

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1851

H.P. 1290

House of Representatives, April 11, 2007

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**An Act To Establish the Regional Greenhouse Gas Initiative Act of  
2007**

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Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative KOFFMAN of Bar Harbor. (GOVERNOR'S BILL)  
Cosponsored by Senator BARTLETT of Cumberland and  
Representatives: ADAMS of Portland, BARSTOW of Gorham, BERRY of Bowdoinham,  
BLANCHARD of Old Town, BLANCHETTE of Bangor, BLISS of South Portland,  
BRAUTIGAM of Falmouth, CAIN of Orono, CAMPBELL of Newfield, Speaker  
CUMMINGS of Portland, DILL of Cape Elizabeth, DUCHESNE of Hudson, EBERLE of  
South Portland, FAIRCLOTH of Bangor, FISCHER of Presque Isle, FLETCHER of Winslow,  
FLOOD of Winthrop, GILES of Belfast, HINCK of Portland, MacDONALD of Boothbay,  
MARLEY of Portland, MAZUREK of Rockland, McDONOUGH of Scarborough,  
MIRAMANT of Camden, NORTON of Bangor, PATRICK of Rumford, PERCY of  
Phippsburg, PIEH of Bremen, PINGREE of North Haven, PIOTTI of Unity, PRATT of  
Eddington, RECTOR of Thomaston, SAVIELLO of Wilton, SIMPSON of Auburn, SMITH of  
Monmouth, STRANG BURGESS of Cumberland, THERIAULT of Madawaska, TREAT of  
Farmingdale, WAGNER of Lewiston, WATSON of Bath, WOODBURY of Yarmouth,  
Senators: BENOIT of Sagadahoc, BOWMAN of York, BRYANT of Oxford, DAMON of  
Hancock, DOW of Lincoln, President EDMONDS of Cumberland, MARTIN of Aroostook,  
MILLS of Somerset, MITCHELL of Kennebec, RAYE of Washington, ROSEN of Hancock,  
ROTUNDO of Androscoggin, STRIMLING of Cumberland, TURNER of Cumberland.

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

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

3 **20-B.**

4 <u>Environment:</u>	<u>Maine Energy</u>	<u>\$50 per day plus</u>	<u>35-A MRSA</u>
5 <u>Natural</u>	<u>Conservation</u>	<u>expenses</u>	<u>§3211-D</u>
6 <u>Resources and</u>	<u>Board</u>		
7 <u>Public Utilities</u>			

8 **Sec. 2. 35-A MRSA §3211-A, sub-§1, ¶I** is enacted to read:

9 I. "Trade association aggregator" means an entity that gathers individual members of  
10 a trade association together for the purpose of receiving electrical efficiency services  
11 or bidding on electrical efficiency contracts.

12 **Sec. 3. 35-A MRSA §3211-A, sub-§2**, as amended by PL 2005, c. 569, §§1 and  
13 2, is further amended to read:

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

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

- 30 (1) Increase consumer awareness of cost-effective options for conserving energy;
- 31 (2) Create more favorable market conditions for the increased use of efficient  
32 products and services;
- 33 (3) Promote sustainable economic development and reduced environmental  
34 damage; ~~and~~
- 35 (4) Reduce the price of electricity over time for all consumers by achieving  
36 reductions in demand for electricity during peak use periods; ~~and~~
- 37 (5) Reduce total costs paid by electricity consumers in the State by increasing the  
38 efficiency with which electricity is consumed.

- 1 B. The commission, with regard to the assessment imposed under subsection 4,  
2 shall:
- 3 (1) Target at least 20% of ~~available~~ funds to programs for low-income residential  
4 consumers, as defined by the commission by rule;
- 5 (2) Target at least 20% of ~~available~~ funds to programs for small business  
6 consumers, as defined by the commission by rule; and
- 7 (3) To the greatest extent practicable, apportion remaining available funds  
8 among customer groups and geographic areas in a manner that allows all other  
9 customers to have a reasonable opportunity to participate in one or more  
10 conservation programs.
- 11 C. The commission shall hold at least one public hearing and invite, accept, review  
12 and consider comments and suggestions from interested parties prior to adopting or  
13 substantially revising conservation programs or the objectives and overall strategy for  
14 conservation programs.
- 15 D. The commission shall monitor conservation planning and program development  
16 activities in the region and around the country.
- 17 E. The commission shall implement conservation programs by contracting with  
18 service providers in accordance with subsection 3.
- 19 F. The commission shall monitor and evaluate the delivery of conservation  
20 programs by service providers and assess the cost-effectiveness of programs in  
21 meeting the objectives and overall strategy established by the commission.
- 22 G. The commission, to the extent possible, shall coordinate its efforts with other  
23 agencies of the State with energy-related responsibilities.
- 24 H. The commission shall secure sufficient technical and administrative expertise to  
25 carry out its responsibilities pursuant to this section by:
- 26 (1) Contracting with appropriate entities with relevant expertise and experience;  
27 (2) Establishing one or more advisory groups composed of persons with  
28 relevant expertise and experience; or
- 29 (3) Any other reasonable means developed by the commission.
- 30 I. The commission may coordinate its efforts under this section with similar efforts  
31 in other states in the northeast region and enter into agreements with public agencies  
32 or other entities in or outside of the State for joint or cooperative conservation  
33 planning or conservation program delivery, if the commission finds that such  
34 coordination or agreements would provide demonstrable benefits to citizens of the  
35 State and be consistent with this section, the conservation programs and the  
36 objectives and overall strategy for the conservation programs.
- 37 J. The commission shall encourage school facility managers to complete an energy  
38 efficiency training and certification program established and conducted by the  
39 commission under this section. To the extent the commission determines necessary  
40 and appropriate to meet the goals of this paragraph, the commission may, in  
41 accordance with the requirements of this section, establish incentive mechanisms to

1 encourage participation in this program. For purposes of this paragraph, "school  
2 facility managers" means persons employed by school administrative units in this  
3 State who are responsible for the design or operation of school administrative unit  
4 facilities or the heating, ventilation or air conditioning systems or equipment used in  
5 such facilities.

6 **Sec. 4. 35-A MRSA §3211-A, sub-§3**, as enacted by PL 2001, c. 624, §4, is  
7 amended to read:

8 **3. Implementation.** The commission shall seek to implement the delivery of  
9 conservation programs in all regions of the State on an equitable basis and to citizens at  
10 all income levels. The commission may arrange the delivery of conservation programs  
11 by contracting with service providers. The commission shall select service providers in  
12 accordance with this subsection.

13 A. The commission shall select service providers through a competitive bidding  
14 process.

15 B. To the extent practicable, the commission shall encourage the development of  
16 resources, infrastructure and skills within the State by giving preference to in-state  
17 service providers.

18 C. Notwithstanding paragraph A:

19 (1) The commission may select a service provider for one or more conservation  
20 programs without employing a competitive bidding process if the commission  
21 finds that the selection of the service provider will promote the efficient and  
22 effective delivery of conservation programs and is consistent with the objectives  
23 and overall strategy of the conservation programs; and

24 (2) For the delivery of conservation programs to low-income residential  
25 consumers, the commission, without employing a competitive bidding process,  
26 may utilize the delivery system for the Weatherization Assistance for Low-  
27 income Persons Program administered through the United States Department of  
28 Energy and the network of for-profit and not-for-profit entities who have held  
29 contracts with transmission and distribution utilities to deliver conservation  
30 services to low-income and residential customers.

31 Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by  
32 the State Purchasing Agent in selecting service providers pursuant to this subsection. The  
33 commission shall adopt rules establishing procedures governing the selection of service  
34 providers under this subsection. The commission shall consult with the State Purchasing  
35 Agent in developing the rules.

36 A trade association aggregator is eligible to participate in competitive bid processes under  
37 this subsection.

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

40 **4. Funding level.** ~~The~~ Except as provided in subsection 4-A, the commission shall  
41 assess transmission and distribution utilities to collect funds for conservation programs

1 and administrative costs in accordance with this subsection. The amount of all  
2 assessments by the commission under this subsection plus expenditures of a transmission  
3 and distribution utility associated with prior conservation efforts must result in total  
4 conservation expenditures by each transmission and distribution utility that:

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

7 B. ~~Do not exceed~~ Are fixed at a rate of .145 cent per kilowatt-hour;

8 C. Except as provided in subsection 7-A, are no less than 0.5% of the total  
9 transmission and distribution revenues of the transmission and distribution utility;  
10 and

11 D. Are proportionally equivalent on a per-kilowatt-hour basis to the total  
12 conservation expenditures of other transmission and distribution utilities, unless the  
13 commission finds that a different amount is justified.

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

15 **4-A. Additional assessment on transmission and distribution utilities.** In  
16 addition to the assessment under subsection 4, the commission shall assess each  
17 transmission and distribution utility based on the utility's gross operating revenue. For  
18 the purposes of this subsection, "gross operating revenue" means revenue derived from  
19 filed rates, except from sales for resale. The commission may correct any errors in the  
20 assessments by means of a credit or debit to the following year's assessment rather than  
21 reassessing all utilities in the current year. The commission shall determine the  
22 assessments under this subsection annually prior to May 1st and assess each utility for its  
23 pro rata share for expenditure, including funds for energy conservation programs, during  
24 the fiscal year beginning July 1st following presentation of the commission's budget to  
25 the joint standing committee of the Legislature having jurisdiction over utility and energy  
26 matters and the joint standing committee of the Legislature having jurisdiction over  
27 appropriations and financial affairs. Each utility shall pay the assessment charged to that  
28 utility on or before July 1st of each year.

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

30 **4-B. Transmission and subtransmission voltage level.** After July 1, 2007,  
31 customers receiving electric service at transmission and subtransmission voltage levels  
32 are not eligible for new projects undertaken under this section, and those customers are  
33 not required to pay the assessment imposed under subsection 4 or subsection 4-A. The  
34 commission shall reduce the rates of such customers by 0.145 cents per kilowatt-hour as  
35 of the first rate adjustment following the effective date of this subsection in a manner that  
36 reflects the elimination of the assessment under this subsection.

37 **Sec. 8. 35-A MRSA §3211-A, sub-§7-A**, as enacted by PL 2003, c. 275, §2, is  
38 amended to read:

39 **7-A. Funds held in trust.** All funds collected from electricity consumers pursuant  
40 to this section, ~~including assessments collected from transmission and distribution~~  
41 ~~utilities and deposited in the program fund or the administration fund and any prior~~

1 ~~conservation efforts~~, are collected under the authority and for the purposes of this section  
2 and, ~~whether held by the commission, transmission and distribution utilities or their~~  
3 ~~agents~~, are deemed to be held in trust for the purposes of benefiting electricity consumers.  
4 In the event funds are not expended or contracted for expenditure within 2 years of being  
5 collected from consumers, the commission shall return the value of those funds to  
6 consumers by appropriate reductions in the assessment collected pursuant to subsection 4.

