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An Act To Improve the Energy Efficiency of Public Buildings and Create Jobs

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

PART A

Sec. A-1. 5 MRSA §1764-A, as affected by PL 2003, c. 497, §5 and corrected by RR 2003, c. 1, §2, is amended to read:

§ 1764-A.Improvement of energy efficiency and usage of distributed renewable technology in state-funded construction

1. Definitions. For purposes of this section, "~~substantially renovated~~" means any renovation for which the cost exceeds 50% of the building's current value prior to renovationAs used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Distributed renewable energy technology" means a product or facility or cluster of products or facilities that has a generating capacity of not more than 5 megawatts or an equivalent amount of heat energy and generates energy in a manner that results in no carbon dioxide emissions or that relies on one or more of the following:

- (1) Air source heat pumps;
- (2) Electric thermal storage;
- (3) Fuel cells;
- (4) Geothermal installations;
- (5) Hydroelectric generators;
- (6) Solar arrays and installations;
- (7) Tidal power; and
- (8) Wind power installations.

B. "Green design building standard" means an energy and environmental design green building rating standard adopted by rule by the Efficiency Maine Trust under Title 35-A, section 10104, subsection 10-A.

C. "Load management system" means the process of balancing the supply of electricity on the network with the electrical load by adjusting or controlling the load rather than the power station output.

D. "Substantially renovated" means having had a renovation for which the cost exceeds 20% of the building's current value prior to renovation.

2. Rules. The Bureau of General Services, in consultation with the ~~Energy Resources Council and the Public Utilities Commission,~~ Efficiency Maine Trust, established in Title 35-A, section 10103, shall by rule require that all planning and design for the construction of new or substantially renovated state-owned or state-leased buildings, new or substantially renovated buildings owned or leased by the University of Maine System, the Maine Community College System or the Maine Maritime Academy and buildings built or substantially renovated with state funds, including buildings funded ~~through~~ through state bonds or the Maine Municipal Bond Bank:

A. Involve consideration of architectural designs and energy systems, including distributed renewable energy technology and load management systems, that show the greatest net benefit over the life of the building by minimizing long-term energy and operating costs;

B. Include an energy-use target that exceeds ~~by at least~~ the greater of 20% above the energy efficiency standards in effect for commercial and institutional buildings pursuant to Title 10, section 1415-D chapter 1103 and the green design building standard most closely related to the building and project type; and

C. Include a life-cycle cost analysis that explicitly considers cost and benefits over a minimum of 30 years and that explicitly includes the public health and environmental benefits associated with energy-efficient building design and construction, to the extent they can be reasonably quantified.

Rules adopted pursuant to this section apply to all new or substantially renovated state-owned or state-leased buildings, new or substantially renovated buildings owned or leased by the University of Maine System, the Maine Community College System or the Maine Maritime Academy and buildings built or substantially renovated with state funds, including buildings funded through state bonds or the Maine Municipal Bond Bank, regardless of whether the planning and design for construction is subject to approval by the department.

Rules adopted pursuant to this section may provide for exemptions, waivers or other appropriate consideration for buildings with little or no energy usage, such as unheated sheds or warehouses.

~~The Bureau of General Services shall adopt rules pursuant to this section by July 1, 2004. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

3. Approval. A state agency responsible for approving the construction of a new or substantially renovated state-owned or state-leased building, new or substantially renovated buildings owned or leased by the University of Maine System, the Maine Community College System or the Maine Maritime Academy and buildings built or substantially renovated with state funds, including buildings funded through state bonds or the Maine Municipal Bond Bank, may not grant such approval unless the agency or other entity or organization proposing the construction can show that it has duly considered the most energy-efficient and environmentally efficient designs suitable in accordance with rules adopted pursuant to this section and that the proposed construction project meets the standards described in subsection 2, paragraph B.

