

# DRAFT – FOR DISCUSSION

## EFFICIENCY MAINE TRUST (EMT) BOARD OF TRUSTEES

### GUIDE TO ROLES AND RESPONSIBILITIES

This document is a guide to roles and responsibilities for the Board of Trustees (the Board) of the Efficiency Maine Trust (the Trust or EMT). It has been developed and adopted by the Board to help orient new Trustees, and to serve as a reference and reminder for veteran Trustees, to facilitate the efficient and effective operation of the organization. It is intended to be an organic document that will be periodically updated to meet the needs of the Trust.

The contents of the guide cover:

1. [Responsibilities and expectations of individual trustees;](#)
2. [Responsibilities and expectations of the board as a whole, including:](#)
  - a. [General matters;](#)
  - b. [Administrative matters;](#)
  - c. [Duties of the Board;](#)
  - d. [Liability and Indemnity;](#)
  - e. [Confidentiality and conflict of interest;](#)
3. [Exhibit A - Select Maine Statutory Provisions Regarding Confidentiality and Conflict of Interest Obligations](#)
4. [Exhibit B – Conflict of Interest Policy.](#)

**Commented [EC1]:** SM - in general, there are several instances where additional info will be available in other sections of the board materials. If possible, it would be great to reference/directly link to those documents (e.g., discussion on coordination with other state agencies could link to description of the other agencies elsewhere in the materials)

#### I. RESPONSIBILITIES AND EXPECTATIONS OF INDIVIDUAL TRUSTEES

Individual members of the Board will:

- Attend monthly Board meetings and special EMT functions or events.
  - Board meetings are typically 3-4 hours in length, plus approximately 1-2 hours of work to prepare for each meeting.
- Review the agenda and supporting materials prior to board meetings.
  - EMT staff endeavors to get that information to Board members at least 5 days prior to each Board meeting.
- Stay informed about EMT's statutory purpose and duties, policies, and programs.
- Serve as an EMT ambassador to inform others about the organization, but not to speak for the organization except when authorized to do so by the Board.
- Assist, mentor, support, and evaluate EMT's Executive Director with the purposes, duties and goals of the Trust in mind.

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- Offer outside perspective to provide independent views, insight, and guidance regarding EMT’s goals, objectives, opportunities, strategies, risks, and operations.
- Adhere to State law and EMT’s Bylaws and policies regarding Conflict of Interest and Confidentiality.
- Assist the Board in carrying out its fiduciary responsibilities, such as developing the Trust’s annual budget, reviewing the Trust’s annual financial statements and independent audit, and ensuring proper financial controls are in place.

As a fiduciary, each individual member of the Board of Trustees has three primary legal duties known as the “duty of care,” “duty of loyalty,” and “duty of obedience.”

- *Duty of Care*: Take care of EMT by ensuring prudent use of all assets, including facility, finances, people, and good will.
- *Duty of Loyalty*: Ensure that EMT’s activities and transactions are, first and foremost, advancing its statutory purpose and duties; Recognize and disclose conflicts of interest; Make decisions that are in the best interest of the organization, not in the best interest of the individual board member (or any other individual or entity).
- *Duty of Obedience*: Ensure that EMT complies with applicable laws and regulations; follows its own bylaws; and that it adheres to its stated corporate purposes.

## II. RESPONSIBILITIES AND EXPECTATIONS OF THE BOARD AS A WHOLE

### A. General

- The general role of the Board is to provide governance of the Trust.
- Provide strategic guidance to the Staff
  - Triennial Plan priorities and strategies
  - Budget allocations
  - Pursuit of new opportunities
- Ensure effective organizational planning and reporting
- Oversee Staff’s implementation of programs to:
  - Not exceed spending levels authorized by approved budgets
  - Comply with applicable statutory, regulatory, and contractual obligations
  - Support achievement of appropriate progress toward goals and targets set forth in the Triennial Plan and periodic updates to it.
- Make decisions collectively by a majority vote of the Board. Individual Trustees are not authorized to unilaterally instruct or make decisions affecting the duties or operations of the Staff.

Commented [MS2]: Heather's suggestion. NEW 12-18-2023.

