



SPONSOR: Sen. Poore & Rep. Brady  
Sens. Lopez, Pettyjohn, Sokola, Townsend, ;  
Reps. Bennett, Bolden, Outten, Peterman

DELAWARE STATE SENATE  
147th GENERAL ASSEMBLY

SENATE BILL NO. 150

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO SUSTAINABLE ENERGY UTILITY.

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

1 Section 1. Amend Chapter 80, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions  
2 as shown by strike through as follows:

3 § 8059. Sustainable Energy Utility.

4 (a) Definitions. -- As used in this section:

5 (1) "Agency" means any state agency, authority, or any political subdivision of the State or local  
6 government, including, but not limited to, county, city, township, village or municipal government, local  
7 school districts, and institutions of higher education, any state-supported institution, or a joint action  
8 agency composed of political subdivisions.

9 ~~(2) "Contract Administrator" means an entity or person contracted through competitive bid by the~~  
10 ~~Delaware Energy Office that manages the functions and responsibilities of the SEU.~~

11 ~~(3) "Fiscal agent" means an entity or person contracted by the Delaware Energy Office to assist in the~~  
12 ~~financial management of the SEU.~~

13 ~~(4) "Implementation contractor" means any entity competitively contracted by the SEU to implement~~  
14 ~~specific programs and services.~~

15 ~~(5) (2) "SEU Oversight Board" ("the Board") means a the board comprised of public, academic and~~  
16 ~~private sector representatives that acts to establish and revise SEU performance targets and to oversee~~  
17 ~~SEU program planning, implementation, and evaluation to ensure compliance with performance targets~~  
18 ~~created pursuant to this section.~~

19 ~~(6) (3) "Sustainable Energy Utility" ("SEU") is the nonprofit entity under which the contract~~  
20 ~~administrator must operate according created pursuant to the provisions of this section to develop and~~  
21 ~~coordinate programs for energy end-users in Delaware for the purpose of promoting the sustainable use of~~  
22 ~~energy in Delaware.~~

23 (b) Intent of legislation. -- The General Assembly finds that there remain in Delaware significant, cost-effective  
24 opportunities to acquire end-user energy efficiency savings that can lower customers' bills and reduce the environmental

25 impacts of energy production, delivery, and use. Delaware has an opportunity to create new markets for customer-sited  
26 renewable energy generation that will help build jobs in Delaware, improve our national security, keep value within the  
27 local economy, improve energy reliability, and protect Delawareans from the damaging effects of recurrent energy price  
28 spikes.

29 (c) Sustainable Energy Utility administrative organization. --

30 (1) This section creates the "Sustainable Energy Utility" ("SEU"). The SEU ~~program through the~~  
31 ~~contractor administrator~~ shall design and deliver comprehensive end-user energy efficiency and  
32 customer-sited renewable energy services to Delaware's households and businesses. The SEU shall be  
33 unaffiliated with any of the State's electric or gas utilities, public or private, ~~and it will operate through~~  
34 ~~the contract administrators under contract to the Delaware Energy Office ("Energy Office" or "DEO")~~  
35 ~~under the direction of the State Energy Coordinator. The SEU shall be known by a trade name to be~~  
36 ~~determined by the Delaware Energy Office.~~

37 (2) Routine administration of the SEU shall be managed by ~~a contract administrator. The funds to support~~  
38 ~~an executive director selected by the Board through an open and competitive selection process.~~ the SEU's  
39 activities shall be managed by a fiscal agent. This institutional structure, with ultimate responsibility for  
40 oversight residing with the Delaware Energy Office under the direction of the State Energy Coordinator  
41 and the Oversight Board, as detailed in subsections (d) and (e) of this section, is intended to protect not  
42 only the SEU's independence, but also to assure that its performance is continually and closely monitored  
43 and that it always has the strongest incentives to operate as efficiently as possible. The SEU contract  
44 administrator ("CA") and fiscal agent ("FA") will be selected by the Delaware Energy Office through an  
45 open, competitive bidding process.