Sec. A-2. 35-A MRSA §10104, sub-§10-A is enacted to read:

10-A. Green design building standard. The trust shall adopt by rule a green design building standard for energy-efficient and environmentally sustainable public building construction and renovation and historic public building renovation.

PART B

Sec. B-1. 20-A MRSA §15903, sub-§3, ¶C, as enacted by PL 1981, c. 693, §§5 and 8 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

C. The Department of Health and Human Services; and

Sec. B-2. 20-A MRSA §15903, sub-§3, ¶D, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

D. The State Fire Marshal; and

Sec. B-3. 20-A MRSA §15903, sub-§3, ¶E is enacted to read:

E. The Efficiency Maine Trust as established under Title 35-A, section 10103.

Sec. B-4. 20-A MRSA §15908-A, as amended by PL 2007, c. 578, §1, is further amended to read:

§ 15908-A. School energy efficiency standards and distributed renewable energy technology rules

1. Definitions. For purposes of this section, "substantially renovated" means any renovation for which the cost exceeds 50% of the building's current value prior to renovation. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Distributed renewable energy technology" means a product or facility or cluster of products or facilities that has a generating capacity of not more than 5 megawatts or an equivalent amount of heat energy and generates energy in a manner that results in no carbon dioxide emissions or that relies on one or more of the following:

(1) Air source heat pumps;

(2) Electric thermal storage;

(3) Fuel cells;

(4) Geothermal installations;

(5) Hydroelectric generators;

(6) Solar arrays and installations;

(7) Tidal power; and

(8) Wind power installations.

B. "Green design building standard" means an energy and environmental design green building rating standard adopted by rule by the Efficiency Maine Trust under Title 35-A, section 10104, subsection 10-A.

C. "Load management system" means the process of balancing the supply of electricity on the network with the electrical load by adjusting or controlling the load rather than the power station output.

D. "Substantially renovated" means having had a renovation for which the cost exceeds 20% of the building's current value prior to renovation.

2. Rules. The state board, in consultation with the Department of Administrative and Financial Services and the Public Utilities Commission, shall by rule require as a condition for state funding for construction that, except as provided in subsection 4, all planning and design for new or substantially renovated schools or school buildings subject to state board approval:

A. Involve consideration of architectural designs and energy systems, including distributed renewable energy technology and load management systems, that show the greatest net benefit over the life of the building by minimizing long-term energy and operating costs;

B. Include an energy-use target that exceeds ~~by at least~~ the greater of 20% above the energy efficiency standards in effect for commercial and institutional buildings pursuant to Title 10, section 1415-D chapter 1103 and the green design building standard most closely related to the building and project type; and

C. Include a life-cycle cost analysis that explicitly considers cost and benefits over a minimum of 30 years and that explicitly includes the public health and environmental benefits associated with energy-efficient building design and construction, to the extent they can be reasonably quantified.

The state board shall adopt rules pursuant to this section by July 1, 2004. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Requirements for approval. Except as provided in subsection 4, the state board shall withhold approval of a state-funded new or substantially renovated school or school building if the local school authority proposing the project can not show that it has duly considered the most energy-efficient and environmentally efficient designs suitable in accordance with rules adopted pursuant to this section and that the project meets the standards described in subsection 2, paragraph B.

4. Renovation of historic school buildings; waiver. The state board may, in consultation with the Public Utilities Commission and the Executive Director of the State Historic Preservation Commission, grant a waiver from the requirements of this section on a case-by-case basis for instances of substantial renovation of a historic school building, if the waiver requires the project to meet the green design building standard for historic buildings rather than exceed by 20% the energy efficiency standards in effect for commercial and institutional buildings pursuant to Title 10, chapter 1103. For the purposes of this subsection, "historic school building" means a school building that is on the National Register of Historic Places, eligible for nomination to the national register or designated as a historic building by a certified municipal historic preservation ordinance.

