

SPONSOR: Sen. McDowell & Rep. Thornburg

Sens. Bunting, Venables, Copeland, Simpson & Reps.
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DELAWARE STATE SENATE

144th GENERAL ASSEMBLY

SENATE BILL NO. 263

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO A REGIONAL
GREENHOUSE GAS INITIATIVE AND CO2 EMISSION TRADING PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
DELAWARE:

(1) Section 1. Amend Title 7 of the Delaware Code by adding a new Subchapter

IIA as follows:

“Subchapter II A. Regional Greenhouse Gas Initiative and CO2 Emission
Trading Program

§ 6043. Findings, Purpose, and Definitions.

(a) Findings – The General Assembly hereby makes the following
findings concerning the development, utilization and control of the air
resources of the State related to impacts of carbon dioxide (CO2) emissions:

1. There is growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect and causing changes in the Earth's climate.

2. Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally, regionally and in the State of Delaware.

3. CO₂ is an air contaminant as defined in § 6002 of this Chapter

4. It is in the interest of the State to protect human health and terrestrial and aquatic ecosystems by taking actions to stabilize and to limit the CO₂ contributions from the State.

5. A CO₂ reduction program focusing on fossil fuel-fired electricity generation, and the development of a CO₂ allowance trading program, will create a strong incentive for the creation and deployment of more efficient fuel-burning technologies, renewable resources and end-use efficiency resources, which will lead to lower dependence on imported fossil fuels.

6. Given the absence of federal action to protect the nation, a number of states, including Delaware, are taking actions regionally to reduce power sector CO₂ emissions.

7. The State of Delaware is a signatory state to the Regional Greenhouse Gas Initiative ("RGGI"), a cooperative effort

on the part of mid-Atlantic and northeastern states to curtail CO₂ emissions from power plants.

8. The Memorandum of Understanding (“MOU”) signed by the Governors of participating RGGI states requires each participating state to promulgate regulations to establish a cap-and-trade program for CO₂ with the goal of stabilizing CO₂ emissions at current levels through 2015 and reducing by 10 percent such emissions by 2019.

9. The MOU sets an initial emissions cap of 7,559,787 short tons of CO₂ for Delaware and further requires a minimum of 25 percent of Delaware’s allocation of CO₂ allowances under the cap-and-trade program to be used for Public Benefit Purposes. The cap and Delaware’s allocation may be adjusted in the future.

10. Implementation of a CO₂ reduction program on a large scale, such as regionally, or nationally, is important so as to maximize our efficient use of energy and our contribution to lowering CO₂ emissions while minimizing impacts on electric system reliability and unnecessary costs to Delaware power consumers. Further, costs of the CO₂ cap and trade program are anticipated to be less burdensome if the program is implemented, to the extent possible and practicable, on a regional level.

11. Pursuant to Senate Concurrent Resolution 28 of the 144th General Assembly, a stakeholder workgroup was convened to study the RGGI MOU, analyze the actions of other RGGI states, and consider and recommend the best course of action for Delaware, noting particularly the quantity of CO2 allowances to be auctioned and the potential for the use of any revenue to further the goals of the Sustainable Energy Utility or such other goals the workgroup considered consistent with the RGGI MOU.

(b) Definitions - For purposes of this Chapter, the following terms shall have the meaning set out herein.

(1) “CO2 Allowance” shall mean a limited authorization to emit up to one ton of CO2.

(2) “Public Benefit Purpose” shall mean purposes including the promotion of energy efficiency, the mitigation of electricity ratepayer impacts attributable to RGGI, the promotion of distributed renewable or non-carbon-emitting energy technologies, the stimulation and reward of investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential, and funding of the administration of the Program established by this Chapter.

(3) “Regional Greenhouse Gas Initiative” or “RGGI” shall mean Regional Greenhouse Gas Initiative as established by the Memorandum of Understanding signed by Delaware and other

States calling for the development of a program to reduce CO2 emissions from energy generating facilities utilizing fossil fuels.

§ 6044. Regional Greenhouse Gas Initiative.

(a) The General Assembly explicitly authorizes and sanctions the prior and ongoing participation of the Secretary of the Department of Natural Resources and Environmental Control, and the Chair of the Public Service Commission, and their duly authorized representatives, as part of their official duties, to implement and participate in the Regional Greenhouse Gas Initiative (“RGGI”).

(b) Representatives of the RGGI states have formed a non-profit corporation called RGGI Inc. to assist in the development of the regional program for reducing CO2 emissions. The General Assembly explicitly authorizes and sanctions the prior and ongoing participation in RGGI Inc. by the Secretary of the Department of Natural Resources and Environmental Control, and the Chair of the Public Service Commission, and their duly authorized representatives, as part of their official duties. The State may contract with RGGI Inc, pay dues to RGGI Inc, and transfer funds to RGGI Inc. to facilitate implementation of the RGGI program.

(c) The Secretary of the Department of Natural Resources and Environmental Control is herein authorized to promulgate regulations to

implement the RGGI cap and trade program consistent with the RGGI MOU, as amended.

(d) No person that is required by regulation to hold CO₂ allowances shall operate in Delaware unless it holds CO₂ allowances as required by the regulations implementing the RGGI Program.

(e) The Secretary shall enforce the provisions of this Subchapter.

§6045. Auction of Allowances.

