

MAINE STATE LEGISLATURE

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DMG
R. 003

L.D. 1810

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UTILITIES AND ENERGY

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 710, L.D. 1810, Bill, "An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force"

Amend the bill on page 1 by striking out all of the 5th and 6th indented paragraphs and inserting the following:

Whereas, state and adjoining federal waters feature significant offshore wind, tidal and wave power energy resources, including world-class and untapped deep-water wind resources with the potential to make a significant contribution to the State's energy sources to meet the State's changing needs for renewable sources of light and power, heat and transportation fuel; to meet the State's ambitious renewable energy portfolio standards; and to position the State to be an exporter of clean, renewable indigenous energy; and

Whereas, the Governor's Ocean Energy Task Force identified and made recommendations to overcome economic, technical and regulatory obstacles and to provide economic incentives for vigorous and efficient development of these promising indigenous, renewable ocean energy resources in ways that recognize the concurrent need to sustain the ongoing biological integrity of the State's waters, the vitality and productivity of ocean harvests and the differing needs and uses of the seas and other natural resources and to ensure the provision of these benefits to the people of the State by careful use of such public resources for renewable ocean energy production; and'

Amend the bill on page 1 in the 7th indented paragraph in the 2nd line (page 1, line 30 in L.D.) by striking out the following: "deep water" and inserting the following: 'deep-water'

Amend the bill on page 1 in the 7th indented paragraph in the next to last line (page 1, line 33 in L.D.) by striking out the following: "action now" and inserting the following: 'timely action'

Amend the bill in Part A by striking out all of sections 1 to 5 and inserting the following:

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Sec. A-1. 35-A MRSA §3132, sub-§6, as amended by PL 2009, c. 309, §3, is further amended to read:

6. Commission order; certificate of public convenience and necessity. In its order, the commission shall make specific findings with regard to the public need for the proposed transmission line. If the commission finds that a public need exists, it shall issue a certificate of public convenience and necessity for the transmission line. In determining public need, the commission shall, at a minimum, take into account economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings and alternatives to construction of the transmission line, including energy conservation, distributed generation or load management. If the commission orders or allows the erection of the transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the transmission line. The commission shall, as necessary and in accordance with subsections 7 and 8, consider the findings of the Department of Environmental Protection under Title 38, chapter 3, subchapter 1, article 6, with respect to the proposed transmission line and any modifications ordered by the Department of Environmental Protection to lessen the impact of the proposed transmission line on the environment. A person may submit a petition for and obtain approval of a proposed transmission line under this section before applying for approval under municipal ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A; and Title 38, section 438-A and, except as provided in subsection 4, before identifying a specific route or route options for the proposed transmission line. Except as provided in subsection 4, the commission may not consider the petition insufficient for failure to provide identification of a route or route options for the proposed transmission line. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the person to erect or construct was prudent. At the time of its issuance of a certificate of public convenience and necessity, the commission shall send to each municipality through which a proposed corridor or corridors for a transmission line extends a separate notice that the issuance of the certificate does not override, supersede or otherwise affect municipal authority to regulate the siting of the proposed transmission line. The commission may deny a certificate of public convenience and necessity for a transmission line upon a finding that the transmission line is reasonably likely to adversely affect any transmission and distribution utility or its customers.

Sec. A-2. 35-A MRSA §3402, sub-§1, as enacted by PL 2007, c. 661, Pt. A, §4, is amended to read:

1. Contribution of wind energy development. The Legislature finds and declares that the wind energy resources of the State constitute a valuable indigenous and renewable energy resource and that wind energy development, which is unique in its benefits to and impacts on the natural environment, makes a significant contribution to the general welfare of the citizens of the State for the following reasons:

A. Wind energy is an economically feasible, large-scale energy resource that does not rely on fossil fuel combustion or nuclear fission, thereby displacing electrical energy provided by these other sources and avoiding air pollution, waste disposal problems and hazards to human health from emissions, waste and by-products;

1 consequently, wind energy development may address energy needs while making a
2 significant contribution to achievement of the State's renewable energy and
3 greenhouse gas reduction objectives, including those in Title 38, section 576; and

4 B. At present and increasingly in the future with anticipated technological advances
5 that promise to increase the number of places in the State where grid-scale wind
6 energy development is economically viable, and changes in the electrical power
7 market that favor clean power sources, wind energy may be used to displace
8 electrical power that is generated from fossil fuel combustion and thus reduce our
9 citizens' dependence on imported oil and natural gas and improve environmental
10 quality and state and regional energy security; and

11 C. Renewable energy resources within the State and in the Gulf of Maine have the
12 potential, over time, to provide enough energy for the State's homeowners and
13 businesses to reduce their use of oil and liquid petroleum-fueled heating systems by
14 transition to alternative, renewable energy-based heating systems and to reduce their
15 use of petroleum-fueled motor vehicles by transition to electric-powered motor
16 vehicles. Electrification of heating and transportation has potential to increase the
17 State's energy independence, to help stabilize total residential and commercial energy
18 bills and to reduce greenhouse gas emissions.

