



**Maine State Legislature**  
**OFFICE OF POLICY AND LEGAL ANALYSIS**

www.mainelegislature.gov/opla  
13 State House Station, Augusta, Maine 04333-0013  
(207) 287-1670

**MEMORANDUM**

**TO:** Joint Standing Committee on Health Coverage, Insurance and Financial Services

**FROM:** Colleen McCarthy Reid, Principal Legislative Analyst

**DATE:** January 12, 2023

**RE:** Orientation Materials

---

**Overview of Staff Offices and Committee Process and Activities**

1. Office of Policy and Legal Analysis – Overview (blue)
2. Office of Fiscal and Program Review – Overview (green)
3. Office of Program Evaluation and Government Accountability – Overview (purple)
4. Frequently Asked Questions about Legislative Analysts (blue)
5. Maine’s Freedom of Access Act and the Conduct of the Business of the Legislature (goldenrod)
6. Legislative Confidentiality (teal)
7. How to Read a Bill (yellow)
8. The Flow of Legislation through the Committee Process (yellow)
9. Policy Committee Role in Budget Matters: Joint Rule 314 (pink)
10. Fiscal Notes in the Committee Process (green)
11. Special Reviews of Public Records Exceptions and Restrictions on Access to Public Records (goldenrod)
12. Carry Over Bills (buff)
13. Committee Bills (salmon)
14. Legislative Oversight of Agency Rules (purple)
15. Legislative Review of Major Substantive Rules (goldenrod)
16. Studies: Legislative and Non-legislative (salmon)
17. Government Evaluation Act (purple)
18. State Mandates (buff)

**Committee Rules of Procedure and Guidance for Conduct of Committee Meetings**

1. 131<sup>st</sup> Legislature Model Rules of Committee Procedure (purple)
2. Guidance from presiding officers for committees (yellow)
3. Committee meeting guidance for the public and interested parties (white)

# Office of Policy and Legal Analysis

**Mailing Address:** 13 State House Station  
Augusta, Maine 04333-0013

**Physical Location:** Cross Office Building, Room 215

**Telephone:** (207) 287-1670

**Fax:** (207) 287-1275

**Website:** <http://legislature.maine.gov/opla>

## Who we are

The Office of Policy and Legal Analysis (OPLA) is a nonpartisan staff office of the Maine Legislature operating under the auspices of the Legislative Council. OPLA staff are prohibited from taking or advocating political positions on policy issues or engaging in any activities that might be construed as partisan or political. OPLA staff observe strict confidentiality policies and guidelines.

## What we do

OPLA provides nonpartisan professional legislative committee staffing services to the Legislature. In particular, OPLA staffs all the joint standing committees of the Legislature (except the committees with jurisdiction over appropriations and financial affairs and taxation issues) and provides other related services to support the Legislature.

Committee staff services include:

- Providing nonpartisan policy and legal research and analysis of legislation and issues before the committee and assisting the committee with its consideration of legislation;
- Drafting committee papers, including committee amendments, committee bills, reports and other correspondence;
- Assisting committees in oversight of state agencies, including reviewing agency budgets and rulemaking and conducting State Government Evaluation Act reviews and quasi-independent state entity reviews; and
- Assisting committee chairs in facilitating the committee process and organizing committee work.

Other OPLA services include:

- Assisting individual legislators with drafting and information requests;
- Providing staffing for interim legislative study commissions, including providing nonpartisan policy and legal research and analysis of study issues, assisting commission chairs with scheduling and drafting study reports;
- Conducting staff studies (policy and legal analysis of issues) during the Legislative interim;
- Assisting the Revisor of Statutes in drafting legislative bill requests; and
- Preparing and presenting reports to legislative leadership on the status of committee work on bills.

## Publications

OPLA's primary publications include:

- Legislators' Handbook (updated biennially);
- Bill Digest and Enacted Law Summaries (prepared annually after adjournment); and
- Reports of legislative study commissions (one-time, or annually for ongoing studies).

# Office of Fiscal and Program Review

**Mailing Address:** 5 State House Station  
Augusta, Maine 04333-0013  
**Physical Location** State House, Room 226

**Telephone:** (207) 287-1635  
**Fax:** (207) 287-6469  
**Website** <http://legislature.maine.gov/ofpr/>

The Office of Fiscal and Program Review (OFPR) is a nonpartisan office established to provide independent, accurate and objective information and analyses to members of the Maine State Legislature with respect to historical, current, projected and proposed appropriations, expenditures, taxes and revenue, as well as other fiscal information requested.

## Function and services

### Committee Staffing

- Staffs the Joint Committee on Appropriations and Financial Affairs and the Joint Committee on Taxation;
- Staffs the Transportation and Health and Human Services committees during budget deliberations;
- Provides fiscal and budget assistance to other committees as needed;
- Staffs the Revenue Forecasting Committee (two OFPR staff serve on the committee as members); and
- Staffs study groups, task forces and conference committees as assigned by the Legislative Council.

### Fiscal Tracking of Legislation

- Analyzes bills and amendments for fiscal impact to produce a fiscal note that summarizes the fiscal impact on state and local government finances; and
- Identifies, tracks and reports on bills that are subject to or placed on the Special Appropriations Table and/or the Special Highway Table.

### Fiscal Monitoring, Analysis and Reporting

- Assists the Appropriations Committee in fulfilling their statutory obligation to review the Financial Orders generated by the executive branch and approved by the Governor;
- Provides regular reporting on budgeted and actual fund balances, revenue performance, cash balances and spending of major state programs;
- Responds to inquiries from legislators, legislative staff and the general public regarding the financial position of the state and state programs; and
- Tracks and reviews the reports required to be provided to the Appropriations and Taxation Committees by various departments and agencies.

## Major publications

- [Compendium of State Fiscal Information \(updated annually\)](#)
- [Summary of Major State Funding Disbursed to Municipalities and Counties \(updated annually\)](#)
- [The Budget Process \(updated biennially\)](#)
- [The Fiscal Note Process: An Overview \(updated biennially\)](#)

For more information please visit <http://legislature.maine.gov/ofpr>

# Office of Program Evaluation and Government Accountability

**Mailing Address:** 82 State House Station  
Augusta, Maine 04333-0082

**Physical Location:** Cross Office Building, Room  
104/105

**Telephone:** (207) 287-1901

**Website:** <http://legislature.maine.gov/opega>

## Who we are

The Office of Program Evaluation and Government Accountability (OPEGA) is an independent, nonpartisan legislative office established and governed by [3 M.R.S.A. §§991-1001](#). With a focus on effectiveness, efficiency, accountability and economical use of resources, OPEGA conducts independent, evidence-based, objective reviews of state agencies, programs and activities to support the Legislature's oversight role monitoring and improving the performance of state government. Within this context, OPEGA also evaluates program compliance with laws, regulations, policies and best practices. OPEGA supports, and is overseen by, the Government Oversight Committee (GOC), which reviews and approves the office's annual work plan, directs the office to conduct program evaluations, and receives reports produced by the office.

## What we do

OPEGA strives to provide timely, informative evaluation reports that are of high value to the Legislature and that support its oversight responsibilities. OPEGA's primary functions include:

### Program Evaluations, Including of Tax Expenditures

- At the direction of the GOC, conducting independent and objective evaluations of state agencies, programs and activities, which may also include other entities receiving public funds administered by the State or expending private monies for public purposes;
- Pursuant to statute, conducting evaluations of tax expenditure programs, including economic development incentives; and
- Producing and presenting final written reports with detailed findings and results.

### Government Oversight Committee Staffing

- Providing direct staffing to the GOC, with OPEGA's administrative secretary serving as the GOC committee clerk;
- Coordinating committee meetings, including preparing meeting materials and providing requested research; and
- Providing thorough, public presentations of OPEGA reports.

## Review requests

Legislators can call OPEGA directly at 207-287-1901 to discuss submitting a review request to the GOC or visit OPEGA's website at <http://mainelegislature.org/opega/> and click on the "Request for a review" link on the left-hand side of the page.

## Publications

OPEGA's primary publications include:

- Reports and information briefs from OPEGA program evaluations; and
- Annual reports on OPEGA activities and performance.

# Frequently Asked Questions about Legislative Analysts

## What do Legislative Analysts do?

- We provide professional nonpartisan staffing for legislative committees, designated subcommittees and study commissions. Analysts from the Office of Policy and Legal Analysis (OPLA) staff all joint standing committees except the Taxation and Appropriations and Financial Affairs Committees, which are staffed by analysts from the Office of Fiscal and Program Review (OFPR).
- We are part of the Legislative Council's nonpartisan staff and we are hired specifically to work with and for all legislators in a nonpartisan fashion in accordance with strict Legislative Council policies.
- We work with individual committee members and other legislators in accordance with strict Legislative Council policies governing confidentiality and nonpartisanship.
- We do just about everything you can imagine professional, nonpartisan committee staff doing. We:
  - Assist committee chairs in facilitating the committee process and organizing (scheduling) committee work to keep things moving forward in as logical and efficient a fashion as possible;
  - Provide nonpartisan policy and legal analysis of legislation and issues before the committee, identifying and providing information on public policies and legal issues that may appear in legislative proposals;
  - Draft committee papers, including committee amendments (unanimous reports, majority reports, minority reports – we draft them all), committee bills, reports and other correspondence;
  - Assist committees in understanding what legislative proposals (bills, resolves, amendments) propose to do and how they fit into current law; and
  - Collect information requested by the committee, or individual legislators, related to legislative proposals and related issues.

