



# **BILL NO. 49**

*Government Bill*

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*1st Session, 61st General Assembly  
Nova Scotia  
58 Elizabeth II, 2009*

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## **An Act to Establish the Efficiency Nova Scotia Corporation**

CHAPTER 3  
ACTS OF 2009

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
NOVEMBER 5, 2009**

The Honourable Bill Estabrooks, MB  
*Minister of Energy*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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## **An Act to Establish the Efficiency Nova Scotia Corporation**

Be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Efficiency Nova Scotia Corporation Act*.
- 2 The purpose of this Act is to
  - (a) establish an administrator to manage electricity demand-side management programs in the Province;
  - (b) establish a fund to be used to defray the costs of electricity demand-side management programs;
  - (c) provide for regulatory oversight of the administrator, the Fund and electricity demand-side management programs; and
  - (d) provide the administrator with the authority to engage in energy efficiency and conservation programs other than electricity demand-side management programs.
- 3 In this Act,
  - (a) “Board of Directors” means the Board of Directors of the Corporation;
  - (b) “Corporation” means the Efficiency Nova Scotia Corporation;
  - (c) “electricity demand-side management program” means an electricity demand-side management program designed to
    - (i) promote efficiency of electricity use,
    - (ii) promote electricity conservation, and
    - (iii) manage electricity demand where it is not otherwise managed by a public utility;
  - (d) “Fund” means the Electricity Demand-side Management Fund;
  - (e) “Minister” means the Minister of Energy or another minister appointed by the Governor in Council as the minister responsible for this Act;
  - (f) “Nova Scotia Power” means Nova Scotia Power Incorporated, a company regulated under the *Public Utilities Act* as a public utility;
  - (g) “public servant” means a person employed in the public service of the Province;
  - (h) “public utility” means any person that may now or hereafter transmit, deliver or furnish electric power or energy for compensation to or for the public, and includes Nova Scotia Power;
  - (i) “Review Board” means the Nova Scotia Utility and Review Board established under the *Utility and Review Board Act*.
- 4 This Act binds Her Majesty in right of the Province.

5 The Minister has the general supervision and management of this Act.

## CORPORATION

6 There is hereby established a body corporate to be known as the Efficiency Nova Scotia Corporation.

7 Notwithstanding Sections 70 and 71 of the *Provincial Finance Act*, the Corporation is not and may not be designated as a crown corporation under the *Provincial Finance Act* or otherwise.

8 The objects of the Corporation are to

(a) design and administer electricity demand-side management programs with a view to restraining future electricity demand and use in the Province; and

(b) engage in energy efficiency and conservation programs other than electricity demand-side management programs.

9 The management and control of the affairs of the Corporation is vested in a Board of Directors and the Board may, subject to this Act, exercise the powers of the Corporation.

10 (1) The Board of Directors consists of

(a) not fewer than two nor more than ten members appointed under subsection (2) or (3); and

(b) one non-voting member who is a deputy minister or other public servant appointed by the Governor in Council.

(2) The initial members of the Board of Directors referred to in clause (1)(a) shall be appointed by the Governor in Council, hold office for the term set by the Governor in Council and remain in office, notwithstanding the expiry of their term, until re-appointed or replaced.

(3) Subject to subsection (2), the members of the Board of Directors referred to in clause (1)(a) shall be appointed as provided by and hold office for the term provided by the by-laws of the Corporation.

(4) A member of the House of Assembly or the Executive Council or a person who has been a member of the House of Assembly or the Executive Council within the last three years is not eligible to be a member of the Board of Directors.

(5) An employee of a public utility or an affiliate of a public utility is not eligible to be a member of the Board of Directors.

(6) No member of the Board of Directors, other than the member appointed under clause (1)(b) by the Governor in Council, may be a public servant.

11 (1) The Governor in Council shall designate one of the members of the initial Board of Directors as its Chair, to hold such office for the term set by the Governor in Council.

