



June 8, 2020

To: Members of the House Environmental Resources and Energy Committee
Re: Opposition to House Bill 2025 (P.N. 2926)

Dear Representatives:

Tomorrow the House Environmental Resources and Energy Committee will meet to consider House Bill 2025 (P.N. 2926), which mandates that any rulemaking addressing carbon dioxide emissions be affirmatively approved by the General Assembly. The Pennsylvania Environmental Council (PEC) and Environmental Defense Fund (EDF) urge you to oppose this legislation for the reasons provided in this letter. Our concerns lie both in the framework of the bill itself as well as in broader implications for the Commonwealth.

The General Assembly Must Affirmatively Act on Energy and Climate

In 2008, with bipartisan support, the General Assembly passed the Pennsylvania Climate Change Act (Act 70 of 2008). Recognizing the immediacy and consequence of climate change to our state, this legislation charged the Department of Environmental Protection (Department) with developing a Climate Change Action Plan, to be updated every three years, that would identify cost-effective strategies for addressing greenhouse gas emissions, including policy recommendations to the General Assembly.¹ In addition, periodic assessments have been developed in consultation with Penn State University on the economic, health, and environmental impacts to Pennsylvania resulting from climate change.²

The Action Plans and Impacts Analyses have consistently underscored the consensus that climate change is an immediate economic and environmental concern, and that our state's contribution to greenhouse emissions is globally significant. These findings mirror public and

¹ The most recent (April 2019) Climate Change Action Plan can be found at <http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=1454161&DocName=2018%20PA%20CLIMATE%20ACTION%20PLAN.PDF>

² The most recent (April 2020) Pennsylvania Climate Change Impacts Assessment can be found at <http://files.dep.state.pa.us/Energy/Office%20of%20Energy%20and%20Technology/OETDPortalFiles/ClimateChange/2020ClimateChangeImpactsAssessmentUpdate.pdf>

private conclusions from interests as far ranging as the scientific community,³ the U.S. Military,⁴ investment and financial institutions,⁵ and utilities and energy companies.⁶

Despite all this, and even with a majority of Pennsylvanians in support of specific policies and actions to reduce greenhouse gas emissions⁷ – even factoring the Covid-19 pandemic⁸ – the General Assembly has essentially remained silent. There has been no comprehensive legislative action to address climate change, or to best position Pennsylvania for the necessary transformation to a net zero economy. This includes failing to address impacts to communities already significantly affected by changes to our energy portfolio even with the absence of policy action. This runs counter to bi-partisan action in legislatures across the country which have passed ambitious legislation to hasten and support the transition to the clean economy.

Our legislature can and should lead the charge on maximizing the economic and employment opportunities provided through clean and net zero technologies, and to help communities adapt to the inevitable transitions that have occurred and will continue in the years to come.

PEC has provided policy recommendations⁹ for decarbonization of Pennsylvania’s electricity sector which are premised on an “all in” approach that can maintain and improve the state’s energy portfolio. Chief among those recommendations is for Pennsylvania to link to the Regional Greenhouse Gas Initiative (RGGI), a proven market-based platform that provides cost-effective and flexible means to reduce emissions from the electricity sector while returning revenue to our state for investment in communities, jobs, and businesses.

RGGI has helped other states reduce their emissions, lower energy prices, and create jobs. RGGI’s emission allowance design mirrors other successful air pollution programs in which

³ See the Fourth National Climate Assessment (<https://nca2018.globalchange.gov>), as well as the reports of the Intergovernmental Panel on Climate Change (<https://www.ipcc.ch>).

⁴ See the January 2019 Department of Defense report on the impacts of climate change: <https://media.defense.gov/2019/Jan/29/2002084200/-1/-1/1/CLIMATE-CHANGE-REPORT-2019.PDF>

⁵ For example, Ceres (<https://www.ceres.org/news-center/press-releases/sweeping-new-report-provides-us-financial-regulators-key-action-steps>), Goldman Sachs (<https://www.goldmansachs.com/insights/pages/gs-research/taking-the-heat/report.pdf>), the Federal Reserve Bank (<https://www.frbsf.org/community-development/publications/community-development-investment-review/2019/october/strategies-to-address-climate-change-low-moderate-income-communities/>), and BlackRock (https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter?cid=ppc:CEOLetter:PMS:US:NA&gclid=EAlaIqobChMIktrLx5eL5wIVip6zCh1nBweOEAYASAAEgJPFvD_BwE&gclidsrc=aw.ds)

⁶ See <https://www.catf.us/resource/state-utility-climate-change-targets/>, as well as examples such as Shell’s Sky Scenario (<https://www.shell.com/energy-and-innovation/the-energy-future/scenarios/shell-scenario-sky.html>).

