



Michael LeVert <mjlevert@gmail.com>

FW: Draft Legislation

22 messages

Philip Saucier <psaucier@bernsteinshur.com>

Thu, Sep 26, 2013 at 2:52 PM

To: "LeVert, Michael" <Michael.LeVert@legislature.maine.gov>

Cc: Dan Riley <driley@bernsteinshur.com>

Hi Mike,

It was good to talk with you this afternoon. As promised I have attached the proposed amendments to LD 1/Regulatory Reform. Please feel free to contact me or Dan Riley if you have any questions.

Take care,

Phil

Philip Saucier

Attorney

psaucier@bernsteinshur.com

207 228-7160 direct

207 774-1200 main

My Bio | LinkedIn | Twitter

BERNSTEIN SHUR | Click for Address: Portland, ME | Augusta, ME | Manchester, NH | bernsteinshur.com

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LD1Clarification.DOC

28K

Michael LeVert <mjlevert@gmail.com>

Thu, Sep 26, 2013 at 4:43 PM

To: Philip Saucier <psaucier@bernsteinshur.com>

Cc: Dan Riley <driley@bernsteinshur.com>

Thanks. Questions: What is the background for Section 3, Tangible Benefits? Are there instances of DEP using the lack of evidence of tangible benefits to deny an application? My understanding of the background for TB was that in order to get expedited permitting an applicant had to show TB in addition to (presumed) energy and emissions benefits. Does this change this?

[Quoted text hidden]

Philip Saucier <psaucier@bernsteinshur.com> Fri, Sep 27, 2013 at 10:40 AM
To: "LeVert, Michael" <Michael.LeVert@legislature.maine.gov>
Cc: Dan Riley <driley@bernsteinshur.com>, Jeremy Payne <jpayne@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Hi Mike,

I've forwarded an answer to your question from Jeremy Payne of the Maine Renewable Energy Association. Please feel free to contact any of us if you have any questions, and thank you for helping with this legislation.

Take care,

Phil

Philip Saucier
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From: Jeremy Payne
Sent: Friday, September 27, 2013 10:23 AM
To: Philip Saucier
Cc: Kate Knox; Dan Riley
Subject: Re: Draft Legislation

Basically last session DEP & Woodcock tried to amend the wind energy act to say that projects had to reduce energy costs for Maine ratepayers in order to be approved.

So I believe their intent was to jam those same requirements through is this "application guidance."

This bill basically says an applicant may submit that info, but isn't mandated. And that DEP must review that info in the context prescribed in 35-A 3452.

To Mike's question, nothing in here changes the proposed tangible benefits requirements....they remain intact exactly as is.

Jeremy Payne
Senior Project Manager
The Bernstein Shur Group
jpayne@bernsteinshur.com
207 629-6227 direct
207 623-1596 main
LinkedIn | Twitter

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On Sep 26, 2013, at 7:38 PM, "Philip Saucier" <psaucier@bernsteinshur.com> wrote:

Jeremy, FYI. We spoke to Mike today and I forwarded the most recent draft from Dan. He sent back these questions.

Philip Saucier
Attorney
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Begin forwarded message:

From: Michael LeVert <mjlevert@gmail.com>
Date: September 26, 2013 at 4:43:22 PM EDT
To: Philip Saucier <psaucier@bernsteinshur.com>
Cc: Dan Riley <driley@bernsteinshur.com>
Subject: Re: FW: Draft Legislation

[Quoted text hidden]

Dan Riley <driley@bernsteinshur.com>

Fri, Sep 27, 2013 at 10:50 AM

To: Philip Saucier <psaucier@bernsteinshur.com>

Cc: "LeVert, Michael" <Michael.LeVert@legislature.maine.gov>, Jeremy Payne <jpayne@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Mike:

As we discussed yesterday, the primary purpose of this legislation is to bring to light the LePage Administration's hypocrisy with respect to regulatory fairness. Their "signature" legislation includes a specific prohibition against doing exactly what the DEP is doing with their new application instructions and we need a legislator like Sen. Alfond who served on the Joint Select Committee on Regulatory Fairness to sponsor this bill so we can bring this issue to light and stop the DEP from using these new instructions as application requirements.

We will be meeting with Sen. Alfond on this issue to pursue other avenues of relief as well.

Thank you.

Dan

Dan Riley

Shareholder

Legislative Practice Group Leader

driley@bernsteinshur.com

207 228-7124 direct

207 774-1200 main

My Bio | LinkedIn | Twitter

On Sep 27, 2013, at 10:40 AM, "Philip Saucier" <psaucier@bernsteinshur.com> wrote:

Hi Mike,

I've forwarded an answer to your question from Jeremy Payne of the Maine Renewable Energy Association. Please feel free to contact any of us if you have any questions, and thank you for helping with this legislation.

Take care,

Phil

Philip Saucier

Attorney

psaucier@bernsteinshur.com

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Cc: Kate Knox; Dan Riley

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From: Michael LeVert <mjlevert@gmail.com>
Date: September 26, 2013 at 4:43:22 PM EDT
To: Philip Saucier <psaucier@bernsteinshur.com>
Cc: Dan Riley <driley@bernsteinshur.com>
Subject: Re: FW: Draft Legislation

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[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>

Fri, Sep 27, 2013 at 3:11 PM

To: Philip Saucier <psaucier@bernsteinshur.com>, Jeremy Payne <jpayne@renewablemaine.org>
Cc: Dan Riley <driley@bernsteinshur.com>

The bill is in. Pres. Alford is sponsor. Talk with you all soon.

On Thu, Sep 26, 2013 at 2:52 PM, Philip Saucier <psaucier@bernsteinshur.com> wrote:

[Quoted text hidden]

Philip Saucier <psaucier@bernsteinshur.com>

Fri, Sep 27, 2013 at 3:18 PM

To: Michael LeVert <mjlevert@gmail.com>, Jeremy Payne <jpayne@renewablemaine.org>
Cc: Dan Riley <driley@bernsteinshur.com>

Mike- thank you for your email and for your help with this.

-Phil

From: Michael LeVert [mailto:mjlevert@gmail.com]

Sent: Friday, September 27, 2013 3:12 PM

To: Philip Saucier; Jeremy Payne

Cc: Dan Riley

Subject: Re: FW: Draft Legislation

The bill is in. Pres. Alford is sponsor. Talk with you all soon.

[Quoted text hidden]

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>

Fri, Sep 27, 2013 at 5:17 PM

To: Michael LeVert <mjlevert@gmail.com>

Cc: Philip Saucier <psaucier@bernsteinshur.com>, Dan Riley <driley@bernsteinshur.com>

Mike:

Thanks very much. Have a nice wkend.

Jeremy

[Quoted text hidden]



wind bill

Michael LeVert <mjlevert@gmail.com>

Fri, Sep 27, 2013 at 11:01 AM

To: Justin Alfond <jalfond@gmail.com>, Jack Woods <jack@jackwoods.org>, Ericka Dodge <wirydog@gmail.com>

JA - I talked with some folks about the risks we discussed about the wind bill. Consensus is that they're small, nothing to worry about. It's a good bill.

✶ Jack - can you put this wind power bill in for Justin? Thanks.

W LD1Clarification.DOC

Jack Woods <jack@jackwoods.org>

Fri, Sep 27, 2013 at 11:08 AM

To: Michael LeVert <mjlevert@gmail.com>

Cc: Justin Alfond <jalfond@gmail.com>, Ericka Dodge <wirydog@gmail.com>

Mike,

Who is the contact for this if the Revisor's Office has questions? Phil and Dan?

Jack Woods

(207) 518-8155

[Quoted text hidden]

Section 1. LD 1 is clarified in response to the DEP's issuance of application instructions that constitute a "Rule".

Amend 5 M.R.S.A. § 8002, sub-§9 as follows:

9. Rule. "Rule" is defined as follows.

A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, application instruction or other agency guideline or statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, including but not limited to statements that ascribe the weight to be afforded particular types of evidence, or describes the procedures or practices of the agency.

B. The term does not include:

. . . .
(4) Any form, instruction or explanatory statement of policy that in itself is not judicially enforceable, and that is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties, or privileges, and does not otherwise constitute a "Rule" as defined above.

Section 2. Amend either the Wind Energy Act or preferably the APA to clarify that agency decisionmaking must be based on objective and reliable data.

Add the following language after the first sentence of Section 9061 and after the first sentence of Section 10005.

Every agency decision must be based on the best available evidence including the conclusions and testimony of qualified experts, data gathered through objective and reliable means, and testimony and other evidence supported by independent indicia of reliability. If any agency decision is contrary to the conclusion(s) of the agency's expert, the agency must identify, with specificity, the basis for rejecting such expert's conclusion(s).

Section 3. Clarify the Wind Energy Act requirements related to energy and emissions-related benefits.

Amend 35-A M.R.S. § 3453 as follows:

In making findings pursuant to Title 12, section 685-B, 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. Applicants for an expedited wind energy development may submit evidence of the energy and emissions-related benefits of such a development, but the agency shall not require such

information nor shall the agency make specific findings on such benefits. Such benefits must be considered by the agency pursuant to 35-A M.R.S. § 3452.3.D.

Section 4. Clarify the meaning of the Wind Energy Act visual impact evaluation criteria.

Add the following language to the end of 35-A M.R.S. § 3452.3:

When considering the expedited wind energy development's purpose and the context of the proposed project pursuant to subsection 3.D. above, the agency shall take into account the policy objectives of the Act and the energy, environmental and economic benefits associated with the expedited wind energy development.

Michael LeVert <mjlevert@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Mon, Sep 30, 2013 at 4:54 PM

Jeremy - can we chat soon about the wind carryover bills?
[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Michael LeVert <mjlevert@gmail.com>

Wed, Oct 2, 2013 at 8:46 AM

Yessir -- you in Augusta today?

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org
[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Wed, Oct 2, 2013 at 8:33 PM

Hey Jeremy - Sorry, just getting this, and I wasn't in today. Thursday I am, or Friday I'm around...
[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Michael LeVert <mjlevert@gmail.com>

Thu, Oct 3, 2013 at 7:30 AM

Chat at 3 today?
[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Oct 3, 2013 at 8:11 AM

330 works...In SH or phone?
[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Michael LeVert <mjlevert@gmail.com>

Thu, Oct 3, 2013 at 9:31 AM

SH works -- 3rd or 4th flr?

Meeting Woodcock at CSOB at 4
[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Oct 3, 2013 at 11:08 AM

3rd floor. My new office. (Formerly Chuck's). See you then.
[Quoted text hidden]



LR 2650

Christopher O'Neil <cponeil22@gmail.com>
To: Justin Alfond <justin@justinalfond.com>

Sun, Oct 27, 2013 at 4:59 PM

LR 2650 An Act To Amend the Maine Wind Energy Act

Hi Justin - I have two clients who likely will be interested in this bill title. Can you tell me about it please?

Thanks. CPO

Christopher P. O'Neil
O'Neil Policy Consulting, Inc.
Government Relations
PO Box 631
Portland, ME 04104
cponeil22@gmail.com
(207) 590-3842

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Senate President Justin Alfond <justin@justinalfond.com>
To: Michael Levert <mjlevert@gmail.com>

Sun, Oct 27, 2013 at 9:37 PM

How would you describe the bill? Chris O'Neil is the lobbyist who fight to kill all wind projects.

A thought - should you reach out to Jeremy to get a description of this?

Best,
Justin

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

134 Sheridan Street
Portland, ME 04101
207-232-4187

[Quoted text hidden]

Senate President Justin Alfond <justin@justinalfond.com>
To: Michael Levert <mjlevert@gmail.com>

Tue, Nov 5, 2013 at 8:29 AM

Can you spend a few minutes on this today for me.

Thanks,
Justin

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

134 Sheridan Street
Portland, ME 04101
207-232-4187

[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>
To: Senate President Justin Alfond <justin@justinalfond.com>

Tue, Nov 5, 2013 at 8:59 AM

Will do this asap.

[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>

Tue, Nov 5, 2013 at 12:11 PM

To: Philip Saucier <psaucier@bernsteinshur.com>, Jeremy Payne <jpayne@renewablemaine.org>

Cc: Dan Riley <driley@bernsteinshur.com>

I put this description together for Pres. Alfond's bill. Do you have a minute to give me your thoughts on this?
Thanks.

LR 2650 is a regulatory reform bill which ensures that permitting decisions are open, transparent, and based on data and expertise. It ensures that the application process is fair and streamlined, and prohibits agencies from requiring businesses to provide extra and onerous information in their permit applications that can not be used as criteria for the agency decision.

Specifically, the bill does four things:

1. It ensures that application requirements for permits are consistent with existing law and rule-making. In other words, an applicant for an expedited wind project can not be required to provide information that is contrary to what has been agreed to in a transparent, open process like rule-making or the legislative process.

2. It requires that an agency's decision (e.g., to grant or not grant a site permit) must be based on the opinions of experts, and that if their decision is contrary to their experts' recommendation, they have to clearly explain why.

3. It prohibits DEP from requiring that applicants for an expedited wind permit provide proof of their energy and emissions benefits, which are already presumed in statute; that is, DEP has been directed to presume that wind power projects are good for the environment - and therefore applicants should not have to provide further proof of those benefits, not should DEP evaluate the application based on those benefits.

4. It ensures that the benefits of a wind power project (energy, environmental, economic) are taken into account when DEP is determining whether the scenic impact of wind turbines is enough to reject the proposal.

On Thu, Sep 26, 2013 at 2:52 PM, Philip Saucier <psaucier@bernsteinshur.com> wrote:

[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>

Tue, Nov 5, 2013 at 8:42 PM

To: Justin Alfond <jalfond@gmail.com>

See below for my take on your wind bill. I sent it to Dan and Phil to see if they agree on my description but haven't heard back. If they respond with changes, I'll let you know. In the interest of time, I think this is probably a pretty good description.

----- Forwarded message -----

From: Michael LeVert <mjlevert@gmail.com>

Date: Tue, Nov 5, 2013 at 12:11 PM

Subject: Re: FW: Draft Legislation

To: Philip Saucier <psaucier@bernsteinshur.com>, Jeremy Payne <jpayne@renewablemaine.org>

Cc: Dan Riley <driley@bernsteinshur.com>

I put this description together for Pres. Alfond's bill. Do you have a minute to give me your thoughts on this?
Thanks.

LR 2650 is a regulatory reform bill which ensures that state permitting decisions are open, transparent, and based on sound data and expertise. It ensures that the application process is fair and streamlined, and prohibits agencies from requiring businesses to provide extra and onerous information in their permit applications that can not be used as criteria for the agency decision.

Specifically, the bill does four things:

1. **It ensures that application requirements for permits are consistent with existing law and rule-making.** For example, an applicant for an expedited wind project can not be required to provide information that is contrary to what has been agreed to in a transparent, open process like rule-making or the legislative process.

2. **It requires that an agency's decision (e.g., to grant or not grant a site permit) must be based on the opinions of experts,** and that if their decision is contrary to their experts' recommendation, they must clearly explain why.

3. **It prohibits DEP from requiring that applicants for an expedited wind permit provide proof of their energy and emissions benefits,** which are already presumed in statute. In other words, since DEP is required by law to presume that wind power projects are good for the environment, applicants will not have to provide further proof of those benefits, not can DEP evaluate the application based on an applicant's submission of those benefits.

4. **It ensures that the benefits of a wind power project (energy, environmental, economic) are taken into account** when DEP is determining whether the scenic impact of wind turbines is significant enough to reject the proposal.

On Thu, Sep 26, 2013 at 2:52 PM, Philip Saucier <psaucier@bernsteinshur.com> wrote:

Hi Mike,

It was good to talk with you this afternoon. As promised I have attached the proposed amendments to LD 1/Regulatory Reform. Please feel free to contact me or Dan Riley if you have any questions.

Take care,

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Senate President Justin Alfond <jalfond@gmail.com>

Tue, Nov 5, 2013 at 10:47 PM

Reply-To: jalfond@gmail.com

To: Michael LeVert <mjlevert@gmail.com>

Great and I look forward to their responses.

Best,
Justin

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

134 Sheridan Street
Portland, ME 04101
207-232-4187

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>

Wed, Nov 6, 2013 at 4:55 PM

To: Michael LeVert <mjlevert@gmail.com>

Cc: Philip Saucier <psaucier@bernsteinshur.com>, Dan Riley <driley@bernsteinshur.com>

Mike:

Will get back to you tmrw with any suggestions.

Thanks.

Jeremy

[Quoted text hidden]

--

[Quoted text hidden]

Senate President Justin Alfond <jalfond@gmail.com>

Tue, Nov 12, 2013 at 8:14 AM

Reply-To: jalfond@gmail.com

To: Michael LeVert <mjlevert@gmail.com>

Did they respond to this?

Best,
Justin

Senate President Justin Alford
www.justinalfond.com
justin@justinalfond.com

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207-232-4187

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[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>
To: Justin Alford <jalfond@gmail.com>

Tue, Nov 12, 2013 at 8:31 AM

Jeremy confirmed receipt, said it was good but had a few comments; no response yet.
[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Michael LeVert <mjlevert@gmail.com>
Cc: Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Tue, Nov 12, 2013 at 8:56 AM

Mike:

Sorry for the delay in getting back to you w/ some edits for your consideration. See below for our thoughts. One important point is that we are not stating that agency decisions must be based on expert opinion, only that when the agency retains an expert and then issues a decision contrary to the conclusion of such expert, they must clearly state why they are rejecting the expert's conclusion. This language is not specific to wind power and we need to be careful not to set a standard that requires agencies to retain experts on a host of issues. To that end, we may want to add the following clause to Section 2 of the bill:

Every agency decision must be based on the best available evidence including, where appropriate, the conclusions and testimony

LR 2650 is a regulatory reform bill which ensures that permitting decisions are open, transparent, and based on the best available evidence ~~data and expertise~~. It ensures that the application process is fair and ~~streamlined~~, and prohibits agencies from requiring ~~businesses~~ extra and onerous information in their ~~permit applications~~ that is not required to demonstrate compliance with applicable review criteria ~~can not be used as criteria for the agency~~.

Specifically, the bill does four things:

1. It ensures that application requirements for permits are consistent with existing law and rule-making. In other words, an applicant for an expedited wind project can not be required to provide information that is contrary to what is required by applicable law ~~has been agreed to in a transparent, open process like rule-making or the legislative process.~~
2. It requires that an agency's decision (e.g., to grant or ~~not grant~~ or deny a site permit) must be based on the ~~opinions of experts on the best available evidence~~, and that if their the agency's decision is contrary to their experts' recommendation, ~~they have to~~ the agency must clearly explain why.
3. It prohibits DEP from requiring that applicants for an expedited wind permit provide proof of their energy and emissions benefits, which are already presumed in statute; that is, DEP has been directed to presume that wind power projects are good for the environment - and therefore applicants are not required ~~should not have to~~ provide further proof of those benefits, ~~not should DEP evaluate the application based on those benefits.~~
4. It ensures that the benefits of a wind power project (energy, environmental, economic) are taken into account when DEP is determining whether the ~~scenic impact of wind turbines~~ wind energy development meets the scenic impact criteria of the law ~~is enough to reject the proposal.~~

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

On Tue, Nov 5, 2013 at 12:11 PM, Michael LeVert <mjlevert@gmail.com> wrote:
I put this description together for Pres. Alfond's bill. Do you have a minute to give me your thoughts on this?
Thanks.

LR 2650 is a regulatory reform bill which ensures that permitting decisions are open, transparent, and based on data and expertise. It ensures that the application process is fair and streamlined, and prohibits agencies from requiring businesses to provide extra and onerous information in their permit applications that can not be used as criteria for the agency decision.

Specifically, the bill does four things:

1. It ensures that application requirements for permits are consistent with existing law and rule-making. In other words, an applicant for an expedited wind project can not be required to provide information that is contrary to what has been agreed to in a transparent, open process like rule-making or the legislative process.
2. It requires that an agency's decision (e.g., to grant or not grant a site permit) must be based on the opinions of experts, and that if their decision is contrary to their experts' recommendation, they have to clearly explain why.
3. It prohibits DEP from requiring that applicants for an expedited wind permit provide proof of their

energy and emissions benefits, which are already presumed in statute; that is, DEP has been directed to presume that wind power projects are good for the environment - and therefore applicants should not have to provide further proof of those benefits, not should DEP evaluate the application based on those benefits.

4. It ensures that the benefits of a wind power project (energy, environmental, economic) are taken into account when DEP is determining whether the scenic impact of wind turbines is enough to reject the proposal.

Michael LeVert <mjlevert@gmail.com>

Thu, Nov 14, 2013 at 10:22 AM

To: Justin Alfond <jalfond@gmail.com>, Ericka Dodge <wirydog@gmail.com>

Here are folks' edits to my summary of your wind bill. Legal-speak.

----- Forwarded message -----

From: **Jeremy Payne** <jpayne@renewablemaine.org>

Date: Tue, Nov 12, 2013 at 8:56 AM

Subject: Re: FW: Draft Legislation

[Quoted text hidden]

Section 1. LD 1 is clarified in response to the DEP's issuance of application instructions that constitute a "Rule".

Amend 5 M.R.S.A. § 8002, sub-§9 as follows:

9. Rule. "Rule" is defined as follows.

A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, application instruction or other agency guideline or statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, including but not limited to statements that ascribe the weight to be afforded particular types of evidence, or describes the procedures or practices of the agency.

B. The term does not include:

...

(4) Any form, instruction or explanatory statement of policy that in itself is not judicially enforceable, and that is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties, or privileges, and does not otherwise constitute a "Rule" as defined above.

Section 2. Amend either the Wind Energy Act or preferably the APA to clarify that agency decisionmaking must be based on objective and reliable data.

Add the following language after the first sentence of Section 9061 and after the first sentence of Section 10005.

Every agency decision must be based on the best available evidence including the conclusions and testimony of qualified experts, data gathered through objective and reliable means, and testimony and other evidence supported by independent indicia of reliability. If any agency decision is contrary to the conclusion(s) of the agency's expert, the agency must identify, with specificity, the basis for rejecting such expert's conclusion(s).

Section 3. Clarify the Wind Energy Act requirements related to energy and emissions-related benefits.

Amend 35-A M.R.S. § 3453 as follows:

In making findings pursuant to Title 12, section 685-B, 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. Applicants for an expedited wind energy development may submit evidence of the energy and emissions-related benefits of such a development, but the agency shall not require such



Michael LeVert <mjlevert@gmail.com>

2 messages

Dylan Voorhees <dvoorhees@nrcm.org>

Tue, Jan 7, 2014 at 8:53 AM

To: Michael LeVert <mjlevert@gmail.com>, Alysia Melnick <amelnick.legislature@gmail.com>

[REDACTED] permission to do the two anti-wind bills, so it will be a zoo and [REDACTED] will totally be lost (or contrasted with anti-wind in media, etc.) [REDACTED] hearing that we had planned as [REDACTED] not actually vote until [REDACTED]

Dylan

Michael LeVert <mjlevert@gmail.com>

Tue, Jan 7, 2014 at 4:34 PM

To: Dylan Voorhees <dvoorhees@nrcm.org>

Cc: Alysia Melnick <amelnick.legislature@gmail.com>

Left a mssg with Cleveland...stay tuned.

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

JLA Bills3 messages

John Woods, Senate President's Office <john.woods@legislature.maine.gov>

Thu, Jan 16, 2014 at 11:20 AM

To: kenneth.hardy@gmail.com

Hey Ken,

The President had five bills accepted by LegCouncil; tastings, Civic Center, college, FPDF, and the wind bill. The two VLA bills and college have come back, and I know you're still working on FPDF, but do you know what the hold-up is on the wind bill? Are we waiting for something?

Thanks!

John M. Woods
Legislative Aide
Senate President's Office

3 State House Station
Augusta, Maine 04333

(207) 287-1500 (office)
(207) 518-8155 (cell)
(207) 287-5862 (fax)

Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Jan 16, 2014 at 11:29 AM

To: "John Woods, Senate President's Office" <john.woods@legislature.maine.gov>

Let me check.

KDH

[Quoted text hidden]

John Woods, Senate President's Office <john.woods@legislature.maine.gov>

Thu, Jan 16, 2014 at 11:30 AM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thank you!

John M. Woods
Legislative Aide
Senate President's Office

3 State House Station
Augusta, Maine 04333

(207) 287-1500 (office)
(207) 518-8155 (cell)
(207) 287-5862 (fax)

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Let me check.

KDH

On Thu, Jan 16, 2014 at 11:20 AM, John Woods, Senate President's Office
<john.woods@legislature.maine.gov> wrote:
[Quoted text hidden]



Michael LeVert <mjlevert@gmail.com>

Wind study bill

3 messages

Dylan Voorhees <dvoorhees@nrcm.org>

Thu, Jan 16, 2014 at 2:55 PM

To: Alysia Melnick <amelnick.legislature@gmail.com>, Michael LeVert <mjlevert@gmail.com>

Cleveland is proposing a bill to authorize a substantial wind permitting review task force or study. With staffing...

Not what I expected...

Dylan Voorhees
NRCM

Sent from my U.S. Cellular® smartphone

Michael LeVert <mjlevert@gmail.com>

Thu, Jan 16, 2014 at 2:54 PM

To: Ken Hardy <kenneth.hardy@gmail.com>

[Quoted text hidden]

Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Jan 16, 2014 at 3:11 PM

To: Michael LeVert <mjlevert@gmail.com>

Son of a gun.

[Quoted text hidden]



EUT

Michael LeVert <mjlevert@gmail.com>

Fri, Jan 17, 2014 at 9:10 AM

To: Justin Alfond <jalfond@gmail.com>, Troy Jackson <jacksonforsenate@hotmail.com>, Ken Hardy <kenneth.hardy@gmail.com>

The EUT committee surprised some folks yesterday. I understand that the renewable energy folks were very upset, mostly about the perceived change in direction. Sen. Cleveland has offered to come in Tuesday and explain his strategy. Just so we're on the same page, here is my assessment of the facts - no judgment on the Chair's decision here, just an accounting of what I thought was expected and what actually happened. Troy, others - please tell me if I'm off-base.

Expectation:

100MW bill would get voted out of committee ONTP on Wednesday.

Three wind bills would get voted out with majority ONTP on Thursday. (Sen. Cleveland said this in last week's meeting with P.O.'s., and Sen Cleveland told renewable power folks this was the plan right before hearing.)

What actually happened:

No vote on 100MW bill on Wednesday.

2 of 3 wind bills were tabled on Thursday, including 616 with a new amendment from Patrick Woodcock and Rep. Dunphy.

A legislative study commission on wind was proposed by Senator Cleveland.

Sen. Cleveland explained the need for the commission by stating he would be "sad" if nothing was done to address the anti-wind siting issues.

Sen. Cleveland said on mic that Leadership said he could do a study commission.

Again, I'm not judging the outcomes. The Chairs surely have great reasons for this strategy. I just want to detail the change in game plan so we can talk it through.

Mike



Fwd: EUT

Michael LeVert <mjlevert@gmail.com>

Fri, Jan 17, 2014 at 9:13 AM

To: "Hicks, Ana" <ana.m.hicks@gmail.com>, Alysia Melnick <amelnick.legislature@gmail.com>

FYI, please do not distribute. My attempt at detailing a concrete example of EUT surprising Leadership.

----- Forwarded message -----

From: **Michael LeVert** <mjlevert@gmail.com>

Date: Fri, Jan 17, 2014 at 9:10 AM

Subject: EUT

To: Justin Alfond <jalfond@gmail.com>, Troy Jackson <jacksonforsenate@hotmail.com>, Ken Hardy <kenneth.hardy@gmail.com>

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Sen. Cleveland said on mic that Leadership said he could do a study commission.

Again, I'm not judging the outcomes. The Chairs surely have great reasons for this strategy. I just want to detail the change in game plan so we can talk it through.

Mike



Kenneth Hardy <kenneth.hardy@gmail.com>

Fwd: LD 1750

4 messages

Michael LeVert <mjlevert@gmail.com>
To: Ken Hardy <kenneth.hardy@gmail.com>

Thu, Jan 30, 2014 at 9:06 PM

is bill right?

----- Forwarded message -----

From: "Bill Norbert" <wnorbert@famemaine.com>
Date: Jan 30, 2014 2:36 PM
Subject: LD 1750
To: "Michael LeVert" <mjlevert@gmail.com>
Cc:

Michael, just a heads up that Pres. Alfond's bill regarding science and wind energy, LD 1750, gives us some heartburn.

It seemingly would require all our applications (see addition of "application instruction" in Section 1) to go through rulemaking, an admin. nightmare!

http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/SP069201.asp

I see what he's trying to do but could it be narrowed a bit? I'm sure other agencies will be concerned.

Thanks,

Bill

William Norbert

Governmental Affairs & Communications Manager
Finance Authority of Maine
P.O. Box 949, 5 Community Drive, Augusta, ME 04332-0949
207-620- 3540 or 1-800-228-3734
Fax: 207-213-2640 – TTY: 207-626-2717
wnorbert@famemaine.com

www.FAMEMaine.com

30 years of helping Maine people reach their business and education goals

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your compliance.

Hardy, Kenneth <Kenneth.Hardy@legislature.maine.gov>
To: "kenneth.hardy@gmail.com" <kenneth.hardy@gmail.com>

Fri, Feb 7, 2014 at 1:13 PM

From: Bill Norbert
Sent: Friday, February 07, 2014 1:10:05 PM (UTC-05:00) Eastern Time (US & Canada)
To: Hardy, Kenneth
Subject: LD 1750

Hi Ken:

Any update on alternate date for education briefing? If not, I'll just do it on my own.

Also, see below email I sent to Michael. We are concerned about proposed change to definition of "rule" at beginning of bill.

Any way to improve/drop?

Thanks,

Bill

William Norbert

Governmental Affairs & Communications Manager
Finance Authority of Maine
P.O. Box 949, 5 Community Drive, Augusta, ME 04332-0949
207-620-3540 or 1-800-228-3734
Fax: 207-213-2640 – TTY: 207-626-2717
wnorbert@famemaine.com

www.FAMEMaine.com

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From: Bill Norbert
Sent: Thursday, January 30, 2014 2:36 PM
To: 'Michael LeVert'

Subject: LD 1750

Michael, just a heads up that Pres. Alfond's bill regarding science and wind energy, LD 1750, gives us some heartburn.

It seemingly would require all our applications (see addition of "application instruction" in Section 1) to go through rulemaking, an admin. nightmare!

http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/SP069201.asp

I see what he's trying to do but could it be narrowed a bit? I'm sure other agencies will be concerned.

Thanks,

Bill

Hardy, Kenneth <Kenneth.Hardy@legislature.maine.gov>
To: "kenneth.hardy@gmail.com" <kenneth.hardy@gmail.com>

Fri, Feb 7, 2014 at 4:33 PM

From: Bill Norbert
Sent: Friday, February 07, 2014 4:32:59 PM (UTC-05:00) Eastern Time (US & Canada)
To: Hardy, Kenneth
Subject: Re: LD 1750

Thanks

From: Hardy, Kenneth [mailto:Kenneth.Hardy@legislature.maine.gov]
Sent: Friday, February 07, 2014 04:14 PM
To: Bill Norbert
Cc: LeVert, Michael <Michael.LeVert@legislature.maine.gov>
Subject: RE: LD 1750

Still Checking on back up date.

From: Bill Norbert [mailto:wnorbert@famemaine.com]
Sent: Friday, February 07, 2014 1:10 PM

[Quoted text hidden]

[Quoted text hidden]

Hardy, Kenneth <Kenneth.Hardy@legislature.maine.gov>

Mon, Feb 10, 2014 at 9:06 AM

To: "kenneth.hardy@gmail.com" <kenneth.hardy@gmail.com>

From: Bill Norbert

Sent: Monday, February 10, 2014 9:06:01 AM (UTC-05:00) Eastern Time (US & Canada)

To: Hardy, Kenneth

Subject: RE: LD 1750

Good, thanks. We'd rather not weigh in with testimony.

From: Hardy, Kenneth [mailto:Kenneth.Hardy@legislature.maine.gov]

Sent: Monday, February 10, 2014 9:04 AM

To: Bill Norbert

Subject: RE: LD 1750

On the bill, I am working on an amendment.

KDH

From: Bill Norbert [mailto:wnorbert@famemaine.com]

Sent: Friday, February 07, 2014 4:33 PM

[Quoted text hidden]

[Quoted text hidden]



LD 1750 (EUT) - Public Hearing Scheduled

Cassie Nixon <cassie.nixon@legislature.maine.gov>

Tue, Feb 4, 2014 at 5:26 PM

Reply-To: cassie.nixon@legislature.maine.gov

To: justin@justinalfond.com, marcia.homstead@legislature.maine.gov, john.woods@legislature.maine.gov

A public hearing for your bill LD 1750 "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws" has been scheduled for Tuesday, Feb 18 2014 1:00PM, Cross Building, Room 211.

Senate President Justin Alford <justin@justinalfond.com>

Wed, Feb 5, 2014 at 11:13 AM

To: Michael Levert <mjlevert@gmail.com>

So my bill is already in EUT...

Justin

Senate President Justin Alford

www.justinalfond.com

justin@justinalfond.com

143 Vaughan Street

Portland, ME 04102

207-232-4187

[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com>

Wed, Feb 5, 2014 at 11:30 AM

To: Ken Hardy <kenneth.hardy@gmail.com>, Ericka Dodge <wirydog@gmail.com>, Justin Alford

<jalfond@gmail.com>, Jack Woods <jack@jackwoods.org>

Team - so we need to figure out Justin's wind bill quickly. Some options: leave as is and let EUT work it. Come prepared with amendment. Rerefer to State and Local. Somehow split into two bills.

Ken- can you think about pros and cons and suggest a path?

Regardless, we will need remarks for Justin (Ken). And we'll need to make sure there is a good showing of public support (Ken). Perhaps Kurt Adams would speak in support. (Justin). And we should make sure the press understands the bill early (Ericka) especially because anti wind folks are already ginning up their members.

Thoughts?

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

Fwd: LD 1750 (EUT) - Public Hearing Scheduled

2 messages

Michael LeVert <mjlevert@gmail.com>

Wed, Feb 5, 2014 at 11:30 AM

To: Ken Hardy <kenneth.hardy@gmail.com>, Ericka Dodge <wirydog@gmail.com>, Justin Alfond <jalfond@gmail.com>, Jack Woods <jack@jackwoods.org>

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Thoughts?

----- Forwarded message -----

From: "Senate President Justin Alfond" <justin@justinalfond.com>

Date: Feb 5, 2014 11:13 AM

Subject: Fwd: LD 1750 (EUT) - Public Hearing Scheduled

To: "Michael Levert" <mjlevert@gmail.com>

Cc:

So my bill is already in EUT...

Justin

Senate President Justin Alfond

www.justinalfond.com

justin@justinalfond.com

143 Vaughan Street

Portland, ME 04102

207-232-4187

----- Forwarded message -----

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Date: Tue, Feb 4, 2014 at 5:26 PM

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Kenneth Hardy <kenneth.hardy@gmail.com>
To: Michael LeVert <mjlevert@gmail.com>

Wed, Feb 5, 2014 at 2:49 PM

Yep.

KDH

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

Can you spend a few minutes going over wind application bill with me today?

10 messages

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 6, 2014 at 11:07 AM

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 6, 2014 at 11:17 AM

Absolutely -- can I call you this pm?

What # is best?



Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

On Thu, Feb 6, 2014 at 11:07 AM, Kenneth Hardy <kenneth.hardy@gmail.com> wrote:

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 6, 2014 at 11:25 AM

Sure. I'm also talking with Dan Riley.

KDH

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 6, 2014 at 11:44 AM



Kenneth Hardy <kenneth.hardy@gmail.com>

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10 messages

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 6, 2014 at 11:07 AM

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 6, 2014 at 11:17 AM

Absolutely -- can I call you this pm?

What # is best?

I have to speak to the flippin' Augusta Kiwanis Club at noon (no idea why I agreed to this), and then I'm heading to Sunday River for the Chamber's leadership summit.

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

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To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 6, 2014 at 11:25 AM

Sure. I'm also talking with Dan Riley.

KDH

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 6, 2014 at 11:44 AM

I can call probably around 2 or 3pm?

What's the best # to call you?

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

[Quoted text hidden]

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 6, 2014 at 2:02 PM

I could do 2:30?

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 6, 2014 at 2:03 PM

Sure. Works for me.

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

[Quoted text hidden]

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Mon, Feb 10, 2014 at 2:38 PM

Are you guys lining up people to testify on the wind permitting bill?

We want a good showing.

Also, lets talk today or tomorrow about a possible amendment.

KDH

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Mon, Feb 10, 2014 at 5:19 PM

We will turn people out.

Let's connect in the am -- you around tmrw?

JP

[Quoted text hidden]

--

[Quoted text hidden]

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Tue, Feb 11, 2014 at 10:10 AM

I am here.

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Tue, Feb 11, 2014 at 10:16 AM

Two minutes

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

Should we shoot for a call

4 messages

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Wed, Feb 12, 2014 at 8:52 PM

On Friday....given the weather?

Re: LD 1750.

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 13, 2014 at 10:11 AM

Yes. What time works for your people? I will send out a draft later today.

KDH

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 13, 2014 at 10:12 AM

9:30?

Marcia initially indicated that 9 or 930 could work, but was going to check w/ Justin before confirming.

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org
[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 13, 2014 at 12:20 PM

Marcia confirmed 930 tmrw & is to send out a call-in #

Thx

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

Very Rough Discussion Draft for Tomorrow

5 messages

Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 13, 2014 at 8:56 PM

To: justin alfond <jalfond@gmail.com>, Jeremy Payne <jpayne@renewablemaine.org>

Attached is a rough draft to guide the discussion tomorrow. There are two options at the beginning that I think could narrow the focus of the bill.

Talk with you tomorrow.

KDH



An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws Amend Options.docx
18K

Jeremy Payne <jpayne@renewablemaine.org>

Sat, Feb 15, 2014 at 12:50 PM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Do you have what you need?

JP

[Quoted text hidden]

--

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
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Augusta, ME 04332
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207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

Kenneth D. Hardy <kenneth.hardy@gmail.com>

Mon, Feb 17, 2014 at 8:22 AM

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: justin alfond <jalfond@gmail.com>

Do you anticipate anyone is going to oppose the two last provisions in the original legislation? We are wondering if we leave that in. We are planning on sending out the amendment later today.

Also, President Alfond may want to talk with you, Juliet and Dan tomorrow before the hearing so he can ask any last minute questions and make sure we are on the same page.

Just to confirm, we have 5-7 people coming to testify on behalf of the bill, correct?

KDH

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>
Cc: justin alfond <jalfond@gmail.com>

Mon, Feb 17, 2014 at 8:54 AM

I can't imagine anyone will, other than perhaps the anti-wind contingent but they'll oppose the bill no matter what.

We are happy to discuss at any point. Dan & I will be at the State House in the morning and am sure we can dial in Juliet as needed.

Testifying in support:

State Chamber, MREA, at least two wind development companies, AGC (and they were aiming to turn out 3-4 contracting company members), Cianbro, landowner attorney (for Jay Haynes), and possibly Maine Forest Products Council...and maybe Maine Sierra Club:

Once you're comfortable w the amendment I will share the revised language w others to try and push them to support. Please lemme know once you've determined the language is "final."

We will also track down Hobbins, Cleveland, Sen Jackson, Gideon, Russell & Tipping-Spitz to brief them more fully on the amended language.

Jeremy

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>
To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>
Cc: justin alfond <jalfond@gmail.com>

Mon, Feb 17, 2014 at 1:52 PM

Ken:

Some additional reasons to leave in Sections 4 and 5....

Arguably, the most helpful wind provisions are the original Sections 4 and 5 of the bill and, in particular Section 4. Importantly, Section 4 will expressly give future DEP commissioners the ability to balance adverse visual impacts with a project's benefits in determining whether the overall impact is unreasonable. I think they have that ability now, but it is not express so I think it would help to make it express particularly because, bizarrely, the DEP has already taken the position in Bowers that it cannot do so under existing law. The DEP's position in Bowers will make it more difficult for a subsequent DEP commissioner to take a contrary position particularly if the BEP upholds the Bowers denial.

Jeremy

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[Quoted text hidden]

An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws

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

Option 1 – Replace the whole bill and simply place two restrictions in title 35-A that state:

DEP may not use application instructions to set additional requirements for permitting.

If during the application process the DEP ignores the advice of its hired expert it must give reasons why.

Option 2 – Amend the APA without amending the APA

Sec. 1 35-A Sec. XXX

Non withstanding XXX When applying 5 MRSA §8002 to wind power permitting process under XXX Sec XXX the title shall read:

Sec. 1. 5 MRSA §8002, sub-§9, ¶A, as amended by PL 2011, c. 304, Pt. G, §1, is further amended to read:

A. "Rule" means the whole or any part of every regulation, standard, code, application instruction, statement of policy, statement that designates the weight to be afforded particular types of evidence or other agency guideline or statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency.

Sec. 2. 5 MRSA §9061, first ¶, as enacted by PL 1977, c. 551, §3, is amended to read:

Every agency decision made at the conclusion of an adjudicatory proceeding ~~shall~~must be in writing or stated in the record, and ~~shall~~must include findings of fact sufficient to apprise the parties

and any interested member of the public of the basis for the decision. Every agency decision must be based on the best evidence available to the agency, including the conclusions and testimony of qualified experts, data gathered through objective and reliable means and testimony and other evidence supported by independent confirmation of reliability. If an agency decision is contrary to a conclusion of a qualified expert of the agency, the agency must identify with specificity the basis for rejecting the expert's conclusion. A copy of the decision ~~shall~~must be delivered or promptly mailed to each party to the proceeding or ~~his~~the party's representative of record. Written notice of the party's rights to review or appeal of the decision within the agency or review of the decision by the courts, as the case may be, and of the action required and the time within which such action must be taken in order to exercise the right of review or appeal, ~~shall~~must be given to each party with the decision.

Sec. 3. 5 MRSA §10005, as enacted by PL 1985, c. 680, §8, is amended to read:

§ 10005. Decision and record

Any licensing decision not involving an adjudicatory proceeding, as defined in section 8002, subsection 1, ~~shall~~must be made in writing and ~~shall~~must be made only on the basis of evidence relevant to the case. Every licensing decision must be based on the best evidence available to the agency, including the conclusions and testimony of qualified experts, data gathered through objective and reliable means and testimony and other evidence supported by independent confirmation of reliability. If an agency's licensing decision is contrary to a conclusion of a qualified expert of the agency, the agency must identify with specificity the basis for rejecting the expert's conclusion. When the requested license is denied, or only conditionally approved, the decision ~~shall~~must contain or reflect the agency's reasoning, in a manner sufficient to inform the applicant and the public of the basis for the agency's action.

Sec. 4. 35-A MRSA §3452, sub-§3, ¶D, as enacted by PL 2007, c. 661, Pt. A, §7, is amended to read:

D. The expedited wind energy development's purpose and the context of the proposed activity, including but not limited to the energy and emissions-related benefits described in section 3402, the policy objectives of the Maine Wind Energy Act and the energy, environmental and economic benefits associated with the expedited wind energy development;

Sec. 5. 35-A MRSA §3454, first ¶, as repealed and replaced by PL 2013, c. 424, Pt. A, §21, is amended to read:

In making findings pursuant to 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. An applicant for an expedited wind energy development may submit evidence of the energy and emissions-related benefits but the primary siting authority may not require the submission of the evidence or make specific findings related to energy and emissions-related benefits. The Department of Labor, the Governor's Office of Policy and Management, the Governor's Energy Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

SUMMARY

This bill amends the Maine Administrative Procedure Act by amending the definition of "rule" and requiring that every agency decision be based on the best evidence available to the agency. The bill also amends the laws governing expedited wind energy developments to provide that in determining the tangible benefits of an expedited wind energy development, the primary siting authority may not require the submission of evidence of the energy and emissions-related benefits or make specific findings related to energy and emissions-related benefits. Those benefits are presumed. The bill also provides that in determining whether a proposed expedited wind energy development will have an unreasonable adverse effect on scenic character or existing uses and whether an applicant must provide a visual impact assessment, the primary siting authority is required to consider the energy and emissions-related benefits of the expedited wind energy development, the policy objectives of the Maine Wind Energy Act and the energy, environmental and economic benefits associated with the expedited wind energy development.



Conference call (Ken will initiate call)

Created by: Marcia Homstead

Time

9:30am - 10:30am (Eastern Time)

Guests

KDH

Date

Fri Feb 14, 2014

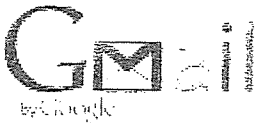
Description

Conference Dial-in Number: (712) 432-1500

Participant Access Code: 669173#

President Alfond; Ken Hardy; Jeremy Payne; Kate Knox; Dan Riley

My Notes



LD 1750

Senate President Justin Alfond <jalfond@gmail.com>

Fri, Feb 14, 2014 at 9:57 AM

Reply-To: jalfond@gmail.com

To: Justin Alfond <jalfond@gmail.com>, "Kenneth D. Hardy" <kenneth.hardy@gmail.com>

Juliet - APA language already should prevent these issues

a) Get at the DEP to follow existing law

b) LD 1 - I sat on the committee and during the hearings were heard about state agencies using guidance and internal policies as the force of law and have no authority to do. In LD 1 this was strictly prohibited. In hydro-policy - never took it to legislature, thru rule making and just did it thru an internal rule. Legislature said you can not do it. Another example of the same department of doing the same thing and against law.

BACKGROUND: LD 1 was drafted by Ann Robinson at the Governor request with Preti Flaherty donations on the bill. Preti was arguing for changes that the select committee did not go through. We rejected most of them because they were specific client issues and not regulatory reform that the select committee was looking for.

c) Ask AG for advisory opinion & guidance

* how do get this information to the committee (chairs have had AG office - LD 1013 radio frequency levels // probably could get chairs to ask AG office to come and talk about

application instruction comply with the law). But also not following LD 1. Force DEP pull back application instructions and do it right.

d) After AG office told DEP that this is a problem (when rule first came out) - the DEP still required Bingham project to produce

e) Sit down with AG & Tim Feeley - need information out there but don't want to put her office in a bind. What questions can we ask you? (B/C

f) get an amendment to the bill as soon as possible so we can get it to the agencies so that they know at the hearing - will be going off that - will prevent a lot of people testifying and will get a lot of people not testifying against.

h) 35-A: you can not do these two things! This would create benefit for wind industry

APA portion

Application

Tell DEP to comply with existing law

Wind Energy Act - if DEP was carry out policy then you would not need this either

Wind Energy portions of the bill:

* Last two sections

Bingham Public meeting - Pattie Aho - the bill embarrass Governor

Baldacci & Kurt Adams:

1) Due process was removed

2) JA now follow

3) AGC will be supporting the bill: transparency - if you have hired an expert, ignoring their findings and should have to explain why?

4) Commissioner an attorney is fertile ground for us

DEP should make decision on best evidence
should not put on new guidance and new instructions (and propose rules that were rejected last session LD 385 -
provide factual evidence - DEP knew they could not do this and the legislature still said no – and they

Senate President Justin Alford
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143 Vaughan Street
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207-232-4187



LD 1750 testimony

Senate President Justin Alfond <jalfond@gmail.com>

Fri, Feb 14, 2014 at 11:03 AM

Reply-To: jalfond@gmail.com

To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>, Ericka Dodge <edodge.mail@gmail.com>, Jack Woods <jack@jackwoods.org>

Hi all,

On Tuesday at 1pm, LD 1750 my DEP transparency bill is up in EUT committee. Ken will take the lead in writing the testimony and today he is working on an amendment to narrow the bill's focus.

So for fun read this..http://www.pressherald.com/opinion/Maine_Voices__Bill_favoring_wind_industry_threatens_to_muzzle_Maine_citizens__regulators_.html

I think my testimony:

1) First go right after the Chris O'Neil crowd: transparency of the sponsor

a) I support renewable energy: it's cleaner, it's uses our inherent assets as a state, and it's critical for our energy independence

b) I support the renewable energy industry because we can be a world leader renewable production - why should we not benefit?

c) I receive donations (should I list how much since the 126th started) from the renewable industry (as well as many others) and I report my donations. Big \$, Big wind is a

a great slogan but hardly the basis of the decisions made by then Rep. Ken Fletcher, Rep. Stacey Fitts and so many others.

d)

2) Go right after citizen involvement, transparency & road blocking public process

a) This bill will not stifle the public engagement in renewable energy. Any suggestion of this is just false ***is there anything in the bill that somehow takes away from citizens being involved in the bill?

b) Nothing is this bill will stifle transparency or the public process but rather the complete opposite.

So why am I introducing this bill? Because I like many of you on this committee and Maine believed in the principals of Governor LePage first initiative regulatory reform under LD1

a) As many of you know I sat on the LD 1 committee and during the five months of hearings we heard over and over from businesses, non-profits and individuals that Augusta needs to create laws, guidance and policies that are transparent, consistent and predictable. We then heard about many state agencies that did not do this because they had a culture and pattern of creating their own guidance and internal policies to make decisions and force of law. We as a committee agreed unanimously, that state agency do not have the authority to this was strictly prohibited.

b) Today you will hear from many that come after me that Maine's DEP is not following the law (what statute or law in LD 1?) we passed in 2011.

2) This bill has three major objectives:

a) Predictability: It requires DEP to comply with existing law

b) Transparency: It prohibits the DEP from putting on new guidance and new instructions to any wind project/applicant internally. It also lays out that any new guidance or instruction must come to the legislature for minor and substantive rule making (and propose rules that were rejected last session LD 385 - provide factual evidence -

c) Transparency: And it mandates that if the DEP hires expert consultants that their recommendations should be transparent and if the DEP decides to not follow those recommendations then the DEP must explain why

3) Ken, what I do about the last two sections (Wind part) of the bill?

Best,
Justin

Senate President Justin Alford
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187



Kenneth Hardy <kenneth.hardy@gmail.com>

LD 1750

3 messages

Browne, Juliet <jbrowne@verrilldana.com>

Fri, Feb 14, 2014 at 11:40 AM

To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>, "jalfond@gmail.com" <jalfond@gmail.com>

Cc: Dan Riley <driley@bernsteinshur.com>, Jeremy Payne <jpayne@renewablemaine.org>, Kate Knox

<kknox@bernsteinshur.com>

Ken,

Here is some suggested language. A few notes:

- I've suggested making Section 1 retroactive to June 1, 2013 to expressly capture the new instructions issued by DEP.
- The second part of Section 1 essentially states that the primary siting authority in a wind energy development must comply with the APA. Perhaps gratuitous in the normal course, but things are far from normal.
- Section 2 is limited to the primary siting authority providing in writing the basis for rejecting its expert's conclusion on compliance with an applicable review criteria. While I would like to include the original language about making decisions on the basis of the best available evidence, it is tricky and would probably be better as a talking point in support of the expert issue as opposed to a separate requirement.

Also, just as an FYI, I know some people raised concerns about the scope of original Section 1 language, but they likely were not aware of the existing statute, which expressly excludes more typical application instructions, including forms, instructions, etc. that are intended solely as advice to assist persons in determining, exercising or complying with the legal rights, duties, or privileges. 5 MRSA Section 8002.9.B. That language would have been unaffected by 1750 but my guess is no one was aware of that express carve out.

Let me know if I can be of any further help.

Also, can you confirm receipt of this because I'm not sure I have your best e-mail.

Juliet

Juliet T. Browne, Partner

One Portland Square

Portland, ME 04112-0586

Office: (207) 253-4608

Fax: (207) 253-4609

Bio: verrilldana.com/jbrowne

Verrill Dana
Attorneys at Law

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Section 1 is replaced with the following.DOC
25K

Kenneth Hardy <kenneth.hardy@gmail.com>

Fri, Feb 14, 2014 at 2:06 PM

To: Justin Alfond <jalfond@gmail.com>, Michael LeVert <mjlevert@gmail.com>

Mr. President,

This looks ok to me. I think we just tell them on the last two sections we need them to come out.

KDH

[Quoted text hidden]



Section 1 is replaced with the following.DOC
25K

Senate President Justin Alfond <jalfond@gmail.com>

Mon, Feb 17, 2014 at 3:54 PM

Reply-To: jalfond@gmail.com

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Cc: Michael LeVert <mjlevert@gmail.com>

Hi Ken,

This new language looks fine to me. As far as the last two sections 4 & 5 -- I think Jeremy and crew want this in and it seems fine to me. Are you concerned in leaving it in?

This new language with the final two sections as is, are ready to be sent to the entire list of interested parties, departments and (Gerrity).

Best,
Justin

Senate President Justin Alford
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

[Quoted text hidden]

Section 1 is replaced with the following:

35-A MRSA § 3460 is enacted to read:

The primary siting authority may not establish additional permitting requirements or determine the weight to be afforded certain types of evidence through application instructions or any other “rule” as defined in 5 MRSA § 8002.9, unless such permitting requirement or determination of the weight to be afforded certain types of evidence has been adopted in a manner consistent with the applicable requirements of the Administrative Procedures Act. This prohibition is retroactive to June 1, 2013. Additionally, the primary siting authority may not establish any guideline, policy, or other requirement that implements, interprets, or makes specific the laws applied by the primary siting authority in review of an expedited wind energy development except in accordance with the Administrative Procedures Act, including but not limited to 5 MRSA § 8002.9.

Sections 2 and 3 are replaced with the following:

35-A MRSA § 3461 is enacted to read:

If the primary siting authority retains a third-party expert to provide input on an expedited wind energy development’s compliance with applicable review criteria and reaches a conclusion that is contrary to the conclusion reached by such expert, then the licensing decision by the primary siting authority must identify in writing the basis for rejecting that expert’s conclusion. Nothing in this section shall be interpreted to require the primary siting authority to identify in writing the basis for rejecting or disagreeing with every aspect of such expert’s analysis, but only the conclusion of whether an expedited wind energy development complies with one or more applicable review criteria.



Kenneth Hardy <kenneth.hardy@gmail.com>

Op Ed on Wind

2 messages

Kenneth Hardy <kenneth.hardy@gmail.com>

Fri, Feb 14, 2014 at 2:18 PM

To: Jeremy Payne <jpayne@renewablemaine.org>, Ericka Dodge <edodge.mail@gmail.com>

Jeremy and Ericka,

Just connecting you two. Ericka on a call today we were talking about getting a response op ed to the PPH wind one yesterday. Possibly by the general contractors.

KDH

Jeremy Payne <jpayne@renewablemaine.org>

Mon, Feb 17, 2014 at 2:28 PM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Cc: Ericka Dodge <edodge.mail@gmail.com>

Thanks -- I've connected w/ Scott Lever at the Associated General Contractors and he thinks this is likely something they can submit.

We spoke about the particulars of the bill, what the op-ed might say, etc -- he'll just need to get approval from his Board, but he was optimistic.

Ericka, do you want to draft it or do you want me to? Either way is fine by me.

Thx.

JP

Jeremy N. Payne
Executive Director
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www.renewablemaine.org
[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

Wind Testimony

2 messages

Mon, Feb 17, 2014 at 8:23 AM

Kenneth D. Hardy <kenneth.hardy@gmail.com>

To: justin alfond <jalfond@gmail.com>, "Graham M. Wilson" <GWilson@perkinscoie.com>, Ericka Dodge <edodge.mail@gmail.com>

Coming shortly, just polishing a little.

KDH

Mon, Feb 17, 2014 at 8:42 AM

Senate President Justin Alfond <jalfond@gmail.com>

Reply-To: jalfond@gmail.com

To: Ken Hardy <kenneth.hardy@gmail.com>

Cc: Ericka Dodge <edodge.mail@gmail.com>

Great and thank you.

J

[Quoted text hidden]

6/16/2014 10:08 AM



Kenneth Hardy <kenneth.hardy@gmail.com>

Wind Testimony

1 message

Kenneth Hardy <kenneth.hardy@gmail.com>

Mon, Feb 17, 2014 at 11:37 AM

To: justin alfond <jalfond@gmail.com>, Michael LeVert <mjlevert@gmail.com>, Ericka Dodge <edodge.mail@gmail.com>

Bit of a balancing act here. Tried to put some heat in it but also wanted to make the point that we are just asking the DEP to do what they already should.

My suggestion here is we all look over it internally and then ask Jeremy, Juliet and Dan to take a look?

Are you OK with the amendment Mr. President, and is it OK to send out to the legislative liaison list, Bruce Gerrity, and other interested parties who approached us about concerns?

I think in the email we just say we heard people's concerns that the original cut was too broad in regards to the APA, and we wanted to make sure we were narrowly tailoring it to address our stated concern?

KDH

**WIND.docx**

18K

TESTIMONY of PRESIDENT JUSTIN ALFOND

In Support Of

L.D. 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws"

Senator Cleveland, Representative Hobbins and esteemed members of the Joint Standing Utilities and Energy, my name is Justin Alfond. I am a resident of Portland, I am honored to serve as President of the Maine Senate and proud to represent Senate District 8, which includes most of Portland and the islands of Peaks, Cliff and Great Diamond. Today, I am pleased to appear before you as the sponsor of LD 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws."

I would begin by pointing out that I have presented an amendment to the bill before you. The amendment removes the impact of the bill on the entire Administrative Procedures Act and more narrowly focuses the implications to Chapter 35-A, dealing with the permitting of grid-scale wind energy development.

Let me make a simple statement of my philosophy in regards to wind power development. The growth of wind energy resources in Maine is vital to our state's long term economic and energy future. The production of wind energy is clean and renewable, and Maine is ideally situated to be a leader in the nation, and in the world. In an increasingly competitive global economy we must harness our competitive advantages, and wind power is at the top of the list in Maine.

There are some more cynical members of our community who question the commitment some of us have to wind energy development and say it is only because of financial support we receive from the wind energy community. They want to rely on slogans like "Big Wind, Big Money" to try and discredit the wind industry and those who would support it. But slogans ignore the thoughtful work done on this issue on both sides of the aisle by men like former Representatives Ken Fletcher and Stacey Fitts. A thorough and considerate process was set up, and when the opponents don't like the process or the results, they turn to obfuscation and accusations.

Just last week, the opponents claimed that that this bill was "hijacking the public process, restraining regulators and punishing opposition." This is patently incorrect. It is exactly the opposite, it is an attempt to make sure that the wind siting regulators are not hijacking the process and using their own pre-determined conclusions in siting policies. The bill does not amend the public's input, but is simply an attempt to ensure that the regulators use criteria that they are empowered to, and don't arbitrarily make up criteria and other conditions that are outside of their authority.

A stable regulatory authority, free from the personal predilections and whims of regulators was one of the main principals of Governor LePage's first initiative regulatory reform under LD1. As many of you know I sat on the LD 1 committee, and during the five months of hearings we heard over and over from businesses, non-profits and individuals that Augusta needs to create laws, guidance and policies that are transparent, consistent and predictable. We then heard about many

state agencies that did not do this because they had a culture and pattern of creating their own guidance and internal policies to make decisions and force of law. We as a committee agreed unanimously, that state agencies do not have this authority, and that it should be clearly and strictly prohibited.

Today you will hear testimony that Maine's DEP is not following the changes to the administrative procedures act we made in LD 1 around rulemaking. The DEP continues to use application instructions and policy statements regarding evidence to circumvent the process and impose their own will and judgments. This has directly impacted wind siting applications in a negative way. It has also been alleged that the department has disregarded the advice of experts without reason.

Thus, the bill and the amendment I have presented attempts to rein in those behaviors in two ways. First it promotes predictability by clarifying that the DEP in evaluating applications may not establish additional permitting requirements or new requirements determines the weight of evidence unless it goes through the established process in the Administrative Procedures Act. Again, the Department should already be doing this, but this would make it explicit. It also reinforces what basis the department can make finding on.

Second, it promotes transparency by requiring that if the primary siting authority hires an expert but then ignores the conclusions that the expert comes to the Department must identify in writing why they have ignored that conclusion. If the people of Maine are paying for an expert to evaluate an application and the DEP ignores the expert, both the applicant and the people of Maine have a right to know why.

Those testifying behind me will be able to go into more detail, but let me close by saying it is not my intention to squelch opposition. Wind power development is too important to Maine and I simply want to create a regulatory environment where decisions are made in a transparent, consistent, and predictable manner. I thank you for your time and would be happy to answer any questions you may have.



Re: Very Rough Discussion Draft for Tomorrow

Jeremy Payne <jpayne@renewablemaine.org>
To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>
Cc: justin alfond <jalfond@gmail.com>

Mon, Feb 17, 2014 at 1:52 PM

Ken:

Some additional reasons to leave in Sections 4 and 5....

Arguably, the most helpful wind provisions are the original Sections 4 and 5 of the bill and, in particular Section 4. Importantly, Section 4 will expressly give future DEP commissioners the ability to balance adverse visual impacts with a project's benefits in determining whether the overall impact is unreasonable. I think they have that ability now, but it is not express so I think it would help to make it express particularly because, bizarrely, the DEP has already taken the position in Bowers that it cannot do so under existing law. The DEP's position in Bowers will make it more difficult for a subsequent DEP commissioner to take a contrary position particularly if the BEP upholds the Bowers denial.

Jeremy

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On Mon, Feb 17, 2014 at 8:54 AM, Jeremy Payne <jpayne@renewablemaine.org> wrote:

I can't imagine anyone will, other than perhaps the anti-wind contingent but they'll oppose the bill no matter what.

We are happy to discuss at any point. Dan & I will be at the State House in the morning and am sure we can dial in Juliet as needed.

Testifying in support:

State Chamber, MREA, at least two wind development companies, AGC (and they were aiming to turn out 3-4 contracting company members), Cianbro, landowner attorney (for Jay Haynes), and possibly Maine Forest Products Council...and maybe Maine Sierra Club.

Once you're comfortable w the amendment I will share the revised language w others to try and push them to

support. Please lemme know once you've determined the language is "final."

We will also track down Hobbins, Cleveland, Sen Jackson, Gideon, Russell & Tipping-Spitz to brief them more fully on the amended language.

Jeremy

On Feb 17, 2014, at 8:22 AM, "Kenneth D. Hardy" <kenneth.hardy@gmail.com> wrote:

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Do you have what you need?

JP

On Thursday, February 13, 2014, Kenneth Hardy <kenneth.hardy@gmail.com> wrote:

Attached is a rough draft to guide the discussion tomorrow. There are two options at the beginning that I think could narrow the focus of the bill.

Talk with you tomorrow.

KDH

—

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

5/29/2014

Gmail - Re: Very Rough Discussion Draft for Tomorrow




Kenneth Hardy <kenneth.hardy@gmail.com>

(no subject)

8 messages

Mon, Feb 17, 2014 at 5:17 PM

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Kenneth Hardy <kenneth.hardy@gmail.com>

 Proposed Amendment to LD 1750.docx
12K

Mon, Feb 17, 2014 at 5:21 PM

Kenneth Hardy <kenneth.hardy@gmail.com>
To: justin alfond <jalfond@gmail.com>, Michael LeVert <mjlevert@gmail.com>, Ericka Dodge <edodge.mail@gmail.com>


Mr. President,

Was just thinking it might be a good idea if you sent Sen. Cleveland and Rep. Hobbins the amendment and gave them a heads up. The little courtesies never hurt.

KDH

SenJohn.Cleveland@legislature.maine.gov
bhobbins@hobbinslaw.com

On Mon, Feb 17, 2014 at 5:17 PM, Kenneth Hardy <kenneth.hardy@gmail.com> wrote:


 Proposed Amendment to LD 1750.docx
12K

Mon, Feb 17, 2014 at 8:31 PM

Kenneth Hardy <kenneth.hardy@gmail.com>
To: Bill Norbert <wnorbert@famemaine.com>, Tim Feeley <feeley.t@gmail.com>, bgerrity@preti.com

Attached please find an amendment for the hearing on LD 1750 tomorrow. We appreciated you sharing your concerns and hope this addresses them.

KDH

 Proposed Amendment to LD 1750.docx
12K

Mon, Feb 17, 2014 at 8:41 PM

Bill Norbert <wnorbert@famemaine.com>
To: "kenneth.hardy@gmail.com" <kenneth.hardy@gmail.com>

6/16/2014 10:0

Much better. Thanks, Ken.

William Norbert

Governmental Affairs & Communications Manager
Finance Authority of Maine
P.O. Box 949, 5 Community Drive, Augusta, ME 04332-0949
207-620-3540 or 1-800-228-3734
Fax: 207-213-2640 – TTY: 207-626-2717
wnorbert@famemaine.com

www.FAMEMaine.com

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From: Kenneth Hardy [mailto:kenneth.hardy@gmail.com]

Sent: Monday, February 17, 2014 08:31 PM

To: Bill Norbert; Tim Feeley <feeley.t@gmail.com>; bgerrity@preti.com <bgerrity@preti.com>

Subject: Fwd:

Attached please find an amendment for the hearing on LD 1750 tomorrow. We appreciated you sharing your concerns and hope this addresses them.

KDH

Tim Feeley <feeley.t@gmail.com>

Mon, Feb 17, 2014 at 8:46 PM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Thanks Ken.

Here is out tomorrow, but said he would be checking his email for this.

Sent from my iPhone

> On Feb 17, 2014, at 8:31 PM, Kenneth Hardy <kenneth.hardy@gmail.com> wrote:

>

> Attached please find an amendment for the hearing on LD 1750 tomorrow. We appreciated you sharing your concerns and hope this addresses them.

>

> KDH

>

>

> <Proposed Amendment to LD 1750.docx>

Kenneth D. Hardy <kenneth.hardy@gmail.com>

Tue, Feb 18, 2014 at 7:11 AM

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: Michael LeVert <mjlevert@gmail.com>

We are good with this version. I will be sending to leg liaisons later this morning. Hobbins and Cleveland have seen.

KDH

Begin forwarded message:

From: Kenneth Hardy <kenneth.hardy@gmail.com>
Date: February 17, 2014 at 8:31:48 PM EST
To: Bill Norbert <wnorbert@famemaine.com>, Tim Feeley <feeley.t@gmail.com>, bgerrity@preti.com
Subject: Fwd:

Attached please find an amendment for the hearing on LD 1750 tomorrow. We appreciated you sharing your concerns and hope this addresses them.

KDH



Proposed Amendment to LD 1750.docx
12K

Jeremy Payne <jpayne@renewablemaine.org>
To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>
Cc: Michael LeVert <mjlevert@gmail.com>

Tue, Feb 18, 2014 at 7:43 AM

Thank you. I will touch base w chairs this morning, too.

I will share with our allies.

Jeremy

[Quoted text hidden]

| <Proposed Amendment to LD 1750.docx>

Kenneth D. Hardy <kenneth.hardy@gmail.com>
To: Ericka Dodge <edodge.mail@gmail.com>

Tue, Feb 18, 2014 at 3:49 PM

KDH

Begin forwarded message:

From: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>
Date: February 18, 2014 at 7:11:44 AM EST
To: Jeremy Payne <jpayne@renewablemaine.org>
Cc: Michael LeVert <mjlevert@gmail.com>

Subject: Fwd:

[Quoted text hidden]



Proposed Amendment to LD 1750.docx

12K

Proposed Amendment to LD 1750

Section 1 is replaced with the following:

35-A MRSA § 3460 is enacted to read:

June 1
The primary siting authority may not establish additional permitting requirements or determine the weight to be afforded certain types of evidence through application instructions or any other “rule” as defined in 5 MRSA § 8002.9, unless such permitting requirement or determination of the weight to be afforded certain types of evidence has been adopted in a manner consistent with the applicable requirements of the Administrative Procedures Act. This prohibition is retroactive to August 31, 2013. Additionally, the primary siting authority may not establish any guideline, policy, or other requirement that implements, interprets, or makes specific the laws applied by the primary siting authority in review of an expedited wind energy development ***that is judicially enforceable***, except in accordance with the Administrative Procedures Act, including but not limited to 5 MRSA § 8002.9.

Sections 2 and 3 are replaced with the following:

35-A MRSA § 3461 is enacted to read:

If the primary siting authority retains a third-party expert to provide input on an expedited wind energy development’s compliance with applicable review criteria and reaches a conclusion that is contrary to the conclusion reached by such expert, then the licensing decision by the primary siting authority must identify in writing the basis for rejecting that expert’s conclusion. Nothing in this section shall be interpreted to require the primary siting authority to identify in writing the basis for rejecting or disagreeing with every aspect of such expert’s analysis, but only the conclusion of whether an expedited wind energy development complies with one or more applicable review criteria.

Sections 4 and 5 remain.

*2X deleted
4*



Kenneth Hardy <kenneth.hardy@gmail.com>

Re: WIND (mjlevert@gmail.com)

6 messages

Michael LeVert <mjlevert@gmail.com>

Mon, Feb 17, 2014 at 6:17 PM

To: "Justin Alfond (Google Drive)" <jalfond@gmail.com>

Cc: Ericka Dodge <edodge.mail@gmail.com>, Jack Woods <jack@jackwoods.org>, Ken Hardy <kenneth.hardy@gmail.com>

Guys - I struggle with google doc when making more than a few edits or rearranging things. So I attach my revisions using Track Changes, and I paste the edits below. See what you think.

TESTIMONY of PRESIDENT JUSTIN ALFOND

In Support Of

L.D. 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws"

Senator Cleveland, Representative Hobbins and esteemed members of the Joint Standing Utilities and Energy, my name is Justin Alfond. I am a resident of Portland, I am honored to serve as President of the Maine Senate and proud to represent Senate District 8, which includes most of Portland and the islands of Peaks, Cliff and Great Diamond. Today, I am pleased to appear before you as the sponsor of LD 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws."

I would begin by pointing out that I have presented an amendment to the bill before you. The amendment removes the impact of the bill on the entire Administrative Procedures Act and more narrowly focuses the implications to Chapter 35-A, dealing with the permitting of grid-scale wind energy development.

First I'd like to share a few of my beliefs in regards to renewable energy development in Maine. The growth of renewable energy production in Maine is vital to our state's long term economic

and energy future. In particular, the development of a strong wind energy industry is important -- it's clean; it's renewable; its costs have come down significantly over the past few years; many Maine companies are today investing billions of dollars into the Maine economy; and Maine has the natural assets to be a leader in wind energy in the nation, and in the world. In an increasingly competitive global economy, Maine must harness all of our competitive advantages, and wind power is near the top of the list for Maine.

So what is LD 1750 after. For any business or industry, an objective and consistent regulatory authority is critical. In fact, this was one of the main principals of Governor LePage's first initiative -- regulatory reform under LD1. As many of you know I sat on the LD 1 committee, and during the five months of hearings we heard over and over from businesses, non-profits and individuals that Augusta needs to create laws, guidance and policies that are transparent, consistent and predictable. We then heard about many state agencies that did not do this because they had a culture and pattern of creating their own guidance and internal policies to make decisions and force of law. We as a legislature agreed that state agencies do not have this authority, and that it should be clearly and strictly prohibited.

This bill is an attempt to make sure that the wind siting regulators are playing by these rules, too, and are not undermining the legislature or using their own pre-determined conclusions in siting policies. The bill is simply an attempt to ensure that the regulators use the criteria that they are empowered to by statute, and don't arbitrarily use criteria and other conditions that are outside of their statutory authority.

Today you will hear testimony that Maine's DEP is not following the changes to the administrative procedures act we made in LD 1 around rulemaking. The DEP continues to use application instructions and policy statements regarding evidence to circumvent the process and impose their own will and judgments. This has directly impacted wind siting applications in a negative way. It has also been alleged that the department has disregarded the advice of experts without reason. Whether you support wind or not, this is inappropriate and goes against the changes we made during the LD 1 process.

Thus, the bill and the amendment I have presented attempts to rectify this in two ways. First it promotes predictability by clarifying that the DEP, when evaluating wind energy applications, may not establish additional permitting requirements or new requirements that determines the weight of evidence unless it goes through the established process in the Administrative Procedures Act. Again, the DEP should already be doing this, but this bill would make it explicit. It also reinforces what basis the department can make findings on.

Second, it promotes transparency by requiring that if the primary siting authority hires an expert but then ignores the conclusions that the expert presents, the Department must identify in writing why they have ignored that conclusion. If the people of Maine are paying for an expert to evaluate

an application and the DEP ignores the expert, both the applicant and the people of Maine have a right to know why.

Renewable energy and wind power development are too important to Maine and this bill is an attempt to create a regulatory environment where decisions are made in a transparent, consistent, and predictable manner.

