

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1680

S.P. 652

In Senate, January 6, 2010

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### An Act To Assist in Reviewing Wind Energy Applications

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Submitted by the Department of Conservation pursuant to Joint Rule 204.  
Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HOBBS of York.  
Cosponsored by Representative FITTS of Pittsfield and  
Representatives: ADAMS of Portland, MacDONALD of Boothbay, McCABE of Skowhegan,  
McKANE of Newcastle, VAN WIE of New Gloucester.

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3 repealed and the following enacted in its place:

4  
5 **2-C. Wind energy development; determination deadline.** The following  
6 **provisions govern wind energy development.**

7 A. The commission shall consider any wind energy development in the expedited  
8 permitting area under Title 35-A, chapter 34-A with a generating capacity of 100  
9 kilowatts or greater a use requiring a permit, but not a special exception, within the  
10 affected districts or subdistricts. The commission may require an applicant to provide  
11 a timely notice of filing prior to filing an application for, and may require the  
12 applicant to attend a public meeting during the review of, a wind energy  
13 development. The commission shall render its determination on an application for  
14 such a development within 185 days after the commission determines that the  
15 application is complete, except that the commission shall render such a decision  
16 within 270 days if it holds a hearing on the application. The chair of the Public  
17 Utilities Commission or the chair's designee shall serve as a nonvoting member of the  
18 commission and may participate fully but is not required to attend hearings when the  
19 commission considers an application for an expedited wind energy development.  
20 The chair's participation on the commission pursuant to this subsection does not  
21 affect the ability of the Public Utilities Commission to submit information into the  
22 record of the commission's proceedings. For purposes of this subsection, "expedited  
23 permitting area," "expedited wind energy development" and "wind energy  
24 development" have the same meanings as in Title 35-A, section 3451.

25 B. At the request of an applicant, the commission may stop the processing time for a  
26 period of time agreeable to the commission and the applicant. The expedited review  
27 period specified in paragraph A does not apply to the associated facilities, as defined  
28 in Title 35-A, section 3451, subsection 1, of the wind energy development if the  
29 commission determines that an expedited review time is unreasonable due to the size,  
30 location, potential impacts, multiple agency jurisdiction or complexity of that portion  
31 of the development.

32 **Sec. 2. 12 MRSA §685-B, sub-§4, ¶C**, as amended by PL 2007, c. 661, Pt. C,  
33 §3, is further amended to read:

34 C. Adequate provision has been made for fitting the proposal harmoniously into the  
35 existing natural environment in order to assure ensure there will be no undue adverse  
36 effect on existing uses, scenic character and natural and historic resources in the area  
37 likely to be affected by the proposal. In making a determination under this paragraph  
38 regarding development to facilitate withdrawal of groundwater, the commission shall  
39 consider the effects of the proposed withdrawal on waters of the State, as defined by  
40 Title 38, section 361-A, subsection 7; water-related natural resources; and existing  
41 uses, including, but not limited to, public or private wells, within the anticipated zone  
42 of contribution to the withdrawal. In making findings under this paragraph, the

1 commission shall consider both the direct effects of the proposed withdrawal and its  
2 effects in combination with existing water withdrawals.

3 In making a determination under this paragraph regarding an expedited wind energy  
4 development, as defined in Title 35-A, section 3451, subsection 4, the commission  
5 shall consider the development's effects on scenic character and existing uses related  
6 to scenic character in accordance with Title 35-A, section 3452.

7 In making a determination under this paragraph regarding a wind energy  
8 development, as defined in Title 35-A, section 3451, subsection 11, that has a  
9 generating capacity of 100 kilowatts or greater and is located in the expedited  
10 permitting area, the commission shall consider the development's effects on scenic  
11 character and existing uses relating to scenic character in the manner provided for in  
12 Title 35-A, section 3452;

13 **Sec. 3. 12 MRSA §685-F, sub-§1**, as amended by PL 2007, c. 541, Pt. B, §3 and  
14 affected by §6, is further amended to read:

15 **1. Designation as extraordinary project.** The director of the Maine Land Use  
16 Regulation Commission, referred to in this section as "the director," may designate a  
17 proposed project requiring review and approval under this chapter as an extraordinary  
18 project when the director determines that the project is a wind energy development, as  
19 defined in Title 35-A, section 3451, subsection 11 or, because of the project's size,  
20 uniqueness or complexity, review of the project application is likely to:

21 A. Significantly impair the capacity of the commission's staff and cooperating state  
22 agencies to review other applications in a timely manner; or

23 B. Require the commission to incur costs that exceed the funding provided in  
24 accordance with section 685-G.

25 A project is considered to significantly impair the capacity of the commission's staff if  
26 review of that project is likely to occupy the equivalent of at least one person working  
27 full-time on that project for a minimum of 4 months. Designation as an extraordinary  
28 project must be made at or prior to the time the application is accepted as complete. The  
29 director shall notify the applicant in writing upon making the designation.

### 30 SUMMARY

31 This bill amends the laws governing the siting of wind energy developments. It  
32 makes certain provisions of the laws governing the Maine Land Use Regulation  
33 Commission consistent with the corresponding provisions applicable to the Department  
34 of Environmental Protection. These provisions allow the commission to require a  
35 preapplication notice of filing; allow the commission to require an applicant to attend a  
36 public meeting during the review of a wind energy development; allow the commission to  
37 extend the processing time with the consent of the applicant; and clarify that, in certain  
38 circumstances, associated facilities are not subject to the same time limits. It also  
39 clarifies the definitions associated with certain terms. It clarifies that the provisions of  
40 law regarding a development's effects on scenic character apply to all wind energy  
41 developments, as defined in the Maine Revised Statutes, Title 35-A, of 100 kilowatts or

1 greater in the expedited areas of the commission's jurisdiction, including wind energy  
2 developments that do not qualify as grid-scale. It specifies that in the jurisdiction of the  
3 commission, all wind energy developments are subject to fee provisions as extraordinary  
4 projects, allowing the commission to recover costs associated with processing of the  
5 applications, including the cost of noise or other studies.