

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1262

H.P. 901

House of Representatives, March 28, 2013

An Act To Reduce Energy Costs

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FREDETTE of Newport.

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

2 **Sec. 1. 2 MRSA §9, sub-§3, ¶I**, as enacted by PL 2007, c. 656, Pt. C, §1, is
3 amended to read:

4 I. Monitor energy transmission capacity planning and policy affecting this State and
5 the regulatory approval process for the development of energy infrastructure pursuant
6 to Title 35-A, ~~section 122~~ chapter 19 and make recommendations to the Governor
7 and the Legislature as necessary for changes to the relevant laws and rules to
8 facilitate energy infrastructure planning and development; ~~and~~

9 **Sec. 2. 2 MRSA §9, sub-§3, ¶J**, as amended by PL 2011, c. 55, §2, is further
10 amended to read:

11 J. Take action as necessary to carry out the goals and objectives of the state energy
12 plan prepared pursuant to paragraph C including lowering the total cost of energy to
13 consumers in this State; ~~and~~ and

14 **Sec. 3. 2 MRSA §9, sub-§3, ¶K** is enacted to read:

15 K. Execute energy cost-reduction contracts in accordance with Title 35-A, chapter
16 19.

17 **Sec. 4. 2 MRSA §9, sub-§4**, as enacted by PL 2009, c. 655, Pt. C, §2, is amended
18 to read:

19 **4. Advice to state agencies.** The director shall advise state agencies regarding
20 energy-related principles for agencies to consider, along with the laws and policies
21 governing those agencies, in conjunction with the sale, lease or other allowance for use of
22 state-owned land or assets for the purpose of development of energy infrastructure. ~~For~~
23 ~~the purposes of this subsection, "state owned" and "energy infrastructure corridor" have~~
24 ~~the same meanings as in Title 35 A, section 122, subsection 1.~~ At a minimum, the
25 director shall consider the following principles in advising state agencies under this
26 subsection:

27 A. The principles for the determination of the long-term public interest of the State
28 as specified in Title 35-A, ~~section 122, subsection 1 D, paragraph B~~ chapter 19;

29 B. Avoiding wherever possible the use of lands subject to the provisions of the
30 Constitution of Maine, Article IX, Section 23; ~~and~~ and

31 C. Maximizing the benefit realized from the State's strategic location within New
32 England and the northeastern region; ~~and~~ and

33 ~~D. Complying with the provisions of the memorandum of agreement between the~~
34 ~~Maine Turnpike Authority and the Department of Transportation under Title 35 A,~~
35 ~~section 122, subsection 1 C, when applicable.~~

36 Nothing in this subsection alters any of the responsibilities or limits any of the authority
37 of the Department of Administrative and Financial Services, Bureau of General Services
38 pursuant to Title 5. Nothing in this subsection alters or limits the ability of departments

1 or agencies of the State, along with the Bureau of General Services pursuant to Title 5, to
2 generate or cogenerate energy at state facilities for use on site and elsewhere.

3 **Sec. 5. 5 MRSA §282, sub-§7**, as amended by PL 2009, c. 372, Pt. F, §1, is
4 further amended to read:

5 **7. Value of fringe benefits.** To ensure that all publications that state the salary of an
6 employee or of a position in State Government also include a statement of the dollar
7 value of the fringe benefit package provided. For purposes of this subsection, "fringe
8 benefits" includes an employer's cost of an employee's health insurance, dental insurance
9 and retirement but does not include the amount paid to cover any unfunded liability; and

10 **Sec. 6. 5 MRSA §282, sub-§8**, as amended by PL 2009, c. 372, Pt. F, §2, is
11 further amended to read:

12 **8. Serve as director of Clean Government Initiative.** To serve as a director, along
13 with the Commissioner of Environmental Protection, of the Clean Government Initiative
14 established in Title 38, section 343-H; ~~and.~~

15 **Sec. 7. 5 MRSA §282, sub-§9**, as amended by PL 2011, c. 652, §1 and affected
16 by §14, is repealed.

