

127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1354

H.P. 922

House of Representatives, April 21, 2015

An Act To Improve the Maine Administrative Procedure Act

Reference to the Committee on State and Local Government suggested and ordered printed.

ROBERT B. HUNT

R(+ B. Hunt

Clerk

Presented by Representative FREDETTE of Newport. (GOVERNOR'S BILL)

Be it enacted by the People of the State of Maine as follows:

- Sec. 1. 5 MRSA §8052, sub-§7, as amended by PL 1995, c. 373, §3, is repealed and the following enacted in its place:
 - 7. Adoption of rule. A rule may not take effect unless the agency adopts it within 120 days of the final date by which data, views or arguments may be submitted to the agency for consideration in adopting the rule.

Sec. 2. 5 MRSA §8052, sub-§9 is enacted to read:

- 9. Adoption of a rule expected to result in taking of private property. An agency may not adopt a rule if it is reasonably expected to result in a taking of private property under the Constitution of Maine unless such a result is directed by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking.
- **Sec. 3. 5 MRSA §8053, sub-§1,** as amended by PL 2011, c. 479, §§1 to 3, is further amended to read:
 - 1. Notice of rulemaking without hearing. At least 20 days prior to the comment deadline of any rule without hearing, the agency shall deliver or mail written notice or, with written or electronic agreement of the party, provide electronic notice to:
 - A. Any person specified by the statute authorizing the rulemaking;
 - B. Any person who has filed within the past year a written or electronic request with the agency for notice of rulemaking;
 - C. Any trade, industry, professional, interest group or regional publication that the agency considers effective in reaching the persons affected; and
 - E. The primary sponsor of the legislation that was enacted and authorized the rulemaking, as long as the legislation was enacted within the previous 2 years.
 - Notification to subscribers under paragraph B must be by mail <u>if requested by the subscriber</u> or, <u>with written or electronically submitted agreement of the subscriber</u>, <u>by electronic notice</u> or otherwise in writing to the last address provided to the agency by that person. Subscribers under paragraph B may request to receive a copy of each proposed rule with the <u>written</u> notice. The agency shall provide the copy at the same time the notice is sent.
- Written or electronic notice must also be given to the Secretary of State, by the deadline established by the Secretary of State, for publication in accordance with subsection 5.

 This notice must be in a format approved by the Secretary of State.
 - **Sec. 4. 5 MRSA §8053, sub-§3-A,** as amended by PL 2003, c. 207, §2, is further amended to read:
 - **3-A.** Copies of proposed rules available upon request. At least 20 days prior to hearing on any proposed rule and at least 20 days prior to the comment deadline of any rule without a hearing, the agency shall make copies of the proposed rule available in

1 writing or, with agreement of to persons upon request by mail if so specified by the 2 requestor, or electronically to persons upon request. 3 Sec. 5. 5 MRSA §8056, sub-§1, ¶A, as enacted by PL 1977, c. 551, §3, is 4 amended to read: 5 A. Submit the rule to the Attorney General for approval advice as to form and 6 legality; 7 Sec. 6. 5 MRSA §8056, sub-§1, ¶B, as amended by PL 1999, c. 261, §1, is 8 further amended to read: 9 B. File the original rule as signed by the Attorney General or an assistant attorney 10 general and the authorized representative of the agency, and the statement required by section 8052, subsection 5, with the Secretary of State in a form prescribed by the 11 12 Secretary of State, which form is susceptible to frequent and easy revision. 13 (1) Through rulemaking, an agency may incorporate by reference all or any part of a code, standard, rule or regulation that has been adopted by an agency of the 14 15 United States or of this State or by a nationally recognized organization or 16 association. 17 (2) The reference in the agency rules must fully identify the incorporated matter by exact title, edition or version and date of publication. 18 19 (3) The rules must state where copies of the incorporated matter are available at cost from the agency issuing the rule or where copies are available from the 20 21 agency of the United States, this State or an organization or association originally 22 issuing that matter. 23 (4) An agency incorporating a matter by reference shall submit a copy of the incorporated matter to the Secretary of State; 24 Sec. 7. 5 MRSA §8056, sub-§1, ¶B-1 is enacted to read: 25 26 B-1. Notwithstanding paragraph B, an agency may specify that an incorporated code, standard, rule or regulation also incorporates any subsequently adopted amendment 27 of the incorporated code, standard, rule or regulation. An agency shall provide notice 28 29 to the Legislature, the Secretary of State and the persons specified in section 8053 of 30 any amendment incorporated pursuant to this paragraph. Sec. 8. 5 MRSA §8056, sub-§6, as amended by PL 1995, c. 537, §6, is repealed. 31 32 Sec. 9. 5 MRSA §8057, sub-§2, as amended by PL 1979, c. 425, §10, is further 33 amended to read: 2. Rules not approved. Rules not approved and filed in the manner prescribed by 34 section 8056, subsection 1, paragraphs A and paragraph B, shall be are void and of no 35

