

SENATE No. 13

Senate, February 8, 2021 -- Message from His Excellency the Governor (pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts) returning with recommendation of amendment the engrossed Bill creating a next-generation roadmap for Massachusetts climate policy (see Senate, No. 9).

The Commonwealth of Massachusetts



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February 7, 2021

To the Honorable Senate and House of Representatives,

Here in Massachusetts, we have been experiencing the impacts of climate change for years and have led the nation with our response. My Administration is proud to have worked closely with the Legislature for the past six years to address this challenge through bold action to reduce emissions and to advance the development of clean energy. We are pleased to continue that partnership through this legislation that will establish many important policies on the road to our ambitious 2050 climate goals.

Pursuant to Article LVI, as amended by Section 3 of Article XC, of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment

Senate Bill No. 9, “An Act creating a next-generation roadmap for Massachusetts climate policy.” This bill is identical to Senate Bill No. 2995, which the previous General Court laid on my desk on January 4, 2021.

I am grateful the Legislature moved quickly to refile this bill, as it now provides an opportunity for the Administration and Legislature to work together to refine the language in a manner that was not possible at the end of the last legislative session. Over the past three weeks,

our Administration has engaged in productive and informative discussion with members of the House and Senate and various stakeholders, and we have been able to find considerable common ground. I am grateful for the time and energy that all parties have dedicated to discussing amendments to this bill, which I believe will result in improved legislation for the people of the Commonwealth.

Informed by this robust dialogue, I am proposing a series of targeted amendments that make several policy adjustments and technical improvements. I commend the Legislature's efforts to address the urgent challenge of climate change and believe that this bill, combined with the planning work my Administration has recently completed, will set the Commonwealth on a path for net zero emissions in 2050 through aggressive, equitable and science-based climate action that protects the state's economy and most vulnerable residents.

The science is clear—the Commonwealth, the nation and the world must achieve net zero emissions by 2050 if we are to avoid the worst impacts of climate change. In 2020, my Administration adopted net zero as a legally binding limit for 2050 emissions under the Global Warming Solutions Act of 2008 (the "GWSA"). This legislation enshrines net zero emissions in statute, further binding the Commonwealth to this important goal.

Massachusetts is a leader on offshore wind, and we are proud of our partnership with the Legislature to advance the Commonwealth's clean energy leadership. Our comprehensive 2050 Decarbonization Roadmap Report found that significant amounts of offshore wind, as much as 15 GW, will be necessary to reach the Commonwealth's net zero limit. We recognize that more work is needed to ramp up offshore wind development in Massachusetts and to provide clean, affordable power to residents. Further the scale of our clean energy and climate goals requires that we work with neighboring states to reform regional power markets to incorporate these clean energy goals and to ensure the energy grid can support deployment of these resources through transmission and interconnection. We support the bill's provision to increase the Commonwealth's authorization for procurement of up to 4,000 Megawatts of offshore wind and look forward to working with the Legislature on opportunities to regionally procure additional offshore wind and other clean energy resources during this session.

The GWSA requires the setting of interim emissions limits for 2030 and 2040, which provide important milestones to achieve net zero emissions in 2050. Based on extensive study, my Administration selected an emissions limit of 45% below 1990 levels as the interim limit for 2030 and last year presented a detailed plan on how we can reduce emissions to that level cost effectively, and equitably. As currently written, S.9 would require an even more aggressive emissions limit of no less than 50% below the 1990 level by 2030.

We recognize the possibility of technological innovations or changes in federal climate policy that could occur in the next decade and improve the Commonwealth's ability to reach greater emissions reductions goals while lowering costs. To ensure our decision-making is

responsive to the latest science, I am proposing amendments that would establish a range of 45% to 50% reductions for the 2030 limit, and 65% to 75% for the 2040 limit. This adjustment to the language of the bill will allow the Executive Branch to select a target that reflects the best available data and any changed circumstances that may make a more aggressive interim limit feasible and appropriate. Just as the original GWSA allowed the Executive Branch to select a 2020 interim target within a range established by the Legislature, this new climate bill should give the Commonwealth the ability to make responsive, data-based decisions and pivot when new information becomes available. This flexibility will also help the Commonwealth avoid the costs that are expected to result from imposing a higher limit, particularly on those who can least afford it.

The current legislation also proposes to help the Commonwealth realize overall statewide emissions reduction limits by establishing sublimits for particular sectors. To ensure these sublimits allow the Commonwealth to achieve our overall emissions reduction goals in the most cost-effective and equitable manner without unintentionally and disproportionately overburdening particular Massachusetts businesses and industries, I am proposing to allow sector-specific emissions sublimits to serve as planning tools rather than independent legal requirements, provided we achieve our overall statewide emissions reductions.

