

MAINE STATE LEGISLATURE

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Majority

L.D. 1851

Date:

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Majority

(Filing No. H-321)

NATURAL RESOURCES

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STATE OF MAINE

HOUSE OF REPRESENTATIVES

123RD LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1290, L.D. 1851, Bill, "An Act To Establish the Regional Greenhouse Gas Initiative Act of 2007"

Amend the bill by inserting after the enacting clause and before section 1 the following:

'Sec. 1. 5 MRSA §12004-G, sub-§13-F is enacted to read:

13-F.

Environment/
Natural
Resources and
Public Utilities

Energy and
Carbon Savings
Trust

Legislative per
diem plus
expenses

35-A MRSA
§10008

Amend the bill by striking out section 1 and inserting the following:

'Sec. 1. 5 MRSA §12004-I, sub-§20-B is enacted to read:

20-B.

Environment:
Natural
Resources and
Public Utilities

Maine Energy
Conservation
Board

\$50 per day plus
expenses

35-A MRSA
§10007

Sec. 2. 35-A MRSA §3211-A, sub-§1, ¶C, as amended by PL 2003, c. 487, §2, is repealed.

Sec. 3. 35-A MRSA §3211-A, sub-§1, ¶H, as enacted by PL 2001, c. 624, §4, is repealed.'

Amend the bill by striking out section 3 and inserting the following:

1 ‘Sec. 3. 35-A MRSA §3211-A, sub-§2, as amended by PL 2005, c. 569, §§1 and
2 2, is further amended to read:

3 **2. Programs.** The commission shall develop and, ~~to the extent of available funds,~~
4 implement conservation programs ~~in accordance with this section to help reduce energy~~
5 ~~costs for electricity consumers in the State by the maximum amount possible.~~ The
6 commission shall establish and, on a schedule determined by the commission, revise
7 objectives and an overall energy strategy for conservation programs. Conservation
8 programs implemented by the commission must be consistent with the objectives and an
9 overall energy strategy developed by the commission and be cost effective, as defined by
10 the commission by rule or order. In defining "cost effective," the commission may
11 consider the extent to which a program promotes sustainable economic development or
12 reduces environmental damage to the extent the commission can quantify or otherwise
13 reasonably identify such effects. Consistent with the other requirements of this section,
14 the commission, in adopting and implementing conservation programs, shall seek to
15 encourage efficiency in electricity use, provide incentives for the development of new,
16 energy-efficient business activity in the State and take into account the costs and benefits
17 of energy efficiency and conservation to existing business activity in the State.

18 A. The commission shall consider, without limitation, conservation programs that:

- 19 (1) Increase consumer awareness of cost-effective options for conserving energy;
20 (2) Create more favorable market conditions for the increased use of efficient
21 products and services;
22 (3) Promote sustainable economic development and reduced environmental
23 damage; ~~and~~
24 (4) Reduce the price of electricity over time for all consumers by achieving
25 reductions in demand for electricity during peak use periods; ~~and~~
26 (5) Reduce total energy costs for electricity consumers in the State by increasing
27 the efficiency with which electricity is consumed.

28 B. The commission, with regard to the assessment imposed under subsection 4,
29 shall:

- 30 (1) Target at least 20% of ~~available~~ funds to programs for low-income residential
31 consumers, as defined by the commission by rule;
32 (2) Target at least 20% of ~~available~~ funds to programs for small business
33 consumers, as defined by the commission by rule; and
34 (3) To the greatest extent practicable, apportion remaining ~~available~~ funds
35 among customer groups and geographic areas in a manner that allows all other
36 customers to have a reasonable opportunity to participate in one or more
37 conservation programs.

38 C. The commission shall hold at least one public hearing and invite, accept, review
39 and consider comments and suggestions from interested parties prior to adopting or

- 1 substantially revising conservation programs or the objectives and overall strategy for
2 conservation programs.
- 3 D. The commission shall monitor conservation planning and program development
4 activities in the region and around the country.
- 5 E. The commission shall implement conservation programs by contracting with
6 service providers in accordance with subsection 3.
- 7 F. The commission shall monitor and evaluate the delivery of conservation
8 programs by service providers and assess the cost-effectiveness of programs in
9 meeting the objectives and overall strategy established by the commission.
- 10 G. The commission, to the extent possible, shall coordinate its efforts with other
11 agencies of the State with energy-related responsibilities.
- 12 H. The commission shall secure sufficient technical and administrative expertise to
13 carry out its responsibilities pursuant to this section by:
- 14 (1) Contracting with appropriate entities with relevant expertise and experience;
15 (2) Establishing one or more advisory groups composed of persons with
16 relevant expertise and experience; or
17 (3) Any other reasonable means developed by the commission.
- 18 I. The commission may coordinate its efforts under this section with similar efforts
19 in other states in the northeast region and enter into agreements with public agencies
20 or other entities in or outside of the State for joint or cooperative conservation
21 planning or conservation program delivery, if the commission finds that such
22 coordination or agreements would provide demonstrable benefits to citizens of the
23 State and be consistent with this section, the conservation programs and the
24 objectives and overall strategy for the conservation programs.
- 25 J. The commission shall encourage school facility managers to complete an energy
26 efficiency training and certification program established and conducted by the
27 commission under this section. To the extent the commission determines necessary
28 and appropriate to meet the goals of this paragraph, the commission may, in
29 accordance with the requirements of this section, establish incentive mechanisms to
30 encourage participation in this program. For purposes of this paragraph, "school
31 facility managers" means persons employed by school administrative units in this
32 State who are responsible for the design or operation of school administrative unit
33 facilities or the heating, ventilation or air conditioning systems or equipment used in
34 such facilities.
- 35 K. The commission, in conjunction with the trustees of the Energy and Carbon
36 Savings Trust, shall develop a triennial energy efficiency and conservation plan in
37 accordance with section 10007, subsection 6. The plan must seek to address the needs
38 of all customer classes of the transmission and distribution utilities in the public
39 interest.'
- 40 Amend the bill by striking out section 5 and inserting the following:

1 'Sec. 5. 35-A MRSA §3211-A, sub-§4, as amended by PL 2005, c. 459, §1, is
2 further amended to read:

3 **4. Funding level; base assessment.** The commission shall assess transmission and
4 distribution utilities to collect funds for conservation programs and administrative costs in
5 accordance with this subsection and shall make other assessments in accordance with
6 subsection 4-A. The amount of all assessments by the commission under this subsection
7 plus expenditures of a transmission and distribution utility associated with prior
8 conservation efforts must result in ~~total~~ conservation expenditures by each transmission
9 and distribution utility, not including expenditures on assessments under subsection 4-A,
10 that are fixed at a rate of 0.145 cent per kilowatt-hour.

11 ~~A. Are based on the relevant characteristics of the transmission and distribution~~
12 ~~utility's service territory, including the needs of customers;~~

13 ~~B. Do not exceed .145 cent per kilowatt hour;~~

14 ~~C. Except as provided in subsection 7-A, are no less than 0.5% of the total~~
15 ~~transmission and distribution revenues of the transmission and distribution utility;~~
16 ~~and~~

17 ~~D. Are proportionally equivalent on a per kilowatt hour basis to the total~~
18 ~~conservation expenditures of other transmission and distribution utilities, unless the~~
19 ~~commission finds that a different amount is justified.'~~

20 Amend the bill by striking out section 6 and inserting the following:

21 'Sec. 6. 35-A MRSA §3211-A, sub-§4-A is enacted to read:

22 **4-A. Other assessments on transmission and distribution utilities.** The
23 commission shall assess each transmission and distribution utility based on the utility's
24 gross operating revenue as necessary to realize all available energy efficiency and
25 demand reduction resources in this State that are cost-effective, reliable and feasible after
26 consideration of the following:

27 A. The amount of assessments pursuant to subsection 4 and their payment schedule;

28 B. The funding for conservation programs provided by the Energy and Carbon
29 Savings Trust pursuant to section 10008;

30 C. The amount of payments received from a forward capacity market, as defined in
31 section 10008, subsection 1, paragraph B, as a result of conservation programs
32 funded under this chapter and under section 10008; and

33 D. Any other predictable sources of funding for or investment in energy conservation
34 and efficiency programs.

35 For the purposes of this subsection, "gross operating revenue" means revenue derived
36 from filed rates, except from sales for resale. The commission may correct any errors in
37 the assessments under this subsection by means of a credit or debit to the following year's
38 assessment rather than reassessing all utilities in the current year. The commission shall
39 determine the assessments under this subsection annually prior to May 1st and assess
40 each utility for its pro rata share for expenditure, including funds for energy conservation

1 programs, during the fiscal year beginning July 1st. The commission may not charge any
2 assessment under this subsection until the Legislature has approved the commission's
3 budget in accordance with section 116. The commission shall separately identify any
4 recommended assessment under this subsection in its presentation of budget
5 recommendations contained in any current services budget legislation and any
6 supplemental budget legislation to the joint standing committee of the Legislature having
7 jurisdiction over public utilities matters pursuant to section 116. Each utility shall pay the
8 assessment charged to that utility under this subsection on the same schedule that
9 payment of assessments under subsection 4 is required.'

10 Amend the bill by striking out section 7 and inserting the following:

11 'Sec. 7. 35-A MRSA §3211-A, sub-§4-B is enacted to read:

12 **4-B. Transmission and subtransmission voltage level.** After July 1, 2007,
13 electricity customers receiving service at transmission and subtransmission voltage levels
14 are not eligible for new conservation programs undertaken under this section, and those
15 customers are not required to pay in rates any amount associated with the assessment
16 imposed on transmission and distribution utilities under subsection 4 or subsection 4-A.
17 To remove the amount of the assessment under subsection 4, the commission shall reduce
18 the rates of such customers that are in effect on July 1, 2007 by 0.145 cent per kilowatt-
19 hour at the time of the first rate adjustment following the effective date of this subsection.
20 For the purposes of this section, "transmission voltage levels" means 44 kilovolts or
21 more, and "subtransmission voltage levels" means 34.5 kilovolts.

22 Sec. 8. 35-A MRSA §3211-A sub-§5-B is enacted to read:

23 **5-B. Support for Maine Energy Conservation Board.** Notwithstanding any other
24 provision of this section, the Maine Energy Conservation Board established under section
25 10007 may apply to the commission for funding from the program fund for staff support
26 for the board; and, upon application of the board, the commission may provide up to 1%
27 of the total amount in the program fund to the board for that purpose.'