19 **Sec. A-3. 35-A MRSA §3404, sub-§1**, as enacted by PL 2007, c. 661, Pt. A, §6,
20 is amended to read:

21 **1. Encouragement of wind energy-related development.** It is the policy of the
22 State ~~that~~, in furtherance of the goals established in subsection 2, ~~its political~~
23 ~~subdivisions, agencies and public officials take every reasonable action to encourage the~~
24 attraction of appropriately sited development related to wind energy, including any
25 additional transmission and other energy infrastructure needed to transport additional
26 offshore wind energy to market, consistent with all state environmental standards; the
27 permitting and financing of wind energy projects; and the siting, permitting, financing
28 and construction of wind energy research and manufacturing facilities.'

29 Amend the bill in Part A by striking out all of sections 7 to 10 and inserting the
30 following:

31 '**Sec. A-7. 38 MRSA §631, sub-§3** is enacted to read:

32 **3. Encouragement of tidal and wave power development.** It is the policy of the
33 State to encourage the attraction of appropriately sited development related to tidal and
34 wave energy, including any additional transmission and other energy infrastructure
35 needed to transport such energy to market, consistent with all state environmental
36 standards; the permitting and siting of tidal and wave energy projects; and the siting,
37 permitting, financing and construction of tidal and wave energy research and
38 manufacturing facilities.

39 **Sec. A-8. Competitive solicitation; long-term contracts; deep-water**
40 **offshore wind energy pilot projects and tidal energy demonstration projects.**
41 By September 1, 2010, in accordance with the Maine Revised Statutes, Title 35-A,
42 section 3210-C, except as otherwise provided by this section, the Public Utilities
43 Commission shall conduct a competitive solicitation for proposals for long-term contracts

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1 to supply installed capacity and associated renewable energy and renewable energy
2 credits from one or more deep-water offshore wind energy pilot projects or tidal energy
3 demonstration projects.

4 The commission shall consult with the University of Maine, Department of Industrial
5 Cooperation, Office of Research and Economic Development and the Department of
6 Economic and Community Development in developing the request for proposals under
7 this section and in its review of proposals submitted in response to the request.

8 Subject to the requirements of this section, the commission may direct one or more
9 transmission and distribution utilities, as appropriate, to enter into a long-term contract of
10 up to 20 years for the installed capacity and associated renewable energy and renewable
11 energy credits of one or more deep-water offshore wind energy pilot projects or tidal
12 energy demonstration projects.

13 For purposes of this section, "deep-water offshore wind energy pilot project" means a
14 wind energy development, as defined by Title 35-A, section 3451, subsection 11, that is
15 connected to the electrical transmission system located in the State and employs one or
16 more floating wind energy turbines in the Gulf of Maine at a location 300 feet or greater
17 in depth no less than 10 nautical miles from any land area of the State other than coastal
18 wetlands, as defined by Title 38, section 480-B, subsection 2, or an uninhabited island.
19 "Tidal energy demonstration project" has the same meaning as in Title 38, section 636-A,
20 subsection 1, paragraph A.

21 1. Following review of proposals submitted in response to the competitive
22 solicitation, the commission may negotiate with one or more potential suppliers to supply
23 an aggregate total of no more than 30 megawatts of installed capacity and associated
24 renewable energy and renewable energy credits from deep-water offshore wind energy
25 pilot projects or tidal energy demonstration projects as long as no more than 5 megawatts
26 of the total is supplied by tidal energy demonstration projects. Consistent with such
27 negotiations, the commission may direct one or more transmission and distribution
28 utilities, as appropriate, to enter into a long-term contract under this section only if the
29 commission determines that the potential supplier:

30 A. Proposes sale of renewable energy produced by a deep-water offshore wind
31 energy pilot project or a tidal energy demonstration project, referred to in this section
32 as "the project;"

33 B. Has the technical and financial capacity to develop, construct, operate and, to the
34 extent consistent with applicable federal law, decommission and remove the project
35 in the manner provided by Title 38, section 480-HH, subsection 3, paragraph G;

36 C. Has quantified the tangible economic benefits of the project to the State, including
37 those regarding goods and services to be purchased and use of local suppliers,
38 contractors and other professionals, during the proposed term of the contract;

39 D. Has experience relevant to tidal power or the offshore wind energy industry, as
40 applicable, including, in the case of a deep-water offshore wind energy pilot project
41 proposal, experience relevant to the construction and operation of floating wind
42 turbines, and has the potential to construct a deep-water offshore wind energy project
43 100 megawatts or greater in capacity in the future to provide electric consumers in
44 the State with project-generated power at reduced rates;

1 E. Has demonstrated a commitment to invest in manufacturing facilities in the State
2 that are related to deep-water offshore wind energy or tidal energy, as applicable,
3 including, but not limited to, component, turbine, blade, foundation or maintenance
4 facilities; and

5 F. Has taken advantage of all federal support for the project, including subsidies, tax
6 incentives and grants, and incorporated those resources into its bid price.

