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Public Law
124th Legislature
Second Regular Session

Chapter 642
S.P. 582 - L.D. 1504

**An Act To Provide Predictable Benefits to Maine
Communities That Host Wind Energy Developments**

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

PART A

Sec. A-1. 12 MRSA §685-F, sub-§3, as enacted by PL 2005, c. 107, §2 and affected by §4, is amended to read:

3. Accounting system. The director shall require that all staff involved in any aspect of an application review for a project designated as an extraordinary project keep accurate and regular daily time records. These records must describe the matters worked on, services performed and amount of time devoted to those matters and services as well as amounts of money expended in performing those functions. The director shall keep records of all expenses incurred in reviewing a project, including staff time records and billing statements for contracted services and billing statements from other state agencies for the actual cost of review.

Sec. A-2. 35-A MRSA §3451, sub-§1-B is enacted to read:

1-B. Community benefit agreement. "Community benefit agreement" means an agreement between the developer of an expedited wind energy development and a host community that involves payments by the developer to the host community to be utilized for public purposes, including, but not limited to, for property tax reductions, economic development projects, land and natural resource conservation, tourism promotion or reduction of energy costs, and that specifies in writing:

A. The value of any lump sum payments made by the developer to the host community; and

B. Any payment schedule and associated terms and conditions for payments to be made over time by the developer to the host community.

Sec. A-3. 35-A MRSA §3451, sub-§1-C is enacted to read:

1-C. Community benefits package. "Community benefits package" means the aggregate collection of tangible benefits resulting from any of the following:

- A. Payments, not including property tax payments, to the host community or communities, including, but not limited to, payments under community benefit agreements;
- B. Payments that reduce energy costs in the host community or communities; and
- C. Any donations for land or natural resource conservation.

Sec. A-4. 35-A MRSA §3451, sub-§7, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

7. Host community. ~~"Host community" means a municipality, township or plantation in which the generating facilities of an expedited wind energy development are located. :~~

A. The following entities:

(1) A municipality or plantation in which the generating facilities of an expedited wind energy development are located;

(2) If the generating facilities of an expedited wind energy development are located in a township, the county in which those facilities are located;

(3) If the generating facilities of an expedited wind energy development are located on Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, the Passamaquoddy Tribe, if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;

(4) If the generating facilities of an expedited wind energy development are located on Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; or

(5) If the generating facilities of an expedited wind energy development are located on Qualifying Band Trust Land, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and

B. When the generating facilities of an expedited wind energy development are located within the State's unorganized or deorganized areas and the developer selects a municipality; plantation; township; Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6; Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9; or Qualifying Band Trust Land proximate to the location of the generating facilities for the purpose of providing specific tangible benefits:

- (1) In the case of a municipality or plantation that is selected, the municipality or plantation;
- (2) In the case of a township that is selected, the county in which that township is located;
- (3) In the case of Passamaquoddy Indian territory that is selected, the Passamaquoddy Tribe if the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development;
- (4) In the case of Penobscot Indian territory that is selected, the Penobscot Nation if the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development; and
- (5) In the case of Qualifying Band Trust Land that is selected, the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for purposes of this chapter with respect to the expedited wind energy development.

An expedited wind energy development may have multiple host communities.

Sec. A-5. 35-A MRSA §3451, sub-§8-A is enacted to read:

8-A. Qualifying Band Trust Land. "Qualifying Band Trust Land" means Band Trust Land, as defined in the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171, 105 Stat. 1143 (1991), over which the Aroostook Band of Micmacs possesses municipal authority with respect to expedited wind energy development. For purposes of this subsection, "municipal authority" means the rights, privileges, powers and immunities of a municipality that are specified in legislation specifically authorizing the exercise of those government powers and that are equivalent to the rights, privileges, powers and immunities possessed by the Penobscot Nation and the Passamaquoddy Tribe with respect to expedited wind energy development within their respective Indian territories pursuant to Title 30, section 6206.