28 Amend the bill by striking out section 9 and inserting the following:

29 'Sec. 9. 35-A MRSA §3211-A, sub-§9, as enacted by PL 2001, c. 624, §4, is
30 repealed and the following enacted in its place:

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

34 Amend the bill by striking out section 10 and inserting the following:

35 'Sec. 10. 35-A MRSA §10007 is enacted to read:

36 **§10007. Maine Energy Conservation Board**

37 **1. Establishment.** The Maine Energy Conservation Board, as established in Title 5,
38 section 12004-I, subsection 20-B and referred to in this section as "the board," is created

1 to assist the commission and the trustees of the Energy and Carbon Savings Trust in the
2 development, coordination and integration of planning for the State's energy conservation
3 efforts and to provide advice and counsel to the commission and the Energy and Carbon
4 Savings Trust on energy conservation and carbon dioxide reduction matters.

5 **2. Composition of board.** The board is composed of 7 voting members, none of
6 whom may have a financial interest in energy efficiency or conservation delivery:

7 A. A member representing commercial electrical consumers, appointed by the
8 commission;

9 B. A member representing industrial electrical consumers, appointed by the
10 commission;

11 C. A representative of the Office of the Public Advocate who represents the interest
12 of residential electrical consumers;

13 D. A member with significant knowledge of environmental issues and climate
14 change policy appointed by the commission;

15 E. A member representing small businesses in the State, appointed by the
16 commission;

17 F. The Commissioner of Environmental Protection or the commissioner's designee;
18 and

19 G. The director of the Governor's Office of Energy Independence and Security
20 within the Executive Department or the director's designee.

21 The commission may also appoint 3 nonvoting members representing transmission and
22 distribution utilities. The chair of the commission and one trustee of the Energy and
23 Carbon Savings Trust, appointed by the trustees, serve as nonvoting members.

24 **3. Terms; chair.** The term of a voting member of the board is 3 years. If a voting
25 member is unable to complete the term, the commission shall appoint a replacement for
26 the remainder of the unexpired term. A voting member may serve a maximum of 2
27 consecutive terms. The board shall select a chair and vice-chair from the board's voting
28 membership.

29 **4. Meetings; voting.** The board may meet up to 6 times annually. If a voting
30 member of the board is absent from more than one meeting without notice to the chair or
31 vice-chair, the commission may appoint a replacement. An affirmative vote of 5
32 members is required for any action.

33 **5. Staff.** The board may contract for technical expertise in energy efficiency
34 programs and administrative services and may apply to the commission and to the Energy
35 and Carbon Savings Trust for funding to support such staff services. The board may
36 expend for such staff services an amount not to exceed 1% of the total amount in the
37 conservation program fund established under section 3211-A, subsection 5 and the
38 Energy and Carbon Savings Trust Fund established in section 10008.

39 **6. Triennial energy efficiency and conservation plan.** The board shall vote on a
40 detailed triennial energy efficiency and conservation plan developed jointly by the
41 commission and the trustees of the Energy and Carbon Savings Trust pursuant to section

1 3211-A, subsection 2, paragraph K and section 10008, subsection 7, referred to in this
2 subsection as "the plan," and make a full report of the vote to the commission and the
3 trustees of the Energy and Carbon Savings Trust in accordance with this subsection.

4 A. In developing the plan, the commission and the trustees of the Energy and Carbon
5 Savings Trust shall consult the board and provide the opportunity for the board to
6 provide input on drafts of the plan.

7 B. The board may review efficiency and conservation program budget allocations of
8 the commission and the Energy and Carbon Savings Trust and provide general
9 guidance to the commission and the trustees of the Energy and Carbon Savings Trust
10 on program implementation.

11 C. The board may present any recommended changes to the plan to the commission
12 and the trustees of the Energy and Carbon Savings Trust for review and final
13 approval. The commission and the trustees may adopt, modify or reject any
14 recommended changes presented by the board.

15 D. With respect to efficiency and conservation programs administered by the
16 commission, the first plan must be developed and adopted to address all programs
17 implemented on or after July 1, 2010.'

18 Amend the bill by striking out section 11 and inserting the following:

19 'Sec. 11. 35-A MRSA §10008 is enacted to read:

20 **§10008. Energy and Carbon Savings Trust**

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

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

25 B. "Forward capacity market" means the program established by the regional
26 transmission organization that is in effect on the effective date of this paragraph and
27 compensates providers of electrical capacity with payments for the availability or
28 reduction of capacity as determined by the regional transmission organization.

29 C. "Regional transmission organization" means the independent systems operator
30 that administers and oversees the wholesale electricity markets in which the State
31 participates.

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

35 E. "Trust" means the Energy and Carbon Savings Trust established in subsection 2.

36 F. "Trust fund" means the Energy and Carbon Savings Trust Fund established in
37 subsection 2.

38 G. "Trustee" means a trustee of the trust.

1 **2. Establishment of trust; trust fund.** The Energy and Carbon Savings Trust and
2 the Energy and Carbon Savings Trust Fund are established effective October 1, 2008 to
3 support the goals and implementation of the carbon dioxide cap-and-trade program
4 established under Title 38, section 580-B. The trust fund is established as a nonlapsing
5 fund administered by the trust for the purposes established in this section. The trust is
6 authorized to receive, and shall deposit in the trust fund and expend in accordance with
7 this section, revenue resulting from the sale of carbon dioxide allowances, pursuant to
8 Title 38, section 580-B, and any forward capacity market or other capacity payments
9 from the regional transmission organization that may be attributable to projects funded by
10 the trust. The trust fund may not be used for any other purpose, and money in the trust
11 fund is considered to be held in trust for the purposes of benefiting consumers.

