

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1494

S.P. 457

In Senate, April 4, 2019

### **An Act To Reform Maine's Renewable Portfolio Standard**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator VITELLI of Sagadahoc.  
Cosponsored by Representative PLUECKER of Warren and  
Senators: BREEN of Cumberland, CARPENTER of Aroostook, CHIPMAN of Cumberland,  
MILLETT of Cumberland, POULIOT of Kennebec, SANBORN, H. of Cumberland,  
SANBORN, L. of Cumberland, WOODSOME of York.

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

2 **Sec. 1. 35-A MRSA §3210**, as amended by PL 2017, c. 291, §1, is further  
3 amended to read:

4 **§3210. Renewable resources**

5 **1. Policy.** In order to ensure an adequate and reliable supply of electricity for Maine  
6 residents and to encourage the use of renewable, efficient and indigenous resources, it is  
7 the policy of this State to encourage the generation of electricity from renewable and  
8 efficient sources and to diversify electricity production on which residents of this State  
9 rely in a manner consistent with this section.

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

12 A. "Efficient resource" means a source of electrical generation that:

13 (1) Qualifies as a qualifying cogeneration facility under the Federal Energy  
14 Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart  
15 B, as in effect on January 1, 1997, was constructed prior to January 1, 1997 and  
16 meets the following efficiency standard:

17 (a) During any calendar year, the sum of the useful power output and the  
18 useful thermal energy output of the facility is no less than 60% of the total  
19 energy input to the facility.

20 For purposes of this paragraph, the term "useful power output" means the electrical or  
21 mechanical energy made available for use, exclusive of any energy used in the power  
22 production process. For purposes of this paragraph, the term "useful thermal energy"  
23 means ~~thermal~~ heat energy made available to an industrial or commercial process, net  
24 of any heat contained in condensate return and makeup water, used in a heating  
25 application or used in a space cooling application.

26 A-1. "Alternative compliance payment rate" means a certain dollar amount per  
27 kilowatt-hour set by the commission that a competitive electricity provider may pay  
28 to the commission to satisfy the portfolio requirements of subsection 3-A.

29 B. "Eligible resource" means a source of electrical generation that:

30 (1) Generates power that can physically be delivered to the control region in  
31 which the New England Power Pool, or its successor as approved by the Federal  
32 Energy Regulatory Commission, has authority over transmission, or to the  
33 Maritimes Control Area; and

34 (2) Is either a renewable resource or an efficient resource.

35 B-2. "Renewable energy credit" means a tradable instrument that represents an  
36 amount of electricity generated from eligible resources or renewable capacity  
37 resources.

38 B-3. "Renewable capacity resource" means a source of electrical generation:

1 (1) Whose total power production capacity does not exceed 100 megawatts and  
2 relies on one or more of the following:

3 (a) Fuel cells;

4 (b) Tidal power;

5 ~~(c) Solar arrays and installations;~~

6 (d) Geothermal installations;

7 (e) Hydroelectric generators that meet all state and federal fish passage  
8 requirements applicable to the generator;

9 (f) Biomass generators that are fueled by wood, wood waste or landfill gas;  
10 or

11 (g) Anaerobic digestion of by-products of waste from animals or agricultural  
12 crops, food or vegetative material, algae or organic refuse; or

13 (2) That relies on wind power installations or solar power installations.

14 B-4. "New" as applied to ~~any a~~ renewable capacity resource that is a hydroelectric  
15 generator means qualified hydroelectric output only. "New" as applied to any other  
16 renewable capacity resource means a renewable capacity resource that:

17 (1) Has an in-service date after September 1, 2005;

18 (2) Was added to an existing facility after September 1, 2005;

19 (3) For at least 2 years was not operated or was not recognized by the New  
20 England independent system operator as a capacity resource and, after September  
21 1, 2005 but before September 1, 2019, resumed operation or was recognized by  
22 the New England independent system operator as a capacity resource; or

23 (4) ~~Was refurbished after September 1, 2005 and is operating beyond its~~  
24 ~~previous useful life or is employing an alternate technology that significantly~~  
25 ~~increases the efficiency of the generation process. Received certification from the~~  
26 ~~commission:~~

27 (a) Before September 1, 2019 that it is operating beyond its previous useful  
28 life or employing an alternate technology that significantly increases the  
29 efficiency of the generation process; or

30 (b) On or after September 1, 2019 that it is operating beyond its previous  
31 useful life as evidenced by a finding that the facility would be reasonably  
32 likely to cease operation if not for substantial capital investment made after  
33 September 1, 2018.

