An Act To Authorize the State's Participation in the Regional Greenhouse Gas Initiative

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

Sec. 1. 38 MRSA c. 3-A, as amended, is repealed.

Sec. 2. 38 MRSA c. 3-B is enacted to read:

CHAPTER 3-B

REGIONAL GREENHOUSE GAS INITIATIVE

§ 579-A. Regional greenhouse gas initiative

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administrative costs" means costs of the commission and department that are expended pursuant to and associated with the implementation of this section, including, but not limited to, costs of program planning and evaluation, securing necessary expertise, contract formation and administration and monitoring and enforcing contractual obligations.

B. "Allowance" means an authorization to emit a fixed amount of carbon dioxide.

C. "Cap and trade program" means a policy approach for controlling emissions from a group of emitting sources, such as electric generating facilities, by:

(1) Setting an overall cap or maximum amount of emissions from all regulated sources per compliance period, rather than regulating each source individually;

(2) Creating and issuing a certain number of authorizations to emit in the form of allowances and making them available to the marketplace through a sale by auction;

(3) Limiting the total number of allowances made available in any compliance period; and

(4) Requiring regulated sources to completely and accurately measure and report all covered emissions and turn in an equal number of allowances as emissions at the end of the compliance period.

D. "Carbon" means carbon dioxide emissions.

E. "Carbon cap" or "cap" means a cap on carbon.

F. "Commission" means the Public Utilities Commission.

G. "Covered facility" means any electric power generating unit that is subject to regulation pursuant to the initiative memorandum.

H. "Electric power sector" means the 4 classes of consumers of electric power: industrial; business and commercial; municipal and institutional; and residential and low-income residential.

I. "Memorandum of Understanding" or "memorandum" means the Regional Greenhouse Gas Initiative Memorandum of Understanding dated December 20, 2005 that establishes an electric power sector carbon emissions cap and trade program within the northeast region of the United States.

J. "Regional Greenhouse Gas Initiative" or "initiative" means the initiative referred to in the Memorandum of Understanding and the corresponding model rule.

K. "Service provider" means a public or private provider of energy efficiency, conservation, demand-side or carbon reduction management services or an entity selected by the commission to contract with such providers or otherwise arrange the delivery of energy efficiency or carbon reduction programs.

2. Cap and trade program. There is established a cap and trade program.

A. By rule, the department, in consultation with the commission, shall establish a carbon dioxide cap and trade program to limit and then reduce the total carbon emissions released by electric generating stations that provide electric power to the State's utilities and end-use consumers.

B. The department's rules establishing a carbon cap and trade program must be designed to comply with the Regional Greenhouse Gas Initiative and permit the holders of allowances to trade them in a regional market to be established through the initiative.

3. Annual carbon budgets and allocation of tradable carbon allowances. The department shall, by rule, establish annual budgets for total emissions of carbon associated with the electric power sector in the State consistent with the initiative memorandum.

A. In establishing annual carbon emission budgets, the department may not exceed the State's maximum allotment of annual allowances pursuant to the initiative memorandum, and shall reduce the budget if the total estimated annual estimated emissions for the budget year is 250 or more tons below the state cap. Any such reduction in the annual emission budget may be made contingent upon continued idling or retirement of a covered facility during the budget year. The department may make further reductions in the State's annual cap on a reciprocal basis with the other states participating in the initiative.

B. The department shall retire allowances to account for voluntary renewable energy sales within each control period within the State, consistent with the initiative model rule.

C. The department shall annually convey 100% of allowances established pursuant to this section into the Energy Efficiency and Carbon Reduction Trust Account established pursuant to subsection 6.

4. Auction design. The following provisions apply to the auction of allowances.

A. Any tradable electric power sector carbon allowances established pursuant to this section must be sold through a public auction process open to all who wish to participate.

B. The commission, in consultation with the department, shall determine and specify the method of auctioning allowances, including the design of the auction process, the entity that may conduct and manage the auction and the timing of auctions in any year. The auction process must be designed to mitigate the risk of market power and advance the purposes of this section.

