

# MAINE STATE LEGISLATURE

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(Filing No. H-1024)

UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1439, L.D. 2041, Bill, "An Act To Enhance Maine's Energy Independence and Security"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 36 MRSA §3203, sub-§1-A is enacted to read:

1-A. Special biodiesel rate. Notwithstanding subsection 1, the rate for distillates containing 2% or more of biodiesel fuel by volume is 20¢ per gallon. This subsection is repealed 90 days after the adjournment of the First Regular Session of the 123rd Legislature.

Sec. A-2. Study group. The Department of the Secretary of State, Bureau of Motor Vehicles shall convene a study group consisting of the Bureau of Motor Vehicles; Office of Energy Independence and Security; the Department of Transportation; and the Department of Administrative and Financial Services, Bureau of Revenue Services. The study group shall consider the revenue impacts of a differential tax on biodiesel, the impacts on tax administration and compliance and alternatives to a differential tax including a refund process.

By March 15, 2007, the Department of the Secretary of State, Bureau of Motor Vehicles shall report the findings and recommendations of the study group, including any necessary

COMMITTEE AMENDMENT

2 implementing legislation, to the joint standing committee of the  
Legislature having jurisdiction over utilities matters and the  
4 joint standing committee of the Legislature having jurisdiction  
over transportation matters. Either the joint standing committee  
6 of the Legislature having jurisdiction over utilities matters or  
the joint standing committee of the Legislature having  
8 jurisdiction over transportation matters, after consultation  
between the committees, may report out legislation on the  
10 subject matter of the report to the First Regular Session of the  
123rd Legislature.

12 **Sec. A-3. Transfer from General Fund to Highway Fund.** The  
State Controller shall transfer \$20,000 from the General Fund  
14 unappropriated surplus to the Highway Fund unappropriated surplus  
no later than June 30, 2007.  
16

18 **PART B**

20 **Sec. B-1. 35-A MRSA §3212, sub-§4-A,** as enacted by PL 2003, c.  
665, §2, is repealed.  
22

24 **Sec. B-2. 35-A MRSA §3212, sub-§§4-B and 4-C** are enacted to  
read:

26 4-B. Demand response and energy efficiency. The commission  
may incorporate cost-effective demand response and energy  
28 efficiency into the supply of standard-offer service. The  
commission shall encourage entities based in this State that are  
30 not otherwise either a standard-offer service provider or its  
affiliate to participate in supplying cost-effective demand  
32 response or energy efficiency pursuant to this subsection.

34 4-C. Authority to establish various contract lengths and  
terms. For the purpose of providing over a reasonable time  
36 period the lowest price for standard-offer service to residential  
and small commercial customers, the commission, with respect to  
38 residential and small commercial standard-offer service, may, in  
addition to incorporating cost-effective demand response and  
40 energy efficiency pursuant to subsection 4-B and to the extent  
authorized in section 3210-C, incorporating the energy portion of  
42 any contracts entered into pursuant to section 3210-C, establish  
various standard-offer service contract lengths and terms.  
44

46 **Sec. B-3. Review of authority to establish various contract lengths**  
**and terms.** By January 15, 2008, the Public Utilities Commission  
shall report to the joint standing committee of the Legislature  
48 having jurisdiction over utilities matters on its use of the  
authority granted under the Maine Revised Statutes, Title 35-A,  
50 section 3212, subsection 4-C to establish various

standard-offer service contract lengths and terms for residential and small commercial standard-offer service. The joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation to the Second Regular Session of the 123rd Legislature on the subject matter of Title 35-A, section 3212, subsection 4-C.

**Sec. B-4. Demand response programs.** The Public Utilities Commission, pursuant to the Maine Revised Statutes, Title 35-A, section 3211-A, shall consider developing one or more demand response programs for medium nonresidential customers.

**PART C**

**Sec. C-1. 35-A MRSA §§3210-C and 3210-D** are enacted to read:

**§3210-C. Capacity resource adequacy**

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

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or new interruptible, demand response or energy efficiency capacity resource.

B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission.

C. "New" as applied to any capacity resource means a capacity resource that:

- (1) Has an in-service date after September 1, 2005;
- (2) Was added to an existing facility after September 1, 2005;
- (3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or
- (4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is

2 employing an alternate technology that significantly  
3 increases the efficiency of the generation process.

4 D. "Nonrenewable capacity resource" means an electric  
5 generation resource other than a renewable capacity resource.

