

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1284

S.P. 447

March 8, 2007

An Act To Create the Energy Independence Act

(EMERGENCY)

Reference to the Committee on Utilities and Energy suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BARTLETT of Cumberland.
Cosponsored by Representative FLETCHER of Winslow and Senators: BOWMAN of York,
BROMLEY of Cumberland, MITCHELL of Kennebec, Representatives: BRAUTIGAM of
Falmouth, FITTS of Pittsfield, HINCK of Portland, PENDLETON of Scarborough, TREAT of
Farmingdale.

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,** the State is facing significant and increasing economic and environmental
4 challenges associated with high and volatile energy prices, increasing demand for energy
5 and reliance on energy produced from fossil fuels; and

6 **Whereas,** the State has made the commitment, in law, to increase the share of
7 electric generation from renewable resources by 10% by 2017, to lower the cost of
8 electricity to consumers, to reduce price volatility and to decrease greenhouse gas
9 emissions from energy production; and

10 **Whereas,** this legislation establishes the Office of Energy Independence with the
11 specific focus and dedication to the formulation, coordination and management of state
12 energy policy; and

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

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

18 **Sec. 1. 2 MRSA §6, sub-§3,** as repealed and replaced by PL 2005, c. 683, Pt. A,
19 §2, is amended to read:

20 **3. Range 89.** The salaries of the following state officials and employees are within
21 salary range 89:

- 22 Director, Bureau of General Services;
- 23 Director, Bureau of Alcoholic Beverages and Lottery Operations;
- 24 State Budget Officer;
- 25 State Controller;
- 26 Director of the Bureau of Forestry;
- 27 Director, State Planning Office;
- 28 Director, ~~Energy Resources Office~~ Office of Energy Independence;
- 29 Director of Human Resources;
- 30 Director, Bureau of Parks and Lands; and
- 31 Director of Econometric Research.

32 **Sec. 2. 5 MRSA §3304, sub-§3, ¶J,** as enacted by PL 1989, c. 501, Pt. DD, §7, is
33 amended to read:

- 34 J. Be assisted by departments, agencies, authorities, boards, commissions and other
35 instrumentalities of State Government in the gathering of information, reports and

1 data ~~which~~ that relate to state planning and development in the area of energy
2 resources; and

3 **Sec. 3. 5 MRSA §3304, sub-§3, ¶K**, as enacted by PL 1989, c. 501, Pt. DD, §7,
4 is repealed.

5 **Sec. 4. 5 MRSA §3304, sub-§3, ¶L**, as enacted by PL 1989, c. 501, Pt. DD, §7,
6 is amended to read:

7 L. Be empowered, in connection with the performance of duties, to apply to the
8 Superior Court for a subpoena to compel the attendance of witnesses, the production
9 of books, papers, records and documents of individuals, firms, associations and
10 corporations and all officers, boards, commissions and departments of State
11 Government. The court, before issuing the subpoena, shall provide adequate
12 opportunity for the director and the party against whom the subpoena is requested to
13 be heard. ~~No such~~ Such a subpoena may not be issued unless the court or judge
14 certifies that the attendance of the witness or the production of the books, papers,
15 records or documents is reasonably necessary to carry out the purposes of this section
16 and that the director has made reasonable efforts to secure the attendance or the
17 books, papers, records or documents without recourse to compulsory process. The
18 director shall afford confidential treatment to any materials or information turned
19 over to the director ~~which~~ that is of a confidential or proprietary nature;

20 **Sec. 5. 5 MRSA §3304, sub-§3, ¶M**, as amended by PL 2005, c. 91, §1, is
21 repealed.

22 **Sec. 6. 5 MRSA §3304, sub-§3, ¶N**, as enacted by PL 1989, c. 501, Pt. DD, §7,
23 is repealed.

24 **Sec. 7. 5 MRSA §3305-B**, as amended by PL 2001, c. 624, §1, is repealed.

25 **Sec. 8. 5 MRSA §3307-B**, as enacted by PL 1989, c. 501, Pt. DD, §13, is
26 repealed.

27 **Sec. 9. 5 MRSA §3307-C**, as amended by PL 2005, c. 91, §§2 to 4, is repealed.

