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No. 940

H.P. 700

House of Representatives, March 8, 2011

An Act To Increase Access to State Rule-making Notices

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative HAYES of Buckfield.

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

2 **PART A**

3 **Sec. A-1. 5 MRSA §8002, sub-§8-A**, as enacted by PL 1997, c. 110, §1, is
4 amended to read:

5 **8-A. Proposed rule.** "Proposed rule" or "proposed agency rule" means a rule that an
6 agency has formally proposed for adoption through submission of the rule to the
7 Secretary of State for publication pursuant to section 8053, subsection ~~5~~ 6.

8 **Sec. A-2. 5 MRSA §8052, sub-§7**, as amended by PL 1995, c. 373, §3, is further
9 amended to read:

10 **7. Adoption of rule.** A rule may not take effect unless:

11 A. The agency adopts it within 120 days of the final date by which data, views or
12 arguments may be submitted to the agency for consideration in adopting the rule; and

13 B. This adopted rule is approved by the Attorney General as to form and legality, as
14 required by section 8056, within 150 days of the final date by which those comments
15 may be submitted.

16 The final date for comments may be extended if notice of doing so is published within 14
17 days after the most recently published comment deadline, ~~in the consolidated notice~~
18 ~~referred to in section 8053.~~

19 **Sec. A-3. 5 MRSA §8053, sub-§1**, as amended by PL 2003, c. 207, §1, is further
20 amended to read:

21 **1. Notice of rulemaking without hearing.** At least 20 days prior to the comment
22 deadline of any rule without hearing, the agency shall deliver or mail written notice or,
23 with written or electronic agreement of the party, provide electronic notice to:

24 A. Any person specified by the statute authorizing the rulemaking;

25 B. Any person who has filed within the past year a written or electronic request with
26 the agency for notice of rulemaking; and

27 C. Any trade, industry, professional, interest group or regional publication that the
28 agency considers effective in reaching the persons affected.

29 Notification to subscribers under paragraph B must be by mail or, with written or
30 electronically submitted agreement of the subscriber, electronic notice or otherwise in
31 writing to the last address provided to the agency by that person. Subscribers under
32 paragraph B may request to receive a copy of each proposed rule with the written notice.
33 The agency shall provide the copy at the same time the notice is sent.

34 Written or electronic notice must also be given to the Secretary of State, by the deadline
35 established by the Secretary of State, for publication in accordance with subsection ~~5~~ 6.
36 This notice must be in a format approved by the Secretary of State.

1 **Sec. A-4. 5 MRSA §8053, sub-§2**, as repealed and replaced by PL 1979, c. 425,
2 §5, is amended to read:

3 **2. Notice of rule-making hearing.** When an agency holds a public hearing prior to
4 adoption of a rule, notice of the hearing ~~shall~~ must be given in the manner described in
5 subsections 1 and ~~5~~ 6, using the date of the hearing to calculate the time periods involved;

6 **Sec. A-5. 5 MRSA §8053, sub-§3**, as amended by PL 2009, c. 256, §1, is further
7 amended to read:

8 **3. Contents of notice.** ~~Except for notices governed by subsections 5 and 7, a~~ A
9 notice under this section must:

- 10 A. Refer to the statutory authority under which the adoption of the rule is proposed;
- 11 B. State the time and place of any scheduled public hearing or state the manner in
12 which a hearing may be requested;
- 13 C. State the manner and time within which data, views or arguments may be
14 submitted to the agency for consideration, whether or not a hearing is held;
- 15 C-1. State the name, address and phone number of the staff person responsible for
16 providing additional information or a printed version of the proposed rule;
- 17 D. If possible, contain the express terms of the proposed rule or otherwise describe
18 the substance of the proposed rule, stating the subjects and issues involved and
19 indicate where a copy of the proposed rule may be obtained;
- 20 E. Refer to the substantive state or federal law to be implemented by the rules; and
- 21 F. Indicate where a copy of the statement of impact on small business pursuant to
22 section 8052, subsection 5-A may be obtained.

23 **Sec. A-6. 5 MRSA §8053, sub-§5**, as amended by PL 2009, c. 256, §2, is
24 repealed.

25 **Sec. A-7. 5 MRSA §8053, sub-§6**, as amended by PL 2009, c. 256, §3, is further
26 amended to read:

27 **6. Electronic publication.** ~~In addition to the printed publication required in~~
28 ~~subsection 5, the~~ The Secretary of State shall maintain a publicly accessible website for
29 posting the notices of all proposed and adopted rules. The website must include a brief
30 explanation to assist the public in participating in the rule-making process. The contents
31 of the notice for electronic publication are pursuant to subsection 3. Notice of each rule-
32 making proceeding must be published on the Secretary of State's website 17 to 24 days
33 prior to the public hearing on the proposed rule or at least 30 days prior to the last date on
34 which views and arguments may be submitted to the agency for consideration if no public
35 hearing was scheduled.

36 The Secretary of State must be reimbursed for the cost of electronic publication of rule-
37 making notices by the agencies proposing the rulemaking. The total costs must be
38 prorated by the Secretary of State among all agencies submitting notices.

1 **Sec. A-8. 5 MRSA §8053, sub-§7**, as enacted by PL 2009, c. 256, §4, is repealed.

2 **Sec. A-9. 5 MRSA §8056, sub-§1, ¶D**, as enacted by PL 1981, c. 524, §12, is
3 amended to read:

4 D. Publish, pursuant to the procedures set forth in section 8053, subsection ~~5~~ 6, a
5 notice containing the following information: A statement that the rule has been
6 adopted, its effective date, a brief description of the substance of the rule, and the
7 address where a copy may be obtained.

