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An Act To Enhance Maine's Clean Energy Opportunities

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

Whereas, this legislation needs to take effect before the expiration of the 90-day period in order to ensure the proper implementation of the Efficiency Maine Trust Act; 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 §3210-C, sub-§1, ¶F is enacted to read:

F. "Renewable energy credit" means a tradable instrument that represents an amount of electricity generated from eligible resources as defined in section 3210, subsection 2, paragraph B or renewable capacity resources.

Sec. 2. 35-A MRSA §3210-C, sub-§1, ¶G is enacted to read:

G. "Triennial plan" has the same meaning as in section 10102, subsection 9.

Sec. 3. 35-A MRSA §3210-C, sub-§3, as repealed and replaced by PL 2009, c. 415, Pt. A, §21, is amended to read:

3. Commission authority. The commission may direct investor-owned transmission and distribution utilities to enter into long-term contracts for:

A. Capacity resources; and

B. Any available energy associated with capacity resources contracted under paragraph A:

(1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

(2) If the commission determines appropriate for purposes of supplying or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State. Available energy contracted pursuant to this subparagraph may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids; and

C. Any available renewable energy credits associated with capacity resources contracted under paragraph A to the extent the cost of the renewable energy credits is below market value or the purchase of renewable energy credits adds value to the transaction.

If at any time after July 1, 2011 the commission determines that the assessments on transmission and distribution utilities under section 10110, subsections 4 and 5 will not provide sufficient funds to meet the energy efficiency program budget allocations articulated in the triennial plan approved by the commission pursuant to section 10104, subsection 4 or any annual update plan approved by the commission pursuant to section 10104, subsection 6, the commission may, after providing notification to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters, direct investor-owned transmission and distribution utilities to enter into long-term contracts for energy efficiency capacity resources and any available energy associated with such resources to the extent necessary to meet the energy efficiency program budget allocations articulated in the triennial plan or annual update plan.

The commission may direct investor-owned transmission and distribution utilities to enter into contracts under this subsection only as agents for their customers, only when such contracts are in the best interest of customers and only in accordance with this section. The commission may permit, but may not require, investor-owned transmission and distribution utilities to enter into contracts for differences that are designed and intended to buffer ratepayers in the State from potential negative impacts from transmission development. To the greatest extent possible, the commission shall develop procedures for long-term contracts for investor-owned transmission and distribution utilities under this subsection having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources. These contracts are not subject to the rules of the State Purchasing Agent. In a competitive solicitation conducted pursuant to subsection 6, the commission shall allow transmission and distribution utilities to submit bids for interruptible,or demand response or energy efficiency capacity resources.

Capacity resources contracted under this subsection may not exceed the amount necessary to ensure the reliability of the electric grid of this State, to meet the energy efficiency program budget allocations articulated in the triennial plan as approved by the commission pursuant to section 10104, subsection 4 or any annual update plan approved by the commission pursuant to section 10104, subsection 6 or to lower customer costs as determined by the commission pursuant to rules adopted under subsection 10.

Unless the commission determines the public interest requires otherwise, a capacity resource may not be contracted under this subsection unless the commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

The commission shall ensure that any long-term contract authorized under this subsection is consistent with the State's goals for greenhouse gas reduction under Title 38, section 576 and the regional greenhouse gas initiative as described in the state climate action plan required in Title 38, section 577.

Sec. 4. 35-A MRSA §3210-C, sub-§6, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

6. Competitive solicitation process and contract negotiation.~~For~~Except as provided in paragraph A, for purposes of selecting potential capacity resources for contracting pursuant to subsection 3, the commission shall conduct a competitive solicitation no less often than every 3 years if the commission determines that the likely benefits to ratepayers resulting from any contracts entered into as a result of the solicitation process will exceed the likely costs. Following review of bids, the commission may negotiate with one or more potential suppliers. When only one bid has been offered, the commission shall ensure that negotiations are based on full project cost disclosure by the potential supplier. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior.

A. The commission shall, for purposes of selecting energy efficiency capacity resources and available energy associated with such resources for contracting pursuant to subsection 3, conduct a competitive solicitation in accordance with this subsection or contract with the Efficiency Maine Trust established in section 10103 to deliver those resources through a competitive solicitation process administered by the trust.

