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Legislative Document

No. 1042

H.P. 776

House of Representatives, March 10, 2011

An Act To Preserve and Protect Citizens' Property Rights and Values

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative DUNPHY of Embden.
Cosponsored by Senator THOMAS of Somerset and
Representatives: BLACK of Wilton, CRAFTS of Lisbon, DAVIS of Sangerville, LIBBY of
Waterboro, McCABE of Skowhegan, McCLELLAN of Raymond, TIMBERLAKE of Turner.

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

2 **Sec. 1. 33 MRSA §173, sub-§4, ¶D,** as enacted by PL 1999, c. 476, §1, is
3 amended to read:

4 D. Underground oil storage tanks as required under Title 38, section 563,
5 subsection 6; ~~and~~

6 **Sec. 2. 33 MRSA §173, sub-§5,** as enacted by PL 1999, c. 476, §1, is amended to
7 read:

8 **5. Known defects.** Any known defects; and

9 **Sec. 3. 33 MRSA §173, sub-§6** is enacted to read:

10 **6. Proximity to wind energy development.** Whether the property is located within
11 the State's expedited permitting area under Title 35-A, chapter 34-A or knowledge of an
12 existing permit or pending permit application for a grid-scale wind energy development
13 within 8 miles of the property.

14 **Sec. 4. 35-A MRSA c. 34-B** is enacted to read:

15 **CHAPTER 34-B**

16 **PROPERTY VALUE GUARANTEE AND COMPENSATION PROGRAM**

17 **§3471. Definitions**

18 As used in this chapter, unless the context otherwise indicates, the following terms
19 have the following meanings.

20 **1. Asking price.** "Asking price" means the value of the eligible property at the time
21 that the landowner decides to sell that property as established under section 3474.

22 **2. Eligible property.** "Eligible property" means a real property parcel a boundary
23 line of which is within a 3-mile radius of the base of a wind tower, either constructed or
24 proposed to be constructed under an expedited wind energy development permit.
25 "Eligible property" includes any real property parcel within 8 miles of a wind tower from
26 which any portion of the generating facility is visible.

27 **3. Landowner.** "Landowner" means a person who owns eligible property.

28 **4. Permit.** "Permit" means the appropriate authorization from the primary siting
29 authority under chapter 34-A to construct a wind energy development.

30 **5. Property value guarantee agreement.** "Property value guarantee agreement" or
31 "agreement" means a contract entered into by a landowner and a wind energy
32 development owner or operator that documents the responsibility of the wind energy
33 development owner or operator to compensate the landowner for the reduction in
34 property value of eligible property.

1 **6. Program.** "Program" means the property value guarantee program established in
2 section 3472.

3 **7. Wind energy development.** "Wind energy development" means a development
4 under chapter 34-A that uses one or more wind towers to convert wind energy into
5 electrical energy for sale or use by a person other than the wind energy development
6 owner or operator. A wind energy development includes generating facilities and
7 associated facilities.

8 **8. Wind tower.** "Wind tower" means a windmill or wind turbine structure that is
9 part of the generating facilities of a wind energy development.

10 **§3472. Program established; process**

11 **1. Established.** The property value guarantee program is established as provided in
12 this section to provide compensation for the reduction in property value experienced by
13 landowners within close proximity to one or more wind towers.

14 **2. Notice to landowners.** Within 30 days of submitting a permit application, a wind
15 energy development applicant shall provide notice to all landowners about the program as
16 provided in this subsection.

17 A. All notices must be sent to each landowner by certified mail, return receipt
18 requested.

19 B. The notice must include a detailed description of the program, including a clear
20 explanation of landowner responsibilities and directions for participating in the
21 program. An additional notice must be sent within 14 days of the issuance of a
22 development permit advising that interested landowners must enter into a property
23 value guarantee agreement within 180 days of the issuance of the permit.

24 C. The notice must include a description of the process to establish predevelopment
25 baseline property values as provided in section 3473, including a clear explanation
26 that a landowner interested in participating in the predevelopment baseline property
27 value process must provide notice to the wind energy development owner or operator
28 within 30 days of receiving the notice.

29 **3. Agreement.** If a landowner chooses to enter into a property value guarantee
30 agreement, the wind energy development owner or operator shall enter into the
31 agreement, and both parties shall execute the agreement according to subsection 4.

32 **4. Guarantee.** An agreement must provide that, if the landowner lists for sale that
33 landowner's eligible property within 10 years of entering into the agreement and the
34 actual sale price is less than the asking price established under section 3474, the wind
35 energy development owner or operator shall pay to the landowner the difference between
36 the actual sale price and the asking price. The wind energy development owner or
37 operator may make a counter-offer on any offer of purchase that is below the asking
38 price; the counter-offer must be made within 48 hours of the submitted offer.

39 **5. Claim; payment; interest.** If a property subject to an agreement sells for less
40 than the asking price, the landowner shall make a claim to the wind energy development

1 owner or operator for the difference between the asking price and the actual sale price,
2 after deducting real estate commissions and normal costs associated with the sale of real
3 estate in the county in which the property is located. If the wind energy development
4 owner or operator does not pay the amount owed within 10 days of the sale, then the wind
5 energy development owner or operator is responsible for paying interest on the amount
6 owed equal to one percent per month, and is responsible for attorney's fees and other
7 costs associated with collecting the payment and interest required under this subsection.

8 **6. Buyout.** If a landowner's eligible property fails to sell within 6 months of the
9 property's being listed at the asking price, the wind energy development owner or
10 operator shall purchase the property at the asking price.

11 **§3473. Predevelopment baseline property values**

12 **1. Panel.** A panel of 3 real estate appraisers shall determine the predevelopment
13 baseline property value of the eligible property of a landowner who has provided notice
14 to the wind energy development owner or operator that the landowner chooses to
15 participate in the predevelopment baseline property value process. The wind energy
16 development owner or operator and the landowner shall each select a neutral real estate
17 appraiser and shall jointly select a neutral real estate appraiser. Each real estate appraiser
18 must be licensed in this State and must conduct business in the general area of the
19 property in question.

20 **2. Comparative market analysis.** Each real estate appraiser selected under
21 subsection 1 shall perform a comparative market analysis of the property that compares
22 the property size and improvements to no less than 3 similar properties that are listed for
23 sale, using generally accepted comparative market analysis methods. The comparative
24 market analyses must be based on comparable areas not affected by wind energy
25 development. The comparative market analyses must be performed at the expense of the
26 wind energy development owner or operator.

27 **3. Access to property.** The landowner shall permit access to the eligible property as
28 required to perform inspections for comparative market analysis under subsection 2. The
29 landowner shall provide full disclosure of known defects of the property required under
30 law in this State for residential real property being offered for sale.

31 **4. Reports.** Each real estate appraiser selected under subsection 1 shall provide a
32 written copy of the comparative market analysis report to both the landowner and the
33 wind energy development owner or operator. Both the landowner and the wind energy
34 development owner or operator have the right to reject comparative market analysis
35 results only in the instance of a clear mistake by the real estate appraiser.

36 **5. Determination of predevelopment baseline property value.** The 2 highest
37 property valuations determined from each comparative market analysis made under
38 subsection 2 are averaged to determine the predevelopment baseline property value.

39 **6. Part of application record.** All results of the predevelopment baseline property
40 value determinations made under subsection 2 become part of the permit application
41 record.

1 **§3474. Asking price determination**

2 **1. Agreed-to asking price.** If the landowner and the wind energy development
3 owner or operator agree on the asking price of the landowner's eligible property, then the
4 agreed-to amount must be used as the asking price under the program.

5 **2. Determination of asking price by appraisal.** If the wind energy development
6 owner or operator and the landowner do not agree to the asking price, a panel of 3 real
7 estate appraisers shall determine the asking price by appraisal.

8 A. The wind energy development owner or operator and the landowner shall each
9 select a neutral real estate appraiser and shall jointly select a neutral real estate
10 appraiser. Each real estate appraiser must be licensed in this State and must conduct
11 business in the general area of the eligible property.

12 B. Each real estate appraiser shall perform a comparative market analysis of the
13 eligible property that compares the property size and improvements to no less than 3
14 similar properties that are listed for sale, using generally accepted comparative
15 market analysis methods. The comparative market analyses must be based on
16 comparable areas not affected by wind energy development.

17 C. The comparative market analyses under paragraph B must be performed at the
18 expense of the wind energy development owner or operator.

19 D. The landowner shall permit access to the eligible property as required to perform
20 the comparative market analysis under paragraph B for inspections. The landowner
21 shall provide full disclosure of known defects of the property as required under law in
22 this State for residential real property being offered for sale.

23 E. Each real estate appraiser shall provide a written copy of the report of
24 comparative market analysis under paragraph B to the landowner and the wind
25 energy development owner or operator. Both the landowner and the wind energy
26 development owner or operator have the right to reject comparative market analysis
27 results only in the instance of a clear mistake by the real estate appraiser.

28 F. The 2 highest property valuations determined from each comparative market
29 analysis must be averaged to determine the asking price.

30 **§3475. Compensation contract**

31 If a landowner enters into a contract with the wind energy development owner or
32 operator in which the landowner allows the placement of a wind tower closer than 3 miles
33 to a boundary line of that landowner's property in exchange for any compensation from
34 the wind energy development owner or operator, then the landowner is ineligible to
35 participate in the program unless the wind energy development owner or operator waives
36 this provision and allows the landowner to enter into an agreement under this program.

37 **§3476. Compensation for property value loss before the program**

38 **1. Permit issued before effective date.** A landowner who owns property a
39 boundary line of which is within a 3-mile radius of the base of a wind tower that was
40 constructed or proposed under a permit issued prior to the effective date of this chapter

1 may seek compensation from the State for any loss in property value due to the proximity
2 to the wind tower.

3 **2. Process.** The process of determining the asking price by appraisal under section
4 3474 for property described in subsection 1 must be used to determine the diminution in
5 property value, with the Department of Environmental Protection acting as the wind
6 energy development owner or operator for the purposes of the appraisal and payment of
7 compensation.

8 **SUMMARY**

9 This bill establishes a property value guarantee program to ensure that a landowner
10 whose real property is located within 3 miles of the base of a wind tower is compensated
11 for any reduction in property value resulting from the proximity of the wind tower. The
12 wind energy development owner or operator is required to notify landowners within the
13 3-mile radius of a planned wind tower of the property value guarantee program.
14 Landowners may choose to enter into the agreement with the wind energy development
15 owner or operator under which the wind energy development owner or operator must pay
16 the difference in property value if the real property is sold within 10 years of entering into
17 the agreement for less than the asking price that is either agreed to by the parties or
18 determined by appraisal. A landowner who receives compensation for the location of the
19 wind tower directly from the wind energy development owner or operator is not eligible
20 to participate in the program unless the wind energy development owner or operator
21 waives the disqualification.

22 The bill requires sellers of residential real property to disclose whether the property to
23 be sold is located within the State expedited wind energy development permitting area, or
24 whether the seller has knowledge of an existing permit or a pending permit application
25 for a grid-scale wind energy development within 8 miles of the property.

26 The bill provides a compensation element for landowners whose property values have
27 diminished due to the location of wind towers permitted before the effective date of the
28 new program.