

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 886

H.P. 610

House of Representatives, March 5, 2009

An Act To Secure Maine's Energy Future

Reference to the Joint Select Committee on Maine's Energy Future suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Speaker PINGREE of North Haven.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: ADAMS of Portland, BERRY of Bowdoinham, FITTS of Pittsfield, HINCK
of Portland, MARTIN of Eagle Lake, PIOTTI of Unity, Senators: President MITCHELL of
Kennebec, SCHNEIDER of Penobscot.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§13-F**, as enacted by PL 2007, c. 317, §1, is
3 repealed.

4 **Sec. 2. 5 MRSA §12004-G, sub-§13-G** is enacted to read:

5 **13-G.**

6 Environment/ Efficiency Maine Expenses Only 35-A MRSA §10009
7 Natural Resources Trust
8 and Public
9 Utilities

10 **Sec. 3. 5 MRSA §12004-I, sub-§20-B**, as enacted by PL 2007, c. 317, §2, is
11 repealed.

12 **Sec. 4. 30-A MRSA §4741, sub-§15**, as amended by PL 1991, c. 871, §2, is
13 further amended to read:

14 **15. State weatherization, conservation and fuel assistance agency for low-**
15 **income persons.** The Maine State Housing Authority is designated the weatherization,
16 energy conservation and fuel assistance agency for low-income persons in the State and
17 may apply for, receive, distribute and administer federal funds on behalf of the State for
18 weatherization, energy conservation and fuel assistance pursuant to the Weatherization
19 Assistance for Low-income Persons Program administered through the United States
20 Department of Energy and the Low-income Home Energy Assistance Program
21 administered through the United States Department of Health and Human Services in
22 accordance with rules adopted under the Maine Administrative Procedure Act;

23 **Sec. 5. 35-A MRSA §3211-A**, as amended by PL 2007, c. 317, §§3 to 13, is
24 further amended to read:

25 **§3211-A. Electric efficiency and conservation programs**

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

28 A. "Administrative costs" means costs of the ~~commission trust~~ trust that are funded
29 pursuant to and associated with the implementation of this section, including, but not
30 limited to, ~~costs of program planning and evaluation~~, costs of securing necessary
31 expertise, costs associated with contract formation and administration and costs of
32 monitoring and enforcing contractual obligations.

33 B. "Administration fund" means the conservation administration fund established by
34 the ~~commission trust~~ trust pursuant to subsection 6.

35 D. "Conservation programs" means energy efficiency programs developed by the
36 ~~commission trust~~ trust pursuant to this section designed to reduce inefficient electricity
37 use.

1 E. "Prior conservation efforts" means programs to promote conservation undertaken
2 at the direction or with the authorization of the commission prior to March 1, 2002.

3 F. "Program fund" means the conservation program fund established by the
4 ~~commission trust~~ pursuant to subsection 5.

5 G. "Service provider" means a public or private provider of energy conservation
6 services or an entity selected by the ~~commission trust~~ to contract with such providers
7 or otherwise arrange the delivery of conservation programs.

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

11 J. "Trust" means the Efficiency Maine Trust established in section 10009.

12 K. "Complementary energy programs" means programs relating to energy other than
13 programs to provide direct financial incentives, training or education for the
14 acquisition of energy efficiency resources. "Complementary energy programs"
15 includes activities pursuant to subsection 5-A, research or general education about
16 energy efficiency, interagency information-sharing forums and promotion of
17 renewable energy.

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

33 A. The ~~commission trust~~ shall consider, without limitation, conservation programs
34 that:

- 35 (1) Increase consumer awareness of cost-effective options for conserving energy;
- 36 (2) Create more favorable market conditions for the increased use of efficient
37 products and services;
- 38 (3) Promote sustainable economic development and reduced environmental
39 damage;
- 40 (4) Reduce the price of electricity over time for all consumers by achieving
41 reductions in demand for electricity during peak use periods; and

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

1 commission under this section. To the extent the ~~commission trust~~ determines
2 necessary and appropriate to meet the goals of this paragraph, the ~~commission trust~~
3 may, in accordance with the requirements of this section, establish incentive
4 mechanisms to encourage participation in this program. For purposes of this
5 paragraph, "school facility managers" means persons employed by school
6 administrative units in this State who are responsible for the design or operation of
7 school administrative unit facilities or the heating, ventilation or air conditioning
8 systems or equipment used in such facilities.

9 K. ~~The commission, in conjunction with the trustees of the Energy and Carbon~~
10 ~~Savings Trust, trust~~ shall develop a triennial energy efficiency and conservation plan
11 in accordance with section ~~10007~~ 10009, subsection ~~6~~ 5, paragraph D. The plan must
12 seek to address the needs of all customer classes of the transmission and distribution
13 utilities in the public interest.

14 **3. Implementation.** ~~The commission trust~~ shall seek to implement the delivery of
15 conservation programs in all regions of the State on an equitable basis and to citizens at
16 all income levels. The ~~commission trust~~ may arrange the delivery of conservation
17 programs by contracting with service providers. The ~~commission trust~~ shall select
18 service providers in accordance with this subsection.

19 A. The ~~commission trust~~ shall select service providers through a competitive bidding
20 process.

21 B. To the extent practicable, the ~~commission trust~~ shall encourage the development
22 of resources, infrastructure and skills within the State by giving preference to in-state
23 service providers.

24 C. Notwithstanding paragraph A:

25 (1) The ~~commission trust~~ may select a service provider for one or more
26 conservation programs without employing a competitive bidding process if the
27 ~~commission trust~~ finds that the selection of the service provider will promote the
28 efficient and effective delivery of conservation programs and is consistent with
29 the objectives and overall strategy of the conservation programs; and

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

37 Notwithstanding Title 5, section 1831, the ~~commission trust~~ is not subject to rules
38 adopted by the State Purchasing Agent in selecting service providers pursuant to this
39 subsection. The ~~commission trust~~ shall adopt rules establishing procedures governing the
40 selection of service providers under this subsection. The ~~commission trust~~ shall consult
41 with the State Purchasing Agent in developing the rules.

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

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

9 **4-A. Other assessments on transmission and distribution utilities.** The
10 commission shall assess each transmission and distribution utility based on the utility's
11 gross operating revenue as necessary to realize all available energy efficiency and
12 demand reduction resources in this State that are cost-effective, reliable and feasible after
13 consideration of the following:

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

15 B. The funding for conservation programs provided by the ~~Energy and Carbon~~
16 ~~Savings Trust~~ Regional Greenhouse Gas Initiative Trust Fund pursuant to section
17 ~~10008~~ 10010;

18 C. The amount of payments received from a forward capacity market, as defined in
19 section ~~10008~~ 10010, subsection 1, paragraph B, as a result of conservation programs
20 funded under this chapter and under section ~~10008~~ 10010; and

21 D. Any other predictable sources of funding for or investment in ~~energy~~ conservation
22 ~~and efficiency~~ programs.

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

38 **4-B. Transmission and subtransmission voltage level.** After July 1, 2007,
39 electricity customers receiving service at transmission and subtransmission voltage levels
40 are not eligible for new conservation programs undertaken under this section, and those
41 customers are not required to pay in rates any amount associated with the assessment
42 imposed on transmission and distribution utilities under subsection 4 or subsection 4-A.
43 To remove the amount of the assessment under subsection 4, the commission shall reduce
44 the rates of such customers that are in effect on July 1, 2007 by 0.145 cent per kilowatt-

1 hour at the time of the first rate adjustment following the effective date of this subsection.
2 For the purposes of this section, "transmission voltage levels" means 44 kilovolts or
3 more, and "subtransmission voltage levels" means 34.5 kilovolts.

4 **5. Conservation program fund.** The ~~commission~~ trust shall establish a
5 conservation program fund to be used solely for conservation programs.

6 A. The commission shall deposit all assessments collected pursuant to this section,
7 other than funds deposited in the administration fund or set aside for complementary
8 energy programs, into the program fund subaccount within the trust.