Commented [MS3]: Suzanne's suggestion -- NEW (12-18-2023)

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- Ensure Board compliance with EMT Bylaws and policies regarding:
  - Conflict of Interest,
  - Confidentiality,
  - Procurement, and
  - Travel.
- The Efficiency Maine Trust Act (the EMT Act) is found in [Title 35-A of Maine Revised Statutes \(MRSA\) at Chapter 97](#). The EMT Act is EMT’s authorizing statute and provides the basic framework for the organization’s purpose and duties that are to be guided and overseen by the Board.

## B. Administrative

**1. Quasi-State Agency.** EMT was created by the Maine Legislature as a body corporate and politic and a public “instrumentality of the state.” ([§10103\(1\)\(2\)](#) of the *EMT Act*). It is listed among the “quasi-independent state entities” in Title 5 MRSA at [§12021\(6\)](#). It is considered a “component unit” of State government.

- EMT falls into the category of “General government” among the boards, commissions, committees and similar organizations identified in Title 5 MRSA at [§12004-G](#).
- As a quasi-state agency, EMT’s purpose is established by statute in contrast to non-profit organizations where the purpose is established by the board.

**2. Purpose.** Per the *EMT Act*, EMT was established for the purposes of developing, planning, coordinating, and implementing energy efficiency and ~~clean~~alternative energy resources programs in the State to:

- Provide uniform, integrated planning, program design, and administration of programs;
- Reduce energy costs and improve security of the state and local economies by, among other things,
  - Administering cost-effective energy and energy efficiency programs to help individuals and businesses meet their energy needs at the lowest cost;
  - Simplifying and enhancing consumer access to technical assistance and financial incentives relating to energy efficiency and the use of alternative energy resources by merging or coordinating dispersed programs under a single administrative unit possessing independent management and expertise; and,
  - Using cost-effective energy and energy efficiency investments to reduce greenhouse gas emissions.

(35-A MRSA [§10103](#))

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**3. Principles of Program Administration.** The Trust shall plan, design, and administer programs using the following principles:

- Programs are consumer-oriented;
- Ensure effectiveness of programs is maximized by:
  - Building up and centralizing expertise,
  - Addressing conflicts of interest,
  - Mitigating the influence of politics,
  - Promoting flexible, timely program management, and
  - Providing a champion for funding energy efficiency
- Plan, design, deliver, and oversee programs efficiently; and
- Provide checks and balances to ensure consistency with public policy and accountability so that energy efficiency programs in the State are sustainable for the long term.

(35-A MRSA [§10104\(2\)](#))

**4. Board Composition.** EMT is governed by the independent EMT Board. The Board consists of the following 9 voting members:

- The Director of the Governor's Energy Office;
- The Director of the Maine State Housing Authority; and
- Seven members appointed by the Governor.

**(a) Appointed Trustees.** Appointees must be reviewed by the Legislature's Joint Standing Committee on Energy, Utilities and Technology (EUT) and approved by the Senate. Among these 7 members must be persons who adequately represent the interests of:

- Commercial energy consumers;
- Industrial energy consumers;
- Small business energy consumers;
- Residential energy consumers; and
- Low-income energy consumers.

Among these members must be persons with knowledge of and experience in financial matters and consumer advocacy and who possess substantial management expertise or knowledge of or experience with conservation fund programs, carbon reduction programs, energy efficiency, or climate change policy. These requirements may be met through the appointment of one or more persons who satisfy more than one of the requirements, as long as at any one time the seven members include among them members who adequately represent the identified interests and who possess the required knowledge, expertise, and experience.

Appointed Trustees serve 3-year terms. If an appointed trustee is unable to complete their term, the Governor shall appoint a replacement for the remainder of the unexpired term.

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**(b) Board Officers.** The Board shall elect a Chair, a Vice-Chair, a Secretary, and a Treasurer from among its members. Each officer serves for a one-year term and is eligible for reelection.

**(c) Executive Committee.** The Board may elect an Executive Committee of not fewer than five trustees who, in intervals between meetings of the Board, may transact such EMT business as the Board may authorize from time to time.

**(d) Other Committees.** The board may establish such other committees as it deems appropriate to its functions. The members and duties of such committees shall be established by the Board, and shall each be comprised of at least three Trustees. (Bylaws, §3.6)

**(e) Quorum.** A majority of voting members constitutes a quorum.

(35-A MRSA [§10103\(2\)](#))

## C. Duties of the Board.

The *EMT Act* enumerates a number of duties for the EMT Board, including that it:

- Shall hire a qualified full-time Executive Director of EMT
- Shall adopt bylaws for the governance of EMT affairs
- Shall adopt rules for establishing and administering EMT and its programs
- Shall, regarding strategic planning:
  - Review and approve a Triennial Plan by affirmative vote of 2/3 of the Trustees upon a finding that the plan:
    - Is consistent with the statutory authority for each source of funds that will be used to implement the plan,
    - Advances the state energy efficiency targets enumerated in the *EMT Act* (35-A MRSA [§10104\(4\)\(F\)](#)),
    - Reflects the principles of program administration in [§10104\(2\)](#), and
    - Is consistent with the provisions of [§10104](#).
  - Deliver (through the Staff) the approved Triennial Plan to the Public Utilities Commission
- Regarding revenues:
  - May apply for and receive grants from municipal, state, federal and private sources for deposit into appropriate program funds, including funds for both residential and business programs.
  - May deposit in appropriate program funds the proceeds of any bonds issued for the purposes of programs administered by EMT.
  - May receive and shall deposit in appropriate program funds revenue resulting from any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to those projects funded by those funds, except that, from fiscal year 2019-20 to fiscal year 2024-25, such

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payments must be used to promote high-performance air source heat pump technology and deposited in the Heating Fuels Efficiency and Weatherization Fund established in the *EMT Act* at [§10119](#).

- Shall propose, develop, and approve revenue bond projects as EMT projects under the [§963-A\(10\)](#) of the Finance Authority of Maine Act.
- Shall deposit into appropriate program funds revenue transferred to EMT from the energy infrastructure benefits fund pursuant to Title 5, [§282\(9\)](#) for use in accordance with subsection 4-A.
- May also deposit any grants or other funds received by or from any entity with which EMT has an agreement or contract if the Board determines that receipt of those funds is consistent with EMT’s purpose.

(35-A MRSA [§10103\(4\)](#)).

- Regarding expenditures and budgets:
  - Shall establish an administration fund to be used solely to defray administrative costs. (35-A MRSA [§10103\(5\)](#)).
  - Recognize that for the Regional Greenhouse Gas Initiative (RGGI), the Trustees:
    - Have a fiduciary duty to the customers of the State's transmission and distribution utilities in their administration of the RGGI trust fund;
    - Upon accepting appointment as a trustee, must acknowledge their fiduciary duty to use the RGGI trust fund only for the purposes set forth in this section;
    - Shall ensure that the goals and objectives of the RGGI trust fund are carried out;
    - Represent the interests of the RGGI trust fund in the development of the Triennial Plan; and
    - Determine the appropriate allocation of RGGI funds consistent with the provisions the *EMT Act*.

(35-A MRSA [§10109\(2\)](#)).

- Recognize for the Electricity Efficiency Program Fund that:
  - All funds collected from electricity consumers pursuant to the Electricity Efficiency Program Fund are collected under the authority and for the purposes of this Program as described in the *EMT Act* and are deemed to be “held in trust for the purposes of benefiting electricity consumers.”

(35-A MRSA [§10110\(10\)](#)).

- Recognize for the Natural Gas Efficiency Program Fund that:

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- Funds collected pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be “held in trust for the purposes of benefiting natural gas consumers.”

(35-A MRSA [§10111\(2\)](#)).

- Regarding Procurements:
  - May approve the use of a sole source procurement for more than \$10,000 where it determines that the following criteria have been met:
    - (1) the service provider has unique qualifications, resources, or experience;
    - (2) there is not enough time to use a competitive bidding process;
    - (3) the program or required service would clearly benefit from a sole source procurement; or
    - (4) the service provider is an identified partner in a grant proposal that has been submitted by and awarded to EMT.