Those testifying behind me will be able to go into more detail, but let me close by saying that I know that wind energy is controversial in this committee. Ironically, that's not the case across the state, where Maine people overwhelmingly support wind energy. But for those who don't support wind I want to make it clear that I am in no way trying to undermine their ability to contest any wind project, for whatever reason. That's their right, and I respect and value their opinions. But what I don't condone – and what I am continually shocked by – is the cynicism of a small but vocal group of wind opponents, who slander wind supporters, question their integrity, and knowingly deceive the public about the motivations of wind supporters. We should debate wind energy. Just like we should debate oil and natural gas and solar. And we should hold the wind energy industry accountable. But I hope we can do that in an honest and respectful way that allows for reasonable people to disagree. My motivations, just like yours, is to do what's right for Maine people. I believe this bill is the right thing to do, Renewable energy and wind power development are too important to Maine and I simply want to create a regulatory environment where decisions are made in a transparent, consistent, and predictable manner.

I thank you for your time and would be happy to answer any questions you may have.


On Feb 17, 2014 4:00 PM, "justin alfond (Google Drive)" <jalfond@gmail.com> wrote:

I've shared an item with you.

 WIND

Google Drive: create, share, and keep all your stuff in one place.

Google

 wind MJL.odt
30K

Michael LeVert <mjlevert@gmail.com>

Mon, Feb 17, 2014 at 6:42 PM

To: "justin alfond (Google Drive)" <jalfond@gmail.com>

Cc: Ericka Dodge <edodge.mail@gmail.com>, Jack Woods <jack@jackwoods.org>, Ken Hardy <kenneth.hardy@gmail.com>

resending with one correction at bottom of text below.

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I would begin by pointing out that I have presented an amendment to the bill before you. The amendment removes the impact of the bill on the entire Administrative Procedures Act and more narrowly focuses the implications to Chapter 35-A, dealing with the permitting of grid-scale wind energy development.

First I'd like to share a few of my beliefs in regards to renewable energy development in Maine. The growth of renewable energy production in Maine is vital to our state's long term economic and energy future. In particular, the development of a strong wind energy industry is important -- it's clean; it's renewable; it's costs have come down significantly over the past few years; many Maine companies are today investing billions of dollars into the Maine economy; and Maine has the natural assets to be a leader in wind energy in the nation, and in the world. In an increasingly competitive global economy, Maine must harness all of our competitive advantages, and wind power is near the top of the list for Maine.

So what is LD 1750 after. For any business or industry, an objective and consistent regulatory authority is critical. In fact, this was one of the main principals of Governor LePage's first initiative -- regulatory reform under LD1. As many of you know I sat on the LD 1 committee, and during the five months of hearings we heard over and over from businesses, non-profits and individuals that Augusta needs to create laws, guidance and policies that are transparent, consistent and predictable. We then heard about many state agencies that did not do this because they had a culture and pattern of creating their own guidance and internal policies to make decisions and force of law. We as a legislature agreed that state agencies do not have this authority, and that it should be clearly and strictly prohibited.

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 WIND

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Google

Reply-To: jalfond@gmail.com
To: Michael Levert <mjlevert@gmail.com>
Cc: Jack Woods <jack@jackwoods.org>, Ken Hardy <kenneth.hardy@gmail.com>, Ericka Dodge <edodge.mail@gmail.com>

Michael,

This testimony is very good. It strikes the right balance and tone.

Best,
Justin

[Quoted text hidden]

Michael LeVert <mjlevert@gmail.com> Mon, Feb 17, 2014 at 6:48 PM
To: Justin Alfond <jalfond@gmail.com>
Cc: Jack Woods <jack@jackwoods.org>, Ericka Dodge <edodge.mail@gmail.com>, Ken Hardy <kenneth.hardy@gmail.com>

All credit goes to ken. I just put on my editor's hat...

[Quoted text hidden]

Senate President Justin Alfond <jalfond@gmail.com> Mon, Feb 17, 2014 at 7:14 PM
Reply-To: jalfond@gmail.com
To: Michael Levert <mjlevert@gmail.com>
Cc: Jack Woods <jack@jackwoods.org>, Ken Hardy <kenneth.hardy@gmail.com>, Ericka Dodge <edodge.mail@gmail.com>

I agree, Ken teed this up following my instructions to be aggressive. Thank you Ken.

[Quoted text hidden]

Kenneth Hardy <kenneth.hardy@gmail.com> Mon, Feb 17, 2014 at 7:19 PM
Draft To: justin alfond <jalfond@gmail.com>
Cc: Michael Levert <mjlevert@gmail.com>, Jack Woods <jack@jackwoods.org>, Ericka Dodge <edodge.mail@gmail.com>

[Quoted text hidden]

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Kenneth Hardy <kenneth.hardy@gmail.com>

WIND (kenneth.hardy@gmail.com)

justin alfond (Google Drive) <jalfond@gmail.com>

To: kenneth.hardy@gmail.com

Mon, Feb 17, 2014 at 4:00 PM

Cc: edodge.mail@gmail.com, jack@jackwoods.org, mjlevert@gmail.com

I've shared an item with you.



Google Drive: create, share, and keep all your stuff in one place.

Google

Barry Hobbins

From: Senate President Justin Alfond <jalfond@gmail.com>
Sent: Monday, February 17, 2014 8:45 PM
To: John Cleveland; Barry Hobbins
Cc: Kenneth D. Hardy
Subject: LD 1750: Amendment
Attachments: Proposed Amendment to LD 1750.doc

Hi Senator Cleveland and Representative Hobbins,

I wanted you to see my amendment to LD 1750 before tomorrow's afternoon public hearing. Ken Hardy will find both of you in the morning with a hard copy also.

Hope you both had a great long weekend!

Best,
Justin

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

Proposed Amendment to LD 1750

Section 1 is replaced with the following:

35-A MRSA § 3460 is enacted to read:

The primary siting authority may not establish additional permitting requirements or determine the weight to be afforded certain types of evidence through application instructions or any other “rule” as defined in 5 MRSA § 8002.9, unless such permitting requirement or determination of the weight to be afforded certain types of evidence has been adopted in a manner consistent with the applicable requirements of the Administrative Procedures Act. This prohibition is retroactive to June 1, 2013. Additionally, the primary siting authority may not establish any guideline, policy, or other requirement that implements, interprets, or makes specific the laws applied by the primary siting authority in review of an expedited wind energy development except in accordance with the Administrative Procedures Act, including but not limited to 5 MRSA § 8002.9.

Sections 2 and 3 are replaced with the following:

35-A MRSA § 3461 is enacted to read:

If the primary siting authority retains a third-party expert to provide input on an expedited wind energy development’s compliance with applicable review criteria and reaches a conclusion that is contrary to the conclusion reached by such expert, then the licensing decision by the primary siting authority must identify in writing the basis for rejecting that expert’s conclusion. Nothing in this section shall be interpreted to require the primary siting authority to identify in writing the basis for rejecting or disagreeing with every aspect of such expert’s analysis, but only the conclusion of whether an expedited wind energy development complies with one or more applicable review criteria.

Sections 4 and 5 remain.

5/15/2014

Gmail - Fwd:



Alysa Melnick <amelnick.legislature@gmail.com>

Fwd:

2 messages

Jeremy Payne <jpayne@renewablemaine.org>
To: Alysa Melnick <amelnick.legislature@gmail.com>

Tue, Feb 18, 2014 at 8:56 AM

FYI – LD 1750 amendment attached.

Thx.

JP

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

----- Forwarded message -----

From: **Kenneth D. Hardy** <kenneth.hardy@gmail.com>
Date: Tue, Feb 18, 2014 at 7:11 AM
Subject: Fwd:
To: Jeremy Payne <jpayne@renewablemaine.org>
Cc: Michael LeVert <mjlevert@gmail.com>

We are good with this version. I will be sending to leg liaisons later this morning. Hobbins and Cleveland have seen.

KDH



Proposed Amendment to LD 1750.docx

12K

5/15/2014

Gmail - Fwd:

Alysia Melnick <amelnick.legislature@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Tue, Feb 18, 2014 at 11:32 AM

Thanks!

[Quoted text hidden]

—

Alysia Melnick, Esq.

Legal and Policy Counsel

Office of the Speaker of the House

Maine Legislature

alysia.melnick@legislature.maine.gov

Direct (207) 287-1306, Cell (207) 939-4190

Proposed Amendment to LD 1750

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35-A MRSA § 3460 is enacted to read:

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Sections 4 and 5 remain.

Hardy, Kenneth

From: Hardy, Kenneth
Sent: Tuesday, February 18, 2014 9:08 AM
To: Feeley, Timothy
Subject: RE: LD 1750

Of course.

From: Feeley, Timothy [<mailto:Timothy.Feeley@maine.gov>]
Sent: Tuesday, February 18, 2014 9:07 AM
To: Hardy, Kenneth
Subject: FW: LD 1750

Is it ok to send Anne Head at OFPR your proposed Amendment?

From: Head, Anne L
Sent: Tuesday, February 18, 2014 8:59 AM
To: Feeley, Timothy
Subject: LD 1750

Tim,

How likely is it that the Senate President will propose an amendment to LD 1750 deleting the Title 5 sections of the bill?

Thanks,
Anne Head

*Anne L. Head, Commissioner
Department of Professional and Financial Regulation
Office (207) 624-8511
Cell (207) 462-2394*



Kenneth Hardy <kenneth.hardy@gmail.com>

Fwd: DEP testimony for LD 1750

1 message

Senate President Justin Alfond <SenJustin.Alfond@legislature.maine.gov>

Tue, Feb 18, 2014 at 9:45 AM

To: Ken Hardy <kenneth.hardy@gmail.com>, Michael Levert <mjlevert@gmail.com>, Ericka Dodge <edodge.mail@gmail.com>

Fyi.

Ken please read and let me know if we need to adjust.

Best,
Justin

----- Forwarded message -----

From: "Karagiannes, Mike" <Mike.Karagiannes@maine.gov>
Date: Feb 18, 2014 9:42 AM
Subject: DEP testimony for LD 1750
To: "Alfond, SenJustin" <SenJustin.Alfond@legislature.maine.gov>
Cc: "Parent, Heather" <Heather.Parent@maine.gov>

Senator Alfond,

Attached are the DEP's testimony for the public hearing on LD 1750. Sorry for sending you this at the last minute but we have just finalized them this morning.

Sincerely,

Mike Karagiannes
Policy Development Specialist
Office of the Commissioner
Maine Department of Environmental Protection
Office: (207) 287-7024
mike.karagiannes@maine.gov

P.S. Because the size of the report was too large to email, I'm attaching the web link to the report mentioned in Commissioner Aho testimony.

<http://www.maine.gov/dep/bep/legislative-reports/BEP%20Report%20to%20Leg%20for%202013.pdf>

2 attachments



126th 2nd LD 1750 MAPA and Wind Energy_MB_testimony.pdf

86K



126th, 2nd Session_ LD 1750- Testimony_finalaho.pdf

86K



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PATRICIA W. AHO
COMMISSIONER

TESTIMONY OF MARK BERGERON, DIRECTOR
DIVISION OF LAND RESOURCE REGULATION

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 1750

AN ACT TO AMEND THE MAINE ADMINISTRATIVE PROCEDURE ACT AND
CLARIFY WIND ENERGY LAWS

SPONSORED BY SENATOR ALFOND

BEFORE THE JOINT STANDING COMMITTEE
ON
ENERGY, UTILITIES AND TECHNOLOGY

DATE OF HEARING:

FEBRUARY 18, 2014

Senator Cleveland, Representative Hobbins, and members of the Committee, I am Mark Bergeron, the Director of the Division of Land Resource Regulation at the Department of Environmental Protection, speaking in opposition to L.D. 1750, specifically against Sections two through five.

Sections 2 and 3 of LD 1750, on page 1, apply to all state agencies, and echo current procedure under the adjudicatory hearing process as laid out in the Administrative Procedures Act, while simultaneously weakening the Department's ability to execute its statutory responsibility to make independent decisions regarding permit applications, and increasing regulatory uncertainty for applicants. Section 4 applies to the review of

scenic impacts from a wind energy project, and requires the Department to consider the effects of criteria not related to scenic impact in this review, including specifically the energy and emissions-related benefits of a project, as well as the energy (sic), environmental and economic benefits of the project. Section 5 prevents the Department from requiring an applicant to submit information relating to energy and emissions-related benefits as part of the tangible benefits portion of an application for an expedited wind energy project.

The language proposed in Sections 2 and 3 of LD 1750, on page 1, requires the Department and all other state agencies to:

- use the best evidence available, which is currently standard Department procedure;
- include the conclusions and testimony of qualified experts as a basis for every agency decision made at the conclusion of an adjudicatory proceeding, and every licensing decision;
- determine that data considered in making those decisions has been collected using objective and reliable means; and
- independently confirm the reliability of any testimony or other evidence used to reach any such decision.

An adjudicatory hearing is intended to provide a venue for the presentation of evidence on both sides of an issue, and to provide the opportunity for proponents of either side to cross-examine witnesses in a court-like environment, so that the evidence presented can be fully investigated as to veracity, relevance, and completeness. During an adjudicatory hearing, proponents of each side of an issue present the best available evidence in support of their positions, recruit qualified experts to support their assertions, closely examine the qualifications of experts presented by the opposing side, closely examine the validity of data and data collection methodologies, and in general do their best to validate their position. The presiding officer at such a hearing, much like a judge in a court of law, weighs the evidence presented in light of the

testimony of the expert witnesses, and makes a decision based on that evidence. The application review process the Department uses to make licensing decisions parallels the procedures used in adjudicatory hearings, only without the formalities of sworn testimony and a courtroom-like environment. In both cases, the goal of the decision-maker is to make the correct decision based on the evidence and the applicable law. The provisions of Sections 2 and 3 of this bill would require the Department to adopt the conclusions and testimony of experts on every aspect of every decision, regardless of the criterion being evaluated. The Department typically uses pre-qualified outside contractors only for review of submissions in specialized areas of expertise such as sound levels or scenic impacts. The Department currently requires specific data collection techniques in areas where national or industry standards apply, like wetland delineation and soil mapping, but not in areas where photographs or on-the-ground measurements by an applicant are sufficient. Licensing staff reviews evidence submitted by applicants and interested persons to determine its reliability. The requirement to delegate mundane elements of the review process to qualified experts will increase processing times, increase cost, and increase uncertainty for applicants.

Section 4 of LD 1750 inserts new language into the Wind Energy Act (WEA). 35-A M.R.S. §3452 is the portion of the Wind Energy Act titled "Determination of Effect on Scenic Character and Related Uses". Subsection 3 sets out the criteria to be considered when reviewing scenic impacts of a wind energy development. Section 4 of LD 1750 would modify paragraph 3 to require the Department to consider and evaluate energy and emissions-related benefits, as well as energy, environmental and economic benefits as factors affecting the scenic impact of a project. This would require the Department to balance the potential degradation of visual quality against potential energy, economic, environmental and emissions-related benefits. Such arbitrary balancing or comparison of unrelated effects of a development would increase regulatory uncertainty for developers.

Section 5 of LD 1750 inserts language into the WEA which would prevent the Department from requiring an applicant to submit evidence relating to energy and emissions-related benefits of a proposed development as part of the tangible benefits of project, and enjoins the Department from making findings regarding these benefits. The part of the WEA affected by Section 5, 35-A M.R.S. §3454, is subtitled "Determination of Tangible Benefits," and specifically requires the Department to "presume that an expedited wind energy development provides energy and emissions-related benefits", and to "make additional findings regarding other tangible benefits provided by the development". Inclusion of energy and emissions-related benefits in §3454 implies that they are tangible benefits. By stating that findings regarding other tangible benefits are additional findings, §3454 also allows the Department to make findings regarding energy and emissions-related benefits. A license for an expedited wind energy development includes a finding that enumerates specific tangible benefits such as payments to host communities, snowmobile clubs and conservation groups, and other benefits as described in the statutory definition of tangible benefits. Since statute presumes that an expedited wind energy project provides energy and emissions-related benefits, the Department may not find that those benefits do not exist. This does not mean that the Department may not or should not discover and make findings regarding particular aspects of these benefits. Additionally, the wording in Section 5 may result in an interpretation that information regarding the energy and emissions-related benefits of a project are not to be made available after a project is operational, which would hinder the Department's ability to track and report on the cumulative benefits of wind energy projects as required by statute.

Thank you for the opportunity to provide our comments and I would be happy to answer any questions you may have on this bill.



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PATRICIA W. AHO
COMMISSIONER

TESTIMONY OF PATRICIA AHO, COMMISSIONER
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION OF L.D. 1750

AN ACT TO AMEND THE MAINE ADMINISTRATIVE PROCEDURE ACT AND
CLARIFY WIND ENERGY LAWS

SPONSORED BY SENATOR ALFOND

BEFORE THE JOINT STANDING COMMITTEE
ON
ENERGY, UTILITIES AND TECHNOLOGY

DATE OF HEARING:

FEBRUARY 18, 2014

Good afternoon Senator Cleveland, Representative Hobbins and members of the Energy, Utilities and Technology Committee. I am Patricia Aho, Commissioner of the Department of Environmental Protection, which oversees the regulatory and licensing aspects of grid-scale wind energy development projects. I am here today to provide you with an overview of our work and with me today is Mark Bergeron, our Director of Land Resource Regulation, the division which undertakes the permitting, compliance and enforcement of wind power projects. Following me, Mark will provide you with specific comments on certain sections of LD 1750 and answer questions you may have regarding the specifics of our licensing process. Though the Wind Energy Act is codified in statute at 35-A MRS §§ 3401-3459, it is the Department which oversees all of the licensing, compliance and enforcement related to grid-scale wind projects. Smaller wind projects are also under the jurisdiction of the Department in certain circumstances, but the focus of my testimony today is on the larger, grid-scale projects. Wind projects, especially expedited or large-scale projects have been and continue to be a significant

focus of staff time at the Department whether during the permitting phase, also continuing beyond that phase with ongoing compliance and enforcement work and appeals.

These projects bring with them emotional and for some involved, life-changing decisions, for those who are located in the areas near a proposed project. I have met personally with many concerned citizens – both supportive of and concerned with wind projects, undertaken a number of site visits and I take their questions, their need for inclusion in the process and their concerns seriously. It is at the heart of some of the changes we have made at the Department.

Since 2008 when the Expedited Wind Energy Act was established, all projects handled by DEP, whether denied or approved have been appealed to the Board of Environmental Protection and almost all have also been appealed to the Maine Law Court. Please realize that the Department's time and effort on a particular project doesn't end at the decision on the license. Staff time continues with appeals which are made, with compliance and enforcement questions, constituent and public questions as well as legislative questions and discussions.

Much has been made recently regarding the Department's focus to implement the law as it was written as well as other recent changes the Department has instituted in order to provide additional opportunities for the concerned and interested public to engage on proposed applications. There has been much consternation and considerable confusion regarding some of these changes and why the Department has undertaken those changes. These changes came about because:

- Members of the public, whether in the organized or unorganized parts of the state, wanted additional opportunities to provide public input into a proposed application;
- The Department's experience with the permitting process related to large projects;
- The need to ensure that the statutory criteria as enacted were being followed for these projects as we follow for other types of land use projects.

Let me provide you with a brief synopsis of the recent changes we have made to our permitting process.

- In August 2011, the Department established a new two-step public meeting process to provide expanded opportunities for public comment and input. Prior to the new policy, the public had one opportunity at the beginning of an application process. Now the public has an opportunity at the beginning to ask questions and gather information and then again toward the end once the staff has drafted an analysis for the public to review and provide comments. The Commissioner attends and receives the comments from the public at the second opportunity.

These comments are entered into the public record, evaluated, and given consideration during the final analysis review and order.

- DEP application forms had not been updated since 2008 (the start of the expedited wind approach) and in 2011 the application forms and application instructions – (known as submission requirements at the DEP)- were updated regarding a portion of the tangible benefits calculation requirements.
- In 2012, new noise regulations were finally adopted and became effective in during the summer. Among other provisions, the regulations establish a night-time noise level for wind projects.
- In 2013, the application requirements were updated to include many of the requirements which had not been previously listed on the application form, though required by the Department and specified by the Wind Energy Act. These included: shadow flicker assessments, safety considerations, tangible benefits, decommissioning financial assurance amounts, fire prevention and response measures, part-time, full-time jobs, the energy benefits for Maine citizens, scenic character and visual impact assessment materials.
- In 2013 a new law (P.L. 2013, C. 325) requires “best practical mitigation” for all aspects of a wind project, new requirements which are redundant to our public hearing and adjudicatory proceedings, and protection for the Bicknell’s Thrush habitat. These changes apply to project applications submitted after October 9, 2013. As of today, we have not received any applications for grid-scale wind energy projects since the October 9, 2013.

As many of you are aware, the Board of Environmental Protection is the entity which hears the appeals on wind energy licensing projects. Through these experiences, the Board highlighted in its Annual Report to the Legislature the issues which are frequently raised or contested in the appeal proceedings. Prior to writing its Annual Report, the Board also requested Mark Bergeron, Land Resource Regulation Division Director provide a briefing regarding the process improvements and more importantly issues the Department has identified looking forward. I have attached to this testimony a copy of the Board’s Annual Report which was provided to the Energy, Utilities and Technology Committee and to the Environment and Natural Resources Committee. That report is also informative of our current and emerging issues.

We do have concerns with LD 1750 as it is drafted. Let me speak briefly at an overarching level and allow Mr. Bergeron to provide you in his testimony on the specifics. This bill simply put - places a stop on all work at DEP, whether it is related to wind power projects or not. The bill states “application instructions” which means the forms we use, have to go through a rulemaking process. Not only does this stop all of our permitting work until such time as that can happen, it also means any corrections to any forms, any changes to update forms which may be needed can never happen unless a rulemaking is undertaken. It means applications for economic development projects, wastewater or drinking water improvements, or frankly any work at any agency in state government halts until rulemaking occurs.

We assume the bill's intent is to strike the changes the Department made to its wind application submission requirements. Not to halt all environmental work or the work of all state agencies. The changes DEP made to its submission requirements (application form) include asking applicants to provide the Department with the information regarding what is already required in state law. Perhaps though what should be most informative to you is that the original Wind Energy Act (PL 2007 c. 661) specifically allows the Department to request through the submission requirements and further states, "Implementation of this section does not require rulemaking under Title 5, chapter 375." (Section B-13). Thus, the Department was simply following the law when it undertook the necessary changes to the submission requirements (application form).

Because of our needs to be able to update application forms, instructions, submission requirements and related materials without the time, the staff time and the expense of rulemaking, especially for submission requirements which had been specifically listed in the Wind Energy Act, and because shutting down all work at the Department and all other state agencies isn't the outcome any wish for, we do have significant concerns with the first sections of the bill.

I sincerely appreciate the opportunity for me to comment today and to provide the Committee an understanding of the needs of the Department and why we have made changes to our process to reflect the criteria established in the law.

Hardy, Kenneth

From: Hardy, Kenneth
Sent: Tuesday, February 18, 2014 10:30 AM
To: Aho, Patricia; Bergeron, Mark
Subject: Amendment to LD 1750
Attachments: Proposed Amendment to LD 1750.docx

Commissioner Aho,

President Alfond wanted me to make sure you had seen this proposed amendment to LD 1750. Please contact me with questions.

Thank you,

KDH



Kenneth Hardy <kenneth.hardy@gmail.com>

One more draft

2 messages

Kenneth Hardy <kenneth.hardy@gmail.com>

Tue, Feb 18, 2014 at 10:46 AM

To: Jack Woods <jack@jackwoods.org>, Ericka Dodge <edodge.mail@gmail.com>, Michael LeVert <mjlevert@gmail.com>

Made a few edits. The one big change is that I took out the sentence saying when the public pays for an expert, because technically its more like the applicant paying.

Jack can proof one more time, format and print off the 20 copies?

Thanks,

KDH

**TESTIMONY of PRESIDENT JUSTIN ALFOND - Take 3.docx**

17K

Jack Woods <jack@jackwoods.org>

Tue, Feb 18, 2014 at 11:27 AM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Cc: Ericka Dodge <edodge.mail@gmail.com>, Michael LeVert <mjlevert@gmail.com>

Changed minor typos, printed and ready for committee.

Jack Woods

(207) 518-8155

[Quoted text hidden]



Alysia Melnick <amelnick.legislature@gmail.com>

Fwd: Maine is in Great Danger

1 message

Jeremy Payne <jpayne@renewablemaine.org>

Tue, Feb 18, 2014 at 12:52 PM

To: Ken Hardy <kenneth.hardy@gmail.com>, Michael LeVert <mjlevert@gmail.com>, "amelnick.legislature@gmail.com" <amelnick.legislature@gmail.com>, "edodge.mail@gmail.com" <edodge.mail@gmail.com>

FYI...

