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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 165

AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO THE RENEWABLE ENERGY
DEVELOPMENT ACT.

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

1 Section 1. Amend Title 17 of the Delaware Code by making deletions as shown by strike through and insertions
2 as shown by underline as follows:

3 CHAPTER 20. RENEWABLE ENERGY DEVELOPMENT ACT

4 §2001. Findings of public policy.

5 The General Assembly finds and declares as follows:

6 (1) Development of renewable energy sources and their connection to the electric power grid are declared
7 to be matters of statewide concern and interest.

8 (2) The Delaware Department of Transportation has absolute care, management, and control of State-
9 owned roadway rights-of-way.

10 (3) To foster the development of renewable energy and a clean energy future in this State, responsible and
11 reasonable accommodation of renewable energy delivery lines in the State-owned roadway rights-of-way shall be
12 encouraged as an integral part of the State's infrastructure.

13 §2002. Definitions.

14 (1) "Applicable Codes" means laws, rules, regulations, engineering standards, engineering guidance, and
15 established best practices as recognized by the Department of Transportation or the Federal Highway
16 Administration.

17 (2) "Department" means the Delaware Department of Transportation.

18 (3) "Fair Market Rental Rate" means a recurring rate for the use of the State's roadway rights-of-way based on a
19 fair market appraisal of the use of that land.

20 (4) "Renewable energy" means electricity produced from wind or solar sources.

21 (5) "Renewable energy developer" means a person or company (whether acting on its own behalf or acting as the
22 agent of a renewable energy owner or renewable energy operator on a temporary basis) developing or constructing

a renewable energy source. A renewable energy developer may also, but need not, be a renewable energy operator or a renewable energy owner.

(6) “Renewable energy operator” means a person or company (whether acting on its own behalf or acting as the agent of a renewable energy owner on a semi-permanent basis) operating a renewable energy source.

(7) “Renewable energy owner” means a person or company who owns the renewable energy delivery lines to be located in the State-owned right-of-way.

(8) “Renewable energy source” means a facility, such as a wind farm, solar array, or battery, used for the generation of electricity produced from the wind, or sun, or storage of such wind or sun sourced generated electricity.

(9) “Renewable energy delivery line” means a system of conductors that carries medium or high voltage electricity generated from a renewable energy source. A renewable energy delivery line is underground and can include conduits, connectors, resistors and other associated equipment required to transmit electricity from a renewable energy source. A renewable energy delivery line does not include poles placed by the renewable energy developer, renewable energy operator, or renewable energy owner in the State’s right-of-way, or battery storage.

(10) “Right-of-Way” or “ROW” means all those lands owned by the State of Delaware in fee simple or lesser rights or under the management or control of the Department and operated as a public roadway (whether located within or outside incorporated municipalities). A ROW does not include tax parcels owned by the State of Delaware or lands owned and operated by the State such as bicycle and pedestrian pathways, recreational trails or railroads that are separate from State-owned roadway rights of way.

§ 2003. Regulations.

The Secretary of the Department shall have the authority to promulgate regulations to fully define the requirements necessary to implement the provisions of this chapter.

§2004 Use and occupancy agreement.

(a) The Department is authorized to enter into use and occupancy agreements with renewable energy developers, renewable energy owners, or renewable energy operators for the locating of renewable energy delivery lines in the ROW under terms that:

(1) Protect the public health, safety and welfare along Delaware's roadways.

(2) Minimize conflicts with the use of the State's ROW for the primary purpose of transportation.

(3) Prohibit the renewable energy owner, renewable energy operator, or renewable energy developer from owning and placing poles as part of a renewable energy delivery line in the State’s ROW.

53 (4) Prohibit the placement of renewable energy sources in the State's ROW.

54 (5) Require renewable energy delivery lines to be located underground.

55 (6) Limit the renewable energy delivery line to be only as required to connect the renewable energy
56 delivery line from the renewable energy source to the point of interconnection with an electric power substation or
57 electric utility distribution line approved by the applicable electric distribution company.

58 (7) Ensure that the renewable energy developer, renewable energy owner, or renewable energy operator
59 entering into a use and occupancy agreement has the financial, technical, organizational and managerial resources
60 needed to site and operate in the ROW for the full-term of the use and occupancy agreement.

61 (8) Are competitively neutral and nondiscriminatory.

62 (9) Charge a Fair Market Rental Rate for the use of the State's ROW by renewable energy owners or
63 renewable energy operators.

64 (b) Such use and occupancy agreements shall be for a term of thirty (30) years with an option to renew for
65 additional 5-year terms subject to compliance with performance requirements set by the Department, and the
66 authority of the Department to revoke such agreements for cause.

67 (c) Such use and occupancy agreements shall be non-assignable and non-transferable without the reasonable
68 consent of the Department based on the assignee or transferee having the financial, technical, organizational and
69 managerial resources needed to operate in the ROW for the term of the use and occupancy agreement and
70 protecting the public health, safety and welfare.

71 (d) Each renewable energy developer, renewable energy owner, or renewable energy operator entering into a valid
72 use and occupancy agreement shall comply with the Underground Utility Damage Prevention and Safety Act,
73 Chapter 8 of Title 26 of the Delaware Code, to the extent applicable.

74 § 2005. Permits.

75 (a) A renewable energy owner, renewable energy developer, or renewable energy operator must first obtain a
76 permit from the Department prior to constructing, modifying, or maintaining a renewable energy delivery line in
77 the State's ROW.

78 (b) The Department shall receive applications for, process, and issue such permits subject to the following
79 requirements:

80 (1) The applicant shall place renewable energy delivery lines underground.

81 (2) Within 30 days of receiving an application, the Department will determine and notify the applicant
82 whether the application is complete. If an application is incomplete, the Department must specifically identify the
83 missing information.

84 (3) The Department will process permits within 90 days either approving the permit request, or denying
85 the permit request for cause based on the Department finding that the permit request fails to comply with any of
86 the following:

87 a. Public safety.

88 b. Objective, reasonable design standards.

89 c. Applicable Codes including applicable provisions of the Delaware Utilities Manual
90 Regulations, unless or until the Secretary of the Department promulgates regulations specific to accommodation of
91 renewable energy delivery lines in the State ROW.

92 § 2006 Removal of Renewable Energy Delivery Lines.

93 Any renewable energy owner or renewable energy operator wanting to retire an existing renewable energy
94 delivery line or cease operations shall notify the Department not less than 60 days prior to ceasing operations as to the
95 disposition of their renewable energy delivery lines. Acceptable disposition includes removal of the delivery lines from the
96 ROW, or transfer of the delivery lines to a new renewable energy owner or renewable energy operator subject to the
97 approval of the Department in accordance with the provisions of section 2004(c) of this chapter.

98 § 2007 Relocation of renewable energy infrastructure.

99 Whenever it becomes necessary to relocate any renewable energy delivery lines due to expansion of the
100 transportation system, or if the renewable energy delivery lines are found to interfere unreasonably with ingress and egress
101 to adjacent properties or their development, or for reasons deemed in the public interest by the Department, the renewable
102 energy owner or renewable energy operator, as applicable, shall relocate its infrastructure at its sole expense to a location
103 mutually agreed upon by the renewable energy owner or renewable energy operator and the Department.

SYNOPSIS

Safe accommodation of Renewable energy delivery lines in the State ROW will foster the development of renewable energy sources in Delaware and secure a clean energy future for Delawareans. This legislation will limit the accommodation only to the extent necessary to allow connection to the electric power grid; to avoid interference with existing public uses; and to charge a fair market rental rate under this Chapter for use of the ROW.

Author: Senator Hansen