Sec. A-6. 35-A MRSA §3451, sub-§10, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

10. Tangible benefits. "Tangible benefits" means environmental or economic improvements or benefits to residents of this State attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: property tax payments resulting from the development; other payments to a host community, including, but not limited to, payments under a community benefit agreement; construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; land or natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community or communities to the extent practicable and affected neighboring communities.

Sec. A-7. 35-A MRSA §3454, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

§ 3454. Determination of tangible benefits; requirements

In making findings pursuant to Title 12, section 685B, subsection 4 or Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

1. Documentation. As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

- A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project;
- B. Estimated annual generation of wind energy;
- C. Projected property tax payments;
- D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and
- E. Any other tangible benefits to be provided by the project.

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

3. Community benefits package requirement; exceptions. The community benefits package requirement under subsection 2:

- A. Is waived for any expedited wind energy development that:
 - (1) Has an installed capacity of less than 20 megawatts; or
 - (2) Is owned by a nonprofit entity, a public entity or a quasi-public entity; and
- B. Does not apply to those turbines included in the development that are located:

(1) In a host community in which the legislative body has voted to waive or reduce the community benefits package requirement;

(2) On Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6, unless the Passamaquoddy Tribe notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development;

(3) On Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9, unless the Penobscot Nation notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development; or

(4) On Qualifying Band Trust Land unless the Aroostook Band of Micmacs notifies the primary siting authority that it chooses to be considered a host community for the purposes of this chapter with respect to the expedited wind energy development.

The community benefits package requirement applies to any turbines of the development that are not exempted under subparagraph (1), (2), (3) or (4).

Nothing in this subsection limits a host community's authority to require an expedited wind energy development to enter into a community benefit agreement and to fulfill its property tax obligations.

4. Community benefit agreement payments to counties. When generating facilities of an expedited wind energy development are located within an unorganized or deorganized area other than within a plantation, community benefit agreement payments provided to the county as the host community in accordance with this section may be used for projects and programs of public benefit located anywhere within that county.

5. Promoting economic development and resource conservation; assistance to host communities. To the extent practicable within existing resources, the Department of Economic and Community Development and the Executive Department, State Planning Office, shall provide, upon the request of a host community, assistance for the purpose of helping the host community maximize the economic development and resource conservation benefits from tax payments and payments made pursuant to a community benefit agreement or a community benefits package in connection with expedited wind energy developments. As part of this assistance, the department and the office shall support host communities in identifying additional funding and developing regional economic and natural resource conservation strategies.

Sec. A-8. 38 MRSA §352, sub-§3, as amended by PL 2009, c. 160, §1, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs

than those listed on Table I, the commissioner may designate that application as subject to special fees. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. The maximum fee for processing an application may not exceed \$250,000. All department staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Department of Marine Resources who have worked on the review of the application, including, but not limited to, preapplication consultations, shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. Any appeal filed by the applicant of an application fee must be to the agency of jurisdiction of the application. The costs associated with assistance to the board on an appeal before the board may be separately charged. The processing fee for that application must be the actual cost to the department, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Department of Marine Resources. The processing fee must be distributed to each department that incurs a cost to be deposited in the account in which the expenses were incurred in that department to reimburse the actual cost to that department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum fee established in this subsection.

Sec. A-9. PL 2007, c. 661, Pt. A, §8 is amended to read:

Sec. A-8. Tracking progress toward achievement of state wind energy goals; assessment of tangible benefits. The Executive Department, Governor's Office of Energy Independence and Security, referred to in this section as "the office," shall, on an annual basis, monitor and make an assessment of tangible benefits provided by expedited wind energy developments in accordance with the Maine Revised Statutes, Title 35A, section 3454 and the State's progress toward meeting the wind energy development goals established in the Maine Revised Statutes, Title 35A, section 3404, subsection 2 and, by December 2013, in consultation with other state agencies as appropriate, conduct a full review of the status of meeting the goals for 2015 and the likelihood of achieving the goals for 2020. The office shall provide its assessment and recommendations under this section to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 15th of each year.

