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L.D. 901

Date: 5/18/17 Minority

(Filing No. H- 214)

ENVIRONMENT AND NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 629, L.D. 901, Bill, "An Act To Amend the Laws Governing the Determination of a Wind Energy Development's Effect on the Scenic Character of Maine's Special Places"

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

Sec. 1. 12 MRSA §684, first ¶, as amended by PL 2011, c. 682, §8, is further amended to read:

The commission shall elect annually, from its own membership, a chair and such other officers it considers necessary. Meetings are held at the call of the chair or at the call of more than 1/2 of the membership. Meetings must be held at a location within the jurisdiction of the commission or another convenient location approved by the chair. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter 2, may adopt whatever rules it considers necessary for the conduct of its business, except that rules adopted under this chapter relating to wind energy development are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The commission shall keep minutes of all proceedings, which are a public record available and on file in the office of the commission. Members of the commission are compensated as provided in Title 5, chapter 379. Commission members must receive an orientation and annual continuing education on this chapter, commission rules and planning and regulatory processes. A quorum of the commission for the transaction of business is 5 members. No action may be taken by the commission unless upon approval by a vote of 5 members.

Sec. 2. 35-A MRSA §3452, sub-§4, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

4. Visual impact assessment. An applicant for an expedited wind energy development shall provide the primary siting authority with a visual impact assessment of the development that addresses the evaluation criteria in subsection 3 if ~~the primary siting authority determines such an assessment is necessary in accordance with subsection 3.~~ ~~There is a rebuttable presumption that a visual impact assessment is not required for those~~

COMMITTEE AMENDMENT

1 portions of the development's generating facilities ~~that are located more than 3~~ within 12
 2 miles, measured horizontally, from a scenic resource of state or national significance. ~~The~~
 3 ~~primary siting authority may require a visual impact assessment for portions of the~~
 4 ~~development's generating facilities located more than 3 miles and up to 8 miles from a~~
 5 ~~scenic resource of state or national significance if it finds there is substantial evidence~~
 6 ~~that a visual impact assessment is needed to determine if there is the potential for~~
 7 ~~significant adverse effects on the scenic resource of state or national significance.~~
 8 ~~Information intended to rebut the presumption must be submitted to the primary siting~~
 9 ~~authority by any interested person within 30 days of acceptance of the application as~~
 10 ~~complete for processing. The primary siting authority shall determine if the presumption~~
 11 ~~is rebutted based on a preponderance of evidence in the record.~~

12 **Sec. 3. 35-A MRSA §3453, last ¶**, as enacted by PL 2007, c. 661, Pt. A, §7 and
 13 amended by PL 2011, c. 682, §38, is further amended to read:

14 Rules adopted by the Maine Land Use Planning Commission pursuant to this section
 15 are ~~routine technical~~ major substantive rules as defined in Title 5, chapter 375, subchapter
 16 2-A.

17 **Sec. 4. 35-A MRSA §3453-A, sub-§7**, as enacted by PL 2015, c. 265, §8 and
 18 affected by §10, is amended to read:

19 **7. Rulemaking.** The Maine Land Use Planning Commission may adopt rules
 20 implementing this section. Rules adopted pursuant to this section are ~~routine technical~~
 21 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted
 22 pursuant to subsection 3 need not meet the requirements of Title 5, section 8053-A or
 23 8060 but must meet all other applicable requirements in Title 5, chapter 375.

24 **Sec. 5. 35-A MRSA §3457, last ¶**, as enacted by PL 2007, c. 661, Pt. A, §7, is
 25 amended to read:

26 Rules adopted pursuant to this section are ~~routine technical~~ major substantive rules as
 27 defined in Title 5, chapter 375, subchapter 2-A.

28 **Sec. 6. 35-A MRSA §3459, sub-§2**, as enacted by PL 2013, c. 325, §3, is
 29 amended to read:

30 **2. Rules.** The department shall adopt rules governing best practical mitigation under
 31 this section. Rules adopted under this subsection are major substantive rules as described
 32 in Title 5, chapter 375, subchapter 2-A. ~~Any amendments to the rules after final adoption~~
 33 ~~of the major substantive rules are routine technical rules pursuant to Title 5, chapter 375,~~
 34 ~~subchapter 2-A.~~

35 **Sec. 7. 35-A MRSA §3460** is enacted to read:

36 **§3460. Rulemaking**

37 Except as otherwise provided in this chapter, the department may adopt rules, which
 38 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, to
 39 implement the provisions of this chapter.

40 **Sec. 8. 38 MRSA §489-E**, as repealed and replaced by PL 2011, c. 359, §4, is
 41 amended to read:

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§489-E. Rulemaking

Rules adopted by the department pursuant to this article are routine technical rules except that rules adopted by the department after January 1, 2010 pursuant to section 484, subsections 1, 3, 4, 4-A, 5, 6 ~~and~~ 7 and 10 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. PL 2007, c. 661, Pt. E, §2 is repealed.

Sec. 10. Rules adopted prior to effective date of Act. Notwithstanding any provision of law to the contrary, rules relating to wind energy development adopted pursuant to the Maine Revised Statutes, Title 12, chapter 206-A; Title 35-A, chapter 34-A; or Title 38, chapter 3, article 6 prior to the effective date of this Act remain in effect, except that any amendment to such rules on or after the effective date of this Act must comply, where applicable, with the requirements of Title 12, section 684; Title 35-A, section 3460; and Title 38, section 489-E.'

SUMMARY

This amendment, which is the minority report of the committee, replaces the bill and amends current law regarding when a visual impact assessment is required for an expedited wind energy development by requiring a visual impact assessment if portions of a wind energy development's generating facilities are located within 12 miles of a scenic resource of state or national significance. It also requires all rules adopted under the laws regarding expedited permitting of grid-scale wind energy development on or after the effective date of the Act to be major substantive rules.

FISCAL NOTE REQUIRED

(See attached)



128th MAINE LEGISLATURE

LD 901

LR 1446(03)

An Act To Amend the Laws Governing the Determination of a Wind Energy Development's Effect on the Scenic Character of Maine's Special Places

Fiscal Note for Bill as Amended by Committee Amendment *B (H-214)*
Committee: Environment and Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection (DEP) from requiring a visual impact assessment (VIA) from an expedited wind energy development located within 12 miles of a scenic resource of state or national significance are anticipated to be minor and can be absorbed within existing budgeted resources. The requirement that any rules enacted with regard to expedited wind permitting be defined as major substantive rules will increase DEP rulemaking costs.