



SPONSOR: Sen. McDowell

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL

AN ACT TO AMEND TITLES 9, 22, 26 AND 29 OF THE DELAWARE CODE RELATING TO THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT AND THE COMMUNITY SUSTAINABLE ENERGY AUTHORITIES ACT.

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

1 (Two-thirds of all members of each House thereof concurring therein)

2 Section 1. Amend § 352, Title 26 of the Delaware Code by making deletions as shown by strike through and
3 insertions as shown by underline as follows and by redesignating accordingly:

4 § 352. Definitions.

5 (27) “Community solar project” means the solar electric generation component of a community sustainable
6 energy project; provided that if the solar electric generation component is combined with other sustainable
7 energy resources in a community sustainable energy project, the solar electric generation component must
8 be separately metered to establish entitlement to community solar renewable energy credits.

9 (28) “Community solar renewable energy credits” (“CSRECs”) means renewable energy credits generated
10 by a community solar project located in Delaware and developed pursuant to the Community Sustainable
11 Energy Authorities Act, Chapter 21 of Title 22.

12 (29) “Community sustainable energy project” has the meaning given in the Community Sustainable Energy
13 Authorities Act, Chapter 21 of Title 22.

14 (30) “Critical emergency facilities” means facilities whose continued operation during an emergency is required or
15 proposed in a municipality’s emergency response plan as approved by the Delaware Department of Safety and
16 Homeland Security.

17 (31) “Sustainable energy resources” has the meaning given in the Community Sustainable Energy
18 Authorities Act, Chapter 21 of Title 22.

19 Section 2. Amend § 354, Title 26 of the Delaware Code by making deletions as shown by strike through and
20 insertions as shown by underline as follows and by redesignating accordingly:

21 § 354. Renewable energy portfolio standards, eligible energy resources, and industrial exemption.

22 (a) The total retail sales of each Retail Electricity Product delivered to Delaware end-use customers by a retail
23 electricity supplier or municipal electric company during any given compliance year shall include a minimum percentage of
24 electrical energy sales with eligible energy resources and solar photovoltaics as follows:

SCHEDULE I

Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Eligible Energy Resources	Minimum Cumulative Percentage from Solar Photovoltaics*	<u>Minimum Cumulative Percentage from Community Solar**</u>
2010	5.00%	0.018%	
2011	7.00%	0.20%	
2012	8.50%	0.40%	
2013	10.00%	0.60%	
2014	11.50%	0.80%	
2015	13.00%	1.00%	
2016	14.50%	1.25%	
2017	16.00%	1.50%	
2018	17.50%	1.75%	
2019	19.00%	2.00%	
2020	20.00%	2.25%	0.00%
2021	21.00%	2.50%	0.20%
2022	22.00%	2.75%	0.25%
2023	23.00%	3.00%	0.30%
2024	24.00%	3.25%	0.35%
2025	25.00%	3.50%	0.40%
<u>2026</u>	<u>25.50%</u>	<u>3.75%</u>	<u>0.45%</u>
<u>2027</u>	<u>26.00%</u>	<u>4.00%</u>	<u>0.50%</u>
<u>2028</u>	<u>26.50%</u>	<u>4.25%</u>	<u>0.55%</u>
<u>2029</u>	<u>27.00%</u>	<u>4.50%</u>	<u>0.60%</u>
<u>2030</u>	<u>28.00%</u>	<u>5.00%</u>	<u>0.65%</u>
<u>2031</u>	<u>30.00%</u>	<u>5.80%</u>	<u>1.00%</u>
<u>2032</u>	<u>32.00%</u>	<u>6.60%</u>	<u>1.50%</u>
<u>2033</u>	<u>34.00%</u>	<u>7.40%</u>	<u>1.95%</u>
<u>2034</u>	<u>37.00%</u>	<u>8.40%</u>	<u>2.60%</u>
<u>2035</u>	<u>40.00%</u>	<u>10.00%</u>	<u>3.50%</u>

* Minimum Percentage from Eligible Energy Resources Includes the Minimum Percentage from Solar Photovoltaics.

**The Minimum Percentage from Solar Photovoltaics Includes the Minimum Percentage from Community Solar

25 (b) Cumulative minimum percentage requirements of eligible energy resources and solar photovoltaics shall be
26 established by Commission rules for compliance year ~~2026~~ 2036 and each subsequent year. ~~In no case shall the~~ The
27 minimum percentages established by Commission rules may not be lower than those required for compliance year ~~2025~~
28 2035 in Schedule I, subsection (a) of this section. Each of the rules setting such minimum percentage ~~shall~~ must be adopted
29 at least 2 years ~~prior to~~ before the minimum percentage being required.

