

March 15th, 2023

Senator Stacy Brenner, Senate Chair
Representative Lori Gramlich, House Chair
Joint Standing Committee on Environment and Natural Resources
100 State House Station
Augusta, Maine 04333

RE: MSCC Testimony in opposition to L.D 865: An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection by Adjusting the Requirements for Certain Hearings and for Certain Agencies by Adjusting the Requirements for Cost-Benefit Analysis

Senator Brenner, Representative Gramlich and members of the Environment and Natural Resources Committee:

My name is Ben Lucas, I live in Portland, and I represent the Maine State Chamber of Commerce, a statewide business organization consisting of a network of more than 5,000 small and large employers across Maine. The Maine State Chamber of Commerce is submitting testimony in opposition to L.D. 865. Unfortunately, due to a scheduling conflict and a previously scheduled work trip out of state, I am unable to deliver verbal testimony, but we felt it was important to submit written testimony and be on record regarding L.D. 865.

The business community welcomes a robust regulatory environment that provides clear, predictable, consistent decisions from state agencies and the Chamber always advocates for that. We already have a rigorous and thorough permitting process in Maine, and anything that adds more challenges for critical projects to come online is of concern to the business community. Maine is urgently responding to the environmental and economic challenges that climate change imposes on all of us, it is important that we have a streamlined process so various projects can get permitted and come online as soon as possible. The Maine State Chamber supports the high-level goals of the state dealing with climate, we support the carbon reduction goals of 45% by 2030 and 80% by 2050. We also support adding 30,000 new clean energy jobs. To reach these goals, we need a consistent regulatory process. Additionally, the proposed legislation would have far greater impacts than just renewable projects that need permits, in our opinion it could have an impact on all applicants within the Department and that is incredibly far reaching and puts a lot of pressure on the Board of Environmental Protection. The Chamber has incredible confidence and trust within the Department, and we believe these critical decisions should remain in the control of the DEP.

Some of our technical concerns are regarding section 3 and 4. The proposed legislation makes it so the Board assumes jurisdiction over projects of statewide significance, resulting in a significant burden on the Board's limited resources. This also results in additional burdens and delays on the regulated community. Section 3

would amend the current law and require the Board to assume jurisdiction over all applications – not only those applications referred to it by the DEP Commissioner pursuant to § 344, subsection 2-A – when it finds that at least 3 of the 4 criteria of statewide significance have been met.

Section 4 would give the Board the flexibility to decide whether to vote to assume jurisdiction over an application if it finds that at least 3 of the 4 criteria of this subsection have been met. These changes would strip from the Board its authority to control its own docket, resulting in a large influx of project applications that the Board must process and decide. This would not only tax an already overburdened Board but would significantly slow down the processing of applications. A slow regulatory approval process is not business friendly.

We also have serious concerns regarding section 5 of the proposed legislation. First, the requirement for the Board to hold a hearing on every appeal, even if there were no hearing on the initial permitting decision, does not have merit and would be a significant burden on the regulated community. The Department's Chapter 2 sec. 7 rules allow "any person" to request a hearing on any application. And a hearing request must be made within 20 days after the application is accepted as complete for processing and must include the reasons why a hearing is warranted. If no hearing request is made while the application is being processed, it doesn't make sense to require a hearing when an appeal is filed. Holding a hearing is an extensive process that could include multiple parties, each with multiple witnesses, and that could extend over multiple days. The Board simply does not have the resources to hold a hearing on every appeal, and doing so would slow down all business before the Board. In short, a hearing would cause substantial delay that no one wants. All parties – appellants and licensees – want prompt resolution of appeals of permitting decisions.

In closing, we feel L.D. 865 is bad for Maine businesses and we would respectfully encourage the committee to vote, "ought not to pass". I am happy to provide any additional information the committee may need before the work session, and I will be sure to be present at the work session. Thank you.

Sincerely,
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Maine State Chamber of Commerce
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