6 E. "Renewable capacity resource" means an renewable  
7 resource, as defined in section 3210, subsection 2,  
8 paragraph C, except "renewable capacity resource" does not  
9 include:

10  
11 (1) A generator fueled by municipal solid waste in  
12 conjunction with recycling; or

13 (2) A hydroelectric generator unless it meets all  
14 state and federal fish passage requirements.

15 2. Policy. It is the policy of this State:

16  
17 A. That the share of new renewable capacity resources as a  
18 percentage of the total capacity resources in this State on  
19 December 31, 2007 increase by 10% by 2017 and that, to the  
20 extent possible, the increase occur in uniform annual  
21 increments;

22 B. To reduce electric prices and price volatility for the  
23 State's electricity consumers and to reduce greenhouse gas  
24 emissions from the electricity generation sector; and

25 C. To develop new capacity resources to reduce demand or  
26 increase capacity so as to mitigate the effects of any  
27 regional or federal capacity resource mandates.

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

31 A. Capacity resources; and

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

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

36 (2) If the commission determines appropriate for  
37 purposes of supplying standard-offer service pursuant  
38 to section 3212. If contracts are entered into  
39 pursuant to this subparagraph, the contracts must be

2 treated as standard-offer service contracts pursuant to  
3 section 3212.

4 The commission may direct large investor-owned transmission and  
5 distribution utilities to enter into contracts under this  
6 subsection only as agents for their customers and only in  
7 accordance with this section. To the greatest extent possible,  
8 the commission shall develop procedures having the same legal and  
9 financial effect as the procedures used for standard-offer  
10 service pursuant to section 3212 for large investor-owned  
11 transmission and distribution utilities.

12 The commission may enter into contracts for interruptible, demand  
13 response or energy efficiency capacity resources.

14 Capacity resources contracted under this subsection may not  
15 exceed the amount necessary to ensure the reliability of the  
16 electric grid of this State or to lower customer costs as  
17 determined by the commission pursuant to rules adopted under  
18 subsection 10.

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

24 4. Priority of capacity resources. In selecting capacity  
25 resources for contracting pursuant to subsection 3, the  
26 commission shall apply the following standards.

27 A. The commission shall select capacity resources that are  
28 competitive and the lowest price when compared to other  
29 available offers for capacity resources of the same or  
30 similar contract duration. The commission shall consider  
31 the cost of the capacity and the cost of related energy. The  
32 commission shall, by rules adopted pursuant to subsection  
33 10, establish a methodology for calculating and considering  
34 the cost of related energy for capacity-only offers.

35 B. Among capacity resources meeting the standard in  
36 paragraph A, the commission shall choose among capacity  
37 resources in the following order of priority:

38 (1) New interruptible, demand response or energy  
39 efficiency capacity resources located in this State;

40 (2) New renewable capacity resources located in this  
41 State;

2           (3) New capacity resources with no net emission of  
          greenhouse gases;

4           (4) New nonrenewable capacity resources located in  
          this State. The commission shall give preference to new  
6           nonrenewable capacity resources with no net emission of  
          greenhouse gases;

8           (5) Capacity resources that enhance the reliability of  
10          the electric grid of this State. The commission shall  
          give preference to capacity resources with no net  
12          emission of greenhouse gases; and

14          (6) Other capacity resources.

16          5. Contract term. A contract entered into pursuant to  
          subsection 3 may not be for more than 10 years, unless the  
18          commission finds a contract for a longer term to be prudent.

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

34          7. Disposition of resources. A large investor-owned  
36          transmission and distribution utility shall sell capacity  
          resources purchased pursuant to subsection 3 or take other action  
38          relative to such capacity resources as directed by the commission.

40          8. Cost recovery. The commission shall ensure that a large  
          investor-owned transmission and distribution utility recovers in  
42          rates all costs of contracts entered into pursuant to subsection  
          3, including but not limited to any impacts on the utility's  
44          costs of capital. A price differential existing at any time  
          during the term of the contract between the contract price and  
46          the prevailing market price at which the capacity resource is  
          sold must be reflected in rates and may not be deemed to be  
48          imprudent.

2 9. Contract payments. Contracts for capacity and related  
3 energy entered into pursuant to this section must provide that  
4 payments will be made only after contracted amounts of capacity  
5 and related energy have been provided.

