

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
124<sup>TH</sup> LEGISLATURE  
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed during the Second Regular Session of the 124<sup>th</sup> Maine Legislature coming from the

**JOINT STANDING COMMITTEE ON UTILITIES AND  
ENERGY**

April 2010

**STAFF:**

LUCIA A. NIXON, LEGISLATIVE ANALYST  
JON CLARK, DEPUTY DIRECTOR  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670

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# STATE OF MAINE

124<sup>TH</sup> LEGISLATURE  
SECOND REGULAR SESSION



## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 124<sup>th</sup> Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

<i>CARRIED OVER</i> .....	<i>Carried over to a subsequent session of the Legislature</i>
<i>CON RES XXX</i> .....	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
<i>CONF CMTE UNABLE TO AGREE</i> .....	<i>Committee of Conference unable to agree; bill died</i>
<i>DIED BETWEEN HOUSES</i> .....	<i>House &amp; Senate disagree; bill died</i>
<i>DIED IN CONCURRENCE</i> .....	<i>One body accepts ONTP report; the other indefinitely postpones the bill</i>
<i>DIED ON ADJOURNMENT</i> .....	<i>Action incomplete when session ended; bill died</i>
<i>EMERGENCY</i> .....	<i>Enacted law takes effect sooner than 90 days</i>
<i>FAILED EMERGENCY ENACTMENT/FINAL PASSAGE</i> .....	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</i> .....	<i>Bill failed to get majority vote</i>
<i>FAILED MANDATE ENACTMENT</i> .....	<i>Bill imposing local mandate failed to get 2/3 vote</i>
<i>NOT PROPERLY BEFORE THE BODY</i> .....	<i>Ruled out of order by the presiding officers; bill died</i>
<i>INDEF PP</i> .....	<i>Bill Indefinitely Postponed; bill died</i>
<i>ONTP (or Accepted ONTP report)</i> .....	<i>Ought Not To Pass report accepted; bill died</i>
<i>P&amp;S XXX</i> .....	<i>Chapter # of enacted Private &amp; Special Law</i>
<i>PUBLIC XXX</i> .....	<i>Chapter # of enacted Public Law</i>
<i>RESOLVE XXX</i> .....	<i>Chapter # of finally passed Resolve</i>
<i>UNSIGNED</i> .....	<i>Bill held by Governor</i>
<i>VETO SUSTAINED</i> .....	<i>Legislature failed to override Governor's Veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session of the 124<sup>th</sup> Legislature is Monday, July 12, 2010. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

# Joint Standing Committee on Utilities and Energy

**LD 1810**

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

**PUBLIC 615  
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HOBBINS	OTP-AM	S-500

This bill implements the recommendations of the Governor's Ocean Energy Task Force.

### PART A

Part A amends the Maine Wind Energy Act to articulate state policy regarding transition to electric power to meet Maine's heating and transportation needs and recognize the key role of ocean wind and other renewable energy resources in accomplishing that transition over time; clarify that state policy encouraging siting of wind energy includes support for new transmission infrastructure needed to transport additional onshore and offshore wind energy to market; and establish the state goal of 8,000 megawatts of installed wind energy capacity, including 5,000 megawatts of offshore wind power, by 2030.

It authorizes the Public Utilities Commission, in issuing a certificate of public convenience and necessity for a transmission line that it has designated as an energy infrastructure corridor under the Maine Revised Statutes, Title 35-A, section 122, subsection 2, to consider anticipated future growth in electric power demand in determining if such a line is needed to attain state wind energy goals for generating facilities located in coastal waters, to allow a transmission and distribution utility to construct and own such a line under specified circumstances and to allow the recovery of the reasonable costs of construction of such a line through electric rates under specified circumstances.

It amends the Maine Waterway Development and Conservation Act to articulate that it is the policy of the State to support and encourage tidal power development at appropriate locations.

