

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## An Act To Establish the Regional Greenhouse Gas Initiative Act of 2007

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

**Sec. 1. 5 MRSA §12004-I, sub-§20-B** is enacted to read:

**20-B.**

Maine Energy                      \$50 per day                      35-A MRSA  
Conservation Board           plus expenses                      §3211-D

Environment:  
Natural  
Resources and  
Public Utilities

**Sec. 2. 35-A MRSA §3211-A, sub-§1, ¶I** is enacted to read:

I. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts.

**Sec. 3. 35-A MRSA §3211-A, sub-§2,** as amended by PL 2005, c. 569, §§1 and 2, is further amended to read:

**2. Programs.** ~~The commission shall develop and, to the extent of available funds, implement conservation programs in accordance with this section to help reduce energy costs of Maine consumers by the maximum amount possible.~~ The commission shall establish and, on a schedule determined by the commission, revise objectives and an overall energy strategy for conservation programs. Conservation programs implemented by the commission must be consistent with the objectives and an overall energy strategy developed by the commission and be cost effective, as defined by the commission by rule or order. In defining "cost effective," the commission may consider the extent to which a program promotes sustainable economic development or reduces environmental damage to the extent the commission can quantify or otherwise reasonably identify such effects. Consistent with the other requirements of this section, the commission, in adopting and implementing conservation programs, shall seek to encourage efficiency in electricity use, provide incentives for the development of new, energy-efficient business activity in the State and take into account the costs and benefits of energy efficiency and conservation to existing business activity in the State.

A. The commission shall consider, without limitation, conservation programs that:

(1) Increase consumer awareness of cost-effective options for conserving energy;

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

(3) Promote sustainable economic development and reduced environmental damage; ~~and~~

(4) Reduce the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods; ~~and~~

(5) Reduce total costs paid by electricity consumers in the State by increasing the efficiency with which electricity is consumed.

B. The commission, with regard to the assessment imposed under subsection 4, shall:

(1) Target at least 20% of available funds to programs for low-income residential consumers, as defined by the commission by rule;

(2) Target at least 20% of available funds to programs for small business consumers, as defined by the commission by rule; and

(3) To the greatest extent practicable, apportion remaining available funds among customer groups and geographic areas in a manner that allows all other customers to have a reasonable opportunity to participate in one or more conservation programs.

C. 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 conservation programs or the objectives and overall strategy for conservation programs.

D. The commission shall monitor conservation planning and program development activities in the region and around the country.

E. The commission shall implement conservation programs by contracting with service providers in accordance with subsection 3.

F. The commission shall monitor and evaluate the delivery of conservation programs by service providers and assess the cost-effectiveness of programs in meeting the objectives and overall strategy established by the commission.

G. The commission, to the extent possible, shall coordinate its efforts with other agencies of the State with energy-related responsibilities.

H. The commission shall secure sufficient technical and administrative expertise to carry out its responsibilities pursuant to this section by:

- (1) Contracting with appropriate entities with relevant expertise and experience;
- (2) Establishing one or more advisory groups composed of persons with relevant expertise and experience; or
- (3) Any other reasonable means developed by the commission.

I. The commission may coordinate its efforts under this section with similar efforts in other states in the northeast region and enter into agreements with public agencies or other entities in or outside of the State for joint or cooperative conservation planning or conservation program delivery, if the commission finds that such coordination or agreements would provide demonstrable benefits to citizens of the State and be consistent with this section, the conservation programs and the objectives and overall strategy for the conservation programs.

J. The commission shall encourage school facility managers to complete an energy efficiency training and certification program established and conducted by the commission under this section. To the extent the commission determines necessary and appropriate to meet the goals of this paragraph, the commission may, in accordance with the requirements of this section, establish incentive mechanisms to encourage participation in this program. For purposes of this paragraph, "school facility managers" means persons employed by school administrative units in this State who are responsible for the design or operation of school administrative unit facilities or the heating, ventilation or air conditioning systems or equipment used in such facilities.

**Sec. 4. 35-A MRSA §3211-A, sub-§3**, as enacted by PL 2001, c. 624, §4, is amended to read:

**3. Implementation.** The commission shall seek to implement the delivery of conservation programs in all regions of the State on an equitable basis and to citizens at all income levels. The commission may arrange the delivery of conservation programs by contracting with service providers. The commission shall select service providers in accordance with this subsection.

- A. The commission shall select service providers through a competitive bidding process.
- B. 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 paragraph A:

- (1) The commission may select a service provider for one or more conservation 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 conservation programs and is consistent with the objectives and overall strategy of the conservation programs; and

(2) For the delivery of conservation programs to low-income residential consumers, the commission, without employing a competitive bidding process, may utilize 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.

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.

