

## Title 5, §8072, Legislative review of major substantive rules

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the First Special Session of the 120th Legislature, which ended November 14, 2002, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

**PLEASE NOTE: The Revisor's Office cannot provide legal advice or interpretation of Maine law. If you need such legal assistance, please contact a qualified attorney.**

### §8072. Legislative review of major substantive rules

As provided in section 8071, major substantive rules are subject to an increased level of rule-making requirements. The rule-making requirements of subchapter II 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. [1995, c. 463, §2 (new).]

**1. Preliminary adoption of major substantive rules.** An agency proposing a major substantive rule other than an emergency rule, after filing the notice of proposed rulemaking required by section 8052, shall proceed with rule-making procedures to the point of, but not including, final adoption. At that point, known in this section as "provisional adoption," the agency shall file the provisionally adopted rule and related materials with the Secretary of State as provided in section 8056, subsection 1, paragraph B and submit the rule to the Legislature for review and authorization for final adoption as provided in this section. The rule has legal effect only after review by the Legislature followed by final adoption by the agency. [1997, c. 196, §2 (amd).]

**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 of: [1995, c. 463, §2 (new).]

#### 2. Submission of materials.

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; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

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; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

C. A statement of the circumstances that require the rule; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

D. A statement of the economic impact of the rule on the State and its residents; and [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

E. Any other information required by law. [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

**3. Assignment to committee of jurisdiction.** Upon receipt of the required copies of the provisionally adopted rule and related information, the Executive Director of the Legislative Council shall immediately forward the materials to the Secretary of the Senate and the Clerk of the House for placement on the Advance Journal and Calendar and distribution to a committee as provided in this subsection. The secretary and clerk shall jointly suggest reference 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. After floor action on referral of the rule 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

## Title 5, §8072, Legislative review of major substantive rules

information to each member of that committee. Each rule submitted for legislative review 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. [1995, c. 574, §2 (amd).]

**4. Committee review.** The committee shall review each provisionally adopted rule and, in its discretion, may hold public hearings on that rule. A public hearing under this subsection must be advertised in the same manner as required by legislative rules then in effect for advertisement of public hearings on proposed legislation. The committee's review must include, but is not limited to, a determination of: [1995, c. 537, §§7, 8 (amd).]

### 4. Committee review.

A. Whether the agency has exceeded the scope of its statutory authority in approving the provisionally adopted rule; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 537, §§7, 8 (amd).]

B. Whether the provisionally adopted rule is in conformity with the legislative intent of the statute the rule is intended to implement, extend, apply, interpret or make specific; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 537, §§7, 8 (amd).]

C. Whether the provisionally adopted rule conflicts with any other provision of law or with any other rule adopted by the same or a different agency; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 537, §§7, 8 (amd).]

D. Whether the provisionally adopted rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 537, §§7, 8 (amd).]

E. Whether the provisionally adopted rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 537, §§7, 8 (amd).]

F. Whether the provisionally adopted rule could be made less complex or more readily understandable for the general public; [1995, c. 537, §7 (amd).]

[1995, c. 537, §7 (amd).] [1995, c. 537, §§7, 8 (amd).]

G. Whether the provisionally adopted rule was proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law; and [1995, c. 537, §7 (amd).]

[1995, c. 537, §7 (amd).] [1995, c. 537, §§7, 8 (amd).]

H. For a rule that is reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the rule to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the rule. [1995, c. 537, §8 (new).]

[1995, c. 537, §8 (new).] [1995, c. 537, §§7, 8 (amd).]

**5. Committee recommendation.** After reviewing the rule, the committee shall recommend: [1995, c. 463, §2 (new).]

### 5. Committee recommendation.

A. That the Legislature authorize the final adoption of the rule; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

B. That the Legislature authorize the final adoption of a specified part of the rule; [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

## Title 5, §8072, Legislative review of major substantive rules

C. That the Legislature authorize the final adoption of the rule with certain specified amendments; or [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

D. That the final adoption of the rule be disapproved by the Legislature. [1995, c. 463, §2 (new).]

[1995, c. 463, §2 (new).] [1995, c. 463, §2 (new).]

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. [1995, c. 463, §2 (new).]

**6. Draft legislation.** When the committee recommends that a rule be authorized in whole or in part by the Legislature, the committee shall instruct its nonpartisan staff to draft a bill authorizing the adoption of all or part of the rule and incorporating any amendments the committee desires. [1995, c. 463, §2 (new).]

**7. Consideration by the Legislature.** No later than 30 days before statutory adjournment of the Legislature 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 45 days before statutory adjournment. If an adjournment date earlier than required by statute is anticipated, the Legislative Council may establish an earlier deadline for agencies to submit provisionally adopted rules for review, except that any earlier date established by the council may not be more than 75 days before statutory adjournment. 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. [1997, c. 196, §2 (amd).]

**8. Final adoption; effective date.** Unless otherwise provided by law, final adoption of a rule by an agency must occur within 60 days of the effective date of the legislation approving that rule or of the adjournment of the session at which that rule is reviewed if no legislation is enacted. 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 effective 30 days after filing with the Secretary of State or at a later date specified by the agency. [1995, c. 463, §2 (new).]

**9. Consideration at special session.** If appropriate, the committee recommendation regarding an agency rule or rules may be submitted to and considered by a special session of the Legislature. [1995, c. 463, §2 (new).]