

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 865

S.P. 362

In Senate, February 24, 2023

**An Act to Clarify the Roles and Responsibilities of the Board of
Environmental Protection by Adjusting the Requirements for
Certain Hearings and for Certain Agencies by Adjusting the
Requirements for Cost-Benefit Analysis**

Reference to the Committee on Environment and Natural Resources 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 Senator BENNETT of Oxford.
Cosponsored by Representative: O'NEIL of Saco.

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

2 **Sec. 1. 5 MRSA §8063-A**, as enacted by PL 2011, c. 304, Pt. B, §1, is amended to
3 read:

4 **§8063-A. Analysis of benefits and costs**

5 In addition to the economic impact statement required under section 8052, subsection
6 5-A and the fiscal impact note required under section 8063, an agency may, ~~within existing~~
7 ~~budgeted resources and~~ in instances in which the consideration of costs is permitted,
8 conduct an analysis of the benefits and costs of a proposed rule to evaluate the effects of
9 the rule on the distribution of benefits and costs for specific groups and on the overall
10 economic welfare of the State.

11 **1. Contents of a cost-benefit analysis.** ~~To the extent permitted within existing~~
12 ~~resources,~~ a cost-benefit analysis conducted under this section must include, at a
13 minimum, the following information:

14 A. Specification of the baseline condition for the analysis, including all required
15 parameters for the analysis, all assumptions made in specifying the baseline condition
16 and specification of the analysis period;

17 B. A description of the methods used to discount future benefits and costs, preferably
18 based on the federal Office of Management and Budget's discount rate for federal
19 projects;

20 C. An analysis of changes in the level of economic activity in the State as measured
21 by employment, income and outputs; and

22 D. An estimate of the discounted benefits and costs of the proposed rule over the
23 baseline condition, including benefits and costs to specific groups and changes in the
24 economic welfare of the State as a whole over the baseline condition.

25 ~~Prior to conducting a cost-benefit analysis under this section, an agency shall determine~~
26 ~~that sufficient staff expertise and budgeted resources exist within the agency to complete~~
27 ~~the analysis.~~ An agency shall assess the costs of a cost-benefit analysis conducted under
28 this section against the applicant. The agency shall include a cost-benefit analysis
29 conducted by a 3rd party with a copy of a proposed rule when responding to a request for
30 the proposed rule under section 8053, subsection 3-A. When the analysis is conducted on
31 a provisionally adopted major substantive rule, the analysis must be included with the
32 materials submitted to the Executive Director of the Legislative Council under section
33 8072, subsection 2. ~~A cost-benefit analysis conducted under this section is not subject to~~
34 ~~judicial review under section 8058.~~

35 **Sec. 2. 38 MRSA §341-B**, as amended by PL 2019, c. 315, §3, is further amended
36 to read:

37 **§341-B. Rules**

38 The purpose of the Board of Environmental Protection is to provide informed,
39 independent ~~and timely,~~ timely decisions on the interpretation, administration and
40 enforcement of the laws relating to environmental protection and to provide for credible,
41 fair and responsible public participation in department decisions. The board shall fulfill its
42 purpose through rulemaking, decisions on selected permit applications, decisions on

1 appeals of the commissioner's licensing actions, review of the commissioner's enforcement
2 actions and recommending changes in the law to the Legislature.

3 **Sec. 3. 38 MRSA §341-D, sub-§2**, as amended by PL 2011, c. 304, Pt. H, §6, is
4 further amended by amending the 2nd blocked paragraph to read:

5 The board shall assume jurisdiction over applications, including an application referred to
6 it under section 344, subsection 2-A, when it finds that at least 3 of the 4 criteria of this
7 subsection have been met.

8 **Sec. 4. 38 MRSA §341-D, sub-§2**, as amended by PL 2011, c. 304, Pt. H, §6, is
9 further amended by repealing the 3rd blocked paragraph.

10 **Sec. 5. 38 MRSA §341-D, sub-§4, ¶A**, as enacted by PL 1989, c. 890, Pt. A, §13
11 and affected by §40, is amended to read:

12 A. Final license or permit decisions made by the commissioner when a person
13 aggrieved by a decision of the commissioner appeals that decision to the board within
14 30 days of the filing of the decision with the board staff. The board shall hold a hearing
15 on the appeal. The appeal is governed by the law in effect at the time the appeal was
16 filed with the commissioner. The board staff shall give written notice to persons that
17 have asked to be notified of the decision. The board ~~may~~ shall allow the record to be
18 supplemented when ~~it~~ a majority of the board finds that the evidence offered is relevant
19 and material and that:

20 (1) An interested party seeking to supplement the record has shown due diligence
21 in bringing the evidence to the licensing process at the earliest possible time; or

22 (2) The evidence is newly discovered or arises from materially changed
23 circumstances and could not, by the exercise of diligence, have been discovered in
24 time to be presented earlier in the licensing process.

25 The board is not bound by the commissioner's findings of fact or conclusions of law
26 but may adopt, modify or reverse findings of fact or conclusions of law established by
27 the commissioner. Any changes made by the board under this paragraph must be based
28 upon the board's review of the record, any supplemental evidence admitted by the board
29 and any hearing held by the board;

30 **Sec. 6. 38 MRSA §341-D, sub-§4**, as amended by PL 2017, c. 334, §3, is further
31 amended by enacting at the end a new first blocked paragraph to read:

32 The board shall make a decision authorized by this subsection not later than 180 days after
33 the date the matter is referred to the board for review.

34 **Sec. 7. 38 MRSA §341-D, sub-§9** is enacted to read:

35 **9. Information sharing.** Information submitted to the chair of the board or a member
36 of the board relating to a matter before the board must be distributed to all members of the
37 board.

38 SUMMARY

39 This bill requires a cost-benefit analysis made by an agency to be performed by a 3rd
40 party and requires the agency to assess the applicant for the cost of the analysis. It also
41 removes a provision subjecting the cost-benefit analysis to judicial review.

1 The bill requires the board to assume jurisdiction over applications if certain criteria
2 are met. It requires the board to hold a hearing on an appeal of a final decision on a license
3 or permit that is governed by the law in effect at the time the appeal was filed and requires
4 the board to allow supplementation if a majority of the board finds that certain conditions
5 have been met. The bill adds evidence arising from materially changed circumstances to
6 the types of evidence considered in the appeal.