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

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

13 **Sec. 10. 35-A MRSA §3211-D** is enacted to read:

14 **§3211-D. Maine Energy Conservation Board**

15 **1. Establishment.** The Maine Energy Conservation Board, as established in Title 5,  
16 section 12004-I, subsection 20-B and referred to in this section as "the board," is created  
17 to accomplish coordinated and integrated planning for Maine's energy conservation  
18 efforts and to provide advice and counsel on conservation and carbon dioxide reduction  
19 matters.

20 **2. Composition of board.** The board is composed of 7 voting members appointed  
21 by the commission, none of whom may have a financial interest in energy efficiency or  
22 conservation delivery:

23 **A. A member representing commercial electrical consumers;**

24 **B. A member representing industrial electrical consumers;**

25 **C. A representative of the Office of the Public Advocate who represents the interest**  
26 **of residential electrical consumers;**

27 **D. A member with significant knowledge of environmental issues and climate**  
28 **change policy; and**

29 **E. The 3 trustees of the Energy and Carbon Savings Trust, established in section**  
30 **3211-E.**

31 **The commission may also appoint 3 nonvoting members representing transmission and**  
32 **distribution utilities. The Commissioner of Environmental Protection, the chair of the**  
33 **commission and the director of the Governor's Office of Energy Independence and**  
34 **Security within the Executive Department serve as nonvoting, ex officio members.**

35 **3. Terms; chair.** Except for members appointed pursuant to subsection 2, paragraph  
36 E, the term of a voting member of the board is 3 years. If a voting member is unable to  
37 complete the term, the commission shall appoint a replacement. A voting member may  
38 serve a maximum of 2 consecutive terms. The board shall select a chair and vice-chair  
39 from the board's voting membership.

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

5 5. Staff. The commission shall provide staff support for the development of the plan  
6 under subsection 6. The board may contract with an independent consultant with  
7 expertise in energy efficiency programs and may expend for such services an amount not  
8 to exceed 1% of the total amount in the conservation program fund established under  
9 section 3211-A, subsection 5 and the Energy and Carbon Savings Trust established in  
10 section 3211-E.

11 6. Biennial plan. The board shall develop and approve a detailed biennial plan,  
12 referred to in this subsection as "the plan," in accordance with this subsection.

13 A. In developing the plan, the board shall seek input from the public.

14 B. The plan must contain program budget allocations and general guidance or  
15 instructions on program implementation and make provisions for annual updates and  
16 revisions.

17 C. The plan must include instructions for the use of funds in the conservation  
18 program fund established under section 3211-A, subsection 5 and the Energy and  
19 Carbon Savings Trust established in section 3211-E.

20 D. The plan must seek to address the needs of all customer classes of the  
21 transmission and distribution utilities in the public interest.

22 E. The plan must be presented to the commission for review and final approval by  
23 order.

24 7. Rulemaking. The commission shall adopt rules for establishing and  
25 administering the board and its programs. Rules adopted pursuant to this subsection are  
26 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

27 **Sec. 11. 35-A MRS §3211-E** is enacted to read:

28 **§3211-E. Energy and Carbon Savings Trust**

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

31 A. "Forward capacity market" means the program established by the regional  
32 transmission organization that is in effect on the effective date of this paragraph and  
33 compensates providers of electrical capacity with payments for the availability or  
34 reduction of capacity as determined by the regional transmission organization.

35 B. "Regional transmission organization" means the independent systems operator  
36 that administers and oversees the wholesale electricity markets in which the State  
37 participates.



1 C. "Trade association aggregator" means an entity that gathers individual members  
2 of a trade association together for the purpose of receiving electrical efficiency  
3 services or bidding on electrical efficiency contracts.

4 D. "Trust" means the Energy and Carbon Savings Trust established in subsection 2.

5 E. "Trustee" means a trustee of the trust.

6 **2. Establishment of trust.** The Energy and Carbon Savings Trust is established and  
7 must be managed and administered by the commission to support the goals and  
8 implementation of the carbon dioxide cap-and-trade program established under Title 38,  
9 section 580-B. The trust is authorized to receive, hold, bank and expend revenue  
10 resulting from the sale of allowances and any forward capacity market or other capacity  
11 payments from the regional transmission organization that may be attributable to projects  
12 funded by the trust. The funds may not be used for any other purpose and are considered  
13 to be held in trust for the purposes of benefiting consumers.

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

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

21 C. The trustees may meet periodically, in addition to participating in all meetings of  
22 the Maine Energy Conservation Board, as established in section 3211-D or upon  
23 request of the commission. If a trustee is absent from more than one meeting without  
24 notice, the commission may appoint a replacement. An affirmative vote of two-thirds  
25 of the members is required for any action.

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

30 E. The trustees shall ensure that the goals and objectives of the trust, as established  
31 in this section and in commission rules, are carried out. The trustees shall represent  
32 the interests of the trust as participants in the development by the Maine Energy  
33 Conservation Board of the biennial plan pursuant to section 3211-D, subsection 6.

