

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

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Legislative Document

No. 1366

H.P. 1005

House of Representatives, March 30, 2011

An Act To Update the Maine Wind Energy Act To Include Low-emission Energy

(EMERGENCY)

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative GIFFORD of Lincoln.
Cosponsored by Representative: CRAY of Palmyra.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** in 2008, crude oil prices reached \$147 per barrel and gasoline and heating
4 oil prices reached over \$4 per gallon, highlighting our State's reliance on petroleum for
5 home heating and fuel for our vehicles and our potential to use electricity for home
6 heating and automobiles; and

7 **Whereas,** along with the foreseeable possibility of prolonged high or higher fossil
8 fuel prices, the potential implications of climate change, greenhouse gas emissions from
9 combustion of fossil fuels and the attendant threats to the environment, economy, social
10 fabric and human health underscore the need to explore ways that we might significantly
11 reduce our State's dependence on liquid petroleum fuels; and

12 **Whereas,** renewable and low-emission energy holds potential to address our state
13 and regional energy goals, including energy independence and security and limiting
14 exposure to fossil fuels' price and supply volatility; and

15 **Whereas,** our neighboring states and provinces, as well as state and adjoining
16 federal waters, feature significant renewable and low-emission energy resources,
17 including world-class and untapped deep water wind resources with the potential to meet
18 some of the State's electricity needs, such as for lighting, appliances, heating and
19 transportation, with the potential to make the State a net electricity exporter; and

20 **Whereas,** in 2009, the Governor's Ocean Energy Task Force identified and made
21 recommendations to overcome economic, technical and regulatory obstacles and to
22 provide economic incentives for vigorous and efficient development of these potential
23 indigenous, renewable ocean energy resources in ways that recognize the concurrent need
24 to sustain the ongoing biological integrity, vitality and productivity and related existing
25 uses of those natural resources and to ensure provision of benefits to the people of the
26 State for use of public resources for renewable ocean electricity production; and

27 **Whereas,** although additional economic research and related technological advances
28 are needed for efficient commercialization of deep water offshore wind power, varied and
29 significant potential public benefits attributable to development and transition over time
30 to optimal use of this resource and the State's other renewable ocean and low-emission
31 energy resources necessitates action now to explore the feasibility of the State to capture
32 these benefits for the people of the State; and

33 **Whereas,** the State must explore all energy sources that can be proven viable and
34 competitive for Maine ratepayers; and

35 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
36 the meaning of the Constitution of Maine and require the following legislation as
37 immediately necessary for the preservation of the public peace, health and safety; now,
38 therefore,

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

1 **Sec. 1. 12 MRSA §689**, as amended by PL 2009, c. 642, Pt. B, §1, is further
2 amended to read:

3 **§689. Appeal**

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

16 **Sec. 2. 35-A MRSA §3401**, as enacted by PL 2003, c. 665, §3, is amended to
17 read:

18 **§3401. Short title**

19 This chapter may be known and cited as "the Maine Wind and Low-emission Energy
20 Act."

21 **Sec. 3. 35-A MRSA §3402**, as amended by PL 2009, c. 615, Pt. A, §2, is further
22 amended to read:

23 **§3402. Legislative findings**

24 The Legislature finds that it is in the public interest to explore opportunities for and
25 encourage the development, where appropriate, of wind and low-emission energy
26 production in the State in a manner that is consistent with all state and federal
27 environmental standards and that achieves reliable, cost-effective, sustainable energy
28 production on those sites in the State that will attract investment and permit the
29 development of viable wind and low-emission energy projects. The Legislature finds that
30 the development of the wind and low-emission energy potential in the State needs to be
31 integrated into the existing energy supply and transmission systems in a way that
32 achieves system reliability, total capital cost-effectiveness and optimum short-term and
33 long-term benefits to Maine people. The Legislature finds it is in the public interest to
34 encourage the construction and operation of low-emission and community wind power
35 generation facilities in the State. For the purposes of this chapter, "community wind
36 power generation facility" means an electricity-generating facility at any one site with
37 instantaneous generating nameplate capacity of not more than 10 megawatts that is
38 powered entirely by wind energy. The Legislature also finds it is in the public interest to
39 encourage wind energy research and the development of wind generation equipment
40 manufacturing facilities in the State.