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

It directs the Finance Authority of Maine, in consultation with the Department of Environmental Protection, the Public Utilities Commission and the Efficiency Maine Trust, to work to establish a moral obligation credit enhancement program to reduce financing costs of electric ratepayer-backed renewable ocean energy projects and projects for conversion to electric heating that do not pose a significant risk of financial loss to the State and that will support the goals of assisting in the development of commercial-scale renewable ocean energy projects or the conversion of energy demand away from the use of oil and gas as a primary energy source.

It directs the Public Utilities Commission to conduct a competitive solicitation for proposals for offshore wind, tidal and wave energy produced by one or more projects employing generating facilities located in the State's coastal waters or adjoining federal waters and authorizes the commission to negotiate a long-term contract with a technically competent generator for such energy if the contract terms would not have an unreasonable rate impact.

It directs the Executive Department, Governor's Office of Energy Independence and Security to amend the state energy plan to acknowledge the need for new transmission capacity to support attainment of state offshore wind energy generation goals.

## *Joint Standing Committee on Utilities and Energy*

It directs the Maine Port Authority to assess and make a recommendation regarding acquisition of real estate near existing port facilities in the State needed to facilitate renewable ocean energy development opportunities.

### PART B

Part B amends the State's submerged lands leasing law to enact special provisions regarding renewable ocean energy projects, including clarification of the compatibility of such projects with public trust-related stewardship of submerged lands, fees for demonstration projects and further coordination of lease approval criteria and procedures with related state permitting requirements.

It establishes the Renewable Ocean Energy Trust to protect and enhance the integrity of public trust-related resources and related human uses of the State's submerged lands. Eighty percent of rental fees charged for leasing state submerged lands for renewable ocean energy projects, in addition to the State's share of federal revenues from leasing areas in federal waters for such projects, is deposited in the trust. Twenty percent of the rental fees is deposited in the existing Shore and Harbor Management Fund. Funds from the trust would be provided to the Department of Marine Resources for specified resource enhancement and compensation purposes.

It directs the Department of Conservation, Bureau of Parks and Lands to amend its submerged lands leasing rules to establish a rental fee schedule for leasing submerged lands for commercial-scale offshore wind and other renewable ocean energy projects.

It specifies that such fees must be commercially reasonable and balance state goals of assurance of fair compensation for use and mitigation of potential adverse effects on or conflict with existing uses of state-owned submerged lands with state wind and other renewable ocean energy-related goals. It specifies criteria that the bureau must consider in establishing these fees.

It specifies that the rules must allow a developer of a renewable ocean energy project to enter into a power sales contract that, through reduced rates or otherwise, provides the electric consumers a portion of the rental fee and obligates the developer to provide monetary payment to the State for the remaining portion of the fee.

### PART C

Part C clarifies that a municipality may tax renewable ocean energy-generating machinery, equipment or related components located on state submerged lands that are installed within the boundaries of the municipality, as established by its legislative charter, prior to the effective date of this provision. The bill provides that, for purposes of this provision, there is a rebuttable presumption that the boundaries of a municipality in the coastal area do not extend below the mean low-water line on waters subject to tidal influence.

It also clarifies that renewable ocean energy-generating machinery, equipment and related components that are in transit to be located in, on or above state submerged lands and are within the State on the first day of April of the applicable tax year are exempt from taxation.

It also specifies that renewable ocean energy-generating machinery, equipment and related components that are located in, on or above state submerged lands in the unorganized territory are exempt from taxation and provides that the unorganized territory is not entitled to reimbursement for the tax exemption.

### PART D

Part D amends the definition of "unorganized and deorganized areas" in the laws governing land use regulation to include, for the limited purpose of permitting community-based offshore wind energy projects and structures associated with resource analysis activities necessary for such intended projects, the siting of such projects and resource analysis structures. It defines "community-based offshore wind energy project," which is the type of

## *Joint Standing Committee on Utilities and Energy*

small-scale offshore wind energy project subject to permitting by the Maine Land Use Regulation Commission. It provides for permit processing timelines and procedures for a community-based offshore wind energy project that are the same as for an expedited wind energy development.

