

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1798

H.P. 1325

House of Representatives, January 26, 2012

An Act To Reform Land Use Planning in the Unorganized Territory

Reported by Representative EDGECOMB of Caribou for the Joint Standing Committee on Agriculture, Conservation and Forestry pursuant to Resolve 2011, chapter 113, section 9.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-D, sub-§1**, as amended by PL 2007, c. 617, §1, is
3 repealed.

4 **Sec. 2. 5 MRSA §12004-D, sub-§1-A** is enacted to read:

5 **1-A.**

6 Maine Land Use Planning
7 Commission

8 Legislative Per Diem Plus 12 MRSA §683-A
9 Expenses.
10 Notwithstanding any
11 limitation on noontime meal
12 expenses in section 12002,
13 subsection 2, for each day
14 in attendance at a
15 commission meeting or
16 hearing, each member is
17 entitled to a meal
18 allowance not to exceed the
19 legislative meal allowance
20 for each session day as
provided for in Title 3,
section 2.

21 **Sec. 3. 12 MRSA §681**, as amended by PL 2009, c. 401, §1, is further amended to
22 read:

23 **§681. Purpose and scope**

24 The Legislature finds that it is desirable to extend principles of sound planning,
25 zoning and ~~subdivision control~~ development to the unorganized and deorganized
26 townships of the State: To preserve public health, safety and general welfare; to support
27 and encourage Maine's natural resource-based economy and strong environmental
28 protections; to encourage appropriate residential, recreational, commercial and industrial
29 land uses; to honor the rights and participation of residents and property owners in the
30 unorganized and deorganized areas while recognizing the unique value of these lands and
31 waters to the State; to prevent inappropriate residential, recreational, commercial and
32 industrial uses detrimental to the proper long-term health, use or value of these areas
33 and to Maine's natural resource-based economy; to prevent discourage the intermixing of
34 incompatible industrial, commercial, residential and recreational activities; to provide for
35 appropriate residential, recreational, commercial and industrial uses; to prevent the
36 development in these areas of substandard structures or structures located unduly
37 proximate to waters or roads; to prevent the despoliation, pollution and inappropriate use
38 detrimental uses of the water in these areas; and to ~~preserve~~ conserve ecological and
39 natural values.

1 The Legislature declares it to be in the public interest, for the public benefit, for the
2 good order of the people of this State and for the benefit of the property owners and
3 residents of the unorganized and deorganized townships of the State, to encourage the
4 well-planned and well-managed multiple use, including conservation, of land and
5 resources and to encourage and facilitate regional economic viability. The Legislature
6 acknowledges the importance of these areas in the continued vitality of the State and to
7 local economies. Finally, the Legislature desires to encourage the appropriate use of
8 these lands by the residents of Maine and visitors in pursuit of outdoor recreation
9 activities, including, but not limited to, hunting, fishing, boating, hiking and camping.

10 **Sec. 4. 12 MRSA §682, sub-§1**, as amended by PL 2009, c. 615, Pt. D, §1, is
11 repealed and the following enacted in its place:

12 **1. Unorganized and deorganized areas.** "Unorganized and deorganized areas"
13 includes:

14 A. All unorganized and deorganized townships;

15 B. Plantations that have not received commission approval under section 685-A,
16 subsection 4-A to implement their own land use controls;

17 C. Municipalities that have organized since 1971 that have not received commission
18 approval under section 685-A, subsection 4-A to implement their own land use
19 controls; and

20 D. All other areas of the State that are not part of a municipality except Indian
21 reservations.

22 For the purposes of permitting a community-based offshore wind energy project and
23 structures associated with resource analysis activities necessary for such an intended
24 project, the area of submerged land to be occupied for such a project and resource
25 analysis structures is considered to be in the unorganized or deorganized areas.

26 **Sec. 5. 12 MRSA §682, sub-§20** is enacted to read:

27 **20. Planned subdistrict.** "Planned subdistrict" means a delineated area for which a
28 specific land use plan and standards have been approved by the commission.

29 **Sec. 6. 12 MRSA §683**, as amended by PL 2009, c. 328, §1, is repealed.

30 **Sec. 7. 12 MRSA §683-A** is enacted to read:

31 **§683-A. Creation of Maine Land Use Planning Commission**

32 The Maine Land Use Planning Commission, as established by Title 5, section
33 12004-D, subsection 1-A to carry out the purposes stated in section 681, is created within
34 the Department of Conservation, and in this chapter called "the commission." The
35 commission is charged with implementing this chapter. The commission consists of 9
36 members, appointed or designated in accordance with subsections 1 and 2.

37 **1. Appointments by the Governor.** The Governor shall appoint 3 members to the
38 commission. Gubernatorial appointments are subject to review by the joint standing

1 committee of the Legislature having jurisdiction over conservation matters and to
2 confirmation by the Legislature. In selecting appointees, the Governor shall actively seek
3 and give consideration to persons residing in or near the unorganized and deorganized
4 areas of the State and to persons residing on unorganized coastal islands. Appointees to
5 the commission must be familiar with the needs and issues affecting the commission's
6 jurisdiction. All appointees must:

7 A. Reside in the commission's jurisdiction;

8 B. Work in the commission's jurisdiction;

9 C. Be a former resident or be retired after working within the commission's
10 jurisdiction for a minimum of 5 years; or

11 D. Have expertise in commerce and industry, fisheries and wildlife, forestry or
12 conservation issues as these activities affect the commission's jurisdiction.