A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

**Sec. 5. 35-A MRSA §3211-A, sub-§4**, as amended by PL 2005, c. 459, §1, is further amended to read:

**4. Funding level.** ~~The~~Except as provided in subsection 4-A, the commission shall assess transmission and distribution utilities to collect funds for conservation programs and administrative costs in accordance with this subsection. The amount of all assessments by the commission under this subsection plus expenditures of a transmission and distribution utility associated with prior conservation efforts must result in total conservation expenditures by each transmission and distribution utility that:

- A. Are based on the relevant characteristics of the transmission and distribution utility's service territory, including the needs of customers;
- B. ~~Do not exceed~~Are fixed at a rate of .145 cent per kilowatt-hour;
- C. Except as provided in subsection 7-A, are no less than 0.5% of the total transmission and distribution revenues of the transmission and distribution utility; and
- D. Are proportionally equivalent on a per-kilowatt-hour basis to the total conservation expenditures of other transmission and distribution utilities, unless the commission finds that a different amount is justified.

**Sec. 6. 35-A MRSA §3211-A, sub-§4-A** is enacted to read:

**4-A. Additional assessment on transmission and distribution utilities.** In addition to the assessment under subsection 4, the commission shall assess each transmission and distribution utility based on the utility's gross operating revenue. For the purposes of this subsection, "gross operating revenue" means revenue derived from filed rates, except from sales for resale. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year. The commission shall determine the assessments under this subsection annually prior to May 1st and assess each utility for its pro rata share for expenditure, including funds for energy conservation programs, during the fiscal year beginning July 1st following

presentation of the commission's budget to the joint standing committee of the Legislature having jurisdiction over utility and energy matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Each utility shall pay the assessment charged to that utility on or before July 1st of each year.

**Sec. 7. 35-A MRSA §3211-A, sub-§4-B** is enacted to read:

**4-B. Transmission and subtransmission voltage level.** After July 1, 2007, customers receiving electric service at transmission and subtransmission voltage levels are not eligible for new projects undertaken under this section, and those customers are not required to pay the assessment imposed under subsection 4 or subsection 4-A. The commission shall reduce the rates of such customers by 0.145 cents per kilowatt-hour as of the first rate adjustment following the effective date of this subsection in a manner that reflects the elimination of the assessment under this subsection.

**Sec. 8. 35-A MRSA §3211-A, sub-§7-A,** as enacted by PL 2003, c. 275, §2, is amended to read:

**7-A. Funds held in trust.** All funds collected from electricity consumers pursuant to this section; including assessments collected from transmission and distribution utilities and deposited in the program fund or the administration fund and any prior conservation efforts; are collected under the authority and for the purposes of this section and, whether held by the commission, transmission and distribution utilities or their agents; are deemed to be held in trust for the purposes of benefiting electricity consumers. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall return the value of those funds to consumers by appropriate reductions in the assessment collected pursuant to subsection 4.

**Sec. 9. 35-A MRSA §3211-A, sub-§9,** as enacted by PL 2001, c. 624, §4, is repealed and the following enacted in its place:

**9. Ratemaking and cost recovery.** All assessments under this section are just and reasonable costs for rate-making purposes. The assessments charged to utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of transmission and distribution utilities.

**Sec. 10. 35-A MRSA §3211-D** is enacted to read:

### **§ 3211-D. Maine Energy Conservation Board**

**1. Establishment.** The Maine Energy Conservation Board, as established in Title 5, section 12004-I, subsection 20-B and referred to in this section as "the board," is created to accomplish coordinated and integrated planning for Maine's energy conservation efforts and to provide advice and counsel on conservation and carbon dioxide reduction matters.

**2. Composition of board.** The board is composed of 7 voting members appointed by the commission, none of whom may have a financial interest in energy efficiency or conservation delivery:

**A. A member representing commercial electrical consumers;**

- B. A member representing industrial electrical consumers;
- C. A representative of the Office of the Public Advocate who represents the interest of residential electrical consumers;
- D. A member with significant knowledge of environmental issues and climate change policy; and
- E. The 3 trustees of the Energy and Carbon Savings Trust, established in section 3211-E.

The commission may also appoint 3 nonvoting members representing transmission and distribution utilities. The Commissioner of Environmental Protection, the chair of the commission and the director of the Governor's Office of Energy Independence and Security within the Executive Department serve as nonvoting, ex officio members.

**3. Terms; chair.** Except for members appointed pursuant to subsection 2, paragraph E, the term of a voting member of the board is 3 years. If a voting member is unable to complete the term, the commission shall appoint a replacement. A voting member may serve a maximum of 2 consecutive terms. The board shall select a chair and vice-chair from the board's voting membership.

**4. Meetings; voting.** The board may meet up to 6 times annually. If a voting member of the board is absent from more than one meeting without notice to the chair or vice-chair, the commission may appoint a replacement. An affirmative vote of 5 members is required for any action.

**5. Staff.** The commission shall provide staff support for the development of the plan under subsection 6. The board may contract with an independent consultant with expertise in energy efficiency programs and may expend for such services an amount not to exceed 1% of the total amount in the conservation program fund established under section 3211-A, subsection 5 and the Energy and Carbon Savings Trust established in section 3211-E.

