

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Facilitate Wind Power Siting**

**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 amended to read:

**2-C. Wind energy development; determination deadline.** The commission shall consider any expedited wind energy development and any other wind energy development in proposed for location within the expedited permitting area under Title 35-A, chapter 34-A with a generating capacity greater than 100 kilowatts a use requiring a permit, but not a special exception, within the affected districts or subdistricts and. The commission shall hold a hearing on application for such a development and shall render its determination on an the application for such a development within 185210 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 as defined in Title 35-A, section 3451. 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.

**Sec. 2. 35-A MRSA §3451, sub-§8**, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

**8. Wind power siting authority.** "Primary Wind power siting authority" means:

A. The department, in the case of an expedited wind energy development subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, including, but not limited to, a development subject to the department's jurisdiction pursuant to Title 38, section 488, subsection 9, or in the case of a wind energy development subject to certification from the department under section 3456; or

B. The Maine Land Use Regulation Commission, in the case of an ~~expedited~~ wind energy development subject to the Maine Land Use Regulation Commission's jurisdiction pursuant to Title 12, chapter 206-A.

**Sec. 3. 35-A MRSA §3451-A** is enacted to read:

**§ 3451-A. Wind power siting authority; jurisdiction**

Notwithstanding Public Law 2007, chapter 661, Part E, section 1 or any other provision of law to the contrary, a governmental entity, other than a wind power siting authority, may not require any approval, consent, permit, certificate or other condition for the construction or initial operation of a wind energy development that is authorized by a certificate or permit issued by a wind power siting authority in accordance with this chapter. This section is not intended to prevent any governmental entity from applying regulations that do not pertain to the location or design of a wind energy development for which a certificate or permit has been obtained from the appropriate wind power siting authority. For purposes of this section, "governmental entity" means any city, town, plantation, county or instrumentality of the State and any office, department, agency, authority, commission or board of the State.

**Sec. 4. 35-A MRSA §3456, sub-§2,** as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

**2. Fees; outside review; approval process.** The department may charge a developer an appropriate fee for its review of an application and certification pursuant to this section. Certification may be conditioned on specific requirements, including but not limited to setbacks from residential structures to address noise or safety concerns. The department may use an outside reviewer as provided in Title 38, section 344-A. The department shall hold a hearing pursuant to Title 38, section 345-A, subsection 1-A on an application for certification under this section. If no other approval by the department is required for the development, the department shall issue its certification within ~~185~~210 days of ~~its acceptance of a request for certification~~the date on which the department accepts the application as complete pursuant to Title 38, section 344. At the request of an applicant, the department may put the certification review period on hold. If another approval by the department is required for the development, the department shall consolidate its process for certification under this section with that regarding other approvals by the department as provided in the department's rules and may extend the review period as provided in those rules. Notwithstanding any other provision of law, the department's certification pursuant to this section regarding a development that does not otherwise require the department's approval pursuant to this Title is not itself subject to judicial review as final agency action or otherwise, except as an aspect of an appeal of a pertinent municipal land use decision.

**Sec. 5. 38 MRSA §344, sub-§2-A, ¶A,** as amended by PL 2007, c. 661, Pt. B, §5, is further amended to read:

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

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a certification required for a wind energy development other than an expedited wind energy development pursuant to Title 35-A, section 3456. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application

for an expedited wind energy development within ~~185~~210 days of the date on which the department accepts the application as complete pursuant to this section ~~or within 270 days of the department's acceptance of the application if the~~. The commissioner holds~~holds~~shall hold a hearing on ~~the~~any application for an expedited wind energy development pursuant to section 345-A, subsection 1-A.

(2) The expedited review ~~periods of 185 days and 270~~period of 210 days specified in subparagraph (1) ~~does~~do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner 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. If ~~an~~the expedited review period does not apply, a review period specified pursuant to section 344-B applies.

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

**Sec. 6. 38 MRSA §484, sub-§10**, as enacted by PL 2007, c. 661, Pt. B, §12, is amended to read:

**10. Special provisions; grid-scale wind energy development.** In the case of a grid-scale wind energy development, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

- A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;
- B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and
- C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primarywind power siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primarywind power siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

**Sec. 7. Maine Revised Statutes amended; revision clause.** Wherever in the Maine Revised Statutes, Title 35-A, chapter 34-A the words "primary siting authority" appear, they are amended to read "wind power siting authority," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

## **SUMMARY**

This bill amends the laws governing the siting of wind energy developments. The bill grants the state-level wind power siting authority, which is the Department of Environmental Protection or the Maine Land Use Regulation Commission depending on the location of a given wind power development, sole jurisdiction for approving the construction and initial operation of a wind energy development. Specifically, the bill prohibits any other state or local governmental entity from requiring any approval, permit or other condition for the construction or initial operation of a wind energy development that has been certified or permitted by the wind power siting authority. The bill changes the terminology used in the law from "primary siting authority" to "wind power siting authority" to reflect the removal of any secondary authority over siting of wind power development.

The bill also amends the definition of "wind power siting authority" to specify the Department of Environmental Protection and the Maine Land Use Regulation Commission as the siting authority for the smaller-scale wind energy developments that are subject to approval by the department or commission. Under current law, the siting authority is only defined for the larger grid-scale wind energy developments. The bill also amends the law to require a wind power siting authority to hold a public hearing on any application for approval of a wind energy development and to require a decision in 210 days from acceptance of a complete application.