

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

**'An Act To Reduce Maine's Dependence on Fossil Fuels and Enhance Energy-efficient Development'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**PART A**

**Sec. A-1. 38 MRSA c. 3-C** is enacted to read:

**CHAPTER 3-C**

**ENERGY EFFICIENCY DEVELOPMENT ACT**

**§ 580-G. Short title; findings; purpose**

This chapter may be known and cited as "the Energy Efficiency Development Act."

The Legislature finds and declares that reduced reliance on the fossil fuels that contribute to greenhouse gas emissions is necessary to improve energy security, reduce the State's heavy reliance on imported fuels and improve and strengthen the State's economy.

The Legislature also finds and declares that the stabilization and the reduction of greenhouse gas emissions in accordance with the targeted state goals established in section 576 are consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds and declares that making progress towards the State's targeted medium-term and long-term greenhouse gas emission reduction goals set forth in section 576 requires consideration and reduction of climate impacts and effects as an integral part of state planning and licensing, and consideration in the development of new public and private infrastructure.

**§ 580-H. Definitions**

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

**1. Energy-related greenhouse gas emissions.** "Energy-related greenhouse gas emissions" means all direct and indirect emissions that could reasonably result from energy use or production or from heating, cooling, lighting, equipment use and other activities associated with the postconstruction operation of a project or activity.

**2. Greenhouse gas.** "Greenhouse gas" has the same meaning as in section 574, subsection 1.

**3. Long-term project decision.** "Long-term project decision" means final approval by any state authority of any capital investment, loan or construction project of the State that will result in the purchase, development or significant improvement of public infrastructure with a useful life of 15 or more years, including, but not limited to, schools, roads, bridges and other transportation facilities, correctional facilities, water or sewage treatment plants, recreational facilities, communication and energy infrastructure, public buildings and other infrastructure.

**4. Planning decision.** "Planning decision" means final approval by any state authority of plans or management decisions that could significantly affect energy use or net lifetime emissions of greenhouse gases, including, but not limited to:

A. Transit planning or studies by the Department of Transportation or the Maine Turnpike Authority, including planning for locally administered projects funded by the State;

B. Establishment or amendment of land use districts and standards by the Maine Land Use Regulation Commission or any revisions to its comprehensive land use plan;

C. Administrative or management plans involving use of public buildings, schools and other infrastructure; and

D. Construction standards, procurement criteria or other decisions that can affect energy use and the volume of greenhouse gas emissions by state facilities.

**5. State authority.** "State authority" means:

A. Any state agency;

B. Any state authority, including the University of Maine System, the Maine Maritime Academy and the Maine Community College System; and

C. Any advisory organization, including an authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by executive order issued by the Governor, unless the law, resolve or executive order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this chapter.

**6. Transportation-related greenhouse gas emissions.** "Transportation-related greenhouse gas emissions" means all direct and indirect emissions of greenhouse gas that could reasonably result from the transportation of people and goods associated with a project or activity or with the postconstruction operation of a project or activity.

## **§ 580-I. Reducing energy use and greenhouse gas emissions by state authorities**

**1. State authority energy standards.** A state authority shall establish policies and guidelines to lower overall energy use, lessen the State's reliance on fossil fuels and reduce greenhouse gas emissions consistent with the purposes of this chapter. By January 1, 2011, and every 4 years thereafter, the department, in consultation with other state authorities, shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters summarizing state authorities' efforts to implement the policies and guidelines and the savings and reductions achieved.

**2. Energy criteria for new state infrastructure.** Planning decisions and long-term project decisions finalized by a state authority on or after July 1, 2012 must incorporate measures to lower overall energy use, lessen the State's reliance on fossil fuels and reduce greenhouse gas emissions consistent with the purposes of this chapter. In determining such measures, a state authority shall consider net lifetime energy use and greenhouse gas emissions, including energy-related greenhouse gas emissions and transportation-related greenhouse gas emissions, and shall seek to achieve the greatest energy savings and emissions reductions possible after consideration of available funding and expected annual operating costs and savings.