(95-648 Code of Maine Rules [CMR] ch.1)

- Shall review any petition for a hearing to reconsider a contract award decision, following the process requirements set forth in Section 5 of Code of Maine Rules [CMR] ch.1. (95-648 Code of Maine Rules [CMR] ch.1)
- Shall approve the annual budget for contributions. (EMT Procurement Policy v. 2018-3-28, Section 5)
- Shall approve the annual budget for travel, meal and entertainment costs. (EMT Procurement Policy v. 2018-3-28, Section 6)
- Regarding the Maine Clean Energy Accelerator:
  - May identify technologies and activities that are eligible for financing and investment from the Accelerator consistent with the Act.
  - May approve additional financial products beyond those listed in the *EMT Act* to provide capital to Qualified Projects under the Accelerator.
  - May approve additional public or private funding sources to capitalize the Accelerator.

(35-A MRSA [§10129](#))

- Regarding coordination:
  - Shall (through the Staff) coordinate with the activities and programs of state agencies and authorities that relate to the purposes of the *EMT Act* in order to align such activities and programs with EMT’s plans and programs. These include, but are not limited to, energy efficiency programs relating to state facilities administered by the Department of Administrative and Financial Services, Bureau of General Services, the adoption, amendment, and maintenance

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of the Maine Uniform Building and Energy Code by the Technical Building Codes and Standards Board (within the Department of Public Safety), energy efficiency or green energy workforce development activities of the Department of Labor or the State Workforce Board, energy efficiency and weatherization programs administered by the Maine State Housing Authority, and the activities of the Nonwires Alternative Coordinator. (35-A MRSA [§10104\(9\)](#)).

- Shall review and provide input on Maine State Housing Authority’s annual implementation plans for the use of federal funds for the Weatherization Assistance Program (WAP) and the Low-income Home Energy Assistance Program (LIHEAP). (35-A MRSA [§10104\(8\)](#)).
- Shall, in adopting the Triennial Plan, “take into consideration the comprehensive state energy plan pursuant to Title 2, section 9, subsection 3, paragraph C” (which is prepared by the Governor’s Energy Office). (35-A MRSA [§10104\(4\)](#)).
- Regarding “Confidential Record” designations for records obtained or developed by EMT:
  - If a person, including EMT, to whom the record belongs or pertains requests that a record be designated confidential, the Board must review that request and determine whether the record contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through EMT’s records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains.

(35-A MRSA [§10106\(1\)\(A\)\(1\)](#))

## D. Liability Insurance and Indemnity

- All officers, trustees, employees, and other agents of EMT entrusted with the custody of funds of the Trust or authorized to disburse the funds of the Trust must be bonded either by a blanket bond or by individual bonds with a minimum limitation of \$100,000 coverage for each person covered by the bond or bonds, or equivalent fiduciary liability insurance, conditioned upon the faithful performance of their duties. The premiums for the bond or bonds must be paid out of the assets of the Trust.
- Each trustee must be indemnified by the Trust against expenses actually and necessarily incurred by the trustee in connection with the defense of any action or proceeding in which the trustee is made a party by reason of being or having been a trustee and against any final judgment rendered against the trustee in that action or proceeding.

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## E. Confidentiality and Conflict of Interest

### 1. Applicable Provisions of Maine Statute

Several provisions in Maine statute pertaining to confidentiality and conflict of interest apply to Trustees of EMT. Key provisions are listed here. The full statutory language for each can be found in Exhibit A.

The *EMT Act* provides a framework for Board member duties regarding confidentiality and conflicts of interest:

- Self-dealing prohibited. – [35-A MRSA §10105\(6\)](#)
- Confidentiality; freedom of access – [35-A MRSA §10106](#)
- Conflicts of interest; financial disclosure statements – [35-A MRSA §10107](#)

Relevant statutory provisions from outside the *EMT Act* include:

- Disqualification of executive employees from participation in certain matters – [5 MRSA §18](#)
- Financial policies and procedures [for Quasi-State Agencies] – [5 MRSA §12022](#)

### 2. Confidential Information Management Systems (CIMS) Policy

The Confidential Information Management System Policy (“CIMS Policy”) codifies the policies, procedures, and guidelines by which EMT, its employees and trustees, and its contractors and consultants shall handle Confidential Information (defined therein). Confidential Information generally consists of data that is: (1) acquired from utilities; (2) acquired from customers directly or developed by EMT and its contractors using customer identifiable energy usage information in the course of designing and implementing energy efficiency programs or services; (3) competitively sensitive information; and (4) personally identifiable information or confidential energy infrastructure information acquired from federal, regional or state agencies, including the Maine Public Utilities Commission, the Maine State Housing Authority, and the Independent System Operator for New England, in connection with planning, implementing, and administering EMT programs.