7 2. To mitigate any impacts of a long-term contract entered into under this section on
8 electric rates, the commission shall:

9 A. Require the supplier, as part of the long-term contract, to take advantage of future
10 federal support that may become available to the project over the contract term to
11 mitigate impacts of the contract on electric rates;

12 B. Use the following funds to the full extent that such funds are available to mitigate
13 impacts of the long-term contract on electric rates over the contract term:

14 (1) A portion of federal revenues from leasing areas of the Outer Continental
15 Shelf for the project that is received by the State;

16 (2) A portion of the rent received by the State for leasing state submerged lands;

17 (3) A portion of the funds collected in the energy independence fund under Title
18 5, section 282, subsection 9; and

19 (4) Any other sources of revenue or funds accessible to the commission to
20 mitigate impacts on ratepayers;

21 C. Develop and market an ocean wind green power offer, in accordance with
22 provisions governing green power offers under Title 35-A, section 3212-A, that is
23 composed of electricity or renewable energy credits for electricity generated from
24 deep-water offshore wind energy pilot projects to coincide with the start-up date of
25 any deep-water offshore wind energy pilot project that secures a long-term contract
26 under this section. In its annual report under Title 35-A, section 120, subsection 7,
27 the commission shall report on the development, marketing and purchase of the ocean
28 wind green power offer.

29 The commission may not approve any long-term contract under this section that
30 would result in an increase in electric rates in any customer class that is greater than the
31 amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the
32 time that the contract is entered.

33 Any contract entered into pursuant to this section must require that the deep-water
34 offshore wind energy pilot project or tidal energy demonstration project, as appropriate,
35 be constructed and operating within 5 years of the date the contract is finalized, unless the
36 commission and project developer mutually agree to a longer time period.

37 In purchasing electricity for state-owned buildings pursuant to Title 5, section
38 1766-A, the State shall consider the ocean wind green power offer. In purchasing
39 electricity for the university system, the University of Maine System shall consider the
40 ocean wind green power offer.

41 **Sec. A-9. Review of terms and conditions for long-term contracts for**
42 **renewable ocean energy.** No later than January 15, 2012, the Executive Department,

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COMMITTEE AMENDMENT "A" to S.P. 710, L.D. 1810

1 Governor's Office of Energy Independence and Security shall make a recommendation to
2 the joint standing committee of the Legislature having jurisdiction over utilities and
3 energy matters regarding terms and conditions for long-term contracts for installed
4 capacity and associated renewable energy and renewable energy credits produced by
5 renewable ocean energy projects, except for those addressed in section 8. For the
6 purposes of this section, "renewable ocean energy project" has the same meaning as in the
7 Maine Revised Statutes, Title 12, section 1862, subsection 1, paragraph F-1. In making a
8 recommendation under this section, the office shall, at a minimum, consider the following
9 issues:

- 10 1. Risks to ratepayers associated with fossil fuel price volatility over the next 20
11 years;
- 12 2. State goals for the reduction of greenhouse gas emissions established in Title 38,
13 section 576;
- 14 3. State wind energy generation goals under Title 35-A, section 3404, subsection 2;
15 and
- 16 4. Other potential benefits attributable to the development of offshore wind, tidal and
17 wave energy projects, including but not limited to public health, job creation and other
18 economic benefits and energy security.'

19 Amend the bill in Part B in section 1 in §1862 in subsection 13 in paragraph A in
20 subparagraph (4) in the 3rd line (page 14, line 34 in L.D.) by inserting after the following:
21 "navigation," the following: 'consideration of potential adverse effects on existing uses of
22 the marine environment.'

23 Amend the bill in Part B in section 1 in §1862 in subsection 13 in paragraph B in
24 subparagraph (1) in the 3rd line (page 15, line 5 in L.D.) by striking out the following:
25 "meeting," and inserting the following: 'meeting that includes the Department of Marine
26 Resources and is'

27 Amend the bill in Part B in section 1 in §1862 in subsection 13 in paragraph B by
28 inserting after subparagraph (2) the following:

29 '(3) The director shall provide notice to the Marine Resources Advisory Council
30 under section 6024 and any lobster management policy council established
31 pursuant to section 6447 in whose or within 3 miles of whose designated lobster
32 management zone created pursuant to section 6446 the proposed development is
33 located. The Marine Resources Advisory Council and any lobster management
34 policy council notified pursuant to this subparagraph may provide comments
35 within a reasonable period established by the director, and the director shall
36 consider the comments in making findings pursuant to subsection 2, paragraph A,
37 subparagraph (6).'

