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Legislative Document

No. 1426

S.P. 512

In Senate, April 23, 2013

**An Act To Improve Maine's Economy and Lower Energy Costs
through Energy Efficiency**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BOYLE of Cumberland.
Cosponsored by Representative RUSSELL of Portland and
Senators: President ALFOND of Cumberland, CAIN of Penobscot, CLEVELAND of
Androscoggin, SAVIELLO of Franklin, Representatives: DUNPHY of Embden, Speaker
EVES of North Berwick, GIDEON of Freeport, HUBBELL of Bar Harbor, NOON of Sanford.

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

2 **PART A**

3 **Sec. A-1. 35-A MRSA §3210-C, sub-§12**, as enacted by PL 2011, c. 413, §3, is
4 repealed.

5 **Sec. A-2. 35-A MRSA §10104, sub-§4, ¶A**, as enacted by PL 2009, c. 372, Pt.
6 B, §3, is amended to read:

7 A. The triennial plan must be developed by the trust, in consultation with entities and
8 agencies engaged in delivering efficiency programs in the State, to authorize and
9 govern or coordinate implementation of energy efficiency and weatherization
10 programs in the State. The triennial plan must identify all achievable cost-effective
11 energy efficiency savings and related programs that could be implemented pursuant
12 to sections 10110 and 10111, the costs and benefits of such programs and the basis
13 and support for such identified costs and benefits. The trust shall conduct an
14 evaluation of all the cost-effective potential for electrical and natural gas energy
15 efficiency savings in the State at least once every 5 years.

16 (1) Transmission and distribution utilities and natural gas utilities shall furnish
17 data to the trust that the trust requests under this subsection subject to such
18 confidential treatment as a utility may request and the board determines
19 appropriate pursuant to section 10106. The costs of providing the data are
20 deemed reasonable and prudent expenses of the utilities and are recoverable in
21 rates.

22 **Sec. A-3. 35-A MRSA §10104, sub-§4, ¶D**, as amended by PL 2009, c. 518, §8,
23 is further amended to read:

24 D. Prior to submission of the triennial plan to the commission, the trust shall offer to
25 provide a detailed briefing on the draft plan to the joint standing committee of the
26 Legislature having jurisdiction over energy matters and, at the request of the
27 committee, shall provide such a briefing and opportunity for input from the
28 committee. After providing such opportunity for input and making any changes as a
29 result of any input received, the board shall deliver the plan to the commission for its
30 review and approval. The commission shall open ~~a~~ an adjudicatory proceeding and
31 issue an order either approving the plan and issuing the appropriate orders to
32 transmission and distribution utilities and gas utilities or rejecting the plan and stating
33 the reasons for the rejection. The commission shall reject elements of the plan that
34 propose to use funds generated pursuant to sections 3210-C, 10109, 10110, 10111 or
35 10119 if the plan fails to reasonably explain how these elements of the program
36 would achieve the objectives and implementation requirements of the programs
37 established under those sections or the measures of performance under subsection 3.
38 Funds generated under these statutory authorities may not be used pursuant to the
39 triennial plan unless those elements of the plan proposing to use the funds have been
40 approved by the commission. The commission shall approve ~~or reject any~~ all
41 elements of the triennial plan shown to be cost-effective and shall incorporate into
42 rates sufficient revenue to procure energy efficiency resources identified within the

1 plan pursuant to section 10110, subsection 4-A and section 10111, subsection 2
2 within ~~60~~ 120 days of its delivery to the commission. The board, within ~~45~~ 30 days
3 of final commission approval of its plan, shall submit the plan to the joint standing
4 committee of the Legislature having jurisdiction over energy matters together with
5 any explanatory or other supporting material as the committee may request and, at the
6 request of the committee, shall provide a detailed briefing on the final plan. ~~After~~
7 ~~receipt of the plan, the joint standing committee of the Legislature having jurisdiction~~
8 ~~over energy matters may submit legislation relating to the plan.~~