13 **2. Members representing a county.** Except as provided in subsection 5, one
14 member must be appointed by each of the 6 counties with the most acreage in the
15 unorganized or deorganized areas subject to the jurisdiction of the commission. The
16 county commissioners of each of the counties shall select one among them or appoint
17 another resident of that county to serve as a member of the commission.

18 **3. Eligibility.** A state employee may not be appointed to or serve as a member of the
19 commission. A county commissioner, county employee, municipal official or municipal
20 employee is not considered to hold an incompatible office for purposes of simultaneous
21 service on the commission. If a county or municipality is a participant in an adjudicatory
22 proceeding before the commission, a commissioner, official or employee from that
23 county or municipality may not participate in that proceeding.

24 **4. Terms.** All members are appointed to 4-year terms. Any member who has not
25 been renominated by the Governor or the county commissioners prior to the expiration of
26 that member's term may not continue to serve on the commission, unless the Governor
27 notifies the Legislature in writing prior to the expiration of that member's term that
28 extension of that member's term is required to ensure fair consideration of specific major
29 applications pending before the commission. That member's term ends upon final
30 commission decisions on the specific applications identified in the Governor's
31 communication. Any member renominated by the Governor prior to the expiration of
32 that member's term shall continue to serve on the commission until the nomination is
33 acted upon by the Legislature. A vacancy during an unexpired term is filled as provided
34 in this section, but only for the unexpired portion of the term.

35 **5. Replacement of a county representative.** If a county with a representative
36 serving on the commission under subsection 2 assumes authority for land use planning
37 and regulation under section 685-A, subsection 4-B, that county is no longer entitled to a
38 member on the commission. The county commissioners of the county with the next
39 highest acreage in the unorganized and deorganized areas without a representative on the
40 commission shall appoint a person to represent that county as soon as practicable.

1 **6. Rules.** Unless otherwise provided in this chapter, rules adopted by the
2 commission under this chapter are routine technical rules as defined in Title 5, chapter
3 375, subchapter 2-A.

4 **Sec. 8. 12 MRSA §684, first ¶**, as amended by PL 1999, c. 333, §4, is further
5 amended to read:

6 The commission shall elect annually, from its own membership, a chair and such
7 other officers it considers necessary. Meetings are held at the call of the chair or at the
8 call of more than 1/2 of the membership. Meetings must be held at a location within the
9 jurisdiction of the commission or another convenient location approved by the chair. The
10 commission, acting in accordance with the procedures set forth in Title 5, chapter 375,
11 subchapter ~~H~~ 2, may adopt whatever rules it considers necessary for the conduct of its
12 business. The commission shall keep minutes of all proceedings, which are a public
13 record available and on file in the office of the commission. Members of the commission
14 are compensated as provided in Title 5, chapter 379. Commission members must receive
15 an orientation and annual continuing education on this chapter, commission rules and
16 planning and regulatory processes. A quorum of the commission for the transaction of
17 business is ~~4~~ 5 members. No action may be taken by the commission unless upon
18 approval by a vote of ~~4~~ 5 members.

19 **Sec. 9. 12 MRSA §685**, as amended by PL 1987, c. 308, §5 and c. 508, is further
20 amended to read:

21 **§685. Commission budget, financing and personnel**

22 The Commissioner of Conservation shall prepare a biennial budget and shall submit
23 to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The
24 commission may accept contributions of any type from any source to assist it in carrying
25 out its assigned tasks, and make such requirements in respect to the administration of
26 such funds, not inconsistent with this subchapter, as are required as conditions precedent
27 to receiving such funds, federal or otherwise. The commission shall give public notice of
28 all contributions, in the state paper, stating the source, the amount and the purpose of such
29 contributions. The commission may contract with municipal, ~~State~~ county, state and
30 ~~Federal Governments~~ federal governments or their agencies to assist in the carrying out
31 of any of its assigned tasks. The Commissioner of Conservation, with the consent of a
32 majority of the commission, shall appoint a director who ~~shall be~~ is the principal
33 administrative, operational and executive employee of the commission. The director shall
34 attend all meetings of the commission and ~~be~~ is permitted to participate fully but ~~shall~~ is
35 not ~~be~~ a voting member of the commission.

36 The commission shall establish and maintain at least 2 field offices, one in Greenville
37 and one in Ashland, designed principally to provide assistance to the public on permit
38 applications and to carry out such other functions of the commission as appropriate.
39 These field offices ~~shall~~ must be established ~~in~~ at locations in or close to the
40 commission's jurisdiction and chosen to provide the maximum benefit to the public while
41 minimizing costs. Historic levels of permitting activity, the convenience of access and the
42 availability and cost of office facilities ~~shall~~ must be considered in choosing the field
43 office locations. Each office ~~shall~~ must be open on a part-time basis at least 2 days a

1 month or as public demand for the services of such field offices ~~warrant~~ warrants and as
2 resources allow. Whenever practicable, the commission shall make use of existing
3 personnel to staff these field offices. Personnel must receive regular training to address
4 customer service and other needs.

