

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1647

H.P. 1175

House of Representatives, December 23, 2009

### An Act To Enhance Maine's Clean Energy Opportunities

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Utilities and Energy pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BERRY of Bowdoinham.  
Cosponsored by Senator BARTLETT of Cumberland and  
Representatives: FITTS of Pittsfield, FLAHERTY of Scarborough, FLETCHER of Winslow,  
HINCK of Portland, MARTIN of Eagle Lake, SHAW of Standish, VAN WIE of New  
Gloucester, Senator: SHERMAN of Aroostook.

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

3           **Whereas,** this legislation needs to take effect before the expiration of the 90-day  
4 period in order to ensure the proper implementation of the Efficiency Maine Trust Act;  
5 and

6           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
7 the meaning of the Constitution of Maine and require the following legislation as  
8 immediately necessary for the preservation of the public peace, health and safety; now,  
9 therefore,

10           **Be it enacted by the People of the State of Maine as follows:**

11           **Sec. 1. 35-A MRSA §3210-C, sub-§3,** as repealed and replaced by PL 2009, c.  
12 415, Pt. A, §21, is amended to read:

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

15           A. Capacity resources; and

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

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

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

24           The commission shall direct investor-owned transmission and distribution utilities to  
25 enter into long-term contracts for capacity resources and any available energy associated  
26 with such resources to the extent necessary to meet the energy efficiency targets  
27 articulated in the triennial plan as approved by the commission pursuant to section 10104,  
28 subsection 4.

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

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

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

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

15 The commission shall ensure that any long-term contract authorized under this subsection  
16 is consistent with the State's goals for greenhouse gas reduction under Title 38, section  
17 576 and the regional greenhouse gas initiative as described in the state climate action plan  
18 required in Title 38, section 577.

19 **Sec. 2. 35-A MRSA §3210-C, sub-§6**, as enacted by PL 2005, c. 677, Pt. C, §1,  
20 is amended to read:

21 **6. Competitive solicitation process and contract negotiation.** For purposes of  
22 selecting potential capacity resources for contracting pursuant to subsection 3, the  
23 commission shall conduct a competitive solicitation no less often than every 3 years if the  
24 commission determines that the likely benefits to ratepayers resulting from any contracts  
25 entered into as a result of the solicitation process will exceed the likely costs. Following  
26 review of bids, the commission may negotiate with one or more potential suppliers.  
27 When only one bid has been offered, or when the commission forgoes a competitive  
28 solicitation, the commission shall ensure that negotiations are based on full project cost  
29 disclosure by the potential supplier. The commission shall negotiate contracts that are  
30 commercially reasonable and that commit all parties to commercially reasonable  
31 behavior. The commission need not conduct a competitive solicitation for contracts for  
32 energy efficiency capacity resources if those resources cost less than an equivalent  
33 amount of electricity supply purchased at the statewide average retail price, as determined  
34 by the commission, and are delivered through the programs of the Efficiency Maine Trust  
35 established in section 10103 in a manner that is consistent with the triennial plan as  
36 approved by the commission pursuant to section 10104, subsection 4.

37 **Sec. 3. 35-A MRSA §3210-C, sub-§9**, as enacted by PL 2005, c. 677, Pt. C, §1,  
38 is amended to read:

39 **9. Contract payments.** Contracts for capacity and related energy entered into  
40 pursuant to this section must provide that payments will be made only after contracted  
41 amounts of capacity and related energy have been provided. This subsection does not  
42 apply to contracts for energy efficiency capacity resources and related energy.

1           **Sec. 4. 35-A MRSA §10103, sub-§1, ¶C**, as enacted by PL 2009, c. 372, Pt. B,  
2           §3, is amended to read:

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

6           **Sec. 5. 35-A MRSA §10104, sub-§4**, as enacted by PL 2009, c. 372, Pt. B, §3, is  
7           amended to read:

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

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

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

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

37          C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of  
38          the trustees upon a finding that the plan is consistent with the statutory authority for  
39          each source of funds that will be used to implement the plan, the state energy  
40          efficiency targets in paragraph F and the best practices of program administration  
41          under subsection 2. The plan must include, but is not limited to, efficiency and  
42          conservation program budget allocations, objectives, targets, measures of

1 performance, program designs, program implementation strategies, timelines and  
2 other relevant information.

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

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

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

- 33 (1) Weatherizing 100% of residences and 50% of businesses by 2030;
- 34 (2) Reducing peak-load electric energy consumption by 100 megawatts by 2020;
- 35 (3) Reducing the State's consumption of liquid fossil fuels by at least 30% by  
36 2030;
- 37 (4) By 2020, achieving electricity and natural gas savings of at least 30% and  
38 heating fuel savings of at least 20% as defined in and determined pursuant to the  
39 measures of performance ratified by the commission under section 10120;
- 40 (5) Capturing all cost-effective energy efficiency resources available for electric  
41 and natural gas utility ratepayers;

1 ~~(6) Saving residential and commercial heating consumers not less than \$3 for~~  
2 ~~every \$1 of program funds invested by 2020 in cost effective heating and cooling~~  
3 ~~measures that cost less than conventional energy supply;~~

4 (7) Building stable private sector jobs providing clean energy and energy  
5 efficiency products and services in the State by 2020; and

6 (8) Reducing greenhouse gas emissions from the heating and cooling of buildings  
7 in the State by amounts consistent with the State's goals established in Title 38,  
8 section 576.

