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No. 1479

H.P. 1088

House of Representatives, April 13, 2011

An Act To Minimize Conflicts between Property Owners and Grid-scale Wind Energy Developments

Reference to the Committee on Energy, Utilities and Technology 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: CLARK of Easton, HARMON of Palermo, KESCHL of Belgrade,
McCLELLAN of Raymond, O'CONNOR of Berwick, PARKER of Veazie, SIROCKI of
Scarborough.

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

2 **Sec. 1. 12 MRSA §682, sub-§20** is enacted to read:

3 **20. Grid-scale wind energy development.** "Grid-scale wind energy development"
4 has the same meaning as in Title 35-A, section 3451, subsection 6.

5 **Sec. 2. 12 MRSA §685-B, sub-§4-B,** as amended by PL 2009, c. 615, Pt. D, §5,
6 is further amended to read:

7 **4-B. Special provisions; wind energy development or project.** In the case of a
8 wind energy development, as defined in Title 35-A, section 3451, subsection 11, with that
9 is not a grid-scale wind energy development and that has a generating capacity greater
10 than 100 kilowatts, or a community-based offshore wind energy project, the developer
11 must demonstrate, in addition to requirements under subsection 4, that the proposed
12 generating facilities, as defined in Title 35-A, section 3451, subsection 5:

13 A. Will meet the requirements of the Board of Environmental Protection's noise
14 control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;

15 B. Will be designed and sited to avoid undue adverse shadow flicker effects;

16 C. Will be constructed with setbacks adequate to protect public safety, as provided in
17 Title 35-A, section 3455. In making findings pursuant to this paragraph, the
18 commission shall consider the recommendation of a professional, licensed civil
19 engineer as well as any applicable setback recommended by a manufacturer of the
20 generating facilities; and

21 D. Will provide significant tangible benefits, as defined in Title 35-A, section 3451,
22 subsection 10, within the State, as provided in Title 35-A, section 3454, if the
23 development is an expedited wind energy development, as defined in Title 35-A,
24 section 3451, subsection 4.

25 **Sec. 3. 12 MRSA §685-B, sub-§4-C** is enacted to read:

26 **4-C. Special provisions; grid-scale wind energy development or project.** In the
27 case of a grid-scale wind energy development, the developer must demonstrate, in
28 addition to requirements under subsection 4, that the proposed generating facilities, as
29 defined in Title 35-A, section 3451, subsection 5, will meet the requirements in Title 38,
30 section 484-C.

31 **Sec. 4. 35-A MRSA §3454, sub-§2,** as enacted by PL 2009, c. 642, Pt. A, §7, is
32 amended to read:

33 **2. Community benefits package requirement.** Except as provided in subsection 3,
34 to demonstrate that an expedited wind energy development provides significant tangible
35 benefits as required in Title 12, section 685-B, subsection 4-B and Title 38, section 484,
36 ~~subsection 10 484-C,~~ the applicant for an expedited wind energy development is required
37 to establish a community benefits package valued at no less than \$4,000 per year per
38 wind turbine included in the expedited wind energy development, averaged over a

1 20-year period. This subsection does not affect the property tax obligations of an
2 expedited wind energy development.

3 **Sec. 5. 35-A MRSA §3455**, as enacted by PL 2007, c. 661, Pt. A, §7, is amended
4 to read:

5 **§3455. Determination of public safety-related setbacks**

6 In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38,
7 section 484, subsection 3 on whether a wind energy development must be constructed
8 with setbacks adequate to protect public safety, the primary siting authority must consider
9 the recommendation of a professional, licensed civil engineer as well as any applicable
10 setback recommended by a manufacturer of the generating facilities and the requirements
11 in Title 38, section 484-C for grid-scale wind energy developments and offshore wind
12 power projects. The primary siting authority may require submission of this information
13 as part of the application.

14 **Sec. 6. 38 MRSA §484, sub-§10**, as amended by PL 2009, c. 615, Pt. E, §18, is
15 repealed.

16 **Sec. 7. 38 MRSA §484-C** is enacted to read:

17 **§484-C. Standards for grid-scale wind energy development or offshore wind power**
18 **projects**

19 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
20 following terms have the following meanings.

21 A. "Approved residential subdivision" means a residential subdivision for which the
22 developer has received all applicable land use permits for the subdivision and the
23 time for beginning construction under such permits has not expired.

24 B. "Boundary line" means the boundary of a parcel of land owned or leased for a
25 grid-scale wind energy development.

26 C. "Capacity factor" means the value of electricity production in one calendar month
27 divided by the maximum potential production based on the nameplate capacity.

