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House of Representatives, March 21, 2013

An Act To Protect Maine's Scenic Character

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HAYES of Buckfield.
Cosponsored by Representatives: BRIGGS of Mexico, CROCKETT of Bethel, HARLOW of Portland, HARVELL of Farmington, McCABE of Skowhegan, MORRISON of South Portland, WINSOR of Norway, Senator: SAVIELLO of Franklin.

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

2 **Sec. 1. 35-A MRSA §3451, sub-§§1-D and 8-B** are enacted to read:

3 **1-D. Cumulative scenic impact or effect.** "Cumulative scenic impact or effect"
4 means the potential adverse effect on the scenic character and existing uses related to the
5 scenic character of scenic resources of national, state or local significance resulting from
6 the incremental impact of a proposed wind energy development when added to the effects
7 of other past, present and reasonably foreseeable wind energy developments within the
8 viewshed of a scenic resource of national, state or local significance. A determination of
9 cumulative scenic impact or effect may be based upon the combined, successive or
10 sequential observation of wind energy developments by the viewer.

11 **8-B. Scenic resource of local significance.** "Scenic resource of local significance"
12 means those areas of a municipality that have been identified in the municipality's
13 comprehensive plan or comparable document as having special scenic or historic value
14 and that are protected from the effects of inappropriate development by public ownership,
15 ownership by a land trust or similar nonprofit organization or land use controls.

16 **Sec. 2. 35-A MRSA §3451, sub-§9, ¶D,** as enacted by PL 2007, c. 661, Pt. A,
17 §7, is amended to read:

18 D. A great pond that is:

19 (1) One of the 66 great ponds located in the State's organized area identified as
20 having outstanding or significant scenic quality in the "Maine's Finest Lakes"
21 study published by the Executive Department, State Planning Office in October
22 1989; ~~or~~

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

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

31 **Sec. 3. 35-A MRSA §3451, sub-§10-A** is enacted to read:

32 **10-A. Viewshed of a scenic resource.** "Viewshed of a scenic resource" means the
33 geographic area as viewed from a scenic resource of national, state or local significance
34 that includes a proposed wind energy development. The viewshed may include the visible
35 proposed development from a single observer position or the visible proposed
36 development from multiple observer positions.

37 **Sec. 4. 35-A MRSA §3452, sub-§§1 and 3,** as enacted by PL 2007, c. 661, Pt.
38 A, §7, are amended to read:

1 **1. Application of standard.** In making findings regarding the effect of an expedited
2 wind energy development on scenic character and existing uses related to scenic character
3 pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 or
4 section 480-D, the primary siting authority shall determine, in the manner provided in
5 subsection 3, whether the development significantly compromises views from a scenic
6 resource of national, state or ~~national~~ local significance such that the development has an
7 unreasonable adverse effect on the scenic character or existing uses related to scenic
8 character of the scenic resource of national, state or ~~national~~ local significance. Except as
9 otherwise provided in subsection 2, determination that a wind energy development fits
10 harmoniously into the existing natural environment in terms of potential effects on scenic
11 character and existing uses related to scenic character is not required for approval under
12 either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484,
13 subsection 3.

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

18 A. The significance of the potentially affected scenic resource of national, state or
19 ~~national~~ local significance;

20 B. The existing character of the surrounding area;

21 C. The expectations of the typical viewer;

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

24 E. The extent, nature and duration of potentially affected public uses of the scenic
25 resource of national, state or ~~national~~ local significance and the potential effect of the
26 generating facilities' presence on the public's continued use and enjoyment of the
27 scenic resource of national, state or ~~national~~ local significance; if the generating
28 facilities are located within 15 miles, measured horizontally, of Acadia National Park,
29 the Appalachian Trail, a federally designated wilderness area, Baxter State Park or
30 the Allagash Wilderness Waterway, there is a rebuttable presumption that the
31 generating facilities will have an unreasonable adverse effect on the scenic character
32 of these areas; and

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

39 In applying these evaluation criteria, the primary siting authority shall consider the
40 primary impact and the cumulative scenic impact or effect of the development during
41 both day and night on scenic resources of national, state and local significance. A finding
42 by the primary siting authority that the development's generating facilities are a **highly**
43 visible feature in the landscape is not a solely sufficient basis for determination that an

1 expedited wind energy project has an unreasonable adverse effect on the scenic character
2 and existing uses related to scenic character of a scenic resource of national, state or
3 national local significance. ~~In making its determination under subsection 1, the primary~~
4 ~~siting authority shall consider insignificant the effects of portions of the development's~~
5 ~~generating facilities located more than 8 miles, measured horizontally, from a scenic~~
6 ~~resource of state or national significance.~~

7 **Sec. 5. 35-A MRSA §3452, sub-§4**, as enacted by PL 2007, c. 661, Pt. A, §7, is
8 repealed and the following enacted in its place:

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

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

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

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

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

36 **Sec. 6. 35-A MRSA §3457, sub-§3** is enacted to read:

37 **3. Decommissioning plans.** The Department of Environmental Protection shall
38 adopt rules to require that decommissioning plans be submitted to and approved by the
39 department as a condition of approval in all grid-scale wind energy development. These
40 rules must include, at a minimum, requirements for full funding for the removal of all
41 components of the wind energy development, vegetative restoration of the development
42 area and maintenance of public safety and environmental protection during

1 decommissioning. The department may require the use of letters of credit, performance
2 bonds, segregated funds, corporate parent guarantees and other forms of financial
3 assurance to ensure that funds are available regardless of what point in the history of the
4 development decommissioning becomes necessary.

5 **Sec. 7. Directive to update great ponds studies.** The Maine Land Use
6 Planning Commission shall reevaluate and update the scenic resources sections of the
7 "Maine Wildlands Lakes Assessment," published by the Maine Land Use Regulation
8 Commission in June 1987, and the Department of Environmental Protection shall
9 reevaluate and update the scenic resources sections of "Maine's Finest Lakes," published
10 by the Executive Department, State Planning Office in October 1989. The Maine Land
11 Use Planning Commission shall undertake this work using existing resources. Prior to
12 completion of these updates, an interested party may, within 30 days of the acceptance of
13 the application as complete for processing under the Maine Revised Statutes, Title 35-A,
14 chapter 34-A, submit information to the primary siting authority that a great pond within
15 the regulated watershed of a proposed project that is not protected on the effective date of
16 this Act under Title 35-A, section 3451, subsection 9, paragraph D meets the minimum
17 standards for protection. The primary siting authority shall make a determination
18 pursuant to this section within 30 days of its receipt of this information.

19 SUMMARY

20 This bill makes several changes to the scenic impact provisions of the laws governing
21 expedited permitting of grid-scale wind energy development enacted in 2008. It offers
22 the possibility of protecting scenic resources that have been identified as significant by
23 municipalities in their comprehensive plans and the scenic resources of certain great
24 ponds on which there are commercial sporting camps; increases from 8 miles to 15 miles
25 the jurisdictional distance for requiring visual impact assessments; and creates a
26 rebuttable presumption that proposed grid-scale wind energy development projects within
27 15 miles of Acadia National Park, Baxter State Park, the Appalachian Trail, a federally
28 designated wilderness area or the Allagash Wilderness Waterway will have an
29 unreasonable adverse effect on a scenic resource. It requires the Department of
30 Environmental Protection to consider the cumulative impacts of development when
31 permitting grid-scale wind energy development projects under the laws governing
32 expedited permitting of grid-scale wind energy development. It requires the Department
33 of Environmental Protection to undertake rulemaking with respect to required
34 decommissioning plans and directs updates of the great ponds studies done in 1987 and
35 1989.