

APPROVED

CHAPTER

APR 05 '02

624

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWO

H.P. 330 - L.D. 420

An Act to Strengthen Energy Conservation

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

Whereas, funds for conservation programs have been collected pursuant to existing law and there is an immediate need to put in place changes to the law in order to ensure efficient and effective use of those funds; 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,

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

Sec. 1. 5 MRSA §3305-B, sub-§§2 to 5, as enacted by PL 1999, c. 336, §2, are repealed.

Sec. 2. 35-A MRSA §3153-A, sub-§1, ¶E, as amended by PL 1999, c. 398, Pt. A, §58 and affected by §§104 and 105, is further amended to read:

E. Transmission and distribution utility financing or subsidization of capital improvements undertaken by ratepayers to conserve electricity used by the ratepayers in the future. This paragraph applies to future programs for

utility financing of energy conservation or load management as long as the goal of such programs is to economically defer or eliminate the need for transmission and distribution plant upgrades. In addition to programs undertaken pursuant to this paragraph, programs may be undertaken pursuant to section ~~3211~~ 3211-A to achieve goals other than that identified in this paragraph;

Sec. 3. 35-A MRSA §3211, as repealed and replaced by PL 1999, c. 336, §3, is repealed.

Sec. 4. 35-A MRSA §3211-A is enacted to read:

§3211-A. Conservation programs

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

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

B. "Administration fund" means the conservation administration fund established by the commission pursuant to subsection 6.

C. "Available funds" means funds available in the program fund.

D. "Conservation programs" means programs developed by the commission pursuant to this section designed to reduce inefficient electricity use.

E. "Prior conservation efforts" means programs to promote conservation undertaken at the direction or with the authorization of the commission prior to March 1, 2002.

F. "Program fund" means the conservation program fund established by the commission pursuant to subsection 5.

G. "Service provider" means a public or private provider of energy conservation services or an entity selected by the commission to contract with such providers or otherwise arrange the delivery of conservation programs.

H. "Total conservation expenditures" means expenditures of a transmission and distribution utility associated with prior conservation efforts plus assessments paid by the utility pursuant to this section.

2. Programs. The commission shall develop and, to the extent of available funds, implement conservation programs in accordance with this section. 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.

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; and

(3) Promote sustainable economic development and reduced environmental damage.

B. The commission 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.

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.

4. Funding level. 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 .15 cent per kilowatt-hour;

C. Are no less than 0.5% of the total transmission and distribution revenues of the transmission and distribution utility; and

D. Are proportionally equivalent to the total conservation expenditures of other transmission and distribution utilities, unless the commission finds that a different amount is justified; however, any increase in an assessment on a transmission and distribution utility by the commission must be based on factors other than the achievement of proportional equivalency.

5. Conservation program fund. The commission shall establish a conservation program fund to be used solely for conservation programs.

A. The commission shall deposit all assessments collected pursuant to this section, other than funds deposited in the administration fund, into the program fund.

B. Any interest earned on funds in the program fund must be credited to the program fund.

C. Funds not spent in any fiscal year remain in the program fund to be used for conservation programs.

D. The commission may apply for and receive grants from state, federal and private sources for deposit in the program fund and also may deposit in the program fund any grants or other funds received by or from any entity with which the commission has an agreement or contract pursuant to this section if the commission determines that receipt of those funds would be consistent with the purposes of this section. If the commission receives any funds pursuant to this paragraph, it shall establish a separate account within the program fund to receive the funds and shall keep those funds and any interest earned on those funds segregated from other funds in the program fund.

6. Conservation administration fund. The commission shall establish a conservation administration fund to be used solely to defray administrative costs. The commission annually may deposit funds collected pursuant to this section into the administration fund up to a maximum in any fiscal year of \$1,300,000. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year

must either remain in the administration fund to be used to defray administrative costs or be transferred to the program fund.

7. Prior conservation efforts. Except as otherwise directed by the commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

8. Resolution of disputes. Upon receipt of an appropriate filing by a party to a contract relating to prior conservation efforts, the commission shall adjudicate a dispute relating to the interpretation or administration of the contract by the transmission and distribution utility.

