

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1757

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H.P. 1251

House of Representatives, May 21, 2019

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

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative COOPER of Yarmouth.  
Cosponsored by Senator SANBORN, H. of Cumberland and  
Representative: BERRY of Bowdoinham.

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

2 **Sec. 1. 35-A MRSA §10104, sub-§3**, as amended by PL 2013, c. 369, Pt. A, §9,  
3 is further amended to read:

4 **3. Performance metrics.** The trust shall develop quantifiable ~~measures~~ of  
5 performance metrics for all programs it administers and to which it will hold accountable  
6 all recipients of funding from the trust and recipients of funds used to deliver energy and  
7 energy efficiency and weatherization programs administered or funded by the trust. Such  
8 ~~measures~~ performance metrics may include, but are not limited to, reduced energy  
9 consumption, increased use of alternative energy resources, reduced heating costs,  
10 reduced capacity demand for natural gas, electricity and fossil fuels, reduced carbon  
11 dioxide emissions, program and overhead costs and cost-effectiveness, the number of  
12 new jobs created by the award of trust funds, the number of energy efficiency trainings or  
13 certification courses completed and the amount of sales generated.

14 **Sec. 2. 35-A MRSA §10104, sub-§4**, as amended by PL 2013, c. 369, Pt. A,  
15 §§10 to 13, is further amended to read:

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

36 A. The triennial plan must be developed by the trust, in consultation with entities and  
37 agencies engaged in delivering efficiency programs in the State, to authorize and  
38 govern or coordinate implementation of energy efficiency and weatherization  
39 programs in the State. The triennial plan must identify ~~all~~ the maximum achievable  
40 cost-effective energy efficiency savings, as defined by rule by the trust, and related  
41 programs that could be implemented pursuant to sections 10110 and 10111, the costs  
42 and benefits of such programs and the basis and support for such identified costs and  
43 benefits. The trust shall conduct an evaluation of ~~all~~ the maximum cost-effective

1 potential for electrical and natural gas energy efficiency savings in the State at least  
2 once every ~~5~~ 3 years.

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

11 (2) The Maine State Housing Authority and the Department of Health and  
12 Human Services shall furnish to the trust data pertaining to the identity, location  
13 and contact information, but not including income or asset information, of  
14 households that qualify for low-income programs, as determined necessary by the  
15 trust to develop and implement the triennial plan and to evaluate program  
16 effectiveness. Data received pursuant to this subparagraph is deemed to be  
17 received by the commission and is subject to a protective order issued by the  
18 commission pursuant to section 1311-A.

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

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

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

33 D. Prior to submission of the triennial plan to the commission, the trust shall offer to  
34 provide a detailed briefing on the draft plan to the joint standing committee of the  
35 Legislature having jurisdiction over energy matters and, at the request of the  
36 committee, shall provide such a briefing and opportunity for input from the  
37 committee. After providing such opportunity for input and making any changes as a  
38 result of any input received, the board shall deliver the plan to the commission for its  
39 review and approval. The commission shall open an adjudicatory proceeding ~~and~~  
40 ~~issue an order either approving the plan and issuing the appropriate orders to~~  
41 ~~transmission and distribution utilities and gas utilities or rejecting the plan and stating~~  
42 ~~the reasons for the rejection to review the triennial plan.~~ The commission shall  
43 review the triennial plan to determine whether it will capture the maximum  
44 achievable cost-effective energy efficiency savings. In conducting the review, the  
45 commission shall defer to the trust's calculations of energy savings as long as the

