

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1706

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H.P. 1258

House of Representatives, December 23, 2011

**An Act To Protect Maine's Biomass and Forest Products Industries  
by Allowing Biomass Generators To Enter into Short-term  
Contracts**

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

Received by the Clerk of the House on December 21, 2011. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative FITTS of Pittsfield.  
Cosponsored by Representative: WILLETTE of Mapleton.

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

2 **Sec. 1. 35-A MRSA §3602, sub-§4-A** is enacted to read:

3 **4-A. Qualifying biomass generator.** "Qualifying biomass generator" means a  
4 stand-alone electricity generating facility whose total power production capacity does not  
5 exceed 100 megawatts, that is fueled by wood or wood waste and that meets the  
6 eligibility requirements of section 3603, subsection 3, paragraph F.

7 **Sec. 2. 35-A MRSA §3602, sub-§5, ¶¶E and F,** as enacted by PL 2009, c. 329,  
8 Pt. A, §4, are amended to read:

9 E. A nonprofit corporation, organized under the laws of the State, including a unit  
10 ~~owners~~ owner's association organized under Title 33, section 1603-101; ~~or~~

11 F. A business corporation, organized under the laws of the State, at least 51% of  
12 which is owned by one or more residents of the State; ~~or~~

13 **Sec. 3. 35-A MRSA §3602, sub-§5, ¶G** is enacted to read:

14 G. A business corporation that owns a qualifying biomass generator.

15 **Sec. 4. 35-A MRSA §3603, sub-§2,** as enacted by PL 2009, c. 329, Pt. A, §4, is  
16 amended to read:

17 **2. Program scope; limits on generating capacity.** The commission shall limit  
18 participation in the program in accordance with this subsection.

19 A. The installed generating capacity of a program participant may not exceed 10  
20 megawatts.

21 B. The total installed generating capacity of all program participants combined may  
22 not exceed 50 megawatts.

23 C. The total installed generating capacity of program participants within the service  
24 territory of a single investor-owned transmission and distribution utility may not  
25 exceed 25 megawatts, unless a higher capacity limit is authorized by the utility and  
26 approved by the commission. The commission shall determine a generating capacity  
27 limit for the service territory of each investor-owned transmission and distribution  
28 utility at the outset of the program, taking into consideration the utility's electric load  
29 and share of electricity market in the State. The commission may modify the  
30 generating capacity limit under this paragraph based on program experience.

31 D. Of the 50-megawatt limit on total generating capacity under paragraph B, 10  
32 megawatts must be reserved at the outset of the program for program participants  
33 that:

34 (1) Have an installed generating capacity of less than 100 kilowatts; or

35 (2) Are located in the service territory of a consumer-owned transmission and  
36 distribution utility.

1 The commission may modify the amount of generating capacity reserved under this  
2 paragraph based on program experience.

3 E. The total installed generating capacity of program participants that receive the  
4 renewable energy credit multiplier incentive under section 3605 may not exceed 10  
5 megawatts.

6 This subsection does not apply to qualifying biomass generators.

7 **Sec. 5. 35-A MRSA §3603, sub-§3, ¶¶D and E**, as enacted by PL 2009, c. 329,  
8 Pt. A, §4, are amended to read:

9 D. ~~Have~~ Except for qualifying biomass generators, have an in-service date after  
10 September 1, 2009; ~~and~~

11 E. ~~Satisfy~~ Except for qualifying biomass generators, satisfy the limits on generating  
12 capacity established in subsection 2-; ~~and~~

13 **Sec. 6. 35-A MRSA §3603, sub-§3, ¶F** is enacted to read:

14 F. In the case of a qualifying biomass generator, demonstrate that the qualifying  
15 biomass generator creates one or more of the following benefits to the community  
16 and region in which the qualifying biomass generator operates:

17 (1) Jobs;

18 (2) Wood waste disposal;

19 (3) Local transmission and distribution system voltage support; or

20 (4) Support to the local economy.

21 **Sec. 7. 35-A MRSA §3603, sub-§4**, as enacted by PL 2009, c. 329, Pt. A, §4, is  
22 amended to read:

23 **4. Program incentives.** Subject to the requirements of subsection 2, a program  
24 participant may elect one of the following program incentives:

25 A. A long-term contract for community-based renewable energy pursuant to section  
26 3604; or

27 B. The renewable energy credit multiplier pursuant to section 3605.

28 If the program participant is a qualifying biomass generator, it is not eligible for the  
29 incentives described in paragraphs A and B but is eligible for a short-term contract for  
30 community-based renewable energy pursuant to section 3604-A.

