

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1119

H.P. 791

House of Representatives, March 21, 2013

**An Act To Establish Superior Court as the Forum in Which Appeals
of Agency Decisions Must Be Taken**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CROCKETT of Bethel.
Cosponsored by Representative: DUNPHY of Embden.

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

2 **Sec. 1. 35-A MRSA §1305, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is
3 amended to read:

4 **4. Right to appeal.** Either the examiner or the commissioner, who is the presiding
5 officer at the hearing, shall at the outset of the hearing inform the public as to the steps
6 necessary to preserve its right to appeal the final order or decision of the commission to
7 the ~~Supreme Judicial~~ Superior Court under the provisions of section 1320.

8 **Sec. 2. 35-A MRSA §1320, sub-§1**, as enacted by PL 1987, c. 141, Pt. A, §6, is
9 amended to read:

10 **1. Final decisions.** ~~An appeal from a~~ A final decision of the commission ~~may be~~
11 ~~taken to the Law Court on questions of law in the same manner as an appeal taken from a~~
12 ~~judgment of~~ is deemed to be final agency action subject to appeal to the Superior Court in
13 ~~a civil action~~ as provided in Title 5, chapter 375, subchapter 7.

14 **Sec. 3. 35-A MRSA §1320, sub-§6**, as enacted by PL 1987, c. 141, Pt. A, §6, is
15 repealed.

16 **Sec. 4. 35-A MRSA §1320, sub-§§7 and 9**, as enacted by PL 1987, c. 141, Pt.
17 A, §6, are amended to read:

18 **7. Stay.** While an appeal under subsection 1 is pending, no injunction may issue
19 suspending or staying any order of the commission and the appeal ~~shall~~ does not excuse
20 any person or corporation from complying with and obeying any order or decision or any
21 requirement of any order or decision of the commission or operate in any manner to stay
22 or postpone the enforcement of the order or decision, except in the cases and upon the
23 terms as the commission orders. While an appeal under subsection 5 is pending final
24 determination by the court, the ~~Chief Justice, or in his absence any other justice,~~ judge
25 may enjoin or stay the effect of the ruling or order upon the terms and conditions as ~~he~~
26 the judge determines proper.

27 **9. Certification of decision, costs.** The result of the appeal ~~shall~~ must be certified
28 by the clerk of the ~~Law~~ Superior Court to the administrative director of the commission
29 and to the clerk of the Superior Court for Kennebec County. The prevailing party shall
30 recover costs to be taxed by the Superior Court in accordance with the law for the
31 taxation of costs on appeal in civil actions. Execution for these costs ~~shall~~ must be issued
32 from the Superior Court of Kennebec County in the same manner as in actions originating
33 in the court. Double costs ~~shall~~ must be assessed by the court upon any party whose
34 appeal appears to the court not to be a fit subject for judicial inquiry or appears to be
35 intended for delay.

36 **Sec. 5. 38 MRSA §346, sub-§4**, as repealed and replaced by PL 2011, c. 420, Pt.
37 A, §34, is amended to read:

38 **4. Appeal of decision.** A ~~judicial appeal of~~ final action by the board or
39 commissioner regarding an application for an expedited wind energy development, as

1 defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section
2 480-HH or section 636-A ~~must be taken to the Supreme Judicial Court sitting as the Law~~
3 ~~is deemed to be final agency action subject to appeal to the Superior Court as provided in~~
4 ~~Title 5, chapter 375, subchapter 7. The Law Court has exclusive jurisdiction over request~~
5 ~~for judicial review of final action by the commissioner or the board regarding expedited~~
6 ~~wind energy developments or a general permit pursuant to section 480-HH or section~~
7 ~~636-A. These appeals to the Law Court must be taken in the manner provided in Title 5,~~
8 ~~chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.~~

9 **Sec. 6. 39-A MRSA §314, sub-§6**, as enacted by PL 1991, c. 885, Pt. A, §8 and
10 affected by §§9 to 11, is amended to read:

11 **6. Finality.** The findings of fact made by the arbitrator acting within the arbitrator's
12 powers, in the absence of fraud, are conclusive. If the arbitrator expressly finds that any
13 party has or has not sustained the party's burden of proof, that finding is considered a
14 conclusion of law and is reviewable in accordance with section 322. Any party may
15 appeal the decision of the arbitrator to the ~~Law~~ Superior Court pursuant to section 322
16 within 20 days of receipt of notice of the filing of the decision by the arbitrator.