5 **Sec. 10. 12 MRSA §685-A, sub-§1**, as amended by PL 1999, c. 333, §5, is
6 further amended to read:

7 **1. Classification and districting of lands.** The commission, acting on principles of
8 sound land use planning and development, shall determine the boundaries of areas within
9 the unorganized and deorganized areas of the State that fall into land use districts and
10 designate each area in one of the following major district classifications: protection,
11 management and development. The commission, acting in accordance with the
12 procedures set forth in Title 5, chapter 375, subchapter ~~H~~ 2, shall adopt ~~regulations~~ rules
13 for determining the boundaries of each major type of district in accordance with the
14 following standards:

15 A. Protection districts: Areas where development would jeopardize significant
16 natural, recreational and historic resources, including, but not limited to, flood plains,
17 precipitous slopes, wildlife habitat and other areas critical to the ecology of the region
18 or State;

19 B. Management districts: Areas that are appropriate for commercial forest product
20 or agricultural uses or for the extraction of nonmetallic minerals and for which plans
21 for additional development are not presently formulated nor additional development
22 anticipated; and

23 D. Development districts: Areas ~~discernible as having patterns of intensive~~ that are
24 appropriate for residential, recreational, commercial or industrial use or commercial
25 removal of metallic minerals and areas appropriate for designation as development
26 districts when measured against the purpose, intent and provisions of this chapter.

27 In addition to delineating the major district classifications listed, the commission may
28 delineate such subclassifications as may be necessary and desirable to carry out the intent
29 of this chapter. The commission may delineate and designate planned subdistricts and
30 establish standards unique to each to efficiently balance the benefits of development and
31 resource protection.

32 **Sec. 11. 12 MRSA §685-A, sub-§4**, as amended by PL 1987, c. 737, Pt. C, §§22
33 and 106; PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the
34 following enacted in its place:

35 **4. Land use standards considered as minimum requirements.** Land use
36 standards must be interpreted and applied by the commission as minimum requirements,
37 adopted to reasonably and effectively promote health, safety and general welfare and
38 ensure compliance with state plans and policies.

39 If the requirements of the adopted land use standards are at variance with the
40 requirements of any other lawfully adopted rules, regulations, standards, ordinances, deed
41 restrictions or covenants, the more protective of existing natural, recreational and historic
42 resources governs.

1 The action by the commission under this subsection, subsection 4-A or subsection 4-B
2 must conform with the provisions for rulemaking of the Maine Administrative Procedure
3 Act.

4 **Sec. 12. 12 MRSA §685-A, sub-§4-A** is enacted to read:

5 **4-A. Transition from commission jurisdiction to the jurisdiction of a plantation**
6 **or municipality.** Any portion of a land use district that subsequently becomes an
7 organized municipality or part of an organized municipality or any plantation that adopts
8 planning, zoning and subdivision control as provided in Title 30-A, section 7059
9 continues to be regulated by the Maine Land Use Planning Commission pursuant to this
10 chapter until such time as the plantation or municipality of which the regulated district is
11 then a part adopts land use plans and regulations not less protective of the existing
12 natural, recreational or historic resources than those adopted by the commission.

13 A. Any municipality organized after September 23, 1971 or any plantation that
14 adopts planning, zoning and subdivision control as provided in Title 30-A, section
15 7059 may submit to the commission and receive the approval of the commission of
16 the following:

- 17 (1) A comprehensive land use plan for that plantation or municipality;
18 (2) Standards for determining land use district boundaries and uses permitted
19 within the districts in that plantation or municipality;
20 (3) A land use district boundary map for that plantation or municipality; and
21 (4) Such other proposed regulations or standards as the commission considers
22 necessary to achieve the purpose, intent and provisions of this chapter.

23 Upon request of the plantation or municipality, the commission shall prepare such
24 plans, maps, regulations and standards as it considers necessary to meet minimum
25 planning and zoning standards for its approval of those standards.

26 Upon obtaining approval, the plantation or municipality shall thereafter adopt,
27 administer and enforce the approved plans, maps, regulations and standards.

28 B. From time to time, the commission may review the administration and
29 enforcement of local land use plans and regulations by plantations and municipalities
30 that have adopted land use plans, maps, regulations and standards approved by the
31 commission. If, following the review, the commission finds that any of the following
32 have occurred, the commission may reestablish its jurisdiction over that plantation or
33 municipality:

- 34 (1) A plantation or municipality has repealed the land use plan, maps, standards
35 or regulations necessary to satisfy the requirements of this subsection or has
36 substantially modified the land use plan, maps, standards or regulations so that
37 the resources of the plantation or municipality are not reasonably protected;
38 (2) A plantation or municipality has abolished or does not have functioning the
39 administrative bodies and officers necessary to implement the land use program
40 as approved by the commission; or

1 (3) A plantation or municipality has not administered or enforced its land use
2 plan, maps, standards or regulations in a manner that reasonably protects the
3 resources in the plantation or municipality involved.

4 Action taken by the commission to reestablish its jurisdiction over a plantation or
5 municipality is effective immediately, but must be submitted to the current or next regular
6 session of the Legislature for approval. If the Legislature fails to act, the action of the
7 commission continues in effect.

