



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1546

S.P. 493

In Senate, May 5, 2011

An Act To Amend the Laws Governing the Deference Afforded to Agency Decisions

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator PLOWMAN of Penobscot.
Cosponsored by Representative FITTS of Pittsfield and
Senators: COURTNEY of York, THIBODEAU of Waldo, Representative: CROCKETT of
Bethel.

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

2 **Sec. 1. 5 MRSA §8058, sub-§1**, as amended by PL 1985, c. 680, §6, is further
3 amended to read:

4 **1. Judicial review.** Judicial review of an agency rule, or of an agency's refusal or
5 failure to adopt a rule ~~where~~ when the adoption of a rule is required by law, may be had
6 by any person who is aggrieved in an action for declaratory judgment in the Superior
7 Court conducted pursuant to Title 14, ~~section 5951, et seq. chapter 707, which the~~
8 ~~provisions shall of which~~ apply to such actions ~~wherever~~ whenever not inconsistent with
9 this section. The court, in conducting its review of a rule, shall review de novo the
10 agency's interpretation of the statutes applicable to the rulemaking. Insofar as the court
11 finds that a rule exceeds the rule-making authority of the agency, or is void under section
12 8057, subsection 1 or 2, it shall declare the rule invalid. In reviewing any other
13 procedural error alleged, the court may invalidate the rule only if it finds the error to be
14 substantial ~~and related to matters of such central relevance to the rule that there is a~~
15 ~~substantial likelihood that the rule would have been significantly changed if the error had~~
16 ~~not occurred.~~ If the court finds that the rule is not procedurally invalid and not in excess
17 of the agency's rule-making authority, ~~its~~ the court's substantive review of that rule ~~shall~~
18 ~~be~~ is to determine whether the rule is arbitrary, capricious, an abuse of discretion or
19 otherwise not in accordance with law. The phrase "otherwise not in accordance with law"
20 ~~shall apply~~ applies only to the review authorized in the preceding sentence and ~~shall may~~
21 not be construed so as to limit or replace in any way section 8003. In the event that the
22 court finds that an agency has failed to adopt a rule as required by law, the court may
23 issue ~~such~~ those orders as are necessary and appropriate to remedy such failure.

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

26 Every agency decision made at the conclusion of an adjudicatory proceeding ~~shall~~
27 must be in writing or stated in the record, and ~~shall must~~ must include findings of fact
28 sufficient to apprise the parties and any interested member of the public of the basis for
29 the decision. A copy of the decision ~~shall must~~ must be delivered or promptly mailed to each
30 party to the proceeding or ~~his~~ each party's representative of record. Written notice of the
31 party's rights to review or appeal ~~of~~ the decision within the agency or review of the
32 decision by the courts, as the case may be, and of the action required and the time within
33 which such action must be taken in order to exercise the right of review or appeal, ~~shall~~
34 must be given to each party with the decision. In any review or appeal of a decision to a
35 court of this State, the court, while considering the underlying decision appealed, shall
36 review de novo the agency's interpretation of statutes or rules. The court shall defer to
37 the agency's findings of fact unless the court finds, based on the entire record, that an
38 agency's findings of fact are unsupported by substantial evidence.

39 **Sec. 3. 5 MRSA §11007, sub-§3**, as enacted by PL 1977, c. 551, §3, is amended
40 to read:

