



# 125th MAINE LEGISLATURE

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Legislative Document

No. 1443

S.P. 450

In Senate, April 12, 2011

### **An Act To Improve the Permitting Process for Wind Energy Developments and To Protect Maine's Quality of Place**

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Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator PATRICK of Oxford.

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

2 **Sec. 1. 12 MRSA §685-B, sub-§2-C, ¶A**, as amended by PL 2009, c. 615, Pt. D,  
3 §3, is further amended to read:

4 A. The commission shall consider any wind energy development in the expedited  
5 permitting area under Title 35-A, chapter 34-A with a generating capacity of 100  
6 kilowatts or greater or a community-based offshore wind energy project a use  
7 requiring a permit, but not a special exception, within the affected districts or  
8 subdistricts. For an offshore wind energy project that is proposed within one nautical  
9 mile of an island within the unorganized or deorganized areas, the commission shall  
10 review the proposed project to determine whether the project qualifies as a  
11 community-based offshore wind energy project and therefore is within the  
12 jurisdiction of the commission. The commission may require an applicant to provide  
13 a timely notice of filing prior to filing an application for, and may require the  
14 applicant to attend a public meeting during the review of, a wind energy development  
15 or a community-based offshore wind energy project. The commission shall render its  
16 determination on an application for such a development or project within ~~185~~ 270  
17 days after the commission determines that the application is complete, ~~except that the~~  
18 ~~commission shall render such a decision within 270 days if it holds a hearing on the~~  
19 ~~application.~~ The chair of the Public Utilities Commission or the chair's designee shall  
20 serve as a nonvoting member of the commission and may participate fully but is not  
21 required to attend hearings when the commission considers an application for an  
22 expedited wind energy development or a community-based offshore wind energy  
23 project. The chair's participation on the commission pursuant to this subsection does  
24 not affect the ability of the Public Utilities Commission to submit information into  
25 the record of the commission's proceedings. For purposes of this subsection,  
26 "expedited permitting area," "expedited wind energy development" and "wind energy  
27 development" have the same meanings as in Title 35-A, section 3451.

28 **Sec. 2. 12 MRSA §685-B, sub-§4-B**, as amended by PL 2009, c. 615, Pt. D, §5,  
29 is repealed.

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

31 **4-C. Special provisions; wind energy development or project.** In the case of a  
32 wind energy development, as defined in Title 35-A, section 3451, subsection 11, with a  
33 generating capacity greater than 100 kilowatts, or a community-based offshore wind  
34 energy project, the developer must demonstrate, in addition to the requirements under  
35 subsection 4:

36 A. That the proposed generating facilities, as defined in Title 35-A, section 3451,  
37 subsection 5:

38 (1) Will meet the requirements of the Board of Environmental Protection's noise  
39 control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;

40 (2) Will be designed and sited to avoid undue adverse shadow flicker effects;

1                   (3) Will be constructed with minimum setback requirements, defined by rule by  
2                   the Department of Environmental Protection pursuant to Title 38, section 484,  
3                   subsection 10-A;

4                   (4) If the wind energy development is located more than 1,000 feet above sea  
5                   level, will not be greater than 75 feet in height; and

6                   (5) Will not have a significant cumulative environmental impact, in accordance  
7                   with rules adopted by the Department of Environmental Protection pursuant to  
8                   Title 38, section 484, subsection 10-A; and

9                   B. That the following conditions have been met:

10                   (1) If the wind energy development is an expedited wind energy development,  
11                   the development will provide significant tangible benefits, as defined in Title  
12                   35-A, section 3451, subsection 10, within the State, as provided in Title 35-A,  
13                   section 3454;

14                   (2) An assessment of wildlife impacts by the Department of Inland Fisheries and  
15                   Wildlife pursuant to section 12709 has been completed with respect to the  
16                   development; and

17                   (3) A decommissioning plan with respect to the development has been developed  
18                   that includes a description of the circumstances under which the  
19                   decommissioning would occur. An escrow account must be established to  
20                   provide financial guarantees for the decommissioning of the development. The  
21                   terms and conditions of the escrow account must be in accordance with rules  
22                   adopted by the Department of Environmental Protection pursuant to Title 38,  
23                   section 484, subsection 10-A.