**6. Biennial plan.** The board shall develop and approve a detailed biennial plan, referred to in this subsection as "the plan," in accordance with this subsection.

- A. In developing the plan, the board shall seek input from the public.
- B. The plan must contain program budget allocations and general guidance or instructions on program implementation and make provisions for annual updates and revisions.
- C. The plan must include instructions for the use of funds in the conservation program fund established under section 3211-A, subsection 5 and the Energy and Carbon Savings Trust established in section 3211-E.
- D. The plan must seek to address the needs of all customer classes of the transmission and distribution utilities in the public interest.
- E. The plan must be presented to the commission for review and final approval by order.

**7. Rulemaking.** The commission shall adopt rules for establishing and administering the board and its programs. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 11. 35-A MRSA §3211-E** is enacted to read:

**§ 3211-E. Energy and Carbon Savings Trust**

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

A. "Forward capacity market" means the program established by the regional transmission organization that is in effect on the effective date of this paragraph and compensates providers of electrical capacity with payments for the availability or reduction of capacity as determined by the regional transmission organization.

B. "Regional transmission organization" means the independent systems operator that administers and oversees the wholesale electricity markets in which the State participates.

C. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts.

D. "Trust" means the Energy and Carbon Savings Trust established in subsection 2.

E. "Trustee" means a trustee of the trust.

**2. Establishment of trust.** The Energy and Carbon Savings Trust is established and must be managed and administered by the commission to support the goals and implementation of the carbon dioxide cap-and-trade program established under Title 38, section 580-B. The trust is authorized to receive, hold, bank and expend revenue resulting from the sale of allowances and any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded by the trust. The funds may not be used for any other purpose and are considered to be held in trust for the purposes of benefiting consumers.

A. The commission shall appoint 3 trustees for the Energy and Carbon Savings Trust. The commission shall appoint a diverse set of trustees who possess knowledge of high-efficiency energy conservation programs, carbon reduction programs or policy or substantial management expertise.

B. A trustee serves a 3-year term. If a trustee is unable to complete the term, the commission shall appoint a replacement. Trustees may serve a maximum of 2 consecutive terms.

C. The trustees may meet periodically, in addition to participating in all meetings of the Maine Energy Conservation Board, as established in section 3211-D or upon request of the commission. If a trustee is absent from more than one meeting without notice, the commission may appoint a replacement. An affirmative vote of two-thirds of the members is required for any action.

D. The trustees have a fiduciary duty to the customers of the State's transmission and distribution utilities in the administration of the trust. Upon accepting appointment as a trustee, each trustee must acknowledge the fiduciary duty to use the trust funds only for the purposes set forth in this section.

E. The trustees shall ensure that the goals and objectives of the trust, as established in this section and in commission rules, are carried out. The trustees shall represent the interests of the trust as participants in the development by the Maine Energy Conservation Board of the biennial plan pursuant to section 3211-D, subsection 6.

F. The commission shall make available staff to support the work of the trustees.

**3. Trust inviolability.** The commission may not impair the value of the trust either directly or indirectly, or reduce, impair, postpone or terminate the amount of revenues arising from the regional greenhouse gas initiative program established under Title 38, chapter 3-B. The commission may take legal action in the name of the trust to oppose efforts to reduce, impair, postpone or terminate the amount of such revenues.

The State pledges to, contracts with, and agrees with the purchasers of carbon dioxide emissions allowances and trustees for the proceeds of those allowances that neither the State nor any of its agencies, including the commission, may limit, alter, amend, reduce or impair the trust, its funds or any rights under the trust or ownership of the trust or security interest in the trust. The State acknowledges that such owners, holders and trustees may and will rely on this pledge, contract and agreement and that any such limitation, alteration, amendment, reduction or impairment without adequate provision will irreparably harm such owners, holders and trustees.

**4. Money invested.** Any revenue received from the sale of allowances and any forward capacity market payments administered by the regional transmission organization or other capacity payments that may be attributable to projects funded by the trust are the property of the trust. Money in the trust not currently needed to meet obligations under Title 38, section 580-B or for the purposes of this section must be deposited with the Treasurer of State to the credit of the trust and may be invested as provided by law. Interest on these investments must be credited to the trust.

**5. Ceiling on energy efficiency spending.** The ceiling on energy efficiency spending from the trust is set at \$5 per carbon dioxide allowance. Until that price ceiling is adjusted or removed, only the first \$5 of each carbon dioxide allowance sold and deposited in the trust may be awarded to or directed to qualified projects for purposes of energy efficiency improvements. While the ceiling is in place, an allowance value above \$5 must be used by the commission pursuant to sections 301 and 1322 for rebates to electric ratepayers calculated on a per-kilowatt-hour basis.

**6. Program plan.** By December 31st of each year, the trustees and program administrator under subsection 7 shall develop a trust program plan with support from the commission and with the input of the Maine Energy Conservation Board established in section 3211-D. The program plan must set guidelines for the evaluation and approval of proposed projects for which funding is sought from the trust. The commission may approve the trust program plan.