The full policy is attached as Exhibit C.

**Commented [EC4]:** SM - some boards I've been a part of review these topics on an annual basis and have trustees sign a document (or at least flag any potential issues), particularly as trustee's work may change over the course of their term. May be worth considering for EMT.

**Commented [EC5]:** Not attached here, but would be in final version.

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## EXHIBIT A

### SELECT MAINE STATUTORY PROVISIONS REGARDING CONFIDENTIALITY AND CONFLICT OF INTEREST OBLIGATIONS

#### TITLE 35-A

##### §10105. Powers, duties and limitations

...

**6. Self-dealing prohibited.** In the operation or dissolution of the trust, no part of the net earnings of the trust may benefit any trustee, officer or employee except that the trust may pay reasonable compensation for services rendered and otherwise hold, manage and dispose of its property in furtherance of the purposes of the trust.

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##### §10106. Freedom of access; confidentiality

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

- A. A record obtained or developed by the trust that:
  - (1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or
  - (3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and
- B. A financial statement or tax return.

The social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust is confidential.

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**2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and are public records:

- A. Any otherwise confidential information the confidentiality of which the board determines to have been satisfactorily and effectively waived;
- B. Any otherwise confidential information that has already lawfully been made available to the public; and
- C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the board, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

- A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;
- B. To a financing institution or credit reporting service;
- C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;
- D. If necessary to ensure collection of any obligation in which the trust has or may have an interest;
- E. In any litigation or proceeding in which the trust has appeared, introduction for the record of any information obtained from records designated confidential by this section; and
- F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority.

## **§10107. Conflicts of interest; financial disclosure statements**

Each trustee is an "executive employee" for purposes of Title 5, sections 18, 18-A and 19. A trustee or employee of the trust or a spouse or dependent child of any of those individuals may not receive any direct personal benefit from the activities of the trust in assisting any private entity. This section does not prohibit corporations or other entities with which a trustee is associated by reason of ownership or employment from participating in program activities with the trust if ownership or employment is made known to the board and the trustee abstains from voting on matters relating to that participation.

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## Title 5

### §18. Disqualification of executive employees from participation in certain matters

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

A. "Constitutional officers" means the Attorney General, Secretary of State and Treasurer of State.

B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in [chapter 379](#) and compensated members of the classified or unclassified service employed by the Executive Branch, ...

C. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds.

D. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction, but does not include an employee organization bid or contract to provide agency services under [section 1816-B](#).

E. "Participates in the legislative process" means to provide any information concerning pending legislation to a legislative committee, subcommittee or study or working group, whether orally or in writing.

**2. Executive employee.** An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. Himself, his spouse or his dependent children;

B. His partners;

C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;

D. An organization in which he has a direct and substantial financial interest; or

E. Any person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to [Title 13, chapter 22-A](#), during the preceding year.

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**6. Application of more stringent statutory provisions.** If other statutory conflict of interest provisions pertaining to any state agency, quasi-state agency or state board are more stringent than the provisions in this section, the more stringent provisions shall apply.

**7. Avoidance of appearance of conflict of interest.** Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and [subsection 8](#), "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

**8. Disclosure of conflict of interest.** An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.

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## Title 5

### §12022. Financial policies and procedures [for Quasi-State Agencies]

A governing body of an entity: [PL 2011, c. 616, Pt. A, §1 (NEW).]

**1. Consistency with authorizing law.** Shall ensure that all activities and expenditures of the entity are limited to those necessary to accomplish the entity's mission and to carry out the entity's duties consistent with the entity's authorizing law;

[PL 2011, c. 616, Pt. A, §1 (NEW).]