12 A. The commission shall appoint 3 trustees for the Energy and Carbon Savings
13 Trust. The commission shall appoint a diverse set of trustees who possess knowledge
14 of high-efficiency energy conservation programs, carbon reduction programs or
15 policy or substantial management expertise.

16 B. A trustee serves a 3-year term. If a trustee is unable to complete the term, the
17 commission shall appoint a replacement for the remainder of the unexpired term.
18 Trustees may serve a maximum of 2 consecutive terms.

19 C. The trustees may meet periodically and may participate in all meetings of the
20 Maine Energy Conservation Board, as established in section 10007. If a trustee is
21 absent from more than one meeting of the trustees without notice, the commission
22 may appoint a replacement. An affirmative vote of two-thirds of the trustees is
23 required for any action.

24 D. The trustees have a fiduciary duty to the customers of the State's transmission and
25 distribution utilities in the administration of the trust fund. Upon accepting
26 appointment as a trustee, each trustee must acknowledge the fiduciary duty to use the
27 trust funds only for the purposes set forth in this section.

28 E. The trustees shall ensure that the goals and objectives of the trust, as established
29 in this section and in rules adopted by the trust, are carried out. The trustees shall
30 represent the interests of the trust in the development of the triennial energy
31 efficiency and conservation plan pursuant to section 10007, subsection 6.

32 **3. Trust inviolability.** The trustees may take legal action in the name of the trust to
33 oppose efforts to reduce, impair, postpone or terminate the amount of revenues arising
34 from the regional greenhouse gas initiative established under Title 38, chapter 3-B.

35 The State pledges to, contracts with, and agrees with the purchasers of carbon dioxide
36 allowances and trustees for the proceeds of those allowances that neither the State nor any
37 of its agencies, including the commission, may limit, alter, amend, reduce or impair the
38 trust, its funds or any rights under the trust or ownership of the trust or security interest in
39 the trust. The State acknowledges that such owners, holders and trustees may and will
40 rely on this pledge, contract and agreement and that any such limitation, alteration,
41 amendment, reduction or impairment without adequate provision will irreparably harm
42 such owners, holders and trustees.

43 **4. Money invested.** Any revenue received from the sale of carbon dioxide
44 allowances, pursuant to Title 38, section 580-B, and any forward capacity market

1 payments administered by the regional transmission organization or other capacity
2 payments that may be attributable to projects funded by the trust are the property of the
3 trust and must be deposited in the trust fund. Money in the trust fund not currently needed
4 to meet obligations under Title 38, section 580-B or for the purposes of this section must
5 be deposited with the Treasurer of State to the credit of the trust fund and may be
6 invested as provided by law. Interest on these investments must be credited to the trust
7 fund.

8 **5. Ceiling on energy efficiency spending.** There is established a ceiling on energy
9 efficiency spending from the trust equal to \$5 per carbon dioxide allowance. Until that
10 price ceiling is adjusted or removed, only the first \$5 of each carbon dioxide allowance
11 sold and deposited in the trust fund may be awarded to or directed to qualified projects
12 for purposes of energy efficiency improvements. While the ceiling is in place, revenue
13 received by the trust from an allowance value above \$5 must be transferred to the
14 commission for use used by the commission pursuant to sections 301 and 1322 for
15 rebates to electric ratepayers calculated on a per-kilowatt-hour basis.

16 **6. Administration of trust fund; expenditures; projects.** The trust fund must be
17 administered in accordance with this subsection.

18 A. The trust fund must be administered and expenditures authorized by a program
19 administrator selected by the trustees whose qualifications must include demonstrated
20 expertise in the management of electricity efficiency programming and supervision of
21 energy efficiency personnel. The administrator shall report to the trustees. The
22 administrator shall hire and organize staff resources for the trustees.

23 B. During the years 2009, 2010 and 2011, not less than 85% of the trust fund must be
24 allocated for measures, investments and arrangements that reduce electricity
25 consumption, and not more than 15% must be allocated for fossil fuel conservation
26 measures, investments and arrangements. Subject to the apportionment between fossil
27 fuel and electricity conservation pursuant to this subsection, the trust shall fund
28 conservation programs that give priority to measures with the highest benefit-to-cost
29 ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

30 (1) Reliably reduce greenhouse gas production by fossil fuel combustion in the
31 State at the lowest cost in trust funds per unit of emissions; or

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

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

1 D. The trustees may target bid competitions in areas or to participants as they
2 consider necessary, as long as the requirements of paragraph B are satisfied.

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

7 F. The size of a project funded by the trust is not limited as long as funds are
8 awarded to maximize energy efficiency and support greenhouse gas reductions and to
9 fully implement the triennial energy efficiency and conservation plan developed by
10 the commission and the trustees pursuant to section 10007, subsection 6.

