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Public Law
124th Legislature
First Regular Session

Chapter 200
S.P. 93 - L.D. 276

**An Act To Protect the Integrity of the State's Carbon Dioxide
Budget Trading Program and Auction Process and To Provide
Allocations to the Energy and Carbon Savings Trust Fund**

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

Whereas, the Maine State Legislature enacted the Regional Greenhouse Gas Initiative Act of 2007, or RGGI, which is designed to stabilize and then reduce anthropogenic emissions of carbon dioxide, a greenhouse gas, from large electrical generating sources using a cap-and-trade mechanism; and

Whereas, the cap-and-trade mechanism uses an auction platform to sell state allocations of carbon dioxide allowances that will generate revenue for the State for purposes of electrical and fossil fuel conservation; and

Whereas, RGGI established the Energy and Carbon Savings Trust to oversee the expenditure of auction revenue on cost-effective electrical and fossil fuel conservation measures, investments and arrangements that will provide the citizens of the State with measurable economic and greenhouse gas reduction benefits; and

Whereas, RGGI also established the Energy and Carbon Savings Trust Fund, for the Energy and Carbon Savings Trust, to receive and expend revenue money associated with the auctioned sale of RGGI allowances but did not provide for allocation for receipt and expenditure of the auction revenues within the Energy and Carbon Savings Trust Fund; and

Whereas, the current statutory limit on the administrative costs of the Energy and Carbon Savings Trust may not enable the trust to adequately perform certain functions necessary to ensure that the expenditures from the Energy and Carbon Savings Trust Fund meet the statutory obligations of the trust; and

Whereas, the participating RGGI states conducted an auction in September 2008 and an auction in December 2008, and auctions are expected to continue at quarterly intervals in the future; and

Whereas, this much-needed revenue could be used to decrease electrical and heating energy costs beginning this winter for the State's citizens; and

Whereas, the Governor has declared that emergency conditions exist this winter for many citizens due to the unprecedented increases in petroleum product prices; and

Whereas, in addition, the primary purpose of the RGGI auction platform is to sell the State's allocations of carbon dioxide allowances at prices that are reflective of a competitive market that is free from collusion and market manipulation among the auction participants; and

Whereas, the release of RGGI information specific to any one account holder, including all auction bids and awards, carbon dioxide allowance and carbon dioxide offset allowance holdings and transactions or any applications and financial security information or summaries thereof, has the potential to increase collusive or market manipulative behavior in RGGI auctions; and

Whereas, there is an immediate need to ensure future RGGI auctions will have robust competitive market conditions; and

Whereas, Public Law 2007, chapter 317, section 15 established a system under which the proceeds from the sale of carbon dioxide allowances are returned to electric customers as direct credits on their bills when the price of the allowances in the regional allowance market rises above a statutorily established price ceiling; 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. 35-A MRSA §10008, sub-§5, as amended by PL 2007, c. 695, Pt. A, §42, is further amended to read:

5. Ceiling on energy efficiency spending; rebates to electric ratepayers; rules.

There is established a ceiling on energy efficiency spending from the trust equal to \$5 per carbon dioxide allowance. Until that price ceiling is adjusted or removed, only the first \$5 of each carbon dioxide allowance sold and deposited in the trust fund may be awarded to or directed to qualified projects for purposes of energy efficiency improvements. While the ceiling is in place, revenue received by the trust from an allowance value above \$5 must be transferred to the commission for use by the commission pursuant to sections 301 and 1322 for rebates to electric ratepayers calculated on a per-kilowatt-hour basis. The commission shall adopt rules to implement this subsection. The rules must establish a system under which proceeds from the sale of carbon dioxide allowances may be returned to electric ratepayers as direct credits on their bills at times of heightened price pressure in regional carbon dioxide allowance markets due to an extraordinary circumstance. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 35-A MRSA §10008, sub-§6, ¶G, as amended by PL 2007, c. 608, §2, is repealed and the following enacted in its place:

G. No more than \$800,000 of trust fund receipts in any one year may be used for the costs of administering the trust pursuant to this section. The limit on administrative costs established in this paragraph does not apply to the following costs that may be funded by the trust:

(1) Costs of the Department of Environmental Protection for participating in the regional organization as defined in Title 38, section 580-A, subsection 20 and for administering the allowance auction under Title 38, chapter 3-B; and

(2) Costs of the Attorney General for activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the trust's funding of conservation programs.

Sec. 3. 38 MRSA §580-A, sub-§1-A is enacted to read:

1-A. Account. "Account" means a general account or a compliance account.