9 B. Any interest earned on funds in the program fund must be credited to the program
10 fund.

11 C. Funds not spent in any fiscal year remain in the program fund to be used for
12 conservation programs.

13 D. The commission or the trust may apply for and receive grants from state, federal
14 and private sources for deposit in the program fund and also may deposit in the
15 program fund any grants or other funds received by or from any entity with which the
16 commission or trust has an agreement or contract pursuant to this section if the
17 commission ~~determines~~ receives prior written consent from the trust that receipt of
18 those funds would be consistent with the purposes of this section. If the commission
19 or trust receives any funds pursuant to this paragraph, ~~it~~ they shall establish a separate
20 account within the program fund to receive the funds and shall keep those funds and
21 any interest earned on those funds segregated from other funds in the program fund.

22 Nothing in this subsection prohibits the commission from applying for and receiving
23 grants to implement complementary energy programs from state, federal and private
24 sources or from any entity with which the commission has an agreement or contract
25 pursuant to this section as long as the grants or funds are not deposited in the
26 conservation program fund and are not used in programs that provide direct financial
27 incentives, training or education for the acquisition of energy efficiency resources, as the
28 trust is solely responsible for administering the fund and providing those incentives.

29 **5-A. Support for Energy Resources Council.** Notwithstanding any other provision
30 of this section:

31 A. The Energy Resources Council established under Title 5, section 3327 may apply
32 to the commission for funding from ~~the program fund~~ commission funds set aside for
33 complementary energy programs to support projects and activities of the council
34 related to energy conservation; and

35 B. The commission may provide up to \$200,000 in any fiscal year to the Energy
36 Resources Council established under Title 5, section 3327 ~~from the program fund~~ if
37 the funds are needed for particular projects or activities directed by the Legislature to
38 be undertaken by the council, or the commission finds the projects or activities are
39 generally consistent with the overall purposes of this section.

40 **5-B. Independent technical support for board of trustees.** Notwithstanding any
41 other provision of this section, the ~~Maine Energy Conservation Board established under~~
42 ~~section 10007 may apply to the commission for funding~~ trust shall set aside and make

1 available funding from the program fund for staff independent expert technical support
2 for the board; and, upon application of the board, the commission may provide up to
3 Board of Trustees of the Efficiency Maine Trust established under section 10009,
4 subsection 3 in the amount of 1% of the total amount in the program fund to the board for
5 that purpose.

6 **6. Conservation administration fund.** The ~~commission~~ trust shall establish a
7 conservation administration fund to be used solely to defray administrative costs. The
8 ~~commission~~ trust annually may deposit funds collected pursuant to this section into the
9 administration fund up to a maximum in any fiscal year of \$1,300,000 up to 9% of total
10 funds received pursuant to subsections 4 and 4-A, not including any amounts held aside
11 by the commission to fund complementary energy programs. Any interest on funds in the
12 administration fund must be credited to the administration fund and any funds unspent in
13 any fiscal year must either remain in the administration fund to be used to defray
14 administrative costs or be transferred to the program fund.

15 **6-A. Conservation oversight and evaluation fund.** The commission shall establish
16 a conservation oversight and evaluation fund to be used to defray the commission's
17 projected costs of negotiating measures of performance with the Efficiency Maine Trust,
18 reviewing and approving the trust's triennial plan under section 10009, subsection 5,
19 paragraph D and contracting with expert 3rd-party resources to provide technical
20 assistance or impartial evaluation of the performance of energy efficiency programs
21 administered by the trust.

22 **7. Prior conservation efforts.** Except as otherwise directed by the commission,
23 transmission and distribution utilities shall continue to administer contracts associated
24 with prior conservation efforts. Such contracts may not be renewed, extended or
25 otherwise modified by transmission and distribution utilities in a manner that results in
26 any increased expenditures associated with those contracts.

27 **7-A. Funds held in trust.** All funds collected from electricity consumers pursuant
28 to this section are collected under the authority and for the purposes of this section and
29 are deemed to be held in trust for the purposes of benefiting electricity consumers. In the
30 event funds are not expended or contracted for expenditure within 2 years of being
31 collected from consumers, the commission shall return the value of those funds to
32 consumers by appropriate reductions in the assessment collected pursuant to subsection 4.

33 **8. Resolution of disputes.** Upon receipt of an appropriate filing by a party to a
34 contract relating to prior conservation efforts, the commission shall adjudicate a dispute
35 relating to the interpretation or administration of the contract by the transmission and
36 distribution utility.

37 In the case of a dispute filed after the effective date of this subsection, the commission
38 shall refer the dispute to commercial arbitration in accordance with this paragraph. Each
39 party to the contract shall select an arbitrator who is not a current employee of the party.
40 The selected arbitrators shall then select a 3rd arbitrator. If the arbitrators can not agree
41 on the 3rd arbitrator, each party shall submit to the commission a list of at least 3
42 arbitrators who have no previous or current interest in the contract and, to the extent
43 practicable, have special competence and experience with respect to the subject matter

1 involved in the dispute. The commission shall choose the 3rd arbitrator from among the
2 persons on the lists provided by the parties. After their selection, the arbitrators shall
3 promptly hear and determine the controversy pursuant to the rules of the American
4 Arbitration Association for the conduct of commercial arbitration proceedings, except
5 that if such rules conflict with any procedural rules established by the commission or
6 applicable provisions of the laws of this State relating to arbitration, the applicable
7 commission rules or provisions of state law govern the arbitration. The arbitrators shall
8 submit their decision to the commission.

9 A. The commission shall accept or reject the decision within 30 days of its
10 submission, unless the commission requires additional time, in which case it may
11 extend its review for another 30 days.

12 B. If the commission does not reject the decision within 30 days or, if it extends its
13 review period an additional 30 days, within 60 days, the decision is deemed accepted.

14 C. If the commission rejects the decision, the commission shall adjudicate the
15 dispute.

16 A decision by the commission under this subsection, including a decision by the
17 arbitrators that is deemed accepted by the commission pursuant to paragraph B, is
18 enforceable in a court of law.

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

22 **10. Rules.** The ~~commission trust~~ shall adopt rules necessary to implement this
23 section subsection. Rules adopted under this section are routine technical rules as defined
24 in Title 5, chapter 375, subchapter H-A 2-A.

25 ~~11. Report.~~ ~~The commission shall report by December 1st of each year to the joint~~
26 ~~standing committee of the Legislature having jurisdiction over utilities and energy~~
27 ~~matters. The report must include:~~

28 ~~A.— A description of actions taken by the commission pursuant to this section,~~
29 ~~including descriptions of all conservation programs implemented during the prior 12~~
30 ~~months and all conservation programs that the commission plans to implement during~~
31 ~~the next 12 months, a description of how the commission determines the cost~~
32 ~~effectiveness of each conservation program and its assessment of the cost~~
33 ~~effectiveness of programs implemented during the prior 12 months;~~

34 ~~B.— An accounting of:~~

35 ~~(1) Assessments made on each transmission and distribution utility pursuant to~~
36 ~~this section during the prior 12 months and projected assessments during the next~~
37 ~~12 months;~~

38 ~~(2) Total deposits into and expenditures from the program fund during the prior~~
39 ~~12 months and projected deposits into and expenditures from the program fund~~
40 ~~during the next 12 months;~~

1 ~~(3) The amount and source of any grants or funds deposited in the program fund~~
2 ~~pursuant to subsection 5, paragraph D during the previous 12 months and the~~
3 ~~projected amount and source of any such funds during the next 12 months; and~~

4 ~~(4) Total deposits into and expenditures from the administration fund during the~~
5 ~~prior 12 months and projected deposits into and expenditures from the~~
6 ~~administration fund during the next 12 months;~~

