



Climate Change Statutes

STATE OF MAINE

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Current through the 2009 Legislative Session of the Maine State Legislature.

§ 10008. Energy and Carbon Savings Trust

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

A. "Carbon dioxide allowance" has the same meaning as in Title 38, section 580-A, subsection 2.

B. "Forward capacity market" means the program established by the regional transmission organization that is in effect on the effective date of this paragraph and compensates providers of electrical capacity with payments for the availability or reduction of capacity as determined by the regional transmission organization.

C. "Regional transmission organization" means the independent systems operator that administers and oversees the wholesale electricity markets in which the State participates.

D. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts.

E. "Trust" means the Energy and Carbon Savings Trust established in subsection 2.

F. "Trust fund" means the Energy and Carbon Savings Trust Fund established in subsection 2.

G. "Trustee" means a trustee of the trust.

2. Establishment of trust; trust fund. The Energy and Carbon Savings Trust and the Energy and Carbon Savings Trust Fund are established effective July 1, 2008 to support the goals and implementation of the carbon dioxide cap-and-trade program established under Title 38, section 580-B. The trust fund is established as a nonlapsing fund administered by the trust for the purposes established in this section. The trust is authorized to receive, and shall deposit in the trust fund and expend in accordance with this section, revenue resulting from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded by the trust. The trust fund may not be used for any other purpose, and money in the trust fund is considered to be held in trust for the purposes of benefiting consumers.

A. The commission shall appoint 3 trustees for the Energy and Carbon Savings Trust. The commission shall appoint a diverse set of trustees who possess knowledge of high-efficiency energy conservation programs, carbon reduction programs or policy or substantial management expertise.

B. A trustee serves a 3-year term. If a trustee is unable to complete the term, the commission shall appoint a replacement for the remainder of the unexpired term. Trustees may serve a maximum of 2 consecutive terms.

C. The trustees may meet periodically and may participate in all meetings of the Maine Energy Conservation Board, as established in section 10007. If a trustee is absent from more than one meeting of the trustees without notice, the commission may appoint a replacement. An affirmative vote of two-thirds of the trustees is required for any action.

D. The trustees have a fiduciary duty to the customers of the State's transmission and distribution utilities in the administration of the trust fund. Upon accepting appointment as a trustee, each trustee must acknowledge the fiduciary duty to use the trust funds only for the purposes set forth in this section.

E. The trustees shall ensure that the goals and objectives of the trust, as established in this section and in rules adopted by the trust, are carried out. The trustees shall represent the interests of the trust in the development of the triennial energy efficiency and conservation plan pursuant to section 10007, subsection 6.

3. Trust inviolability. The trustees may take legal action in the name of the trust to oppose efforts to reduce, impair, postpone or terminate the amount of revenues arising from the regional greenhouse gas initiative established under Title 38, chapter 3-B.

The State pledges to, contracts with, and agrees with the purchasers of carbon dioxide allowances and trustees for the proceeds of those allowances that neither the State nor any of its agencies, including the commission, may limit, alter, amend, reduce or impair the trust, its funds or any rights under the trust or ownership of the trust or security interest in the trust. The State acknowledges that such owners, holders and trustees may and will rely on this pledge, contract and agreement and that any such limitation, alteration, amendment, reduction or impairment without adequate provision will irreparably harm such owners, holders and trustees.

4. Money invested. Any revenue received from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market payments administered by the regional transmission organization or other capacity payments that may be attributable to projects funded by the trust are the property of the trust and must be deposited in the trust fund. Money in the trust fund not currently needed to meet obligations under Title 38, section 580-B or for the purposes of this section must be deposited with the Treasurer of State to the credit of the trust fund and may be invested as provided by law. Interest on these investments must be credited to the trust fund. The State may not assess any indirect charges on any revenue received from the sale of carbon dioxide allowances pursuant to this section.

5. Ceiling on energy efficiency spending; rebates to electric ratepayers; rules. There is established a ceiling on energy efficiency spending from the trust equal to \$5 per carbon dioxide allowance. Until that price ceiling is adjusted or removed, only the first \$5 of each carbon dioxide allowance sold and deposited in the trust fund may be awarded to or directed to qualified projects for purposes of energy efficiency improvements. While the ceiling is in place, revenue received by the trust from an allowance value above \$5 must be transferred to the commission for use by the commission pursuant to sections 301 and 1322 for rebates to electric ratepayers calculated on a per-kilowatt-hour basis. The commission shall adopt rules to implement this subsection. The rules must establish a

system under which proceeds from the sale of carbon dioxide allowances may be returned to electric ratepayers as direct credits on their bills at times of heightened price pressure in regional carbon dioxide allowance markets due to an extraordinary circumstance. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

6. Administration of trust fund; expenditures; projects. The trust fund must be administered in accordance with this subsection.

