



SPONSOR: Sen. McDowell & Rep. Thornburg
Sens. Bunting, Venables, Copeland, Simpson & Reps.
Hocker, McWilliams

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

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

3 § 6043. Findings, Purpose, and Definitions.

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

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

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

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

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

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

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

21 7. The State of Delaware is a signatory state to the Regional Greenhouse Gas
22 Initiative (“RGGI”), a cooperative effort on the part of mid-Atlantic and northeastern states to
23 curtail CO2 emissions from power plants.

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

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

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

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

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

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

48 (2) “Public Benefit Purpose” shall mean purposes including the promotion of energy
49 efficiency, the mitigation of electricity ratepayer impacts attributable to RGGI, the promotion of
50 distributed renewable or non-carbon-emitting energy technologies, the stimulation and reward of

51 investment in the development of innovative carbon emissions abatement technologies with
52 significant carbon reduction potential, and funding of the administration of the Program
53 established by this Chapter.

54 (3) "Regional Greenhouse Gas Initiative" or "RGGI" shall the mean Regional
55 Greenhouse Gas Initiative as established by the Memorandum of Understanding signed by
56 Delaware and other States calling for the development of a program to reduce CO2 emissions
57 from energy generating facilities utilizing fossil fuels.

58
59 § 6044. Regional Greenhouse Gas Initiative.

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

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

71 (c) The Secretary of the Department of Natural Resources and Environmental Control is
72 herein authorized to promulgate regulations to implement the RGGI cap and trade program consistent
73 with the RGGI MOU, as amended.

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

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

77
78 §6045. Auction of Allowances.

79 (a) The Secretary of the Department of Natural Resources and Environmental Control is hereby
80 authorized to establish, implement and manage an auction program to sell CO2 allowances into a

81 market based trading program consistent with the RGGI MOU and this statute. The Secretary shall
82 make every effort to participate in a regional allowance auction with other RGGI states but may
83 conduct a Delaware-only auction if such individual auction is found to be in the best interests of
84 Delaware electric ratepayers, as determined by the Secretary, and after consultation with the Delaware
85 Public Service Commission.

86 (b) The Secretary need not establish, implement or manage the elements of the allowance auction
87 program by regulation. However, the Secretary shall publish the elements of the auction program in
88 the Delaware Register of Regulations no less than 60 days prior to Delaware's participation in its first
89 auction. The Secretary may modify the auction program as the Secretary deems necessary, but
90 substantive modifications shall also be published in the Delaware Register of Regulations.

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

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

98
99 § 6046. Auction Revenue.

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

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

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

105 (1) 65% of the CO2 allowance proceeds shall be directed to the Sustainable Energy Utility (SEU),
106 established in 29 Del C §8059. The SEU shall apply these funds to further the goals and activities
107 of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency,
108 renewable energy, and energy financing pursuant to Section 8059(j)(3).

109 (2) A total of 15% of the CO2 allowance proceeds shall be directed to low income consumers, of
110 which 10% shall be directed to the federally funded and state administered Weatherization

111 Assistance Program (WAP), and up to 5% shall be directed to the federally funded and state
112 administered fuel assistance (LIHEAP) programs. Participants in the LIHEAP program funded
113 pursuant to this section shall also participate in the WAP program within two years of receiving
114 assistance through LIHEAP, subject to funding availability. These programs are administered by the
115 office of Community Services, which is located within the Division for State Service Centers, and
116 Delaware Department of Health and Social Services.

117 (3) Percentage allocations of funds to the SEU and low income consumers may be reviewed and
118 adjusted annually by a committee comprised of the Secretary of DNREC, who shall serve as
119 committee chair, the Chair of the Board of the SEU, and the program managers of the State
120 Weatherization Assistance Program and Low Income Home Energy Assistance Program.

121 (4) 10% of CO2 allowance proceeds shall be directed to Greenhouse Gas Reduction Projects,
122 selected by the Secretary following a periodic competitive proposal process. The Secretary shall
123 utilize an advisory body composed of electric generators, environmental advocates, legislators and
124 such others as the Secretary may find useful in developing guidelines for the proposal process and in
125 soliciting and ranking of projects. Projects must result in quantifiable and verifiable reductions in
126 Greenhouse gas emissions in Delaware not otherwise required by federal or state law and not
127 receiving funding from any other state sources.

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

131 (d) The Secretary of DNREC shall use annual auction proceeds to implement the cap-and-trade program,
132 monitor emissions, allowances and offsets, and pay any expenses associated with the program including,
133 but not limited to, expenses related to auctioning and tracking of allowances. This may include
134 contracting with RGGI Inc., paying of dues to RGGI Inc., or transferring funds to RGGI Inc. should
135 DNREC determine it appropriate for RGGI Inc. to undertake any action related to implementation of the
136 program. Any auction proceeds directed to the Secretary of DNREC may also be used to fund climate
137 change activities designed to reduce greenhouse gas emissions from all sectors of Delaware's economy
138 and to maintain a public information program to educate Delawareans about the impacts of climate
139 change on Delaware, and for any administrative costs associated with support of the SEU not otherwise
140 provided for under 29 Del C §8059.

141

142 § 9207. Federal Pre-emption.

143 Should a national cap and trade program essentially equivalent to the requirements of
144 RGGI be promulgated by the federal government, Delaware may transition into the federal program and
145 suspend or amend its regulations accordingly, provided that any unspent funds remaining with the SEU or
146 DNREC following cessation or suspension of the RGGI program shall be used in accordance with their
147 initial purpose. Delaware's program shall not be abandoned until the national program is fully
148 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.

Author: Senator McDowell