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Chapter 661

S.P. 908 - L.D. 2283

An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development

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

Whereas, development of the State's wind energy resources may provide varied and significant tangible benefits to the State's environment and economy; and

Whereas, assurance of a significant increase in wind energy generation capacity in the State over the next decade is a key element of state and regional strategies to enhance utilization of indigenous, renewable energy resources in order to increase energy independence and security and reduce greenhouse gases and other air pollution emissions and thus help address climate change concerns; and

Whereas, proposals to locate and build wind energy facilities in the State have at times proven controversial, due to concerns regarding potential effects of such facilities on scenic and other natural resources values and lack of clarity and direction in state policy regarding consideration of such concerns in making state permitting and other land use decisions; and

Whereas, clarification of pertinent state policies to ensure that wind energy development is sited expeditiously and in a manner that ensures due consideration of other natural resources and community-related values can help ensure timely realization within the State of the many tangible benefits of wind energy; and

Whereas, the State's interest in the development of wind energy resources must be balanced with the interests of Maine ratepayers; and

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

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

PART A

Sec. A-1. 30-A MRSA §4452, sub-§5, ¶S, as amended by PL 2007, c. 112, §5, is further amended to read:

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules; ~~and~~

Sec. A-2. 30-A MRSA §4452, sub-§5, ¶T, as enacted by PL 2007, c. 112, §6, is amended to read:

T. Laws pertaining to limitations on construction and excavation near burial sites and established cemeteries in Title 13, section 1371-A and local ordinances and regulations adopted by municipalities in accordance with this section and section 3001 regarding those limitations.; and

Sec. A-3. 30-A MRSA §4452, sub-§5, ¶U is enacted to read:

U. Standards under a wind energy development certification issued by the Department of Environmental Protection pursuant to Title 35-A, section 3456 if the municipality chooses to enforce those standards.

Sec. A-4. 35-A MRSA §3402, sub-§1 is enacted to read:

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

A. Wind energy is an economically feasible, large-scale energy resource that does not rely on fossil fuel combustion or nuclear fission, thereby displacing electrical energy provided by these other sources and avoiding air pollution, waste disposal problems and hazards to human health from emissions, waste and by-products; consequently, wind energy development may address energy needs while making a significant contribution to achievement of the State's renewable energy and greenhouse gas reduction objectives, including those in Title 38, section 576; and

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

Sec. A-5. 35-A MRSA §3402, sub-§2 is enacted to read:

2. Need for modification of regulatory process for siting wind energy developments. The Legislature finds that it is in the public interest to reduce the potential for controversy regarding siting of grid-scale wind energy development by expediting development in places where it is most compatible with existing patterns of development and resource values when considered broadly at the landscape level. Accordingly, the Legislature finds that certain aspects of the State's regulatory process for determining the environmental acceptability of wind energy developments should be modified to encourage the siting of wind energy developments in these areas. Such changes include, but are not limited to:

A. Making wind energy development a permitted use within certain parts of the State's unorganized and deorganized areas;

B. Refining certain procedures of the Department of Environmental Protection and the Maine Land Use Regulation Commission; and

C. Because the Legislature recognizes that wind turbines are potentially a highly visible feature of the landscape that will have an impact on views, judging the effects of wind energy development on scenic character and existing uses related to scenic character based on whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of that resource.

The Legislature further finds that, while wind energy may be developed at many sites with minimal site-specific environmental impacts, wind energy developments may have, in addition to their beneficial environmental effects and potential scenic impacts, specific adverse environmental effects that must be addressed in state permitting decisions pursuant to approval criteria tailored to address issues presented by wind energy development. Nothing in this section is meant to diminish the importance of addressing as appropriate site-specific impacts on natural values, including, but not limited to, wildlife, wildlife habitats and other ecological values.

The Legislature further finds that development of the State's wind energy resources should be undertaken in a manner that ensures significant tangible benefits to the people of the State, including, but not limited to, residents of communities that host wind energy facilities; and that the State should seek to host a substantial amount of wind energy as part of a strategy to reduce greenhouse gas emissions and meet the goals established in the state climate action plan developed pursuant to Title 38, section 577.

Sec. A-6. 35-A MRSA §3404, as enacted by PL 2005, c. 646, §4, is repealed and the following enacted in its place:

§ 3404. Determination of public policy; state wind energy generation goals

1. Encouragement of wind energy-related development. It is the policy of the State that, in furtherance of the goals established in subsection 2, its political subdivisions, agencies and public officials take every reasonable action to encourage the attraction of appropriately sited development related to wind energy consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.

2. State wind energy generation goals. The goals for wind energy development in the State are that there be:

A. At least 2,000 megawatts of installed capacity by 2015; and

B. At least 3,000 megawatts of installed capacity by 2020, of which there is a potential to produce 300 megawatts from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters.