17 **Sec. 7. 39-A MRSA §318, last ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and
18 affected by §§9 to 11, is amended to read:

19 Clerical mistakes in decrees, orders or other parts of the record and errors arising
20 from oversight or omission may be corrected by the board at any time of its own
21 initiative, at the request of the hearing officer or on the motion of any party and after
22 notice to the parties. During the pendency of an appeal, these mistakes may be corrected
23 before the appeal is docketed in the ~~Law~~ Superior Court and thereafter, while the appeal
24 is pending, may be corrected with leave of the ~~Law~~ Superior Court.

25 **Sec. 8. 39-A MRSA §322**, as amended by PL 2011, c. 647, §21, is further
26 amended to read:

27 **§322. Appeal from decision of hearing officer or board**

28 **1. Appeals.** Any party in interest may present a copy of the decision of the division
29 or a decision of the board, if the board has reviewed a decision pursuant to section 320, to
30 the clerk of the ~~Law~~ Superior Court within 20 days after receipt of notice of the filing of
31 the decision by the division or the board. Within 20 days after the copy is filed with the
32 ~~Law~~ Superior Court, the party seeking review by the ~~Law~~ Superior Court shall file a
33 petition seeking appellate review with the ~~Law~~ Superior Court that sets forth a brief
34 statement of the facts, the error or errors of law that are alleged to exist and the legal
35 authority supporting the position of the appellant.

36 **2. Procedures.** The ~~Law~~ Superior Court shall establish and publish procedures for
37 the review of petitions for appellate review of decisions of the board.

38 **3. Discretionary appeal; action.** ~~Upon the approval of 3 or more members of a~~
39 ~~panel consisting of no fewer than 5 Justices of the Law Court, the petition for appellate~~

1 ~~review may be granted.~~ If the petition for appellate review is denied, the decision of the
2 board is final. The petition must be considered on written briefs only.

3 If the petition for appellate review is granted, the clerk of the Law Superior Court shall
4 notify the parties of the briefing schedule consistent with the Maine Rules of Civil
5 Procedure and in all respects the appeal before the Law Superior Court must be treated as
6 an appeal in an action in which equitable relief has been sought, except that there may be
7 no appeal upon findings of fact. The Law Superior Court may, after due consideration,
8 reverse, modify or affirm any decision of the board.

9 **Sec. 9. 39-A MRSA §324, sub-§1**, as amended by PL 2011, c. 361, §1, is further
10 amended to read:

11 **1. Order or decision.** The employer or insurance carrier shall make compensation
12 payments within 10 days after the receipt of notice of an approved agreement for payment
13 of compensation or within 10 days after any order or decision of the board awarding
14 compensation. If the board enters a decision awarding compensation, and a motion for
15 findings of fact and conclusions of law is filed with the hearing officer or an appeal is
16 filed with the Law Superior Court pursuant to section 322, payments may not be
17 suspended while the motion for findings of fact and conclusions of law or appeal is
18 pending. The employer or insurer may recover from an employee payments made
19 pending a motion for findings of fact and conclusions of law or appeal to the Law
20 Superior Court if and to the extent that the hearing officer or the Law Superior Court has
21 decided that the employee was not entitled to the compensation paid. The board has full
22 jurisdiction to determine the amount of overpayment, if any, and the amount and schedule
23 of repayment, if any. The board, in determining whether or not repayment should be
24 made and the extent and schedule of repayment, shall consider the financial situation of
25 the employee and the employee's family and may not order repayment that would work
26 hardship or injustice. The board shall notify the Commissioner of Health and Human
27 Services within 10 days after the receipt of notice of an approved agreement for payment
28 of compensation or within 10 days after any order or decision of the board awarding
29 compensation identifying the employee who is to receive the compensation. For
30 purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance
31 Guaranty Association under Title 24-A, chapter 57, subchapter 3.

32 SUMMARY

33 This bill amends the laws governing appeals of agency decisions.

34 Currently, appeals of decisions of the Workers' Compensation Board and the Public
35 Utilities Commission and appeals of final action by the Board of Environmental
36 Protection or the Commissioner of Environmental Protection on applications for
37 expedited wind energy development, general permits for tidal energy demonstration
38 projects and general permits for offshore wind energy demonstration projects are heard
39 by the Law Court. Under this bill, those decisions are instead subject to appeal to the
40 Superior Court.