28 **Sec. 10. 5 MRSA §3327, sub-§1**, as amended by PL 2005, c. 425, §2, is further
29 amended to read:

30 **1. Council established; membership.** In order to facilitate more effective
31 interagency coordination of the State's activities regarding energy issues, the Energy
32 Resources Council, referred to in this chapter as the "council," is established. The chair
33 of the council is the Director of the ~~State Planning Office~~ Office of Energy Independence,
34 who is responsible for ensuring that the council carries out its responsibilities under this
35 chapter. The membership of the council is as follows:

- 36 A. The Director of the ~~State Planning Office~~ Office of Energy Independence;
- 37 B. The chair of the Public Utilities Commission;
- 38 C. The Commissioner of Environmental Protection;

- 1 D. The Public Advocate;
- 2 E. The Commissioner of Transportation;
- 3 F. The Commissioner of Administrative and Financial Services;
- 4 G. The Commissioner of Economic and Community Development or the
- 5 commissioner's designee;
- 6 H. The Director of the Maine State Housing Authority; and
- 7 I. The Commissioner of Conservation.

8 **Sec. 11. 5 MRSA §3327, sub-§2, ¶A**, as enacted by PL 2001, c. 630, §1, is
9 amended to read:

- 10 A. Recommend coordinated state policy regarding major programs or proposals
- 11 that affect energy use in the State and that involve the activities of more than one
- 12 state agency and recommend policies and programs to reduce growth in electricity
- 13 demand in the State in a cost-effective manner;

14 **Sec. 12. 5 MRSA §3327, sub-§3**, as amended by PL 2003, c. 487, §1, is further
15 amended to read:

16 **3. Quarterly meetings; staff; funding.** The council shall meet at least quarterly.
17 The council shall prepare a work ~~program~~ plan for each year establishing priorities
18 among its efforts. The ~~State Planning Office~~ Office of Energy Independence, within the
19 Executive Department, shall provide staff support.

20 A. A state agency applying for funds under the State Energy Program of the United
21 States Department of Energy pursuant to 10 Code of Federal Regulations, Part 420
22 shall, as directed by the council, apply for funds to support the work of the council
23 and its staff.

24 B. To the extent funds available pursuant to paragraph A are insufficient to fund
25 fully staff support for the council, each member of the council shall enter into an
26 agreement with the ~~State Planning Office~~ Office of Energy Independence to share in
27 the cost of providing the staff support.

28 C. The council may seek, and the Public Utilities Commission may provide, funds
29 to the council pursuant to Title 35-A, section 3211-A, subsection 5-A.

30 **Sec. 13. 5 MRSA c. 339** is enacted to read:

31 **CHAPTER 339**

32 **ENERGY INDEPENDENCE**

33 **§5021. Short title**

34 This chapter may be known and cited as “the Energy Independence Act.”

1 **§5022. Definitions.**

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

4 **1. Director.** “Director” means the Director of the Office of Energy Independence.

5 **2. Office.** “Office” means the Office of Energy Independence.

6 **§5023. Office of Energy Independence established**

7 There is established to carry out the purpose of this chapter the Office of Energy
8 Independence in the Executive Department. The office is concerned with the
9 formulation, coordination and management of state energy policy for the purpose of
10 increasing the energy independence of the State, including but not limited to reducing
11 dependence on fossil fuels, increasing investment in and reliance on renewable resources,
12 increasing energy efficiency and reducing energy demand. The Office of Energy
13 Independence is directly responsible to the Governor and assists the Governor and other
14 state agencies in the coordination and implementation of energy policy issues of
15 interagency concern.

16 **§5024. Director of Energy Independence**

17 **1. Director.** The executive head of the Office of Energy Independence is the
18 director. The director is appointed by the Governor and serves at the pleasure of the
19 Governor.

20 **2. Qualifications.** The director must be qualified by education, training and
21 experience in energy policy.

22 **3. Powers and duties.** The director shall exercise the powers of the office and is
23 responsible for the execution of its duties. The director:

24 A. Shall appoint and remove the staff of the office and prescribe its duties as may be
25 necessary to implement the purposes of this chapter. Professional employees must be
26 hired as unclassified employees. All other employees must be subject to those civil
27 service and personnel policies established for state employees generally and must be
28 paid salaries at rates of pay comparable to those of state employees with equivalent
29 responsibilities in other state agencies;

30 B. Shall supervise and administer the affairs of the office;

31 C. Shall advise the Governor, the Legislature and other appropriate state agencies
32 with respect to matters of energy policy;