1. Assessment. The assessment under this section must include:

A. Examination of experiences from the permitting process;

B. Identified successes, including tangible benefits realized from wind energy development, in implementing the recommendations contained in the February 2008 final report of the Governor's Task Force on Wind Power Development in Maine pursuant to Executive Order issued May 8, 2007;

B-1. A summary of tangible benefits provided by expedited wind energy developments including, but not limited to, documentation of community benefits packages and community benefit agreement payments provided. The assessment must also include a review of the community benefits package requirement under Title 35A, section 3454, subsection 2 and the actual amount of negotiated community benefits packages relative to the statutorily required minimum amount;

C. Projections of wind energy developers' plans, as well as technology trends and their state policy implications;

D. The status of Maine and each of the other New England states in making progress toward reducing greenhouse gas emissions; and

E. Recommendations, including, but not limited to, any changes regarding:

(1) The wind energy development goals established in Title 35A, section 3404, subsection 2;

(2) Permitting processes for wind energy development;

(3) Identification of places within the State's unorganized and deorganized areas for inclusion in the expedited permitting area established pursuant to Title 35A, chapter 34A; and

(4) Creation of an independent siting authority to consider wind energy development applications; and

(5) The community benefits package requirement under Title 35A, section 3454, subsection 2.

2. Assessment of tangible benefits; first annual report. In the report due January 15, 2009, the office shall include an assessment of whether there is a need for additional funding to conduct the analysis of tangible benefits realized from wind energy development as required under this section and, if funding is needed, recommendations for a funding mechanism that is connected to the fees assessed to wind energy developers by the Department of Environmental Protection and the Maine Land Use Regulation Commission. Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit legislation to the First Regular Session of the 124th Legislature regarding the subject matter of this subsection.

Sec. A-10. Application. This Part does not affect the determination of tangible benefits for any expedited wind energy development pursuant to the Maine Revised Statutes, Title 35A, section 3454 for which a permit application has been submitted to the primary siting authority prior to the effective date of this Act.

PART B

Sec. B-1. 12 MRSA §689, as amended by PL 1979, c. 127, §70, is further amended to read:

§ 689. Appeal

Persons aggrieved by final actions of the commission, including without limitation any final decision of the commission with respect to any application for approval or the adoption by the commission of any district boundary or amendment thereto, may appeal therefrom in accordance with Title 5, chapter 375, subchapter ~~VH~~ 7. Appeals of final actions of the commission regarding an application for an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, must be taken to the Supreme Judicial Court sitting as the Law Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. The Law Court has exclusive jurisdiction over requests for judicial review of final actions of the commission regarding expedited wind energy developments. This right of appeal, with respect to any commission action to which this right may apply, shall be in lieu of the rights provided under Title 5, section 8058, subsection 1.

Sec. B-2. 35-A MRSA §3458 is enacted to read:

§ 3458. Judicial appeal; municipal permitting decision

Any judicial appeal of a municipal decision regarding permitting of an expedited wind energy development that is taken in the manner provided in the Maine Rules of Civil Procedure, Rule 80B must be heard and determined by the Superior Court as expeditiously as possible.

Sec. B-3. 38 MRSA §346, sub-§1, as amended by PL 2007, c. 661, Pt. B, §7, is further amended to read:

1. Appeal to Superior Court. Except as provided in subsection 4 and section 347A, subsection 3 or 4, any person aggrieved by any order or decision of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court must be taken in accordance with Title 5, chapter 375, subchapter 7.

Sec. B-4. 38 MRSA §346, sub-§4, as enacted by PL 2007, c. 661, Pt. B, §8, is amended to read:

4. Appeal of decision regarding an expedited wind energy development. A ~~person aggrieved by an order or decision of~~ judicial appeal of final action by the board or commissioner regarding an application for an expedited wind energy development, as defined in Title 35A, section 3451, subsection 4, ~~may appeal~~ must be taken to the Supreme Judicial Court sitting as the ~~law court~~ Law Court. The Law Court has exclusive jurisdiction over request for judicial review of final action by the commissioner or the board regarding expedited wind energy developments. These appeals to the ~~law court~~ Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

Effective July 12, 2010