

Tony Buxton
New England Aqua Ventus

TESTIMONY OF TONY BUXTON ON BEHALF OF
NEW ENGLAND AQUA VENTUS
IN OPPOSITION TO
LD 101, AN ACT TO PROHIBIT OFFSHORE WIND ENERGY DEVELOPMENT
MAY 4, 2021

Senator Lawrence, Representative Berry, distinguished members of the Joint Standing Committee on Energy Utilities and Technology, I am Tony Buxton of the law firm Preti Flaherty, representing New England Aqua Ventus, LLC ("NEAV") in opposition to LD 101. NEAV is the developer of the Monhegan demonstration floating offshore wind Project. My testimony focuses on the statutory and legal effects of LD 101.

Put simply, LD 101 is at best a mistake in progress. Specifically, the broad desire of LD 101 to kill Maine offshore wind must be assumed from its title; what is unclear is what that means. And, then, whether or how it is done by the bill. After expressing an attempted broad prohibition, the bill admits its lack of specificity by directing the Land Use Planning Commission, The Public Utilities Commission and the Department of Environmental Protection to prepare and submit legislation to achieve such a prohibition to the Second Regular Session of the 130th Maine Legislature. While LD 101 is not quite a concept draft, it is perhaps a concept draft with benefits. Clearly, LD 101 is not complete.

Legislation is the prerogative of this Legislature and the citizens of Maine. But NEAV would like you to know that its decisions to partner with UMaine and to work with the Mills Administration were not made lightly. The decisions depended on years of personal experience and much due diligence. Those depended in turn on understanding UMaine's long and succeeding effort to make Maine a floating offshore wind hub in a rapidly developing world-wide industry. NEAV based its decision on your hard work since as early as 2006 to test, commercialize and build UMaine's patented VoltturnUS Floating Technology in Maine. NEAV saw that Maine has persisted in creating a genuine opportunity for Maine. NEAV decided that Maine's commitment could be relied on by NEAV as it proceeded to invest \$100 million of its own funds. NEAV also heard Governor Mills, and the 129th Legislature, when they said in the 2019 Resolve that Maine must be known to the world to keep its word.

LD 101 apparently would change Maine's word, as it may prohibit issuance of DEP and municipal permits for the Monhegan Project, as the term "Offshore Wind Energy Demonstration Project" as defined in Title 38, Section 480HH, Subsection 1. If that is correct, the result could be an impairment of the NEAV contract with UMaine, and of its contract with Central Maine Power Company, likely creating State of Maine liability to the contracting parties. I note the MAV/NEAV power contract was required by Maine law and approved by the Public Utilities Commission. This result would be both significant and tragic, as it would render Maine a questionable partner in the future energy decisions necessary to deal with the climate crisis.

These points raise another red flag. When the State of Maine undertakes over nearly two decades to implement a comprehensive strategy such as turning Maine into an international hub for the manufacture of floating offshore wind, and that strategy is woven into perhaps a dozen statutes affecting all levels of Maine government, that fabric of creativity, investment and work perhaps should not be burned by one admittedly incomplete paragraph. The full texture of that fabric should be presented to you, so you might see it all before burning it. LD 101 does not do that.

There are other problems with LD 101. For example, the federal government, not the State of Maine, permits offshore wind beyond the three-mile limit of state jurisdiction. The State of Maine likely cannot prohibit a submerged power transmission cable running from a project in federal waters to the transmission grid on land in Maine (see 35-A MRS §3451(i) "generator lead line"). This means that offshore wind located beyond three miles and its cables either would be not covered at all by LD 101, or would be unaffected because of federal preemption of interstate electricity transmission. An additional issue is whether LD 101 prohibits wharves or piers in coastal waters used to support offshore wind in federal waters.

NEAV believes Maine can and should be proud of the future it is creating in Floating Offshore Wind. NEAV respectfully urges that LD 101 not be enacted.