33 D. Must be assisted by departments, agencies, authorities, boards, commissions,
34 other instrumentalities of the State or other governmental units in the gathering of
35 information, reports and data that relate to energy issues;

36 E. Shall prepare and submit for executive and legislative action the budget for the
37 office;

1 F. Shall make an annual report, by December 31st, to the Governor and to the joint
2 standing committee of the Legislature having jurisdiction over utilities and energy
3 matters detailing the activities of the office and, after consultation with and approval
4 by the Governor, submit such recommendations for legislative action as determined
5 necessary to further the purposes of this chapter;

6 G. May collect inventory and product delivery data from the State's primary storage
7 facilities of petroleum products, as described in section 5027 and may afford
8 confidential treatment to that information pursuant to section 5025, subsection 1,
9 paragraph C;

10 H. Shall oversee the implementation of any energy programs assigned to the office
11 under this chapter; and

12 I. Is empowered, in connection with the performance of duties, to apply to the
13 Superior Court for a subpoena to compel the attendance of witnesses, the production
14 of books, papers, records and documents of individuals, firms, associations and
15 corporations and all officers, boards, commissions and departments of State
16 Government. The court, before issuing the subpoena, shall provide adequate
17 opportunity for the director and the party against whom the subpoena is requested to
18 be heard. A subpoena may not be issued unless the court or judge certifies that the
19 attendance of the witness or the production of the books, papers, records or
20 documents is reasonably necessary to carry out the purposes of this section and that
21 the director has made reasonable efforts to secure the attendance or the books, papers,
22 records or documents without recourse to compulsory process. The director may
23 designate as confidential any materials or information turned over to the director
24 under this paragraph that is of a confidential or proprietary nature. Information
25 designated as confidential by the director under this paragraph is not a public record
26 and is not subject to disclosure under Title 1, chapter 13, subchapter 1;

27 **§5025. Office of Energy Independence; powers and duties**

28 **1. Powers and duties. The office shall:**

29 A. Coordinate the development and implementation of policies to guide the State in
30 achieving energy independence and efficient use of the State's energy resources;

31 B. Develop specific policies and initiatives to reduce growth in energy demand with
32 cost-effective energy efficiency measures. The office shall also participate in regional
33 efforts to reduce demand growth;

34 C. Collect and analyze energy data from all available energy sources in the State.
35 Upon the request of a company engaged in the wholesale and retail trade of
36 petroleum products in the State, the director may designate as confidential
37 information documents and data dealing with sales of that company. Information
38 designated confidential by the director under this paragraph is not a public record and
39 is not subject to disclosure under Title 1, chapter 13, subchapter 1;

40 D. Prepare and submit to the Governor and the Legislature every 2 years a
41 comprehensive state plan for achieving energy independence, along with any
42 recommended legislation to implement the plan. The plan must be submitted by
43 March 1st of each odd-numbered year. The plan must include, but is not limited to:

1 (1) Strategies to reduce reliance on fossil fuels, increase reliance on renewable
2 resources and promote energy efficiency;

3 (2) Recommendations for state policies or programs to decrease growth in
4 electricity demand and achieve reductions in demand for electricity during peak
5 use periods in a cost-effective manner, including, but not limited to, policies
6 relating to building codes, appliance and lighting standards and public water and
7 sewer facilities;

8 (3) A description of historical energy demand and demand growth by end-use
9 sector and the energy resources used to meet that demand, and a forecast of
10 energy demand, including electric and gas energy demand, by end-use sector for
11 the next 5 years, 10 years and 20 years; and

12 (4) An assessment of availability of cost-effective efficiency and demand
13 response resources to reduce demand growth.

14 E. Encourage, direct or sponsor research, experiments and demonstration projects
15 within the State to develop alternative energy sources, particularly, but not limited to,
16 those sources that rely on renewable natural resources of the State, such as solar
17 energy, water of tides and rivers, forests, winds and other sources that to date have
18 not been fully explored or used;

19 F. Identify conservation alternatives to proposed new electric power generating
20 plants and transmission and distribution facilities and assess the long-term and short-
21 term energy savings realized by the conservation alternatives; and

22 G. Coordinate the actions of state agencies that affect the consumption of energy
23 with the objective of securing the environmental and economic benefits of electric
24 industry restructuring occurring pursuant to Title 35-A, chapter 32; and

25 H. Provide planning and technical assistance to the Governor and Legislature by
26 undertaking special studies related to energy independence, preparing or analyzing
27 policy alternatives and identifying the immediate and long-range needs and the
28 resources to meet those needs. The office shall prepare plans and studies at the
29 request of the Governor, the Legislature or interdepartmental committees, councils
30 and task forces.