34 For the purposes of this paragraph, "capacity resource" has the same meaning as in  
35 section 3210-C, subsection 1, paragraph A. ~~For the purposes of this paragraph, "to~~  
36 ~~refurbish" means to make an investment in equipment or facilities, other than for~~  
37 ~~routine maintenance and repair, to renovate, reequip or restore the renewable capacity~~  
38 ~~resource.~~

1 B-5. "Qualified hydroelectric output" means the following annual percentages of the  
2 total electrical output of a hydroelectric generator licensed by the Federal Energy  
3 Regulatory Commission that is a renewable capacity resource and that on January 1,  
4 2019 had a total nameplate capacity of at least 25 megawatts, as specified in the  
5 license issued by the Federal Energy Regulatory Commission, is located outside of  
6 the critical habitat designated for the Gulf of Maine distinct population segment of  
7 Atlantic salmon by the National Oceanic and Atmospheric Administration, National  
8 Marine Fisheries Service in 74 Federal Register, 29299 (2009), and is interconnected  
9 to an electric distribution system located in the State:

10 (1) In 2020, 40%;

11 (2) In 2021, 50%;

12 (3) In 2022, 60%;

13 (4) In 2023, 70%;

14 (5) In 2024, 80%;

15 (6) In 2025, 90%; and

16 (7) In 2026 and each year thereafter, 100%.

17 C. "Renewable resource" means a source of electrical generation:

18 (1) That qualifies as a small power production facility under the Federal Energy  
19 Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart  
20 B, as in effect on January 1, 1997; or

21 (2) Whose total power production capacity does not exceed 100 megawatts and  
22 that relies on one or more of the following:

23 (a) Fuel cells;

24 (b) Tidal power;

25 (c) Solar arrays and installations;

26 (d) Wind power installations;

27 (e) Geothermal installations;

28 (f) Hydroelectric generators;

29 (g) Biomass generators that are fueled by wood or wood waste, landfill gas  
30 or anaerobic digestion of agricultural products, by-products or wastes; or

31 (h) Generators fueled by municipal solid waste in conjunction with  
32 recycling.

33 D. "Thermal energy" means heat, steam, hot water or another form of thermal  
34 energy:

35 (1) Generated by a new renewable capacity resource that begins operation after  
36 June 30, 2019, as certified by the commission;

37 (2) Delivered to an end user in the State in a manner that can be verified by  
38 metering or other means certified by the commission;

1                   (3) Used for heating, cooling, humidity control, process use or other end use to  
2                   meet a need of the end user that would otherwise be met using another energy  
3                   source such as electricity or an on-site thermal energy system; and

4                   (4) Generated or delivered in accordance with any efficiency performance  
5                   standards established by the commission.

6                   E. "Thermal renewable energy credit" means a tradable instrument that represents an  
7                   amount of thermal energy equivalent to a unit of electricity. A thermal renewable  
8                   energy credit of one megawatt represents 3,412,000 British thermal units of thermal  
9                   energy, as verified by the commission.

10                  The commission shall establish by rule or order standards and procedures necessary to  
11                  implement any definition under this subsection, including but not limited to certifications  
12                  and performance and verification standards necessary for purposes of paragraphs B-4, D  
13                  and E. Rules adopted under this subsection are routine technical rules pursuant to Title 5,  
14                  chapter 375, subchapter 2-A.

