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## **An Act Regarding Energy Independence**

**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 State has become increasingly dependent on unreliable, insecure and expensive fossil fuels, natural gas and propane; and burning these fuels is contributing to pollution and climate change; and

**Whereas,** investing in energy efficiency and renewable sources of energy can result in significant and achievable savings for residents and businesses, can create new green jobs, can reduce carbon emissions, can slow climate change and can put millions of dollars back into the state economy through heating fuel and electricity savings; and

**Whereas,** energy consumers are seeking savings in all the energy they use and need a central entity to which they can turn to meet their energy-related needs; and

**Whereas,** residents and businesses could save over nine billion dollars through weatherization of all existing buildings; and

**Whereas,** a central independent entity that is authorized to administer all fuel energy efficiency and renewable energy initiatives will result in programs that are well coordinated, effective in achieving energy and carbon savings and easily accessible to consumers and that will create jobs and stimulate the state economy; and

**Whereas,** it is critically important to enact legislation immediately to accomplish these goals; 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:**

### **PART A**

**Sec. A-1. 5 MRSA §3327,** as amended by PL 2007, c. 656, Pt. C, §§3 to 5, is repealed.

**Sec. A-2. 5 MRSA §12004-G, sub-§13-F,** as enacted by PL 2007, c. 317, §1, is repealed.

**Sec. A-3. 35-A MRSA §3211-A,** as amended by PL 2007, c. 317, §§3 to 13, is repealed.

**Sec. A-4. 35-A MRSA §3211-C,** as amended by PL 2007, c. 493, §§1 to 3 and c. 661, Pt. D, §1, is repealed.

**Sec. A-5. 35-A MRSA §4711,** as enacted by PL 2005, c. 110, §1, is repealed.

**Sec. A-6. 35-A MRSA c. 95,** as amended, is repealed.

**Sec. A-7. Effective date.** This Part takes effect July 1, 2010.

## **PART B**

**Sec. B-1. 5 MRSA §949, sub-§1, ¶D,** as amended by PL 2007, c. 482, §3, is further amended to read:

D. Director of Technical Analysis; and

**Sec. B-2. 5 MRSA §949, sub-§1, ¶D-1,** as enacted by PL 2007, c. 482, §4, is repealed.

**Sec. B-3. 5 MRSA §12004-G, sub-§10-C** is enacted to read:

### **10-C.**

Energy

Efficiency  
Maine Plus Council

Expenses  
Only for Public  
Members

10 MRSA  
§9303

**Sec. B-4. 10 MRSA c. 1005** is enacted to read:

## **CHAPTER 1005**

### **Maine Energy independence Act**

#### **§ 9301. Short title**

This chapter may be known and cited as "the Maine Energy Independence Act."

#### **§ 9302. Definitions**

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

**1. Administrative costs.** "Administrative costs" means costs of Efficiency Maine Plus in carrying out its responsibilities under this chapter, including, but not limited to, costs of:

- A. Program planning, implementation and evaluation;
- B. Securing necessary expertise;
- C. Contracting for program delivery; and
- D. Monitoring and enforcing contractual obligations.

**2. Administration fund.** "Administration fund" means the administration fund established by the council pursuant to section 9304.

**3. Carbon dioxide allowance.** "Carbon dioxide allowance" has the same meaning as in Title 38, section 580-A, subsection 2.

**4. Council.** "Council" means the Efficiency Maine Plus Council established under section 9303.

**5. Director.** "Director" means the director of Efficiency Maine Plus.

**6. Efficiency Maine Plus.** "Efficiency Maine Plus" means the independent energy efficiency and renewable energy authority established in section 9303, subsection 1.

**7. Electricity conservation fund.** "Electricity conservation fund" means the fund established by Efficiency Maine Plus pursuant to section 9307.

**8. Electricity conservation fund program.** "Electricity conservation fund program" means a program developed by Efficiency Maine Plus pursuant to section 9307 and funded by the conservation fund.

**9. Energy and carbon savings fund.** "Energy and carbon savings fund" means the fund established by the council pursuant to section 9308.

**10. Forward capacity market.** "Forward capacity market" means the program established by the regional transmission organization that is in effect on the effective date of this subsection and compensates providers of electrical capacity with payments for the availability or reduction of capacity as determined by the regional transmission organization.

**11. Program funds.** "Program funds" means any of the funds established pursuant to this chapter, other than the administration fund, to fund Efficiency Maine Plus programs.

**12. Quadrennial plan.** "Quadrennial plan" means the quadrennial energy efficiency and conservation plan developed pursuant to section 9305.

**13. Regional transmission organization.** "Regional transmission organization" means the independent systems operator that administers and oversees the wholesale electricity markets in which the State participates.

**14. Service provider.** "Service provider" means a public or private provider of energy conservation or other energy program services or an entity selected by the council to contract with such providers or to otherwise arrange for the delivery of conservation or other energy programs.

**15. Trade association aggregator.** "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts.

### **§ 9303. Efficiency Maine Plus**

**1. Establishment.** Efficiency Maine Plus is established as an independent energy efficiency and renewable energy authority and is a public body corporate and politic and an instrumentality of the State. Efficiency Maine Plus shall plan, develop and implement energy conservation and efficiency programs, building weatherization programs, programs to reduce carbon emissions, programs to promote renewable sources of energy and other energy-related programs as specified in this chapter. Efficiency Maine Plus shall plan, develop, coordinate and implement energy efficiency and renewable energy programs to meet the following goals:

- A. Reduce greenhouse gas emissions to 10% below 1990 levels by 2020, as established by the state climate action plan under Title 38, section 577;
- B. Weatherize 100% of Maine residences and 50% of Maine businesses by 2030;
- C. Reduce peak-load electric energy consumption by 100 megawatts by 2020; and
- D. Increase new jobs and business development to deliver energy efficiency and renewable energy products and services.

**2. Director; staff.** The Governor shall appoint a director of Efficiency Maine Plus, subject to confirmation by the Senate. The director must be a person qualified by training and experience to perform the duties of the office.

- A. The director serves on a full-time basis for a 4-year term of office, and until a successor has been appointed and qualified. The Governor shall establish the rate and amount of compensation of the director.
- B. The powers and duties of Efficiency Maine Plus are vested solely in the director. The director or a representative shall attend all meetings of the council.
- C. The director may act in all personnel matters and may employ technical or legal experts and any other officers, agents and employees that the director requires and shall determine their qualifications, duties and compensation. The director may delegate to the employees and agents any powers and duties that the director considers proper.

**3. Efficiency Maine Plus Council.** The Efficiency Maine Plus Council, as established in Title 5, section 12004-G, subsection 10-C, is created to develop, plan, coordinate and evaluate Efficiency Maine Plus programs in order to slow climate change, reduce dependence on foreign oil and stimulate the economy by reducing energy use and carbon emissions and promoting renewable sources of energy. The council shall establish programs to serve all energy consumers, including residential, nonprofit, business, commercial, industrial and public entity consumers.

