



Maine Human Rights Commission

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March 31, 2025

The Honorable Joseph Baldacci, Senate Chair
The Honorable Suzanne Salisbury, House Chair
Joint Standing Committee on State and Local Government
100 State House Station
Augusta, ME 04333

Re: An Act to Require the Automatic Repealing of Agency Rules – LD 965

Dear Senator Baldacci, Representative Salisbury, and Members of the Joint Standing Committee on State and Local Government:

The Maine Human Rights Commission (“Commission”) is Maine’s quasi-independent, nonpartisan State agency charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* (“MHRA”). The Commission is statutorily charged with the duties of: investigating, conciliating, and at times litigating protected-class discrimination cases under the MHRA; promulgating rules and regulations to effectuate the Act; and making recommendations for further legislation or executive action concerning infringements on human rights in Maine. 5 M.R.S. § 4566(7), (11). With those duties in mind, the Commission provides this testimony against LD 965.

Background: The Commission’s Rulemaking Authority and Process

The Commission has the statutory authority to “adopt, amend and rescind rules and regulations to effectuate this Act, such adoption, amendment and rescission to be made in the manner provided by” the Administrative Procedures Act (“APA”). 5 M.R.S. § 4566(7). Only amendments to rules implementing § 4553-A of the MHRA (which defines “disability” for purposes of the Act) are major substantive rules subject to Legislative approval, *id.*; the remainder of the Commission’s rules are subject only to review by the Attorney General’s office (“AG”) for legal sufficiency and form.

The Commission’s rules are drafted by its Commission Counsel, with assistance from the Deputy Commission Counsel and the Executive Director. Prior to being sent for public comment, the draft rules are reviewed by the five Commissioners and revised by Commission Counsel as necessary to meet their approval; these proposed rules are then sent to the AG for preliminary review and approval. Commission Counsel then follows the APA to publish notice and receive public comment on the proposed rules, summarizes and responds to any comments received, and advises the Commission regarding potential changes suggested by the commenters. Counsel also must ensure that any rulemaking proposals do not conflict with rules effectuating federal antidiscrimination laws promulgated by the Equal Employment Opportunity Commission (“EEOC”) and the U.S. Department of Housing and Urban Development (“HUD”), which provide substantial funding to the Commission based on a determination that the MHRA and its regulations are “substantially similar” to those agencies’ laws.

The Commission has seven rules in total, two of which are procedural rules (one general, and one for education cases), one each for housing, employment, public accommodations, and education, and a rule addressing disability

discrimination in public conveyances. The rules are routinely reviewed, and while only the procedural rule is updated regularly, other rules are amended when necessary due to a change in the statute or a new legal ruling.

LD 965 Is Unnecessary and Unduly Burdensome

LD 965 favors automation over expertise by imposing a rigid timeline which repeals rules without any consideration of whether those rules require any updates. Even a rule interpreting a statute which is unchanged would be repealed automatically, regardless of whether the rule itself was still legally sufficient. This blanket approach is not appropriate because it discounts the experience of Maine’s agency experts, as well as the experience the general public has when interacting with those agencies. If rules are automatically repealed without notice, the public will be unable to properly anticipate the way an agency operates; this is particularly important when dealing with Maine’s most vulnerable populations, who already face unnecessary hurdles to access services.

LD 965 would subject the Commission to unnecessary effort and expense. Whenever the MHRA is amended, the Commission reviews rules which relate to the amended portions of the law and drafts any necessary revisions. The same occurs when the Maine Supreme Judicial Court issues a new opinion addressing the interpretation of the MHRA. Requiring the Commission to redraft all of its rules every five years without regard to whether redrafting is needed would be a substantial burden on Commission Counsel, and on the entire 14-person Commission staff. Moreover, for an agency as small as the Commission, the cost of publishing notice and providing copies of its proposed rules is not negligible. In addition, this Bill requires that if an agency adopts or seeks renewal of a rule, it must identify two other rules that it will not seek to renew. This requirement is ill-suited to the Commission and other small agencies, which have few rules – in order to comply with this rule, the Commission would simply name any two rules, planning to allow all of its rules to expire in rotation and then be reenacted. This process appears to exalt form over substance and would create extra work for agency employees with no resulting public benefit.

If the Legislature has concerns about an agency’s attention to its rules, it has many less disruptive ways to address those concerns. For example, during the last legislative session, concerns arose about the Department of Education (“DOE”) and the Commission’s joint education rule. The Commission and DOE began the process to amend this rule in 2015, but the rule ultimately was derailed by others outside the agencies. In 2021, the Legislature adopted substantive and procedural amendments to the MHRA, including to the subsection addressing education. In accordance with the process described above, once these changes became effective, the Commission reviewed and began the process of amending its education rule anew. In 2023, wanting to ensure that the education rule was timely reviewed and revised, the Legislature enacted LD 489, codified at 5 M.R.S. § 4603, providing that the Commission and DOE must review and, if necessary, revise the joint education rule at least once every 10 years, starting January 15, 2024. This approach has the benefit of prompting Maine agencies to address outdated rules, while still relying on the judgment and experience of each individual agency as to whether its rules require amending.

Thank you for this opportunity to provide testimony against LD 965. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,

/s/ Barbara Archer Hirsch, Commission Counsel

cc: Commissioners
Kit Thomson Crossman, Executive Director