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Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 305

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

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

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

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

8 WHEREAS, the Intergovernmental Panel on Climate Change has found that human activities have caused
9 approximately 1.0 degree Celsius of warming globally above pre-industrial levels and that, in order to limit global warming
10 to 1.5 degrees Celsius, global greenhouse gas emissions must decline by at least 45% by 2030 and reach net zero by 2050;
11 and

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

14 WHEREAS, the General Assembly has previously recognized that the threat posed by climate change from
15 greenhouse gas emissions demands legislative action and has, for example, passed legislation to respond to the effects on
16 territorial and aquatic ecosystems, § 6043(a)(2) of Title 7, the importance of renewable energy generation, § 6043(a)(5) of
17 Title 7, the need to allow natural systems, plants, and animals to accommodate or adopt to climate change, § 7507A(a)(10)
18 of Title 7, the importance of efficient renewable energy consumption, § 8051(b)(3) of Title 29, the unique threat of sea level
19 rise to Delaware's coastal areas and beaches, §§ 6801, 7014(c)(5) of Title 7, and the need to construct buildings that have
20 net zero energy consumption, § 7602 of Title 16; and

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

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

26 WHEREAS, the Department of Natural Resources and Environmental Control will lead efforts to implement and
27 update the Climate Action Plan; and

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

31 WHEREAS, numerous State governmental bodies have a role in ensuring inclusive, coordinated, and transparent
32 progress on the State’s climate goals; and

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

35 NOW, THEREFORE:

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

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

39 Part X. Climate Change.

40 Chapter 100. Delaware Climate Change Solutions Act.

41 § 10000. This Act shall be known as the “Delaware Climate Change Solutions Act of 2022”.

42 § 10001. Legislative Purpose.

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

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

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

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

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

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

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

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

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

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

68 § 10002. Definitions.

69 (1) “2005 Baseline” means the 2005 statewide gross greenhouse gas emissions, as determined by the Department’s
70 Division of Air Quality greenhouse gas emissions inventory.

71 (2) “2030 Target” means the greenhouse gas emissions reduction requirement set forth in § 10003(a) of this
72 chapter.

73 (3) “2050 Target” means the greenhouse gas emissions reduction requirement set forth in § 10003(b) of this
74 chapter.

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

77 (5) “Climate Action Plans” means Delaware’s Climate Action Plan issued in November, 2021, and such further
78 Climate Action Plans as required in § 10004 of this chapter.

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

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

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

87 (9) “Greenhouse gas” means carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O), hydrofluorocarbons
88 (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆), nitrogen trifluoride (NF₃), and any other substance
89 emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.

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

91 (11) “Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

92 (12) “State agencies” means as defined in § 6902 of Title 29.

93 (13) “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the state,
94 measured in metric tons of carbon dioxide equivalent, and includes all emissions of greenhouse gases from all
95 economic sectors including the electric power, transportation, industrial, residential and commercial buildings,
96 agriculture, and waste management sectors. Statewide greenhouse gas emissions includes emissions from the
97 generation of electricity delivered to and consumed within the state, regardless of where the electricity is
98 generated. Statewide greenhouse gas emissions shall be measured on a gross basis and shall not include the
99 estimated carbon dioxide removal from the atmosphere by land use, land-use change and forestry sector.

100 §10003. Greenhouse Gas Emissions Reductions.

101 (a) The State shall reduce its statewide greenhouse gas emissions by not less than 50% by 2030 from a 2005
102 Baseline (the “2030 Target”).

103 (b) The State shall reduce its statewide greenhouse gas emissions by not less than 90% by 2050 from a 2005
104 Baseline (the “2050 Target”).

105 (c) The State shall implement programs necessary to achieve the 2030 Target and the 2050 Target of economy-
106 wide gross greenhouse gas emissions reductions.

107 (d) The greenhouse gas emissions reduction requirements set forth in subsections (a)-(b) of this section are the
108 minimum reductions required. Nothing in this chapter nor any other statutory provision should be construed to limit the
109 Governor's authority to establish additional reductions.

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

112 § 10004. Climate Action Plan.

113 (a) The State shall periodically update its Climate Action Plan, originally issued in November 2021, to aid in
114 achieving the State's greenhouse gas emissions reduction targets.

115 (b) The Department and the Office of the Governor shall be responsible for updating the Climate Action Plan.

116 (c) All State agencies shall provide reasonable assistance to the Department in the compilation of data or other
117 information that the Department determines is necessary to update the Climate Action Plan.

118 (d) The Climate Action Plan shall be updated not later than December 31, 2025 and every 5 years thereafter.

119 (e) In preparing each update to the Climate Action Plan, the Department shall:

120 (1) Provide opportunities for public input throughout the development of the plan, including strategies
121 that seek input from over-burdened and under-resourced communities.

122 (2) Make the proposed plan available to the public.

123 (3) Consult with State agencies and local governments.

124 (4) Consider the current scientific understanding of climate change, current data on statewide greenhouse gas
125 emissions, and the sea level rise scenarios, heat scenarios, and precipitation scenarios developed by the Technical
126 Committee on Climate Scenarios.

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

129 (f) Each update of the Climate Action Plan shall include, at minimum:

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

132 (2) A determination of whether existing federal, state, and local greenhouse gas emissions reduction strategies
133 are sufficient to meet the State's greenhouse gas emissions reduction targets.

134 (3) Proposed additional greenhouse gas emissions reduction strategies, if existing federal, state, and local
135 greenhouse gas emissions reduction strategies are not sufficient to meet the State's greenhouse gas emissions
136 reduction targets.

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

141 (5) A determination of whether existing federal, state, and local resilience strategies are sufficient to address
142 the State’s current and future vulnerability to climate change risks.

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

145 (7) Proposed actions to ensure equity in implementation of the Climate Action Plan.

146 (g) Each final updated Climate Action Plan shall be presented to the Governor and to the General Assembly and
147 made available to the public.

148 § 10005. Technical Committee on Climate Scenarios.

149 (a) A Technical Committee on Climate Scenarios is established and shall serve in an advisory capacity to the
150 Department. The size and membership of Technical Committee shall be determined by the Secretary and may, at the
151 discretion of the Secretary, include Department staff, external experts, and members of the public.

152 (b) The Technical Committee’s responsibilities shall include:

153 (1) Evaluating and updating the State’s sea level rise scenarios. The Technical Committee shall issue updated
154 sea level rise scenario by December 31, 2024 and shall evaluate and update those scenarios not less than every 5
155 years thereafter.

156 (2) Evaluating, preparing and updating temperature scenarios for the State. The Technical Committee shall
157 issue initial temperature scenarios by December 31, 2024 and shall evaluate and update those scenarios not less
158 than every 5 years thereafter.

159 (3) Evaluating, preparing and updating precipitation scenarios for the State. The Technical Committee shall
160 issue initial precipitation scenarios by December 31, 2024 and shall evaluate and update those scenarios not less
161 than every 5 years thereafter.

162 (4) Evaluating and providing guidance to the Department on preparing and updating the State’s Climate
163 Action Plan.

164 (5) Such other responsibilities determined by the Secretary relevant to the preparation of the Climate Action
165 Plan.

166 § 10006. All of Government Implementation.

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(a) Agency Regulations.

(1) All State agencies shall, wherever applicable, incorporate the State’s greenhouse gas emissions reduction targets into the promulgation and amendment of regulations.

(2) All State agencies are authorized, wherever applicable, to incorporate the State’s Climate Action Plan, sea level rise scenarios, temperature scenarios, and precipitation scenarios into the promulgation and amendment of regulations.

(b) 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:

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

(ii) the State’s most recent Climate Action Plan; and

(iii) 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.

(c) The Department shall provide a report to the Governor and the Legislature on December 31, 2024, and every 2 years thereafter, on the State’s progress on the strategies outlined in the most recent Climate Action Plan. All State agencies shall provide reasonable assistance to the Department in the compilation of data or other information that the Department determines is necessary in the preparation of such report, which shall include, at minimum, the following:

(1) New or emerging climate related vulnerabilities to agency operations; and

(2) Activities taken by agencies to increase resiliency to climate change; and

(3) Activities taken by agencies to reduce greenhouse gas emissions and, when such data are available, estimated greenhouse gas emissions reductions, by sector, for the reporting period; and

(4) Available emissions information from the State’s annual Greenhouse Gap Emissions Inventory; and

(5) Policy barriers to accomplishing greenhouse gas emissions reductions strategies or resiliency strategies.

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

199 § 8053. State Energy Office; State Energy Coordinator; establishment; powers and duties.

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

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

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

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

207 (c) The State Energy Office shall:

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

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

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

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

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

221 § 10118. Agency findings; form of regulations.

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

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(3) A finding that the regulation will not negatively impact the achievement of the State's greenhouse gas

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emissions reduction targets, as specified in § 10003 of Title 7:

SYNOPSIS

This Act, known as the Delaware Climate Change Solutions Act, follows the issuance of Delaware's Climate Action Plan in 2021, and establishes a statutory requirement of greenhouse gas emissions reductions over the medium and long term to mitigate the adverse effects of climate change due to anthropogenic greenhouse gas emissions on the State, establishing a mandatory and regularly updated plan to achieve those emissions reductions and develop resilience strategies for the State, and requires State agencies to address climate change in decision-making and rulemaking.

Author: Senator Hansen