Sec. A-7. 35-A MRSA c. 34-A is enacted to read:

CHAPTER 34-A

EXPEDITED PERMITTING OF GRID-SCALE WIND ENERGY DEVELOPMENT

§ 3451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Associated facilities. "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.

2. Department. "Department" means the Department of Environmental Protection.

3. Expedited permitting area. "Expedited permitting area" means:

A. The organized areas of the State in their entirety, but not including waters subject to tidal influence, so that the edge of the area that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service defines the boundary of the expedited permitting area on lands abutting waters subject to tidal influence; and

B. Specific places within the State's unorganized and deorganized areas, as defined by Title 12, section 682, subsection 1, that are identified by rule by the Maine Land Use Regulation Commission in accordance with this chapter.

4. Expedited wind energy development. "Expedited wind energy development" means a grid-scale wind energy development that is proposed for location within an expedited permitting area.

5. Generating facilities. "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines.

6. Grid-scale wind energy development. "Grid-scale wind energy development" means a wind energy development that is of a size that would qualify as a development of state or regional significance that may substantially affect the environment as defined under Title 38, section 482, subsection 2, paragraph A or paragraph C.

7. Host community. "Host community" means a municipality, township or plantation in which the generating facilities of an expedited wind energy development are located.

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

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

B. The Maine Land Use Regulation Commission, in the case of an expedited wind energy development subject to the Maine Land Use Regulation Commission's jurisdiction pursuant to Title 12, chapter 206-A.

9. Scenic resource of state or national significance. "Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath;

B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox;

C. A national or state park;

D. A great pond that is:

(1) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or

(2) One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987;

E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the Department of Conservation in 1982;

F. A scenic viewpoint located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Conservation designates by rule adopted in accordance with section 3457;

G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a scenic highway; or

H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:

(1) One of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

(2) A scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with section 3457.

10. Tangible benefits. "Tangible benefits" means environmental or economic improvements attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: construction-related employment; local purchase of materials; employment in operations and maintenance; reduced property taxes; reduced electrical rates; natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community to the extent practicable and affected neighboring communities.

11. Wind energy development. "Wind energy development" means a development that uses a windmill or wind turbine to convert wind energy to electrical energy for sale or use by a person other than the generator. A wind energy development includes generating facilities and associated facilities.

§ 3452. Determination of effect on scenic character and related existing uses

1. Application of standard. In making findings regarding the effect of an expedited wind energy development on scenic character and existing uses related to scenic character pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 or section 480-D, the primary siting authority shall determine, in the manner provided in subsection 3, whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of the scenic resource of state or national significance. Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under either Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3.

2. Exception; certain associated facilities. The primary siting authority shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development, if the primary siting authority determines that application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit

information regarding this determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

3. Evaluation criteria. In making its determination pursuant to subsection 1, and in determining whether an applicant for an expedited wind energy development must provide a visual impact assessment in accordance with subsection 4, the primary siting authority shall consider:

A. The significance of the potentially affected scenic resource of state or national significance;

B. The existing character of the surrounding area;

C. The expectations of the typical viewer;

D. The expedited wind energy development's purpose and the context of the proposed activity;

E. The extent, nature and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and

F. The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A finding by the primary siting authority that the development's generating facilities are a highly visible feature in the landscape is not a solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the primary siting authority shall consider insignificant the effects of portions of the development's generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

4. Visual impact assessment; rebuttable presumption. An applicant for an expedited wind energy development shall provide the primary siting authority with a visual impact assessment of the development that addresses the evaluation criteria in subsection 3 if the primary siting authority determines such an assessment is necessary in accordance with subsection 3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of the development's generating facilities that are located more than 3 miles, measured horizontally, from a scenic resource of state or national significance. The primary siting authority may require a visual impact assessment for portions of the development's generating facilities located more than 3 miles and up to 8 miles from a scenic resource of state or national significance if it finds there is substantial evidence that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the scenic resource of state or national significance. Information intended to rebut the presumption must be submitted to the primary siting authority by any interested person within 30 days of acceptance of the application as complete for processing. The primary siting authority shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

§ 3453. Additions to the expedited permitting area

The Maine Land Use Regulation Commission may, by rule adopted in accordance with Title 5, chapter 375, add a specified place in the State's unorganized or deorganized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Regulation Commission must determine that the proposed addition to the expedited permitting area:

1. Geographic extension. Involves a logical geographic extension of the currently designated expedited permitting area;

2. Meets state goals. Is important to meeting the state goals for wind energy development established in section 3404; and

3. Principal values and goals. Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Regulation Commission pursuant to Title 12, section 685-C.