## What are some examples of things Legislative Analysts do that I might not realize they do?

- We summarize policy options and questions in an organized fashion so that the committee can work through a complex subject in an efficient and productive fashion.
- We work with interested parties, at the direction of a committee or committee member to identify where there are agreements or disagreements on items within legislative proposals and report this information back to the committee (this can save time for the committee when it wants to find out if there are items on which all sides might agree). Of course, the committee makes the decisions, not interested parties or committee staff.
- We conduct research during the interim between sessions on issues of importance to the committee at the request of the committee, with the approval of the Legislative Council.

## Is there anything I shouldn't ask a Legislative Analyst to do?

- If in doubt about what we can do for you, ask us. We are here to help in any way we possibly can. And remember, your conversations with us are confidential. If it turns out that you need something that we really cannot provide (for example, partisan policy advice), we can suggest other people or other resources that may be helpful to you.
- Remember we are nonpartisan staff. This means that we cannot and do not act in any manner, inside or outside the legislative context, that is or could appear to be partisan.

### When do Legislative Analysts do their work?

- Legislative Analysts are year-around employees.
  - During the session, our primary responsibility is staffing the committees: when the committee or any subcommittee is meeting, we are with them (except for confirmation hearings).
  - During the interim, we staff legislative study commissions and any interim committee meetings. We also complete a number of other interim projects, such as summarizing enacted legislation considered in the prior session.
- During session, the Legislature needs to accomplish a lot of work within a limited time and our work often extends beyond regular office hours.

### Where do Legislative Analysts do their work?

- Analysts are in the room with committee members during committee meetings (including public hearings, work sessions, briefings and other meetings, except for confirmation hearings, which we do not staff).
- When not in committee meetings (note: analysts may staff more than one committee), we are typically working in our offices. Call or email – we are here for you.
- You can find information about the offices and contact information for individual staff at:
  - OPLA: <http://legislature.maine.gov/opla/>
  - OFPR: <http://legislature.maine.gov/ofpr/>
- Office Locations and Phone Numbers

OPLA Cross Office Building, 2<sup>nd</sup> Floor, Room 215 (207)287-1670  
(farthest offices on South side of the 2<sup>nd</sup> floor)

OFPR State House, 2<sup>nd</sup> Floor, Room 226 (207)287-1635  
(adjacent to AFA Committee Room)

# Maine's Freedom of Access Act and the Conduct of the Business of the Legislature

Prepared for the Right to Know Advisory Committee  
by the Office of Policy and Legal Analysis and the Office of the Attorney General  
Updated January 2023

*The Maine Freedom of Access Act requires governmental entities to conduct public business in the open and to provide access to public records. Legislative meetings and records are subject to the law and must be open to the public, with some limited exceptions set forth in the law.*

## **Intent of the Freedom of Access Law**

The Maine Freedom of Access Act provides that it is the intent of the Legislature that “actions [involving the conduct of the people’s business] be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.” The Freedom of Access Act, found in Title 1 of the Maine Revised Statutes, chapter 13, applies to all governmental entities, including the Legislature.

## **Public Proceedings**

Under state law, all meetings of the Legislature, its joint standing committees and legislative subcommittees are public proceedings. A legislative subcommittee is a group of 3 or more committee members appointed for the purpose of conducting legislative business on behalf of the committee.

The public must be given notice of public proceedings and must be allowed to attend. Notice must be given in ample time to allow the public to attend and in a manner reasonably calculated to notify the general public. The public is also allowed to record the proceedings as long as the activity does not interfere with the orderly conduct of the proceedings.

Party caucuses are not committees or subcommittees of the Legislature, so their meetings do not appear to be public proceedings. Similarly, informal meetings of the members of a committee who are affiliated with the same party are not public proceedings as these members are not designated by the committee as a whole to conduct business of the committee. However, committee members should be careful when they caucus not to make decisions or otherwise use the caucus to circumvent the public proceeding requirements.

## **Limited Exception to Public Proceedings (Executive Sessions)**

In very limited situations, joint standing committees may hold executive sessions to discuss certain matters. State law is quite specific as to those matters that may be deliberated in executive sessions. The executive session must not be used to defeat the purpose of the Act, which is to ensure that the people’s business is conducted in the open.

The permitted reasons for executive session are set forth in the law, Title 1, section 405 and Title 3, section 156. The reasons most relevant to legislative work are discussion of confidential records and pre-hearing conferences on confirmations.

An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of the committee. The motion to go into executive session must indicate the precise nature of the business to be discussed and no other matters may be discussed. A committee may not take any votes or other official action in executive sessions.

If a committee wants to hold an executive session, the committee should discuss the circumstances with an attorney from the Office of Policy and Legal Analysis or the Office of Fiscal and Program Review who can provide the committee with guidance about whether an executive session is permitted and, if so, how to proceed.

## **Public Records**

The Freedom of Access Act defines “public records” broadly, to include all material in possession of public agencies, staff and officials if the materials were received or prepared for use in, or relate to, the transaction of public or governmental business. The scope of the definition means that most, if not all, papers and electronic records relating to legislative business are public records. This includes records that may be stored on an individual legislator’s personal computer, tablet or smartphone if they relate to or were prepared for use in the transaction of public business, *e.g.*, constituent inquiries, emails, text messages or other correspondence about legislative matters. Information contained in a communication between a constituent and a legislator may be confidential if it meets certain narrow requirements.

## **Time-limited Exception from Public Disclosure for Certain Legislative Records**

The Freedom of Access Act contains exceptions to the general rule that public records must be made available for public inspection and copying. One exception that is relevant to legislative work allows certain legislative papers to be withheld from public disclosure until the end of the legislative session in which they are being used. The exceptions are as follows:

- ❑ Legislative papers and reports (e.g. bill drafts, committee amendments and the like) are not public records until signed and publicly distributed; and
- ❑ Working papers, drafts, records, and memoranda used to prepare proposed legislative papers or reports are not public records until the end of the legislative session in which the papers or reports are prepared or considered or to which they are carried over.

The Legislative Council’s Confidentiality Policy and the Joint Rules provide guidance to legislative staff about how such records are to be treated before they become public records.

## **Confidential Records in the Possession of Committees**

Committees may also need to be prepared to deal with other types of non-public records, such as individual medical or financial records that are classified as confidential under state or federal law.

If the committee comes into possession of records that are declared confidential by law, the Freedom of Access Act allows the committee to withhold those records from the public and to go into executive session to consider them (see discussion above for the proper process).

In addition, the committee should also find out whether there are laws that set specific limitations on, and penalties for, dissemination of those records. The Office of the Attorney General or an attorney from the Office of Policy and Legal Analysis or the Office of Fiscal and Program Review can help the committee with these records.

Joint Rule 313 also sets forth procedures to be followed by a committee that possesses confidential records.

## **Legislative Review of Public Record Exceptions**

All exceptions to the public records law are subject to a review process. A legislative committee that considers a legislative measure proposing a new statutory exception must refer the measure to the Judiciary Committee if a majority of the committee supports the proposed exception. The Judiciary Committee will review and evaluate the proposal according to statutory standards, then report findings and recommendations to the committee of jurisdiction. The Judiciary Committee regularly seeks input from the Right to Know Advisory Committee on public records, confidentiality and other freedom of access issues.

## **Public Access Ombudsman**

The Public Access Ombudsman, an attorney located in the Department of the Attorney General, is available to provide information about public meetings and public records, to help resolve complaints about accessing proceedings and records and to help educate the public as well as public agencies and officials. Legislators may contact the Public Access Ombudsman, Brenda Kielty, at [Brenda.Kielty@maine.gov](mailto:Brenda.Kielty@maine.gov), or (207) 626-8577 for assistance.

# Legislative Confidentiality

## **Nonpartisan legislative staff are governed by a strict confidentiality policy**

This policy requires that:

- Communications between Legislators and nonpartisan staff are confidential; and
- Nonpartisan staff must protect the confidentiality of requests for assistance, advice or information and related working papers, including draft bills, resolves, resolutions, orders or amendments.

## **Treatment of documents and information protected as confidential**

The policy requires nonpartisan staff to treat confidential documents and information as follows.

1. Requests for assistance, advice or information and related working papers may be shared by nonpartisan legislative staff only with the permission of the requesting legislator.
2. Nonpartisan legislative staff may share confidential documents and information with each other when necessary to perform their responsibilities in accordance with office policies.
3. A draft bill, resolve, resolution, order or amendment is a working paper and may be shared by nonpartisan legislative staff only with permission of the legislator or entity requesting the bill, resolve, resolution, order or amendment. A draft bill, resolve, resolution, order or amendment remains confidential until it is distributed in a public meeting or signed and publicly distributed in accordance with legislative rules.
4. The sponsor of a legislative request may specify that the title of the request and the sponsor's name remain confidential until cloture; otherwise, the title and sponsor's name are public information when the request is filed. The Governor may specify that a Governor's request for a bill or resolve remains confidential until the bill or resolve is printed.

