An Act To Improve Maine's Economy and Lower Energy Costs through Energy Efficiency

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

Presented by Senator BOYLE of Cumberland.
Cosponsored by Representative RUSSELL of Portland and Senators: President ALFOND of Cumberland, CAIN of Penobscot, CLEVELAND of Androscoggin, SAVIELLO of Franklin, Representatives: DUNPHY of Embden, Speaker EVES of North Berwick, GIDEON of Freeport, HUBBELL of Bar Harbor, NOON of Sanford.
Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 35-A MRSA §3210-C, sub-§12, as enacted by PL 2011, c. 413, §3, is repealed.

Sec. A-2. 35-A MRSA §10104, sub-§4, ¶A, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

A. The triennial plan must be developed by the trust, in consultation with entities and agencies engaged in delivering efficiency programs in the State, to authorize and govern or coordinate implementation of energy efficiency and weatherization programs in the State. The triennial plan must identify all achievable cost-effective energy efficiency savings and related programs that could be implemented pursuant to sections 10110 and 10111, the costs and benefits of such programs and the basis and support for such identified costs and benefits. The trust shall conduct an evaluation of all the cost-effective potential for electrical and natural gas energy efficiency savings in the State at least once every 5 years.

(1) Transmission and distribution utilities and natural gas utilities shall furnish data to the trust that the trust requests under this subsection subject to such confidential treatment as a utility may request and the board determines appropriate pursuant to section 10106. The costs of providing the data are deemed reasonable and prudent expenses of the utilities and are recoverable in rates.

Sec. A-3. 35-A MRSA §10104, sub-§4, ¶D, as amended by PL 2009, c. 518, §8, is further amended to read:

D. Prior to submission of the triennial plan to the commission, the trust shall offer to provide a detailed briefing on the draft plan to the joint standing committee of the Legislature having jurisdiction over energy matters and, at the request of the committee, shall provide such a briefing and opportunity for input from the committee. After providing such opportunity for input and making any changes as a result of any input received, the board shall deliver the plan to the commission for its review and approval. The commission shall open an adjudicatory proceeding and issue an order either approving the plan and issuing the appropriate orders to transmission and distribution utilities and gas utilities or rejecting the plan and stating the reasons for the rejection. The commission shall reject elements of the plan that propose to use funds generated pursuant to sections 3210-C, 10109, 10110, 10111 or 10119 if the plan fails to reasonably explain how these elements of the program would achieve the objectives and implementation requirements of the programs established under those sections or the measures of performance under subsection 3. Funds generated under these statutory authorities may not be used pursuant to the triennial plan unless those elements of the plan proposing to use the funds have been approved by the commission. The commission shall approve or reject any all elements of the triennial plan shown to be cost-effective and shall incorporate into rates sufficient revenue to procure energy efficiency resources identified within the
plan pursuant to section 10110, subsection 4-A and section 10111, subsection 2 within 60-120 days of its delivery to the commission. The board, within 45-30 days of final commission approval of its plan, shall submit the plan to the joint standing committee of the Legislature having jurisdiction over energy matters together with any explanatory or other supporting material as the committee may request and, at the request of the committee, shall provide a detailed briefing on the final plan. After receipt of the plan, the joint standing committee of the Legislature having jurisdiction over energy matters may submit legislation relating to the plan.

Sec. A-4. 35-A MRSA §10110, sub.§2, ¶B, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

B. The trust, with regard to the assessment imposed under subsection 4 funds available to the trust, shall:

(1) Target at least 20% 10% of funds electric conservation for ratepayers or $2,600,000, whichever is greater, to programs for low-income residential consumers, as defined by the board by rule;

(2) Target at least 20% 10% of funds electric conservation for ratepayers or $2,600,000, whichever is greater, to programs for small business consumers, as defined by the board by rule; and

(3) To the greatest extent practicable, apportion remaining funds among customer groups and geographic areas in a manner that allows all other customers to have a reasonable opportunity to participate in one or more conservation programs.

Sec. A-5. 35-A MRSA §10110, sub.§4, as enacted by PL 2009, c. 372, Pt. B, §3, is repealed.

Sec. A-6. 35-A MRSA §10110, sub.§4-A is enacted to read:

4-A. Procurement of all cost-effective energy efficiency resources. The commission shall ensure that electric ratepayers in the State procure all energy efficiency resources found by the commission to be cost-effective, reliable and achievable pursuant to section 10104, subsection 4. The procurement of cost-effective energy efficiency resources is a just and reasonable element of rates. The commission may issue any appropriate orders to transmission and distribution utilities necessary to achieve the goals of this subsection. In determining the amount of cost-effective efficiency resources that must be procured by electric ratepayers, the commission shall give consideration to energy efficiency resources that are reasonably foreseeable to be achieved by the trust through all other sources of revenue, including but not limited to the Regional Greenhouse Gas Initiative Trust Fund under section 10109.

