

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1872

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H.P. 1386

House of Representatives, March 13, 2012

### **An Act To Change the Name of the Governor's Office of Energy Independence and Security**

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

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

HEATHER J.R. PRIEST  
Clerk

Presented by Representative COTTA of China. (GOVERNOR'S BILL)  
Cosponsored by Representatives: DUNPHY of Embden, MOULTON of York.

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

2 **Sec. 1. 2 MRSA§9**, as amended by PL 2011, c. 400, §§1 and 2, is further amended  
3 to read:

4 **§9. Governor's Energy Office**

5 **1. Office established.** The Governor's ~~Office of Energy Independence and Security~~  
6 Office, referred to in this section as "the office," is established in the Executive  
7 Department to carry out responsibilities of the State relating to energy resources, planning  
8 and development. The office is directly responsible to the Governor.

9 **2. Director.** The office is under the control and supervision of the Director of the  
10 Governor's ~~Office of Energy Independence and Security~~ Office, referred to in this section  
11 as "the director." The director is appointed by the Governor and serves at the pleasure of  
12 the Governor.

13 **2-A. Funding.** The office is funded from an annual allocation from the funds of the  
14 Efficiency Maine Trust, established in Title 35-A, chapter 97, and federal funds. The  
15 director may request from the Efficiency Maine Trust, ~~established in Title 35-A, chapter~~  
16 ~~97~~, and the trust ~~may~~ shall provide from funds available to it funding sufficient to carry  
17 out the duties of the office under ~~section~~ subsection 3 and any other applicable law.

18 **3. Duties.** The director is responsible for the execution of the duties of the office.  
19 The director shall:

20 A. Serve as a member of the Efficiency Maine Trust Board, established under Title  
21 5, section 12004-G, subsection 10-C;

22 B. In collaboration with the relevant state agencies, coordinate state energy policy  
23 and actively foster cooperation with the Efficiency Maine Trust, established in Title  
24 35-A, chapter 97;

25 C. In consultation with the Efficiency Maine Trust Board, established in Title 5,  
26 section 12004-G, subsection 10-C, prepare and submit a comprehensive state energy  
27 plan to the Governor and the Legislature by January 15, 2009 and submit an updated  
28 plan every 2 years thereafter. Within the comprehensive state energy plan, the  
29 director shall identify opportunities to lower the total cost of energy to consumers in  
30 this State and transmission capacity and infrastructure needs and recommend  
31 appropriate actions to lower the total cost of energy to consumers in this State and  
32 facilitate the development and integration of new renewable energy generation within  
33 the State and support the State's renewable resource portfolio requirements specified  
34 in Title 35-A, section 3210 and wind energy development goals specified in Title  
35 35-A, section 3404. The comprehensive state energy plan must include a section that  
36 specifies the State's progress in meeting the oil dependence reduction targets in  
37 subsection 5. The office shall make recommendations, if needed, for additional  
38 legislative and administrative actions to ensure that the State can meet the reduction  
39 targets in subsection 5. The recommendations must include a cost and resource  
40 estimate for technology development needed to meet the reduction targets;