38 Amend the bill in Part B in section 1 in §1862 in subsection 13 in paragraph B by
39 striking out all of subparagraph (5) and inserting the following:

40 '(5) Except as otherwise provided in this paragraph, the annual rent for a wind
41 energy demonstration project for which a general permit has been issued under
42 Title 38, section 480-HH is \$10,000 per year for the term of the general permit.
43 The annual rent for a tidal energy demonstration project for which a general

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1 permit has been issued under Title 38, section 636-A is \$100 per acre of
2 submerged lands occupied by the project for the term of the general project,
3 except that the annual rent may not exceed \$10,000. As used in this paragraph,
4 "submerged lands occupied" includes the sum of the area on which turbines,
5 testing and monitoring equipment, anchoring or mooring lines, submerged
6 transmission cables or other structures are placed and any additional area from
7 which the director finds it necessary to exclude transient public trust uses to
8 avoid unreasonable interference with the project's purposes. An annual rent is
9 not required for an offshore wind energy demonstration project located in the
10 Maine Offshore Wind Energy Research Center, as designated by the department
11 under section 1868, subsection 2.'

12 Amend the bill in Part B in section 1 in §1862 in subsection 13 in paragraph B in
13 subparagraph (6) in the first line (page 16, line 10 in L.D.) by striking out the following:
14 "lessee a" and inserting the following: 'lessee an annual'

15 Amend the bill in Part B in section 1 in §1862 in subsection 13 in paragraph B by
16 renumbering the subparagraphs to read consecutively.

17 Amend the bill in Part B in section 3 in §1863-A in subsection 3 in paragraph A in
18 the 2nd line (page 17, line 4 in L.D.) by inserting after the following: "subsection 13" the
19 following: 'and offshore wind energy demonstration projects and tidal energy
20 demonstration projects for which a general permit has been issued under Title 38, section
21 480-HH or Title 38, section 636-A, respectively'

22 Amend the bill in Part B in section 3 in §1863-A in subsection 4 in the 2nd line (page
23 17, line 8 in L.D.) by striking out the following: "trust to the" and inserting the following:
24 'trust for credit to the Ocean Energy Fund established within'

25 Amend the bill in Part B in section 4 in the 5th line (page 17, line 31 in L.D.) by
26 striking out the following: "rental"

27 Amend the bill in Part B in section 4 in subsection 4 in the 5th line (page 18, line 13
28 in L.D.) by striking out the following: "amount" and inserting the following: 'fee'

29 Amend the bill in Part B in section 4 in subsection 7 in the first line (page 18, line 22
30 in L.D.) by striking out the following: "lease fees and lease fee" and inserting the
31 following: 'annual rent and'

32 Amend the bill in Part C by striking out all of sections 1 to 6 and inserting the
33 following:

34 '**Sec. C-1. Personal property-related taxation; renewable ocean energy**
35 **development.** No later than November 1, 2010, the Department of Administrative and
36 Financial Regulation, Bureau of Revenue Services shall develop and provide to the joint
37 standing committees of the Legislature having jurisdiction over taxation matters and
38 utilities and energy matters an analysis of whether and under what circumstances
39 renewable ocean energy-generating machinery, equipment and related components,
40 including but not limited to turbines, support structures, transmission cables and their
41 component parts, that are in transit to be located in, on or above state submerged lands as
42 defined in the Maine Revised Statutes, Title 12, section 1801, subsection 9 and that are in

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1 the State on the first day of April on the applicable tax year are exempt from taxation
2 under Title 36, section 655, subsection 1, paragraph A, B, G or H.'

3 Amend the bill in Part D in section 2 in subsection 19 in the 3rd line (page 20, line 4
4 in L.D.) by inserting after the following: "subsection 11," the following: 'with an
5 aggregate generating capacity of less than 3 megawatts'

6 Amend the bill in Part D in section 2 in subsection 19, in the 7th line (page 20, line 8
7 in L.D.) by inserting after the following: "island communities;" the following: 'and

8 Amend the bill in Part D in section 2 in subsection 19 in the last 3 lines (page 20,
9 lines 10 to 12 in L.D.) by striking out the following: "; and the projected average annual
10 electricity production, as stated in the application, will be no more than 200% greater than
11 the pertinent island communities' current annual electricity consumption"

12 Amend the bill in Part D by striking out all of sections 3 and 4 and inserting the
13 following:

14 **'Sec. D-3. 12 MRSA §685-B, sub-§2-C,** as repealed and replaced by PL 2009, c.
15 492, §1, is amended to read:

16 **2-C. Wind energy development; community-based offshore wind energy**
17 **projects; determination deadline.** The following provisions govern wind energy
18 development.