7 C. ~~Any recommendations for changes to law relating to energy conservation; and~~

8 D. ~~The status of the progress towards meeting the goals of subsection 2, paragraph J~~
9 ~~and the strategies that have been implemented to meet those goals. The report also~~
10 ~~must include an accounting, to the extent available, of the energy savings that have~~
11 ~~been achieved by school administrative units after their school facility managers have~~
12 ~~been certified pursuant to subsection 2, paragraph J. A school administrative unit is~~
13 ~~not required to incur additional costs in order to supply information to the~~
14 ~~commission for its report.~~

15 ~~12. Independent analysis of programs. The commission shall arrange for an~~
16 ~~independent evaluation of each major program implemented under this section. Each~~
17 ~~major program must be evaluated at least once every 5 years. The evaluation must~~
18 ~~include an accounting audit of the program and an evaluation of the program's~~
19 ~~effectiveness in meeting the goals of this section. The evaluations must be conducted by~~
20 ~~a competent professional with expertise in energy efficiency matters, including the~~
21 ~~management of cost effective energy efficiency programs. The commission shall include~~
22 ~~the results of all evaluations conducted under this subsection in the annual report~~
23 ~~submitted pursuant to subsection 11. For purposes of this subsection, "major program"~~
24 ~~means a program with an annual budget of more than \$500,000.~~

25 **Sec. 6. 35-A MRSA §4711**, as enacted by PL 2005, c. 110, §1, is amended to
26 read:

27 **§4711. Natural gas efficiency and conservation programs**

28 **1. Programs.** In accordance with rules adopted by the commission, each natural gas
29 utility in the State that serves 5,000 or more residential consumers shall offer cost-
30 effective conservation programs designed to promote the efficient use of natural gas. In
31 determining whether a program is cost-effective, the commission may consider the extent
32 to which the program promotes sustainable economic development or reduces greenhouse
33 gas emissions to the extent the commission can quantify or otherwise reasonably identify
34 such effects. Consistent with the other requirements of this section, a gas utility, in
35 adopting and implementing conservation programs, shall seek to encourage efficiency in
36 natural gas use, provide incentives for the development of new, energy-efficient business
37 activity in the State and take into account the cost and benefits of energy efficiency and
38 conservation to existing business activity in the State.

39 A. The gas utility shall consider, without limitation, demonstrably cost-effective
40 conservation programs that:

41 (1) Increase consumer awareness of cost-effective options for conserving energy;

1 (2) Create more favorable market conditions for the increased use of efficient
2 products and services; and

3 (3) Promote sustainable economic development and reduced environmental
4 damage.

5 B. The gas utility shall apportion available funds under subsection 3 in accordance
6 with rules adopted by the commission. The rules must require the gas utility or other
7 person implementing natural gas efficiency and conservation programs authorized
8 pursuant to this section to prepare a 3-year strategy and implementation plan, to be
9 incorporated into the comprehensive triennial plan of the Efficiency Maine Trust
10 required in section 10009, subsection 5, paragraph D, and annual update plans
11 approved by the trust. The strategy and implementation plan and the annual update
12 plans of each gas utility or other person implementing a natural gas efficiency
13 program must be reviewed and approved by the Efficiency Maine Trust before any
14 program may be implemented and before the costs associated with the program may
15 be recovered in rates. The commission may direct by rule that funds authorized
16 pursuant to this section be collected and deposited in a subaccount within the
17 Efficiency Maine Trust authorized to be disbursed consistent with the trust's
18 comprehensive triennial plan.

19 (1) The commission shall ensure that a reasonable percentage of the available
20 funds is directed to programs for low-income residential consumers, as defined
21 by the commission by rule. The commission shall establish the percentage based
22 on an assessment of the opportunity for cost-effective conservation measures for
23 such consumers, including an assessment of the number of low-income
24 residential consumers that may be eligible for such programs.

25 (2) The commission shall ensure that a reasonable percentage of the available
26 funds is directed to programs for small business consumers, as defined by the
27 commission by rule. The commission shall establish the percentage based on an
28 assessment of the opportunity for cost-effective conservation measures for such
29 consumers. In defining "small business" for the purposes of this subparagraph,
30 the commission shall consider definitions of that term used for other programs in
31 this State that assist small businesses.

32 (3) The commission shall ensure that, to the greatest extent practicable, the
33 remaining available funds are apportioned in a manner that allows all other
34 consumers to have a reasonable opportunity to participate in one or more
35 conservation programs.

36 C. The commission rules under paragraph B must require each gas utility to provide
37 to the Efficiency Maine Trust all data necessary for the trust to review and evaluate
38 plans and program performance of the natural gas efficiency and conservation
39 programs authorized pursuant to this section and an annual report on the financial and
40 program performance of each individual program that the trust delivers. The report
41 must reflect the findings of any independent evaluations conducted during the prior
42 year.

1 **2. Cost recovery.** The commission shall include in rates for a gas utility all costs
2 incurred in compliance with this section and commission rules adopted under this section,
3 as long as such costs have been prudently incurred.

4 **3. Funding level.** Each gas utility to which this section applies shall undertake
5 energy efficiency programs designed to operate within a budget, upon full
6 implementation, that is ~~no less than 3% of the gas utility's delivery revenues~~ sufficient to
7 implement all available energy efficiency and demand reduction resources in this State
8 that are cost-effective, cost less than supply and are reliable and feasible as defined
9 determined by the commission by rule order not less often than once every 3 years, which
10 order shall be timed to precede the next scheduled period of the comprehensive triennial
11 plan under section 10009, subsection 5, paragraph D.

12 **4. Rules.** The commission shall adopt rules necessary to implement this section.
13 Rules adopted under this section subsection are routine technical rules as defined in Title
14 5, chapter 375, subchapter 2-A.

15 **5. Report.** ~~The commission shall report by December 1st of each year to the joint~~
16 ~~standing committee of the Legislature having jurisdiction over utilities and energy~~
17 ~~matters. The report must include:~~

18 A. ~~A description of actions taken by gas utilities pursuant to this section, including~~
19 ~~descriptions of all conservation programs implemented during the prior 12 months~~
20 ~~and all conservation programs that the gas utilities plan to implement during the next~~
21 ~~12 months;~~

22 B. ~~A description of how the commission determines the cost effectiveness of each~~
23 ~~conservation program and its assessment of the cost effectiveness of programs~~
24 ~~implemented during the prior 12 months;~~

25 C. ~~For each gas utility to which this section applies, total expenditures for its~~
26 ~~conservation programs during the prior 12 months and projected expenditures during~~
27 ~~the next 12 months; and~~

28 D. ~~Any recommendations for changes to the laws relating to energy conservation~~
29 ~~by gas utilities.~~

30 **Sec. 7. 35-A MRSA §10004, sub-§2** is enacted to read:

31 **2. Efficiency Maine Trust.** Any funds of the United States Department of Energy
32 State Energy Program or other federally funded programs that are used to provide
33 financial incentives, training or education for the acquisition of energy efficiency
34 resources in the State must, after review and approval of the Board of Trustees of the
35 Efficiency Maine Trust under section 10009, be transferred to a dedicated subaccount
36 within the trust and incorporated into the trust's comprehensive triennial plan required
37 under section 10009, subsection 5, paragraph D. Funds from any federally funded
38 programs must be assigned for delivery to one or more entities providing services under
39 an existing contract with the Efficiency Maine Trust or by competitive solicitation
40 designed and administered by the trust.

41 **Sec. 8. 35-A MRSA §10007**, as enacted by PL 2007, c. 317, §14, is repealed.

1 **Sec. 9. 35-A MRSA §10008**, as amended by PL 2007, c. 608, §§1 and 2 and c.
2 695, Pt. A, §42, is repealed.

3 **Sec. 10. 35-A MRSA §10009** is enacted to read:

4 **§10009. Efficiency Maine Trust**

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

- 7 A. "Board" means the Board of Trustees of the Efficiency Maine Trust.
8 B. "Director" means the Director of the Efficiency Maine Trust.
9 C. "Triennial plan" means the plan required under subsection 5, paragraph D.
10 D. "Trust" means the Efficiency Maine Trust.
11 E. "Trustee" means a member of the board.