46 (d) Responsibilities of the Delaware Energy Office. — The Delaware Energy Office shall assume the following  
47 responsibilities relating to the development, implementation, and monitoring of the SEU:

48 (1) The Energy Office shall prepare requests for proposals (RFPs) to solicit bid proposals to engage each  
49 of the ~~2 administrator contractors: the SEU contract administrator and the fiscal agent. The RFPs shall be~~  
50 ~~open to public comment, amended if necessary, and then submitted to the Oversight Board for approval~~  
51 ~~prior to release. To maintain independence between each of the administrative functions, any bidder for~~  
52 ~~an administrator contract, and any bidder's affiliate, shall not concurrently hold or be awarded the other~~  
53 ~~administrator contract. Neither shall any bidder for the contract administrator be affiliated with a utility,~~  
54 ~~public or private, that operates in Delaware, or any agency of Delaware, or any entity providing power or~~  
55 ~~fuel to Delaware's distribution utilities or residents.~~

56 a. The Energy Office shall determine and describe in detail in the RFPs the following: the roles  
57 of each contracted position; the relevant performance targets set by legislation, the Energy Office or the  
58 Oversight Board; the bidding and contract procedures; the criteria for evaluation of bid proposals; and the  
59 annual reporting requirements. In addition, the Energy Office shall define performance incentives such  
60 that if the SEU exceeds program targets by 120% it shall receive a bonus, and if the SEU achieves less  
61 than 80% of program targets it shall be charged a penalty. By written agreement between the DEO and  
62 the SEU, performance incentives may be passed through to implementation contractors when the DEO  
63 and SEU decide this is in the best interest of the State's development of sustainable energy resources.

64 b. The Energy Office must require bidders for the SEU contract administrator to present, in their  
65 proposals, plans including, but not limited to: evaluation, monitoring and verification of program  
66 performance; data collection and management; and financial management.

67 c. The Energy Office shall ask bidders for the SEU contract administrator to describe how they  
68 will obtain information from, and be responsive to, the public, and how bidders intend to resolve disputes  
69 with stakeholders and customers.

70 d. The Energy Office shall evaluate the proposals based on criteria outlined in the RFP and then  
71 select and hire the contractors for the 2 positions.

72 e. The Energy Office shall determine the contract period for each administrator position, but  
73 such periods shall be no less than 3 years and no more than 5 years. The Energy Office may offer a  
74 renewal contract to a current contractor for 1 additional contract term, provided the contractor has met or  
75 exceeded expectations and the Oversight Board approves of the renewal. The contract must be open to the  
76 public through the RFP process after 2 consecutive terms by 1 contractor.

77 (2) The Energy Office shall report biannually to the Oversight Board on the progress of the SEU and the  
78 management of the contract administrator and fiscal agent contracts.

79 (3) The Energy Office shall ensure continuity of program implementation and sufficient carry-over  
80 funding during the transition period between the end of 1 SEU contract term and the beginning of another  
81 SEU contract term, so that Delawareans may still have regular access to sustainable energy services  
82 during transitional periods.

83 (4) The Energy Office must use the appropriate responsibilities outlined in the subsections (f) and (g) of  
84 this section to develop additional RFP guidelines for each contractor.

85 (5) The Energy Office shall develop appropriate means to issue Renewable Energy Credits and Solar  
86 Renewable Energy Credits, as defined in § 352 of Title 26, for renewable energy technologies sited in  
87 Delaware.