30 (e) ~~Beginning in compliance year 2010, and in each compliance year thereafter, the Commission may review the~~
31 ~~status of Schedule I and report to the legislature on the status of the pace of the scheduled percentage increases toward the~~
32 ~~goal of 25% from eligible energy resources. If the Commission concludes at this time that the schedule either needs to be~~
33 ~~accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.~~

34 (d) ~~Beginning in compliance year 2014, and in each compliance year thereafter, the Commission may, in the event~~
35 ~~of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage~~
36 ~~increases towards meeting the goal of 25%. The Commission may only slow the increases if the Commission finds that at~~
37 ~~least 30% of RPS compliance has been met through the alternative compliance payment for 3 consecutive years, despite~~
38 ~~adequate planning by the commission-regulated electric companies and, where applicable, the retail electricity suppliers~~
39 ~~with existing contractual electric supply obligations. The Commission may only accelerate the scheduled percentage~~
40 ~~increases after finding that the average price for renewable energy credits eligible for RPS compliance has, for 2~~
41 ~~consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The~~
42 ~~Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy~~
43 ~~Office. Rules that would alter the percentage targets shall be promulgated at least 2 years before the percentage change~~
44 ~~takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.~~

45 (ec) Beginning with compliance year ~~2012~~ 2020, commission-regulated electric companies shall be responsible for
46 procuring RECs, SRECs, CSRECs, and any other attributes needed to comply with subsection (a) of this section with
47 respect to all energy delivered to such companies' end use customers.

48 (i) ~~The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative solar~~
49 ~~photovoltaics requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying~~
50 ~~with this requirement during a compliance year exceeds 1% of the total retail cost of electricity for retail electricity~~
51 ~~suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from solar~~
52 ~~photovoltaics shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a~~
53 ~~finding by the Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be~~
54 ~~expected to be under the 1% threshold. The total cost of compliance shall include the costs associated with any ratepayer~~
55 ~~funded state solar rebate program, SREC purchases, and solar alternative compliance.~~

56 (j) ~~The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative~~
57 ~~eligible energy resources requirement for regulated utilities if the Delaware Energy Office determines that the total cost of~~
58 ~~complying with this requirement during a compliance year exceeds 3% of the total retail cost of electricity for retail~~
59 ~~electricity suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from~~

60 ~~eligible energy resources shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be~~
61 ~~lifted upon a finding by the Coordinator, in consultation with the Commission, that the total cost of compliance can~~
62 ~~reasonably be expected to be under the 3% threshold. The total cost of compliance shall include the costs associated with~~
63 ~~any ratepayer funded state renewable energy rebate program, REC purchases, and alternative compliance payments.~~

64 (k) The CSREC requirements of this subchapter may be satisfied with regular SRECs in the event that
65 insufficient CSRECs are available and would drive the price above 200% of the average cost of an SREC that the
66 commission-regulated utility purchased in the previous two years.

67 Section 3. Amend § 355, Title 26 of the Delaware Code by making deletions as shown by strike through and
68 insertions as shown by underline as follows:

69 § 355. Renewable energy credits.

70 (a) Energy sold or displaced by customer-sited generation on or after June 1, 2006, may be used to create and
71 accumulate renewable energy credits for the purposes of calculating compliance with the renewable energy portfolio
72 standards established pursuant to this subchapter.

73 (b) Energy production from customer-sited eligible energy resource may also be used to demonstrate compliance,
74 provided that the facilities are physically located in Delaware.

75 (c) Aggregate generation from small eligible energy sources, 100 kilowatts of capacity or less, may be used to
76 meet the requirements of Schedule I of § 354(a) of this title, provided that the generators or their agents document the level
77 of generation, as recorded by appropriate metering and power sales, on an annual basis.

78 (d) Community sustainable energy projects are permitted to generate CSRECs whether or not customer-sited.

79 Section 4. Amend § 356, Title 26 of the Delaware Code by making deletions as shown by strike through
80 and insertions as shown by underline as follows:

81 § 356. Multiple credits for specific energy sources.

82 (f) Microgrids that serve critical emergency facilities shall receive 1.5 CSRECs per CSREC created by a
83 community sustainable energy project for the first five years of operation. However, any microgrid covered by this
84 provision cannot also receive any of the other CSREC credit benefits permitted by this section.

85 (g) A retail electricity supplier or municipal electric company must receive 150% credit toward meeting the
86 renewable energy portfolio standards established under this subchapter for eligible energy resources located on a
87 certified brownfield, as defined under § 9123 of Title 7. However, any retail electricity supplier or municipal electric
88 company covered by this provision cannot also receive any of the other CSREC credit benefits permitted by this
89 section.

90 (h) A retail electricity supplier or municipal electric company must receive 150% credit toward meeting the
91 renewable energy portfolio standards established under this subchapter for eligible energy resources provided that at
92 least 5% of the energy users participating in any community sustainable energy project are low and moderate income
93 users, meaning users whose income is 120% or less of the median income for families in Delaware.

94 Section 5. Amend § 358, Title 26 of the Delaware Code by making deletions as shown by strike through and
95 insertions as shown by underline as follows:

96 § 358. Issuance of renewable energy credits; reporting requirement; alternative compliance payment.

