

MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 582, L.D. 1504, Bill, "An Act To Require That Expedited Wind Energy Development Projects Provide a Tangible Benefit to Maine Ratepayers in the Form of Discounts to Future Electric Rates"

Amend the bill by striking out the title and substituting the following:

'An Act To Provide Predictable Benefits to Maine Communities That Host Wind Energy Developments'

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

PART A

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

1-B. Community benefit agreement. "Community benefit agreement" means an agreement between the developer of an expedited wind energy development and a host community that involves payments by the developer to the host community to be utilized for public purposes, including, but not limited to, for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion or reduction of energy costs, and that specifies in writing:

A. The value of any lump sum payments made by the developer to the host community; and

B. Any payment schedule and associated terms and conditions for payments to be made over time by the developer to the host community.

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

1-C. Community benefits package. "Community benefits package" means the aggregate collection of tangible benefits resulting from any of the following:

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1 A. Payments, not including property tax payments, to the host community or
2 communities, including, but not limited to, payments under community benefit
3 agreements;

4 B. Payments that reduce energy costs in the host community or communities; and

5 C. Any donations for land or natural resource conservation.

6 **Sec. A-3. 35-A MRSA §3451, sub-§7**, as enacted by PL 2007, c. 661, Pt. A, §7,
7 is amended to read:

8 **7. Host community.** "Host community" means ~~a municipality, township or~~
9 ~~plantation in which the generating facilities of an expedited wind energy development are~~
10 ~~located.;~~

11 A. The following entities:

12 (1) A municipality or plantation in which the generating facilities of an
13 expedited wind energy development are located;

14 (2) If the generating facilities of an expedited wind energy development are
15 located in a township, the county in which those facilities are located;

16 (3) If the generating facilities of an expedited wind energy development are
17 located on Passamaquoddy Indian territory, as defined in Title 30, section 6203,
18 subsection 6, the Passamaquoddy Tribe, if the Passamaquoddy Tribe notifies the
19 primary siting authority that it chooses to be considered a host community for
20 purposes of this chapter with respect to the expedited wind energy development;

21 (4) If the generating facilities of an expedited wind energy development are
22 located on Penobscot Indian territory, as defined in Title 30, section 6203,
23 subsection 9, the Penobscot Nation if the Penobscot Nation notifies the primary
24 siting authority that it chooses to be considered a host community for purposes of
25 this chapter with respect to the expedited wind energy development; or

26 (5) If the generating facilities of an expedited wind energy development are
27 located on Qualifying Band Trust Land, the Aroostook Band of Micmacs, if the
28 Aroostook Band of Micmacs notifies the primary siting authority that it chooses
29 to be considered a host community for purposes of this chapter with respect to the
30 expedited wind energy development; and

31 B. When the generating facilities of an expedited wind energy development are
32 located within the State's unorganized or deorganized areas and the developer selects
33 a municipality; plantation; township; Passamaquoddy Indian territory, as defined in
34 Title 30, section 6203, subsection 6; Penobscot Indian territory, as defined in Title 30,
35 section 6203, subsection 9; or Qualifying Band Trust Land proximate to the location
36 of the generating facilities for the purpose of providing specific tangible benefits:

37 (1) In the case of a municipality or plantation that is selected, the municipality or
38 plantation;

39 (2) In the case of a township that is selected, the county in which that township is
40 located;

1 (3) In the case of Passamaquoddy Indian territory that is selected, the
2 Passamaquoddy Tribe if the Passamaquoddy Tribe notifies the primary siting
3 authority that it chooses to be considered a host community for purposes of this
4 chapter with respect to the expedited wind energy development;

5 (4) In the case of Penobscot Indian territory that is selected, the Penobscot
6 Nation if the Penobscot Nation notifies the primary siting authority that it
7 chooses to be considered a host community for purposes of this chapter with
8 respect to the expedited wind energy development; and

9 (5) In the case of Qualifying Band Trust Land that is selected, the Aroostook
10 Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting
11 authority that it chooses to be considered a host community for purposes of this
12 chapter with respect to the expedited wind energy development.