A. The state board shall grant a waiver request if, in the board's opinion, the local school authority proposing the renovation project has demonstrated that renovation of the historic school building would not compromise the public health and safety requirements of this chapter and that 2 or more of the following circumstances exist:

(1) Renovation of the historic school building is in substantial compliance with the energy efficiency standards required under this section as determined by the Public Utilities Commission;

(2) Renovation of the historic school building provides substantial energy efficiency as determined by the Public Utilities Commission and also provides education, social or environmental benefits as determined by the department over alternative proposals, including, but not limited to, any proposals to construct a new school on an alternative site; and

(3) Adherence to the energy building standards would result in irreparable damage to the historic character of a historic school building as determined by the Executive Director of the State Historic Preservation Commission.

B. An application for a waiver from the requirements of this section must be submitted to the state board in accordance with requirements established by the state board by rule pursuant to paragraph D. The waiver application must include documentation to substantiate the conditions of this subsection. If the request is denied, the state board shall communicate the reasons for denying the request to the applicant.

C. The state board shall render a decision on an application for a waiver from the requirements of this section within 60 days of the receipt by the state board of a complete application for a waiver. In rendering a decision, the state board may place conditions upon the granting of a waiver. Failure on the part of the state board to render a decision within the 60-day period constitutes approval of the request for the waiver.

D. The state board shall adopt or amend rules to implement the requirements of this subsection. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-5. 20-A MRSA §15915, sub-§1, as amended by PL 2005, c. 499, §1, is further amended to read:

1. Initial agreement. Any school administrative unit may enter into an agreement of up to ~~15~~20 years with a private party, such as an energy service or 3rd-party financing company, for the design, installation, operation, maintenance and financing of energy conservation, distributed renewable energy technology, load management systems or combined energy conservation and air quality improvements at existing school administrative unit facilities. For purposes of this subsection, "distributed renewable energy technology" has the same meaning as in section 15908-A, subsection 1, paragraph A and "load management system" has the same meaning as in section 15908-A, subsection 1, paragraph C. The school administrative unit's costs to enter into such an agreement are not applicable to the unit's school construction project costs, the debt service on which is eligible for subsidy purposes under section 15907. Such an agreement is deemed to be a professional service, which is not subject to the competitive bidding requirements of Title 5, section 1743-A, if the agreement:

A. Provides for operation or maintenance of the improvement for at least 5 years or the entire term of the financing agreement if longer than 5 years;

B. Requires a guaranty by the contractor that the improvement will meet performance criteria set forth in the agreement for at least 5 years or for the entire term of the financing agreement if longer than 5 years; and

C. Has a total contract cost, excluding interest and operating and maintenance costs, of less than \$2,000,000 for any school building, except that this limit may be exceeded if all risk that the project's costs will exceed its benefits is borne by an entity other than the school administrative unit.

A school administrative unit may select contractors for these professional services on the basis of a request for qualifications or a request for proposals and it is not required to use a competitive method set forth in this chapter and Title 5, section 1743-A and Private and Special Law 1999, chapter 79. The selection process must include at a minimum a request for qualifications or a request for proposals that

is advertised in a newspaper of general circulation in the school administrative unit and a newspaper of general circulation in the City of Augusta. The school administrative unit shall interview not fewer than 3 service providers unless a smaller number of service providers responds to the request for qualifications or requests for proposals. The performance criteria in the agreement isare subject to approval by the Department of Administrative and Financial Services, Bureau of General Services. A request for qualifications or proposals may not contain terms that require service providers to have more than 3 years of experience in the energy conservation field or the use of equipment that is not generally available to service providers or terms that are otherwise included for the purpose of bias or favoritism toward a particular service provider. Objections to the terms of a request for qualifications or proposals under this subsection are deemed waived if not delivered in writing to the office of the superintendent of schools in that school administrative unit within 21 days of the last publication of the newspaper advertisement. The school administrative unit may seek technical and other assistance from the Efficiency Maine Trust under Title 35-A, section 10103 in this process.