1 calculations were conducted consistent with rules of the trust and are supported by  
2 evidence in the record and the trust used a reasonable and transparent process to  
3 make the technical determinations necessary to make those calculations. The  
4 commission shall reject elements of the plan that propose to use funds generated  
5 pursuant to sections 3210-C, 10110, 10111 or 10119 if the plan fails to reasonably  
6 explain how these elements of the program would achieve the objectives and  
7 implementation requirements of the programs established under those sections or the  
8 ~~measures of performance metrics~~ under subsection 3. If the commission approves the  
9 triennial plan, the commission shall issue the appropriate orders to transmission and  
10 distribution utilities and natural gas utilities for the procurement of energy efficiency  
11 resources identified within the plan pursuant to section 10110, subsection 4-A and  
12 section 10111, subsection 2. If the commission rejects the triennial plan, the  
13 commission shall issue an order stating the reasons for the rejection. Funds generated  
14 under these statutory authorities may not be used pursuant to the triennial plan unless  
15 those elements of the plan proposing to use the funds have been approved by the  
16 commission. ~~The commission shall approve all elements of the triennial plan it~~  
17 ~~determines to be cost-effective, reliable and achievable and shall incorporate into gas~~  
18 ~~utility and transmission and distribution rates sufficient revenue to provide for the~~  
19 ~~procurement of energy efficiency resources identified within the plan pursuant to~~  
20 ~~section 10110, subsection 4-A and section 10111, subsection 2.~~ The commission  
21 shall approve or reject the entire plan or elements of the plan within 120 days of its  
22 delivery to the commission. The board, within 30 days of final commission approval  
23 of ~~its~~ the triennial plan, shall submit the triennial plan to the joint standing committee  
24 of the Legislature having jurisdiction over energy matters together with any  
25 explanatory or other supporting material as the committee may request and, at the  
26 request of the committee, shall provide a detailed briefing on the ~~final~~ triennial plan.  
27 After receipt of the triennial plan, the joint standing committee of the Legislature  
28 having jurisdiction over energy matters may submit legislation relating to the  
29 triennial plan.

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

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

- 39 (1) Reducing energy costs, including residential heating costs;
- 40 (2) Weatherizing substantially all homes whose owners or occupants are willing  
41 to participate in and share the costs of cost-effective home weatherization to a  
42 minimum standard of weatherization, as defined by the trust, by 2030;
- 43 (3) Reducing peak-load demand for electricity through trust programs by 300  
44 megawatts by 2020;

1 (4) By 2020, achieving electricity and natural gas program savings of at least  
2 20% and heating fuel savings of at least 20%, as defined in and determined  
3 pursuant to the ~~measures of performance~~ metrics approved by the commission  
4 under section 10120;

5 (5) Creating stable private sector jobs providing alternative energy and energy  
6 efficiency products and services in the State by 2020; and

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

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

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

19 After the triennial plan is approved, the trust or any party to the triennial plan may  
20 petition for, or the commission may initiate on its own, consideration of revising the  
21 calculations of avoided energy costs upon a showing that, subsequent to the  
22 publication of the avoided cost study relied upon, changes in price forecasts would  
23 result in more than a 25% change in the value of avoided cost affecting a significant  
24 portion of the program activity in the triennial plan.

25 As used in this paragraph, "heating fuel" means liquefied petroleum gas, kerosene or  
26 #2 heating oil, but does not include fuels when used for industrial or manufacturing  
27 processes.

28 **Sec. 3. 35-A MRSA §10104, sub-§5, ¶D,** as enacted by PL 2009, c. 372, Pt. B,  
29 §3, is amended to read:

30 D. The performance of the trust and individual programs and program delivery  
31 agents or service providers in meeting the objectives, targets and ~~measures of~~  
32 performance metrics approved by the commission and contained in the triennial plan.

33 **Sec. 4. 35-A MRSA §10104, sub-§6,** as enacted by PL 2009, c. 372, Pt. B, §3, is  
34 amended to read:

35 **6. Updated plans.** Within ~~30~~ 90 days of completion of the annual report under  
36 subsection 5, the director shall submit to the board an annual update plan describing any  
37 significant changes to the triennial plan under subsection 4 related to program budget  
38 allocations, goals, targets, ~~measures of performance~~ metrics, program designs,  
39 implementation strategies, timelines and other relevant information for the year ahead for  
40 all funds administered and managed by the trust. The director or any contractor, grantee  
41 or agency delivering programs may not execute any significant changes until the changes  
42 are approved by the board and, in the case of significant changes to programs using funds

1 generated by assessments under this chapter, until the changes are also approved by the  
2 commission using the same standard as for the triennial plan.