15                  **3. Portfolio requirements.** As a condition of licensing pursuant to section 3203,  
16 each competitive electricity provider in this State must demonstrate in a manner  
17 satisfactory to the commission that no less than 30% of its portfolio of supply sources for  
18 retail electricity sales in this State is accounted for by eligible resources. If a competitive  
19 electricity provider represents to a customer that the provider is selling to the customer a  
20 portfolio of supply sources that includes more than 30% eligible resources, the resources  
21 necessary to supply more than 30% of that customer's load may not be applied to meet the  
22 aggregate 30% portfolio requirement. Rules adopted under this subsection are major  
23 substantive rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

24                  **3-A. Portfolio requirements; new renewable capacity resources.** Portfolio  
25 requirements for new renewable capacity resources are governed by this subsection.

26                  A. Except as provided in paragraph B, beginning January 1, 2008, as a condition of  
27 licensing pursuant to section 3203, each competitive electricity provider in this State  
28 must demonstrate in a manner satisfactory to the commission that the percentage of  
29 its portfolio of supply sources for retail electricity sales in this State accounted for by  
30 new renewable capacity resources is as follows:

- 31                   (1) One percent for the period from January 1, 2008 to December 31, 2008;  
32                   (2) Two percent for the period from January 1, 2009 to December 31, 2009;  
33                   (3) Three percent for the period from January 1, 2010 to December 31, 2010;  
34                   (4) Four percent for the period from January 1, 2011 to December 31, 2011;  
35                   (5) Five percent for the period from January 1, 2012 to December 31, 2012;  
36                   (6) Six percent for the period from January 1, 2013 to December 31, 2013;  
37                   (7) Seven percent for the period from January 1, 2014 to December 31, 2014;  
38                   (8) Eight percent for the period from January 1, 2015 to December 31, 2015;  
39                   (9) Nine percent for the period from January 1, 2016 to December 31, 2016; ~~and~~

- 1                   (10) Ten percent for the period from January 1, 2017 to December 31, ~~2022~~  
2                   2019;
- 3                   (11) Fourteen percent for the period from January 1, 2020 to December 31,  
4                   2020;
- 5                   (12) Seventeen percent for the period from January 1, 2021 to December 31,  
6                   2021;
- 7                   (13) Twenty percent for the period from January 1, 2022 to December 31, 2022;
- 8                   (14) Twenty-three percent for the period from January 1, 2023 to December 31,  
9                   2023;
- 10                  (15) Twenty-six percent for the period from January 1, 2024 to December 31,  
11                  2024;
- 12                  (16) Twenty-nine percent for the period from January 1, 2025 to December 31,  
13                  2025;
- 14                  (17) Thirty-three percent for the period from January 1, 2026 to December 31,  
15                  2026;
- 16                  (18) Thirty-seven percent for the period from January 1, 2027 to December 31,  
17                  2027;
- 18                  (19) Forty-one percent for the period from January 1, 2028 to December 31,  
19                  2028;
- 20                  (20) Forty-five percent for the period from January 1, 2029 to December 31,  
21                  2029; and
- 22                  (21) Fifty percent for the period from January 1, 2030 to December 31, 2030 and  
23                  each year thereafter.

24                  New renewable capacity resources used to satisfy the requirements of this paragraph  
25                  may not be used to satisfy the requirements of subsection 3.

26                  B. Suspensions of scheduled increases in the portfolio requirements as provided in  
27                  paragraph A are governed by this paragraph.

28                         (1) If by March 31st of the years 2010, 2012, 2014 and 2016 the commission  
29                         determines that investment in new renewable capacity resources in the preceding  
30                         2 calendar years has not been sufficient for competitive electricity providers to  
31                         meet the portfolio requirements under paragraph A and that the resulting use of  
32                         renewable energy credits pursuant to subsection 8 or the alternative compliance  
33                         payment mechanism pursuant to subsection 9, or both of these methods, has  
34                         burdened electricity customers in the State without providing the benefits of new  
35                         renewable capacity resources, the commission may suspend all or some of the  
36                         future scheduled increases in the portfolio requirements under paragraph A.