It applies specific scenic character review criteria for a community-based offshore wind energy project consistent with the criteria for an expedited wind energy development and provides that an application for a community-based offshore wind energy project is exempt from review under the Maine Revised Statutes, Title 12, section 685-B, subsection 4 to the extent the Maine Land Use Regulation Commission determines that review and findings are required under criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6). It provides for specific review criteria regarding noise control, shadow flicker and safety setbacks for a community-based offshore wind energy project.

It requires the Maine Land Use Regulation Commission to adopt routine technical rules to allow an offshore wind power project and a community-based offshore wind energy project as uses requiring a permit, but not a special exception, in all applicable subdistricts and establishes the same on an interim basis.

### PART E

Part E makes several changes in the law regarding the issuance of permits for offshore wind power projects under the Natural Resources Protection Act and the site location of development law, and of permits for tidal power projects under the Maine Waterway Development and Conservation Act. The bill:

1. Provides that the Board of Environmental Protection may not assume jurisdiction over an application for any of those permits;
2. Provides that, in reviewing an appeal of a permit decision by the Commissioner of Environmental Protection on an application for any of those permits, the Board of Environmental Protection base its decision on the administrative record;
3. Provides that the Commissioner of Environmental Protection may not request that the Board of Environmental Protection assume jurisdiction over an application for any of those permits;
4. Provides that a person aggrieved by an order or decision of the Commissioner of Environmental Protection or Board of Environmental Protection regarding an application for any of those permits may appeal to the Supreme Judicial Court sitting as the law court; and
5. Requires the commissioner to issue a decision on an application for an offshore wind power project or tidal power project within 185 days, or 270 days if the commissioner holds a hearing. This review period does not apply to a project's associated facilities if the commissioner determines that such a review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development.

It adds offshore wind power projects subject to the Natural Resources Protection Act or the site location of development law and tidal power projects subject to the Maine Waterway Development and Conservation Act to the category of projects for which the Commissioner of Environmental Protection may contract for outside review services, at the applicant's expense, without the applicant's consent.

It amends the Natural Resources Protection Act to address offshore wind power projects as follows.

1. It adds a definition of "offshore wind power project" to the Natural Resources Protection Act.
2. It provides that in making a determination under Title 38, section 480-D, subsection 1 concerning an offshore wind power project, the Department of Environmental Protection shall consider the project's effects on scenic

## *Joint Standing Committee on Utilities and Energy*

character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

3. It adds a provision to the standards of the Natural Resources Protection Act that addresses certain issues related to an offshore wind power project that does not also require a permit under the site location of development law.
4. It amends a notification provision to provide that the Department of Environmental Protection may not review an application for an offshore wind power project without providing notice to the Maine Land Use Regulation Commission when the proposed development is within one mile of an area of land within the jurisdiction of the commission and notice to any municipality with land located within one mile of the proposed development. The Maine Land Use Regulation Commission and any municipality notified may provide comments within a reasonable period established by the Commissioner of Environmental Protection and the commissioner shall consider these comments.
5. It provides that the Department of Environmental Protection shall issue all permits under the Natural Resources Protection Act for offshore wind power projects except for community-based offshore wind energy projects as defined in Title 12, section 682, subsection 19.

It amends the site location of development law to address offshore wind power projects as follows:

1. It provides that a permit is required pursuant to the site location of development law for an offshore wind energy project with an aggregate generating capacity of 3 megawatts or more.
2. It adds a definition of "offshore wind power project" to the site location of development law.
3. It provides that in making a determination regarding an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the Department of Environmental Protection shall consider the project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.
4. It provides that an offshore wind power project with an aggregate generating capacity of 3 megawatts or more must avoid unreasonable shadow flicker effects, provide safety-related setbacks and provide significant tangible benefits, as required for a grid-scale wind energy development.
5. It provides that an offshore wind power project with an aggregate generating capacity of 3 megawatts or more that is located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission is not exempt from the site location of development law unless it is a community-based offshore wind energy project.
6. It provides that an offshore wind power project with an aggregate generating capacity of 3 megawatts or more is exempt from review under the existing use standard in Title 38, section 484, subsection 3 insofar as review is also required by the Department of Conservation under criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), as determined by the Department of Environmental Protection.