34 F. The commission shall make available staff to support the work of the trustees.

35 **3. Trust inviolability.** The commission may not impair the value of the trust either  
36 directly or indirectly, or reduce, impair, postpone or terminate the amount of revenues  
37 arising from the regional greenhouse gas initiative program established under Title 38,  
38 chapter 3-B. The commission may take legal action in the name of the trust to oppose  
39 efforts to reduce, impair, postpone or terminate the amount of such revenues.

40 The State pledges to, contracts with, and agrees with the purchasers of carbon dioxide  
41 emissions allowances and trustees for the proceeds of those allowances that neither the  
42 State nor any of its agencies, including the commission, may limit, alter, amend, reduce

1 or impair the trust, its funds or any rights under the trust or ownership of the trust or  
2 security interest in the trust. The State acknowledges that such owners, holders and  
3 trustees may and will rely on this pledge, contract and agreement and that any such  
4 limitation, alteration, amendment, reduction or impairment without adequate provision  
5 will irreparably harm such owners, holders and trustees.

6 **4. Money invested.** Any revenue received from the sale of allowances and any  
7 forward capacity market payments administered by the regional transmission  
8 organization or other capacity payments that may be attributable to projects funded by the  
9 trust are the property of the trust. Money in the trust not currently needed to meet  
10 obligations under Title 38, section 580-B or for the purposes of this section must be  
11 deposited with the Treasurer of State to the credit of the trust and may be invested as  
12 provided by law. Interest on these investments must be credited to the trust.

13 **5. Ceiling on energy efficiency spending.** The ceiling on energy efficiency  
14 spending from the trust is set at \$5 per carbon dioxide allowance. Until that price ceiling  
15 is adjusted or removed, only the first \$5 of each carbon dioxide allowance sold and  
16 deposited in the trust may be awarded to or directed to qualified projects for purposes of  
17 energy efficiency improvements. While the ceiling is in place, an allowance value above  
18 \$5 must be used by the commission pursuant to sections 301 and 1322 for rebates to  
19 electric ratepayers calculated on a per-kilowatt-hour basis.

20 **6. Program plan.** By December 31st of each year, the trustees and program  
21 administrator under subsection 7 shall develop a trust program plan with support from the  
22 commission and with the input of the Maine Energy Conservation Board established in  
23 section 3211-D. The program plan must set guidelines for the evaluation and approval of  
24 proposed projects for which funding is sought from the trust. The commission may  
25 approve the trust program plan.

26 **7. Administration of trust funds; expenditures; projects.** The trust must be  
27 administered in accordance with this subsection.

28 A. The trust must be administered, and expenditures authorized by, a program  
29 administrator selected by the commission whose qualifications must include  
30 demonstrated expertise in the management of electricity efficiency programming and  
31 supervision of energy efficiency personnel. The administrator shall report to the  
32 trustees. The administrator shall organize staff resources of the commission for the  
33 trustees. Expenditures from the trust must be made pursuant to the annual trust  
34 program plan developed in accordance with subsection 6. To the extent possible, the  
35 trust program plan must be incorporated into the biennial plan approved by the  
36 commission pursuant to section 3211-D, subsection 6.

37 B. During the years 2009, 2010 and 2011, not less than 85% of the trust must be  
38 allocated for measures, investments and arrangements that reduce electricity  
39 consumption. Subject to the apportionment between fossil fuel and electricity  
40 conservation pursuant to this subsection, the trust must fund projects that give priority  
41 to measures with the highest benefit-to-cost ratio, as long as cost-effective collateral  
42 efficiency opportunities are not lost, and that:

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

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

5           C. Expenditures from the trust relating to conservation of electricity and mitigation  
6           or reduction of greenhouse gases must be made predominantly on the basis of a  
7           competitive bid process for long-term contracts, subject to commission rules. Rules  
8           adopted to implement the competitive bid process under this paragraph may not  
9           include an avoided cost methodology for compensating successful bidders. Bidders  
10           may propose contracts designed to produce greenhouse gas savings or electricity  
11           conservation savings, or both, on a unit cost basis. Contracts must be commercially  
12           reasonable and may require liquidated damages to ensure performance. Contracts  
13           must provide sufficient certainty of payment to enable commercial financing of the  
14           conservation measure purchased and its installation.

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

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

21           F. The size of a project funded by the trust is not limited as long as funds are  
22           awarded to maximize energy efficiency and support greenhouse gas reductions and to  
23           fully implement the biennial plan approved by the commission pursuant to section  
24           3211-D, subsection 6.

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

27                   (1) Of the commission and the trust related to this section;

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

30                   (3) Of the Attorney General, including activities pertaining to the tracking and  
31                   monitoring of allowance trading activity and managing and evaluating the trust's  
32                   conservation program.

33           Of the trust receipts used for administrative costs under this paragraph, no more than  
34           40% in any one year may be used for the administration of the trust. The trust may  
35           fund research approved by the Department of Environmental Protection in an amount  
36           of up to \$100,000 per year to develop new categories for carbon dioxide emissions  
37           offset projects, as defined in Title 38, section 580-A, that are located in the State.