97 (d) In lieu of standard means of compliance with this ~~statute, subchapter, any retail electricity supplier~~ any
98 commission-regulated utility may pay into the Fund an alternative compliance payment of \$25 for each megawatt-hour
99 deficiency between the credits available and used by a ~~retail electricity supplier~~ commission-regulated utility in a given
100 compliance year for eligible non-solar renewable energy resources and the credits necessary for such ~~retail electricity~~
101 ~~supplier~~ commission-regulated utility to meet the year's renewable energy portfolio standard. A municipal electric company
102 may pay the alternative compliance payment into a fund established by its municipal members. If alternative compliance
103 payments representing 15% or more of the total number of RECs for eligible non-solar renewable energy resources are paid
104 into the Fund for each of 2 consecutive compliance years, the minimum cumulative percentage from eligible energy
105 resources specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately preceding
106 year and does not increase from that percentage until a year passes during which no alternative compliance payment is
107 made. After the year in which less than 15% of the REC obligation is satisfied by alternative compliance payments, the
108 annual increases in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year
109 immediately before the current compliance year. A freeze of the minimum cumulative percentage from eligible non-solar
110 technology does not permit a freeze of the minimum cumulative percentage from eligible solar energy resources. In
111 ~~subsequent years, the alternative compliance payments for any retail electricity supplier or municipal electricity company~~
112 ~~shall increase as follows:~~

113 (1) ~~If a retail electricity supplier has paid an alternative compliance payment of \$25 for each megawatt hour in any~~
114 ~~previous year, then the alternative compliance payment shall be \$50 for each megawatt hour. [Repealed.]~~

115 (2) ~~If a retail electricity supplier has paid an alternative compliance payment of \$50 for each megawatt hour in any~~
116 ~~previous year, then the alternative compliance payment shall be \$80 for each megawatt hour. [Repealed.]~~

117 (3) ~~Alternative compliance payments shall not be more than \$80 for each megawatt hour. [Repealed.]~~

118 (4) ~~The State Energy Coordinator shall have the authority to review the alternative compliance payment on an as~~
119 ~~needed or annual basis to determine reasonableness compared to market REC prices. Following an analysis conducted by~~

120 ~~the Delaware Energy Office, the State Energy Coordinator shall also have the authority to adjust the alternative compliance~~
121 ~~payment by 10% in order to achieve reasonableness. [Repealed.]~~

122 (e) In lieu of standard means of compliance with this ~~statute, subchapter, any retail electricity supplier a~~
123 commission-regulated utility may pay into the Fund a Solar Alternative Compliance payment of ~~\$400~~ \$150 or each
124 megawatt-hour deficiency between the credits available and used by a ~~retail electricity supplier~~ commission-regulated
125 utility in a given compliance year and the credits necessary for such ~~retail electricity supplier~~ commission-regulated utility
126 to meet the year's Renewable Energy Portfolio Standard. A municipal electric company may pay the solar alternative
127 compliance payment into a fund established by its municipal members. If solar alternative compliance payments
128 representing 15% or more of the total number of SRECs are paid into the Fund for each of 2 consecutive compliance years,
129 the minimum cumulative percentage from solar technology specified in Schedule I of § 354(a) of this title remains at the
130 percentage specified for the immediately preceding year and does not increase from that percentage until a year passes
131 during which less than 15% of the SREC obligation is satisfied by solar alternative compliance payments. After the year in
132 which 15% or less of the total SREC obligation is satisfied by solar alternative compliance payments, the annual increases
133 set forth in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year immediately
134 before the current compliance year. A freeze of the minimum cumulative percentage from solar technology does not freeze
135 the minimum cumulative percentage from eligible energy resources. In subsequent years, the solar alternative compliance
136 payments for any retail electricity supplier or municipal electricity company shall increase as follows:

137 (1) ~~If a retail electricity supplier has paid a solar alternative compliance payment of \$400 \$100 for each megawatt-~~
138 ~~hour in any previous year, then the solar alternative compliance payment shall must be \$450 \$125 for each megawatt hour.~~
139 [Repealed.]

140 (2) ~~If a retail electricity supplier has paid a solar alternative compliance payment of \$450 \$125 for each megawatt-~~
141 ~~hour in any previous year, then the solar alternative compliance payment shall must be \$500 \$150 for each megawatt hour.~~
142 [Repealed.]

143 (3) ~~The State Energy Coordinator shall have the authority to review the solar alternative compliance payment on~~
144 ~~an as needed or annual basis to determine reasonableness compared to market based SREC prices. Following an analysis~~
145 ~~conducted by the Delaware Energy Office, the State Energy Coordinator shall also have the authority to adjust the solar~~
146 ~~alternative compliance payment by 20% in order to achieve reasonableness, but not higher than 20% of the competitive~~
147 ~~market cost of an SREC, determined by the quarterly weighted average cost of meeting the requirement through purchase~~
148 ~~of an SREC as analyzed by the Delaware Energy Office. [Repealed.]~~

149 Section 6. Amend § 362, Title 26 of the Delaware Code by making deletions as shown by strike through and
150 insertions as shown by underline as follows:

151 § 362. Rules and regulations.

152 (a) The Commission shall adopt rules and regulations necessary to implement the provisions of this subchapter as
153 it applies to retail electricity suppliers. The Commission shall make its regulations as consistent as possible with those of
154 other states in the region with similar requirements in order to minimize the compliance burdens imposed by this ~~statute~~
155 subchapter and in order to avoid duplication of effort.

156 (b) ~~For regulated utilities, the Commission shall further adopt rules and regulations to specify the procedures for~~
157 ~~freezing the minimum cumulative solar photovoltaic requirement as authorized under § 354(i) and (j) of this title, and for~~
158 ~~adjusting the alternative compliance payment and solar alternative compliance payment as authorized under § 358(d)(4) and~~
159 ~~(e)(3) of this title.~~

160 Section 7. Amend § 363, Title 26 of the Delaware Code by making deletions as shown by strike through
161 and insertions as shown by underline as follows and by re-designating accordingly:

162 § 363. Special provisions for municipal electric companies and rural electric cooperatives.