It provides that the Department of Environmental Protection shall develop a permit by rule for offshore wind power project-related meteorological towers in coastal wetlands.

### PART F

Part F amends the Maine Waterway Development and Conservation Act to provide that the Department of Environmental Protection has statewide jurisdiction over wave power projects under that law.

### PART G

Part G expands the Public Utilities Commission's existing authority to exempt real estate of an entity to which the

## *Joint Standing Committee on Utilities and Energy*

commission has issued a certificate of public convenience and necessity wholly or in part from a local ordinance to include real estate used for a renewable ocean energy project if, following public notice and comment, the commission determines the exemption reasonably necessary for public welfare and convenience. It also clarifies and limits the scope of a municipality's land use and zoning authority to promote consistency with pertinent state standards and requirements regarding offshore wind energy development.

### **Committee Amendment "A" (S-500)**

The amendment makes the following changes to Part A:

1. It removes the provision in the bill that permits the Public Utilities Commission to determine there is a public need for a transmission line that is sized to serve anticipated future growth needed to attain state wind energy goals for generating facilities located in coastal waters;
2. It removes the provision in the bill that requires a generator interconnection transmission facility that the Public Utilities Commission has designated as an energy infrastructure corridor under the Maine Revised Statutes, Title 35-A, section 122, subsection 2 to obtain a certificate of public convenience and necessity from the Public Utilities Commission and the provision that authorizes the commission to direct a transmission and distribution utility to construct and own such a line under certain circumstances and to allow the recovery of the reasonable costs of construction of such a line through electric rates;
3. It amends a provision in the bill to clarify the legislative finding regarding the potential contribution of wind resources in the State and the Gulf of Maine over time to be used to reduce the State's reliance on petroleum-based heating and transportation fuels;
4. It removes the provision of the bill that articulates a state policy regarding transition to electric power to meet the State's heating and transportation needs;
5. It amends the provision in the bill regarding the encouragement of tidal power development to clarify that policy and adds language regarding the encouragement of wave power development;
6. It removes the provision in the bill that directs the Department of Environmental Protection, in consultation with the Public Utilities Commission, the Finance Authority of Maine and the Efficiency Maine Trust, if adequate funding is received, to develop a program that provides incentives for Maine homeowners and business owners to convert their fossil fuel-powered heating systems to more efficient, less polluting electric-powered systems;
7. It removes the provision in the bill that directs the Finance Authority of Maine, in consultation with the Department of Environmental Protection, the Public Utilities Commission and the Efficiency Maine Trust, to develop a moral obligation credit enhancement program to reduce the financing costs of electric ratepayer-backed renewable ocean energy projects and projects for conversion to electric heating;
8. It amends the provision in the bill regarding long-term contracts for offshore wind and tidal energy projects. It directs the Public Utilities Commission to conduct a competitive solicitation for long-term contracts to supply capacity, energy and renewable energy credits from deep-water offshore wind energy pilot projects and tidal energy demonstration projects and authorizes the commission to direct a transmission and distribution utility to enter such a long-term contract if certain requirements are met by the supplier and the commission takes certain actions to mitigate the risks to ratepayers, including the development of an ocean wind green power offer; and
9. It amends the provision in the bill that requires the Executive Department, Governor's Office of Energy Independence and Security to examine and make recommendations related to long-term contracts for energy produced by other renewable ocean energy projects.

The amendment makes the following changes to Part B:



## *Joint Standing Committee on Utilities and Energy*

1. It amends the provision regarding an application for a renewable ocean energy project under the submerged lands leasing program to require that the Department of Marine Resources be included in joint interagency preapplication meetings for a lease or easement and to require that the Director of the Bureau of Parks and Lands within the Department of Conservation provide notice to the Marine Resources Advisory Council and any lobster management policy council in whose or within three miles of whose designated lobster management zone the proposed renewable ocean energy project is located; and
2. It amends the provision regarding the Renewable Ocean Energy Trust to clarify that 80% of rental payments for wind energy demonstration projects and tidal energy demonstration projects are deposited in the trust.

