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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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COMMISSIONER

**TESTIMONY OF**

**Rob Wood, Director of the Bureau of Land Resources**

**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF L. D. 1881**

**AN ACT REGARDING COMPENSATION FEES AND RELATED COMPENSATION  
EFFORTS TO PROTECT SOILS AND WILDLIFE AND FISHERIES HABITAT FROM  
SOLAR AND WIND ENERGY DEVELOPMENT AND HIGH-IMPACT TRANSMISSION  
LINES UNDER THE SITE LOCATION OF DEVELOPMENT LAWS**

**SPONSORED BY REP. LANDRY**

**BEFORE THE JOINT STANDING COMMITTEE  
ON  
AGRICULTURE, CONSERVATION AND FORESTRY**

**DATE OF HEARING**

**MAY 10, 2023**

Senator Ingwersen, Representative Pluecker, and members of the Joint Standing Committee on Agriculture, Conservation and Forestry, I am Rob Wood, Director of the Bureau of Land Resources at the Department of Environmental Protection. The DEP is speaking in support of L. D. 1881.

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Like my DACF colleague speaking before me, I would also like to first thank Representative Landry for bringing this bill forward and express appreciation to the many agency staff and interested parties who spent substantial time providing feedback on this legislation. The DEP believes this is an important bill that will enhance environmental protection and improve the efficiency of our operations.

The rationale for this bill is straightforward. While the development of renewable energy infrastructure is essential to address climate change, it is also putting pressure on our natural resources in Maine. In recent years, solar, wind and transmission projects have comprised a substantial share of our permitting workload at the Bureau of Land Resources. Most of these projects are located on farmland or forestland, and many have been proposed or developed in sensitive wildlife habitat relatively far from existing development. Grid-scale renewable energy projects, in particular, need substantial contiguous undeveloped land area and tend to be sited in large intact blocks of wildlife habitat.

Under the Site Location of Development Act, otherwise known as Site Law (38 MRSA §§481-489-E), the DEP must find that a project has no adverse impact on the natural environment to permit the development. The DEP's Chapter 375 rules elaborate on this standard, requiring a developer to demonstrate, among other things, that they have made adequate provision for the protection of wildlife and fisheries (DEP Ch. 375 §15).

While many small projects located close to existing development have been able to meet this standard with relatively little concern, the DEP has encountered many larger projects, especially those in large tracts of forestland, that were on the margins of what is considered permissible. Some of these projects were not permissible without commitments from the developer to offset habitat impacts through preservation of comparable habitat off site.

L D 1881 An Act Regarding Compensation Fees and Related Compensation Efforts to Protect Soils and Wildlife and Fisheries Habitat from Solar and Wind Energy Development and High-Impact Transmission Lines Under the Site Location of Development Laws

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Such off-site habitat preservation, allowed under the Department's Chapter 375 rules, has been required in the case of projects like Weaver Wind, Hancock Solar, the NECEC transmission line, and the Three Corners Solar project. In some cases, off-site habitat preservation has been required to address specific wildlife species of concern, and in other cases, off-site preservation has been required to address cumulative impacts to intact wildlife habitat that a variety of species depend on.

While the DEP has the authority to require off-site habitat preservation as a permit condition under Site Law, this tool is underutilized. The primary barrier is that the requirement for a developer to preserve off-site habitat usually arises late in the permitting process, as the deadline to issue a decision is fast approaching, and the developer or state agencies must work to find a suitable preservation option that works for both parties. The result is an ad hoc outcome that lacks predictability.

L D 1881 would address this challenge by amending Site Law to direct the DEP to establish a compensation fee program for renewable energy development. Allowing for the payment of a compensation fee will improve predictability for the DEP and for developers and ensure the consistent administration of the DEP's Ch. 375 rules pertaining to protection of wildlife and fisheries habitat.

Moreover, the creation of a compensation fee program will allow for more effective use of compensation funds. Most developers do not have experience or expertise in habitat preservation or farmland conservation. Creating an option for developers to pay a fee should not only make it easier for developers to comply with permitting requirements, it will also allow for the pooling of fees, which can be collectively directed to support more substantial conservation projects. L D 1881 would allow the DEP to create a new fund for such purposes or to identify another fund created by the Legislature appropriate to accept and administer compensation fees.

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L D 1881 would also direct DACF and DEP to conduct rulemaking to develop the details of the compensation fee program. Among other things, the rulemaking provisions direct the DEP to define “wildlife and fisheries habitats” for the purposes of the compensation program, in consultation with the Department of Inland Fisheries and Wildlife. This term is not currently defined in the Site Law rules, and we believe it is important to set parameters around this definition in the bill to ensure it includes the types of habitats that large renewable energy projects often impact, specifically, large undeveloped habitat blocks and important wildlife corridors.

While the rulemaking provisions require a tight turnaround for the DEP and DACF, we believe it is important to get rules in place expeditiously, given the steady flow of renewable energy permit applications the DEP receives. Section 3 of the bill would authorize the DEP and DACF to allow the payment of compensation fees prior to the adoption of final rules using interim criteria established in consultation with DIFW and the Governor’s Energy Office.

Finally, like DACF, DEP suggests one change to L D 1881, in the “conservation option” subsection in Section 1. We suggest that any fee purchase or conservation easement should be completed prior to the start of construction, rather than prior to the issuance of a permit. The DEP would not want the applicant to take on the expense of a conservation project to offset the impact of the solar development before they have been permitted to move forward with the development.

In sum, the DEP supports L D 1881 because it will add predictability and consistency to our permitting processes, while providing the DEP with the necessary tools to ensure that renewable energy projects are meeting the standards of Site Law and DEP rules.

Thank you for the opportunity to provide testimony. I am available to answer questions of the Committee, both now and at work session.