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**An Act To Implement the Recommendations of the Joint
Standing Committee on State and Local Government To Make
Necessary Changes to the Maine Administrative Procedure Act**

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

Sec. 1. 5 MRSA §8054, sub-§2, as amended by PL 2007, c. 581, §4, is further amended to read:

2. Agency findings. Any emergency rule must include, with specificity, the agency's findings with respect to the existence of an emergency, including any modifications of procedures, and such findings are subject to judicial review under section 8058. Such findings must be included in any proposed or adopted emergency rule in a section labeled "findings." No emergency may be found to exist when the primary cause of the emergency is delay caused by the agency involved.

Sec. 2. 5 MRSA §8054, sub-§4 is enacted to read:

4. Fiscal impact; curtailment orders. An emergency rule proposed or adopted in whole or in part to satisfy the requirements of a temporary curtailment order by the Governor under section 1668 must include a specification of the dollar amount of curtailed funds attributable to each change proposed or adopted in the rule.

Sec. 3. 5 MRSA §8071-A is enacted to read:

§ 8071-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Legislative review session. "Legislative review session" means the regular session of the Legislature convening after the beginning of the legislative rule acceptance period.

2. Legislative rule acceptance period. "Legislative rule acceptance period" means the period beginning on the July 1st preceding the convening of a regular session of the Legislature and ending at 5:00 p.m. on the 2nd Friday in January after the convening of that regular session of the Legislature.

Sec. 4. 5 MRSA §8072, sub-§3, as amended by PL 1995, c. 574, §2, is further amended to read:

3. Legislative review; legislative instrument prepared. Upon receipt of the required copies of the provisionally adopted rule and related information, are received by the Executive Director of the Legislative Council during the legislative rule acceptance period, the Executive Director shall immediately forward the materials to notify the Revisor of Statutes, who shall draft an appropriate legislative instrument to allow for legislative review and action upon the provisionally adopted rule during the legislative review session. The Secretary of the Senate and the Clerk of the House for placements shall place the legislative instrument on the Advance Journal and Calendar and distribution to a committee

~~as provided in this subsection.~~ The secretary and clerk shall jointly suggest reference of the legislative instrument to a joint standing committee of the Legislature that has jurisdiction over the subject matter of the proposed rule and shall provide for publication of that suggestion in the Advance Journal and Calendar first in the Senate and then in the House of Representatives no later than the next legislative day following receipt ~~of the legislative instrument~~. After floor action on referral of the ~~rule~~legislative instrument to committee is completed, the Secretary of the Senate and the Clerk of the House of Representatives shall send copies of the rule and related information to each member of that committee. Each rule submitted for legislative review during the legislative rule acceptance period must be reviewed by the appropriate joint standing committee at a meeting called for that purpose in accordance with legislative rules. A committee may review more than one rule and the rules of more than one agency at a meeting. The committee shall notify the affected agency of the meeting on its proposed rules.

Sec. 5. 5 MRSA §8072, sub-§5, as enacted by PL 1995, c. 463, §2, is amended to read:

5. Committee recommendation. After reviewing ~~the~~ a rule referred to it by the Legislature, the committee shall recommend:

- A. That the Legislature authorize the final adoption of the rule;
- B. That the Legislature authorize the final adoption of a specified part of the rule;
- C. That the Legislature authorize the final adoption of the rule with certain specified amendments; or
- D. That the final adoption of the rule be disapproved by the Legislature.

The committee shall notify the agency proposing the rule of its recommendation. When the committee makes a recommendation under paragraph B, C or D, the notice must contain a statement of the reasons for that recommendation.

Sec. 6. 5 MRSA §8072, sub-§6, as enacted by PL 1995, c. 463, §2, is repealed.

Sec. 7. 5 MRSA §8072, sub-§7, as amended by PL 2005, c. 586, §1, is further amended to read:

7. Report to the Legislature. ~~No~~Unless otherwise provided by the Legislature, each joint standing committee of the Legislature that receives a rule submitted during the legislative rule acceptance period shall report to the Legislature its recommendations concerning final adoption of the rule no later than 30 days before statutory adjournment of the Legislature~~legislative review session as provided in Title 3, section 2 each joint standing committee of the Legislature shall submit to the Secretary of the Senate and the Clerk of the House of Representatives the committee's report on agency rules the committee has reviewed as provided in this section. The report must include a copy of the rule or rules reviewed, the committee's recommendation concerning final adoption of the rule or rules, a statement of the reasons for a recommendation to withdraw or modify the rule or rules and draft legislation for introduction in that session that is necessary to implement the committee's recommendation. A committee may decline to include in its report recommendations covering any rules submitted to it later than 5:00 p.m. on the 2nd Friday in January of the year in which the rules are to be considered by the committee. If, before~~

~~adjournment of the session at which a rule is reviewed, the Legislature fails to act on all or part of any rule submitted to it for review in accordance with this section, an agency may proceed with final adoption and implementation of the rule or part of the rule that was not acted on.~~

Sec. 8. 5 MRSA §8072, sub-§8, as enacted by PL 1995, c. 463, §2, is amended to read:

8. Final adoption; effective date. Unless otherwise provided by law, final adoption of a rule or part of a rule by an agency must occur within 60 days of the effective date of the legislation approving that rule or part of that rule or of the adjournment of the session at which that rule is reviewed if no legislation is enacted in which the Legislature failed to act on the rule or part of the rule as specified in subsection 11. Finally adopted rules must be filed with the Secretary of State as provided in section 8056, subsection 1, paragraph B and notice must be published as provided in section 8056, subsection 1, paragraph D. ~~An agency rule authorized by the Legislature becomes~~ Except as otherwise specified by law, the rules become effective 30 days after filing with the Secretary of State or at a later date specified by the agency.

Sec. 9. 5 MRSA §8072, sub-§10 is enacted to read:

10. Rules submitted outside legislative rule acceptance period. The Legislature may act or decline to act upon any rules submitted outside the legislative rule acceptance period.

Sec. 10. 5 MRSA §8072, sub-§11 is enacted to read:

11. Prohibited final adoption. A provisionally adopted rule or part of a provisionally adopted rule may not be finally adopted by an agency unless:

A. Legislation authorizing adoption of the rule or part of the rule is enacted into law; or

B. The agency submits the rule or part of the rule in accordance with this section during the legislative rule acceptance period and the Legislature fails to act on the rule or part of the rule.

For purposes of this subsection, the Legislature fails to act on a rule or part of a rule if the Legislature fails to enact legislation authorizing adoption or disapproving adoption of the rule or part of the rule during the legislative review session or during any subsequent session to which a legislative instrument expressly providing for approval or disapproval of the rule or part of the rule is carried over. Nothing in this section requires the Legislature to use the legislative instrument produced pursuant to subsection 3 to approve or disapprove of a rule or part of a rule.

SUMMARY

This bill implements the statutory recommendations of the Joint Standing Committee on State and Local Government resulting from its study of the Maine Administrative Procedure Act pursuant to Resolve 2009, chapter 207.

This bill clarifies that a provisionally adopted major substantive rule submitted for legislative review after the statutory deadline for submission may not be finally adopted unless legislation authorizing its adoption is enacted into law or the agency follows the procedure under the Maine Revised Statutes, Title

5, section 8072 as amended in this bill and the Legislature fails to act. This bill also specifies that an emergency rule must include the agency's findings with respect to the existence of an emergency in a section labeled "findings" and that emergency rules proposed or adopted in whole or in part to satisfy the requirements of a temporary curtailment order must include a specification in the rule of the dollar amount of curtailed funds attributable to each change adopted in the rule.