Sec. A-7. 35-A MRSA §10110, sub.§5, as amended by PL 2009, c. 518, §10, is repealed.

Sec. A-8. 35-A MRSA §10110, sub.§6, as enacted by PL 2009, c. 372, Pt. B, §3, is repealed.
Sec. A-9. 35-A MRSA §10110, sub-§8, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

8. Conservation administration fund. The trust shall establish a conservation administration fund to be used solely to defray administrative costs. The commission, at the direction of the trust, may annually deposit funds collected pursuant to this section into the administration fund up to a maximum in any fiscal year of up to 9% of total funds received pursuant to subsections 4 and 5. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year must either remain in the administration fund to be used to defray administrative costs or be transferred to the program fund.

Sec. A-10. 35-A MRSA §10110, sub-§10, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

10. Funds held in trust. All funds collected from electricity consumers pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting electricity consumers. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall require the trust to return the value of those funds to consumers by appropriate reductions in the assessment collected pursuant to subsection 4.

Sec. A-11. 35-A MRSA §10120, sub-§3, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

3. Oversight and evaluation fund. The commission may establish an oversight and evaluation fund to be used solely to defray the commission's projected costs of overseeing ongoing oversight of the trust, including but not limited to reviewing the trust's calculation of program costs and benefits, measurement and verification procedures and program evaluations and reviewing and approving the triennial plan and contracting. The commission may use funds to contract with expert 3rd-party resources to provide technical assistance or impartial evaluation of the performance of energy efficiency programs administered by the trust. The commission may assess the trust an amount not to exceed 1% of the total funds administered by the trust, and the trust shall transfer that amount to the commission to be deposited into the oversight and evaluation fund. Any interest on funds in the oversight and evaluation fund must be credited to the oversight and evaluation fund and any funds unspent in any fiscal year must either remain in the oversight and evaluation fund to be used for the purposes specified in this subsection or be transferred to the trust for deposit in appropriate program funds.

PART B

Sec. B-1. 35-A MRSA §10119, sub-§1-A is enacted to read:

1-A. Voluntary heating fuel efficiency and weatherization payment; antitrust exception. The trust may collect a voluntary heating fuel efficiency and weatherization payment pursuant to this subsection.
A. The payment must be made voluntarily.

B. The voluntary payment must be made at the wholesale level and based on each barrel of #2 heating oil or kerosene or an equivalent amount of propane that is:

1. Transferred by a terminal facility licensed pursuant to Title 38, section 545;
2. First transported into this State by a person required to register pursuant to Title 38, section 545-B; or
3. First transported into this State by a vendor of propane or kerosene.

C. The voluntary payment is established by agreement of oil, kerosene and propane dealers in this State but is limited to up to 2% of the average retail price paid for each gallon of #2 heating oil or kerosene or the equivalent amount of propane during the previous calendar year.

D. The voluntary payment must be collected for at least 90% of the #2 heating oil, kerosene and propane supplied in this State.

The trust shall deposit any voluntary payment received pursuant to this subsection in the fund. Annually, the trust shall transfer to the fund an amount from the Regional Greenhouse Gas Initiative Trust Fund that is equivalent to the amount of any voluntary payments received pursuant to this subsection during the same time period.

Notwithstanding any law to the contrary, the agreement of oil, kerosene and propane dealers to make a voluntary payment pursuant to this subsection and to agree on the amount of the voluntary payment is not considered to be a conspiracy, a combination in restraint of trade, an illegal monopoly or an attempt to lessen competition, in order to fix prices arbitrarily or to create a combination or pool in violation of any law of this State.

An agreement or contract between the oil, kerosene and propane dealers authorized in this subsection is not considered to be illegal, in restraint of trade or contrary to any statute enacted against pooling or combinations.

**Sec. B-2.** 35-A MRSA §10119, sub-§2, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

**2. Program.** All funds deposited in the fund must be administered by the trust in accordance with the following.

A. All funds deposited in the fund must be administered by the trust to reduce heating fuel consumption consistent with the purpose and targets of the trust and the triennial plan to achieve the following goals: targets in section 10104, subsection 4, paragraph F.