**4. Council duties and authority.** The council shall establish and revise programs according to the goals and objectives in the quadrennial plan, approve program budgets and adopt protocols for evaluating program outcomes. The council:

- A. May determine the types of services and the extent to which program administration and implementation may be delivered by independent contractors;

B. Shall provide uniform, integrated planning, program design and administration of the programs established under this chapter;

C. Shall ensure that funds are expended for uses consistent with the state or federal authorities that created the funds and in a manner that ensures that:

(1) Processes for participation and program design are targeted to serve the multiple needs of energy consumers in this State;

(2) The effectiveness of programs is maximized by increasing and centralizing expertise, addressing conflicts of interest, mitigating the influence of politics, promoting flexible, nimble program management and providing a champion for funding cost-effective energy efficiency;

(3) The efficiency with which programs are planned, designed, overseen and delivered is maximized; and

(4) Sufficient checks and balances are provided to ensure consistency with public policy and accountability for meeting the principles set out in subparagraphs (1) to (3) so that energy efficiency programs in the State are sustainable for the long term;

D. Shall develop quantifiable measures of performance to which it will be held accountable to the Governor and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. Measures of performance must be negotiated between the council and the Governor and the joint standing committee. Measures must be established for a 4-year period, with revisions allowable by mutual agreement. The council shall also develop quantifiable measures of performance to which it will hold accountable all recipients of funding from the council and recipients of funds used to deliver energy efficiency and weatherization programs that are incorporated in the quadrennial plan and approved by the council. Such measures may include, but are not limited to, reduced energy consumption, reduced capacity demand for natural gas and electricity, reduced energy costs, reduced carbon dioxide emissions, program and overhead costs and cost-effectiveness, the number of new jobs created, the number of energy efficiency trainings or certification courses completed and the amount of sales generated;

E. May make recommendations to the Governor, the Legislature and other public officials regarding energy efficiency, weatherization and renewable energy programs;

F. Shall coordinate energy efficiency and weatherization programs and carbon savings and renewable energy programs among the agencies that have responsibilities for these activities, in accordance with Title 2, section 9 and in such a way that these programs are complementary and that consumers can easily access programs from a single source;

G. Shall consult with the Maine State Housing Authority on matters of mutual interest that may include low-income energy conservation and assistance programs, building weatherization programs, relationships with financial partners, use of databases to capture energy and carbon savings and training of energy auditors and weatherization contractors; and

H. May establish technical advisory groups as needed for the purposes of gathering technical knowledge on any aspect of energy conservation or policy.

**5. Composition of council; chair; terms.** The council is composed of the following 9 voting members appointed by the Governor and approved by the Senate:

A. The chair of the Public Utilities Commission;

B. The director of the Governor's Office of Energy Independence and Security;

C. The director of Maine State Housing Authority;

D. A representative of commercial energy consumers;

E. A representative of industrial energy consumers;

F. A representative of small business energy consumers;

G. A representative of residential energy consumers; and

H. Two members who possess knowledge of energy conservation fund programs, carbon reduction programs, energy efficiency or climate change policy or substantial management expertise.

The director of the Governor's Office of Energy Independence and Security shall serve as the chair of the council.

Members of the council serve 3-year terms.

**6. Meetings; voting.** The council may meet as many times as necessary to carry out its responsibilities. An affirmative vote of 5 members is required for any action of the council.

### **§ 9304. Program funding; administration fund**

**1. Program funding.** The council or Efficiency Maine Plus may apply for and receive grants from state, federal and private sources for deposit into appropriate program funds. The council or Efficiency Maine Plus also may deposit in appropriate program funds any grants or other funds received by or from any entity with which the council or Efficiency Maine Plus has an agreement or contract pursuant to this chapter if the council determines that receipt of those funds is consistent with the purposes of this chapter.

**2. Administration fund.** Efficiency Maine Plus shall establish an administration fund to be used solely to defray administrative costs. Efficiency Maine Plus may annually deposit funds pursuant to this chapter into the administration fund up to a maximum in any fiscal year of 10% of all revenues received to fund Efficiency Maine Plus. 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 program funds.

## **§ 9305. Quadrennial energy efficiency and conservation plan**

**1. Development.** The council shall develop a quadrennial energy efficiency and conservation plan, referred to in this section as "the plan." The plan must be designed to address the needs of all customer classes under subsection 2 in the public interest and be coordinated with the comprehensive state energy plan pursuant to Title 2, section 9, subsection 3, paragraph C. The plan must outline strategies and goals to achieve the objectives set forth in section 9303, subsection 1.

**2. Plan.** The plan shall address energy efficiency measures for all fuels and the needs of all customer classes, including, but not limited to, residential, commercial, industrial, business, not-for-profit and public consumers of energy. The plan must provide integrated planning, program design and implementation strategies for each program established in this chapter. The plan must include:

- A. Measurable energy efficiency goals that are supported by the priorities and the level of funding established in the plan;
- B. A general prioritization of energy efficiency and conservation fund programs and markets to be served for the 4-year period;
- C. Projected funding levels for the 4-year period and a clear accounting of how funds from revenue sources identified in this chapter will be deployed;
- D. Program strategies that integrate energy conservation related to electricity, natural gas and home heating fuels with renewable or efficient energy production technologies; and
- E. Activities or initiatives that promote the use of renewable energy such as wind, geothermal and solar power.

**3. Public hearing.** The council shall hold at least one public hearing and invite, accept, review and consider comments and suggestions from interested parties prior to adopting or substantially revising the plan.

**4. Plan updates.** The council shall update the plan to reflect any significant changes in the comprehensive state energy plan submitted pursuant to Title 2, section 9, subsection 3, paragraph C and may update the plan more frequently than quadrennially if the council considers it necessary.

**5. Plan adoption and presentation.** The first plan must be developed and adopted on or after July 1, 2010. The plan and any plan updates must be presented within 60 days of adoption to the Governor and the joint standing committee of the Legislature having jurisdiction over energy matters.

## **§ 9306. Rulemaking**

The council may adopt rules as necessary to administer this chapter. These rules may include:

**1. Expenditure.** Provisions for the expenditure of funds, including, but not limited to, the development of program budgets, criteria, procedures and standards for energy efficiency and renewable energy programs and other consumer benefit programs, the process for project selection and approval, minimum requirements for project monitoring and verification and the cost-effectiveness tests to be used for measuring and comparing program benefits and costs;

**2. Evaluation.** Provisions for the independent evaluation of program expenditures to ensure cost-effectiveness of projects to improve energy efficiency or to reduce greenhouse gases; and

**3. Standards.** Provisions for establishing standards for training and certification of energy auditors, weatherization technicians and contractors and solar and wind energy system installers.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## **§ 9307. Electricity conservation fund program**

**1. Programs.** Efficiency Maine Plus shall establish an electricity conservation fund program to help reduce energy costs for electricity consumers in the State by the maximum amount possible. The electricity conservation fund program established by Efficiency Maine Plus must be consistent with the quadrennial plan and be cost-effective, as defined by the council by rule. In defining "cost-effective," the council may consider the extent to which a program promotes sustainable economic development or reduces environmental damage to the extent the council can quantify or otherwise reasonably identify such effects. The council shall seek to establish the delivery of the electricity conservation fund program in all regions of the State on an equitable basis and to citizens at all income levels.

A. Efficiency Maine Plus shall consider, without limitation, an electricity conservation fund program that:

(1) Reduces the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods;

(2) Reduces total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed;

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

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



(5) Promotes sustainable economic development and reduced environmental damage.

B. Efficiency Maine Plus with regard to the assessment imposed by the Public Utilities Commission under Title 35-A, section 10101 shall:

(1) Target at least 20% of funds to programs for low-income residential consumers, as defined by the council by rule;

(2) Target at least 20% of funds to programs for small business consumers, as defined by the council 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 the electricity conservation fund program.

C. Efficiency Maine Plus shall hold at least one public hearing and invite, accept, review and consider comments and suggestions from interested parties prior to substantially revising the electricity conservation fund program.

D. In developing and administering the electricity conservation fund program, Efficiency Maine Plus shall monitor conservation planning and program development activities in the northeast region of the United States and in the United States.

