

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 1251 - L.D. 1757

**An Act To Clarify Certain Standards for the Efficiency Maine Trust's
Triennial Plan**

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

Whereas, it is necessary that this legislation take effect prior to the start of the next fiscal year for the Efficiency Maine Trust to remove uncertainty and prevent market disruption for Maine contractors, vendors and customers; 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:

Sec. 1. 30-A MRSA §4706, sub-§2, ¶D, as amended by PL 1993, c. 175, §3, is further amended to read:

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; ~~and~~

Sec. 2. 30-A MRSA §4706, sub-§2, ¶E, as enacted by PL 1993, c. 175, §4, is amended to read:

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D-; and

Sec. 3. 30-A MRSA §4706, sub-§2, ¶F is enacted to read:

F. The Maine State Housing Authority may provide records to the Efficiency Maine Trust pursuant to Title 35-A, section 10104, subsection 4, paragraph A, subparagraph (2).

Sec. 4. 35-A MRSA §10104, sub-§3, as amended by PL 2013, c. 369, Pt. A, §9, is further amended to read:

3. Performance metrics. The trust shall develop quantifiable ~~measures of~~ performance metrics for all programs it administers and to which it will hold accountable all recipients of funding from the trust and recipients of funds used to deliver energy and energy efficiency and weatherization programs administered or funded by the trust. Such ~~measures~~ performance metrics may include, but are not limited to, reduced energy consumption, increased use of alternative energy resources, reduced heating costs, reduced capacity demand for natural gas, electricity and fossil fuels, reduced carbon dioxide emissions, program and overhead costs and cost-effectiveness, the number of new jobs created by the award of trust funds, the number of energy efficiency trainings or certification courses completed and the amount of sales generated.

Sec. 5. 35-A MRSA §10104, sub-§4, as amended by PL 2013, c. 369, Pt. A, §§10 to 13, is further amended to read:

4. Triennial plan. The board shall vote on a detailed, triennial, ~~energy efficiency, alternative energy resources and conservation~~ plan that includes the quantifiable ~~measures of~~ performance metrics developed under subsection 3 and make a full report of the vote to the commission in accordance with this subsection. The triennial plan must provide integrated planning, program design and implementation strategies for all energy efficiency, alternative energy resources and conservation programs administered by the trust, including but not limited to the electric efficiency and conservation programs under section 10110, the natural gas efficiency and conservation programs under section 10111, the Regional Greenhouse Gas Initiative Trust Fund under section 10109, the Heating Fuels Efficiency and Weatherization Fund under section 10119 and any state or federal funds or publicly directed funds accepted by or allocated to the trust for the purposes of this chapter. The triennial plan must include provisions for the application of appropriate program funds to support workforce development efforts that are consistent with and promote the purposes of the trust. ~~Beginning January 1, 2011, the triennial plan must specify the appropriate participation of the State in national and regional carbon markets.~~ The plan must ~~be consistent with~~ take into consideration the comprehensive state energy plan pursuant to Title 2, section 9, subsection 3, paragraph C. The plan must include, but is not limited to, efficiency and conservation program budget allocations, objectives, targets, performance metrics, program designs, program implementation strategies, timelines and other relevant information.

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 the maximum achievable cost-effective energy efficiency savings, as defined by rule by the trust, 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 maximum cost-effective potential for electrical and natural gas energy efficiency savings in the State at least once every ~~5~~ 3 years.

(1) Transmission and distribution utilities and natural gas utilities shall furnish data to the trust that the trust requests under this subsection to develop and implement the triennial plan or conduct the evaluation of all cost-effective potential for electrical and natural gas energy efficiency savings 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.

(2) Unless prohibited by federal law, the Maine State Housing Authority and the Department of Health and Human Services shall furnish to the trust data pertaining to the identity, location and contact information, but not including income or asset information, of households that qualify for low-income programs, as determined necessary by the trust to develop and implement the triennial plan and to evaluate program effectiveness. Data received pursuant to this subparagraph is deemed to be received by the commission and is subject to a protective order issued by the commission pursuant to section 1311-A.

