



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1204

H.P. 894

House of Representatives, March 21, 2011

An Act To Create Jobs through Home Energy Efficiency

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative CELLI of Brewer.
Cosponsored by Representative: CASAVANT of Biddeford.

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

2 **Sec. 1. 14 MRSA §6021, sub-§8** is enacted to read:

3 **8. Maine Residential Energy Conservation Program.** A violation of Title 35-A,
4 section 10117-A does not constitute a per se violation of the implied warranty of fitness
5 for human habitation under subsection 2.

6 **Sec. 2. 33 MRSA §201** is amended by adding at the end a new paragraph to read:

7 An affidavit of compliance with the Maine Residential Energy Conservation
8 Program, as established in Title 35-A, section 10117-A, must also be recorded by the
9 buyer at the time a deed is acknowledged and recorded, if such a deed is recorded as a
10 result of the sale of a residential structure.

11 **Sec. 3. 35-A MRSA §10117-A** is enacted to read:

12 **§10117-A. Maine Residential Energy Conservation Program**

13 **1. Program established.** The Maine Residential Energy Conservation Program is
14 established within the trust to promote job creation, cost savings and energy
15 independence through home energy savings improvements.

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

18 A. "Affidavit of compliance" means an affidavit provided by a seller, stating that a
19 property either is in compliance with the program's requirements or is exempted from
20 compliance under this section. An affidavit of compliance must also include a list of
21 improvements installed to comply with the program.

22 B. "Agent" means a person who acts on behalf of another in the transfer of a
23 residential property, including a person acting pursuant to a power of attorney.

24 C. "Cap" means one measure used to determine the minimum required expenditure.
25 The cap is \$5,000 on the effective date of this section. The trust shall calculate an
26 adjusted cap annually to reflect the rate of inflation, using the Consumer Price Index
27 for Urban Wage Earners and Clerical Workers, as compiled by the United States
28 Department of Labor, Bureau of Labor statistics or a successor index, for the first 12
29 months prior to September 1st. Each adjusted cap so calculated takes effect January
30 1st of the following year. This calculation must be made on October 31st of each
31 year.

32 D. "Cost of compliance" means an amount sufficient to meet the requirements of this
33 section and may not exceed the minimum required expenditure.

34 E. "Distributed renewable energy system" means a product or facility or cluster of
35 products or facilities that has a generating capacity of not more than one megawatt or
36 an equivalent amount of heat generating capacity and either generates energy in a
37 manner that results in no carbon dioxide emissions or that relies on one or more of
38 the following: fuel cells, tidal power, solar arrays and installations, wind power

1 installations, geothermal installations, hydroelectric generators, electric thermal
2 storage or air source or ground source heat pumps.

3 F. "Dwelling to be demolished" means a dwelling scheduled to be demolished within
4 a year of the recording of an affidavit of compliance.

5 G. "Energy advisor" means an energy auditor approved by the trust to perform home
6 energy audits under the program.

7 H. "Energy efficiency measure" means an installation that leads to lower
8 consumption of electrical or heat energy.

9 I. "Home energy improvement" means an energy efficiency measure or a distributed
10 renewable energy system.

11 J. "Low-cost dwelling" means a residential property that has an assessed value of
12 less than \$65,000 on the effective date of this section, or less than an adjusted value
13 in subsequent years. The trust shall calculate the adjusted value annually, using the
14 lowest median home sale price of any county in this State for the first 12 months
15 prior to September 1st. Each adjustment takes effect January 1st of the following
16 year. This calculation must be made on October 31st of each year.

17 K. "Minimum required expenditure" means 2% of the assessed value of a property or
18 the cap, whichever is higher. "Minimum required expenditure" includes the cost of
19 the initial audit and subsequent inspection.

20 L. "Noncompliance" means a seller's or a rental unit owner's failure to comply with
21 the requirements of the program, including but not limited to a false statement made
22 in the affidavit of compliance regarding improvements installed, a false claim of
23 exemption or a failure to provide a buyer an affidavit of compliance.

24 M. "Program" means the Maine Residential Energy Conservation Program.

25 N. "Seller" means the seller of a residential property, the seller's agent or a testator
26 who participates in the sale of a residential property pursuant to the testator's duties.

27 O. "Substantial renovation" means a renovation for which the cost exceeds \$50,000.

28 **3. Requirements for compliance.** The following provisions govern requirements
29 for compliance and exemptions from compliance.

