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

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.

DAREK M. GRANT
Secretary of the Senate

Presented by President ALFOND of Cumberland.
Be it enacted by the People of the State of Maine as follows:

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

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

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

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

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

§10005. Decision and record

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

Sec. 4. 35-A MRSA §3452, sub-$3, ¶D, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:
D. The expedited wind energy development's purpose and the context of the proposed activity, including but not limited to the energy and emissions-related benefits described in section 3402, the policy objectives of the Maine Wind Energy Act and the energy, environmental and economic benefits associated with the expedited wind energy development;

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

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

SUMMARY

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