PART C

Sec. C-1. 30-A MRSA §703, sub-§2, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

2. State. Counties may apply for and accept and expend state grants for any purpose for which state grants are available to counties, either directly or through a state agency, and may seek assistance from the Efficiency Maine Trust pursuant to Title 35-A, section 10103.

Sec. C-2. 30-A MRSA §903, sub-§1, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

1. Agreement with energy service and 3rd-party financing companies. County commissioners may enter into an agreement with a private party, such as an energy service or 3rd-party financing company, for the design, installation, operation, maintenance and financing of energy conservation, distributed renewable energy technology, load management systems or combined energy conservation and air quality improvements at county facilities. County commissioners may seek assistance from the Efficiency Maine Trust under Title 35-A, section 10103 for the purposes of this subsection. For purposes of this subsection, "distributed renewable energy technology" has the same meaning as in section 903-B, subsection 1, paragraph A and "load management system" has the same meaning as in section 903-B, subsection 1, paragraph C.

Sec. C-3. 30-A MRSA §903-B is enacted to read:

§ 903-B. Improvement of energy efficiency and usage of distributed renewable energy technology in construction of county buildings

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

A. "Distributed renewable energy technology" means a product or facility or cluster of products or facilities that has a generating capacity of not more than 5 megawatts or an equivalent amount of heat energy and generates energy in a manner that results in no carbon dioxide emissions or that relies on one or more of the following:

(1) Air source heat pumps;

(2) Electric thermal storage;

(3) Fuel cells;

(4) Geothermal installations;

(5) Hydroelectric generators;

(6) Solar arrays and installations;

(7) Tidal power; and

(8) Wind power installations.

B. "Green design building standard" means an energy and environmental design green building rating standard adopted by rule by the Efficiency Maine Trust under Title 35-A, section 10104, subsection 10-A.

C. "Load management system" means the process of balancing the supply of electricity on the network with the electrical load by adjusting or controlling the load rather than the power station output.

D. "Substantially renovated" means having had a renovation for which the cost exceeds 20% of the building's current value prior to renovation.

2. Planning and design. A county shall require that all planning and design for the construction of new or substantially renovated county-owned or county-leased buildings and buildings built or substantially renovated with county funds, including buildings funded through county bonds or the Maine Municipal Bond Bank:

A. Involve consideration of architectural designs and energy systems, including distributed renewable energy technology and load management systems, that show the greatest net benefit over the life of the building by minimizing long-term energy and operating costs;

B. Include an energy-use target that exceeds the greater of 20% above the energy efficiency standards in effect for commercial and institutional buildings pursuant to Title 10, chapter 1103 and the green design building standard most closely related to the building and project type. This paragraph applies only if the life-cycle cost of meeting the requirements of this paragraph does not exceed the life-cycle cost of a reasonable alternative design that is less environmentally efficient; and

C. Include a life-cycle cost analysis that explicitly considers cost and benefits over a minimum of 30 years and that explicitly includes the public health and environmental benefits associated with energy-efficient building design and construction, to the extent they can be reasonably quantified.

This subsection does not apply to buildings that the county determines will have little or no energy usage, such as unheated sheds or warehouses.

3. Approval. A county may not approve the construction of a new or substantially renovated county-owned or county-leased building or of a building built or substantially renovated with county funds, including a building funded through county bonds or the Maine Municipal Bond Bank, unless the county agency or other entity or organization proposing the construction demonstrates that it has duly considered the most energy-efficient and environmentally efficient designs suitable in accordance with this section and that the proposed construction project meets the standards described in subsection 2, paragraph B.

PART D

Sec. D-1. 30-A MRSA c. 187, sub-c. 4-A is enacted to read:

SUBCHAPTER 4-A

PUBLIC BUILDINGS

§ 4421. Improvement of energy efficiency and usage of distributed renewable energy technology in construction of municipal buildings

1. Limitations on home rule authority. Notwithstanding chapter 111, this subchapter provides express limitations on municipal home rule authority.

