

# MAINE STATE LEGISLATURE

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L.D. 385

Date: 6/14/13

Minority

(Filing No. H-522)

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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 "B" 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 §3404, sub-§1**, as amended by PL 2009, c. 615, Pt. A, §3, is further amended to read:

**1. Encouragement of wind energy-related development.** It is the policy of the State in furtherance of the goals established in subsection 2; to encourage the attraction of appropriately sited development related to wind energy, including any additional transmission and other energy infrastructure needed to transport additional offshore wind energy to market, consistent with providing significant tangible benefits, including to a maximum extent practicable lower electrical rates to ratepayers in this State in addition to the benefits to New England independent system operator ratepayers, long-term job creation and a reduction in greenhouse gas emissions; all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.

**Sec. 2. 35-A MRSA §3451, sub-§1-D** is enacted to read:

**1-D. Cumulative scenic impact.** "Cumulative scenic impact" means the potential adverse effect on the scenic character and existing uses related to the scenic character of a scenic resource of state or national significance resulting from the incremental impact of a proposed wind energy development when added to the scenic impact of other wind energy developments within the viewshed of a scenic resource of state or national significance based on the amount of wind energy development that a viewer within the scenic resource of state or national significance would see:

- A. From a stationary point within a typical field of vision in a single direction;
- B. From a stationary point when looking in more than one direction; or
- C. Along a linear route, such as a trail or watercourse.

**COMMITTEE AMENDMENT**

1           **Sec. 3. 35-A MRSA §3452, sub-§3**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
2 amended to read:

3           **3. Evaluation criteria.** In making its determination pursuant to subsection 1, and in  
4 determining whether an applicant for an expedited wind energy development must  
5 provide a visual impact assessment in accordance with subsection 4, the primary siting  
6 authority shall consider:

7           A. The significance of the potentially affected scenic resource of state or national  
8 significance;

9           B. The existing character of the surrounding area;

10          C. The expectations of the typical viewer;

11          D. The expedited wind energy development's purpose and the context of the  
12 proposed activity;

13          E. The extent, nature and duration of potentially affected public uses of the scenic  
14 resource of state or national significance and the potential effect of the generating  
15 facilities' presence on the public's continued use and enjoyment of the scenic resource  
16 of state or national significance. If the generating facilities are located within 15  
17 miles, measured horizontally, of Acadia National Park, the Appalachian Trail, a  
18 federally designated wilderness area, Baxter State Park or the Allagash Wilderness  
19 Waterway, there is a rebuttable presumption that the generating facilities will have an  
20 unreasonable adverse effect on the scenic character of these areas; and

21          F. The scope and scale of the potential effect of views of the generating facilities on  
22 the scenic resource of state or national significance, including but not limited to  
23 issues related to the number and extent of turbines visible from the scenic resource of  
24 state or national significance, the distance from the scenic resource of state or  
25 national significance and the effect of prominent features of the development on the  
26 landscape.

27 In applying these evaluation criteria, the primary siting authority shall consider the visual  
28 impact and the cumulative scenic impact of the development during both day and night  
29 on the scenic resource of state or national significance. A finding by the primary siting  
30 authority that the development's generating facilities are a highly visible feature in the  
31 landscape is not a solely sufficient basis for determination that an expedited wind energy  
32 project has an unreasonable adverse effect on the scenic character and existing uses  
33 related to scenic character of a scenic resource of state or national significance. ~~In~~  
34 making its determination under subsection 1, the primary siting authority shall consider  
35 insignificant the effects of portions of the development's generating facilities located  
36 more than 8 miles, measured horizontally, from a scenic resource of state or national  
37 significance.

38           **Sec. 4. 35-A MRSA §3452, sub-§4**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
39 repealed and the following enacted in its place:

40           **4. Visual impact assessment; rebuttable presumption.** An applicant for an  
41 expedited wind energy development shall provide the primary siting authority with a  
42 visual impact assessment of the development that addresses the evaluation criteria in  
43 subsection 3 in accordance with this subsection.

1           A. If portions of the expedited wind energy development's generating facilities are  
2           located within 8 miles, measured horizontally, from a scenic resource of state or  
3           national significance, a visual impact assessment is required.

4           B. If portions of the expedited wind energy development's generating facilities are  
5           located more than 8 miles and up to 15 miles, measured horizontally, from a scenic  
6           resource of state or national significance, there is a rebuttable presumption that a  
7           visual impact assessment is required. Information intended to rebut the presumption  
8           must be submitted to the primary siting authority by the applicant with the  
9           application. An interested person may respond to the applicant's rebuttal information  
10           within 30 days of the acceptance of the application by the primary siting authority as  
11           complete for processing.