11 G. No more than 5% of trust fund receipts in any one year may be used for the total
12 administrative costs:

13 (1) Of the trust related to this section;

14 (2) Of the Department of Environmental Protection in administering the
15 allowance auction under Title 38, chapter 3-B; and

16 (3) Of the Attorney General, including activities pertaining to the tracking and
17 monitoring of allowance trading activity and managing and evaluating the trust's
18 funding of conservation programs.

19 Of the trust fund receipts used for administrative costs under this paragraph, no more
20 than 40% in any one year may be used for the administration of the trust.

21 H. In order to minimize administrative costs and maximize program participation
22 and effectiveness, the trustees and the commission shall, to the greatest extent
23 feasible, coordinate the delivery of and make complementary the energy efficiency
24 programs under this section, section 3211-A and section 3210-C.

25 I. Notwithstanding Title 5, section 1831, the trustees are not subject to rules adopted
26 by the State Purchasing Agent in selecting service providers pursuant to this section.
27 The trustees shall consider delivery of efficiency programs by means of contracts
28 with service providers that participate in competitive bid processes for reducing
29 energy consumption within individual market segments or for particular end uses.

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

32 K. Notwithstanding any other provision of this section, the Maine Energy
33 Conservation Board established under section 10007 may apply to the trust for
34 funding from the trust fund for staff support for the board, and upon application of
35 the board the trust may provide up to 1% of the total amount in the trust fund in any
36 fiscal year to the board for that purpose.

37 L. Trust fund receipts may fund research approved by the Department of
38 Environmental Protection in an amount of up to \$100,000 per year to develop new
39 categories for carbon dioxide emissions offset projects, as defined in Title 38, section
40 580-A, subsection 6, that are located in the State. Expenditures on research pursuant
41 to this paragraph are not considered administrative costs under paragraph G.

1 **7. Triennial energy efficiency and conservation plan.** The trustees, in conjunction
2 with the commission, shall develop a triennial energy efficiency and conservation plan in
3 accordance with section 10007, subsection 6.

4 **8. Rulemaking.** The trustees shall adopt rules for establishing and administering the
5 trust, the trust fund and its programs. These rules must include:

6 A. Provisions for the expenditure of funds, including, but not limited to, the
7 development of program budgets, criteria for energy efficiency and conservation
8 programs and other consumer benefit programs, the process for project selection and
9 approval, minimum requirements for project monitoring and verification and the cost-
10 effectiveness tests to be used for measuring and comparing program benefits and
11 costs subject to subsection 6, paragraph B; and

12 B. Provision for the independent evaluation of program expenditures to ensure cost-
13 effectiveness of projects to improve energy efficiency or to reduce greenhouse gases.

14 Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5,
15 chapter 375, subchapter 2-A.'

16 Amend the bill in section 13 in §580-A by inserting after subsection 7 the following:

17 **'8. Combined cycle system.** "Combined cycle system" means a system composed
18 of one or more combustion turbines, heat recovery system generators and steam turbines
19 configured to improve overall efficiency of electrical generation or steam production.'

20 Amend the bill in section 13 in §580-A to renumber the subsections to read
21 consecutively.

22 Amend the bill in section 13 in §580-B by striking out subsections 6, 7 and 8 and
23 inserting the following:

24 **'6. Waiver of enforcement; suspension of compliance obligation.** The
25 commissioner has authority, under the exceptional circumstances set out in paragraphs A
26 and B, to waive or suspend requirements of this chapter.

27 A. If the regional greenhouse gas initiative results in price levels for allowances that
28 will result in immediate and irreparable harm to the operations of a carbon dioxide
29 budget unit regulated under this chapter, including but not limited to the termination
30 of business at that location, the commissioner may, in consultation with the Attorney
31 General and the chair of the Public Utilities Commission, grant a temporary waiver of
32 enforcement not to exceed one year for any violation by an individual regulated
33 carbon dioxide budget unit of a requirement of this chapter.

34 B. In cases of emergency events that are beyond the control of a carbon dioxide
35 budget unit, the commissioner may temporarily suspend the compliance obligation
36 under a particular permit until such time as the emergency no longer is in effect.

37 The department shall adopt rules for the implementation of this subsection. Rules adopted
38 pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375,
39 subchapter 2-A and must be submitted to the Legislature by January 15, 2008 for review

by the Joint Standing Committee on Natural Resources during the Second Regular Session of the 123rd Legislature.

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

8. Combined heat and power incentive; set aside. The department shall set aside a portion of the State's annual carbon dioxide emissions allowances in an allowance account for carbon dioxide budget units that are combined heat and power units and are located at integrated manufacturing facilities. The department shall use these allowances for existing carbon dioxide budget units to reflect only that portion of each unit's emissions related to electricity and thermal power generated at a carbon dioxide budget unit that is a combined heat and power unit, whether it is a combined cycle system or other energy generation configuration of which the carbon dioxide budget unit is a part, that are not transmitted across the facilities of a transmission and distribution utility.

