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

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

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

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

**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. A copy of the decision shall ~~must~~ be delivered or promptly mailed to each party to the proceeding or ~~his~~ each 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. In any review or appeal of a decision to a court of this State, the court, while considering the underlying decision appealed, shall review de novo the agency's interpretation of statutes or rules. The court shall defer to the agency's findings of fact unless the court finds, based on the entire record, that an agency's findings of fact are unsupported by substantial evidence.

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

**3. Judgment.** The court shall ~~may~~ not substitute its judgment for that of the agency on questions of fact. On questions of law, the court shall review de novo an agency's interpretation of statutes or rules.

## **SUMMARY**

This bill requires a court, in an appeal of an agency's interpretation of the statutes in making or administering rules under the Maine Administrative Procedure Act, to conduct a de novo review. The bill also clarifies that, on questions of fact, the court is required to defer to the agency unless the court finds that the agency's findings of fact are unsupported by substantial evidence.