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Sokola, Sturgeon

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 99
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 7 AND 29 OF THE DELAWARE CODE RELATING TO CLIMATE CHANGE.

WHEREAS, anthropogenic emissions of greenhouse gases are contributing to climate change, threatening the health and well-being of the people of Delaware and require us to act with urgency; and

WHEREAS, the threat that climate change poses is multi-faceted, resulting in severe impacts such as sea level rise, disruption to the hydrologic cycle, more frequent and intense heatwaves, droughts, and storms; and

WHEREAS, Delaware has the lowest mean elevation of any state in the nation and the State is particularly vulnerable to related climate change impacts like sea level rise, flooding, saltwater intrusion into drinking water, erosion, wetland loss, beach loss, and extreme storm events; and

WHEREAS, in 2021, as part of the global effort to limit global warming to 1.5 degrees Celsius, the United States made a pledge to reduce its greenhouse gas emissions by at least 50% by 2030 and to reach net zero by 2050; and

WHEREAS, the General Assembly has previously recognized that the threat posed by climate change from greenhouse gas emissions demands legislative action and has, for example, passed legislation to respond to the effects on territorial and aquatic ecosystems, § 6043(a)(2) of Title 7, the importance of renewable energy generation, § 6043(a)(5) of Title 7, the need to allow natural systems, plants, and animals to accommodate or adapt to climate change, § 7507A(a)(10) of Title 7, the importance of efficient renewable energy consumption, § 8051(b)(3) of Title 7, the unique threat of sea level rise to Delaware's coastal areas and beaches, §§ 6801, 7014(c)(5)of Title 7, and the need to construct buildings that have net zero energy consumption, § 7602 of Title 16; and

WHEREAS, the State's forests, vegetation, and soils play a key role in storing and sequestering carbon and also contribute to the State's resiliency to the effects of climate change; and

HD : NSW : MAW : 2141520054
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Released: 06/27/2023 04:19 PM

WHEREAS, Delaware's first Climate Action Plan was published by the Department of Natural Resources and Environmental Control in November 2021, which provides a pathway for the State to reduce greenhouse gas emissions and increase the State's resilience to climate change impacts; and

WHEREAS, the Climate Action Plan details the need for a just and equitable transition toward a decarbonized economy that invests in clean energy and ensures quality jobs; and

WHEREAS, the Department of Natural Resources and Environmental Control will lead efforts to recommend strategies and update the Climate Action Plan; and

WHEREAS, all State agencies play an important role in preparing Delaware, its economy, and its infrastructure for the future, and the 2021 Climate Action Plan urges a whole of government approach to addressing climate change within the State; and

WHEREAS, State governmental bodies have a role in ensuring inclusive, coordinated, and transparent progress on the State's climate goals, while taking into consideration the need to balance impacts to the State's economy, labor force, energy costs, and utility infrastructure; and

WHEREAS, significant additional action is necessary to reduce greenhouse gas emissions in the State and to increase the resilience of the State to the effects of climate change.

NOW, THEREFORE:

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

Section 1. Amend Title 7 of the Delaware Code by inserting a new Part X and by making deletions as shown by strike through and insertions as shown by underline as follows:

Part X. Climate Change.

Chapter 100. Delaware Climate Change Solutions Act.

§ 10000. This Act shall be known as the "Delaware Climate Change Solutions Act of 2023".

§ 10001. Legislative Purpose.

(a) The General Assembly finds all of the following:

(1) Anthropogenic emissions of greenhouse gases are contributing to climate change and have caused global temperatures to rise by approximately 1 degree Celsius above preindustrial levels.

(2) Climate change threatens the health and well-being of the people of Delaware, particularly Delawareans residing in historically over-burdened and under-served communities, and results in severe impacts such as sea level rise, increasing temperatures and changes to precipitation patterns. Climate change will also intensify and increase the frequency of extreme weather events, such as coastal storm surges, flooding, and heat waves.

(3) The threat that climate change poses to Delaware is multi-faceted, resulting in disruptions and damage to the State's agriculture industry, water resources, built infrastructure, natural resources, and public health.

(4) Delaware has the lowest mean elevation of any state in the nation and is therefore particularly vulnerable to coastal climate change impacts, including sea level rise, flooding, saltwater intrusion into drinking water and agricultural lands, erosion, wetland loss, beach loss, and extreme storm events.

(5) Delaware's economy and public safety are dependent on transportation, water, and energy infrastructure systems that must be adaptive to current and future climate change.