In the case of a dispute filed after the effective date of this subsection, the commission shall refer the dispute to commercial arbitration in accordance with this paragraph. Each party to the contract shall select an arbitrator who is not a current employee of the party. The selected arbitrators shall then select a 3rd arbitrator. If the arbitrators can not agree on the 3rd arbitrator, each party shall submit to the commission a list of at least 3 arbitrators who have no previous or current interest in the contract and, to the extent practicable, have special competence and experience with respect to the subject matter involved in the dispute. The commission shall choose the 3rd arbitrator from among the persons on the lists provided by the parties. After their selection, the arbitrators shall promptly hear and determine the controversy pursuant to the rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules conflict with any procedural rules established by the commission or applicable provisions of the laws of this State relating to arbitration, the applicable commission rules or provisions of state law govern the arbitration. The arbitrators shall submit their decision to the commission.

A. The commission shall accept or reject the decision within 30 days of its submission, unless the commission requires additional time, in which case it may extend its review for another 30 days.

B. If the commission does not reject the decision within 30 days or, if it extends its review period an additional 30 days, within 60 days, the decision is deemed accepted.

C. If the commission rejects the decision, the commission shall adjudicate the dispute.

A decision by the commission under this subsection, including a decision by the arbitrators that is deemed accepted by the commission pursuant to paragraph B, is enforceable in a court of law.

9. Cost recovery. The commission shall include all assessments under this section in the rates of transmission and distribution utilities.

10. Rules. The commission shall adopt rules necessary to implement this section. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

11. Report. The commission shall report by December 1st of each year to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include:

A. A description of actions taken by the commission pursuant to this section, including descriptions of all conservation programs implemented during the prior 12 months and all conservation programs that the commission plans to implement during the next 12 months, a description of how the commission determines the cost effectiveness of each conservation program and its assessment of the cost effectiveness of programs implemented during the prior 12 months;

B. An accounting of:

(1) Assessments made on each transmission and distribution utility pursuant to this section during the prior 12 months and projected assessments during the next 12 months;

(2) Total deposits into and expenditures from the program fund during the prior 12 months and projected deposits into and expenditures from the program fund during the next 12 months;

(3) The amount and source of any grants or funds deposited in the program fund pursuant to subsection 5, paragraph D during the previous 12 months and the projected amount and source of any such funds during the next 12 months; and

(4) Total deposits into and expenditures from the administration fund during the prior 12 months and

projected deposits into and expenditures from the administration fund during the next 12 months; and

C. Any recommendations for changes to law relating to energy conservation.

Sec. 5. PL 1997, c. 316, §5, as amended by PL 1997, c. 558, §2, is further amended to read:

Sec. 5. Conservation and qualifying facility contracts. All existing contracts and agreements in effect as of March 1, 2000 between electric utilities and energy resource providers, including but not limited to qualifying facilities, continue in effect notwithstanding any other provision of this Act, and the rights of the parties to these contracts and agreements may not be abrogated or diminished as a result of implementing this Act.

All existing electric utilities shall provide each qualifying facility, each party to a contract entered into solely for the purpose of restructuring a contract with a qualifying facility except an affiliated interest and each demand-side management or conservation provider, broker or host with whom it has contracts as of March 1, 2000 the option to have the contract or contracts:

1. Retained by the transmission and distribution utility if it is the same legal entity as the electric utility that entered into the contract or contracts; or

2. Assigned by the existing electric utility to the transmission and distribution utility if it exists as a distinct legal entity after implementation of the provisions of this Act.

