

Efficiency Nova Scotia Corporation Act

CHAPTER 3 OF THE ACTS OF 2009

as amended by

2010, c. 2, ss. 97, 98; 2014, c. 5, s. 13



© 2016 Her Majesty the Queen in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 3 OF THE ACTS OF 2009
amended 2010, c. 2, ss. 97, 98; 2014, c. 5, s. 13

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

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Act binds Her Majesty.....	4
Minister has supervision and management of Act.....	5
Corporation	
Efficiency Nova Scotia Corporation established.....	6
Not a crown corporation.....	7
Objects of Corporation.....	8
Management and control vested in Board of Directors.....	9
Board of Directors.....	10
Selection of Chair.....	11
Quorum.....	12
Remuneration and reimbursement.....	13
No personal liability.....	14
By-laws.....	15
Not-for-profit and no share in surpluses.....	16
Chief Executive Officer.....	17
Officers, employees and specialists.....	18
Salaries and benefits determined by Board.....	19
Information to be provided by public utilities and confidentiality.....	21
Corporation's power to carry out objects.....	22
Companies Act and agreements with governments.....	23
Fiscal year determined by Board of Directors.....	24
Accounting system.....	25
Auditor.....	26
Electricity Demand-side Management Fund	
Electricity Demand-side Management Fund.....	27
Restriction expenditures.....	28
Corporation's operations costs paid out of Fund.....	29
Surplus funds.....	30
Fund not available for obligations of Province.....	32
Fund not public moneys.....	33
Powers to invest Fund and to borrow.....	34
Program and Expenditures	
Review Board to approve allocation of program costs.....	36
Review Board supervises Corporation.....	37
Public Utilities Act.....	38
Miscellaneous	
Corporation and Nova Scotia Power transition plan.....	40
Transition plan to address.....	41

Transition plan to be approved by Review Board	42
Assessment of start-up costs of Corporation	43
Effective date	44

Short title

1 This Act may be cited as the *Efficiency Nova Scotia Corporation Act*.
2009, c. 3, s. 1.

Purpose of 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. 2009, c. 3, s. 2.

Interpretation

- 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*. 2009, c. 3, s. 3.

Act binds Her Majesty

4 This Act binds Her Majesty in right of the Province. 2009, c. 3, s. 4.

Minister has supervision and management of Act

5 The Minister has the general supervision and management of this Act. 2009, c. 3, s. 5.

CORPORATION

Efficiency Nova Scotia Corporation established

6 There is hereby established a body corporate to be known as the Efficiency Nova Scotia Corporation. 2009, c. 3, s. 6.

Not a crown corporation

7 Notwithstanding Sections 70 and 71 of the *Finance Act*, the Corporation is not and may not be designated as a crown corporation under the *Finance Act* or otherwise. 2009, c. 3, s. 7; 2010, c. 2, s. 97.

Objects of Corporation

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. 2009, c. 3, s. 8.

Management and control vested in Board of Directors

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. 2009, c. 3, s. 9.

Board of Directors

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. 2009, c. 3, s. 10.

Selection of Chair

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. 2009, c. 3, s. 11.

Quorum

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. 2009, c. 3, s. 12.

Remuneration and reimbursement

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. 2009, c. 3, s. 13.

No personal liability

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. 2009, c. 3, s. 14.

By-laws

- 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.
- 2009, c. 3, s. 15.

Not-for-profit and no share in surpluses

- 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. 2009, c. 3, s. 16.

Chief Executive Officer

- 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. 2009, c. 3, s. 17.

Officers, employees and specialists

- 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. 2009, c. 3, s. 18.

Salaries and benefits determined by Board

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. 2009, c. 3, s. 19.

20 *repealed 2014, c. 5, s. 13.*

Information to be provided by public utilities and confidentiality

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. 2009, c. 3, s. 21.

Corporation's powers to carry out objects

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. 2009, c. 3, s. 22.

Companies Act and agreements with governments

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. 2009, c. 3, s. 23.

Fiscal year determined by Board of Directors

24 The fiscal year of the Corporation shall be as determined by the Board of Directors. 2009, c. 3, s. 24.

Accounting system

25 The Corporation shall establish and maintain an accounting system in accordance with generally accepted accounting principles. 2009, c. 3, s. 25.

Auditor

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. 2009, c. 3, s. 26.

ELECTRICITY DEMAND-SIDE MANAGEMENT FUND**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. 2009, c. 3, s. 27.

Restriction on expenditures

28 Only expenditures permitted under this Act and approved by the Review Board may be made from the Fund. 2009, c. 3, s. 28.

Corporation's operations costs paid out of 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. 2009, c. 3, s. 29.

Surplus funds

30 Any surplus in program funds in any year must be retained in the Fund and used for the following year's program. 2009, c. 3, s. 30.

31 *repealed 2014, c. 5, s. 13.*

Fund not available for obligations of Province

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. 2009, c. 3, s. 32.

Fund not public moneys

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 General Revenue Fund of the Province. 2009, c. 3, s. 33; 2010, c. 2, s. 98.

Powers to invest Fund and to borrow

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. 2009, c. 3, s. 34.

PROGRAM AND EXPENDITURES

35 *repealed 2014, c. 5, s. 13.*

Review Board to approve allocation of program costs

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. 2009, c. 3, s. 36.

Review Board supervises Corporation

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. 2009, c. 3, s. 37.

Public Utilities Act

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. 2009, c. 3, s. 38.

39 *repealed 2014, c. 5, s. 13.*

MISCELLANEOUS

Corporation and Nova Scotia Power transition plan

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. 2009, c. 3, s. 40.

Transition plan to address

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. 2009, c. 3, s. 41.

Transition plan to be approved by Review Board

42 The transition plan referred to in Section 40 must be approved by the Review Board. 2009, c. 3, s. 42.

Assessment of start-up costs of Corporation

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 rate-payers as the Review Board determines. 2009, c. 3, s. 43.

Effective date

44 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2009, c. 3, s. 44.

Proclaimed - January 22, 2010
In force - January 22, 2010