(6) Climate change poses risks to Delaware's continued economic vitality, including an industrial center and major port located on the Delaware River, subject to flooding and storm surge; a tourism economy on the Atlantic beach communities exposed to sea level rise, flooding, and storm impacts; and a robust agriculture sector vulnerable to weather extremes, flooding, and saltwater intrusion.

(7) The continued health and quality of life of Delaware's residents are dependent upon reducing its emissions of greenhouse gases and maintaining and improving the State's resiliency to the impacts of climate change.

(8) Actions taken to reduce greenhouse gas emissions and increase resiliency to climate change have co-benefits to economic development, job opportunities, public health and air and water quality.

(b) Based on its findings in subsection (a) of this section, the General Assembly determines that it is in the public interest to develop a comprehensive approach to reduce emissions of greenhouse gases in the State and to maximize the State's adaptation and resiliency to the effects of climate change.

§ 10002. Definitions.

For purposes of this chapter, the following terms shall have the meanings set forth herein.

(1) "2005 Baseline" means the 2005 statewide greenhouse gas emissions, as determined by the Department's Division of Air Quality.

(2) "2030 Target" means the greenhouse gas emissions reduction requirement set forth in § 10003(a) of this chapter.

(3) "2050 Target" means the greenhouse gas emissions reduction requirement set forth in § 10003(b) of this chapter.

(4) "Carbon dioxide equivalent" means a metric used to quantify greenhouse gas emissions, measured in metric tons, which accounts for the relative global warming potential of different kinds of greenhouse gases.

(5) "Chief Climate Change Officer" means the Director of the Division of Climate, Coastal and Energy at the Department of Natural Resources and Environmental Control.

(6) “Climate Action Plan” means Delaware’s Climate Action Plan issued in November 2021, and all updated Climate Action Plans as required in § 10004 of this chapter.

(7) “Climate Change Officer” means the individuals designated by the Secretary of each of the Key Cabinet-Level Departments to coordinate with the Chief Climate Change Officer on the process of implementation of the strategies identified in the Climate Action Plan, and on the process of updating the Climate Action Plan.

(8) “Delaware’s Greenhouse Gas Inventory” means an annual report that provides a comprehensive accounting of total statewide greenhouse gas emissions from all man-made sources. The gases covered by the inventory include carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF6), and nitrogen trifluoride (NF3). The inventory also calculates carbon dioxide removal from the atmosphere by “sinks,” e.g., through the uptake of carbon and storage in forests, vegetation, and soils.

(9) “Department” means the Department of Natural Resources and Environmental Control.

(10) “Global warming potential” means an index representing the combined effect of the differing times greenhouse gases remain in the atmosphere and their relative effectiveness in absorbing outgoing infrared radiation.

(11) “Greenhouse gas” means carbon dioxide (CO2), methane (CH4), nitrous oxide (N20), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF6), nitrogen trifluoride (NF3), and any other substance determined by the Department through regulation that is emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.

(12) “Greenhouse gas emissions reduction targets” means the 2030 Target and the 2050 Target.

(13) “Key Cabinet-Level Departments” mean those Departments in State government with the greatest ability to shape and implement the Climate Action Plan. Those Departments are:

a. Delaware Department of Natural Resources and Environmental Control.

b. Delaware Department of Agriculture.

c. Delaware Department of Health and Social Services.

d. Delaware State Housing Authority.

e. Delaware Office of Management and Budget.

f. Delaware Department of Safety and Homeland Security.

g. Delaware Department of State.

h. Delaware Department of Transportation.

i. Delaware Department of Education.

(14) "Net" means that when measuring total annual emissions for purposes of the 2030 Target or the 2050 Target, emissions may be offset by strategies involving land use, land use change, agriculture, forestry, and also by strategies involving carbon storage or sequestration projects or other mechanisms approved by the Department.

(15) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(16) "State agencies" means as defined in § 6902 of Title 29.

(17) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the state, measured in metric tons of carbon dioxide equivalent, and includes all emissions of greenhouse gases from all economic sectors including electric power, transportation, industrial, residential and commercial buildings, agriculture, waste management, and energy sectors. Statewide greenhouse gas emissions includes emissions from the generation of electricity delivered to and consumed within the state, regardless of where the electricity is generated.

§ 10003. Greenhouse Gas Emissions Reductions.

(a) The State shall implement greenhouse gas emissions reduction strategies to ensure that, no later than January 1, 2030, Statewide greenhouse gas emissions on a net basis shall be reduced by not less than 50% from a 2005 Baseline (the "2030 Target").

(b) The State shall implement greenhouse gas emissions reduction strategies to ensure that, no later than January 1, 2050, greenhouse gas emissions in the State shall be stabilized at or below net zero emissions (the "2050 Target") and shall not exceed that level thereafter.