19 A. The commission shall consider any wind energy development in the expedited
20 permitting area under Title 35-A, chapter 34-A with a generating capacity of 100
21 kilowatts or greater or a community-based offshore wind energy project a use
22 requiring a permit, but not a special exception, within the affected districts or
23 subdistricts. For an offshore wind energy project that is proposed within one nautical
24 mile of an island within the unorganized or deorganized areas, the commission shall
25 review the proposed project to determine whether the project qualifies as a
26 community-based offshore wind energy project and therefore is within the
27 jurisdiction of the commission. The commission may require an applicant to provide
28 a timely notice of filing prior to filing an application for, and may require the
29 applicant to attend a public meeting during the review of, a wind energy development
30 or a community-based offshore wind energy project. The commission shall render its
31 determination on an application for such a development or project within 185 days
32 after the commission determines that the application is complete, except that the
33 commission shall render such a decision within 270 days if it holds a hearing on the
34 application. The chair of the Public Utilities Commission or the chair's designee shall
35 serve as a nonvoting member of the commission and may participate fully but is not
36 required to attend hearings when the commission considers an application for an
37 expedited wind energy development or a community-based offshore wind energy
38 project. The chair's participation on the commission pursuant to this subsection does
39 not affect the ability of the Public Utilities Commission to submit information into
40 the record of the commission's proceedings. For purposes of this subsection,
41 "expedited permitting area," "expedited wind energy development" and "wind energy
42 development" have the same meanings as in Title 35-A, section 3451.

43 B. At the request of an applicant, the commission may stop the processing time for a
44 period of time agreeable to the commission and the applicant. The expedited review

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1 period specified in paragraph A does not apply to the associated facilities, as defined
2 in Title 35-A, section 3451, subsection 1, of the wind energy development or
3 community-based offshore wind energy project if the commission determines that an
4 expedited review time is unreasonable due to the size, location, potential impacts,
5 multiple agency jurisdiction or complexity of that portion of the development or
6 project.

7 **Sec. D-4. 12 MRSA §685-B, sub-§4**, as amended by PL 2009, c. 492, §2, is
8 further amended to read:

9 **4. Criteria for approval.** In approving applications submitted to it pursuant to this
10 section, the commission may impose such reasonable terms and conditions as the
11 commission may consider appropriate. In making a decision under this subsection
12 regarding an application for a community-based offshore wind energy project, the
13 commission may not consider whether the project meets the specific criteria designated in
14 section 1862, subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This
15 limitation is not intended to restrict the commission's review of related potential impacts
16 of the project as determined by the commission.

17 The commission may not approve an application, unless:

18 A. Adequate technical and financial provision has been made for complying with the
19 requirements of the State's air and water pollution control and other environmental
20 laws, and those standards and regulations adopted with respect thereto, including
21 without limitation the minimum lot size laws, sections 4807 to 4807-G, the site
22 location of development laws, Title 38, sections 481 to 490, and the natural resource
23 protection laws, Title 38, sections 480-A to 480-Z, and adequate provision has been
24 made for solid waste and sewage disposal, for controlling of offensive odors and for
25 the securing and maintenance of sufficient healthful water supplies;

26 B. Adequate provision has been made for loading, parking and circulation of land,
27 air and water traffic, in, on and from the site, and for assurance that the proposal will
28 not cause congestion or unsafe conditions with respect to existing or proposed
29 transportation arteries or methods;

30 C. Adequate provision has been made for fitting the proposal harmoniously into the
31 existing natural environment in order to ensure there will be no undue adverse effect
32 on existing uses, scenic character and natural and historic resources in the area likely
33 to be affected by the proposal. In making a determination under this paragraph
34 regarding development to facilitate withdrawal of groundwater, the commission shall
35 consider the effects of the proposed withdrawal on waters of the State, as defined by
36 Title 38, section 361-A, subsection 7; water-related natural resources; and existing
37 uses, including, but not limited to, public or private wells, within the anticipated zone
38 of contribution to the withdrawal. In making findings under this paragraph, the
39 commission shall consider both the direct effects of the proposed withdrawal and its
40 effects in combination with existing water withdrawals.

41 In making a determination under this paragraph regarding an expedited wind energy
42 development, as defined in Title 35-A, section 3451, subsection 4, or a community-
43 based offshore wind energy project, the commission shall consider the development's

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1 or project's effects on scenic character and existing uses related to scenic character in
2 accordance with Title 35-A, section 3452.

3 In making a determination under this paragraph regarding a wind energy
4 development, as defined in Title 35-A, section 3451, subsection 11, that is not a grid-
5 scale wind energy development, that has a generating capacity of 100 kilowatts or
6 greater and that is proposed for location within the expedited permitting area, the
7 commission shall consider the development's or project's effects on scenic character
8 and existing uses relating to scenic character in the manner provided for in Title
9 35-A, section 3452;

10 D. The proposal will not cause unreasonable soil erosion or reduction in the capacity
11 of the land to absorb and hold water and suitable soils are available for a sewage
12 disposal system if sewage is to be disposed on-site;

13 E. The proposal is otherwise in conformance with this chapter and the regulations,
14 standards and plans adopted pursuant thereto; and

15 F. In the case of an application for a structure upon any lot in a subdivision, that the
16 subdivision has received the approval of the commission.