8 **Sec. 13. 12 MRSA §685-A, sub-§4-B** is enacted to read:

9 **4-B. Transition from commission jurisdiction to county.** Subject to the same
10 conditions that apply to municipalities under Title 30-A, chapter 187, subchapter 2,
11 beginning September 1, 2015, a county may assume authority for land use planning,
12 zoning and subdivision regulation in the unorganized and deorganized areas within its
13 borders if the following conditions have been met:

14 A. The county has adopted a county charter consistent with Title 30-A, chapter 11,
15 and the charter authorizes the county commissioners to exercise authority for land use
16 planning, zoning and subdivision regulation in the unorganized and deorganized areas
17 within its borders;

18 B. The county has submitted to the State Planning Office or its successor a
19 comprehensive plan for the unorganized and deorganized areas within its borders,
20 and the plan has been reviewed and approved by the office or its successor in the
21 same manner and subject to the same requirements that apply to a comprehensive
22 plan submitted by a municipality for approval under Title 30-A, chapter 187,
23 subchapter 2;

24 C. The county has plans and budgetary resources to provide the necessary planning,
25 permitting and enforcement staff and to cover related costs;

26 D. The county has established a planning committee in the same manner as a
27 municipality under Title 30-A, section 4324 and a board of appeals in the same
28 manner as a municipality under Title 30-A, section 2691; and

29 E. The county has prepared planning and zoning maps, regulations and standards.

30 Upon assuming jurisdiction for land use planning, zoning and subdivision regulation in
31 unorganized and deorganized areas within its borders under this subsection, a county has
32 the same authority to adopt, amend, administer and enforce an approved land use plan,
33 maps, regulations and standards as a municipality under Title 30-A, chapter 187,
34 subchapter 2.

35 **Sec. 14. 12 MRSA §685-A, sub-§8-A, ¶B,** as enacted by PL 1999, c. 333, §10,
36 is amended to read:

37 B. The proposed land use district satisfies a demonstrated need in the community or
38 area and has no undue adverse impact on existing uses or resources or a new district
39 designation is more appropriate for the protection and management of existing uses
40 and resources within the affected area.

1 **Sec. 15. 12 MRSA §685-A, sub-§12**, as repealed and replaced by PL 2005, c.
2 226, §1, is amended to read:

3 **12. Timber harvesting activities.** Rules adopted by the Commissioner of
4 Conservation pursuant to section 8867-B for the purpose of regulating timber harvesting
5 and timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and
6 tidal waters become effective for the unorganized and deorganized areas ~~on the date~~
7 ~~established under Title 38, section 438-B, subsection 5 of the State September 1, 2012.~~
8 For the purposes of this subsection, "timber harvesting" and "timber harvesting activities"
9 have the same meanings as in section 8868, subsections 4 and 5.

10 ~~The Beginning September 1, 2012, the Director of the Bureau of Forestry within the~~
11 ~~Department of Conservation shall administer and enforce the regulation of timber~~
12 ~~harvesting and timber harvesting activities in these areas. For the purposes of this~~
13 ~~subsection, "timber harvesting" and "timber harvesting activities" have the same~~
14 ~~meanings as in section 8868, subsections 4 and 5~~ chapter 805, subchapter 3-A within the
15 unorganized and deorganized areas of the State in accordance with that subchapter and
16 rules adopted under it.

17 **Sec. 16. 12 MRSA §685-A, sub-§13**, as enacted by PL 2007, c. 661, Pt. C, §1, is
18 amended to read:

19 **13. Wind energy development.** Wind energy development is a permitted use within
20 those areas identified as expedited permitting areas in the commission's rules adopted
21 under Title 35-A, section 3451, subsection 3. Except for community-based offshore wind
22 energy projects, the Department of Environmental Protection shall exclusively administer
23 and enforce the land use regulation of wind energy development occurring within the
24 expedited permitting areas. The commission may add areas in the State's unorganized
25 and deorganized areas to the expedited permitting area for wind energy development in
26 accordance with Title 35-A, section 3453.

27 **Sec. 17. 12 MRSA §685-A, sub-§14** is enacted to read:

28 **14. Site location of development.** The Department of Environmental Protection
29 shall administer and enforce Title 38, chapter 3, subchapter 1, article 6 for activities in the
30 unorganized and deorganized areas in accordance with Title 38, section 489-A-1 except
31 for the following activities:

32 A. Forest practices regulated under subsection 12 and chapter 805, subchapter 3-A;
33 and

34 B. Development within planned subdistricts.

35 **Sec. 18. 12 MRSA §685-B, sub-§1-A, ¶B**, as amended by PL 2009, c. 270, Pt.
36 D, §1, is further amended to read:

37 B. A Except for development projects that are located in a planned subdistrict, a
38 permit is not required for those aspects of a development project approved by the
39 Department of Environmental Protection under Title 38 if the commission determines
40 that the project is an allowed use within the subdistrict or subdistricts for which it is

1 proposed. Notice of the intent to develop and a map indicating the location of the
2 proposed development must be filed with the commission prior to or concurrently
3 with submission of a development application to the Department of Environmental
4 Protection;

5 **Sec. 19. 12 MRSA §685-B, sub-§1-C** is enacted to read:

6 **1-C. Delegation to county.** The commission may establish standards by which
7 authority may be delegated to a county, upon request of the county commissioners, to
8 approve, approve with reasonable conditions or deny applications to conduct specified
9 activities requiring a permit and to enforce compliance with the permit. Any person
10 aggrieved by a decision of a county has the right to a review of that decision by the
11 commission. A request for such a review must be made within 30 days after the county
12 decision.

13 **Sec. 20. 12 MRSA §685-B, sub-§2-C**, as amended by PL 2009, c. 615, Pt. D, §3,
14 is further amended to read:

15 **2-C. Community-based offshore wind energy projects; determination deadline.**
16 The following provisions govern community-based offshore wind energy ~~development~~
17 projects.