- 1 C-1. By February 1st of each year, prepare and submit to the joint standing  
2 committee of the Legislature having jurisdiction over utilities and energy matters an  
3 annual report that describes the activities of the office during the previous calendar  
4 year in carrying out its duties under this subsection and describes the State's progress  
5 in implementation of the state energy plan prepared pursuant to paragraph C. After  
6 receipt and review of the annual report required under this paragraph, the joint  
7 standing committee of the Legislature having jurisdiction over utilities and energy  
8 matters may submit legislation relating to energy policy;
- 9 D. In collaboration with other relevant state agencies, private industry and nonprofit  
10 organizations, collect and analyze energy data, including, but not limited to, data on  
11 energy supply, demand and costs in this State with consideration of all available  
12 energy sources;
- 13 E. Coordinate the dissemination of energy information to the public and the media;
- 14 F. Provide technical assistance and information to the Governor and the Legislature  
15 regarding the State's short-range and long-range energy needs and the resources to  
16 meet those needs;
- 17 G. Seek funds and partnerships with public and private sources to support the goals  
18 of the office, including, but not limited to, promoting energy efficiency, demand-side  
19 management and distributed generation;
- 20 H. Work with transmission and distribution utilities, state agencies involved in the  
21 permitting of energy generation facilities and other relevant entities to negotiate  
22 agreements that create value for electricity consumers with developers of renewable  
23 generation who are interested in building energy generation facilities or developing or  
24 utilizing energy transmission infrastructure in this State. This paragraph does not  
25 authorize the director to be a signatory to any such agreement unless that authority is  
26 otherwise granted by law. The director shall report on activities undertaken pursuant  
27 to this paragraph by February 1, 2009, and annually thereafter, to the joint standing  
28 committee of the Legislature having jurisdiction over utilities and energy matters;
- 29 I. Monitor energy transmission capacity planning and policy affecting this State and  
30 the regulatory approval process for the development of energy infrastructure pursuant  
31 to Title 35-A, section 122 and make recommendations to the Governor and the  
32 Legislature as necessary for changes to the relevant laws and rules to facilitate energy  
33 infrastructure planning and development; and
- 34 J. Take action as necessary to carry out the goals and objectives of the state energy  
35 plan prepared pursuant to paragraph C including lowering the total cost of energy to  
36 consumers in this State.

37 **4. Advice to state agencies.** The director shall advise state agencies regarding  
38 energy-related principles for agencies to consider, along with the laws and policies  
39 governing those agencies, in conjunction with the sale, lease or other allowance for use of  
40 state-owned land or assets for the purpose of development of energy infrastructure. For  
41 the purposes of this subsection, "state-owned" and "energy infrastructure corridor" have  
42 the same meanings as in Title 35-A, section 122, subsection 1. At a minimum, the  
43 director shall consider the following principles in advising state agencies under this  
44 subsection:

- 1 A. The principles for the determination of the long-term public interest of the State  
2 as specified in Title 35-A, section 122, subsection 1-D, paragraph B;
- 3 B. Avoiding wherever possible the use of lands subject to the provisions of the  
4 Constitution of Maine, Article IX, Section 23;
- 5 C. Maximizing the benefit realized from the State's strategic location within New  
6 England and the northeastern region; and
- 7 D. Complying with the provisions of the memorandum of agreement between the  
8 Maine Turnpike Authority and the Department of Transportation under Title 35-A,  
9 section 122, subsection 1-C, when applicable.

10 Nothing in this subsection alters any of the responsibilities or limits any of the authority  
11 of the Department of Administrative and Financial Services, Bureau of General Services  
12 pursuant to Title 5. Nothing in this subsection alters or limits the ability of departments  
13 or agencies of the State, along with the Bureau of General Services pursuant to Title 5, to  
14 generate or cogenerate energy at state facilities for use on site and elsewhere.

15 **5. Oil dependence reduction plan.** The office, with input from stakeholders and in  
16 consultation with the Efficiency Maine Trust, shall develop a plan to reduce the use of oil  
17 in all sectors of the economy in this State. The plan must:

- 18 A. Be designed to achieve the targets of reducing the State's consumption of oil by at  
19 least 30% from 2007 levels by 2030 and by at least 50% from 2007 levels by 2050;
- 20 B. Focus on near-term policies and infrastructure changes that set the State on a  
21 reasonable trajectory to meet the 2030 and 2050 targets in paragraph A;
- 22 C. Prioritize the improvement of energy efficiency and the transition to the use of  
23 alternative energy sources for heating and transportation; and
- 24 D. Draw on existing state data and studies rather than new analyses, including, but  
25 not limited to, analyses and data from the State's climate action plan pursuant to Title  
26 38, section 577 and the progress updates to the climate action plan under Title 38,  
27 section 578, the comprehensive state energy plan pursuant to subsection 3, paragraph  
28 C, the Efficiency Maine Trust's triennial plan pursuant to Title 35-A, section 10104,  
29 subsection 4 and analyses completed by the Federal Government, nonprofit  
30 organizations and other stakeholders.