6 10. Rules. The commission shall adopt rules to implement  
7 this section. In adopting rules, the commission shall consider  
8 the financial implications of this section on large  
9 investor-owned transmission and distribution utilities. Rules  
10 adopted under this subsection are major substantive rules as  
11 defined in Title 5, chapter 375, subchapter 2-A. The commission  
12 may not enter into or direct any large investor-owned  
13 transmission and distribution utility to enter into any contract  
14 pursuant to this section until rules are finally adopted under  
15 this subsection.

16 §3210-D. Resource plan

17 The commission shall adopt by rule a long-term plan for  
18 electric resource adequacy for this State to ensure grid  
19 reliability and the provision or availability of electricity to  
20 consumers at the lowest cost.

21 After final adoption of rules under this section, the  
22 commission shall take any necessary action within its authority  
23 under this Title to support achievement of the objectives of the  
24 plan.

25 Rules adopted under this section are major substantive rules  
26 as defined in Title 5, chapter 375, subchapter 2-A.

27 **32 Sec. C-2. 37-B MRSA §742, sub-§2, ¶B, as amended by PL 2001, c.**  
28 **353, §5, is further amended to read:**

29 **B. Upon the issuance of an energy emergency proclamation**  
30 **and after consulting with the Executive Department, State**  
31 **Planning Office, the Governor may exercise all the powers**  
32 **granted in this chapter, except as specifically limited by**  
33 **paragraph C. The powers of the Governor include, without**  
34 **limitation, the authority to:**

35 (1) Establish and implement programs, controls,  
36 standards, priorities and quotas for the allocation,  
37 conservation and consumption of energy resources;

38 (2) Regulate the hours and days during which  
39 nonresidential buildings may be open and the  
40 temperatures at which they may be maintained;



2 (3) Regulate the use of gasoline and diesel-powered  
land vehicles, watercraft and aircraft;

4 (4) After consulting, when appropriate, with the New  
6 England governors and upon the recommendations of the  
Maine Public Utilities Commission, regulate the  
8 generation, distribution and consumption of electricity;

10 (5) Establish temporary state and local boards and  
agencies;

12 (6) Establish and implement programs and agreements  
14 for the purposes of coordinating the emergency energy  
response of the State with those of the Federal  
Government and of other states and localities;

16 (7) Temporarily suspend truck weight and size  
18 regulations, but not in conflict with federal  
regulations; and

20 (8) Regulate the storage, distribution and consumption  
22 of home heating oil; and

24 (9) If the energy emergency was caused by a lack of  
26 electric grid reliability in this State resulting from  
insufficient capacity resources, take appropriate  
28 action, in consultation with the Public Utilities  
Commission, to procure sufficient capacity resources  
30 including generation capacity and interruptible, demand  
response or energy efficiency capacity resources.

32 **Sec. C-3. Public Utilities Commission resource plan.** The Public  
Utilities Commission shall adopt the resource plan required under  
34 the Maine Revised Statutes, Title 35-A, section 3210-D in  
accordance with the following schedule.

36 **1. Outline and strategy.** By March 1, 2007, the commission  
38 shall establish an outline or procurement strategy for the  
resource plan and provide the outline or procurement strategy to  
40 the joint standing committee of the Legislature having  
jurisdiction over utilities matters for its review and comment.

42 **2. Final resource plan.** By March 1, 2008, the commission  
44 shall submit to the Legislature provisionally adopted rules  
establishing the resource plan.

48 **PART D**

50 **Sec. D-1. 5 MRSA §12004-I, sub-§74-A-2 is enacted to read:**

2            74-A-2. Maine Energy Not            35-A MRSA  
Public            Council            Authorized            §3218  
4            Utilities

6            **Sec. D-2. 35-A MRSA §3218** is enacted to read:

8            **§3218. Maine Energy Council**

10            1. Council established. The Maine Energy Council, referred  
to in this section as "the council," is established to monitor  
12            and evaluate matters affecting electricity supply and costs to  
consumers in this State and to provide recommendations to the  
14            Governor, the Public Utilities Commission, other appropriate  
state agencies and the Legislature regarding these matters. The  
16            council is established pursuant to Title 5, section 12004-I,  
subsection 74-A-2.