1. By 2030, to provide cost-effective energy efficiency and weatherization measures to substantially all homes and businesses whose owners wish to participate in programs established by the trust under this section.

B. Funds from the fund may be used only for programs that provide cost-effective energy efficiency and weatherization measures for the benefit of heating fuel customers or to efficiency service providers serving those customers and in accordance with the following.
(1) Program categories must include low-income, single-family and 2-family residential units, multifamily residential units, small business, commercial and institutional and such other categories as the trust determines appropriate;

(2) Within program categories, the trust may differentiate between programs for new construction and existing buildings; and

(3) Cost-effective energy efficiency measures must include measures that improve the energy efficiency of the building envelope and its energy-using systems, such as heating and cooling systems, through building weatherization and system upgrades or conversions, including conversions to energy-efficient systems that rely on renewable energy sources or systems that rely on effective energy efficiency technologies.

C. Program designs approved by the trust may contain:

(1) Incentives to consumers to purchase and install cost-effective efficiency and weatherization products and services identified by a certified energy auditor, except in the case of programs to deliver education, training or certifications;

(2) A schedule of customer copayments and loan options for prescribed products and services. Programs for low-income consumers may provide exemptions from the copayment and schedule;

(3) A plan for integrating delivery of heating fuel efficiency and weatherization measures with electric efficiency measures; and

(4) A system for the equitable allocation of costs among the contributing funds or subaccounts administered by the trust when more than one efficiency opportunity is identified.

D. Other eligible program measures may include, but are not limited to, training or certification of energy auditors, insulation installers, mechanical heating system installers and maintenance technicians and building energy inspectors.

E. The trust shall ensure that during any fiscal year at least 20% of funds authorized in this section are spent on programs for low-income residential consumers, as defined by the trust by rule.

PART C

Sec. C-1. 35-A MRSA §3105 is enacted to read:

§3105. Rate-making treatment for fuel conversions

A transmission and distribution utility may not recover costs from ratepayers for grants offered to customers for a fuel conversion. The commission shall allow a transmission and distribution utility to use shareholder funds for grants or loans for fuel conversions as long as the following conditions are met:

1. Energy assessment. The building to be converted to electricity has received an energy assessment that identifies for the building owner the cost-effectiveness of the fuel
conversion along with other energy measures, including but not limited to weatherization; and

2. **Consultation with Efficiency Maine Trust.** The fuel conversion program has been developed in consultation with and agreement by the Efficiency Maine Trust under chapter 97. In developing the program, there must be coordinated communication with ratepayers regarding both fuel conversion and energy efficiency programs, including incentives offered by the Efficiency Maine Trust for energy efficiency measures.

If the transmission and distribution utility provides on-bill financing for which the costs of that financing are recoverable through rates, financing must also be made available for energy efficiency measures.

For purposes of this section, "fuel conversion" means the conversion of a primary heating or cooling system from one type of fuel to another. For purposes of this section, "on-bill financing" means periodic financing payments for the loan that are included on the ratepayer's bill for the utility service that is issued by the transmission and distribution utility.

**Sec. C-2. 35-A MRSA §4713** is enacted to read:

§4713. **Rate-making treatment for fuel conversions**

A natural gas utility may not recover costs from ratepayers for grants offered to customers for a fuel conversion. The commission shall allow a utility to use shareholder funds for grants or loans for fuel conversions as long as the following conditions are met:

1. **Energy assessment.** The building to be converted to natural gas has received an energy assessment that identifies for the building owner the cost-effectiveness of the fuel conversion along with other energy measures, including but not limited to weatherization; and

2. **Consultation with Efficiency Maine Trust.** The fuel conversion program has been developed in consultation with and agreement by the Efficiency Maine Trust under chapter 97. In developing the program, there must be coordinated communication with ratepayers regarding both fuel conversion and energy efficiency programs, including incentives offered by the Efficiency Maine Trust for energy efficiency measures.

If the natural gas utility provides on-bill financing for which the costs of that financing are recoverable through rates, financing must also be made available for energy efficiency measures.

For purposes of this section, "fuel conversion" means the conversion of a primary heating or cooling system from one type of fuel to another. For purposes of this section, "on-bill financing" means periodic financing payments for the loan that are included on the ratepayer's bill for the utility service that is issued by the natural gas utility.