**7. Administration of trust funds; expenditures; projects.** The trust must be administered in accordance with this subsection.

A. The trust must be administered, and expenditures authorized by, a program administrator selected by the commission whose qualifications must include demonstrated expertise in the management of electricity efficiency programming and supervision of energy efficiency personnel. The administrator shall report to the trustees. The administrator shall organize staff resources of the commission for the trustees. Expenditures from the trust must be made pursuant to the annual trust program plan developed in accordance with subsection 6. To the extent possible, the trust program plan must be incorporated into the biennial plan approved by the commission pursuant to section 3211-D, subsection 6.

B. During the years 2009, 2010 and 2011, not less than 85% of the trust must be allocated for measures, investments and arrangements that reduce electricity consumption. Subject to the apportionment between fossil fuel and electricity conservation pursuant to this subsection, the trust must fund projects that give priority to measures with the highest benefit-to-cost ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

(1) Reliably reduce greenhouse gas production by fossil fuel combustion in the State at the lowest cost in trust funds per unit of emissions; or

(2) Reliably reduce the consumption of electricity in the State at the lowest cost in trust funds per kilowatt-hour saved.

C. Expenditures from the trust relating to conservation of electricity and mitigation or reduction of greenhouse gases must be made predominantly on the basis of a competitive bid process for long-term contracts, subject to commission rules. Rules adopted to implement the competitive bid process under this paragraph may not include an avoided cost methodology for compensating successful bidders. Bidders may propose contracts designed to produce greenhouse gas savings or electricity conservation savings, or both, on a unit cost basis. Contracts must be commercially reasonable and may require liquidated damages to ensure performance. Contracts must provide sufficient certainty of payment to enable commercial financing of the conservation measure purchased and its installation.

D. The trustees may target bid competitions in areas or to participants as they consider necessary, as long as the requirements of paragraph B are satisfied.

E. Nonelectric savings programs must be used to maximize fossil-fueled energy efficiency and conservation and associated greenhouse gas reductions, subject to the apportionment between fossil fuel and electricity conservation set forth in paragraph B.

F. The size of a project funded by the trust is not limited as long as funds are awarded to maximize energy efficiency and support greenhouse gas reductions and to fully implement the biennial plan approved by the commission pursuant to section 3211-D, subsection 6.

G. No more than 5% of trust receipts in any one year may be used for the total administrative costs:

(1) Of the commission and the trust related to this section;

(2) Of the Department of Environmental Protection in administering the allowance auction under Title 38, chapter 3-B; and

(3) Of the Attorney General, including activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the trust's conservation program.

Of the trust receipts used for administrative costs under this paragraph, no more than 40% in any one year may be used for the administration of the trust. The trust may fund research approved by the Department of Environmental Protection in an amount of up to \$100,000 per year to develop new categories for carbon dioxide emissions offset projects, as defined in Title 38, section 580-A, that are located in the State.

H. In order to minimize administrative costs and maximize program participation and effectiveness, the commission shall, to the greatest extent feasible, coordinate the delivery of and make complementary the energy efficiency programs under this section, section 3211-A and section 3210-C.

I. Notwithstanding Title 5, section 1831, neither the trustees nor the commission are subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this section. The trustees and the commission shall consider delivery of efficiency programs by means of contracts with service providers that participate in competitive bid processes for reducing energy consumption within individual market segments or for particular end uses.

J. A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

**8. Rulemaking.** The commission shall adopt rules for establishing and administering the trust and its programs. These rules must include:

A. Provisions for the expenditure of funds, including, but not limited to, the development of a plan and program budgets, criteria for energy efficiency and other consumer benefit programs, the process for project selection and approval, minimum requirements for project monitoring and verification and the cost-effectiveness tests to be used for measuring and comparing program benefits and costs subject to subsection 7, paragraph B; and

B. Provision for the independent evaluation of program expenditures to ensure cost-effectiveness of projects to improve energy efficiency or to reduce greenhouse gases.

Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 12. 38 MRSA §579**, as enacted by PL 2005, c. 330, §24, is amended to read:

**§ 579. Regional greenhouse gas initiative**

The department may participate in the regional greenhouse gas initiative as described in the climate action plan required in section 577;and may coordinate its efforts with other states and jurisdictions participating in that initiative, with respect to:

- 1. Regional market.** The design, conduct and supervision of a regional market for carbon dioxide allowances;
- 2. Additional offset categories.** The establishment and mutual recognition of additional offset categories that recognize the State's unique geography, economy and natural resources; and
- 3. Ensuring no unfair disadvantage.** Efforts seeking to ensure that electricity generated within participating states and jurisdictions is not unfairly disadvantaged as a result of imports of electricity from nonparticipating states and jurisdictions.

**Sec. 13. 38 MRSA c. 3-B** is enacted to read:

**CHAPTER 3-B**

**REGIONAL GREENHOUSE GAS INITIATIVE**

**§ 580. Short title**

This chapter may be known and cited as "the Regional Greenhouse Gas Initiative Act of 2007."