88 (e) (d) SEU Oversight Board. --

89 (1)a. The business and affairs of the SEU shall be managed by or under the direction of the SEU  
90 Oversight Board. The SEU Oversight Board shall consist of 11 members and shall include the Secretary  
91 of the Department of Natural Resources and Environmental Control (“DNREC”) or the Secretary's  
92 designee, and the Public Advocate or the Public Advocate's designee. The Board shall include  
93 representation from each county. Seven members of the SEU Oversight Board shall be appointed by and  
94 serve at the pleasure of the Governor: ~~1 representative from academia, 1 representative from the nonprofit~~  
95 ~~community with experience servicing the low to moderate income community, 1 representative from the~~  
96 ~~nonprofit environmental community, 1 representative from the nonprofit energy community, 1~~  
97 ~~representative from the business community, and 2 representatives from the financial/accounting~~  
98 ~~community, and may include, but not be limited to, representatives from the nonprofit environmental~~  
99 ~~community, the nonprofit energy community, the nonprofit community servicing the low and moderate~~  
100 ~~income community, the financing/accounting community, business, labor, and education.~~ Two members  
101 One member of the SEU Oversight Board shall be members of the General Assembly: ~~1 from the Senate,~~  
102 ~~who~~ shall be appointed by and serve at the pleasure of the President Pro Tempore, and ~~1 from the House~~  
103 ~~of Representatives who~~ one member shall be appointed by and serve at the pleasure of the Speaker of the  
104 House. The Board shall elect 1 of its members to serve as a chairperson by a majority vote. The ~~State~~  
105 ~~Energy Coordinator in the Delaware Energy Office~~ Director of the Division of Energy & Climate of  
106 DNREC, or the director’s designee, shall serve on the board in an ex officio nonvoting capacity. ~~The~~  
107 ~~existing SEU Oversight Board shall continue to serve until the Governor has appointed 7 members of the~~  
108 ~~SEU Oversight Board. The initial Board members appointed to replace the existing SEU Oversight Board~~  
109 ~~shall be appointed for terms of 2 to 4 years. The terms of the Board members shall typically be 4 years,~~  
110 ~~and shall be staggered. The Governor may appoint members for terms of less than 4 years to ensure that~~  
111 ~~the terms are staggered. The Governor may, at any time, remove any gubernatorial appointee to the SEU~~  
112 Oversight Board for gross inefficiency, malfeasance, misfeasance or nonfeasance, in office. A  
113 gubernatorial appointee may be deemed to have resigned their position if they are absent from 3  
114 consecutive Board meetings without good cause. After the initial appointments to the SEU Oversight  
115 Board have been made, any subsequent Board member appointed or reappointed to replace any sitting  
116 Board member shall be appointed for a term of 4 years.

117 b. The SEU Oversight Board shall be governed by and subject to the Delaware Freedom of  
118 Information Act [Chapter 100 of this title].

119 c. The SEU Oversight Board shall include a provision in its bylaws pertaining to conflicts of  
120 interest and Board members shall be required to sign conflict of interest statements.

121 ~~(2) After it has been constituted, the~~ The SEU Oversight Board may, from time to time, appoint  
122 ~~an~~ one or more advisory committees. ~~The~~ An advisory committee may include representatives of  
123 organizations which represent low and moderate income energy consumers, low and moderate income  
124 housing consumers, civic organizations, environmental organizations, the energy industry, the energy  
125 efficiency and energy conservation community, the renewable energy community, marketing and public  
126 relations, small business, agriculture, accounting, business management, banking, finance, nonprofit  
127 communities, the general public, and the academic community. The Board shall decide the number of  
128 advisory committee members (including ex officio members).

129 a. ~~The purpose of the advisory committee is to~~ Among other things, the advisory committee may  
130 provide advice to the Board on issues of public policy and public education which may enhance the  
131 performance and quality of service of the SEU.

132 b. ~~Selection of the~~ A candidate for an advisory committee shall ~~occur by~~ require a two-thirds  
133 vote of Board members in order to serve. ~~Advisory committee members will be recommended by a 3-~~  
134 ~~person selection committee appointed by the Board.~~ Criteria for the advisory ~~Board~~ committee members  
135 shall include professional experience, community service, reputation, significance to Delaware, a  
136 diversified representation of the Delaware community and geographical representation of the State.

137 c. Nominations for the advisory committee may be submitted by Board members and public  
138 solicitation.

139 (3) Board members shall serve without compensation except for travel allowed in paragraph (e)(8) of this  
140 section.

141 (4) No Board member shall receive financial gain from service on the Board.

142 (5) Board members shall not be employed by any organization directly or indirectly affiliated with the  
143 SEU or its contractors for a period of not less than 2 years after the end of their service on the Board.

144 (6) The Board shall adopt by-laws, by September 28, 2007, to govern itself.

145 (7) The Board shall have the following responsibilities, among others permitted by law:

146 a. ~~Review and approve RFP's developed by the Energy Office for the contracts of the SEU~~  
147 ~~contract administrator and fiscal agent.~~

148 b. a. Review and approve the ~~annual and~~ contract-term SEU and performance targets  
149 recommended by the ~~contract administrator~~ executive director.

150 e. ~~b.~~ Review and approve any proposed modifications to SEU performance targets or program  
151 designs during the contract term of the contract administrator.