B. In developing the triennial plan, the staff of the trust shall consult the board and provide the opportunity for the board to provide input on drafts of the plan.

B-1. In developing the triennial plan, the trust shall provide the joint standing committee of the Legislature having jurisdiction over energy matters an opportunity to provide input on the plan, which may occur at the same time the trust consults with other entities in the development of the plan.

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 ~~and is consistent with the provisions of this section.~~ ~~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.~~

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~~ At the request of the trust or any party to the triennial plan, 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 to review the triennial plan. If an adjudicatory proceeding is not requested, the commission may use an adjudicatory proceeding or other process to review the

triennial plan. The commission shall review the triennial plan to determine whether it will capture the maximum achievable cost-effective energy efficiency savings. In conducting the review, the commission shall defer to the trust's calculations of energy savings as long as the calculations were conducted consistent with rules of the trust and are supported by evidence in the record and the trust used a reasonable and transparent process to make the technical determinations necessary to make those calculations. The commission shall reject elements of the plan that propose to use funds generated pursuant to sections 3210-C, 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 metrics under subsection 3. If the commission approves the triennial plan, the commission shall issue the appropriate orders to transmission and distribution utilities and natural gas utilities for the procurement of energy efficiency resources identified within the plan pursuant to section 10110, subsection 4-A and section 10111, subsection 2. If the commission rejects the triennial plan, the commission shall issue an order stating the reasons for the rejection. 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 all elements of the triennial plan it determines to be cost-effective, reliable and achievable and shall incorporate into gas utility and transmission and distribution rates sufficient revenue to provide for the procurement of energy efficiency resources identified within the plan pursuant to section 10110, subsection 4-A and section 10111, subsection 2.~~ The commission shall approve or reject the entire plan or elements of the plan within 120 days of its delivery to the commission. The board, within 30 days of final commission approval of ~~its~~ the triennial plan, shall submit the triennial 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~~ triennial plan. After receipt of the triennial plan, the joint standing committee of the Legislature having jurisdiction over energy matters may submit legislation relating to the triennial plan.

E. The trust shall determine the period to be covered by the triennial plan except that the period of the plan may not interfere with the delivery of any existing contracts to provide energy efficiency services that were previously procured pursuant to efficiency and conservation programs administered by the commission.

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 and to users of all fuel types. The plan must set forth the costs and benefits of energy efficiency programs that advance the following goals; and funding necessary to meet those goals:

- (1) Reducing energy costs, including residential heating costs;
- (2) Weatherizing substantially all homes whose owners or occupants are willing to participate in and share the costs of cost-effective home weatherization to a minimum standard of weatherization, as defined by the trust, by 2030;

(3) Reducing peak-load demand for electricity through trust programs by 300 megawatts by 2020;

(4) By 2020, achieving 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~~ metrics approved by the commission under section 10120;

(5) Creating stable private sector jobs providing alternative energy and energy efficiency products and services in the State by 2020; and

(6) ~~Reducing~~ Contributing to the effort to reduce greenhouse gas emissions ~~from the heating and cooling of buildings~~ in the State by amounts consistent with the State's goals greenhouse gas emission levels 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.~~

~~Except when specifically provided in the individual goals under this paragraph, 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.~~

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.

G. After the triennial plan is approved, the trust or any party to the triennial plan may petition for, or the commission may initiate on its own, consideration of revising the calculations of avoided energy costs used in the determination of maximum achievable cost-effective energy efficiency resources pursuant to section 10110, subsection 4-A or section 10111, subsection 2 upon a showing that, subsequent to the publication of the avoided energy cost study relied upon, changes in price forecasts would result in more than a 25% change in the value of avoided energy cost affecting a significant portion of the program activity in the triennial plan.