The department shall adopt rules setting forth the proper treatment of combined heat and power units. The rules may distinguish between combined heat and power units that commence operation after July 1, 2007 and those that commence operation before July 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

Amend the bill in section 13 in §580-B by striking out subsection 10 and inserting the following:

'10. Annual report. The department and the trustees of the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 10008 shall submit a joint report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters by March 15, 2009 and each year thereafter. The report must assess and address:

A. The reductions of greenhouse gas emissions from carbon dioxide budget units, conservation programs funded by the Energy and Carbon Savings Trust pursuant to Title 35-A, section 10008 and carbon dioxide emissions offset projects;

B. The improvements in overall carbon dioxide emissions and energy efficiency from sources that emit greenhouse gases including electrical generation and fossil fuel fired units;

C. The maximization of savings through systemic energy improvements statewide;

D. Research and support of new carbon dioxide offset allowance categories for development in the State;

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

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

4 The department and the trustees of the Energy and Carbon Savings Trust may include in
5 the report any proposed changes to the program established under this chapter.

6 The joint standing committee of the Legislature having jurisdiction over natural resources
7 matters may submit legislation relating to areas within the committee's jurisdiction in
8 connection with the program. The joint standing committee of the Legislature having
9 jurisdiction over utilities and energy matters may submit legislation relating to areas
10 within the committee's jurisdiction in connection with the program.'

11 Amend the bill by striking out sections 14 and 15 and inserting the following:

12 **'Sec. 14. Major substantive rulemaking; authority for legislation.** Major
13 substantive rules provisionally adopted pursuant to the Maine Revised Statutes, Title
14 35-A, section 10008 must be submitted to the Legislature by January 15, 2009 for review
15 by the joint standing committee of the Legislature having jurisdiction over utilities and
16 energy matters during the First Regular Session of the 124th Legislature. The joint
17 standing committee is authorized to submit legislation to the First Regular Session of the
18 124th Legislature regarding establishment and administration of the Energy and Carbon
19 Savings Trust.

20 **Sec. 15. Ceiling on energy efficiency spending.** Eight months prior to the
21 expiration of the first compliance obligation period established under rules of the
22 Department of Environmental Protection pursuant to the Maine Revised Statutes, Title
23 38, section 580-B, the Public Utilities Commission, following the receipt of public input
24 and consultation with the trustees of the Energy and Carbon Savings Trust under Title
25 35-A, section 10008 and based on an analysis of the efficacy of energy efficiency, rebates
26 or other funded purposes in reducing energy costs, shall provide its recommendation to
27 the joint standing committee of the Legislature having jurisdiction over utilities and
28 energy matters regarding changing or removing the energy efficiency spending ceiling
29 established in Title 35-A, section 10008, subsection 5.'

30 Amend the bill by striking out sections 17 and 18 and inserting the following:

31 **'Sec. 17. Report; feasibility of consolidating energy efficiency**
32 **responsibilities.** The Office of the Public Advocate shall study the feasibility of
33 integrating the programmatic responsibilities and organizational structure and functions
34 with respect to energy efficiency and conservation within the Public Utilities Commission
35 and the Energy and Carbon Savings Trust under Title 35-A, section 10008. In its study,
36 the Office of the Public Advocate shall also consider the responsibilities of the Maine
37 Energy Conservation Board, established under Title 35-A, section 10007, in relation to
38 the Public Utilities Commission and the Energy and Carbon Savings Trust. The Office of
39 the Public Advocate shall submit a report of its findings, including any recommended
40 legislation, by January 15, 2008 to the Joint Standing Committee on Utilities and Energy.
41 After receipt and review of the report, the committee may submit legislation on this issue
42 to the Second Regular Session of the 123rd Legislature.

1 **Sec. 18. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title
2 35-A, section 10007, subsection 3, of the original appointments of voting members of the
3 Maine Energy Conservation Board, one member serves an initial term of one year, one
4 member serves an initial term of 2 years and one member serves an initial term of 3 years.
5 An initial term of one or 2 years may not be considered a full term for purposes of
6 limiting the number of terms for which a member may serve.

7 **Sec. 19. Temporary transfer of funds authorized.** For purposes of funding
8 activities of the Energy and Carbon Savings Trust under the Maine Revised Statutes, Title
9 35-A, section 10008, the Public Utilities Commission may, upon request of the trust,
10 transfer to the Energy and Carbon Savings Trust Fund, established pursuant to Title 35-A,
11 section 10008, subsection 2, on October 1, 2008, up to \$175,000 of previously collected
12 but unallocated funds in the conservation program fund under Title 35-A, section 3211-A,
13 subsection 5. Notwithstanding any other provision of law, there is no limitation on the use
14 of funds transferred to the trust under this section for the administrative costs of the trust.
15 Once the trust has collected \$175,000 in the Energy and Carbon Savings Trust Fund
16 through the sale of carbon dioxide emissions allowances and any forward capacity market
17 or other capacity payments from the regional transmission organization that may be
18 attributable to projects funded by the trust, the trust shall transfer to the conservation
19 program fund an amount equal to the amount transferred from the conservation program
20 fund to the trust under this section.

21 **Sec. 20. Rulemaking; legislative direction.**

22 1. Because the State has a number of integrated manufacturing facilities that produce
23 electricity and heat or steam for use in manufacturing other products and that may sell
24 electricity transmitted on the electric grid, rules adopted by the Department of
25 Environmental Protection pursuant to the Maine Revised Statutes, Title 38, chapter 3-B
26 must be designed in a way that recognizes the highly efficient production and
27 consumption of energy at these facilities, prevents harm from regulatory uncertainty and
28 unintended or unnecessary effects on these facilities and ensures their availability, as
29 needed from time to time, to enhance the reliability of the electric grid serving this State.