30 A. To comply with this section, an owner of a residential property who is applying
31 for a permit for substantial renovation of a residential structure or a seller of a
32 residential property must:

33 (1) Obtain an energy audit by an energy advisor, providing a copy of any audit
34 report to a buyer in the case of a sale;

35 (2) Either make the minimum required expenditure on home energy
36 improvements or install all energy efficiency measures identified by an energy
37 advisor in an audit report with a payback period of 10 years or less; and

38 (3) Obtain an inspection of the dwelling from an energy advisor after home
39 energy improvements have been installed to ensure compliance.

40 B. The following transfers are exempt from the requirements of paragraph A:

- 1 (1) Sale for delinquent taxes, assessment or foreclosure;
- 2 (2) Transfer between parent and child, stepparent and stepchild, parent and son-
- 3 in-law or parent and daughter-in-law for nominal or no consideration;
- 4 (3) Transfer between husband and wife;
- 5 (4) Transfer by will, descent or survivorship;
- 6 (5) Transfer pursuant to or in lieu of condemnation;
- 7 (6) Transfer of a low-cost dwelling; and
- 8 (7) Transfer of a dwelling to be demolished, except that a dwelling that is not
- 9 demolished within one year of sale must be brought into compliance under
- 10 paragraph A within 3 months thereafter.

11 C. The following residential structures are exempt from the requirements of
12 paragraph A, subparagraphs 2 and 3:

- 13 (1) A dwelling built after December 1, 2010;
- 14 (2) A dwelling whose current seller or owner has installed energy improvements
- 15 worth at least the value of the minimum required expenditure within the last 10
- 16 years, as determined by the trust; and
- 17 (3) A dwelling that meets the standards of the 2009 edition of the International
- 18 Energy Conservation Code or an equivalent standard as determined by the trust.

19 D. Prior to or at the time of the sale of any residential structure, a seller shall provide
20 to a buyer an affidavit of compliance. The buyer shall record the affidavit in
21 accordance with Title 33, section 201. If home energy improvements had to be made
22 in anticipation of the sale, the cost of compliance must be born by the buyer, unless
23 the sale is not completed.

24 E. Prior to obtaining a permit for any substantial renovation of a residential structure,
25 an owner shall provide to the agency granting the permit an audit report by an energy
26 advisor and an affidavit stating which improvements, if any, will be installed to
27 comply with the requirements of this section.

28 **4. Implied warranty and remedy for noncompliance.** The following provisions
29 govern the implied warranty of compliance with this section.

30 A. All residential structures sold after the effective date of this section are sold with
31 an implied warranty of compliance with this section. A statement acknowledging the
32 warranty provided in this section must be included in the affidavit of compliance by
33 the seller or agent.

34 B. In the case of a substantial renovation, a lease or rental agreement for a residential
35 structure or unit that has undergone substantial renovations after the effective date of
36 this section carries an implied warranty of compliance with this section.

37 C. A buyer of a residential structure or unit shall bring the structure or unit into
38 compliance with the requirements of the program, and may recover damages from the
39 seller including the cost of compliance, litigation costs including reasonable

1 attorney's fees, inspection fees and any further incidental or consequential damages
2 resulting from noncompliance.

3 D. A tenant who is adversely affected by noncompliance with this section may
4 recover damages resulting from an owner's noncompliance, including cost of
5 compliance, litigation costs including reasonable attorney's fees, inspection fees and
6 any further incidental or consequential damages resulting from noncompliance if
7 these damages occurred within a 2-year period prior to the commencement of an
8 action seeking such damages.

9 **SUMMARY**

10 The bill establishes the Maine Residential Energy Conservation Program within the
11 Efficiency Maine Trust. It requires an owner of a residential property who is applying for
12 a permit for substantial renovation of a residential structure or a seller of a residential
13 property to obtain an energy audit by an energy advisor, providing a copy of the audit
14 report to a buyer in the case of a sale; either make a minimum required expenditure on
15 home energy improvements or install all energy efficiency measures identified by an
16 energy advisor in an audit report with a payback period of 10 years or less; and obtain an
17 inspection of the dwelling from an energy advisor after improvements have been installed
18 to ensure compliance. If home energy improvements are made in anticipation of a sale,
19 the cost of compliance must be borne by the buyer. The bill provides exemptions for
20 certain sales and transfers and for certain residential structures.