The amendment removes all provisions contained in Part C of the bill regarding the taxation of renewable ocean energy-generating machinery, equipment or related components located in, on or above state submerged lands or in transit to be located in, on or above state submerged lands and, instead, replaces those provisions with a requirement that the Department of Administrative and Financial Services, Bureau of Revenue Services by November 1, 2011 provide an analysis of the tax treatment and exemption of such renewable ocean energy-generating machinery, equipment or related components to the joint standing committees of the Legislature having jurisdiction over taxation matters and over utilities and energy matters.

The amendment makes the following changes to Part D:

1. It amends the definition of "community-based offshore wind energy project," which is the type of small-scale offshore wind energy project subject to permitting by the Maine Land Use Regulation Commission, to establish an absolute capacity limit of 3 megawatts;
2. It clarifies the provision regarding the decision criteria for the Maine Land Use Regulation Commission and the Department of Conservation, Bureau of Parks and Lands in making decisions regarding community-based offshore wind energy projects;
3. It clarifies that a community-based offshore wind energy project does not have to meet the "significant tangible benefits" requirement that is applicable to grid-scale wind energy projects.

The amendment makes the following changes to Part E:

1. It amends the provisions in the bill regarding permits for offshore wind power projects under the Natural Resources Protection Act and the site location of development laws and permits for tidal power projects under the Maine Waterway Development and Conservation Act. The bill proposes to extend to all such permits the provisions of law governing expedited wind energy developments relative to the Board of Environmental Protection's jurisdiction and appeal procedures, including the ability to appeal directly to the law court, decision timeline and outside reviewers. The amendment, instead, extends those provisions of law governing expedited wind energy projects only to offshore wind energy demonstration projects and tidal energy demonstration projects;
2. It clarifies the provision regarding the decision criteria of the Department of Environmental Protection and the Department of Conservation, Bureau of Parks and Lands in making decisions regarding offshore wind power projects; and
3. It amends the provision regarding notice to be provided by the Department of Environmental Protection prior to review of an application for an offshore wind energy development to require notice to the Maine Land Use Regulation Commission when the proposed development is within three miles, rather than one mile, of an area of land within the jurisdiction of the commission and notice to any municipality with land located within three miles, rather than one mile, of the proposed development and to add a requirement for notice to any municipality in which associated facilities of the development are proposed.

## *Joint Standing Committee on Utilities and Energy*

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

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

### **Enacted Law Summary**

Public Law 2009, chapter 615 implements recommendations of the Governor's Ocean Energy Task Force.

#### **PART A**

Part A amends the Maine Wind Energy Act to articulate the potential, over time, for renewable energy resources in the State and in the Gulf of Maine to provide enough energy to reduce the State's reliance on oil and liquid-petroleum heating systems and petroleum-fueled motor vehicles; to clarify that state policy encouraging siting of wind energy includes support for new transmission infrastructure needed to transport additional onshore and offshore wind energy to market; and establish the state goal of 8,000 megawatts of installed wind energy capacity, including 5,000 megawatts of offshore wind power, by 2030. It also amends the Maine Waterway Development and Conservation Act to articulate that it is the policy of the State to support and encourage tidal and wave power development at appropriate locations.

It requires the Public Utilities Commission in determining public need with respect to issuance of a certificate of public convenience and necessity for a transmission line to consider, among other things, renewable energy generation goals.

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

It directs the Executive Department, Governor's Office of Energy Independence and Security to make a recommendation to the joint standing committee of the Legislature having jurisdiction over utility and energy matters regarding terms and conditions for long-term contracts with renewable ocean energy projects other than deep-water offshore wind energy pilot projects and tidal energy demonstration projects. It also directs the Governor's Office of Energy Independence and Security to amend the State energy plan to acknowledge the need for new transmission capacity to support attainment of the State's offshore wind energy generation goals.

It directs the Maine Port Authority to assess and make a recommendation regarding acquisition of real estate near existing port facilities in the State needed to facilitate renewable ocean energy development opportunities.