If contracts with qualifying facilities in existence on March 1, 2000 contain provisions for the simultaneous purchase of energy, or energy and capacity, by an electric utility from a qualifying facility and by a qualifying facility from an electric utility, the transmission and distribution utility shall continue to sell at retail all transmission and distribution services to the qualifying facility, including the transmission of any energy, or energy and capacity, the qualifying facility may obtain in the competitive market. In the case of each such qualifying facility contract ~~and each demand-side management or conservation contract~~ assigned or retained as provided for in this section, any requirement pursuant to the contract that the qualifying facility or customer ~~or host implementing demand-side management or conservation measures~~ remain a customer of the electric utility that was an original party to the contract or any requirement pursuant to the contract to purchase a certain amount of electricity from that electric utility is deemed to be

fully satisfied by the qualifying facility, or customer, or ~~host~~ (a) remaining a customer of the transmission and distribution utility that has retained the contract, or to whom it has been assigned pursuant to the option provided for in this section, (b) receiving any such required amounts of electricity by making purchases in the competitive energy market, and (c) receiving such purchases over the facilities of the transmission and distribution utility. ~~The transmission and distribution utility shall make payments required under any such demand-side management or conservation contracts of this Act and is entitled to collect these payments in rates and charges as provided for in the Maine Revised Statutes, Title 35-A.~~

The Legislature finds that the execution of contracts relating to programs to promote conservation undertaken at the direction or with the authorization of the Public Utilities Commission prior to September 19, 1997, the effective date of this Act, occurred prior to the restructuring of the electric industry, the divestiture of generation assets by transmission and distribution utilities and the creation of a real-time market in New England for the purchase and sale of electricity and that these significant legal, physical and financial changes in the electric industry justify certain changes in the legal standards under which such contracts are administered and interpreted. Therefore, the Public Utilities Commission and arbitrators shall use the standards established in this paragraph when deciding any contract disputes pursuant to the Maine Revised Statutes, Title 35-A, section 3211-A, subsection 8. Notwithstanding any provision of Title 35-A, a contract relating to programs to promote conservation undertaken at the direction or with the authorization of the commission prior to September 19, 1997 and administered subsequent to March 1, 2000 is deemed to be performed in accordance with the terms of that contract if (a) the project subject to the contract reduces by at least any amount specifically required by the contract the electric consumption of the facility at which the project is installed in comparison with the consumption that would have occurred but for the installation of the project, regardless of the source of electricity used by the facility; (b) the demand-side management or conservation measures are of the same general purpose and nature as those originally installed; even if not identical to those originally installed; (c) the facility at which the project was installed remains interconnected with the transmission and distribution utility's system; and (d) if the contract requires a specific minimum kilowatt-hour quantity of electricity to be purchased through the transmission and distribution utility, such purchases are made. However, all other terms and provisions of the contract not related to (a), (b), (c) or (d) in the previous sentence or the source, delivery or purchase of power remain in full force and effect.

The transmission and distribution utility shall make payments required under any such demand-side management or conservation contracts or this Act and is entitled to collect those payments in rates and charges as provided for in the Maine Revised Statutes, Title 35-A.

Sec. 6. Transition benefits; utility employees. A transmission and distribution utility may file with the Public Utilities Commission a plan in accordance with this section for providing transition services and benefits for eligible employees. For the purposes of this section, "eligible employees" means full-time or part-time employees of a transmission and distribution utility who are not officers of the utility; who are responsible for administering programs to promote conservation undertaken by the utility at the direction or with the authorization of the commission; who are employed by the utility on February 1, 2002; and who are laid off as a result of the transfer of the administration of programs to promote conservation to the Public Utilities Commission pursuant to this Act.

The plan must be filed prior to the transmission and distribution utility laying off eligible employees or 120 days after the effective date of this Act, whichever is first. If the plan is consistent with this section and the Public Utilities Commission finds the plan reasonable, the commission shall approve the plan. In approving a plan, the commission may establish a reasonable date after which employees who are laid off are considered not to be eligible employees.

1. Employee notice. Prior to filing the plan with the Public Utilities Commission, the transmission and distribution utility shall inform its employees and their certified representatives of the provisions of the proposed plan and, in accordance with applicable law, shall confer with those employees or their certified representatives regarding the impact of the proposed plan on those employees and measures to minimize any resulting hardships on those employees.

2. Commission notice. While a plan is in effect, a transmission and distribution utility shall file notice with the Public Utilities Commission within 5 business days of laying off any eligible employees.