**§ 580-A. Definitions**

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

- 1. Allocation.** "Allocation" means the number of carbon dioxide allowances to be credited to a carbon dioxide budget unit or to the general account of the sponsor of an approved carbon dioxide emissions offset project.
- 2. Carbon dioxide allowance.** "Carbon dioxide allowance" or "carbon dioxide emissions allowance" means a limited authorization by the department for the emission of up to one ton of carbon dioxide.
- 3. Carbon dioxide budget unit.** "Carbon dioxide budget unit" means a fossil fuel fired electrical generating unit that serves a generator with a nameplate capacity equal to or greater than 25 megawatts of electrical output.

**4. Carbon dioxide budget unit compliance account.** "Carbon dioxide budget unit compliance account" means the account established by the department wherein carbon dioxide budget units deposit carbon dioxide emissions allowances.

**5. Carbon dioxide emissions budget.** "Carbon dioxide emissions budget" means the total amount of carbon dioxide emissions allowances allocated by the State on an annual basis.

**6. Carbon dioxide emissions offset project.** "Carbon dioxide emissions offset project" means a project that reduces or avoids loading of carbon dioxide and other greenhouse gases in the atmosphere and is demonstrated to qualify as real, additional, verifiable, enforceable and permanent as those terms are defined in rules adopted by the department. "Carbon dioxide emissions offset project" includes, but is not limited to, landfill and agricultural methane capture and destruction, reduction in emissions of sulfur hexafluoride, sequestration of carbon due to afforestation and reduction or avoidance of carbon dioxide emissions from natural gas, oil or propane end-use combustion due to end-use energy efficiency and other categories established by the department by rule.

**7. Carbon dioxide offset allowance.** "Carbon dioxide offset allowance" means a carbon dioxide allowance awarded to the sponsor of a carbon dioxide emissions offset project.

**8. Combined heat and power unit.** "Combined heat and power unit" means a device that simultaneously generates electricity and thermal power and operates at a high level of output efficiency by utilizing the waste heat created as a by-product of electricity generation for domestic, commercial or industrial heating or cooling purposes, and whose useful thermal output equals at least 10% of the fossil fuel energy input of the unit.

**9. Electrical generating unit.** "Electrical generating unit" means a fossil fuel fired combustion device that serves a generator.

**10. Fossil fuel.** "Fossil fuel" means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such a material.

**11. Fossil fuel fired.** "Fossil fuel fired" means combustion of fossil fuel when the fossil fuel combusted constitutes, or is projected to constitute, more than 50% of the annual heat input on a British Thermal Unit basis.

**12. Generator.** "Generator" means a device that produces electricity and is required to be reported as a generating unit pursuant to the United States Department of Energy Form 860.

**13. Gross electrical generation.** "Gross electrical generation" means the electrical output in megawatts at the terminals of the generator.

**14. Integrated manufacturing facility.** "Integrated manufacturing facility" means a facility that:

A. Received an air emissions license from the department prior to the effective date of this subsection;

B. Produces electricity from one or more carbon dioxide budget units, including one or more combined heat and power units, for transmission over the facilities of a transmission and distribution utility; and

C. Routinely produces one or more other products for sale.

**15. Long-term electricity contract.** "Long-term electricity contract" means a contract for a period of 3 years or more with a carbon dioxide budget unit for the purchase of electricity.

**16. Memorandum of Understanding; memorandum.** "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.

**17. Nameplate capacity.** "Nameplate capacity" means the maximum electrical generating output, expressed in megawatts, that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings.

**18. Regional greenhouse gas initiative.** "Regional greenhouse gas initiative" means the initiative referred to in the Memorandum of Understanding and the corresponding model rule that memorializes the ongoing cooperative effort by the State and other states to design and implement a regional carbon dioxide cap-and-trade program covering carbon dioxide emissions from electrical generating units in the signatory states.

**19. Regional organization.** "Regional organization" means the entity that will manage the regional greenhouse gas initiative on a regional basis and with which the State contracts for related service.

**20. Regional transmission organization.** "Regional transmission organization" means the independent systems operator that administers and oversees the wholesale electricity markets in which the State participates.

**21. Ton.** "Ton" means 2,000 pounds.

**22. Transmission and distribution utility.** "Transmission and distribution utility" means a transmission and distribution utility as defined in Title 35-A, section 3201, subsection 6, 12 or 16.

## **§ 580-B. Cap-and-trade program established**

A carbon dioxide cap-and-trade program, referred to in this section as "the program," is established in accordance with this section.