9 **Sec. A-4. 35-A MRSA §10110, sub-§2, ¶B,** as enacted by PL 2009, c. 372, Pt.
10 B, §3, is amended to read:

11 B. The trust, with regard to ~~the assessment imposed under subsection 4~~ funds
12 available to the trust, shall:

13 (1) Target at least ~~20%~~ 10% of ~~funds~~ electric conservation for ratepayers or
14 \$2,600,000, whichever is greater, to programs for low-income residential
15 consumers, as defined by the board by rule;

16 (2) Target at least ~~20%~~ 10% of ~~funds~~ electric conservation for ratepayers or
17 \$2,600,000, whichever is greater, to programs for small business consumers, as
18 defined by the board by rule; and

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

23 **Sec. A-5. 35-A MRSA §10110, sub-§4,** as enacted by PL 2009, c. 372, Pt. B, §3,
24 is repealed.

25 **Sec. A-6. 35-A MRSA §10110, sub-§4-A** is enacted to read:

26 **4-A. Procurement of all cost-effective energy efficiency resources.** The
27 commission shall ensure that electric ratepayers in the State procure all energy efficiency
28 resources found by the commission to be cost-effective, reliable and achievable pursuant
29 to section 10104, subsection 4. The procurement of cost-effective energy efficiency
30 resources is a just and reasonable element of rates. The commission may issue any
31 appropriate orders to transmission and distribution utilities necessary to achieve the goals
32 of this subsection. In determining the amount of cost-effective efficiency resources that
33 must be procured by electric ratepayers, the commission shall give consideration to
34 energy efficiency resources that are reasonably foreseeable to be achieved by the trust
35 through all other sources of revenue, including but not limited to the Regional
36 Greenhouse Gas Initiative Trust Fund under section 10109.

37 **Sec. A-7. 35-A MRSA §10110, sub-§5,** as amended by PL 2009, c. 518, §10, is
38 repealed.

39 **Sec. A-8. 35-A MRSA §10110, sub-§6,** as enacted by PL 2009, c. 372, Pt. B, §3,
40 is repealed.

- 1 A. The payment must be made voluntarily.
- 2 B. The voluntary payment must be made at the wholesale level and based on each
3 barrel of #2 heating oil or kerosene or an equivalent amount of propane that is:
- 4 (1) Transferred by a terminal facility licensed pursuant to Title 38, section 545;
5 (2) First transported into this State by a person required to register pursuant to
6 Title 38, section 545-B; or
- 7 (3) First transported into this State by a vendor of propane or kerosene.
- 8 C. The voluntary payment is established by agreement of oil, kerosene and propane
9 dealers in this State but is limited to up to 2% of the average retail price paid for each
10 gallon of #2 heating oil or kerosene or the equivalent amount of propane during the
11 previous calendar year.
- 12 D. The voluntary payment must be collected for at least 90% of the #2 heating oil,
13 kerosene and propane supplied in this State.

14 The trust shall deposit any voluntary payment received pursuant to this subsection in the
15 fund. Annually, the trust shall transfer to the fund an amount from the Regional
16 Greenhouse Gas Initiative Trust Fund that is equivalent to the amount of any voluntary
17 payments received pursuant to this subsection during the same time period.

18 Notwithstanding any law to the contrary, the agreement of oil, kerosene and propane
19 dealers to make a voluntary payment pursuant to this subsection and to agree on the
20 amount of the voluntary payment is not considered to be a conspiracy, a combination in
21 restraint of trade, an illegal monopoly or an attempt to lessen competition, in order to fix
22 prices arbitrarily or to create a combination or pool in violation of any law of this State.
23 An agreement or contract between the oil, kerosene and propane dealers authorized in this
24 subsection is not considered to be illegal, in restraint of trade or contrary to any statute
25 enacted against pooling or combinations.

26 **Sec. B-2. 35-A MRSA §10119, sub-§2**, as enacted by PL 2009, c. 372, Pt. B, §3,
27 is amended to read:

28 **2. Program.** All funds deposited in the fund must be administered by the trust in
29 accordance with the following.