12 **2. Establishment; purpose.** The Efficiency Maine Trust, as established in Title 5,
13 section 12004-G, subsection 13-G, is a nonprofit corporation with public and charitable
14 purposes. The duties, activities and operations of the trust are within the provisions of the
15 United States Internal Revenue Code, Section 501(c)(3). Powers and duties of the trust
16 apply to any predecessor authorized to administer efficiency funds up to the point that
17 such powers and duties are transferred or assigned to the trust. The trust is established to:

- 18 A. Provide uniform, integrated planning, program design and administration of:
19 (1) Conservation programs under section 3211-A;
20 (2) Natural gas efficiency and conservation programs under section 4711;
21 (3) The Regional Greenhouse Gas Initiative Trust Fund established in section
22 10010, subsection 2; and
23 (4) Any state or federal funds or publicly directed funds that may be accepted by
24 or allocated to the trust for the purpose of investing in energy efficiency
25 programs in the State;
26 B. Reduce energy costs and improve security of the state and local economies. The
27 trust shall administer cost-effective energy efficiency programs to help families and
28 businesses meet their energy needs at the lowest cost and generally to improve the
29 economic security of the State by:
30 (1) Maximizing the use of cost-effective energy efficiency and weatherization;
31 (2) Reducing economic insecurity from overdependence on price-volatile
32 heating fuels;
33 (3) Increasing new jobs and business development to deliver energy efficiency
34 products and services;
35 (4) Enhancing heating benefits for low-income eligible households through
36 weatherization, thus improving the comfort and indoor air quality of these
37 households and reducing the need for future fuel assistance;

1 (5) Simplifying and enhancing consumer access to technical assistance and
2 financial incentives for energy efficiency and weatherization by merging
3 dispersed, uncoordinated programs under a single administrative unit possessing
4 independent management and expertise; and

5 (6) Using cost-effective energy efficiency investments to reduce greenhouse gas
6 emissions; and

7 C. Ensure that all expenditures of the trust are cost- effective in terms of avoided fuel
8 costs.

9 **3. Governance; board.** The trust is governed and all of its powers exercised by an
10 independent board consisting of 12 voting members and 4 nonvoting members.

11 A. The commission shall appoint 9 voting members of the board:

12 (1) Three who possess knowledge of high-efficiency energy conservation
13 programs, carbon reduction programs, policy or technology or substantial
14 management expertise;

15 (2) One who represents commercial energy consumers;

16 (3) One who represents industrial energy consumers;

17 (4) One who represents small business energy consumers;

18 (5) One who represents residential general energy consumers;

19 (6) One who represents low-income or fixed-income consumers; and

20 (7) One member who represents environmental and climate change interests.

21 B. The Governor shall appoint 3 voting members of the board:

22 (1) One who represents the Department of Environmental Protection;

23 (2) One who represents the Governor's Office of Energy Independence and
24 Security; and

25 (3) One who represents the Maine State Housing Authority.

26 C. The Governor shall appoint 3 nonvoting members of the board:

27 (1) One who represents electric utilities;

28 (2) One who represents natural gas utilities; and

29 (3) One who represents the heating fuel industry.

30 D. The chair of the commission serves as an ex officio, nonvoting member of the
31 board.

32 E. Each trustee may have a designee. A voting trustee or the voting trustee's
33 designee may not have a financial interest in the delivery of energy efficiency or
34 conservation.

35 F. A trustee serves a 3-year term. If a trustee is unable to complete the term, the
36 appropriate appointing authority shall appoint a replacement for the remainder of the
37 unexpired term. Trustees may serve a maximum of 2 consecutive terms.

1 G. The board may meet periodically. If a trustee is absent from more than 2
2 meetings of the board without notice, the appropriate appointing authority may
3 appoint a replacement.

4 H. The board shall elect a chair, a vice-chair, a secretary and a treasurer from among
5 the voting members. Each officer serves for a one-year term and is eligible for
6 reelection.

7 I. A majority of the voting trustees constitutes a quorum.

8 J. An affirmative vote of 2/3 of the voting members is required to approve a motion
9 or action.

10 K. The board may elect an executive committee of not fewer than 6 trustees who, in
11 intervals between meetings of the board, may transact such business of the trust as the
12 board may authorize from time to time.

13 **4. Administration of trust; director.** The trust is administered and expenditures
14 authorized by a director.

15 A. The board shall appoint, using a full and competitive search process and after
16 giving proper consideration to the qualifications in paragraph C, a full-time director
17 for the trust. The director serves at the pleasure of the board.

18 B. The director serves as the president of the trust upon confirmation by the board.
19 The director shall hire and organize staff resources for the trust. The director shall
20 serve as the liaison between the board and any committee of the Legislature having
21 jurisdiction over energy matters. The director shall establish an office for the trust
22 located outside of State Government, shall manage the trust's programs, services and
23 staff and shall perform other duties the board considers appropriate. The director or
24 the director's designee shall select staff for the trust.

25 C. To qualify as director, an individual must have demonstrated experience in the
26 planning, design or delivery of energy efficiency programs or the management of
27 organizations that plan, design or deliver those programs.

28 **5. Duties.** The duties of the trust are as set out in this subsection.

29 A. The trust is an independent fiscal agent for public investments in energy
30 efficiency and weatherization programs and is not a state entity. The trust serves as
31 administrator of the funds intended for use to promote energy efficiency in the State.
32 Funds allocated or transferred to or deposited with the trust are not state funds. Fiscal
33 duties of the trust include the disbursement of funds to companies, nonprofit
34 organizations, trade associations and government agencies for the purchase or
35 delivery of cost-effective energy efficient products and services for the benefit of
36 energy consumers in the State. Other duties include the accounting, evaluation and
37 monitoring of all activities of the trust and all programs funded in whole or in part by
38 the trust and the evaluation and monitoring of all energy efficiency and
39 weatherization programs approved by the trust in the triennial plan under paragraph
40 D.

1 B. The trust shall plan, design and administer programs to ensure that funds are
2 expended for uses consistent with the state or federal statutory authorities that created
3 the funds and so that the following principles of administration are met:

4 (1) Programs are consumer oriented such that the processes for participation and
5 program design are targeted to serve the multiple needs of energy consumers in
6 this State;

7 (2) The effectiveness of programs is maximized by building up and centralizing
8 expertise, addressing conflicts of interest, mitigating the influence of politics,
9 promoting flexible, nimble program management and providing a champion for
10 funding cost-effective energy efficiency;

11 (3) The efficiency with which programs are planned, designed, overseen and
12 delivered is maximized; and

13 (4) Sufficient checks and balances are provided to ensure consistency with
14 public policy and accountability for meeting the principles set out in
15 subparagraphs (1) to (3) so that energy efficiency programs in the State are
16 sustainable for the long term.

17 C. The trust shall develop quantifiable measures of performance to which it will be
18 held accountable by the Public Utilities Commission. Measures of performance must
19 be negotiated between the trust and the commission and must be ratified by the
20 commission, as provided in section 10012, prior to being incorporated into the
21 triennial plan under paragraph D. The measures must be established for a 3-year
22 period, with revisions allowable by mutual agreement. The trust shall also develop
23 quantifiable measures of performance to which it will hold accountable all recipients
24 of funding from the trust and recipients of funds used to deliver energy efficiency and
25 weatherization programs that are incorporated in the triennial plan and approved by
26 the trust. Such measures may include, but are not limited to, reduced energy
27 consumption, reduced capacity demand for natural gas and electricity, reduced
28 energy costs, reduced carbon dioxide emissions, program and overhead costs and
29 cost-effectiveness, the number of new jobs created by the award of trust funds, the
30 number of energy efficiency trainings or certification courses completed and the
31 amount of sales generated.