(2) Subject to subsection (1), the Board of Directors may appoint or, by by-law, provide for the appointment of one of its members as its Chair, to hold such office for the term set by the Board of Directors or the by-laws.

12 A majority of the members of the Board of Directors appointed under clause 10(1)(b) and subsection 10(2) or (3) constitutes a quorum.

13 (1) A member of the Board of Directors, who is not a public servant, shall be paid such remuneration as the Board determines.

(2) The members of the Board of Directors shall be reimbursed for reasonable expenses necessarily incurred in the performance of their duties.

14 A member of the Board of Directors or an employee of the Corporation is not personally liable for anything done or omitted to be done or for any neglect or default in the *bona fide* exercise or purported exercise of a power conferred upon that member or employee, as the case may be, pursuant to this Act.

15 The Board of Directors may make by-laws

(a) respecting the appointment of its members under subsection 10(3) and their term of office;

(b) respecting the appointment of its Chair under subsection 11(2) and the Chair's term of office;

(c) regulating its proceedings;

(d) determining the power and duties of its officers, servants and agents;

(e) generally, respecting the management of the Corporation.

16 (1) The Corporation shall operate on a not-for-profit basis.

(2) No officer, director or employee of the Corporation may share in any operating surpluses of the Corporation.

17 (1) The Board of Directors shall appoint a Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer of the Corporation shall be paid such remuneration as the Board of Directors determines and shall be reimbursed for reasonable expenses necessarily incurred in the performance of the duties of the Chief Executive Officer.

(3) The Chief Executive Officer, subject to the control and direction of the Board of Directors, has charge of the conduct of the business of the Corporation.

18 (1) The Corporation may employ such other officers and employees as are necessary for the proper conduct and management of the affairs of the Corporation.

**(2)** The Corporation may engage the services of professional persons, technical persons and experts upon such terms and conditions as the Board of Directors determines.

**19** The officers and employees of the Corporation shall be paid such salary and receive such benefits as are determined by the Board of Directors.

**20** The Corporation

(a) shall administer electricity demand-side management programs with a view to restraining electricity demand and use; and

(b) may engage in energy efficiency and conservation programs other than electricity demand-side management.

**21 (1)** Upon written notice from the Corporation, a public utility shall, within such reasonable time as is specified in the notice, provide to the Corporation, for the purpose of permitting the Corporation to fulfil its duties under this Act, such information, including records, respecting customer electricity usage and load as is specified in the notice.

**(2)** The Corporation and any representatives of the Corporation shall keep confidential all information obtained under subsection (1) except information that

(a) is in the public domain at the time it is obtained;

(b) comes into the public domain after it has been obtained, other than by virtue of a breach of this subsection;

(c) is available to the Corporation on a non-confidential basis from a public utility if the source is entitled to disclose the information; or

(d) is required by law to be disclosed, but only to the extent so required.

**22** Subject to this Act, the Corporation has all of the capacity, rights, powers and privileges of a natural person necessary to carry out its objects in accordance with this Act.

**23 (1)** The *Companies Act* does not apply to the Corporation, except to the extent that the Governor in Council determines.

**(2)** The Corporation may, in pursuit of its objects, enter into an agreement in accordance with the law with a government or a department, agency or body of a government or with an international organization or a body of such an organization or body.

**24** The fiscal year of the Corporation shall be as determined by the Board of Directors.

**25** The Corporation shall establish and maintain an accounting system in accordance with generally accepted accounting principles.

**26** The Board of Directors shall appoint an auditor for the Corporation and the auditor shall annually audit and prepare a report on the accounts of the Corporation.