⁷ See <https://climatecommunication.yale.edu/visualizations-data/ycom-us/>

⁸ See <https://www.climatechangecommunication.org/wp-content/uploads/2020/05/climate-change-american-mind-april-2020b.pdf> and <https://www.mckinsey.com/business-functions/sustainability/our-insights/how-a-post-pandemic-stimulus-can-both-create-jobs-and-help-the-climate>

⁹ Please see PEC’s October 2018 testimony to the Committee (<https://pecpa.org/wp-content/uploads/PEC-House-ERE-Committee-Testimony.-Oct-28-2019.pdf>) as well as PEC’s Energy and Climate Pathways Report (<https://pecpa.org/wp-content/uploads/PEC-Energy-and-Climate-Pathway.pdf>).

Pennsylvania has already participated in. There are built-in protections to help control costs and the program has been deemed successful in terms of price discovery, transparency, transaction costs, and other logistical considerations.¹⁰

In short, joining RGGI is the most sensible and adaptable program to reduce carbon dioxide emissions. It is supported by states, environmental organizations and business and energy interests alike.

The Department has now developed proposed rulemaking to have the state link to RGGI beginning in 2022. Even though this rulemaking is in its preliminary stage, the agency has taken extraordinary steps to model and publicly present¹¹ the anticipated environmental and economic benefits and impacts of the proposal – even before the public comment period, and before a full regulatory analysis of the draft proposal that will be provided to the General Assembly and public.

Full analysis is of course essential and we welcome robust dialogue on energy and climate policy; but there must be a corresponding commitment to finding solutions. House Bill 2025 is not that vehicle. This legislation is written to allow the General Assembly to block the Department’s rulemaking proposal through mere inaction. Furthermore, House Bill 2025 also attempts to revise policy precedent and statutory authority relating to the control of air pollution in our Commonwealth.

House Bill 2025 is a Step Backwards

Our concerns with House Bill 2025 are as follows:

Redundancy with the Regulatory Review Act

House Bill 2025 sets forth public outreach and informational requirements that are already established by the Regulatory Review Act. We support assurance that rulemakings are fully vetted by the public and supported with sufficient examination; we merely raise this point to explain that long-established processes are already in place – including public comment and hearings, development of regulatory analysis and comment/response documents, and prescribed review by the General Assembly, Independent Regulatory Review Commission, Attorney General, Environmental Quality Board, and multiple advisory boards. As such, House Bill 2025 is unnecessary to accomplish these ends.

¹⁰ See Congressional Research Service, *The Regional Greenhouse Gas Initiative*. See also Paul J. Hibbard et al., “An Expanding Carbon Cap-and-Trade Regime? A Decade of Experience with RGGI Charts a Path Forward,” *The Electricity Journal*, 2018; and M.J. Bradley & Associates, *A Pioneering Approach to Carbon Markets: How the Northeast States Redefined Cap and Trade for the Benefit of Consumers*, 2017.

¹¹ This information and material is available on the Department’s website (see, for example, <https://www.dep.pa.gov/Business/Air/BAQ/AdvisoryGroups/Air-Quality-Technical-Advisory-Committee/Pages/default.aspx>).

Conflicts with Existing Statutory and Constitutional Authority

House Bill 2025 asserts that existing law does not provide the Department with the authority to develop a rulemaking for greenhouse gas emissions, but this is not the case. Through the Air Pollution Control Act (APCA), the legislature has already set forth very clear declarations of policy and authoritative provisions that direct the Department to adopt rules and regulations for the prevention, control, and reduction of air pollution, broadly defined as any pollution or emissions “which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.” Greenhouse gas emissions like carbon dioxide clearly fall within the design and intent of the APCA; particularly given the findings generated pursuant to the Climate Change Act.

House Bill 2025 also runs counter to the intent and express language of the Environmental Rights Amendment in our state Constitution, which establishes an affirmative obligation on both the Governor and General Assembly to protect public resources, including air and water quality.

The premise set forth by House Bill 2025 that the Department is acting on unfounded authority is erroneous and an oblique attempt to rewrite long-established statutory precedent.

Dismissal Through Inaction

Finally, House Bill 2025 grants the legislature the ability to halt the Department’s proposed rulemaking through mere inaction. This rests the power of decision in a small handful of leadership and committee chairs who would be under no obligation to act.

Under current law, and at any time, the legislature has the discretion to pass legislation to restart or abrogate a rulemaking proposal. House Bill 2025 makes special expansion of this authority solely for a rulemaking proposal designed to address greenhouse gas emissions. Aside from stacking the deck against movement on a critical public issue, the legislation raises constitutional questions.

This provision of the bill does more to ensure that a rulemaking will not be promulgated than it does to ensure full examination and engagement.

Conclusion

The proposed rulemaking set forth by the Department has provided a basis for constructive dialogue on Pennsylvania’s energy and climate future. That dialogue needs to happen now, and the General Assembly is integral to that process. But the effect of House Bill 2025 does more to close the door than set a path forward. As such, we urge you to oppose this legislation.

Thank you for your consideration.

Sincerely,

John Walliser
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Pennsylvania Environmental Council

Mandy Warner
Director, Climate and Clean Air Policy
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