32 D. The board shall vote on a detailed, triennial energy efficiency and conservation
33 plan and make a full report of the vote to the commission in accordance with this
34 subsection. The triennial plan must provide integrated planning, program design and
35 implementation strategies for the electric efficiency and conservation programs under
36 section 3211-A, the natural gas efficiency and conservation programs under section
37 4711, the Regional Greenhouse Gas Initiative Trust Fund under section 10010 and
38 any state or federal funds or publicly directed funds accepted by or allocated to the
39 trust for the purpose of investing in energy efficiency programs in the State.

40 (1) The triennial plan must be developed by the trust, in consultation with
41 entities and agencies engaged in delivering efficiency programs in the State, to
42 authorize and govern implementation of energy efficiency and weatherization
43 programs in the State.

1 (a) Electric utilities shall furnish data to the trust under this subsection
2 subject to such provisions as the trust may request and the commission may
3 order with regard to confidential or proprietary information. The costs of
4 providing the data are deemed reasonable and prudent expenses of the
5 utilities and are recoverable in rates.

6 (b) Expenditures by a natural gas utility for energy efficiency and
7 weatherization measures may not be authorized for recovery in rates until the
8 board reviews and approves an initial 3-year implementation plan to be
9 incorporated into the triennial plan. In making its determination, the board
10 shall consider if the utility's plan is consistent with the provisions of section
11 4711, the best practices of program administration, the state energy
12 efficiency targets under subparagraph (6) and the objective of integrating
13 delivery of thermal and electric efficiency programs to the maximum extent
14 practicable. Natural gas utilities shall furnish data to the trust under this
15 subsection subject to such provisions as the trust may request and the
16 commission may order. The costs of providing the data are deemed
17 reasonable and prudent expenses of the utilities and are recoverable in rates.

18 (c) A designated state agency, community action agency or unit of local
19 government eligible to apply for funds under 42 United States Code, Section
20 6863(c) shall submit to the trust for review and approval an initial 3-year
21 implementation plan to be incorporated into the triennial plan. An agency or
22 unit of local government may not submit any annual plans or application to
23 the federal government pursuant to 42 United States Code, Section 6864 or
24 make expenditures for purposes of implementing federal Weatherization
25 Assistance Program funds until the board reviews and approves the plan or
26 application. In reviewing the plan or application the board shall consider if it
27 is consistent with the rest of the triennial plan, best practices of program
28 administration, the state energy efficiency targets under subparagraph (6) and
29 the objective of integrating delivery of thermal and electric efficiency
30 measures to the maximum extent practicable.

31 (2) In developing the triennial plan, the staff of the trust shall consult the board
32 and provide the opportunity for the board to provide input on drafts of the plan.

33 (3) The board shall review and approve the triennial plan upon a finding that the
34 plan is consistent with the statutory authority for each source of funds that will be
35 used to implement the plan, the state energy efficiency targets in subparagraph
36 (6) and the best practices of program administration under paragraph B. The plan
37 must include, but is not limited to, efficiency and conservation program budget
38 allocations, objectives, targets, measures of performance, program designs,
39 program implementation strategies, timelines and other relevant information.

40 (4) The board shall deliver the triennial plan to the commission for its review.
41 The commission shall reject elements of the plan that propose to use ratepayer
42 funds generated pursuant to section 3211-A, subsections 4 and 4-A or section
43 4711 for failure to reasonably explain how these elements of the program would
44 achieve the objectives and implementation requirements of section 3211-A,
45 subsections 2 and 3 and section 4711, subsection 1 or the negotiated measures of

1 performance under section 10012, subsection 1. Ratepayer funds generated
2 under these statutory authorities may not be used pursuant to the triennial plan
3 unless and until those elements of the plan proposing to use ratepayer funds have
4 been approved by the commission. The commission shall approve or reject the
5 ratepayer elements of the triennial plan within 60 days of its delivery to the
6 commission.

7 (5) The trust shall determine the period to be covered by the triennial plan except
8 that the period of the plan may not interfere with the delivery of any existing
9 contracts to provide energy efficiency services that were previously procured
10 pursuant to efficiency and conservation programs administered by the
11 commission.

12 (6) It is an objective of the triennial plan to design, coordinate and integrate
13 sustained energy efficiency and weatherization programs that are available to all
14 energy consumers in the State, regardless of fuel type, that advance the targets of:

15 (a) Reducing by 20% the State's dependence on imported heating fuels by
16 2020;

17 (b) Capturing all cost-effective energy efficiency resources available for
18 electric and natural gas utility ratepayers;

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

22 (d) Building stable private sector jobs providing clean energy and energy
23 efficiency products and services in the State by 2020; and

24 (e) Reducing greenhouse gas emissions from the heating and cooling of
25 buildings in the State by amounts consistent with the State goals established
26 in Title 38, section 576.

27 E. The trust shall report by December 1st of each year to the commission and the
28 joint standing committee of the Legislature having jurisdiction over utilities and
29 energy matters. The report must include:

30 (1) A description of actions taken by the trust pursuant to this section, including
31 descriptions of all energy efficiency, weatherization and conservation programs
32 implemented during the prior 12 months and all programs that the commission
33 plans to implement during the next 12 months, a description of how the trust
34 determines the cost-effectiveness of each program and its assessment of the cost-
35 effectiveness of programs implemented during the prior 12 months;

36 (2) An accounting of:

37 (a) Assessments made on each transmission and distribution utility pursuant
38 to section 3211-A, subsections 4 and 4-A during the prior 12 months and
39 projected assessments during the next 12 months and total deposits into and
40 expenditures from the program fund during the prior 12 months and projected
41 deposits into and expenditures from the program funds during the next 12
42 months;

1 (b) Funding for conservation programs by natural gas utilities pursuant to
2 section 4711, subsection 3, including:

3 (i) A description of actions taken by natural gas utilities pursuant to
4 section 4711, including descriptions of all conservation programs
5 implemented during the prior 12 months and all conservation programs
6 that the natural gas utilities plan to implement during the next 12 months;

7 (ii) A description of how the trust determines the cost-effectiveness of
8 each conservation program and its assessment of the cost-effectiveness of
9 programs implemented during the prior 12 months;

10 (iii) For each natural gas utility to which this section applies, total
11 expenditures for its conservation programs during the prior 12 months
12 and projected expenditures during the next 12 months; and

13 (c) Total deposits into and expenditures from the Heating Fuels Efficiency
14 and Weatherization Fund under section 10011;

15 (d) Total funds received and expended in the State on energy efficiency and
16 weatherization pursuant to the Weatherization Assistance Program of the
17 United States Department of Energy and the Low-income Home Energy
18 Assistance Program of the United States Department of Health and Human
19 Services;

20 (e) The amount and source of any grants or funds deposited in the program
21 fund pursuant to section 3211-A, subsection 5, paragraph D during the
22 previous 12 months and the projected amount and source of any such funds
23 during the next 12 months; and

24 (f) Total deposits into and expenditures from the conservation administration
25 fund under section 3211-A, subsection 6 during the prior 12 months and
26 projected deposits into and expenditures from the conservation
27 administration fund during the next 12 months;

28 (3) Any recommendations for changes to the laws relating to energy
29 conservation; and

30 (4) The performance of the trust and individual programs and program delivery
31 agents or service providers in meeting the objectives, targets and measures of
32 performance approved by the commission and contained in the triennial plan.

33 The report must be approved by the board before being presented to the commission
34 and the joint standing committee of the Legislature having jurisdiction over utilities
35 and energy matters.

