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## **An Act To Create the Energy Independence Act**

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

**Whereas,** the State is facing significant and increasing economic and environmental challenges associated with high and volatile energy prices, increasing demand for energy and reliance on energy produced from fossil fuels; and

**Whereas,** the State has made the commitment, in law, to increase the share of electric generation from renewable resources by 10% by 2017, to lower the cost of electricity to consumers, to reduce price volatility and to decrease greenhouse gas emissions from energy production; and

**Whereas,** this legislation establishes the Office of Energy Independence with the specific focus and dedication to the formulation, coordination and management of state energy policy; 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**Sec. 1. 2 MRSA §6, sub-§3,** as repealed and replaced by PL 2005, c. 683, Pt. A, §2, is amended to read:

**3. Range 89.** The salaries of the following state officials and employees are within salary range 89:

Director, Bureau of General Services;

Director, Bureau of Alcoholic Beverages and Lottery Operations;

State Budget Officer;

State Controller;

Director of the Bureau of Forestry;

Director, State Planning Office;

Director, ~~Energy Resources Office~~Office of Energy Independence;

Director of Human Resources;

Director, Bureau of Parks and Lands; and

Director of Econometric Research.

**Sec. 2. 5 MRSA §3304, sub-§3, ¶J,** as enacted by PL 1989, c. 501, Pt. DD, §7, is amended to read:

J. Be assisted by departments, agencies, authorities, boards, commissions and other instrumentalities of State Government in the gathering of information, reports and data ~~which~~that relate to state planning and development in the area of energy resources; and

**Sec. 3. 5 MRSA §3304, sub-§3, ¶K**, as enacted by PL 1989, c. 501, Pt. DD, §7, is repealed.

**Sec. 4. 5 MRSA §3304, sub-§3, ¶L**, as enacted by PL 1989, c. 501, Pt. DD, §7, is amended to read:

L. Be empowered, in connection with the performance of duties, to apply to the Superior Court for a subpoena to compel the attendance of witnesses, the production of books, papers, records and documents of individuals, firms, associations and corporations and all officers, boards, commissions and departments of State Government. The court, before issuing the subpoena, shall provide adequate opportunity for the director and the party against whom the subpoena is requested to be heard. ~~No such~~Such a subpoena may not be issued unless the court or judge certifies that the attendance of the witness or the production of the books, papers, records or documents is reasonably necessary to carry out the purposes of this section and that the director has made reasonable efforts to secure the attendance or the books, papers, records or documents without recourse to compulsory process. The director shall afford confidential treatment to any materials or information turned over to the director ~~which~~that is of a confidential or proprietary nature;.

**Sec. 5. 5 MRSA §3304, sub-§3, ¶M**, as amended by PL 2005, c. 91, §1, is repealed.

**Sec. 6. 5 MRSA §3304, sub-§3, ¶N**, as enacted by PL 1989, c. 501, Pt. DD, §7, is repealed.

**Sec. 7. 5 MRSA §3305-B**, as amended by PL 2001, c. 624, §1, is repealed.

**Sec. 8. 5 MRSA §3307-B**, as enacted by PL 1989, c. 501, Pt. DD, §13, is repealed.

**Sec. 9. 5 MRSA §3307-C**, as amended by PL 2005, c. 91, §§2 to 4, is repealed.

**Sec. 10. 5 MRSA §3327, sub-§1**, as amended by PL 2005, c. 425, §2, is further amended to read:

**1. Council established; membership.** In order to facilitate more effective interagency coordination of the State's activities regarding energy issues, the Energy Resources Council, referred to in this chapter as the "council," is established. The chair of the council is the Director of the ~~State Planning Office~~Office of Energy Independence, who is responsible for ensuring that the council carries out its responsibilities under this chapter. The membership of the council is as follows:

- A. The Director of the ~~State Planning Office~~Office of Energy Independence;
- B. The chair of the Public Utilities Commission;
- C. The Commissioner of Environmental Protection;
- D. The Public Advocate;
- E. The Commissioner of Transportation;

F. The Commissioner of Administrative and Financial Services;

G. The Commissioner of Economic and Community Development or the commissioner's designee;

H. The Director of the Maine State Housing Authority; and

I. The Commissioner of Conservation.

**Sec. 11. 5 MRSA §3327, sub-§2, ¶A**, as enacted by PL 2001, c. 630, §1, is amended to read:

A. Recommend coordinated state policy regarding major programs or proposals that affect energy use in the State and that involve the activities of more than one state agency and recommend policies and programs to reduce growth in electricity demand in the State in a cost-effective manner;

**Sec. 12. 5 MRSA §3327, sub-§3**, as amended by PL 2003, c. 487, §1, is further amended to read:

**3. Quarterly meetings; staff; funding.** The council shall meet at least quarterly. The council shall prepare a work ~~program~~plan for each year establishing priorities among its efforts. The ~~State Planning Office~~Office of Energy Independence, within the Executive Department, shall provide staff support.

A. A state agency applying for funds under the State Energy Program of the United States Department of Energy pursuant to 10 Code of Federal Regulations, Part 420 shall, as directed by the council, apply for funds to support the work of the council and its staff.

B. To the extent funds available pursuant to paragraph A are insufficient to fund fully staff support for the council, each member of the council shall enter into an agreement with the ~~State Planning Office~~Office of Energy Independence to share in the cost of providing the staff support.

C. The council may seek, and the Public Utilities Commission may provide, funds to the council pursuant to Title 35-A, section 3211-A, subsection 5-A.

**Sec. 13. 5 MRSA c. 339** is enacted to read:

## **CHAPTER 339**

### **ENERGY INDEPENDENCE**

#### **§ 5021. Short title**

This chapter may be known and cited as “the Energy Independence Act.”

#### **§ 5022. Definitions.**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Director.** “Director” means the Director of the Office of Energy Independence.

**2. Office.** “Office” means the Office of Energy Independence.

### **§ 5023. Office of Energy Independence established**

There is established to carry out the purpose of this chapter the Office of Energy Independence in the Executive Department. The office is concerned with the formulation, coordination and management of state energy policy for the purpose of increasing the energy independence of the State, including but not limited to reducing dependence on fossil fuels, increasing investment in and reliance on renewable resources, increasing energy efficiency and reducing energy demand. The Office of Energy Independence is directly responsible to the Governor and assists the Governor and other state agencies in the coordination and implementation of energy policy issues of interagency concern.

### **§ 5024. Director of Energy Independence**

**1. Director.** The executive head of the Office of Energy Independence is the director. The director is appointed by the Governor and serves at the pleasure of the Governor.

**2. Qualifications.** The director must be qualified by education, training and experience in energy policy.

**3. Powers and duties.** The director shall exercise the powers of the office and is responsible for the execution of its duties. The director:

A. Shall appoint and remove the staff of the office and prescribe its duties as may be necessary to implement the purposes of this chapter. Professional employees must be hired as unclassified employees. All other employees must be subject to those civil service and personnel policies established for state employees generally and must be paid salaries at rates of pay comparable to those of state employees with equivalent responsibilities in other state agencies;

B. Shall supervise and administer the affairs of the office;

C. Shall advise the Governor, the Legislature and other appropriate state agencies with respect to matters of energy policy;

D. Must be assisted by departments, agencies, authorities, boards, commissions, other instrumentalities of the State or other governmental units in the gathering of information, reports and data that relate to energy issues;

E. Shall prepare and submit for executive and legislative action the budget for the office;

F. Shall make an annual report, by December 31st, to the Governor and to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters detailing the activities of the office and, after consultation with and approval by the Governor, submit such recommendations for legislative action as determined necessary to further the purposes of this chapter;

G. May collect inventory and product delivery data from the State's primary storage facilities of petroleum products, as described in section 5027 and may afford confidential treatment to that information pursuant to section 5025, subsection 1, paragraph C;