Rules adopted by the Maine Land Use Regulation Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 3454. Determination of tangible benefits

In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development. The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

§ 3455. Determination of public safety-related setbacks

In making findings pursuant to Title 12, section 685-B, subsection 4 or Title 38, section 484, subsection 3 on whether a wind energy development must be constructed with setbacks adequate to protect public safety, the primary siting authority must consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities. The primary siting authority may require submission of this information as part of the application.

§ 3456. Siting considerations for smaller-scale wind energy development in organized areas

1. Construction and operation requirements. A person may not construct or operate a wind energy development, other than a grid-scale wind energy development, that is located in the State's organized area without first obtaining a certification from the department that the generating facilities:

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

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

C. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities.

A person proposing a wind energy development subject to certification under this section shall apply to the department for certification using an application provided by the department and may not begin construction until the certification is received.

2. Fees; outside review; approval process. The department may charge a developer an appropriate fee for its review and certification pursuant to this section. Certification may be conditioned on specific requirements, including but not limited to setbacks from residential structures to address noise or safety concerns. The department may use an outside reviewer as provided in Title 38, section 344-A. If no other approval by the department is required for the development, the department shall issue its certification within 185 days of its acceptance of a request for certification as complete pursuant to Title 38, section 344. At the request of an applicant, the department may put the certification review period on hold. If another approval by the department is required for the development, the department shall consolidate its process for certification under this section with that regarding other approvals by the department as provided in the department's rules and may extend the review period as provided in those rules. Notwithstanding any other provision of law, the department's certification pursuant to this section regarding a development that does not otherwise require the department's approval pursuant to this Title is not itself subject to judicial review as final agency action or otherwise, except as an aspect of an appeal of a pertinent municipal land use decision.

3. Enforcement of standards. Following certification under this section and during construction and operation, the standards in subsection 1 for a wind energy development subject to certification under this section may be enforced by the municipality in which the generating facilities are located at the municipality's discretion pursuant to Title 30-A, section 4452. The department is not responsible for enforcement of this section.

4. Exemption. Certification under this section is not required for a wind energy development with a generating capacity of less than 100 kilowatts.

§ 3457. Rulemaking; scenic viewpoint; scenic inventory

1. Scenic viewpoint. The Department of Conservation shall adopt rules to designate scenic viewpoints located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that have state or national significance from a scenic perspective based on criteria modeled after those used in the "Maine Rivers Study" published by the Department of Conservation in 1982 and "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987 and consideration of the criteria in section 3452, subsection 3.

2. Scenic inventory. The Executive Department, State Planning Office shall adopt rules regarding the methodology for conducting a scenic inventory of scenic resources of state or national significance that are located in the coastal area, as defined by Title 38, section 1802, subsection 1, in

a manner comparable to that used for an inventory listed in section 3451, subsection 9, paragraph H, subparagraph (1). The office may contract with an outside entity for the preparation of a scenic inventory conducted pursuant to the methodology developed pursuant to this subsection.

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

Sec. A-8. Tracking progress toward achievement of state wind energy goals. The Executive Department, Governor's Office of Energy Independence and Security, referred to in this section as "the office," shall, on an annual basis, monitor and make an assessment of progress toward meeting the wind energy development goals established in the Maine Revised Statutes, Title 35-A, section 3404, subsection 2 and, by December 2013, in consultation with other state agencies as appropriate, conduct a full review of the status of meeting the goals for 2015 and the likelihood of achieving the goals for 2020. The office shall provide its assessment and recommendations under this section to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 15th of each year.

1. Assessment. The assessment under this section must include:

A. Examination of experiences from the permitting process;

B. Identified successes, including tangible benefits realized from wind energy development, in implementing the recommendations contained in the February 2008 final report of the Governor's Task Force on Wind Power Development in Maine pursuant to Executive Order issued May 8, 2007;

C. Projections of wind energy developers' plans, as well as technology trends and their state policy implications;

D. The status of Maine and each of the other New England states in making progress toward reducing greenhouse gas emissions; and

E. Recommendations, including, but not limited to, any changes regarding:

(1) The wind energy development goals established in Title 35-A, section 3404, subsection 2;

(2) Permitting processes for wind energy development;

(3) Identification of places within the State's unorganized and deorganized areas for inclusion in the expedited permitting area established pursuant to Title 35-A, chapter 34-A; and

(4) Creation of an independent siting authority to consider wind energy development applications.

2. Assessment of tangible benefits; first annual report. In the report due January 15, 2009, the office shall include an assessment of whether there is a need for additional funding to conduct the analysis of tangible benefits realized from wind energy development as required under this section and, if funding is needed, recommendations for a funding mechanism that is connected to the fees assessed to wind energy developers by the Department of Environmental Protection and the Maine Land Use Regulation Commission. Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit legislation to the First Regular Session of the 124th Legislature regarding the subject matter of this subsection.