Sec. 6. 35-A MRSA §10104, sub-§5, ¶D, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

D. The performance of the trust and individual programs and program delivery agents or service providers in meeting the objectives, targets and ~~measures of~~ performance metrics approved by the commission and contained in the triennial plan.

Sec. 7. 35-A MRSA §10104, sub-§6, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

6. Updated plans. Within ~~30~~ 90 days of completion of the annual report under subsection 5, the director shall submit to the board an annual update plan describing any significant changes to the triennial plan under subsection 4 related to program budget

allocations, goals, targets, ~~measures~~ of performance metrics, program designs, implementation strategies, timelines and other relevant information for the year ahead for all funds administered and managed by the trust. The director or any contractor, grantee or agency delivering programs may not execute any significant changes until the changes are approved by the board and, in the case of significant changes to programs using funds generated by assessments under this chapter, until the changes are also approved by the commission using the same standard as for the triennial plan.

All annual update plans must be presented to the commission and the joint standing committee of the Legislature having jurisdiction over energy matters.

Sec. 8. 35-A MRSA §10110, sub-§4-A, as amended by PL 2015, c. 255, §1, is further amended to read:

4-A. Procurement of cost-effective energy efficiency and conservation resources.

The commission shall ensure that transmission and distribution utilities on behalf of their ratepayers procure ~~all through the trust~~ the maximum achievable cost-effective electric energy efficiency and conservation resources ~~found by the commission to be cost-effective, reliable and achievable pursuant to section 10104, subsection 4~~, except that the commission may not require the inclusion in rates under this subsection of a total amount that exceeds 4% of total retail electricity and transmission and distribution sales in the State as determined by the commission by rule. The cost of procurement of cost-effective electric energy efficiency and conservation 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. When determining the ~~amount of maximum achievable cost-effective electric energy efficiency resources to be procured under this subsection~~, the commission shall:

A. Consider ~~electric~~ energy efficiency resources that are reasonably foreseeable to be acquired by the trust using all other sources of revenue, including, but not limited to, the Regional Greenhouse Gas Initiative Trust Fund under section 10109;

B. ~~Ensure that~~ Apply the discount rate adopted by the trust and ensure that the calculations of avoided energy costs and the budget identified by the trust in its triennial plan as needed to capture all cost effective electric energy efficiency resources are reasonable, based on sound evidence and make use of best practices across the region; and are consistent with rules adopted by the trust and are supported by evidence in the record. Avoided energy costs must include but are not limited to the following elements:

- (1) Retail value of electricity supply including a wholesale risk premium;
- (2) Statewide average value of avoided marginal transmission and distribution costs;
- (3) Statewide average for line losses; and
- (4) Demand reduction induced price effects.

The trust shall use, and the commission shall give deference to, values for each element of avoided energy cost from a regional avoided energy supply cost study as long as the analysis has been developed through a transparent process, with input

from state agencies, public advocates, utilities or energy efficiency administrators from at least 3 other states in New England and the analysis has been published not more than 24 months prior to the trust's filing of the plan. When values specific to the State are not available in the regional study, the trust may use, and the commission shall give deference to, regional values provided in that regional study or values determined from other sources when supported by evidence in the record; and

C. Maximize total electricity savings for all ratepayers.

The commission shall consider gross efficiency savings for the purpose of determining savings that are cost-effective, reliable and achievable ~~and. The commission shall consider both whether the trust is taking reasonable steps to achieve high net and gross efficiency savings for the purpose of determining the appropriateness of the amount identified by the trust in its triennial plan as needed to capture all cost-effective electric energy efficiency resources, including but not limited to the use of national standard practices as identified by the trust by rule.~~

Rules adopted under this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

Sec. 9. 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~~ cost-effective energy efficiency measures 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.