17 **Sec. 8. 5 MRSA §12004-G, sub-§30-D**, as enacted by PL 2009, c. 655, Pt. A,
18 §1, is repealed.

19 **Sec. 9. 5 MRSA §12004-I, sub-§74-A-2** is enacted to read:

20 **74-A-2.**

21 <u>Public Utilities</u>	<u>Energy Cost</u>	<u>Not Authorized</u>	<u>35-A MRSA §1905</u>
22	<u>Reduction Oversight</u>		
23	<u>Board</u>		

24 **Sec. 10. 10 MRSA §963-A, sub-§11-A** is enacted to read:

25 **11-A. Energy cost-reduction contract.** "Energy cost-reduction contract" means a
26 contract executed in accordance with Title 35-A, chapter 19 to procure natural gas
27 pipeline capacity.

28 **Sec. 11. 10 MRSA §1041, sub-§2-A** is enacted to read:

29 **2-A. Securities for energy cost-reduction contracts.** Issue revenue obligation
30 securities to pay the cost of or to provide financial assistance for an energy cost-reduction
31 contract in accordance with section 1056.

32 **Sec. 12. 10 MRSA §1056** is enacted to read:

1 **§1056. Energy cost-reduction contracts**

2 If directed by the director of the Governor's Energy Office established in Title 2,
3 section 9, subsection 1, the authority shall issue revenue obligation securities for the
4 amount necessary to fund the State's obligations under an energy cost-reduction contract
5 pursuant to Title 35-A, section 1908, subsection 1. The authority may request from the
6 Public Utilities Commission funds from the Energy Cost Reduction Trust Fund
7 established in Title 35-A, section 1907, subsection 1 to make payments on bond
8 obligations under this section. If there are not sufficient funds in the Energy Cost
9 Reduction Trust Fund to make those payments, the authority may request that the Public
10 Utilities Commission recover the costs of the bond in the rates of utilities pursuant to
11 Title 35-A, section 1908, subsection 2, paragraph A.

12 **Sec. 13. 12 MRSA §685-A, sub-§11**, as amended by PL 2007, c. 656, Pt. A, §1,
13 is further amended to read:

14 **11. Exemptions.** Real estate used or to be used by a public utility, as defined in
15 Title 35-A, section 102, subsection 13, or a person who ~~is issued a certificate by the~~
16 ~~Public Utilities Commission~~ enters an energy cost-reduction contract to lease the use of
17 property, lands or waters of the State for the purposes of gas, water or electricity
18 transmission corridors under Title 35-A, ~~section 122~~ chapter 19 may be wholly or
19 partially exempted from regulation to the extent that the commission may not prohibit
20 such use but may impose terms and conditions for use consistent with the purpose of this
21 chapter, when, upon timely petition, notice and public hearing, the Public Utilities
22 Commission determines that such exemption is necessary or desirable for the public
23 welfare or convenience. The Public Utilities Commission shall adopt by rule procedures
24 to implement this subsection. Rules adopted pursuant to this subsection are routine
25 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

26 **Sec. 14. 23 MRSA §1803-C, sub-§2, ¶A**, as enacted by PL 2011, c. 652, §7 and
27 affected by §14, is repealed.

28 **Sec. 15. 30-A MRSA §4352, sub-§4**, as amended by PL 2009, c. 615, Pt. G, §1,
29 is further amended to read:

30 **4. Exemptions.** Real estate used or to be used by a public utility, as defined in Title
31 35-A, section 102, subsection 13, by a person who ~~is issued a certificate by the Public~~
32 ~~Utilities Commission~~ enters an energy cost-reduction contract to lease the use of
33 property, lands or waters of the State for the purposes of gas, water or electricity
34 transmission corridors under Title 35-A, ~~section 122~~ chapter 19 or by a renewable ocean
35 energy project as defined in Title 12, section 1862, subsection 1, paragraph F-1 is wholly
36 or partially exempt from an ordinance only when on petition, notice and public hearing
37 the Public Utilities Commission determines that the exemption is reasonably necessary
38 for public welfare and convenience. The Public Utilities Commission shall adopt by rule
39 procedures to implement this subsection. Rules adopted pursuant to this subsection are
40 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1 **Sec. 16. 35-A MRSA §122**, as amended by PL 2011, c. 652, §13 and affected by
2 §14; amended by c. 655, Pt. MM, §§14 to 16 and affected by §26; and amended by c.
3 682, §38, is repealed.