**1. Application.** All carbon dioxide budget units are subject to the carbon dioxide cap-and-trade program, except that a carbon dioxide budget unit is exempt from the program if:

A. It is incapable of producing enough energy to generate 25 megawatts or more of electrical output;

B. Its sale of electricity to any power distribution system is less than 10% of its gross electrical generation on an annual basis. In calculating this percentage, all electricity transmitted to the regional grid over the facilities of a transmission and distribution utility as a result of verifiable conservation and demand-side management initiatives or any emergency mandate of the regional transmission organization or lawful order of a governmental authority is not included in the calculation of annual sales; or

C. Fifty percent or more of its annual heat input comes from the combustion of fuels other than fossil fuels.

**2. Contingent on initiation of comparable programs.** The carbon dioxide cap-and-trade program commences no earlier than January 1, 2009 and only when other states that are participating in the regional greenhouse gas initiative that produce a minimum of 35,000,000 tons of annual carbon dioxide emissions budget and participate in a wholesale electricity market administered and overseen by the regional transmission organization have initiated a comparable carbon dioxide cap-and-trade program.

**3. Base annual budget.** The base annual carbon dioxide emissions budget is established at 5,948,902 tons of carbon dioxide. Beginning with the year 2015, the annual carbon dioxide emissions budget must decline by 148,722 tons per year until 2018 so that the annual carbon dioxide emissions budget for 2018 is 10% below the base annual carbon dioxide emissions budget.

**4. Rules implementing program.** The department shall adopt rules to implement the program. The rules must contain:

A. Provisions for the establishment of a system for the annual assignment, sale and distribution of carbon dioxide emissions allowances consistent with the carbon dioxide emissions budget;

B. Provisions for the establishment of carbon dioxide budget unit compliance obligation accounts;

C. Provisions for the establishment of carbon dioxide offset project allowance categories and requirements;

D. Provisions for the implementation of a licensing process for carbon dioxide budget units;

E. Provisions for the establishment of a carbon dioxide emissions and carbon dioxide allowance tracking program; and

F. Provisions to manage the carbon dioxide allowance auction developed in coordination with other states and jurisdictions in the regional greenhouse gas initiative and in a manner that is consistent with provisions adopted by those states and jurisdictions and, to the extent feasible, that:

(1) Ensure close monitoring of allowance transactions in a manner that guards against collusion and market manipulation;

- (2) Ensure ongoing authentic price discovery and minimize price volatility;
- (3) Facilitate open participation for bidding to all individuals or entities that meet the financial requirements jointly adopted by the participating states;
- (4) Minimize administration and transaction costs and provide for an open and transparent user-friendly system;
- (5) Provide that ongoing monitoring of market activity is undertaken by entities that have complete financial independence from any market participant;
- (6) For purposes of civil and criminal enforcement authority under section 349, establish a contract term at the time an allowance is purchased at the regional auction for violations of market rules jointly adopted by the participating states and jurisdictions or through another method of ensuring state jurisdiction; and
- (7) Guarantee that the Attorney General, the Public Utilities Commission and the commissioner have access to all auction information and information concerning allowance trading activity, including reports provided to the regional organization by a market monitor.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**5. Enforcement.** Violations of this chapter are enforceable, and penalties may be imposed in accordance with sections 347-A, 348 and 349.

**6. Waiver of enforcement; suspension of compliance obligation.** The commissioner has authority, under the exceptional circumstances set out in paragraphs A and B, to waive or suspend requirements of this chapter.

A. If a regional greenhouse gas initiative auction results in price levels for allowances that are expected to be excessive, or that are excessive and will result, or are expected to result, in immediate and irreparable harm to the operations of a carbon dioxide budget unit regulated under this chapter, including but not limited to the termination of business at that location, the commissioner may, in consultation with the Attorney General and the chair of the Public Utilities Commission, grant waivers of enforcement for any violation by an individual regulated carbon dioxide budget unit of a requirement of this chapter.

B. In cases of emergency events that are beyond the control of a carbon dioxide budget unit, the commissioner may temporarily suspend the compliance obligation under a particular permit until such time as the emergency no longer is in effect.

The department shall adopt rules for the implementation of this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**7. Allocation of carbon dioxide emissions allowances.** The department shall allocate 100% of the annual carbon dioxide emissions allowances for public benefit to produce funds for carbon reduction and energy conservation, as specified in this chapter. Except as provided in subsection 8, the department shall sell the carbon dioxide emissions allowances at public auction, in accordance with rules adopted under subsection 4.

**8. Combined heat and power incentive.** The department shall set aside a portion of the State's annual carbon dioxide emissions allowances in an allowance account for carbon dioxide budget units that are combined heat and power units and are located at integrated manufacturing facilities. The department shall use these allowances for existing carbon dioxide budget units to reflect only that portion of each unit's emissions related to electricity generated at a carbon dioxide budget unit that is not transmitted across the facilities of a transmission and distribution utility.

The department shall adopt rules setting forth the proper treatment of any combined heat and power units that commence operations after July 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**9. Integrated manufacturing facilities.** This subsection governs the treatment of integrated manufacturing facilities under this chapter.