C. The commission, in consultation with the department, shall engage an independent contractor, consumer trustee or other entity experienced in auction design and management or contract with a consumer trustee or other entity determined by the commission to be qualified to conduct auctions in a manner that ensures the efficiency of the auction process. The determination of an independent contractor, consumer trustee or other entity must include an open and public request for proposals from parties seeking to conduct the auctions. Any person or entity selected by the commission to conduct the auctions may be reimbursed only for reasonable costs of administering the program, as determined by the commission. The independent contractor, consumer trustee or other entity is authorized to receive, hold and sell allowances for the long-term benefits of consumers.

D. All proceeds from the sale of allowances, minus the administrative costs of the auction, must be deposited into the trust account.

E. The commission shall require an annual report describing the auction and its results from the independent contractor, consumer trustee or other entity describing the auction and its results. The report must be made available to the public and be submitted to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters.

5. Energy Efficiency and Carbon Reduction Trust Account. The commission shall establish a trust account pursuant to this subsection.

A. The commission shall establish the Energy Efficiency and Carbon Reduction Trust Account, referred to as "the trust account" in this section, to receive, hold, bank and sell tradable allowances and any revenue received from the sale of those allowances.

B. All allowances and funds in the trust account may be used only for energy efficiency and programs that reduce the State's emissions of carbon dioxide and other greenhouse gases, except that:

(1) Up to 5% of total funds may be used for costs of administration of this section; and

(2) Up to 2% of total funds may be used for the administrative costs of the advisory board established in subsection 7, paragraph C.

The commission may establish separate subaccounts for each of these purposes.

C. Any interest earned on funds in the trust account must be credited to the trust account. Funds not spent in any fiscal year remain in the trust account to be used for future energy efficiency and carbon reduction programs.

D. All funds collected pursuant to this section, whether held by the commission or the auctioneer or their agents, may be used only for the purposes of benefiting electric power consumers, reducing energy consumption and lowering the State's greenhouse gas emission profile.

E. In the event funds are not expended or contracted for expenditure within 4 years of being deposited, the commission shall return the value of those funds to electric power consumers in a manner consistent with the costs of the program paid by each electric power sector for the year the funds were collected.

6. Energy efficiency and carbon reduction program. The commission shall periodically develop and implement an energy efficiency and carbon reduction program pursuant to this subsection.

A. In order to provide the maximum long-term benefit to the State's energy consumers and to achieve the greatest possible reductions in emissions of carbon and other gases that contribute to global warming, the commission, in consultation with the department, shall periodically develop and, to the extent of available funds, implement a statewide energy efficiency and carbon reduction program. To the maximum extent practicable, the program must:

(1) Reduce the State's emissions of greenhouse gases consistent with the reduction goals of this chapter;

(2) Benefit the State's energy consumers;

(3) Build upon existing regulatory and administrative structures and programs that lower energy costs, improve energy efficiency or lower the State's carbon emissions profile;

(4) Provide support for new emissions-reducing activities or projects that would not occur under existing programs or investments;

(5) Support programs and activities that do not pose a significant risk to human health and the environment;

(6) Fairly balance and distribute proceeds from the public sale of allowances in accord with the purposes of this section; and

(7) Foster development and deployment of clean energy technologies and carbon abatement technologies that have significant carbon reduction potential.

B. To the extent practicable, the energy efficiency and carbon reduction program must be coordinated and integrated with other energy-related programs of the State.

C. To carry out its responsibilities pursuant to this section, the commission shall present an annual program plan to an advisory board composed of persons with relevant expertise and experience, including persons representing consumers in each electric power sector, environmental interest groups, public health groups, the Office of the Public Advocate, the University of Maine or other state academic institution, the department and the Energy Resources Council. Electrical generators, energy suppliers and utilities may be provided with one or more ex officio, nonvoting seats on the board. The commission may contract with appropriate entities with relevant expertise and experience to assist the board. The commission may merge the duties of the advisory board with other activities of the commission.

D. The commission shall hold at least one public hearing and invite, accept, review and consider comments and suggestions from interested parties prior to adopting or substantially revising the energy efficiency and carbon reduction program.