## **When confidential documents become public**

- Legislative papers and reports become public when signed and publicly distributed in accordance with legislative rules.
- Written records used or maintained by nonpartisan legislative staff to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees are working papers and become public records at the end of the legislative session in which the papers or reports are prepared or considered or to which they are carried over.

## **Basis**

Legislative confidentiality is governed by statute (Maine's Freedom of Access Act, 1 MRS §402, sub-§3, ¶(C)), the Joint Rules adopted by each Legislature (Joint Rule 207 of the 131st Legislature) and Legislative Council policy.

# How to Read a Bill

## Basic components

A bill is a printed proposal for a law. Every printed bill has certain basic components: the assigned House Paper or Senate Paper number and Legislative Document (L.D.) number; the number of the legislative session; the date of introduction; the name of the committee suggested for reference; the sponsor and any cosponsors; the title; the authority for introduction, if any; the text of the bill; and the summary. Once printed, bills are usually identified and referred to throughout the rest of the session by their L.D. numbers.

## Format

In the bill text, existing statutory language proposed to be repealed is either shown stricken through or clearly identified as being repealed, and all proposed new statutory language is shown as underlined. When a bill proposes to repeal and replace an existing statute or create an entirely new statute, all of the proposed new statutory language is underlined.

## Summary

The summary is a brief, plain language explanation of the content and intent of the bill, which is prepared by nonpartisan staff.

## Concept draft

Joint Rule 208 also permits a legislator to submit a bill as a concept draft. A concept draft is simply a summary of what the sponsor intends to accomplish with the bill; it does not contain the actual language of a proposed law and, therefore, cannot be enacted unless and until such actual language is appropriately substituted for the concept.

## Example

On the following page is a copy of a bill from a previous legislature with a description of its various technical components.

When bills are printed, they are assigned Legislative Document (LD) numbers in sequential order from the start of the biennium

**Legislative Document**

**No. 110**

Bills are assigned paper numbers by the body of bill's sponsor (HP=House Paper, SP=Senate Paper)

H.P. 92

House of Representatives, January 17, 2019

Title of the bill, providing a brief description

**An Act Regarding Credit Ratings Related to Overdue Medical Expenses**

Suggested legislative committee to review and report recommendations on the bill (suggested by the Clerk of the House and Secretary of the Senate)

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

ROBERT B. HUNT  
Clerk

Bill's sponsors and cosponsors

Presented by Representative JOHANSEN of Monticello.  
Cosponsored by Representatives: COLLINGS of Portland, MORRIS of Turner, ORDWAY of Standish, Senator: GUERIN of Penobscot.

Enacting clause

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

Amending clause and history line, showing title and section of law being amended

**Sec. 1. 10 MRSA §1310-H, sub-§3**, as enacted by PL 2013, c. 228, §1, is amended to read:

Strikethrough indicates language being repealed and underscoring indicates language being added

**3. Nonliability.** A person may not be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to ensure compliance with the provisions of subsections 1 ~~and~~, 2 ~~and~~ 4.

Sections of bills affecting a title, section or subsection of the MRSA are arranged in ascending numerical order

**Sec. 2. 10 MRSA §1310-H, sub-§4** is enacted to read:

Underscoring indicates language being added

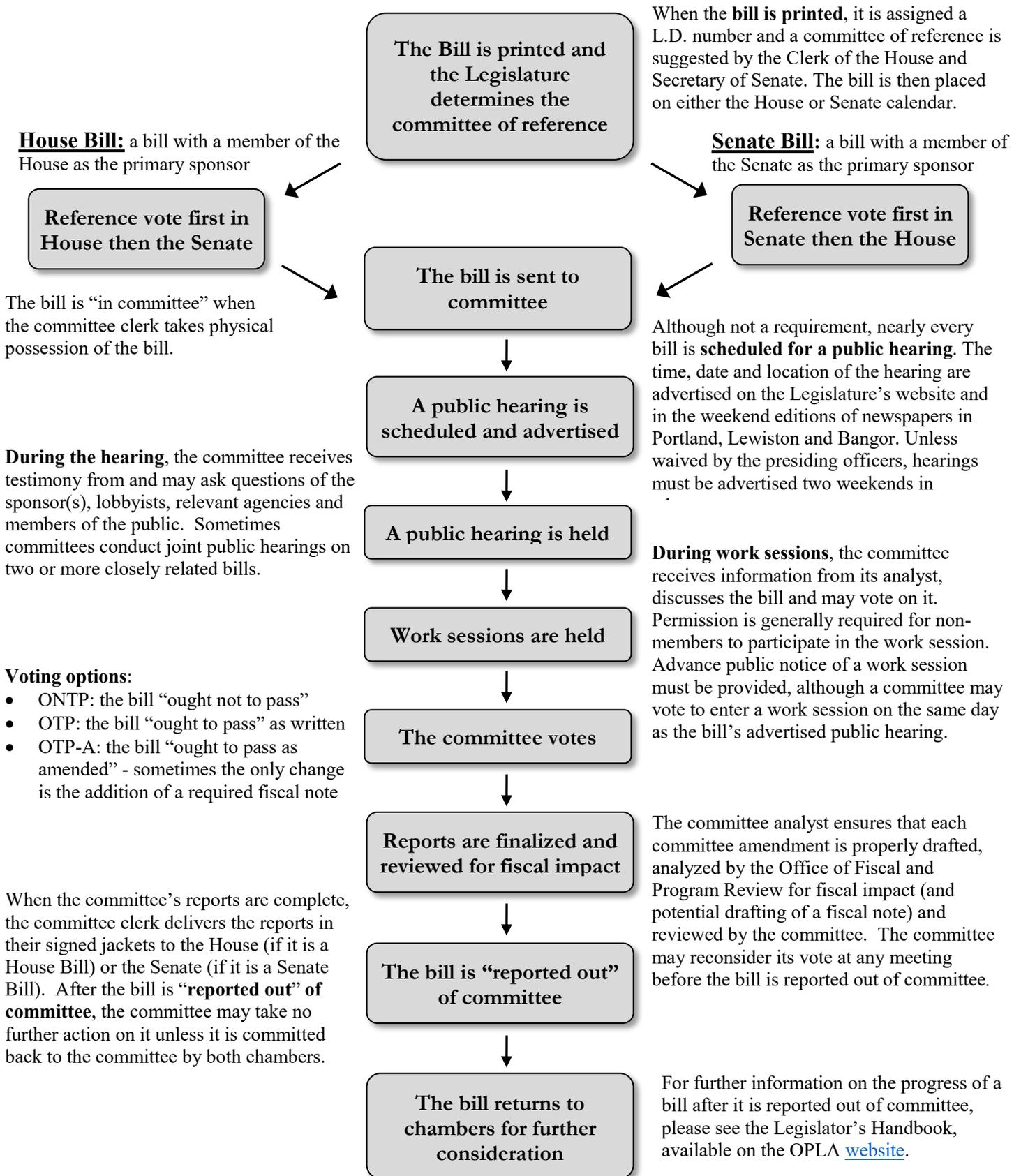
**4. Reporting of overdue medical expenses on consumer report.**  
Notwithstanding any provision of federal law, a consumer reporting agency may not report debt from overdue medical expenses on a consumer's consumer report in a manner that adversely affects the consumer's credit history or credit rating as long as the consumer is making regular, scheduled periodic payments toward the debt.

Explanation of what the bill does

**SUMMARY**

This bill prohibits a consumer reporting agency from reporting debt from overdue medical expenses on a consumer report in a manner that adversely affects the consumer's credit history or credit rating as long as that consumer is making regular, scheduled periodic payments toward the debt.

# The Flow of Legislation through the Committee Process



# The Policy Committee Role in Budget Matters: Joint Rule 314

Joint Rule 314 establishes the role of policy committees -- any joint standing or joint select committee other than the Appropriations and Financial Affairs Committee (Appropriations Committee) -- in budget matters. Policy committees:

1. Advise the Appropriations Committee on those portions of State budget bills that affect subject matter within the jurisdiction of the policy committee; and
2. Advise the Appropriations Committee on the policy committee's budgetary priorities relating to certain bills having a fiscal impact.

## Advising on budget bills

According to the subject matter jurisdiction of each policy committee, the Appropriations Committee schedules a series of joint public hearings with policy committees on the relevant portions of the Governor's budget bills. The relevant portions of a budget bill for a policy committee include the initiatives in a proposed budget that affects all agencies within the policy committee's jurisdiction and any proposed changes to statutory language affecting laws under the policy committee's jurisdiction. The policy committee can attend the hearing as a whole or send an appointed subcommittee to attend the public hearing and serve as a liaison to the Appropriations Committee.

After the joint public hearing, policy committees typically hold their own work sessions and develop their recommendations on the relevant portions of a budget bill. The Appropriations Committee may direct that policy committees' recommendations stay within budgetary constraints established by the Appropriations Committee.

The policy committee then reports its recommendations on the relevant portions of a budget bill to the Appropriations Committee in a format specified by the Appropriations Committee. Typically, the Appropriations Committee asks policy committees to report back using a document that allows the committee to record a vote on each budget initiative or language part.

Policy committee recommendations are not binding on the Appropriations Committee; the Appropriations Committee must consider policy committee recommendations but retains sole decision-making authority on budget matters.