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. 10. 35-A MRSA §10111, sub-§2, as amended by PL 2017, c. 358, §1, is further amended to read:

2. Natural gas conservation fund; procurement 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, in accordance with the triennial plan, an amount necessary to capture all cost-effective energy efficiency that is achievable and reliable for those consumers who are eligible to receive funds from the natural gas conservation fund~~ ensure that gas utilities on behalf of their ratepayers procure through the trust the maximum achievable cost-effective natural gas energy efficiency and conservation resources pursuant to section 10104, subsection 4. The commission may issue any appropriate order to the gas utilities necessary to achieve the goals of this subsection, including the collection of funds for the procurement of cost-effective energy efficiency resources. The commission shall direct a gas utility that collects any ~~portion of the assessment funds~~ assessment funds under this subsection from a customer that is a large-volume manufacturer and large-volume agricultural business to collect the ~~assessment funds~~ assessment funds only on the first 1,000,000 centum cubic feet of natural gas used by that manufacturer or agricultural business in each year. The limitation on the collection of the ~~assessment funds~~ assessment funds from large-volume manufacturers and large-volume agricultural businesses may not affect the trust's determination of the amount necessary to capture all cost-effective energy efficiency that is achievable and reliable. The limitation does not ~~limit~~ prohibit the eligibility of a large-volume manufacturer or large-volume agricultural business to participate in a natural gas conservation program. 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~~ funds collected from 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 ensure that the value of those funds is returned to consumers.

For purposes of this subsection, "large-volume manufacturer" means a customer that is a gas utility ratepayer engaged in manufacturing in the State and purchases at least 1,000,000 centum cubic feet of natural gas per year. For purposes of this subsection, "large-volume agricultural business" means a customer that is a gas utility ratepayer that purchases at least 1,000,000 centum cubic feet of natural gas per year and is engaged in the commercial growing or harvesting of plants or commercial aquaculture, as defined in Title 12, section 6001, subsection 1, in the State.

When determining the maximum achievable cost-effective natural gas energy efficiency resources, the commission shall apply the discount rate adopted by the trust and ensure that the calculations of avoided energy costs are consistent with rules adopted by the trust and are supported by evidence in the record. Avoided energy costs must include but are not limited to the retail value of natural gas supply including a wholesale risk premium and demand reduction induced price effects. The trust shall use, and the commission shall give deference to, values for each element of avoided energy cost from a regional avoided energy cost study as long as the analysis has been developed through a transparent process, with input from state agencies, public advocates, utilities or energy efficiency administrators from at least 3 other states in New England and the analysis has been published not more than 24 months prior to the trust's filing of the triennial plan. When values specific to the State are not available in the regional study, the trust may use, and the commission shall give deference to, regional values provided in that regional study or values determined from other sources when supported by evidence in the record.

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

Sec. 11. 35-A MRSA §10120, sub-§1, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

1. Performance metrics. The trust shall incorporate ~~measures of~~ performance metrics in the triennial plan. The ~~measures of~~ performance metrics must define the electricity, natural gas and heating fuel savings targets established in section 10104, subsection 4, paragraph F and specify the ~~measures~~ metrics for assessing progress in meeting the targets. The commission shall ratify ~~measures of~~ performance metrics incorporated in the triennial plan if it finds that these ~~measures~~ metrics satisfy the requirements of this chapter, including the principles described in section 10104, subsection 2, and are in the public interest. The commission and the trust may revise one or more of the ~~measures of~~ performance metrics in the triennial plan at any time by mutual agreement.

Sec. 12. 35-A MRSA §10120, sub-§4 is enacted to read:

4. Regional analysis of avoided costs. The commission shall participate in any New England-wide process to establish a common analysis for determining the avoided costs of energy efficiency resources. The commission shall, at a minimum, provide input on the scope of work for any analysis, provide information specific to the State that may be useful for the analysis and review and provide feedback on drafts or other regional

work products. The trust shall pay that portion attributable to the State of the cost of developing an avoided cost analysis. This subsection does not limit the ability of the trust to participate in the development of a regional avoided cost analysis.

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