163 (a) Any municipal electric company and any rural electric cooperative may elect to exempt itself from the
164 requirements of this subchapter, if it develops and implements a comparable program to the renewable energy
165 portfolio standards for its ratepayers beginning in ~~2013~~ 2022.

166 (b) In the event that a municipal electric company or rural electric cooperative elects to exempt itself from
167 the requirements of this subchapter, it shall submit a plan at the beginning of ~~2013~~ 2022 to its local regulatory
168 authority, the Delaware General Assembly, and the ~~Delaware Energy Office~~ Department of Natural Resources and
169 Environmental Control detailing its approach to achieve a level of renewable energy penetration in its service
170 territory, and shall submit an annual compliance report to its local regulatory authority, the Delaware General
171 Assembly, and the ~~Delaware Energy Office~~ Department of Natural Resources and Environmental Control detailing
172 its progress toward yearly targets.

173 (c) The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal
174 electric company shall base renewable energy portfolio standard decisions on the need, value and feasibility of the
175 renewable energy resources pertaining to the economic and environmental well being of their members. The Board
176 of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall
177 continue to evaluate all renewable energy resources including but not limited to: wind, biomass, hydroelectric and
178 solar and submit an annual report to the General Assembly and their membership as to their determination.

179 (d) In the event that a municipal electric company or rural electric cooperative elects to exempt itself, it shall
180 either contribute to the Green Energy Fund at levels commensurate with other retail electricity suppliers or create an
181 independent, self-administered fund separate from the Green Energy Fund to be used in support of energy efficiency
182 technologies, renewable energy technologies, or demand side management programs, into which it shall make
183 payments of at least \$0.178 for each megawatt-hour it sells, transmits, or distributes in this State.

184 ~~(e) The total cost of compliance with this section shall include the costs associated with any ratepayer~~
185 ~~funded renewable energy rebate programs, REC and SREC purchases, or other costs incurred in meeting renewable~~
186 ~~energy programs.~~

187 ~~(f) The total cost of complying with eligible energy resources shall not exceed 3% of the total cost of the~~
188 ~~purchased power of the utility for any calendar year.~~

189 ~~(g) The total cost of complying with the solar photovoltaic program shall not exceed 1% of the total cost of~~
190 ~~the purchased power of the affected utility for any calendar year.~~

191 ~~(h) At no time during any calendar year shall the total cost of compliance with this section result in an~~
192 ~~increase of an average consumer's monthly bill in excess of 4%.~~

193 ~~(i) The Board of Directors of a rural electric cooperative and the local regulatory authority of a municipal~~
194 ~~electric company may approve an increase in the limit on the cost of compliance, as specified in subsections (f) and~~
195 ~~(g) of this section above.~~

196 (je) In pursuit of their renewable energy goals, a municipal electric company or rural electric cooperative
197 shall receive all appropriate multiple credits for specific energy sources, as established under §§ 356 and 357 of this
198 title and sited in Delaware for the life of contracts for renewable energy credits.

199 Section 8. Amend § 1001, Title 26 of the Delaware Code by making deletions as shown by strike through
200 and insertions as shown by underline as follows and by redesignating accordingly:

201 (5) "Community Sustainable Energy Authority" means an authority established under the
202 Community Sustainable Energy Authorities Act, Chapter 21 of Title 22 of the Delaware Code.

203 ~~(5)(6)~~ (6) "Community-owned energy generating facility" means a renewable energy generating
204 facility that has multiple owners or customers who share the output of the generator, which may be located
205 either as a stand-alone facility or behind the meter of a participating owner or customer. The facility shall be
206 interconnected to the distribution system and operated in parallel with an electric distribution company's
207 transmission and distribution facilities. This term includes eligible energy resources included in community

208 sustainable energy projects created under the Community Sustainable Energy Authorities Act, Chapter 21,
209 Title 22 of the Delaware Code, regardless of ownership structure.

210 (7) “Community sustainable energy project” has the meaning given in the Community Sustainable
211 Energy Authorities Act, Chapter 21, Title 22 of the Delaware Code.

212

213 Section 9. Amend § 102, Title 26 of the Delaware Code by making deletions as shown by strike
214 through and insertions as shown by underline as follows:

215 (2) “Public utility” includes every individual, partnership, association, corporation, joint stock
216 company, agency or department of the State or any association of individuals engaged in the prosecution in
217 common of a productive enterprise (commonly called a “cooperative”), their lessees, trustees or receivers
218 appointed by any court whatsoever, that now operates or hereafter may operate for public use within this
219 State, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the
220 production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric
221 suppliers as defined in § 1001 of this title), and Community Sustainable Energy Authorities created pursuant
222 to this title), electric transmission by other than a public utility over which the Commission has no
223 supervisory or regulatory jurisdiction pursuant to § 202(a) or (g) of this title, water, wastewater (which shall
224 include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular
225 technology or by domestic public land mobile radio service) service, system, plant, or equipment.

