

MAINE STATE LEGISLATURE

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L.D. 1147

Date: 6/18/13

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Minority

ENVIRONMENT AND NATURAL RESOURCES

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

COMMITTEE AMENDMENT "A" to H.P. 812, L.D. 1147, Bill, "An Act To Protect Maine's Scenic Character"

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 and 1-D are enacted to read:

1-A. Combined observation. "Combined observation" means a view of multiple groups of turbines from a stationary point within a typical cone of vision. As used in this subsection, "cone of vision" means a fan-shaped field of view extending in front of a viewer.

1-D. Cumulative scenic impact or effect. "Cumulative scenic impact or effect" means the potential adverse effect on the scenic character and existing uses related to the scenic character of scenic resources of state or national significance resulting from the incremental impact of a proposed wind energy development when added to the effects of other past or present wind energy developments within the viewshed of a scenic resource of state or national significance. A determination of cumulative scenic impact or effect may be based upon the combined observation, successive observation or sequential observation of wind energy developments by a viewer from the scenic resource of state or national significance.

Sec. 2. 35-A MRSA §3451, sub-§§9-A and 9-B are enacted to read:

9-A. Sequential observation. "Sequential observation" means a view of more than one group of turbines as the viewer travels along a linear route such as a hiking trail or river.

9-B. Successive observation. "Successive observation" means a view of multiple groups of turbines from a particular viewpoint, but not within the same viewing arc. Groups of turbines are not within the same viewing arc if a viewer has to turn the viewer's head or body to see another group of turbines.

Sec. 3. 35-A MRSA §3451, sub-§10-A is enacted to read:

COMMITTEE AMENDMENT

1 **10-A. Viewshed of a scenic resource.** "Viewshed of a scenic resource" means the
2 geographic area as viewed from a scenic resource of state or national significance that
3 includes a proposed wind energy development. The viewshed of a scenic resource may
4 include the visible proposed wind energy development from a single viewer position or
5 the visible proposed wind energy development from multiple viewer positions. The
6 viewshed of a scenic resource is limited to the geographic area within 15 miles, measured
7 horizontally, from the proposed wind energy development's generating facilities.

8 **Sec. 4. 35-A MRSA §3452, sub-§3,** as enacted by PL 2007, c. 661, Pt. A, §7, is
9 amended to read:

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

14 A. The significance of the potentially affected scenic resource of state or national
15 significance;

16 B. The existing character of the surrounding area;

17 C. The expectations of the typical viewer;

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

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

28 F. The scope and scale of the potential effect of views of the generating facilities on
29 the scenic resource of state or national significance, including but not limited to
30 issues related to the number and extent of turbines visible from the scenic resource of
31 state or national significance, the distance from the scenic resource of state or
32 national significance and the effect of prominent features of the development on the
33 landscape.

34 In applying these evaluation criteria, the primary siting authority shall consider the
35 primary impact and the cumulative scenic impact or effect of the development during
36 both day and night on scenic resources of state or national significance. A finding by the
37 primary siting authority that the development's generating facilities are a highly visible
38 feature in the landscape is not a solely sufficient basis for determination that an expedited
39 wind energy project has an unreasonable adverse effect on the scenic character and
40 existing uses related to scenic character of a scenic resource of state or national
41 significance. In making its determination under subsection 1, the primary siting authority
42 shall consider insignificant the effects of portions of the development's generating

1 ~~facilities located more than 8 miles, measured horizontally, from a scenic resource of~~
2 ~~state or national significance.~~

3 **Sec. 5. 35-A MRSA §3452, sub-§4**, as enacted by PL 2007, c. 661, Pt. A, §7, is
4 repealed and the following enacted in its place:

5 **4. Visual impact assessment; rebuttable presumption.** An applicant for an
6 expedited wind energy development shall provide the primary siting authority with a
7 visual impact assessment of the development that addresses the evaluation criteria in
8 subsection 3.

9 A. If portions of the development's generating facilities are located within 8 miles,
10 measured horizontally, from a scenic resource of state or national significance, a
11 visual impact assessment is required.

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

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

31 The primary siting authority shall make decisions under this subsection based on a
32 preponderance of evidence in the record.