24                   The Department of Labor, the Executive Department, State Planning Office and the  
25                   Public Utilities Commission shall provide review comments if requested by the primary  
26                   siting authority. For purposes of this subsection, "primary siting authority" and  
27                   "expedited wind energy development" have the same meanings as in Title 35-A, section  
28                   3451.

29                   **Sec. 4. 12 MRSA §12709** is enacted to read:

30                   **§12709. Wildlife impacts of a wind energy development**

31                   At the request of a developer of a proposed wind energy development, the department  
32                   shall complete an assessment of the cumulative environmental impact and potential  
33                   wildlife impacts of the proposed wind energy development. The department shall adopt  
34                   rules to implement this section. Rules adopted pursuant to this section are routine  
35                   technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department may  
36                   charge the developer a fee to cover the cost of the assessment.

37                   As used in this section, "wind energy development" has the same meaning as in Title  
38                   35-A, section 3451, subsection 11.

39                   **Sec. 5. 35-A MRSA §3453, last ¶**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
40                   amended to read:

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

4 **Sec. 6. 35-A MRSA §3454, sub-§2**, as enacted by PL 2009, c. 642, Pt. A, §7, is  
5 amended to read:

6 **2. Community benefits package requirement.** Except as provided in subsection 3,  
7 to demonstrate that an expedited wind energy development provides significant tangible  
8 benefits as required in Title 12, section 685-B, subsection ~~4-B~~ 4-C and Title 38, section  
9 484, subsection ~~4~~ 10-A, the applicant for an expedited wind energy development is  
10 required to establish a community benefits package valued at no less than \$4,000 per year  
11 per wind turbine included in the expedited wind energy development, averaged over a  
12 20-year period. This subsection does not affect the property tax obligations of an  
13 expedited wind energy development.

14 **Sec. 7. 35-A MRSA §3456, sub-§1**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
15 repealed.

16 **Sec. 8. 35-A MRSA §3456, sub-§1-A** is enacted to read:

17 **1-A. Construction and operation requirements.** A person may not construct or  
18 operate a wind energy development, other than a grid-scale wind energy development,  
19 that is located in the State's organized area without first obtaining a certification from the  
20 department that:

21 A. The generating facilities:

22 (1) Will meet the requirements of the noise control rules adopted by the Board of  
23 Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6;

24 (2) Will be designed and sited to avoid unreasonable adverse shadow flicker  
25 effects;

26 (3) Will be constructed with minimum setback requirements, defined by rule by  
27 the Department of Environmental Protection pursuant to Title 38, section 484,  
28 subsection 10-A;

29 (4) Will not have a significant cumulative environmental impact, in accordance  
30 with rules adopted by the Department of Environmental Protection pursuant to  
31 Title 38, section 484, subsection 10-A; and

32 (5) If the wind energy development is located more than 1,000 feet above sea  
33 level, will not be greater than 75 feet in height; and

34 B. That the following conditions have been met:

35 (1) An assessment of wildlife impacts by the Department of Inland Fisheries and  
36 Wildlife was completed pursuant to Title 12, section 12709 with respect to the  
37 development; and

38 (2) A decommissioning plan with respect to the development has been developed  
39 that includes a description of the circumstances under which the

1            decommissioning would occur. An escrow account must be established to  
2            provide financial guarantees for the decommissioning of the development. The  
3            terms and conditions of the escrow account must be in accordance with rules  
4            adopted by the department pursuant to Title 38, section 484, subsection 10-A.

5            A person proposing a wind energy development subject to certification under this section  
6            shall apply to the department for certification using an application provided by the  
7            department and may not begin construction until the certification is received.

8            **Sec. 9. 35-A MRSA §3456, sub-§3**, as enacted by PL 2007, c. 661, Pt. A, §7, is  
9            amended to read:

10           **3. Enforcement of standards.** Following certification under this section and during  
11           construction and operation, the standards in subsection ~~4~~ 1-A for a wind energy  
12           development subject to certification under this section may be enforced by the  
13           municipality in which the generating facilities are located at the municipality's discretion  
14           pursuant to Title 30-A, section 4452. The department is not responsible for enforcement  
15           of this section.