17 The burden is upon the applicant to demonstrate by substantial evidence that the criteria
18 for approval are satisfied, and that the public's health, safety and general welfare will be
19 adequately protected. Except as otherwise provided in Title 35-A, section 3454, the
20 commission shall permit the applicant and other parties to provide evidence on the
21 economic benefits of the proposal as well as the impact of the proposal on energy
22 resources.'

23 Amend the bill in Part D in section 5 in subsection 4-B in paragraph D in the last line
24 (page 22, line 20 in L.D.) by striking out the following: "or a community-based offshore
25 wind energy project"

26 Amend the bill in Part E in section 1 in subsection 2 by striking out all of the last
27 blocked paragraph (page 23, lines 9 to 17 in L.D.) and inserting the following:

28 'The board may not assume jurisdiction over an application for an expedited wind energy
29 development as defined in Title 35-A, section 3451, subsection 4 ~~or~~ for a certification
30 pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH
31 or section 636-A.'

32 Amend the bill in Part E in section 2 by striking out all of paragraph D (page 23, lines
33 20 to 40 in L.D.) and inserting the following:

34 'D. License or permit decisions regarding an expedited wind energy development as
35 defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to
36 section 480-HH or section 636-A. In reviewing an appeal of a license or permit
37 decision by the commissioner ~~on an application for an expedited wind energy~~
38 ~~development under this paragraph,~~ the board shall base its decision on the
39 administrative record of the department, including the record of any adjudicatory
40 hearing held by the department, and any supplemental information allowed by the
41 board using the standards contained in subsection 5 for supplementation of the
42 record. The board may remand the decision to the department for further proceedings
43 if appropriate. The chair of the Public Utilities Commission or the chair's designee

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1 shall ~~serve~~ serve as a nonvoting member of the board and is entitled to fully
2 participate but is not required to attend hearings when the board considers an appeal
3 pursuant to this paragraph. The chair's participation on the board pursuant to this
4 paragraph does not affect the ability of the Public Utilities Commission to submit
5 information to the department for inclusion in the record of any proceeding before the
6 department.'

7 Amend the bill in Part E in section 3 in paragraph A by striking out all of
8 subparagraph (1) (page 24, lines 7 to 24 in L.D.) and inserting the following:

9 '(1) The commissioner may not request the board to assume jurisdiction of an
10 application for any permit or other approval required for an expedited wind
11 energy development, as defined in Title 35-A, section 3451, subsection 4, ~~or~~ a
12 certification pursuant to Title 35-A, section 3456 or a general permit pursuant to
13 section 480-HH or section 636-A. Except as provided in subparagraph (2), the
14 commissioner shall issue a decision on an application for an expedited wind
15 energy development, an offshore wind power project or a hydropower project, as
16 defined in section 632, subsection 3, that uses tidal action as a source of electrical
17 or mechanical power within 185 days of the date on which the department
18 accepts the application as complete pursuant to this section or within 270 days of
19 the department's acceptance of the application if the commissioner holds a
20 hearing on the application pursuant to section 345-A, subsection 1-A.'

21 Amend the bill in Part E in section 5 by striking out all of subsection 4 (page 25, lines
22 10 to 20 in L.D.) and inserting the following:

23 '**4. Appeal of decision.** A person aggrieved by an order or decision of the board or
24 commissioner regarding an application for an expedited wind energy development, as
25 defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section
26 480-HH or section 636-A may appeal to the Supreme Judicial Court sitting as the law
27 court. These appeals to the law court must be taken in the manner provided in Title 5,
28 chapter 375, subchapter 7.'

29 Amend the bill in Part E by inserting after section 6 the following:

30 '**Sec. E-7. 38 MRSA §480-D, first paragraph,** as amended by PL 2007, c. 353,
31 §9, is further amended to read:

32 The department shall grant a permit upon proper application and upon such terms as
33 it considers necessary to fulfill the purposes of this article. The department shall grant a
34 permit when it finds that the applicant has demonstrated that the proposed activity meets
35 the standards set forth in subsections 1 to 9 11, except that when an activity requires a
36 permit only because it is located in, on or over a community public water system primary
37 protection area the department shall issue a permit when it finds that the applicant has
38 demonstrated that the proposed activity meets the standards set forth in subsections 2 and
39 5.'

40 Amend the bill in Part E in section 7 in subsection 1 by striking out all of the last
41 blocked paragraph (page 25, lines 33 to 39 in L.D.) and inserting the following:

42 'In making a determination under this subsection regarding an expedited wind energy
43 development, as defined in Title 35-A, section 3451, subsection 4, or an offshore wind

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1 power project, the department shall consider the development's or project's effects on
2 scenic character and existing uses related to scenic character in accordance with Title
3 35-A, section 3452. In making a decision under this subsection regarding an application
4 for an offshore wind power project, the department may not consider whether the project
5 meets the specific criteria designated in Title 12, section 1862, subsection 2, paragraph A,
6 subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the
7 department's review of related potential impacts of the project as determined by the
8 department.'

