

DRAFT

DELAWARE STATE _____

144th GENERAL ASSEMBLY

_____BILL NO.____

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO A CARBON DIOXIDE 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 Chapter 92 as follows:

“Chapter 92 Carbon Dioxide Emission Trading Program

§ 9201. Findings and Purpose.

(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 emissions:

1. There is growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect that is resulting in 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. 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 carbon contributions from the State.
4. There are no known commercially available treatment technologies for the control of carbon dioxide from the combustion of fossil fuels.

5. Nonetheless, it is known that large producers of carbon dioxide emissions include the electric power generating sector and other industrial and mechanical sources. These are areas where energy source reduction and use of alternative renewable and end-use efficiency resources are alternatives to traditional “end-of-the pipe” control installations.

6. A carbon constraint on fossil fuel-fired electricity generation and the development of a carbon dioxide allowance trading mechanism 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.

7. Given the absent of federal action to protect the nation, a number of states, including Delaware, are taking actions to work regionally to reduce power sector carbon emissions.

8. 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 carbon dioxide emissions from power plants.

9. 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 carbon dioxide with the goal of stabilizing carbon dioxide emissions at current levels through 2015 and reducing by 10 percent such emissions by 2019.

10. The MOU sets an initial emissions cap of 7,559,787 short tons of carbon dioxide for Delaware and further requires a minimum of 25 percent of Delaware’s allocation of carbon dioxide allowances under the cap-and-trade program to be used for Public B Purposes.

11. Implementation of carbon constraint 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 carbon emissions while minimizing impacts on electric system

reliability and unnecessary costs to Delaware power consumers. Further, costs of the regional program are anticipated to be less burdensome if the carbon constraint program is implemented, to the extent possible and practicable, on a regional level.

12. Pursuant to Senate Concurrent Resolution 28, 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 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.

§ 9202. Definitions For purposes of this Chapter, the following terms shall have the meaning set out herein.

(a) “Public Benefit Purpose” shall mean purposes including the promotion of energy efficiency, the mitigation of electricity ratepayer impacts attributable to RGGI, the promotion of 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.

(b) “Regional Greenhouse Gas Initiative” shall mean Regional Greenhouse Gas Initiative as established by the Memorandum of Understanding signed by the Governor of Delaware and other States calling for the development of a program to reduce carbon dioxide emissions from energy generating facilities utilizing fossil fuels.

(c) “RGGI Workgroup” shall mean the workgroup established by Senate Concurrent Resolution #28 of the 144th General Assembly of the State of Delaware, the House of Representatives concurring therein.

§ 9203. 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 Chairman 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 regional program for reducing carbon 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 Chairman of the Public Service Commission, and their duly authorized representatives, as part of their official duties.

§ 9204. Regulations

(a) The Department of Natural Resources and Environmental Control is herein authorized to promulgate regulations to establish, implement and manage a cap-and-trade program for carbon dioxide emissions consistent with the RGGI, which would require regulated entities to hold allowances equivalent to their carbon contributions

(b) The provisions of Chapter 60 of this Title shall govern the implementation and enforcement of these regulations.

§ 9205. Auction of Allowances

DNREC is hereby directed and authorized to auction **XXX%** of the allowances allocated to Delaware pursuant to RGGI.

§ 9206. Use of Allowance Proceeds

(a) All proceeds associated with the auction of carbon dioxide allowances are appropriated to DNREC to be utilized by DNREC for Public Benefit Purposes.

(b) DNREC shall use the first \$500,000 or a maximum of 10% of any revenues over \$5,000,000 to implement the cap-and-trade program, monitor emissions, allowances and offsets, pay any expenses associated with the program including, but not limited to, expenses related to auctioning and tracking of allowances. This may include the payment of dues to RGGI Inc. or the transfer of funds to RGGI Inc. should DNREC determine it

appropriate for RGGI Inc. to undertake any action related to implementation of the program. DNREC may participate in a regional or other auction process providing the process ensures a liquid allowance market, minimizes price volatility and which is open to participation by all individuals. This money may also be used to fund a climate change program 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.

- (e) DNREC shall use any further revenues for other Public Benefit Purposes which may also include funding for residential and commercial energy efficiency programs such as the Sustainable Energy Utility , as defined in 29 Del C §8059, funding for the Low Income Home Energy Assistance Program (LIHEAP) and the Delaware Weatherization Assistance Program (WAP) operated by the Division of State Service Centers in the Department of Health and Social Services, funding incentives to attract non or low-CO2 emitting industries to Delaware, promote in-state manufacturing of low or non-emitting carbon technologies and to help finance existing industry's transformations to lower carbon emissions.
- (f) DNREC shall hold any and all proceeds in an interest bearing account with all interest directed to the account to carry out the administrative purposes set forth in subsection (b)(1) herein.

§ 9207. Federal Pre-emption

Should a federal program essentially equivalent to the requirements of RGGI be promulgated by the federal government, Delaware shall transition into the federal program and suspend or amend its regulations accordingly.

SYNOPSIS

This bill authorizes the DNREC to promulgate regulations necessary to conduct the Regional Greenhouse Gas Initiative (RGGI) CO2 cap and trade program. This bill further requires that all proceeds from the sale of RGGI CO2 allowances be used for public benefit purposes such as promotion of energy efficiency, promotion of

renewable or non-carbon-emitting energy technologies and stimulation of technological advances in carbon reduction techniques.