## ELECTRICITY DEMAND-SIDE MANAGEMENT FUND

- 27** (1) There is hereby established the Electricity Demand-side Management Fund.
- (2) The Fund consists of
- (a) any electricity demand-side management transitional funds contributed from Nova Scotia Power referred to in Sections 41 and 43;
  - (b) assessments on public utilities referred to in Section 31;
  - (c) any other funds contributed by any person for the purpose of electricity demand-side management; and
  - (d) investment income of the Fund.
- (3) The Fund vests in the Corporation and must be kept segregated from any other assets or funds of the Corporation.
- 28** Only expenditures permitted under this Act and approved by the Review Board may be made from the Fund.
- 29** (1) All costs of the Corporation's operations related to electricity demand-side management, including administration expenses and the cost of any electricity demand-side management programs, shall be paid out of the Fund.
- (2) No other costs of the Corporation, including costs related to energy efficiency and conservation programs, must be paid from the Fund.
- 30** Any surplus in program funds in any year must be retained in the Fund and used for the following year's program.
- 31** (1) Subject to the approval of the Review Board, the Corporation shall determine a public utility's annual assessment for electricity demand-side management.
- (2) A public utility's annual assessment for electricity demand-side management programs must be paid to the Corporation in such amounts and at such times as the Review Board determines.
- (3) The Corporation shall provide notice of an assessment to a public utility in any manner it considers necessary or expedient.
- (4) Any notice provided pursuant to subsection (3) must indicate the amount owing by the public utility and the time the assessment is payable.
- 32** The Fund is not available to meet any future, current or past general obligations of Her Majesty in right of the Province, but Her Majesty may participate in any electricity demand-side management programs and services on the same basis as any other electricity consumer or customer of a public utility.

**33** Nothing in this Act makes the Fund, or is to be construed to cause the Fund to be considered, public moneys subject to appropriation by the Legislature or required to be deposited into the Consolidated Fund of the Province.

**34** The Corporation may

(a) invest the Fund according to investment and lending policies, standards and procedures that are approved from time to time by the Review Board; and

(b) borrow from any financial institution, by way of overdraft or otherwise, any sums the Board of Directors considers necessary to properly carry out the Corporation's objects.

#### PROGRAM AND EXPENDITURES

**35** The Corporation shall submit to the Review Board for approval an electricity demand-side management program for one or more calendar years, at the time and in the manner required by the Review Board, commencing with the program for the 2012 calendar year or such later year as the Review Board determines.

**36** In approving the electricity demand-side management program, the Review Board must be satisfied that the allocation of costs of the Corporation between electricity demand-side management programs and energy efficiency and conservation programs, other than electricity demand side management programs, is just and reasonable.

**37** The Review Board has the general supervision of the Corporation in relation to electricity demand-side management and may make all necessary examinations and inquiries and keep itself informed as to the compliance by the Corporation with the provisions of law and has the right to obtain from the Corporation all information necessary to enable the Board to fulfil its duties.

**38** The *Public Utilities Act* applies *mutatis mutandis* to the supervision of the Corporation under Section 37, except that

(a) the Corporation is not entitled to recover any rate of return through its assessments; and

(b) notwithstanding Section 117 of the *Public Utilities Act*, where there is a conflict between this Act and the *Public Utilities Act*, this Act prevails.

**39** Each public utility is entitled to recover through its rate base the electricity demand-side management charges assessed against it under this Act on the basis approved by the Review Board under the *Public Utilities Act*.

#### MISCELLANEOUS

**40** The Corporation and Nova Scotia Power shall enter into a transition plan with respect to the manner in which the electricity demand-side management program will be undertaken by the Corporation and Nova Scotia Power.



**41** The transition plan must address

(a) issues of the transition of any electricity demand-side management program that has not concluded;

(b) the transfer of funding for any electricity demand-side management programs to be transferred; and

(c) the provision of information by Nova Scotia Power to the Corporation to permit the Corporation to execute the electricity demand-side management programs and transfer and assumption of any outstanding contractual arrangements related to the electricity demand-side management programs to be transferred.

**42** The transition plan referred to in Section 40 must be approved by the Review Board.

**43 (1)** Nova Scotia Power shall pay to the Corporation an assessment, as determined by the Review Board, to cover the start-up costs of the Corporation related to electricity demand-side management.

**(2)** Nova Scotia Power may recover the assessment from its ratepayers as the Review Board determines.

**44** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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