

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

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Legislative Document

No. 199

H.P. 164

House of Representatives, January 21, 2009

An Act To Facilitate Wind Power Siting

Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CEBRA of Naples.

Cosponsored by Representatives: FITTS of Pittsfield, FLETCHER of Winslow, HAMPER of Oxford, ROBINSON of Raymond, SARTY of Denmark.

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

2 **Sec. 1. 12 MRSA §685-B, sub-§2-C**, as enacted by PL 2007, c. 661, Pt. C, §2, is
3 amended to read:

4 **2-C. Wind energy development; determination deadline.** The commission shall
5 consider any expedited wind energy development and any other wind energy
6 development in proposed for location within the expedited permitting area under Title
7 35-A, chapter 34-A with a generating capacity greater than 100 kilowatts a use requiring
8 a permit, but not a special exception, within the affected districts or subdistricts ~~and~~. The
9 commission shall hold a hearing on application for such a development and shall render
10 its determination on an the application for such a development within 185 210 days after
11 the commission determines that the application is complete, except that the commission
12 shall render such a decision within 270 days if it holds a hearing on the application. The
13 chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting
14 member of the commission and may participate fully but is not required to attend
15 hearings when the commission considers an application for an expedited wind energy
16 development ~~as defined in Title 35-A, section 3451~~. The chair's participation on the
17 commission pursuant to this subsection does not affect the ability of the Public Utilities
18 Commission to submit information into the record of the commission's proceedings. For
19 purposes of this subsection, "expedited permitting area," "expedited wind energy
20 development" and "wind energy development" have the same meanings as in Title 35-A,
21 section 3451.

22 **Sec. 2. 35-A MRSA §3451, sub-§8**, as enacted by PL 2007, c. 661, Pt. A, §7, is
23 amended to read:

24 **8. Wind power siting authority.** "Primary Wind power siting authority" means:

25 A. The department, in the case of an expedited wind energy development subject to
26 the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6,
27 including, but not limited to, a development subject to the department's jurisdiction
28 pursuant to Title 38, section 488, subsection 9, or in the case of a wind energy
29 development subject to certification from the department under section 3456; or

30 B. The Maine Land Use Regulation Commission, in the case of ~~an expedited a~~ wind
31 energy development subject to the Maine Land Use Regulation Commission's
32 jurisdiction pursuant to Title 12, chapter 206-A.

33 **Sec. 3. 35-A MRSA §3451-A** is enacted to read:

34 **§3451-A. Wind power siting authority; jurisdiction**

35 Notwithstanding Public Law 2007, chapter 661, Part E, section 1 or any other
36 provision of law to the contrary, a governmental entity, other than a wind power siting
37 authority, may not require any approval, consent, permit, certificate or other condition for
38 the construction or initial operation of a wind energy development that is authorized by a
39 certificate or permit issued by a wind power siting authority in accordance with this
40 chapter. This section is not intended to prevent any governmental entity from applying

1 regulations that do not pertain to the location or design of a wind energy development for
2 which a certificate or permit has been obtained from the appropriate wind power siting
3 authority. For purposes of this section, "governmental entity" means any city, town,
4 plantation, county or instrumentality of the State and any office, department, agency,
5 authority, commission or board of the State.

6 **Sec. 4. 35-A MRSA §3456, sub-§2**, as enacted by PL 2007, c. 661, Pt. A, §7, is
7 amended to read:

8 **2. Fees; outside review; approval process.** The department may charge a
9 developer an appropriate fee for its review of an application and certification pursuant to
10 this section. Certification may be conditioned on specific requirements, including but not
11 limited to setbacks from residential structures to address noise or safety concerns. The
12 department may use an outside reviewer as provided in Title 38, section 344-A. The
13 department shall hold a hearing pursuant to Title 38, section 345-A, subsection 1-A on an
14 application for certification under this section. If no other approval by the department is
15 required for the development, the department shall issue its certification within ~~185~~ 210
16 days of its acceptance of a request for certification the date on which the department
17 accepts the application as complete pursuant to Title 38, section 344. At the request of
18 an applicant, the department may put the certification review period on hold. If another
19 approval by the department is required for the development, the department shall
20 consolidate its process for certification under this section with that regarding other
21 approvals by the department as provided in the department's rules and may extend the
22 review period as provided in those rules. Notwithstanding any other provision of law, the
23 department's certification pursuant to this section regarding a development that does not
24 otherwise require the department's approval pursuant to this Title is not itself subject to
25 judicial review as final agency action or otherwise, except as an aspect of an appeal of a
26 pertinent municipal land use decision.

