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L.D. 2283

Date: 4-8-08

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UTILITIES AND ENERGY

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**STATE OF MAINE
SENATE
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to S.P. 908, L.D. 2283, Bill, "An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development"

Amend the bill in the emergency preamble in the 2nd paragraph in the first line (page 1, line 3 in L.D.) by striking out the following: "can" and inserting the following: 'may'

Amend the bill in the emergency preamble by inserting after the 5th paragraph the following:

'Whereas, the State's interest in the development of wind energy resources must be balanced with the interests of Maine ratepayers; and'

Amend the bill in Part A by inserting before section 1 the following:

'Sec. A-1. 30-A MRSA §4452, sub-§5, ¶S, as amended by PL 2007, c. 112, §5, is further amended to read:

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules; and

Sec. A-2. 30-A MRSA §4452, sub-§5, ¶T, as enacted by PL 2007, c. 112, §6, is amended to read:

T. Laws pertaining to limitations on construction and excavation near burial sites and established cemeteries in Title 13, section 1371-A and local ordinances and regulations adopted by municipalities in accordance with this section and section 3001 regarding those limitations; and

Sec. A-3. 30-A MRSA §4452, sub-§5, ¶U is enacted to read:

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1 U. Standards under a wind energy development certification issued by the
2 Department of Environmental Protection pursuant to Title 35-A, section 3456 if the
3 municipality chooses to enforce those standards.'

4 Amend the bill in Part A in section 1 in subsection 1 in paragraph B in the 3rd line
5 (page 2, line 3 in L.D.) by striking out the following: "projects are" and inserting the
6 following: 'development is'

7 Amend the bill in Part A in section 2 by striking out all of subsection 2 (page 2, lines
8 9 to 40 in L.D.) and inserting the following:

9 '2. Need for modification of regulatory process for siting wind energy
10 developments. The Legislature finds that it is in the public interest to reduce the
11 potential for controversy regarding siting of grid-scale wind energy development by
12 expediting development in places where it is most compatible with existing patterns of
13 development and resource values when considered broadly at the landscape level.
14 Accordingly, the Legislature finds that certain aspects of the State's regulatory process for
15 determining the environmental acceptability of wind energy developments should be
16 modified to encourage the siting of wind energy developments in these areas. Such
17 changes include, but are not limited to:

18 A. Making wind energy development a permitted use within certain parts of the
19 State's unorganized and deorganized areas;

20 B. Refining certain procedures of the Department of Environmental Protection and
21 the Maine Land Use Regulation Commission; and

22 C. Because the Legislature recognizes that wind turbines are potentially a highly
23 visible feature of the landscape that will have an impact on views, judging the effects
24 of wind energy development on scenic character and existing uses related to scenic
25 character based on whether the development significantly compromises views from a
26 scenic resource of state or national significance such that the development has an
27 unreasonable adverse effect on the scenic character or existing uses related to the
28 scenic character of that resource.

29 The Legislature further finds that, while wind energy may be developed at many sites
30 with minimal site-specific environmental impacts, wind energy developments may have,
31 in addition to their beneficial environmental effects and potential scenic impacts, specific
32 adverse environmental effects that must be addressed in state permitting decisions
33 pursuant to approval criteria tailored to address issues presented by wind energy
34 development. Nothing in this section is meant to diminish the importance of addressing
35 as appropriate site-specific impacts on natural values, including, but not limited to,
36 wildlife, wildlife habitats and other ecological values.

37 The Legislature further finds that development of the State's wind energy resources
38 should be undertaken in a manner that ensures significant tangible benefits to the people
39 of the State, including, but not limited to, residents of communities that host wind energy
40 facilities; and that the State should seek to host a substantial amount of wind energy as
41 part of a strategy to reduce greenhouse gas emissions and meet the goals established in
42 the state climate action plan developed pursuant to Title 38, section 577.'