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

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

19 **Sec. 6. 35-A MRSA §10105, sub-§7**, as enacted by PL 2009, c. 372, Pt. B, §3, is  
20 amended to read:

21 **7. Recommendations; advisory groups.** The trust may make recommendations to  
22 the Governor, the Legislature and other public officials regarding energy efficiency,  
23 weatherization and renewable energy programs. The trust may establish technical  
24 advisory groups as needed for the purposes of gathering technical knowledge on any  
25 aspect of energy conservation or policy and may consult with or retain independent legal  
26 counsel.

27 **Sec. 7. 35-A MRSA §10107**, as enacted by PL 2009, c. 372, Pt. B, §3, is amended  
28 to read:

29 **§10107. Conflicts of interest; financial disclosure statements**

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

38 **Sec. 8. 35-A MRSA §10110, sub-§5**, as enacted by PL 2009, c. 372, Pt. B, §3, is  
39 amended to read:

1           **5. Other assessments on transmission and distribution utilities.** In accordance  
2 with the triennial plan, the commission shall assess each transmission and distribution  
3 utility based on the utility's gross operating revenue as necessary to realize all available  
4 energy efficiency and demand reduction resources in this State that are cost-effective,  
5 reliable and feasible after consideration of the following:

- 6           A. The amount of assessments pursuant to subsection 4 and their payment schedule;  
7           B. The funding for conservation programs provided by the Regional Greenhouse Gas  
8 Initiative Trust Fund pursuant to section 10109;  
9           C. The amount of payments received from a forward capacity market as a result of  
10 conservation programs funded under this chapter; and  
11           D. Any other predictable sources of funding for or investment in conservation  
12 programs.

13 For the purposes of this subsection, "gross operating revenue" means revenue derived  
14 from filed rates, except from sales for resale. The commission may correct any errors in  
15 the assessments under this subsection by means of a credit or debit to the following year's  
16 assessment rather than reassessing all utilities in the current year. The commission shall  
17 determine the assessments under this subsection annually prior to ~~May~~ June 1st and  
18 assess each utility for its pro rata share for expenditure, including funds for energy  
19 conservation programs, during the fiscal year beginning July 1st. The commission may  
20 not charge any assessment under this subsection until ~~the Legislature has approved the~~  
21 ~~commission's budget in accordance with section 116. The commission shall separately~~  
22 ~~identify any recommended assessment under this subsection in its presentation of budget~~  
23 ~~recommendations contained in any current services budget legislation and any~~  
24 ~~supplemental budget legislation to the joint standing committee of the Legislature having~~  
25 ~~jurisdiction over public utilities matters pursuant to section 116~~ the triennial plan has  
26 been reviewed by the joint standing committee of the Legislature having jurisdiction over  
27 energy matters and subsequently approved by the commission in accordance with section  
28 10104, subsection 4, paragraph D. Each utility shall pay the assessment charged to that  
29 utility under this subsection on the same schedule that payment of assessments under  
30 subsection 4 is required.

31           **Sec. 9. 35-A MRSA §10110, sub-§6**, as enacted by PL 2009, c. 372, Pt. B, §3, is  
32 amended to read:

33           **6. Transmission and subtransmission voltage level.** After July 1, 2007, electricity  
34 customers receiving service at transmission and subtransmission voltage levels are not  
35 eligible for new conservation programs undertaken under this section, ~~and those~~ except to  
36 the extent that those programs are funded pursuant to long-term contracts for energy  
37 efficiency capacity resources and any available energy associated with such resources  
38 under section 3210-C and in a manner that reflects the amount of such capacity resource  
39 and available energy procurement that is attributable to those customers as a whole, as  
40 determined by the commission. Those customers are not required to pay in rates any  
41 amount associated with the assessment imposed on transmission and distribution utilities  
42 under subsection 4 or subsection 5. To remove the amount of the assessment under  
43 subsection 4, the commission shall reduce the rates of such customers by 0.145 cent per



1 kilowatt-hour. For the purposes of this section, "transmission voltage levels" means 44  
2 kilovolts or more, and "subtransmission voltage levels" means 34.5 kilovolts.

3 **Sec. 10. 35-A MRSA §10115, sub-§3** is enacted to read:

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

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

#### 16 SUMMARY

17 This bill requires the Public Utilities Commission to direct investor-owned  
18 transmission and distribution utilities to enter into long-term contracts for capacity  
19 resources and any available energy associated with such resources to the extent necessary  
20 to meet the energy efficiency targets articulated in the Efficiency Maine Trust's triennial  
21 plan. It specifies when the commission need not conduct a competitive solicitation for  
22 contracts for energy efficiency capacity resources and amends the laws governing  
23 contracts for capacity resources and related energy. It defines "heating fuel" and "liquid  
24 fossil fuel" for purposes of the targets of the triennial plan. It includes in the Efficiency  
25 Maine Trust's triennial plan an examination of the national and regional carbon markets  
26 and the appropriate participation of the State in these markets. It allows the trust to  
27 consult with or retain independent legal counsel. It provides that the commission may not  
28 charge any assessment under the triennial plan until the plan has been reviewed by the  
29 joint standing committee of the Legislature having jurisdiction over energy matters and  
30 approved by the commission. It specifies when electricity customers receiving service at  
31 transmission and subtransmission voltage levels are eligible for new conservation  
32 programs. It amends the laws governing the administration by the trust of certain  
33 federally funded energy programs.