12           C. The primary siting authority may require a visual impact assessment for portions  
13           of the development's generating facilities located more than 15 miles, measured  
14           horizontally, from a scenic resource of state or national significance if it finds that  
15           there is substantial evidence that a visual impact assessment is needed to determine if  
16           there is the potential for unreasonable adverse effects on scenic resources of state or  
17           national significance. Information intended to rebut or support the need for a visual  
18           impact assessment of effects on scenic resources more than 15 miles from the  
19           development's generating facilities must be submitted to the primary siting authority  
20           by the applicant or any interested person not later than 60 days after acceptance by  
21           the primary siting authority of the application as complete for processing. The  
22           applicant has an additional 15 days to respond to information submitted by interested  
23           persons.

24           The primary siting authority shall make findings and determinations under this subsection  
25           based on a preponderance of evidence in the record.

26           **Sec. 5. 35-A MRSA §3454, first ¶,** as amended by PL 2011, c. 655, Pt. DD, §14  
27           and affected by §24 and amended by c: 682, §27, is repealed and the following enacted in  
28           its place:

29           In making findings pursuant to Title 38, section 484, subsection 3, the primary siting  
30           authority shall make additional findings regarding other tangible benefits provided by an  
31           expedited wind energy development, including but not limited to findings regarding the  
32           manner and extent to which the development provides energy and emissions-related  
33           benefits described in section 3402. The Department of Labor, the Governor's Office of  
34           Policy and Management, the Governor's Energy Office and the Public Utilities  
35           Commission shall provide review comments if requested by the primary siting authority.

36           **Sec. 6. 38 MRSA §341-D, sub-§4, ¶D,** as amended by PL 2011, c. 304, Pt. H,  
37           §9, is further amended to read:

38           D. License or permit decisions regarding an expedited wind energy development as  
39           defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to  
40           section 480-HH or section 636-A. In reviewing an appeal of a license or permit  
41           decision by the commissioner under this paragraph, the board shall base its decision  
42           on the administrative record of the department, including the record of any  
43           adjudicatory hearing held by the department, and any supplemental information  
44           allowed by the board for supplementation of the record. The board may remand the

1 decision to the department for further proceedings if appropriate. ~~The chair of the~~  
2 ~~Public Utilities Commission or the chair's designee serves as a nonvoting member of~~  
3 ~~the board and is entitled to fully participate but is not required to attend hearings~~  
4 ~~when the board considers an appeal pursuant to this paragraph. The chair's~~  
5 ~~participation on the board pursuant to this paragraph does not affect the ability of the~~  
6 ~~Public Utilities Commission to submit information to the department for inclusion in~~  
7 ~~the record of any proceeding before the department.~~

8 **Sec. 7. 38 MRSA §344, sub-§2-A, ¶D** is enacted to read:

9 D. The commissioner shall accept public comment on applications during the course  
10 of processing the application. The commissioner shall set a deadline for receiving  
11 public comments. The commissioner may not issue the final decision until at least 10  
12 business days after the close of the public comment period.

13 **Sec. 8. 38 MRSA §346, sub-§4**, as repealed and replaced by PL 2011, c. 420, Pt.  
14 A, §34, is repealed and the following enacted in its place:

15 **4. Appeal of decision.** A judicial appeal of final action by the board or  
16 commissioner regarding ~~an application for an expedited wind energy development, as~~  
17 ~~defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section~~  
18 ~~480-HH or section 636-A must be taken to the Supreme Judicial Court sitting as the Law~~  
19 ~~Court. The Law Court has exclusive jurisdiction over request for judicial review of final~~  
20 ~~action by the commissioner or the board regarding expedited wind energy developments~~  
21 ~~or a general permit pursuant to section 480-HH or section 636-A. These appeals to the~~  
22 ~~Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and~~  
23 ~~the Maine Rules of Civil Procedure, Rule 80C.'~~

24 **SUMMARY**

25 This amendment is the minority report and replaces the bill. It requires that wind  
26 energy must provide a tangible benefit of lower electricity rates for ratepayers in this  
27 State and adds a new definition of "cumulative scenic impact" to allow for rulemaking to  
28 address potential cumulative impacts related to multiple wind energy generating facilities.  
29 It changes the size of the area in which an analysis of visual impact must be undertaken  
30 from 3 and 8 miles as in current law to 8 and 15 miles. Additionally, it creates a  
31 rebuttable presumption of unreasonable adverse effect on the scenic character of an area  
32 if the generating facility is located within 15 miles of Acadia National Park, the  
33 Appalachian Trail, a federally designated wilderness area, Baxter State Park or the  
34 Allagash Wilderness Waterway.

**FISCAL NOTE REQUIRED**  
(See attached)



# 126th MAINE LEGISLATURE

LD 385

LR 1345(03)

An Act To Improve Wind Energy Development Permitting

Fiscal Note for Bill as Amended by Committee Amendment

*B'(H-522)*

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

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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.