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Date: (Filing No. H-)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 812, L.D. 1147, Bill, “An Act To Protect Maine's Scenic Character”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 35-A MRSA §3451, sub-§§1-D and 1-E are enacted to read:

1-D. Combined observation. "Combined observation" means an observation of more than one group of generating facilities within the field of view of a stationary viewer.

1-E. Cumulative scenic impact or effect. "Cumulative scenic impact or effect" means the potential adverse effect on the scenic character and existing uses related to the scenic character of scenic resources of state or national significance resulting from the incremental impact of a proposed wind energy development when added to the effects of other past or present wind energy developments within the viewshed of a scenic resource of state or national significance. A determination of cumulative scenic impact or effect may be based upon the combined observation, successive observation or sequential observation of wind energy developments by a viewer.

Sec. 2. 35-A MRSA §3451, sub-§9, ¶D, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

- D. A great pond that is:
 - (1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; ~~or~~
 - (2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987;

COMMITTEE AMENDMENT

1 (3) One of the great ponds in the studies cited in subparagraphs (1) and (2) that is
2 identified as having both outstanding fisheries and wildlife resources and on
3 which there is located at least one commercial sporting camp that was established
4 prior to 2007; or

5 (4) One of the great ponds in the studies cited in subparagraphs (1) and (2) that is
6 not identified in those studies as having outstanding or significant scenic quality
7 but that the primary siting authority finds, based upon evidence presented during
8 the course of reviewing an application for an expedited wind energy
9 development:

10 (a) Was not studied for its scenic values as part of either study, including but
11 not limited to a great pond about which either study indicates there was
12 missing information or a need for further field checking or no data were
13 collected; and

14 (b) Meets the minimum standards for significant or outstanding scenic
15 quality using the scenic quality overview and standards provided in the study
16 cited in subparagraph (1);

17 **Sec. 3. 35-A MRSA §3451, sub-§§9-A and 9-B** are enacted to read:

18 **9-A. Sequential observation.** "Sequential observation" means a view of more than
19 one group of generating facilities as the viewer travels along a linear route, including but
20 not limited to a hiking trail or river.

21 **9-B. Successive observation.** "Successive observation" means views of more than
22 one group of generating facilities from a single viewpoint as a result of the viewer turning
23 the viewer's head or body.

24 **Sec. 4. 35-A MRSA §3451, sub-§10-A** is enacted to read:

25 **10-A. Viewshed of a scenic resource.** "Viewshed of a scenic resource" means the
26 geographic area as viewed from a scenic resource of state or national significance that
27 includes a proposed wind energy development. The viewshed of a scenic resource may
28 include the visible proposed wind energy development from a single viewer position or
29 the visible proposed wind energy development from multiple viewer positions. The
30 viewshed of a scenic resource is limited to the geographic area within 15 miles, measured
31 horizontally, from the proposed wind energy development's generating facilities.

32 **Sec. 5. 35-A MRSA §3452, sub-§3**, as enacted by PL 2007, c. 661, Pt. A, §7, is
33 amended to read:

34 **3. Evaluation criteria.** In making its determination pursuant to subsection 1, and in
35 determining whether an applicant for an expedited wind energy development must
36 provide a visual impact assessment in accordance with subsection 4, the primary siting
37 authority shall consider:

38 A. The significance of the potentially affected scenic resource of state or national
39 significance;

40 B. The existing character of the surrounding area;

- 1 C. The expectations of the typical viewer;
- 2 D. The expedited wind energy development's purpose and the context of the
3 proposed activity;
- 4 E. The extent, nature and duration of potentially affected public uses of the scenic
5 resource of state or national significance and the potential effect of the generating
6 facilities' presence on the public's continued use and enjoyment of the scenic resource
7 of state or national significance; if the generating facilities are located within 15
8 miles, measured horizontally, from Acadia National Park, the Appalachian Trail, a
9 federally designated wilderness area, Baxter State Park or the Allagash Wilderness
10 Waterway, there is a rebuttable presumption that the generating facilities will have an
11 unreasonable adverse effect on the scenic character of these areas; and
- 12 F. The scope and scale of the potential effect of views of the generating facilities on
13 the scenic resource of state or national significance, including but not limited to
14 issues related to the number and extent of turbines visible from the scenic resource of
15 state or national significance, the distance from the scenic resource of state or
16 national significance and the effect of prominent features of the development on the
17 landscape.

18 In applying these evaluation criteria, the primary siting authority shall consider the
19 primary impact and the cumulative scenic impact or effect of the development during
20 both day and night on scenic resources of state or national significance. A finding by the
21 primary siting authority that the development's generating facilities are a highly visible
22 feature in the landscape is not a solely sufficient basis for determination that an expedited
23 wind energy project has an unreasonable adverse effect on the scenic character and
24 existing uses related to scenic character of a scenic resource of state or national
25 significance. ~~In making its determination under subsection 1, the primary siting authority~~
26 ~~shall consider insignificant the effects of portions of the development's generating~~
27 ~~facilities located more than 8 miles, measured horizontally, from a scenic resource of~~
28 ~~state or national significance.~~

29 **Sec. 6. 35-A MRSA §3452, sub-§4,** as enacted by PL 2007, c. 661, Pt. A, §7, is
30 repealed and the following enacted in its place:

31 **4. Visual impact assessment; rebuttable presumption.** An applicant for an
32 expedited wind energy development shall provide the primary siting authority with a
33 visual impact assessment of the development that addresses the evaluation criteria in
34 subsection 3 as follows.