30 A. All funds deposited in the fund must be administered by the trust to reduce
31 heating fuel consumption consistent with the purpose and targets of the trust and the
32 triennial plan to achieve the ~~following goal:~~ targets in section 10104, subsection 4,
33 paragraph F.

34 ~~(1) By 2030, to provide cost effective energy efficiency and weatherization~~
35 ~~measures to substantially all homes and businesses whose owners wish to~~
36 ~~participate in programs established by the trust under this section.~~

37 B. Funds from the fund may be used only for programs that provide cost-effective
38 energy efficiency and weatherization measures for the benefit of heating fuel
39 customers or to efficiency service providers serving those customers and in
40 accordance with the following.

- 1 (1) Program categories must include low-income, single-family and 2-family
2 residential units, multifamily residential units, small business, commercial and
3 institutional and such other categories as the trust determines appropriate;
- 4 (2) Within program categories, the trust may differentiate between programs for
5 new construction and existing buildings; and
- 6 (3) Cost-effective energy efficiency measures must include measures that
7 improve the energy efficiency of the building envelope and its energy-using
8 systems, such as heating and cooling systems, through building weatherization
9 and system upgrades or conversions, including conversions to energy-efficient
10 systems that rely on renewable energy sources or systems that rely on effective
11 energy efficiency technologies.
- 12 C. Program designs approved by the trust ~~must~~ may contain:
- 13 (1) Incentives to consumers to purchase and install cost-effective efficiency and
14 weatherization products and services identified by a certified energy auditor,
15 except in the case of programs to deliver education, training or certifications;
- 16 (2) A schedule of customer copayments and loan options for prescribed products
17 and services. Programs for low-income consumers may provide exemptions from
18 the copayment and schedule;
- 19 (3) A plan for integrating delivery of heating fuel efficiency and weatherization
20 measures with electric efficiency measures; and
- 21 (4) A system for the equitable allocation of costs among the contributing funds or
22 subaccounts administered by the trust when more than one efficiency opportunity
23 is identified.
- 24 D. Other eligible program measures may include, but are not limited to, training or
25 certification of energy auditors, insulation installers, mechanical heating system
26 installers and maintenance technicians and building energy inspectors.
- 27 E. The trust shall ensure that during any fiscal year at least 20% of funds authorized
28 in this section are spent on programs for low-income residential consumers, as
29 defined by the trust by rule.

30 PART C

31 **Sec. C-1. 35-A MRSA §3105** is enacted to read:

32 **§3105. Rate-making treatment for fuel conversions**

33 A transmission and distribution utility may not recover costs from ratepayers for
34 grants offered to customers for a fuel conversion. The commission shall allow a
35 transmission and distribution utility to use shareholder funds for grants or loans for fuel
36 conversions as long as the following conditions are met:

37 **1. Energy assessment.** The building to be converted to electricity has received an
38 energy assessment that identifies for the building owner the cost-effectiveness of the fuel

1 conversion along with other energy measures, including but not limited to weatherization;
2 and

3 **2. Consultation with Efficiency Maine Trust.** The fuel conversion program has
4 been developed in consultation with and agreement by the Efficiency Maine Trust under
5 chapter 97. In developing the program, there must be coordinated communication with
6 ratepayers regarding both fuel conversion and energy efficiency programs, including
7 incentives offered by the Efficiency Maine Trust for energy efficiency measures.

8 If the transmission and distribution utility provides on-bill financing for which the costs
9 of that financing are recoverable through rates, financing must also be made available for
10 energy efficiency measures.

11 For purposes of this section, "fuel conversion" means the conversion of a primary
12 heating or cooling system from one type of fuel to another. For purposes of this section,
13 "on-bill financing" means periodic financing payments for the loan that are included on
14 the ratepayer's bill for the utility service that is issued by the transmission and distribution
15 utility.