H. Shall oversee the implementation of any energy programs assigned to the office under this chapter; and

I. Is empowered, in connection with the performance of duties, to apply to the Superior Court for a subpoena to compel the attendance of witnesses, the production of books, papers, records and documents of individuals, firms, associations and corporations and all officers, boards, commissions and departments of State Government. The court, before issuing the subpoena, shall provide adequate opportunity for the director and the party against whom the subpoena is requested to be heard. A subpoena may not be issued unless the court or judge certifies that the attendance of the witness or the production of the books, papers, records or documents is reasonably necessary to carry out the purposes of this section and that the director has made reasonable efforts to secure the attendance or the books, papers, records or documents without recourse to compulsory process. The director may designate as confidential any materials or information turned over to the director under this paragraph that is of a confidential or proprietary nature. Information designated as confidential by the director under this paragraph is not a public record and is not subject to disclosure under Title 1, chapter 13, subchapter 1;

## **§ 5025. Office of Energy Independence; powers and duties**

**1. Powers and duties.** The office shall:

A. Coordinate the development and implementation of policies to guide the State in achieving energy independence and efficient use of the State's energy resources;

B. Develop specific policies and initiatives to reduce growth in energy demand with cost-effective energy efficiency measures. The office shall also participate in regional efforts to reduce demand growth;

C. Collect and analyze energy data from all available energy sources in the State. Upon the request of a company engaged in the wholesale and retail trade of petroleum products in the State, the director may designate as confidential information documents and data dealing with sales of that company. Information designated confidential by the director under this paragraph is not a public record and is not subject to disclosure under Title 1, chapter 13, subchapter 1;

D. Prepare and submit to the Governor and the Legislature every 2 years a comprehensive state plan for achieving energy independence, along with any recommended legislation to implement the plan. The plan must be submitted by March 1st of each odd-numbered year. The plan must include, but is not limited to:

(1) Strategies to reduce reliance on fossil fuels, increase reliance on renewable resources and promote energy efficiency;

(2) Recommendations for state policies or programs to decrease growth in electricity demand and achieve reductions in demand for electricity during peak use periods in a cost-effective manner, including, but not limited to, policies relating to building codes, appliance and lighting standards and public water and sewer facilities;

(3) A description of historical energy demand and demand growth by end-use sector and the energy resources used to meet that demand, and a forecast of energy demand, including electric and gas energy demand, by end-use sector for the next 5 years, 10 years and 20 years; and

(4) An assessment of availability of cost-effective efficiency and demand response resources to reduce demand growth.

E. Encourage, direct or sponsor research, experiments and demonstration projects within the State to develop alternative energy sources, particularly, but not limited to, those sources that rely on renewable natural resources of the State, such as solar energy, water of tides and rivers, forests, winds and other sources that to date have not been fully explored or used;

F. Identify conservation alternatives to proposed new electric power generating plants and transmission and distribution facilities and assess the long-term and short-term energy savings realized by the conservation alternatives; and

G. Coordinate the actions of state agencies that affect the consumption of energy with the objective of securing the environmental and economic benefits of electric industry restructuring occurring pursuant to Title 35-A, chapter 32; and

H. Provide planning and technical assistance to the Governor and Legislature by undertaking special studies related to energy independence, preparing or analyzing policy alternatives and identifying the immediate and long-range needs and the resources to meet those needs. The office shall prepare plans and studies at the request of the Governor, the Legislature or interdepartmental committees, councils and task forces.

**2. Administrative powers.** The office may:

A. With the consent of the Governor, employ expert and professional consultants and contract for research projects as it determines necessary within the limits of the funds provided and consistent with the powers and duties of the office;

B. Enter into agreements with the Federal Government and other agencies and organizations that will promote the objectives of this chapter;

C. Accept funds from the Federal Government or from any individual, foundation or corporation to be used to carry out the purposes of this chapter; and

D. Adopt rules as necessary to implement this chapter. Unless otherwise specified, rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§ 5026. Energy resources development program**

The office, as funding allows, shall administer a program of energy research and demonstration activities related to both the use of indigenous, renewable resources and more efficient use of energy. The director may accept private funds for the purpose of pursuing this program.

**1. Report to Legislature.** The director shall include, in the biennial state energy independence plan required under section 5025 subsection 1, paragraph D, a report that specifies the expenditure of funds by the program, the purposes for which the funds were used and the amount of the funds as well as the sources from which the funds were derived.