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

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

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. 21. 12 MRSA §685-B, sub-§4**, as amended by PL 2009, c. 615, Pt. D, §4, 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~~

1 ~~of~~ 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~~ 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 **Sec. 22. 12 MRSA §685-B, sub-§4-B**, as amended by PL 2009, c. 615, Pt. D, §5,
24 is further amended to read:

25 **4-B. Special provisions; community-based offshore wind energy project.** In the
26 case of a ~~wind energy development, as defined in Title 35-A, section 3451, subsection 11,~~
27 ~~with a generating capacity greater than 100 kilowatts, or a community-based offshore~~
28 wind energy project, the developer must demonstrate, in addition to requirements under
29 subsection 4, that the proposed generating facilities, as defined in Title 35-A, section
30 3451, subsection 5:

31 A. Will meet the requirements of the Board of Environmental Protection's noise
32 control rules adopted pursuant to Title 38, chapter 3, subchapter 1, article 6;

33 B. Will be designed and sited to avoid undue adverse shadow flicker effects; and

34 C. Will be constructed with setbacks adequate to protect public safety, as provided in
35 Title 35-A, section 3455. In making findings pursuant to this paragraph, the
36 commission shall consider the recommendation of a professional, licensed civil
37 engineer as well as any applicable setback recommended by a manufacturer of the
38 generating facilities; ~~and~~.

39 ~~D. Will provide significant tangible benefits, as defined in Title 35-A, section 3451,~~
40 ~~subsection 10, within the State, as provided in Title 35-A, section 3454, if the~~
41 ~~development is an expedited wind energy development, as defined in Title 35-A,~~
42 ~~section 3451, subsection 4.~~

1 **Sec. 23. 12 MRSA §685-C, sub-§1**, as amended by PL 2009, c. 375, §1, is
2 further amended to read:

3 **1. Comprehensive land use plan.** The commission shall ~~adopt~~ prepare an official
4 comprehensive land use plan, referred to in this subsection as "the plan," for the
5 unorganized and deorganized ~~townships~~ areas of the State.

6 The commission must use the plan as a guide in developing specific land use standards
7 and delineating district boundaries and guiding development and generally fulfilling the
8 purposes of this chapter.

9 The plan may consist of maps, data and statements of present and prospective resource
10 uses that generally delineate the proper use of resources, and recommendations for its
11 implementation.

12 The commission shall hold public hearings to collect information to be used in
13 establishing the ~~land use guidance~~ plan. The public hearings must be conducted according
14 to commission rules adopted in accordance with procedures for the establishment of rules
15 pursuant to Title 5, chapter 375, subchapter 2.

16 The commission may, on its own motion or petition of any state agency or regional
17 planning commission, hold such other hearings as the commission considers necessary
18 from time to time for the purpose of obtaining information helpful in the determination of
19 its policies, the carrying out of its duties or the formulation of its land use standards or
20 rules.

21 ~~The commission may not adopt a plan or portion of a plan unless:~~

22 A. ~~The tentative plan has been submitted to each regional planning commission and~~
23 ~~other appropriate agencies, which shall forward their comments and~~
24 ~~recommendations, if any, to the commission within 30 days; may not finalize a plan~~
25 ~~or a portion of a plan without:~~

26 (1) Submitting the tentative plan to each regional planning commission and other
27 appropriate agencies, which shall forward their comments and recommendations,
28 if any, to the commission within 30 days;

29 (2) Submitting the tentative plan to the State Planning Office or its successor,
30 pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward
31 its comments and recommendations, if any, to the commission within 30 days;

32 (3) Considering all comments submitted under paragraphs A and B; and

33 (4) Submitting the tentative plan to the joint standing committee of the
34 Legislature having jurisdiction over conservation matters and the committee
35 reviewing the plan at a public meeting. The commission shall brief the
36 committee on any anticipated changes to land use districts and subdistricts based
37 on revisions in the comprehensive land use plan and a projected timetable for
38 rulemaking to adopt these changes.

39 B. ~~The tentative~~ After the commission has finalized a plan has been submitted to the
40 State Planning Office, pursuant to Title 5, section 3305, subsection 1, paragraph G,
41 which shall forward its or a portion of a plan, but prior to adoption, the commission

1 shall provide a copy to the Commissioner of Conservation, who shall submit the
2 finalized plan or a portion of the plan to the Governor for comments and
3 recommendations, if any, to. The commissioner shall submit the finalized plan or a
4 portion of the plan including the Governor's comments to the Legislature within 30
5 days after the convening of the next regular session for approval. The Legislature
6 shall, by act or resolve, approve, disapprove or require changes to the plan or any
7 portion of the plan prior to adjournment. If the plan or a portion of the plan is
8 approved or the Legislature fails to act on the plan or a portion of the plan before
9 adjournment, the plan or a portion of the plan may be finally adopted by the
10 commission ~~within 30 days~~. If the plan or a portion of the plan is disapproved or
11 revisions are required, the plan or a portion of the plan must be revised by the
12 commission and resubmitted to the Legislature for approval by act or resolve. The
13 joint standing committee of the Legislature having jurisdiction over conservation
14 matters may submit legislation to implement the provisions of this paragraph.