#### **PART B**

Part B amends the State's submerged lands leasing law to enact special provisions regarding renewable ocean energy projects, including clarification of the compatibility of such projects with public trust-related stewardship of submerged lands, fees for demonstration projects and further coordination of lease approval criteria and procedures with related state permitting requirements. It requires that the Department of Marine Resources be included in joint interagency preapplication meetings for a lease or easement for a renewable ocean energy project and requires that the Director of the Bureau of Parks and Lands within the Department of Conservation provide notice to the Marine Resources Advisory Council and any lobster management policy council in whose or within three miles of whose designated lobster management zone the proposed renewable ocean energy project is located.

## *Joint Standing Committee on Utilities and Energy*

It establishes the Renewable Ocean Energy Trust to protect and enhance the integrity of public trust-related resources and related human uses of the State's submerged lands. Eighty percent of rental fees charged for leasing state submerged lands for renewable ocean energy projects, including wind energy demonstration projects and tidal energy demonstration projects, in addition to the State's share of federal revenues from leasing areas in federal waters for such projects, is deposited in the trust. Twenty percent of the rental fees is deposited in the existing Shore and Harbor Management Fund. Funds from the trust would be provided to the Department of Marine Resources for specified resource enhancement and compensation purposes.

It directs the Department of Conservation, Bureau of Parks and Lands to amend its submerged lands leasing rules to establish a rental fee schedule for leasing submerged lands for commercial-scale offshore wind and other renewable ocean energy projects. It specifies that such fees must be commercially reasonable and balance state goals of assurance of fair compensation for use and mitigation of potential adverse effects on or conflict with existing uses of state-owned submerged lands with state wind and other renewable ocean energy-related goals. It specifies criteria that the bureau must consider in establishing these fees.

It specifies that the rules must allow a developer of a renewable ocean energy project to enter into a power sales contract that, through reduced rates or otherwise, provides the electric consumers a portion of the rental fee and obligates the developer to provide monetary payment to the State for the remaining portion of the fee.

### PART C

Part C requires that the Department of Administrative and Financial Services, Bureau of Revenue Services by November 1, 2011 provide an analysis of the tax treatment and exemption of such renewable ocean energy-generating machinery, equipment or related components to the joint standing committees of the Legislature having jurisdiction over taxation matters and over utilities and energy matters.

### PART D

Part D amends the definition of "unorganized and deorganized areas" in the laws governing land use regulation to include, for the limited purpose of permitting community-based offshore wind energy projects and structures associated with resource analysis activities necessary for such intended projects, the siting of such projects and resource analysis structures. It defines "community-based offshore wind energy project," which is the type of small-scale offshore wind energy project subject to permitting by the Maine Land Use Regulation Commission. It provides for permit processing timelines and procedures for a community-based offshore wind energy project that are the same as for an expedited wind energy development.

It applies specific scenic character review criteria for a community-based offshore wind energy project consistent with the criteria for an expedited wind energy development and provides that an application for a community-based offshore wind energy project is exempt from review under the Maine Revised Statutes, Title 12, section 685-B, subsection 4 to the extent the Maine Land Use Regulation Commission determines that review and findings are required under criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6). It provides for specific review criteria regarding noise control, shadow flicker and safety setbacks for a community-based offshore wind energy project.

It requires the Maine Land Use Regulation Commission to adopt routine technical rules to allow an offshore wind power project and a community-based offshore wind energy project as uses requiring a permit, but not a special exception, in all applicable subdistricts and establishes the same on an interim basis.

### PART E

Part E makes several changes in the laws regarding the issuance of a general permit for offshore wind energy demonstration projects under the Natural Resources Protection Act and the site location of development law, and the

## *Joint Standing Committee on Utilities and Energy*

issuance of a general permit for tidal energy demonstration projects under the Maine Waterway Development and Conservation Act. The law:

1. Provides that the Board of Environmental Protection may not assume jurisdiction over an application for those general permits;
2. Provides that, in reviewing an appeal of a permit decision by the Commissioner of Environmental Protection on an application for those general permits, the Board of Environmental Protection base its decision on the administrative record.
3. Provides that the Commissioner of Environmental Protection may not request that the Board of Environmental Protection assume jurisdiction over an application for those general permits.
4. Provides that a person aggrieved by an order or decision of the Commissioner of Environmental Protection or Board of Environmental Protection regarding an application for those general permits may appeal to the Supreme Judicial Court sitting as the law court.