E. The director shall monitor and evaluate the delivery of the electricity conservation fund program by service providers and assess the cost-effectiveness of the program in meeting the objectives and overall strategy established by the council and shall report results of monitoring and evaluation to the council.

F. Efficiency Maine Plus shall coordinate its efforts with other agencies of the State with energy-related responsibilities. Efficiency Maine Plus may coordinate its efforts under this section with similar efforts in other states of the United States and enter into agreements with public agencies or other entities in or outside of the State for joint or cooperative energy conservation planning or conservation fund program delivery, if such coordination or agreements would provide demonstrable benefits to citizens of the State and be consistent with this section, the electricity conservation fund program and the objectives and overall strategy for the electricity conservation fund program.

G. Efficiency Maine Plus shall establish or approve an energy efficiency training and certification program for facility managers and shall encourage facility managers to complete the program. To the extent Efficiency Maine Plus determines necessary and appropriate to meet the goals of this paragraph, Efficiency Maine Plus may establish incentive mechanisms to encourage participation in

this program. For purposes of this paragraph, "facility managers" means persons who are responsible for the design or operation of facilities or the heating, lighting, ventilation or air conditioning systems or equipment used in such facilities.

**2. Implementation.** Efficiency Maine Plus shall secure sufficient technical and administrative expertise to carry out its responsibilities pursuant to this section by contracting with appropriate entities with relevant expertise and experience; establishing one or more advisory groups composed of persons with relevant expertise and experience; or any other reasonable means. Efficiency Maine Plus may arrange the delivery of the electricity conservation fund program by contracting with service providers. Efficiency Maine Plus shall select service providers in accordance with this subsection.

A. The council may adopt rules establishing procedures governing the selection of service providers under this chapter. The council shall consult with the State Purchasing Agent in developing the rules.

B. To the extent practicable, Efficiency Maine Plus shall encourage the development of resources, infrastructure and skills within the State by giving preference to in-state service providers.

C. Notwithstanding paragraph A:

(1) Efficiency Maine Plus may select service providers for the electricity conservation fund program without employing a competitive bidding process if it finds that the selection of service providers will promote the efficient and effective delivery of the electricity conservation fund program and is consistent with the objectives and overall strategy of the electricity conservation fund program;

(2) For the delivery of the electricity conservation fund program to low-income residential consumers, Efficiency Maine Plus, without employing a competitive bidding process, may utilize the delivery system for the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the network of for-profit and not-for-profit entities who have held contracts with transmission and distribution utilities to deliver conservation services to low-income and residential customers; and

(3) A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

**3. Fund.** Efficiency Maine Plus shall establish an electricity conservation fund to carry out the purposes of this section.

**4. Effective date.** This section takes effect July 1, 2010.

## **§ 9308. Energy and carbon savings fund program**

**1. Establishment of fund.** The energy and carbon savings fund is established to support the goals and implementation of the carbon dioxide cap-and-trade program established under Title 38, section 580-B. The fund is established as a nonlapsing fund administered by the council for the purposes established in this section. The council is authorized to receive and shall deposit in the fund in accordance with this section revenue resulting from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded by the energy and carbon savings fund. The fund may not be used for any other purpose, and money in the fund is considered to be held in trust for the purposes of benefiting consumers.

**2. Funds held in trust.** All funds deposited into the energy and carbon savings fund 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 energy consumers.

**3. Money invested.** Any revenue received from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market payments administered by the regional transmission organization or other capacity payments that may be attributable to projects funded from the energy and carbon savings fund must be deposited in the energy and carbon savings fund. Any interest earned on funds must be credited to the energy and carbon savings fund. The State may not assess any indirect charges on any revenue received from the sale of carbon dioxide allowances pursuant to this section.

**4. Ceiling on energy efficiency spending.** A ceiling is established on energy efficiency spending from the energy and carbon savings fund 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 energy and carbon savings fund may be awarded to or directed to qualified projects for purposes of energy efficiency improvements. While the ceiling is in place, revenue received from an allowance value above \$5 must be transferred to the Public Utilities Commission for use by the Public Utilities Commission pursuant to Title 35-A, sections 301 and 1322 for rebates to electric ratepayers calculated on a per-kilowatt-hour basis.

**5. Administration of fund; expenditures; projects.** The energy and carbon savings fund must be administered by the council in accordance with this subsection.

A. The energy and carbon savings fund must be administered and expenditures authorized by the council.

B. During the years 2009, 2010 and 2011, not less than 85% of the energy and carbon savings fund must be allocated for measures, investments and arrangements that reduce electricity consumption, and not more than 15% 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 council shall fund conservation fund 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 per unit of emissions; or

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

C. Expenditures from the energy and carbon savings fund relating to conservation of electricity and mitigation or reduction of greenhouse gases must be made predominantly on the basis of a competitive bid process for long-term contracts, subject to rules adopted by the council. Rules adopted to implement the competitive bid process under this paragraph may not include an avoided cost methodology for compensating successful bidders. Bidders may propose contracts designed to produce greenhouse gas savings or electricity conservation savings, or both, on a unit cost basis. Contracts must be commercially reasonable and may require liquidated damages to ensure performance. Contracts must provide sufficient certainty of payment to enable commercial financing of the conservation measure purchased and its installation.

D. The council may target bid competitions in areas or to participants as it considers necessary, as long as the requirements of paragraph B are satisfied.

E. Nonelectric savings programs must be used to maximize fossil-fueled energy efficiency and conservation and associated greenhouse gas reductions, subject to the apportionment between fossil fuel and electricity conservation set forth in paragraph B.

F. The size of a project funded from the energy and carbon savings fund is not limited as long as funds are awarded to maximize energy efficiency and support greenhouse gas reductions and to fully implement the quadrennial plan.

G. No more than 10% of energy and carbon savings fund receipts in any one year may be used for the total of:

(1) Administrative costs of Efficiency Maine Plus in implementing this section;

(2) Administrative 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

(3) Administrative costs of the Attorney General, including activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the energy and carbon savings fund funding of conservation fund programs.

H. A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

I. Energy and carbon savings fund receipts may fund research approved by the Department of Environmental Protection in an amount of up to \$100,000 per year to develop new categories for carbon dioxide emissions offset projects, as defined in Title 38, section 580-A, subsection 6, that are located in the State. Expenditures on research pursuant to this paragraph are not considered administrative costs under paragraph G.

**6. Effective date.** This section takes effect July 1, 2010.

## **§ 9309. Natural gas conservation program**

**1. Program established.** In accordance with the goals and objectives of the quadrennial plan, the council shall establish a cost-effective conservation program to promote the efficient use of natural gas. Each natural gas utility in the State shall contribute data and other relevant information to assist in the development of the program. In determining whether the program is cost-effective, the council may consider whether it promotes sustainable economic development or reduces greenhouse gas emissions to the extent the council can quantify or otherwise reasonably identify such effects. The council 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 council 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 reduced environmental damage.

B. The council 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 council. The council 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 council. The council 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 council 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.

**2. Funding level.** Efficiency Maine Plus shall establish a natural gas conservation fund to carry out the purposes of this section.

**3. Rules.** The council may adopt rules necessary to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**4. Effective date.** This section takes effect July 1, 2010.

## **§ 9310. Solar and wind energy rebate program**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Qualified solar energy system" means a solar photovoltaic system or a solar thermal system.

B. "Qualified solar thermal water system installer" means a person who has been certified by the council to install solar thermal systems designed to heat water and who holds a current license from the State as a master plumber, as a master oil burner technician or as a propane and natural gas technician or has been certified as a type II, type III or universal heating, ventilation and air conditioning refrigeration technician through a certification program approved by the United States Environmental Protection Agency.