31 **Sec. 2. 10 MRSA §1023-K, sub-§1,** as amended by PL 2009, c. 124, §2, is  
32 further amended to read:

33 **1. Established; fund administration.** The Clean Fuel Vehicle Fund, referred to in  
34 this section as the "fund," is established under the jurisdiction of the authority to support  
35 production, distribution and consumption of clean fuels and biofuels. In administering  
36 the fund, the authority shall consult and provide opportunity for input from the  
37 Governor's ~~Office of Energy Independence and Security~~ Office within the Executive  
38 Department.

39 **Sec. 3. 10 MRSA §1023-K, sub-§3-B,** as enacted by PL 2009, c. 124, §2, is  
40 amended to read:

1           **3-B. Application of fund.** The fund may be used in accordance with this  
2 subsection.

3           A. The fund may be applied to carry out any power of the authority under or in  
4 connection with section 1026-A, subsection 1, paragraph A, subparagraph (1),  
5 division (c), including, but not limited to, the pledge or transfer and deposit of money  
6 in the fund as security for and the application of the fund to pay principal, interest and  
7 other amounts due on insured loans.

8           B. The fund may be used for direct loans to finance all or part of any clean fuel or  
9 sustainable biofuel vehicle project when the authority determines that:

10                 (1) The applicant demonstrates a reasonable likelihood that the applicant will be  
11 able to repay the loan;

12                 (2) The project is technologically feasible; and

13                 (3) The project will contribute to a reduction of or more efficient use of fossil  
14 fuels.

15           C. The fund may be used for grants to support clean fuel and sustainable biofuel  
16 production, distribution and consumption. The authority, in consultation with the  
17 Governor's ~~Office of Energy Independence and Security~~ Office within the Executive  
18 Department, shall establish a formula and method for the awarding of grants under  
19 this paragraph.

20           D. The fund may be used for reasonable development and administration costs for an  
21 online contribution process, in accordance with subsection 6.

22           E. The fund may be used for reasonable initial and ongoing administrative costs of  
23 the authority to implement this section.

24 The authority, in consultation with the Governor's ~~Office of Energy Independence and~~  
25 ~~Security~~ Office within the Executive Department, shall adopt rules for determining  
26 eligibility, project feasibility, terms, conditions and security for loans under this section.  
27 Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter  
28 375, subchapter 2-A.

29           **Sec. 4. 10 MRSA §1043, sub-§2, ¶O,** as enacted by PL 2011, c. 261, §4, is  
30 amended to read:

31           O. In the case of an energy distribution system project regulated by the Public  
32 Utilities Commission with respect to rates or terms of service or that requires, for  
33 construction or operation, authorization or certification from the commission, the  
34 following conditions are met.

35                 (1) The energy distribution system project has received all authorizations or  
36 certifications from the Public Utilities Commission necessary for construction  
37 and operation of the project. The authority may issue a certificate of approval for  
38 a project that has received conditional approvals or certifications from the  
39 commission, except that the authority's certificate becomes legally effective only  
40 upon fulfillment of the conditional provisions of the commission's certificates or  
41 approvals. If the commission has approved rates to be charged by the project or

1 has issued a certificate of public convenience and necessity for the project, the  
2 authority shall take into consideration any findings and conclusions of law of the  
3 commission, including any findings and conclusions pertaining to the need for  
4 the project and the financial viability of the project.

5 (2) The authority has reviewed and considered any comments provided by the  
6 Director of the Governor's ~~Office of Energy Independence and Security~~ Office  
7 and the Public Advocate.

8 (3) The authority has determined that the applicant is creditworthy and that there  
9 is a reasonable likelihood that the revenue obligation securities will be repaid  
10 through the revenues of the project and any other sources of revenues and  
11 collateral pledged to the repayment of those securities. In order to make these  
12 determinations, the authority shall consider such factors as it considers necessary  
13 and appropriate in light of the special purpose or other nature of the business  
14 entity owning the project and the specific purposes of the project to measure and  
15 evaluate the project and the sufficiency of the pledged revenues to repay the  
16 obligations, including, but not limited to:

17 (a) Whether the individuals or entities obligated to repay the obligations  
18 have demonstrated sufficient revenues from the project or from other sources  
19 to repay the obligations and a reasonable probability that those revenues will  
20 continue to be available for the term of the revenue obligation securities;

21 (b) Whether the applicant demonstrates a reasonable probability that the  
22 project will continue to operate and provide the public benefits projected to  
23 be created for the term of the revenue obligation securities;