Begin forwarded message:

From: Sara Gideon <saraigideon@gmail.com>**Date:** February 18, 2014 at 12:40:45 PM EST**To:** "Barry J. Hobbins - Maine State Legislature (bhobbins@hobbinslaw.com)" <bhobbins@hobbinslaw.com>, Jeremy Payne <jpayne@renewablemaine.org>**Subject:** Fwd: FW: Maine is in Great Danger

----- Forwarded message -----

From: Gideon, RepSara <repsara.gideon@legislature.maine.gov>**Date:** Mon, Feb 17, 2014 at 9:22 PM**Subject:** FW: Maine is in Great Danger**To:** "saraigideon@gmail.com" <saraigideon@gmail.com>

From: SavingMaine.org [SavingMaine.org@ads-launch.com]**Sent:** Monday, February 17, 2014 8:53 PM**To:** Gideon, RepSara**Subject:** Maine is in Great Danger**MAINE IS IN GREAT DANGER**

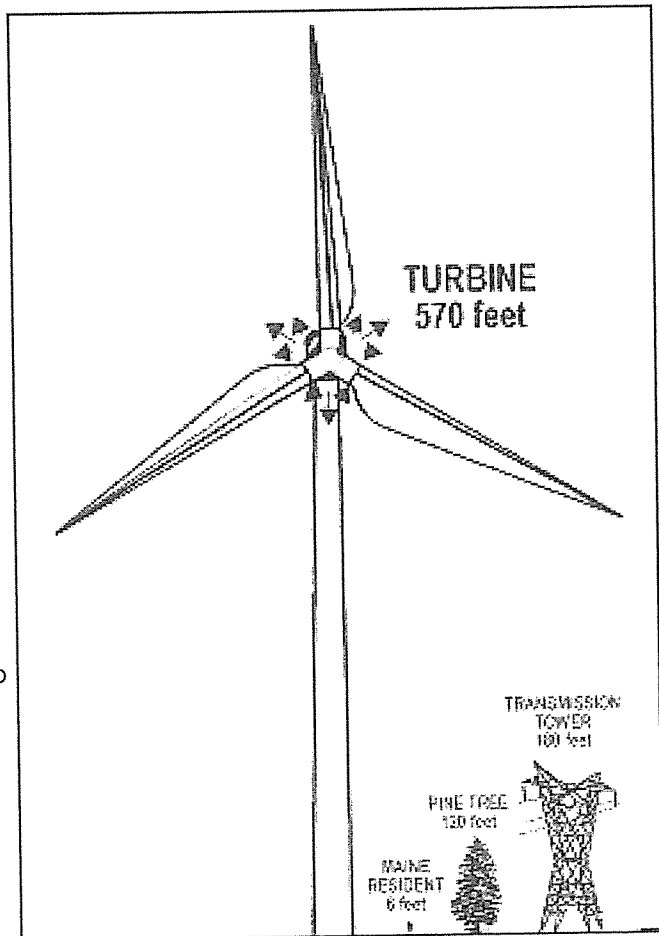
TWO MINUTES OF YOUR TIME CAN HELP SAVE OUR BELOVED STATE

Democratic leaders in the Maine Legislature are hustling behind closed doors to push through a bill that wipes out the right of Maine citizens to testify before State agencies.

Backed by Senator Justin Alford (D Portland) and Representative Diane Russell (D Portland), the bill, LD 1750, prohibits the State Department of Environmental Protection (DEP) and other State agencies from allowing public testimony on many destructive projects. These include the massive expansion of thousands of industrial wind towers across Maine that is being planned by foreign and out of state energy companies and banks.

LD 1750 requires that State agencies such as DEP may only consider "the testimony of qualified experts, data gathered by objective and reliable means, and supported by independent confirmation of reliability." This means **Maine citizens no longer have the right** to present testimony on projects that may destroy their outdoor resources, recreation, scenic beauty, property values, and health. And the cost of hiring professional experts to provide testimony will be so prohibitively expensive that citizens will have no recourse at all.

To avoid public outrage, LD 1750 is being hustled through the Legislature at the very end by Senators Alford (D), Cleveland (D) and Jackson (D), and Representatives Russell (D), Gideon (D), Beavers (D), Rykerson (D) and Tipping-Spitz (D). They have labelled the bill "emergency", which means it has minimum public input, no environmental review, and can be passed by the Legislature by Friday, February 21.



Because of industrial wind power's catastrophic environmental, social, and economic impacts, *wind projects have been halted by citizen opposition in southern New England states*. But now these and other eastern states are now paying to devastate the magnificent Maine ridges, peaks, and mountains of Maine with enormous **howling machines more than 50 stories high**, some so tall they'll be the third-tallest structures in New England.

These vast projects have been proven to **slaughter millions of birds and bats, destroy scenic beauty, lower property values and tourism, sicken people and drive them from their homes, disrupt economies and raise electric rates**. But they make billions in taxpayer-funded subsidies for the investment banks that develop them, all which gets added to our \$18 Trillion national debt. And a lot of that money gets passed along to politicians, media, and *special-interest groups willing to betray Maine for cash*.

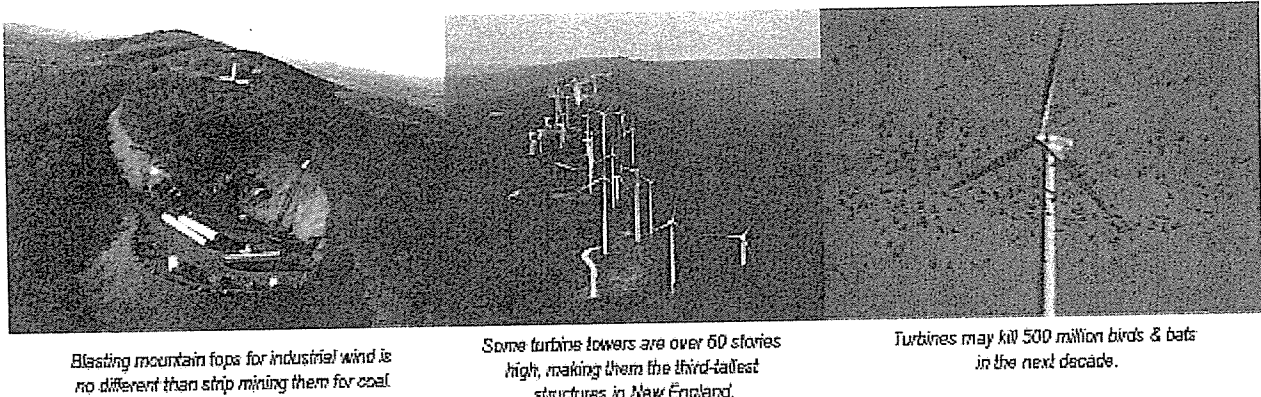
Despite the wind industry's self-serving claims, these destructive projects don't reduce greenhouse gas emissions or fossil fuel use, because wind is so erratic that fossil fuel plants have to run constantly to back up the turbines. Dozens of peer-reviewed scientific, utility, and environmental studies from around the world have shown that **wind projects do not lower CO2 or fossil fuel use**, and in some cases even

increase them.

While Maine citizens will have only a brief chance to comment on LD 1750, **out-of-state and foreign energy companies and their lobbyists, lawyers, and PR agents have been meeting secretly with legislators** in secret meetings behind closed doors. Statewide, these companies are paying many

thousands of dollars to Maine politicians to keep them backing the ruin of Maine.

Representative Russell is so poorly informed about wind energy she has even proclaimed that ruining Maine with wind turbines will reduce Midwest coal-burning. This claim is ridiculous because no grid connections exist between the two areas. And when asked how she will vote on a wind-related bill she has been known to say, "Wait, let me call my wind lobbyist."



Is Senator Alford angling for election to Congress, and wants the wind industry's lobbyists, PR firms, and deep pockets to help get him there? He clearly doesn't care about the financial disaster that industrial wind developments have on Maine homeowners, communities, tourism, and local economies. And he apparently has no love for the beauty, environment, and economy of Maine.

We need everyone who cares about Maine to fight back.

If you have two minutes to give save Maine, please email your own legislators as well as the following (you can paste this into the address line of your email):

senjohn.cleveland@legislature.maine.gov; senTroy.Jackson@legislature.maine.gov;
edmyoungblood@gmail.com; repbobbi.beavers@legislature.maine.gov; repdiane.russell@legislature.maine.gov;
repaaron.libby@legislature.maine.gov; RepSara.Gideon@legislature.maine.gov;
RepDeane.Rykerson@legislature.maine.gov; oronoryan@gmail.com; lanceharvell@hotmail.com;
mIn@fairpoint.net; skime2@roadrunner.com; patrick.c.woodcock@maine.gov

And please email or call the Governor and ask him to oppose LD 1750 every way he can:

Email: Governor@Maine.gov
(207) 287-3531

This bill cannot become law.

TWO MINUTES OF YOUR TIME CAN HELP SAVE MAINE

Thank you,

Your Maine friends and neighbors
SavingMaine.org

and

The Campaign to Save Maine

Saving Maine

5/15/2014

Gmail - Fwd: Maine is in Great Danger
1 Forest Hill Lane, Kennebunk ME 04043

If you wish to no longer receive messages, please press here

Food Pantry stock is running low everywhere. Please consider buying just a couple of extra cans of food per week with your groceries and dropping them at your local food pantry on the way home. In Freeport and Pownal, bring to FCS at 53 Depot Street.

Sara Gideon

State Representative, Maine State Legislature - District 106, Freeport & Pownal

37 South Freeport Road - Freeport, Maine 04032

207.865.9593 (mobile)

<http://www.maine.gov/legis/housedems/gideons/index.html>

saraigideon@gmail.com

or find me on Facebook

Note that legislative correspondence is considered a public record and may be subject to a request under the Maine Freedom of Access Act.

Information that you wish to keep confidential should not be included in email correspondence.



Thank You

Senate President Justin Alfond <jalfond@gmail.com>

Tue, Feb 18, 2014 at 5:09 PM

Reply-To: jalfond@gmail.com

To: Barry Hobbins <bhobbins@hobbinslaw.com>, John Cleveland <jcleveland@cdcorp.org>

Hi John & Barry,

Thank you so much for hosting me and LD 1750 this afternoon. You saw how important this bill is to Maine businesses, and I look forward to working with you both.

Best,
Justin

P.S. Sorry that my bill kept you late. Get home safely.

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

Gmail - Here is sound evidence why Maine's Wind Energy Act presumes that wind energy provides energy pricing benefits



message

Wed, Feb 19, 2014 at 10:48 AM

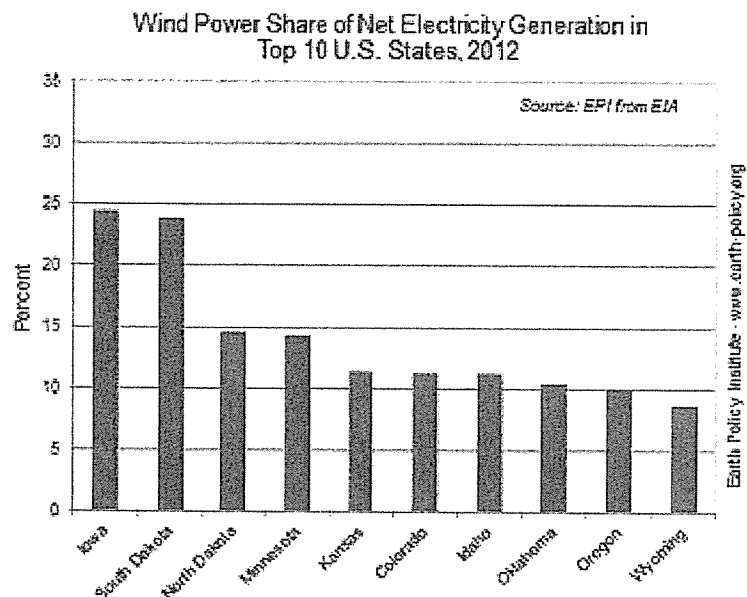
More Wind Energy Means Lower Electricity Prices

02/13/2014 03:38 PM

The 11 states that get more than 7% of their electricity from wind energy have seen their electric prices decrease by 0.37% over the past five years, in contrast to all other states, where electricity prices have increased 7.79% during that time.

Texas is on the verge of getting 10% of electricity from wind; Iowa and South Dakota already get 25%.

The more wind capacity they have, the more rates have come down.



But don't take AWEA's word for it - at least 15 studies confirm that as wind energy increases, electric prices come down. Studies have been done by independent grid operators, state governments, academic experts, and others.

For example, research from New England's grid operator concludes that when wind provides 14% of electricity, prices drop 10%, and when it reaches 24%, prices decline 15%. Find the links to these studies in AWEA's white paper, Wind Power's Consumer Benefits:

Website: <http://awea.files.cms-plus.com/AWEA%20White%20Paper-Consumer%20Benefits.pdf>

<http://www.sustainablebusiness.com/index.cfm/go/news.display/id/25517>

Jeremy N. Payne
 Executive Director
 Maine Renewable Energy Association
 PO Box 743
 Augusta, ME 04332
 207.626.0730 - P
 207.626.0200 - F
 207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org



Michael LeVert <mjlevert@gmail.com>

President Alfond's Testimony - LD 1750

1 message

John Woods, Senate President's Office <john.woods@legislature.maine.gov>

Wed, Feb 19, 2014 at
12:50 PM

To: Jeremy Payne <jpayne@renewablemaine.org>

Bcc: mjlevert@gmail.com

Mr. Payne,

Please find President Alfond's testimony on LD 1750 below.

John M. Woods
Legislative Aide
Senate President's Office

3 State House Station
Augusta, Maine 04333

(207) 287-1500 (office)

(207) 518-8155 (cell)

(207) 287-5862 (fax)

TESTIMONY of PRESIDENT JUSTIN ALFOND

In Support Of

L.D. 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws"

Senator Cleveland, Representative Hobbins and esteemed members of the Joint Standing Utilities and Energy, my name is Justin Alfond. I am a resident of Portland, I am honored to serve as President of the Maine Senate and proud to represent Senate District 8, which includes most of Portland and the islands of Peaks, Cliff and Great Diamond. Today, I am pleased to appear before you as the sponsor of LD 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws."

I would begin by pointing out that I have presented an amendment to the bill before you. The amendment removes the impact of the bill on the entire Administrative Procedures Act and more narrowly focuses the implications to Chapter 35-A, dealing with the permitting of grid-scale wind energy development.

First I'd like to share a few of my beliefs in regards to renewable energy development in Maine. The growth of renewable energy production in Maine is vital to our state's long term economic and energy future. In particular, the development of a strong wind energy industry is important -- it's clean; it's renewable; its costs have come down significantly over the past few years; many Maine companies are today investing hundreds of millions of dollars into the Maine economy; and Maine has the natural assets to be a leader in wind energy in the nation, and in the world. In an

increasingly competitive global economy, Maine must harness all of our competitive advantages, and wind power is near the top of the list for Maine.

So, what is LD 1750 after? For any business or industry, an objective and consistent regulatory authority is critical. In fact, this was one of the main principles of Governor LePage's first initiative -- regulatory reform under LD 1. As many of you know I sat on the LD 1 committee, and during the five months of hearings we heard over and over from businesses, nonprofits and individuals that Augusta needs to create laws and policies that are transparent, consistent and predictable. We then heard about many state agencies that did not do this because they had a culture and pattern of creating their own guidance and internal policies to make decisions as if they had the force of law. We as a legislature agreed that state agencies do not have this authority, and that it should be clearly and strictly prohibited.

This bill is an attempt to make sure that the wind siting regulators are playing by these rules, too, and are not undermining the legislature or using their own pre-determined conclusions in siting policies. The bill is simply an attempt to ensure that the regulators use the criteria that they are empowered to by statute, and don't arbitrarily use criteria and other conditions that are outside of their statutory authority.

Today you will hear testimony that Maine's DEP is not following the changes to the administrative procedures act we made in LD 1 around rulemaking. The DEP continues to use application instructions and policy statements regarding evidence to circumvent the process and impose their own will and judgments. This has directly impacted wind siting applications in a negative way. It has also been alleged that the department has disregarded the advice of experts without reason. Whether you support wind or not, this is inappropriate and goes against the changes we made during the LD 1 process.

Thus, the bill and the amendment I have presented attempts to rectify this in two ways. First, it promotes predictability by clarifying that the DEP, when evaluating wind energy applications, may not establish additional permitting requirements or new requirements that determines the weight of evidence unless it goes through the established process in the Administrative Procedures Act.

Again, the DEP should already be doing this, but this bill would make it explicit. It also reinforces what basis the department can make findings on.

Second, it promotes transparency by requiring that if the primary siting authority hires an expert but then ignores the conclusions that the expert presents, the Department must identify in writing why they have ignored that conclusion. If an expert is retained to evaluate an application and the DEP ignores the expert, both the applicant and the people of Maine have a right to know why.

Renewable energy and wind power development are so important to Maine and this bill is an attempt to create a regulatory environment where decisions are made in a transparent, consistent, and predictable manner.

Those testifying behind me will be able to go into more detail, but let me close by saying that I know that wind energy is controversial in this committee. Ironically, that's not the case across the state, where Maine people overwhelmingly support wind energy. But for those who don't support wind I want to make it clear that I am in no way trying to undermine your ability to contest any wind project, for whatever reason. That's your right, and I respect and value all opinions. But what I don't condone -- and what I am continually shocked by -- is the cynicism of a small but vocal group of wind opponents, who slander wind supporters, question their integrity, and knowingly deceive the public about the motivations of wind supporters.

We should debate wind energy, just like we should debate oil and natural gas and solar. And we should hold the wind energy industry accountable. But I hope we can do that in an honest and respectful way that allows for reasonable people to disagree. My motivations, just like yours, is to do what's right for Maine people. I believe this bill is the right thing to do, I thank you for your time and would be happy to answer any questions you may have.



RE: Legislature Enacts Student Hunger Bill - District 8 Legislative Update

Browne, Juliet <jbrowne@verrilldana.com>

Thu, Feb 20, 2014 at 11:18 AM

To: "justin@justinalfond.com" <justin@justinalfond.com>

Thanks for your great work on the wind bill!

Juliet T. Browne, Partner

One Portland Square

Portland, ME 04112-0586

Office: (207) 253-4608

Fax: (207) 253-4609

Bio: verrilldana.com/jbrowne

Verrill Dana

From: Senate President Justin Alfond [mailto:michael@mainesenate.ccsend.com] **On Behalf Of** Senate President Justin Alfond

Sent: Thursday, February 20, 2014 11:15 AM

To: Browne, Juliet

Subject: Legislature Enacts Student Hunger Bill - District 8 Legislative Update

Senator Justin
ALFOND
District 8 • Portland

Call or write Senator Justin Alfond at (207) 287-1500 or Justin.Alfond@leg.maine.gov



Unclaimed Property

Revenue Sharing

Bills Update

This week, one of my bills became law, another passed both the House and Senate, and another was introduced in committee.

Unclaimed Property

In our busy lives, we change jobs, location, and banks. In the process, we sometimes forget to close an account, retrieve our 401k, or change our address. As a result, this year Mainers lost more than \$13.5 million. When this happens, the Office of the State Treasurer collects information about these unclaimed properties in order to reconnect the rightful owners with their money. State Treasurer Neria Douglass has provided a list of all current unclaimed property in the State of Maine. It is worth checking the list to see if you, or someone close to you, has unclaimed property.

[Click here to see if you have unclaimed property.](#)

Revenue Sharing

Last Thursday, more than two-thirds of the House and Senate enacted the bill to restore \$40 million in revenue sharing funding to Maine's cities and towns. Towns across Maine continue to be stretched--their budgets are already lean. Without this bill, towns will lose an average of 62 percent of state funding for their local budgets. Portland alone would lose \$2.5 million.

This bill is critical to cities and towns across the state, and the strong bipartisan vote demonstrates the legislature's commitment to keeping our promise. The bill will now be sent to Governor LePage for his signature or veto.

Bills Update

Wind Power

On Tuesday, I introduced my wind power bill, LD 1750, to the Energy, Utilities and Technology Committee. The bill would ensure that when regulators are considering approval or denial of a permit, they use the criteria already established, rather than creating new rules.

In recent years, agencies have created inconsistencies in permitting requirements by using different rules and criteria when evaluating permits. The bill would eliminate some of those inconsistencies by clarifying that the Department of Environmental Protection cannot arbitrarily create new rules.

Businesses need a fair, consistent, and predictable regulatory environment. Renewable energy and wind power development are very important to Maine, and this bill is an attempt to create a regulatory environment where decisions are made in a transparent, consistent, and predictable manner. The growth of renewable energy resources in Maine is vital to our state's long term economic and energy future. In an increasingly competitive global economy, Maine must harness all of our competitive advantages, and wind power is at the top of the list for Maine.

Crowd Investing

Last week, my bill to allow Maine businesses to sell small amounts of equity to raise start-up capital, LD 1512, passed the House 129-1. This was a great bipartisan show of support, and when the bill came to the Senate, it received a unanimous vote of approval.

Crowdfunding through programs like Kickstarter and Indiegogo are great tools for funding smaller projects. Crowd investing applies the same principles to investing in start-up businesses. The business would set a target amount to raise, of no more than \$1 million, and a hard deadline to raise it by. If the business owners do not raise the target amount by the set deadline, all of the contributed money is returned to the investors.

Maine is a great place to start a business and, with this bill, we have a unique opportunity to support entrepreneurs, increase investing opportunities for more Maine people, and be a national leader in turning ideas into jobs.

This is a great small business bill, and I encourage Governor LePage to support this bill and join the Legislature in supporting and growing Maine's start-up culture.

Student Hunger

I've written about my student hunger bill, LD 1353, a lot over the past year. This is an important bill to provide food to thousands of Maine students during summer vacation.

Governor LePage didn't see the merits of this program and vetoed the bill, a move called "misinformed and unkind," "a mistake," and "just plain wrong."

Fortunately more than two-thirds of lawmakers saw the value in feeding hungry children and voted to override Governor LePage's veto 25-10 in the Senate and 92-45 in the House.

Hunger is one of the most severe roadblocks to the learning process. This new law gives us a chance to feed our state's hungry children and level the playing field so more children return to school in the fall eager and ready to learn.

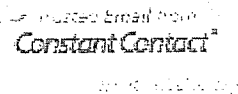
Closing

As always, I'd love to hear from you. Feel free to reach me at
Justin@JustinAlfond.com

-Justin

Forward email

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This email was sent to jbrownne@verrilldana.com by justin@justinalfond.com |

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Maine Senate Democrats | 3 State House Station | Augusta | ME | 04333

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Senate President Justin Alfond <justin@justinalfond.com>
To: "Browne, Juliet" <jbrownne@verrilldana.com>

Fri, Feb 21, 2014 at 8:40 AM

Thank you and I really appreciate all the assistance you've given me and Ken.

Justin

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

[Quoted text hidden]



Fwd: LD 1750 public hearing summary

Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 20, 2014 at 5:06 PM

To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>, Michael LeVert <mjlevert@gmail.com>

Cc: justin alfond <jalfond@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>, Ericka Dodge <edodge.mail@gmail.com>

Good afternoon:

Please find attached the amendment to LD 385 DEP/Woodcock offered last session requesting the changes they ultimately made via application guidance or "submission requirements."

Page 1, Section 1, shows how DEP wanted info on how a proposed project would lower electrical rates, despite current law presuming there to be energy benefits.

Page 3, Section 6, illustrates how DEP wanted to remove the presumption of energy and emissions benefits (as you can see in the strike-through of 3454). Continued on page 4 is their attempt to allow DEP to make 'findings' regarding energy and emissions-related benefits.

Based on my discussion this morning w/ Senator Cleveland, I believe this is exactly the type of information he is seeking (i.e. the "smoking gun") – our thought is to have you request that at the work session Sen Cleveland allow Dan to walk the committee through this attachment and the minority report from LD 385, and compare that to the changes made in the "submission requirements." Especially because Dan's testimony was limited to 3 minutes, while DEP and Woodcock were afforded approximately 30 minutes.