4 **Sec. 17. 35-A MRSA c. 19** is enacted to read:

5 **CHAPTER 19**

6 **THE MAINE ENERGY COST REDUCTION ACT**

7 **§1901. Short title**

8 This chapter may be known and cited as "the Maine Energy Cost Reduction Act."

9 **§1902. Definitions**

10 As used in this section, unless the context otherwise indicates, the following terms
11 have the following meanings.

12 **1. Board.** "Board" means the Energy Cost Reduction Oversight Board established in
13 Title 5, section 12004-I, subsection 74-A-2.

14 **2. Director.** "Director" means the Director of the Governor's Energy Office
15 established in Title 2, section 9, subsection 1.

16 **3. Energy cost-reduction contract.** "Energy cost-reduction contract" means a
17 contract executed in accordance with this chapter to procure natural gas pipeline capacity
18 or a contract to lease the use of property, lands or waters of the State for the purposes of
19 gas, water or electricity transmission corridors.

20 **4. Investor-owned transmission and distribution utility.** "Investor-owned
21 transmission and distribution utility" has the same meaning as in section 3104, subsection
22 1, paragraph A.

23 **5. ISO-NE region.** "ISO-NE region" means the independent system operator of the
24 New England bulk power system or a successor organization.

25 **6. Pipeline capacity holder.** "Pipeline capacity holder" means any person owning
26 rights to natural gas pipeline capacity.

27 **7. Trust fund.** "Trust fund" means the Energy Cost Reduction Trust Fund
28 established under section 1907, subsection 1.

29 **§1903. Legislative findings**

30 The Legislature finds that:

31 **1. Electricity prices.** It is in the public interest to decrease prices of electricity and
32 natural gas for consumers in this State;

1 **2. Natural gas expansion.** The expansion of natural gas transmission capacity into
2 this State and other states in the ISO-NE region would result in lower natural gas prices
3 and, by extension, lower electricity prices for consumers in this State;

4 **3. Interstate transmission.** Electricity transmission facilities built in this State
5 connecting electricity production facilities in Canada and load centers in the ISO-NE
6 region would require the use of and would diminish the value of the State's resources,
7 including lands and waters owned by the State and its instrumentalities; and

8 **4. Benefits for the use of state land.** The State's citizens should be compensated for
9 the costs imposed upon resources of the State and for their contribution to the benefits
10 achieved by Canadian electricity production resources and ISO-NE region load centers
11 that are achieved through the use of the State's resources.

12 **§1904. Energy cost-reduction contracts**

13 The director may execute an energy cost-reduction contract in accordance with this
14 section.

15 **1. Director determination of benefits.** The director may submit an energy cost-
16 reduction contract proposal to the board if the director has determined that the agreement
17 is commercially reasonable and in the public interest and that the price paid for the
18 natural gas pipeline capacity is not above average prevailing rates as determined by the
19 commission by rule for such agreements in this State or the ISO-NE region and:

20 A. In the case of a contract to procure natural gas transmission pipeline capacity, that
21 the contract is reasonably likely to:

22 (1) Materially enhance natural gas transmission opportunities within and into the
23 State or the ISO-NE region;

24 (2) Lead to the development or expansion of a natural gas transmission pipeline
25 that will have the effect of reducing electricity rates or other energy costs for
26 residents and businesses within the State;

27 (3) Lead to the continued operation of a natural gas transmission pipeline that
28 has the effect of reducing electricity rates or other energy costs for residents and
29 businesses within the State; or

30 (4) Increase the energy reliability, security and independence of the State or the
31 ISO-NE region; and

32 B. In the case of a contract to lease the use of property, lands or waters of the State
33 for the purposes of gas, water or electricity transmission corridors, that the amount,
34 duration and certainty of the compensation for that use fully reflects the value of the
35 use of the property, lands or waters of the State for those purposes, as well as the loss
36 of value of the property, lands or waters for other public purposes.