Sec. 4. 38 MRSA §580-A, sub-§4, as enacted by PL 2007, c. 317, §17, is amended to read:

4. Carbon dioxide budget unit compliance account or compliance account.

"Carbon dioxide budget unit compliance account" or "compliance account" means the account established by the department for a carbon dioxide budget unit wherein carbon dioxide budget units deposit carbon dioxide emissions allowances and carbon dioxide offset allowances are held and available for compliance purposes under the carbon dioxide cap-and-trade program.

Sec. 5. 38 MRSA §580-A, sub-§6-A is enacted to read:

6-A. Carbon dioxide general account or general account. "Carbon dioxide general account" or "general account" means the account established by the department upon the request of an entity wherein the entity may hold carbon dioxide allowances and carbon dioxide offset allowances. The general account is separate from the compliance account.

Sec. 6. 38 MRSA §580-A, sub-§18-A is enacted to read:

18-A. Proprietary information. "Proprietary information" means production, commercial or financial information claimed as confidential on documents required to be submitted to participate in an auction, the disclosure of which would impair the competitive position of the account holder and would make available information that is not otherwise available.

Sec. 7. 38 MRSA §580-B, sub-§7, as enacted by PL 2007, c. 317, §17, is amended to read:

7. Allocation of carbon dioxide emissions allowances. The department shall allocate 100% of the annual carbon dioxide emissions allowances for public benefit to produce funds for carbon reduction and energy conservation, as specified in Title 35-A, section 10008. Except as provided in subsection 7-A and subsection 8, the department shall sell the carbon dioxide emissions allowances at public auction, in accordance with rules adopted under subsection 4. Revenue resulting from the sale of allowances must be deposited in the Energy and Carbon Savings Trust Fund established under Title 35-A, section 10008.

Sec. 8. 38 MRSA §580-B, sub-§10, ¶E, as enacted by PL 2007, c. 317, §17, is amended to read:

E. Management and cost-effectiveness of the State's energy conservation and carbon reduction programs and efforts funded by the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 10008; and

Sec. 9. 38 MRSA §580-B, sub-§10, ¶F, as enacted by PL 2007, c. 317, §17, is amended to read:

F. The extent to which funds from the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 10008 serve customers from all classes of the State's transmission and distribution utilities; and

Sec. 10. 38 MRSA §580-B, sub-§10, ¶G is enacted to read:

G. The revenues and expenditures of the Energy and Carbon Savings Trust Fund, established pursuant to Title 35-A, section 10008.

Sec. 11. 38 MRSA §580-B, sub-§11 is enacted to read:

11. Confidentiality. To protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program established in this section, the following records are confidential as provided in this subsection.

A. Except as provided in this paragraph, the following records are confidential for a period of 3 years beginning at the time of application, submission, award or record creation by the department or its agents:

(1) Auction bid and award information specific to any one account holder;

(2) Carbon dioxide allowance and carbon dioxide offset allowance account holdings; and

(3) Carbon dioxide allowance and carbon dioxide offset allowance transactions.

This paragraph does not prohibit the release of carbon dioxide allowance and carbon dioxide offset allowance account holdings and transactions in an aggregated form that does not permit the identification of any person or entity.

The commissioner may release information described in subparagraph (1), (2) or (3) before the expiration of the 3-year period if the commissioner determines that confidentiality of that information is no longer required to protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program.

B. The following records remain confidential and may not be disclosed except pursuant to a court order or upon the written consent of the account holder:

(1) Proprietary information contained in documents required to be submitted to participate in an auction conducted under the carbon dioxide cap-and-trade program; and

(2) Carbon dioxide allowance and carbon dioxide offset allowance transaction prices. This subparagraph does not prohibit the release of transaction prices calculated in an aggregated manner that does not permit the identification of any person or entity.

Records containing any emission, offset or allowance tracking information submitted for the purpose of demonstrating compliance with the carbon dioxide cap-and-trade program and rules adopted to implement the program are public records subject to disclosure under Title 1, chapter 13.

Sec. 12. Public Law 2007, c. 317, §24, sub-§3 is repealed.

Sec. 13. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC UTILITIES COMMISSION

Energy and Carbon Savings Trust Fund N027

Initiative: Provides an allocation to the Energy and Carbon Savings Trust Fund that will be used to reduce electricity consumption and greenhouse gas emissions.

OTHER SPECIAL REVENUE FUNDS	2008-09	2009-10	2010-11
All Other	\$30,000,000	\$30,000,000	\$30,000,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$30,000,000	\$30,000,000	\$30,000,000

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

Effective May 26, 2009.