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1 Amend the bill in Part A in section 4 in §3451 by striking out all of subsection 6
2 (page 4, lines 10 to 13 in L.D.) and inserting the following:

3 '6. Grid-scale wind energy development. "Grid-scale wind energy development"
4 means a wind energy development that is of a size that would qualify as a development of
5 state or regional significance that may substantially affect the environment as defined
6 under Title 38, section 482, subsection 2, paragraph A or paragraph C.'

7 Amend the bill in Part A in section 4 in §3451 by striking out all of subsection 9
8 (page 4, lines 25 to 38 and page 5, lines 1 to 27 in L.D.) and inserting the following:

9 '9. Scenic resource of state or national significance. "Scenic resource of state or
10 national significance" means an area or place owned by the public or to which the public
11 has a legal right of access that is:

12 A. A national natural landmark, federally designated wilderness area or other
13 comparable outstanding natural and cultural feature, such as the Orono Bog or
14 Meddybemps Heath;

15 B. A property listed on the National Register of Historic Places pursuant to the
16 National Historic Preservation Act of 1966, as amended, including, but not limited to,
17 the Rockland Breakwater Light and Fort Knox;

18 C. A national or state park;

19 D. A great pond that is:

20 (1) One of the 66 great ponds located in the State's organized area identified as
21 having outstanding or significant scenic quality in the "Maine's Finest Lakes"
22 study published by the Executive Department, State Planning Office in October
23 1989; or

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

28 E. A segment of a scenic river or stream identified as having unique or outstanding
29 scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the
30 Department of Conservation in 1982;

31 F. A scenic viewpoint located on state public reserved land or on a trail that is used
32 exclusively for pedestrian use, such as the Appalachian Trail, that the Department of
33 Conservation designates by rule adopted in accordance with section 3457;

34 G. A scenic turnout constructed by the Department of Transportation pursuant to
35 Title 23, section 954 on a public road that has been designated by the Commissioner
36 of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a
37 scenic highway; or

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1 H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802,
2 subsection 1, that are ranked as having state or national significance in terms of
3 scenic quality in:

4 (1) One of the scenic inventories prepared for and published by the Executive
5 Department, State Planning Office: "Method for Coastal Scenic Landscape
6 Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to
7 South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland
8 Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic
9 Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands,"
10 Dewan and Associates, June 1992; or

11 (2) A scenic inventory developed by or prepared for the Executive Department,
12 State Planning Office in accordance with section 3457.'

13 Amend the bill in Part A in section 4 in §3451 in subsection 10 in the 2nd line (page
14 5, line 29 in L.D.) by striking out the following: "improvement attributable to" and
15 inserting the following: 'improvements attributable to the'

16 Amend the bill in Part A in section 4 in §3452 in the first line (page 6, line 1 in L.D.)
17 by striking out the following: "ans" and inserting the following: 'and'

18 Amend the bill in Part A in section 4 in §3452 by striking out all of subsection 1
19 (page 6, lines 2 to 12 in L.D.) and inserting the following:

20 '1. Application of standard. In making findings regarding the effect of an
21 expedited wind energy development on scenic character and existing uses related to
22 scenic character pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484,
23 subsection 3 or section 480-D, the primary siting authority shall determine, in the manner
24 provided in subsection 3, whether the development significantly compromises views from
25 a scenic resource of state or national significance such that the development has an
26 unreasonable adverse effect on the scenic character or existing uses related to scenic
27 character of the scenic resource of state or national significance. Except as otherwise
28 provided in subsection 2, determination that a wind energy development fits
29 harmoniously into the existing natural environment in terms of potential effects on scenic
30 character and existing uses related to scenic character is not required for approval under
31 either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484,
32 subsection 3.'