A. The trust fund must be administered and expenditures authorized by a program administrator selected by the trustees whose qualifications must include demonstrated expertise in the management of electricity efficiency programming and supervision of energy efficiency personnel. The administrator shall report to the trustees. The administrator shall hire and organize staff resources for the trustees.

B. During the years 2009, 2010 and 2011, not less than 85% of the trust fund must be allocated for measures, investments and arrangements that reduce electricity consumption, and not more than 15% must be allocated for fossil fuel conservation measures, investments and arrangements. Subject to the apportionment between fossil fuel and electricity conservation pursuant to this subsection, the trust shall fund conservation programs that give priority to measures with the highest benefit-to-cost ratio, as long as cost-effective collateral efficiency opportunities are not lost, and that:

(1) Reliably reduce greenhouse gas production by fossil fuel combustion in the State at the lowest cost in trust funds per unit of emissions; or

(2) Reliably reduce the consumption of electricity in the State at the lowest cost in trust funds per kilowatt-hour saved.

C. Expenditures from the trust fund relating to conservation of electricity and mitigation or reduction of greenhouse gases must be made predominantly on the basis of a competitive bid process for long-term contracts, subject to rules adopted by the trust. Rules adopted to implement the competitive bid process under this paragraph may not include an avoided cost methodology for compensating successful bidders. Bidders may propose contracts designed to produce greenhouse gas savings or electricity conservation savings, or both, on a unit cost basis. Contracts must be commercially reasonable and may require liquidated damages to ensure performance. Contracts must provide sufficient certainty of payment to enable commercial financing of the conservation measure purchased and its installation.

D. The trustees may target bid competitions in areas or to participants as they consider necessary, as long as the requirements of paragraph B are satisfied.

E. Nonelectric savings programs must be used to maximize fossil-fueled energy efficiency and conservation and associated greenhouse gas reductions, subject to the apportionment between fossil fuel and electricity conservation set forth in paragraph B. Community-based renewable energy projects, as defined in section 3602, subsection 1, may apply for funding from the trust as nonelectric savings programs.

F. The size of a project funded by the trust is not limited as long as funds are awarded to maximize energy efficiency and support greenhouse gas reductions and to fully implement the triennial energy efficiency and conservation plan developed by the commission and the trustees pursuant to section 10007, subsection 6.

G. No more than \$800,000 of trust fund receipts in any one year may be used for the costs of administering the trust pursuant to this section. The limit on administrative costs established in this paragraph does not apply to the following costs that may be funded by the trust:

(1) Costs of the Department of Environmental Protection for participating in the regional organization as defined in Title 38, section 580-A, subsection 20 and for administering the allowance auction under Title 38, chapter 3-B; and

(2) Costs of the Attorney General for activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the trust's funding of conservation programs.

H. In order to minimize administrative costs and maximize program participation and effectiveness, the trustees and the commission shall, to the greatest extent feasible, coordinate the delivery of and make complementary the energy efficiency programs under this section, section 3211-A and section 3210-C.

I. Notwithstanding Title 5, section 1831, the trustees are not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this section. The trustees shall consider delivery of efficiency programs by means of contracts with service providers that participate in competitive bid processes for reducing energy consumption within individual market segments or for particular end uses.

J. A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

K. Notwithstanding any other provision of this section, the Maine Energy Conservation Board established under section 10007 may apply to the trust for funding from the trust fund for staff support for the board, and upon application of the board the trust may provide up to 1% of the total amount in the trust fund in any fiscal year to the board for that purpose.

L. Trust fund receipts may fund research approved by the Department of Environmental Protection in an amount of up to \$100,000 per year to develop new categories for carbon dioxide emissions offset projects, as defined in Title 38, section 580-A, subsection 6, that are located in the State. Expenditures on research pursuant to this paragraph are not considered administrative costs under paragraph G.

7. Triennial energy efficiency and conservation plan. The trustees, in conjunction with the commission, shall develop a triennial energy efficiency and conservation plan in accordance with section 10007, subsection 6.

8. Rulemaking. The trustees shall adopt rules for establishing and administering the trust, the trust fund and its programs. These rules must include:

A. Provisions for the expenditure of funds, including, but not limited to, the development of program budgets, criteria for energy efficiency and conservation programs and other consumer benefit programs, the process for project selection and approval, minimum requirements for project monitoring and verification and the cost-effectiveness tests to be used for measuring and comparing program benefits and costs subject to subsection 6, paragraph B; and

B. Provision for the independent evaluation of program expenditures to ensure cost-effectiveness of projects to improve energy efficiency or to reduce greenhouse gases.