Thanks,
Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

From: Jeremy Payne [mailto:jpayne@renewablemaine.org]

Sent: Wednesday, February 19, 2014 4:00 PM

To: Dave Wilby; Matt Kearns; Harry Benson; Mike Speerschneider; Chris Swartley; Jeff Bishop; Thumma, Eric; Harley Lee; Parker Hadlock; Bruce Metrick; Tim Walton; Jack Parker; Steve Perry; Mike Beckner; Chapman, Katie; Habig, Neil; Rioux, Kelly; Todd Presson; Tom Carroll

Cc: Dan Riley; Kate Knox; Andrea Nadeau; Browne, Juliet; Katherine Joyce; James Cote

Subject: LD 1750 public hearing summary

Good afternoon:

As you know, Senate President Alfond's wind energy legislation (LD 1750) had its public hearing yesterday.

Please find below the testimony President Alfond delivered to the committee. Also, attached is the proposed amendment President Alfond offered at the hearing which narrowed the scope of the original bill to exclusively focus on DEP's treatment of wind energy applications.

Here is the AP's coverage of the hearing – http://www.pressherald.com/news/Don_t_alter_how_wind_energy_proposals_are_evaluated__LePage_official_says_.html

The afternoon was a success as it made clear to DEP that their circumvention of the legislative process will not be tolerated by the affected industry, or, most importantly, the Legislature.

President Alfond was enormously helpful and we appreciate his assistance throughout this process; we anticipate the work session for the bill is likely to occur next week.

Please let me know if you have any questions.

Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F

207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

TESTIMONY of PRESIDENT JUSTIN ALFOND

In Support Of

L.D. 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws"

Senator Cleveland, Representative Hobbins and esteemed members of the Joint Standing Utilities and Energy, my name is Justin Alfond. I am a resident of Portland, I am honored to serve as President of the Maine Senate and proud to represent Senate District 8, which includes most of Portland and the islands of Peaks, Cliff and Great Diamond. Today, I am pleased to appear before you as the sponsor of LD 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws."

I would begin by pointing out that I have presented an amendment to the bill before you. The amendment removes the impact of the bill on the entire Administrative Procedures Act and more narrowly focuses the implications to Chapter 35-A, dealing with the permitting of grid-scale wind energy development.

First I'd like to share a few of my beliefs in regards to renewable energy development in Maine. The growth of renewable energy production in Maine is vital to our state's long term economic and energy future. In particular, the development of a strong wind energy industry is important – it's clean; it's renewable; its costs have come down significantly over the past few years; many Maine companies are today investing hundreds of millions of dollars into the Maine economy; and Maine has the natural assets to be a leader in wind energy in the nation, and in the world. In an increasingly competitive global economy, Maine must harness all of our competitive advantages, and wind power is near the top of the list for Maine.

So, what is LD 1750 after? For any business or industry, an objective and consistent regulatory authority is critical. In fact, this was one of the main principles of Governor LePage's first initiative – regulatory reform under LD 1. As many of you know I sat on the LD 1 committee, and during the five months of hearings we heard over and over from businesses, nonprofits and individuals that Augusta needs to create laws and policies that are transparent, consistent and predictable. We then heard about many state agencies that did not do this because they had a culture and pattern of creating their own guidance and internal policies to make decisions as if they had the force of law. We as a legislature agreed that state agencies do not have this authority, and that it should be clearly and strictly prohibited.

This bill is an attempt to make sure that the wind siting regulators are playing by these rules, too, and are not undermining the legislature or using their own pre-determined conclusions in siting policies. The bill is simply an attempt to ensure that the regulators use the criteria that they are empowered to by statute, and don't arbitrarily use criteria and other conditions that are outside of their statutory authority.

Today you will hear testimony that Maine's DEP is not following the changes to the administrative procedures act we made in LD 1 around rulemaking. The DEP continues to use application instructions and policy statements regarding evidence to circumvent the process and impose their own will and judgments. This has directly impacted wind siting applications in a negative way. It has also been alleged that the department has

disregarded the advice of experts without reason. Whether you support wind or not, this is inappropriate and goes against the changes we made during the LD 1 process.

Thus, the bill and the amendment I have presented attempts to rectify this in two ways. First, it promotes predictability by clarifying that the DEP, when evaluating wind energy applications, may not establish additional permitting requirements or new requirements that determines the weight of evidence unless it goes through the established process in the Administrative Procedures Act. Again, the DEP should already be doing this, but this bill would make it explicit. It also reinforces what basis the department can make findings on.

Second, it promotes transparency by requiring that if the primary siting authority hires an expert but then ignores the conclusions that the expert presents, the Department must identify in writing why they have ignored that conclusion. If an expert is retained to evaluate an application and the DEP ignores the expert, both the applicant and the people of Maine have a right to know why.


Renewable energy and wind power development are so important to Maine and this bill is an attempt to create a regulatory environment where decisions are made in a transparent, consistent, and predictable manner.

Those testifying behind me will be able to go into more detail, but let me close by saying that I know that wind energy is controversial in this committee. Ironically, that's not the case across the state, where Maine people overwhelmingly support wind energy. But for those who don't support wind I want to make it clear that I am in no way trying to undermine your ability to contest any wind project, for whatever reason. That's your right, and I respect and value all opinions. But what I don't condone – and what I am continually shocked by – is the cynicism of a small but vocal group of wind opponents, who slander wind supporters, question their integrity, and knowingly deceive the public about the motivations of wind supporters.

We should debate wind energy, just like we should debate oil and natural gas and solar. And we should hold the wind energy industry accountable. But I hope we can do that in an honest and respectful way that allows for reasonable people to disagree. My motivations, just like yours, is to do what's right for Maine people. I believe this bill is the right thing to do, I thank you for your time and would be happy to answer any questions you may have.

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 **DEP Amendment.pdf**
454K

Senate President Justin Alfond <jalfond@gmail.com>

Fri, Feb 21, 2014 at 8:41 AM

Reply-To: jalfond@gmail.com

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>, Michael LeVert <mjlevert@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknnox@bernsteinshur.com>, Ericka Dodge <edodge.mail@gmail.com>

Jeremy,

Thanks for highlighting this and please let me know what other ways we can assist.

5/29/2014

Gmail - Fwd: LD 1750 public hearing summary

Best,
Justin

Senate President Justin Alford
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

[Quoted text hidden]



Michael LeVert <mjlevert@gmail.com>

Fwd: Preliminary Fiscal Impact Statement - LD 1750

1 message

Senate President Justin Alford <justin@justinalfond.com>

Mon, Feb 24, 2014 at 8:10 AM

To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>, Michael Levert <mjlevert@gmail.com>

FYI

Senate President Justin Alford
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

----- Forwarded message -----

From: <marc.cyr@legislature.maine.gov>

Date: Fri, Feb 21, 2014 at 5:27 PM

Subject: Preliminary Fiscal Impact Statement - LD 1750

To: cnixon@legislature.maine.gov, Kay.E.Booker@maine.gov

The Office of Fiscal and Program Review has released a Preliminary Fiscal Impact Statement for LD 1750.

Please click on the attached link below to view a PDF version of the document. If you have any problem opening the link or if you have questions regarding this document, please contact the office at 287-1635 or come in to the office at room 226 on the 2nd floor of the State House.

http://www.mainelegislature.org/legis/bills/bills_126th/fiscalpdfs/FN175001.pdf

Marc A. Cyr
Principal Analyst
Office of Fiscal and Program Review
Telephone (207) 287-1635
E-Mail marc.cyr@legislature.maine.gov



Alysia Melnick <amelnick.legislature@gmail.com>

Bill status

5 messages

Alysia Melnick <amelnick.legislature@gmail.com>
To: "Nixon, Cassie" <cassie.nixon@legislature.maine.gov>
Cc: "Guzzetti, Jean" <Jean.Guzzetti@legislature.maine.gov>

Mon, Feb 24, 2014 at 11:36 AM

Hi Cassie,

We are trying to track the progress of the following bills and would appreciate if you have any info about where they are in the process and what is holding them from being reported out (ie waiting on fiscal note, waiting on amendment, waiting for language review, etc.).

616 - wind permitting voted 1/22

1479 - Telecom reform voted 2/12

646 - 100 megawatt voted 1/23

1252 - solar rebates voted 2/6

I would appreciate anything you can tell me. Thank you!

Alysia

—

Alysia Melnick, Esq.

Legal and Policy Counsel

Office of the Speaker of the House

Maine Legislature

alysia.melnick@legislature.maine.gov

Direct (207) 287-1306, Cell (207) 939-4190

Nixon, Cassie <Cassie.Nixon@legislature.maine.gov>
To: Alysia Melnick <amelnick.legislature@gmail.com>

Mon, Feb 24, 2014 at 12:45 PM

Hi Alysha,

To the best of my knowledge, all 4 of those LDs are currently waiting to be scheduled for language review. Once the analyst presents the draft language and it is approved by the committee, I will then be waiting on official amendments for all of them, as they all have at least one report of "ought to pass as

amended", before I can report them out.

I hope this is helpful,

Cassie Nixon

Maine State Legislature

Energy, Utilities, & Technology

Committee Clerk

207-287-4143

From: Alysia Melnick [mailto:amelnick.legislature@gmail.com]

Sent: Monday, February 24, 2014 11:37 AM

To: Nixon, Cassie

Cc: Guzzetti, Jean

Subject: Bill status

[Quoted text hidden]

Alysia Melnick <amelnick.legislature@gmail.com>

Mon, Feb 24, 2014 at 12:49 PM

To: Jean Guzzetti <Jean.Guzzetti@legislature.maine.gov>, Marion HylanBarr
<Marion.HylanBarr@legislature.maine.gov>

Hi Jean,

Does this jive with where you believe these bills are in the process?

Rep. Tipping-Spitz was under the impression that at least 1252 had already had a language review and was waiting on a fiscal note?

Any further info on these would be appreciated.

Thank you! Alysia

[Quoted text hidden]

Guzzetti, Jean <Jean.Guzzetti@legislature.maine.gov>

Mon, Feb 24, 2014 at 12:59 PM

To: Alysia Melnick <amelnick.legislature@gmail.com>, "HylanBarr, Marion"
<Marion.HylanBarr@legislature.maine.gov>

Hi Alysia,

5/15/2014

Gmail - Bill status

Please see my response in your original email below. I would like to say that the date that the bill was voted is not always the best indicator of when it will be reported out. Some amendments are more complicated than others, some are more fleshed out in committee than others and then some are indeed an easy turn-around.

Jean

Policy Analyst

Office of Policy and Legal Analysis

Maine State Legislature

jean.guzzetti@legislature.maine.gov

(207) 287-1670

From: Alysia Melnick [mailto:amelnick.legislature@gmail.com]

Sent: Monday, February 24, 2014 12:49 PM

To: Guzzetti, Jean; HylanBarr, Marion

Subject: Fwd: RE: Bill status

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

616 - wind permitting voted 1/22 – Language review done, fiscal note printed and distributed to committee.

1479 - Telecom reform voted 2/12 – Language review not yet done.

646 - 100 megawatt voted 1/23 – Language review not yet done

1252 - solar rebates voted 2/6 – While the near final language for this was reviewed by the committee, they have not had a final language review on this bill, though I expect the final language review to be this week.

I would appreciate anything you can tell me. Thank you!

Alysia

—

Alysia Melnick, Esq.

Legal and Policy Counsel

Office of the Speaker of the House

5/15/2014

Gmail - Bill status

Maine Legislature

alysia.melnick@legislature.maine.gov

Direct (207) 287-1306, Cell (207) 939-4190

Alysia Melnick <amelnick.legislature@gmail.com>
To: "Guzzetti, Jean" <Jean.Guzzetti@legislature.maine.gov>
Cc: "HylanBarr, Marion" <Marion.HylanBarr@legislature.maine.gov>

Mon, Feb 24, 2014 at 1:24 PM

Thanks Jean,

I had read your response and totally understand your point. I guess I was reaching out to you again since it seemed like at least a portion of these bills were waiting for language reviews on amendments, which I believe you draft. So I figured you might know how complex the amendments looked to be and/or how far along you were to date.

I know you have a tremendous amount of work to do in your committee, so please don't take my inquiries as commentary of any kind. We are just getting itchy to take things up here on the 3rd floor and I'm getting questions from leadership about when we expect them heading our way.

So thank you for providing these updates - they are very helpful.

I will keep an eye out this week for language reviews on 1252, 646 and 1479.

Thanks again,

Alysia

[Quoted text hidden]



Alysia Meinick <ameinick.legislature@gmail.com>

Photo Release: Washington County lawmakers hold forum on citizens' rights in the unorganized territory

1 message

Ankeles, Daniel <Dan.Ankeles@legislature.maine.gov>

Mon, Feb 24, 2014 at 4:56 PM

Maine Legislature

www.maine.gov/legis

-

For Immediate Release

Feb. 24, 2014

Contact: Contact: Ann Kim [Cassidy], 287-1488, Jim Cyr [Burns] 287-1505, David Sorensen [Turner] 205-7793

Washington County lawmakers hold forum on citizens' rights in the unorganized territory

Edmunds event focuses on restoring residents' voices in wind power siting process

Suggested Photo Caption: (from left) Reps. Beth Turner, R-Burlington, Katherine Cassidy, D-Lubec, and Sen. David Burns, R-Whiting, listen as residents discuss the rules around wind power siting in unorganized territories. The meeting, which took place Sunday, Feb. 23, at the Edmunds School, drew 30 residents from Trescott, Edmunds and Marion Townships. Currently, there is a bill before the Maine Legislature, LD 616, that would restore residents' right to be heard in public hearings for wind power development.

Photo Credit: Stan Turner

5/15/2014

Gmail - Photo Release: Washington County lawmakers hold forum on citizens' rights in the unorganized territory



Wind Forum Edmunds.jpg
1612K



Michael LeVert <mjlevert@gmail.com>

Fwd: APA bill

3 messages

Ana Hicks <ana.m.hicks@gmail.com>
To: Michael LeVert <mjlevert@gmail.com>

Mon, Feb 24, 2014 at 9:11 AM


----- Forwarded message -----

From: **Sharon Treat** <satrear@gmail.com>
Date: Mon, Feb 24, 2014 at 8:45 AM
Subject: APA bill
To: Ana Hicks <ana.hicks@legislature.maine.gov>

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0692&item=1&snum=126>

Is this in the energy committee? It makes major changes to the APA that apply throughout and should be considered by judiciary.

Sharon Treat
Sent from my iPhone
Please excuse typos!
207.242.8558 mobile

 **Maine 126 - SP 692 item 1.pdf**
31K

Michael LeVert <mjlevert@gmail.com>
To: Ana Hicks <ana.m.hicks@gmail.com>

Mon, Feb 24, 2014 at 9:18 AM

That has been fixed. Justin put forward an amendment that focused the bill exclusively on DEP, and took out the references to the APA in general.

[Quoted text hidden]

Ana Hicks <ana.m.hicks@gmail.com>
To: Michael LeVert <mjlevert@gmail.com>

Mon, Feb 24, 2014 at 9:18 AM

Thanks! You told me that and I forgot. :)

[Quoted text hidden]



Michael LeVert <mjlevert@gmail.com>

comments on wind draft

1 message.

Michael LeVert <mjlevert@gmail.com>
To: Ken Hardy <kenneth.hardy@gmail.com>

Mon, Feb 24, 2014 at 11:56 AM

Ken - here are some general comments. See if this helps for draft 2...Thanks!

Stylistic suggestions:

1. Bring your lead forward, and start with your most important statement/conclusion. Follow up with your second most important statement, etc. This is in contrast to building the case and concluding at the end.
2. Use short, pithy sentences, especially in the beginning.
3. Avoid too much specificity on the process. For example, we probably don't need to differentiate between the bill and the amendment. Who cares.

Substantive suggestions:

1. I really like the part about "before LD1," that agencies were using their own viewpoints to undermine the will of the people/legislature. I would add that this wasn't just the governor's...it was bipartisan. We should take some credit.
2. I also liked in Justin's testimony the part where we say - we respect folks' right to disagree, and we will protect that right. This bill does not hurt public input. It just makes sure the process is fair etc. I might reframe your paragraph that rebuts the administrations' claim that this hurts public input in these terms.
3. What about explicitly mentioning the example of the minority report that was rejected that became part of the application?

LEPAGE ADMINISTRATION SHOULD FOLLOW OWN LAW

Pop quiz: What Maine industry has invested X hundred million dollars in Maine over the last Y years, is poised to invest a billion more by 20XX, and has created thousands of good paying construction jobs?

If you guessed the wind power industry, you're right! And if you're like 70% of Maine people (reference poll), you support wind power for both its economic and environmental benefits.

Unfortunately, politics are getting in the way of wind power development in Maine. The Governor has directed the Department of Environmental Protection to make it harder for wind energy projects to get approved, often-times in direct conflict with laws that the Maine legislature has already enacted. At stake are millions of dollars of investments and thousands of jobs for the Maine economy.

But this issue is about more than just wind. It's about a transparent, consistent, and predictable business climate for Maine.

Association effort, Before the legislature passed "LD 1" some state agencies were using their own pre-determined viewpoint and their own guidance and internal policies for decision-making. The process was sporadic and unpredictable for Maine businesses. The legislature agreed that state agencies should not have that ability or authority. "LD 1" was supposed to put a stop to it.

But recently the DEP has reverted to old form when reviewing wind projects. The DEP is using things like application instructions and policy statements without the force of law to require evidence and impose their own will and judgments.

For example, the DEP often hires experts to advise them on permitting decisions, but if they don't like the advice, they simply ignore it with no explanation as to why. These behaviors are in direct contravention of "LD 1" and have negatively impacted wind siting applications.

This is especially troubling since last session the legislature specifically rejected a bill giving the DEP these powers and more. The Utilities and Energy Committee reviewed them, and chose not to adopt them. But this did not stop the DEP.

Fortunately, a bill is not in front of the legislature to make sure the DEP complies with LD1 and provides a consistent and stable process for Maine businesses. Senate President Justin Alford has introduced LD 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws." The bill will make sure that the Governor's Department of Environmental Protection complies with state law in siting wind projects. It

protects public input by prohibiting the DEP from establishing additional or new wind site permitting requirements unless it goes through an established public process. It reinforces government transparency by requiring that the DEP explain their reasoning if they hire an expert and then choose to ignore the hired expert's advice. Again, these are both things that the DEP should already be doing, and they are just common sense.

The General Contractors Association supports President Alford's bill because we believe that Maine can use its competitive advantage in wind energy to improve our economy and environment. But just as important, we believe in a stable and fair regulatory process for Maine businesses, and this bill is an important step in that direction.

LEPAGE ADMINISTRATION SHOULD FOLLOW OWN LAW

Did you know that the Maine wind power industry has invested X hundred million dollars in Maine over the last Y years, is poised to invest a billion more by 20XX, and has created thousands of good paying construction jobs?

Did you know that according to a recent poll by XXX, 70% of Maine people support wind power for both its economic and environmental opportunities?

Unfortunately, politics are getting in the way of wind power development in Maine. Governor LePage has directed the Department of Environmental Protection to make it harder for wind energy projects to get approved, often-times in direct conflict with laws that the Maine legislature has already enacted. At stake are millions of dollars of investments and thousands of jobs for Maine people.

While this issue is certainly about the impact on Maine's burgeoning wind industry, it is also about a transparent, consistent, and predictable business climate for Maine.

Two years ago, the General Contractors Association of Maine supported a bi-partisan effort to reform Maine's regulatory agenda, known then as "LD 1." Before the legislature passed "LD 1" some state agencies were using their own pre-determined viewpoint and their own guidance and internal policies for decision-making. The process was sporadic and unpredictable for Maine businesses. The legislature agreed that state agencies should not have that ability or authority. "LD 1" was supposed to put a stop to it.

But recently the DEP has reverted to its old form when reviewing wind projects. The DEP is using things like application instructions and policy statements to require evidence and impose their own will and judgments.

Also, the DEP often hires experts to advise them on permitting decisions, but if they don't like the advice, they simply ignore it with no explanation as to why. These behaviors are in direct contravention of "LD 1" and have negatively impacted wind siting applications.

This is especially troubling since last session the legislature specifically rejected a bill giving the DEP these powers and more. The Utilities and Energy Committee reviewed them, and chose not to adopt them. But this did not stop the DEP.

Fortunately, a bill is in front of the legislature to make sure the DEP complies with "LD1" and provides a consistent and stable process for Maine businesses. Senate President Justin Alford has introduced LD 1750, "An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws." The bill will make sure that the Governor's Department of Environmental Protection complies with state law in siting wind projects. It protects public input by prohibiting the DEP from establishing additional or new wind site permitting requirements unless it goes through an established public process. It reinforces government transparency by requiring that

the DEP explain their reasoning if they hire an expert and then choose to ignore the hired expert's advice. Again, these are both things that the DEP should already be doing, and they are just common sense.

The General Contractors Association supports President Alfond's bill because we believe that Maine can use its competitive advantage in wind energy to improve our economy and environment. But just as important, we believe in a stable and fair regulatory process for Maine businesses, and this bill is an important step in that direction.



Michael LeVert <mjlevert@gmail.com>

Re: Wind energy goals

1 message

Jeremy Payne <jpayne@renewablemaine.org>

Tue, Feb 25, 2014 at 10:04 AM

To: "Durkin, Alanna" <ADurkin@ap.org>

Bcc: mjlevert@gmail.com

Hi Alanna,

Your recollection is correct -- the administration has previously attempted to eliminate the wind goals via proposed amendments and testimony, but never in a stand-alone piece of legislation.

It's interesting that they've now determined they do after all require legislative authority to require proof of energy pricing benefits -- it's notable because the Wind Energy Act presumes there to be energy and emissions benefits, but despite that legislatively-authorized presumption DEP has required *proof* via their new application "submission requirements" and data requests they've issued on applications currently before them. This was one of the relevant issues during the public hearing for LD 1750, which you wrote about last week.

Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

On Tue, Feb 25, 2014 at 9:35 AM, Durkin, Alanna <ADurkin@ap.org> wrote:

Hey Jeremy,

I just noticed this bill that was introduced by the gov's office (LD 1791) that appears to remove the wind

energy goals and replace them with things like "lower electricity prices for residential, commercial and industrial consumers." I know the governor's office has suggested getting rid of the wind energy goals in the past, but do you happen to know if they've ever actually introduced a bill on it? This struck me as new, but I'm not sure.

http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/HP128201.asp

Alanna

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[IP_US_DISC]

msk dccc60c6d2c3a6438f0cf467d9a4938



Kenneth Hardy <kenneth.hardy@gmail.com>

Draft of Op Ed

2 messages

Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Feb 27, 2014 at 3:08 PM

To: Jeremy Payne <jpayne@renewablemaine.org>

Jeremy,

The draft of the op-ed. Let us know what you and the GC's think.

KDH



LEPAGE ADMINISTRATION SHOULD FOLLOW OWN LAW - Final.docx

16K

Jeremy Payne <jpayne@renewablemaine.org>

Thu, Feb 27, 2014 at 5:09 PM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Got it -- thanks.

I've sent along my edits to AGC and will report back once I've heard from them.

Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org
[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

Fwd: LD 1750 and the APA

2 messages

Jeremy Payne <jpayne@renewablemaine.org>
To: "Guzzetti, Jean" <Jean.Guzzetti@legislature.maine.gov>
Bcc: kenneth.hardy@gmail.com

Mon, Mar 3, 2014 at 8:54 AM

Jean,

Please see the information below from Juliet. We'd be happy to jump on a call w/ you to walk through all this information, answer any questions, etc ahead of Thursday's work session.

Thank you.

Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

----- Forwarded message -----

From: **Browne, Juliet** <jbrowne@verrilldana.com>
Date: Sun, Mar 2, 2014 at 11:33 AM
Subject: LD 1750 and the APA
To: Jeremy Payne <jpayne@renewablemaine.org>

Jeremy,

In response to your request, here is some information related to LD 1750 and the APA.

Rulemaking Provisions of the APA.

The Administrative Procedure Act (APA) addresses a range of issues related to agency action, including requirements related to rulemaking, adjudicatory proceedings, licensing, and judicial review of final agency action. 5 MRSA Sections 8001 et seq. The rulemaking provisions are found in Sections 8051-8074 of the APA. These provisions generally describe the process that must be followed by an agency in adopting rules (e.g., public notice, consideration of relevant information, a written statement explaining the factual and policy basis for the rule, a statement addressing the comments and concerns expressed about the proposed rule, timelines and process for the rules becoming final, judicial review of rules, etc.) The APA defines "rule" in the general definition section of 5 MRSA Section 8002.9. Before the agency may adopt any rule, it must follow the rulemaking provisions of the APA. Rules that are adopted in a manner other than provided for under the rulemaking provisions of the APA are void and of no legal effect. 5 MRSA Section 8057.