37                         (2) If the commission finds that alternative compliance payments are made  
38                         pursuant to subsection 9 in 3 consecutive calendar years, the commission shall  
39                         temporarily suspend all or some of the future scheduled increases in the portfolio  
40                         requirements under paragraph A.

1 (3) If the commission suspends any scheduled increases in the portfolio  
2 requirements under paragraph A pursuant to subparagraph (1) or (2), the  
3 commission may resume increases, limited to no more than one percentage point  
4 per year over the previous year, in the portfolio requirements after a minimum of  
5 one year.

6 C. No later than March 31, 2008 and annually thereafter, the commission shall  
7 submit a report regarding the status of new renewable capacity resources in the State  
8 and compliance with the portfolio requirements under paragraph A to the joint  
9 standing committee of the Legislature having jurisdiction over utilities and energy  
10 matters. The report must include, but is not limited to, a description of new renewable  
11 capacity resources available to meet the portfolio requirements under paragraph A,  
12 documentation of the loss of any existing renewable generation capacity in the State,  
13 the status of implementation of the ~~new renewable capacity resources~~ portfolio  
14 requirements under paragraph A, including any suspensions pursuant to paragraph B,  
15 and recommendations to stimulate investment in new renewable capacity resources.  
16 If the commission has reliable information about benefits and costs of the portfolio  
17 requirements under paragraph A, over both the short and long terms with respect to  
18 the State's economy, environmental quality or electricity consumers, the commission  
19 shall include that information in the report.

20 D. Retail electricity sales pursuant to a supply contract or standard-offer service  
21 arrangement executed by a competitive electricity provider that is in effect on the  
22 effective date of this subsection is exempt from the requirements of this subsection  
23 until the end date of the current term of the supply contract or standard-offer service  
24 arrangement.

25 The commission shall adopt rules to implement this subsection. Rules adopted under this  
26 subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

27 **3-B. Portfolio requirements; thermal renewable energy credits.** Each  
28 competitive electricity provider must, in addition to meeting the other portfolio  
29 requirements of subsections 3 and 3-A, demonstrate in a manner satisfactory to the  
30 commission that it has purchased thermal renewable energy credits in an amount at least  
31 equal to the following percentages of its portfolio of supply sources for retail electricity  
32 sales in this State:

33 A. For calendar year 2020, 0.4%;

34 B. For calendar year 2021, 0.8%;

35 C. For calendar year 2022, 1.2%;

36 D. For calendar year 2023, 1.6%;

37 E. For calendar year 2024, 2%;

38 F. For calendar year 2025, 2.4%;

39 G. For calendar year 2026, 2.8%;

40 H. For calendar year 2027, 3.2%;

41 I. For calendar year 2028, 3.6%; and



1           J. For calendar year 2029, and each year thereafter, 4%.

2           **4. Report.** In view of property tax benefits, developments in other states and the  
3 development of a market for tradable credits for satisfying eligible resource requirements,  
4 the commission shall review the 30% portfolio requirement and make a recommendation  
5 for any change to the joint standing committee of the Legislature having jurisdiction over  
6 utilities and energy matters no later than 5 years after the beginning of retail competition.

7           **7. Information.** To the extent that funding is available, the commission shall inform  
8 electricity consumers in this State of the benefits of electricity generated in this State  
9 using renewable resources and of the opportunities available in this State to purchase  
10 electricity that is generated using those resources, including, but not limited to, the green  
11 power offer and other green power supply products and renewable energy credit products  
12 certified under section 3212-A. The commission may not promote any renewable  
13 resources over others. The commission may apply for, receive and expend grant money  
14 from the United States Department of Energy and other government agencies for this  
15 purpose. The commission may create or cause to be created a brand or logo to identify  
16 Maine renewable resources, including the green power offer and other green power  
17 supply products and renewable energy credit products certified under section 3212-A, to  
18 consumers. The commission shall register any mark or logo created pursuant to this  
19 subsection with the United States Patent and Trademark Office or in accordance with  
20 Title 10, chapter 301-A, or both. Any brand or logo created pursuant to this subsection  
21 may only be used in accordance with the purposes of this subsection as approved by the  
22 commission.