36 F. Within 30 days of completion of the annual report:

37 (1) The staff of the trust shall submit to the board an annual update plan
38 describing any significant changes to the triennial plan under paragraph D related
39 to program budget allocations, goals, targets, measures of performance, program
40 designs, implementation strategies, timelines and other relevant information for
41 the year ahead for all subaccounts administered and managed by the trust. The
42 staff, any contractor, grantee or agency delivering programs may not execute any

1 significant changes until approved by the board and, in the case of significant
2 changes to programs using ratepayer funds, also by the commission using the
3 same standard as for the triennial plan; and

4 (2) A natural gas utility or an agency administering weatherization or efficiency
5 programs for low-income persons shall submit to the trust an annual update plan
6 describing any significant changes to the triennial plan related to program budget
7 allocations, goals, targets, measures of performance, program designs and
8 timelines and other relevant information for all efficiency and weatherization
9 programs the utility or agency administers. Expenditures for any significant
10 changes to the approved plan may not be authorized until the board has reviewed
11 and approved any subsequent annual update plan.

12 All annual update plans must be presented to the commission and the joint standing
13 committee of the Legislature having jurisdiction over utilities and energy matters.

14 G. The trust shall do all things necessary or convenient to carry out the lawful
15 purposes of the trust.

16 **6. Powers.** The trust shall execute its duties consistent with this subsection.

17 A. The trust is authorized to receive and shall hold in separate subaccounts funds for:

18 (1) Transfers into the conservation program fund and the conservation
19 administration fund, pursuant to section 3211-A, subsections 5 and 6;

20 (2) Transfers from a natural gas utility collected pursuant to section 4711 for
21 conservation programs;

22 (3) Transfers from the Heating Fuels Efficiency and Weatherization Fund under
23 section 10011;

24 (4) Bonds issued under section 10011, subsection 5 for the purpose of energy
25 efficiency and weatherization;

26 (5) Federal funds for weatherization and energy efficiency;

27 (6) The Regional Greenhouse Gas Initiative Trust Fund under section 10010; and

28 (7) Any other source, including but not limited to state programs, federal
29 programs, nonprofit foundations, civil penalties, alternative compliance payments
30 or any other funds that are intended to be used for energy weatherization and
31 efficiency programs or related education, training or certification initiatives.

32 B. The trust shall adopt bylaws, through the board, consistent with this section for
33 the governance of its affairs.

34 C. The trust shall fix, through the board, the compensation of all employees of the
35 trust.

36 D. Notwithstanding Title 5, section 1831, the trust is not subject to rules adopted by
37 the State Purchasing Agent in selecting service providers pursuant to this subsection.
38 The trust shall adopt rules establishing procedures governing the selection of service
39 providers under this section. The trust shall consult with the State Purchasing Agent
40 in developing the rules.

1 E. The board shall adopt rules for establishing and administering the trust and its
2 programs. These rules must include:

3 (1) Provisions for the expenditure of trust funds, including, but not limited to, the
4 development of program budgets, criteria for energy efficiency and conservation
5 programs and other consumer benefit programs, the process for project selection
6 and approval, minimum requirements for project monitoring and verification and
7 the cost-effectiveness tests to be used for measuring and comparing program
8 benefits and costs subject to paragraph B; and

9 (2) Provisions for the independent evaluation of program expenditures to ensure
10 cost-effectiveness of projects to improve energy efficiency or to reduce
11 greenhouse gases.

12 F. The trust shall operate as a nonprofit organization consistent with its composition
13 and broad public purposes. In the operation or dissolution of the trust, no part of the
14 net earnings of the trust may benefit any member, officer or employee except that the
15 trust may pay reasonable compensation for services rendered and otherwise hold,
16 manage and dispose of its property in furtherance of the purposes of the trust.

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

19 **Sec. 11. 35-A MRSA §10010** is enacted to read:

20 **§10010. Regional Greenhouse Gas Initiative Trust Fund**

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

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

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

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

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

35 E. "Trust" means the Efficiency Maine Trust established in section 10009.

36 F. "Trust fund" means the Regional Greenhouse Gas Initiative Trust Fund.

37 G. "Trustee" means a trustee of the Efficiency Maine Trust.

38 **2. Establishment of Regional Greenhouse Gas Initiative Trust Fund.** The
39 Regional Greenhouse Gas Initiative Trust Fund is established and is the successor to the

1 fund that was established under section 10008 effective July 1, 2008. The trust fund is
2 established to support the goals and implementation of the carbon dioxide cap-and-trade
3 program established under Title 38, section 580-B. The trust fund is established as a
4 nonlapsing fund administered by the trust for the purposes established in this section. The
5 trust is authorized to receive, and shall deposit in the trust fund and expend in accordance
6 with this section, revenue resulting from the sale of carbon dioxide allowances, pursuant
7 to Title 38, section 580-B, and any forward capacity market or other capacity payments
8 from the regional transmission organization that may be attributable to projects funded by
9 the trust. The trust fund may not be used for any other purpose and money in the trust
10 fund is considered to be held in trust for the purposes of benefiting consumers.

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

15 B. The trustees shall ensure that the goals and objectives of the trust fund, as
16 established in this section and in rules adopted by the trust, are carried out. The
17 trustees shall represent the interests of the trust fund in the development of the
18 triennial energy efficiency and conservation plan pursuant to section 10009,
19 subsection 5, paragraph D.

20 3. Ceiling on energy efficiency spending. There is established a ceiling on energy
21 efficiency spending from the trust fund subaccount holding revenue from the sale of
22 carbon dioxide allowances pursuant to Title 38, section 580-B equal to \$5 per carbon
23 dioxide allowance. Until that price ceiling is adjusted or removed, only the first \$5 of
24 each carbon dioxide allowance sold and deposited in the trust fund may be awarded to or
25 directed to qualified projects for purposes of energy efficiency improvements. While the
26 ceiling is in place, revenue received by the trust from an allowance valued above \$5 must
27 be transferred to the commission for use by the commission pursuant to sections 301 and
28 1322 for rebates to electric ratepayers calculated on a per-kilowatt-hour basis.

29 4. Expenditures; projects. For the subaccount holding revenue from the sale of
30 carbon dioxide allowances pursuant to Title 38, section 580-B, the funds from the trust
31 fund must be expended in accordance with this subsection.

32 A. During the years 2009, 2010 and 2011, not less than 85% of the trust fund must
33 be allocated for measures, investments and arrangements that reduce electricity
34 consumption, and not more than 15% must be allocated for fossil fuel conservation
35 measures, investments and arrangements. Subject to the apportionment between fossil
36 fuel and electricity conservation pursuant to this subsection, the trust shall fund
37 conservation programs that give priority to measures with the highest benefit-to-cost
38 ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

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

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

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

11 C. The trustees may target bid competitions in areas or to participants as they
12 consider necessary, as long as the requirements of paragraph A are satisfied.

13 D. Nonelectric savings programs must be used to maximize fossil-fueled energy
14 efficiency and conservation and associated greenhouse gas reductions, subject to the
15 apportionment between fossil fuel and electricity conservation set forth in paragraph
16 A.

17 E. The size of a project funded by the trust is not limited as long as funds are
18 awarded to maximize energy efficiency and support greenhouse gas reductions and to
19 fully implement the triennial energy efficiency and conservation plan developed by
20 the trust pursuant to section 10009, subsection 5, paragraph D.

21 F. No more than 5% of trust fund receipts in any one year may be used for the total
22 administrative costs:

- 23 (1) Of the trust related to this section;
- 24 (2) Of the Department of Environmental Protection for participating in the
25 regional organization as defined in Title 38, section 580-A, subsection 20 and for
26 administering the allowance auction under Title 38, chapter 3-B; and
- 27 (3) Of the Attorney General, including activities pertaining to the tracking and
28 monitoring of allowance trading activity and managing and evaluating the trust's
29 funding of conservation programs.

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

32 G. In order to minimize administrative costs and maximize program participation
33 and effectiveness, the trustees and the commission shall, to the greatest extent
34 feasible, coordinate the delivery of and make complementary the energy efficiency
35 programs under this section, section 3210-C and section 3211-A.

