

# MAINE STATE LEGISLATURE

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Date: 6/10/19

L.D. 1757  
(Filing No. H-539)

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1251, L.D. 1757, Bill, "An Act To Clarify Certain Standards for the Efficiency Maine Trust's Triennial Plan"

Amend the bill by inserting after the title and before the enacting clause the following:

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** it is necessary that this legislation take effect prior to the start of the next fiscal year for the Efficiency Maine Trust to remove uncertainty and prevent market disruption for Maine contractors, vendors and customers; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by inserting after the enacting clause and before section 1 the following:

**Sec. 1. 30-A MRSA §4706, sub-§2, ¶D,** as amended by PL 1993, c. 175, §3, is further amended to read:

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; ~~and~~

**Sec. 2. 30-A MRSA §4706, sub-§2, ¶E,** as enacted by PL 1993, c. 175, §4, is amended to read:

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D; and

**COMMITTEE AMENDMENT**

1           **Sec. 3. 30-A MRSA §4706, sub-§2, ¶F** is enacted to read:

2           F. The Maine State Housing Authority may provide records to the Efficiency Maine  
3           Trust pursuant to Title 35-A, section 10104, subsection 4, paragraph A, subparagraph  
4           (2).'

5           Amend the bill by striking out all of section 2 and inserting the following:

6           **Sec. 2. 35-A MRSA §10104, sub-§4**, as amended by PL 2013, c. 369, Pt. A,  
7           §§10 to 13, is further amended to read:

8           **4. Triennial plan.** The board shall vote on a detailed, triennial, ~~energy efficiency,~~  
9           ~~alternative energy resources and conservation~~ plan that includes the quantifiable measures  
10           of performance metrics developed under subsection 3 and make a full report of the vote  
11           to the commission in accordance with this subsection. The triennial plan must provide  
12           integrated planning, program design and implementation strategies for all energy  
13           efficiency, alternative energy resources and conservation programs administered by the  
14           trust, including but not limited to the electric efficiency and conservation programs under  
15           section 10110, the natural gas efficiency and conservation programs under section 10111,  
16           the Regional Greenhouse Gas Initiative Trust Fund under section 10109, the Heating  
17           Fuels Efficiency and Weatherization Fund under section 10119 and any state or federal  
18           funds or publicly directed funds accepted by or allocated to the trust for the purposes of  
19           this chapter. The triennial plan must include provisions for the application of appropriate  
20           program funds to support workforce development efforts that are consistent with and  
21           promote the purposes of the trust. ~~Beginning January 1, 2011, the triennial plan must~~  
22           ~~specify the appropriate participation of the State in national and regional carbon markets.~~  
23           The plan must ~~be consistent with~~ take into consideration the comprehensive state energy  
24           plan pursuant to Title 2, section 9, subsection 3, paragraph C. The plan must include, but  
25           is not limited to, efficiency and conservation program budget allocations, objectives,  
26           targets, performance metrics, program designs, program implementation strategies,  
27           timelines and other relevant information.

28           A. The triennial plan must be developed by the trust, in consultation with entities and  
29           agencies engaged in delivering efficiency programs in the State, to authorize and  
30           govern or coordinate implementation of energy efficiency and weatherization  
31           programs in the State. The triennial plan must identify all the maximum achievable  
32           cost-effective energy efficiency savings, as defined by rule by the trust, and related  
33           programs that could be implemented pursuant to sections 10110 and 10111, the costs  
34           and benefits of such programs and the basis and support for such identified costs and  
35           benefits. The trust shall conduct an evaluation of all the maximum cost-effective  
36           potential for electrical and natural gas energy efficiency savings in the State at least  
37           once every ~~5~~ 3 years.

38           (1) Transmission and distribution utilities and natural gas utilities shall furnish  
39           data to the trust that the trust requests under this subsection to develop and  
40           implement the triennial plan or conduct the evaluation of all cost-effective  
41           potential for electrical and natural gas energy efficiency savings subject to such  
42           confidential treatment as a utility may request and the board determines  
43           appropriate pursuant to section 10106. The costs of providing the data are  
44           deemed reasonable and prudent expenses of the utilities and are recoverable in  
45           rates.

1           (2) Unless prohibited by federal law, the Maine State Housing Authority and the  
 2           Department of Health and Human Services shall furnish to the trust data  
 3           pertaining to the identity, location and contact information, but not including  
 4           income or asset information, of households that qualify for low-income  
 5           programs, as determined necessary by the trust to develop and implement the  
 6           triennial plan and to evaluate program effectiveness. Data received pursuant to  
 7           this subparagraph is deemed to be received by the commission and is subject to a  
 8           protective order issued by the commission pursuant to section 1311-A.

