

MAINE STATE LEGISLATURE

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R. O. S.

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UTILITIES AND ENERGY

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 545, L.D. 1465, Bill, "An Act To Facilitate Testing and Demonstration of Renewable Ocean Energy Technology"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, the Gulf of Maine contains vast, untapped renewable ocean energy resources, including a globally significant offshore wind energy resource estimated at over 100 gigawatts, and tidal and wave power resources with significant potential to contribute to the State's renewable energy mix and create related business opportunities; and

Whereas, promising technologies exist and others are being developed to harness these renewable ocean energy resources for transportation and home heating needs; and

Whereas, these significant renewable ocean energy resources will help address the economic and environmental challenges we face as a result of over-reliance on oil and natural gas to meet energy needs; and

Whereas, Governor John E. Baldacci created the Ocean Energy Task Force to develop strategies to promote the State's renewable ocean energy resources, including research and testing of new technologies to harness those resources; and

Whereas, the Ocean Energy Task Force has identified the need to streamline and coordinate state permitting and submerged lands leasing requirements for renewable ocean energy demonstration projects so that the State can become an international proving ground for testing promising new technologies in state waters in specific locations along the coast in an environmentally responsible manner; and

Whereas, the Legislature finds that it is in the public interest to use state-owned submerged lands for temporary demonstration projects to test offshore wind energy and other renewable ocean energy technologies; and

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1 **Whereas**, designation of one of the offshore testing areas as the Maine Offshore
2 Wind Energy Research Center will support the significant research and development
3 initiatives of the University of Maine System and make the State more competitive for
4 federal and private sector investments needed to jump-start the State's renewable ocean
5 energy industry; and

6 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
7 the meaning of the Constitution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public peace, health and safety; now,
9 therefore,'

10 Amend the bill in Part A in section 2 in §480-HH in subsection 1 by inserting before
11 paragraph A the following:

12 'A. "Coastal area" has the same meaning as in section 1802, subsection 1.'

13 Amend the bill in Part A in section 2 in §480-HH in subsection 1 by inserting after
14 paragraph D the following:

15 'E. "Ocean energy generating unit" means a wind turbine that converts wind energy
16 to electrical energy that may be employed pursuant to a general permit under this
17 section, a wave energy converter that may be employed pursuant to a general permit
18 issued under this section or a tidal energy demonstration project that may be
19 employed pursuant to a permit issued under section 636-A.'

20 Amend the bill in Part A in section 2 in §480-HH in subsection 1 in paragraph F in
21 the 2nd line (page 2, line 2 in L.D.) by striking out the following: "windmill or"

22 Amend the bill in Part A in section 2 in §480-HH in subsection 1 by relettering the
23 paragraphs to read consecutively.

24 Amend the bill in Part A in section 2 in §480-HH in subsection 2 in the 3rd line (page
25 3, line 1 in L.D.) by striking out the following: "an individual permit is not required" and
26 inserting the following: 'a permit is not required under section 480-C'

27 Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph F by
28 striking out all of subparagraph (1) (page 5, lines 1 to 6 in L.D.) and inserting the
29 following:

30 '(1) A boundary defining an exclusion zone around the proposed generating
31 facilities, anchoring system, submerged utility line and other project elements, if
32 any, in which specified types of navigation and underwater activities
33 incompatible with project operations may not be conducted. Any such exclusion
34 zone must be specified with global positioning system coordinates and be
35 designed to minimize potential conflicts with other existing uses in the area and
36 may be no larger than the applicant demonstrates is necessary to achieve the
37 purposes of the offshore wind energy demonstration project;'

38 Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph F in
39 subparagraph (2) in the first line (page 5, line 7 in L.D.) by inserting after the following:
40 "zone" the following: 'specified pursuant to subparagraph (1).''