226 Section 10. Amend Title 22 of the Delaware Code by adding a new Chapter 21 and by making deletions as
227 shown by strike through and insertions as shown by underline as follows:

228 Chapter 21. Community Sustainable Energy Authorities Act

229 § 2101. Short Title; Findings and Declaration of Policy.

230 This chapter shall be known and may be cited as the “Community Sustainable Energy Authorities
231 Act.”

232 It is determined and declared as a matter of legislative finding that:

233 1. Continued emission of greenhouse gases threatens to result in dangerous human interference
234 with the climate system and climate change poses a significant threat to the life and security of the citizens
235 of Delaware;

236 2. Among the effects of climate change are rising sea levels, and increasingly severe storms and
237 weather events which expose Delaware communities to disruption of community life and severe economic
238 loss;

239 3. Transition to a sustainable energy economy by reducing building energy use, increasing use of
240 electric vehicles, and moving to renewable sources of energy generation are essential to reducing
241 greenhouse gas emissions;

242 4. Establishing local, secure, resilient energy generation facilities, such as qualified microgrids
243 servicing critical facilities used by the public, can mitigate the effects of climate disruption;

244 5. Lower-income citizens of Delaware are the least economically able to participate in the
245 transition to a sustainable energy economy and often most at risk for the effects of climate disruption.
246 The establishment of authorities that promote the transition to a local sustainable energy economy and assist
247 lower-income citizens to participate in that transition, and will promote the public health, safety,
248 convenience, and welfare;

249 6. Therefore, it is declared to be the policy of this State to promote the public health, safety,
250 convenience and welfare of the inhabitants thereof by the creation in municipalities of “community energy
251 authorities,” which shall exist and operate to expand the deployment of energy conservation measures,
252 renewable energy, and energy storage in the State and spread the benefits of those sustainable resources to
253 all citizens of the State.

254 § 2102. Definitions.

255 As used in this chapter, unless the context requires a different meaning:

256 (1) “Aggregator” has the meaning given in § 1001(1) of Title 26.

257 (2) “Authority” means a body politic and corporate created pursuant to this chapter.

258 (c) “Board” means the governing body of the authority.

259 (d) “Community sustainable energy project” means a sustainable energy project undertaken by an
260 authority pursuant to § 2106 of this title.

261 (e) “Community-owned energy generating facility” has the meaning given in 26 Del. C. §1001(5).

262 (f) “Community Sustainable Energy Authority” means any authority created pursuant to this Act. Any
263 authority created pursuant to this Act is not a “public utility” under 26 Del. C. § 102(2), and is not
264 subject to regulation by the Delaware Public Service Commission.

265 (g) “Demand response resource” means facilities owned or operated by a municipal energy user or by, or
266 on behalf of, an authority that are qualified to provide demand-side management services.

267 (h) “Demand-side management” has the meaning given in 26 Del. C. §1001(7).

268 (i) “Electric supplier” has the meaning given in 26 Del. C. §1001(14).

269 (j) “Energy conservation measure” has the meaning given in 29 Del. C. § 6972 (3).

270 (k) “Energy storage system” means a battery or other electric storage system or a thermal energy storage
271 system.

272 (l) “Federal agency” means and includes the United States of America and any department, corporation,
273 agency, or instrumentality heretofore or hereafter created, designated, or established by the United States
274 of America.

275 (m) “Governing Body” means the city council or other governing body of a Municipality.

276 (n) “Municipality” means any incorporated city or incorporated town of this State.

277 (o) “Municipal sponsor” means the municipality or municipalities that incorporate an authority under
278 this chapter.

279 (p) “Municipal energy user” means (i) a person who maintains a private residence or operates a business
280 within the jurisdictional limits of a municipal sponsor or (ii) a business, non-profit, or governmental
281 entity that owns or operates a facility or building within the jurisdictional limits of the municipal
282 sponsor.

283 (q) “Persons” means and includes natural persons.

284 (r) “Qualified microgrid” means a group of interconnected loads and distributed energy resources within
285 clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid with
286 generating capacity that includes at least 70 % sustainable energy resources.

287 (s) “Sustainable energy resource” means and includes energy conservation, energy efficiency, and
288 renewable energy consistent with “eligible energy resource” as defined in 26 Del. C. § 352.

289 (t) “Sustainable energy program” means a program to assist municipal energy users to undertake
290 sustainable energy projects, including providing technical support or assistance with financing, singly or
291 on a collective basis.

292 (v) “Sustainable energy project” means the development, construction, acquisition, financing, and
293 operation as a single commercial unit of 1 or more sustainable energy resources, energy storage systems,

294 electric vehicle charging stations, demand response resources, energy conservation measures, or
295 qualified microgrids.

296 (w) “Sustainable Energy Utility” means the Sustainable Energy Utility, Inc. or any successor
297 organization formed and existing under 29 Del. C. § 8059.

298 (x) “Small business” means a firm having a full-time equivalent complement of 100 or fewer Delaware-
299 based employees at the time of application.

300 § 2103. Organizing an authority.

301 (a) Whenever the governing body or bodies of a municipality, singly, or 2 or more municipalities
302 jointly, desire to organize an authority, under this chapter, they must adopt a resolution or ordinance
303 signifying their intention to do so. Any municipality may join an authority being organized by a county,
304 provided that the municipality is located, in whole or in part, within the county. In such cases, the county
305 and each included municipality must adopt a resolution or ordinance signifying their intention to join in
306 organizing the authority.