31 **Sec. 8. 35-A MRSA §3604-A** is enacted to read:

32 **§3604-A. Short-term contracts for community-based renewable energy**

33 Short-term contracts with qualifying biomass generators for community-based  
34 renewable energy are governed by this section. As used in this section, "short-term  
35 contract" means a contract having a term of no longer than 3 years.

1           **1. Investor-owned transmission and distribution utilities; required**  
2 **participation.** Notwithstanding section 3204, the commission shall direct investor-  
3 owned transmission and distribution utilities to enter into short-term contracts with  
4 qualifying biomass generators located within the service territory of the utility for energy,  
5 capacity resources or renewable energy credits. The commission shall direct investor-  
6 owned transmission and distribution utilities to enter into contracts under this subsection  
7 only as agents for their customers and only in accordance with this section. An  
8 investor-owned transmission and distribution utility shall sell energy, capacity resources  
9 or renewable energy credits purchased pursuant to this subsection into the wholesale  
10 electricity market or take other action relative to such energy, capacity resources or  
11 renewable energy credits as directed by the commission.

12           **2. Sale of energy; contract procedures.** Energy, capacity resources or renewable  
13 energy credits contracted in short-term contracts pursuant to this section may be sold into  
14 the wholesale electricity market in conjunction with solicitations for standard-offer  
15 supply bids under section 3212 or solicitations for green power offer bids under section  
16 3212-A. To the greatest extent possible, the commission shall develop procedures for  
17 short-term contracts for transmission and distribution utilities under this section having  
18 the same legal and financial effect as the procedures used for standard-offer service  
19 pursuant to section 3212 for transmission and distribution utilities.

20           **3. Contract pricing; cost containment.** The commission shall ensure that in any  
21 contract entered into pursuant to this section the price for the capacity resources and  
22 renewable energy credits sold by a qualifying biomass generator does not exceed the  
23 projected market price for capacity resources and renewable energy credits at the time of  
24 delivery. The average price of energy per kilowatt-hour within each contract year may  
25 not exceed the lesser of:

26           A. A rate that, together with revenues from any sales of capacity resources and  
27 renewable energy credits, is sufficient for the qualifying biomass generator to be  
28 financially capable of normal operations; and

29           B. Two cents per kilowatt-hour over the projected wholesale market price of energy  
30 at the time of delivery.

31 Projected market prices may be determined by the commission at the time a contract is  
32 authorized, using recognized and reasonable industry forecasting methodologies.

33           **4. Contract negotiation; large generators.** A qualifying biomass generator with a  
34 generating capacity of at least one megawatt may submit proposals to the commission for  
35 short-term contracts. The commission shall review and approve a proposal if the  
36 commission determines that a short-term contract is necessary in order to ensure that the  
37 qualifying biomass generator is financially capable of normal operations and is able to  
38 achieve the benefits described in section 3603, subsection 3, paragraph F. The  
39 commission shall negotiate short-term contracts with a qualifying biomass generator that  
40 submits an approved proposal on terms that are commercially reasonable and that commit  
41 all parties to commercially reasonable behavior.

42           **5. Cost recovery.** The commission shall ensure that a transmission and distribution  
43 utility recovers in rates all costs of contracts entered into under this section, including, but

1 not limited to, any effects on the utility's costs of capital. A price differential existing at  
2 any time during the term of the contract between the contract price and the prevailing  
3 market price at which the energy is sold must be reflected in rates and may not be  
4 considered to be imprudent.

5 **6. Contract payments.** Contracts for capacity resources and related energy entered  
6 into pursuant to this section must provide that payments will be made only after  
7 contracted amounts of energy have been provided.

8 **7. Ratepayer protection.** The commission shall ensure that mechanisms are  
9 established to provide protections for ratepayers over the term of contracts entered into  
10 pursuant to this section.

11 **SUMMARY**

12 This bill authorizes the Public Utilities Commission to enter into short-term contracts  
13 with qualifying biomass generators. This bill limits the price for the capacity and  
14 renewable energy credits generated by a qualifying biomass generator to the projected  
15 market price at the time of delivery. The average price of energy generated by a  
16 qualifying biomass generator may not exceed the lesser of a rate that, together with  
17 revenues from any sales of capacity resources and renewable energy credits, is sufficient  
18 for the qualifying biomass generator to be financially capable of normal operations, and  
19 2¢ per kilowatt-hour over the projected wholesale market price of energy at the time of  
20 delivery.