C. "Qualified wind energy system" means any device, such as a wind charger, windmill or wind turbine and associated facilities, with a peak generating capacity of 100 kilowatts or less that converts wind energy to electrical energy for use primarily in a residence, public facility or place of business that is located in an area with demonstrated wind power potential.

D. "Solar photovoltaic system" means a solar energy device with a peak generating capacity of 100 kilowatts or less used for generating electricity for use in a residence or place of business.

E. "Solar thermal system" means a configuration of solar collectors and a pump, heat exchanger and storage tank or fans designed to heat water or air for the purpose of space heating, domestic water heating or both space and domestic water heating. Solar thermal system types include forced circulation, integral collector storage, thermosyphon and self-pumping systems.

**2. Solar and wind energy rebate program.** To the extent that funds are available in the fund established in Title 35-A, section 10103 and the requirements of subsection 3 are satisfied, an owner or tenant of residential or commercial property located in the State is entitled to a rebate for a qualified solar energy system that is installed in accordance with this subsection after July 1, 2005 that will be connected to the electrical grid or a qualified wind energy system that is installed in accordance with this subsection after January 1, 2009 that will be connected to the electrical grid. The council shall set rebate levels for qualified solar energy systems and qualified wind energy systems. In setting rebate levels, the council may consider market demand for qualified solar energy systems and qualified wind energy systems, program implementation experience and other factors relevant to the solar and wind energy rebate program.

A. To qualify for a rebate, a solar photovoltaic system must be installed by a master electrician who has been certified by a North American board of certified energy practitioners or by a master electrician working in conjunction with a person who has been certified by a North American board of certified energy practitioners.

B. To qualify for a rebate, a solar thermal system designed to heat water must be installed by a qualified solar thermal water system installer and, if the solar thermal system is designed to heat potable water, it must be installed by a qualified solar thermal water system installer who holds a current license as a master plumber or by a qualified solar thermal water system installer working in conjunction with a master plumber.

C. To qualify for a rebate, the electrical components of a qualified wind energy system must be installed by a master electrician or by a factory trained and approved dealer for the qualified wind energy system working under the supervision of a master electrician.

In the case of a newly constructed residence, the rebate must be available to the original owner or occupant.

**3. Energy audit requirement; solar photovoltaic system.** To qualify for a rebate for a solar photovoltaic system under this section, an owner or tenant of residential or commercial property located in the State must demonstrate to the satisfaction of Efficiency Maine Plus that an energy audit has been completed.

**4. Limitation to residents of State.** Participation in the solar and wind energy rebate program established in this section is limited to residents of the State.

**5. Effective date.** This section takes effect July 1, 2010.

**6. Repeal.** This section is repealed December 31, 2010.

## **§ 9311. Training for installers of solar equipment**

**1. Installation training.** To the extent that funds and resources allow, the council shall establish training programs for installers of solar equipment that most effectively meet the needs of the public. The council:

A. May develop separate programs for different solar technologies or applications when the council determines that the skills or training for the installation of those technologies or applications merit the distinction;

B. Shall confer with the Plumbers' Examining Board and the Electricians' Examining Board when it develops the course content and requirements;

C. Shall determine the content of the training, the hours required for course completion and the manner in which applicants must demonstrate proficiency in solar equipment installation;

D. Shall issue a certificate of completion to individuals who meet the requirements the council has established;

E. May establish reasonable course fees. All fees must be paid to the Treasurer of State to be used by the council for the purposes of this section;

F. Shall determine terms for the expiration and renewal of an applicant's certificate of completion; and

G. Shall determine an appropriate means of maintaining recognition of the training received by persons holding certificates issued pursuant to former Title 32, chapter 87 or under former Title 35-A, section 10002.

**2. Qualifications for installing solar equipment.** A certificate of completion issued by the council pursuant to subsection 1 does not exempt the holder from any applicable licensing requirements for activities involved in installing solar equipment, including but not limited to licensing requirements established in Title 32, chapter 17 or 49.

**3. Effective date.** This section takes effect July 1, 2010.

## **§ 9312. Training for energy auditors**

**1. Auditor training.** To the extent that funds and resources allow, the council shall set standards for training programs for energy auditors that most effectively meet the needs of the public and that satisfy the requirements of funding sources. For the purposes of this subsection, an energy auditor is a person who is trained to prepare a report that delineates the energy consumption characteristics of a building, identifies appropriate energy efficiency operations and maintenance procedures and recommends appropriate energy efficiency measures. The council:

A. May develop separate programs for audits of different building types and functions when the council determines that the skills or training needed to perform these audits merit the distinction;



- B. Shall determine the content of the training, the hours required for course completion and the manner in which applicants must demonstrate proficiency in energy auditing;
- C. Shall issue a certificate of completion to individuals who meet the requirements the council has established;
- D. May establish reasonable course fees. All fees must be paid to the Treasurer of State to be used by the council for the purposes of this section;
- E. Shall determine terms for the expiration and renewal of an applicant's certificate of completion;
- F. Shall determine an appropriate means of maintaining recognition of the training received by persons holding a certification; and
- G. Shall work with state agencies and other interested parties to establish standards through which energy auditors are certified.

2. **Effective date.** This section takes effect July 1, 2010.

### **§ 9313. Federal energy programs**

1. **Programs.** Efficiency Maine Plus shall oversee and administer:

- A. The United States Department of Energy State Energy Program; and
- B. Other federally funded programs and projects related to Efficiency Maine Plus programs.

2. **Effective date.** This section takes effect July 1, 2010.

### **§ 9314. Energy Conservation Small Business Revolving Loan Program**

1. **Program and fund.** The council shall establish the Energy Conservation Small Business Revolving Loan Program, referred to in this subsection as "the program," and the Energy Conservation Small Business Revolving Loan Fund, referred to in this subsection as "the fund." The fund consists of federal capitalization grants and awards made to the State for the purposes for which the fund is established; any amounts received from the Public Utilities Commission from the assessment on public utilities pursuant to Title 35-A, section 10101; principal and interest received from the repayment of loans made from the fund; any interest earned on investment of fund balances; and any other funds from any public or private source received for use of any of the purposes for which the fund is established. The fund is a nonlapsing revolving fund account.

A. The council shall credit all repayments of loans made to businesses, including interest, penalties and other fees and charges related to fund loans, to the fund account.

B. Money in the fund not needed to meet the current obligations of the program must be deposited with the Treasurer of State to the credit of the fund account and may be invested in such manner as is provided by law. Interest received on that investment must be credited to the fund account.

C. At the end of each fiscal year, all unencumbered balances in the fund account may be carried forward to be used for the purposes specified in this subsection.

**2. Effective date.** This section takes effect July 1, 2010.

### **§ 9315. Energy efficiency of rental properties**

**1. Residential energy efficiency disclosure statement.** The council and the Maine State Housing Authority shall prepare a residential energy efficiency disclosure statement form for landlords and other lessors of residential properties to use to disclose to tenants and lessees information about the energy efficiency of the property in order to comply with Title 14, section 6030-C. The council and the Maine State Housing Authority shall post and maintain the statement required by this subsection on the Internet in a format that is easily accessible by the public.

**2. Suggested energy efficiency standards.** The council and the Maine State Housing Authority shall prepare suggested energy efficiency standards for landlords and other lessors of residential property that is used by the tenant or lessee as a primary residence. The council and the Maine State Housing Authority shall post and maintain the standards required by this subsection on the Internet in a format that is easily accessible by the public.