A. The compliance obligation for a carbon dioxide budget unit at an integrated manufacturing facility is the carbon dioxide emissions associated with electricity resulting from the combustion of fossil fuels and transmitted over the facilities of a transmission and distribution utility. Absent any contractual arrangement to the contrary, the department shall presume that electricity from sources other than carbon dioxide budget units is transmitted first. The department shall adopt rules governing the compliance obligation for electricity generated at integrated manufacturing facilities and transmitted over the facilities of a transmission and distribution utility.

B. The department shall establish the Integrated Manufacturing Facility Retirement Account to ensure proper accounting for carbon emissions from the generation of electricity and heat from fossil fuels at integrated manufacturing facilities.

C. The purchase of electricity pursuant to a long-term electricity contract renders the purchaser an owner of a carbon dioxide budget unit for purposes of this chapter and obligates the owner to obtain the carbon dioxide emissions allowances applicable to the compliance obligation associated with the carbon dioxide budget unit. For purposes of this paragraph, "owner" means:

(1) The holder of any portion of the legal or equitable title in a carbon dioxide budget unit;

(2) The holder of a leasehold interest in a carbon dioxide budget unit, other than a passive lessor or a person who has an equitable interest through such lessor whose rental payments are not based, either directly or indirectly, upon the revenues or income from that unit; or

(3) A purchaser of electricity from a carbon dioxide budget unit under a contractual arrangement for greater than a 3-year period.

If no person has title to the electricity under subparagraphs (1) to (3), the owner is any holder of any portion of the legal or equitable title to the output of a carbon dioxide budget unit or any holder of a leasehold interest in such a unit.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**10. Annual report.** The department and the Public Utilities Commission shall submit a joint report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters by March 15, 2009 and each year thereafter. The report must assess and address:

A. The reductions of greenhouse gas emissions from carbon dioxide budget units, projects funded by the Energy and Carbon Savings Trust pursuant to Title 35-A, section 3211-E and carbon dioxide emissions offset projects;

B. The improvements in overall carbon dioxide emissions and energy efficiency from sources that emit greenhouse gases including electrical generation and fossil fuel fired units;

C. The maximization of savings through systemic energy improvements statewide;

D. Research and support of new carbon dioxide offset allowance categories for development in the State;

E. Management and cost-effectiveness of the State's energy conservation and carbon reduction programs and efforts, including projects funded by the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 3211-E; and

F. The extent to which funds from the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 3211-E serve customers from all classes of the State's transmission and distribution utilities.

The department and the Public Utilities Commission may include in the report any proposed changes to the cap-and-trade program established under this chapter.

The joint standing committees of the Legislature having jurisdiction over natural resources matters and utilities and energy matters may report out legislation relating to the carbon dioxide cap-and-trade program.

**§ 580-C. Construction; absence of limitation**

Nothing in this chapter may be construed to limit:

**1. Withdrawal by State.** The ability of this State to withdraw from the regional greenhouse gas initiative; or

**2. Categories of carbon dioxide emissions offset projects.** The categories of carbon dioxide emissions offset projects that may qualify under agreements among the states and jurisdictions participating in the regional greenhouse gas initiative, particularly with respect to additional categories that take advantage of the geographical, economic or natural resources of this State.

**Sec. 14. Major substantive rulemaking.** Major substantive rules provisionally adopted pursuant to the Maine Revised Statutes, Title 35-A, sections 3211-D and 3211-E must be submitted to the Legislature by January 15, 2008 for review by the Joint Standing Committee on Utilities and Energy during the Second Regular Session of the 123rd Legislature. The joint standing committee is authorized to submit legislation to the Second Regular Session of the 123rd Legislature regarding establishment and administration of the Maine Energy Conservation Board and the Energy and Carbon Savings Trust.

**Sec. 15. Ceiling on energy efficiency spending.** Eight months prior to the expiration of the first compliance obligation period established under rules of the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 580-B, the Public Utilities Commission, following the receipt of public input and based on an analysis of the efficacy of energy efficiency, rebates or other funded purposes in reducing energy costs, shall provide its recommendation to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters regarding changing or removing the energy efficiency spending ceiling established in Title 35-A, section 3211-E, subsection 5.

**Sec. 16. Report; establishment of civil and criminal liability.** Because orderly operation of the market for carbon dioxide allowances and reasonable availability and pricing of these allowances are an essential part of the State's air quality laws and programs, the Department of Environmental Protection shall consult with the Public Utilities Commission, the Attorney General and interested parties regarding the establishment of civil and criminal liability for disruption of the carbon dioxide allowance market established in the Maine Revised Statutes, Title 38, chapter 3-B. For purposes of this section, "disruption" includes the purchase of allowances in a volume that affects the orderly operation of the market or the reasonable availability of allowances or their price. The department shall submit a report of its findings by January 15, 2008 to the Joint Standing Committee on Natural Resources and the Joint Standing Committee on Utilities and Energy. After receipt and review of the report, either committee or both committees may submit legislation on this issue to the Second Regular Session of the 123rd Legislature.