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COMMITTEE AMENDMENT "A" to S.P. 545, L.D. 1465

1 Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph G in
2 the 2nd line (page 5, line 26 in L.D.) by inserting after the following: "days of" the
3 following: 'expiration or'

4 Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph H in
5 the 7th line (page 6, line 23 in L.D.) by inserting after the following: "Service;" the
6 following: 'the lobster management policy council established under Title 12, section
7 6447 for the lobster management zone in which the offshore wind energy demonstration
8 project is proposed;'

9 Amend the bill in Part A in section 2 in §480-HH in subsection 3 in paragraph K in
10 the last line (page 6, line 45 in L.D.) by striking out the following: "proposed; and" and
11 inserting the following: 'proposed. This paragraph does not apply to an application by
12 the University of Maine System for a project, funded in whole or part with state or federal
13 funds and proposed for location in the Maine Offshore Wind Energy Research Center,
14 that employs offshore wind energy technology for which the department has not
15 previously granted a general permit under this section; and

16 Amend the bill in Part A in section 2 in §480-HH in subsection 4 in the first line
17 (page 7, line 8 in L.D.) by striking out the following: "Work may not occur until 60 days
18 after" and inserting the following: 'There is a 60-day review period for applications for a
19 general permit for an offshore wind energy demonstration project under this section. The
20 review period begins on the date that '

21 Amend the bill in Part A in section 2 in §480-HH by striking out all of subsection 5
22 (page 7, lines 11 to 16 in L.D.) and inserting the following:

23 '5. Notification. Except as otherwise provided by subsection 13, the department
24 shall notify an applicant in writing within the review period pursuant to subsection 4 if
25 the department determines that the requirements of this section have not been met. The
26 notification must specifically cite the requirements of this section that have not been met.
27 If the department has not notified the applicant under this subsection within the review
28 period, a general permit is deemed to have been granted as of the date immediately
29 following the final day of the review period specified in subsection 4.'

30 Amend the bill in Part A in section 2 in §480-HH in subsection 6 in the 4th line
31 (page 7, line 20 in L.D.) by inserting after the following: "assessed" the following:
32 'pursuant to section 352.'

33 Amend the bill in Part A in section 2 in §480-HH by striking out all of subsections 8,
34 9 and 10 and inserting the following:

35 '8. General permit term. Except as otherwise provided in subsections 9 to 12, a
36 general permit granted under this section authorizes conduct of the approved offshore
37 wind energy demonstration project in accordance with this subsection:

38 A. If the offshore wind energy demonstration project is not located in the Maine
39 Offshore Wind Energy Research Center, conduct of the project is authorized for 3
40 years from the date that construction of a permitted structure on submerged lands is
41 initiated or 5 years from the date on which the general permit has been granted
42 pursuant to subsection 5, whichever first occurs; or

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1 B. If the offshore wind energy demonstration project is located in the Maine
2 Offshore Wind Energy Research Center, conduct of the project is authorized for 5
3 years from the date that construction of a permitted structure on submerged lands is
4 initiated or 7 years from the date on which the permit has been granted pursuant to
5 subsection 5, whichever first occurs.

6 The applicant must provide the department written notice of the date of initiation of
7 construction within 7 days of its commencement. Except as otherwise provided by
8 subsection 9, the department may not extend the term of a general permit granted under
9 this section.

10 **9. Extensions to permit term.** The department may grant one or more extensions of
11 the general permit term in accordance with this subsection.

12 A. The department may grant one or more extensions of the general permit term,
13 each for a period of 6 months or less, if, prior to expiration of the general permit
14 term, the applicant has filed completed applications for all requisite state license and
15 permit approvals for a wind energy development, as defined by Title 35-A, section
16 3451, subsection 11, located wholly or partly where the offshore wind energy
17 demonstration project is located. The department may not grant an extension under
18 this paragraph for a project located in the Maine Offshore Wind Energy Research
19 Center.