152 d. ~~Contract an independent professional agency to monitor and verify results reported by the~~  
153 ~~contract administrator in annual and contract term reports.~~

154 e. ~~Receive biannual reports from the Energy Office, as described in paragraph (d)(2) of this~~  
155 ~~section, and offer recommendations to the Energy Office regarding the management of the SEU.~~

156 (8) In order for the Board to meet its obligations, the SEU shall annually set aside a budget at the  
157 beginning of the State fiscal year not to exceed 75,000 real 2007 dollars, and not to be less than 50,000  
158 real 2007 dollars. Use of these funds shall be limited to the following:

159 a. ~~Payment of consultant fees for independent analyses of policy and program options to~~  
160 ~~improve SEU performance voted by two thirds of board members.~~

161 b. ~~Supported travel by Oversight Board members to conferences and workshops of direct~~  
162 ~~relevance to sustainable energy market development and performance. Supported travel is capped for~~  
163 ~~individual members at 3,000 real 2007 dollars and only 1 supported travel can be requested by a member~~  
164 ~~in a fiscal year.~~

165 c. ~~Sponsorship of annual statewide competitions by elementary, middle and/or high school~~  
166 ~~students in Delaware to recommend SEU service logos, mottos or new sustainable energy measures.~~

167 d. ~~Other uses as voted by two thirds of the members of the Oversight Board that can be shown to~~  
168 ~~directly improve the performance of the SEU and/or the State's development of sustainable energy~~  
169 ~~resources.~~

170 (f) Responsibilities of the fiscal agent. — The fiscal agent shall assist the Energy Office with the financial  
171 management of the SEU program. The fiscal agent is the SEU's "Treasury." The FA may be contracted by fee only or by a  
172 fee plus incentive structure as determined by the Energy Office. The primary responsibilities of the fiscal agent are to:

173 (1) Receive funds for the SEU from the funding sources outlined in subsection (j) of this section, disburse these  
174 funds to the SEU contract administrator under the direction of the Energy Office, and keep accurate records of  
175 such transactions;

176 (2) Interface with bonding and revenue authorities;

177 (3) Oversee financial transactions involving Renewable Energy Credits (RECs) and possible Solar Lifeline  
178 activities; and

179 (4) Pay SEU invoices.

180 (g)(e) ~~SEU contract administrator~~ Executive Director responsibilities. The SEU contract administrator will manage  
181 executive director is responsible for the day-to-day functions and responsibilities of the SEU. The contract administrator's

182 ~~executive director's~~ chief responsibilities are ~~program research and design, administration of the implementation contracts,~~  
183 ~~and oversight to ensure the implementation contractors meet~~ include oversight of program management, and setting and  
184 compliance with appropriate performance and budgetary targets. ~~The contract administrator may be contracted by fee only~~  
185 ~~or by a fee plus incentive structure as determined by the Energy Office.~~

186 (1) Program research and design. --

187 a. ~~The contract administrator shall undertake a comprehensive resource analysis ("Analysis") to~~  
188 ~~support initial program planning for the SEU. The Analysis must include demographic energy use~~  
189 ~~assessments, population and economic growth estimates, energy consumption forecasts, regional energy~~  
190 ~~efficiency trend analyses, technical and economic potential estimates, and market potential assessments.~~

191 The comprehensive resource analysis must:

- 192 1. ~~Assess energy end-user markets, including electricity end-uses, natural gas end-uses, clean~~  
193 ~~vehicles, green buildings, weatherization, and affordable energy services;~~
- 194 2. ~~Assess energy end-user demographic sectors, including low-income, residential, commercial,~~  
195 ~~industrial, agricultural, and transportation sectors; and~~
- 196 3. ~~Assess energy end-use equipment, including appliances, lighting, heating, cooling, industrial~~  
197 ~~processes, and vehicles.~~

198 b. ~~Using the results from the Analysis from paragraph (g)(1)a. of this section, the contract~~  
199 ~~administrator shall select markets, end-users, and end-use equipment for the SEU to target through its~~  
200 ~~programs.~~

201 e. a. ~~The contract administrator~~ executive director shall develop a comprehensive suite of  
202 program designs, ~~based on the Analysis and selected markets, end-users, and end-use equipment, as~~  
203 ~~described in paragraphs (g)(1)a. and (g)(1)b. of this section.~~ Each program design must specify, at  
204 minimum, program goals, performance targets, an estimated budget, an implementation strategy, and an  
205 evaluation strategy. ~~The contract administrator~~ executive director is not required to design or initiate all  
206 programs at once, but ~~it~~ he or she must demonstrate how each program fits within the ~~contract~~  
207 ~~administrator's SEU's~~ overall strategy to meet its own performance targets as well as the SEU's long-term  
208 performance targets established in subsection (i) of this section.