The definition of rule is quite broad and includes regulations, statement of policy or other agency statement of general applicability. 5 MRSA Section 8002.9. LD 1 added the language "guideline" in the definition of "rule" to make clear that the DEP could not circumvent the rulemaking provisions of the APA and impose agency guidelines as law. Dan Riley has additional background on the DEP hydro licensing issue that resulted in the word "guideline" being added to the definition of "rule" under the APA. LD 1 also inserted language into the definition of rule that states a "rule is not judicially enforceable unless it is adopted in a manner consistent with this chapter [the APA rulemaking chapter]." This is somewhat redundant because, as noted above, 5 MRSA Section 8057 already makes clear that a rule is void and of no legal effect unless it is adopted in a manner consistent with the Act.

It is worth noting that the definition of "rule" does not include "forms, instructions or explanatory statements" that are intended solely as advice to the persons in determining, exercising or complying with their legal rights. 5 MRSA Section 8002.9.B. In other words, true application instructions, instructions that simply inform an applicant on what to include in the application, do not constitute a "rule" under the APA. The problem is that DEP has used "submission requirements" (or "application instructions") to adopt new standards, policies, guidelines. The September, 2013 submission requirements on wind power meet the definition of "rule" set forth in 5 MRSA Section 8002.9.A (e.g., implements, interprets or makes specific the law administered by the agency), but are called by another name (submission requirements), thereby creating confusion as to their enforceability.

As a matter of existing law, at least portions of the September, 2013 submission requirements for wind energy developments constitute a "rule" and are therefore null and void because they were not adopted in accordance with the APA rulemaking provisions. The DEP, however, has declined to retract the new requirements, thereby placing applicants in the untenable position of having to decide for themselves which portions of the application instructions are legal and must be complied with, and which portions are not.

LD 1750 Amendment.

The amendment to LD 1750 cross references the definition of "rule" in the APA, which makes clear that the primary siting authority (and this is only the DEP post-LURC reform bill and applies only to wind power permitting) may not establish additional permitting requirements or determine the weight to be afforded evidence through application instructions or other "rules" as defined under the APA, unless the DEP has done so in accordance with the applicable requirements of the APA, e.g., the rulemaking provisions of the APA. The last sentence of the amendment simply restates existing law, i.e., states that the primary siting authority may not adopt guidelines, policies, etc. except in accordance with the APA.

nail - Fwd: LD 1750 and the APA

DEP's Submission Requirements Related to Wind Energy.

DEP previously identified submission requirements specific to wind energy developments as required by Sec. B-13 of the Wind Energy Act. The Wind Energy Act provided that implementation of that section did not require rulemaking under the APA. I have attached for reference the submission requirements specific to wind energy developments that were in place prior to the DEP's recent changes. To my knowledge, none of the submission requirements had been controversial and all appeared consistent with the Wind energy Act and did not constitute a "rule" as defined under the APA (i.e., they did not appear to be more general statements of DEP policy under the Act or create new standards under the Act). I've also attached the current complete set of application instructions for Site Law projects. The wind energy specific requirements are found in sections 26-30. This document is on-line under the forms section of the DEP webpage on Site Location www.maine.gov/det/land/sitelaw/index.html#form

Finally, there are quite specific requirements related to wind energy sound, which were implemented as part of a rulemaking process conducted in accordance with the APA. Those requirements are generally found in the rule itself, as opposed to the application instructions.

Hope this is helpful, and don't hesitate to let me know if you need additional information.

Best,

Juliet


Juliet T. Browne, Partner
One Portland Square
Portland, ME 04112-0586
Office: (207) 253-4608
Fax: (207) 253-4609
Bio: verrilldana.com/jbrowne


Verrill Dana
ATTORNEYS AT LAW

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2 attachments

 **AppInstructionsWindSectionsPreSept2013.pdf**
221K


 **SiteLawApplication.pdf**
4120K


Michael LeVert <mjlevert@gmail.com>
To: Ken Hardy <kenneth.hardy@gmail.com>

Mon, Mar 3, 2014 at 10:39 AM

figure you got this but I can tell...
[Quoted text hidden]

2 attachments

 **AppInstructionsWindSectionsPreSept2013.pdf**
221K

 **SiteLawApplication.pdf**
4120K



Kenneth Hardy <kenneth.hardy@gmail.com>

Fwd: 1750 amendment from ken hardy after speaking with AG

2 messages

Jeremy Payne <jpayne@renewablemaine.org>

Wed, Mar 5, 2014 at 4:19 PM

To: Ken Hardy <kenneth.hardy@gmail.com>

See below for Juliet's thoughts on the decommissioning language.

Ok?

Begin forwarded message:

From: "Browne, Juliet" <jbrowne@verrilldana.com>

Date: March 5, 2014 at 4:00:44 PM EST

To: 'Jeremy Payne' <jpayne@renewablemaine.org>

Cc: "'Daniel P. Riley Jr.'" <driley@bernsteinshur.com>, 'Kate Knox' <kknox@bernsteinshur.com>

Subject: RE: 1750 amendment from ken hardy after speaking with AG

I'm OK with date change and reference to "judicially enforceable" (although the second change is not ideal but probably OK). The statement that "Nothing in this section precludes reasonable permitting requirements regarding decommissioning" is problematic and opens the door to the DEP doing something totally crazy. There are existing requirements for decommissioning that are OK, but I would be concerned about changes. Maybe modify to read: "Nothing in this section invalidates decommissioning permitting requirements in effect and being implemented by the primary siting authority as of August 31, 2013."

Juliet T. Browne, Partner
One Portland Square
Portland, ME 04112-0586
Office: (207) 253-4608
Fax: (207) 253-4609
Bio: verrilldana.com/jbrowne

-----Original Message-----

From: Jeremy Payne [<mailto:jpayne@renewablemaine.org>]

Sent: Wednesday, March 05, 2014 3:31 PM

To: Browne, Juliet

Cc: Daniel P. Riley Jr.; Kate Knox

Subject: 1750 amendment from ken hardy after speaking with AG

Ok??

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Kenneth Hardy <kenneth.hardy@gmail.com>

Wed, Mar 5, 2014 at 4:39 PM

To: Jeremy Payne <jpayne@renewablemaine.org>, jbrown@verrilldana.com

Thank you.

The de-commissioning change makes sense, we were also worried about that.

KDH

[Quoted text hidden]

Hardy, Kenneth

From: Hardy, Kenneth
Sent: Thursday, March 06, 2014 1:33 PM
To: Guzzetti, Jean
Subject: Here is the amended language that Sen Cleavland has to present to committee

Proposed Amendment to LD 1750

Section 1 is replaced with the following:

35-A MRSA § 3460 is enacted to read:

The primary siting authority may not establish additional permitting requirements or determine the weight to be afforded certain types of evidence through application instructions or any other “rule” as defined in 5 MRSA § 8002.9, unless such permitting requirement or determination of the weight to be afforded certain types of evidence has been adopted in a manner consistent with the applicable requirements of the Administrative Procedures Act. This prohibition is retroactive to *August 31*, 2013. Additionally, the primary siting authority may not establish any guideline, policy, or other requirement that implements, interprets, or makes specific the laws applied by the primary siting authority in review of an expedited wind energy development *that is judicially enforceable*, except in accordance with the Administrative Procedures Act, including but not limited to 5 MRSA § 8002.9.

Sections 2 and 3 are replaced with the following:

35-A MRSA § 3461 is enacted to read:

If the primary siting authority retains a third-party expert to provide input on an expedited wind energy development’s compliance with applicable review criteria and reaches a conclusion that is contrary to the conclusion reached by such expert, then the licensing decision by the primary siting authority must identify in writing the basis for rejecting that expert’s conclusion. Nothing in this section shall be interpreted to require the primary siting authority to identify in writing the basis for rejecting or disagreeing with every aspect of such expert’s analysis, but only the conclusion of whether an expedited wind energy development complies with one or more applicable review criteria.

Sections 4 and 5 remain.



Michael LeVert <mjlevert@gmail.com>

Op Ed

2 messages

Hardy, Kenneth <Kenneth.Hardy@legislature.maine.gov>

Fri, Mar 14, 2014 at 10:03 AM

To: "mmarks@agcmaine.org" <mmarks@agcmaine.org>

Cc: "LeVert, Michael" <Michael.LeVert@legislature.maine.gov>

Matt,

Ken from President Alford's office here. Jeremy Payne said that you guys had the potential op-ed on wind and were thinking about submitting it. Could you give me a call when you get a chance. I'd like to talk through any edits or concerns you may have.

Thanks,

KDH

Office: 207-287-1500

Cell: 207-233-3331

Hardy, Kenneth <Kenneth.Hardy@legislature.maine.gov>

Mon, Mar 17, 2014 at 9:46 AM

To: "mmarks@agcmaine.org" <mmarks@agcmaine.org>

Cc: "LeVert, Michael" <Michael.LeVert@legislature.maine.gov>

Matt,

Any more news? The WS is tomorrow so it would be timely.

Thanks,

KDH

From: Hardy, Kenneth

Op Ed

<https://mail.google.com/mail/u/0/?ui=2&ik=bda96e87d8&view=pt&...>

Sent: Friday, March 14, 2014 10:03 AM

To: 'mmarks@agcmaine.org'

Cc: LeVert, Michael

Subject: Op Ed

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

FW: Op Ed

1 message

Hardy, Kenneth <Kenneth.Hardy@legislature.maine.gov>
To: "kenneth.hardy@gmail.com" <kenneth.hardy@gmail.com>

Tue, Mar 18, 2014 at 11:17 AM

From: Matthew Marks, AGC Maine
Sent: Tuesday, March 18, 2014 11:17:17 AM (UTC-05:00) Eastern Time (US & Canada)
To: Hardy, Kenneth
Subject: Re: Op Ed

Yes, I'm bringing you copies

Sent from my iPhone

On Mar 18, 2014, at 10:42 AM, "Hardy, Kenneth" <Kenneth.Hardy@legislature.maine.gov> wrote:

I heard it may have been submitted?

From: Hardy, Kenneth
Sent: Monday, March 17, 2014 9:47 AM
To: 'mmarks@agcmaine.org'
Cc: LeVert, Michael
Subject: RE: Op Ed

Matt,

Any more news? The WS is tomorrow so it would be timely.

Thanks,

KDH

From: Hardy, Kenneth
Sent: Friday, March 14, 2014 10:03 AM

To: 'mmarks@agcmaine.org'

Cc: LeVert, Michael

Subject: Op Ed

Matt,

Ken from President Alfond's office here. Jeremy Payne said that you guys had the potential op-ed on wind and were thinking about submitting it. Could you give me a call when you get a chance. I'd like to talk through any edits or concerns you may have.

Thanks,

KDH

Office: 207-287-1500

Cell: 207-233-3331



Kenneth Hardy <kenneth.hardy@gmail.com>

1750 amendment

3 messages

Jeremy Payne <jpayne@renewablemaine.org>

Wed, Mar 19, 2014 at 11:40 AM

To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>

Cc: Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Can you share w/ me the amended version President Alfond plans to present?

Don't think I have a copy.

Does the committee still want Dan to walk 'em through things about how the submission requirements migrated over from a failed minority report amendment to LD 385 last session?

Thx.

JP

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

Kenneth Hardy <kenneth.hardy@gmail.com>

Wed, Mar 19, 2014 at 12:02 PM

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

I think Dan should still plan on speaking after the President.

KDH

Proposed Amendment to LD 1750

Section 1 is replaced with the following:

35-A MRSA § 3460 is enacted to read:

The primary siting authority may not establish additional permitting requirements or determine the weight to be afforded certain types of evidence through application instructions or any other “rule” as defined in 5 MRSA § 8002.9, unless such permitting requirement or determination of the weight to be afforded certain types of evidence has been adopted in a manner consistent with the applicable requirements of the Administrative Procedures Act. This prohibition is retroactive to *August 31*, 2013. Additionally, the primary siting authority may not establish any guideline, policy, or other requirement that implements, interprets, or makes specific the laws applied by the primary siting authority in review of an expedited wind energy development *that is judicially enforceable*, except in accordance with the Administrative Procedures Act, including but not limited to 5 MRSA § 8002.9.

Sections 2 and 3 are replaced with the following:

35-A MRSA § 3461 is enacted to read:

If the primary siting authority retains a third-party expert to provide input on an expedited wind energy development’s compliance with applicable review criteria and reaches a conclusion that is contrary to the conclusion reached by such expert, then the licensing decision by the primary siting authority must identify in writing the basis for rejecting that expert’s conclusion. Nothing in this section shall be interpreted to require the primary siting authority to identify in writing the basis for rejecting or disagreeing with every aspect of such expert’s analysis, but only the conclusion of whether an expedited wind energy development complies with one or more applicable review criteria.

Sections 4 and 5 remain.

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>

Wed, Mar 19, 2014 at 12:07 PM

To: Kenneth Hardy <kenneth.hardy@gmail.com>

Cc: Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Great -- thx.

If Cleveland provides you with any sense of when they'll take it up today, please let us know as I know Dan has a few committees he's juggling.

Thx very much.

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

They are getting ready to roll on wind.

2 messages

Kenneth D. Hardy <kenneth.hardy@gmail.com>
To: Jeremy Payne <jpayne@renewablemaine.org>

Wed, Mar 19, 2014 at 3:33 PM

Is dan coming over?

KDH

Jeremy Payne <jpayne@renewablemaine.org>
To: "Kenneth D. Hardy" <kenneth.hardy@gmail.com>

Wed, Mar 19, 2014 at 7:19 PM

How'd you think it went?

[Quoted text hidden]



Kenneth Hardy <kenneth.hardy@gmail.com>

1750 this pm

3 messages

Jeremy Payne <jpayne@renewablemaine.org>

Thu, Mar 20, 2014 at 2:32 PM

To: "Kenenth D. Hardy" <kenneth.hardy@gmail.com>

Cc: Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Ken,

Senator Cleveland just said they plan to work LD 1750 this pm. They're working two other bills first, so I suspect we'll have maybe an hour or so before it comes up.

Wanted you to be aware, and make sure we understand what approach you and President Alfond prefer to take.

Thank you.

Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Mar 20, 2014 at 3:09 PM

To: Jeremy Payne <jpayne@renewablemaine.org>

Trying to nail down.

[Quoted text hidden]

Kenneth D. Hardy <kenneth.hardy@gmail.com>

Thu, Mar 20, 2014 at 3:27 PM

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: Dan Riley <driley@bernsteinshur.com>, Kate Knox <kknox@bernsteinshur.com>

Give me a call 207233331 to discuss.

KDH

[Quoted text hidden]



Wind bills

3 messages

Dylan Voorhees <dvoorhees@nrcm.org>

Thu, Mar 27, 2014 at 9:26 AM

To: "Roth-Wells, Andrew (Andrew.Roth-Wells@legislature.maine.gov)" <Andrew.Roth-Wells@legislature.maine.gov>, Michael LeVert <mjlevert@gmail.com>

Cc: Alysia Melnick <amelnick.legislature@gmail.com>

Andy & Mike,

I think it would be pretty helpful if I came to your caucus to discuss the wind bills. We're all hoping it will be smoother sailing in the Senate than the House, but it was a mess on that side and I think a lot of members who care about the environment voted the wrong way because they didn't understand the core issues. And there are several House D's working this issue pretty hard – even pushing for the Gov's wind goals bill (albeit improved from printed but still no good.) 12 D's voted for his bill, and 25 House D's voted for a bill that would be ruinous for wind development and protecting the North Woods.

They still haven't voted 616 on that side, but presumably that is coming. I do think it makes sense to bundle these together.

I need to be in Portland most of today, but I'm around all day tomorrow and all next week...

These talking points are not ready for general distribution to a caucus yet, but may be helpful for you.

Thanks,

Dylan



Talking points on LD 616 and Wind Power bills.docx

18K

Michael LeVert <mjlevert@gmail.com>

Thu, Mar 27, 2014 at 9:28 AM

To: dylan voorhees <dvoorhees@nrcm.org>

Cc: "Roth-Wells, Andrew (Andrew.Roth-Wells@legislature.maine.gov)" <Andrew.Roth-Wells@legislature.maine.gov>, Alysia Melnick <amelnick.legislature@gmail.com>

We're rolling today. ..can you come now?

[Quoted text hidden]

5/19/2014

Gmail - Wind bills

Thu, Mar 27, 2014 at 9:34 AM

Dylan Voorhees <dvoorhees@nrcm.org>

To: Michael LeVert <mjlevert@gmail.com>

Cc: "Roth-Wells, Andrew (Andrew.Roth-Wells@legislature.maine.gov)" <Andrew.Roth-Wells@legislature.maine.gov>, Alysia Melnick <amelnick.legislature@gmail.com>

I can. Where do you want me to come?

Dylan Voorhees

Clean Energy Director

From: Michael LeVert [mailto:mjlevert@gmail.com]

Sent: Thursday, March 27, 2014 9:28 AM

To: Dylan Voorhees

Cc: Roth-Wells, Andrew (Andrew.Roth-Wells@legislature.maine.gov); Alysia Melnick

Subject: Re: Wind bills

[Quoted text hidden]

RothWells, Andrew

From: RothWells, Andrew on behalf of Roth-Wells, Andrew
Sent: Thursday, March 27, 2014 9:42 AM
To: 'Dylan Voorhees'
Subject: RE: Wind bills

We're in 425.

Andy Roth-Wells|Chief of Staff

Maine State Senate Majority Office

3 State House Station,

Augusta, ME 04333-0003

Phone 207.287.1515

andrew.rothwells@legislature.maine.gov

From: Dylan Voorhees [<mailto:dvoorhees@nrcm.org>]
Sent: Thursday, March 27, 2014 9:35 AM
To: Michael LeVert
Cc: Roth-Wells, Andrew; Alysia Melnick
Subject: RE: Wind bills

I can. Where do you want me to come?

Dylan Voorhees
Clean Energy Director

From: Michael LeVert [<mailto:mjlevert@gmail.com>]
Sent: Thursday, March 27, 2014 9:28 AM
To: Dylan Voorhees
Cc: Roth-Wells, Andrew (Andrew.Roth-Wells@legislature.maine.gov); Alysia Melnick
Subject: Re: Wind bills

We're rolling today. ...can you come now?

On Mar 27, 2014 9:24 AM, "Dylan Voorhees" <dvoorhees@nrcm.org> wrote:

Andy & Mike,

I think it would be pretty helpful if I came to your caucus to discuss the wind bills. We're all hoping it will be smoother sailing in the Senate than the House, but it was a mess on that side and I think a lot of members who care about the environment voted the wrong way because they didn't understand the core issues. And there are several House D's working this issue pretty hard – even pushing for the Gov's wind goals bill (albeit improved

from printed but still no good.) 12 D's voted for his bill, and 25 House D's voted for a bill that would be ruinous for wind development and protecting the North Woods.

They still haven't voted 616 on that side, but presumably that is coming. I do think it makes sense to bundle these together.

I need to be in Portland most of today, but I'm around all day tomorrow and all next week...

These talking points are not ready for general distribution to a caucus yet, but may be helpful for you.

Thanks,

Dylan

RothWells, Andrew

From: Dylan Voorhees <dvoorhees@nrcm.org>
Sent: Thursday, March 27, 2014 9:26 AM
To: Roth-Wells, Andrew; Michael LeVert
Cc: Alysia Melnick
Subject: Wind bills
Attachments: Talking points on LD 616 and Wind Power bills.docx

Andy & Mike,

I think it would be pretty helpful if I came to your caucus to discuss the wind bills. We're all hoping it will be smoother sailing in the Senate than the House, but it was a mess on that side and I think a lot of members who care about the environment voted the wrong way because they didn't understand the core issues. And there are several House D's working this issue pretty hard – even pushing for the Gov's wind goals bill (albeit improved from printed but still no good.) 12 D's voted for his bill, and 25 House D's voted for a bill that would be ruinous for wind development and protecting the North Woods.

They still haven't voted 616 on that side, but presumably that is coming. I do think it makes sense to bundle these together.

I need to be in Portland most of today, but I'm around all day tomorrow and all next week...

These talking points are not ready for general distribution to a caucus yet, but may be helpful for you.

Thanks,
Dylan

Talking points on LD 616 and Wind Power bills

Broad points to re-iterate:

- Wind power is an important part of Maine's clean energy future. It is a local, renewable energy source that creates jobs, increases energy independence, and reduces air pollution and helps with climate change.
- Maine people remain strongly supportive of moving forward with wind power.
- It is important to have a predictable and balanced siting and permitting policy for wind, so we maximize the benefits of wind—whether economic or environmental—and minimize impacts.
- The establishment of the expedited permitting area was intended to increase predictability for permitting, and guide wind development toward certain regions and away from the more remote parts of the state. (The Wind Energy Act also required wind developers to pay minimum, monetary tangible benefits annually to communities that host wind, a requirement we don't levy on most forms of development. It is a balance, and remains a good balance overall.)
- Last year we passed an important bill, LD 385, to significantly increase public participation in wind power permitting proceedings.

Support the Minority ONTP report on LD 616

General:

- The majority ought to pass as amended report on LD 616 creates a process for the removal of locations from the expedited wind permitting area at the Maine Land Use Planning Commission. There is general support—including by conservation groups and developers—for creating a process to remove locations from the expedited wind permitting area.
- However, the language in the majority report is overly broad and could lead to a floodgate of requests for removal from the expedited area that the LUPC would be required to grant *without good cause*.
- Conservation groups, landowners and wind developers are committed to continuing to find common ground on this important issue. I urge the Legislature to vote against LD 616 and instead consider a version next session that has broader support.
- LD 616 has raised legitimate concerns but the solution needs more work.

More specific:

- The Majority Report has some good elements to it, however it still has a critical problem because it does not give the LUPC any substantive guidance about what criteria to use in deciding to remove areas.
- If the LUPC is going to make wind developers in the current expedited permitting area go through a different, additional re-zoning process, there should be some *land use reason* to do that.
- That's really important, otherwise we could see a major erosion of the state's land identified as more appropriate for wind power. We should—and can—get this right.



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Caucus March 27

1 message

Kate Simmons <kathryn.m.simmons@gmail.com>

Thu, Mar 27, 2014 at 5:22 PM

To: Seth Berry <bhamberry@gmail.com>, Jeff McCabe <jeffmccabe4me@gmail.com>, Mark Eves <markweves@yahoo.com>, Ana Hicks <ana_hicks@yahoo.com>, Jodi Quintero <jodiquintero@gmail.com>, Ann Kim <annkim207@gmail.com>, "Saxton, Amy" <amy.saxton@legislature.maine.gov>, "MacDonald, Ryan" <Ryan.MacDonald@legislature.maine.gov>, Bill Brown <william.brown@gmail.com>, Alex Pringle <Alex.Pringle@legislature.maine.gov>, "MacFarland, Millie" <Millie.Macfarland@legislature.maine.gov>, Alysia Melnick <amelnick.legislature@gmail.com>, "Hunt, Rob" <rob.hunt@legislature.maine.gov>

Notes for Chairs:

- Kudos to Rep. Sharon Treat for keeping an eye on the bills being reported out of her committee, and prepping sponsors and committee members for the floor. She gave Rep. Rankin a folder for today's bill, and made sure she was ready.
- Many thanks to Rep. MacDonald for pre-drafting sheets for caucus on his most controversial bills
- Thanks to Rep. Hobbins for moving the wind bills and two other bills forward in the past 48 hours - great work

Caucus

March 28, 2013

8:30 am **Welcome**

8:35 am **Bills Planned to Run**

1-1 EUT PUC Temp Commissioner Bill – Recede and Concur

UF 2 TAX

UF 9 EUT POLR

Tentative UF 11 Amended Work Permits for Minors - Jeff checking w Rep Herbig

Notice 1: Leukocyte Antigen Testing

8:50 am **Update on Thurs Bond Hearings**

8:55 am **Announcements**

9:00 am

Depart for Chamber

Calendar Notes

1-1 EUT LD 1619 "An Act to Provide for a Quorum at the Public Utilities Commission" – SENATE AMENDED UNDER THE HAMMER. AMENDMENT CLARIFIES COMPENSATION FOR TEMP COMMISSIONER. RECEDE AND CONCUR, RUN.