Sec. A-9. Rulemaking. By September 1, 2008, the Department of Conservation and the Executive Department, State Planning Office shall adopt rules pursuant to the Maine Revised Statutes, Title 35-A, section 3457, subsections 1 and 2, respectively.

PART B

Sec. B-1. 38 MRSA §341-D, sub-§2, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

2. Permit and license applications. ~~The~~Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment:

A. Involves a policy, rule or law that the board has not previously interpreted;

B. Involves important policy questions that the board has not resolved;

C. Involves important policy questions or interpretations of a rule or law that require reexamination; or

D. ~~Have~~Has generated substantial public interest.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A, when it finds that the criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that one or more of the criteria in this subsection have been met.

Any interested party may request the board to assume jurisdiction of an application.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or for a certification pursuant to Title 35-A, section 3456.

Sec. B-2. 38 MRSA §341-D, sub-§4, ¶B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

B. License or permit decisions made by the commissioner that the board votes to review within 30 days of the next regularly scheduled board meeting following written notification to the board of the commissioner's decision. ~~The~~Except as provided in paragraph D, the procedures for review are the same as provided under paragraph A; ~~and~~

Sec. B-3. 38 MRSA §341-D, sub-§4, ¶C, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A.~~.~~; and

Sec. B-4. 38 MRSA §341-D, sub-§4, ¶D is enacted to read:

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4. In reviewing an appeal of a license or permit decision by the commissioner on an application for an expedited wind energy development, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board using the

standards contained in subsection 5 for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

Sec. B-5. 38 MRSA §344, sub-§2-A, ¶A, as enacted by PL 1989, c. 890, Pt. A, §22 and affected by §40, is amended to read:

A. ~~The~~Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets one or more of the criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a certification pursuant to Title 35-A, section 3456. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant.

Sec. B-6. 38 MRSA §344-A, first ¶, as enacted by PL 1991, c. 471, is amended to read:

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. ~~The~~Except for an agreement for outside review regarding review of an application for a wind energy

development as defined in Title 35-A, section 3451, subsection 11 or a certification pursuant to Title 35-A, section 3456, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review.

Sec. B-7. 38 MRSA §346, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §4, is further amended to read:

1. Appeal to Superior Court. Except as provided in section 347-A, subsection 3 or 4, any person aggrieved by any order or decision of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court ~~shall~~must be taken in accordance with Title 5, chapter 375, subchapter ~~VII~~7.

Sec. B-8. 38 MRSA §346, sub-§4 is enacted to read:

4. Appeal of decision regarding an expedited wind energy development. A person aggrieved by an order or decision of the board or commissioner regarding an application for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, may appeal to the Supreme Judicial Court sitting as the law court. These appeals to the law court must be taken in the manner provided in Title 5, chapter 375, subchapter 7.

Sec. B-9. 38 MRSA §352, sub-§3, as amended by PL 2001, c. 212, §2, is further amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. ~~A~~Through August 31, 2009, a special fee may not exceed $250,000. Beginning September 1, 2009, a special fee may not exceed $75,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application, including, but not limited to, preapplication consultations, shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. The costs associated with assistance to the board on an appeal before the board may be separately charged. The processing fee for that application must be the actual cost to the department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum special fee established in this subsection.

Sec. B-10. 38 MRSA §480-D, sub-§1, as enacted by PL 1987, c. 809, §2, is amended to read:

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. B-11. 38 MRSA §484, sub-§3, ¶G is enacted to read:

G. In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

Sec. B-12. 38 MRSA §484, sub-§10 is enacted to read:

10. Special provisions; grid-scale wind energy development. In the case of a grid-scale wind energy development, the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

A. Will be designed and sited to avoid unreasonable adverse shadow flicker effects;

B. Will be constructed with setbacks adequate to protect public safety. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional, licensed civil engineer as well as any applicable setback recommended by a manufacturer of the generating facilities; and

C. Will provide significant tangible benefits as determined pursuant to Title 35-A, section 3454, if the development is an expedited wind energy development.

The Department of Labor, the Executive Department, State Planning Office and the Public Utilities Commission shall provide review comments if requested by the primary siting authority.

For purposes of this subsection, "grid-scale wind energy development," "primary siting authority," "significant tangible benefits" and "expedited wind energy development" have the same meanings as in Title 35-A, section 3451.