9 Amend the bill in Part E in section 9 in subsection 1 in paragraph B by striking out all
10 of subparagraphs (1) and (2) (page 26, lines 32 to 36 in L.D.) and inserting the following:

11 '(1) Notice to the Maine Land Use Regulation Commission when the proposed
12 development is located within 3 miles of an area of land within the jurisdiction of
13 the Maine Land Use Regulation Commission; and

14 (2) Notice to any municipality with land located within 3 miles of the proposed
15 development and any municipality in which development of associated facilities
16 is proposed.'

17 Amend the bill in Part G in section 2 in §4361 by striking out all of subsections 2 to 4
18 and inserting the following:

19 **2. Location of renewable ocean energy projects.** A municipality may not enact or
20 enforce a land use ordinance that prohibits siting of renewable ocean energy projects,
21 including but not limited to their associated facilities, within the municipality. Nothing in
22 this section is intended to authorize a municipality to enact or enforce a land use
23 ordinance as applied to submerged lands.

24 **3. Boundaries; rebuttable presumption.** A municipality may not enact or enforce
25 any land use standard or other requirement regarding a renewable ocean energy project
26 unless the project or part of the project over which the municipality asserts approval
27 authority is located within its boundaries, as established in its legislative charter, prior to
28 the effective date of this subsection. In any proceeding regarding the location of a
29 municipality's boundaries for purposes of this section, there is a rebuttable presumption
30 that the boundaries of a municipality in the coastal area do not extend below the mean
31 low-water line on waters subject to tidal influence.'

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

33 **'PART H**

34 **Sec. H-1. Appropriations and allocations.** The following appropriations and
35 allocations are made.

36 **MARINE RESOURCES, DEPARTMENT OF**

37 **Bureau of Resource Management 0027**

38 Initiative: Establishes the Ocean Energy Fund with a base allocation.

1	OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
2	All Other	\$500	\$500
3			
4	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$500</u>	<u>\$500</u>
5			

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

8 **SUMMARY**

9 The amendment makes the following changes to Part A:

10 1. It removes the provision in the bill that permits the Public Utilities Commission to
11 determine there is a public need for a transmission line that is sized to serve anticipated
12 future growth needed to attain state wind energy goals for generating facilities located in
13 coastal waters;

14 2. It removes the provision in the bill that requires a generator interconnection
15 transmission facility that the Public Utilities Commission has designated as an energy
16 infrastructure corridor under the Maine Revised Statutes, Title 35-A, section 122,
17 subsection 2 to obtain a certificate of public convenience and necessity from the Public
18 Utilities Commission and the provision that authorizes the commission to direct a
19 transmission and distribution utility to construct and own such a line under certain
20 circumstances and to allow the recovery of the reasonable costs of construction of such a
21 line through electric rates;

22 3. It amends a provision in the bill to clarify the legislative finding regarding the
23 potential contribution of wind resources in the State and the Gulf of Maine over time to
24 be used to reduce the State's reliance on petroleum-based heating and transportation
25 fuels;

26 4. It removes the provision of the bill that articulates a state policy regarding
27 transition to electric power to meet the State's heating and transportation needs;

28 5. It amends the provision in the bill regarding the encouragement of tidal power
29 development to clarify that policy and adds language regarding the encouragement of
30 wave power development;

31 6. It removes the provision in the bill that directs the Department of Environmental
32 Protection, in consultation with the Public Utilities Commission, the Finance Authority of
33 Maine and the Efficiency Maine Trust, if adequate funding is received, to develop a
34 program that provides incentives for Maine homeowners and business owners to convert
35 their fossil fuel-powered heating systems to more efficient, less polluting electric-
36 powered systems;

37 7. It removes the provision in the bill that directs the Finance Authority of Maine, in
38 consultation with the Department of Environmental Protection, the Public Utilities
39 Commission and the Efficiency Maine Trust, to develop a moral obligation credit
40 enhancement program to reduce the financing costs of electric ratepayer-backed
41 renewable ocean energy projects and projects for conversion to electric heating;

1 8. It amends the provision in the bill regarding long-term contracts for offshore wind
2 and tidal energy projects. It directs the Public Utilities Commission to conduct a
3 competitive solicitation for long-term contracts to supply capacity, energy and renewable
4 energy credits from deep-water offshore wind energy pilot projects and tidal energy
5 demonstration projects and authorizes the commission to direct a transmission and
6 distribution utility to enter such a long-term contract if certain requirements are met by
7 the supplier and the commission takes certain actions to mitigate the risks to ratepayers,
8 including the development of an ocean wind green power offer; and

9 9. It amends the provision in the bill that requires the Executive Department,
10 Governor's Office of Energy Independence and Security to examine and make
11 recommendations related to long-term contracts for energy produced by other renewable
12 ocean energy projects.