3 All annual update plans must be presented to the commission and the joint standing  
4 committee of the Legislature having jurisdiction over energy matters.

5 **Sec. 5. 35-A MRS §10110, sub-§4-A**, as amended by PL 2015, c. 255, §1, is  
6 further amended to read:

7 **4-A. Procurement of cost-effective energy efficiency and conservation resources.**

8 The commission shall ensure that transmission and distribution utilities on behalf of their  
9 ratepayers procure all through the trust the maximum achievable cost-effective electric  
10 energy efficiency and conservation resources ~~found by the commission to be cost-~~  
11 ~~effective, reliable and achievable~~ pursuant to section 10104, subsection 4, except that the  
12 commission may not require the inclusion in rates under this subsection of a total amount  
13 that exceeds 4% of total retail electricity and transmission and distribution sales in the  
14 State as determined by the commission by rule. The cost of procurement of cost-effective  
15 electric energy efficiency and conservation resources is a just and reasonable element of  
16 rates. The commission may issue any appropriate orders to transmission and distribution  
17 utilities necessary to achieve the goals of this subsection. When determining the ~~amount~~  
18 ~~of maximum achievable cost-effective electric energy efficiency resources to be procured~~  
19 ~~under this subsection~~, the commission shall:

20 A. Consider ~~electric~~ energy efficiency resources that are reasonably foreseeable to be  
21 acquired by the trust using all other sources of revenue, including, but not limited to,  
22 the Regional Greenhouse Gas Initiative Trust Fund under section 10109;

23 B. ~~Ensure that~~ Apply the discount rate adopted by the trust and ensure that the  
24 calculations of avoided energy costs and the budget identified by the trust in its  
25 triennial plan as needed to capture all cost-effective electric energy efficiency  
26 resources are reasonable, based on sound evidence and make use of best practices  
27 across the region; and are consistent with rules adopted by the trust and are supported  
28 by evidence in the record. Avoided energy costs must include but are not limited to  
29 the following elements:

30 (1) Retail value of electricity supply including a wholesale risk premium;

31 (2) Statewide average value of avoided marginal transmission and distribution  
32 costs;

33 (3) Statewide average for line losses; and

34 (4) Demand reduction induced price effects.

35 The trust shall use, and the commission shall give deference to, values for each  
36 element of avoided energy cost from a regional avoided energy supply cost study as  
37 long as the analysis has been developed through a transparent process, with input  
38 from state agencies, public advocates, utilities or energy efficiency administrators  
39 from at least 3 other states in New England and the analysis has been published not  
40 more than 24 months prior to the trust's filing of the plan. When values specific to the  
41 State are not available in the regional study, the trust may use, and the commission

1 shall give deference to, regional values provided in that regional study or values  
2 determined from other sources when supported by evidence in the record; and

3 C. Maximize total electricity savings for all ratepayers.

4 The commission shall consider gross efficiency savings for the purpose of determining  
5 savings that are cost-effective, reliable and achievable ~~and. The commission shall~~  
6 ~~consider both whether the trust is taking reasonable steps to achieve high net and gross~~  
7 ~~efficiency savings for the purpose of determining the appropriateness of the amount~~  
8 ~~identified by the trust in its triennial plan as needed to capture all cost-effective electric~~  
9 ~~energy efficiency resources, including but not limited to the use of national standard~~  
10 ~~practices as identified by the trust by rule.~~