27 **Sec. 5. 38 MRSA §344, sub-§2-A, ¶A**, as amended by PL 2007, c. 661, Pt. B,
28 §5, is further amended to read:

29 A. Except as otherwise provided in this paragraph, the commissioner shall decide as
30 expeditiously as possible if an application meets one or more of the criteria set forth
31 in section 341-D, subsection 2 and shall request that the board assume jurisdiction of
32 that application. If at any subsequent time during the review of an application the
33 commissioner decides that the application falls under section 341-D, subsection 2, the
34 commissioner shall request that the board assume jurisdiction of the application.

35 (1) The commissioner may not request the board to assume jurisdiction of an
36 application for any permit or other approval required for an expedited wind
37 energy development, as defined in Title 35-A, section 3451, subsection 4, or a
38 certification required for a wind energy development other than an expedited
39 wind energy development pursuant to Title 35-A, section 3456. Except as
40 provided in subparagraph (2), the commissioner shall issue a decision on an
41 application for an expedited wind energy development within ~~185~~ 210 days of the
42 date on which the department accepts the application as complete pursuant to this
43 section ~~or within 270 days of the department's acceptance of the application if~~

1 ~~the~~. ~~The commissioner holds~~ shall hold a hearing on ~~the any~~ application for an
2 expedited wind energy development pursuant to section 345-A, subsection 1-A.

3 (2) The expedited review ~~periods of 185 days and 270~~ period of 210 days
4 specified in subparagraph (1) ~~do~~ does not apply to the associated facilities, as
5 defined in Title 35-A, section 3451, subsection 1, of the development if the
6 commissioner determines that an expedited review time is unreasonable due to
7 the size, location, potential impacts, multiple agency jurisdiction or complexity of
8 that portion of the development. If ~~an~~ the expedited review period does not
9 apply, a review period specified pursuant to section 344-B applies.

10 The commissioner may stop the processing time with the consent of the applicant for
11 a period of time agreeable to the commissioner and the applicant.

12 **Sec. 6. 38 MRSA §484, sub-§10**, as enacted by PL 2007, c. 661, Pt. B, §12, is
13 amended to read:

14 **10. Special provisions; grid-scale wind energy development.** In the case of a grid-
15 scale wind energy development, the proposed generating facilities, as defined in Title 35-
16 A, section 3451, subsection 5:

17 A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;

18 B. Will be constructed with setbacks adequate to protect public safety. In making a
19 finding pursuant to this paragraph, the department shall consider the recommendation
20 of a professional, licensed civil engineer as well as any applicable setback
21 recommended by a manufacturer of the generating facilities; and

22 C. Will provide significant tangible benefits as determined pursuant to Title 35-A,
23 section 3454, if the development is an expedited wind energy development.

24 The Department of Labor, the Executive Department, State Planning Office and the
25 Public Utilities Commission shall provide review comments if requested by the ~~primary~~
26 wind power siting authority.

27 For purposes of this subsection, "grid-scale wind energy development," "~~primary wind~~
28 power siting authority," "significant tangible benefits" and "expedited wind energy
29 development" have the same meanings as in Title 35-A, section 3451.

30 **Sec. 7. Maine Revised Statutes amended; revision clause.** Wherever in the
31 Maine Revised Statutes, Title 35-A, chapter 34-A the words "primary siting authority"
32 appear, they are amended to read "wind power siting authority," and the Revisor of
33 Statutes shall implement this revision when updating, publishing or republishing the
34 statutes.

35 SUMMARY

36 This bill amends the laws governing the siting of wind energy developments. The bill
37 grants the state-level wind power siting authority, which is the Department of
38 Environmental Protection or the Maine Land Use Regulation Commission depending on
39 the location of a given wind power development, sole jurisdiction for approving the
40 construction and initial operation of a wind energy development. Specifically, the bill

1 prohibits any other state or local governmental entity from requiring any approval, permit
2 or other condition for the construction or initial operation of a wind energy development
3 that has been certified or permitted by the wind power siting authority. The bill changes
4 the terminology used in the law from "primary siting authority" to "wind power siting
5 authority" to reflect the removal of any secondary authority over siting of wind power
6 development.

7 The bill also amends the definition of "wind power siting authority" to specify the
8 Department of Environmental Protection and the Maine Land Use Regulation
9 Commission as the siting authority for the smaller-scale wind energy developments that
10 are subject to approval by the department or commission. Under current law, the siting
11 authority is only defined for the larger grid-scale wind energy developments. The bill also
12 amends the law to require a wind power siting authority to hold a public hearing on any
13 application for approval of a wind energy development and to require a decision in 210
14 days from acceptance of a complete application.