24 (c) Whether the applicant's creditworthiness is demonstrated by factors such  
25 as its historical financial performance, management ability, plan for  
26 marketing its product or service and ability to access conventional financing;

27 (d) Whether the applicant meets or exceeds industry average financial  
28 performance ratios commonly accepted in determining creditworthiness in  
29 that industry;

30 (e) Whether the applicant demonstrates that the need for authority assistance  
31 is due to the reduced cost and increased flexibility of the financing for the  
32 project that result from authority assistance and not from an inability to  
33 obtain necessary financing without the capital reserve fund security provided  
34 by the authority;

35 (f) Whether collateral securing the repayment obligation is reasonably  
36 sufficient under the circumstances;

37 (g) Whether the proposed project enhances the opportunities for economic  
38 development;

39 (h) The effect that the proposed project financing has on the authority's  
40 financial resources;

41 (i) The financial performance of similar projects;

- 1 (j) The need for the project, as determined by the Public Utilities  
2 Commission and as indicated by any comments provided by the Director of  
3 the Governor's ~~Office of Energy Independence and Security~~ Office, other  
4 public officials and members of the public;
- 5 (k) The nature and extent of customer commitment to use the project or the  
6 fuel or energy the project distributes or transmits; and
- 7 (l) The cost advantages to end users of the fuel or energy to be distributed or  
8 transmitted by the project, to the extent those advantages may affect market  
9 penetration by the project.

10 **Sec. 5. 10 MRSA §9722, sub-§2, ¶I**, as enacted by PL 2007, c. 699, §6, is  
11 amended to read:

12 I. An energy efficiency representative, recommended by the ~~director~~ Director of the  
13 Governor's ~~Office of Energy Independence and Security~~ Office within the Executive  
14 Department, who has experience or expertise in the design or implementation of  
15 energy codes or in the application of energy efficiency measures in residential or  
16 commercial construction;

17 **Sec. 6. 35-A MRSA §122, sub-§1-B, ¶A**, as enacted by PL 2009, c. 655, Pt. A,  
18 §2, is amended to read:

19 A. The panel includes the following members:

- 20 (1) The Director of the Governor's ~~Office of Energy Independence and Security~~  
21 Office within the Executive Department or the director's designee;
- 22 (2) The Commissioner of Administrative and Financial Services or the  
23 commissioner's designee;
- 24 (3) The commissioner of each department or the director of any other state  
25 agency or authority that owns or controls land or assets within the statutory  
26 corridor under consideration or that commissioner's or director's designee; and
- 27 (4) Four members of the public appointed by the Governor in accordance with  
28 this subparagraph, subject to review by the joint standing committee of the  
29 Legislature having jurisdiction over utilities and energy matters and to  
30 confirmation by the Senate:
- 31 (a) One member with expertise in energy and utilities selected from  
32 candidates nominated by the President of the Senate;
- 33 (b) One member with expertise in real estate or finance selected from  
34 candidates nominated by the President of the Senate;
- 35 (c) One member representing industrial or commercial energy consumers  
36 selected from candidates nominated by the Speaker of the House; and
- 37 (d) One member representing residential energy consumers selected from  
38 candidates nominated by the Speaker of the House.

39 Public members serve 3-year terms, except that a vacancy must be filled for the  
40 unexpired portion of the term. A public member serves until a successor is



1 appointed. A public member may serve a maximum of 2 consecutive terms.  
2 Compensation of public members is as provided in Title 5, section 12004-G,  
3 subsection 30-D.

4 **Sec. 7. 35-A MRSA §122, sub-§2, ¶B**, as amended by PL 2009, c. 655, Pt. A,  
5 §2, is further amended to read:

6 B. The commission may commence a proceeding to designate a petitioned corridor  
7 only upon the filing of a petition for the designation of a petitioned corridor by the  
8 Office of the Public Advocate, the Executive Department, Governor's ~~Office of~~  
9 Energy ~~Independence and Security~~ Office or a potential developer.