15 ~~C. The commission has considered all comments submitted under paragraphs A and~~
16 ~~B; and~~

17 ~~D. The commission has submitted the tentative plan to the joint standing committee~~
18 ~~of the Legislature having jurisdiction over conservation matters and the committee~~
19 ~~has reviewed the plan at a public meeting. The commission shall brief the committee~~
20 ~~on any anticipated changes to land use districts and subdistricts based on revisions in~~
21 ~~the comprehensive land use plan and a projected timetable for rulemaking to adopt~~
22 ~~these changes. The tentative plan must be submitted to the committee a minimum of~~
23 ~~30 days prior to the commission's final vote.~~

24 ~~Upon adoption of the official land use plan by the commission, the commission shall~~
25 ~~submit the plan to the Governor for approval. The Governor shall approve or disapprove~~
26 ~~the plan, plans or any portion of a plan within 30 days of receipt. If the Governor fails to~~
27 ~~act, the plan is deemed approved. This subsection also applies to any alteration in the~~
28 ~~comprehensive plan.~~

29 **Sec. 24. 12 MRSA §685-C, sub-§1-A** is enacted to read:

30 **1-A. Regional comprehensive land use plans.** A county, separately or in
31 partnership with another county or counties, may request the commission to develop and
32 implement a regional comprehensive land use plan and associated zoning for all or a
33 portion of the territory within the jurisdiction of the commission in the county or counties
34 making the request. If the commission provides assistance under this subsection, it shall:

35 A. Consult with regional economic development organizations and regional planning
36 and development districts described in Title 30-A, chapter 119;

37 B. Seek input from representatives of service center communities as defined in Title
38 30-A, section 4301, subsection 14-A and neighboring municipalities in the area for
39 which assistance is requested; and

40 C. Provide for involvement by members of the public, landowners in the
41 unorganized and deorganized areas of the State and residents of the unorganized and
42 deorganized areas of the State.

1 **Sec. 25. 12 MRSA §685-F, sub-§1**, as amended by PL 2009, c. 492, §3, is
2 further amended to read:

3 **1. Designation as extraordinary project.** The director of the Maine Land Use
4 ~~Regulation~~ Planning Commission, referred to in this section as "the director," may
5 designate a proposed project requiring review and approval under this chapter as an
6 extraordinary project when the director determines that ~~the project is a wind energy~~
7 ~~development, as defined in Title 35-A, section 3451, subsection 11 or~~, because of the
8 project's size, uniqueness or complexity, review of the project application is likely to:

9 A. Significantly impair the capacity of the commission's staff and cooperating state
10 agencies to review other applications in a timely manner; or

11 B. Require the commission to incur costs that exceed the funding provided in
12 accordance with section 685-G.

13 A project is considered to significantly impair the capacity of the commission's staff if
14 review of that project is likely to occupy the equivalent of at least one person working
15 full-time on that project for a minimum of 4 months. Designation as an extraordinary
16 project must be made at or prior to the time the application is accepted as complete. The
17 director shall notify the applicant in writing upon making the designation.

18 **Sec. 26. 12 MRSA §685-G, sub-§§1 and 2**, as amended by PL 2009, c. 213, Pt.
19 HHHH, §1, are further amended to read:

20 **1. Unorganized territories.** Beginning with fiscal year 2009-10, funding for
21 services and activities of the commission for planning, permitting and ensuring
22 compliance in the unorganized territories must be assessed and allocated to the
23 unorganized territories through a fee equal to .014% of the most recent equalized state
24 valuation established by the State Tax Assessor. This fee must be collected through the
25 municipal cost component under Title 36, chapter 115, except that fees collected under
26 this subsection for property located in a county that has assumed jurisdiction for planning
27 and land use regulation for unorganized territories within the county under section 685-A,
28 subsection 4-B must be transferred to that county.

29 **2. Towns and plantations.** ~~Beginning with fiscal year 2009-10, a~~ A town or a
30 plantation in the commission's jurisdiction on April 1, 2012 that elects not to administer
31 land use controls at the local level ~~but receives commission services or a town or~~
32 ~~plantation with a portion of its land under the commission's jurisdiction and receiving~~
33 ~~commission services, including planning, permitting and ensuring compliance, as~~
34 provided in section 685-A, subsection 4-A must be assessed a fee equal to .018% of the
35 most recent equalized state valuation established by the State Tax Assessor for that town
36 or plantation or that portion of a town or plantation under the commission's jurisdiction.
37 The State Tax Assessor shall issue a warrant to each such town or plantation no later than
38 March 1st of each year. The warrant is payable on demand. Interest charges on unpaid
39 fees begin on June 30th of each year and are compounded monthly at the interest rate for
40 unpaid property tax as established by the State Tax Assessor for the unorganized territory.
41 For any assessment that remains unpaid as of September 1st of the year in which it is due,
42 state revenue sharing to that town or plantation must be reduced by an amount equal to
43 any unpaid warrant amount plus any accrued interest, until the amount is paid. ~~These~~

1 fees Fees collected under this subsection for property subject to planning and land use
2 regulation by the commission must be deposited to the General Fund. Fees collected
3 under this subsection for property located in a county that has assumed jurisdiction for
4 planning and land use regulation under section 685-A, subsection 4-B must be transferred
5 to that county.

6 **Sec. 27. 12 MRSA §685-H** is enacted to read:

7 **§685-H. Annual performance report**

8 **1. Report due.** By January 15, 2013 and by January 15th annually thereafter, the
9 commission shall report to the joint standing committee of the Legislature having
10 jurisdiction over conservation matters regarding the commission's performance under this
11 subchapter for the previous year and goals for the coming year.

