



125th MAINE LEGISLATURE

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Legislative Document

No. 158

S.P. 51

In Senate, January 25, 2011

An Act To Improve Public Understanding in the Rulemaking of Certain Departments

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

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senators: COLLINS of York, SNOWE-MELLO of Androscoggin,
THIBODEAU of Waldo, THOMAS of Somerset, TRAHAN of Lincoln, Representative:
CEBRA of Naples.

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

2 **Sec. 1. 5 MRSA §8052, sub-§5**, as amended by PL 1997, c. 196, §1, is further
3 amended to read:

4 **5. Written statement adopted.** At the time of adoption of any rule, the agency shall
5 adopt a written statement explaining the factual and policy basis for the rule. The agency
6 shall list the names of persons whose comments were received, including through
7 testimony at hearings, the organizations the persons represent and summaries of their
8 comments. The agency shall address the specific comments and concerns expressed
9 about any proposed rule and state its rationale for adopting any changes from the
10 proposed rule, failing to adopt the suggested changes or drawing findings and
11 recommendations that differ from those expressed about the proposed rule. For rules that
12 have received a public hearing, the Department of Agriculture, Food and Rural
13 Resources, the Department of Conservation, the Department of Environmental Protection
14 and the Department of Inland Fisheries and Wildlife shall identify the primary sources of
15 information relied on in establishing the primary provisions of the rule.

16 A. If the same or similar comments or concerns about a specific issue were
17 expressed by different persons or organizations, the agency may synthesize these
18 comments and concerns into a single comment that accurately reflects the meaning
19 and intent of these comments and concerns to be addressed by the agency, listing the
20 names of the persons who commented and the organizations they represent.

21 B. A rule may not be adopted unless the adopted rule is consistent with the terms of
22 the proposed rule, except to the extent that the agency determines that it is necessary
23 to address concerns raised in comments about the proposed rule, or specific findings
24 are made supporting changes to the proposed rule. The agency shall maintain a file
25 for each rule adopted that must include, in addition to other documents required by
26 this Act, testimony, comments, the names of persons who commented and the
27 organizations they represent and information relevant to the rule and considered by
28 the agency in connection with the formulation, proposal or adoption of a rule. If an
29 agency determines that a rule that the agency intends to adopt is substantially
30 different from the proposed rule, the agency shall request comments from the public
31 concerning the changes from the proposed rule. The agency may not adopt the rule
32 for a period of 30 days from the date comments are requested pursuant to this
33 paragraph. Notice of the request for comments must be published by the Secretary of
34 State in the same manner as notice for proposed or adopted rules.

35 C. If the adoption under this subsection is final adoption of a major substantive rule
36 under subchapter ~~H-A~~ 2-A, the agency must include in its written statement citation
37 of the legislative act authorizing final adoption of that rule; or, if authorization is the
38 result of failure of the Legislature to act under section 8072, subsection 7, the agency
39 must indicate that fact and identify the date the agency filed the rule for review under
40 section 8072.

41 **Sec. 2. 5 MRSA §8053, sub-§3-A**, as amended by PL 2003, c. 207, §2, is further
42 amended to read:

1 **3-A. Copies of proposed rules available upon request.** At least 20 days prior to a
2 hearing on any proposed rule and at least 20 days prior to the comment deadline of any
3 rule without a hearing, the agency shall make copies of the proposed rule available in
4 writing or, with agreement of the requestor, electronically to persons upon request. At
5 least 10 days prior to a hearing on any proposed rule, the Department of Agriculture,
6 Food and Rural Resources, the Department of Conservation, the Department of
7 Environmental Protection and the Department of Inland Fisheries and Wildlife shall
8 provide to persons upon request a list of the primary sources of information relied on in
9 establishing the primary provisions of the proposed rule as required in section 8052,
10 subsection 5.

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SUMMARY

12 This bill requires the Department of Agriculture, Food and Rural Resources, the
13 Department of Conservation, the Department of Environmental Protection and the
14 Department of Inland Fisheries and Wildlife to make available to the public primary
15 sources of information that support the primary provisions in proposed rules.