Sec. B-13. Submission requirements. No later than September 1, 2008, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, jointly and to the extent not already addressed in existing agency guidance, specify the submission requirements for the following matters for applications for wind energy development, including, but not limited to, expedited wind energy development as defined in the Maine Revised Statutes, Title 35-A, section 3451, subsection 4, in accordance with the recommendations of the February 2008 final report of the Governor's Task Force on Wind Power Development in Maine created by Executive Order issued on May 8, 2007, and the provisions of this Act, as applicable:

1. Effects on scenic character and existing uses related to scenic character;

2. Tangible benefits, including postconstruction reporting of tangible benefits realized;

3. Noise and shadow flicker effects;

4. Effects on avian and bat species;

5. Public safety-related setbacks; and

6. Decommissioning plans, including demonstration of current and future financial capacity that would be unaffected by the applicant's future financial condition to fully fund any necessary decommissioning costs commensurate with the project's scale, location and other relevant considerations, including, but not limited to, those associated with site restoration and turbine removal.

Implementation of this section does not require rulemaking under Title 5, chapter 375.

PART C

Sec. C-1. 12 MRSA §685-A, sub-§13 is enacted to read:

13. Additions to expedited permitting area for wind energy development. The commission may add areas in the State's unorganized and deorganized areas to the expedited permitting area for wind energy development in accordance with Title 35-A, section 3453.

Sec. C-2. 12 MRSA §685-B, sub-§2-C is enacted to read:

2-C. Expedited wind energy development; determination deadline. The commission shall consider any wind energy development in the expedited permitting area under Title 35-A, chapter 34-A a use requiring a permit, but not a special exception, within the affected districts or subdistricts and shall render its determination on an application for such a development within 185 days after the commission determines that the application is complete, except that the commission shall render such a decision within 270 days if it holds a hearing on the application. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the commission and may participate fully but is not required to attend hearings when the commission considers an application for an expedited wind energy development as defined in Title 35-A, section 3451. The chair's participation on the commission pursuant to this subsection does not affect the ability of the Public Utilities Commission to submit information into the record of the commission's proceedings.

Sec. C-3. 12 MRSA §685-B, sub-§4, as amended by PL 2005, c. 452, Pt. A, §1, is further amended to read:

4. Criteria for approval. In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may ~~deem~~consider appropriate.

The commission ~~shall~~may not approve ~~no~~an application, unless:

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

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

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

In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the commission shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452;

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

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

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

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

Sec. C-4. 12 MRSA §685-B, sub-§4-B is enacted to read:

4-B. Special provisions; wind energy development. In the case of a wind energy development, as defined in Title 35-A, section 3451, subsection 11, with a generating capacity greater than 100 kilowatts, the developer must demonstrate, in addition to requirements under subsection 4, that the proposed generating facilities, as defined in Title 35-A, section 3451, subsection 5:

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

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

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

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

Sec. C-5. 12 MRSA §685-F, sub-§2, as enacted by PL 2005, c. 107, §2 and affected by §4, is amended to read:

2. Processing fee. The processing fee for a project designated as extraordinary is the sum of the actual costs associated with review of that project application. These costs include, but are not limited to, costs of personnel, supplies, administration, travel, specialized computer software, services needed for review of that project, including review provided by other state agencies, and contracting for legal and consulting services. The director shall provide the applicant with an estimate of the processing fee for a project with a breakdown of anticipated costs. The applicant must pay 1/2 of the estimated processing fee prior to the beginning of the project review. The applicant must be billed quarterly for the remainder of the fee. The director shall deposit all processing fees in a dedicated account from which expenses attributable to the application review are paid. The commission shall withhold a decision on the project until the entire processing fee is paid. The director shall return all unspent funds to the applicant within 120 days of the commission's decision on the application.

Sec. C-6. Expedited permitting area designation; permitted use. No later than September 1, 2008, the Maine Land Use Regulation Commission shall adopt a rule listing the following specific places within the State's unorganized and deorganized areas, which comprise the expedited permitting area for purposes of this Act, except that the commission may subsequently add additional areas to this list by rule in the manner provided by this Act:

1. Entire townships and plantations. The following entire townships and plantations: Albany Twp., 17802; Alder Stream Twp., 07801; Argyle Twp., 19801; Bald Mountain Twp., T2 R3, 25805; Baring Plt., 29040; Barnard Twp., 21030; Batchelders Grant Twp., 17805; Benedicta Twp., 03050; Big Moose Twp., 21801; Blake Gore, 25811; Blanchard Twp., 21040; Brookton Twp., 29801; Carroll Plt., 19080; Carrying Place Twp., 25860; Cary Plt., 03090; Centerville Twp., 29080; Chase Stream Twp., 25816; Chester, 19100; Codyville Plt., 29110; Concord Twp., 25818; Connor Twp., 03802; Cove Point Twp., 21805; Cox Patent, 03803; Cross Lake Twp., 03899; Cyr Plt., 03140; Dennistown Plt., 25090; Drew Plt., 19160; Dudley Twp., 03804; Dyer Twp., 29803; E Twp., 03160; East Moxie Twp., 25821; Edmunds Twp., 29804; Fletchers Landing Twp., 09804; Forest City Twp., 29806; Forest Twp., 29805; Forkstown Twp., 03805; Fowler Twp., 29807; Freeman Twp., 07808; Garfield Plt., 03220; Glenwood Plt., 03230; Grand Falls Twp., 19250; Grindstone Twp., 19802; Hamlin, 03250; Hammond, 03260; Harfords Point Twp., 21811; Herseytown Twp., 19803; Hibberts Gore, 15801; Highland Plt., 25150; Hopkins Academy Grant Twp., 19804; Indian Stream Twp., 25828; Jim Pond Twp., 07811; Johnson Mountain Twp., 25829; Kibby Twp., 07812; Kingman Twp., 19808; Kingsbury Plt., 21110; Lake View Plt., 21120; Lambert Lake Twp., 29809; Lexington Twp., 25831; Macwahoc Plt., 03360; Marion Twp., 29810; Mason Twp., 17811; Mattamiscontis Twp., 19810; Mayfield Twp., 25835; Milton Twp., 17812; Misery Gore Twp., 25837; Misery Twp., 25836; Molunkus Twp., 03806; Moosehead Junction Twp., 21816; Moro Plt., 03430; Mount Chase, 19450; Moxie Gore, 25838; Nashville Plt., 03440; No. 14 Twp., 29330; North Yarmouth Academy Grant Twp., 03807; Orneville Twp., 21821; Osborn, 09230; Oxbow Plt., 03500; Parkertown

Twp., 17814; Parlin Pond Twp., 25839; Perkins Twp., 07818; Perkins Twp. Swan Island, 23801; Pleasant Ridge Plt., 25250; Prentiss Twp., T4 R4 NBKP, 25843; Prentiss Twp., T7 R3 NBPP, 19540; Rangeley Plt., 07160; Reed Plt., 03540; Saint Croix Twp., 03808; Saint John Plt., 03570; Sandbar Tract Twp., 25848; Sandy Bay Twp., 25850; Sandy River Plt., 07170; Sapling Twp., 25851; Seboeis Plt., 19550; Silver Ridge Twp., 03809; Squapan Twp., 03810; Squaretown Twp., 25854; Summit Twp., 19812; T1 R5 WELS, 03816; T1 R6 WELS, 19815; T10 R3 WELS, 03829; T10 R6 WELS, 03830; T10 SD, 09806; T11 R3 NBPP, 29817; T11 R4 WELS, 03833; T13 R5 WELS, 03856; T14 R5 WELS, 03867; T14 R6 WELS, 03868; T15 R5 WELS, 03879; T15 R6 WELS, 03880; T16 MD, 09807; T16 R4 WELS, 03889; T16 R5 WELS, 03890; T16 R6 WELS, 03891; T17 R3 WELS, 03897; T17 R4 WELS, 03898; T18 ED BPP, 29818; T18 MD BPP, 29819; T19 ED BPP, 29820; T19 MD BPP, 29821; T2 R4 WELS, 03817; T2 R8 NWP, 19817; T2 R9 NWP, 19819; T22 MD, 09808; T3 Indian Purchase Twp., 19806; T3 R3 WELS, 03818; T3 R4 WELS, 03819; T3 R9 NWP, 19823; T4 R3 WELS, 03820; T6 R6 WELS, 19829; T7 R5 WELS, 03821; T7 R6 WELS, 19832; T7 SD, 09803; T8 R3 NBPP, 29815; T8 R3 WELS, 03822; T8 R4 NBPP, 29816; T8 R5 WELS, 03823; T8 R6 WELS, 19835; T9 R3 WELS, 03824; T9 R4 WELS, 03825; T9 R5 WELS, 03826; T9 SD, 09805; TA R2 WELS, 03813; TA R7 WELS, 19814; Taunton & Raynham Academy Grant, 25803; TC R2 WELS, 03814; TD R2 WELS, 03815; The Forks Plt., 25320; Trescott Twp., 29811; Unity Twp., 11801; Upper Molunkus Twp., 03811; Washington Twp., 07827; Webbertown Twp., 03812; Webster Plt., 19600; West Forks Plt., 25330; Williamsburg Twp., 21827; and Winterville Plt., 03680;

2. Portions of townships and plantations. The following portions of townships and plantations: that portion of Adamstown Twp., 17801, north of Route 16; Bald Mountain Twp., T4 R3, 25806, excluding areas of Boundary Bald Mountain above 2,700 feet in elevation; a 146.6-acre parcel in the northeast corner of the Chain of Ponds, 07803, along the border with Canada; the portion of Coplin Plt., 07040, north of Route 16; the portion of Dallas Plt., 07050, north of Route 16; the portion of Ebeemee Twp., 21853, east of Route 11; the portion of Kossuth Twp., 29808, north of Route 6; the portion of Lang Twp., 07813, north of Route 16; the portion of Lincoln Plt., 17160, north of Route 16; the portion of Long A Twp., 19809, east of Route 11; the portion of Long Pond Twp., 25833, south of Long Pond and Moose River; the 487.5-acre area above the 2,040-foot elevation around Green Top in Lynchtown Twp., 17810; the portion of Rockwood Strip T1 R1 NBKP, 25844, south of Moose River, Little Brassua Lake and Brassua Lake; the portion of Rockwood Strip T2 R1 NBKP, 25845, south of Little Brassua Lake and Brassua Lake; the portion of Salem Twp., 07820, south of Route 142; the portion of Sandwich Academy Grant Twp., 25849, south of Moose River, Little Brassua Lake and Brassua Lake; that portion of Skinner Twp., 07822, composed of the 193.3-acre area that follows the ridge to Kibby Mountain, bounded on the east and west by the 2,820-foot contour, on the south by the town line and on the north by the line from the 2,820-foot contour through the 3,220-foot contour from Kibby Mountain; the portion of Soldiertown Twp., T2 R7 WELS, 19811, east of the East Branch Penobscot River; the portion of T1 R8 WELS, 19816, south of Millinocket Lake; the portion of T1 R9 WELS, 21833, southeast of Ambajejus Lake; T24 MD BPP, 29822, excluding a one-mile buffer around Mopang Stream; the 51.9-acre area in T25 MD BPP, 29823, encompassing Black Brook and Black Brook Pond, and the area northeast of Holmes Falls Road; the portion of T3 R7 WELS, 19821, east of the Seboeis River and East Branch Penobscot River; the portions of T4 Indian Purchase Twp., 19807, area northeast of North Twin Lake and south of Route 11; the portion of T4 R7 WELS, 19824, east of the Seboeis River; the portion of T4 R9 NWP, 21845, east of Route 11; the portion of T5 R7 WELS, 19827, east of the Seboeis River; and the portion of T6 R7 WELS, 19830, east of the Seboeis River; and

3. Coastal islands in unorganized and deorganized area. All islands located in waters subject to tidal influence that are within the unorganized and deorganized areas of the State.

4. Transition; establishment of expedited permitting area and permitted use prior to rulemaking. Notwithstanding any other provision of law, prior to the Maine Land Use Regulation Commission's adoption of the rules required by this section, the portion of expedited permitting area located in the State's unorganized and deorganized areas consists of the lands and state waters specified in this section and an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, is a use requiring a permit, but not a special exception, subject to permitting by the Maine Land Use Regulation Commission or Department of Environmental Protection in accordance with this Act and other applicable law, in all districts and subdistricts located within the expedited permitting area.

No later than September 1, 2008, the Maine Land Use Regulation Commission shall adopt a rule amending its land use districts and standards to provide that grid-scale wind energy development as defined in the Maine Revised Statutes, Title 35-A, section 3451 is a use requiring a permit, but not a special exception, in all districts or subdistricts located within the expedited permitting area designated pursuant to this section, subject to permitting by the Maine Land Use Regulation Commission or Department of Environmental Protection in accordance with this Act and other applicable law.

Rules adopted by the Maine Land Use Regulation Commission pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. C-7. Amendment of comprehensive land use. No later than July 1, 2009, the Maine Land Use Regulation Commission shall amend its comprehensive land use plan, adopted pursuant to the Maine Revised Statutes, Title 12, section 685-C, as needed to ensure its consistency with the provisions of this Act.

PART D

Sec. D-1. 35-A MRSA §3211-C, as amended by PL 2007, c. 493, §§1 to 3, is further amended to read:

§ 3211-C. Solar and wind energy rebate program; fund

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

A. "Qualified solar energy system" means a solar photovoltaic system or a solar thermal system.

A-1. "Qualified solar thermal water system installer" means a person who has been certified by the commission to install solar thermal systems designed to heat water and who holds a current license from the State as a master plumber, as a master oil burner technician or as a propane and natural gas technician or has been certified as a type II, type III or universal heating, ventilation and air conditioning refrigeration technician through a certification program approved by the United States Environmental Protection Agency.

A-2. "Qualified wind energy system" means any device, such as a wind charger, windmill or wind turbine and associated facilities, with a peak generating capacity of 100 kilowatts or less that converts wind energy to electrical energy for use primarily in a residence, public facility or place of business that is located in an area with demonstrated wind power potential.

B. "Solar photovoltaic system" means a solar energy device with a peak generating capacity of 100 kilowatts or less used for generating electricity for use in a residence or place of business.