## Prioritizing bills with fiscal impact

Bills with fiscal impact that have been reported out of a committee and received initial approval in both chambers are tabled before final enactment on the Senate's Special Appropriations Table. Near the end of session, the Appropriations Committee, with input from the policy committees, makes final recommendations to the Senate on which, if any, such legislation should be enacted, not enacted or amended given budgetary considerations. The policy committees may provide input by submitting a list expressing the committee's priorities for bills on the Special Appropriations Table, including an indication of how each committee member voted on the priority recommendation.

For more information please visit [www.legislature.maine.gov/ofpr](http://www.legislature.maine.gov/ofpr) and click on **Publications**.

# Fiscal Notes in the Committee Process

## What is a fiscal note?

A fiscal note is a brief description of the effect of a bill or amendment on the finances of Maine State Government (costs, savings and/or revenue increases or decreases) and any costs incurred by local units of government if the bill constitutes a potential state mandate. All fiscal notes are prepared by the nonpartisan Office of Fiscal and Program Review (OFPR) and are intended to describe accurately and objectively the fiscal impact of bills and amendments.

## Committee process

Although not required, OFPR may produce preliminary fiscal impact statements, which are distributed to the bill's sponsor and the committee of reference. Given time constraints, these are generally produced only for bills with readily available information and requiring less complex reviews. These are not final fiscal notes but provide a preliminary assessment of the bill's fiscal impact, if any. The preliminary fiscal impact statement indicates whether the bill, if it proceeds unchanged, will require a fiscal note.

Under Joint Rule 312, OFPR prepares a fiscal note if the office determines that a bill or amendment receiving a favorable vote from a committee, or from a majority or minority of a committee, has an impact affecting state revenues, appropriations and allocations or that requires a local unit of government to expand or modify that unit's activities. OFPR will produce the fiscal note and that fiscal note must accompany the bill or amendment when it is reported out of committee. If OFPR's analysis indicates an original bill or amendment without an appropriation or allocation will require positions or other expenditures to accomplish the intended outcome, the fiscal note drafted by OFPR will contain an appropriations and allocations section that identifies what funding is required.

The committee analyst will process all bills and amendments through the OFPR fiscal review procedure, ensure that preliminary impact statements and fiscal notes are brought to the attention of the committee and ensure that any required fiscal note and appropriations or allocations section is included with a committee report. The committee may ask the fiscal analyst from OFPR to come to the committee to discuss the fiscal note or the appropriations or allocations section intended to be included as part of a committee amendment. After reviewing a fiscal note and any draft appropriations or allocations section, or notes or sections in the case of multiple reports, a committee may report the bill out with the fiscal note or notes or it may reconsider its action and change or eliminate the fiscal impact by making changes to the bill or amendment. Any change will require a new review and revised fiscal note from OFPR.

## Floor process

Legislation with an impact on the General Fund or Highway Fund, as identified in the fiscal note, that has been reported out of committee and received initial approval in both houses will be tabled before final enactment on the Senate's Special Appropriations Table or Special Highway Table. The Joint Standing Committee on Appropriations and Financial Affairs (or Joint Standing Committee on Transportation for the Special Highway Table), with input from the committees of jurisdiction, makes final recommendations to the Senate on which, if any, such legislation should be enacted, not enacted or amended given budgetary considerations.

**For more information** please visit <http://legislature.maine.gov/ofpr/> and click on **Publications**.

# Special Reviews of Public Records Exceptions and Restrictions on Access to Public Records

## Background

In the Freedom of Access Act (FOAA), set forth in [Title 1, chapter 13, subchapter 1](#) of the Maine Revised Statutes, the Maine Legislature has declared as a matter of public policy that records in the possession or custody of an agency or public official of the State or its political subdivisions should as a general rule be open to public inspection and copying. Although the Legislature retains authority to adopt a law specifically declaring that a particular type of record is confidential or exempt from some or all of FOAA's public access requirements, [Title 1, chapter 13, subchapter 1-A](#) of the Maine Revised Statutes (another of Maine's Freedom of Access laws) establishes specific processes for the enactment of and for periodic review of such exceptions.

## Committee procedure when a bill proposes a new public records exception

If, after holding a public hearing, a majority of a committee supports legislation proposing a new public records exception or affecting the accessibility of a public record, it must request that the Judiciary Committee conduct a supplemental review of the proposal under [1 M.R.S.A. §434](#). Legislation contains a "new public records exception" if it declares a particular type of otherwise-public record either "confidential" or "not a public record" for purposes of FOAA. To initiate the review process, the committee with jurisdiction over the legislation generally drafts a memo to the Judiciary Committee outlining the proposed public records exception or accessibility restriction and explaining why the committee believes the proposal should be adopted.

## Review of proposed new public records exceptions by the Judiciary Committee

The Judiciary Committee evaluates legislation proposing new public records exceptions using the following criteria, which are set forth in [1 M.R.S.A. §434](#), subsections 2 and 2-A:

- Whether a record protected by the proposed exception needs to be collected and maintained;
- The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- Whether federal law requires a record covered by the proposed exception to be confidential;
- Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- Whether public access to the record ensures that members of the public are able to make informed health and safety decisions;
- Whether the proposed exception is as narrowly tailored as possible;
- Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception; and
- Whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

If the legislative proposal affects the accessibility of a public record, instead of or in addition to containing a new public records exception, [1 M.R.S.A. §434](#), subsection 2-B provides that the Judiciary Committee may

consider during its review any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

After completing this review, the Judiciary Committee must report its findings and recommendation whether the proposed public records exception or access limitation should be enacted to the committee with jurisdiction over the legislation.

Subsection 1 of [1 M.R.S.A. §434](#) provides that a proposed public records exception or accessibility restriction may not be enacted into law unless the Judiciary Committee has completed this review.

## Carry Over Bills

Under Joint Rules 309 and 310 as adopted by the 131st Legislature, all legislative documents (LDs)—bills, resolves and resolutions, jointly referred to as “bills” in this document—must be reported out of committee in accordance with deadlines established by the presiding officers. Generally, bills must be reported out during the session in which they are introduced. However, under certain circumstances, the presiding officers may authorize committees to hold specific, identified bills in committee beyond the end of a legislative session. Such bills are said to be “carried over” to the subsequent session. A bill may be carried over only if there is another scheduled or expected session of the same legislature (for instance, LDs may be carried over from the First Regular Session to the Second Regular Session).

A committee may wish to carry over a bill to the subsequent session for a variety of reasons. For example, the subject matter of the bill may be exceptionally complex, the committee may wish to direct stakeholders to meet over the interim to reach a consensus solution to the issues raised in the bill, the committee may have requested that important additional information be collected over the interim or the committee may be awaiting the outcome of events that are significant to its consideration of the bill.

### Procedure

If a committee wishes to carry over one or more bills, the following are the standard procedures.

1. Unless otherwise directed or authorized by the presiding officers, the committee should submit a written request, prepared by the committee’s analyst, to the presiding officers. The request should identify each bill by LD number and title and briefly explain the reason why the committee is requesting that it be carried over.
2. The presiding officers jointly review and approve or deny the requests in whole or in part.
3. Bills approved for carry over are usually included in a single joint order, introduced near the end of the session, authorizing each of the identified bills to be carried over by the specified committee to a subsequent session. The order sometimes authorizes the Legislature to carry over other specifically identified bills that are “tabled” in the House or Senate pending further legislative action. Under certain circumstances, for instance an unanticipated early adjournment, all bills not finally disposed of are carried over without referencing individual bills.

Historically, committees have been encouraged to complete their work on carry over bills early in the Second Regular Session, leaving the remainder of the session to focus on newly referred bills.

# Committee Bills

A committee bill is a bill that originates in committee and is introduced to the Legislature by the committee.

## Sources of authority to report out a committee bill

- **Joint order.** A joint order that has been passed by both chambers may authorize or direct a committee to report out a bill (typically on a designated subject).
- **Law.** A provision of law (statute, Public Law or Resolve) may authorize a committee to report out a bill.
- **Joint Rule.** Under Joint Rule 353, as adopted by the 131st Legislature, a committee of jurisdiction may report out a bill to implement recommendations of a Legislative study or other study required by law.

## Process to report out a committee bill

A majority vote is required to report out a committee bill. There are two approaches to reporting out a committee bill:

1. **Report out for Reference Back.** This is the typical approach. In this approach, the committee votes to report out a committee bill for the purpose of having it printed as a Legislative Document (LD) and referred back to the committee for public hearing and work session. The vote to report out the bill is a procedural vote, not a final recommendation on the substance of the bill. If a committee wishes, it can include language in the bill summary indicating that the committee is not taking any position on the bill and is only reporting out the bill out to have it printed and referred back to committee; this language is optional and entirely up to the committee (see sample): or
2. **Report out with Final Recommendation.** Alternatively, a committee may vote to report out a committee bill for the purpose of sending it to the floor with a final recommendation on the substance of the bill. In this case, the committee conducts its work on the bill as a proposal or draft bill (rather than a printed LD). After being reported out, the bill is not referred back to committee but is directly taken up on the floor. There are several things for the committee to consider regarding this approach.
  - a) Processing a bill in committee as a proposal or draft bill can sometimes be confusing for the public, since there will not be a LD that the public can find in the Legislature's online bill status system until after the committee has reported it out.
  - b) If the committee wishes to hold a public hearing on a proposal or draft bill, it needs to obtain the express written approval of the presiding officers.
  - c) If a committee bill is reported out to the floor with a final recommendation and there is a divided report, the majority report will be printed as the LD and any minority report (other than ONTP) will be drafted as an amendment to the bill.