37 **2. Submission to the commission.** The director may submit an energy cost-
38 reduction contract proposal to the commission for approval if a majority of the board
39 members agree that the contract is reasonably likely to meet the requirements in
40 subsection 1.

1 **3. Report to the Legislature.** Within 10 days of submitting an energy cost-
2 reduction contract proposal to the commission under subsection 2, the director shall
3 submit a report to the joint standing committee of the Legislature having jurisdiction over
4 public utilities matters that describes in detail the energy cost-reduction contract proposal,
5 including the benefits and risks to the citizens of the State if the proposed contract is
6 executed.

7 **4. Execution of the contract.** The director may execute an energy cost-reduction
8 contract if, pursuant to section 1906, an order is issued by the commission approving the
9 contract.

10 **5. Resale of natural gas pipeline capacity.** The director may negotiate and enter
11 into contracts for the resale of all or a portion of the reserved natural gas transmission
12 pipeline capacity acquired through an energy cost-reduction contract pursuant to this
13 section as long as all of the revenue received as a result of the resale is deposited into the
14 trust fund.

15 **6. Joint contracts.** If the director concludes that an energy cost-reduction contract
16 can be achieved with the participation of other entities, the director may propose to
17 contract jointly with other entities, including other state agencies and instrumentalities,
18 governments in other states and nations, utilities and generators, when submitting an
19 energy cost-reduction contract proposal to the board or the commission.

20 **7. Contract evaluation and administration.** The director is responsible for
21 assessing, analyzing, negotiating, implementing and monitoring compliance with energy
22 cost-reduction contracts. The commission shall provide funds for this purpose from the
23 trust fund or by just and reasonable assessments placed on an investor-owned
24 transmission and distribution utility, a gas utility or a natural gas pipeline utility pursuant
25 to section 1908, subsection 2, paragraph C.

26 **§1905. Energy Cost Reduction Oversight Board**

27 The Energy Cost Reduction Oversight Board, established in Title 5, section 12004-I,
28 subsection 74-A-2, consists of the Public Advocate, one person nominated by the
29 Governor and subject to review by the joint standing committee of the Legislature having
30 jurisdiction over public utilities matters and confirmed by the Senate and the Attorney
31 General or the Attorney General's designee.

32 **1. Duties.** The board shall review all energy cost-reduction contract proposals
33 submitted by the director. If a majority of the board members agree that a contract is
34 reasonably likely to meet the requirements in section 1904, subsection 1, the director may
35 submit the proposal to the commission for review.

36 **§1906. Commission review of energy cost-reduction contracts**

37 The commission in an adjudicatory proceeding shall issue an order approving or
38 rejecting an energy cost-reduction contract submitted by the director pursuant to section
39 1904, subsection 2 in accordance with this section.

1 **1. Standards for approval.** The commission shall issue an order approving an
2 energy cost-reduction contract if the commission finds that the contract is reasonably
3 likely to:

4 **A. In the case of a contract to procure natural gas transmission pipeline capacity:**

5 **(1) Materially enhance natural gas transmission opportunities within and into the**
6 **State or the ISO-NE region;**

7 **(2) Materially increase the availability and diversity of natural gas supplies in the**
8 **State;**

9 **(3) Lead to the development or expansion of a natural gas transmission pipeline**
10 **that will have the effect of reducing electricity rates or natural gas costs for**
11 **residents and businesses within the State;**

12 **(4) Lead to the continued operation of a natural gas transmission pipeline that**
13 **has the effect of reducing electricity rates or natural gas costs for residents and**
14 **businesses within the State; or**

15 **(5) Increase the energy reliability, security and independence of the State or the**
16 **ISO-NE region; and**

17 **B. In the case of a contract to lease the use of property, lands or waters of the State**
18 **for the purposes of gas, water or electricity transmission corridors, that the amount,**
19 **duration and certainty of the compensation for that use fully reflects the value of the**
20 **use of the property, lands or waters of the State for those purposes, as well as the loss**
21 **of value of the property, lands or waters for other public purposes.**

22 **2. Public hearing.** The commission shall seek public input regarding whether or not
23 a contract meets the standards under subsection 1 and shall conduct an adjudicatory
24 proceeding regarding approval of the contract prior to issuing an order under subsection
25 4.