307 § 2104. Purpose and powers.

308 (a) The authority incorporated under this chapter shall constitute a body politic and corporate, and
309 shall be known as the community energy authority of the municipal sponsor, but shall in no way be deemed to
310 be an instrumentality of the municipal sponsor or engaged in the performance of a municipal function. The
311 authority shall have the power to conduct research activities to maintain current data on energy consumption and
312 needs for energy resilience in the municipality or municipalities, for the fulfillment of public and private
313 needs in relation to energy efficiency and energy consumption, including needs in low and moderate income
314 census tracts. The authority shall also have the power, either independently or in conjunction with other
315 public or private persons and entities, to engage in planning, designing, locating, acquiring, holding,
316 constructing, improving, maintaining and operating, owning or leasing, in the capacity of lessor or lessee,
317 and making loans and investments in connection with sustainable energy projects and sustainable energy
318 programs.

319 (b) Every authority may exercise all powers necessary or convenient for the carrying out of the
320 aforesaid purposes including, but without limiting, the generality of the foregoing. , the rights and powers
321 described below:

322 q. To obtain on a confidential basis from the public utilities serving municipal energy users in the
323 municipal sponsor data on usage of electricity and, as applicable, other forms of energy by

324 municipal energy users to assist it in the development of sustainable energy projects. The authority
325 may share that data on an aggregated basis that does not permit identification of individual
326 customers with potential participants in sustainable energy projects.

327 § 2105. Co-operation with the Sustainable Energy Utility.

328 (a) An authority may work in cooperation with the Sustainable Energy Utility, Inc. to implement energy
329 efficiency and renewable energy projects in the State.

330 § 2106. Community Sustainable Energy Projects.

331 (a) For purposes of awarding CSRECs as defined in § 352 of Title 26, Community Sustainable
332 Energy Projects are subject to: i) a cap of 5 megawatts, and ii) an annual aggregate statewide program cap
333 of 20 megawatts. At the year 2030, the project cap i) will change to 10 megawatts and the annual aggregate
334 statewide program cap in ii) will change to 50 megawatts.

335 (b) An authority may undertake community sustainable energy projects on behalf of residential,
336 small business, non-profit, and governmental energy users within the municipality that elect to participate in
337 a project, as established by affirmative written consent of the energy users. In evaluating the participation
338 of small businesses, those small businesses employing 10 or fewer persons will be afforded preference in
339 the subscription for a community sustainable energy project.

340 (c) An authority may require an investment in a community sustainable energy project or a partial
341 prepayment for services of a community sustainable energy project by a municipal energy user.

342 (d) If an authority elects, municipal energy users who participate in a community sustainable
343 energy project shall be billed for their energy consumption on the same basis as participants in a
344 community-owned energy generating facility established under the Renewable Energy Portfolio Standards
345 Act, 26 Del. C. §351 *et.seq.*, provided that all participating municipal energy users must be served by the
346 same public utility, and such projects must be interconnected at the distribution level.

347 (e) An authority may elect to own a community sustainable energy project directly or through a
348 special purpose entity created for the purpose or may contract with third parties on behalf of municipal
349 energy users to own, operate, or undertake other services for a community sustainable energy project for the
350 municipal energy users' benefit.

351 § 2107. Governing body.

352 1. The powers of each authority shall be exercised by a board of directors composed of not less than
353 5 members, all of whom shall be municipal energy users within the municipal sponsor. The board shall be

354 broadly representative of the population of the municipal sponsor. Board members shall receive no
355 compensation for services, but shall be entitled to the necessary expenses, including travel expenses, incurred
356 in the discharge of duties.

357 § 2108. Moneys; reporting; examination of accounts.

358 (a) All moneys of any authority, from whatever source derived, shall be paid to the treasurer of the
359 authority. The moneys shall be deposited in the first instance by the treasurer in 1 or more banks or trust
360 companies in 1 or more special accounts. The moneys in the accounts shall be paid out on the warrant or
361 other order of the chairperson of the authority or of such other person or persons as the authority may
362 authorize to execute such warrants or orders. Every authority shall have at least an annual examination of its
363 books, accounts, and records by a certified public accountant in accordance with Governmental Accounting
364 Standards Board requirements. A copy of such audit shall be delivered to the municipal sponsor and the
365 Sustainable Energy Utility. A concise financial statement shall be published annually at least once in a
366 newspaper of general circulation in the municipal sponsor. If such publication is not made by the authority,
367 the municipal sponsor shall publish such statement at the expense of the authority. If the authority fails to
368 make such an audit, the auditor or accountant designated by the municipal sponsor may, from time to time,
369 examine, at the expense of the authority, the accounts and books of the authority, including its receipts,
370 disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances,
371 operation, and affairs.

372 (b) The Attorney General may examine the books, accounts, and records of any authority.

373 (c) Each authority shall prepare an annual report of its activities in a form approved by the
374 Sustainable Energy Utility including: (i) the acquisition and disposition of property, (ii) the development,
375 financing, construction, and operation of sustainable energy projects, including energy savings and carbon
376 reductions; (iii) the operation of sustainable energy programs directly or in collaboration with the
377 Sustainable Energy Utility; and (iv) other material activities undertaken by the authority in furtherance of
378 the purposes of this chapter. The authority shall provide copies of such report to the municipal sponsor and
379 the Sustainable Energy Utility and make it available by electronic or other suitable means to the general
380 public.

381 2. No member of the Board of any authority shall be entitled to vote on any matter before the
382 Board if such member has a direct or indirect financial interest in the outcome of such matter under review.
383 In the event such a financial interest exists, said member shall disclose to the Board the nature of the interest

384 and said member shall refrain from any discussion, deliberation, action, or vote by the Board on this matter.
385 In situations in which a member or members do not vote by reason of such financial interest, the matter
386 pending before the Board will be decided on the basis of a majority vote of the remaining members present
387 who do not have a financial interest in the matter. A member or members having a financial interest as set
388 forth herein shall be counted for purposes of establishing a quorum, provided such member or members are
389 present at the meeting. The disqualification of a member from voting on a matter before the Board by reason
390 of a financial interest therein shall not affect the validity of any action taken by the Board relative to the
391 matter before it.

392 § 2109. Exemption from taxation; payments in lieu of taxes.

393 The effectuation of the authorized purposes of the authorities created under this chapter shall and will be
394 in all respects for the benefit of the residents of municipalities for the increase of their resilience and prosperity,
395 and for the improvement of their health, safety, and living conditions, and, in effectuating such purposes, such
396 authorities shall not be required to pay any taxes or assessments upon any property acquired or used by them for
397 such purposes. In lieu of such taxes or special assessments, an authority may agree to make payments to the
398 municipal sponsor or the county or any political subdivision. The bonds issued on behalf of any authority, their
399 transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from
400 taxation within this State.

401 Section 11. Amend Chapter 3, Title 9 of the Delaware Code by making deletions as shown by strike through and
402 insertions as shown by underline as follows:

403 § 350. Community Sustainable Energy Authorities Act.

404 The county governments may create community sustainable energy authorities pursuant to the provisions
405 of the Community Sustainable Energy Authorities Act, Chapter 21 of Title 22. Any Community Sustainable Energy
406 Authority created by a county government shall be governed by, and must comply with, applicable provisions of the
407 Community Sustainable Energy Authorities Act, including all powers and obligations of municipal authorities under
408 the Act.

409 Section 12. Amend § 8059, Title 29 of the Delaware Code by making deletions as shown by strike through and
410 insertions as shown by underline as follows:

411 (i) The SEU may create Community Sustainable Energy Authorities pursuant to the provisions of the Community
412 Sustainable Energy Authorities Act, Title 22, Chapter 21. Any Community Sustainable Energy Authority created by
413 the SEU shall be governed by, and must comply with, applicable provisions of the Community Sustainable Energy

414 Authorities Act. The SEU may assist cities, towns, and counties with the formation of community sustainable energy
415 authorities and the financing of projects.

416 Section 13. Amend § 1014, Title 26 of the Delaware Code by making deletions as shown by strike through and
417 insertions as shown by underline as follows:

418 § 1014 Public purpose programs and consumer education.

419 (e) The rules and regulations promulgated for net energy metering by the Commission, municipal electric companies,
420 and electric cooperatives during any period of exemption under § 223 of this title shall:

421 (2) Provide for customers participating in a community-owned energy generating facility to be credited in kilowatt-
422 hours (kWh), valued at an amount per kWh equal to supply service charges according to each account's rate
423 schedule for any excess production of the community-owned energy generating facility, meaning the amount above
424 the Net Metering Limit . For customers that host a community-owned energy generating facility or where all
425 participating customers are located on the same distribution feeder as a community-owned energy generating
426 facility, credit in kWh shall be valued according to each account's rate schedule and the rules and regulations
427 promulgated for net energy metering under paragraph (e)(1) or (3) of this section. Excess kWh credits shall be
428 credited to subsequent billing periods to offset customers' consumption in those billing periods. At the end of the
429 annualized ~~billing~~ billing period, a customer participating in a community-owned generating facility community
430 may request a payment from the electric supplier for any excess kWh credits. The payment shall be calculated by
431 multiplying the excess kWh credits by ~~the supply service rate of the account hosting the community-owned energy~~
432 ~~generating facility~~ the average annual load-weighted PJM wholesale locational marginal price of energy in the
433 Delmarva Power Zone. Such payment shall be made to the ~~account hosting~~ account-hosting customer participating
434 in the community-owned energy generating facility, and may be credited to the account through monthly billing if
435 less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges, including demand
436 charges, imposed by the electric supplier. The customers participating in a community-owned energy generating
437 facility retain ownership of all RECs associated with electric energy produced unless the customer has relinquished
438 such ownership by contractual agreement with a third party.

439 (9) Absent the promulgation of rules and regulations pursuant to paragraph (e)(3) of this section, individual
440 customers may aggregate their individual meters in conjunction with a community-owned energy generating
441 facility, provided that:

442 a. A community includes customers sharing a unique set of ~~interests; and~~ interests.

443 b. Electric suppliers, DEC, DP&L, and municipal electric companies shall only allow meter aggregation for
444 customer accounts of which they provide electric supply ~~service; and~~ service.