## When a committee bill goes to the floor

When a committee bill is reported out, it is introduced in the chamber where the law or joint order that enabled the committee to report the bill out originated. If the typical approach is used (the committee bill is reported out for reference back to committee), the bill goes through the reference process in the House and Senate and generally is referred back to the committee. If the alternative approach is used (the committee bill is reported out with a final recommendation), the bill is directly taken up for action by the House and Senate.

## **SAMPLE OPTIONAL SUMMARY**

### **COMMITTEE BILL REPORTED OUT FOR REFERENCE BACK** (COMMITTEE IS NOT TAKING POSITION ON SUBSTANCE OF THE BILL)

#### **SUMMARY**

This bill is reported out by the Joint Standing Committee on [*committee name*] pursuant to [*authority for legislation*].

The committee has not taken a position on the substance of this bill. By reporting this bill out the committee is not suggesting and does not intend to suggest that it agrees or disagrees with any aspect this bill. The committee is reporting the bill out for the sole purpose of having a bill printed that can be referred to the committee for an appropriate public hearing and subsequent processing in the normal course. The committee is taking this action to ensure clarity and transparency in the legislative review of the proposals contained in the bill.

# Legislative Oversight of Agency Rules

## Legislative delegation of authority to adopt rules

When it enacts legislation, the Legislature sometimes delegates to a state agency the authority to adopt rules that implement, interpret or make specific the law administered by the agency, or that describe the procedures or practices of the agency. Although referred to as a “regulation” at the federal level, in Maine a “rule” is any judicially enforceable standard, requirement or statement of policy adopted by a state agency. Rules must be consistent with the law under which they are adopted and must be adopted in accordance with the Maine Administrative Procedure Act (MAPA), [Title 5, chapter 375 of the Maine Revised Statutes](#).

## Categorization of rules as “routine technical” or “major substantive”

When the Legislature enacts a law authorizing or directing a state agency to adopt rules, the Legislature must specifically indicate whether the rules are “routine technical” or “major substantive.” (This requirement was enacted in 1996.) The APA describes routine technical rules as rules that establish standards of practice or procedures for agency business and major substantive rules as rules that require the exercise of significant agency discretion or interpretation or that will cause a significant public impact. However, it is the Legislature that makes the decision about the category of rule when enacting the law authorizing adoption of the rule. The key consideration is whether the Legislature wishes to review the rule before it is finally adopted by the agency (major substantive rules are subject to formal legislative review whereas routine technical rules are not).

## Legislative review of major substantive rules

An agency must submit new major substantive rules and amendments to previously adopted major substantive rules to the Legislature for formal review. The Legislature initiates this review by printing a resolve authorizing adoption of the rule or amended rule and referring the resolve to the committee with jurisdiction over the rule’s subject matter. The committee generally holds a public hearing and work sessions on the resolve in the same manner as it does for other bills and resolves. The APA establishes criteria for the committee to apply in reviewing the rule and in deciding whether to recommend final adoption of the rule as drafted by the agency; final adoption of a part of the rule; final adoption of the rule after certain specified amendments are made to the agency’s draft; or that the agency not finally adopt the rule. For more information on this legislative review process, please see the handout entitled “Legislative Review of Proposed Major Substantive Rules.”

## Annual review of agency regulatory agendas

In [5 M.R.S.A. §8060](#), the APA also requires each state agency to submit a regulatory agenda to the appropriate legislative committee or committees with jurisdiction over that agency. An agency’s regulatory agenda includes a list of the rules that the agency expects to propose before the next regulatory agenda is issued, the statutory or other basis for adoption of each rule, the purpose of each rule, the anticipated schedule for adopting each rule, a listing of potentially benefitted and regulated parties for each rule and a listing of all rules adopted on an emergency basis since the last regulatory agenda was issued. The regulatory agenda must be submitted on an annual basis between the beginning of a legislative session and 100 days after adjournment. The APA directs the legislative committee receiving a regulatory agenda to review the agenda.

## Annual review of completed agency rulemaking activity

The Legislature also receives and reviews annual lists of agency rulemaking activity in accordance with [5 M.R.S.A. §8053-A](#). By February 1st of each year, the Secretary of State must provide to the Executive Director of the Legislative Council a list of all rules adopted by each agency during the previous calendar year. The Executive Director refers each list to the appropriate legislative committee for review. After each committee has received a list of rulemaking activity, the committee may require an agency to appear before the committee and may report out legislation in the same legislative session in which the report is received to adjust rulemaking authority related to the rules adopted in the previous calendar year.

# Legislative Review of Major Substantive Rules

## Legal authority required to adopt rules

Before an agency may adopt a rule on a matter, the Legislature must have enacted a law granting the agency rulemaking authority. Rules must be consistent with the law under which they are adopted and adopted in accordance with the Maine Administrative Procedure Act (MAPA), [5 MRSA chapter 375, subchapters 2 and 2-A](#).

## Two types of rules: “routine technical” or “major substantive”

Under the APA, all laws enacted after January 1, 1996 that delegate rulemaking authority to an agency must specifically indicate whether the rules are “routine technical” or “major substantive.” Although the APA provides the following guidelines, the ultimate decision whether a particular rule is routine technical or major substantive is made by the Legislature when it enacts the law authorizing adoption of the rule.

- “Routine technical rules,” are those that establish standards of practice or procedure for agency business including, for example, rules that set a fee within a range specified by statute.
- “Major substantive” rules are rules that, in the judgment of the Legislature, either (1) require the exercise of significant agency discretion or interpretation in drafting or (2) are reasonably expected to result in a significant increase in the cost of doing business, significant reduction in property values, significant reduction of government benefits or services, serious burden on the public or serious burden on units of local government.

The key consideration is whether the Legislature wishes to review the rule before it is finally adopted by the agency (major substantive rules are subject to formal legislative review whereas routine technical rules are not).

## APA procedural requirements for agency rulemaking

Agencies must provide notice of proposed new or amended rules to interested parties, the general public and to the Legislature. The Executive Director of the Legislative Council accepts notices of rulemaking from agencies on behalf of the Legislature and forwards each notice to the appropriate legislative committee or committees with jurisdiction over the subject matter addressed in the rule. After providing notice, agencies must accept and respond to public comments on the proposed rule. Agencies are required to hold a public hearing on proposed major substantive rules. Proposed rules must also be reviewed and approved for legality by the Office of the Attorney General.

Once this process is complete, a major substantive rule may only be provisionally adopted by the agency and does not have legal effect until it has been reviewed by the Legislature and finally adopted by the agency. By contrast, a routine technical rule may be finally adopted by the agency without additional legislative review.

## Legislative review of major substantive rules

When a provisionally adopted major substantive rule is properly submitted by an agency, a resolve is printed that proposes to allow the agency to adopt the rule. The resolve is then referred to the committee with jurisdiction over the rule’s subject matter and serves as the vehicle through which the committee recommends whether and how the rule should be adopted.

The APA provides certain useful criteria ([5 M.R.S.A. §8072\(4\)](#)) for a committee to consider when reviewing a rule.

After reviewing the rule and corresponding resolve, the committee may vote to recommend:

- That the agency be authorized to finally adopt the provisionally adopted rule (1) as drafted by the agency, (2) only in part or (3) contingent upon the agency making changes to the rule, or
- That the agency not be authorized to finally adopt the provisionally adopted rule.

The committee’s recommendation must be reported out not less than 30 days before statutory adjournment.

## **Timing of agency submission of rules for review; effect of Legislature's failure to act**

The APA directs agencies to submit provisionally adopted new (or amended) major substantive rules for review during the “rule acceptance period,” which begins on July 1st before each regular session and ends at 5:00 p.m. on the 2nd Friday in January after the convening of that regular session. Filing a rule outside the acceptance period affects both the legislative review process and the agency's adoption authority.

If the provisionally adopted rule is submitted within the rule acceptance period, a rule resolve is automatically prepared and then referred to the appropriate committee for review.

- If the Legislature fails to act—for example, by allowing the resolve to die between the bodies or sustaining a veto of the resolve—the agency **may** finally adopt the rule as provisionally adopted. A committee vote of ONTP on the resolve is considered a failure to act on the rule.
- If the Legislature wishes to not authorize final adoption of a timely submitted rule, it must pass legislation prohibiting the agency from finally adopting the rule (this is typically done through an amendment to the resolve).
- If the Legislature wishes to authorize the rule but only if the rule is amended, the Legislature must pass legislation describing the changes the agency must make before final adoption is authorized (this is typically done through an amendment to the resolve).

If the provisionally adopted rule is submitted after the acceptance period has ended, the Legislative Council decides whether to accept the rule for review. If it accepts the rule, a resolve for review of the rule will be prepared and referred to the appropriate committee.