I am pleased to see a series of provisions codifying environmental justice principles in this legislation. Our Administration is committed to ensuring that environmental benefits and burdens are shared equitably across the Commonwealth, as expressed in our 2017 Environmental Justice Policy. I am proposing amendments to make these provisions even stronger and more protective of environmental justice populations.

First, as environmental justice populations are particularly vulnerable to the impacts of climate change, I am including these impacts in the bill's definition of "environmental burden." Second, while I approve of the changes to environmental review in the bill as enacted, I propose adding language that will require the Department of Environmental Protection to conduct cumulative impact analysis as a condition of issuing certain permits. Environmental justice populations have historically borne more than their fair share of pollution, particularly air pollution. Recognition of those facts should not be limited to environmental review and instead should be incorporated into permitting decisions directly.

To maintain the Commonwealth's leadership in energy efficiency and to meet our greenhouse gas emissions limits, significant improvements are needed to reduce emissions from new building construction while still ensuring that affordable housing options are expanded for residents. The Interim Clean Energy and Climate Plan for 2030 (CECP) calls for a high-performance stretch energy code to be available for municipal opt-in by 2022, and allows six years for full adoption statewide by 2028. The amendments I am proposing align with our CECP, provide clarity to industry and municipalities as to how this code will be developed and adopted, and limit cost pressures on new affordable housing. The proposals clarify that the existing stretch

energy code will be first be transitioned to a specialized stretch energy code under the control of the Department of Energy Resources (DOER). Through a regulatory process with significant stakeholder involvement, DOER will then promulgate an updated stretch energy code that includes a municipal option for high-performing, energy-efficient new construction that supports our emissions reduction goals. Additionally, I propose a more targeted expansion to the membership of the State Board of Building Regulation and Standards that supplements the current expertise of Board members.

Finally, I propose a series of technical amendments to address the nuts and bolts of implementation so that the Executive Branch will be better able to carry out the intent of this bill and protect the authority to implement regional programs and other emissions regulations mechanisms currently in place.

There is still much work to be done to fully address climate change, and the Executive Branch needs to begin the work of implementing any enacted legislation and our Clean Energy and Climate Plan for 2030. I sincerely hope that the Legislature will re-enact S.9 with these changes. I look forward to continuing the dialogue with the Legislature on this important issue and working together with the House and Senate on other important climate legislation in the coming session.

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For the reasons stated above, I recommend that the bill, S.9, be amended as follows:-

Amend the bill, in section 1, by striking out, in lines 5 to 6, the words “in the commonwealth including, but not limited to, emissions from any transportation vehicle,” and inserting in place thereof the following words:- including, but not limited to, emissions from transportation or heating fuels or from any.

And amend the bill, in section 2, by inserting after the word “emissions” in line 12, the first time it appears, the following words:- , including but not limited to greenhouse gas emissions from transportation fuels, heating fuels, or electricity that are used, distributed, consumed, combusted, or sold into the commonwealth,.

And further amend section 2 by adding the following sentence:- When used in relation to the regulation of emissions, a person or entity that sells or distributes transportation fuels, heating fuels, or electricity may be considered to be the source of greenhouse gas emissions from the use, distribution, consumption, combustion, or sale of such fuels or electricity.

And amend the bill, in section 4, by striking out, in line 26, the word “gases” and inserting in place thereof the following words:- gas emissions.

And further amend section 4 by striking out, in line 29, the word “annual”.

And further amend section 4 by striking out, in lines 32 to 34, the words “secretary, the regional greenhouse gas initiative or other regional program that result in the same greenhouse gas emissions reduction, over the same time period, as direct compliance with a greenhouse gas emissions limit or emission reduction measure adopted pursuant to this chapter” and inserting in place thereof the following words:- secretary and the department, the regional greenhouse gas initiative or other similar multi-jurisdictional program that results in greenhouse gas emissions reductions.

And amend the bill, in section 5, by striking out lines 45 to 47 and inserting in place thereof the following sentence:- The department shall establish programs to monitor and reduce emissions of greenhouse gases and promulgate regulations regarding sources or categories of sources that emit greenhouse gases in order to achieve the greenhouse gas emissions limits and sublimits and implement the roadmap plans required by this chapter.