8056, subsection 1, paragraph B.

legal effect. Rules in effect prior to July 1, 1978, become void and of no legal effect on

December 31, 1979, unless filed with the Secretary of State in accordance with section

36

37

38

1 2	Sec. 10. 5 MRSA §8072, first \P , as enacted by PL 1995, c. 463, §2, is amended to read:
3 4 5 6 7 8 9	As provided in section 8071, major substantive rules are subject to an increased level of rule-making requirements. The rule-making requirements of subchapter H 2 for routine technical rules apply to the adoption of major substantive rules, except that the 120-day period for adoption and the 150-day period for approval as to form and legality under section 8052, subsection 7, paragraphs A and B apply applies to provisional adoption of major substantive rules, not final adoption. In addition to the other rule-making requirements, every major substantive rule is also subject to legislative review as provided in this section.
11 12	Sec. 11. 5 MRSA §8072, sub-§2, as enacted by PL 1995, c. 463, §2, is amended to read:
13 14 15	2. Submission of materials. At the time an agency provisionally adopts a rule, the agency shall submit to the Executive Director of the Legislative Council 20 copies one electronic copy of:
16 17 18	A. The full text of the rule provisionally adopted by the agency with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible;
19 20	B. A concise summary of the content of the rule and a description and a copy of any existing rule the agency proposes to amend or repeal;
21	C. A statement of the circumstances that require the rule;
22	D. A statement of the economic impact of the rule on the State and its residents; and
23	E. Any other information required by law.
24 25	Sec. 12. 12 MRSA §12452, as amended by PL 2009, c. 214, §1, is further amended to read:
26	§12452. Consolidation of rules
27 28 29 30	Fishing rules as set forth in the Open Water and Ice Fishing Regulations folder, as printed and distributed to the public, are declared to be official consolidations of fishing rules upon filing with the Secretary of State, except that the 150 day limit of Title 5, section 8052, subsection 7, paragraph B does not apply to this section.
31	SUMMARY
32	This bill amends the Maine Administrative Procedure Act as follows:

for advice as to form and legality;

33 34

35

1. It repeals a requirement that rules be approved for form and legality by the

Attorney General and adds a requirement that rules be submitted to the Attorney General

- 2. It changes a statutory provision, which previously provided that the Attorney General may not approve a rule if it is reasonably expected to result in a taking of private property except under certain conditions, to provide that an agency may not adopt a rule if it is reasonably expected to result in such a taking;
 - 3. It changes notice requirements, which previously provided that notice and copies of proposed rules be provided by mail unless the requestor specified they be provided electronically, to provide that notice and copies of proposed rules be provided electronically unless the requestor specifies they be provided by mail;
 - 4. It allows for electronic submission of certain rule-making information;
 - 5. It enacts a provision that allows an agency to choose to incorporate by reference subsequent amendments to a code, standard, rule or regulation; and
- 12 6. This bill also corrects cross-references.