9           B. In developing the triennial plan, the staff of the trust shall consult the board and  
 10          provide the opportunity for the board to provide input on drafts of the plan.

11          B-1. In developing the triennial plan, the trust shall provide the joint standing  
 12          committee of the Legislature having jurisdiction over energy matters an opportunity  
 13          to provide input on the plan, which may occur at the same time the trust consults with  
 14          other entities in the development of the plan.

15          C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of  
 16          the trustees upon a finding that the plan is consistent with the statutory authority for  
 17          each source of funds that will be used to implement the plan, advances the state  
 18          energy efficiency targets in paragraph F and, reflects the best practices of program  
 19          administration under subsection 2 and is consistent with the provisions of this section.  
 20          ~~The plan must include, but is not limited to, efficiency and conservation program~~  
 21          ~~budget allocations, objectives, targets, measures of performance, program designs,~~  
 22          ~~program implementation strategies, timelines and other relevant information.~~

23          D. Prior to submission of the triennial plan to the commission, the trust shall offer to  
 24          provide a detailed briefing on the draft plan to the joint standing committee of the  
 25          Legislature having jurisdiction over energy matters and, at the request of the  
 26          committee, shall provide such a briefing and opportunity for input from the  
 27          committee. After providing such opportunity for input and making any changes as a  
 28          result of any input received, the board shall deliver the plan to the commission for its  
 29          review and approval. The At the request of the trust or any party to the triennial plan,  
 30          the commission shall open an adjudicatory proceeding and issue an order either  
 31          approving the plan and issuing the appropriate orders to transmission and distribution  
 32          utilities and gas utilities or rejecting the plan and stating the reasons for the rejection  
 33          to review the triennial plan. If an adjudicatory proceeding is not requested, the  
 34          commission may use an adjudicatory proceeding or other process to review the  
 35          triennial plan. The commission shall review the triennial plan to determine whether it  
 36          will capture the maximum achievable cost-effective energy efficiency savings. In  
 37          conducting the review, the commission shall defer to the trust's calculations of energy  
 38          savings as long as the calculations were conducted consistent with rules of the trust  
 39          and are supported by evidence in the record and the trust used a reasonable and  
 40          transparent process to make the technical determinations necessary to make those  
 41          calculations. The commission shall reject elements of the plan that propose to use  
 42          funds generated pursuant to sections 3210-C, 10110, 10111 or 10119 if the plan fails  
 43          to reasonably explain how these elements of the program would achieve the  
 44          objectives and implementation requirements of the programs established under those  
 45          sections or the ~~measures of performance~~ metrics under subsection 3. If the

1 commission approves the triennial plan, the commission shall issue the appropriate  
 2 orders to transmission and distribution utilities and natural gas utilities for the  
 3 procurement of energy efficiency resources identified within the plan pursuant to  
 4 section 10110, subsection 4-A and section 10111, subsection 2. If the commission  
 5 rejects the triennial plan, the commission shall issue an order stating the reasons for  
 6 the rejection. Funds generated under these statutory authorities may not be used  
 7 pursuant to the triennial plan unless those elements of the plan proposing to use the  
 8 funds have been approved by the commission. ~~The commission shall approve all~~  
 9 ~~elements of the triennial plan it determines to be cost effective, reliable and~~  
 10 ~~achievable and shall incorporate into gas utility and transmission and distribution~~  
 11 ~~rates sufficient revenue to provide for the procurement of energy efficiency resources~~  
 12 ~~identified within the plan pursuant to section 10110, subsection 4 A and section~~  
 13 ~~10111, subsection 2.~~ The commission shall approve or reject the entire plan or  
 14 elements of the plan within 120 days of its delivery to the commission. The board,  
 15 within 30 days of final commission approval of ~~its~~ the triennial plan, shall submit the  
 16 triennial plan to the joint standing committee of the Legislature having jurisdiction  
 17 over energy matters together with any explanatory or other supporting material as the  
 18 committee may request and, at the request of the committee, shall provide a detailed  
 19 briefing on the ~~final~~ triennial plan. After receipt of the triennial plan, the joint  
 20 standing committee of the Legislature having jurisdiction over energy matters may  
 21 submit legislation relating to the triennial plan.