33 Amend the bill in Part A in section 4 in §3452 in subsection 2 in the 2nd line (page 6,
34 line 14 in L.D.) by inserting after the following: "development" the following: 'in terms
35 of potential effects'

36 Amend the bill in Part A in section 4 in §3452 in subsection 3 in the 2nd line (page 6,
37 line 25 in L.D.) by striking out the following: "project" and inserting the following:
38 'development'

39 Amend the bill in Part A in section 4 in §3452 in subsection 3 in paragraph D in the
40 first line (page 6, line 32 in L.D.) by striking out the following: "project" and inserting
41 the following: 'expedited wind energy development's'

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1 Amend the bill in Part A in section 4 in §3452 in subsection 3 in the blocked
2 paragraph in the 4th line (page 7, line 4 in L.D.) by striking out the following: "values
3 and existing uses related to scenic character" and inserting the following: 'character and
4 existing uses related to scenic character'

5 Amend the bill in Part A in section 4 in §3452 by striking out all of subsection 4
6 (page 7, lines 9 to 25 in L.D.) and inserting the following:

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

23 Amend the bill in Part A in section 4 by striking out all of §3454 (page 8, lines 1 to
24 10 in L.D.) and inserting the following:

25 **'§3454. Determination of tangible benefits**

26 In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38,
27 section 484, subsection 3, the primary siting authority shall presume that an expedited
28 wind energy development provides energy and emissions-related benefits described in
29 section 3402 and shall make additional findings regarding other tangible benefits
30 provided by the development. The Department of Labor, the Executive Department,
31 State Planning Office and the Public Utilities Commission shall provide review
32 comments if requested by the primary siting authority.'

33 Amend the bill in Part A in section 4 in §3456 in the first line (page 8, line 18 in
34 L.D.) by inserting after the following: "**development**" the following: '**in organized**
35 **areas**'

36 Amend the bill in Part A in section 4 in §3456 in subsection 1 in the blocked
37 paragraph in the first line (page 8, line 31 in L.D.) by striking out the following:
38 "project" and inserting the following: 'wind energy development subject to certification
39 under this section'

40 Amend the bill in Part A in section 4 in §3456 by striking out all of subsection 3
41 (page 9, lines 9 to 12 in L.D.) and inserting the following:

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1 '3. Enforcement of standards. Following certification under this section and
2 during construction and operation, the standards in subsection 1 for a wind energy
3 development subject to certification under this section may be enforced by the
4 municipality in which the generating facilities are located at the municipality's discretion
5 pursuant to Title 30-A, section 4452. The department is not responsible for enforcement
6 of this section.'

7 Amend the bill in Part A in section 4 by striking out all of §3457 (page 9, lines 15 to
8 28 in L.D.) and inserting the following:

9 '§3457. Rulemaking; scenic viewpoint; scenic inventory

10 1. Scenic viewpoint. The Department of Conservation shall adopt rules to designate
11 scenic viewpoints located on state public reserved land or on a trail that is used
12 exclusively for pedestrian use, such as the Appalachian Trail, that have state or national
13 significance from a scenic perspective based on criteria modeled after those used in the
14 "Maine Rivers Study" published by the Department of Conservation in 1982 and "Maine
15 Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission
16 in June 1987 and consideration of the criteria in section 3452, subsection 3.

17 2. Scenic inventory. The Executive Department, State Planning Office shall adopt
18 rules regarding the methodology for conducting a scenic inventory of scenic resources of
19 state or national significance that are located in the coastal area, as defined by Title 38,
20 section 1802, subsection 1, in a manner comparable to that used for an inventory listed in
21 section 3451, subsection 9, paragraph H, subparagraph (1). The office may contract with
22 an outside entity for the preparation of a scenic inventory conducted pursuant to the
23 methodology developed pursuant to this subsection.

24 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
25 chapter 375, subchapter 2-A.'

26 Amend the bill in Part A by striking out all of section 5 and inserting the following:

27 **'Sec. A-5. Tracking progress toward achievement of state wind energy**
28 **goals.** The Executive Department, Governor's Office of Energy Independence and
29 Security, referred to in this section as "the office," shall, on an annual basis, monitor and
30 make an assessment of progress toward meeting the wind energy development goals
31 established in the Maine Revised Statutes, Title 35-A, section 3404, subsection 2 and, by
32 December 2013, in consultation with other state agencies as appropriate, conduct a full
33 review of the status of meeting the goals for 2015 and the likelihood of achieving the
34 goals for 2020. The office shall provide its assessment and recommendations under this
35 section to the joint standing committee of the Legislature having jurisdiction over utilities
36 and energy matters by January 15th of each year.

