



April 27, 2021

**To: Members of the Pennsylvania Senate Environmental Resources & Energy Committee**  
**Re: Opposition to Senate Bill 119 (P.N. 125)**

Dear Senators:

The Pennsylvania Environmental Council (PEC) and Environmental Defense Fund (EDF) urge you to oppose Senate Bill 119, which mandates that any rulemaking addressing carbon dioxide emissions be affirmatively approved by the General Assembly. Our concerns lie both in the framework of the bill as well as the broader implications for our Commonwealth.

The time to address climate change, protect Pennsylvanians, and invest in our communities and energy future is now. Senate Bill 119 runs counter to all of these objectives.

### **Pennsylvania Must 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, 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.<sup>1</sup> In addition, periodic assessments have been developed in consultation with Penn State University on the economic, health, and ecological impacts to Pennsylvania resulting from climate change.<sup>2</sup>

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

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<sup>1</sup> The most recent (April 2019) Climate Change Action Plan is online at <http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=1454161&DocName=2018%20PA%20CLIMATE%20ACTION%20PLAN.PDF%20%20%20%3cspan%20style%3D%22color:blue%3b%22%3e%28NEW%29%3c/span%3e>

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

the scientific community,<sup>3</sup> investment and financial institutions,<sup>4</sup> business associations,<sup>5</sup> and utilities and energy companies.<sup>6</sup>

Despite all this, and even with a bipartisan majority of Pennsylvanians in support of specific policies and actions to reduce greenhouse gas emissions,<sup>7</sup> the General Assembly has 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. Our legislature's inaction runs counter to bipartisan work in states across the country, which have passed forward-looking legislation on the transition to a clean energy economy.

There is a growing consensus among industry, investors, and businesses of the importance of implementing decarbonization strategies and propelling clean energy investment. Major electric distributors are aligned with this tenet; in fact, the vast majority of customers in Pennsylvania are served by utilities that have made emission reduction commitments.<sup>8</sup>

The legislature should be working to position Pennsylvania as a leader in the clean energy economy. Businesses will not look to our state if the pollution impacts of our energy profile are not addressed. States and utilities will reject our generation if they do not meet their own energy standards. That reality will equally hold true for other generation states seeking to attract investment and export power. Pennsylvania can chart its own unique, self-determined path to living up to its climate goals, but we must achieve clear and measurable emission reductions, and provide the mechanisms to achieve those goals.

The first step should be to support the Department's proposed rulemaking 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 proceeds to our state for potential 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 Pennsylvania has already participated in. There are built-in protections to help control costs and the program has been

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<sup>3</sup> 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>).

<sup>4</sup> For example, BlackRock (<https://www.blackrock.com/us/individual/2021-larry-fink-ceo-letter>), 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>), and 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/>).

<sup>5</sup> See <https://www.uschamber.com/series/above-the-fold/update-the-chambers-approach-climate>

<sup>6</sup> See <https://sepapower.org/utility-transformation-challenge/utility-carbon-reduction-tracker/>), 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>).

<sup>7</sup> See <https://climatecommunication.yale.edu/publications/politics-global-warming-december-2020/>

<sup>8</sup> <https://sepapower.org/utility-transformation-challenge/utility-carbon-reduction-tracker/>

deemed successful in terms of price discovery, transparency, transaction costs, and other logistical considerations.<sup>9</sup>

In short, joining RGGI is the most sensible and adaptable program to begin the reduction of carbon dioxide emissions. It is supported by states, environmental organizations, and business and energy interests alike. Furthermore, it provides a proven platform for our state to best position itself ahead of any federal requirements – while ensuring that investment opportunities benefit Pennsylvania.

There is a misconception that rejecting RGGI will ensure the survival of the few remaining coal generation facilities in our state. The facts are that coal generation in Pennsylvania, and elsewhere in the United States, has been rapidly declining due to more competitive and efficient generation from renewables and natural gas, age of the generation fleet, and growing business and investment preference for clean energy. Furthermore, without RGGI, the only assurance is that communities will continue to be left to fend for themselves in the face of plant closures.

### **Senate Bill 119 is a Step Backwards**

Senate Bill 119 attempts to revise policy precedent and statutory authority relating to the control of air pollution in our Commonwealth. It creates redundant processes already provided in existing law. And it ultimately delays and impedes any meaningful action on climate and energy transitioning. This legislation would not only stop Pennsylvania from linking to RGGI – it would block *any* action by the Department to address carbon dioxide emissions.

#### SB 119 Conflicts with Existing Statutory and Constitutional Authority

SB 119 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 squarely fall within the design and intent of the APCA; particularly given the findings generated pursuant to the Climate Change Act.

This bill 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 citizens and public resources, including air and water quality.

The premise set forth by SB 119 that the Department is acting on unfounded authority is erroneous and an oblique attempt to rewrite long-established statutory precedent.

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<sup>9</sup> 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.

### SB 119 is Redundant with Existing Regulatory Review Act Requirements

SB 119 sets forth public outreach and informational requirements that are already established by the Regulatory Review Act. We support the principle that rulemakings should be 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, and Environmental Quality Board.

All of these measures are already required; Senate Bill 119 is not necessary to accomplish these ends.

### SB 119 is Designed to Impede Action

Finally, SB 119 grants the legislature the unprecedented ability to halt the Department's proposed rulemaking through mere inaction. There is no provision in the legislation to require review. This rests Pennsylvania's energy and climate future in a handful of leadership and committee chairs who would be under no obligation to consider or act on the proposal – and have thus far been unwilling to lead on climate solutions despite support for such leadership from the vast majority of Pennsylvanians.

Under current law, and at any time, the legislature has the discretion to pass legislation to restart or abrogate a rulemaking proposal. SB 119 makes an extraordinary expansion of this authority solely for a rulemaking proposal designed to address carbon dioxide emissions. Aside from stacking the deck against movement on a critical public issue, the legislation raises constitutional questions.

This design of this legislation does more to ensure that a rulemaking will not be promulgated than it does to promote examination and engagement.

### **There Are Alternatives for the Legislature to Engage and Act**

Last year legislation was introduced (former Senate Bill 15) that would have accomplished two important objectives: (1) it would chart the course for Pennsylvania to reduce greenhouse gas emissions from the electric power sector; and (2) it would provide a framework for investment in communities and programs that promote energy innovation, mitigate utility bill impacts, increase efficiency, and workforce development.

Our legislature can help 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 will continue in the years to come.

If the legislature genuinely wishes to have further engagement on RGGI and solutions to carbon pollution, as has been contended, we would welcome that.

We would recommend as a start immediately revisiting approaches like SB15, which positively engage the legislature on climate and energy at a time when action is truly needed and indeed is expected by Pennsylvanians.

But simply rejecting RGGI, the only policy on the table that cost-effectively and immediately guarantees emissions reductions from the power sector, is not an acceptable path.

## **Conclusion**

It is time for Pennsylvania to move forward. The needs are clear, as are the opportunities, and Pennsylvanians are calling on leadership in Harrisburg to act. For these reasons, we urge you to oppose Senate Bill 119 and advance legislation like former Senate Bill 15. Thank you for your consideration.

Sincerely,

John Walliser  
Senior Vice President  
Pennsylvania Environmental Council

Mandy Warner  
Director, Climate and Clean Air Policy  
Environmental Defense Fund