13 The amendment makes the following changes to Part B:

14 1. It amends the provision regarding an application for a renewable ocean energy
15 project under the submerged lands leasing program to require that the Department of
16 Marine Resources be included in joint interagency preapplication meetings for a lease or
17 easement and to require that the Director of the Bureau of Parks and Lands within the
18 Department of Conservation provide notice to the Marine Resources Advisory Council
19 and any lobster management policy council in whose or within 3 miles of whose
20 designated lobster management zone the proposed renewable ocean energy project is
21 located; and

22 2. It amends the provision regarding the Renewable Ocean Energy Trust to clarify
23 that 80% of rental payments for wind energy demonstration projects and tidal energy
24 demonstration projects are deposited in the trust.

25 In Part C of the bill, the amendment removes all provisions regarding the taxation of
26 renewable ocean energy-generating machinery, equipment or related components located
27 in, on or above state submerged lands or in transit to be located in, on or above state
28 submerged lands and, instead, requires that the Department of Administrative and
29 Financial Services, Bureau of Revenue Services by November 1, 2011 provide an
30 analysis of the tax treatment and exemption of such renewable ocean energy-generating
31 machinery, equipment or related components to the joint standing committees of the
32 Legislature having jurisdiction over taxation matters and utilities and energy matters.

33 The amendment makes the following changes to Part D:

34 1. It amends the definition of "community-based offshore wind energy project,"
35 which is the type of small-scale offshore wind energy project subject to permitting by the
36 Maine Land Use Regulation Commission, to establish an absolute capacity limit of 3
37 megawatts;

38 2. It clarifies the provision regarding the decision criteria for the Maine Land Use
39 Regulation Commission and the Department of Conservation, Bureau of Parks and Lands
40 in making decisions regarding community-based offshore wind energy projects;

41 3. It clarifies that a community-based offshore wind energy project does not have to
42 meet the "significant tangible benefits" requirement that is applicable to grid-scale wind
43 energy projects.

1 The amendment makes the following changes to Part E:

2 1. It amends the provisions in the bill regarding permits for offshore wind power
3 projects under the Natural Resources Protection Act and the site location of development
4 laws and permits for tidal power projects under the Maine Waterway Development and
5 Conservation Act. The bill proposes to extend to all such permits the provisions of law
6 governing expedited wind energy developments relative to the Board of Environmental
7 Protection's jurisdiction and appeal procedures, including the ability to appeal directly to
8 the law court, decision timeline and outside reviewers. The amendment, instead, extends
9 those provisions of law governing expedited wind energy projects only to offshore wind
10 energy demonstration projects and tidal energy demonstration projects;

11 2. It clarifies the provision regarding the decision criteria of the Department of
12 Environmental Protection and the Department of Conservation, Bureau of Parks and
13 Lands in making decisions regarding offshore wind power projects; and

14 3. It amends the provision regarding notice to be provided by the Department of
15 Environmental Protection prior to review of an application for an offshore wind energy
16 development to require notice to the Maine Land Use Regulation Commission when the
17 proposed development is within 3 miles, rather than one mile, of an area of land within
18 the jurisdiction of the commission and notice to any municipality with land located within
19 3 miles, rather than one mile, of the proposed development and to add a requirement for
20 notice to any municipality in which associated facilities of the development are proposed.

21 In Part G of the bill, the amendment removes the provision that establishes certain
22 requirements regarding the scope and application of municipal land use standards in
23 relation to state standards and requirements for offshore wind energy development.

24 The amendment amends the bill to add Part H, which includes an appropriations and
25 allocations section.

26 **FISCAL NOTE REQUIRED**

27 **(See attached)**



124th MAINE LEGISLATURE

LD 1810

LR 2571(02)

An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force

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

Committee: Utilities and Energy

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium revenue increase - Other Special Revenue Funds

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Appropriations/Allocations				
Other Special Revenue Funds	\$500	\$500	\$500	\$500

Fiscal Detail and Notes

Under this legislation the Department of Marine Resources will receive 80% of submerged lands rental payments for renewable ocean energy projects and the Department of Conservation will receive 20%. A new account has been established in the bill with a base allocation of \$500 which will allow the Department of Marine Resources to spend any revenue received in accordance with the uses listed in the bill. The Department of Conservation already has an existing account and needs no further allocation. Without knowing how many projects there may potentially be, no estimate of the revenue increase is made.

Any additional costs to the Department of Environmental Protection, the University of Maine System and the Department of Economic and Community Development associated with consulting with the Public Utilities Commission (PUC) can be absorbed within existing budgeted resources. The PUC may incur administrative costs which can be absorbed within existing budgeted resources.

The Department of Marine Resources may incur additional General Fund costs if notification of proposed projects to the advisory council and lobster policy management council require additional meetings. These costs are expected to be minor, requiring no change to the budget.