**Sec. C-3. 35-A MRSA §10111, sub-§1**, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:
1. Program established. In accordance with the goals and objectives of the triennial plan, the trust shall establish a cost-effective conservation program to promote the efficient use of natural gas. Each gas utility in the State that serves at least 5,000 residential customers shall contribute data and other relevant information to assist in the development of the program. In determining whether the program is cost-effective, the trust may consider whether it promotes sustainable economic development or reduces greenhouse gas emissions to the extent the trust can quantify or otherwise reasonably identify such effects. The trust shall seek to encourage efficiency in natural gas use, provide incentives for the development of new, energy-efficient business activity in the State and take into account the cost and benefits of energy efficiency and conservation to existing business activity in the State.

A. The trust shall consider, without limitation, a natural gas conservation program that:

(1) Increases consumer awareness of cost-effective options for conserving energy;

(2) Creates more favorable market conditions for the increased use of efficient products and services; and

(3) Promotes sustainable economic development and reduces environmental damage;

(4) Maximizes investments in energy efficiency associated with significant expansion of natural gas systems in the State, including but not limited to the energy efficiency of natural gas heating systems and building envelopes.

B. The trust shall apportion available funds such that:

(1) A reasonable percentage of the available funds is directed to programs for low-income residential consumers, as defined by the trust. The trust shall establish the percentage based on an assessment of the opportunity for cost-effective conservation measures for such consumers, including an assessment of the number of low-income residential consumers that may be eligible for such programs;

(2) A reasonable percentage of the available funds is directed to programs for small business consumers, as defined by the trust. The trust shall establish the percentage based on an assessment of the opportunity for cost-effective conservation measures for such consumers. In defining "small business" for the purposes of this subparagraph, the trust shall consider definitions of that term used for other programs in this State that assist small businesses; and

(3) To the greatest extent practicable, the remaining available funds are apportioned in a manner that allows all other consumers to have a reasonable opportunity to participate in one or more conservation programs.

Sec. C-4. 35-A MRSA §10111, sub-§2, as amended by PL 2011, c. 637, §7, is further amended to read:

2. Funding level. The natural gas conservation fund, which is a nonlapsing fund, is established to carry out the purposes of this section. The commission shall assess each
gas utility that serves at least 5,000 residential customers an amount that is no less than 3% of the gas utility’s delivery revenues as defined by commission rule. In accordance with the triennial plan, the commission may assess a higher amount an amount necessary to capture all cost-effective energy efficiency that is achievable and reliable. All amounts collected under this subsection must be transferred to the natural gas conservation 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.

The assessments charged to gas utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of gas utilities.

All funds collected pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting natural gas consumers served by the gas utilities assessed under this subsection. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall return the value of those funds to consumers by appropriate reductions in the assessment collected pursuant to this subsection.

Rules adopted by the commission under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

PART D

Sec. D-1. 35-A MRSA §10104, sub-§4, ¶C, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of the trustees upon a finding that the plan is consistent with the statutory authority for each source of funds that will be used to implement the plan, advances the state energy efficiency targets in paragraph F and reflects the best practices of program administration under subsection 2. The plan must include, but is not limited to, efficiency and conservation program budget allocations, objectives, targets, measures of performance, program designs, program implementation strategies, timelines and other relevant information.

Sec. D-2. 35-A MRSA §10104, sub-§4, ¶F, as amended by PL 2009, c. 518, §8, is repealed and the following enacted in its place:

F. It is an objective of the triennial plan to design, coordinate and integrate sustained energy efficiency and weatherization programs that are available to all energy consumers in the State, regardless of fuel type. The plan must set forth the costs and benefits of energy efficiency programs that substantively advance the following targets and funding necessary to meet those targets. Except where specifically provided in the individual targets, the trust may consider expected savings from market effects not attributable to the trust as well as efforts by other organizations, including but not limited to federally funded low-income weatherization programs:

(1) Substantially all homes willing to participate in and share the costs of cost-effective home weatherization must be brought to a minimum standard of weatherization, as defined by the trust, by 2030:
(2) Electric peak-load demand through trust programs must be reduced by 300 megawatts by 2020;

(3) By 2020, electricity and natural gas program savings of at least 20% and heating fuel savings of at least 20%, as defined in and determined pursuant to the measures of performance ratified by the commission under section 10120, must be achieved;

(4) Stable private sector jobs providing clean energy and energy efficiency products and services in the State must be created by 2020; and

(5) Greenhouse gas emissions from the heating and cooling of buildings in the State must be reduced by amounts consistent with the State's goals established in Title 38, section 576.