18            2. Membership. The council consists of 17 members.  
20            Appointing authorities shall seek to ensure representation of all  
areas of the State. Members are appointed as follows:

22            A. Two members of the Senate, appointed by the President of  
24            the Senate, one of whom must be a member of the political  
party holding the largest number of seats in the Senate and  
26            one of whom must be a member of the political party holding  
the 2nd-largest number of seats in the Senate;

28            B. Two members of the House of Representatives, appointed  
30            by the Speaker of the House of Representatives, one of whom  
must be a member of the political party holding the largest  
32            number of seats in the House and one of whom must be a  
34            member of the political party holding the 2nd-largest number  
of seats in the House;

36            C. The chair of the Public Utilities Commission or the  
chair's designee;

38            D. The Public Advocate or the Public Advocate's designee;

40            E. The Commissioner of Environmental Protection or the  
42            commissioner's designee;

44            F. One member representing the Governor's office, appointed  
by the Governor; and

46            G. Nine persons appointed by the Governor, including:

48            (1) One member from the University of Maine System who  
50            has expertise in energy issues;

2 (2) One member representing electricity generators  
4 with a capacity in excess of 100 megawatts;

6 (3) One member representing electricity generators  
8 that rely on renewable energy resources;

10 (4) One member representing competitive electricity  
12 providers;

14 (5) One member representing residential users of  
16 electricity;

18 (6) One member representing large industrial users of  
20 electricity;

22 (7) One member representing small commercial users of  
24 electricity;

26 (8) One member representing investor-owned transmission  
28 and distribution utilities; and

30 (9) One member representing consumer-owned transmission  
32 and distribution utilities.

34 The Governor shall request a list of names from organizations or  
36 entities identified in paragraph G from which to make  
38 appointments.

40 3. Chairs. The first-named Senate member and the  
42 first-named House member serve as cochairs of the council. The  
44 chairs shall jointly call the first meeting of the council. At  
46 the first meeting, the council may select officers from among its  
48 members. The council may select new officers annually.

50 4. Terms of appointment. The terms of appointment are as  
follows.

A. Gubernatorial appointments are for terms of 3 years.

B. Members may serve beyond their designated terms until  
their successors are appointed.

C. Terms of appointment for Legislators coincide with their  
respective legislative terms of office.

5. Meetings. The council may meet as often as necessary. A  
meeting may be called by either chair or by any 4 members. The  
council shall take and maintain minutes of all meetings.

2 6. Staffing. The staff of the commission shall, within  
existing resources, provide assistance to the council in carrying  
out its functions and duties.

4  
6 7. Duties. The council shall:

8 A. Advise the Governor, the commission, other appropriate  
state agencies and the Legislature on matters affecting  
electricity supply and costs to consumers in this State; and

10  
12 B. As resources permit, undertake studies, develop findings  
and make recommendations to the Governor and to the joint  
standing committee of the Legislature having jurisdiction  
over utilities matters on issues affecting electricity  
supply or costs to consumers in this State.

16  
18 8. Authority. As resources permit, the council may:

20 A. Conduct public hearings, conferences, workshops and other  
meetings to obtain information about and discuss and  
publicize the needs of and solutions to issues facing  
electricity consumers in this State;

24 B. At the request of the joint standing committee of the  
Legislature having jurisdiction over utilities matters,  
examine specific issues affecting electricity consumers in  
this State; and

28  
30 C. Submit legislation to the Legislature to implement any  
recommendations of the council.

32 **Sec. D-3. Feasibility study.** The Maine Energy Council shall  
undertake an examination of the feasibility and appropriate means  
34 of studying the impacts of electric industry restructuring in  
this State. The council shall report its recommendations,  
36 together with any necessary implementing legislation, to the  
joint standing committee of the Legislature having jurisdiction  
38 over utilities matters by January 15, 2007. The joint standing  
committee of the Legislature having jurisdiction over utilities  
40 matters may report out legislation on the subject matter of this  
section to the First Regular Session of the 123rd Legislature.'

42  
44 **SUMMARY**

46 This amendment replaces the bill. This amendment  
accomplishes the following.

48  
50 1. It provides for a one-year reduction in the sales and  
use tax on biofuels. It directs the State Controller to transfer

2 \$20,000 from the General Fund unappropriated surplus to the  
3 Highway Fund unappropriated surplus no later than June 30, 2007.  
4 It also directs the Department of the Secretary of State, Bureau  
5 of Motor Vehicles to convene a study group to consider the  
6 revenue impacts of a differential tax on biodiesel, the impacts  
7 on tax administration and compliance and alternatives to a  
8 differential tax including a refund process. The joint standing  
9 committee of the Legislature having jurisdiction over utilities  
10 matters is authorized to report out legislation on this matter to  
11 the First Regular Session of the 123rd Legislature.