16 **Sec. C-2. 35-A MRSA §4713** is enacted to read:

17 **§4713. Rate-making treatment for fuel conversions**

18 A natural gas utility may not recover costs from ratepayers for grants offered to
19 customers for a fuel conversion. The commission shall allow a utility to use shareholder
20 funds for grants or loans for fuel conversions as long as the following conditions are met:

21 **1. Energy assessment.** The building to be converted to natural gas has received an
22 energy assessment that identifies for the building owner the cost-effectiveness of the fuel
23 conversion along with other energy measures, including but not limited to weatherization;
24 and

25 **2. Consultation with Efficiency Maine Trust.** The fuel conversion program has
26 been developed in consultation with and agreement by the Efficiency Maine Trust under
27 chapter 97. In developing the program, there must be coordinated communication with
28 ratepayers regarding both fuel conversion and energy efficiency programs, including
29 incentives offered by the Efficiency Maine Trust for energy efficiency measures.

30 If the natural gas utility provides on-bill financing for which the costs of that financing
31 are recoverable through rates, financing must also be made available for energy
32 efficiency measures.

33 For purposes of this section, "fuel conversion" means the conversion of a primary
34 heating or cooling system from one type of fuel to another. For purposes of this section,
35 "on-bill financing" means periodic financing payments for the loan that are included on
36 the ratepayer's bill for the utility service that is issued by the natural gas utility.

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

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

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

14 (1) Increases consumer awareness of cost-effective options for conserving
15 energy;

16 (2) Creates more favorable market conditions for the increased use of efficient
17 products and services; ~~and~~

18 (3) Promotes sustainable economic development and reduces environmental
19 damage; and

20 (4) Maximizes investments in energy efficiency associated with significant
21 expansion of natural gas systems in the State, including but not limited to the
22 energy efficiency of natural gas heating systems and building envelopes.

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

24 (1) A reasonable percentage of the available funds is directed to programs for
25 low-income residential consumers, as defined by the trust. The trust shall
26 establish the percentage based on an assessment of the opportunity for cost-
27 effective conservation measures for such consumers, including an assessment of
28 the number of low-income residential consumers that may be eligible for such
29 programs;

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

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

39 **Sec. C-4. 35-A MRSA §10111, sub-§2,** as amended by PL 2011, c. 637, §7, is
40 further amended to read:

41 **2. Funding level.** The natural gas conservation fund, which is a nonlapsing fund, is
42 established to carry out the purposes of this section. The commission shall assess each

1 gas utility ~~that serves at least 5,000 residential customers an amount that is no less than~~
2 ~~3% of the gas utility's delivery revenues as defined by commission rule. In in~~ accordance
3 with the triennial plan, ~~the commission may assess a higher amount~~ an amount necessary
4 to capture all cost-effective energy efficiency that is achievable and reliable. All amounts
5 collected under this subsection must be transferred to the natural gas conservation fund.
6 Any interest on funds in the fund must be credited to the fund. Funds not spent in any
7 fiscal year remain in the fund to be used for the purposes of this section.

8 The assessments charged to gas utilities under this section are just and reasonable costs
9 for rate-making purposes and must be reflected in the rates of gas utilities.

10 All funds collected pursuant to this section are collected under the authority and for the
11 purposes of this section and are deemed to be held in trust for the purposes of benefiting
12 natural gas consumers served by the gas utilities assessed under this subsection. In the
13 event funds are not expended or contracted for expenditure within 2 years of being
14 collected from consumers, the commission shall return the value of those funds to
15 consumers by appropriate reductions in the assessment collected pursuant to this
16 subsection.