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

A. "Distributed renewable energy technology" means a product or facility or cluster of products or facilities that has a generating capacity of not more than 5 megawatts or an equivalent amount of heat energy and generates energy in a manner that results in no carbon dioxide emissions or that relies on one or more of the following:

- (1) Air source heat pumps;
- (2) Electric thermal storage;
- (3) Fuel cells;
- (4) Geothermal installations;
- (5) Hydroelectric generators;
- (6) Solar arrays and installations;
- (7) Tidal power; and
- (8) Wind power installations.

B. "Green design building standard" means an energy and environmental design green building rating standard adopted by rule by the Efficiency Maine Trust under Title 35-A, section 10104, subsection 10-A.

C. "Load management system" means the process of balancing the supply of electricity on the network with the electrical load by adjusting or controlling the load rather than the power station output.

D. "Substantially renovated" means having had a renovation for which the cost exceeds 20% of the building's current value prior to renovation.

3. Planning and design. A municipality shall require that all planning and design for the construction of new or substantially renovated municipally owned or municipally leased buildings and buildings built or substantially renovated with municipal funds, including buildings funded through municipal bonds or the Maine Municipal Bond Bank:

A. Involve consideration of architectural designs and energy systems, including distributed renewable energy technology and load management systems, that show the greatest net benefit over the life of the building by minimizing long-term energy and operating costs;

B. Include an energy-use target that exceeds the greater of 20% above the energy efficiency standards in effect for commercial and institutional buildings pursuant to Title 10, chapter 1103 and the green design building standard most closely related to the building and project type. This

paragraph applies only if the life-cycle cost of meeting the requirements of this paragraph does not exceed the life-cycle cost of a reasonable alternative design that is less environmentally efficient; and

C. Include a life-cycle cost analysis that explicitly considers cost and benefits over a minimum of 30 years and that explicitly includes the public health and environmental benefits associated with energy-efficient building design and construction, to the extent they can be reasonably quantified.

This subsection does not apply to buildings that the municipality determines will have little or no energy usage, such as unheated sheds or warehouses.

4. Approval. A municipality may not approve the construction of a new or substantially renovated municipally owned or municipally leased building or of a building built or substantially renovated with municipal funds, including a building funded through municipal bonds or the Maine Municipal Bond Bank, unless the requirements of subsection 3, paragraph B are met.

PART E

Sec. E-1. 30-A MRS §5953-C, as amended by PL 2007, c. 66, §1, is further amended to read:

§ 5953-C. Loans for energy efficiency and distributed renewable energy technology improvements in municipal and school buildings

This section establishes a program to promote energy efficiency, increased use of distributed renewable energy technology, load management systems and indoor air quality in municipal and school buildings. As used in this section, "distributed renewable energy technology" has the same meaning as in section 4421, subsection 2, paragraph A and "load management system" has the same meaning as in section 4421, subsection 2, paragraph C.

1. Efficiency Partners Program. The bank shall establish the Efficiency Partners Program, referred to in this section as "the program," designed to reduce net energy costs in municipal and school buildings and to create jobs by financing energy audits and cost-effective improvements that accomplish energy efficiency, increased use of distributed renewable energy technology and load management systems, while maintaining healthful indoor air quality. The bank shall issue a request for proposals for energy audits of municipal and school buildings and for energy savings that could be achieved through cost-effective usage of distributed renewable energy technology and improvements to load management, heating and cooling systems, windows, insulation, lighting and equipment in municipal and school buildings. Identification of cost-effective improvements to achieve net energy savings under the program must be based on a comprehensive energy audit that has been performed within the previous 5 years by a professional engineer licensed in this State. An energy audit that is financed under the program or is the basis for cost-effective energy efficiency improvements financed under the program must address compliance with the model building energy code Maine Uniform Building and Energy Code adopted by the Public Utilities Commission pursuant to Title 35-A, section 121 pursuant to Title 10, chapter 1103.