Sec. 5. 35-A MRSA §3210-C, sub-§7, as repealed and replaced by PL 2009, c. 415, Pt. A, §22, is amended to read:

7. Disposition of resources. An investor-owned transmission and distribution utility shall sell capacity resources ~~and~~, energy or renewable energy credits purchased pursuant to subsection 3 or take other action relative to such capacity resources ~~and~~, energy or renewable energy credits as directed by the commission.

Sec. 6. 35-A MRSA §3210-C, sub-§9, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

9. Contract payments.~~Contracts~~Except as provided in paragraphs A and B, contracts for capacity and~~resources,~~ related energy or renewable energy credits entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity ~~and~~resources, related energy or renewable energy credits have been provided.

A. Contracts with the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy entered into pursuant to this section may provide that up to 20% of the total payment be made at the start of the contract. Such contracts must provide that the remaining payments will be made only after the supplier has demonstrated, according to measurement and verification protocols specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated.

B. Contracts with any entity other than the Efficiency Maine Trust established in section 10103 for energy efficiency capacity resources and related energy must provide that payments will be made only after the supplier has demonstrated, according to measurement and verification protocols

specified in rules adopted by the Efficiency Maine Trust Board pursuant to section 10105, subsection 5, that physical installations have been completed and contracted amounts of capacity resources and related energy have been substantiated.

Sec. 7. 35-A MRSA §10103, sub-§1, ¶C, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

C. Ensure that all expenditures of the trust are cost-effective in terms of avoided energy costs as provided by rules adopted pursuant to section 10105, subsection 5, paragraph A; and

Sec. 8. 35-A MRSA §10104, sub-§4, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

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

A. The triennial plan must be developed by the trust, in consultation with entities and agencies engaged in delivering efficiency programs in the State, to authorize and govern or coordinate implementation of energy efficiency and weatherization programs in the State.

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

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

C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of the trustees upon a finding that the plan is consistent with the statutory authority for each source of funds that will be used to implement the plan, the state energy efficiency targets in paragraph F and the best practices

of program administration under subsection 2. The plan must include, but is not limited to, efficiency and conservation program budget allocations, objectives, targets, measures of performance, program designs, program implementation strategies, timelines and other relevant information.

D. Prior to submission of the triennial plan to the commission, the trust shall offer to provide a detailed briefing on the draft plan to the joint standing committee of the Legislature having jurisdiction over energy matters and, at the request of the committee, shall provide such a briefing and opportunity for input from the committee. After providing such opportunity for input and making any changes as a result of any input received, the board shall deliver the plan to the commission for its review and approval. The commission shall open a proceeding and issue an order either approving the plan or rejecting the plan and stating the reasons for the rejection. The commission shall reject elements of the plan that propose to use funds generated pursuant to sections 3210C, 10110, 10111 or 10119 if the plan fails to reasonably explain how these elements of the program would achieve the objectives and implementation requirements of the programs established under those sections or the measures of performance under subsection 3. Funds generated under these statutory authorities may not be used pursuant to the triennial plan unless those elements of the plan proposing to use the funds have been approved by the commission. The commission shall approve or reject any elements of the triennial plan within 60 days of its delivery to the commission. The board, within 15 days of final commission approval of its plan, shall submit the plan to the joint standing committee of the Legislature having jurisdiction over energy matters together with any explanatory or other supporting material as the committee may request and, at the request of the committee, shall provide a detailed briefing on the final plan. After receipt of the plan, the joint standing committee of the Legislature having jurisdiction over energy matters may submit legislation relating to the plan.

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

F. It is an objective of the triennial plan to design, coordinate and integrate sustained energy efficiency and weatherization programs that are available to all energy consumers in the State, regardless of fuel type, that advance the targets of:

- (1) Weatherizing 100% of residences and 50% of businesses by 2030;
- (2) Reducing peak-load electric energy consumption by 100 megawatts by 2020;
- (3) Reducing the State's consumption of liquid fossil fuels by at least 30% by 2030;
- (4) By 2020, achieving electricity and natural gas savings of at least 30% and heating fuel savings of at least 20% as defined in and determined pursuant to the measures of performance ratified by the commission under section 10120;

- (5) Capturing all cost-effective energy efficiency resources available for electric and natural gas utility ratepayers;
- (6) Saving residential and commercial heating consumers not less than \$3 for every \$1 of program funds invested by 2020 in cost-effective heating and cooling measures that cost less than conventional energy supply;
- (7) Building stable private sector jobs providing clean energy and energy efficiency products and services in the State by 2020; and
- (8) Reducing greenhouse gas emissions from the heating and cooling of buildings in the State by amounts consistent with the State's goals established in Title 38, section 576.

