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Public Law
124th Legislature
Second Regular Session

Chapter 492
S.P. 652 - L.D. 1680

An Act To Assist in Reviewing Wind Energy Applications

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, creating consistency in the application and permitting process for wind energy developments before the Maine Land Use Regulation Commission and the Department of Environmental Protection will improve the application process; and

Whereas, in order to move quickly and fairly in processing wind energy development applications, the Maine Land Use Regulation Commission needs the authority to charge applicants fees for necessary consulting expertise, studies or materials; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA §685-B, sub-§2-C, as enacted by PL 2007, c. 661, Pt. C, §2, is repealed and the following enacted in its place:

2-C. Wind energy development; determination deadline. The following provisions govern wind energy development.

A. The commission shall consider any wind energy development in the expedited permitting area under Title 35A, chapter 34A with a generating capacity of 100 kilowatts or greater a use requiring a permit, but not a special exception, within the affected districts or subdistricts. The commission may require an applicant to provide a timely notice of filing prior to filing an application for, and may require the applicant to attend a public meeting during the review of, a wind energy development. The commission shall render its determination on an application for such a development within 185 days after the commission determines that the application is complete, except that the commission shall render such a decision within 270 days if it holds a hearing on the application. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the commission and may participate fully but is not required to attend hearings when the commission considers an application for an expedited wind energy development. The chair's participation on the commission pursuant to this subsection does not affect the ability of the Public Utilities Commission to submit

information into the record of the commission's proceedings. For purposes of this subsection, "expedited permitting area," "expedited wind energy development" and "wind energy development" have the same meanings as in Title 35-A, section 3451.

B. At the request of an applicant, the commission may stop the processing time for a period of time agreeable to the commission and the applicant. The expedited review period specified in paragraph A does not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the wind energy development if the commission determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development.

Sec. 2. 12 MRSA §685-B, sub-§4, ¶C, as amended by PL 2007, c. 661, Pt. C, §3, is further amended to read:

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, section 361A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, the commission shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35A, section 3452; .

In making a determination under this paragraph regarding a wind energy development, as defined in Title 35A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for location within the expedited permitting area, the commission shall consider the development's effects on scenic character and existing uses relating to scenic character in the manner provided for in Title 35-A, section 3452;

Sec. 3. 12 MRSA §685-F, sub-§1, as amended by PL 2007, c. 541, Pt. B, §3 and affected by §6, is further amended to read:

1. Designation as extraordinary project. The director of the Maine Land Use Regulation Commission, referred to in this section as "the director," may designate a proposed project requiring review and approval under this chapter as an extraordinary project when the director determines that the project is a wind energy development, as defined in Title 35A, section 3451, subsection 11 or, because of the project's size, uniqueness or complexity, review of the project application is likely to:

A. Significantly impair the capacity of the commission's staff and cooperating state agencies to review other applications in a timely manner; or

B. Require the commission to incur costs that exceed the funding provided in accordance with section 685-G.

A project is considered to significantly impair the capacity of the commission's staff if review of that project is likely to occupy the equivalent of at least one person working full-time on that project for a minimum of 4 months. Designation as an extraordinary project must be made at or prior to the time the application is accepted as complete. The director shall notify the applicant in writing upon making the designation.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

CONSERVATION, DEPARTMENT OF

Land Use Regulation Commission 0236

Initiative: Provides funding associated with application processing of wind energy development projects.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$20,000	\$40,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$20,000	\$40,000

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective March 5, 2010.