35 A. If portions of the development's generating facilities are located within 8 miles,
36 measured horizontally, from a scenic resource of state or national significance, a
37 visual impact assessment is required.

38 B. If portions of the development's generating facilities are located more than 8 miles
39 and up to 15 miles, measured horizontally, from a scenic resource of state or national
40 significance, there is a rebuttable presumption that a visual impact assessment is
41 required. Information intended to rebut the presumption must be submitted to the
42 primary siting authority by the applicant with the application. An interested person
43 may respond to the applicant's rebuttal information within 30 days of the acceptance
44 by the primary siting authority of the application as complete for processing.

1 C. The primary siting authority may require a visual impact assessment for portions
2 of the development's generating facilities located more than 15 miles, measured
3 horizontally, from a scenic resource of state or national significance if it finds that
4 there is substantial evidence that a visual impact assessment is needed to determine if
5 there is the potential for unreasonable adverse effects on scenic resources of state or
6 national significance. Information intended to rebut or support the need for a visual
7 impact assessment of effects on scenic resources more than 15 miles from the
8 development's generating facilities must be submitted to the primary siting authority
9 by the applicant or any interested person not later than 60 days after acceptance by
10 the primary siting authority of the application as complete for processing. The
11 applicant has an additional 15 days to respond to information submitted by interested
12 persons.

13 The primary siting authority shall make decisions under this subsection based on a
14 preponderance of evidence in the record.

15 **Sec. 7. 35-A MRSA §3454, sub-§1**, as enacted by PL 2009, c. 642, Pt. A, §7, is
16 amended to read:

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

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

30 **Sec. 8. 38 MRSA §341-D, sub-§4, ¶D**, as amended by PL 2011, c. 304, Pt. H,
31 §9, is further amended to read:

32 ~~D. License or permit decisions regarding an expedited wind energy development as~~
33 ~~defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to~~
34 ~~section 480-HH or section 636-A. In reviewing an appeal of a license or permit~~
35 ~~decision by the commissioner under this paragraph, the board shall base its decision~~
36 ~~on the administrative record of the department, including the record of any~~
37 ~~adjudicatory hearing held by the department, and any supplemental information~~
38 ~~allowed by the board for supplementation of the record. The board may remand the~~
39 ~~decision to the department for further proceedings if appropriate. The chair of the~~
40 ~~Public Utilities Commission or the chair's designee serves as a nonvoting member of~~
41 ~~the board and is entitled to fully participate but is not required to attend hearings~~
42 ~~when the board considers an appeal pursuant to this paragraph. The chair's~~
43 ~~participation on the board pursuant to this paragraph does not affect the ability of the~~

1 ~~Public Utilities Commission to submit information to the department for inclusion in~~
2 ~~the record of any proceeding before the department.~~

3 **Sec. 9. 38 MRSA §346, sub-§4**, as repealed and replaced by PL 2011, c. 420, Pt.
4 A, §34, is amended to read:

5 **4. Appeal of decision.** A judicial appeal of final action by the board or
6 commissioner regarding an application for an ~~expedited wind energy development, as~~
7 ~~defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section~~
8 480-HH or section 636-A must be taken to the Supreme Judicial Court sitting as the Law
9 Court. The Law Court has exclusive jurisdiction over request for judicial review of final
10 action by the commissioner or the board regarding ~~expedited wind energy developments~~
11 ~~or~~ a general permit pursuant to section 480-HH or section 636-A. These appeals to the
12 Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and
13 the Maine Rules of Civil Procedure, Rule 80C.'

14 **SUMMARY**

15 This amendment makes changes to the bill, including:

16 1. Creating several new definitions relating to the scenic impact of a wind energy
17 development;

18 2. Adding to the definition of "scenic resource of state or national significance" great
19 ponds that were not studied for their scenic values in 1987 or 1989 and that the
20 Department of Environmental Protection finds have outstanding or significant scenic
21 quality using the assessment criteria in the 1989 Maine's Finest Lakes study;

22 3. Removing from current law a requirement that judicial appeals of final action by
23 the Board of Environmental Protection or the Commissioner of Environmental Protection
24 regarding an expedited wind energy development be taken directly to the Supreme
25 Judicial Court sitting as the Law Court;

26 4. Removing the provisions of the bill that apply the scenic impact laws to scenic
27 resources of local significance; and

28 5. Creating a rebuttable presumption of unreasonable adverse effect on scenic
29 character if a generating facility is located within 15 miles from certain scenic resources
30 of state or national significance.