31 **2. Administrative powers. The office may:**

32 A. With the consent of the Governor, employ expert and professional consultants and
33 contract for research projects as it determines necessary within the limits of the funds
34 provided and consistent with the powers and duties of the office;

35 B. Enter into agreements with the Federal Government and other agencies and
36 organizations that will promote the objectives of this chapter;

37 C. Accept funds from the Federal Government or from any individual, foundation or
38 corporation to be used to carry out the purposes of this chapter; and

39 D. Adopt rules as necessary to implement this chapter. Unless otherwise specified,
40 rules adopted pursuant to this paragraph are routine technical rules as defined in Title
41 5, chapter 375, subchapter 2-A.

1 **§5026. Energy resources development program**

2 The office, as funding allows, shall administer a program of energy research and
3 demonstration activities related to both the use of indigenous, renewable resources and
4 more efficient use of energy. The director may accept private funds for the purpose of
5 pursuing this program.

6 **1. Report to Legislature.** The director shall include, in the biennial state energy
7 independence plan required under section 5025 subsection 1, paragraph D, a report that
8 specifies the expenditure of funds by the program, the purposes for which the funds were
9 used and the amount of the funds as well as the sources from which the funds were
10 derived.

11 **2. Expenditures requiring approval.** For all programs involving expenditures of
12 \$10,000 or more, the director shall recommend those expenditures to the Governor. If the
13 Governor approves, the director shall recommend those expenditures to the Legislature
14 under the procedures authorizing the transfer of funds set forth in section 1585.

15 **§5027. Petroleum inventories and deliveries**

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

18 A. "Petroleum products" means propane; gasoline; unleaded gasoline; gasohol;
19 kerosene; #2 heating oil; diesel fuel; kerosene-based jet fuel; aviation gasoline; #4, #5
20 and #6 residual oil for utility and nonutility uses; and Bunker C oil.

21 B. "Primary storage facilities" means facilities that receive petroleum products into
22 the State either by pipeline or ship.

23 C. "Primary supplier" means any refiner, marketer, distributor, firm or person who
24 makes the first sale of any petroleum product to resellers or consumers in this State.

25 **2. Reporting of owners and lessees of primary storage facilities.** Each owner or
26 lessee of primary storage facilities in the State shall make an accurate report on the first
27 and 3rd Mondays of each month to the office on a form provided by the director. The
28 form must contain a conspicuous statement of the penalties provided in subsection 4 and
29 must require the following information:

30 A. The total inventory of each petroleum product stored in the State, as measured
31 within not more than 3 working days prior to the reporting date; and

32 B. The quantities of each petroleum product delivery into the State expected within
33 15 days of the reporting date or within any longer period established by the director.

34 **3. Reporting of primary suppliers.** Each primary supplier of petroleum products
35 shall make an accurate report on the 3rd Monday of each month to the office on a form
36 provided by the director, unless the report is already being submitted in accordance with
37 federal regulations. The form must contain a conspicuous statement of the penalties
38 provided in subsection 4 and must require the following information:

1 A. Actual deliveries of all petroleum products in this State during the preceding
2 calendar month;

3 B. Anticipated deliveries of all petroleum products in this State during the following
4 calendar month or during any longer period established by the director; and

5 C. Allocation fractions for all petroleum products for the following month or for any
6 longer period established by the director.

7 **4. Penalty provisions.** A person who violates this section is subject to the penalties
8 set out in this subsection.

9 A. An owner or lessee of a primary storage facility or a primary supplier covered by
10 this section who fails to provide the information required by this section commits a
11 Class D crime. Violation of this paragraph is a strict liability crime as defined in
12 Title 17-A, section 34, subsection 4-A.

13 B. An owner or lessee of a primary storage facility or a primary supplier covered by
14 this section who knowingly or recklessly supplies false or misleading information is
15 guilty of a violation of Title 17-A, section 453.

16 C. An owner or lessee of a primary storage facility who supplies false or misleading
17 information commits a civil violation for which a fine of \$2,500 may be adjudged.