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

1 I. Notwithstanding Title 5, section 1831, neither the trustees nor the commission are  
2 subject to rules adopted by the State Purchasing Agent in selecting service providers  
3 pursuant to this section. The trustees and the commission shall consider delivery of  
4 efficiency programs by means of contracts with service providers that participate in  
5 competitive bid processes for reducing energy consumption within individual market  
6 segments or for particular end uses.

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

9 **8. Rulemaking.** The commission shall adopt rules for establishing and  
10 administering the trust and its programs. These rules must include:

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

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

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

21 **Sec. 12. 38 MRSA §579**, as enacted by PL 2005, c. 330, §24, is amended to read:

22 **§579. Regional greenhouse gas initiative**

23 The department may participate in the regional greenhouse gas initiative as described  
24 in the climate action plan required in section 577- and may coordinate its efforts with  
25 other states and jurisdictions participating in that initiative, with respect to:

26 **1. Regional market.** The design, conduct and supervision of a regional market for  
27 carbon dioxide allowances;

28 **2. Additional offset categories.** The establishment and mutual recognition of  
29 additional offset categories that recognize the State's unique geography, economy and  
30 natural resources; and

31 **3. Ensuring no unfair disadvantage.** Efforts seeking to ensure that electricity  
32 generated within participating states and jurisdictions is not unfairly disadvantaged as a  
33 result of imports of electricity from nonparticipating states and jurisdictions.

34 **Sec. 13. 38 MRSA c. 3-B** is enacted to read:

35 **CHAPTER 3-B**

1 **REGIONAL GREENHOUSE GAS INITIATIVE**

2 **§580. Short title**

3 This chapter may be known and cited as "the Regional Greenhouse Gas Initiative Act  
4 of 2007."

5 **§580-A. Definitions**

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

8 **1. Allocation.** "Allocation" means the number of carbon dioxide allowances to be  
9 credited to a carbon dioxide budget unit or to the general account of the sponsor of an  
10 approved carbon dioxide emissions offset project.

11 **2. Carbon dioxide allowance.** "Carbon dioxide allowance" or "carbon dioxide  
12 emissions allowance" means a limited authorization by the department for the emission of  
13 up to one ton of carbon dioxide.

14 **3. Carbon dioxide budget unit.** "Carbon dioxide budget unit" means a fossil fuel  
15 fired electrical generating unit that serves a generator with a nameplate capacity equal to  
16 or greater than 25 megawatts of electrical output.

17 **4. Carbon dioxide budget unit compliance account.** "Carbon dioxide budget unit  
18 compliance account" means the account established by the department wherein carbon  
19 dioxide budget units deposit carbon dioxide emissions allowances.

20 **5. Carbon dioxide emissions budget.** "Carbon dioxide emissions budget" means  
21 the total amount of carbon dioxide emissions allowances allocated by the State on an  
22 annual basis.

23 **6. Carbon dioxide emissions offset project.** "Carbon dioxide emissions offset  
24 project" means a project that reduces or avoids loading of carbon dioxide and other  
25 greenhouse gases in the atmosphere and is demonstrated to qualify as real, additional,  
26 verifiable, enforceable and permanent as those terms are defined in rules adopted by the  
27 department. "Carbon dioxide emissions offset project" includes, but is not limited to,  
28 landfill and agricultural methane capture and destruction, reduction in emissions of sulfur  
29 hexafluoride, sequestration of carbon due to afforestation and reduction or avoidance of  
30 carbon dioxide emissions from natural gas, oil or propane end-use combustion due to  
31 end-use energy efficiency and other categories established by the department by rule.

32 **7. Carbon dioxide offset allowance.** "Carbon dioxide offset allowance" means a  
33 carbon dioxide allowance awarded to the sponsor of a carbon dioxide emissions offset  
34 project.

35 **8. Combined heat and power unit.** "Combined heat and power unit" means a  
36 device that simultaneously generates electricity and thermal power and operates at a high  
37 level of output efficiency by utilizing the waste heat created as a by-product of electricity

1 generation for domestic, commercial or industrial heating or cooling purposes, and whose  
2 useful thermal output equals at least 10% of the fossil fuel energy input of the unit.

3 **9. Electrical generating unit.** "Electrical generating unit" means a fossil fuel fired  
4 combustion device that serves a generator.

5 **10. Fossil fuel.** "Fossil fuel" means natural gas, petroleum, coal or any form of  
6 solid, liquid or gaseous fuel derived from such a material.

7 **11. Fossil fuel fired.** "Fossil fuel fired" means combustion of fossil fuel when the  
8 fossil fuel combusted constitutes, or is projected to constitute, more than 50% of the  
9 annual heat input on a British Thermal Unit basis.

10 **12. Generator.** "Generator" means a device that produces electricity and is required  
11 to be reported as a generating unit pursuant to the United States Department of Energy  
12 Form 860.

13 **13. Gross electrical generation.** "Gross electrical generation" means the electrical  
14 output in megawatts at the terminals of the generator.

15 **14. Integrated manufacturing facility.** "Integrated manufacturing facility" means a  
16 facility that:

17 A. Received an air emissions license from the department prior to the effective date  
18 of this subsection;

19 B. Produces electricity from one or more carbon dioxide budget units, including one  
20 or more combined heat and power units, for transmission over the facilities of a  
21 transmission and distribution utility; and

22 C. Routinely produces one or more other products for sale.

23 **15. Long-term electricity contract.** "Long-term electricity contract" means a  
24 contract for a period of 3 years or more with a carbon dioxide budget unit for the  
25 purchase of electricity.