8 **Sec. A-10. 12 MRSA §6194**, as enacted by PL 2007, c. 692, §2, is amended to
9 read:

10 **§6194. Shellfish area closure status notification**

11 ~~Notwithstanding Title 5, section 8053, the notification of rulemaking relating to the~~
12 ~~status of a shellfish area is not required to be published in a newspaper.~~ The department
13 shall place any information concerning the opening or closing of a shellfish area on the
14 department's shellfish sanitation hotline and on the department's publicly accessible
15 website. The commissioner may, in the case of an emergency as determined by the
16 commissioner, advertise a change in the status of a shellfish area in the newspaper.

17 **Sec. A-11. 25 MRSA §2103-A, sub-§2, ¶C**, as enacted by PL 1989, c. 754, Pt.
18 C, §1, is amended to read:

19 C. The Secretary of State shall publish, pursuant to the procedures set forth in Title
20 5, section 8053, subsection ~~5~~ 6, a notice containing the following information:

- 21 (1) A statement that the state rule has been adopted and its effective date;
- 22 (2) A brief description of the substance of the state rule and the referenced
23 federal regulations or amendments; and
- 24 (3) The addresses where copies of the state rule and the federal regulations and
25 amendments may be obtained; and

26 **Sec. A-12. 29-A MRSA §555, sub-§2, ¶D**, as amended by PL 2005, c. 679, §1,
27 is further amended to read:

28 D. The Secretary of State shall publish, pursuant to Title 5, section 8053, subsection
29 ~~5~~ 6, a notice containing the following information:

- 30 (1) A statement that the rule has been adopted and its effective date;
- 31 (2) A brief description of the substance of the rule and the referenced federal
32 regulation or amendment; and
- 33 (3) The addresses at which copies of the rule and the federal regulation or
34 amendment may be obtained.

35 **Sec. A-13. 30-A MRSA §2357, sub-§1**, as amended by PL 1995, c. 655, §1, is
36 further amended to read:

1 **1. Public notice and hearing required.** All quasi-municipal corporations or
2 districts must provide reasonable public notice and hearing, as provided by Title 5,
3 section 8052, subsection 1 and Title 5, section 8053, before adopting any regulation or
4 expanding or creating any program, ~~except that notice need not be given to the Secretary~~
5 ~~of State for publication in the consolidated newspaper notice of agency rulemaking.~~ In
6 addition to the preceding notice requirements, a quasi-municipal corporation or district
7 must publish notice in a newspaper of general circulation in the service area of the
8 corporation or district at least 17 days, but not more than 24 days, in advance of a
9 meeting at which a regulation will be adopted or a program expanded or created.

10 **Sec. A-14. 38 MRSA §344-B, sub-§1,** as amended by PL 2001, c. 212, §1, is
11 further amended to read:

12 **1. Publication of timetables.** No later than November 1st of each year, the
13 commissioner shall publish processing timetables for each permit and license issued by
14 the department. Permit and license processing timetables must be published
15 ~~simultaneously in all newspapers designated~~ by the Secretary of State as ~~papers of record~~
16 under Title 5, section 8053, subsection ~~5~~ 6. The commissioner shall enter the published
17 processing timetables into the record of the board at the first meeting of the board
18 following publication.

19 Except as provided in this section, the deadline governing the processing of an
20 application is determined by the timetable in effect on the date the application is
21 determined to be complete.

22 **Sec. A-15. 38 MRSA §1696, sub-§1,** as enacted by PL 2007, c. 643, §2, is
23 amended to read:

24 **1. Authority.** The board may adopt rules prohibiting the manufacture, sale or
25 distribution in the State of a children's product containing a priority chemical if the board
26 finds, after consideration of information filed under section 1695 and other relevant
27 information submitted to or obtained by the board, that:

28 A. Distribution of the children's product directly or indirectly exposes children and
29 vulnerable populations to the priority chemical; and

30 B. One or more safer alternatives to the priority chemical are available at a
31 comparable cost.

32 If there are several available safer alternatives to a priority chemical, the board may
33 prohibit the sale of children's products that do not contain the safer alternative that is least
34 toxic to human health or least harmful to the environment.

35 A rule established pursuant to this subsection must specify the effective date of the
36 prohibition, which may not be sooner than 12 months after notice of the proposed rule is
37 published as required under Title 5, section 8053, subsection ~~5~~ 6. Rules adopted pursuant
38 to this subsection are major substantive rules as defined in Title 5, chapter 375,
39 subchapter 2-A.

40 **Sec. A-16. Effective date.** This Part takes effect July 1, 2012.

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PART B

Sec. B-1. Competitive bids. In accordance with the competitive bid process pursuant to the Maine Revised Statutes, Title 5, chapter 155, the Department of Administrative and Financial Services shall issue a contract to provide a publicly accessible website through the office of the Secretary of State to post notices of all proposed and adopted rules pursuant to Title 5, section 8053. The website must be user-friendly, allow for easy searchability of agency rules and have archival capability. The website must be fully operational no later than July 1, 2012.

SUMMARY

This bill eliminates the requirement that the Secretary of State publish proposed and adopted rules in the newspaper beginning July 1, 2012. It requires the Department of Administrative and Financial Services to issue a contract to provide a website for rule-making notices in accordance with the competitive bid process pursuant to the Maine Revised Statutes, Title 5, chapter 155. The website must be fully operational no later than July 1, 2012.