209 d. b. ~~The contract administrator~~ executive director is expected to fulfill the following  
210 responsibilities through program designs, RFPs for ~~Implementation Contractors~~, and program  
211 implementation:

- 212 1. To be responsive to customers and market forces in implementing and redesigning the  
213 programs ~~it delivers~~;

- 214 2. To design a portfolio of programs to allow all energy end-users, regardless of electricity or gas  
215 retail providers, and regardless of market segment or end-use fuel, to participate in the SEU  
216 programs;
- 217 3. To promote program initiatives and market strategies that address the needs of persons or  
218 businesses facing the most significant barriers to participation;
- 219 4. To promote coordinated program delivery, including coordination with low income  
220 weatherization programs, other efficiency programs, and utility programs;
- 221 5. To coordinate with relevant regional and national energy efforts and markets, including  
222 markets for pollution emissions offsets and credits, and renewable energy credits;
- 223 6. To consider innovative approaches to delivering sustainable energy services, including  
224 strategies to encourage third party financing and leveraged customer contributions to the cost of  
225 program measures, as consistent with principles of sound program design;
- 226 7. To offer "one-stop shopping" and be the point-of-contact for sustainable energy services in  
227 Delaware;
- 228 8. To create a comprehensive website that provides easy access to SEU programs and  
229 information for all Delawareans, allowing them to participate in SEU programs electronically;
- 230 9. To emphasize "lost opportunity" markets, which are sustainable energy measures that can  
231 only be cost-effectively captured at particular times, such as during new construction or  
232 extensive remodeling; and
- 233 10. To emphasize market strategies to deliver services.
- 234 ~~e. The contract administrator shall continue to research and assess the resources and market~~  
235 ~~needs for sustainable energy services in Delaware, as described in paragraph (g)(1)a. of this section,~~  
236 ~~while program implementation is ongoing. The contract administrator and other stakeholders will use this~~  
237 ~~research to assess the impacts and effectiveness of SEU programs; to make adjustments to SEU program~~  
238 ~~performance targets; to reassess targeted markets, end users, and end uses; and to recommend further~~  
239 ~~policy initiatives for consideration by the General Assembly.~~
- 240 (2) Administration of ~~implementation~~ contracts. --
- 241 ~~a. With the exception of education and public outreach programs, which the contract~~  
242 ~~administrator may implement itself with approval of the Energy Office and Oversight Board, all other~~  
243 ~~SEU programs must be delivered by competitively selected implementation contractors.~~



244                    b. a. The SEU shall propose and adopt rules to guide the bidding process and criteria to guide bid  
245 selection. The RFPs shall specify a contract term not to exceed the limitation set forth in The Energy  
246 Performance Contracting Act set forth in subchapter V of Chapter 69 of this title.

247                    ~~c. The contract administrator shall be responsible for selecting winning implementation~~  
248 ~~contractor bids.~~

249                    ~~d. Any entity, including electricity or gas utilities in Delaware, may bid for an implementation~~  
250 ~~contract. If an affiliate of the contract administrator bids, or intends to bid, for an implementation~~  
251 ~~contract, both the contract administrator and its affiliate must ensure that the affiliate does not benefit~~  
252 ~~from any unfair advantage resulting from insider information.~~

253                    ~~e. RFP's for competitively bid implementation contracts should include provisions for~~  
254 ~~performance-based incentives as appropriate to ensure that program targets are achieved or exceeded.~~

255                    ~~f. If an implementation contractor is not successfully selected through the RFP bidding process,~~  
256 ~~the contract administrator may implement its own program delivery process subject to approval by the~~  
257 ~~Energy Office and Oversight Board.~~

258 (3) ~~Oversight, monitoring, and verification~~ and reporting. --

259                    ~~a. The Oversight Board must review the contract administrator's proposed program designs,~~  
260 ~~performance targets, and RFPs before the contract administrator submits RFPs for bid. When reviewing~~  
261 ~~and approving the SEU's programs and RFPs, the Oversight Board must ensure that program coordination~~  
262 ~~between the contract administrator, implementation contractors, and customers is as streamlined and~~  
263 ~~simple as possible from the customer's perspective. The Oversight Board shall ensure that the SEU's~~  
264 ~~programs will provide packaged services. Rather than simply providing the most cost-effective or easiest-~~  
265 ~~to-provide services, packaged services must be designed to provide customers with as many relevant end-~~  
266 ~~use services at once, each time the contract administrator or the implementation contractors have contact~~  
267 ~~with a customer.~~