11 Rules adopted under this subsection are routine technical rules under Title 5, chapter 375,  
12 subchapter 2-A.

13 **Sec. 6. 35-A MRSA §10111, sub-§1**, as enacted by PL 2009, c. 372, Pt. B, §3, is  
14 amended to read:

15 **1. Program established.** In accordance with the goals and objectives of the triennial  
16 plan, the trust shall establish a cost-effective conservation program to promote the  
17 efficient use of natural gas. Each gas utility in the State ~~that serves at least 5,000~~  
18 ~~residential customers~~ shall contribute data and other relevant information to assist in the  
19 development of the program. In determining whether the program is cost-effective, the  
20 trust may consider whether it promotes sustainable economic development or reduces  
21 greenhouse gas emissions to the extent the trust can quantify or otherwise reasonably  
22 identify such effects. The trust shall ~~seek to~~ encourage efficiency in natural gas use,  
23 provide incentives for ~~the development of new, energy-efficient business activity~~ cost-  
24 effective energy efficiency measures in the State and take into account the cost and  
25 benefits of energy efficiency and conservation to existing business activity in the State.

26 A. The trust shall consider, without limitation, a natural gas conservation program  
27 that:

28 (1) Increases consumer awareness of cost-effective options for conserving  
29 energy;

30 (2) Creates more favorable market conditions for the increased use of efficient  
31 products and services; and

32 (3) Promotes sustainable economic development and reduces environmental  
33 damage.

34 B. The trust shall apportion available funds such that:

35 (1) A reasonable percentage of the available funds is directed to programs for  
36 low-income residential consumers, as defined by the trust. The trust shall  
37 establish the percentage based on an assessment of the opportunity for cost-  
38 effective conservation measures for such consumers, including an assessment of  
39 the number of low-income residential consumers that may be eligible for such  
40 programs;

1 (2) A reasonable percentage of the available funds is directed to programs for  
2 small business consumers, as defined by the trust. The trust shall establish the  
3 percentage based on an assessment of the opportunity for cost-effective  
4 conservation measures for such consumers. In defining "small business" for the  
5 purposes of this subparagraph, the trust shall consider definitions of that term  
6 used for other programs in this State that assist small businesses; and

7 (3) To the greatest extent practicable, the remaining available funds are  
8 apportioned in a manner that allows all other consumers to have a reasonable  
9 opportunity to participate in one or more conservation programs.

10 **Sec. 7. 35-A MRSA §10111, sub-§2**, as amended by PL 2017, c. 358, §1, is  
11 further amended to read:

12 **2. Procurement level.** The natural gas conservation fund, which is a nonlapsing  
13 fund, is established to carry out the purposes of this section. The commission shall assess  
14 ~~each gas utility, in accordance with the triennial plan, an amount necessary to capture all~~  
15 ~~cost-effective energy efficiency that is achievable and reliable for those consumers who~~  
16 ~~are eligible to receive funds from the natural gas conservation fund~~ ensure that gas  
17 utilities on behalf of their ratepayers procure through the trust the maximum achievable  
18 cost-effective natural gas energy efficiency resources. To the extent that such an analysis  
19 is available, the commission shall ensure that calculations of avoided energy costs used to  
20 determine the maximum achievable cost-effective energy efficiency resources use the  
21 result of a regional analysis as long as the analysis was conducted consistent with rules of  
22 the commission, was developed through a reasonable and transparent process with input  
23 from each energy efficiency program administrator or state and is supported by evidence  
24 in the record. The commission may issue any appropriate order to the gas utilities  
25 necessary to achieve the goals of this subsection, including the collection of funds for the  
26 procurement of cost-effective energy efficiency resources. The commission shall direct a  
27 gas utility that collects any portion of the assessment funds under this subsection from a  
28 customer that is a large-volume manufacturer and large-volume agricultural business to  
29 collect the assessment funds only on the first 1,000,000 centum cubic feet of natural gas  
30 used by that manufacturer or agricultural business in each year. The limitation on the  
31 collection of the assessment funds from large-volume manufacturers and large-volume  
32 agricultural businesses may not affect the trust's determination of the amount necessary to  
33 capture all cost-effective energy efficiency that is achievable and reliable. The limitation  
34 does not limit prohibit the eligibility of a large-volume manufacturer or large-volume  
35 agricultural business to participate in a natural gas conservation program. All amounts  
36 collected under this subsection must be transferred to the natural gas conservation fund.  
37 Any interest on funds in the fund must be credited to the fund. Funds not spent in any  
38 fiscal year remain in the fund to be used for the purposes of this section.