## **§ 580-J. Energy efficient development**

**1. General standard.** Developments or activities subject to approval pursuant to section 483-A may not result in or contribute to unreasonable emissions of greenhouse gases. In making a determination under this subsection, the department may consider factors related to the design, construction and operation of the development, including, but not limited to, land use, building materials and building energy usage, energy efficiency and weatherization.

The department may specify de minimis thresholds or types of projects or elements of developments or activities that do not require approval under this subsection. The department may also establish qualified measures to demonstrate presumptive compliance with the standard established in this subsection. The department may exclude projects or facilities subject to federal greenhouse gas requirements. Industrial processes, forestry and agricultural activities are not subject to review under this section.

**2. Mitigation.** In determining whether a development or activity will result in unreasonable emissions of greenhouse gases, the department may consider mitigation of emissions of greenhouse gases. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for emissions of greenhouse gases. The department may require that compensation for unavoidable emissions of greenhouse gases includes the design, implementation and maintenance of a greenhouse gas offset compensation project or may allow the applicant to pay a greenhouse gas compensation fee.

**A.** The department may establish a compensation fund for the purpose of receiving compensation fees other than those paid directly to a state entity as provided in paragraph B, grants and other related income under this section. Income received under this paragraph must be deposited to the credit of the compensation fund and may be invested as provided by law. Interest on these investments must be credited to the compensation fund. The department may make payments from the compensation fund consistent with the purpose of the fund. A project that is funded in whole or in part from the

compensation fund must be approved by the department, except that the department may transfer to or deposit greenhouse gas compensation funds with the Energy and Carbon Savings Trust established under Title 35-A, section 10008 for use in energy conservation and efficiency projects that do not require approval by the department.

B. The department may require that all or a portion of a greenhouse gas compensation fee be paid directly to a state entity designated by the department for use in energy efficiency and conservation projects that do not require approval by the department.

**3. Major substantive rulemaking.** The department shall coordinate with the Maine Land Use Regulation Commission and, after consultation with members of the public and representatives of industry and commercial, residential and institutional development, shall jointly with the Maine Land Use Regulation Commission, in accordance with Title 12, section 685-B, subsection 4-C, paragraph C, initiate rulemaking that implements this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The rules may include but are not limited to the following:

A. Thresholds or types of projects or elements of developments or activities that have a de minimis amount of greenhouse gas emissions and will not require review by the department under the standard in this section;

B. Categories of developments or activities that are exempt from the standard in this section, such as, but not limited to, certain categories of industrial development, industrial processes, expansions of existing facilities subject to reporting requirements, forestry, agriculture and those developments or activities subject to federal greenhouse gas requirements;

C. A list of qualified measures that when included in the design of a development or activity, as demonstrated by an applicant, means the development or activity meets the standard in this section. The rules may require that an applicant demonstrate the design includes the qualified measure. The qualified measures may relate to the design, construction and operation of buildings and structures and may include the use of energy-efficient designs, such as the United States Environmental Protection Agency's Energy Star standards, or nationally recognized energy and environmental design rating systems; active and passive renewable energy systems; construction materials and practices; and site clearing or land management;

D. Provisions that enable applicants to propose and use other measures that reduce lifetime net energy use and greenhouse gas emissions; and

E. Provisions that include mitigation requirements for those developments or activities associated with the long-term conversion of undeveloped land and the associated loss of biological carbon sequestration. These requirements may include mitigation through an on-site or off-site compensation, through natural biological carbon sequestration, such as forestry or agricultural offsets, or energy efficiency projects. The department may also establish a fee program to allow payment of a fee when mitigation of greenhouse gas emissions is not practicable for an applicant or when an applicant prefers to pay a fee rather than provide on-site or off-site compensation.

**4. Application date.** The requirements of subsections 1 and 2 do not apply to developments and activities before the department finally adopts rules pursuant to subsection 3.

**Sec. A-2. Reports on rules, implementation and fees.**

1. By January 7, 2010, the Department of Environmental Protection, in coordination with the Maine Land Use Regulation Commission, shall submit to the Joint Standing Committee on Natural Resources a report on the status of rulemaking required pursuant to the Maine Revised Statutes, Title 38, section 580-J, subsection 3, including a draft definition of "unreasonable emissions of greenhouse gases." The committee is authorized to report out legislation related to the report to the Second Regular Session of the 124th Legislature.