268                    ~~b. The contract administrator must develop and maintain information services to collect all~~  
269 ~~performance, market, and financial data necessary to monitor and evaluate SEU performance as specified~~  
270 ~~in its contract with the Energy Office. The contract administrator must make such data available to the~~  
271 ~~Energy Office and Oversight Board upon request.~~

272                    ~~c. Consistent with the specific terms of its contract and generally accepted accounting principles,~~  
273 ~~the contract administrator must prepare and submit detailed documentation and invoices for~~  
274 ~~administrative, management, and program costs to the fiscal agent for review in order to receive payment.~~

275 ~~d. The contract Administrator must develop appropriate mechanisms to accurately evaluate,~~  
276 ~~monitor, and verify program performance and implementation contractor performance.~~

277 ~~e. The contract administrator shall have 30 days to respond to complaints from, or disputes~~  
278 ~~among, affected persons or entities. After 30 days any unresolved complaints shall be presented to the~~  
279 ~~Energy Office and Oversight Board.~~

280 ~~f. The contract administrator shall submit to the Oversight Board for approval any reports~~  
281 ~~produced by the contract administrator that codify current practices or detail new practices or substantive~~  
282 ~~changes in the SEU's implementation of programs and services.~~

283 ~~g. The contract administrator shall conduct site visits and review the files of the implementation~~  
284 ~~contractors as necessary to ensure contract compliance.~~

285 ~~(h) Evaluation, monitoring, and verification.—The Energy Office must ensure that adequate evaluation,~~  
286 ~~monitoring, and verification mechanisms are in place so that:~~

287 ~~(1) The Energy Office and Oversight Board can verify that both SEU and Implementation Contractor expenditures~~  
288 ~~result in verifiable energy savings over the expected lifetime of each energy saving measure.~~

289 ~~(2) The SEU and implementation contractors are held responsible for the energy savings reportedly achieved~~  
290 ~~through program activities and expenditures.~~

291 a. The SEU Oversight Board shall develop a three to five year strategic plan, with input provided by Board  
292 members, stakeholder groups across the State, and the public at large. The strategic plan shall be made available to the  
293 public on the SEU's website. The SEU's strategic plan shall include an educational component for the general public with a  
294 continued focus on residential energy efficiency projects.

295 b. The SEU shall publish a comprehensive annual report which shall be submitted to the Governor and the General  
296 Assembly and made available to the public on the SEU's website.

297 c. The SEU shall have certified financial statements prepared at the end of each fiscal year and make them  
298 available to the public on the SEU's website.

299 d. The SEU's financial statements shall be audited every other year by an independent certified public accounting  
300 firm qualified to perform such an audit, and the audit results shall be made available to the public on the SEU's website.

301 ~~(i) SEU initial program targets.—~~

302 ~~(1) Energy efficiency.—By December 31, 2015, the SEU shall have achieved an average 30% reduction in annual~~  
303 ~~energy usage for SEU participants, with a target of one-third of the participant savings occurring for residential~~  
304 ~~clients, based on January 1, 2006 baseline levels. The Energy Office and Oversight Board may increase or~~  
305 ~~accelerate this target if a comprehensive resource analysis indicates a greater cost-effective end-user energy~~  
306 ~~efficiency potential exists or if the SEU achieves performance targets ahead of schedule.~~

307 (2) Delaware Solar Lifeline.—For the purposes of this subsection, a low-income household shall be defined as a  
308 household that qualifies for Low Income Home Energy Assistance Program (LIHEAP) assistance in Delaware.  
309 The SEU shall have the authority to administer the Delaware Solar Lifeline program, which shall provide, by  
310 December 31, 2015, each low-income household with a life-sustaining supply of at least 200 kilowatt-hours per  
311 month of low-cost electricity not to exceed \$.05 per kWh in real 2007 dollars from in-state solar electric resources,  
312 the electricity generated thereof dedicated entirely for use by low-income households in the Solar Lifeline  
313 program. The Energy Office shall devise annual Solar Lifeline program goals that specify a targeted amount of  
314 installed photovoltaic capacity and a targeted number of households to be served. Such targets shall increase at a  
315 reasonable rate each year until sufficient in-state photovoltaic capacity has been installed to provide, by December  
316 31, 2015, each low-income household with at least 200 kilowatt-hours per month of low-cost solar electricity.  
317 Implementation of the Solar Lifeline program and the obligation to meet the December 31, 2015 target shall  
318 depend upon the DEO and SEU obtaining the approval of the Oversight Board, as voted by a majority of board  
319 members. The chief criterion for board approval shall be that the DEO and SEU have identified self-sustaining  
320 funds for the program or that the General Assembly has approved designated funds for the purpose of maintaining  
321 the Solar Lifeline program.

