

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create Jobs through Home Energy Efficiency

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

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

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

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

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

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

§ 10117-A. Maine Residential Energy Conservation Program

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

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

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

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

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

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

E. "Distributed renewable energy system" means a product or facility or cluster of products or facilities that has a generating capacity of not more than one megawatt or an equivalent amount of heat generating capacity and either generates energy in a manner that results in no carbon dioxide emissions or that relies on one or more of the following: fuel cells, tidal power, solar arrays and installations, wind power installations, geothermal installations, hydroelectric generators, electric thermal storage or air source or ground source heat pumps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Sale for delinquent taxes, assessment or foreclosure;

(2) Transfer between parent and child, stepparent and stepchild, parent and son-in-law or parent and daughter-in-law for nominal or no consideration;

(3) Transfer between husband and wife;

(4) Transfer by will, descent or survivorship;

(5) Transfer pursuant to or in lieu of condemnation;

(6) Transfer of a low-cost dwelling; and

(7) Transfer of a dwelling to be demolished, except that a dwelling that is not demolished within one year of sale must be brought into compliance under paragraph A within 3 months thereafter.

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

(1) A dwelling built after December 1, 2010;

(2) A dwelling whose current seller or owner has installed energy improvements worth at least the value of the minimum required expenditure within the last 10 years, as determined by the trust; and

(3) A dwelling that meets the standards of the 2009 edition of the International Energy Conservation Code or an equivalent standard as determined by the trust.

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

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

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

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

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

C. A buyer of a residential structure or unit shall bring the structure or unit into compliance with the requirements of the program, and may recover damages from the seller including the cost of compliance, litigation costs including reasonable attorney's fees, inspection fees and any further incidental or consequential damages resulting from noncompliance.

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

SUMMARY

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