**3. Effective date.** This section takes effect July 1, 2010.

### **§ 9316. Unregulated Fuels Energy Conservation Program**

**1. Funds received.** All funds collected from unregulated fuels are to be held in a separate unregulated fuels fund for the purposes of energy conservation and to benefit consumers of unregulated fuels. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the council shall return the value of those funds to consumers by appropriate reductions in the assessment collected. The council shall design and establish programs to achieve energy conservation goals for unregulated fuels as established in and in accordance with the quadrennial plan.

**2. Implementation.** To the extent revenues allow, the council may implement and monitor programs and measures to increase electric, gas and heating fuel energy efficiency, distributed renewable energy production, combined heat and power installation and effective load management in this section.

**3. Effective date.** This section takes effect July 1, 2010.

### **§ 9317. Building weatherization program**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A. "Authorized provider"** means an organization authorized by the council to provide services under the program.

B. "Program" means the building weatherization program established by the council under this section.

C. "Qualified contractor" means an individual who has met minimum training and insurance requirements established by the council.

D. "Qualified energy auditor" means an individual qualified to perform energy audits as determined by the council, including persons who are certified or otherwise qualified as energy auditors by the Maine State Housing Authority, the commission or other entity approved by the council.

E. "Weatherization" means any modifications to a building conducted in accordance with the requirements of the program that reduces heat loss through the walls, windows, doors, foundation or any other aspect of the building's envelope.

**2. Building weatherization program.** The council may establish a building weatherization program available to middle-income and upper-income homeowners that includes at a minimum pre-weatherization energy audits, weatherization services, post-weatherization audits and financing of the costs of the energy audits and weatherization services.

A. The goals of the program are to:

(1) Substantially improve the energy efficiency of and reduce carbon emissions from the State's building stock by reducing annual fuel consumption for heating and cooling by at least 20% in those buildings that receive weatherization services;

(2) Provide convenient and low-cost weatherization services to homeowners and commercial building owners; and

(3) Meet the objectives of the quadrennial plan of weatherizing all residential units and 50% of businesses in the State by 2030.

B. Efficiency Maine Plus, through a cooperative agreement with the Maine State Housing Authority, may administer the program except with respect to weatherization of housing for low-income persons, which portion of the program is administered by the Maine State Housing Authority. Program administration includes but is not limited to:

(1) Working with banks and other private partners on program delivery;

(2) Oversight of data collection and management;

(3) Quality control of work done by qualified energy auditors and qualified contractors;

(4) Marketing, public outreach, media relations and advertising of the program;

(5) Customer interface through the Internet and on the telephone;

(6) Establishing customer incentives to maximize participation in the program;

(7) Trouble-shooting program elements and resolving problems; and

(8) Coordination with other agencies involved in program administration and delivery.

**3. Federal funds; other funds.** The council may establish a weatherization fund to be used solely for the purposes of this section. The council may establish accounts within the fund and may receive funds from the following sources:

A. Federal funds and awards received by the council for the purposes of this section;

B. The proceeds of any bonds issued for the purposes of this section;

C. Principal and interest received from the repayment of loans made from the fund;

D. Any interest earned on investment of fund balances; and

E. Any other funds from public or private sources received in support of the purposes for which the fund is established, and any private funds that are loaned or granted to building owners by private partners approved by the council, the commission or the Maine State Housing Authority.

The council may annually deposit funds received pursuant to this section into the administration fund, up to a maximum in any fiscal year of 10% of the revenues received under this section.

Funds in the weatherization fund not spent in any fiscal year do not lapse and remain in the fund to be used in accordance with this section.

**4. Rulemaking.** The council may adopt rules or policies to implement this section. The rules may include but are not limited to rules that:

A. Establish an energy-audit-based program under which priorities for weatherization are those recommendations from an energy audit that are cost-effective and will result in no less than a 20% savings in energy consumed;

B. Establish a minimum package of weatherization services to be delivered to residents and businesses through a statewide network of authorized providers and supported by participating financial institutions;

- C. Establish standards and criteria for a statewide network of authorized providers and partnering financial institutions;
- D. Establish standards for qualified energy auditors and qualified contractors that includes certification requirements and professional or commercial liability and worker's compensation insurance;
- E. Provide for connecting database systems for purposes of monitoring the performance of building weatherization through energy audits and capturing the data so that the monetary value of energy and carbon savings can be realized;
- F. Establish program parameters or incentives to increase consumer participation in the program, based on best available information;
- G. Provide for the creation and maintenance of a network of financial partners that can provide cost-effective financing for the program and establish standards for financial partners' participation in the program;
- H. Provide for establishing and maintaining relationships with public and private partners who can support program administration, publicity, media relations, cost of materials and advertising for the program; and
- I. Provide easily accessible outreach and program information to ensure maximum participation.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§ 9318. Public information and outreach**

**1. General.** Efficiency Maine Plus shall provide to the public information about renewable energy technologies and energy efficiency practices. In providing public information, Efficiency Maine Plus shall consider:

- A. The aspects of renewable energy technologies and energy efficiency practices about which the public needs information;
- B. The most effective means of providing the information; and
- C. The members of the public who would most benefit from public information.

**2. Funding.** The council may seek federal funding for the purposes of this section and, to the extent necessary, may charge reasonable fees to cover the costs of training or other services provided pursuant to this section. All fees must be paid to Efficiency Maine Plus and used to reimburse the council for its expenses in providing the service for which the fee is charged.

**3. Effective date.** This section takes effect July 1, 2010.

## **§ 9319. Reporting**

Beginning in 2012, the council shall report by February 1st of each year to the Governor and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include:

**1. Council actions.** A description of actions taken by the council pursuant to this chapter, including descriptions of programs implemented during the prior 12 months and programs, projects and activities that the council plans to implement during the next 12 months, a description of how the council determines the cost-effectiveness of each program and its assessment of the cost-effectiveness of programs implemented during the prior 12 months;

**2. Accounting.** An accounting of:

A. Funds received from the Public Utilities Commission from assessments made pursuant to Title 35-A, chapter 96 and funds received from all other sources;

B. Total deposits into and expenditures from the program funds during the prior 12 months and projected deposits into and expenditures from the program funds for the next 12 months;

C. The amount and source of any grants or funds deposited in the program funds during the previous 12 months and the projected amount and source of any grants or funds for the next 12 months; and

D. Total deposits into and expenditures from the administration fund during the prior 12 months and projected deposits into and expenditures from the administration fund for the next 12 months;

**3. Evaluation.** A general evaluation of:

A. Funding sources and program areas and a recommendation as to whether any changes in funding or programming are needed; and

B. Customer satisfaction with program delivery;

**4. Performance.** A summary of measures of performance pursuant to section 9303, subsection 3, paragraph D; and

**5. Recommendations.** Any recommendations for changes to law relating to energy conservation or renewable energy programs.

This section takes effect July 1, 2010.

## **§ 9320. Independent analysis of programs**

Beginning July 1, 2010, the council shall arrange for an independent evaluation of each major program implemented under this chapter. Each major program must be evaluated at least once every 5 years. The evaluation must include an accounting audit of the program and an evaluation of the program's effectiveness in meeting the goals of this chapter. The evaluations must be conducted by a competent

professional with expertise in energy efficiency matters, including the management of cost-effective energy efficiency programs. For purposes of this subsection, "major program" means a program with an annual budget of more than \$500,000.