1 **1. Contribution of wind and low-emission energy development.** The Legislature
2 finds and declares that ~~the wind and low-emission energy resources of the State may~~
3 constitute a valuable indigenous and renewable energy resource and that ~~wind energy~~
4 ~~development, which is unique in its benefits to and impacts on the natural environment,~~
5 ~~makes a significant contribution to the general welfare of the citizens of the State for the~~
6 following reasons:

7 A. Wind and low-emission energy ~~is an~~ may someday be developed into
8 economically feasible, large-scale energy ~~resource that does not rely on fossil fuel~~
9 ~~combustion or nuclear fission resources,~~ thereby ~~displacing electrical energy~~
10 ~~provided by these other sources and avoiding air pollution, waste disposal problems~~
11 ~~and hazards to human health from emissions, waste and by products~~ providing
12 energy options; consequently, wind and low-emission energy development may
13 become viable enough to address energy needs ~~while making a significant~~
14 ~~contribution to achievement of the State's renewable energy and greenhouse gas~~
15 ~~reduction objectives, including those in Title 38, section 576 if the State becomes~~
16 more reliant upon electricity;

17 B. At present and increasingly in the future with anticipated technological advances
18 that ~~promise to increase the number of places in the State where~~ might render grid-
19 scale wind and low-emission energy development is economically viable, and
20 changes in the electrical power market that favor viable clean power sources, wind
21 and low-emission energy may be used to ~~displace electrical power that is generated~~
22 ~~from fossil fuel combustion and thus reduce our citizens' dependence on imported oil~~
23 ~~and natural gas~~ reduce electric rates and improve environmental quality and state and
24 regional energy security; and

25 C. Renewable and low-emission energy resources ~~within the State and,~~ including
26 those in the Gulf of Maine and neighboring states and provinces, have the potential,
27 over time, to provide enough energy for the State's homeowners and businesses to
28 reduce their use of oil and liquid petroleum-fueled heating systems by transition to
29 alternative, renewable energy-based heating systems and to reduce their use of
30 petroleum-fueled motor vehicles by transition to electric-powered motor vehicles.
31 Electrification of heating and transportation has potential to increase the State's
32 energy independence, to help stabilize total residential and commercial energy bills
33 and to reduce greenhouse gas emissions.

34 **2. Need for modification of regulatory process for siting and permitting wind**
35 **energy developments.** The Legislature finds that it is in the public interest to ~~reduce the~~
36 ~~potential for controversy regarding~~ improve the process for siting and permitting of grid-
37 scale wind energy development by expediting development in places where it is most
38 compatible with existing patterns of development and resource values when considered
39 broadly at the landscape level and by ensuring against undue environmental and
40 economic impacts, including cumulative impacts. Accordingly, the Legislature finds that
41 certain aspects of the State's regulatory process for determining the environmental and
42 economic acceptability of wind energy developments should be modified to ~~encourage~~
43 ~~the siting of wind energy developments in these areas~~ best serve the State. Such changes
44 include, but are not limited to:

1 A. Making wind energy development a permitted use within certain parts of the
2 State's unorganized and deorganized areas;

3 B. Refining certain procedures of the Department of Environmental Protection and
4 the Maine Land Use Regulation Commission; ~~and~~

5 C. Because the Legislature recognizes that wind turbines, excavation, construction
6 practices and appurtenant transmission infrastructure are potentially a highly visible
7 ~~feature~~ features and a diminution of the landscape that will have an impact on views
8 and quality of place assets, judging the effects of wind energy development on scenic
9 character and existing uses related to scenic character based on whether the
10 development significantly compromises views from a scenic resource of state or
11 national significance such that the development has an unreasonable adverse effect on
12 the scenic character or existing uses related to the scenic character of that resource;
13 and on the cumulative scenic character impact statewide; and

14 D. Because the Legislature recognizes that electricity produced from wind turbines
15 may have a potentially detrimental effect on ratepayers, judging the effects of wind
16 energy development on rates, both on a site-specific and cumulative basis.

17 The Legislature further finds that, while wind energy may be developed at many sites
18 with minimal site-specific environmental impacts, wind energy developments may have,
19 in addition to their beneficial environmental effects and potential scenic impacts, specific
20 and cumulative adverse environmental and economic effects that must be addressed in
21 state permitting decisions pursuant to approval criteria tailored to address issues
22 presented by wind energy development. Nothing in this section is meant to diminish the
23 importance of addressing as appropriate site-specific and cumulative impacts on quality
24 of place assets and natural values, including, but not limited to, wildlife, wildlife habitats
25 and other ecological values.