26 **16. Memorandum of Understanding; memorandum.** "Memorandum of  
27 Understanding" or "memorandum" means the Regional Greenhouse Gas Initiative  
28 Memorandum of Understanding dated December 20, 2005 that establishes an electric  
29 power sector carbon emissions cap-and-trade program within the northeast region of the  
30 United States.

31 **17. Nameplate capacity.** "Nameplate capacity" means the maximum electrical  
32 generating output, expressed in megawatts, that a generator can sustain over a specified  
33 period of time when not restricted by seasonal or other deratings.

34 **18. Regional greenhouse gas initiative.** "Regional greenhouse gas initiative"  
35 means the initiative referred to in the Memorandum of Understanding and the  
36 corresponding model rule that memorializes the ongoing cooperative effort by the State  
37 and other states to design and implement a regional carbon dioxide cap-and-trade

1 program covering carbon dioxide emissions from electrical generating units in the  
2 signatory states.

3 **19. Regional organization.** "Regional organization" means the entity that will  
4 manage the regional greenhouse gas initiative on a regional basis and with which the  
5 State contracts for related service.

6 **20. Regional transmission organization.** "Regional transmission organization"  
7 means the independent systems operator that administers and oversees the wholesale  
8 electricity markets in which the State participates.

9 **21. Ton.** "Ton" means 2,000 pounds.

10 **22. Transmission and distribution utility.** "Transmission and distribution utility"  
11 means a transmission and distribution utility as defined in Title 35-A, section 3201,  
12 subsection 6, 12 or 16.

### 13 **§580-B. Cap-and-trade program established**

14 A carbon dioxide cap-and-trade program, referred to in this section as "the program,"  
15 is established in accordance with this section.

16 **1. Application.** All carbon dioxide budget units are subject to the carbon dioxide  
17 cap-and-trade program, except that a carbon dioxide budget unit is exempt from the  
18 program if:

19 A. It is incapable of producing enough energy to generate 25 megawatts or more of  
20 electrical output;

21 B. Its sale of electricity to any power distribution system is less than 10% of its gross  
22 electrical generation on an annual basis. In calculating this percentage, all electricity  
23 transmitted to the regional grid over the facilities of a transmission and distribution  
24 utility as a result of verifiable conservation and demand-side management initiatives  
25 or any emergency mandate of the regional transmission organization or lawful order  
26 of a governmental authority is not included in the calculation of annual sales; or

27 C. Fifty percent or more of its annual heat input comes from the combustion of fuels  
28 other than fossil fuels.

29 **2. Contingent on initiation of comparable programs.** The carbon dioxide cap-  
30 and-trade program commences no earlier than January 1, 2009 and only when other states  
31 that are participating in the regional greenhouse gas initiative that produce a minimum of  
32 35,000,000 tons of annual carbon dioxide emissions budget and participate in a wholesale  
33 electricity market administered and overseen by the regional transmission organization  
34 have initiated a comparable carbon dioxide cap-and-trade program.

35 **3. Base annual budget.** The base annual carbon dioxide emissions budget is  
36 established at 5,948,902 tons of carbon dioxide. Beginning with the year 2015, the  
37 annual carbon dioxide emissions budget must decline by 148,722 tons per year until 2018  
38 so that the annual carbon dioxide emissions budget for 2018 is 10% below the base  
39 annual carbon dioxide emissions budget.

1 **4. Rules implementing program.** The department shall adopt rules to implement  
2 the program. The rules must contain:

3 A. Provisions for the establishment of a system for the annual assignment, sale and  
4 distribution of carbon dioxide emissions allowances consistent with the carbon  
5 dioxide emissions budget;

6 B. Provisions for the establishment of carbon dioxide budget unit compliance  
7 obligation accounts;

8 C. Provisions for the establishment of carbon dioxide offset project allowance  
9 categories and requirements;

10 D. Provisions for the implementation of a licensing process for carbon dioxide  
11 budget units;

12 E. Provisions for the establishment of a carbon dioxide emissions and carbon dioxide  
13 allowance tracking program; and

14 F. Provisions to manage the carbon dioxide allowance auction developed in  
15 coordination with other states and jurisdictions in the regional greenhouse gas  
16 initiative and in a manner that is consistent with provisions adopted by those states  
17 and jurisdictions and, to the extent feasible, that:

18 (1) Ensure close monitoring of allowance transactions in a manner that guards  
19 against collusion and market manipulation;

20 (2) Ensure ongoing authentic price discovery and minimize price volatility;

21 (3) Facilitate open participation for bidding to all individuals or entities that meet  
22 the financial requirements jointly adopted by the participating states;

23 (4) Minimize administration and transaction costs and provide for an open and  
24 transparent user-friendly system;

25 (5) Provide that ongoing monitoring of market activity is undertaken by entities  
26 that have complete financial independence from any market participant;

27 (6) For purposes of civil and criminal enforcement authority under section 349,  
28 establish a contract term at the time an allowance is purchased at the regional  
29 auction for violations of market rules jointly adopted by the participating states  
30 and jurisdictions or through another method of ensuring state jurisdiction; and

31 (7) Guarantee that the Attorney General, the Public Utilities Commission and the  
32 commissioner have access to all auction information and information concerning  
33 allowance trading activity, including reports provided to the regional organization  
34 by a market monitor.