And amend the bill, in section 9, by inserting after the figure “3” in line 78 the following words:- ; provided, however, that a sublimit shall not be binding for a given year for which the commonwealth is in compliance with the statewide greenhouse gas limit adopted pursuant to subsection (b) of section 3.

And amend the bill, in section 10, by inserting after the word “least” in line 123 the following words:- 45 per cent and not more than.

And further amend section 10 by inserting after the word “least” in line 125 the following words:- 65 per cent and not more than.

And further amend section 10 by striking out, in lines 182 to 184, the words “promulgate regulations regarding all sources or categories of sources that emit greenhouse gases in order to achieve the emissions limits and sublimits and implement the roadmap plans set forth in subsection (b) of section 3” and inserting in place thereof the following words:- establish programs to reduce emissions of greenhouse gases and promulgate regulations regarding sources or categories of sources that emit greenhouse gases in order to achieve the greenhouse gas emissions limits and sublimits and implement the roadmap plans required by this chapter.

And amend the bill by inserting after section 11 the following 2 sections:-

SECTION 11A. Section 7 of said chapter 21N, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) The secretary and the department may adopt regulations governing market-based compliance mechanisms to reduce greenhouse gas emissions from sources or categories of sources in order to achieve the statewide greenhouse gas emissions limits and sublimits required by this chapter.

SECTION 11B. Subsection (d) of said section 7 of said chapter 21N, as so appearing, is hereby amended by inserting after the word “office” in line 28 the following words:- and the department.

And amend the bill, in section 14, by striking out lines 215 to 219 and inserting in place thereof the following words:-

(b) The department of public utilities shall annually direct the electric and gas distribution companies and municipal aggregators with certified energy plans to jointly transfer funds collected pursuant to section 19 of chapter 25 to the center for the purposes of implementing the clean energy equity workforce and market development program; provided, that the electric and gas distribution companies and municipal aggregators with certified energy plans shall transfer no less than \$12,000,000 no later than December 31 each year. Such transfer shall not reduce the amount expended on low-income programs pursuant to subsection (c) of said section 19 of said chapter 25.

And amend the bill, in section 16, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill, in section 17, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill, in section 18, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill, in section 19, by inserting after the word “annually” in line 241, the following words:- direct the electric and gas distribution companies and municipal aggregators with certified energy plans to jointly.

And further amend section 19 by striking out, in line 244, the words “low-income program funds allocated” and inserting in place thereof the following words:- the amount expended on low-income programs.

And amend the bill, in section 21, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill, in section 22, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill, in section 23, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill by striking out section 25 and inserting in place thereof the following section:-

SECTION 25. Said section 21 of said chapter 25, as so appearing, is hereby further amended by inserting after the words “peak load,” in line 73, the following words:- reducing greenhouse gas emissions,.

And amend the bill, in section 26, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill by inserting after section 26 the following section:-

SECTION 26A. Said section 21 of said chapter 25, as so appearing, is hereby further amended by striking out, in lines 109 to 111, the words “identified and shall capture all energy efficiency and demand reduction resources that are cost effective or less expensive than supply” and inserting in place thereof the following words:- have complied with the requirements of this section.

And amend the bill, in section 27, by adding the following words:- , except in the cases of conversions from fossil fuel heating and cooling to fossil fuel heating and cooling.

And amend the bill, in section 28, by striking out, in line 283, the word “The”, the first time it appears and inserting in place thereof the following words:- Notwithstanding the requirements of subsection (b)(1), the.

And further amend section 31 by striking out lines 313 to 315 and inserting in place thereof the following words:-

(14) develop and promulgate, in consultation with the state board of building regulations and standards, a specialized stretch energy code that includes a higher performing municipal opt-in standard which is designed to achieve compliance with the commonwealth’s statewide greenhouse gas emission limits and sublimits established pursuant to chapter 21N.

And amend the bill, in section 34, by striking out, in line 374, the figure “32” and inserting in place thereof the following figure:- 33.

And amend the bill, in section 56, by inserting after the word “to” in line 658 the following words:- , climate change.

And amend the bill, in section 58, by striking out, in lines 707 and 710, each time they appear, the words “that is not insignificant”.

And amend the bill, in section 60, by striking out, in line 740, the words “is significant and”.

And further amend section 60 by striking out, in line 753, the words “non-significant projects” and inserting in place thereof the following words:- projects that do not require the filing of an environmental notification form pursuant to section 62A.

And amend the bill, in section 64, by striking out, in line 848, the figure “15” and inserting in place thereof the following figure:- 13.

And amend the bill, in section 66, by striking out, in line 854, the figure “12” and inserting in place thereof the following figure:- 10.