13 An expedited wind energy development may have multiple host communities.

14 **Sec. A-4. 35-A MRSA §3451, sub-§8-A** is enacted to read:

15 **8-A. Qualifying Band Trust Land.** "Qualifying Band Trust Land" means Band
16 Trust Land, as defined in the federal Aroostook Band of Micmacs Settlement Act, Public
17 Law 102-171, 105 Stat. 1143 (1991), over which the Aroostook Band of Micmacs
18 possesses municipal authority with respect to expedited wind energy development. For
19 purposes of this subsection, "municipal authority" means the rights, privileges, powers
20 and immunities of a municipality that are specified in legislation specifically authorizing
21 the exercise of those government powers and that are equivalent to the rights, privileges,
22 powers and immunities possessed by the Penobscot Nation and the Passamaquoddy Tribe
23 with respect to expedited wind energy development within their respective Indian
24 territories pursuant to Title 30, section 6206.

25 **Sec. A-5. 35-A MRSA §3451, sub-§10,** as enacted by PL 2007, c. 661, Pt. A, §7,
26 is amended to read:

27 **10. Tangible benefits.** "Tangible benefits" means environmental or economic
28 improvements or benefits to residents of this State attributable to the construction,
29 operation and maintenance of an expedited wind energy development, including but not
30 limited to: property tax payments resulting from the development; other payments to a
31 host community, including, but not limited to, payments under a community benefit
32 agreement; construction-related employment; local purchase of materials; employment in
33 operations and maintenance; reduced property taxes; reduced electrical rates; land or
34 natural resource conservation; performance of construction, operations and maintenance
35 activities by trained, qualified and licensed workers in accordance with Title 32, chapter
36 17 and other applicable laws; or other comparable benefits, with particular attention to
37 assurance of such benefits to the host community or communities to the extent practicable
38 and affected neighboring communities.

39 **Sec. A-6. 35-A MRSA §3454,** as enacted by PL 2007, c. 661, Pt. A, §7, is
40 amended to read:

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§3454. Determination of tangible benefits; requirements

In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

1. Documentation. As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

- A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project;
- B. Estimated annual generation of wind energy;
- C. Projected property tax payments;
- D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and
- E. Any other tangible benefits to be provided by the project.

2. Community benefits package requirement. Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in Title 12, section 685-B, subsection 4-B and Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. This subsection does not affect the property tax obligations of an expedited wind energy development.

3. Community benefits package requirement; exceptions. The community benefits package requirement under subsection 2:

- A. Is waived for any expedited wind energy development that:
 - (1) Has an installed capacity of less than 20 megawatts; or
 - (2) Is owned by a nonprofit entity, a public entity or a quasi-public entity; and
- B. Does not apply to those turbines included in the development that are located:
 - (1) In a host community in which the legislative body has voted to waive or reduce the community benefits package requirement;
 - (2) On Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, unless the Passamaquoddy Tribe notifies the primary siting

1 authority that it chooses to be considered a host community for the purposes of
2 this chapter with respect to the expedited wind energy development;

3 (3) On Penobscot Indian territory, as defined in Title 30, section 6203,
4 subsection 9, unless the Penobscot Nation notifies the primary siting authority
5 that it chooses to be considered a host community for the purposes of this chapter
6 with respect to the expedited wind energy development; or

7 (4) On Qualifying Band Trust Land unless the Aroostook Band of Micmacs
8 notifies the primary siting authority that it chooses to be considered a host
9 community for the purposes of this chapter with respect to the expedited wind
10 energy development.

11 The community benefits package requirement applies to any turbines of the
12 development that are not exempted under subparagraph (1), (2), (3) or (4).

13 Nothing in this subsection limits a host community's authority to require an expedited
14 wind energy development to enter into a community benefit agreement and to fulfill its
15 property tax obligations.

16 4. Community benefit agreement payments to counties. When generating
17 facilities of an expedited wind energy development are located within an unorganized or
18 deorganized area other than within a plantation, community benefit agreement payments
19 provided to the county as the host community in accordance with this section may be
20 used for projects and programs of public benefit located anywhere within that county.

21 5. Promoting economic development and resource conservation; assistance to
22 host communities. To the extent practicable within existing resources, the Department
23 of Economic and Community Development and the Executive Department, State
24 Planning Office, shall provide, upon the request of a host community, assistance for the
25 purpose of helping the host community maximize the economic development and
26 resource conservation benefits from tax payments and payments made pursuant to a
27 community benefit agreement or a community benefits package in connection with
28 expedited wind energy developments. As part of this assistance, the department and the
29 office shall support host communities in identifying additional funding and developing
30 regional economic and natural resource conservation strategies.

