



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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TESTIMONY OF
MARK BERGERON, DIRECTOR, BUREAU OF LAND RESOURCES
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 901

AN ACT TO AMEND THE LAWS GOVERNING THE DETERMINATION OF A WIND ENERGY DEVELOPMENT'S EFFECT ON THE SCENIC CHARACTER OF MAINE'S SPECIAL PLACES

SPONSORED BY REP. WINSOR

**BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING:

MARCH 23, 2017

Senator Saviello, Representative Tucker, and members of the Committee, my name is Mark Bergeron, Director of the Land Resources Bureau at the Department of Environmental Protection, speaking in opposition to L.D. 901.

The proposed bill seeks to change the statutory distance for which scenic impacts can be evaluated for wind energy developments. Currently, applicants must provide a visual impact assessment (VIA) for wind turbines to be located within 3 miles of a scenic resource, and the Department can require VIA's for projects up to 8 miles from a scenic

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resource. L.D. 901 proposes to change the statutory distances to 8 miles for all scenic resources, and up to 15 miles for a number of other scenic resources.

The 2008 Maine Wind Energy Act (35-A MRS §§ 3401-3459) establishes scenic review standards specific to wind energy developments. The Wind Energy Act requires the Department to determine if a proposed wind energy development would cause an unreasonable adverse effect on the scenic character of scenic resources. It has been the Department's experience that the scenic impact standard is one of the most challenging aspects of reviewing applications for wind energy developments, for both our staff and the regulated community. As the saying goes, 'beauty is in the eye of the beholder', and determining what is an unreasonable adverse effect is a difficult task.

The Department opposes the proposed language because it would not provide a solution as to what is an unreasonable adverse effect, and it would create two categories of scenic resources. We believe that increasing the distance to which scenic impacts can be evaluated will not answer the question as to what unreasonable is. Even if a 15-mile limit were to be established for some scenic resources, the question would still exist as to what an unreasonable adverse effect is. We believe that a better approach is not to modify the statutory standards, but to provide better clarity and definition of the existing scenic standards through a rulemaking process. Last year the Department commenced a rulemaking effort to create a new set of rules for the Wind Energy Act, because no rules currently exist. Among other standards, scenic impacts are a focus of the proposed Chapter 382 Wind Rules. We would like to complete our work on this rulemaking effort to provide better clarity and definition as to what an unreasonable adverse effect is. We have had two public meetings and two rounds of pre-rulemaking comments to gather vital public input to the proposed rule. We plan to complete the rulemaking this year.

By extending this new layer of protection to Baxter State Park and Acadia National Park, this bill would diminish the relative importance of many other lesser-known lakes and other scenic resources that are no less important as drivers for Maine's six-billion-dollar tourism economy. We believe all Maine residents and visitors deserve equal protection against potential impacts to our valuable scenic resources.

In closing, let me reiterate that in the Department's view, L.D. 901 would not provide a viable solution as to what is an unreasonable adverse effect to scenic resources, and it would create two categories of scenic resources that unfairly favors some scenic resources over others.

Thank you for this opportunity to provide our comments on this bill. I will be happy to answer any questions that you might have.