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

As used in this paragraph, "heating fuel" means a fossil fuel used for the purposes of heating buildings or for domestic water heating, including liquefied petroleum gas, kerosene or #2 heating oil, but not including fuels when used for industrial or manufacturing processes, and "liquid fossil fuel" means any liquid fossil fuel or heating fuel used for a purpose other than for transportation.

Sec. 9. 35-A MRSA §10107, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

§ 10107. Conflicts of interest; financial disclosure statements

Each trustee is an "executive employee" for purposes of Title 5, sections 18, 18A and 19. A trustee or employee of the trust or a spouse or dependent child of any of those individuals may not receive any direct personal benefit from the activities of the trust in assisting any private entity. This section does not prohibit corporations or other entities with which a trustee is associated by reason of ownership or employment from participating in program activities with the trust if ownership or employment is made known to the board and the ~~board or director~~ trustee abstains from voting on matters relating to that participation.

Sec. 10. 35-A MRSA §10110, sub-§5, as enacted by PL 2009, c. 372, Pt. B, §3, is amended to read:

5. Other assessments on transmission and distribution utilities. In accordance with the triennial plan, 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 after consideration of the following:

- A. The amount of assessments pursuant to subsection 4 and their payment schedule;
- B. The funding for conservation programs provided by the Regional Greenhouse Gas Initiative Trust Fund pursuant to section 10109;
- C. The amount of payments received from a forward capacity market as a result of conservation programs funded under this chapter; and
- D. Any other predictable sources of funding for or investment in conservation 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~~June 1st and assess each utility for its pro rata share for expenditure, including funds for energy conservation programs, during the fiscal year beginning July 1st. The commission may not ~~charge~~increase any assessment under this subsection until the Legislature has approved the ~~commission's~~Efficiency Maine Trust's budget in accordance with section 116. ~~The~~Following the commission's approval of the triennial plan pursuant to section 10104, subsection 4 or any update plan pursuant to section 10104, subsection 6, the commission shall separately ~~identify~~present any recommended increase in the 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 public utilities 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 4 is required.

Sec. 11. 35-A MRSA §10115, sub-§3 is enacted to read:

3. Use of funds. All funds received pursuant to this section must be expended in accordance with the requirements of sections 10103, 10104 and 10105, unless specifically prohibited by federal law or regulation. Funds to be expended for programs or projects related to weatherization and energy-efficient use of fossil fuels for heating must be deposited in the Heating Fuels Efficiency and Weatherization Fund established in section 10119 and expended in accordance with that section. The trust may transfer any federal funds received pursuant to 42 United States Code, Sections 6321 to 6326 (2009) to the appropriate state agency as it considers necessary to the extent that such funds are designated for a purpose that falls outside the energy efficiency and alternative energy programs that the trust oversees and administers.

Sec. 12. Review of long-term contracting. By January 15, 2012, the Public Utilities Commission shall report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters regarding long-term contracts implemented pursuant to the Maine Revised Statutes, Title 35-A, section 3210-C, including the number, types and lengths of contracts. After review of the commission's report, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters may submit a bill regarding long-term contracts to the Second Regular Session of the 125th Legislature.

Sec. 13. Transmission and subtransmission voltage level electricity customers; participation in energy efficiency programs. The Efficiency Maine Trust established in the Maine Revised Statutes, Title 35-A, section 10103 shall convene a working group to examine options regarding the participation of electricity customers receiving service at transmission and subtransmission voltage levels in the energy efficiency programs of the trust, particularly those programs funded by assessments on transmission and distribution utilities. The working group shall, at a minimum, consider the opportunity for these customers to self-direct funding and other strategies. The Efficiency Maine Trust shall, at a minimum, invite the Office of the Public Advocate, the Public Utilities Commission, representatives of transmission and distribution utilities, representatives of industrial energy consumers and representatives of environmental interests to participate in the working group. No later than January 31, 2011, the Efficiency Maine Trust shall submit a report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters regarding the findings and recommendations of the working group. Following receipt and review of the report, the committee may submit a bill related to the report to the First Regular Session of the 125th Legislature.

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

Effective 90 days following adjournment of the 124th
Legislature, Second Regular Session, unless otherwise indicated.