37 **1. Assessment.** The assessment under this section must include:

38 A. Examination of experiences from the permitting process;

39 B. Identified successes, including tangible benefits realized from wind energy
40 development, in implementing the recommendations contained in the February 2008

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1 final report of the Governor's Task Force on Wind Power Development in Maine
2 pursuant to Executive Order issued May 8, 2007;

3 C. Projections of wind energy developers' plans, as well as technology trends and
4 their state policy implications;

5 D. The status of Maine and each of the other New England states in making progress
6 toward reducing greenhouse gas emissions; and

7 E. Recommendations, including, but not limited to, any changes regarding:

8 (1) The wind energy development goals established in Title 35-A, section 3404,
9 subsection 2;

10 (2) Permitting processes for wind energy development;

11 (3) Identification of places within the State's unorganized and deorganized areas
12 for inclusion in the expedited permitting area established pursuant to Title 35-A,
13 chapter 34-A; and

14 (4) Creation of an independent siting authority to consider wind energy
15 development applications.

16 **2. Assessment of tangible benefits; first annual report.** In the report due January
17 15, 2009, the office shall include an assessment of whether there is a need for additional
18 funding to conduct the analysis of tangible benefits realized from wind energy
19 development as required under this section and, if funding is needed, recommendations
20 for a funding mechanism that is connected to the fees assessed to wind energy developers
21 by the Department of Environmental Protection and the Maine Land Use Regulation
22 Commission. Following receipt and review of the report, the joint standing committee of
23 the Legislature having jurisdiction over utilities and energy matters may submit
24 legislation to the First Regular Session of the 124th Legislature regarding the subject
25 matter of this subsection.'

26 Amend the bill in Part B in section 1 in subsection 2 by striking out all of the 4th
27 blocked paragraph (page 10, lines 34 to 36 and page 11, lines 1 and 2 in L.D.) and
28 inserting the following:

29 'The board may not assume jurisdiction over an application for an expedited wind energy
30 development as defined in Title 35-A, section 3451, subsection 4 or for a certification
31 pursuant to Title 35-A, section 3456.'

32 Amend the bill in Part B in section 4 in paragraph D in the 5th line (page 11, line 20
33 in L.D.) by inserting after the following: "department" the following: ', including the
34 record of any adjudicatory hearing held by the department.'

35 Amend the bill in Part B in section 5 in paragraph A in subparagraph (1) in the 4th to
36 6th lines (page 11, lines 41 to 42 and page 12, line 1 in L.D.) by striking out the
37 following: "pursuant to the site location of development laws pursuant to chapter 3,
38 subchapter 1, article 6, the Natural Resources Protection Act or storm water management
39 laws"

40 Amend the bill in Part B in section 9 by striking out all of subsection 3 (page 13, lines
41 6 to 21 in L.D.) and inserting the following:

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1 ‘3. **Maximum fee.** The commissioner shall set the actual fees and shall publish a
2 schedule of all fees by November 1st of each year. If the commissioner determines that a
3 particular application, by virtue of its size, uniqueness, complexity or other relevant
4 factors, is likely to require significantly more costs than those listed on Table I, the
5 commissioner may designate that application as subject to special fees. A Through
6 August 31, 2009, a special fee may not exceed \$250,000. Beginning September 1, 2009, a
7 special fee may not exceed \$75,000. Such a designation must be made at, or prior to, the
8 time the application is accepted as complete and may not be based solely on the
9 likelihood of extensive public controversy. All department staff who have worked on the
10 review of the application, including, but not limited to, preapplication consultations, shall
11 submit quarterly reports to the commissioner detailing the time spent on the application
12 and all expenses attributable to the application, including the costs of any appeals filed by
13 the applicant and, after taking into consideration the interest of fairness and equity, any
14 other appeals if the commissioner finds it in the public interest to do so. The costs
15 associated with assistance to the board on an appeal before the board may be separately
16 charged. The processing fee for that application must be the actual cost to the
17 department. The applicant must be billed quarterly and all fees paid prior to receipt of the
18 permit. Nothing in this section limits the commissioner's authority to enter into an
19 agreement with an applicant for payment of costs in excess of the maximum special fee
20 established in this subsection.’