2. Access to the program. Municipalities and school administrative units may have access to the program regardless of whether the municipality or school administrative unit utilizes a loan pursuant to this section to finance an energy audit or cost-effective energy efficiency improvements.

3. Proposals; contracts. The bank shall solicit proposals from energy service companies and individual vendors of energy service products. Notwithstanding any provision of the law regarding bidding requirements, the bank shall contract with an energy service company or companies or vendor or vendors to provide energy services in municipal and school buildings under the program. Whenever the bid proposals received are substantially equivalent, the bank shall in the contract process select an in-state energy service company or vendor whose primary place of business is within this State. For public school projects, bid proposals for energy efficiency improvements must include plans and specifications that are adequate to permit review by the agencies listed under Title 20-A, section 15903, subsection 3 and that bear the stamp of a licensed professional engineer or licensed architect. The agencies listed in Title 20-A, section 15903, subsection 3 shall review the plans and specifications and approve or disapprove them within a reasonable time period.

4. Loan; loan agreements. Loans from the bank for ~~energy efficiency~~energy-related improvements must be structured to ensure to the greatest extent possible that the cost savings achieved by the energy efficiency improvements are sufficient to cover the loan and ultimately to achieve a net positive cash flow as ~~early as practical~~. The rate of interest charged for loans made through the program for energy efficiency improvements or energy audits must be below the currently available rate of interest charged on commercial loans of equivalent term and use.

5. Energy Payment Equalization Fund. The bank shall establish a fund called the Energy Payment Equalization Fund. To the extent that the fund has assets available to it through funding by federal, state or local governments, or grants, gifts, donations or payments from any other source, money in the fund may be applied to loans made to municipalities in the program if achieved energy savings are not sufficient to offset the debt service payments on a loan made through the program. This fund may include deposits made by energy service companies or vendors to guarantee their commitment to achieve energy savings sufficient to offset debt service payments but may not include any other donations or payments from vendors or interested parties. The fund may be used to provide general interest rate reductions or principal reductions on any loan or group of loans made under the program for energy audits or for energy efficiency improvements regardless of energy cost savings that may be achieved through the use of the proceeds of the loans or loan.

6. Report to the Legislature. Beginning in 2008, the bank shall report annually by March 1st to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters regarding the program. The report must document program activity during the prior 12 months, including, but not limited to, contracts made with energy service companies or vendors, loans made to municipalities or school administrative units, energy audits conducted and energy efficiency improvements implemented.

Sec. E-2. 30-A MRSA §5954-A, sub-§1, as amended by PL 2005, c. 190, §1, is further amended to read:

1. Authority. In addition to its other enumerated powers, but subject to the limitations imposed under subsection 2, the bank, on behalf of or in partnership with one or more governmental units or nonprofit corporations organized under the Internal Revenue Code, Section 501, may aggregate governmental units and nonprofit corporations to purchase in bulk electricity, petroleum products, fuel oil and, natural gas and the services of energy service companies and individual vendors of energy service products.

SUMMARY

This bill amends the law to raise energy efficiency standards for public buildings and increases the ability of school units and counties to finance energy-related improvements in public buildings.

Part A raises efficiency standards for state-funded construction.

Part B raises efficiency standards for school construction, involves the Efficiency Maine Trust in the construction project approval process, gives school administrative units increased flexibility in contracting with energy service companies for energy efficiency, load management and distributed renewable energy improvements and makes school administrative units eligible for technical and other assistance from Efficiency Maine Trust in pursuing energy-related improvements.

Part C raises efficiency standards for county buildings and expands counties' ability to contract with energy service companies to achieve energy savings.

Part D raises efficiency standards for municipal buildings.

Part E applies the Maine Municipal Bond Bank's Efficiency Partners Program, which provides loans for efficiency upgrades to municipal and public school buildings, to renewable energy and load management projects.