The trust shall preserve when possible and appropriate the opportunity for carbon emission reductions to be monetized and sold into a voluntary carbon market. Any program of the trust that supports weatherization of buildings must be voluntary and may not constitute a mandate that would prevent the sale of emission reductions generated through weatherization measures into a voluntary carbon market.

As used in this paragraph, "heating fuel" means liquefied petroleum gas, kerosene or #2 heating oil, but does not include fuels when used for industrial or manufacturing processes.

**PART E**

**Sec. E-1.** 35-A MRSA §10109, sub-§4, ¶A, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

A. During the years 2009-2014, 2015 and 2016, not less than 85% 65% of the trust fund must be allocated for measures, investments and arrangements that reduce electricity consumption, and not more than 15% 35% must be allocated for fossil fuel conservation measures, investments and arrangements. Subject to the apportionment between fossil fuel and electricity conservation pursuant to this subsection, the trust shall fund conservation programs that give priority to measures with the highest benefit-to-cost ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

  (1) Reliably reduce greenhouse gas production by fossil fuel combustion in the State at the lowest cost in funds from the trust fund per unit of emissions; or

  (2) Reliably reduce the consumption of electricity in the State at the lowest cost in funds from the trust fund per kilowatt-hour saved.

**PART F**

**Sec. F-1.** 35-A MRSA §122, sub-§6-B, as enacted by PL 2011, c. 652, §13 and affected by §14, is amended to read:

6-B. **Revenue from energy infrastructure corridors.** Notwithstanding subsection 6-A, 90% 20% of the revenues generated from the use of statutory corridors designated under subsection 1-A, paragraphs A and B owned by the Department of Transportation
within energy infrastructure corridors must be deposited into the Secondary Road Program Fund established in Title 23, section 1803-C and 40% - 80% of the revenues must be deposited into the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

Sec. F-2. 35-A MRSA §10103, sub-§4-A, ¶A, as enacted by PL 2009, c. 655, Pt. B, §4, is amended to read:

A. To ensure the steady transition to energy independence and security for the people, communities, economy and environment of the State in accordance with the triennial plan. In the expenditure of funds pursuant to this paragraph, the trust may provide grants, loans, programs and incentives on a competitive basis. The trust shall apportion the expenditures of funds pursuant to this paragraph in any fiscal year as follows:

(1) Seventy-five percent for cost-effective energy efficiency initiatives; and

(2) Twenty-five percent for cost-effective alternative energy resources initiatives; and

(3) Ten percent for alternative energy resources that may not meet the trust’s modified societal benefit test for cost-effectiveness but increase the State’s energy independence and either meet a participant cost test or foster emerging technologies that could become cost-effective over time.

SUMMARY

This bill changes the structure of the assessment imposed by the Public Utilities Commission for electric efficiency and conservation programs. The bill repeals the base rate of .145¢ per kilowatt hour and instead requires the commission to ensure that all electric ratepayers procure all energy efficiency resources found by the commission to be cost-effective, reliable and achievable and allows the commission to impose any order on transmission and distribution utilities necessary to achieve the energy efficiency savings.

The bill establishes a voluntary heating fuels efficiency and weatherization payment imposed on the transfer of a barrel of #2 heating oil or kerosene or the equivalent amount of propane. The voluntary payment is collected at the wholesale level and may not exceed 2% of the average retail price paid for a gallon of #2 heating oil or its equivalent in the previous year. The Efficiency Maine Trust may not collect the voluntary payment unless it is imposed on 90% of the fuel supplied to the State. The amount of the voluntary payment is set by the fuel dealers; this action is specifically excluded from any state law prohibiting price fixing or collusion. The voluntary payment is deposited in the Heating Fuels Efficiency and Weatherization Fund and is matched by an equivalent transfer by the Efficiency Maine Trust from the Regional Greenhouse Gas Initiative Trust Fund.

The bill prohibits transmission and distribution utilities and natural gas utilities from recovering costs from ratepayers for grants offered to a customer for fuel conversion of the customer’s primary heating or cooling system and allows the utility to use shareholder funds for grants or loans for fuel conversions under certain circumstances.
The bill requires that, during 2014, 2015 and 2016, at least 65% of the Regional Greenhouse Gas Initiative Trust Fund must be allocated for measures, investments and arrangements that reduce electricity consumption, and not more than 35% must be allocated for fossil fuel conservation measures, investments and arrangements. The bill decreases the percentage of revenue generated from the use of energy efficiency corridors owned by the Department of Transportation that is deposited into the Secondary Road Program Fund from 90% to 20% and increases the percentage of revenue deposited in the energy infrastructure benefits fund from 10% to 80%.