35 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
36 chapter 375, subchapter 2-A.

37 **5. Enforcement.** Violations of this chapter are enforceable, and penalties may be  
38 imposed in accordance with sections 347-A, 348 and 349.



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

4 A. If a regional greenhouse gas initiative auction results in price levels for  
5 allowances that are expected to be excessive, or that are excessive and will result, or  
6 are expected to result, in immediate and irreparable harm to the operations of a  
7 carbon dioxide budget unit regulated under this chapter, including but not limited to  
8 the termination of business at that location, the commissioner may, in consultation  
9 with the Attorney General and the chair of the Public Utilities Commission, grant  
10 waivers of enforcement for any violation by an individual regulated carbon dioxide  
11 budget unit of a requirement of this chapter.

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

15 The department shall adopt rules for the implementation of this subsection. Rules  
16 adopted pursuant to this subsection are major substantive rules as defined in Title 5,  
17 chapter 375, subchapter 2-A.

18 **7. Allocation of carbon dioxide emissions allowances.** The department shall  
19 allocate 100% of the annual carbon dioxide emissions allowances for public benefit to  
20 produce funds for carbon reduction and energy conservation, as specified in this chapter.  
21 Except as provided in subsection 8, the department shall sell the carbon dioxide emissions  
22 allowances at public auction, in accordance with rules adopted under subsection 4.

23 **8. Combined heat and power incentive.** The department shall set aside a portion of  
24 the State's annual carbon dioxide emissions allowances in an allowance account for  
25 carbon dioxide budget units that are combined heat and power units and are located at  
26 integrated manufacturing facilities. The department shall use these allowances for  
27 existing carbon dioxide budget units to reflect only that portion of each unit's emissions  
28 related to electricity generated at a carbon dioxide budget unit that is not transmitted  
29 across the facilities of a transmission and distribution utility.

30 The department shall adopt rules setting forth the proper treatment of any combined heat  
31 and power units that commence operations after July 1, 2007. Rules adopted pursuant to  
32 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-  
33 A.

34 **9. Integrated manufacturing facilities.** This subsection governs the treatment of  
35 integrated manufacturing facilities under this chapter.

36 A. The compliance obligation for a carbon dioxide budget unit at an integrated  
37 manufacturing facility is the carbon dioxide emissions associated with electricity  
38 resulting from the combustion of fossil fuels and transmitted over the facilities of a  
39 transmission and distribution utility. Absent any contractual arrangement to the  
40 contrary, the department shall presume that electricity from sources other than carbon  
41 dioxide budget units is transmitted first. The department shall adopt rules governing  
42 the compliance obligation for electricity generated at integrated manufacturing  
43 facilities and transmitted over the facilities of a transmission and distribution utility.

1 B. The department shall establish the Integrated Manufacturing Facility Retirement  
2 Account to ensure proper accounting for carbon emissions from the generation of  
3 electricity and heat from fossil fuels at integrated manufacturing facilities.

4 C. The purchase of electricity pursuant to a long-term electricity contract renders the  
5 purchaser an owner of a carbon dioxide budget unit for purposes of this chapter and  
6 obligates the owner to obtain the carbon dioxide emissions allowances applicable to  
7 the compliance obligation associated with the carbon dioxide budget unit. For  
8 purposes of this paragraph, "owner" means:

9 (1) The holder of any portion of the legal or equitable title in a carbon dioxide  
10 budget unit;

11 (2) The holder of a leasehold interest in a carbon dioxide budget unit, other than  
12 a passive lessor or a person who has an equitable interest through such lessor  
13 whose rental payments are not based, either directly or indirectly, upon the  
14 revenues or income from that unit; or

15 (3) A purchaser of electricity from a carbon dioxide budget unit under a  
16 contractual arrangement for greater than a 3-year period.

17 If no person has title to the electricity under subparagraphs (1) to (3), the owner is  
18 any holder of any portion of the legal or equitable title to the output of a carbon  
19 dioxide budget unit or any holder of a leasehold interest in such a unit.

20 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
21 chapter 375, subchapter 2-A.

22 **10. Annual report.** The department and the Public Utilities Commission shall  
23 submit a joint report to the joint standing committees of the Legislature having  
24 jurisdiction over natural resources matters and utilities and energy matters by March 15,  
25 2009 and each year thereafter. The report must assess and address:

26 A. The reductions of greenhouse gas emissions from carbon dioxide budget units,  
27 projects funded by the Energy and Carbon Savings Trust pursuant to Title 35-A,  
28 section 3211-E and carbon dioxide emissions offset projects;

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

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

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

35 E. Management and cost-effectiveness of the State's energy conservation and carbon  
36 reduction programs and efforts, including projects funded by the Energy and Carbon  
37 Savings Trust established pursuant to Title 35-A, section 3211-E; and

38 F. The extent to which funds from the Energy and Carbon Savings Trust established  
39 pursuant to Title 35-A, section 3211-E serve customers from all classes of the State's  
40 transmission and distribution utilities.

1 The department and the Public Utilities Commission may include in the report any  
2 proposed changes to the cap-and-trade program established under this chapter.

3 The joint standing committees of the Legislature having jurisdiction over natural  
4 resources matters and utilities and energy matters may report out legislation relating to  
5 the carbon dioxide cap-and-trade program.