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

19 PART D

20 **Sec. D-1. 35-A MRSA §10104, sub-§4, ¶C**, as enacted by PL 2009, c. 372, Pt.
21 B, §3, is amended to read:

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

30 **Sec. D-2. 35-A MRSA §10104, sub-§4, ¶F**, as amended by PL 2009, c. 518, §8,
31 is repealed and the following enacted in its place:

32 F. It is an objective of the triennial plan to design, coordinate and integrate sustained
33 energy efficiency and weatherization programs that are available to all energy
34 consumers in the State, regardless of fuel type. The plan must set forth the costs and
35 benefits of energy efficiency programs that substantively advance the following
36 targets and funding necessary to meet those targets. Except where specifically
37 provided in the individual targets, the trust may consider expected savings from
38 market effects not attributable to the trust as well as efforts by other organizations,
39 including but not limited to federally funded low-income weatherization programs:

40 (1) Substantially all homes willing to participate in and share the costs of cost-
41 effective home weatherization must be brought to a minimum standard of
42 weatherization, as defined by the trust, by 2030;

1 within energy infrastructure corridors must be deposited into the Secondary Road
2 Program Fund established in Title 23, section 1803-C and ~~40%~~ 80% of the revenues must
3 be deposited into the energy infrastructure benefits fund established in Title 5, section
4 282, subsection 9.

5 **Sec. F-2. 35-A MRSA §10103, sub-§4-A, ¶A**, as enacted by PL 2009, c. 655,
6 Pt. B, §4, is amended to read:

7 A. To ensure the steady transition to energy independence and security for the
8 people, communities, economy and environment of the State in accordance with the
9 triennial plan. In the expenditure of funds pursuant to this paragraph, the trust may
10 provide grants, loans, programs and incentives on a competitive basis. The trust shall
11 apportion the expenditures of funds pursuant to this paragraph in any fiscal year as
12 follows:

- 13 (1) ~~Seventy-five~~ Seventy percent for cost-effective energy efficiency initiatives; ~~and~~
14 (2) ~~Twenty-five~~ Twenty percent for cost-effective alternative energy resources
15 initiatives; and
16 (3) Ten percent for alternative energy resources that may not meet the trust's
17 modified societal benefit test for cost-effectiveness but increase the State's energy
18 independence and either meet a participant cost test or foster emerging technologies
19 that could become cost-effective over time.

20 SUMMARY

21 This bill changes the structure of the assessment imposed by the Public Utilities
22 Commission for electric efficiency and conservation programs. The bill repeals the base
23 rate of .145¢ per kilowatt hour and instead requires the commission to ensure that all
24 electric ratepayers procure all energy efficiency resources found by the commission to be
25 cost-effective, reliable and achievable and allows the commission to impose any order on
26 transmission and distribution utilities necessary to achieve the energy efficiency savings.

27 The bill establishes a voluntary heating fuels efficiency and weatherization payment
28 imposed on the transfer of a barrel of #2 heating oil or kerosene or the equivalent amount
29 of propane. The voluntary payment is collected at the wholesale level and may not
30 exceed 2% of the average retail price paid for a gallon of #2 heating oil or its equivalent
31 in the previous year. The Efficiency Maine Trust may not collect the voluntary payment
32 unless it is imposed on 90% of the fuel supplied to the State. The amount of the
33 voluntary payment is set by the fuel dealers; this action is specifically excluded from any
34 state law prohibiting price fixing or collusion. The voluntary payment is deposited in the
35 Heating Fuels Efficiency and Weatherization Fund and is matched by an equivalent
36 transfer by the Efficiency Maine Trust from the Regional Greenhouse Gas Initiative Trust
37 Fund.

38 The bill prohibits transmission and distribution utilities and natural gas utilities from
39 recovering costs from ratepayers for grants offered to a customer for fuel conversion of
40 the customer's primary heating or cooling system and allows the utility to use shareholder
41 funds for grants or loans for fuel conversions under certain circumstances.

1 The bill requires that, during 2014, 2015 and 2016, at least 65% of the Regional
2 Greenhouse Gas Initiative Trust Fund must be allocated for measures, investments and
3 arrangements that reduce electricity consumption, and not more than 35% must be
4 allocated for fossil fuel conservation measures, investments and arrangements. The bill
5 decreases the percentage of revenue generated from the use of energy efficiency corridors
6 owned by the Department of Transportation that is deposited into the Secondary Road
7 Program Fund from 90% to 20% and increases the percentage of revenue deposited in the
8 energy infrastructure benefits fund from 10% to 80%.