**2. Expenditures requiring approval.** For all programs involving expenditures of \$10,000 or more, the director shall recommend those expenditures to the Governor. If the Governor approves, the director shall recommend those expenditures to the Legislature under the procedures authorizing the transfer of funds set forth in section 1585.

### **§ 5027. Petroleum inventories and deliveries**

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

A. "Petroleum products" means propane; gasoline; unleaded gasoline; gasohol; kerosene; #2 heating oil; diesel fuel; kerosene-based jet fuel; aviation gasoline; #4, #5 and #6 residual oil for utility and nonutility uses; and Bunker C oil.

B. "Primary storage facilities" means facilities that receive petroleum products into the State either by pipeline or ship.

C. "Primary supplier" means any refiner, marketer, distributor, firm or person who makes the first sale of any petroleum product to resellers or consumers in this State.

**2. Reporting of owners and lessees of primary storage facilities.** Each owner or lessee of primary storage facilities in the State shall make an accurate report on the first and 3rd Mondays of each month to the office on a form provided by the director. The form must contain a conspicuous statement of the penalties provided in subsection 4 and must require the following information:

A. The total inventory of each petroleum product stored in the State, as measured within not more than 3 working days prior to the reporting date; and

B. The quantities of each petroleum product delivery into the State expected within 15 days of the reporting date or within any longer period established by the director.

**3. Reporting of primary suppliers.** Each primary supplier of petroleum products shall make an accurate report on the 3rd Monday of each month to the office on a form provided by the director, unless the report is already being submitted in accordance with federal regulations. The form must contain a conspicuous statement of the penalties provided in subsection 4 and must require the following information:

- A. Actual deliveries of all petroleum products in this State during the preceding calendar month;
- B. Anticipated deliveries of all petroleum products in this State during the following calendar month or during any longer period established by the director; and
- C. Allocation fractions for all petroleum products for the following month or for any longer period established by the director.

**4. Penalty provisions.** A person who violates this section is subject to the penalties set out in this subsection.

- A. An owner or lessee of a primary storage facility or a primary supplier covered by this section who fails to provide the information required by this section commits a Class D crime. Violation of this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
- B. An owner or lessee of a primary storage facility or a primary supplier covered by this section who knowingly or recklessly supplies false or misleading information is guilty of a violation of Title 17-A, section 453.
- C. An owner or lessee of a primary storage facility who supplies false or misleading information commits a civil violation for which a fine of \$2,500 may be adjudged.

**5. Reporting to Legislature.** The office shall provide reports to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters as set out in this subsection:

A. If the office determines, based on available information, that there is or may be a significant shortfall in supply inventories or anticipated deliveries into the State of home heating oil or kerosene, a report including:

(1) The information that suggests a supply shortfall;

(2) Current and anticipated inventories of home heating oil and kerosene storage supplies; and

(3) Any recommendations of the office for actions by the State in response to the anticipated supply shortfall; and

B. A report on inventories, deliveries, curtailments, shortfalls or other matters relating to the availability of petroleum products in this State, at the request of the joint standing committee of the Legislature having jurisdiction over utilities and energy matters.



**Sec. 14. Biofuel action plan.** The Executive Department, Office of Energy Independence shall develop a plan to expand the availability and use of biofuels in the State. In developing the plan, the office shall refer to the definition of biofuels in the Maine Revised Statutes, Title 36, section 5219-X. No later than January 31, 2008, the office shall submit the plan, including recommendations and any legislation necessary to implement the recommendations, to the Joint Standing Committee on Utilities and Energy. After reviewing the plan, the committee may submit a bill regarding biofuels to the Second Regular Session of the 123rd Legislature.

**Sec. 15. Renewable energy investment program.** The Executive Department, Office of Energy Independence shall develop a program to support the development and operation of renewable energy generation facilities within the State through consumer purchase of renewable energy certificates for current or future production of power from renewable resources within the State. No later than January 31, 2008, the office shall submit to the Joint Standing Committee on Utilities and Energy a report including a program design and an implementation plan. The report must include suggested legislation to establish the program in the Maine Revised Statutes, Title 5, chapter 339. After reviewing the report, the committee may submit a bill regarding the program to the Second Regular Session of the 123rd Legislature.