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

41 I. A trade association aggregator is eligible to participate in competitive bid
42 processes under this subsection.

1 J. Trust fund receipts may fund research approved by the Department of
2 Environmental Protection in an amount of up to \$100,000 per year to develop new
3 categories for carbon dioxide emissions offset projects, as defined in Title 38, section
4 580-A, subsection 6, that are located in the State. Expenditures on research pursuant
5 to this paragraph are not considered administrative costs under paragraph F.

6 **Sec. 12. 35-A MRSA §10011** is enacted to read:

7 **§10011. Heating Fuels Efficiency and Weatherization Fund**

8 **1. Heating fuels efficiency and weatherization charge.** A heating fuels efficiency
9 and weatherization system benefit charge must be assessed on each barrel of #2 heating
10 oil, kerosene or equivalent quantity of propane that is transferred by a terminal facility
11 licensed under Title 38, section 545, first transported into this State by a person required
12 to register pursuant to Title 38, section 545-B or first transported into this State by a
13 vendor of propane or kerosene.

14 **2. Collection of charges; transfer to trust.** Any system benefit charge assessed
15 under subsection 1 must be paid monthly to the commission and upon receipt by it
16 transferred to the Heating Fuels Efficiency and Weatherization Fund, which is a state-
17 sources subaccount of the Efficiency Maine Trust established in section 10009. The
18 commission shall by order establish a process for collecting the charge and transferring it
19 to the trust.

20 **3. Exemptions; waivers; rebates.** The commission shall by order establish a
21 process and criteria for applying exemptions, rebates or waivers of the charge assessed
22 under subsection 1 to individual customers or consumer groups that do not use fuels
23 covered by the charge for space heating or domestic hot water, as long as electric
24 generation, industrial process and manufacturing uses and transportation uses are not
25 subject to this system benefit charge. The commission shall consider employing fee
26 exemptions, rebates or waivers for low-income and fixed-income consumers if the
27 commission finds that these groups have sufficient access to efficiency and
28 weatherization funds from other sources. Any commission order issued under this
29 subsection expires in 365 days unless it is reissued or amended within that period.

30 **4. Schedule.** The heating fuels efficiency and weatherization system benefit charge
31 must be assessed according to this subsection.

32 A. Beginning July 1, 2009 and until June 30, 2010, the charge per barrel or its
33 equivalent is \$1.05.

34 B. Beginning July 1, 2010 and until June 30, 2011, the charge per barrel or its
35 equivalent is \$1.26.

36 C. Beginning July 1, 2011 and until June 30, 2012, the charge per barrel or its
37 equivalent is \$1.47.

38 D. Beginning July 1, 2012 and until June 30, 2013, the charge per barrel or its
39 equivalent is \$1.68.

- 1 E. Beginning July 1, 2013 and until June 30, 2014, the charge per barrel or its
2 equivalent is \$1.89.
- 3 F. Beginning July 1, 2014 and until June 30, 2015, the charge per barrel or its
4 equivalent is \$2.10.
- 5 G. Beginning July 1, 2015 and until June 30, 2016, the charge per barrel or its
6 equivalent is \$2.31.
- 7 H. Beginning July 1, 2016 and until June 30, 2017, the charge per barrel or its
8 equivalent is \$2.52.
- 9 I. Beginning July 1, 2017 and until June 30, 2018, the charge per barrel or its
10 equivalent is \$2.73.
- 11 J. Beginning July 1, 2018 and until June 30, 2019, the charge per barrel or its
12 equivalent is \$2.94.

13 After April 1, but before June 1 of 2010 and 2011, the commission may issue an order,
14 after a public hearing and written comment, to postpone the charge increase for that year
15 upon a finding that it would be in the best interest of the State's economy to do so. The
16 commission may not postpone the increase for more than one year. At the end of the year
17 in which the charge increase is postponed, the charge returns to the schedule in this
18 subsection.

19 **5. Heating fuels efficiency and weatherization bond.** The Maine State Housing
20 Authority with the prior written consent of the trust may issue revenue bonds in the
21 amount of \$10,000,000 each year for 5 years beginning on the effective date of this
22 subsection. The proceeds of the bonds must be transferred to the Heating Fuels
23 Efficiency and Weatherization Fund at the Efficiency Maine Trust and held in a separate
24 subaccount as a revolving loan fund.

25 **6. Federal funds for energy efficiency and weatherization.** All money from the
26 Federal Government directed to the State for purposes of promoting energy efficiency
27 and weatherization other than for low-income consumers must be administered by the
28 Efficiency Maine Trust and deposited in the Heating Fuels Efficiency and Weatherization
29 Fund federal-sources subaccount as long as any criteria or limitations associated with the
30 use of such federal funds is consistent with the objectives, criteria and programs used by
31 the trust to implement this section.

32 **7. Use of money.** Money from the Heating Fuels Efficiency and Weatherization
33 Fund must be used in accordance with this subsection.

34 A. All funds deposited in the Heating Fuels Efficiency and Weatherization Fund
35 must be administered by the Efficiency Maine Trust to reduce heating fuel
36 consumption consistent with the purpose and targets of the trust and the triennial
37 energy efficiency and conservation plan under section 10009, subsection 5, paragraph
38 D.

39 B. Funds from the Heating Fuels Efficiency and Weatherization Fund may only be
40 used for programs that provide cost-effective energy efficiency and weatherization

1 measures for the benefit of heating fuel consumers or to efficiency service providers
2 serving those customers and in accordance with subparagraphs (1) to (4).

3 (1) Program categories must include low-income, single-family and 2-family
4 residential units, multifamily residential units, small business, commercial and
5 institutional and such other categories as the Efficiency Maine Trust determines
6 appropriate.

7 (2) Within program categories, the Efficiency Maine Trust may differentiate
8 between programs for new construction and in existing buildings.

9 (3) The Efficiency Maine Trust shall define small business based on the nature
10 and amount of energy consumed by the customer.

11 (4) Funds derived from this section may also be used to pay a proportionate
12 share of the Efficiency Maine Trust's administrative costs.

13 C. Only energy efficiency and weatherization programs that are approved by the
14 Efficiency Maine Trust are eligible for funding from the Heating Fuels Efficiency
15 and Weatherization Fund.

16 D. Program designs approved by the Efficiency Maine Trust must contain:

17 (1) Incentives to consumers to purchase and install the maximum amount of
18 cost-effective efficiency and weatherization products and services identified by a
19 certified assessor, except in the case of programs to deliver education, training or
20 certifications;

21 (2) A schedule of customer copayments and loan options for prescribed products
22 and services. Programs for low-income consumers may provide exemptions
23 from the copayment and schedule;

24 (3) A plan for integrating delivery of heating fuel efficiency and weatherization
25 measures with electric efficiency measures; and

26 (4) A system for the equitable allocation of costs among the contributing funds
27 or subaccounts administered by the trust where more than one thermal, electric or
28 carbon-reducing efficiency opportunity is achieved.

29 E. For the first 2 years of the Heating Fuels Efficiency and Weatherization Fund, the
30 portfolio of programs administered by the Efficiency Maine Trust must include a
31 market-based program designed to deliver an integrated efficiency and weatherization
32 package for residential customers that includes, but is not limited to:

33 (1) An initial assessment of the building shell, heating, ventilation and air-
34 conditioning systems and electrical uses to determine what measures are cost-
35 effective and appropriate for funding by the program. Any assessment must be
36 performed by an individual certified to a level of training as determined by the
37 Efficiency Maine Trust;

38 (2) Cost buy-downs and financing to encourage the purchase of precertified
39 high-efficiency new space heating or water heating equipment;

40 (3) Cost buy-downs and financing incentives to encourage cost-effective
41 weatherization improvements to the building shell;

1 (4) Cost buy-downs and financing incentives to encourage installation of
2 precertified efficient lighting systems and electrical equipment; and

3 (5) A post-installation assessment and report pursuant to specifications approved
4 by the trust.