**2. Compliance with financial policies and procedures.** Shall ensure that the governing body, management and staff of the entity comply with financial policies and procedures established by the governing body;

[PL 2011, c. 616, Pt. A, §1 (NEW).]

**3. Selection of vendors.** Shall adopt by December 31, 2012 and implement by July 1, 2013 written policies and procedures governing the selection of vendors designed to ensure that the entity secures the best value in its procurements. To the extent possible, consistent with the entity's authorizing law, the policies and procedures must:

A. Establish competitive procurement as the standard procurement method; [PL 2011, c. 616, Pt. A, §1 (NEW).]

B. Specify the conditions under which competitive procurement may be waived; and [PL 2011, c. 616, Pt. A, §1 (NEW).]

C. For procurements exceeding \$10,000 that were not competitively procured, require that written justification for and evidence of approvals are maintained on file for 5 years; [PL 2011, c. 616, Pt. A, §1 (NEW).]

[PL 2011, c. 616, Pt. A, §1 (NEW).]

**4. Contributions.** Shall adopt by December 31, 2012 and implement by July 1, 2013 written policies and procedures governing the use of the entity's resources for contributions. To the extent possible, consistent with the entity's authorizing law, the policies and procedures must:

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## EXHIBIT B

### CONFLICT OF INTEREST POLICY ~~(TBD)~~

~~(MTI Policy provided for reference)~~  
~~June 2008~~

The ~~Maine Technology Institute (the “Institute”)-Efficiency Maine Trust (the Trust) has been given the statutory purposes of lowering energy costs and greenhouse gas emissions by planning and administering energy and energy efficiency programs in Maine. It is committed to achieving these purposes -its mission of stimulating and supporting research and development activity in the State’s technology intensive industrial sectors-~~ by operating within the spirit and letter of all applicable laws and regulations. The ~~Institute Trust~~ seeks to achieve a high level of public confidence in its operations through commitment to the highest standards of integrity and fairness in the course of its work.

Consistent with this philosophy, as well as the conflict of interest requirements ~~of 5 M.R.S.A. § 15307,~~ and the State fiscal agent standards ~~of 5 M.R.S.A. § 15303(1) in Maine statute,~~ the Board adopts the following Conflict of Interest Policy, applicable to all ~~Institute director/trustees, Technology Board members-~~ and employees. This Policy shall also apply to individuals who serve in a ~~contractor or~~ volunteer capacity to review funding or other applications on behalf of the ~~Institute Trust.~~

It is the policy of the ~~Institute Trust~~ to avoid conflicts of interest between the ~~Institute Trust~~ and its individual ~~director/trustees,~~ employees and their respective family members as well as between the ~~Institute Trust~~ and its ~~Technology Board members, application-bid~~ reviewers and their respective family members. A conflict of interest is any situation in which an individual’s personal ~~financial~~ interest or the ~~financial~~ interest of the individual’s family members could interfere with the individual’s ability to make objective decisions on behalf of the Institute. There may also be circumstances in which a relationship will create an appearance of a conflict of interest and is to be treated as a conflict of interest.

~~Directors/Trustees~~ and employees of the ~~Institute and Technology Boards Trust,~~ as well as ~~Technology Board members and application-bid~~ reviewers, are prohibited from using their positions or ~~Institute Trust~~ information for personal purposes or gain in a manner that would be a conflict of interest as defined by this Conflict of Interest Policy. ~~Directors/Trustees, members~~ and employees may be required to sign this statement ~~annually.~~

“Family members” covered by this Policy include parents, children, brothers, sisters, spouse, spouse’s parents, and any persons sharing the same household with the ~~Director/trustee, Technology Board member,~~ or employee. ~~The “Institute” means the Maine Technology Institute or any of its Technology Boards.~~

#### Grants or Transactions with Entities Related to Director, Member or Employee

A conflict of interest arises where an entity in which an individual or a family member has a financial interest makes ~~a competitive bid an application-~~ for a financial award or ~~contract for services other transaction-~~ with the ~~Institute Trust~~ and where the individual is in a position to influence decisions pertaining to that transaction. ~~This provision does not apply when a trustee or employee or their family members participate in program offerings that are open for participation on a first come, first served basis and are not subject to a competitive solicitation.~~ In all cases in which an entity in which the individual or a family member has a financial interest makes ~~application-a competitive bid~~ to the ~~Institute Trust~~ for a