30 2. Because it is the Legislature's intent that all revenues derived from the sale of
31 carbon dioxide emissions allowances be used for high-efficiency electricity and fossil
32 fuel conservation to reduce greenhouse gases and minimize the costs of carbon reduction
33 to Maine electric consumers, rules adopted by the Energy and Carbon Savings Trust
34 under Title 35-A, section 10008 must be designed to ensure that proceeds deposited in the
35 Energy and Carbon Savings Trust Fund accruing from the sale of carbon dioxide
36 emissions allowances be expended solely for energy efficiency and related improvements
37 that serve to enhance the reliability of the State's electric grid.

38 3. Rules adopted by the Department of Environmental Protection pursuant to Title
39 38, chapter 3-B must establish a system under which proceeds from the sale of carbon
40 dioxide emissions allowances may be returned to the electric customers as direct credits
41 on their bills at times of heightened price pressure in regional allowance markets, thereby
42 ameliorating grid instability at those times.

43 4. Because certain carbon dioxide budget units have substantially reduced carbon
44 dioxide emissions from their facilities prior to the effective date of this Act and operate as

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1 highly efficient resources, rules adopted by the Department of Environmental Protection
2 pursuant to Title 38, chapter 3-B must require such carbon dioxide budget units to meet
3 only the compliance obligation for that portion of power sold to the grid and require that
4 allowances associated with such units' so-called "behind-the-meter" electrical generation
5 must be retired from the system. Such rules must be designed to recognize that full
6 operation of generating units in existence on the effective date of this Act, including
7 highly efficient cogeneration facilities, is essential for the stability of the State's electric
8 grid at times of peak demand for electricity.'

9 Amend the bill by inserting after section 19 the following:

10 'Sec. 20. Appropriations and allocations. The following appropriations and
11 allocations are made.

12 **PUBLIC UTILITIES COMMISSION**

13 **Conservation Administration Fund 0966**

14 Initiative: Provides funds for 2 Utility Analyst positions and general operating expenses.

15			
16	OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
17	POSITIONS - LEGISLATIVE COUNT	2.000	2.000
18	Personal Services	\$167,106	\$236,277
19	All Other	\$15,087	\$13,599
20			
21	OTHER SPECIAL REVENUE FUNDS TOTAL	\$182,193	\$249,876

22 ,
23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
24 section number to read consecutively.

25 **SUMMARY**

26 This amendment makes the following changes to the bill.

27 1. It amends the provision of the bill regarding additional assessments on
28 transmission and distribution utilities to fund efficiency programming to require that prior
29 to making such assessments the Public Utilities Commission shall consider: the amount
30 and timing of the existing assessments to fund conservation programs; the funding for
31 conservation programs through the Energy and Carbon Savings Trust; forward capacity
32 market payments; and other predictable sources of funding for or investment in energy
33 conservation and efficiency programs. It also specifies that any such assessments may
34 not be charged until the Legislature has approved the commission's budget and requires
35 that the commission identify these assessments in its presentation of its budget
36 recommendations in any current services budget legislation or supplemental budget
37 legislation. It specifies that these additional assessments must be paid on the same
38 schedule that payment of assessments to the commission is required for the current
39 conservation program assessment.

1 2. It amends the provisions of the bill regarding the Maine Energy Conservation
2 Board in several ways. It changes the composition of the board as follows: it removes 3
3 trustees of the Energy and Carbon Savings Trust from the board as voting members,
4 while retaining one trustee on the board as a nonvoting member; and it adds as voting
5 members a representative of small business, the Commissioner of Environmental
6 Protection or the commissioner's designee and the director of the Governor's Office of
7 Energy Independence and Security or the director's designee. The amendment removes
8 the Public Utilities Commission's responsibility for staffing the board and authorizes the
9 board to contract for technical expertise and administrative services.

10 3. It amends the provision in the bill regarding the energy efficiency and conservation
11 plan. It specifies that the plan must be a triennial plan developed jointly by the Public
12 Utilities Commission and the trustees of the Energy and Carbon Savings Trust with input
13 from the Maine Energy Conservation Board. It requires that the commission and the
14 trustees consult the board in development of the plan and authorizes the board to submit
15 recommended changes to the plan to the commission and the trustees for review. It
16 requires the board to vote on the plan and make a full report of its vote to the commission
17 and the trustees. It specifies that with respect to the commission's conservation programs,
18 the first triennial plan must address programs implemented on or after July 1, 2010.

19 4. It amends the provisions of the bill governing the Energy and Carbon Savings
20 Trust to provide an effective date of October 1, 2008; to remove the Public Utilities
21 Commission's responsibility for the management, administration, staffing and rulemaking
22 of the trust and other trust-related responsibilities, while retaining the provision that
23 requires the commission to appoint the 3 trustees; to specify that legal action in the name
24 of the trust is to be taken by the trustees; and to provide initial funding for the trust
25 through a temporary transfer of funds from the conservation program fund to the trust to
26 be repaid when the trust receives revenue as a result of the regional greenhouse gas
27 initiative.