**Sec. B-5. 30-A MRSA §4741, sub-§15,** as amended by PL 1991, c. 871, §2, is further amended to read:

**15. State weatherization, conservation and fuel assistance agency.** The Maine State Housing Authority is designated the weatherization, energy conservation and fuel assistance agency for the State and may apply for, receive, distribute and administer federal funds on behalf of the State for weatherization, energy conservation and fuel assistance pursuant to the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the Low-income Home Energy Assistance Program administered through the United States Department of Health and Human Services in accordance with rules adopted under the Maine Administrative Procedure Act. The Maine State Housing Authority may consult and coordinate with the Efficiency Maine Plus Council on matters of mutual interest that may include building weatherization programs, relationships with financial partners, use of databases to capture energy and carbon savings and training of energy auditors and weatherization contractors;

## PART C

**Sec. C-1. Task force established.** The Commissioner of Administrative and Financial Services shall establish a task force to advance energy efficiency, conservation and independence at state facilities. The members of the task force include:

1. The Commissioner of Administrative and Financial Services, who serves as chair;
2. The Director of the Governor's Office of Energy Independence and Security within the Executive Department or the director's designee;
3. The Commissioner of Environmental Protection or the commissioner's designee;
4. The director of the property management division within the Department of Administrative and Financial Services;
5. The chair of the Public Utilities Commission or the chair's designee;
6. The Director of the State Planning Office within the Executive Department or the director's designee; and
7. Other individuals appointed by the Commissioner of Administrative and Financial Services to serve on the task force who have a demonstrated interest in the energy issues of the State from the private, public or nonprofit sector.

**Sec. C-2. Chair to convene task force.** The task force shall meet at times and places called by the chair. The task force may accept staffing, financial and other administrative or program support from the agencies of State Government or outside sources as it determines appropriate to its duties. Members serve without compensation.

**Sec. C-3. Task force responsibilities.** The task force shall examine ways of advancing the goals of improving energy efficiency, increasing energy conservation and increasing the energy independence of the State by better management of state facilities. The task force shall develop recommendations that, to the extent possible, do not require additional state positions or increased appropriations from the General Fund.

**Sec. C-4. Reporting date established.** The task force shall report its findings and recommendations to the Governor and to the joint standing committee of the Legislature having jurisdiction over state and local government matters and to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than December 1, 2009.

**Sec. C-5. Authority to report out legislation.** The task force is authorized to submit legislation to the Second Regular Session of the 124th Legislature.

## PART D

**Sec. D-1. 2 MRSA §9,** as enacted by PL 2007, c. 656, Pt. C, §1, is amended to read:

### § 9. Governor's Office of Energy Independence and Security

**1. Office established.** The Governor's Office of Energy Independence and Security, referred to in this section as "the office," is established in the Executive Department to carry out responsibilities of the State relating to energy resources, planning and development. The office is directly responsible to the Governor.

**2. Director.** The office is under the control and supervision of the Director of the Governor's Office of Energy Independence and Security, referred to in this section as "the director." The director is appointed by the Governor and serves at the pleasure of the Governor.

**2-A. Powers.** The director may request from Efficiency Maine Plus, established in Title 10, chapter 1005, funding sufficient to carry out the duties required under section 3 and any other appropriate law.

**3. Duties.** The director is responsible for the execution of the duties of the office. The director shall:

A. Chair the ~~Energy Resources~~Efficiency Maine Plus Council, established under Title 5, section 332712004-G, subsection 10-C;

B. In collaboration with the ~~Energy Resources~~Efficiency Maine Plus Council and other relevant state agencies, coordinate state energy policy and actively promote interagency coordination of energy programs in coordination with Efficiency Maine Plus, established in Title 10, chapter 1005;

C. ~~Prepare~~In consultation with Efficiency Maine Plus, established in Title 10, chapter 1005, prepare and submit a comprehensive state energy plan to the Governor and the Legislature by January 15, 2009 and every 2 years thereafter;



C-1. By February 1st of each year, prepare and submit to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters an annual report that describes the activities of the office during the previous calendar year in carrying out its duties under this subsection and describe the State's progress in implementation of the state energy plan prepared pursuant to paragraph C. After receipt and review of the annual report required under this paragraph, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit legislation relating to energy policy.

D. In collaboration with other relevant state agencies, private industry and nonprofit organizations, collect and analyze energy data, including, but not limited to, data on energy supply, demand and costs in this State with consideration of all available energy sources;

E. Coordinate the dissemination of energy information to the public and the media;

F. Provide technical assistance and information to the Governor and the Legislature regarding the State's short-range and long-range energy needs and the resources to meet those needs;

G. Seek funds and partnerships with public and private sources to support the goals of the office, including, but not limited to, promoting energy efficiency, demand-side management and distributed generation;

H. Work with transmission and distribution utilities, state agencies involved in the permitting of energy generation facilities and other relevant entities to negotiate agreements that create value for electricity consumers with developers of renewable generation who are interested in building energy generation facilities or developing or utilizing energy transmission infrastructure in this State. This paragraph does not authorize the director to be a signatory to any such agreement unless that authority is otherwise granted by law. The director shall report on activities undertaken pursuant to this paragraph by February 1, 2009, and annually thereafter, to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters;

I. Monitor energy transmission capacity planning and policy affecting this State and the regulatory approval process for the development of energy infrastructure pursuant to Title 35-A, section 122 and make recommendations to the Governor and the Legislature as necessary for changes to the relevant laws and rules to facilitate energy infrastructure planning and development; and

J. Take action as necessary to carry out the goals and objectives of the state energy plan prepared pursuant to paragraph C.

## PART E

**Sec. E-1. Transition.** The following provisions apply to the establishment of Efficiency Maine Plus pursuant to the Maine Revised Statutes, Title 10, chapter 1005.

**1. Board appointed.** By July 1, 2009, the Governor shall appoint the members and chair of the Efficiency Maine Plus Council. The Governor shall appoint the director of Efficiency Maine Plus no later than October 1, 2009. The council shall establish bylaws no later than December 1, 2009.

**2. Staggered terms.** Notwithstanding Title 10, section 9303, subsection 4, in making the initial appointments of members to the Efficiency Maine Plus Council pursuant to section 9303, subsection 5, paragraphs D to H, the Governor shall appoint 3 members to serve an initial term of 2 years and 3 members to serve an initial term of 3 years.

**3. Quadrennial plan.** The director of Efficiency Maine Plus shall hire or contract staff as needed to support the Efficiency Maine Plus Council and to prepare the quadrennial plan according to Title 10, section 9305 for Council approval by July 1, 2010. The Efficiency Maine Plus Council and the director of Efficiency Maine Plus may study existing rules, conduct research, appoint technical advisory groups or hold public meetings in preparation for transitioning to the new structure and to support the development of the quadrennial plan.

**4. Interim budget.** The director of Efficiency Maine Plus shall prepare a budget for the period between October 1, 2009 and July 1, 2010 and submit it to the Efficiency Maine Plus Council for approval. The Efficiency Maine Plus Council shall submit the approved budget to the commissioners of the Public Utilities Commission, who shall provide full funding for the activities indicated in the budget from the conservation fund and the Energy Carbon Savings Trust pursuant to the Maine Revised Statutes, Title 35-A, section 10008. Employees employed by Efficiency Maine Plus between October 1, 2009 and July 1, 2010 are on the payroll of the Public Utilities Commission until July 1, 2010.

**5. Rules.** All rules adopted by the Public Utilities Commission pursuant to Title 35-A, sections 3211-A, 3211-C and 4711 and Title 35-A, chapter 95, and rules adopted by the Energy and Carbon Savings Trust pursuant to Title 35-A, section 10008 are deemed to be rules of Efficiency Maine Plus and continue in effect until amended or rescinded by Efficiency Maine Plus.