26 The Legislature further finds that development of the State's wind energy resources
27 should be undertaken in a manner that ensures significant tangible benefits to the people
28 of the State, including, but not limited to, residents of communities that host wind energy
29 facilities; and that the State should seek to ~~host a substantial amount of~~ allow wind and
30 low-emission energy, if economically and environmentally viable, as part of a strategy to
31 reduce greenhouse gas emissions and meet the goals established in the state climate
32 action plan developed pursuant to Title 38, section 577.

33 As used in this section, "quality of place assets" has the same meaning as in Title 5,
34 section 7019, subsection 3.

35 **3. Transition to more efficient energy sources for home heating and**
36 **transportation.** The Legislature finds that replacement of motor vehicles and conversion
37 of residential and commercial heating systems in previously weatherized structures to
38 nonpetroleum energy sources use, if economically viable, may have the ability to enhance
39 energy independence and reduction of overall energy costs and greenhouse gas emissions.

40 **Sec. 4. 35-A MRSA §3403, sub-§2,** as enacted by PL 2003, c. 665, §3, is
41 amended to read:

1 **2. Legal action; requirement to purchase or sell electricity prohibited.** After
2 consultation with the Attorney General, the commission may initiate regulatory and other
3 legal action to protect access to markets by wind power facilities located in the State.
4 The commission may not require or order a transmission and distribution utility that
5 begins operations on or after December 31, 2007 to purchase or sell electricity from a
6 wind energy or other electric generation facility.

7 **Sec. 5. 35-A MRSA §3403, sub-§4** is enacted to read:

8 **4. Requirements for developers.** In addition to any other requirement under this
9 chapter or chapter 34-A, a person proposing a wind energy development, referred to in
10 this subsection as "the developer," shall:

11 A. File a statement of intent to develop with the commissioner, giving full disclosure
12 as soon as the developer contacts landowners, staff or elected officials for the purpose
13 of exploring a generation site;

14 B. Record leases, options and other such instruments at the appropriate registry of
15 deeds and provide notice of that recording to the host community; and

16 C. Within 30 days of filing an application, establish and fund a fund for host
17 communities and intervenors for the purpose of conducting timely technical analysis
18 and expert testimony. The commissioner shall specify the amount required to be
19 deposited in the fund by routine technical rulemaking pursuant to Title 5, chapter
20 375, subchapter 2-A.

21 **Sec. 6. 35-A MRSA §3404**, as amended by PL 2009, c. 615, Pt. A, §§3 and 4, is
22 further amended to read:

23 **§3404. Determination of public policy; state wind and low-emission energy**
24 **generation goals**

25 **1. Encouragement of wind and low-emission energy-related development.** It is
26 the policy of the State in furtherance of the goals established in subsection 2, to
27 ~~encourage the attraction~~ explore the economic and environmental viability of
28 appropriately sited development related to wind and low-emission energy, including any
29 additional transmission and other energy infrastructure needed to transport additional
30 ~~offshore wind energy~~ electricity to market, consistent with all state environmental
31 standards; the permitting and financing of wind and low-emission energy projects; and
32 the siting, permitting, financing and construction of wind and low-emission energy
33 research and manufacturing facilities.

34 **2. State wind and low-emission energy generation goals.** The As long as
35 necessary and viable when compared to all other renewable and low-emission energy
36 generation methods, the goals for wind energy development in the State are that there be:

37 A. ~~At least 2,000~~ Up to 300 megawatts of installed capacity by 2015; and

38 B. At least 3,000 megawatts of installed capacity by ~~2020~~ 2030, including 300 ~~2,700~~
39 megawatts or more from generation facilities located in coastal waters, as defined by
40 Title 12, section 6001, subsection 6, or in proximate federal waters; ~~and.~~

1 C. ~~At least 8,000 megawatts of installed capacity by 2030, including 5,000~~
2 ~~megawatts from generation facilities located in coastal waters, as defined by Title 12,~~
3 ~~section 6001, subsection 6, or in proximate federal waters.~~

4 **Sec. 7. 35-A MRSA §3451, sub-§7-A** is enacted to read:

5 **7-A. Low-emission energy.** "Low-emission energy" means energy derived from an
6 electric generation source from which harmful emissions fall below emission levels from
7 a coal-fired or oil-fired generation source.