21 Amend the bill in Part B in section 13 by striking out all of subsections 1 to 5 (page
22 14, lines 22 to 26 in L.D.) and inserting the following:

- 23 ‘1. Effects on scenic character and existing uses related to scenic character;
- 24 2. Tangible benefits, including postconstruction reporting of tangible benefits
- 25 realized;
- 26 3. Noise and shadow flicker effects;
- 27 4. Effects on avian and bat species;
- 28 5. Public safety-related setbacks; and
- 29 6. Decommissioning plans, including demonstration of current and future financial
- 30 capacity that would be unaffected by the applicant's future financial condition to fully
- 31 fund any necessary decommissioning costs commensurate with the project's scale,
- 32 location and other relevant considerations, including, but not limited to, those associated
- 33 with site restoration and turbine removal.’

34 Amend the bill in Part C in section 2 in subsection 2-C in the 3rd line (page 15, line 3
35 in L.D.) by striking out the following: "an allowable, permitted use" and inserting the
36 following: 'a use requiring a permit, but not a special exception.'

37 Amend the bill in Part C in section 6 by striking out all of the first paragraph (page
38 17, lines 10 to 14 in L.D.) and inserting the following:

39 ‘**Sec. C-6. Expedited permitting area designation; permitted use.** No later
40 than September 1, 2008, the Maine Land Use Regulation Commission shall adopt a rule

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1 listing the following specific places within the State's unorganized and deorganized areas,
2 which comprise the expedited permitting area for purposes of this Act, except that the
3 commission may subsequently add additional areas to this list by rule in the manner
4 provided by this Act.'

5 Amend the bill in Part C in section 6 in subsection 2 in the 15th to 17th lines (page
6 18, lines 28 to 30 in L.D.) by striking out the following: "the 12.5-acre north-south
7 trending area just south and west of Kibby Mountain in Skinner Twp., 07822" and
8 inserting the following: 'that portion of Skinner Twp., 07822, composed of the 193.3-acre
9 area that follows the ridge to Kibby Mountain, bounded on the east and west by the
10 2,820-foot contour, on the south by the town line and on the north by the line from the
11 2,820-foot contour through the 3,220-foot contour from Kibby Mountain'

12 Amend the bill in Part C in section 6 by striking out all of the 3 indented paragraphs
13 (page 18, lines 44 and 45 and page 19, lines 1 to 16 in L.D.) and inserting the following:

14 **'4. Transition; establishment of expedited permitting area and permitted use**
15 **prior to rulemaking.** Notwithstanding any other provision of law, prior to the Maine
16 Land Use Regulation Commission's adoption of the rules required by this section, the
17 portion of expedited permitting area located in the State's unorganized and deorganized
18 areas consists of the lands and state waters specified in this section and an expedited wind
19 energy development, as defined in Title 35-A, section 3451, subsection 4, is a use
20 requiring a permit, but not a special exception, subject to permitting by the Maine Land
21 Use Regulation Commission or Department of Environmental Protection in accordance
22 with this Act and other applicable law, in all districts and subdistricts located within the
23 expedited permitting area.

24 No later than September 1, 2008, the Maine Land Use Regulation Commission shall
25 adopt a rule amending its land use districts and standards to provide that grid-scale wind
26 energy development as defined in the Maine Revised Statutes, Title 35-A, section 3451 is
27 a use requiring a permit, but not a special exception, in all districts or subdistricts located
28 within the expedited permitting area designated pursuant to this section, subject to
29 permitting by the Maine Land Use Regulation Commission or Department of
30 Environmental Protection in accordance with this Act and other applicable law.

31 Rules adopted by the Maine Land Use Regulation Commission pursuant to this
32 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

33 Amend the bill by striking out all of Part D and inserting the following:

34 **'PART D**

35 **Sec. D-1. 35-A MRSA §3211-C**, as amended by PL 2007, c. 493, §§1 to 3, is
36 further amended to read:

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1 §3211-C. Solar and wind energy rebate program; fund

2 1. Definitions. As used in this section, unless the context otherwise indicates, the
3 following terms have the following meanings.

4 A. "Qualified solar energy system" means a solar photovoltaic system or a solar
5 thermal system.

6 A-1. "Qualified solar thermal water system installer" means a person who has been
7 certified by the commission to install solar thermal systems designed to heat water
8 and who holds a current license from the State as a master plumber, as a master oil
9 burner technician or as a propane and natural gas technician or has been certified as a
10 type II, type III or universal heating, ventilation and air conditioning refrigeration
11 technician through a certification program approved by the United States
12 Environmental Protection Agency.

13 A-2. "Qualified wind energy system" means any device, such as a wind charger,
14 windmill or wind turbine and associated facilities, with a peak generating capacity of
15 100 kilowatts or less that converts wind energy to electrical energy for use primarily
16 in a residence, public facility or place of business that is located in an area with
17 demonstrated wind power potential.

18 B. "Solar photovoltaic system" means a solar energy device with a peak generating
19 capacity of 100 kilowatts or less used for generating electricity for use in a residence
20 or place of business.

21 C. "Solar thermal system" means a configuration of solar collectors and a pump, heat
22 exchanger and storage tank or fans designed to heat water or air for the purpose of
23 space heating, domestic water heating or both space and domestic water heating.
24 Solar thermal system types include forced circulation, integral collector storage,
25 thermosyphon and self-pumping systems.

26 2. Solar and wind energy rebate program. To the extent that funds are available
27 in the fund established in subsection 3 and the requirements of subsection 2-A are
28 satisfied, an owner or tenant of residential or commercial property located in the State is
29 entitled to a rebate for a qualified solar energy system that is installed in accordance with
30 this subsection after July 1, 2005 that will be connected to the electrical grid or a
31 qualified wind energy system that is installed in accordance with this subsection after
32 January 1, 2009 that will be connected to the electrical grid. The commission shall set
33 rebate levels for qualified solar energy systems and qualified wind energy systems. In
34 setting rebate levels, the commission may consider market demand for qualified solar
35 energy systems and qualified wind energy systems, program implementation experience
36 and other factors relevant to the solar energy and wind energy rebate program.

37 A. To qualify for a rebate, a solar photovoltaic system must meet the following
38 installation requirements:

39 (1) For a system installed after July 1, 2005 but before January 1, 2007, the
40 system must be installed by a master electrician who has completed a training
41 course to prepare for certification by a North American board of certified energy
42 practitioners or by a master electrician working in conjunction with either a
43 person who has been certified by a North American board of certified energy

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1 practitioners or a person who has completed a training course to prepare for
2 certification by a North American board of certified energy practitioners; or

3 (2) For a system installed on or after January 1, 2007, the system must be
4 installed by a master electrician who has been certified by a North American
5 board of certified energy practitioners or by a master electrician working in
6 conjunction with a person who has been certified by a North American board of
7 certified energy practitioners.

8 B. To qualify for a rebate, a solar thermal system designed to heat water must be
9 installed by a qualified solar thermal water system installer and, if the solar thermal
10 system is designed to heat potable water, it must be installed by a qualified solar
11 thermal water system installer who holds a current license as a master plumber or by
12 a qualified solar thermal water system installer working in conjunction with a master
13 plumber.

14 D. To qualify for a rebate, the electrical components of a qualified wind energy
15 system must be installed by a master electrician or by a factory trained and approved
16 dealer for the qualified wind energy system working under the supervision of a
17 master electrician.

18 In the case of a newly constructed residence, the rebate must be available to the original
19 owner or occupant.

20 **2-A. Energy audit requirement; solar photovoltaic system.** To qualify for a
21 rebate for a solar photovoltaic system under this section, an owner or tenant of residential
22 or commercial property located in the State must demonstrate to the satisfaction of the
23 commission that an energy audit, as defined by the commission by rule, has been
24 completed.

25 **3. Funding level; fund.** The commission shall assess transmission and distribution
26 utilities to collect funds for the solar and wind energy rebate program in accordance with
27 this subsection. The amount of all assessments by the commission under this subsection
28 must result in total program expenditures by each transmission and distribution utility that
29 do not exceed 0.005 cent per kilowatt-hour. To the extent practicable, the commission
30 shall establish and collect the assessment in a manner that is consistent with the
31 assessment made under section 3211-A. The commission shall establish a solar and wind
32 energy rebate program fund to be used solely for the purposes of this section. All
33 assessments made under this subsection are deposited in the fund. Any interest on funds
34 in the fund must be credited to the fund. Funds not spent in any fiscal year remain in the
35 fund to be used for the purposes of this section. ~~In each fiscal year, 25% of the fund is~~
36 ~~allotted to solar photovoltaic system rebates and 75% of the fund is allotted to solar~~
37 ~~thermal system rebates.~~ The commission shall determine the allotment of the fund in
38 each fiscal year between solar photovoltaic system rebates, solar thermal system rebates
39 and qualified wind energy system rebates, with a minimum of 20% of the fund provided
40 to each of the 3 types of rebates.

41 **4. Rules.** The commission shall adopt rules necessary to implement the provisions
42 of this section, including procedures and standards for demonstrating qualification for a
43 rebate under this section and a definition of "energy audit" for the purposes of subsection

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1 2-A. Rules adopted under this subsection are routine technical rules as defined in Title 5,
2 chapter 375, subchapter 2-A.

3 **5. Report.** The commission shall report by December 1st of each year to the joint
4 standing committee of the Legislature having jurisdiction over utilities and energy
5 matters a description of actions taken by the commission pursuant to this section during
6 the prior 12 months.

7 **6. Limitation to residents of State; repeal.** Participation in the solar and wind
8 energy rebate program and fund established in this section is limited to residents of the
9 State. This section is repealed December 31, 2010.'

10 Amend the bill in Part E by striking out all of section 1 (page 21, lines 23 to 26 in
11 L.D.) and inserting the following:

12 **'Sec. E-1. Application; municipal authority.** This Act applies to a proposed
13 wind energy development for which the Department of Environmental Protection or the
14 Maine Land Use Regulation Commission has not accepted an application as complete for
15 processing as of the effective date of this Act. This Act does not apply to a proposed
16 wind energy development of the type subject to certification pursuant to the Maine
17 Revised Statutes, Title 35-A, section 3456 for which a municipality has accepted an
18 application as complete for processing as of the effective date of this Act. This Act is not
19 intended to limit a municipality's authority to regulate wind energy development.'

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
21 section number to read consecutively.

22 **SUMMARY**

23 This amendment makes the following changes to the bill.

24 1. It clarifies the definition of "scenic resource of state or national significance" to
25 specify that it is limited to areas that are owned by the public or to which the public has
26 legal right of access and to clarify that it includes scenic viewpoints on pedestrian trails
27 that the Department of Conservation designates by rule as having state or national
28 significance, as well as scenic viewpoints on state public reserved land as provided in the
29 bill.

30 2. It clarifies that the rulemaking of the Executive Department, State Planning Office
31 with respect to the methodology for conducting a scenic inventory of scenic resources
32 applies to those resources located in the coastal area.

33 3. It clarifies the application of the scenic standard regarding the effect of an
34 expedited wind energy development to require the primary siting authority to determine
35 whether the development significantly compromises views from a scenic resource of state
36 or national significance such that the development has an unreasonable adverse effect on
37 the scenic character or existing uses related to scenic character of the scenic resource.

38 4. It clarifies that municipalities are permitted but not required to enforce the
39 standards for a wind energy development certification issued by the Department of

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1 Environmental Protection for a smaller-scale wind energy development and that the
2 department is not responsible for enforcement of such standards.

3 5. It adds language to require the Executive Department, Governor's Office of
4 Energy Independence and Security to submit its findings and recommendations from its
5 annual assessment of progress toward reaching the State's wind energy goals to the joint
6 standing committee of the Legislature having jurisdiction over utilities and energy
7 matters and to require the office in its the first report, due January 15, 2009, to include an
8 assessment of whether additional funding is needed to analyze the tangible benefits
9 realized by wind energy developments.

10 6. It clarifies, with respect to appeals to the Board of Environmental Protection of
11 license or permit decisions of the Commissioner of Environmental Protection regarding
12 wind energy developments, that the administrative record of the department includes the
13 record of any adjudicatory hearing of the department.

14 7. It amends the provision in the bill regarding the special fee that may be required by
15 the Department of Environmental Protection to provide a maximum fee of \$250,000 until
16 September 1, 2009 and \$75,000 beginning September 1, 2009, rather than an unlimited
17 fee for wind energy development as proposed in the bill. It also adds language to clarify
18 that the Commissioner of Environmental Protection has the authority to enter into an
19 agreement with an applicant for a payment of costs in excess of the maximum special fee.

20 8. It adds to the provision in the bill regarding submission requirements to be
21 specified by the Department of Environmental Protection and the Maine Land Use
22 Regulation Commission for applications for wind energy developments to include as
23 additional submission requirements postconstruction reporting of tangible benefits from
24 wind energy development and decommissioning plans, including demonstration of ability
25 to fully fund any necessary future decommissioning costs.

26 9. It clarifies that the Maine Land Use Regulation Commission's authority to amend
27 the list of places included in the expedited permitting area is limited to adding additional
28 areas to the list, and it clarifies the reference to the portion of Skinner Township included
29 in the expedited permitting area.

30 10. It amends the provision in the bill regarding the establishment of a wind energy
31 rebate to limit qualified wind energy systems to those with a peak generating capacity of
32 100 kilowatts or less and to specify that a qualified system is one that is located in an area
33 with demonstrated wind energy potential rather than an area with a specific wind energy
34 classification based on United States Department of Energy maps as provided in the bill.
35 It revises the installation requirements for wind energy systems to narrow the requirement
36 to the installation of the electrical components of the system. It also amends the
37 allotment of the solar and wind energy rebate program fund between the different rebates
38 to require the Public Utilities Commission to determine for each fiscal year the allotment
39 of funds between solar photovoltaic system rebates, solar thermal system rebates and
40 qualified wind energy system rebates, with a minimum of 20% of the fund provided to
41 each of the 3 types of rebates. The bill in contrast allots 50% of the fund to solar system
42 rebates and 50% to wind system rebates.

43 11. The amendment adds language to specify that this Act does not apply to a
44 proposed wind energy development of a type that is subject to certification by the

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1 Department of Environmental Protection, which refers to the smaller-scale wind energy
2 developments in organized areas, if a municipality has accepted an application for that
3 proposed development as complete for processing as of the effective date of the Act. It
4 also adds language to clarify that the Act is not intended to limit municipal authority to
5 regulate wind energy development.

6 **FISCAL NOTE REQUIRED**
7 (See attached)

COMMITTEE AMENDMENT



Approved: 04/06/08 *MAC*

123rd MAINE LEGISLATURE

LD 2283

LR 3544(02)

An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Utilities and Energy
Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - Other Special Revenue Funds
Potential current biennium revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

This bill authorizes the Department of Environmental Protection to assess fees to cover the cost of additional wind power licensing /certification reviews as well as the cost of hiring outside reviewers. It is anticipated that the revenue generated will be sufficient to cover the expected costs. Additional costs to the Public Utilities Commission, the Governor's Office of Energy Independence and Security, the State Planning Office, the Department of Conservation and the Department of Labor to perform additional tasks can be absorbed utilizing existing budgeted resources.