31 **Sec. A-7. PL 2007, c. 661, Pt. A, §8 is amended to read:**

32 **Sec. A-8. Tracking progress toward achievement of state wind energy**
33 **goals; assessment of tangible benefits.** The Executive Department, Governor's
34 Office of Energy Independence and Security, referred to in this section as "the office,"
35 shall, on an annual basis, monitor and make an assessment of tangible benefits provided
36 by expedited wind energy developments in accordance with the Maine Revised Statutes,
37 Title 35-A, section 3454 and the State's progress toward meeting the wind energy
38 development goals established in the Maine Revised Statutes, Title 35-A, section 3404,
39 subsection 2 and, by December 2013, in consultation with other state agencies as
40 appropriate, conduct a full review of the status of meeting the goals for 2015 and the
41 likelihood of achieving the goals for 2020. The office shall provide its assessment and
42 recommendations under this section to the joint standing committee of the Legislature
43 having jurisdiction over utilities and energy matters by January 15th of each year.

1 **1. Assessment.** The assessment under this section must include:

2 A. Examination of experiences from the permitting process;

3 B. Identified successes, including tangible benefits realized from wind energy
4 development, in implementing the recommendations contained in the February 2008
5 final report of the Governor's Task Force on Wind Power Development in Maine
6 pursuant to Executive Order issued May 8, 2007;

7 B-1. A summary of tangible benefits provided by expedited wind energy
8 developments including, but not limited to, documentation of community benefits
9 packages and community benefit agreement payments provided. The assessment
10 must also include a review of the community benefits package requirement under
11 Title 35-A, section 3454, subsection 2 and the actual amount of negotiated
12 community benefits packages relative to the statutorily required minimum amount;

13 C. Projections of wind energy developers' plans, as well as technology trends and
14 their state policy implications;

15 D. The status of Maine and each of the other New England states in making progress
16 toward reducing greenhouse gas emissions; and

17 E. Recommendations, including, but not limited to, any changes regarding:

18 (1) The wind energy development goals established in Title 35-A, section 3404,
19 subsection 2;

20 (2) Permitting processes for wind energy development;

21 (3) Identification of places within the State's unorganized and deorganized areas
22 for inclusion in the expedited permitting area established pursuant to Title 35-A,
23 chapter 34-A; and

24 (4) Creation of an independent siting authority to consider wind energy
25 development applications; and

26 (5) The community benefits package requirement under Title 35-A, section 3454,
27 subsection 2.

28 **2. Assessment of tangible benefits; first annual report.** In the report due January
29 15, 2009, the office shall include an assessment of whether there is a need for additional
30 funding to conduct the analysis of tangible benefits realized from wind energy
31 development as required under this section and, if funding is needed, recommendations
32 for a funding mechanism that is connected to the fees assessed to wind energy developers
33 by the Department of Environmental Protection and the Maine Land Use Regulation
34 Commission. Following receipt and review of the report, the joint standing committee of
35 the Legislature having jurisdiction over utilities and energy matters may submit
36 legislation to the First Regular Session of the 124th Legislature regarding the subject
37 matter of this subsection.

38 **Sec. A-8. Application.** This Part does not affect the determination of tangible
39 benefits for any expedited wind energy development pursuant to the Maine Revised
40 Statutes, Title 35-A, section 3454 for which a permit application has been submitted to
41 the primary siting authority prior to the effective date of this Act.

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PART B

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2 **Sec. B-1. 12 MRSA §689**, as amended by PL 1979, c. 127, §70, is further
3 amended to read:

4 **§689. Appeal**

5 Persons aggrieved by final actions of the commission, including without limitation
6 any final decision of the commission with respect to any application for approval or the
7 adoption by the commission of any district boundary or amendment thereto, may appeal
8 therefrom in accordance with Title 5, chapter 375, subchapter VII 7. Appeals of final
9 actions of the commission regarding an application for an expedited wind energy
10 development, as defined in Title 35-A, section 3451, subsection 4, must be taken to the
11 Supreme Judicial Court sitting as the Law Court in accordance with Title 5, chapter 375,
12 subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. The Law Court has
13 exclusive jurisdiction over requests for judicial review of final actions of the commission
14 regarding expedited wind energy developments. This right of appeal, with respect to any
15 commission action to which this right may apply, shall be in lieu of the rights provided
16 under Title 5, section 8058, subsection 1.

17 **Sec. B-2. 35-A MRSA §3458** is enacted to read:

18 **§3458. Judicial appeal; municipal permitting decision**

19 Any judicial appeal of a municipal decision regarding permitting of an expedited
20 wind energy development that is taken in the manner provided in the Maine Rules of
21 Civil Procedure, Rule 80B must be heard and determined by the Superior Court as
22 expeditiously as possible.