12 **2. Report components.** The report must include:

13 A. The number of permits processed for the previous calendar year, by category;

14 B. A summary of preapplication consultation activities;

15 C. The average time for rendering a decision, with goals for improving processing
16 times;

17 D. The status of regional planning and zoning initiatives, with goals for the calendar
18 year; and

19 E. A description of staff and commission training initiatives to ensure increased
20 customer service and consistency in application of commission rules and regulations,
21 with goals for the calendar year ahead.

22 **3. Public meeting.** The chair of the commission shall present the annual
23 performance report to the joint standing committee of the Legislature having jurisdiction
24 over conservation matters at a meeting of that committee. The committee shall give the
25 public an opportunity to comment on the performance report at this meeting.

26 **Sec. 28. 12 MRSA §689**, as amended by PL 2009, c. 642, Pt. B, §1, is further
27 amended to read:

28 **§689. Appeal**

29 Persons aggrieved by final actions of the commission, including without limitation
30 any final decision of the commission with respect to any application for approval or the
31 adoption by the commission of any district boundary or amendment thereto, may appeal
32 therefrom in accordance with Title 5, chapter 375, subchapter 7. ~~Appeals of final actions~~
33 ~~of the commission regarding an application for an expedited wind energy development,~~
34 ~~as defined in Title 35-A, section 3451, subsection 4, must be taken to the Supreme~~
35 ~~Judicial Court sitting as the Law Court in accordance with Title 5, chapter 375,~~
36 ~~subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. The Law Court has~~
37 ~~exclusive jurisdiction over requests for judicial review of final actions of the commission~~
38 ~~regarding expedited wind energy developments. This right of appeal, with respect to any~~
39 ~~commission action to which this right may apply, shall be is in lieu of the rights provided~~

1 under Title 5, section 8058, subsection 1. To the extent practicable, meetings and public
2 hearings held during the pendency of an appeal must be held at a location in close
3 proximity to the project or projects under review.

4 **Sec. 29. 30-A MRSA §7501, sub-§8**, as amended by PL 1999, c. 106, §2, is
5 further amended to read:

6 **8. Enhanced 9-1-1 service.** Assigning and maintaining physical addresses
7 specifically for the purpose of statewide enhanced 9-1-1 service. The county
8 commissioners may enact an ordinance to establish the addressing standards and,
9 pursuant to that ordinance, may assign road names to existing and proposed roads and
10 property numbers to existing and proposed year-round and seasonal dwellings or
11 structures and may install signs designating road names; ~~and~~

12 **Sec. 30. 30-A MRSA §7501, sub-§9**, as enacted by PL 1999, c. 106, §3, is
13 amended to read:

14 **9. Animal control.** Animal control services. The county commissioners may enact
15 an ordinance for the purpose of animal control. The county commissioners shall give 14
16 ~~days~~ days' notice of the meeting at which the ordinance is to be proposed in the manner
17 provided for town meetings; ~~and~~

18 **Sec. 31. 30-A MRSA §7501, sub-§10** is enacted to read:

19 **10. Planning and land use regulation.** If a county has assumed jurisdiction over
20 planning and land use regulation under Title 12, section 685-A, subsection 4-B, the
21 county commissioners may enact an ordinance for the purpose of planning and land use
22 control under this subsection. The county commissioners shall give 14 days' notice of the
23 meeting at which the ordinance is to be proposed in the manner provided for town
24 meetings.

25 **Sec. 32. 35-A MRSA §3451, sub-§8**, as enacted by PL 2007, c. 661, Pt. A, §7, is
26 amended to read:

27 **8. Primary siting authority.** "Primary siting authority" means:

28 A. The department, in the case of an expedited wind energy development subject to
29 the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6,
30 including, but not limited to, a development subject to the department's jurisdiction
31 pursuant to Title 38, section 488, subsection ~~9~~ 9-A; or

32 B. The Maine Land Use ~~Regulation~~ Planning Commission, in the case of ~~an~~
33 ~~expedited wind energy development subject to the Maine Land Use Regulation~~
34 ~~Commission's jurisdiction pursuant to Title 12, chapter 206-A~~ a community-based
35 offshore wind energy project as defined in Title 12, section 682, subsection 19.

36 **Sec. 33. 38 MRSA §488, sub-§9**, as amended by PL 2009, c. 615, Pt. E, §19, is
37 repealed.

38 **Sec. 34. 38 MRSA §488, sub-§9-A** is enacted to read:

1 **9-A. Development within unorganized areas.** Except for development described
2 in paragraphs A and B, development located within the unorganized and deorganized
3 areas, as defined in Title 12, section 682, subsection 1, is subject to review by the
4 department for compliance with this article. The department shall review development
5 within the unorganized and deorganized areas in accordance with section 489-A-1.

6 A. A community-based offshore wind energy project, as defined in Title 12, section
7 682, subsection 19, is reviewed under Title 12, section 685-B, subsection 2-C and is
8 exempt from the requirements of this article.

9 B. Development within a planned subdistrict as defined in Title 12, section 682,
10 subsection 20 is reviewed by the commission and is exempt from the requirements of
11 this article.

12 **Sec. 35. 38 MRSA §489-A-1** is enacted to read:

13 **§489-A-1. Department review of development within the unorganized and**
14 **deorganized areas**

15 **1. Review.** Except as provided in section 488, subsection 9-A, paragraphs A and B,
16 the department shall review development within the unorganized and deorganized areas
17 of the State. Review by the department of subsequent modifications to a development
18 approved by the Maine Land Use Regulation Commission under former section 488,
19 subsection 9 is required.