And amend the bill, in section 67, by striking out, in lines 856 to 858, the words “, 1 of whom shall be an expert in commercial building energy efficiency, 1 of whom shall be an expert in residential building energy efficiency”.

And amend the bill, in section 72, by inserting after the word “any” in line 876 the following words:- more stringent.

And amend the bill, in section 73, by striking out, in line 880, the word “adopted” and inserting in place thereof the following word:- promulgated.

And amend the bill by inserting after section 73 the following section:-

SECTION 73A. Section 100 of said chapter 143 is hereby amended by striking out, in line 9, the word “ninety-six” and inserting in place thereof the following words:- 96, other than the specialized stretch energy code developed and promulgated by the department of energy resources.

And amend the bill, in section 78, by striking out, in lines 940 to 942, the words “Paragraph (8) of section 1F of said chapter 164, as so appearing, is hereby amended by adding the following subparagraph:- (g)” and inserting in place thereof the following words:- Section 1F of said chapter 164, as so appearing, is hereby amended by adding the following paragraph:- (10).

And amend the bill, in section 85, by striking out, in line 981, the word “non-station” and inserting in place thereof the following word:- station.

And amend the bill, in section 86, by striking out subsections (g) and (h) of section 144 of chapter 164 of the General Laws, as appearing in lines 987 to 993, and inserting in place thereof the following 2 subsections:-

(g) The department shall establish requirements for the maintenance, timely updating, accuracy, and security of gas company maps and records. The department shall incorporate these requirements as a metric in the department’s service quality indicators for gas companies.

(h) The department shall incorporate into its service quality indicators for gas companies a metric or metrics related to disruptions in the provision of electronic data, including but not limited to, maps and records relevant to inspections, maintenance, repairs, and construction to its in-house workforce and contractors.

And amend the bill by striking out section 92.

And amend the bill, in section 96, by striking out, in lines 1060 to 1061, the words “11F of chapter 25A of the General Laws” and inserting in place thereof the following words:- 11 of chapter 75 of the acts of 2016.

And amend the bill, in section 98, by striking out, in line 1076, the words “sections 61and” and inserting in place thereof the following words:- 61 and.

And amend the bill, by inserting after section 98 the following 2 sections:-

SECTION 98A. Notwithstanding any special or general law, rule or regulation to the contrary, not later than January 1, 2028, the state board of building regulations and standards shall incorporate the opt-in higher performing standard of the specialized stretch energy code as developed and promulgated under section 6 of chapter 25A of the General Laws into the base energy provisions of the state building code adopted under section 93 of chapter 143 of the General Laws.

SECTION 98B. Notwithstanding the provisions of this act, any existing stretch energy code adopted by the state board of building regulations and standards shall remain in full force and effect until the final promulgation of the specialized stretch energy code by the department of energy resources pursuant to section 6 of chapter 25A of the General Laws.

And amend the bill, in section 101, by striking out lines 1116 to 1120 and inserting in place thereof the following words:-

households; and (ii) develop and promulgate the specialized stretch energy code not later than 18 months after the effective date of this act. Notwithstanding any special or general law, rule or regulation to the contrary, any municipality may adopt the specialized stretch energy code following its promulgation. A community designated as a green community under subsection (c) of section 10 of chapter 25A of the General Laws that elects not to adopt the opt-in higher performing standard of the specialized stretch energy code shall not lose its designation as a green community solely as a result of that election.

And amend the bill by inserting after section 102 the following 3 sections:-

SECTION 102A. The secretary of energy and environmental affairs shall promulgate regulations to implement sections 57 and 58 by no later than 180 days after the effective date of this act.

SECTION 102B. The requirements imposed by sections 57 and 58 shall apply to new projects filed under section 62A of chapter 30 of the General Laws on or after the effective date of regulations promulgated under section 102A.

SECTION 102C. The department of environmental protection shall evaluate and seek public comment on the incorporation of cumulative impact analyses in the assessment and identification of certain categories of permits and approvals. Not later than 18 months after the effective date of this act, the department of environmental protection shall propose regulations to

include cumulative impact analyses for defined categories of air quality permits identified through the evaluation and public comment process.

And amend the bill, in section 103, by striking out, in line 1129, the words “and regulations”.

And amend the bill, in section 107, by adding the following sentence:- After January 1, 2022 the secretary may set more stringent 2025 and 2030 statewide greenhouse gas emission interim limits and sublimits based on changed circumstances.

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Respectfully submitted,

Charles D. Baker,
Governor