- If the Legislature fails to act on a late-filed rule (see examples above), the agency may **not** finally adopt the rule.
- If the Legislature wishes to prevent adoption of a late-submitted rule, it does not need to act on the rule (a vote of ONTP on the resolve is considered a failure to act on the rule).
- If the Legislature wishes to allow the agency to adopt the late-submitted rule, with or without amendments, it must pass some version of the resolve (or pass other legislation) authorizing the agency to act.

## **Final adoption of rule**

The agency must finally adopt the rule, with any required amendments, within 60 days of the effective date of the legislation approving the rule (or within 60 days of the adjournment of the session if the Legislature fails to act on a timely submitted rule).

# Studies: Legislative and Non-legislative

## Purpose and types of studies

Studies allow for the examination of topics beyond what may be possible during a legislative session. Legislative and non-legislative studies, may take many forms and be tailored to meet the needs of the Legislature. A study usually results in a written report of findings and recommendations for legislative consideration in a subsequent legislative session. The Legislature is not bound to adopt the recommendations of a study.

## Legislative study

A “legislative study” is a study undertaken by any group of people that uses any legislative resources (requires legislative appointments, includes legislators, uses legislative study funds or involves legislative staff). Except for limited exemptions adopted in policies of the Legislative Council, a “legislative study” must conform to Joint Rule 353, which includes many requirements relating to the composition and appointment of membership, compensation, report deadlines and outside funding. Legislative studies are placed on a special study table prior to final approval in the Senate and are reviewed by the Legislative Council, which decides what studies to authorize. Unless the Legislative Council directs otherwise, Legislative Council staff are assigned only to legislative studies that conform to Joint Rule 353.

## Non-legislative study

A “non-legislative study” or “non-legislative study group” is any group of individuals directed by legislation to report back to the Legislature on any issue, but is not otherwise a legislative study. Non-legislative studies include the following.

- Stakeholder group study or an on-going board or commission: Legislative Council policy allows these groups to include up to two legislators as long as no other legislative resources are used; if no more than two legislators are included, the proposal will go on the study table but the other requirements relating to legislative studies do not apply.
- Agency study: An agency is directed to study an issue and report back to a committee or the Legislature.
- Staff study: Nonpartisan legislative staff is directed to collect data, research legal and policy issues and provide an analysis and summary.

A study that proposes to use any legislative resources will likely be placed on the special study table pending review by the Legislative Council.

## Creating a study

If a committee believes a study may be appropriate, its first step should be to define the study’s purpose. The committee should then consider whether a legislative study is the most appropriate form of study to achieve that purpose. A legislative study may be created by joint study order if no one outside the Legislature is required to do anything and the study will be completed within the legislative biennium. Otherwise, some form of law is required to create a study.

## Implementing study recommendations

Under Joint Rule 353 as adopted by the 131st Legislature, neither a legislative nor a non-legislative study may introduce legislation but may include proposed legislation in its report to the Legislature. Under that rule, upon receipt of a report submitted by a study, a joint standing committee may introduce a bill on matters relating to the study, e.g., the legislation proposed by the study.

# The State Government Evaluation Act (GEA)

## Purpose

Enacting legislation, reviewing agency rules, and appropriating funds are the most familiar ways in which the Legislature directs and conducts oversight of Executive Branch functions. The State Government Evaluation Act (“GEA” or “the Act”) establishes another method through which the Legislature fulfills its duty to serve as a check and balance on agencies that administer state laws. The Act ([Title 3, chapter 35](#) of the Maine Revised Statutes) provides for regular, periodic review of the performance of certain state agencies and independent agencies that receive General Fund money or that are established by statute.

## Process

Each GEA review is conducted by the joint standing committee of jurisdiction. The Act specifies a schedule for conducting reviews of specified agencies and independent agencies (see list of agencies scheduled for review by this Legislature on reverse page) but the reviewing committee may modify this schedule by 2/3 vote.

A committee initiates a GEA review by notifying the agency in writing that it intends to proceed, triggering the agency’s duty to compile and submit a “program evaluation report” by the statutory deadline. This report must include certain types of information specified by the Act ([3 M.R.S.A. §956](#)), although the committee may direct that additional information be provided. Often, committees invite agencies to present their reports at a committee meeting, allowing committee members to pose clarifying questions and seek additional information.

The Act ([3 M.R.S.A. §957](#)) states that, in conducting its analysis of the report, the committee may consider:

- The extent to which the agency operates in accordance with its statutory authority;
- The agency’s degree of success in meeting its goals and objectives for each program;
- The agency’s degree of success in meeting its statutory and administrative mandates; and
- The extent to which the agency has increased or reduced filing and paperwork burdens on the public.

After completing its review and analysis of the report, the Act ([3 M.R.S.A. §955](#)) directs the committee to submit its findings, administrative recommendations and, if applicable, legislation necessary to implement those recommendations, to the Legislature. If it chooses, the committee may also establish in the report a specified time in which the committee will conduct a follow-up review to assess the agency’s progress in meeting the committee’s administrative recommendations.

### **Important Dates: First Regular Session<sup>1</sup>**

#### **By May 1st**

Committee must notify the agency of its intent to review the agency during the 2nd Regular Session.

#### **By November 1st**

Agency must submit the Program Evaluation Report to the committee.

### **Important Dates: Second Regular Session**

#### **By February 1st**

Committee must begin its review of each agency subject to review.

#### **By March 15th**

Committee must submit a final report to the full Legislature.

---

<sup>1</sup> The Act ([3 M.R.S.A. §955](#)) also provides that the committee may, by March 1st in the First Regular Session, request “a single-page list of organizational units and programs within each organizational unit” from the agency. If a request is made, the agency must supply the list by April 1st of the same year.

**Statutory Schedule of Agencies to be Reviewed by the 131st Legislature  
by Area of Committee Jurisdiction ([3 M.R.S. §959](#))**

**Agriculture, conservation and forestry**

- Maine Dairy and Nutrition Council
- Maine Dairy Promotion Board
- Maine Milk Commission
- State Harness Racing Commission
- Land for Maine's Future Board

**Criminal justice and public safety**

- Maine Emergency Management Agency within the Department of Defense, Veterans and Emergency Management

**Education and cultural affairs**

- Maine Arts Commission
- Maine Historic Preservation Commission
- Maine Historical Society
- Maine Library Commission
- Maine State Cultural Affairs Council
- Maine State Library
- Maine State Museum
- Maine State Museum Commission
- Office of State Historian

**Health coverage, insurance and financial services**

- Department of Professional and Financial Regulation, in conjunction with committee having jurisdiction over on innovation, development, economic advancement and business

**Health and human services**

- No reviews scheduled for 131st Legislature

**Housing**

- Maine State Housing Authority

**Innovation, development, economic advancement and business**

- Department of Professional and Financial Regulation, in conjunction with committee having jurisdiction over health coverage, insurance and financial services

**Inland fisheries and wildlife**

- Department of Inland Fisheries and Wildlife
- Advisory Board for the Licensing of Taxidermists

**Judiciary**

- No reviews scheduled for 131st Legislature

**Labor**

- Department of Labor

**Marine resources**

- Lobster Advisory Council

**Medical use of cannabis**

- No reviews scheduled for 131st Legislature

**Environment and natural resources**

- No reviews scheduled for 131st Legislature

**Professional licensing of health care professions**

- No reviews scheduled for 131st Legislature

**Retirement**

- No reviews scheduled for 131st Legislature

**State and local government**

- Maine Municipal Bond Bank
- Office of the Treasurer of State

**Taxation**

- No reviews scheduled for 131st Legislature

**Transportation**

- The Bureau of Motor Vehicles within the Department of the Secretary of State

**Utilities and energy**

- Board of Directors, Maine Municipal and Rural Electrification Cooperative Agency

**Veterans and legal affairs**

- State Liquor and Lottery Commission
- Department of Administrative and Financial Services with regard to enforcement of law relating to manufacture, importation, storage, transportation and sale of all liquor and laws relating to licensing and collection of taxes on malt liquor and wine

# State Mandates

## The law

The Maine Constitution, Article IX, Section 21 (adopted in 1992), prohibits the State from requiring a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenues unless:

1. The State annually provides 90% of the funding; or
2. The Legislature votes to establish an exemption by a 2/3 vote of the elected membership of each chamber.

In accordance with the Constitution, the Legislature enacted implementing legislation (30-A MRSA §5685) which, among other things, clarifies that if the Legislature passes legislation that constitutes a State mandate and does not create an exception for that mandate or provide the required state funding, affected local units of government are not bound by the mandate.

## Interpretation

Whether a proposal falls within the terms of Article IX, Section 21 is sometimes the subject of debate. A proposal that may fall within the provision will be identified as a potential State mandate in the fiscal note prepared by the Office of Fiscal and Program Review (OFPR), thus flagging the matter for further legislative consideration. Once identified by OFPR as a potential State mandate, the committee has several options as outlined below and may consult with their committee analyst on any questions concerning whether a legislative proposal constitutes a mandate.