20 **2. Criteria for approval.** The department shall approve a development proposal
21 under this section if:

22 A. The proposed development is an allowed use within the subdistrict or subdistricts
23 in which it is to be located. Subdistricts and allowed uses are established in rule by
24 the Maine Land Use Regulation Commission or its successor in accordance with Title
25 12, section 685-A;

26 B. The standards established under section 484 are met; and

27 C. Standards established in rules adopted under section 489-E to implement this
28 section are met.

29 For a development or part of a development within the unorganized or deorganized areas
30 of the State, the department may request and obtain technical assistance and
31 recommendations from the Maine Land Use Regulation Commission or its successor.
32 The commission shall respond to the requests in a timely manner. The recommendations
33 of the commission must be considered by the department in acting upon a development
34 application.

35 **Sec. 36. Transition provisions.** The following provisions govern the transition
36 of the Maine Land Use Regulation Commission to the Maine Land Use Planning
37 Commission.

38 1. The members of the Maine Land Use Regulation Commission serving on the
39 effective date of this Act continue as members of the Maine Land Use Planning
40 Commission until the expiration of their terms under the Maine Revised Statutes, former

1 Title 12, section 683. To implement the difference in the number of members of the
2 Maine Land Use Regulation Commission and the Maine Land Use Planning Commission,
3 2 additional members must be appointed under Title 12, section 683-A from the 2
4 counties with the highest acreage of unorganized and deorganized areas. When the term
5 of a member serving on the commission under former Title 12, section 683 expires, a
6 member must be appointed from the county with the next highest acreage of unorganized
7 and deorganized areas until all 6 county appointments have been completed. When all
8 county positions have been appointed, the next 3 vacancies must be filled by the
9 appointment of the 3 public members appointed by the Governor.

10 2. The Maine Land Use Planning Commission is the successor in every way to the
11 powers, duties and functions of the former Maine Land Use Regulation Commission as
12 provided in this Act.

13 3. All existing rules, regulations and procedures in effect, in operation or adopted in
14 or by the former Maine Land Use Regulation Commission or any of its administrative
15 units or officers and all permits, approvals and decisions of the former Maine Land Use
16 Regulation Commission are hereby declared in effect and continue in effect until
17 rescinded, revised or amended by the proper authority.

18 4. All existing contracts, agreements and compacts currently in effect involving the
19 former Maine Land Use Regulation Commission continue in effect.

20 5. Any positions authorized and allocated subject to the personnel laws of the former
21 Maine Land Use Regulation Commission are transferred to the Maine Land Use Planning
22 Commission and may continue to be authorized.

23 6. All records, property and equipment previously belonging to or allocated for the
24 use of the former Maine Land Use Regulation Commission become on the effective date
25 of this Act the records, property and equipment of the Maine Land Use Planning
26 Commission. The Maine Land Use Planning Commission shall transfer records received
27 from the former Maine Land Use Regulation Commission or provide copies of those
28 records to the Department of Environmental Protection upon the request of the
29 department as necessary to implement the provisions of this Act transferring authority to
30 the department for permitting and regulation under the site location of development laws
31 under Title 38, chapter 3, subchapter 1, article 6 or expedited permitting of grid-scale
32 wind energy development under Title 35-A, chapter 34-A.

33 7. All existing forms, licenses, permits, letterheads and similar items bearing the
34 name of or referring to the "Maine Land Use Regulation Commission" may be used by
35 the Maine Land Use Planning Commission until existing items are exhausted.

36 8. The Department of Environmental Protection shall adopt rules necessary to review
37 applications for development under Title 38, section 489-A-1. These rules must be
38 adopted and in effect no later than January 1, 2013. In reviewing development under
39 Title 38, section 489-A-1 prior to final adoption of the department's rules, the department
40 shall use standards established in Title 12, chapter 206-A and rules adopted under that
41 chapter as those rules apply in the area proposed for development. Rules adopted

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

3 **Sec. 37. Effective date.** Those sections of this Act that repeal the Maine Revised
4 Statutes, Title 38, section 488, subsection 9 and enact Title 38, section 488, subsection
5 9-A and Title 38, section 489-A-1 take effect August 1, 2012.

6 **Sec. 38. Maine Revised Statutes amended; revision clause.** Wherever in the
7 Maine Revised Statutes the words "Maine Land Use Regulation Commission" appear or
8 reference is made to that entity or those words, those words are amended to read or mean,
9 as appropriate, "Maine Land Use Planning Commission" or "commission," and the
10 Revisor of Statutes shall implement this revision when updating, publishing or
11 republishing the statutes.

12 **SUMMARY**

13 This bill contains statutory changes necessary to implement the recommendations of
14 the Commission on Reform of the Governance of Land Use Planning in the Unorganized
15 Territory pursuant to Resolve 2011, chapter 113.

16 This bill is submitted by the Joint Standing Committee on Agriculture, Conservation
17 and Forestry pursuant to Resolve 2011, chapter 113, section 9.

18 The committee has not taken a position on the substance of the recommendations in
19 the report or this bill to implement those recommendations. The committee is not
20 suggesting and does not intend to suggest that it agrees or disagrees with the
21 recommendations of the commission or that it supports the substance of this bill. The
22 committee is submitting the bill for the sole purpose of turning the commission's proposal
23 into a printed bill that can be referred to the committee for an appropriate public hearing
24 and subsequent work sessions. The committee is taking this action to ensure clarity and
25 transparency in the legislative review of the commission's proposal.