22 E. The trust shall determine the period to be covered by the triennial plan except that  
 23 the period of the plan may not interfere with the delivery of any existing contracts to  
 24 provide energy efficiency services that were previously procured pursuant to  
 25 efficiency and conservation programs administered by the commission.

26 F. It is an objective of the triennial plan to design, coordinate and integrate sustained  
 27 energy efficiency and weatherization programs that are available to all energy  
 28 consumers in the State and to users of all fuel types. The plan must set forth the costs  
 29 and benefits of energy efficiency programs that advance the following goals; and  
 30 funding necessary to meet those goals:

- 31 (1) Reducing energy costs, including residential heating costs;
- 32 (2) Weatherizing substantially all homes whose owners or occupants are willing  
 33 to participate in and share the costs of cost-effective home weatherization to a  
 34 minimum standard of weatherization, as defined by the trust, by 2030;
- 35 (3) Reducing peak-load demand for electricity through trust programs by 300  
 36 megawatts by 2020;
- 37 (4) By 2020, achieving electricity and natural gas program savings of at least  
 38 20% and heating fuel savings of at least 20%, as defined in and determined  
 39 pursuant to the ~~measures~~ of performance metrics approved by the commission  
 40 under section 10120;
- 41 (5) Creating stable private sector jobs providing alternative energy and energy  
 42 efficiency products and services in the State by 2020; and

1                   (6) ~~Reducing Contributing to the effort to reduce~~ greenhouse gas emissions from  
2                   the heating and cooling of buildings in the State by amounts consistent with the  
3                   State's goals greenhouse gas emission levels established in Title 38, section 576.

4                   ~~The trust shall preserve when possible and appropriate the opportunity for carbon~~  
5                   ~~emission reductions to be monetized and sold into a voluntary carbon market. Any~~  
6                   ~~program of the trust that supports weatherization of buildings must be voluntary and~~  
7                   ~~may not constitute a mandate that would prevent the sale of emission reductions~~  
8                   ~~generated through weatherization measures into a voluntary carbon market.~~

9                   ~~Except when specifically provided in the individual goals under this paragraph, the~~  
10                  ~~trust may consider expected savings from market effects not attributable to the trust~~  
11                  ~~as well as efforts by other organizations, including but not limited to federally-funded~~  
12                  ~~low income weatherization programs.~~

13                  As used in this paragraph, "heating fuel" means liquefied petroleum gas, kerosene or  
14                  #2 heating oil, but does not include fuels when used for industrial or manufacturing  
15                  processes.

16                  G. After the triennial plan is approved, the trust or any party to the triennial plan may  
17                  petition for, or the commission may initiate on its own, consideration of revising the  
18                  calculations of avoided energy costs used in the determination of maximum  
19                  achievable cost-effective energy efficiency resources pursuant to section 10110,  
20                  subsection 4-A or section 10111, subsection 2 upon a showing that, subsequent to the  
21                  publication of the avoided energy cost study relied upon, changes in price forecasts  
22                  would result in more than a 25% change in the value of avoided energy cost affecting  
23                  a significant portion of the program activity in the triennial plan.'

24                  Amend the bill by striking out all of section 7 and inserting the following:

25                  '**Sec. 7. 35-A MRS**A §10111, sub-§2, as amended by PL 2017, c. 358, §1, is  
26                  further amended to read:

27                  **2. Natural gas conservation fund; procurement level.** The natural gas  
28                  conservation fund, which is a nonlapsing fund, is established to carry out the purposes of  
29                  this section. ~~The commission shall assess each gas utility, in accordance with the~~  
30                  ~~triennial plan, an amount necessary to capture all cost-effective energy efficiency that is~~  
31                  ~~achievable and reliable for those consumers who are eligible to receive funds from the~~  
32                  ~~natural gas conservation fund~~ ensure that gas utilities on behalf of their ratepayers  
33                  procure through the trust the maximum achievable cost-effective natural gas energy  
34                  efficiency and conservation resources pursuant to section 10104, subsection 4. The  
35                  commission may issue any appropriate order to the gas utilities necessary to achieve the  
36                  goals of this subsection, including the collection of funds for the procurement of cost-  
37                  effective energy efficiency resources. The commission shall direct a gas utility that  
38                  collects any ~~portion of the assessment funds~~ under this subsection from a customer that is  
39                  a large-volume manufacturer and large-volume agricultural business to collect the  
40                  ~~assessment funds~~ only on the first 1,000,000 centum cubic feet of natural gas used by that  
41                  manufacturer or agricultural business in each year. The limitation on the collection of the  
42                  ~~assessment funds~~ from large-volume manufacturers and large-volume agricultural  
43                  businesses may not affect the trust's determination of the amount necessary to capture all  
44                  cost-effective energy efficiency that is achievable and reliable. The limitation does not

# COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to H.P. 1251, L.D. 1757

1 ~~limit~~ prohibit the eligibility of a large-volume manufacturer or large-volume agricultural  
2 business to participate in a natural gas conservation program. All amounts collected  
3 under this subsection must be transferred to the natural gas conservation fund. Any  
4 interest on funds in the fund must be credited to the fund. Funds not spent in any fiscal  
5 year remain in the fund to be used for the purposes of this section.

6 ~~The assessments charged to~~ funds collected from gas utilities under this section are just  
7 and reasonable costs for rate-making purposes and must be reflected in the rates of gas  
8 utilities.

9 All funds collected pursuant to this section are collected under the authority and for the  
10 purposes of this section and are deemed to be held in trust for the purposes of benefiting  
11 natural gas consumers ~~served by the gas utilities assessed under this subsection~~. In the  
12 event funds are not expended or contracted for expenditure within 2 years of being  
13 collected from consumers, the commission shall ensure that the value of those funds is  
14 returned to consumers.

15 For purposes of this subsection, "large-volume manufacturer" means a customer that is a  
16 gas utility ratepayer engaged in manufacturing in the State and purchases at least  
17 1,000,000 centum cubic feet of natural gas per year. For purposes of this subsection,  
18 "large-volume agricultural business" means a customer that is a gas utility ratepayer that  
19 purchases at least 1,000,000 centum cubic feet of natural gas per year and is engaged in  
20 the commercial growing or harvesting of plants or commercial aquaculture, as defined in  
21 Title 12, section 6001, subsection 1, in the State.

22 When determining the maximum achievable cost-effective natural gas energy efficiency  
23 resources, the commission shall apply the discount rate adopted by the trust and ensure  
24 that the calculations of avoided energy costs are consistent with rules adopted by the trust  
25 and are supported by evidence in the record. Avoided energy costs must include but are  
26 not limited to the retail value of natural gas supply including a wholesale risk premium  
27 and demand reduction induced price effects. The trust shall use, and the commission  
28 shall give deference to, values for each element of avoided energy cost from a regional  
29 avoided energy cost study as long as the analysis has been developed through a  
30 transparent process, with input from state agencies, public advocates, utilities or energy  
31 efficiency administrators from at least 3 other states in New England and the analysis has  
32 been published not more than 24 months prior to the trust's filing of the triennial plan.  
33 When values specific to the State are not available in the regional study, the trust may  
34 use, and the commission shall give deference to, regional values provided in that regional  
35 study or values determined from other sources when supported by evidence in the record.

36 Rules adopted by the commission under this subsection are routine technical rules as  
37 defined in Title 5, chapter 375, subchapter 2-A.'

38 Amend the bill by inserting after section 9 the following:

39 '**Emergency clause.** In view of the emergency cited in the preamble, this  
40 legislation takes effect when approved.'

41 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
42 section number to read consecutively.

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**SUMMARY**

This amendment makes the following changes to the bill.

1. It adds language to clarify the provision in the bill regarding the requirement for the Maine State Housing Authority and the Department of Health and Human Services to provide data to the Efficiency Maine Trust.

2. It provides that the Public Utilities Commission is required to conduct an adjudicatory proceeding to review the triennial plan if requested by the Efficiency Maine Trust or any party to the triennial plan; otherwise, the commission may use an adjudicatory proceeding or other process to complete the review.

3. It makes other technical changes to clarify language.

**FISCAL NOTE REQUIRED**

**(See attached)**





# 129th MAINE LEGISLATURE

LD 1757

LR 1639(02)

**An Act To Clarify Certain Standards for the Efficiency Maine Trust's Triennial Plan**

**Fiscal Note for Bill as Amended by Committee Amendment**

**Committee: Energy, Utilities and Technology**

**Fiscal Note Required: Yes**

*A(H-539)*

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## Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Any additional costs to the Efficiency Maine Trust or the Public Utilities Commission as a result of changes to the criteria for developing or implementing the triennial plan are anticipated to be minor and can be absorbed within existing budgeted resources.

Any additional costs to the Department of Health and Human Services and the Maine State Housing Authority from the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.