

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

Amend the amendment by striking out the substitute title and replacing it with the following:

**'An Act To Establish a Process for the
Procurement of Biomass Resources'**

Amend the amendment by inserting after the substitute title the following:

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

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

Whereas, this legislation requires that funds be transferred by June 30, 2016; and

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

Amend the amendment in section 1 in subsection 2 in the 4th and 5th lines (page 1, lines 30 and 31 in amendment) by striking out the following: "contingent upon available funds for above-market costs of the contract pursuant to subsection 4"

Amend the amendment in section 1 by striking out all of subsections 3, 4, 5 and 6 (page 2, lines 3 to 43 and page 3, lines 1 to 9 in amendment) and inserting the following:

'3. Review and selection of renewable resources and contract adjustments. In conducting a solicitation and entering into any contract under subsection 2, the commission shall:

A. Ensure that a biomass resource facility is operating at least at a 50% capacity for 60 days prior to the initiation of a competitive solicitation in accordance with subsection 2 and continues to operate at that capacity except for planned and forced outages; and

B. Seek to ensure, to the maximum extent possible, that a contract entered into under this section:

(1) Provides benefits to ratepayers;

(2) Provides in-state benefits, such as capital investments to improve long-term viability of the facility, permanent direct jobs, payments to municipalities, payments for fuel harvested in the State, payment for in-state resource access, in-state purchases of goods and services and construction-related jobs and purchases;

(3) Reduces greenhouse gas emissions;

(4) Promotes fuel diversity; and

(5) Supports or improves grid reliability.

In selecting among bids, the commission shall determine the total in-state economic benefits of the contract in an expected annual dollar per megawatt-hour average and the cost to fund the above-market costs of a contract in an expected annual dollar per megawatt-hour average. The commission shall consider both of these values for each proposal to identify those proposals that maximize the overall benefits to the State, and shall establish a process under which a generator of biomass resources verifies on an annual basis that the projected in-state economic benefits are generated during the term of the contract. If the commission concludes that the solicitation conducted under subsection 2 is not competitive, no bidders may be selected and the commission is not obligated to enter into a contract. If the commission finds the in-state benefits are not being achieved, the commission may reduce the contract payment by the percentage difference between actual in-state benefits achieved and the projected in-state benefits.

4. Cost recovery fund. There is established within the commission a nonlapsing cost recovery fund, referred to in this section as "the fund." The fund receives funds allocated or transferred by the Legislature from the unappropriated surplus of the General Fund in accordance with subsection 7. The commission shall use the fund to pay all above-market costs of any contract entered into under this section. No more than 50% of the fund may be awarded to facilities serving the NMISA region. At the close of fiscal year 2016-17, amounts remaining in the cost recovery fund that the commission has determined are not needed to pay above-market costs in accordance with subsection 5 must be transferred to the Maine Budget Stabilization Fund established under the Maine Revised Statutes, Title 5, section 1532. The commission by rule or order shall establish how above-market costs are determined and how payments from the fund are made.

5. Cost recovery. The commission shall ensure that all costs and benefits associated with contracts entered into under this section are allocated as follows:

A. All costs, other than above-market costs, and all direct financial benefits associated with contracts entered into under this section must be allocated to ratepayers in accordance with the Maine Revised Statutes, Title 35-A, section 3210-F and may not be considered imprudent; and

B. Above-market costs, including any price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the capacity resource is sold and any losses derived from contracts for differences, must be allocated as follows:

(1) To the extent funds are available in the fund under subsection 4, the above-market costs must be paid from the fund; and

(2) If there are insufficient funds available in the fund under subsection 4, any insufficiency must be allocated to ratepayers in accordance with Title 35-A, section 3210-F and may not be considered imprudent.

Amend the amendment in section 1 by striking out all of subsection 8 (page 3, lines 13 to 21 in amendment) and inserting the following:

‘8. Transfers of funds. Notwithstanding any provision of law to the contrary, at the close of fiscal year 2015-16, the State Controller, as the next priority after making the transfers authorized pursuant to the Maine Revised Statutes, Title 5, sections 1507, 1511, 1519, 1522 and 1536, shall transfer from the unappropriated surplus of the General Fund to the Cost Recovery Fund, Other Special Revenue Funds account within the Public Utilities Commission amounts as may be available from time to time, up to a total of \$13,400,000.’

Amend the amendment in section 1 by renumbering the subsections to read consecutively.

Amend the amendment by striking out all of sections 2 and 3 and inserting the following:

‘Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC UTILITIES COMMISSION

Cost Recovery Fund N228

Initiative: Provides an allocation to pay above-market costs of contracts for energy or contracts for differences for the procurement of up to 80 megawatts of biomass resources.

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
All Other	\$0	\$13,400,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$13,400,000

Public Utilities - Administrative Division 0184

Initiative: Provides an allocation for consulting costs.

OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
All Other	\$0	\$100,974
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$100,974

PUBLIC UTILITIES COMMISSION		
DEPARTMENT TOTALS	2015-16	2016-17
OTHER SPECIAL REVENUE FUNDS	\$0	\$13,500,974
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$13,500,974

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.’

SUMMARY

This amendment:

1. Adds an emergency preamble and clause;
2. Removes language that limits the Public Utilities Commission's authority to enter into a contract based on the availability of funds in the cost recovery fund;
3. Requires that a biomass resource facility is operating at least at a 50% capacity for 60 days rather than 6 months prior to initiation of the competitive solicitation;
4. Provides that if the Public Utilities Commission concludes that the solicitation is not competitive, no bidders may be selected;
5. Removes language that requires the Public Utilities Commission to conduct a competitive solicitation for a combined heat and power solicitation; and
6. Eliminates cost recovery through the Maine Budget Stabilization Fund and instead directs the State Controller at the close of fiscal year 2015-16 to transfer from the unappropriated surplus of the General Fund up to \$13,400,000 to the cost recovery fund established for this purpose. At the close of fiscal year 2016-17, amounts remaining in the cost recovery fund that the commission has determined are not needed to pay above-market costs must be transferred to the Maine Budget Stabilization Fund established under the Maine Revised Statutes, Title 5, section 1532. If funds in the cost recovery fund are insufficient, the commission is directed to recover the funds through amounts charged to ratepayers.

FISCAL NOTE REQUIRED
(See attached)