

# MAINE STATE LEGISLATURE

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Date: 6/15/21

(Filing No. S-377)

MAJORITY

ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE

SENATE

130TH LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "p" to S.P. 142, L.D. 336, "An Act To Encourage Research To Support the Maine Offshore Wind Industry"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 35-A MRSA §3210-H is enacted to read:

§3210-H. Floating offshore wind research array; project labor agreements

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

A. "Floating offshore wind research array project" or "research array" means a project undertaken by an entity to develop a floating offshore wind energy system for the purpose of conducting research on such systems pursuant to 30 Code of Federal Regulations, Part 585 and is located seaward of territorial waters.

B. "Labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

C. "Project labor agreement" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project or portion of a construction project, wherever such construction occurs, and is an agreement described in 29 United States Code, Section 158(f).

2. Project labor agreements. When requiring the negotiation of, or directing an investor-owned transmission and distribution utility to enter into, a long-term contract pursuant to section 3210-C or any other provision of law with an entity for capacity, energy or renewable energy credits associated with the development of a floating offshore wind research array project, or obligating funds pursuant to such a contract, the commission shall

COMMITTEE AMENDMENT

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require the use of a project labor agreement, to be negotiated and executed by the entity seeking the long-term contract in accordance with this section.

A. The project labor agreement must be negotiated in good faith and executed prior to the effective date of a long-term contract for a research array.

B. A project labor agreement reached pursuant to this section must:

(1) Bind all contractors and subcontractors to the terms of the agreement through the inclusion of appropriate provisions in all relevant solicitation and contract documents;

(2) Provide for the invitation of all contractors and subcontractors to bid on contracts without regard to whether the employees of the contractor or subcontractor are members of a labor organization or parties to a collective bargaining agreement;

(3) Contain guarantees against strikes, lockouts and similar disruptions;

(4) Contain terms that are consistent with orders issued by the commission;

(5) Set forth mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(6) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety and health; and

(7) Fully conform to all relevant state and federal statutes, rules and regulations.

C. Nothing in this section may be construed to:

(1) Require the commission to require a project labor agreement on projects or in connection with contracts not governed by this section;

(2) Preclude the use of a project labor agreement in circumstances not covered by this section;

(3) Require contractors or subcontractors to enter into a project labor agreement with any particular labor organization;

(4) Impair or otherwise affect authority granted by law to the commission; or

(5) Prohibit in a project labor agreement the reasonable use of key employees by contractors and subcontractors who are not members of a labor organization or parties to a collective bargaining agreement.

D. Notwithstanding any provision of law to the contrary, agreements and contracts entered into pursuant to this section are not subject to the competitive bid requirements in Title 5, section 1825-B.

E. This section must be implemented consistent with applicable law. This section does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State, its departments, agencies or entities or its officers, employees or agents.

**Sec. 2. Long-term contract in the public interest; coordination with state policy.** The Legislature finds that a long-term contract for a term of no less than 20 years

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1 between an investor-owned transmission and distribution utility and New England Aqua  
2 Ventus, LLC for capacity, energy and renewable energy credits generated from a floating  
3 offshore wind research array to be located in the Gulf of Maine with a capacity up to 144  
4 megawatts effectuates the policies, goals and mandates in the Maine Revised Statutes, Title  
5 35-A, section 3202, subsection 1 and section 3404 and Article 6, Sections 1.8 and 1.9 of  
6 the Maine Aqua Ventus power purchase agreement approved by the Public Utilities  
7 Commission and is in the public interest and in furtherance of the following:

- 8 1. Meeting the requirements of Title 35-A, section 3210 and chapter 34-A;
- 9 2. Achieving the wind energy goals contained in Title 35-A, chapter 34;
- 10 3. Achieving the greenhouse gas emissions reduction levels established in Title 38,  
11 section 576-A;
- 12 4. Implementing the recommendations of the State's climate action plan, developed  
13 pursuant to Title 38, section 577;
- 14 5. State energy policy with due consideration of the energy equity context of these  
15 energy policies, including, in particular, the economic circumstances and opportunities of  
16 Maine's socially vulnerable counties as highlighted in the February 2021 report of the  
17 Governor's Energy Office, State of Maine Renewable Energy Goals Market Assessment;
- 18 6. The Maine Offshore Wind Initiative overseen by the Governor's Energy Office;
- 19 7. The State's decision to seek a federal Department of the Interior, Bureau of Ocean  
20 Energy Management lease of federal waters to construct and operate a research array to  
21 scientifically determine means to protect the Gulf of Maine ecosystem, critical species and  
22 habitats and traditional marine users from imprudent offshore wind development;
- 23 8. State laws that seek to make the State an international hub for floating offshore wind  
24 development and fabrication, including but not limited to: Public Law 2007, chapter 661;  
25 Public Law 2009, chapter 270; Public Law 2009, chapter 615; and Resolve 2019, chapter  
26 87; and
- 27 9. A memorandum of understanding between the State and New England Aqua Ventus,  
28 LLC requiring New England Aqua Ventus, LLC to seek a long-term contract from the  
29 Public Utilities Commission, to assist the State, upon request, in preparing and securing  
30 approval of a lease of federal waters in the Gulf of Maine and in complying with resulting  
31 lease obligations and to seek a power purchase agreement for a floating offshore wind  
32 research array, as defined in the Title 35-A, section 3210-H, through the commission.

33 **Sec. 3. Commission action.** Within in 9 months of receiving a petition from New  
34 England Aqua Ventus, LLC or its designated affiliate for a long-term contract for capacity,  
35 energy or renewable energy credits to be generated from a floating offshore wind research  
36 array project, as defined in the Maine Revised Statutes, Title 35-A, section 3210-H and  
37 referred to in this section as "the research array," with a capacity of up to 144 megawatts  
38 designed, permitted and operated by New England Aqua Ventus, LLC in accordance with  
39 the terms of a lease in federal waters from the federal Department of the Interior, Bureau  
40 of Ocean Energy Management, the Public Utilities Commission shall order the negotiation  
41 of, and direct an investor-owned transmission and distribution utility to enter into, a long-  
42 term contract for at least 20 years with New England Aqua Ventus, LLC or its designated  
43 affiliate if the commission determines the contract furthers the objectives of this Act and is  
44 in the public interest.

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- 1. In ordering the negotiation of the contract, the commission shall:
  - A. Utilize the process for the negotiated purchase of capacity, energy and renewable energy credits under Title 35-A, section 3210-C except that the commission shall invite the Office of the Public Advocate, the Governor's Energy Office and transmission and distribution utilities to participate in negotiations;
  - B. Employ, at the expense of New England Aqua Ventus, LLC or the developer, any expert consultants necessary to assist in negotiations. Expert consultants hired pursuant to this subsection must be employed by the United States Department of Energy, National Renewable Energy Laboratory or a similar entity expert in world-wide cost estimation for floating offshore wind commercialization and with specific knowledge of the VoltturnUS foundation design, and the commission shall use that advice; and
  - C. Direct the parties to determine the lowest reasonable cost to ratepayers, that is sufficient to enable the financing, construction and operation of the research array by New England Aqua Ventus, LLC or its affiliate, in a manner that is consistent with the lease issued by the federal Department of the Interior, Bureau of Ocean Energy Management and any final agreement between New England Aqua Ventus, LLC or its affiliate and the State.
- 2. If the commission directs the parties to enter into a long-term contract, the commission shall require that the contract requires New England Aqua Ventus, LLC or its affiliate to:
  - A. Maintain an office and project leadership staff in the State;
  - B. Use port facilities designated by the State for the organization, fabrication, launch and maintenance of the research array;
  - C. Operate, at the direction of the State, an open platform for research on the prudent development of offshore wind energy generation in the Gulf of Maine;
  - D. Establish and operate an integrated manufacturing and assembly facility in the State to manufacture required VoltturnUS or similar hulls for the research array;
  - E. Make commercially reasonable efforts to attract design and manufacturing facilities to the State for other floating offshore wind energy generation project components;
  - F. Make commercially reasonable efforts to employ in-state design, manufacturing and maintenance firms and workers in an amount that is at least equal to 50% of contracts for those services; and
  - G. Construct the research array pursuant to a project labor agreement in accordance with Title 35-A, section 3210-H that is negotiated with the developer and a qualified labor organization to promote efficiency and economy in state procurement of research on renewable energy development, including the development of offshore wind energy generation seaward of territorial waters.
- 3. If the commission directs the parties to enter into a long-term contract, the commission shall ensure any pricing structure adopted for capacity, energy or renewable energy credits:

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1 A. Represents the lowest reasonable cost to ratepayers, while ensuring the pricing  
2 structure is sufficient to enable the financing, construction and operation of the research  
3 array by New England Aqua Ventus, LLC or its affiliate, in a manner that is consistent  
4 with the lease issued by the federal Department of the Interior, Bureau of Ocean Energy  
5 Management and any final agreement between New England Aqua Ventus, LLC or its  
6 affiliate and the State;

7 B. Was reached with the advice of expert consultants employed in accordance with  
8 subsection 1, paragraph B;

9 C. Supports prompt commercial pursuit of the research array lease, development of  
10 research plans and initiation of development and construction actions;

11 D. Recognizes and accommodates the commercial challenges in long-term cost  
12 estimation for large marine energy infrastructure and permits power purchase  
13 agreement capacity, energy and renewable energy credit prices to be adjusted based on  
14 changing costs prior to the final investment decision by New England Aqua Ventus,  
15 LLC or its affiliate and the commission, employing state of the art marine commercial  
16 cost estimation and control mechanisms such as indexing and inflation adjustment  
17 mechanisms; and

18 E. Considers, for levelized cost of energy comparison purposes, the needed and  
19 expected role of floating offshore wind energy generation in accomplishing the State's  
20 transition to beneficial electrification and the role of the research array in advancing  
21 that transition.

22 In determining the appropriate duration for a long-term contract entered into pursuant to  
23 this section, the commission shall consider what duration is adequate to allow the research  
24 array to be designed, permitted, constructed and operated in conformance with the terms  
25 of the lease of federal waters issued by the federal Department of the Interior, Bureau of  
26 Ocean Energy Management.

27 The State and New England Aqua Ventus, LLC shall negotiate in good faith and make best  
28 efforts to enter into a final operating agreement before a lease is issued by the federal  
29 Department of the Interior, Bureau of Ocean Energy Management. If the State and New  
30 England Aqua Ventus, LLC fail to enter into a final operating agreement before a lease is  
31 issued by the Bureau of Ocean Energy Management, nothing in this section precludes the  
32 State through the Governor's Energy Office from designating an entity other than New  
33 England Aqua Ventus, LLC to negotiate a long-term contract with an investor-owned  
34 transmission and distribution utility for capacity, energy and renewable energy credits  
35 generated from a research array as directed by the commission.

36 **Sec. 4. Study of infrastructure related to offshore wind energy generation.**  
37 The Public Utilities Commission, in consultation with the Governor's Energy Office and  
38 the Office of the Public Advocate and with input from the public and interested  
39 stakeholders, by February 1, 2022, shall submit one or more reports to the Joint Standing  
40 Committee on Energy, Utilities and Technology. The report or reports must include  
41 information regarding options for the technology, location and creation of transmission  
42 infrastructure related to the development of offshore wind energy generation in the Gulf of  
43 Maine and transmission solutions proposed or built in other states and countries. The report  
44 or reports must include ways to protect species, habitats, the environment and traditional  
45 marine users from imprudent development while encouraging efficient transmission

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1 investment. The report or reports must recommend public and private transmission  
2 financing and ownership structures and include any necessary legislation to achieve the  
3 State's climate policy objectives. The committee may report out legislation to the Second  
4 Regular Session of the 130th Legislature based on the report or reports.'