5 F. Other eligible measures for the Heating Fuels Efficiency and Weatherization Fund
6 may include, but are not limited to:

7 (1) Training or certification of energy auditors, insulation installers, mechanical
8 heating system installers and maintenance technicians and building energy
9 inspectors; and

10 (2) Loans for the purchase or lease of commercial equipment that is uniquely
11 used in the installation and maintenance of high-efficiency heating mechanical
12 systems or building shell efficiency measures.

13 G. The full amount of the debt service from the heating fuels efficiency and
14 weatherization revenue bonds under subsection 5 and the costs of administering those
15 bonds must be paid each year from the heating fuels efficiency and weatherization
16 fee, collected monthly under this section.

17 H. The Efficiency Maine Trust shall establish minimum certification or other criteria
18 and processes that are used to determine eligibility of service providers, including oil
19 dealers, natural gas and electric utilities, community action agencies, energy auditors
20 and assessors and other qualified individuals who act as general contractors and
21 liaisons between customers, the trust and other service providers.

22 **Sec. 13. 35-A MRSA §10012 is enacted to read:**

23 **§10012. Commission oversight of Efficiency Maine Trust**

24 **1. Negotiated measures of performance.** The commission shall negotiate measures
25 of performance with the Efficiency Maine Trust to be incorporated in the triennial plan
26 under section 10009, subsection 5, paragraph D. Upon presentation of proposed
27 measures of performance by the trust, the commission shall ratify the final measures of
28 performance if it finds that these measures satisfy the best practices described in section
29 10009, subsection 5, paragraph B and are in the public interest. The commission and the
30 trust may revise one or more of the 3-year measures of performance at any time by
31 mutual agreement.

32 **2. Independent evaluation of programs.** The commission shall arrange for an
33 independent evaluation of each major program administered by the trust or incorporated
34 into the triennial plan under section 10009, subsection 5, paragraph D. Each major
35 program must be evaluated at least once every 3 years. The evaluation must include an
36 accounting audit of the programs and an evaluation of each program's effectiveness. The
37 evaluation must measure actual and lifetime energy saved, carbon dioxide saved, energy
38 costs saved, demand or capacity reductions, other quantifiable benefits, cost of programs
39 and administration, cost-effectiveness of programs, jobs created and other measures that
40 the evaluator, in consultation with the commission, may establish. The evaluations must
41 be conducted by a competent professional with expertise in energy efficiency matters,
42 including the management of cost-effective energy efficiency programs. For purposes of

1 this subsection, "major program" means a program with an annual budget of more than
2 \$500,000.

3 **3. Report to Legislature.** The commission shall submit a report of the independent
4 evaluation conducted pursuant to subsection 2 to the joint standing committee of the
5 Legislature having jurisdiction over utilities and energy matters.

6 **4. Funding.** The commission shall establish a fund to be used to defray the
7 commission's costs of providing negotiating measures of performance with the Efficiency
8 Maine Trust, reviewing and approving the trust's triennial plan under section 10009,
9 subsection 5, paragraph D and contracting expert 3rd-party resources to provide technical
10 assistance or impartial evaluation of the performance of all energy efficiency programs
11 administered by the trust. Funds for this purpose must be set aside from the electric
12 efficiency and conservation program fund under section 3211-A, subsection 5, the natural
13 gas efficiency and conservation program funds under section 4711, the Heating Fuels
14 Efficiency and Weatherization Fund under section 10011, the Regional Greenhouse Gas
15 Initiative Trust Fund under section 10010 and any federal funds used to deliver efficiency
16 or weatherization programs in the State, in proportion to each source's total funding level
17 that is administered by the trust or incorporated into the trust's triennial plan.

18 **Sec. 14. 38 MRSA §580-B, sub-§7,** as enacted by PL 2007, c. 317, §17, is
19 amended to read:

20 **7. Allocation of carbon dioxide emissions allowances.** The department shall
21 allocate 100% of the annual carbon dioxide emissions allowances for public benefit to
22 produce funds for carbon reduction and energy conservation, as specified in Title 35-A,
23 section ~~40008~~ 10010. Except as provided in subsection 8, the department shall sell the
24 carbon dioxide emissions allowances at public auction, in accordance with rules adopted
25 under subsection 4. Revenue resulting from the sale of allowances must be deposited in
26 the ~~Energy and Carbon Savings~~ Regional Greenhouse Gas Initiative Trust Fund
27 established under Title 35-A, section ~~40008~~ 10010.

28 **Sec. 15. 38 MRSA §580-B, sub-§7-A,** as enacted by PL 2007, c. 608, §7, is
29 amended to read:

30 **7-A. Voluntary renewable energy market set-aside.** The department shall set
31 aside a portion of the State's annual carbon dioxide emissions budget in a voluntary
32 renewable market set-aside account. The allowances from this account must be retired in
33 an amount equal to the amount of carbon dioxide emissions reduced by the voluntary
34 purchase of eligible renewable energy credits by persons in the State up to the amount
35 held in the set-aside account. For purposes of this subsection, "eligible renewable energy
36 credits" means renewable energy credits generated within the states that are participating
37 in the regional greenhouse gas initiative.

38 Before February 1, 2010, the portion of the State's annual carbon dioxide emissions
39 budget that is set aside in a voluntary renewable market set-aside account pursuant to this
40 subsection may not exceed 2% of that budget. The department shall report to the joint
41 standing committee of the Legislature having jurisdiction over utilities and energy
42 matters by January 15, 2010 as to whether that 2% cap is appropriate. By January 31,

1 2010, the ~~Energy and Carbon Savings~~ Efficiency Maine Trust, established under Title 35-
2 A, section ~~10008~~ 10009, in consultation with the department, shall establish the cap on
3 the portion of the State's annual carbon dioxide emissions budget that is set aside in a set-
4 aside account.

5 **Sec. 16. 38 MRSA §580-B, sub-§10**, as enacted by PL 2007, c. 317, §17, is
6 amended to read:

7 **10. Annual report.** The department and the trustees of the ~~Energy and Carbon~~
8 ~~Savings~~ Efficiency Maine Trust established pursuant to Title 35-A, section ~~10008~~ 10009
9 shall submit a joint report to the joint standing committees of the Legislature having
10 jurisdiction over natural resources matters and utilities and energy matters by March 15,
11 2009 and each year thereafter. The report must assess and address:

12 A. The reductions of greenhouse gas emissions from carbon dioxide budget units,
13 conservation programs funded by the ~~Energy and Carbon Savings~~ Efficiency Maine
14 Trust pursuant to Title 35-A, section ~~10008~~ 10009 and carbon dioxide emissions
15 offset projects;

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

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

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

22 E. Management and cost-effectiveness of the State's energy conservation and carbon
23 reduction programs and efforts funded by the ~~Energy and Carbon Savings~~ Efficiency
24 Maine Trust established pursuant to Title 35-A, section ~~10008~~ 10009; and

25 F. The extent to which funds from the ~~Energy and Carbon Savings~~ Efficiency Maine
26 Trust established pursuant to Title 35-A, section ~~10008~~ 10009 serve customers from
27 all classes of the State's transmission and distribution utilities.

28 The department and the trustees of the ~~Energy and Carbon Savings~~ Efficiency Maine
29 Trust may include in the report any proposed changes to the program established under
30 this chapter.

31 The joint standing committee of the Legislature having jurisdiction over natural resources
32 matters may submit legislation relating to areas within the committee's jurisdiction in
33 connection with the program. The joint standing committee of the Legislature having
34 jurisdiction over utilities and energy matters may submit legislation relating to areas
35 within the committee's jurisdiction in connection with the program.

36 **Sec. 17. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 35-
37 A, section 10009, subsection 3, paragraph F, initial appointments to the Board of Trustees
38 of the Efficiency Maine Trust must be made as follows:

39 1. Of the trustees appointed by the Public Utilities Commission, 3 must be appointed
40 for 1-year terms, 3 must be appointed for 2-year terms and 3 must be appointed for 3-year
41 terms; and

