

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
S.P. 689 - L.D. 1676

**An Act To Establish a Process for the Procurement of Biomass Resources**

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

**Whereas,** this legislation requires that funds be transferred by June 30, 2016; 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. Biomass competitive solicitation.**

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

A. "Biomass resource" is a source of electrical generation fueled by wood, wood waste or landfill gas that produces energy that may be physically delivered to the ISO-NE region, as defined in the Maine Revised Statutes, Title 35-A, section 1902, subsection 3, or in the NMISA region.

B. "Commission" means the Public Utilities Commission.

C. "NMISA region" is the area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine.

**2. Solicitation and contract negotiation.** In accordance with subsection 3, the commission shall initiate a competitive solicitation as soon as practicable and direct investor-owned transmission and distribution utilities to enter into one or more 2-year contracts for up to 80 megawatts of biomass resources contingent upon available funds for above-market costs of the contract pursuant to subsection 4. The contract may be a contract for energy or a contract for differences. If a generator offers to sell capacity or

renewable energy attributes as part of a contract entered into pursuant to this section, the contract may include the purchase of such capacity or attributes, but the commission may not condition any solicitation or contract on an offer or sale of capacity or renewable energy attributes.

**3. Review and selection of renewable resources and contract adjustments.** In conducting a solicitation and entering into any contract under subsection 2, the commission shall:

A. Ensure that a biomass resource facility is operating at least at a 50% capacity for 60 days prior to the initiation of a competitive solicitation in accordance with subsection 2 and continues to operate at that capacity except for planned and forced outages; and

B. Seek to ensure, to the maximum extent possible, that a contract entered into under this section:

(1) Provides benefits to ratepayers;

(2) Provides in-state benefits, such as capital investments to improve long-term viability of the facility, permanent direct jobs, payments to municipalities, payments for fuel harvested in the State, payment for in-state resource access, in-state purchases of goods and services and construction-related jobs and purchases;

(3) Reduces greenhouse gas emissions;

(4) Promotes fuel diversity; and

(5) Supports or improves grid reliability.

In selecting among bids, the commission shall determine the total in-state economic benefits of the contract in an expected annual dollar per megawatt-hour average and the cost to fund the above-market costs of a contract in an expected annual dollar per megawatt-hour average. The commission shall consider both of these values for each proposal to identify those proposals that maximize the overall benefits to the State, and shall establish a process under which a generator of biomass resources verifies on an annual basis that the projected in-state economic benefits are generated during the term of the contract. If the commission concludes that the solicitation conducted under subsection 2 is not competitive, no bidders may be selected and the commission is not obligated to enter into a contract. If the commission finds the in-state benefits are not being achieved, the commission may reduce the contract payment by the percentage difference between actual in-state benefits achieved and the projected in-state benefits.

**4. Cost limits.** The commission may enter only into contracts under this section that are contingent on the availability of funds in the cost recovery fund established under subsection 5 to pay the above-market costs of the contract, as determined by the commission. Payments of all above-market costs of a contract must be made solely from those funds and are not a liability of the transmission and distribution utility, its ratepayers or the commission. If insufficient funds are available in the fund to pay above-market costs under a contract, the commission shall notify the contracting entity and, unless the contracting entity and the commission agree otherwise, the contract is

suspended. The commission and the contracting entity may agree to reinstate a suspended contract upon the availability of sufficient funds in the cost recovery fund to pay above-market costs.

**5. Cost recovery fund.** There is established within the commission a nonlapsing cost recovery fund, referred to in this section as "the fund." The fund receives funds allocated or transferred by the Legislature from the unappropriated surplus of the General Fund in accordance with subsection 8. The commission shall use the fund to pay all above-market costs of any contract entered into under this section. No more than 50% of the fund may be awarded to facilities serving the NMISA region. At the close of fiscal year 2016-17, amounts remaining in the cost recovery fund that the commission has determined are not needed to pay above-market costs in accordance with subsection 6 must be transferred to the Maine Budget Stabilization Fund established under the Maine Revised Statutes, Title 5, section 1532. The commission by rule or order shall establish how above-market costs are determined and how payments from the fund are made.

**6. Cost recovery.** The commission shall ensure that all costs and benefits associated with contracts entered into under this section are allocated as follows:

A. All costs, other than above-market costs, and all direct financial benefits associated with contracts entered into under this section must be allocated to ratepayers in accordance with the Maine Revised Statutes, Title 35-A, section 3210-F and may not be considered imprudent; and

B. Above-market costs, including any price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the capacity resource is sold and any losses derived from contracts for differences, must be paid from the fund.

**7. Rules.** The commission may adopt rules to implement this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**8. Transfers of funds.** Notwithstanding any provision of law to the contrary, at the close of fiscal year 2015-16, the State Controller, as the next priority after making the transfers authorized pursuant to the Maine Revised Statutes, Title 5, sections 1507, 1511, 1519, 1522 and 1536, shall transfer from the unappropriated surplus of the General Fund to the Cost Recovery Fund, Other Special Revenue Funds account within the Public Utilities Commission amounts as may be available from time to time, up to a total of \$13,400,000.

**Sec. 2. Appropriations and allocations.** The following appropriations and allocations are made.

## **PUBLIC UTILITIES COMMISSION**

### **Cost Recovery Fund N228**

Initiative: Provides an allocation to pay above-market costs of contracts for energy or contracts for differences for the procurement of up to 80 megawatts of biomass resources.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2015-16</b>	<b>2016-17</b>
All Other	\$0	\$13,400,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$13,400,000</b>

**Public Utilities - Administrative Division 0184**

Initiative: Provides an allocation for consulting costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2015-16</b>	<b>2016-17</b>
All Other	\$0	\$100,974
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$100,974</b>

<b>PUBLIC UTILITIES COMMISSION DEPARTMENT TOTALS</b>	<b>2015-16</b>	<b>2016-17</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$13,500,974</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$13,500,974</b>

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