2. By January 7, 2011, the Department of Environmental Protection shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report that addresses the rules required pursuant to the Maine Revised Statutes Title 38, section 580-J, subsection 3 and related information. The department's report must include an analysis of the implementation of the qualified measures and other requirements and a schedule of reasonable fees sufficient to cover the department's cost of administering the rules. The committee is authorized to report out legislation relating to the report to the First Regular Session of the 125th Legislature.

**Sec. A-3. Appropriations and allocations.** The following appropriations and allocations are made.

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

**Mitigation Compensation Fund N082**

Initiative: Provides base allocation for the creation of a mitigation compensation fund.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
All Other	\$500	\$500
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<hr/> \$500	<hr/> \$500

**PART B**

**Sec. B-1. 12 MRSA §685-B, sub-§4, ¶E,** as amended by PL 2007, c. 661, Pt. C, §3, is further amended to read:

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

**Sec. B-2. 12 MRSA §685-B, sub-§4, ¶F,** as enacted by PL 1973, c. 569, §11, is amended to read:

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; and

**Sec. B-3. 12 MRSA §685-B, sub-§4, ¶G** is enacted to read:

G. In the case of a subdivision permit application submitted pursuant to subsection 1, paragraph B or a development permit application submitted pursuant to subsection 1, paragraph C that would be reviewed under Title 38, section 483-A if the development were located in an organized area, the proposed activity does not result in or contribute to unreasonable emissions of greenhouse gases.

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

**4-C. Energy efficient development.** This subsection applies to applications reviewed under subsection 4, paragraph G.

A. In making a determination under subsection 4, paragraph G of whether the proposed activity does not result in or contribute to unreasonable emissions of greenhouse gases, the commission may consider factors related to the design, construction and operation of the development, including, but not limited to, land use, building materials and building energy usage, energy efficiency and weatherization.

The commission may specify de minimis thresholds or types of projects or elements of developments or activities that do not require approval under this subsection. The commission may also establish qualified measures to demonstrate presumptive compliance with the standard under subsection 4, paragraph G. The commission may exclude projects or facilities subject to federal greenhouse gas requirements. Industrial processes, forestry and agricultural activities are not subject to review under this subsection.

B. In determining whether a development or activity will result in unreasonable emissions of greenhouse gases, the commission may consider mitigation of emissions of greenhouse gases and require compensation consistent with Title 38, section 580-J, subsection 2. Income received under this subsection must be deposited to the credit of the compensation fund established pursuant to Title 38, section 580-J, subsection 2, paragraph A.

C. The commission shall coordinate with the Department of Environmental Protection and, after consultation with members of the public and representatives of industry and commercial, residential and institutional development, shall, jointly with the Department of Environmental Protection, in accordance with Title 38, section 580-J, subsection 3, initiate rulemaking that implements subsection 4, paragraph G. The rules may include but are not limited to the items listed in Title 38, section 580-J, subsection 3. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

D. The requirements of paragraphs A and B and subsection 4, paragraph G do not apply to developments and activities before the commission finally adopts rules pursuant to paragraph C.

**Sec. B-5. Report on rules, implementation and fees.** By January 7, 2011, the Maine Land Use Regulation Commission shall submit a report that addresses the rules required pursuant to the Maine Revised Statutes, Title 12, section 685-B, subsection 4-C and related information to the joint standing committee of the Legislature having jurisdiction over conservation matters and to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The commission's report must include an analysis of the implementation of the qualified measures and other requirements and a schedule of reasonable fees sufficient to cover the commission's cost of administering the rules. The joint standing committee of the Legislature having jurisdiction over conservation matters is authorized to report out legislation to the 125th Legislature related to the report.

