127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document	**No. 911**
H.P. 631	House of Representatives, March 12, 2015

An Act Concerning the Review of Certain Projects under the Site Location of Development Laws

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative WINSOR of Norway.
Cosponsored by Senator SAVIELLO of Franklin and
Representatives: CAMPBELL of Orrington, DUCHESNE of Hudson, DUNPHY of Embden, HARLOW of Portland, McCREIGHT of Harpswell, MORRISON of South Portland.

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

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

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

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

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

D. A great pond that is:

(1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; ~~or~~

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987; or

(3) One of the great ponds listed in the publications cited in subparagraphs (1) and (2) but not considered to have outstanding or significant scenic quality under subparagraph (1) or designated as outstanding or significant from a scenic perspective under subparagraph (2) on which there is located at least one commercial sporting camp that was established prior to 2007;

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

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

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

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

10-A. Viewshed of a scenic resource. "Viewshed of a scenic resource" means the geographic area as viewed from a scenic resource of state or national significance that

includes a proposed wind energy development. The viewshed of a scenic resource may include the visible proposed wind energy development from a single viewer position or the visible proposed wind energy development from multiple viewer positions. The viewshed of a scenic resource is limited to the geographic area within 15 miles, measured horizontally, from the proposed wind energy development's generating facilities.

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

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

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

B. The existing character of the surrounding area;

C. The expectations of the typical viewer;

D. The expedited wind energy development's purpose and the context of the proposed activity;

E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and

F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

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

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

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

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

B. Notwithstanding paragraph C, if portions of the development's generating facilities are located within 15 miles, measured horizontally, from Acadia National Park, the Appalachian Trail, a federally designated wilderness area, Baxter State Park or the Allagash Wilderness Waterway, a visual impact assessment is required.

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

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

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

SUMMARY

This bill:

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

2. Allows for the consideration of cumulative scenic impacts in the permitting of wind energy developments;

3. Adds to the definition of "scenic resource of state or national significance" great ponds that were studied for their value in 1987 or 1989 and that have on them commercial sporting camps established prior to 2007;

4. Allows the Department of Environmental Protection to require a visual impact assessment for wind energy developments located within 15 miles of scenic resources of state or national significance and mandates a visual impact assessment if a generating facility is located within 15 miles of specific scenic resources of state or national significance; and

5. Allows the Department of Environmental Protection to require a visual impact assessment for wind energy developments located beyond 15 miles from scenic resources of state or national significance under certain limited circumstances.