## Options if proposal identified as potential mandate in fiscal note

Determination that proposal does not constitute a mandate. If a committee determines that a provision identified by OFPR as a potential mandate is not in fact a mandate, the committee may direct its analyst to draft language to insert in the summary of the committee amendment that states the committee's determination. A recommended template has been developed for use by committee analysts. If inserted into a summary, the intent of the language is to explain the committee's finding that the provision the fiscal note identifies as a potential mandate does not require any expansion or modification of activities so as to necessitate additional expenditures from local revenue. The committee may then report the proposal out without funding and without a Mandate Preamble. In that case, the proposal will normally be placed on the Special Appropriations Table and a decision regarding final enactment will be deferred until the Joint Standing Committee on Appropriations and Financial Affairs makes decisions on bills placed on this table, which usually occurs near the end of a legislative session.

Determination that proposal does constitute a mandate. If a committee determines that a proposal does constitute a mandate, the committee has various options it may pursue, including:

1. Amending the proposal to eliminate the requirement (for instance, making the expanded or modified activity optional);
2. Amending the proposal to provide funding for 90% of the necessitated additional local expenditures; or
3. Amending the proposal to add a Mandate Preamble stating that the legislation is being enacted as an exception to Article IX, Section 21 and that the legislation is exempt from the funding requirement. To accomplish this third option, enactment of the proposal requires a two-thirds vote of the elected members in each chamber of the Legislature.

Determination that no further action is necessary. If a committee decides to report out a proposal without addressing the issue in the summary of a committee amendment and without funding or a Mandate Preamble, the proposal will likely still be placed on the Special Appropriations Table. A decision regarding final enactment will be deferred until the Joint Standing Committee on Appropriations and Financial Affairs decides how to address the potential mandate as part of its review of bills placed on the table, which usually occurs near the end of a legislative session.

**Failure to add a Mandate Preamble or funding**

If the Legislature passes legislation that constitutes a State mandate without providing the funding or exempting the legislation from the funding requirement by adding a Mandate Preamble, affected local units of government are not bound by the mandate.

**131st Maine Legislature**  
**COMMITTEE RULES OF PROCEDURE**

**NOTICE REGARDING COMMITTEE RULES OF PROCEDURE**

**Joint Rule 304** provides that at the beginning of each legislative biennium, the presiding officers shall establish procedures that govern public hearings, work sessions and confirmation hearings. Once established, copies of the procedures must be sent to the committees, the Secretary of the Senate, the Clerk of the House and the Executive Director of the Legislative Council. A committee by majority vote may make exceptions to the rules and notify the presiding officers of exceptions to the rules. Final committee rules must be posted and made available upon request at all public hearings and work sessions.

The rules of procedure in committee are the same as the rules of the Senate and the House of Representatives to the extent applicable. Committee procedures must be consistent with these rules.

**1. Chair presides.** Pursuant to Joint Rule 302, the Senate chair shall preside and in the Senate chair's absence, the House chair shall preside and, thereafter, as the need may arise, the chair shall alternate between the members from each chamber in the sequence of their appointment to the committee.

**2. Quorum.** The following defines a quorum and when it is required.

A. A quorum is 7 members of the committee, one of whom must be a Senator. A quorum must be present to start a meeting. Pursuant to Joint Rule 306, for the purposes of establishing a quorum, only those members physically present at the meeting may be counted. If a quorum has been established but there is not a Senator among those physically present or attending by electronic means pursuant to Section 3, the committee may start a meeting only:

(1) with the authorization of the President of the Senate; or

(2) after notifying the Office of the President of the Senate that no Senators are present and after 30 minutes has passed since the time the notice was given.

A quorum is not required to continue a meeting.

B. A quorum is not required for a vote on a motion to adjourn. All other votes require a quorum; a quorum has been established but there is not a Senator among those physically present or attending by electronic means pursuant to Section 3, the committee may take such a vote only with the authorization of the President of the Senate.

**3. Attendance.** It is each committee member's responsibility to notify the committee clerk whenever the member is unable to attend a public hearing or work session. A member may participate in a meeting by electronic means only with the express permission of that member's presiding officer in accordance with Joint Rule 310(5)(B) and the guidance memo from the presiding officers dated January 3, 2023.

**4. Scheduling of hearings and work sessions.** Joint Rules 304 and 305 govern the scheduling and notice of public hearings and work sessions.

A. The Senate chair with the agreement of the House chair and the assistance of committee staff shall schedule legislative documents for public hearings and work sessions. If the chairs do not reach an agreement, the committee shall decide by majority vote of the membership.

B. In accordance with Joint Rule 305, the presiding officers jointly establish authorized meeting days. The committee may meet only on authorized meeting days unless the presiding officers authorize an exception in writing.

C. Public hearings must be advertised 2 weekends in advance of the hearing date. All exceptions to this requirement require advance approval of both presiding officers.

D. The committee clerk shall:

(1) Distribute a weekly schedule to all committee members providing a detailed list of hearings and work sessions that have been scheduled for the following week;

(2) Post the weekly schedule outside the committee room and arrange for its posting at any other locations designated by the Legislature;

(3) Notify the sponsors of legislation of the date and time of the public hearing. Whenever possible, this notice must be at least 2 days in advance of the hearing; and

(4) Provide timely notice to the sponsors of the date and time of work session(s) on the legislation.

E. The committee shall provide reasonable access for persons with disabilities at its meetings and allow adequate time for participation by persons with disabilities.

F. Pursuant to Joint Rule 305 and Maine's freedom of access laws (Maine Revised Statutes, Title 1, chapter 13, subchapter 1), the committee may not hold a hearing or conduct a work session for which notice has not been posted.

**5. Questions of order.** Pursuant to Joint Rule 304, the presiding chair shall decide all questions of order, subject to appeal to the committee. The chair's ruling stands unless overruled by a majority of the committee membership.

**6. Smoking and eating restrictions.**

A. Pursuant to 22 MRSA §1542, smoking is prohibited in all committee rooms and committee offices. Smoking is prohibited in the Cross Building and the State House and on the grounds of the State House complex except in outdoor areas specifically designated as smoking areas.

B. Members of the public may not consume food or beverages, except for water, in the committee rooms.

C. Committee members may not consume food or beverages in committee rooms except as follows:

- (1) During public hearings, committee members may consume water only;
- (2) During work sessions, committee members may consume beverages; if a work session extends past 6:00 p.m., committee co-chairs may permit members to consume food and beverages; and
- (3) The co-chairs of the Appropriations Committee or the chair of the Legislative Council, as applicable, may permit the consumption of food and beverages in Room 228 and Room 334 at any time.

**7. Procedures for public hearings.** The purpose of a public hearing is to invite public comments on proposed legislation or gubernatorial nominations pending before the committee. Joint Rule 304 governs the public hearing process.

A. Each person testifying shall announce his or her name, residence and affiliation prior to testifying. The person also shall either sign the sheet maintained by the committee clerk or otherwise provide that information to the committee clerk to place in the committee files.

B. Legislators must be addressed by their title. Persons in the audience may specify how they prefer to be addressed.

C. Pursuant to Joint Rule 307, all written materials presented to the committee must bear the name, address and affiliation, if applicable, of the presenter and the date presented. Persons present in the room and submitting written materials shall provide the committee clerk with *at least 20 copies*.

D. All questions must be addressed through the chair. Pursuant to Joint Rule 304, the chair may limit testimony at public hearings as necessary for the orderly conduct of the hearing.

E. Committee members may question witnesses to clarify testimony and to elicit helpful and pertinent information. While probing questions may sometimes be appropriate, members shall show respect at all times for the witnesses and for one another. Members shall refrain from questioning that is argumentative, oppressive, repetitive or unnecessarily embarrassing to hearing participants. Advocacy and discussion among members are not appropriate at public hearings. A committee member who is the primary sponsor of a legislative document and any member who testifies for or against the legislative document shall refrain from questioning other witnesses, except as authorized by the chair to allow the sponsor or member testifying to ask a clarifying question.

F. Committee members and members of the public shall refrain from making or receiving phone calls during public hearings.

G. Procedures for public hearings on nominations of gubernatorial appointments are governed by statute and the Joint Rules.

**8. Procedures for work sessions.** The purpose of a work session is to provide an opportunity for the committee members to deliberate on legislative documents and other matters pending before the committee.

A. All questions must be addressed through the chair.

B. Because work sessions are primarily for deliberation on bills and other committee matters by the committee members and for working with the committee analyst, members of the audience may not participate except at the invitation of the chair.

**9. Reports.** Joint Rule 310 governs committee reports. The committee shall report out every legislative document referred to it, in accordance with reporting deadlines established by the presiding officers and the Joint Rules. The report of the committee must include a recommendation. When a vote is taken on a legislative document, the committee clerk shall record the vote.

A. Recommendations that may be made are:

Ought to Pass;  
Ought to Pass as Amended;  
Ought to Pass in New Draft;  
Ought Not to Pass;  
Refer to Another Committee; or  
Leave to Withdraw.

Necessary fiscal notes must be incorporated into the committee report before the bill is reported out.

A member who is not physically present at the meeting but who received permission from that member's presiding officer to participate by electronic means is deemed to be present for the purposes of voting, but only for voting on committee reports listed in this paragraph and only in a manner that provides opportunity for those physically present at the meeting to see and hear how that member voted.

B. Except for Leave to Withdraw, the committee shall vote on all recommendations to be included in reports on a legislative document during a work session on that legislative document.

Votes may not be taken after 10:30 p.m. or before 7:30 a.m. unless first authorized jointly by the presiding officers.