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

7 **SUMMARY**

8 This amendment is the majority report of the committee and it replaces the bill. The  
9 amendment, like the bill, provides that the Public Utilities Commission shall require the  
10 negotiation of a long-term contract for the design, permitting, construction and operation  
11 of the State's proposed floating offshore wind research array between the developer of the  
12 research array and an investor-owned transmission and distribution utility. The amendment  
13 requires the commission to require the execution of a project labor agreement containing  
14 certain terms and conditions by any entity with which the commission directs an investor-  
15 owned transmission and distribution utility to enter into a long-term contract for capacity,  
16 energy or renewable energy credits.

17 The amendment includes a legislative finding that a long-term contract between an  
18 investor-owned transmission and distribution utility and New England Aqua Ventus, LLC  
19 for capacity, energy and renewable energy credits generated from a floating offshore wind  
20 research array is in the public interest and is in furtherance of existing State laws and  
21 policies. The amendment requires the commission, if it would be in the public interest and  
22 in furtherance of existing State laws and policies, to order the negotiation of a long-term  
23 contract between a utility and New England Aqua Ventus, LLC within 9 months of the  
24 effective date of the Act. The amendment places certain terms and conditions on any  
25 negotiations or long-term contracts the commission may order, including: the invitation of  
26 the Office of the Public Advocate and the Governor's Energy Office to participate in the  
27 negotiations; the retention by the commission, at the developer's expense, of expert  
28 consultants; the use of a project labor agreement with requirements; and specific  
29 requirements for any pricing structure adopted within a power purchase agreement.

30 The amendment requires the commission, in consultation with the Public Advocate and  
31 Governor's Energy Office, to submit a report, by February 1, 2022, to the Joint Standing  
32 Committee on Energy, Utilities and Technology regarding technology, location and other  
33 options for the creation of transmission infrastructure related to the deployment of offshore  
34 wind energy generation in the Gulf of Maine. It allows the committee to report out a bill  
35 based on the report.

36 The majority of the members of the Joint Standing Committee on Energy, Utilities and  
37 Technology find that the Gulf of Maine is host to one of the richest wind resources in the  
38 continental United States, with steady, powerful winds that peak in the winter months and  
39 are highly attractive to the worldwide offshore wind energy generation industry, which is  
40 estimated by the International Energy Agency to become a trillion-dollar industry by 2040.  
41 The State has made substantial investments in the University of Maine's research, including  
42 the development of the patented VoltturnUS floating offshore wind technology, to make  
43 Maine an international hub for floating offshore wind technology and fabrication. The  
44 State needs to move forward with the development of a floating offshore wind research  
45 array in federal waters to realize the potential of this technology and to conduct necessary

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COMMITTEE AMENDMENT "A" to S.P. 142, L.D. 336 (S-317)

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scientific research to fully understand the effects of floating offshore wind turbines on the ecosystem, critical species and habitats and traditional marine uses in the Gulf of Maine. For these reasons it is in the best interest of the State to direct the commission to approve a long-term contract between New England Aqua Ventus, LLC and an investor-owned transmission and distribution utility in accordance with this Act.

**FISCAL NOTE REQUIRED**

**(See attached)**





Approved: 06/13/21 *mac*

# 130th MAINE LEGISLATURE

LD 336

LR 1567(02)

**An Act To Encourage Research To Support the Maine Offshore Wind Industry**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (S-317)**  
**Committee: Energy, Utilities and Technology**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Any additional costs to the Public Utilities Commission, Governor's Energy Office or Office of the Public Advocate as a result of the provisions of this bill are anticipated to be minor and can be absorbed within existing budgeted resources.