18 **5. Reporting to Legislature.** The office shall provide reports to the joint standing
19 committee of the Legislature having jurisdiction over utilities and energy matters as set
20 out in this subsection:

21 A. If the office determines, based on available information, that there is or may be a
22 significant shortfall in supply inventories or anticipated deliveries into the State of
23 home heating oil or kerosene, a report including:

24 (1) The information that suggests a supply shortfall;

25 (2) Current and anticipated inventories of home heating oil and kerosene storage
26 supplies; and

27 (3) Any recommendations of the office for actions by the State in response to the
28 anticipated supply shortfall; and

29 B. A report on inventories, deliveries, curtailments, shortfalls or other matters
30 relating to the availability of petroleum products in this State, at the request of the
31 joint standing committee of the Legislature having jurisdiction over utilities and
32 energy matters.

33 **Sec. 14. Biofuel action plan.** The Executive Department, Office of Energy
34 Independence shall develop a plan to expand the availability and use of biofuels in the
35 State. In developing the plan, the office shall refer to the definition of biofuels in the
36 Maine Revised Statutes, Title 36, section 5219-X. No later than January 31, 2008, the
37 office shall submit the plan, including recommendations and any legislation necessary to
38 implement the recommendations, to the Joint Standing Committee on Utilities and
39 Energy. After reviewing the plan, the committee may submit a bill regarding biofuels to
40 the Second Regular Session of the 123rd Legislature.

1 **Sec. 15. Renewable energy investment program.** The Executive Department,
2 Office of Energy Independence shall develop a program to support the development and
3 operation of renewable energy generation facilities within the State through consumer
4 purchase of renewable energy certificates for current or future production of power from
5 renewable resources within the State. No later than January 31, 2008, the office shall
6 submit to the Joint Standing Committee on Utilities and Energy a report including a
7 program design and an implementation plan. The report must include suggested
8 legislation to establish the program in the Maine Revised Statutes, Title 5, chapter 339.
9 After reviewing the report, the committee may submit a bill regarding the program to the
10 Second Regular Session of the 123rd Legislature.

11 **Sec. 16. Green communities program.** The Executive Department, Office of
12 Energy Independence shall develop a program to support and recognize, as green
13 communities, communities within the State that take steps to become more energy
14 independent, reduce reliance on fossil fuels and increase reliance on renewable energy
15 resources. The office shall define criteria or benchmarks that qualify a community for
16 certification as a green community under the program. The program must include, but is
17 not limited to, technical assistance to communities interested in obtaining certification.
18 No later than January 31, 2008, the office shall submit to the Joint Standing Committee
19 on Utilities and Energy a report including a program design and an implementation plan.
20 The report must include suggested legislation to establish the program in the Maine
21 Revised Statutes, Title 5, chapter 339. After reviewing the report, the committee may
22 submit a bill regarding the program to the Second Regular Session of the 123rd
23 Legislature.

24 **Sec. 17. Review of laws affecting the Office of Energy Independence.** The
25 Executive Department, Office of Energy Independence shall, in consultation with the
26 Public Utilities Commission and the Executive Department, State Planning Office,
27 conduct a comprehensive review of the Maine Revised Statutes, Title 5, chapter 339 and
28 other state laws relating to the functions of the Office of Energy Independence. The
29 purpose of the review is to identify appropriate changes to these laws to reflect the
30 establishment of the Office of Energy Independence, the removal of certain energy-
31 related functions from the State Planning Office and the establishment of similar
32 functions in the Office of Energy Independence, and the relationship between energy-
33 related functions and programs under the jurisdiction of the Office of Energy
34 Independence and the Public Utilities Commission, respectively. No later than January 1,
35 2008, the Office of Energy Independence shall submit a report on the results of the
36 review, including recommendations and suggested legislation, to the Joint Standing
37 Committee on Utilities and Energy. After reviewing the report, the committee is
38 authorized to submit legislation related to the report to the Second Regular Session of the
39 123rd Legislature.

40 **Sec. 18. Maine Revised Statutes headnote amended; revision clause.** In
41 the Maine Revised Statutes, Title 5, Part 13, in the Part headnote, the words "Maine State
42 Energy Resources Act" are amended to read " Energy Independence" and the Revisor of
43 Statutes shall implement this revision when updating, publishing or republishing the
44 statutes.

1 the review, including recommended legislation, to the Joint Standing Committee on
2 Utilities and Energy by January 1, 2008 and authorizes the committee to submit
3 legislation related to the report.