39 When determining the maximum achievable cost-effective natural gas energy efficiency  
40 resources, the commission shall ensure that a discount rate and calculations of avoided  
41 energy costs are consistent with rules adopted by the trust and are supported by evidence  
42 in the record. Avoided energy costs must include but are not limited to the retail value of  
43 natural gas supply including a wholesale risk premium and demand reduction induced  
44 price effects. The trust shall use, and the commission shall give deference to, values for  
45 each element of avoided energy cost from a regional avoided energy supply cost study as

1 long as the analysis has been developed through a transparent process, with input from  
2 state agencies, public advocates, utilities or energy efficiency administrators from at least  
3 3 other states in New England and the analysis has been published not more than 24  
4 months prior to the trust's filing of the triennial plan. When values specific to the State  
5 are not available in the regional study, the trust may use, and the commission shall give  
6 deference to, regional values provided in that regional study or values determined from  
7 other sources when supported by evidence in the record. After the triennial plan is  
8 approved, the trust or any party to the triennial plan may petition for, or the commission  
9 may initiate on its own, consideration of revising the calculations of avoided energy costs  
10 upon a showing that, subsequent to the publication of the avoided cost study relied upon,  
11 changes in price forecasts would result in more than a 25% change in the value of  
12 avoided cost affecting a significant portion of the program activity in the triennial plan.

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

16 All funds collected pursuant to this section are collected under the authority and for the  
17 purposes of this section and are deemed to be held in trust for the purposes of benefiting  
18 natural gas consumers served by the gas utilities assessed under this subsection. In the  
19 event funds are not expended or contracted for expenditure within 2 years of being  
20 collected from consumers, the commission shall ensure that the value of those funds is  
21 returned to consumers.

22 For purposes of this subsection, "large-volume manufacturer" means a customer that is a  
23 gas utility ratepayer engaged in manufacturing in the State and purchases at least  
24 1,000,000 centum cubic feet of natural gas per year. For purposes of this subsection,  
25 "large-volume agricultural business" means a customer that is a gas utility ratepayer that  
26 purchases at least 1,000,000 centum cubic feet of natural gas per year and is engaged in  
27 the commercial growing or harvesting of plants or commercial aquaculture, as defined in  
28 Title 12, section 6001, subsection 1, in the State.

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

31 **Sec. 8. 35-A MRSA §10120, sub-§1**, as enacted by PL 2009, c. 372, Pt. B, §3, is  
32 amended to read:

33 **1. Performance metrics.** The trust shall incorporate ~~measures of~~ performance  
34 metrics in the triennial plan. The ~~measures of~~ performance metrics must define the  
35 electricity, natural gas and heating fuel savings targets established in section 10104,  
36 subsection 4, paragraph F and specify the ~~measures~~ metrics for assessing progress in  
37 meeting the targets. The commission shall ratify ~~measures of~~ performance metrics  
38 incorporated in the triennial plan if it finds that these ~~measures~~ metrics satisfy the  
39 requirements of this chapter, including the principles described in section 10104,  
40 subsection 2, and are in the public interest. The commission and the trust may revise one  
41 or more of the ~~measures of~~ performance metrics in the triennial plan at any time by  
42 mutual agreement.

43 **Sec. 9. 35-A MRSA §10120, sub-§4** is enacted to read:

