

# MAINE STATE LEGISLATURE

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Emery  
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Date: 6/14/13

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**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 260, L.D. 385, Bill, "An Act To Improve Wind Energy Development Permitting"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**Sec. 1. 35-A MRSA §3451, sub-§1-A** is enacted to read:

**1-A. Best practical mitigation.** "Best practical mitigation" means methods or technologies used during construction or operation of a wind energy development that control or reduce to the lowest feasible level impacts to scenic or wildlife resources in accordance with rules adopted by the department. "Best practical mitigation" may include, but is not limited to, turbine and blade coloration to reduce visual impacts, aircraft detection technologies to reduce the need for aircraft hazard warning lighting, technologies to detect at-risk animal populations and modification or curtailment of operations during specified times or conditions to reduce bird and bat mortality.

**Sec. 2. 35-A MRSA §3452-A** is enacted to read:

**§3452-A. Impact on Bicknell's Thrush habitat; adverse effect**

If any portion of the generating facilities or associated facilities of a wind energy development is proposed to be located within a conterminus area of coniferous forest that lies above 2,700 feet in elevation, is at least 25 acres in size and provides suitable habitat for Bicknell's Thrush, Catharus bicknelli, and in which sightings of Bicknell's Thrush have been documented to occur during the bird's breeding season within the previous 15 years, there is a rebuttable presumption that the development would constitute a significant adverse effect on natural resources for the purposes of Title 38, section 484, subsection 3. The presumption extends to the entire conterminus area of suitable habitat and is not limited to the parts of the area immediately proximate to where Bicknell's Thrush sightings have been documented.

**Sec. 3. 35-A MRSA §3459** is enacted to read:

**COMMITTEE AMENDMENT**

1 **§3459. Best practical mitigation**

2 **1. Process.** An application for a grid-scale wind energy development must contain,  
3 and the primary siting authority shall require, best practical mitigation for all aspects of  
4 construction and operation of generating facilities. In determining best practical  
5 mitigation options, the primary siting authority shall consider:

6 A. The existing state of technology;

7 B. The effectiveness of available technologies or methods for reducing impacts; and

8 C. The economic feasibility of the type of mitigation under consideration.

9 **2. Rules.** The department shall adopt rules governing best practical mitigation under  
10 this section. Rules adopted under this subsection are major substantive rules as described  
11 in Title 5, chapter 375, subchapter 2-A. Any amendments to the rules after final adoption  
12 of the major substantive rules are routine technical rules pursuant to Title 5, chapter 375,  
13 subchapter 2-A.

14 **Sec. 4. 38 MRSA §344, sub-§2-A, ¶D** is enacted to read:

15 D. For an application for a permit for a grid-scale wind energy development, as  
16 defined in Title 35-A, section 3451, subsection 6, the following procedures apply.

17 (1) Except as provided in subparagraph (2), if 5 or more interested persons  
18 request in writing that the commissioner hold a public hearing, a hearing must be  
19 held as follows.

20 (a). Notwithstanding any other provision of law, the Secretary of State shall  
21 publish a notice of the hearing in a newspaper of general circulation in the  
22 State. The published notice must:

23 (i). State the time and place of any scheduled hearing or state the manner  
24 in which a hearing may be requested;

25 (ii). State the manner and time within which data, views or arguments  
26 may be submitted to the department for consideration;

27 (iii). State the name, address and phone number of the department staff  
28 person responsible for providing additional information regarding the  
29 hearing; and

30 (iv). Include a brief and general summary of the purpose of the hearing.

31 The department shall reimburse the Secretary of State for any costs incurred  
32 under this division.

33 (b). The department shall post a notice of the hearing on its publicly  
34 accessible website 17 to 24 days prior to the hearing.

35 (c). The hearing is not an adjudicatory hearing and is not subject to the  
36 requirements of Title 5, chapter 375, subchapter 4.

1 (d). The commissioner or a designee who has decision-making responsibility  
2 over the subject matter to be discussed at the hearing shall hold and conduct  
3 the hearing.

4 (e). Written statements and arguments concerning the application must be  
5 filed within 10 days after the close of the hearing unless a longer period is  
6 established by the commissioner.

7 (f). All witnesses must be sworn in.

8 (g). All public comments must be transcribed and included as part of the  
9 record.

10 (2) The commissioner shall hold an adjudicatory hearing under Title 5, chapter  
11 375, subchapter 4 if 2 or more interested parties who qualify as intervenors  
12 request an adjudicatory hearing in writing stating an intent to offer a witness or  
13 cross-examine a witness, unless the commissioner determines and records in  
14 writing why an adjudicatory hearing will not assist the commissioner in  
15 understanding information relevant to the application.

16 (3) The commissioner shall accept public comment on an application during the  
17 course of processing the application. The commissioner shall set a deadline for  
18 receiving public comments.

19 (4) The commissioner may not issue the final decision until 10 business days  
20 after the close of the public comment period. The commissioner's final decision  
21 must include responses to the public comments.'

22 **SUMMARY**

23 This amendment is the majority report and replaces the bill. The amendment  
24 modifies the permitting process for grid-scale wind energy developments by providing  
25 for public comment and the opportunity for the public to request a hearing and by  
26 permitting an intervenor to request an adjudicatory hearing. The amendment provides a  
27 rebuttable presumption that wind energy development constitutes a significant adverse  
28 effect on natural resources if proposed in a Bicknell's Thrush habitat 25 acres or larger in  
29 which Bicknell's Thrush have been documented. The amendment also requires that a  
30 grid-scale wind energy development permit application must contain options for best  
31 practical mitigation to reduce impacts on scenic or wildlife resources.

**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**



# 126th MAINE LEGISLATURE

LD 385

LR 1345(02)

**An Act To Improve Wind Energy Development Permitting**

**Fiscal Note for Bill as Amended by Committee Amendment**

**Committee: Energy, Utilities and Technology**

**Fiscal Note Required: Yes**

*A(H-521)*

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## Fiscal Note

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Additional costs incurred by the Department of Environmental Protection related to rulemaking and changes to the permitting process for wind energy development projects can be absorbed within existing budgeted resources.