**6. Contracts.** All contracts of the Public Utilities Commission entered into pursuant to Title 35-A, sections 3211-A and 3211-C and Title 35-A, chapter 95 remain in effect, and the commission shall administer those contracts in accordance with the law in effect at the time the contracts were entered except as otherwise may be directed by the Efficiency Maine Plus Council. Efficiency Maine Plus is the successor to the conservation programs managed under the name Efficiency Maine at the Public Utilities Commission. Contracts that are in place on July 1, 2010 may be extended for up to 2 years, subject to the approval of the council, in order to maintain a smooth transition to the new program structure.

**7. Transfer of funds.** All accrued expenditures, assets, liabilities, balances or appropriations, allocations, transfers, revenues or other available funds in an account or subdivision of an account pertinent to energy efficiency, energy conservation or renewable energy programs must be transferred to the corresponding account in Efficiency Maine Plus by July 1, 2010. After July 1, 2010, fees that are collected under Title 35-A, sections 10101 to 10103 must be transferred to Efficiency Maine Plus on a monthly basis.

**8. Program staff and contracting.** The director of Efficiency Maine Plus shall hire program management staff and contract for services to implement this Act. In hiring and contracting, the director shall give preference to state employees and contractors who were employed by the Public Utilities Commission and working on energy efficiency and renewable energy programs as of June 30, 2009.

**9. Employees of the Public Utilities Commission.** Employees who were employees of the Public Utilities Commission energy efficiency or renewable energy programs on June 30, 2009 retain their employee rights, privileges and benefits, including sick leave, vacation and seniority, provided under the

Civil Service Law or collective bargaining agreements, unless they accept employment with Efficiency Maine Plus in which case, they will not be state employees and will work under new agreements. For employees who are not offered or who do not accept employment at Efficiency Maine Plus, the Department of Administrative and Financial Services, Bureau of Human Resources shall provide employment assistance.

**10. Records.** All records pertaining to duties that are performed by the Public Utilities Commission and are transferred to Efficiency Maine Plus effective July 1, 2010 must be transferred to Efficiency Maine Plus by July 1, 2010.

**11. Property and equipment.** All property and equipment pertaining to the duties that are performed by the Public Utilities Commission and are transferred to Efficiency Maine Plus effective July 1, 2010 must be transferred to Efficiency Maine Plus by July 1, 2010.

**12. American Recovery and Reinvestment Act.** Funds that are allocated to the State pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, prior to July 1, 2010 to programs or funds that are repealed in Part A of this Act must be transferred by July 1, 2010 to the corresponding fund or program established in Part B of this Act. The Public Utilities Commission staff shall cooperate with, consult with and jointly plan with the director of Efficiency Maine Plus for the expansion of existing programs and establishment of new programs related to new funding for the state energy program resulting from the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5.

**13. Adoption of state standards.** In accordance with Title 10, section 9312, the Efficiency Maine Plus Council shall adopt state standards for energy auditor certification no later than January 1, 2012.

**14. Revisor's review, cross-references.** The Revisor of Statutes shall review the Maine Revised Statutes and include in the errors and inconsistencies bill submitted to the Second Regular Session of the 124th Legislature pursuant to Title 1, section 94 any sections necessary to correct and update any cross-references in the statutes to provisions of law repealed in this Act.

## **PART F**

**Sec. F-1. 35-A MRSA c. 96** is enacted to read:

### **CHAPTER 96**

#### **Maine Energy independence Act funding**

##### **§ 10101. Conservation fund**

**1. Funding level; base assessment.** The commission shall assess transmission and distribution utilities to collect funds for the electricity conservation fund program under Title 10, section 9307 and administrative costs in accordance with this subsection and shall make other assessments in accordance with subsection 2. The amount of all assessments by the commission under this subsection

plus expenditures of a transmission and distribution utility associated with prior conservation efforts must result in conservation expenditures by each transmission and distribution utility, not including expenditures on assessments under subsection 2, that are fixed at a rate of 0.145 cent per kilowatt-hour.

**2. Other assessments on transmission and distribution utilities.** The commission shall assess each transmission and distribution utility based on the utility's gross operating revenue as necessary to realize all available energy efficiency and demand reduction resources in this State that are cost-effective, reliable and feasible as determined by the commission after the commission consults with Efficiency Maine Plus established under Title 10, chapter 1005 and considers the following:

- A. The amount of assessments pursuant to subsection 1 and their payment schedule;
- B. The funding for the electricity conservation fund program provided by the energy and carbon savings fund under Title 10, section 9308;
- C. The amount of payments received from a forward capacity market as a result of conservation fund programs funded under this chapter; and
- D. Any other predictable sources of funding for or investment in energy conservation and efficiency programs.

For the purposes of this subsection, "gross operating revenue" means revenue derived from filed rates, except from sales for resale. The commission may correct any errors in the assessments under this subsection by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year. The commission shall determine the assessments under this subsection annually prior to May 1st and the commission shall assess each utility for its pro rata share for expenditure, including funds for energy conservation fund programs, during the fiscal year beginning July 1st. The commission may not charge any assessment under this subsection until the Legislature has approved the commission's budget in accordance with section 116. The commission shall separately identify any recommended assessment under this subsection in its presentation of budget recommendations contained in any current services budget legislation and any supplemental budget legislation to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters pursuant to section 116. Each utility shall pay the assessment charged to that utility under this subsection on the same schedule that payment of assessments under subsection 1 is required.

**3. Transmission and subtransmission voltage level.** After July 1, 2007, electricity customers receiving service at transmission and subtransmission voltage levels are not eligible for new conservation fund programs undertaken under this section, and those customers are not required to pay in rates any amount associated with the assessment imposed on transmission and distribution utilities under subsection 1 or subsection 2. To remove the amount of the assessment under subsection 1, the commission shall reduce the rates of such customers that are in effect on July 1, 2007 by 0.145 cent per kilowatt-hour at the time of the first rate adjustment following the effective date of this subsection. For the purposes of this subsection, "transmission voltage levels" means 44 kilovolts or more, and "subtransmission voltage levels" means 34.5 kilovolts.

**4. Conservation fund.** The commission shall transfer funds collected under this section to Efficiency Maine Plus to be used solely for the electricity conservation fund program under Title 10, section 9307.

A. The commission shall deposit all assessments collected pursuant to this section into the electricity conservation fund under Title 10, section 9307.

B. Any interest earned on funds in the conservation fund must be credited to the electricity conservation fund under Title 10, section 9307.

C. Funds not spent in any fiscal year remain in the conservation fund to be used for the electricity conservation fund program under Title 10, section 9307.

**5. Prior conservation efforts.** Except as otherwise directed by the commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. For purposes of this section, "prior conservation efforts" means programs to promote conservation undertaken at the direction or with the authorization of the commission prior to March 1, 2002. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

**6. 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 return the value of those funds to consumers by appropriate reductions in the assessment collected pursuant to subsection 1.

**7. Resolution of disputes.** Upon receipt of an appropriate filing by a party to a contract relating to prior conservation efforts, the commission shall adjudicate a dispute relating to the interpretation or administration of the contract by the transmission and distribution utility.

In the case of a dispute filed after the effective date of this subsection, the commission shall refer the dispute to commercial arbitration in accordance with this subsection. Each party to the contract shall select an arbitrator who is not a current employee of the party. The selected arbitrators shall then select a 3rd arbitrator. If the arbitrators cannot agree on the 3rd arbitrator, each party shall submit to the commission a list of at least 3 arbitrators who have no previous or current interest in the contract and, to the extent practicable, have special competence and experience with respect to the subject matter involved in the dispute. The commission shall choose the 3rd arbitrator from among the persons on the lists provided by the parties. After their selection, the arbitrators shall promptly hear and determine the controversy pursuant to the rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules conflict with any procedural rules established by the commission or applicable provisions of the laws of this State relating to arbitration, the applicable council rules or provisions of state law govern the arbitration. The arbitrators shall submit their decision to the council.