(c) The greenhouse gas emissions reductions set forth in subsection (a)-(b) shall be implemented by the State through the process and the principles set forth in § 10004.

(d) The State shall develop and implement strategies that maximize the carbon storage and sequestration potential of forests, vegetation, and soils within the State, which shall be guided by the principles set forth in § 10004(e).

(e) The reductions required by subsections (a)-(b) of this section shall be determined by reference to Delaware's Greenhouse Gas Inventory prepared by the Department.

(f) The Department shall adopt criteria to evaluate offset proposals as provided in § 10002(14) of this title. In evaluating greenhouse gas emissions offset, the Department shall consider all of the following factors:

1. The extent to which the offset results in a direct and additional reduction of greenhouse gas emissions,

2. Whether the offset results in an enduring greenhouse gas reduction that is verifiable.

3. Whether the greenhouse gas reduction produced by the offset can be quantified.

4. The extent to which the offset will be implemented in or result in environmental benefits to the State.

5. The cost-effectiveness and availability of the offset.

6. If the offset has been utilized for the purposes of meeting greenhouse gas emissions goals in any other jurisdiction it shall not be approved as offsets in Delaware.

(g) The Department shall adopt the criteria required by subsection (f) of this section, and any rules or regulations necessary for implementing the provisions of subsection (f) of this section, not later than 18 months prior to the effective date of any new rules or regulations requiring emissions reductions from stationary sources to achieve the greenhouse gas emission reductions set forth in § 10003(a) and (b). Notwithstanding the foregoing, regulations promulgated pursuant to Chapter 60, Subchapter II-A of Title 7, and Chapter 70 of Title 7, which implement pre-existing offset programs, and regulations promulgated to meet federal requirements are excluded from the requirements of subsection (f) and (g) of this section.

§ 10004. Climate Action Plan.

(a) Climate Action Plan as the Ongoing Framework to Meet Targets.

The Climate Action Plan shall serve as the framework to guide all State agencies in working towards achievement of Delaware's 2030 Target and 2050 Target, and, along with the Climate Action Plan Implementation Report required by § 10006(d), shall serve to provide recommendations for any legislation, regulation, or policy changes required to continue to make progress towards the greenhouse gas emissions reduction targets. The Department, working with the Office of the Governor, shall be responsible for updating the Climate Action Plan. The Climate Action Plan shall be updated not later than November 15, 2025 and every 5 years thereafter.

(b) Climate Change Officers to Assist in Updating and Implementation.

Each Key Cabinet-Level Department shall identify one individual from within such department to serve as a Climate Change Officer to support achievement of Delaware's 2030 Target and 2050 Target through implementation of the State's Climate Action Plan. The Department shall appoint one Climate Change Officer and also the Chief Climate Change Officer. The Climate Change Officers from all Key Cabinet-Level Departments shall meet as a group at least biannually to assess progress towards meeting the greenhouse gas emissions reduction targets and assess the status of implementation of legislation, regulations or policies identified in the most recent Climate Action Plan. This meeting shall be chaired by the Chief Climate Change Officer. Each Climate Change Officer shall:

(1) Provide any information needed to evaluate the ongoing implementation of the Climate Action Plan.

(2) Provide any information needed to develop all updates to the Climate Action Plan.

(3) Work with the Department on the development and drafting of the aspects of the Climate Action Plan that address risks or opportunities relevant to the Climate Change Officer's Department.

(4) Work with the secretary of their Key Cabinet-Level Department to coordinate all input from their Department upon the Climate Action Plan as it is developed.

(5) Provide any data or analysis requested by the Technical Climate Advisors.

(6) Obtain and hold any professional certification or professional training relevant to climate change identified by the Office of the Governor.

(c) Assistance from All State Agencies.

All other State agencies shall provide any necessary assistance to the Department in the compilation of data or other information that the Department, or any Climate Change Officer, determines is necessary to update the Climate Action Plan.

(d) Contents of the Climate Action Plan.

Each update of the Climate Action Plan shall include:

(1) An assessment of existing federal, State, and local greenhouse gas emissions reduction strategies, including reference to emissions modeling and emissions inventories.

(2) An assessment of whether existing federal, State, and local greenhouse gas emissions reduction strategies are sufficient to meet the State's greenhouse gas emissions reduction targets.

(3) Additional greenhouse gas emissions reduction strategies to be considered for implementation, if existing federal, State, and local greenhouse gas emissions reduction strategies are not sufficient to meet the State's greenhouse gas emissions reduction targets.

(4) The Department's recommendations for legislative, regulatory, and policy changes necessary for the State to meet its greenhouse gas emissions reduction targets, on topics including renewable energy, energy efficiency, transportation, industrial pollutants, offsets, and land use.