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grant or assistance of any kind, the individual must disclose to the ~~Chair of the Institute Board, the Technology Board~~ or the ~~President of the Institute executive director~~ the nature and extent of the interest. The purpose of the disclosure is to enable the ~~Institute Trust~~ to determine if a conflict of interest exists. As a general matter, if the only financial interest is the direct ownership of less than \$5,000 of a publicly held company, the ~~Institute Trust~~ will determine that no conflict of interest exists. Ownership of shares in a privately held company will constitute a financial interest.

If a conflict of interest is determined to exist, the ~~Director trustee, Technology Board member,~~ or employee must recuse himself/herself from the matter, assuring he/she is not in a position to influence decisions pertaining to that transaction. The recusal shall ensure that the ~~director trustee, Technology Board member~~ or employee: (i) does not participate in discussions or analysis of the grant proposal; (ii) is not present at the time the proposal is evaluated by the ~~Institute Trust~~; and (iii) abstains from voting on the proposal or application. The abstention shall be recorded in the minutes of the meeting. A similar disclosure and recusal standard shall apply to any contract awarded by the ~~Institute Trust~~.

## Indirect Conflicts of Interest

An indirect conflict of interest may arise when a ~~trustee board director, Technology Board member,~~ employee or their family member has a recent, current or imminent future relationship of a financial or business nature with a person or organization seeking ~~to participate in a program of the Trust, by means of delivering products or services or by bidding for a financial incentive a grant or other assistance~~ from the ~~Institute Trust~~. Such a situation might involve a recent past (within one year) or expected prospective employment relationship, strategic business alliance, or even a direct competitor relationship in the same market ~~niche segment~~. This type of indirect conflict of interest can create the appearance of a conflict of interest, if not an actual conflict.

In all cases of indirect conflict of interest, the ~~trustee director, Technology Board member~~ or employee shall disclose the existence of the indirect conflict to the ~~Board Chair of the Institute Board, the Technology Board~~ or the ~~Institute President executive director~~. The purpose of the disclosure is to enable the ~~Institute Trust~~ to determine if a conflict of interest exists. If the ~~Institute Trust~~ determines that a conflict of interest exists, the protocol outlined above for financial conflicts of interest shall be observed by the ~~person~~ recused ~~director, Technology Board member or employee~~.

## Contacts with Applicants-Bidders

All ~~directors, Technology Board member trustees~~ and employees are prohibited from accepting any gift, entertainment, or other personal favor from any person or organization ~~bidding for seeking a contract or financial incentive grant~~ or other ~~financial~~ assistance from the ~~Institute Trust~~ if the gift could be perceived as given to influence decision-making, ~~could be regarded as inconsistent with ethical business practice, or could place the employee or the Institute under an obligation to the giver~~. Any gift, entertainment, or other personal favor accepted from any person or organization ~~seeking a grant bidding for a contract or financial incentive~~ or other ~~financial~~ assistance from the ~~Institute or a Technology Board Trust~~ with a value in excess of \$25.00 must be reported to the ~~Board Chair of the Institute Board, the Technology Board~~ or the ~~President of the Institute executive director~~ either within 30 days of receipt, or before any action on the donor's ~~application bid~~, whichever date occurs earlier.

## Reviewers of Funding or other Applications to the Institute.

In the event the ~~Institute Trust~~ or a contractor to the ~~Institute Trust~~ retains the services of a reviewer or other outside person to assist the ~~Institute Trust~~ in a paid or volunteer capacity in evaluating funding or other applications to the ~~Institute Trust~~, the reviewer shall be required to comply with the provisions of

# DRAFT – FOR DISCUSSION

this Policy. Prior to retaining the reviewer’s services, the ~~Institute Trust~~ shall request the reviewer to sign this statement certifying that he/she understands and is in compliance with this Policy.

Read and Accepted By: \_\_\_\_\_

Date:

Signature:

Printed Name and Title:  
(Name) (Title)