6 **§580-C. Construction; absence of limitation**

7 Nothing in this chapter may be construed to limit:

8 **1. Withdrawal by State.** The ability of this State to withdraw from the regional  
9 greenhouse gas initiative; or

10 **2. Categories of carbon dioxide emissions offset projects.** The categories of  
11 carbon dioxide emissions offset projects that may qualify under agreements among the  
12 states and jurisdictions participating in the regional greenhouse gas initiative, particularly  
13 with respect to additional categories that take advantage of the geographical, economic or  
14 natural resources of this State.

15 **Sec. 14. Major substantive rulemaking.** Major substantive rules provisionally  
16 adopted pursuant to the Maine Revised Statutes, Title 35-A, sections 3211-D and 3211-E  
17 must be submitted to the Legislature by January 15, 2008 for review by the Joint Standing  
18 Committee on Utilities and Energy during the Second Regular Session of the 123rd  
19 Legislature. The joint standing committee is authorized to submit legislation to the  
20 Second Regular Session of the 123rd Legislature regarding establishment and  
21 administration of the Maine Energy Conservation Board and the Energy and Carbon  
22 Savings Trust.

23 **Sec. 15. Ceiling on energy efficiency spending.** Eight months prior to the  
24 expiration of the first compliance obligation period established under rules of the  
25 Department of Environmental Protection pursuant to the Maine Revised Statutes, Title  
26 38, section 580-B, the Public Utilities Commission, following the receipt of public input  
27 and based on an analysis of the efficacy of energy efficiency, rebates or other funded  
28 purposes in reducing energy costs, shall provide its recommendation to the joint standing  
29 committee of the Legislature having jurisdiction over utilities and energy matters  
30 regarding changing or removing the energy efficiency spending ceiling established in  
31 Title 35-A, section 3211-E, subsection 5.

32 **Sec. 16. Report; establishment of civil and criminal liability.** Because  
33 orderly operation of the market for carbon dioxide allowances and reasonable availability  
34 and pricing of these allowances are an essential part of the State's air quality laws and  
35 programs, the Department of Environmental Protection shall consult with the Public  
36 Utilities Commission, the Attorney General and interested parties regarding the  
37 establishment of civil and criminal liability for disruption of the carbon dioxide allowance  
38 market established in the Maine Revised Statutes, Title 38, chapter 3-B. For purposes of  
39 this section, "disruption" includes the purchase of allowances in a volume that affects the  
40 orderly operation of the market or the reasonable availability of allowances or their price.  
41 The department shall submit a report of its findings by January 15, 2008 to the Joint

1 Standing Committee on Natural Resources and the Joint Standing Committee on Utilities  
2 and Energy. After receipt and review of the report, either committee or both committees  
3 may submit legislation on this issue to the Second Regular Session of the 123rd  
4 Legislature.

5 **Sec. 17. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 35-  
6 A, section 3211-D, subsection 3, of the original appointments of voting members of the  
7 Maine Energy Conservation Board, other than the members who are trustees of the  
8 Energy and Carbon Savings Trust, one member serves an initial term of one year, one  
9 member serves an initial term of 2 years and one member serves an initial term of 3 years.  
10 An initial term of one or 2 years may not be considered a full term for purposes of  
11 limiting the number of terms for which a member may serve.

12 **Sec. 18. Rulemaking; legislative direction.**

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

21 2. Because it is the Legislature's intent that all revenues derived from the sale of  
22 carbon dioxide emissions allowances be used for high-efficiency electricity and fossil  
23 fuel conservation to reduce greenhouse gases and minimize the costs of carbon reduction  
24 to Maine electric consumers, rules adopted by the Public Utilities Commission to  
25 implement the Energy and Carbon Savings Trust under Title 35-A, section 3211-E must  
26 be designed to ensure that proceeds deposited in the trust accruing from the sale of carbon  
27 dioxide emissions allowances be expended solely for energy efficiency and related  
28 improvements that serve to enhance the reliability of the State's electric grid.

29 3. Rules adopted by the Department of Environmental Protection pursuant to Title  
30 38, chapter 3-B must establish a system under which proceeds from the sale of carbon  
31 dioxide emissions allowances may be returned to the electric customers as direct credits  
32 on their bills at times of heightened price pressure in regional allowance markets, thereby  
33 ameliorating grid instability at those times.

34 4. Because certain carbon dioxide budget units have substantially reduced carbon  
35 dioxide emissions from their facilities prior to the effective date of this Act and operate as  
36 highly efficient resources, rules adopted by the Department of Environmental Protection  
37 pursuant to Title 38, chapter 3-B must require such carbon dioxide budget units to meet  
38 only the compliance obligation for that portion of power sold to the grid and require that  
39 allowances associated with such units' so-called "behind-the-meter" electrical generation  
40 must be retired from the system. Such rules must be designed to recognize that full  
41 operation of generating units in existence on the effective date of this Act, including  
42 highly efficient cogeneration facilities, is essential for the stability of the State's electric  
43 grid at times of peak demand for electricity.



1 major substantive rules regarding combined heat and power incentives and the Public  
2 Utilities Commission to adopt major substantive rules regarding the establishment and  
3 administration of the Maine Energy Conservation Board. The bill also authorizes the sale  
4 of carbon dioxide emissions allowances for the benefit of consumers and the creation of  
5 the Energy and Carbon Savings Trust.