Unfinished Business

2. LD 936 "AN Act to Authorize Municipalities to Impose Service Charges on Tax-Exempt Property Owned by Certain Non-profit Organizations" – **REP GOODE OK TO CAUCUS, RUN**

3. LD 616 EUT "An Act to Amend the Expedited Permitting Area for Wind Energy Development under the Jurisdiction of the Maine Land Use Planning Commission" – **RUN MONDAY**

4. LD 1458 LCRED "An Act To Enact the Maine Small Business Investment Protection Act" Maj OTP-AM A (Rs plus Mason), Min OTP-AM B (Ds), and Campbell has a third report –**KEEP TABLED**

6. LD 1581 HHS "An Act to Improve Business Certainty for Providers of Quality Child Care" – **REP BERRY – NEWS HERE?**

7. LD 1578 HHS "An Act to Increase Health Security by Expanding Federally Funded Health Care for Maine People" – **KEEP TABLED**

8. **HHS** LD 1686 "An Act to Address Preventable Deaths from Drug Overdose" Maj OTP-AM A (Ds) Min OTP-AM B (Rs) – **CAUCUSED, ASK REP. GIDEON IN CHAIRS**

9. EUT LD 38 Resolve, Regarding Legislative Review of Chapter 201: Provider of Last Resort Service Quality, a Major Substantive Rule of the PUC – Maj OTP-AM A (Ds), Min OTP-AM B (Rs plus Beavers) – **CAUCUS AND RUN FRIDAY**

10. Patent Infringement – **NEWS HERE?**

11. LD 1698 Bill "An Act To Streamline the Work Permitting Process for Minors and To Conform Allowable

5/28/2014

(37263 unread) - ana_hicks - Yahoo Mail

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616

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ana_hicks



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CarPriceSecrets.com

Did You Know Every New Car Has a Secret Price?

Monday's Schedule and Divided Reports coming on Monday (4)

Me

Mar 30

To: Kate Simmons

Ugh!! So annoying! I will talk to mark. Will be hard to be in Monday afternoon if we can't do 616. Morning session will be quick without it.

Adam told me he was definitely not ready for Monday. Will check back in with him. He is not happy about how Seth handled things on Friday. Will tell you more later.

Sent from my iPhone

> Hide message history

On Mar 30, 2014, at 2:02 PM, Kate Simmons <kathryn.m.simmons@gmail.com> wrote:

Barry will never be ready...we need to pick a date and stick to it - want to talk to the speaker?

Begin forwarded message:

From: Seth Berry <bhamberry@gmail.com>

Date: March 30, 2014 at 1:52:26 PM EDT

To: Kate Simmons <kathryn.m.simmons@gmail.com>

Cc: "MacDonald, Ryan" <Ryan.MacDonald@legislature.maine.gov>, Alysia Melnick <amelnick.legislature@gmail.com>, Jodi Quintero <jodiquintero@gmail.com>, Alex Pringle <aprangleleg@gmail.com>, Rob Hunt <rob.hunt@legislature.maine.gov>, "markweves@yahoo.com" <markweves@yahoo.com>, Ana Hicks <ana.m.hicks@gmail.com>, Jeff McCabe <jeffmccabe4me@gmail.com>, "MacFarland, Millie" <Millie.Macfarland@legislature.maine.gov>

Subject: Re: Monday's Schedule and Divided Reports coming on Monday

Goode ready

Hobbins definitely not ready. Please have Ryan prep a sheet for Tuesday or later.

Rep. Seth Berry

House Majority Leader

Cell (207) 522-1609

Office (207) 287-1430

On Mar 30, 2014 12:52 PM, "Kate Simmons" <kathryn.m.simmons@gmail.com> wrote:

Ana - Thank you for doing this note-- had meant to do Saturday and then my technology broke. All sounds good.

Friday night my phone refused to charge, kept dying and my new little laptop screen spontaneously went on the fritz. Phone is at last back up and running -- phew. Laptop not so much.

Happy Sunday,

Kate

On Mar 30, 2014, at 12:07 PM, Jeff McCabe <jeffmccabe4me@gmail.com> wrote:

Did You Know Every New Car Has a Secret Price?

CarPriceSecrets.com

View Singles Near You
Match.com

Premium Fine Art
Gallery Online
www.Qart.com

Text Message

Monday April 7, 9:13AM

JA - Can u bring in 1750 testimony from Riley

KDH - I'm not in building yet. Ericka had a copy

KDH - Also copied on desk

JA - Its misplaced

KDH - Your copy misplaced? Or the one on my desk misplaced?

JA - My copy



Caucus April 8

1 mess 200

Kate Simmons <kathryn.m.simmons@gmail.com>

Mon, Apr 7, 2014 at 5:17 PM

To: Seth Berry <bhamberry@gmail.com>, Jeff McCabe <jeffmccabe4me@gmail.com>, Mark Eves <markweves@yahoo.com>, Ana Hicks <ana_hicks@yahoo.com>, Alysia Melnick <amelnick.legislature@gmail.com>, Bill Brown <william.brown@gmail.com>, "MacDonald, Ryan" <Ryan.MacDonald@legislature.maine.gov>, "Saxton, Amy" <amy.saxton@legislature.maine.gov>, Jodi Quintero <jodiquintero@gmail.com>, Ann Kim <annkim207@gmail.com>, "Hunt, Rob" <rob.hunt@legislature.maine.gov>, "MacFarland, Millie" <Millie.Macfarland@legislature.maine.gov>, Alex Pringle <Alex.Pringle@legislature.maine.gov>

Will send an updated memo tomorrow by noon w news from chairs on their requests on non-concurrent matters.

Caucus

April 8, 2014

2:00 pm **Welcome**

2:05 pm **Bills Running:**

6-1 EUT Pres. Alfond's Wind Bill

7-2 TRANS Interstate Signs

2:20 pm Budget Update (if needed)

Rep. Rotundo

2:25 pm **Announcements**

2:30 pm **Depart for Session**

Calendar Notes

Non-Concurrent Matter

1-1 LD 1177 SLG "An Act To Implement the Recommendations from the Discontinued and Abandoned Roads Stakeholder Group" – **HOUSE INDEFINITELY POSTPONED, SENATE PASSED CMTE AMDT A AND SENATE AMDT B AND IS INSISTING AND REQUESTING COMMITTEE OF CONFERENCE, REP GRAHAM AND REP BERRY DETERMINING WAY FORWARD**

1-2 LD 1669 LCRED "An Act to Standardize and Simplify the Process for Employers to Provide a Drug-Free Workplace" – **HOUSE ONTP, SENATE PASSED CMTE AMDT A AND SENATE AMDT B AND INSISTED – REP MCCABE CHECKING W REP HERBIG**

1-3 LD 1850 EDU Resolve, to Establish the Commission to Strengthen the Adequacy and Equity of Certain Cost Components of the School Funding Formula (EMERGENCY) – **HOUSE PASSED, SENATE AMENDED – CHECKING W REP MACDONALD**

1-4 LD 1710 LCRED "An Act to Retain Call Centers in Maine" – **HOUSE PASSED OTP-AM, SENATE PASSED W SENATE AMENDMENT A, REP MCCABE CHECKING W REP HERBIG**

Divided Reports

6-1 LD 1750 EUT "An Act to Amend Maine's Administrative Procedure Act and Clarify Wind Energy Laws" – Maj OTP-AM (Ds), Min ONTP (Rs plus Beavers), **SENATE PASSED OTP-AM ON PARTY LINES, CAUCUS W SHEET AND RUN, MAY NEED TO WHIP**

DAILY DEBATE: A GUIDE TO DIVIDED REPORTS

Prepared by the House Majority Office for members of the Democratic Caucus

April 8, 2014

Please do not discard if this bill is tabled.

LD 1750: An Act To Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws

Sponsor: Sen. Alfond

Committee: EUT

Contact: Rep. Hobbins

Summary: This bill amends the Maine Administrative Procedure Act by amending the definition of "rule" and requiring that every agency decision be based on the best evidence available to the agency. The bill also amends the laws governing expedited wind energy developments to provide that in determining the tangible benefits of an expedited wind energy development, the primary siting authority may not require the submission of evidence of the energy and emissions-related benefits or make specific findings related to energy and emissions-related benefits. Those benefits are presumed. The bill also provides that in determining whether a proposed expedited wind energy development will have an unreasonable adverse effect on scenic character or existing uses and whether an applicant must provide a visual impact assessment, the primary siting authority is required to consider the energy and emissions-related benefits of the expedited wind energy development, the policy objectives of the Maine Wind Energy Act and the energy, environmental and economic benefits associated with the expedited wind energy development.

Amendment (S-483): This amendment is the majority report of the committee. It requires the Department of Environmental Protection to conduct routine technical rulemaking to establish the submission requirements for permit applications for wind energy developments. It directs the department to use the submission requirements that were established in accordance with Public Law 2007, chapter 661, Part B, section 13 until the rulemaking is completed. This amendment also adds an appropriations and allocations section.

Fiscal Detail and Notes: The bill requires the Department of Environmental Protection (DEP) to establish rules for submission requirements of permit applications for wind energy development. Until DEP adopts these rules, they may not require applicants to submit certain information. The bill includes a General Fund appropriation of \$2,500 in fiscal year 2014-15 to DEP for rulemaking.

REPORT

Majority: OTP-AM

Sen. Cleveland, Jackson

Reps. Hobbins, Gideon, Russell, Rykerson, Tipping-Spitz

Minority: ONTP

Sen. Youngblood

Reps. Beavers, Dunphy, Harvell, Libby, Newendyke

- The Department's rules do not currently reflect the intent of the Legislature when it passed wind permitting laws.
- Current statute allows the Department to skip the rulemaking process regarding the wind power permitting application process.
- As amended, the bill simply seeks to ensure that the Department's rules reflect the law and the intent of the Legislature. It does not change the law regarding wind power applications.
- The current rules have worked well and there is no need to change current practice.
- The current rules reflect the intent of the wind power siting laws.
- Requiring the Department to use the formal rule-making process in the APA could cause significant delays and would unnecessarily use limited Department resources.


[kathryn.m.simmons@gmail.com](#)

Caucus April 10

Simmons, Kate <Kate.Simmons@legislature.maine.gov>

Wed, Apr 9, 2014 at 5:09 PM

To: "bhamberry@gmail.com" <bhamberry@gmail.com>, Jeff McCabe <jeffmccabe4me@gmail.com>, Mark Eves <markweves@yahoo.com>, "Hicks, Ana" <Ana.Hicks@legislature.maine.gov>, "MacDonald, Ryan" <Ryan.MacDonald@legislature.maine.gov>, "Saxton, Amy" <amy.saxton@legislature.maine.gov>, "Kim, Ann" <Ann.Kim@legislature.maine.gov>, "Quintero, Jodi" <jodi.quintero@legislature.maine.gov>, "Bill Brown (william.brownlegislature@gmail.com)" <william.brownlegislature@gmail.com>, "Pringle, Alex" <alex.pringle@legislature.maine.gov>, "Melnick, Alysia" <Alysia.Melnick@legislature.maine.gov>, "MacFarland, Millie" <Millie.Macfarland@legislature.maine.gov>, "Hunt, Rob" <rob.hunt@legislature.maine.gov>
Cc: "kathryn.m.simmons@gmail.com" <kathryn.m.simmons@gmail.com>

Caucus

April 9, 2014

9:30 am **Welcome**

9:35 am **Bills Running:**

1-1 Tentative

6-1 EUT LD 1468 Pellet Boiler Rebate – *confirm wRep. Hobbins in chairs*

6-2 EDU LD 995 Moratorium on Virtual Charter Schools

UF 10 TRANS LD 1831 Signs – *confirm wRep. Theriault in chairs*

9:50 am **Budget Update**

9:55 am **Announcements**

Rep. Chellie Pingree at Friday noon caucus

Attendance on Monday and Tuesday next week critical

10:00 am **Depart for Session**

Out in AM: Dion, Frey (in at 1), Goode (all day), Hayes (in at 11), Noon

Senate Papers

Requiring Reference

Divided Reports

Senate amendment B:

Unfinished Business

7. EUT LD 1750 “An Act to Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws” – Maj OTP-AM (Ds), Min ONTP (Rs plus Beavers) – **OTP-AM FAILED 70-77, RUN FRIDAY (BETTER ATTENDANCE)**

10. TRANS LD 1831 "An Act to Allow Signs for Areas of Local, Regional and Statewide Interest on the Interstate System" – unanimous OTP-AM, **CONFIRM W REP THERIAULT RUN THURS – UNDERSTAND ESPLING AND HICKMAN HAVE AMENDMENTS, ARE THERE ANY MORE?**

Bills Held

1. JUD LD 1828 "An Act to Limit Consent Regarding Land Transfers to the Federal Government" – Maj ONTP (11), Min OTP-AM (Burns, Guerin) – **NEWS HERE?**

Kate Simmons | Chief of Staff

Maine House Majority Office

2 State House Station

Augusta, ME 04333

207.287.1430 (p) | 207.287.8338 (f)

www.housedemocrats.maine.gov



Attendance tomorrow and Friday - 1750

Seth Berry <bhamberry@gmail.com>
To: Justin Alfond <jalfond@gmail.com>

Wed, Apr 9, 2014 at 5:34 PM

Justin,

As of now these folks are out in our caucus:

Thursday morning:

Noon
Goode
Dion
Frey
Hayes

Friday morning:

Noon?
Mason

To me it looks like Friday may be slightly better to run your bill – though we don't always hear from folks until the last minute on Fridays.

At the same time - I am sure Beavers et al are working on this also.

My instinct is to wait until Friday and if attendance is good, run it. If not, run it Monday with the budget instead. That way you can just count to 76 (or better) and know those folks will be voting.

Thanks,

Seth

Rep. Seth Berry
House Majority Leader
cell 207-522-1609
office 207-287-1430



Ralph Chapman's comments on LD1750

Ralph Chapman <chapmanhd37@gmail.com>
To: Ralph Chapman <chapmanHD37@gmail.com>
Bcc: jalfond@gmail.com

Wed, Apr 9, 2014 at 11:50 PM

For those interested in my take on LD1750, here is a (much too lengthy) explanation of my views. -Ralph

Between roughly 4:00pm and 4:30pm on Tuesday April 8, LD 1750 was considered in the House. The motion OTP-A was defeated 70 - 77, then a motion to reconsider was passed 74 - 73, and finally a motion to table was passed 77 - 70. Though listed on the unfinished business calendar, it was not taken up again on Wednesday April 9. It is expected to come up shortly.

Follow-up discussions are underway with several members of the House. I have spoken with Justin Alford (bill sponsor), Ryan Tipping-Spitz (committee amendment sponsor), Bobbi Beavers (EUT member against the bill) and other House colleagues (on ENR and SLG) as well as Jeremy Payne (lobbyist).

Since those discussions, I have downloaded the bill, the fiscal note, and the 2007-8 Public Law Chapter 661 referenced in the bill. I have not seen, nor do I have access to, the current or the previous specifications for submission of application for a wind power, or expedited wind power, development.

I have had experience working for a Maine windpower developer and brought pre-application materials before the DEP and LURC for a "wind-farm" development in Maine. (At the time, the application materials envisioned one megawatt turbines, the largest then available.) I am very familiar with the need for shifting from non-renewable, global polluting and climate changing fossil fuels, to renewable energy sources, and simultaneously improving the efficiency with which we use energy. Since a typical household in Maine annually uses a thousand gallons of #2 oil for home heating, and a thousand gallons of gasoline for transportation, electricity use represents a small fraction (five percent) of our fossil fuel use. Global warming problems can be addressed by home weatherization and carpooling with much more dramatic results than by windpower. Nevertheless, improving efficiency and shifting to renewables are both necessary, and research has shown public acceptance of windpower increases after installation (with an obvious exception on the Fox Islands due to noise from poor original blade design). In the long run, photovoltaics (a quantum energy conversion process) will likely be cheaper than windpower.

The issue at hand regarding LD1750 has to do with the behavior of the Maine Department of Environmental Protection in developing permit application submission requirements for windpower developers without a (major substantive or minor technical) rulemaking process. The LD1750 proponents believe the DEP should be reigned in by the Legislature through passage of the bill. The opponents believe that if the DEP acted illegally, the developers should resolve the matter through the courts.

No one I have talked with offers an answer to the question, "If the legislature passes a bill that is then vetoed and sustained, can the legislative intent be used in a court process?" I think this question is pertinent since it seems expected that the Governor will veto LD1750 if the legislature passes it.

To the question about the legality of the Department specifying application submission requirements without using rulemaking procedures, section B-13 of 2007-8 Public Law Chapter 661 says that "implementation of this section does not require rulemaking...". The section itself describes a process involving both DEP and LURC "jointly" specifying the submission requirements "no later than September 1, 2008."

A plain reading (not necessarily pertinent to lawyers!) suggests that section B-13 of PL Chapt 661 could not be used as a justification for the Department's actions, but it is not clear to me that the Department needs justification.

The bill itself makes the permit application submission requirements minor technical rules subject to rulemaking procedures. It rolls back all requirements to those developed in 2008 until new requirements go through the rulemaking process.

I have no doubt that the DEP (as well as other executive branch agencies) behaves poorly. Indeed, I am aware of the DEP not following the requirements of the Maine Administrative Procedures Act in handling the rulemaking for metal mining rules. I am also aware that lawyers are ready to spring into action should it be necessary.

So, on the one hand, there is nothing wrong with the Legislature, if it so chooses, defining department action as rulemaking. On the other hand, there is nothing wrong with having a developer pursue illegal action by the Department through the courts. Whether or not this issue rises to the level of Legislative action depends upon the egregiousness of the Department-defined specifications. If the Department's specifications are reasonable, I believe it is reasonable for the Department to make them. If the Department's specifications are un-reasonable, I believe the legislature should take control. Therefore, my decision on LD1750 depends upon my evaluation of the Department's specifications.

I am concerned that this issue has taken so much time and attention as other matters seemed to be afforded much less. Specifically, overturning Citizens United was not discussed in caucus, was not supported by the leadership, and was not voted on favorably by the leadership. Yet this matter has received the opposite attention and action. Time to re-calibrate....

I'll stick with my vote against LD1750 unless I am provided the information about the recently adopted specifications from the DEP and I evaluate them to be un-reasonable.

-Ralph Chapman

Senate President Justin Alfond <jalfond@gmail.com>

Thu, Apr 10, 2014 at 8:41 AM

Reply-To: jalfond@gmail.com

To: Michael Levert <mjlevert@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Ken Hardy <kenneth.hardy@gmail.com>, Jeremy Payne <jpayne@renewablemaine.org>

FYI.

Just in case you have not seen.

Justin

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>

Thu, Apr 10, 2014 at 8:51 AM

To: justin alfond <jalfond@gmail.com>

Cc: Michael Levert <mjlevert@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Ken Hardy <kenneth.hardy@gmail.com>, Kate Knox <kknox@bernsteinshur.com>

Thank you - I had not seen this expansive explanation which ultimately makes clear that Ralph is still confused.

Part of the challenge is that Rep Beavers is either confused w/ what DEP tried to do to her bill last session, or she's purposely misleading Rep Chapman.


Yesterday I provided to Rep's Russell, Tipping-Spitz and Rykerson (at their request) the side-by-side which EUT analyst Jean Guzzetti (see attached) created during the committee process. I have told Tipping-Spitz in particular that he should sit down and walk Ralph through the substantive changes made in DEP's submission requirements – and Ryan has agreed to do this. To his credit, Ryan has been working this bill quite hard and fully understands the issues at hand.

I will also follow up w/ Ralph myself this morning and show him DEP's proposed amendment to LD 385, the side-by-side, and the actual submission requirements document. If that's not enough evidence of a problem where the legislature must step in to protect its role as the policymaking body then I'm just not sure what else might move the needle.

It is still our understanding the House will not take up LD 1750 today because a number of House D's are scheduled to be absent.

Thanks,
Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org
[Quoted text hidden]

 **1750 side by side.pdf**
1369K

Senate President Justin Alfond <jalfond@gmail.com>

Thu, Apr 10, 2014 at 9:33 AM

Reply-To: jalfond@gmail.com

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: Kate Knox <kknox@bernsteinshur.com>, Ken Hardy <kenneth.hardy@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Michael Levert <mjlevert@gmail.com>

Thanks Jeremy

[Quoted text hidden]

Jeremy Payne <jpayne@renewablemaine.org>

Thu, Apr 10, 2014 at 3:54 PM

To: justin alfond <jalfond@gmail.com>

Cc: Kate Knox <kknox@bernsteinshur.com>, Ken Hardy <kenneth.hardy@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Michael Levert <mjlevert@gmail.com>

FYI – I spent quite a while w/ Ralph this morning; I suspect he still won't come w/ us.

Interestingly, he thinks the bill should attack DEP on a number of fronts and not just wind. I told him this was the

bill we have so why not support it as a good start?

Also, he wishes you, Mr. President, would call him more often to consult w/ him on other more pressing policy matters.

Again, I don't think we'll change his mind, but we've pushed him as far as we can.

Thank you.

Jeremy

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
PO Box 743
Augusta, ME 04332
207.626.0730 - P
207.626.0200 - F
207.485.4850 - C
jpayne@renewablemaine.org
www.renewablemaine.org

[Quoted text hidden]

Senate President Justin Alfond <jalfond@gmail.com>

Thu, Apr 10, 2014 at 3:59 PM

Reply-To: jalfond@gmail.com

To: Jeremy Payne <jpayne@renewablemaine.org>

Cc: Kate Knox <kknox@bernsteinshur.com>, Ken Hardy <kenneth.hardy@gmail.com>, Dan Riley <driley@bernsteinshur.com>, Michael Levert <mjlevert@gmail.com>

Thanks for the update Jeremy.

Best,
Justin

Senate President Justin Alfond
www.justinalfond.com
justin@justinalfond.com

143 Vaughan Street
Portland, ME 04102
207-232-4187

[Quoted text hidden]

Kenneth Hardy <kenneth.hardy@gmail.com>

Thu, Apr 10, 2014 at 4:00 PM

To: justin alfond <jalfond@gmail.com>

Consult him on policy matters?

KDH

[Quoted text hidden]



Fwd: Call List

Kenneth D. Hardy <kenneth.hardy@gmail.com>
To: justin alfond <jalfond@gmail.com>

Thu, Apr 10, 2014 at 5:22 PM

KDH

Begin forwarded message:

From: Kenneth Hardy <kenneth.hardy@gmail.com>
Date: April 8, 2014 at 8:01:29 PM EDT
To: Jeremy Payne <jpayne@renewablemaine.org>, Dan Riley <driley@bernsteinshur.com>
Subject: Call List

Jeremy,

Attached are the member to call regarding 1750. They are planning on caucusing in the house again tomorrow morning, so any additional materials we want to get them.

The President is also calling through the list.

KDH

Rep. Andrea Boland (Sanford): 207-432-7893

Ralph Chapman (Brooksville):

Denise Harlow (Portland): 207-409-0870

Bryan Kaenrath (South Portland): 207-409-7137

Catherin Nadeau (Winslow): 207-557-1587

Ann Peoples (Westbrook): 207-671-0392

Matt Peterson (Rumford): 207-776-8051

Steve Stanley (Medway): 207-461-4761

Steve Short (Pittsfield): 207-660-2434

Kenneth Theriault (Madawaska): 207-436-0693

ABSENT DEMS:

Peter Kent (Woolwich) – May be in tomorrow 207-319-4708



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

29 April 2014

The 126th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 126th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1750, "An Act To Establish Submission Requirements for Wind Energy through Rulemaking."

The legislation circuitously attempts to restrict the ability of the Department of Environmental Protection (DEP) from requesting additional information from wind developers for proposed projects. Apparently, the Legislature does not believe it would be helpful to understand how a wind project would help reduce energy prices, provide part-time as well as full-time jobs and have potentially detrimental environmental effects.

I disagree. It might have been controversial if the DEP required that projects demonstrate specific energy benefits or employment levels. That is not what DEP has requested. The DEP simply updated their submission requirements for applications for future applications and requested some pertinent questions. The Legislature has offered no valid reason to oppose these questions being asked of wind developers.

Wind development can have a dramatic effect on our entire State, but it is most acute on the local populations. Their voices should be enhanced in the permitting process, and providing information only informs the State of the pros and cons for development. The DEP's request is a modest one in the context of a decision that will have implications for decades in rural communities.

For these reasons, I return LD 1750 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor



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