8 **Sec. 8. 35-A MRSA §3454, sub-§1, ¶E,** as enacted by PL 2009, c. 642, Pt. A,
9 §7, is amended to read:

10 E. Any other tangible benefits to be provided by the project, including benefits to the
11 host community and the State.

12 **Sec. 9. 35-A MRSA §3454, sub-§2,** as enacted by PL 2009, c. 642, Pt. A, §7, is
13 amended to read:

14 **2. Community benefits package requirement.** Except as provided in subsection 3,
15 to demonstrate that an expedited wind energy development provides significant tangible
16 benefits as required in Title 12, section 685-B, subsection 4-B and Title 38, section 484,
17 subsection 10, the applicant for an expedited wind energy development is required to
18 establish a community benefits package valued at no less than ~~\$4,000~~ \$8,000 per year per
19 wind turbine included in the expedited wind energy development, averaged over a
20 20-year period. This subsection does not affect the property tax obligations of an
21 expedited wind energy development. A community benefits package must be approved
22 by the host community legislative body, is considered an enforceable contract and has
23 priority over all other liens.

24 **Sec. 10. 35-A MRSA §3454, sub-§3, ¶A,** as enacted by PL 2009, c. 642, Pt. A,
25 §7, is amended to read:

26 A. Is waived for any expedited wind energy development that:

27 (1) Has an installed capacity of less than ~~20~~ 4 megawatts; or

28 (2) Is owned by a nonprofit entity, a public entity or a quasi-public entity; and

29 **Sec. 11. 35-A MRSA §3454, sub-§5,** as enacted by PL 2009, c. 642, Pt. A, §7, is
30 amended to read:

31 **5. Promoting economic development and resource conservation; assistance to**
32 **host communities.** To the extent practicable within existing resources, the Department
33 of Economic and Community Development and the Executive Department, State
34 Planning Office, shall provide, upon the request of a host community, subject to
35 remuneration by the applicant under this section, assistance for the purpose of helping the
36 host community maximize the economic development and resource conservation benefits
37 from tax payments and payments made pursuant to a community benefit agreement or a
38 community benefits package in connection with expedited wind energy developments.
39 As part of this assistance, the department and the office shall support host communities in

1 identifying additional funding and developing regional economic and natural resource
2 conservation strategies.

3 **Sec. 12. 38 MRSA §346, sub-§1**, as amended by PL 2009, c. 642, Pt. B, §3, is
4 further amended to read:

5 **1. Appeal to Superior Court.** Except as provided in ~~subsection 4 and~~ section
6 347-A, subsection 3 or 4, any person aggrieved by any order or decision of the board or
7 commissioner may appeal to the Superior Court. These appeals to the Superior Court
8 must be taken in accordance with Title 5, chapter 375, subchapter 7.

9 **Sec. 13. 38 MRSA §346, sub-§4**, as amended by PL 2009, c. 615, Pt. E, §5 and c.
10 642, Pt. B, §4, is repealed and the following enacted in its place:

11 **4. Appeal of decision regarding an expedited wind energy development.** A
12 judicial appeal of final action by the board or commissioner regarding an application for
13 an expedited wind energy development, as defined in Title 35-A, section 3451,
14 subsection 4, may be taken to the Supreme Judicial Court sitting as the Law Court. These
15 appeals to the Law Court must be taken in the manner provided in Title 5, chapter 375,
16 subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

17 **Sec. 14. 38 MRSA §352, sub-§3**, as amended by PL 2009, c. 642, Pt. A, §8, is
18 further amended to read:

19 **3. Maximum fee.** The commissioner shall set the actual fees and shall publish a
20 schedule of all fees by November 1st of each year. If the commissioner determines that a
21 particular application, by virtue of its size, uniqueness, complexity or other relevant
22 factors, is likely to require significantly more costs than those listed on Table I, the
23 commissioner may designate that application as subject to special fees. Such a
24 designation must be made at, or prior to, the time the application is accepted as complete
25 and may not be based solely on the likelihood of extensive public controversy. The
26 maximum fee for processing an application may not exceed ~~\$250,000~~ \$1,000,000. All
27 staff of the department, the Department of Inland Fisheries and Wildlife, the Department
28 of Conservation, the Department of Agriculture, Food and Rural Resources and the
29 Department of Marine Resources who have worked on the review of the application,
30 including, but not limited to, preapplication consultations, shall submit quarterly reports
31 to the commissioner detailing the time spent on the application and all expenses
32 attributable to the application, including the costs of any appeals filed by the applicant
33 and, after taking into consideration the interest of fairness and equity, any other appeals if
34 the commissioner finds it in the public interest to do so. Any appeal filed by the applicant
35 of an application fee must be to the agency of jurisdiction of the application. The costs
36 associated with assistance to the board on an appeal before the board may be separately
37 charged. The processing fee for that application must be the actual cost to the
38 department, the Department of Inland Fisheries and Wildlife, the Department of
39 Conservation, the Department of Agriculture, Food and Rural Resources and the
40 Department of Marine Resources. The processing fee must be distributed to each
41 department that incurs a cost to be deposited in the account in which the expenses were
42 incurred in that department to reimburse the actual cost to that department. The applicant
43 must be billed quarterly and all fees paid prior to receipt of the permit. Nothing in this

1 section limits the commissioner's authority to enter into an agreement with an applicant
2 for payment of costs in excess of the maximum fee established in this subsection.

3 **Sec. 15. PL 2007, c. 661, Pt. A, §8, first ¶**, as amended by PL 2009, c. 642, Pt.
4 A, §9, is further amended to read:

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

18 **Sec. 16. Grid-scale wind power in mountain area protection subdistrict.**
19 The Department of Conservation, Maine Land Use Regulation Commission shall amend
20 its rules to prohibit the issuance or allowance of a permit for grid-scale wind power
21 development in a mountain area protection subdistrict. Rules adopted pursuant to this
22 section are routine technical rules pursuant to the Maine Revised Statutes, Title 5, chapter
23 375, subchapter 2-A.

24 **Sec. 17. Maine Revised Statutes headnote amended; revision clause.** In
25 the Maine Revised Statutes, Title 35-A, chapter 34, in the chapter headnote, the words
26 "the Maine wind energy act" are amended to read "the Maine wind and low-emission
27 energy act" and the Revisor of Statutes shall implement this revision when updating,
28 publishing or republishing the statutes.

29 **Emergency clause.** In view of the emergency cited in the preamble, this
30 legislation takes effect when approved.

31 SUMMARY

32 This bill amends the Maine Wind Energy Act and the laws regarding expedited siting
33 of grid-scale energy development to include low-emission energy, which is defined as
34 energy derived from an electric generation source from which harmful emissions fall
35 below emission levels from coal-fired or oil-fired electric generation sources. The bill
36 also:

37 1. Amends the legislative findings to recognize low-emission energy and the
38 detrimental effects of wind turbines on the environment and potentially on ratepayers;

- 1 2. Prohibits the Public Utilities Commission from requiring a transmission and
2 distribution utility from purchasing or selling electricity from a wind energy or other
3 electric generation facility;
- 4 3. Changes the state goals for wind energy generation;
- 5 4. Amends the community benefits package provisions to:
- 6 A. Increase the amount an applicant for an expedited wind energy development is
7 required to establish in a community benefits package from no less than \$4,000 to no
8 less than \$8,000 per year per wind turbine;
- 9 B. Require the community benefits package to be approved by the legislative body of
10 the host community;
- 11 C. Give the community benefits package a lien that has priority over all other liens;
12 and
- 13 D. Change the exemption from the community benefits package requirement to
14 apply to an expedited wind energy development that has an installed capacity of less
15 than 4 megawatts instead of the current exemption of less than 20 megawatts;
- 16 5. Repeals the direct appeal to the Supreme Judicial Court of final action by the
17 board or commissioner regarding an application for an expedited wind energy
18 development;
- 19 6. Increases the maximum fee for processing an application that may be charged by
20 the Department of Environmental Protection from \$250,000 to \$1,000,000; and
- 21 7. Requires the Department of Conservation, Maine Land Use Regulation
22 Commission to amend its rules to prohibit the issuance or allowance of a permit for grid-
23 scale wind power development in a mountain area protection subdistrict.