12 2. It makes various changes to the Public Utilities  
13 Commission's authority to manage standard-offer service. It  
14 allows the commission to incorporate cost-effective demand-side  
15 measures into the supply of standard-offer service. It  
16 authorizes the commission to enter into various standard-offer  
17 service contract lengths and terms for residential and small  
18 commercial customers and directs the commission to report on its  
19 use of this authority by January 15, 2008. The joint standing  
20 committee of the Legislature having jurisdiction over utilities  
21 matters is authorized to report out legislation on this matter to  
22 the Second Regular Session of the 123rd Legislature. The  
23 amendment also directs the commission to consider developing one  
24 or more demand response programs for medium nonresidential  
25 customers.

26 3. It establishes state policies to increase new renewable  
27 capacity resources, reduce electric prices and volatility and  
28 mitigate the effects of regional or federal capacity resource  
29 mandates. It authorizes the Public Utilities Commission to  
30 direct large transmission and distribution utilities to enter  
31 into long-term contracts for capacity resources and, under  
32 certain circumstances, for related energy. The commission is  
33 authorized to enter into long-term contracts for interruptible,  
34 demand response or energy efficiency capacity resources. Only  
35 those capacity resources that are competitive and lowest priced,  
36 considering both the cost of the capacity and related energy when  
37 compared to other available offers, may be contracted under this  
38 provision. It directs the commission by major substantive rule  
39 to adopt a long-term electric resource adequacy plan to ensure  
40 grid reliability and the availability of electricity to consumers  
41 at the lowest price. The rules are required to be submitted for  
42 legislative review by March 1, 2008. It also adds to the  
43 Governor's powers when the Governor declares a state of emergency  
44 relating to an energy shortage by authorizing the Governor to  
45 take appropriate action to secure capacity resources.

46 4. It establishes the Maine Energy Council to monitor and  
47 evaluate matters affecting electricity supply and costs to  
48 consumers in this State and to provide recommendations to the  
49  
50

COMMITTEE AMENDMENT "A" to H.P. 1439, L.D. 2041

2 Governor, the Public Utilities Commission, other agencies and the  
Legislature on these matters. It also specifically directs the  
4 council to undertake an examination of the feasibility and  
appropriate means of studying the impacts of electric industry  
6 restructuring in this State, and to report its recommendations,  
together with any necessary implementing legislation, to the  
8 joint standing committee of the Legislature having jurisdiction  
over utilities matters by January 15, 2007. The joint standing  
committee of the Legislature having jurisdiction over utilities  
10 matters is authorized to report out legislation on this matter to  
the First Regular Session of the 123rd Legislature.

**FISCAL NOTE REQUIRED**  
(See attached)

**COMMITTEE AMENDMENT**



# 122nd MAINE LEGISLATURE

LD 2041

LR 3152(02)

## An Act To Enhance Maine's Energy Independence and Security

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Utilities and Energy

Fiscal Note Required: Yes

### Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$20,000	\$0	\$0
Highway Fund	\$0	(\$92)	\$8,114	\$0
<b>Revenue</b>				
Highway Fund	\$0	(\$19,908)	(\$8,114)	\$0
<b>Transfers</b>				
General Fund	\$0	(\$20,000)	\$0	\$0
Highway Fund	\$0	\$20,000	\$0	\$0

#### Current Costs - Legislative Study

##### Legislative Study

The projected costs to fund the ongoing general operating expenses for four legislators to serve as members of the Maine Energy Council are \$1,680 annually beginning in fiscal year 2006-07. The Legislature's budget includes \$20,000 in fiscal year 2006-07 for legislative studies and other legislative responsibilities. Whether the amount is sufficient to fund all legislative requests will depend on the number of requests approved by the Legislative Council and the Legislature.

##### Fiscal Detail and Notes

This legislation will reduce Highway Fund revenue by an estimated \$19,908 in fiscal year 2006-07 as a result of the change in the special fuel tax rate. This is offset by a \$20,000 transfer from General Fund unappropriated surplus to the Highway Fund by June 30, 2007.

The Public Utilities Commission estimates that the additional tasks resulting from this legislation will require the services of one full-time analyst position and potentially \$100,000 annually in consulting services. The Public Utilities Commission can absorb these additional costs utilizing existing budgeted resources.

The Bureau of Motor Vehicles within the Department of the Secretary of State will be able to convene a required study group within existing budgeted resources. The Department of Transportation, the Office of Energy Independence and Security and Maine Revenue Services will be able to participate in the study group within existing budgeted resources.