It requires the commissioner to issue a decision on an application for an offshore wind power project or tidal power project within 185 days or, if the commission holds a hearing, within 270 days. This review period does not apply to a project's associated facilities if the commissioner determines that such a review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development.

It adds offshore wind power projects subject to the Natural Resources Protection Act or the site location of development law and tidal power projects subject to the Maine Waterway Development and Conservation Act to the category of projects for which the Commissioner of Environmental Protection may contract for outside review services, at the applicant's expense, without the applicant's consent.

It amends the Natural Resources Protection Act to address offshore wind power projects as follows.

1. It adds a definition of "offshore wind power project."
2. It provides that in making a determination under Title 38, section 480-D, subsection 1 concerning an offshore wind power project, the Department of Environmental Protection shall consider the project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.
3. It adds a provision to the standards of the Natural Resources Protection Act that addresses certain issues related to an offshore wind power project that does not also require a permit under the site location of development law.
4. It amends a notification provision to provide that the Department of Environmental Protection may not review an application for an offshore wind power project without providing notice to the Maine Land Use Regulation Commission when the proposed development is within three miles of an area of land within the jurisdiction of the commission and notice to any municipality with land located within three miles of the proposed development and to any municipality in which associated facilities are located. The Maine Land Use Regulation Commission and any municipality notified may provide comments within a reasonable period established by the Commissioner of Environmental Protection and the commissioner shall consider these comments.
5. It provides that the Department of Environmental Protection shall issue all permits under the Natural Resources Protection Act for offshore wind power projects except for community-based offshore wind energy projects as defined in Title 12, section 682, subsection 19.

It amends the site location of development law to address offshore wind power projects as follows.

## *Joint Standing Committee on Utilities and Energy*

1. It provides that a permit is required pursuant to the site location of development law for an offshore wind energy project with an aggregate generating capacity of 3 megawatts or more and adds a definition of "offshore wind power project" to the site location of development law.
2. It provides that in making a determination regarding an offshore wind power project with an aggregate generating capacity of 3 megawatts or more, the Department of Environmental Protection shall consider the project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.
3. It provides that an offshore wind power project with an aggregate generating capacity of 3 megawatts or more must avoid unreasonable shadow flicker effects, provide safety-related setbacks and provide significant tangible benefits, as required for a grid-scale wind energy development.
4. It provides that an offshore wind power project with an aggregate generating capacity of 3 megawatts or more that is located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission is not exempt from the site location of development law unless it is a community-based offshore wind energy project.
5. It provides that an offshore wind power project with an aggregate generating capacity of 3 megawatts or more is exempt from review under the existing use standard in Title 38, section 484, subsection 3 insofar as review is also required by the Department of Conservation under criteria specified in Title 12, section 1862, subsection 2, paragraph A, subparagraph (6), as determined by the Department of Environmental Protection.

It provides that the Department of Environmental Protection shall develop a permit by rule for offshore wind power project-related meteorological towers in coastal wetlands.

### PART F

Part F amends the Maine Waterway Development and Conservation Act to provide that the Department of Environmental Protection has statewide jurisdiction over wave power projects under that law.

### PART G

Part G expands the Public Utilities Commission's existing authority to exempt real estate of an entity to which the commission has issued a certificate of public convenience and necessity wholly or in part from a local ordinance to include real estate used for a renewable ocean energy project if, following public notice and comment, the commission determines the exemption reasonably necessary for public welfare and convenience. It also clarifies and limits the scope of a municipality's land use standards to promote consistency with pertinent state standards and requirements regarding offshore wind energy development.

### PART H

Part H establishes the Ocean Energy Fund within the Department of Marine Resources for the expenditure of funds from the Renewable Ocean Energy Trust.

Public Law 2009, chapter 615, was enacted as an emergency measure effective April 7, 2010.