SPONSOR: Sen. McDowell & Rep. Brady & Rep. Thornburg
Sens. Henry, Bunting, Katz, Bushweller, Ennis, Simpson
& Rep. Kowalko

DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 173

AN ACT TO AMEND TITLES 26 AND 29 OF THE DELAWARE CODE RELATING TO THE SUSTAINABLE ENERGY UTILITY AND RENEWABLE ENERGY.

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

Section 1. Amend § 8059(g)(2)b, Title 29 of the Delaware Code by deleting it in its entirety and substituting in lieu thereof the following:

"The SEU shall propose rules to guide the bidding process and criteria to guide bid selection. The RFPs shall specify a contract term not to exceed the limitation set forth in The Energy Performance Contracting Act set forth in Chapter 69 or Title 29 of the Code."

Section 2. Amend § 8059, Title 29 of the Delaware Code by adding a new subsection (k) as follows:

"(k) Contracts with Counties and Political Subdivisions. A county or political subdivision may enter into contracts with the SEU for the purpose of acquiring, constructing, operating, or providing a project undertaken by an implementation contractor, including arrangements for paying the costs of such project, which costs may include debt service requirements of the SEU relating to that project. If the SEU procures an implementation contract in accordance with §8059(g) of this Title, a contract between the SEU and a county or political subdivision that provises the benefit of the implementation contract to the county or political subdivision may be entered into by the county or political subdivision without additional competitive procurement. Such contracts between the SEU and a county or political subdivision are not intended and shall not be deemed to constitute or create a debt of the county or political subdivision."

Section 3. Amend § 8059(j)(2), Title 29 of the Delaware Code by deleting it in its entirety and substituting in lieu thereof the following:

"(2) Bonds of the SEU. (i) The SEU may from time to time issue bonds for any corporate purpose and all such bonds, notes, bond anticipation notes or other obligations of the SEU issued pursuant to this section shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any other law or laws. In anticipation of the sale of such bonds, the SEU may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed

5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the SEU available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the SEU in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the SEU may contain.

(ii) The bonds and notes of every issue shall be payable solely out of the revenues of the SEU, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues and subject to any agreements with any participating facility. Notwithstanding that bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments subject only to the provisions of the bonds and notes for registration.

(iii) The bonds may be issued as serial bonds or as term bonds, or the SEU, in its discretion may issue bonds of both types. The bonds shall be authorized by resolution of the members of the SEU Oversight Board and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. Such resolution or resolutions may delegate to any combination of 3 of the members of the SEU Oversight Board, the power to determine any of the matters set forth in this subsection (j)(2) and the power to award the bonds to a purchaser or purchasers at public sale or to negotiate a sale to a purchaser or purchasers. The bonds or notes may be sold at public or private sale for such price or prices as the SEU shall determine. Pending preparation of the definitive bonds, the SEU may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(iv) Neither the members of the SEU Oversight Board nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(v) The SEU shall have power, out of any funds available therefor, to purchase its bonds or notes. The SEU may hold, pledge, cancel or resell such bonds or notes subject to and in accordance with agreements with bondholders or participating facilities. The SEU may elect to have bonds issued by a conduit issuer and borrow the proceeds thereof.

(vi) Bonds or notes issued under this section shall not be deemed to constitute a debt or liability of the State or of any political subdivisions thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds or notes shall contain on the face thereof a statement to the effect that neither the State nor any political subdivision thereof shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof

is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under this section shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment. Nothing contained in this section shall prevent or be construed to prevent the SEU from pledging its full faith and credit or the full faith and credit of a participating facility to the payment of bonds or issue of bonds authorized pursuant to this section."

Section 4. Amend § 8059(i)(5), Title 29 of the Delaware Code deleting the word "Certificates" where it appears therein and substituting in lieu thereof the word "Credits."

Section 5. Amend § 8059(j)(3), Title 29 of the Delaware Code by adding the words "or Solar Renewable Energy Credits" after the words "Renewable Energy Credits."

Section 6. Amend § 360(a), Title 26 of the Delaware Code by adding the words "or solar renewable energy credits" after the words "accumulated renewable energy credits."

Section 7. Amend § 360(b), Title 26 of the Delaware Code by adding the words "or solar renewable energy credit" after the words "unused renewable energy credits."

Section 8. Amend § 360, Title 26 of the Delaware Code by adding a new subsection (c) as follows:

"(c) The 3-year period referred in subsection (b) above shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in § 8059 of Title 29."

SYNOPSIS

This act is intended to update and clarify Delaware's Sustainable Energy Utility law, 29 Delaware Code § 8059, which is serving as a model for other jurisdictions.

Under § 8059(g)(2) of the SEU law, the SEU programs designed to achieve energy savings and promote green energy will be carried out through written contracts with competitively selected implementation contractors. Section 1 of the act is intended to make the provisions of the SEU law related to the length of such contracts with implementation contractors consistent with the provisions of the Energy Performance Contracting Act in Chapter 69 of Title 29.

Section 2 of the act is intended to clarify that counties and political subdivisions, including municipalities, may enter into contracts with the SEU to obtain the benefit of SEU programs. Because the SEU is intended to be a "one stop shop" for energy savings programs, and because contracts with implementation contractors will be competitively bid, Section 2 allows the governmental entity to contract with the SEU without having to engage in a competitive bidding process itself.

Section 3 of the act is designed to clarify the provisions of the existing law which limit the liability of the State for bonds issued by the SEU. The provisions in question are being expanded a) to make clear that any bonds or notes issued by the SEU do not constitute a debt or liability of the State or any political subdivision thereof, and b) to require a statement to that effect on the bonds themselves. Section 3 also updates and augments the bond provisions of the SEU law to bring them into conformity with current practices related to the issuance of bonds.

Section 4 of the act makes a technical correction, changing the word "Certificates" to "Credits".

Section 5 of the act clarifies that the SEU may repay bonds using proceeds from the sale of Solar Renewable Energy Credits, as well as the sale of Renewable Energy Credits.

Sections 6 and 7 clarify that § 360(a) and (b) of Title 26 related to renewable energy trading apply to Solar Renewable Energy Credits, in addition to Renewable Energy Credits.

Under § 360 of Title 26, renewable energy credits and solar renewable energy credits that are unused "shall exist for 3 years from the date created." Section 8 amends § 360 of Title 26 by adding a new subsection (c), which tolls the 3 year limit on the existence of renewable energy credits and solar renewable energy credits during any period that such a credit is held by the SEU.

Author: Senator McDowell