(5) A discussion of changes in the State's current and future vulnerability to climate change risks from the prior update of the Climate Action Plan, including but not limited to impacts to human health, infrastructure, agriculture, water resources, and natural resources. Such discussion shall reference the most recent climate change planning scenarios issued by the Technical Climate Advisors.

(6) An assessment of whether existing federal, State, and local resilience strategies are sufficient to address the State's current and future vulnerability to climate change risks.

(7) Proposed additional resilience strategies, if existing federal, State, and local resilience strategies are not sufficient to address either the State's current or future vulnerability to climate change risks.

(8) Proposed guidance to ensure equity in implementation of the Climate Action Plan.

(e) Principles for Development of Reduction Strategies:

Each Climate Action Plan shall, to the extent practicable, reflect climate reduction strategies that:

(1) Are equitable, seek to minimize costs and maximize the total benefits to the State, and encourage early action to reduce greenhouse gas emissions and increase resiliency.

(2) Do not disproportionately impact over-burdened and under-served communities.

(3) Complement efforts to achieve and maintain federal and State ambient air quality standards and complements efforts to reduce emissions of air toxics.

(4) Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

(5) Seek to minimize the administrative burden of implementation upon the agency and the burden of compliance upon the regulated community.

(6) Maintain an adequate and reliable energy supply for Delaware, including preparing for fluctuations in energy demand due to climate change.

(f) Process of Plan Development.

In preparing each update to the Climate Action Plan, the Department shall:

(1) Consider the current scientific understanding of climate change, current data on statewide greenhouse gas emissions, and the sea level rise scenarios, heat scenarios, and precipitation scenarios developed by the Technical Climate Advisors.

(2) Consider provisions to ensure equitable implementation of greenhouse gas reduction measures and adaptation and resiliency measures.

(3) Allow for opportunities for public input and engagement in the development of the Climate Action Plan, including strategies that seek input from overburden and under resourced communities. The input and engagement process should be consistent with the Climate Action Plan Public Participation process as publicly posted by the Department, including public workshops, public comment, and technical stakeholder engagement. The Department shall, at least annually, hold a public meeting to provide an update on progress on implementation of the Climate Action Plan and to receive public input., All public meetings must be held in compliance with § 10004 of Title 29.

(g) Presentation of the Climate Action Plan.

Each updated Climate Action Plan shall be presented to the General Assembly by providing it to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Director and the Librarian of the Division of Research of Legislative Council, and the chairs of the Natural Resources and Agriculture Committees of the House of Representatives and the chairs of the Environment, Energy and Transportation and Agriculture Committees of the Senate.

§ 10005. Technical Climate Advisors.

Technical Climate Advisors shall serve in an advisory capacity to the Department. The number and persons who shall serve as Technical Climate Advisors shall be determined by the Secretary and may, at the discretion of the Secretary, include Department staff, external experts, and members of the public.

(b) The Technical Climate Advisors responsibilities shall include:

(1) Evaluating and updating the State's sea level rise scenarios. The Technical Climate Advisors shall issue updated sea level rise scenarios by November 15, 2024 and shall evaluate and update those scenarios not less than every 5 years thereafter.

(2) Evaluating, preparing and updating temperature scenarios for the State. The Technical Climate Advisors shall issue initial temperature scenarios by November 15, 2024 and shall evaluate and update those scenarios not less than every 5 years thereafter.

(3) Evaluating, preparing and updating precipitation scenarios for the State. The Scientific Committee shall issue initial precipitation scenarios by November 15, 2024 and shall evaluate and update those scenarios not less than every 5 years thereafter.

§ 10006. All of Government Implementation.

(a) Implementation Process. The State shall work to implement the Climate Action Plan on an ongoing basis, in an inclusive, coordinated, and transparent manner. The State shall coordinate the strategy to achieve the State's greenhouse gas reduction targets through regular updates of the Climate Action Plan, through the Department and the Climate Change Officers working to implement that Plan, including working to secure any legislation necessary to meet the State's greenhouse gas emissions reduction targets, and through the implementation strategies identified below.

(b) Agency Regulations.

(1) When promulgating or amending regulations within the agency's statutory authority, all State agencies shall consider and, to the extent practicable, incorporate the State's greenhouse gas emissions reduction targets, the Climate Action Plan, and sea level rise, temperature, and precipitation scenarios as provided for in § 10005(b) of this title.