3. Substantive plan. The transmission and distribution utility's plan must:

A. Include a program to assist eligible employees in maintaining fringe benefits and obtaining employment that makes use of their potential;

B. For 2 years after the effective date of this Act, provide to eligible employees retraining services and out-placement services and benefits, including intensive screening for vocational interests and aptitude;

C. Provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State or provide other reasonable retraining services of value equal to full in-state tuition for 2 years at the University of Maine, at the discretion of the eligible employee;

D. For 24 months or until permanent replacement coverage is obtained through reemployment, whichever comes first, provide continued health care insurance at the benefit and contribution levels existing during employment with the utility; and

E. Provide severance pay equal to 2 weeks of current base pay for each year of full-time employment and one week of current base pay for each year of part-time employment.

The plan may include provisions for providing early retirement benefits.

4. Cost recovery. The Public Utilities Commission shall allocate the reasonable accrual increment cost of the services and benefits provided under a plan approved by the commission pursuant to this section to ratepayers through charges collected by the transmission and distribution utility. All charges collected must be transferred to a system benefits administrator in the transmission and distribution utility and used to provide services and benefits pursuant to the requirements of this section.

Sec. 7. Interim programs. In order to avoid a significant delay in the implementation of conservation programs pursuant to the Maine Revised Statutes, Title 35-A, section 3211-A, the Public Utilities Commission may use funds from the conservation program fund established pursuant to Title 35-A, section 3211-A, subsection 5 to implement on a short-term basis conservation programs that the commission finds to be cost effective. The commission is not required to satisfy the requirements of Title 35-A, section 3211-A before implementing such programs. Any programs implemented under this section must terminate no later than December 31, 2003. Funds in the conservation program fund

not used for short-term programs under this section must be used in accordance with Title 35-A, section 3211-A.

Sec. 8. Report. The Public Utilities Commission shall examine the feasibility of requiring transmission and distribution utilities to transfer the administration of contracts associated with prior conservation efforts to the commission. The commission shall report its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters no later than January 1, 2004. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out legislation to the 121st Legislature relating to the administration of contracts associated with prior conservation efforts.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

EXECUTIVE DEPARTMENT

State Planning Office

Initiative: Deallocates funds to reflect the repeal of the energy conservation program within the State Planning Office and the consequent elimination of one Policy Development Specialist position. The deallocation amount for fiscal year 2001-02 assumes an effective date of April 1, 2002.

Other Special Revenue Funds	2001-02	2002-03
Positions - Legislative Count	(-1,000)	(-1,000)
Personal Services	(\$16,476)	(\$82,050)
All Other	(15,438)	(68,652)
Total	(\$31,914)	(\$150,702)

**EXECUTIVE DEPARTMENT
DEPARTMENT TOTALS**

	2001-02	2002-03
OTHER SPECIAL REVENUE FUNDS	(\$31,914)	(\$150,702)
DEPARTMENT TOTAL - ALL FUNDS	(\$31,914)	(\$150,702)

PUBLIC UTILITIES COMMISSION

Conservation Administration Fund

Initiative: Allocates funds for 3 Utility Analyst positions and related costs associated with the administration of energy conservation programs.

	2001-02	2002-03
Other Special Revenue Funds		
Positions - Legislative Count	(3.000)	(3.000)
Personal Services	\$77,175	\$324,135
All Other	1,222,825	975,865
Total	<u>\$1,300,000</u>	<u>\$1,300,000</u>

Conservation Program Fund

Initiative: Allocates funds to capitalize the conservation program fund to support the development of energy conservation programs.

	2001-02	2002-03
Other Special Revenue Funds		
All Other	\$500	\$500

**PUBLIC UTILITIES COMMISSION
DEPARTMENT TOTALS**

	2001-02	2002-03
OTHER SPECIAL REVENUE FUNDS	<u>\$1,300,500</u>	<u>\$1,300,500</u>
DEPARTMENT TOTAL - ALL FUNDS	<u>\$1,300,500</u>	<u>\$1,300,500</u>

SECTION TOTALS

	2001-02	2002-03
OTHER SPECIAL REVENUE FUNDS	<u>\$1,268,586</u>	<u>\$1,149,798</u>
SECTION TOTAL - ALL FUNDS	<u>\$1,268,586</u>	<u>\$1,149,798</u>

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