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An Act To Clarify the Role of Public Comment in the Agency Decision-making Process

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

Sec. 1. 5 MRSA §8052, sub-§5, as amended by PL 1997, c. 196, §1, is further amended to read:

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall list the names of persons whose comments were received, including through testimony at hearings, the organizations the persons represent and summaries of their comments. The agency shall state the ratio of comments received in terms of the number of persons opposed and the number of persons in favor. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

A. If the same or similar comments or concerns about a specific issue were expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment that accurately reflects the meaning and intent of these comments and concerns to be addressed by the agency, listing the names of the persons who commented and the organizations they represent.

B. A rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule. The agency shall maintain a file for each rule adopted that must include, in addition to other documents required by this Act, testimony, comments, the names of persons who commented and the organizations they represent and information relevant to the rule and considered by the agency in connection with the formulation, proposal or adoption of a rule. If an agency determines that a rule that the agency intends to adopt is substantially different from the proposed rule, the agency shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph. Notice of the request for comments must be published by the Secretary of State in the same manner as notice for proposed or adopted rules.

C. If the adoption under this subsection is final adoption of a major substantive rule under subchapter ~~H-A2-A~~, the agency must include in its written statement citation of the legislative act authorizing final adoption of that rule; or, if authorization is the result of failure of the Legislature to act under section 8072, subsection 7, the agency must indicate that fact and identify the date the agency filed the rule for review under section 8072.

Sec. 2. 5 MRSA §8072, sub-§2, ¶B-1 is enacted to read:

B-1. A summary of the public comments received pursuant to section 8052, subsection 5, including a brief statement of the ratio of persons with favorable comments and persons with unfavorable comments relating to the rule.

Sec. 3. 5 MRSA §8072, sub-§4, ¶G, as amended by PL 1995, c. 537, §7, is further amended to read:

G. Whether the provisionally adopted rule was proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law; and

Sec. 4. 5 MRSA §8072, sub-§4, ¶H, as enacted by PL 1995, c. 537, §8, is amended to read:

H. For a rule that is reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the rule to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the rule.; and

Sec. 5. 5 MRSA §8072, sub-§4, ¶I is enacted to read:

I. When 2/3 or more of the persons submit public comments that oppose or differ substantially from the substance of the proposed rule, whether the agency has addressed or offered a satisfactory explanation for why the rule needs to be adopted as written.

Sec. 6. 12 MRSA §684, as amended by PL 1999, c. 333, §4, is further amended by adding at the end a new paragraph to read:

When a public hearing is held prior to a decision by the commission and 2/3 or more of the persons submitting comments are opposed to the final decision made by the commission, the commission must report its explanation for that decision to the joint standing committee of the Legislature having jurisdiction over conservation matters.

SUMMARY

This bill amends the Maine Administrative Procedure Act to require an agency to report the ratio of the persons submitting comments in support of and persons in opposition to a proposed rule during the public comment period and also to require that the agency provide an explanation to the Legislative Council as to why the rule needs to be adopted as written if the proposed rule was opposed by 2/3 of the persons submitting public comments. It also requires the Maine Land Use Regulation Commission to provide an explanation for a permitting decision that was opposed by 2/3 of the persons submitting comments at a public hearing.