

# MAINE STATE LEGISLATURE

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L.D. 1147

Date: 3/24/14

Minority

(Filing No. H-738)

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" 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-D and 1-E** are enacted to read:

**1-D. Combined observation.** "Combined observation" means an observation of more than one group of generating facilities within the field of view of a stationary viewer.

**1-E. 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.

**Sec. 2. 35-A MRSA §3451, sub-§9, ¶D**, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

D. A great pond that is:

(1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987;

**COMMITTEE AMENDMENT**

1           (3) One of the great ponds in the studies cited in subparagraphs (1) and (2) that is  
2           identified as having both outstanding fisheries and wildlife resources and on  
3           which there is located at least one commercial sporting camp that was established  
4           prior to 2007; or

5           (4) One of the great ponds in the studies cited in subparagraphs (1) and (2) that is  
6           not identified in those studies as having outstanding or significant scenic quality  
7           but that the primary siting authority finds, based upon evidence presented during  
8           the course of reviewing an application for an expedited wind energy  
9           development;

10           (a) Was not studied for its scenic values as part of either study, including but  
11           not limited to a great pond about which either study indicates there was  
12           missing information or a need for further field checking or no data were  
13           collected; and

14           (b) Meets the minimum standards for significant or outstanding scenic  
15           quality using the scenic quality overview and standards provided in the study  
16           cited in subparagraph (1);

17           **Sec. 3. 35-A MRS §3451, sub-§§9-A and 9-B** are enacted to read:

18           **9-A. Sequential observation.** "Sequential observation" means a view of more than  
19           one group of generating facilities as the viewer travels along a linear route, including but  
20           not limited to a hiking trail or river.

21           **9-B. Successive observation.** "Successive observation" means views of more than  
22           one group of generating facilities from a single viewpoint as a result of the viewer turning  
23           the viewer's head or body.

24           **Sec. 4. 35-A MRS §3451, sub-§10-A** is enacted to read:

25           **10-A. Viewshed of a scenic resource.** "Viewshed of a scenic resource" means the  
26           geographic area as viewed from a scenic resource of state or national significance that  
27           includes a proposed wind energy development. The viewshed of a scenic resource may  
28           include the visible proposed wind energy development from a single viewer position or  
29           the visible proposed wind energy development from multiple viewer positions. The  
30           viewshed of a scenic resource is limited to the geographic area within 15 miles, measured  
31           horizontally, from the proposed wind energy development's generating facilities.

32           **Sec. 5. 35-A MRS §3452, sub-§3**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
33           amended to read:

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

38           A. The significance of the potentially affected scenic resource of state or national  
39           significance;

40           B. The existing character of the surrounding area;

- 1 C. The expectations of the typical viewer;
- 2 D. The expedited wind energy development's purpose and the context of the  
3 proposed activity;
- 4 E. The extent, nature and duration of potentially affected public uses of the scenic  
5 resource of state or national significance and the potential effect of the generating  
6 facilities' presence on the public's continued use and enjoyment of the scenic resource  
7 of state or national significance; if the generating facilities are located within 15  
8 miles, measured horizontally, from Acadia National Park, the Appalachian Trail, a  
9 federally designated wilderness area, Baxter State Park or the Allagash Wilderness  
10 Waterway, there is a rebuttable presumption that the generating facilities will have an  
11 unreasonable adverse effect on the scenic character of these areas; and
- 12 F. The scope and scale of the potential effect of views of the generating facilities on  
13 the scenic resource of state or national significance, including but not limited to  
14 issues related to the number and extent of turbines visible from the scenic resource of  
15 state or national significance, the distance from the scenic resource of state or  
16 national significance and the effect of prominent features of the development on the  
17 landscape.

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

29 **Sec. 6. 35-A MRSA §3452, sub-§4**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
30 repealed and the following enacted in its place:

31 **4. Visual impact assessment; rebuttable presumption.** An applicant for an  
32 expedited wind energy development shall provide the primary siting authority with a  
33 visual impact assessment of the development that addresses the evaluation criteria in  
34 subsection 3 as follows.

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

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

1           C. The primary siting authority may require a visual impact assessment for portions  
2           of the development's generating facilities located more than 15 miles, measured  
3           horizontally, from a scenic resource of state or national significance if it finds that  
4           there is substantial evidence that a visual impact assessment is needed to determine if  
5           there is the potential for unreasonable adverse effects on scenic resources of state or  
6           national significance. Information intended to rebut or support the need for a visual  
7           impact assessment of effects on scenic resources more than 15 miles from the  
8           development's generating facilities must be submitted to the primary siting authority  
9           by the applicant or any interested person not later than 60 days after acceptance by  
10           the primary siting authority of the application as complete for processing. The  
11           applicant has an additional 15 days to respond to information submitted by interested  
12           persons.

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

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

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

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

24           B. Estimated annual generation of wind energy;

25           C. Projected property tax payments;

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

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

30           **Sec. 8. 38 MRSA §341-D, sub-§4, ¶D**, as amended by PL 2011, c. 304, Pt. H,  
31           §9, is further amended to read:

32           D. License or permit decisions regarding an expedited wind energy development as  
33           defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to  
34           section 480-HH or section 636-A. In reviewing an appeal of a license or permit  
35           decision by the commissioner under this paragraph, the board shall base its decision  
36           on the administrative record of the department, including the record of any  
37           adjudicatory hearing held by the department, and any supplemental information  
38           allowed by the board for supplementation of the record. The board may remand the  
39           decision to the department for further proceedings if appropriate. ~~The chair of the~~  
40           ~~Public Utilities Commission or the chair's designee serves as a nonvoting member of~~  
41           ~~the board and is entitled to fully participate but is not required to attend hearings~~  
42           ~~when the board considers an appeal pursuant to this paragraph. The chair's~~  
43           ~~participation on the board pursuant to this paragraph does not affect the ability of the~~





# 126th MAINE LEGISLATURE

LD 1147

LR 767(03)

## An Act To Protect Maine's Scenic Character

Fiscal Note for Bill as Amended by Committee Amendment *B(H-738)*  
Committee: Energy, Utilities and Technology  
Fiscal Note Required: Yes

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### Fiscal Note

Minor cost increase - General Fund  
Minor cost increase - Other Special Revenue Funds  
Minor savings - General Fund (Courts)

#### Correctional and Judicial Impact Statements

Decreases the number of Law Court cases

#### Fiscal Detail and Notes

The amendment requires the Department of Environmental Protection and the Maine Land Use Planning Commission within the Department of Agriculture, Conservation and Forestry to consider new criteria when determining whether an applicant for an expedited wind energy development must provide a visual impact assessment. Any additional costs to these departments to consider the new criteria are expected to be minor and can be absorbed within existing budgeted resources.