28 5. It amends the circumstances under which the Commissioner of Environmental
29 Protection may grant a waiver of enforcement for violations of the carbon dioxide cap-
30 and-trade program. The bill authorizes the commissioner to grant waivers if the regional
31 greenhouse gas initiative auction results in price levels that are expected to be excessive,
32 or that are excessive and will result, or that are expected to result, in immediate and
33 irreparable harm. The amendment authorizes the commissioner to grant a temporary
34 waiver of enforcement, not to exceed one year, if the regional greenhouse gas initiative
35 results in price levels for allowances that will result in immediate and irreparable harm.

36 6. It amends the provisions regarding combined heat and power units. The bill
37 requires the Department of Environmental Protection to set aside a portion of the
38 emissions allowances for carbon dioxide budget units that are combined heat and power
39 units located at integrated manufacturing facilities. The amendment clarifies that the
40 department is required to use the allowances for emissions related to electricity and
41 thermal power generated at a unit that is a combined heat and power unit and to clarify
42 that a combined heat and power unit may be a combined cycle system or other energy
43 generation configuration. It also clarifies language authorizing department rules to
44 distinguish between combined heat and power units that commence operation after July
45 1, 2007 and those that commence operation before July 1, 2007.

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1 7. It amends the provision regarding the submittal of an annual report by the
2 Department of Environmental Protection and the Energy and Carbon Savings Trust by
3 clarifying that the joint standing committees of the Legislature having jurisdiction over
4 natural resources matters and utilities and energy matters may individually submit
5 legislation relating to areas within each committee's jurisdiction.

6 8. It adds a provision to the bill that directs the Office of the Public Advocate to
7 study the feasibility of integrating the programmatic and organizational responsibilities
8 and functions with respect to energy efficiency and conservation within the Public
9 Utilities Commission and the Energy and Carbon Savings Trust and consider the
10 responsibilities of the Maine Energy Conservation Board in relation to the commission
11 and the trust. The Office of the Public Advocate is required to submit a report by January
12 15, 2008 to the Joint Standing Committee on Utilities and Energy, and the committee
13 may submit legislation on this issue to the Second Regular Session of the 123rd
14 Legislature.

15 9. It adds an appropriations and allocations section to the bill.

FISCAL NOTE REQUIRED
(See Attached)

COMMITTEE AMENDMENT

**123rd MAINE LEGISLATURE****LD 1851****LR 2605(02)****An Act To Establish the Regional Greenhouse Gas Initiative Act of 2007****Fiscal Note for Bill as Amended by Committee Amendment "A"****Committee: Natural Resources****Fiscal Note Required: Yes**

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Appropriations/Allocations				
Other Special Revenue Funds	\$182,193	\$249,876	\$803,102	\$803,102
Revenue				
Other Special Revenue Funds	\$0	\$0	\$16,062,040	\$16,062,040
Transfers				
Other Special Revenue Funds	\$0	\$0	\$0	\$0

Fiscal Detail and Notes

This bill establishes a statewide carbon dioxide cap and trade program for fossil fuel fired electrical generating units within the state. It also authorizes the sale of carbon dioxide emission allowances and creates an Energy and Carbon Savings Trust effective October 1, 2008. The sale of carbon dioxide offset allowances will be deposited as dedicated revenue in the Energy and Carbon Savings Trust Fund. The specific amount and timing of the collection of the Other Special Revenue Funds revenue will depend on when the first auction takes place and the negotiated price per carbon dioxide emission allowance. Both are unknown at this time but the revenue could be collected at the end of fiscal year 2008-09 or beginning in fiscal year 2009-10.

Based on the assumption that allowances could trade at \$3 per ton, the estimated annual revenue would be \$16,062,040 beginning in fiscal year 2009-10, of which not more than 5% or \$803,102 would be available for administrative costs for the DEP to administer allowance auctions, PUC-related activities of the Trust and the Maine Energy Conservation Board and for the AG for enforcement activities. This legislation allows the Maine Energy Conservation Board to hire staff and apply to the PUC and the Energy and Carbon Savings Trust for funding to support such staff. It allows the Board to expend up to 1% of the Conservation Fund for staff services, which is estimated to be approximately \$130,000 for fiscal year 2007-08, \$160,000 for fiscal year 2008-09 and \$170,000 in fiscal year 2009-10. It also provides up to \$100,000 annually from Trust Fund revenue to fund research approved by the DEP for the development of new categories of carbon dioxide emissions offset projects.

This legislation authorizes a temporary transfer of up to \$175,000 of funds from the PUC's Conservation Fund for use by the Energy and Carbon Savings Trust. It further provides for repayment of such funds as soon as sufficient funds have accumulated in the Energy and Carbon Savings Trust Fund. It also modifies existing assessment provisions of the PUC to achieve additional energy efficiency and demand reduction and exempts certain transmission and sub-transmission classes of customers from paying certain assessments.

The bill imposes several requirements on the PUC that can not be absorbed within existing resources. The bill includes an additional Other Special Revenue Funds allocation of \$182,193 to the PUC in fiscal year 2007-08 and \$249,876 in fiscal year 2008-09 to provide funds for two Utility Analyst positions to assist in meeting the requirements of this legislation.

The Public Advocate within the Executive Department can absorb the additional costs associated with meeting specified study requirements set forth in the bill.