C. "Solar thermal system" means a configuration of solar collectors and a pump, heat exchanger and storage tank or fans designed to heat water or air for the purpose of space heating, domestic water heating or both space and domestic water heating. Solar thermal system types include forced circulation, integral collector storage, thermosyphon and self-pumping systems.

2. Solar and wind energy rebate program. To the extent that funds are available in the fund established in subsection 3 and the requirements of subsection 2-A are satisfied, an owner or tenant of residential or commercial property located in the State is entitled to a rebate for a qualified solar energy system that is installed in accordance with this subsection after July 1, 2005 that will be connected to the electrical grid or a qualified wind energy system that is installed in accordance with this subsection after January 1, 2009 that will be connected to the electrical grid. The commission shall set rebate levels for qualified solar energy systems and qualified wind energy systems. In setting rebate levels, the commission may consider market demand for qualified solar energy systems and qualified wind energy systems, program implementation experience and other factors relevant to the solar energy and wind energy rebate program.

A. To qualify for a rebate, a solar photovoltaic system must meet the following installation requirements:

(1) For a system installed after July 1, 2005 but before January 1, 2007, the system must be installed by a master electrician who has completed a training course to prepare for certification by a North American board of certified energy practitioners or by a master electrician working in conjunction with either a person who has been certified by a North American board of certified energy practitioners or a person who has completed a training course to prepare for certification by a North American board of certified energy practitioners; or

(2) For a system installed on or after January 1, 2007, the system must be installed by a master electrician who has been certified by a North American board of certified energy practitioners or by a master electrician working in conjunction with a person who has been certified by a North American board of certified energy practitioners.

B. To qualify for a rebate, a solar thermal system designed to heat water must be installed by a qualified solar thermal water system installer and, if the solar thermal system is designed to heat potable water, it must be installed by a qualified solar thermal water system installer who holds a current license as a master plumber or by a qualified solar thermal water system installer working in conjunction with a master plumber.

D. To qualify for a rebate, the electrical components of a qualified wind energy system must be installed by a master electrician or by a factory trained and approved dealer for the qualified wind energy system working under the supervision of a master electrician.

In the case of a newly constructed residence, the rebate must be available to the original owner or occupant.

2-A. Energy audit requirement; solar photovoltaic system. To qualify for a rebate for a solar photovoltaic system under this section, an owner or tenant of residential or commercial property located in the State must demonstrate to the satisfaction of the commission that an energy audit, as defined by the commission by rule, has been completed.

3. Funding level; fund. The commission shall assess transmission and distribution utilities to collect funds for the solar and wind energy rebate program in accordance with this subsection. The amount of all assessments by the commission under this subsection must result in total program expenditures by each transmission and distribution utility that do not exceed 0.005 cent per kilowatt-hour. To the extent practicable, the commission shall establish and collect the assessment in a manner that is consistent with the assessment made under section 3211-A. The commission shall establish a solar and wind energy rebate program fund to be used solely for the purposes of this section. All assessments made under this subsection are deposited in the fund. Any interest on funds in the fund must be credited to the fund. Funds not spent in any fiscal year remain in the fund to be used for the purposes of this section. ~~In each fiscal year, 25% of the fund is allotted to solar photovoltaic system rebates and 75% of the fund is allotted to solar thermal system rebates.~~The commission shall determine the allotment of the fund in each fiscal year between solar photovoltaic system rebates, solar thermal system rebates and qualified wind energy system rebates, with a minimum of 20% of the fund provided to each of the 3 types of rebates.

4. Rules. The commission shall adopt rules necessary to implement the provisions of this section, including procedures and standards for demonstrating qualification for a rebate under this section and a definition of "energy audit" for the purposes of subsection 2-A. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5. Report. The commission shall report by December 1st of each year to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters a description of actions taken by the commission pursuant to this section during the prior 12 months.

6. Limitation to residents of State; repeal. Participation in the solar and wind energy rebate program and fund established in this section is limited to residents of the State. This section is repealed December 31, 2010.

PART E

Sec. E-1. Application; municipal authority. This Act applies to a proposed wind energy development for which the Department of Environmental Protection or the Maine Land Use Regulation Commission has not accepted an application as complete for processing as of the effective date of this Act. This Act does not apply to a proposed wind energy development of the type subject to certification pursuant to the Maine Revised Statutes, Title 35-A, section 3456 for which a municipality has accepted an application as complete for processing as of the effective date of this Act. This Act is not intended to limit a municipality's authority to regulate wind energy development.

Sec. E-2. Rulemaking. Any rules adopted pursuant to this Act by the Department of Environmental Protection or the Maine Land Use Regulation Commission are routine technical rules as defined by the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

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

Effective April 18, 2008.