7. **Implementation.** The initiative must be implemented in accordance with the following provisions.

A. In recognition of the superior cost and greenhouse gas reduction benefits resulting from accelerated and sustained investments in cost-effective energy efficiency, energy conservation and low-cost, low-carbon electric power system investments, the commission shall place a high priority upon delivery of cost-effective energy efficiency, conservation and demand-side management programs. To the extent funds are expended on this priority, the commission shall, to the extent practicable, balance and distribute proceeds from the public sale of allowances in approximate proportion to the cumulative program costs paid by each electric power sector, with costs to be averaged over a period of 3 or more years.

B. The commission shall provide for competitive solicitations of targeted energy efficiency and greenhouse gas emissions reduction delivery programs as part of its overall development of programs under this chapter. The commission may arrange the delivery of energy efficiency and emission reduction programs by contracting with service providers. The commission shall select service providers in accordance with this paragraph.

(1) The commission shall select service providers through a competitive bidding process, except that:

(a) The commission may select a service provider for one or more programs without employing a competitive bidding process if the commission finds that the selection of the service provider will promote the efficient and effective delivery of programs and is consistent with the objectives of this chapter; and

(b) For the delivery of energy efficiency and conservation programs to low-income and residential consumers, the commission, without employing a competitive bidding process, may use the delivery system for the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the network of for-profit and not-for-profit entities who have held contracts with transmission and distribution utilities to deliver conservation services to low-income and residential customers.

(2) To the extent practicable, the commission shall encourage the development of resources, infrastructure and skills within the State by giving preference to in-state service providers.

C. Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this subsection. The commission shall adopt rules establishing procedures governing the selection of service providers under this subsection. The commission shall consult with the State Purchasing Agent in developing the rules.

8. Effect on other responsibilities. The responsibilities created by this section are in addition to all other responsibilities imposed by any other law or rule and may not diminish or reduce any power or authority of the commission or department including the authority to adopt standards and rules necessary for the State to join and fully participate in any multistate program, at any stage in the development and implementation of such a program, intended to control emissions of carbon dioxide or other substances that are determined by the department to be damaging or altering the climate.

9. Rules. The commission and department shall each adopt rules necessary to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10. Report. The commission and department shall report by January 1st of each year to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters. The report must include a description of the implementation and operation of the initiative, the revenues collected and the expenditures made under this section, the statewide energy efficiency and carbon reduction programs and any recommendations for changes to law relating to the State’s energy conservation or carbon reduction efforts.

Sec. 3. Findings. The Legislature finds that:

1. There is a growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect, resulting in changes in the earth's climate, and that these changes in climate pose serious risks to human health and terrestrial and aquatic ecosystems globally, regionally and in the State;

2. A carbon constraint on fossil fuel-fired electricity generation and the development of a carbon emissions cap and trade program will create a strong incentive for the creation and deployment of more efficient fuel-burning technologies, renewable resources and end-use efficiency resources and will lead to lower carbon emissions and lower dependence on imported fossil fuels;

3. Absent federal action, some states are taking actions to work regionally to reduce electric power sector carbon emissions;

4. The State has joined with these other states to design the Regional Greenhouse Gas Initiative, and, in 2005, the Governor signed a memorandum of understanding signaling the State's intention to participate in the initiative;

5. The State's participation in the initiative is a crucial and necessary step to meet the greenhouse gas emission reduction goals set forth in this Act;

6. It is crucial to maximize the State's contribution to lowering carbon emissions while minimizing impacts on electric system reliability and unnecessary costs to the State's electric power and energy consumers;

7. The accelerated deployment of low-cost energy efficiency technologies and the strategic use of low-carbon and zero-carbon generation are the best means to achieve these goals; and

8. It is crucial that funds made available from operation of a regional carbon cap and trade program be devoted to the benefit of the State's energy consumers through investments in a strategic portfolio of energy efficiency and low-carbon energy resources.

SUMMARY

This bill authorizes the State's participation in the Regional Greenhouse Gas Initiative. It establishes a carbon dioxide cap and trade program and establishes annual budgets for emissions of carbon associated with the electric power sector in the State.