

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve the Maine Administrative Procedure Act

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Sec. 1. 5 MRSA §8052, sub-§7, as amended by PL 1995, c. 373, §3, is repealed and the following enacted in its place: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 if requested by the subscriber or, ~~with written or electronically submitted agreement of the subscriber,~~ by electronic notice 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 ~~written~~ 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 writing or, with agreement of to persons upon request by mail if so specified by the requestor; or electronically to persons upon request.

Sec. 5. 5 MRSA §8056, sub-§1, ¶A, as enacted by PL 1977, c. 551, §3, is amended to read:

A. Submit the rule to the Attorney General for ~~approval~~advice as to form and legality;

Sec. 6. 5 MRSA §8056, sub-§1, ¶B, as amended by PL 1999, c. 261, §1, is further amended to read:

B. File the original rule as signed by the ~~Attorney General or an assistant attorney 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 Secretary of State, which form is susceptible to frequent and easy revision.

(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 United States or of this State or by a nationally recognized organization or association.

(2) The reference in the agency rules must fully identify the incorporated matter by exact title, edition or version and date of publication.

(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 agency of the United States, this State or an organization or association originally issuing that matter.

(4) An agency incorporating a matter by reference shall submit a copy of the incorporated matter to the Secretary of State;

Sec. 7. 5 MRSA §8056, sub-§1, ¶B-1 is enacted to read:

B-1. Notwithstanding paragraph B, an agency may specify that an incorporated code, standard, rule or regulation also incorporates any subsequently adopted amendment of the incorporated code, standard, rule or regulation. An agency shall provide notice to the Legislature, the Secretary of State and the persons specified in section 8053 of any amendment incorporated pursuant to this paragraph.

Sec. 8. 5 MRSA §8056, sub-§6, as amended by PL 1995, c. 537, §6, is repealed.

Sec. 9. 5 MRSA §8057, sub-§2, as amended by PL 1979, c. 425, §10, is further amended to read:

2. Rules not approved. Rules not approved and filed in the manner prescribed by section 8056, subsection 1, ~~paragraphs A and paragraph B~~, shall be void and of no 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 8056, subsection 1, paragraph B.

Sec. 10. 5 MRSA §8072, first ¶, as enacted by PL 1995, c. 463, §2, is amended to read:

As provided in section 8071, major substantive rules are subject to an increased level of rule-making requirements. The rule-making requirements of subchapter H2 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 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.

Sec. 11. 5 MRSA §8072, sub-§2, as enacted by PL 1995, c. 463, §2, is amended to read:

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:

- 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;
- 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;
- C. A statement of the circumstances that require the rule;
- D. A statement of the economic impact of the rule on the State and its residents; and
- E. Any other information required by law.

Sec. 12. 12 MRSA §12452, as amended by PL 2009, c. 214, §1, is further amended to read:

§ 12452. Consolidation of rules

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.

SUMMARY

This bill amends the Maine Administrative Procedure Act as follows:

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 for advice as to form and legality;

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

6. This bill also corrects cross-references.