10 **Sec. 8. 35-A MRSA §122, sub-§7, ¶C**, as amended by PL 2009, c. 655, Pt. A,  
11 §2, is further amended to read:

12 C. The commission may take and hold by right of eminent domain lands and  
13 easements within an energy infrastructure corridor in accordance with this paragraph,  
14 notwithstanding any transmission and distribution utility ownership of the lands or  
15 easements.

16 (1) The commission may exercise the authority under this paragraph only in an  
17 adjudicatory proceeding upon a petition by the Office of the Public Advocate or  
18 the Executive Department, Governor's ~~Office of~~ Energy ~~Independence and~~  
19 ~~Security~~ Office demonstrating that such action is urgently needed to avoid  
20 substantial harm to electricity consumers regarding anticipated activity associated  
21 with an energy infrastructure corridor. A determination by the commission that  
22 the exercise of eminent domain under this paragraph is urgently needed to avoid  
23 substantial harm to electricity consumers regarding anticipated activity associated  
24 with an energy infrastructure corridor constitutes reviewable final agency action.

25 (2) The amount of any lands or easements taken by the commission pursuant to  
26 this subsection may be no greater than is required to avoid the harm to electricity  
27 consumers identified under subparagraph (1).

28 (3) The right of eminent domain granted in this paragraph does not apply to  
29 personal property, fixtures or improvements that constitute transmission and  
30 distribution plant or an energy transport pipeline.

31 (4) The commission may exercise the right of eminent domain for the purposes of  
32 this paragraph in the same manner and under the same conditions as set forth in  
33 chapter 65. For the purposes of the exercise of eminent domain authorized by  
34 this paragraph, the commission is both a person and the State.

35 (5) The commission is authorized to assess transmission and distribution utilities  
36 to the extent necessary to obtain sufficient funds to pay for lands and easements  
37 taken pursuant to this subsection.

38 (6) The commission, in an adjudicatory proceeding upon petition by the Office of  
39 the Public Advocate or the Executive Department, Governor's ~~Office of~~ Energy  
40 ~~Independence and Security~~ Office, may transfer or convey to any person or state  
41 agency or authority lands and easements once acquired, except that a  
42 transmission and distribution utility or the owner of an energy transport pipeline

1 whose lands or easements were taken pursuant to this paragraph must be given  
2 the first opportunity to acquire the lands or easements to the extent necessary or  
3 useful in the performance of its duties as a transmission and distribution utility or  
4 an owner of an energy transport pipeline.

5 (7) The commission shall report on the circumstances of any taking by eminent  
6 domain to the joint standing committee of the Legislature having jurisdiction  
7 over utilities and energy matters during the next regular session of the Legislature  
8 following the acquisition of lands or easements by eminent domain.

9 **Sec. 9. 35-A MRSA §10103, sub-§2, ¶A,** as enacted by PL 2009, c. 372, Pt. B,  
10 §3, is amended to read:

11 A. The board consists of the following 9 voting members:

12 (1) The ~~director~~ Director of the Governor's ~~Office of Energy Independence and~~  
13 ~~Security Office~~;

14 (2) The director of the Maine State Housing Authority; and

15 (3) Seven members appointed by the Governor, reviewed by the joint standing  
16 committee of the Legislature having jurisdiction over energy matters and  
17 approved by the Senate. Among these 7 members must be persons who  
18 adequately represent the interests of commercial energy consumers, industrial  
19 energy consumers, small business energy consumers, residential energy  
20 consumers and low-income energy consumers; among these members must be  
21 persons with knowledge of and experience in financial matters and consumer  
22 advocacy and who possess substantial management expertise or knowledge of or  
23 experience with conservation fund programs, carbon reduction programs or  
24 energy efficiency or climate change policy. The requirements of this  
25 subparagraph may be met through the appointment of one or more persons who  
26 satisfy more than one of the requirements, as long as at any one time the 7  
27 members include among them members who adequately represent the identified  
28 interests and who ~~posses~~ possess the required knowledge, expertise and  
29 experience.

30 Appointed trustees serve 3-year terms. If an appointed trustee is unable to  
31 complete the term, the Governor shall appoint a replacement for the remainder of  
32 the unexpired term.

### 33 SUMMARY

34 This bill changes the name of the Governor's Office of Energy Independence and  
35 Security to the Governor's Energy Office. The bill also fixes cross-references to reflect  
36 the name change.