**Sec. 16. Green communities program.** The Executive Department, Office of Energy Independence shall develop a program to support and recognize, as green communities, communities within the State that take steps to become more energy independent, reduce reliance on fossil fuels and increase reliance on renewable energy resources. The office shall define criteria or benchmarks that qualify a community for certification as a green community under the program. The program must include, but is not limited to, technical assistance to communities interested in obtaining certification. No later than January 31, 2008, the office shall submit to the Joint Standing Committee on Utilities and Energy a report including a program design and an implementation plan. The report must include suggested legislation to establish the program in the Maine Revised Statutes, Title 5, chapter 339. After reviewing the report, the committee may submit a bill regarding the program to the Second Regular Session of the 123rd Legislature.

**Sec. 17. Review of laws affecting the Office of Energy Independence.** The Executive Department, Office of Energy Independence shall, in consultation with the Public Utilities Commission and the Executive Department, State Planning Office, conduct a comprehensive review of the Maine Revised Statutes, Title 5, chapter 339 and other state laws relating to the functions of the Office of Energy Independence. The purpose of the review is to identify appropriate changes to these laws to reflect the establishment of the Office of Energy Independence, the removal of certain energy-related functions from the State Planning Office and the establishment of similar functions in the Office of Energy Independence, and the relationship between energy-related functions and programs under the jurisdiction of the Office of Energy Independence and the Public Utilities Commission, respectively. No later than January 1, 2008, the Office of Energy Independence shall submit a report on the results of the review, including recommendations and suggested legislation, to the Joint Standing Committee on Utilities and Energy. After reviewing the report, the committee is authorized to submit legislation related to the report to the Second Regular Session of the 123rd Legislature.

**Sec. 18. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 5, Part 13, in the Part headnote, the words "Maine State Energy Resources Act" are amended to read " Energy Independence" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

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

## SUMMARY

This bill creates the Office of Energy Independence as a stand-alone office within the Executive Department that is dedicated to the formulation, coordination and management of state energy policy for the purpose of increasing the energy independence of the State.

The bill removes from the Executive Department, State Planning Office the energy-related powers, duties, responsibilities and programs assigned to the State Planning Office under current law and assigns them to the new Office of Energy Independence. Specific programmatic responsibilities that are transferred to the Office of Energy Independence include management of the Energy Resources Council, the energy resources development program and data collection and reporting of petroleum inventories and deliveries.

The bill establishes the powers and duties of the Office of Energy Independence, which include: coordinating the development and implementation of policies to achieve energy independence and to reduce growth in energy demand through cost-effective efficiency measures; collecting and analyzing energy data; preparing a biennial energy independence plan; supporting research to develop alternative energy resources; identifying conservation alternatives to new generation and transmission and distribution facilities; coordinating the actions of state agencies that affect energy consumption; and conducting studies and policy analysis related to energy issues at the request of the Governor and the Legislature.

The bill requires the Office of Energy Independence to develop the following 3 specific initiatives and submit a report on each initiative to the Joint Standing Committee on Utilities and Energy by January 31, 2008:

1. A biofuel action plan to increase the availability and use of biofuels in the State;
2. A renewable energy investment program to support the development and operation of renewable energy generation facilities within the State through consumer purchase of renewable energy certificates; and
3. A green communities program to support and recognize communities in the State that take steps to become more energy independent, reduce reliance on fossil fuels and increase reliance on renewable energy resources.

The bill authorizes the committee to submit legislation regarding each of these initiatives to the Second Regular Session of the 123rd Legislature following its review of the report on each initiative.

The bill requires the Office of Energy Independence, in consultation with the Public Utilities Commission and the State Planning Office, to review the laws governing the Office of Energy Independence and other state laws relating to the functions of that office. It requires the Office of Energy Independence to submit a report on the results of the review, including recommended legislation, to the Joint Standing Committee on Utilities and Energy by January 1, 2008 and authorizes the committee to submit legislation related to the report.