## PART C

**Sec. C-1. 30-A MRSA §4312, sub-§3, ¶I,** as enacted by PL 1989, c. 104, Pt. A, §45 and enacted by Pt. C, §10, is amended to read:

I. To preserve the State's historic and archeological resources; and

**Sec. C-2. 30-A MRSA §4312, sub-§3, ¶J,** as enacted by PL 1989, c. 104, Pt. A, §45 and enacted by Pt. C, §10, is amended to read:

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters; and

**Sec. C-3. 30-A MRSA §4312, sub-§3, ¶K** is enacted to read:

K. To protect state resources from climate change by reducing emissions of greenhouse gases from the transportation and development sectors.

**Sec. C-4. 38 MRSA §480-Q, sub-§2, ¶B,** as repealed and replaced by PL 1995, c. 27, §1, is amended to read:

B. Crossings do not block passage for fish passages or other aquatic organisms in water courses. Culverts and installation techniques utilized must achieve natural stream flow;

**Sec. C-5. 38 MRSA §480-Q, sub-§2-A,** as amended by PL 1993, c. 315, §2, is further amended to read:

**2-A. Existing road culverts.** In any protected natural resource area, a permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing culvert, as long as the replacement culvert is:

B. Not more than 25% longer than the culvert being replaced; and

C. Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this subsection shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block passage for fish passage in the water course or passage for other aquatic organisms in the water course if passage for fish is required under this subsection. Replacement culverts and techniques used in installing the culverts must achieve natural stream flow.

**Sec. C-6. Fish passage rules.** The Department of Environmental Protection shall amend its rules, Chapter 305, Permit By Rule to require municipalities to achieve natural stream flow when they are repairing or maintaining roads or stream crossings. The amendments must establish standards that ensure:

1. Adequate flow during high water conditions;
2. Upstream and downstream movement for aquatic organisms and downstream and lateral movement of materials;
3. Vertical gradient that matches up and down stream; and
4. Horizontal alignment that matches up and down stream.

**Sec. C-7. Local and regional planning.** The Executive Department, State Planning Office shall review and update its rules, standards and guidelines governing local and regional planning activities to incorporate best practices to reduce the climate change effects on and resulting from those activities. The State Planning Office shall complete the required updates by January 1, 2011, except that, in any case involving changes to major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, the State Planning Office shall submit provisionally adopted rules with the required updates to the Legislature by January 1, 2011.

**Sec. C-8. Rules.** Rules adopted pursuant to or to implement the provisions of this Part are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature by January 1, 2011 for review by the joint standing committee of the Legislature having jurisdiction over natural resources matters.'

## SUMMARY

This amendment is the majority report of the Joint Standing Committee on Natural Resources. The amendment strikes the provisions in the bill that require reviews of climate effects in state planning and project decisions and replaces those provisions with a requirement for state authorities to establish policies and guidelines to lower overall energy use, lessen the State's reliance on fossil fuels and reduce greenhouse gas emissions and a requirement that state authorities incorporate energy criteria in planning and long-term project decisions. The amendment strikes the provisions in the bill that require review of climate effects in state licensing decisions and replaces those provisions with a requirement that developments in the organized areas of the State that are subject to approval under the site location of development law and developments in the unorganized territories that would be subject to the site location of development law if the development was in an organized area of the State may not result in or contribute to unreasonable emissions of greenhouse gases, and it requires the Department of Environmental Protection and the Maine Land Use Regulation Commission to adopt major substantive rules. It authorizes the establishment of



a mitigation compensation fund. The amendment requires the Department of Environmental Protection and the Maine Land Use Regulation Commission to submit an interim report by January 7, 2010 and final reports by January 7, 2011 related to the major substantive rulemaking. This amendment adds an appropriations and allocations section to the bill.

The amendment retains, with changes, provisions in the bill that:

1. Add the protection of state resources from climate change to the goals of the growth management program;
2. Amend exceptions in the Natural Resources Protection Act for the maintenance and repair of stream crossings and of existing road culverts; and
3. Require the Department of Environmental Protection to amend its rules to require municipalities to achieve natural stream flow and upstream and downstream passage of aquatic organisms when repairing or maintaining roads and stream crossings.

**FISCAL NOTE REQUIRED**

**(See attached)**