28 D. "Expedited wind energy development" has the same meaning as in Title 35-A,
29 section 3451.

30 E. "Grid-scale wind energy development" has the same meaning as in Title 35-A,
31 section 3451.

32 F. "Locally designated passive recreation area" means a site or area designated by a
33 municipality for passive recreation that is open and maintained for public use and
34 that:

35 (1) Has fixed boundaries;

36 (2) Is owned in fee simple by a municipality or is accessible by virtue of public
37 easement; and

1 (3) Is identified and described in a local comprehensive plan.

2 G. "Nonparticipating property" means any parcel of land not subject to a lease
3 agreement or other property agreement with a wind energy developer for a wind
4 energy development.

5 H. "Offshore wind power project" has the same meaning as in section 480-B,
6 subsection 6-A.

7 I. "Operator" means a person, firm or corporation owning or operating a generator or
8 that person's, firm's or corporation's representative or agent.

9 J. "Permitting authority" means:

10 (1) The department, in the case of a grid-scale wind energy development subject
11 to the department's jurisdiction pursuant to this article, including, but not limited
12 to, a development subject to the department's jurisdiction pursuant to section 488,
13 subsection 9; or

14 (2) The Maine Land Use Regulation Commission, in the case of a grid-scale
15 wind energy development subject to the Maine Land Use Regulation
16 Commission's jurisdiction pursuant to Title 12, chapter 206-A.

17 K. "Plan" means the site restoration and decommissioning plan developed by a wind
18 energy developer.

19 L. "Planned residence" means a residence for which the owner of the parcel of land
20 on which the residence is to be located has received all applicable building and land
21 use permits and the time for beginning construction under such permits has not
22 expired.

23 M. "Primary siting authority" has the same meaning as in Title 35-A, section 3451.

24 N. "Protected location" means:

25 (1) Any location, accessible by foot, on a parcel of land containing a residence,
26 planned residence, approved residential subdivision, commercial building, house
27 of religious worship, school, college, library, duly licensed hospital or nursing
28 home, building or structure to house or contain domestic animals or any structure
29 likely to be occupied by persons, near the site of a grid-scale wind energy
30 development when an application is received by the permitting authority; and

31 (2) Any location within a state park, a national park, a historic area, a national
32 wildlife refuge, the Appalachian Trail, a federally designated wilderness area, a
33 state wilderness area designated by statute or a locally designated passive
34 recreation area or any location within consolidated public reserve lands
35 designated by rule by the Department of Conservation, Bureau of Public Lands as
36 a protected location.

37 O. "Tangible benefits" has the same meaning as in Title 35-A, section 3451.

38 P. "Wind turbine" means a mechanical device that captures the energy of the wind
39 and converts it into electricity.

1 **2. Grid-scale wind energy development standards.** In the case of a grid-scale wind
2 energy development or an offshore wind power project with an aggregate generating
3 capacity of 3 megawatts or more, a developer must demonstrate:

4 A. That the proposed generating facilities, as defined in Title 35-A, section 3451,
5 subsection 5 will meet:

6 (1) The following minimum setback standards:

7 (a) A wind turbine must be at least 1 1/4 miles from a protected location if
8 the elevation change between the wind turbine and the protected location is
9 equal to or less than 500 feet;

10 (b) A wind turbine must be at least 2 miles from a protected location if the
11 elevation change between the wind turbine and the protected location
12 exceeds 500 feet;

13 (c) A wind turbine must be at least 1/2 mile from the nearest boundary line
14 of the parcel of land on which the wind turbine is located; and

15 (d) A wind turbine must be at least 1/3 mile from any public highway or
16 right-of-way and from any aboveground utility line or facility, except for a
17 utility line that directly connects a wind turbine; and

18 (2) Quantifiable sound level limits adopted by the department by rule that
19 eliminate or minimize reasonable annoyance and health concerns of persons
20 located near the proposed generating facilities;

21 B. That an analysis of shadow flicker effect for each wind turbine has been
22 completed and that shadow flicker effects will not be perceptible on any
23 nonparticipating property;

24 C. That a plan has been developed that provides for the following:

25 (1) The replacement or removal of a wind turbine in the event of the wind
26 turbine's failure, including a failure due to natural disaster;

27 (2) The removal and lawful disposition of all wind turbines and other structures
28 of the grid-scale wind energy development or offshore wind power project,
29 including hazardous materials, foundations and all aboveground or belowground
30 transmission or generator lead lines;

31 (3) The removal or adequate supervision and control of all access roads;

32 (4) To the greatest extent possible, the restoration of the parcels of land that are
33 located at the grid-scale wind energy development site to their condition prior to
34 the construction for the grid-scale wind energy development;

35 (5) The decommissioning of the grid-scale wind energy development site or a
36 portion of the grid-scale wind energy development site upon the expiration or
37 revocation of the permit or license or if the wind energy development or any
38 individual wind turbine performs at less than 10% of its capacity factor for 12
39 consecutive months;