**Sec. 17. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 35-A, section 3211-D, subsection 3, of the original appointments of voting members of the Maine Energy Conservation Board, other than the members who are trustees of the Energy and Carbon Savings Trust, one member serves an initial term of one year, one member serves an initial term of 2 years and one member serves an initial term of 3 years. An initial term of one or 2 years may not be considered a full term for purposes of limiting the number of terms for which a member may serve.

**Sec. 18. Rulemaking; legislative direction.**

1. Because the State has a number of integrated manufacturing facilities that produce electricity and heat or steam for use in manufacturing other products and that may sell electricity transmitted on the electric grid, rules adopted by the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, chapter 3-B must be designed in a way that recognizes the highly efficient production and consumption of energy at these facilities, prevents harm from regulatory uncertainty and unintended or unnecessary effects on these facilities and ensures their availability, as needed from time to time, to enhance the reliability of the electric grid serving this State.

2. Because it is the Legislature's intent that all revenues derived from the sale of carbon dioxide emissions allowances be used for high-efficiency electricity and fossil fuel conservation to reduce greenhouse gases and minimize the costs of carbon reduction to Maine electric consumers, rules adopted by the Public Utilities Commission to implement the Energy and Carbon Savings Trust under Title 35-A, section 3211-E must be designed to ensure that proceeds deposited in the trust accruing from the sale of carbon dioxide emissions allowances be expended solely for energy efficiency and related improvements that serve to enhance the reliability of the State's electric grid.

3. Rules adopted by the Department of Environmental Protection pursuant to Title 38, chapter 3-B must establish a system under which proceeds from the sale of carbon dioxide emissions allowances may be returned to the electric customers as direct credits on their bills at times of heightened price pressure in regional allowance markets, thereby ameliorating grid instability at those times.

4. Because certain carbon dioxide budget units have substantially reduced carbon dioxide emissions from their facilities prior to the effective date of this Act and operate as highly efficient resources, rules adopted by the Department of Environmental Protection pursuant to Title 38, chapter 3-B must require such carbon dioxide budget units to meet only the compliance obligation for that portion of power sold to the grid and require that allowances associated with such units' so-called "behind-the-meter" electrical generation must be retired from the system. Such rules must be designed to recognize that full operation of generating units in existence on the effective date of this Act, including highly efficient cogeneration facilities, is essential for the stability of the State's electric grid at times of peak demand for electricity.

**Sec. 19. Legislative findings, intent and declaration of purpose.**

1. The Legislature finds that the stabilization and the reduction of carbon dioxide emissions is mandated by and consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that the development of a program aimed at stabilizing and then

reducing carbon dioxide emissions through a carbon dioxide cap-and-trade program is consistent with the state climate action plan and the expressed will of the Legislature that the State participate in regional efforts to reduce emissions of greenhouse gases.

2. The purpose of the cap-and-trade program authorized by this Act is to ensure that real, verifiable, enforceable and permanent greenhouse gas emissions reductions occur at the lowest cost both to businesses operating within the State and to the citizens of the State. It is the intent of the Legislature that the statewide carbon dioxide cap-and-trade program be consistent with the carbon dioxide emissions budget under the Regional Greenhouse Gas Initiative Act of 2007.

3. The Legislature further finds that it is essential to the well-being of the citizens and economy of the State and to the air quality laws of the State that an orderly and fair market be established for the trading of carbon dioxide emissions allowances. It is the intent of the Legislature to use every instrumentality of the State to protect its citizens and businesses from any malfunction or manipulation of such a market.

4. The Legislature further finds that the Energy and Carbon Savings Trust, established by this Act, depends on the unimpaired operation of the trust, and that contractors and providers would be irreparably harmed by any interference with the trust, its revenues or its contractors and providers by any entity, including the State.

5. The Legislature further finds that achieving the carbon reduction objectives of the Regional Greenhouse Gas Initiative Act of 2007 requires fulfillment of the intent that electricity generated at a carbon dioxide budget unit, as defined in the Maine Revised Statutes, Title 38, section 580-A, and transmitted over the facilities of a transmission and distribution utility be regulated for associated carbon emissions.

6. The Legislature further finds that, in enacting federal energy legislation in 2005, the Congress of the United States specifically recognized the authority of states to protect electric grid reliability through, among other things, electricity conservation efforts in periods of peak electric demand and that such state authority is not preempted by federal law.

## **SUMMARY**

This bill establishes a statewide carbon dioxide cap-and-trade program for fossil fuel fired electrical generating units within the State that have a nameplate capacity equal to or greater than 25 megawatts and requires the Department of Environmental Protection to develop carbon dioxide cap-and-trade rules that ensure credible greenhouse gas emissions reductions. The bill also authorizes the Department of Environmental Protection to adopt major substantive rules regarding combined heat and power incentives and the Public Utilities Commission to adopt major substantive rules regarding the establishment and administration of the Maine Energy Conservation Board. The bill also authorizes the sale of carbon dioxide emissions allowances for the benefit of consumers and the creation of the Energy and Carbon Savings Trust.