20 B. The department shall grant one or more extensions, each of which may not exceed
21 3 years, of the general permit term for an offshore wind energy demonstration project
22 that is funded in whole or in part with state or federal funds and is located in the
23 Maine Offshore Wind Energy Research Center if the applicant provides written
24 evidence that the University of Maine System has determined that the extension is
25 necessary to fulfill the research and development objectives of the project.

26 **10. Surrender; demonstrated progress required.** If the department determines
27 that the applicant has not completed or made substantial and ongoing progress to
28 complete construction of all project elements within one year of the date on which the
29 general permit has been granted pursuant to subsection 5, the applicant must surrender its
30 general permit, subject to conditions regarding project removal pursuant to subsection 11.
31 An applicant may surrender to the department a general permit granted pursuant to this
32 section prior to its expiration pursuant to subsection 8 or 9. Subject to conditions
33 regarding project removal under subsection 11, the general permit terminates on the date
34 of its surrender pursuant to this subsection.'

35 Amend the bill in Part A in section 2 in §480-HH in subsection 11 in the first line
36 (page 8, line 12 in L.D.) by striking out the following: "termination of the project" and
37 inserting the following: 'expiration or termination of a general permit'

38 Amend the bill in Part A in section 2 in §480-HH in subsection 11 in the 2nd line
39 (page 8, line 13 in L.D.) by striking out the following: "or 10" and inserting the
40 following: ', 10 or 12'

41 Amend the bill in Part A in section 2 in §480-HH by inserting after subsection 14 the
42 following:

1 **'15. Number of projects in the Maine Offshore Wind Energy Research Center.**
2 Notwithstanding any provision of law to the contrary, a general permit may not be
3 granted under this section for an offshore wind energy demonstration project that is
4 proposed for location within the Maine Offshore Wind Energy Research Center if grant
5 of that general permit would authorize more than 6 ocean energy generating units to be
6 sited and in operation at any one time within the Maine Offshore Wind Energy Research
7 Center.'

8 Amend the bill in Part C in section 1 in §1868 by striking out all of subsection 1 and
9 inserting the following:

10 **'1. Site identification process.** No later than December 15, 2009, following
11 consultation with the Department of Environmental Protection, the Public Utilities
12 Commission, the Department of Inland Fisheries and Wildlife, the Maine Land Use
13 Regulation Commission, the Department of Marine Resources, the Maine Historic
14 Preservation Commission and the University of Maine System and opportunity for public
15 comment, the department, in conjunction with the Executive Department, State Planning
16 Office, shall identify and map up to 5 specific offshore wind energy test areas. An
17 offshore wind energy test area identified under this subsection must be a geographic area
18 on state-owned submerged lands suitable for offshore wind energy demonstration projects
19 constructed and operated in accordance with Title 38, section 480-HH. In identifying
20 each such area, the department must consider existing information regarding pertinent
21 ecological, environmental, social and development-related factors, including but not
22 limited to:

23 A. Potential adverse effects on a protected natural resource, as defined by Title 38,
24 section 480-B, subsection 8, or a scenic resource of state or national significance, as
25 defined by Title 35-A, section 3451, subsection 9;

26 B. Potential adverse effects on species listed as threatened or endangered under
27 section 6975 or section 12803, subsection 3; avian species, including seabirds,
28 passerines, raptors, shorebirds, water birds and waterfowl; bats; and marine
29 mammals;

30 C. Potential adverse effects on commercial fishing, recreation, navigation, existing
31 public access ways to intertidal and subtidal areas and other existing uses;

32 D. Proximity to deep water port facilities, rail transportation, transmission
33 infrastructure facilities and existing ocean-based environmental monitoring devices;

34 E. Data regarding wind speed, ocean wave height and period, ocean currents and
35 water depth;

36 F. Geology, including substrate type and other seafloor characteristics;

37 G. Public support in pertinent coastal communities; and

38 H. Historic sites and archaeological resources of state or national significance.'

39 Amend the bill in Part C in section 1 in §1868 by striking out all of subsection 3 and
40 inserting the following:

41 **'3. Modification of identified offshore wind energy test areas.** Following the
42 identification of offshore wind energy test areas under subsection 1, the department may,

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1 following notice and opportunity for public comment, add to, remove or other otherwise
2 modify the list of offshore wind energy test areas identified under subsection 1. In
3 making modifications under this subsection, the department is subject to the site
4 identification criteria under subsection 1, except that modifications under this subsection
5 may result in more than 5 identified areas.