1 (6) Demonstration of the posting of a 3rd-party bond in the amount of the full
2 estimated costs of the decommissioning and site restoration adjusted for inflation,
3 prior to the commencement of construction. The calculations used for
4 determining the cost of implementing the plan and the terms and conditions of
5 the bond must be in accordance with rules adopted by the department; and

6 (7) Written authorization by the wind energy developer for each municipality in
7 which the grid-scale wind energy development is located and the State to have
8 authority to access the parcels of land on the grid-scale wind energy development
9 site for the purpose of implementing the plan in the event that the wind energy
10 developer fails to implement the plan;

11 D. That roads and utility lines associated with the grid-scale wind energy
12 development are the minimum feasible length as determined by the permitting
13 authority;

14 E. That wind turbines that are part of the grid-scale wind energy development have
15 no lighting except for the minimum lighting needed to meet the requirements of the
16 Federal Aviation Administration, including any technology or system approved by
17 the Federal Aviation Administration that allows for minimum illuminated time; and

18 F. If the grid-scale wind energy development is an expedited wind energy
19 development, that the requirement that a grid-scale wind energy development provide
20 significant tangible benefits as determined pursuant to Title 35-A, section 3454 has
21 been met.

22 In establishing standards and limits under this subsection, the department may establish
23 different standards for offshore wind power projects and generating facilities located on
24 land.

25 The Department of Labor, the Executive Department, State Planning Office and the
26 Public Utilities Commission shall provide review comments if requested by the
27 permitting authority.

28 **3. Sound level limits noncompliance.** The department shall establish by rule a
29 process for resolving property owner complaints regarding noise and operator
30 noncompliance with the sound level limitations adopted by the department.

31 **4. Waiver.** A property owner whose property is subject to the requirements in
32 subsection 2, paragraphs A and B may waive one or more of the requirements in
33 subsection 2, paragraphs A and B by signing a written waiver of rights. The waiver of
34 rights must include, but is not limited to:

- 35 A. The specific requirements to be waived;
- 36 B. The potential impact on the property owner of waiving each provision;
- 37 C. The grid-scale wind energy development to which the waiver applies; and
- 38 D. A statement that the waiver is binding on all future property owners.

39 Prior to the operation of the grid-scale wind energy development, the waiver must be
40 recorded in the land records of the applicable municipality or county.

1 If the permitting authority determines that every property owner potentially affected by
2 requirements in subsection 2, paragraph A or B has signed a waiver of rights under this
3 subsection and the requirement should therefore be waived, the permitting authority shall
4 waive the requirement.

5 Rules adopted under this section are major substantive rules pursuant to Title 5,
6 chapter 375, subchapter 2-A.

7 **Sec. 8. Department rulemaking.**

8 **1. Rules.** When adopting rules regarding sound level limits pursuant to the Maine
9 Revised Statutes, Title 38, section 484-C, paragraph A, subparagraph 2, the Department
10 of Environmental Protection shall review the following documents:

11 A. Town of Jackson, Maine's Wind Turbine Ordinance as approved by the Jackson
12 Planning Board February 25, 2010;

13 B. Town of Phillips, Maine's Wind Energy Facility Ordinance as enacted on
14 September 16, 2010;

15 C. Town of Montville, Maine's Wind Turbine Generator Ordinance as enacted on
16 March 27, 2010; and

17 D. The proposed noise rule amendment submitted with a petition to require agency
18 rulemaking submitted to the Board of Environmental Protection by Rufus Brown of
19 Portland, Maine, dated December 27, 2010.

20 The department shall identify the most restrictive sound level limitations in the
21 documents listed in paragraphs A to D and adopt provisions in the rule that require wind
22 developers to meet the most restrictive sound level limitations. The department shall also
23 review the documents in paragraphs A to D when adopting rules governing property
24 owner complaints regarding noise and operator noncompliance with sound level
25 limitations under Title 38, section 484-C, subsection 3.

26 **2. Cost calculations for decommissioning.** When adopting rules regarding
27 calculating the cost for the implementation of the decommissioning plan pursuant to Title
28 38, section 484-C, subsection 2, paragraph C, subparagraph (6), the department may not
29 permit the cost of implementing the decommissioning plan to be offset by speculative or
30 volatile values, such as the salvage value of materials salvaged from the parcels.

31 **SUMMARY**

32 This bill removes statutory guidance for wind energy development standards and
33 creates specific statewide standards for setback requirements, shadow flicker effects and
34 decommissioning plans for grid-scale wind energy developments and offshore wind
35 power projects. This bill limits the length of roads and utility lines associated with a
36 grid-scale wind energy development and the type of lighting that may be placed on a
37 wind turbine. This bill directs the Department of Environmental Protection to adopt rules
38 concerning statewide standards for sound level limits.