322 (3) Affordable energy.—The SEU shall assess strategies and funding mechanisms to weatherize at least 800 low-  
323 income households per year, not counting those households served with Weatherization Assistance Program  
324 funding. The SEU shall target services to households living in single-family owner-occupied units and mobile  
325 homes, single-family rental units, rental buildings with 5 units or less, and large multifamily buildings with greater  
326 than 5 units. The SEU shall target three low-income levels: 200% of the federal poverty level, 60% of the state  
327 median income, and 80% of the state median income.

328 (4) Green Buildings and Clean Vehicles.—

329 a. The Delaware Energy Office shall define "green buildings" and "clean vehicles" as appropriate to meet  
330 statewide energy efficiency targets established in paragraph (1) of this subsection, and with consideration for  
331 current best-practice definitions.

332 b. To establish initial SEU performance targets for Clean Vehicles and Green Buildings programs, the  
333 Delaware Energy Office, under the leadership of the State Energy Coordinator, and the Oversight Board shall  
334 either:

- 335 1. Determine appropriate initial SEU performance targets for Clean Vehicles and Green Buildings market  
336 programs to be included in the SEU Contract Administrator request for proposal;
- 337 2. Or the Energy Office and the Oversight Board may require that bidders for the SEU contract  
338 administrator propose such performance targets.

339 (5) Customer-sited Renewable Energy. — Targets and rebate levels for Customer-sited Renewable Energy  
340 Technologies ("Customer-sited Renewables") shall be established by the DEO, under the direct supervision of the  
341 State Energy Coordinator. Customer-sited Renewables shall include solar electric, solar thermal, geothermal and  
342 wind energy systems not to exceed in capacity the levels specified in net metering regulations of § 1014 of Title  
343 26. Under the direct supervision of the State Energy Coordinator, the DEO shall develop incentive tiers for  
344 different customer-sited renewables and customer classes based on identified state best practices. Rebates shall not  
345 exceed 50% of the incremental cost of Customer-sited Renewables compared to the retail cost of electricity.  
346 Rebates shall decline over time unless the DEO and SEU agree that doing so will prevent SEU clients from  
347 maximizing installed capacity of Customer-sited Renewable Energy in a least-cost manner. Under the direct  
348 supervision of the State Energy Coordinator, the DEO shall specify a certain fraction of SEU-supported Customer-  
349 sited Renewables to be located at residential locations. The SEU shall furnish 3 services to participants who  
350 purchase Customer-sited Renewables. First, it shall provide incentives sufficient to cover the incremental cost of  
351 investing in Customer-sited Renewables, in accord with DEO incentive tiers and current retail energy prices.  
352 Second, the SEU shall obtain, on behalf of participants, Renewable Energy Credits ("RECs") and Solar Renewable  
353 Energy Credits ("SRECs"), as defined in § 352 of Title 26. Third, the SEU shall negotiate the wholesale price for  
354 RECs and SRECs for SEU participants, using its ability to aggregate Customer-sited Renewables to the best  
355 advantage of SEU participants. For these services, the SEU shall charge a fee sufficient to pay its costs and to  
356 maintain incremental cost investments in Customer-sited Renewables. This fee can be assessed as a 1-time charge  
357 or an annual payment subject to the mutual agreement of the SEU and the participant. The Energy Office, under  
358 direct supervision of the State Energy Coordinator, shall determine a fair and reasonable rate that the SEU may  
359 charge for aggregating RECs and SRECs. The SEU fee shall not exceed 35% of the retail value of RECs or  
360 SRECs.

361 (j) (f) Funding for the SEU. --

362 (1) ~~The Delaware Energy Office shall contract~~ DNREC may partner with the SEU ~~contractor administrator~~ to  
363 assist in the administration of some or all of the Green Energy Fund in accordance with § 8057 of this title.