6 **4. Judicial review.** The identification of an offshore wind energy test area or areas
7 under subsection 1 or subsection 3 constitutes final agency action.'

8 Amend the bill in Part D in section 4 in paragraph E in the first line (page 11, line 17
9 in L.D.) by inserting after the following: "A" the following: 'permit or other approval by
10 the commission is not required for a'

11 Amend the bill in Part D in section 4 in paragraph E in the last line (page 11, line 19
12 in L.D.) by striking out the following: "is not subject to review and approval by the
13 commission"

14 Amend the bill by inserting at the end before the summary the following:

15 '**Emergency clause.** In view of the emergency cited in the preamble, this
16 legislation takes effect when approved.'

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

19 **SUMMARY**

20 The amendment makes the following changes to the bill:

21 1. It clarifies the language in the bill regarding the specification of an exclusion zone
22 around an offshore wind energy demonstration project;

23 2. It adds the lobster management policy council for the lobster management zone in
24 which an offshore wind energy project is proposed to the list of required entities with
25 whom an applicant for a general permit for an offshore wind energy demonstration
26 project must consult in the development of plans required as part of the general permit
27 application;

28 3. It adds a provision to allow the University of Maine System to hold more than one
29 general permit for an offshore wind energy project in the Maine Offshore Wind Energy
30 Research Center as long as the projects employ differing wind energy technologies;

31 4. It clarifies the provisions in the bill regarding the application review period, the
32 term of a general permit, permit extensions and the termination of offshore wind energy
33 developments and adds language to provide an initial 5-year project period for projects in
34 the Maine Offshore Wind Energy Research Center, as compared with the initial 3-year
35 project period for projects located elsewhere;

36 5. It adds language to limit the number of ocean energy generating units in the Maine
37 Offshore Wind Energy Research Center to 6 units in operation at any one time in that
38 area and it provides a definition of ocean energy generating units;

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- 1 6. It clarifies the language in the bill regarding the initial identification of offshore
- 2 wind energy test areas by the Department of Environmental Protection and subsequent
- 3 modification of the initial list of identified areas;
- 4 7. It adds language to provide that identification of an offshore wind energy test area
- 5 or areas constitutes final agency action of the Department of Conservation; and
- 6 8. It adds an emergency preamble and emergency clause.

FISCAL NOTE REQUIRED
(See Attached)



124th MAINE LEGISLATURE

LD 1465

LR 1969(02)

An Act To Facilitate Testing and Demonstration of Renewable Ocean Energy Technology

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Utilities and Energy

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

This bill allows the Department of Conservation to designate one of the offshore wind energy test areas as the Maine Offshore Wind Energy Research Center for use by offshore wind energy demonstration projects conducted by or in cooperation with the University of Maine System in a manner that is consistent with the System's offshore wind energy research and development-related objectives. The University of Maine System has indicated that it will only proceed with the development of this center if external funding is available. LD 913, An Act To Authorize Bond Issues for Ratification by the Voters for the November 2009 and June 2010 Elections, includes a request for a bond issue of \$7,500,000 for the Maine Marine Wind Energy Demonstration Site Fund for research, development and product innovation associated with developing one or more ocean wind energy demonstration sites. These funds are contingent upon approval by the voters in the November 2009 general election.

Additional costs to the University of Maine System, the State Planning Office and the Maine Historic Preservation Commission associated with consulting with the Department of Conservation on the site identification process can be absorbed within existing budgeted resources. The additional costs to the Department of Environmental Protection associated with permitting requirements and other duties can be absorbed within existing budgeted resources.