26 **3. Utility participation.** The commission may direct an investor-owned
27 transmission and distribution utility, a gas utility or a natural gas pipeline utility to be a
28 counterparty to a contract and to enter agreements to purchase natural gas pipeline
29 capacity from a natural gas pipeline company on a natural gas pipeline if the commission
30 finds that such an agreement is commercially reasonable and in the public interest and
31 that the price paid for the natural gas pipeline capacity is not above average prevailing
32 rates for such agreements in the State or the ISO-NE region as determined by the
33 commission.

34 Any economic loss, including but not limited to any effects on the cost of capital resulting
35 from an energy cost-reduction contract for an investor-owned transmission and
36 distribution utility, a gas utility or a natural gas pipeline utility, is deemed to be prudent
37 and must be reflected in rates. The commission may direct an investor-owned
38 transmission and distribution utility, a gas utility or a natural gas pipeline utility to
39 implement an assessment to collect funds from ratepayers for the purposes of funding an
40 energy cost-reduction contract pursuant to section 1908, subsection 2, paragraph B.

41 Any profit, as determined by the commission by rule or order, resulting from an energy
42 cost-reduction contract must be deposited into the trust fund.

1 **4. Order.** The commission shall complete its review of the proposed energy cost-
2 reduction contract and issue an order approving or disapproving the contract as promptly
3 as possible without compromising the legitimate interests of parties participating in the
4 review, but no later than 120 days following the submission of the proposed contract by
5 the director.

6 **§1907. Revenues from energy cost-reduction contracts**

7 Revenues received from an energy cost-reduction contract to lease the use of
8 property, lands or waters of the State for the purposes of gas, water or electricity
9 transmission corridors, profit as determined by the commission by rule received by an
10 investor-owned transmission and distribution utility, a gas utility or a natural gas pipeline
11 utility pursuant to section 1906, subsection 3 and revenues received from the resale of a
12 natural gas pipeline capacity acquired through an energy cost-reduction contract under
13 section 1904, subsection 5 must be used in accordance with this section.

14 **1. Establishment of Energy Cost Reduction Trust Fund.** The Energy Cost
15 Reduction Trust Fund is established as a nonlapsing fund administered by the
16 commission for the purposes of this section. The commission is authorized to receive and
17 shall deposit in the trust fund and expend in accordance with this section revenues
18 received from an energy cost-reduction contract to lease the use of property, lands or
19 waters of the State for the purposes of gas, water or electricity transmission corridors,
20 profit as determined by the commission by rule received by an investor-owned
21 transmission and distribution utility, a gas utility or a natural gas pipeline utility pursuant
22 to section 1906, subsection 3 and revenues received from the resale of a natural gas
23 pipeline capacity acquired through an energy cost-reduction contract under section 1904,
24 subsection 5.

25 The funds are held in trust for the purposes of reducing the energy costs of consumers in
26 the State except as described in subsection 2 and may not be used for any other purposes.

27 **2. Distribution of funds.** The commission shall distribute funds in the trust fund
28 according to the following priorities:

29 A. As a first priority, to the costs of monitoring and administering a contract
30 pursuant to section 1904, subsection 7;

31 B. As a 2nd priority, to the repayment of any bond obligations under section 1908,
32 subsection 1; and

33 C. As a 3rd priority, at the commission's discretion, to utilities and other entities to
34 reduce energy costs for electricity and natural gas ratepayers. The commission may
35 distribute funds to benefit ratepayers of one or more investor-owned transmission and
36 distribution utilities, natural gas pipeline utilities or gas utilities in a manner that the
37 commission finds is equitable, just and reasonable.

38 **§1908. Funding an energy cost-reduction contract**

39 An energy cost-reduction contract to procure natural gas transmission pipeline
40 capacity may be funded in accordance with this section.

