



# 128th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2018

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Legislative Document

No. 1810

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H.P. 1255

House of Representatives, January 30, 2018

### **An Act To Amend the Laws Governing Expedited Permitting for Wind Energy Development**

(EMERGENCY)

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Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative STETKIS of Canaan. (GOVERNOR'S BILL)  
Cosponsored by Senator DAVIS of Piscataquis and Representatives: GRIGNON of Athens,  
HANLEY of Pittston, HARLOW of Portland, STEARNS of Guilford, WADSWORTH of  
Hiram, WINSOR of Norway.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the laws governing expedited permitting for wind energy development do  
4 not adequately restrict wind energy development from areas where it is inappropriate; and

5           **Whereas,** the Legislature anticipates an increase in the number of wind energy  
6 development proposals in the future; and

7           **Whereas,** the changes made by this legislation need to take effect as soon as  
8 possible to avoid allowing development to proceed in areas where its impacts would be  
9 untenably harmful; and

10           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
11 the meaning of the Constitution of Maine and require the following legislation as  
12 immediately necessary for the preservation of the public peace, health and safety; now,  
13 therefore,

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

15           **Sec. 1. 35-A MRSA §3451, sub-§3,** as amended by PL 2015, c. 265, §3 and  
16 affected by §10, is further amended to read:

17           **3. Expedited permitting area.** "Expedited permitting area" means:

18           A. ~~The organized areas of the State in their entirety, but not including waters subject~~  
19 ~~to tidal influence, so that the edge of the area that is subject to tidal action during the~~  
20 ~~highest tide level for the year in which an activity is proposed as identified in tide~~  
21 ~~tables published by the United States Department of Commerce, National Oceanic~~  
22 ~~and Atmospheric Administration, National Ocean Service defines the boundary of the~~  
23 ~~expedited permitting area on lands abutting waters subject to tidal influence portion~~  
24 ~~of Aroostook County that includes the Town of St. Francis, St. John Plantation, the~~  
25 ~~Town of Fort Kent, the Town of Wallagrass, the Town of Eagle Lake, Winterville~~  
26 ~~Plantation, T14 R6 W.E.L.S., the Town of Portage Lake, Nashville Plantation,~~  
27 ~~Garfield Plantation, T10 R6 W.E.L.S., Oxbow Plantation, the portion of Aroostook~~  
28 ~~County east of those municipalities and also all municipalities in Aroostook County~~  
29 ~~that are wholly located south of the northernmost extent of Penobscot County,~~  
30 ~~excluding Cary Plantation and Molunkus Township; and~~

31           B. Specified places ~~within the unorganized and deorganized areas~~ that are identified  
32 by rule ~~by the Maine Land Use Planning Commission~~ in accordance with this  
33 chapter.

34           **Sec. 2. 35-A MRSA §3451, sub-§10-B,** as reallocated by RR 2015, c. 1, §39, is  
35 amended to read:

36           **10-B. Viewshed of a scenic resource of state or national significance.** "Viewshed  
37 of a scenic resource of state or national significance" means the geographic area as  
38 viewed from a scenic resource of state or national significance that includes the proposed

1 wind energy development. The viewshed of a scenic resource of state or national  
2 significance may include the proposed wind energy development visible from a single  
3 viewer position or the proposed wind energy development visible from multiple viewer  
4 positions. The viewshed of a scenic resource of state or national significance is limited to  
5 the geographic area within 8 40 miles, measured horizontally, from the proposed wind  
6 energy development's generating facilities.

7 **Sec. 3. 35-A MRSA §3452, sub-§3**, as amended by PL 2015, c. 190, §4, is  
8 further amended to read:

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

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

15 B. The existing character of the surrounding area;

16 C. The expectations of the typical viewer;

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

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

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

29 In applying these criteria, the primary siting authority shall consider the primary impact  
30 and the cumulative scenic impact or effect of the development during both day and night  
31 on scenic resources of state or national significance. In evaluating cumulative scenic  
32 impact or effect associated with sequential observation, the department shall consider, in  
33 addition to the criteria in this subsection, the distance between viewpoints on the linear  
34 route and other forms of development along the linear route that effect the expectation of  
35 the user of the scenic resource of state or national significance. A finding by the primary  
36 siting authority that the development's generating facilities are a highly visible feature in  
37 the landscape is not a solely sufficient basis for determination that an expedited wind  
38 energy project has an unreasonable adverse effect on the scenic character and existing  
39 uses related to scenic character of a scenic resource of state or national significance. In  
40 making its determination under subsection 1, the primary siting authority shall consider  
41 insignificant the effects of portions of the development's generating facilities located

1 more than & 40 miles, measured horizontally, from a scenic resource of state or national  
2 significance.

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

5 **4. Visual impact assessment; rebuttable presumption.** An applicant for an  
6 expedited wind energy development shall provide the primary siting authority with a  
7 visual impact assessment of the development that addresses the evaluation criteria in  
8 subsection 3 if the primary siting authority determines such an assessment is necessary in  
9 accordance with subsection 3. There is a rebuttable presumption that a visual impact  
10 assessment is not required for those portions of the development's generating facilities  
11 that are located more than 3 miles, measured horizontally, from a scenic resource of state  
12 or national significance. The primary siting authority may require a visual impact  
13 assessment for portions of the development's generating facilities located more than 3  
14 miles and up to & 40 miles from a scenic resource of state or national significance if it  
15 finds there is substantial evidence that a visual impact assessment is needed to determine  
16 if there is the potential for significant adverse effects on the scenic resource of state or  
17 national significance. Information intended to rebut the presumption must be submitted  
18 to the primary siting authority by any interested person within 30 days of acceptance of  
19 the application as complete for processing. The primary siting authority shall determine if  
20 the presumption is rebutted based on a preponderance of evidence in the record.

21 **Emergency clause.** In view of the emergency cited in the preamble, this  
22 legislation takes effect when approved.

## 23 SUMMARY

24 This bill amends the laws governing expedited permitting for wind energy  
25 development by changing the definition of "expedited permitting area" to mean specified  
26 places that are identified by rule and the eastern portion of Aroostook County,  
27 specifically described as the Town of St. Francis, St. John Plantation, the Town of Fort  
28 Kent, the Town of Wallagrass, the Town of Eagle Lake, Winterville Plantation, T14 R6  
29 W.E.L.S., the Town of Portage Lake, Nashville Plantation, Garfield Plantation, T10 R6  
30 W.E.L.S., Oxbow Plantation, the portion of Aroostook County east of those  
31 municipalities and also all municipalities in Aroostook County that are wholly located  
32 south of the northernmost extent of Penobscot County, excluding Cary Plantation and  
33 Molunkus Township.

34 The bill changes from 8 miles to 40 miles the farthest distance from a proposed  
35 expedited wind energy development for which a visual impact assessment for potentially  
36 affected scenic resources of state or national significance may be required.