C. In accordance with Joint Rule 310(6) a sponsor may request Leave to Withdraw the sponsor's bill or resolve before it is advertised for a public hearing. The request may be granted only by the agreement of both chairs. When a request for Leave to Withdraw has been granted by the chairs, the bill or resolve is reported out as Leave to Withdraw.

D. If all members are not present for the vote, the bill must be held in committee until the following periods have expired.

(1) If a member is absent from the committee at the time of the vote, the member may register that member's vote with the clerk up until noon on the 2nd business day following the vote.

(2) If the presiding officers jointly determine that operational needs of the Legislature so require, they may require that a member who was absent from the committee at the time of the vote register that member's vote by noon on the next business day following the committee vote.

E. If the vote is not unanimous, more than one report is required. Except as provided in paragraph D, minority reports must be voted on at the same work session as the majority report on the bill. Notwithstanding paragraph D, a committee vote to report a bill favorably must be taken based on written language before the committee at that time or on a motion describing the content of the report.

F. A member may abstain from voting only if the member has a conflict of interest as described in Joint Rule 104.

G. The committee clerk shall prepare the committee jacket or jackets following the vote and obtain signatures from committee members as required.

H. All committee reports must be reviewed at a work session or otherwise distributed to all committee members. The committee shall ensure that all committee reports are available for review by the public no later than when the report is submitted to the Legislature.

I. After a committee vote, no substantive change may be made in the committee report unless motions to reconsider and to amend the report are approved at a committee work session.

J. All reports on any legislative document must be submitted to the Legislature at the same time and within applicable reporting deadlines established by the presiding officers.

**10. Joint referral of bills:** Bills with subject matter that overlap committee jurisdictions may be referred jointly to more than one committee. In those cases, Joint Rule 308(3) makes specific provisions for the conduct of public hearings and work sessions and for the reporting out of the bills.

**11. Participation in the budget process:** Committee participation in development of budget legislation is governed by Joint Rule 314. Joint Rule 314 also governs the process by which the committee notifies the Appropriations Committee of its priority for committee bills that are placed on the Special Appropriations Table.

**12. Procedures for review of gubernatorial nominations.** The committee shall review gubernatorial nominations in accordance with the requirements of the Maine Constitution, Art. V, Part 1st, §8; the Maine Revised Statutes Title 3, Chapter 6; and Part 5 of the Joint Rules.

**13. Use of the committee room:** During the legislative session, committee chairs and other committee members shall coordinate the use of the committee room with the committee clerk. At all other times, use of committee rooms must be coordinated through the Legislative Information Office.

**14. Confidentiality.** The committee shall protect confidential records in accordance with procedures set forth in Joint Rule 313 and freedom of access laws, the Maine Revised Statutes, Title 1, chapter 13, subchapter I.

Committee rules adopted by the Joint Standing (Select) Committee on \_\_\_\_\_

Date:

By:

Senate Chair: \_\_\_\_\_ House Chair: \_\_\_\_\_

A copy of the adopted Committee Rules of Procedure must be posted in the committee room and be available for public review.

+++++

*If the committee proposes any changes to the rules, the changes must be identified and presented to the presiding officers.*

*PROPOSED CHANGES?*

*No* \_\_\_\_\_

*Yes* \_\_\_\_\_

*IF YES, REVIEWED AND AGREED TO BY:*

\_\_\_\_\_  
President of the Senate

Date: \_\_\_\_\_

\_\_\_\_\_  
Speaker of the House

Date: \_\_\_\_\_





**Troy D. Jackson**  
*President of the Senate*

**State of Maine**  
**131<sup>st</sup> Maine Legislature**

**Rachel Talbot Ross**  
*Speaker of the House*

To: Chairs of Joint Standing and Joint Select Committees, 131<sup>st</sup> Legislature

From: Troy D. Jackson, President of the Senate  
Rachel Talbot Ross, Speaker of the House

Date: January 3, 2023

Re: Committee Meetings in the 131<sup>st</sup> Legislature

---

Soon the Joint Standing (and Select) Committees of the 131<sup>st</sup> Legislature will begin their important work. During the previous Legislature, committees worked through the significant challenges of conducting public hearings and work sessions electronically. Although we are proud of way the 130<sup>th</sup> Legislature navigated the process using an entirely new platform, we know you share in the relief we feel in returning to the committee rooms of the State House Complex to work side-by-side with our legislative colleagues. We are grateful for the valuable tools we gained resulting from our need to adapt during those difficult sessions. Access to committee meetings by members of the public who wish to testify on legislation has been increased dramatically. No longer will the only option available to the public be to drive, potentially hundreds of miles, in order to offer live testimony on a bill. Instead, your constituents now have the choice to testify before a committee over an electronic platform. Video streaming of committee proceedings (including an archive of past meetings) is now available with the click of a mouse and provides a significantly improved experience over simply listening to audio.

Some of you may have only experienced committee meetings, as a chair or a member, using the electronic format developed in the 130<sup>th</sup> Legislature. Now that we will be returning to in-person committee meetings for the 131<sup>st</sup>, it is helpful to remember that Joint Rule 306 requires a quorum of members to be physically present in the room to start a meeting. As has always been the case, the need to be absent from committee happens from time to time, and Joint Rule 310 (5) provides that a member who is absent at the time of a vote has until noon on the second business day after the vote was held to register their position with the committee clerk. We hope that members who are absent will take advantage of video streaming (and archives) of committee proceedings when such absences occur.

In accordance with the best interest of the legislative process, we are directing that when attending committee meetings, members will do so by being physically present in the committee room. In rare instances, in the event of extraordinary circumstances, a member may reach out to their presiding officer to request permission to participate in a committee meeting electronically. When that permission is granted, the committee clerk will be notified and authorized to send a (Zoom) link for the member to join the meeting. Extraordinary circumstances for which permission might be granted include, but are not limited to, when we determine that the member's presence in the committee room would not be in the best interest of the Legislature or in the case of a mobility issue that would make navigating the rooms of the State House Complex impossible. Pursuant to Joint Rule 310 (5), a member who has been given permission to participate in a committee meeting electronically is limited to voting only on the committee's report on the bill (OTP, OTP-A, ONTP, re-refer, etc.). It should be noted that because committees will be meeting in person, in the extraordinary instance where a member is participating electronically, that member will have less timely access to documents distributed to those physically present in the room.

Thank you for your attention to this guidance and we are looking forward to a productive 131<sup>st</sup> Legislature.

cc: Legislative Council Members  
Members of the 131<sup>st</sup> Legislature  
Darek Grant, Secretary of the Senate  
Rob Hunt, Clerk of the House  
Legislative Office Directors  
Chiefs of Staff, Senate and House Leadership Offices

**131<sup>st</sup> Maine Legislature**  
**Committee meeting guidance for the public/interested parties**

Pursuant to recent guidance issued by the Presiding Officers, the 131st Legislature will be returning to in-person committee meetings. The following is intended to provide guidance on offering testimony at a public hearing and observing committee work sessions.

**Livestream (and archive) of committee meetings**

Committee meetings are now livestreamed using the Legislature's streaming service (not YouTube). You may access the livestream (or archive) by going to the date of the committee meeting on the Legislature's Calendar (<https://legislature.maine.gov/Calendar/>).

**Public hearings**

As usual, the manner in which testimony is taken during a public hearing, as well as the conduct of hearings generally, will be determined by the committee chairs.

- Testifying before a committee:

Persons wanting to offer testimony to a committee may do so by attending the meeting in person in the committee room or by registering to testify over Zoom using the testimony submission portal (<https://www.mainelegislature.org/testimony/>). Generally, registration is required no later than 30 minutes prior to scheduled start of that day's hearing(s). Once that registration is complete, you will receive additional information regarding acquiring a Zoom meeting link that can be used to join the meeting remotely during the public hearing.

Unless otherwise specified by the chairs, such as in the case of large public hearings, no pre-registration is required for in-person hearing testimony.

- Written testimony:

A person testifying over Zoom can submit their written testimony by uploading it through the registration portal (<https://www.mainelegislature.org/testimony/>).

Although committee clerks will endeavor to provide legislators with hard copies of testimony submitted electronically prior to a hearing, such distribution before or during a public hearing cannot be guaranteed.

A person who testifies in the committee room and has written testimony, should provide **20 hard copies** for distribution to the committee. (This testimony may be uploaded through the portal *in addition* to hard copy distribution.)

**Work sessions and other committee meetings**

For committee work sessions and other committee meetings (e.g., committee orientation, committee briefings, etc.), persons wanting to observe such meetings may do so in person or using the video streaming options described above

Because work sessions (and orientations, briefings and presentations) for the 131<sup>st</sup> Legislature are in-person meetings, interested parties and members of the public should plan on attending these types of committee meetings in person in the committee room or observing the meeting video live. As always, participation by interested parties and members of the public at work sessions and other committee meetings will be by invitation only and at the discretion of the chairs, including the manner of participation (in-person or electronic).

Thank you for your attention to these matters and should you have any questions, please do not hesitate to contact the committee clerk or committee analyst.

Persons in need of accommodations should contact the Legislative Information Office as soon as possible at (207) 287-1692 or [lio@legislature.maine.gov](mailto:lio@legislature.maine.gov).