A. The commission shall accept or reject the decision within 30 days of its submission, unless the commission requires additional time, in which case it may extend its review for another 30 days.

B. If the commission does not reject the decision within 30 days or, if it extends its review period an additional 30 days, within 60 days the decision is deemed accepted.

C. If the commission rejects the decision, the commission shall adjudicate the dispute. A decision by the council under this subsection, including a decision by the arbitrators that is deemed accepted by the council pursuant to paragraph B, is enforceable in a court of law.

**8. Ratemaking and cost recovery.** The assessments charged to utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of transmission and distribution utilities.

**9. Rules.** The commission shall adopt rules necessary to implement this section. The commission may by vote adopt pre-existing rules without conducting a rulemaking process pursuant to Title 5, chapter 375, subchapter 1. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§ 10102. Cost recovery for natural gas conservation programs**

The commission shall include in rates for a gas utility all costs incurred in compliance with natural gas conservation programs established pursuant to Title 10, section 9309 and rules adopted by the Efficiency Maine Plus Council pursuant to that section, as long as those costs have been prudently incurred.

The commission shall assess each gas utility an amount that is no less than 3% of the gas utility's delivery revenues as defined by commission rule. The funds must be transferred to a separate gas conservation fund according to Title 10, section 9309, to benefit consumers of natural gas. 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. In the event that funds are not expended, transferred 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.

### **§ 10103. Funding level; solar and wind energy rebate program**

The commission shall assess transmission and distribution utilities to collect funds for the solar and wind energy rebate program established in accordance with Title 10, section 9310. The amount of all assessments by the commission under this section must result in total program expenditures by each transmission and distribution utility that do not exceed 0.005 cent per kilowatt-hour. To the extent practicable, the commission shall establish and collect the assessment in a manner that is consistent with the assessment made under section 10101. The commission shall establish a solar and wind energy rebate program fund to be used solely for the purposes of this section. All assessments made under this section must be transferred to a solar and energy rebate fund at Efficiency Maine Plus established under Title 10, chapter 1005. 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 commission shall determine the allotment of the fund in each fiscal year between solar photovoltaic system rebates, solar thermal system rebates and qualified wind energy system rebates, with a minimum of 20% of the fund provided to each of the 3 types of rebates.

**Sec. F-2. Effective date.** This Part takes effect July 1, 2010.

## **PART G**

**Sec. G-1. 5 MRSA §282, sub-§7,** as amended by PL 2001, c. 333, §2, is further amended to read:

**7. Value of fringe benefits.** To ensure that all publications that state the salary of an employee or of a position in State Government also include a statement of the dollar value of the fringe benefit package provided. For purposes of this subsection, "fringe benefits" includes an employer's cost of an employee's health insurance, dental insurance and retirement but does not include the amount paid to cover any unfunded liability; and

**Sec. G-2. 5 MRSA §282, sub-§8,** as enacted by PL 2001, c. 333, §3, is further amended to read:

**8. Serve as director of Clean Government Initiative.** To serve as a director, along with the Commissioner of Environmental Protection, of the Clean Government Initiative established in Title 38, section 343-H; and

**Sec. G-3. 5 MRSA §282, sub-§9** is enacted to read:

**9. Energy Independence Fund; revenues from occupancy of state assets.** To establish an energy independence fund from the revenues derived from transportation commerce corridors pursuant to Title 23, section 345 and state waters and coastal islands pursuant to Title 5, section 3347. The revenues must be used for the following purposes:

- A. To ensure methodical transition to energy independence and security for the people, communities, economy and environment of the State;
- B. To transform the ways homes and businesses are heated, energy is used and people and cargo are transported; and
- C. To gain independence from foreign oil and to maximize energy efficiency, to enhance renewable energy sources and to invest in an economic development strategy to ensure a vibrant, environmentally sound and prosperous future.

**Sec. G-4. 5 MRSA c. 314, sub-c. 4** is enacted to read:

### **SUBCHAPTER 4**

#### **compensation for use of state waters and islands**

##### **§ 3347. Compensation**

The Executive Department, State Planning Office shall develop a program to negotiate agreements and receive compensation for the use of state waters and state-owned islands for the generation of energy, transmission of energy or communications systems.

**1. Compensation based on avoided costs.** Compensation must be based on the avoided costs of the entity proposing to use the waters or coastal islands, appraisals, the unique asset of right-of-way and other factors affecting value and cost. Energy generation, energy transmission and communications systems projects with agreements negotiated under this section are exempt from the submerged lands lease program set forth in Title 12, section 1862.

**2. Use of funds.** Compensation received must be used for the general purposes of energy efficiency programs, renewable energy research and development, fisheries management, fisheries-related infrastructure and programs designed to support fishing businesses and related marine industries. Funds received from the negotiated agreements under this section must be deposited in the Energy Independence Fund, established under section 282.

**3. Agreements.** The Executive Department, State Planning Office may enter into an agreement with the Department of Administrative and Financial Services in order to be compensated for any costs associated with implementing this section.

**4. Rules.** The Executive Department, State Planning Office may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A

**Sec. G-5. 23 MRSA c. 8-A** is enacted to read:

## **CHAPTER 8-A**

### **transportation commerce corridors**

#### **§ 345. Transportation commerce corridors**

**1. Occupancy agreements.** Upon a determination that it is in the best interests of the State to do so, the department may enter into occupancy agreements allowing the longitudinal underground installation of lines, cables, pipelines or other structures for the transmission of energy, communication transmission systems or related facilities within the rights-of-way of the state highway system, the federal interstate highway system, state-owned or state-controlled rail corridors or other state transportation corridors.

**2. Negotiate agreements.** The department shall negotiate agreements and receive compensation for the use of highway rights-of-way to install lines, cables, pipes and related facilities. Compensation must be based on the avoided costs of the entity proposing to use the transportation corridor, the limited amount of space within such corridors and other factors affecting value and cost.

**3. Use of funds.** Compensation received pursuant to this section must be used for the general purposes of transportation, energy efficiency programs, renewable energy research and development and other related matters. Funds received from negotiated agreements pursuant to subsection 2 must be deposited in the Energy Independence Fund, established under Title 5, section 282.



**4. Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

## SUMMARY

This bill:

1. Establishes Efficiency Maine Plus as an independent authority with oversight responsibilities for energy efficiency and renewable energy programs for all fuels, including those energy efficiency programs now implemented by the Public Utilities Commission, natural gas utility efficiency programs and the programs funded by revenue from the regional greenhouse gas initiative;
2. Directs Efficiency Maine Plus to plan, implement and evaluate energy efficiency programs for all consumer sectors including the residential, nonprofit, commercial, industrial and public sectors;
3. Directs Efficiency Maine Plus to coordinate and consult with other relevant agencies with respect to energy efficiency matters;
4. Provides for separate accounting for funds from different funding sources, such as the electricity system benefit charge and revenue resulting from the sale of carbon dioxide allowances;
5. Establishes a building weatherization program;
6. Creates an interagency task force that will focus on increasing the energy efficiency of state facilities; and
7. Establishes the Energy Independence Fund, which consists of revenues derived from occupancy agreements for the use of transportation corridors and the use of state waters and state-owned islands.