364 (2) Bonds of the SEU. —

365 a. The SEU may from time to time issue bonds for any corporate purpose and all such bonds, notes, bond  
366 anticipation notes or other obligations of the SEU issued pursuant to this section shall be and are hereby declared  
367 to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any  
368 other law or laws. In anticipation of the sale of such bonds, the SEU may issue negotiable bond anticipation notes  
369 and may renew the same from time to time, but the maximum maturity of any such note, including renewals  
370 thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any

371 revenues of the SEU available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the  
372 SEU in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such  
373 notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations  
374 which a bond resolution of the SEU may contain.

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

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

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

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

399 f. Bonds or notes issued under this section shall not be deemed to constitute a debt or liability of the State  
400 or of any political subdivisions thereof or a pledge of the faith and credit of the State or of any such political  
401 subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds or notes shall  
402 contain on the face thereof a statement to the effect that neither the State nor any political subdivision thereof shall

403 be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the  
404 State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such  
405 bonds. The issuance of bonds under this section shall not directly or indirectly or contingently obligate the State or  
406 any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any  
407 appropriation for their payment. Nothing contained in this section shall prevent or be construed to prevent the SEU  
408 from pledging its full faith and credit or the full faith and credit of a participating facility to the payment of bonds  
409 or issue of bonds authorized pursuant to this section.

410 g. Interest on bonds or notes issued under this section shall be exempt from income taxation by this State  
411 or any political subdivision thereof.

412 (3) Revenue sources contributing to the SEU for the purpose of paying bond debt may include but not be limited to  
413 funds from shared savings agreements with SEU participants and partial proceeds from the sale of Renewable  
414 Energy Credits or Solar Renewable Energy Credits in local and regional markets. The Green Energy Fund shall  
415 provide equity leverage for the SEU.

416 ~~(4) Staffing necessary for the DEO to fulfill its responsibilities in this section shall be funded from the Delaware  
417 Energy Answers program and by existing program funding within the Department of Natural Resources and  
418 Environmental Control.~~

419 ~~(5)~~ (4) Incentives provided through the SEU or proceeds from the Regional Greenhouse Gas Initiative shall be  
420 exempt from taxation by the State and by the counties and municipalities of the State.

421 ~~(k)~~ (g) Contracts with the State or agencies. -- The State or any agency may enter into contracts with the SEU or a  
422 qualified provider (as defined in § 6972(5) of this title) for the purpose of acquiring, constructing, operating, or providing a  
423 project, ~~undertaken by an implementation contractor or qualified provider,~~ including arrangements for paying the costs of  
424 such project, which costs may include debt service requirements of the SEU relating to that project. If the SEU procures an  
425 ~~implementation~~ a contract in accordance with subsection ~~(g)~~ (e) of this section, a contract between the SEU and the State or  
426 an agency that provides the benefit of the ~~implementation~~ contract to the State or agency may be entered into by the State or  
427 agency without additional competitive procurement.

428 No obligation of the State or an agency under an installment payment agreement, a guaranteed energy performance contract  
429 or any other agreement entered into in connection with a project under this Chapter 80 or Chapter 69 of this title shall  
430 constitute or create a debt of the State or agency. No such obligation of the State or an agency shall constitute a tax  
431 supported obligation or a bond or a note of the State as provided in Chapter 74 of this title.

## SYNOPSIS

This bill is intended to implement the recommendations of the General Assembly's Joint Sunset Committee following its review of the Sustainable Energy Utility. The Committee recommended that the statute governing the SEU, Title 29, Section 8059 be amended to a) allow greater flexibility in the composition of the Board, b) include language about staggering the terms of Board members, c) provide standards for the removal of Board members, and d) state that Board members appointed by the Governor may be deemed to have resigned if they are absent from three consecutive Board meetings without good cause.

The bill also implements the Committee's recommendation that the organizational structure of the SEU be changed from the current model, which requires a contract administrator and a fiscal agent. Instead, the SEU's day-to-day business shall be managed by an executive director, who reports directly to the SEU Oversight Board. The Executive Director will handle certain responsibilities previously assigned to the contract administrator and fiscal agent.

The bill also implements the Committee's recommendations that a) the SEU submit a public annual report to the Governor and the General Assembly, b) prepare certified financial statements each year, c) the SEU's financial statements be audited every other year by an independent certified public accounting firm, d) the SEU prepare a three to five year strategic plan with input from stakeholder groups and the public, which plan shall include an educational component for the general public and a continued focus on residential energy efficiency projects, and e) the SEU Oversight Board is authorized to appoint an advisory committee or committees to assist the Board from time to time.

Author: Senator Poore