445 c. A community-owned energy generating facility is designed to produce no more than 110% of the
446 community's aggregate electrical consumption of its individual customers, calculated on the average of the 2
447 previous 12-month periods of actual electrical usage at the time of installation of energy generating equipment.
448 For new building construction, electrical consumption will be estimated at 110% of the consumption of units of
449 similar size and characteristics at the time of installation of energy generating ~~equipment; and~~ equipment.

450 d. A community-owned energy generating facility shall not exceed a capacity of the sum total of the individual
451 unit allowances as defined under paragraph (d)(1) of this section among the participants of a community-owned
452 energy generating ~~facility; and~~ facility, except that community sustainable energy projects are exempt from this
453 limitation.

454 e. Community-owned energy generating facilities may include technologies defined under § 352(6)a.-h. of this
455 ~~title; title.~~

456 f. Before a community-owned net energy metering system may be formed and served by an electric supplier,
457 DP&L, DEC, or municipal electric company, the community proposing a community-owned energy generating
458 facility shall file with the ~~Delaware Energy Office~~ Department of Natural Resources and Environmental Control
459 and the electric supplier, DP&L, DEC, or the appropriate municipal electric ~~company~~ company, a description of
460 the energy generating facility, including the facilities host location, capacity, and fuel type or generating
461 technology the following information:

462 1. A list of individual meters the community desires to aggregate identified by name, address, and account
463 ~~number; ,~~ representing 50% of the subscribing capacity of the community and

464 2. Proof that the project has started the permitting process by either providing a receipt of a filing fee paid to
465 a local jurisdiction for a permit, or if a preliminary action is required prior to paying a filing fee, evidence
466 confirming completion of the preliminary action; and

467 ~~2.~~ (3) A description of the energy generating facility, including the facility's host location, capacity, and fuel
468 type or generating technology; and

469 4. Proof of site control.

470 ~~3.~~ (5) The quantity of kWh credits attributed to each customer, which the electric supplier, DP&L, DEC, or
471 the appropriate municipal electric company shall true-up at the end of the annualized billing period; and

472 6. An interconnection study with the electric supplier or a signed interconnection agreement.

473 g. A community may change its list of aggregated meters no more than ~~quarterly~~ monthly by providing ~~90~~ 30
474 days' written notice to the electric supplier, DP&L, DEC, or the appropriate municipal electric ~~company; and~~
475 company.

476 h. If the community removes individual customers from the aggregate, the community shall either replace the
477 removed customers, reduce the generating capacity of the community-owned energy generating facility to
478 remain compliant with the provisions provided under paragraphs (e)(9)c. and d. of this section, or negotiate with
479 the electric supplier, DP&L, DEC, or the appropriate municipal electric company to establish a mutually
480 acceptable agreement for any excess kWh ~~credit; credit, or the community shall be paid at the Utility's~~
481 Locational Marginal Price for any energy that is unallocated.

482 i. An electric supplier, DP&L, DEC, or municipal electric companies may require that customers participating in
483 a community-owned energy generating facility have their meters read on the same billing ~~cycle; and cycle~~.

484 j. Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation
485 as either public utilities or an electric supplier solely because of their participation in community-owned
486 generating facilities.

487 (f) The Commission shall periodically review the impact of net-metering rules in this section and recommend changes
488 or adjustments necessary for the economic health of utilities.

489 (g) A retail electric customer having on its premises 1 or more grid-integrated electric vehicles shall be credited in
490 kilowatt-hours (kWh) for energy discharged to the grid from the vehicle's battery at the same kWh rate that customer
491 pays to charge the battery from the grid, as defined in paragraph (e)(1) of this section. Excess kWh credits shall be
492 handled in the same manner as net metering as described in paragraph (e)(1) of this section. To qualify under this
493 subsection, the grid-integrated electric vehicle must meet the requirements in paragraphs (d)(1)a., (d)(1)b. and (d)(4) of
494 this section. Connection and metering of grid integrated vehicles shall be subject to the rules and regulations found in
495 paragraphs (e)(4), (5), and (6) of this section.

496 (h) The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection (g) of this
497 section. Such tariffs may include rate and credit structures that vary from those set forth in subsection (g) of this section,
498 as long as alternative rate and credit structures are not inconsistent with the development of grid-integrated electric
499 vehicles.

500 (i) Nothing in this section is intended in any way to limit eligibility for net energy metering services based upon direct
501 ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility,
502 where net energy metering would otherwise be available.

- 503 (j) Disputes shall be resolved by the Commission or appropriate governing body.
- 504 (k) Rules, regulations and programs for paragraphs (e)(8) and (9) of this section shall be promulgated by the
- 505 Commission or the appropriate local regulatory authority not later than July 1, 2011.

SYNOPSIS

This bill is intended to advance sustainable energy goals and initiatives in Delaware and to restore Delaware as a leader in renewable, sustainable energy. First, this Act builds on the Renewable Energy Portfolio Standards Act, which was first enacted into law in 2005, by setting new standards for the minimum percentage of electric energy sales from eligible energy resources and solar photovoltaics. Second, this bill contains the “Community Sustainable Energy Authorities Act,” which authorizes incorporated municipalities, towns, and counties and the Delaware Sustainable Energy Utility to create authorities to develop, promote, and operate community sustainable energy projects.

Author: Senator McDowell