(2) This subsection (b) does not independently confer statutory authority to State agencies to promulgate or amend regulations, but instead directs State agencies to consider and, to the extent practicable, incorporate the State's greenhouse gas emissions reduction targets, Climate Action Plan, sea level rise scenarios, temperature scenarios, and precipitation scenarios in their promulgation and amendment of regulations.

(3) Any regulations promulgated by agencies to meet the targets set for this in this chapter should be consistent with the goals of the Climate Action Plan or any other applicable law.

(c) Agency Planning, Procurement and Resources.

(1) Notwithstanding any other statute, all State agencies, in any decision with respect to the purchase and use of equipment and goods; the siting, construction, and maintenance of State buildings; the assignment of agency personnel; the planning, design, and operation of State infrastructure; and the issuance of grants and funding for any of the foregoing, shall consider the State's greenhouse gas emissions reduction targets, and may also consider:

a. the Legislative Findings set forth in § 10001(a)-(b) of this Chapter.

b. the State's most recent Climate Action Plan.

c. the need to increase resilience to climate change, including by reference to the most recent, if any, sea level rise scenarios, temperature scenarios, and precipitation scenarios, where applicable.

(2) All State agencies shall, wherever practicable, procure products and services that have lower greenhouse gas emissions. This obligation shall apply only when such products and services represent the best value to the State, are readily available, and perform to satisfactory standards. In determining the best value to the State, State agencies may consider the total cost of ownership of products and services, including all costs associated with the production, purchase, transportation, use, operation and disposal of such products or services.

(d) Climate Action Plan Implementation Report.

(1) The Department, working with the Office of the Governor, shall provide to the General Assembly by providing it to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Director and the Librarian of the Division of Research of Legislative Council, the Chairs of the Natural Resources and Agriculture Committees of the House of Representatives and the Chairs of the Environment, Energy and Transportation and Agriculture Committees of the Senate a Climate Action Plan Implementation Report by January 1, 2024, and thereafter shall provide this Implementation Report to the Legislature in the same manner every 2 years. Each Implementation Report shall summarize the State's progress on the strategies outlined in the most recent Climate Action Plan, and shall summarize, at minimum, the following:

a. Activities taken by State agencies to reduce greenhouse gas emissions and, when such data are available, estimated greenhouse gas emissions reductions, by sector, for the reporting period.

b. An update upon the status of the implementation of specific policy measures, specific regulatory actions, or specific legislative proposals that were recommended in the most recent Climate Action Plan.

c. Activities taken by agencies to increase resiliency to climate change.

(2) All State agencies shall provide any requested assistance to the Department in the compilation of data or other information that the Department determines is necessary in the preparation of the Implementation Report.

Section 2. Amend § 8053, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 8053. State Energy Office; State Energy Coordinator; establishment; powers and duties.

(a) There is hereby established the State Energy Office within the Department of Natural Resources and Environmental Control, ~~Office of the Secretary.~~ Division of Climate, Coastal and Energy.

(b) The Director of the Division of ~~Energy and Climate~~ Climate, Coastal and Energy is the administrator and head of the State Energy Office and is the State Energy Coordinator, who shall:

(1) Be qualified by training or experience to perform the duties of the Office; and

(2) Perform such functions in the administration of the State Energy Office as the Secretary of the Department of Natural Resources and Environmental Control may from time to time require.

(c) The State Energy Office shall:

(7) ~~Facilitate the development of~~ Develop and update every 5 years a comprehensive State Energy Plan designed to protect the health, safety and welfare of the citizens and economy of the ~~State~~ State, consistent with the State's greenhouse gas emissions reduction targets, as specified in § 10003 of Title 7, and the State's Climate Action Plan issued pursuant to § 10004 of Title 7, and which shall ~~include, but not be limited to:~~ include:

a. Encouraging and promoting conservation of energy through reducing wasteful, uneconomical or inefficient uses of energy;

b. Encouraging and promoting the use of renewable electric generation facilities and alternate energy technologies by residential and commercial consumers; and

c. Encouraging and promoting such other energy efficiencies and conservation goals, methods, standards, training, programs and policies that are consistent with the intent of this subchapter, especially those directed toward improving end-use efficiency among the State's energy consumers.

Section 3. Amend § 10118, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 10118. Agency findings; form of regulations.

(b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include:

(3) A brief narrative assessment of the impact, if any, of the regulation on the achievement of the State's greenhouse gas emissions reduction targets, as specified in § 10003 of Title 7, and the impact of the regulation on the State's resiliency to climate change, or a statement that any such impact will be de minimis or that such assessment it is not practical for the regulation. If prepared, the narrative assessment should include a brief description of the agency's efforts to consider climate change, resiliency, and the State's greenhouse gas emissions reduction targets in developing the regulation.