23           **8. Credit trading.** The commission shall allow competitive electricity providers to  
24 satisfy the portfolio requirements of subsections 3 and 3-A through the use of renewable  
25 energy credits if the commission determines that a reliable system of electrical attribute  
26 trading exists. When renewable energy credits are used to satisfy the portfolio  
27 requirements of subsections 3 and 3-A, the value of a renewable energy credit for  
28 electricity generated by a community-based renewable energy project, as defined in  
29 section 3602, that is participating in the community-based renewable energy pilot  
30 program established in section 3603 and elects the renewable energy credit multiplier  
31 under section 3605 is 150% of the amount of the electricity.

32           **9. Alternative compliance payment; portfolio requirements for new renewable  
33 capacity resources.** The commission shall allow competitive electricity providers to  
34 satisfy the portfolio requirements for new renewable capacity resources under subsection  
35 3-A through an alternative compliance payment mechanism in accordance with this  
36 subsection.

37           A. The commission shall set the alternative compliance payment rate by rule and  
38 shall publish the alternative compliance payment rate by January 31st of each year. In  
39 setting the rate, the commission shall take into account prevailing market prices,  
40 standard-offer service prices for electricity, reliance on alternative compliance  
41 payments to meet the requirements of subsection 3-A and investment in new  
42 renewable capacity resources in the State during the previous calendar year.

1 B. The commission shall collect alternative compliance payments made by  
2 competitive electricity providers and shall deposit all funds collected under this  
3 paragraph in the Energy Efficiency and Renewable Resource Fund established under  
4 section 10121, subsection 2 to be used to fund research, development and  
5 demonstration projects relating to renewable energy technologies and to fund rebates  
6 for cost-effective renewable energy technologies.

7 The commission shall adopt rules to implement this subsection. Rules adopted under this  
8 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

9 **Sec. 2. 35-A MRSA §3210-G** is enacted to read:

10 **§3210-G. Renewable portfolio standard procurement**

11 The commission shall direct investor-owned transmission and distribution utilities to  
12 enter into one or more contracts for energy or renewable energy credits from new  
13 renewable capacity resources in accordance with this section. For purposes of this  
14 section, "new renewable capacity resource" and "renewable energy credit" have the same  
15 meanings as in section 3210.

16 **1. Competitive procurement.** The commission shall conduct competitive  
17 solicitations in order to choose new renewable capacity resources for contracts under this  
18 section.

19 A. Beginning in 2019, the commission shall conduct competitive solicitations under  
20 this section for an amount of energy or renewable energy credits from new renewable  
21 capacity resources in each calendar year that is at least equal to 1/2 of the total  
22 portfolio of new renewable capacity resources required in that year under section  
23 3210, subsection 3-A, as determined by the commission.

24 B. To the extent sufficient resources are available, 75% of the energy or renewable  
25 energy credits contracted under this section must come from new renewable capacity  
26 resources that begin commercial operations after June 30, 2019 and 25% must come  
27 from new renewable capacity resources that began commercial operations on or prior  
28 to June 30, 2019. The first competitive solicitation for energy or renewable energy  
29 credits from new renewable capacity resources that began commercial operations on  
30 or prior to June 30, 2019 must occur within 3 months of the effective date of this  
31 paragraph. Competitive solicitations for energy or renewable energy credits from  
32 new renewable capacity resources that begin commercial operations after June 30,  
33 2019 must occur at least 3 times before January 1, 2024, unless the 75% requirement  
34 under this paragraph is met through fewer solicitations.

35 C. In conducting a solicitation and choosing new renewable capacity resources for  
36 contracts under this section, the commission shall weigh for each new renewable  
37 capacity resource the benefits to ratepayers and the benefits to the State's economy as  
38 follows:

39 (1) A weight of 70% must be given to the benefits to ratepayers; and

40 (2) A weight of 30% must be given to benefits to the economy, which may  
41 include, but are not limited to:



1 portfolio requirements for these resources. The bill requires the commission to conduct  
2 annual competitive solicitations for the long-term contracts.