33 **Sec. 6. 35-A MRSA §3454, first ¶**, as amended by PL 2011, c. 655, Pt. DD, §14
34 and affected by §24 and amended by c. 682, §27, is repealed and the following enacted in
35 its place:

36 In making findings pursuant to Title 38, section 484, subsection 3, the primary siting
37 authority shall presume that an expedited wind energy development provides energy and
38 emissions-related benefits described in section 3402 and shall make additional findings
39 regarding other tangible benefits provided by the development. The Department of
40 Labor, the Governor's Office of Policy and Management, the Governor's Energy Office
41 and the Public Utilities Commission shall provide review comments if requested by the
42 primary siting authority.

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

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

8 A. Estimated jobs to be created statewide and in the host community or
9 communities, as a result of construction, maintenance and operations of the project;

10 B. Estimated annual generation of wind energy;

11 C. Projected property tax payments;

12 D. A description of the community benefits package, including but not limited to
13 community benefit agreement payments, to be provided in accordance with the
14 requirements of subsection 2; and

15 E. Any other tangible benefits to be provided by the project.

16 **Sec. 8. 38 MRSA §341-D, sub-§4, ¶D**, as amended by PL 2011, c. 304, Pt. H,
17 §9, is further amended to read:

18 D. License or permit decisions regarding an expedited wind energy development as
19 defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to
20 section 480-HH or section 636-A. In reviewing an appeal of a license or permit
21 decision by the commissioner under this paragraph, the board shall base its decision
22 on the administrative record of the department, including the record of any
23 adjudicatory hearing held by the department, and any supplemental information
24 allowed by the board for supplementation of the record. The board may remand the
25 decision to the department for further proceedings if appropriate. ~~The chair of the~~
26 ~~Public Utilities Commission or the chair's designee serves as a nonvoting member of~~
27 ~~the board and is entitled to fully participate but is not required to attend hearings~~
28 ~~when the board considers an appeal pursuant to this paragraph. The chair's~~
29 ~~participation on the board pursuant to this paragraph does not affect the ability of the~~
30 ~~Public Utilities Commission to submit information to the department for inclusion in~~
31 ~~the record of any proceeding before the department.~~

32 **Sec. 9. 38 MRSA §344, sub-§2-A, ¶D** is enacted to read:

33 D. The commissioner shall accept public comment on an application during the
34 course of processing the application. The commissioner shall set a deadline for
35 receiving public comments. The commissioner may not issue a final license or
36 permit decision until at least 10 business days after the close of the public comment
37 period.

38 **Sec. 10. 38 MRSA §346, sub-§4**, as repealed and replaced by PL 2011, c. 420,
39 Pt. A, §34, is amended to read:

40 **4. Appeal of decision.** A judicial appeal of final action by the board or
41 commissioner regarding ~~an application for an expedited wind energy development, as~~
42 ~~defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section~~

1 480-HH or section 636-A must be taken to the Supreme Judicial Court sitting as the Law
2 Court. The Law Court has exclusive jurisdiction over request for judicial review of final
3 action by the commissioner or the board regarding ~~expedited wind energy developments~~
4 or a general permit pursuant to section 480-HH or section 636-A. These appeals to the
5 Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and
6 the Maine Rules of Civil Procedure, Rule 80C.

7 **SUMMARY**

8 This amendment replaces the bill. It adds a new definition of "cumulative scenic
9 impact or effect" to address potential cumulative impacts related to multiple wind energy
10 generating facilities that are observed from a scenic resource of state or national
11 significance. It changes the size of the area in which an analysis of visual impact must be
12 undertaken from 3 and 8 miles currently to 8 and 15 miles. It creates a rebuttable
13 presumption of unreasonable adverse effect on scenic character if the generating facility
14 is located within 15 miles of Acadia National Park, the Appalachian Trail, a federally
15 designated wilderness area, Baxter State Park or the Allagash Wilderness Waterway.

FISCAL NOTE REQUIRED
(See attached)



126th MAINE LEGISLATURE

LD 1147

LR 767(02)

An Act To Protect Maine's Scenic Character

Fiscal Note for Bill as Amended by Committee Amendment
Committee: Environment and Natural Resources

A' (H-550)

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs incurred by the Department of Environmental Protection related to rulemaking activities addressing cumulative scenic impact requirements in this bill can be absorbed within existing budgeted resources.