23 **Sec. B-3. 38 MRSA §346, sub-§1**, as amended by PL 2007, c. 661, Pt. B, §7, is
24 further amended to read:

25 **1. Appeal to Superior Court.** Except as provided in subsection 4 and section
26 347-A, subsection 3 or 4, any person aggrieved by any order or decision of the board or
27 commissioner may appeal to the Superior Court. These appeals to the Superior Court
28 must be taken in accordance with Title 5, chapter 375, subchapter 7.

29 **Sec. B-4. 38 MRSA §346, sub-§4**, as enacted by PL 2007, c. 661, Pt. B, §8, is
30 amended to read:

31 **4. Appeal of decision regarding an expedited wind energy development.** A
32 ~~person aggrieved by an order or decision of judicial appeal of final action by~~ the board or
33 commissioner regarding an application for an expedited wind energy development, as
34 defined in Title 35-A, section 3451, subsection 4, ~~may appeal~~ must be taken to the
35 Supreme Judicial Court sitting as the ~~law court~~ Law Court. The Law Court has exclusive
36 jurisdiction over request for judicial review of final action by the commissioner or the
37 board regarding expedited wind energy developments. These appeals to the ~~law court~~
38 Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and
39 the Maine Rules of Civil Procedure, Rule 80C.'

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SUMMARY

This amendment replaces the bill. Part A of the amendment does the following.

1. It requires applicants for expedited wind energy developments to provide, as part of any permit application, detailed documentation of tangible benefits to be provided.

2. It requires an applicant for an expedited wind energy development to establish a community benefits package in an amount of no less than \$4,000 per year per wind turbine. The package is an aggregate collection of tangible benefits resulting from an expedited wind energy development from: payments to the host community or communities; payments that reduce energy costs in the host community or communities; and donations for land or natural resource conservation.

3. It provides certain exceptions from the community benefits package requirement. Specifically, the requirement is waived for any development that has an installed capacity of less than 20 megawatts or is owned by a nonprofit, public or quasi-public entity, and the requirement does not apply to those turbines included in the development that are located in a host community in which the legislative body has voted to waive or reduce the requirement or on Passamaquoddy Indian territory or Penobscot Indian territory at the option of the respective tribe or nation. It also allows the Aroostook Band of Micmacs to be treated as a host community with respect to expedited wind energy developments on Band Trust Land, as defined in the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171, 105 Stat. 1143 (1991), if the band obtains through appropriate legislation municipal authority that is substantially equivalent to the authority possessed by the Penobscot Nation and the Passamaquoddy Tribe under the Maine Revised Statutes, Title 30, section 6206 within their respective Indian territories.

4. It specifies that community benefit agreement payments to counties acting as host communities may be used for projects and programs of public benefit located anywhere within that county.

5. It requires the Department of Economic and Community Development and the Executive Department, State Planning Office, to the extent practicable within existing resources, to provide assistance to host communities, upon a community's request, in connection with benefits from expedited wind energy developments.

6. It requires the Executive Department, Governor's Office of Energy Independence and Security, in its annual assessment and report on wind energy, to include a summary of tangible benefits provided, including community benefits packages and community benefit agreement payments and to review the community benefits package requirement and actual amounts of negotiated community benefits packages relative to the required minimum.

Part B of the amendment amends the law governing appeals of final actions of the Commissioner of Environmental Protection, the Board of Environmental Protection and the Maine Land Use Regulation Commission regarding an application for an expedited wind energy development. The amendment requires that any appeal of final action in these instances be taken to the Supreme Judicial Court and specifies that the Law Court has exclusive jurisdiction over requests for judicial review of final agency action regarding expedited wind energy developments. Part B also requires that any judicial

COMMITTEE AMENDMENT "A" to S.P. 582, L.D. 1504

1 appeal of a municipal decision regarding permitting of an expedited wind energy
2 development be heard and determined by the Superior Court as expeditiously as possible.

3

FISCAL NOTE REQUIRED

4

(See attached)

COMMITTEE AMENDMENT



124th MAINE LEGISLATURE

LD 1504

LR 2474(02)

An Act To Require That Expedited Wind Energy Development Projects Provide a Tangible Benefit to Maine Ratepayers in the Form of Discounts to Future Electric Rates

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Utilities and Energy

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection, State Planning Office, Public Utilities Commission, Department of Labor and the Department of Economic and Community Development associated with the requirements of this bill can be absorbed within each agency's existing budgeted resources.