16           **Sec. 10. 38 MRSA §344, sub-§1-B** is enacted to read:

17           **1-B. Adjudicatory proceeding for approval.** Notwithstanding any other provision  
18           of law, the department shall conduct an adjudicatory proceeding pursuant to Title 5,  
19           chapter 375, subchapter 4 on an application for a license, permit or certification for a  
20           wind energy development as defined in Title 35-A, section 3451, subsection 11.

21           **Sec. 11. 38 MRSA §344, sub-§2-A, ¶A**, as amended by PL 2009, c. 615, Pt. E,  
22           §3, is further amended to read:

23           A. Except as otherwise provided in this paragraph, the commissioner shall decide as  
24           expeditiously as possible if an application meets one or more of the criteria set forth  
25           in section 341-D, subsection 2 and shall request that the board assume jurisdiction of  
26           that application. If at any subsequent time during the review of an application the  
27           commissioner decides that the application falls under section 341-D, subsection 2, the  
28           commissioner shall request that the board assume jurisdiction of the application.

29           (1) The commissioner may not request the board to assume jurisdiction of an  
30           application for any permit or other approval required for an expedited wind  
31           energy development, as defined in Title 35-A, section 3451, subsection 4, a  
32           certification pursuant to Title 35-A, section 3456 or a general permit pursuant to  
33           section 480-HH or section 636-A. Except as provided in subparagraph (2), the  
34           commissioner shall issue a decision on an application for an expedited wind  
35           energy development, an offshore wind power project or a hydropower project, as  
36           defined in section 632, subsection 3, that uses tidal action as a source of electrical  
37           or mechanical power within 185 days of the date on which the department  
38           accepts the application as complete pursuant to this section or within 270 days of  
39           the department's acceptance of the application if the commissioner holds a  
40           hearing on the application pursuant to subsection 1-B or section 345-A,  
41           subsection 1-A.

1 (2) The expedited review periods of 185 days and 270 days specified in  
2 subparagraph (1) do not apply to the associated facilities, as defined in Title  
3 35-A, section 3451, subsection 1, of the development if the commissioner  
4 determines that an expedited review time is unreasonable due to the size,  
5 location, potential impacts, multiple agency jurisdiction or complexity of that  
6 portion of the development. If an expedited review period does not apply, a  
7 review period specified pursuant to section 344-B applies.

8 The commissioner may stop the processing time with the consent of the applicant for  
9 a period of time agreeable to the commissioner and the applicant.

10 **Sec. 12. 38 MRSA §484, sub-§10**, as amended by PL 2009, c. 615, Pt. E, §18, is  
11 repealed.

12 **Sec. 13. 38 MRSA §484, sub-§10-A** is enacted to read:

13 **10-A. Special provisions; wind energy development or offshore wind power**  
14 **project.** In the case of a grid-scale wind energy development, as defined in Title 35-A,  
15 section 3451, subsection 6 or an offshore wind power project with an aggregate  
16 generating capacity of 3 megawatts or more, the developer demonstrates:

17 A. That the proposed generating facilities, defined in Title 35-A, section 3451,  
18 subsection 5:

19 (1) Will be designed and sited to avoid unreasonable adverse shadow flicker  
20 effects;

21 (2) Will be constructed with minimum setback requirements, defined by rule by  
22 the department;

23 (3) Will not have a significant cumulative environmental impact, as determined  
24 by rule by the department. For the purposes of this subparagraph, "cumulative  
25 environmental impact" means the impact on the environment that results from the  
26 incremental impact of the generating facilities when added to other past, present  
27 and reasonably foreseeable future actions; and

28 (4) If the grid-scale wind energy development is located more than 1,000 feet  
29 above sea level, will not be greater than 75 feet in height; and

30 B. That the following conditions have been met:

31 (1) The grid-scale wind energy development will provide significant tangible  
32 benefits, as defined in Title 35-A, section 3451, subsection 10, within the State,  
33 as provided in Title 35-A, section 3454, if the development is an expedited wind  
34 energy development;

35 (2) An assessment of wildlife impacts has been completed by the Department of  
36 Inland Fisheries and Wildlife pursuant to Title 12, section 12709 with respect to  
37 the development; and

38 (3) A decommissioning plan with respect to the development has been developed  
39 that includes the circumstances under which the decommissioning would need to  
40 occur. An escrow account must be established to provide financial guarantees for