(a) The Secretary of the Department of Natural Resources and Environmental Control is hereby authorized to establish, implement and manage an auction program to sell CO₂ allowances into a market based trading program consistent with the RGGI MOU and this statute. The Secretary shall make every effort to participate in a regional allowance auction with other RGGI states but may conduct a Delaware-only auction if such individual auction is found to be in the best interests of Delaware electric ratepayers, as determined by the Secretary, and after consultation with the Delaware Public Service Commission.

(b) The Secretary need not establish, implement or manage the elements of the allowance auction program by regulation. However, the Secretary shall publish the elements of the auction program in the Delaware Register of Regulations no less than 60 days prior to Delaware's participation in its first auction. The Secretary may modify

the auction program as the Secretary deems necessary, but substantive modifications shall also be published in the Delaware Register of Regulations.

(c) Any auction of Delaware CO₂ allowances shall be conducted in accordance with accepted auction practices and principles and shall seek to maximize the efficacy of the RGGI program, minimize program costs to consumers and provide a liquid, transparent market for CO₂ allowances.

(d) Beginning with 2009 CO₂ allowances, the Secretary shall auction 60% of allowances available to Delaware and allocate 40% to generators in proportion to their average annual emissions from 2000-2002. The percentage of allowances auctioned by the Secretary shall increase by 8% per year, such that 100% of Delaware's allowances for 2014 shall be auctioned.

§ 6046. Auction Revenue.

(a) All proceeds associated with the auction of CO₂ allowances shall be directed to Public Benefit Purposes as defined herein.

(b) The Secretary shall hold any and all auction proceeds in an interest bearing account with all interest directed to the account to carry out the purposes set forth herein.

(c) The Secretary shall direct auction proceeds to the following uses:

- (1) 65% of the CO2 allowance proceeds shall be directed to the Sustainable Energy Utility (SEU), established in 29 Del C §8059. The SEU shall apply these funds to further the goals and activities of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency, renewable energy, and energy financing pursuant to Section 8059(j)(3).
- (2) A total of 15% of the CO2 allowance proceeds shall be directed to low income consumers, of which 10% shall be directed to the federally funded and state administered Weatherization Assistance Program (WAP), and up to 5% shall be directed to the federally funded and state administered fuel assistance (LIHEAP) programs. Participants in the LIHEAP program funded pursuant to this section shall also participate in the WAP program within two years of receiving assistance through LIHEAP, subject to funding availability. These programs are administered by the office of Community Services, which is located within the Division for State Service Centers, and Delaware Department of Health and Social Services.
- (3) Percentage allocations of funds to the SEU and low income consumers may be reviewed and adjusted annually by a committee comprised of the Secretary of DNREC, who shall serve as committee

chair, the Chair of the Board of the SEU, and the program managers of the State Weatherization Assistance Program and Low Income Home Energy Assistance Program.

(4) 10% of CO₂ allowance proceeds shall be directed to Greenhouse Gas Reduction Projects, selected by the Secretary following a periodic competitive proposal process. The Secretary shall utilize an advisory body composed of electric generators, environmental advocates, legislators and such others as the Secretary may find useful in developing guidelines for the proposal process and in soliciting and ranking of projects. Projects must result in quantifiable and verifiable reductions in Greenhouse gas emissions in Delaware not otherwise required by federal or state law and not receiving funding from any other state sources.

(5) The Secretary shall use up to 10% of CO₂ allowance proceeds as detailed in Section 6046(d). Expenses for running the RGGI program shall be met first, prior to distribution of funds as outlined above.

(d) The Secretary of DNREC shall use annual auction proceeds to implement the cap-and-trade program, monitor emissions, allowances and offsets, and pay any expenses associated with the program including, but not limited to, expenses related to auctioning and tracking of allowances. This may include contracting with RGGI Inc., paying of dues to RGGI Inc., or transferring funds to RGGI Inc. should DNREC determine it

appropriate for RGGI Inc. to undertake any action related to implementation of the program. Any auction proceeds directed to the Secretary of DNREC may also be used to fund climate change activities designed to reduce greenhouse gas emissions from all sectors of Delaware's economy and to maintain a public information program to educate Delawareans about the impacts of climate change on Delaware, and for any administrative costs associated with support of the SEU not otherwise provided for under 29 Del C §8059.

§ 9207. Federal Pre-emption.

Should a national cap and trade program essentially equivalent to the requirements of RGGI be promulgated by the federal government, Delaware may transition into the federal program and suspend or amend its regulations accordingly, provided that any unspent funds remaining with the SEU or DNREC following cessation or suspension of the RGGI program shall be used in accordance with their initial purpose. Delaware's program shall not be abandoned until the national program is fully implemented and Delaware's regulations are amended to transition to the national program.

SYNOPSIS

This bill grants legal authority for Delaware to participate in the Regional Greenhouse Gas Initiative (RGGI) CO2 cap and trade program. The bill grants DNREC the authority to implement the program including promulgating regulations and implementing or participating in an allowance auction as necessary to fulfill the goals of the program. This bill further requires that all proceeds from the sale of RGGI CO2 allowances be used for public benefit purposes and directs revenues to the Delaware Sustainable Energy Utility (SEU) for the promotion of energy efficiency and renewable energy technologies, to programs designed to help low income ratepayers, to a Greenhouse Gas Reduction Program and to DNREC for administration of the program.