1 1. Bonds. The director may direct the Finance Authority of Maine, established in
2 Title 5, section 12004-F, subsection 1, to issue revenue obligation securities in the
3 amount necessary to fund the State's obligations under an energy cost-reduction contract
4 to procure natural gas transmission pipeline capacity.

5 2. Assessments. The commission may direct an investor-owned transmission and
6 distribution utility, a gas utility or a natural gas pipeline utility to collect an assessment
7 from ratepayers for the following purposes:

8 A. At the request of the Finance Authority of Maine, pursuant to Title 10, section
9 1056, to pay the obligations of a bond issued under subsection 1;

10 B. To finance the participation of an investor-owned transmission and distribution
11 utility, a gas utility or a natural gas pipeline utility in an energy cost-reduction
12 contract pursuant to section 1906, subsection 3; and

13 C. To pay the costs of energy cost-reduction contract evaluation and administration
14 under section 1904, subsection 7.

15 All assessments must be just and reasonable as determined by the commission and must
16 be identified as an energy cost-reduction contract charge on a ratepayer's utility bill.

17 **§1909. Exemption from state purchasing agent rules**

18 Notwithstanding any other provision of law, agreements and contracts entered into
19 pursuant to this chapter are not subject to the competitive bid requirements of the State
20 Purchasing Agent.

21 **§1910. Market power investigation**

22 The commission may on its own motion, with or without notice, summarily
23 investigate the exercise of market power by a natural gas pipeline utility, gas utility or
24 pipeline capacity holder. If, after the summary investigation, the commission determines
25 it necessary, it may hold a public hearing in accordance with section 1304.
26 Notwithstanding section 1304 and Title 5, section 9052, the commission must notify the
27 utility under investigation in writing of the matter under investigation and 7 days after the
28 commission has given notice the commission may set the time and place for the public
29 hearing.

30 **§1911. Rulemaking**

31 The commission may adopt rules to implement this chapter. When adopting rules, the
32 commission shall consider the financial implications of this chapter for investor-owned
33 transmission and distribution utilities, natural gas pipeline utilities and gas utilities. Rules
34 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
35 375, subchapter 2-A.

36 **Sec. 18. 35-A MRSA §3131, sub-§4-A,** as enacted by PL 2009, c. 655, Pt. A, §3,
37 is amended to read:

1 This bill gives the Director of the Governor's Energy Office the authority to submit
2 energy cost-reduction contract proposals to procure natural gas pipeline capacity or to
3 lease the use of property, lands or waters of the State for the purposes of gas, water or
4 electricity transmission corridors to the Energy Cost Reduction Oversight Board and the
5 Public Utilities Commission for approval.

6 This bill establishes the standards for the Energy Cost Reduction Oversight Board
7 and the Public Utilities Commission to approve an energy cost-reduction contract.

8 This bill requires the Director of the Governor's Energy Office to notify the
9 Legislature when an energy cost-reduction contract proposal is submitted to the Public
10 Utilities Commission for approval.

11 This bill gives the Public Utilities Commission authority to direct an investor-owned
12 transmission and distribution utility, a natural gas utility and a natural gas pipeline utility
13 to assess ratepayers for the cost of an energy cost-reduction contract, the bonds associated
14 with an energy cost-reduction contract and the administration of an energy cost-reduction
15 contract.

16 This bill establishes the Energy Cost Reduction Trust Fund, to be administered by the
17 Public Utilities Commission, to receive the revenue or profits generated from energy
18 cost-reduction contracts and directs those funds towards initiatives to reduce energy costs
19 for ratepayers.

20 This bill exempts energy cost-reduction contracts for the resale of natural gas pipeline
21 capacity from the competitive bid requirements of the State Purchasing Agent.

22 This bill gives the Public Utilities Commission authority to investigate the exercise of
23 market power by a gas utility, natural gas pipeline utility and any person who owns rights
24 to natural gas pipeline capacity.

25 This bill authorizes the Public Utilities Commission to adopt rules to implement the
26 provisions of this legislation.