

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1750

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S.P. 692

In Senate, January 28, 2014

### **An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by President ALFOND of Cumberland.

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

2 **Sec. 1. 5 MRSA §8002, sub-§9, ¶A**, as amended by PL 2011, c. 304, Pt. G, §1, is  
3 further amended to read:

4 A. "Rule" means the whole or any part of every regulation, standard, code,  
5 application instruction, statement of policy, statement that designates the weight to be  
6 afforded particular types of evidence or other agency guideline or statement of  
7 general applicability, including the amendment, suspension or repeal of any prior  
8 rule, that is or is intended to be judicially enforceable and implements, interprets or  
9 makes specific the law administered by the agency, or describes the procedures or  
10 practices of the agency.

11 **Sec. 2. 5 MRSA §9061, first ¶**, as enacted by PL 1977, c. 551, §3, is amended to  
12 read:

13 Every agency decision made at the conclusion of an adjudicatory proceeding ~~shall~~  
14 must be in writing or stated in the record, and ~~shall~~ must include findings of fact  
15 sufficient to apprise the parties and any interested member of the public of the basis for  
16 the decision. Every agency decision must be based on the best evidence available to the  
17 agency, including the conclusions and testimony of qualified experts, data gathered  
18 through objective and reliable means and testimony and other evidence supported by  
19 independent confirmation of reliability. If an agency decision is contrary to a conclusion  
20 of a qualified expert of the agency, the agency must identify with specificity the basis for  
21 rejecting the expert's conclusion. A copy of the decision ~~shall~~ must be delivered or  
22 promptly mailed to each party to the proceeding or ~~his~~ the party's representative of  
23 record. Written notice of the party's rights to review or appeal of the decision within the  
24 agency or review of the decision by the courts, as the case may be, and of the action  
25 required and the time within which such action must be taken in order to exercise the  
26 right of review or appeal, ~~shall~~ must be given to each party with the decision.

27 **Sec. 3. 5 MRSA §10005**, as enacted by PL 1985, c. 680, §8, is amended to read:

28 **§10005. Decision and record**

29 Any licensing decision not involving an adjudicatory proceeding, as defined in  
30 section 8002, subsection 1, ~~shall~~ must be made in writing and ~~shall~~ must be made only on  
31 the basis of evidence relevant to the case. Every licensing decision must be based on the  
32 best evidence available to the agency, including the conclusions and testimony of  
33 qualified experts, data gathered through objective and reliable means and testimony and  
34 other evidence supported by independent confirmation of reliability. If an agency's  
35 licensing decision is contrary to a conclusion of a qualified expert of the agency, the  
36 agency must identify with specificity the basis for rejecting the expert's conclusion. When  
37 the requested license is denied, or only conditionally approved, the decision ~~shall~~ must  
38 contain or reflect the agency's reasoning, in a manner sufficient to inform the applicant  
39 and the public of the basis for the agency's action.

40 **Sec. 4. 35-A MRSA §3452, sub-§3, ¶D**, as enacted by PL 2007, c. 661, Pt. A,  
41 §7, is amended to read:

1 D. The expedited wind energy development's purpose and the context of the  
2 proposed activity, including but not limited to the energy and emissions-related  
3 benefits described in section 3402, the policy objectives of the Maine Wind Energy  
4 Act and the energy, environmental and economic benefits associated with the  
5 expedited wind energy development;

6 **Sec. 5. 35-A MRSA §3454, first ¶**, as repealed and replaced by PL 2013, c. 424,  
7 Pt. A, §21, is amended to read:

8 In making findings pursuant to Title 38, section 484, subsection 3, the primary siting  
9 authority shall presume that an expedited wind energy development provides energy and  
10 emissions-related benefits described in section 3402 and shall make additional findings  
11 regarding other tangible benefits provided by the development. An applicant for an  
12 expedited wind energy development may submit evidence of the energy and emissions-  
13 related benefits but the primary siting authority may not require the submission of the  
14 evidence or make specific findings related to energy and emissions-related benefits. The  
15 Department of Labor, the Governor's Office of Policy and Management, the Governor's  
16 Energy Office and the Public Utilities Commission shall provide review comments if  
17 requested by the primary siting authority.

## 18 SUMMARY

19 This bill amends the Maine Administrative Procedure Act by amending the definition  
20 of "rule" and requiring that every agency decision be based on the best evidence available  
21 to the agency. The bill also amends the laws governing expedited wind energy  
22 developments to provide that in determining the tangible benefits of an expedited wind  
23 energy development, the primary siting authority may not require the submission of  
24 evidence of the energy and emissions-related benefits or make specific findings related to  
25 energy and emissions-related benefits. Those benefits are presumed. The bill also  
26 provides that in determining whether a proposed expedited wind energy development will  
27 have an unreasonable adverse effect on scenic character or existing uses and whether an  
28 applicant must provide a visual impact assessment, the primary siting authority is  
29 required to consider the energy and emissions-related benefits of the expedited wind  
30 energy development, the policy objectives of the Maine Wind Energy Act and the energy,  
31 environmental and economic benefits associated with the expedited wind energy  
32 development.