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I N   S E N A T E

January 30, 2014

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Introduced by Sens. MAZIARZ, RITCHIE, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, the public authorities law, and the environmental conservation law, in relation to biomass-fired electric generating facilities subject to the regional greenhouse gas initiative, the CO2 budget trading program, and the CO2 allowance auction program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative intent. The legislature hereby finds and  
2 declares that it is in the economic and environmental interests of the  
3 citizens of the state of New York to support and encourage renewable  
4 energy generation through the conversion of coal-fired electric generat-  
5 ing facilities to biomass-fired facilities. The combustion of biomass  
6 offers a sustainable and manageable carbon lifecycle since the materials  
7 included in biomass generally absorb atmospheric carbon during their  
8 lifecycle and then return it to the atmosphere during combustion. This  
9 process mimics the natural lifecycle of plant life that can fall to the  
10 forest floor, decompose and return its carbon to the atmosphere.  
11     The legislature further finds and declares that biomass production  
12 facilities support and sustain jobs, particularly in upstate New York,  
13 where more than four thousand people are employed directly or indirectly  
14 by the industry. In fact, many of the largest and most successful biom-  
15 ass facilities are located in parts of New York state that have high  
16 unemployment and are in desperate need of economic development. New York  
17 state also possesses an abundance of biomass fuel due to the large  
18 amount of untapped forest and agricultural land where biomass fuel can  
19 be collected. Biomass is the equivalent of solar energy stored in organ-  
20 ic matter and is environmentally friendly while costing around one third  
21 of the cost of fossil fuels.  
22     As such, to the extent that operators of electric generating facili-  
23 ties in New York state are willing to convert formerly coal-fired facil-  
24 ities (boilers, combustion turbines, or combined cycle systems) to

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 instead be fueled by biomass, state policy should encourage and support  
2 such conversions rather than discourage them. While new biomass-fired  
3 electric generating facilities are not required to acquire CO2 allow-  
4 ances under the regulations implementing the Regional Greenhouse Gas  
5 Initiative (RGGI) in New York state, former coal-fired facilities that  
6 convert to combusting biomass are still subject to RGGI's requirements  
7 under existing regulations, which effectively discourages such conver-  
8 sions. To remedy this situation, and consistent with the intent of RGGI  
9 to encourage more renewable energy generation, the legislature declares  
10 that formerly coal-fired electric generating facilities that convert to  
11 primarily biomass-fired facilities shall not be required under the RGGI  
12 regulations to obtain CO2 allowances for CO2 emissions attributable to  
13 the burning of biomass fuel.

14 S 2. The public service law is amended by adding a new section 73 to  
15 read as follows:

16 S 73. COOPERATION WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOP-  
17 MENT AUTHORITY AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THE  
18 DEPARTMENT SHALL COOPERATE WITH THE NEW YORK STATE ENERGY RESEARCH AND  
19 DEVELOPMENT AUTHORITY AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
20 IN THE IMPLEMENTATION OF SUBDIVISION FOUR OF SECTION 19-0312 OF THE  
21 ENVIRONMENTAL CONSERVATION LAW RELATING TO ELECTRIC GENERATING FACILI-  
22 TIES THAT ARE SUBJECT TO THE CO2 BUDGET TRADING PROGRAM (6 NYCRR PART  
23 242) ESTABLISHED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION IN  
24 CONNECTION WITH THE REGIONAL GREENHOUSE GAS INITIATIVE.

25 S 3. Section 1854 of the public authorities law is amended by adding a  
26 new subdivision 22 to read as follows:

27 22. COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND  
28 THE DEPARTMENT OF PUBLIC SERVICE. THE AUTHORITY SHALL COOPERATE WITH THE  
29 DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF PUBLIC  
30 SERVICE IN THE IMPLEMENTATION OF SUBDIVISION FOUR OF SECTION 19-0312 OF  
31 THE ENVIRONMENTAL CONSERVATION LAW RELATING TO ELECTRIC GENERATING  
32 FACILITIES THAT ARE SUBJECT TO THE CO2 BUDGET TRADING PROGRAM (6 NYCRR  
33 PART 242) ESTABLISHED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION IN  
34 CONNECTION WITH THE REGIONAL GREENHOUSE GAS INITIATIVE.

35 S 4. Section 19-0312 of the environmental conservation law is amended  
36 by adding a new subdivision 4 to read as follows:

37 4. NOTWITHSTANDING ANY LAW, RULE, REGULATION OR POLICY TO THE CONTRA-  
38 RY, AN ELECTRIC GENERATING FACILITY THAT USES BIOMASS FOR MORE THAN  
39 FIFTY PERCENT OF ITS ANNUAL HEAT INPUT SHALL NOT BE REQUIRED TO OBTAIN  
40 CO2 ALLOWANCES FOR CO2 EMISSIONS ATTRIBUTABLE TO THE BURNING OF BIOMASS  
41 UNDER THE CO2 BUDGET TRADING PROGRAM (6 NYCRR PART 242), WHICH WAS  
42 ESTABLISHED BY THE DEPARTMENT IN CONNECTION WITH THE REGIONAL GREENHOUSE  
43 GAS INITIATIVE, TO THE EXTENT THAT SUCH ELECTRIC GENERATING FACILITY  
44 USES BIOMASS IN A STATIONARY BOILER, COMBUSTION TURBINE OR A COMBINED  
45 CYCLE SYSTEM THAT (I) WAS FORMERLY FOSSIL FUEL-FIRED DUE TO THE USE OF  
46 COAL AS ITS PRIMARY FUEL AND (II) IS NO LONGER AUTHORIZED TO COMBUST  
47 COAL UNDER ITS AIR TITLE V FACILITY PERMIT ISSUED BY THE DEPARTMENT  
48 PURSUANT TO 6 NYCRR SUBPART 201-6. FOR THE PURPOSES OF THIS SUBDIVISION,  
49 THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

50 A. "BIOMASS" SHALL MEAN:

51 (I) ANY ORGANIC MATERIAL GROWN FOR THE PURPOSE OF BEING CONVERTED TO  
52 ENERGY;

53 (II) ANY ORGANIC BYPRODUCT OF AGRICULTURE THAT CAN BE CONVERTED INTO  
54 ENERGY; OR

1 (III) ANY MATERIAL THAT CAN BE CONVERTED INTO ENERGY AND IS NONMER-  
2 CHANTABLE FOR OTHER PURPOSES, THAT IS SEGREGATED FROM OTHER NONMERCHANT-  
3 ABLE MATERIAL, AND THAT IS:

4 (1) A FOREST-RELATED ORGANIC RESOURCE, INCLUDING MILL RESIDUES,  
5 PRECOMMERCIAL THINNINGS, SLASH, BRUSH, OR BYPRODUCT FROM CONVERSION OF  
6 TREES TO MERCHANTABLE MATERIAL; OR

7 (2) A WOOD MATERIAL, INCLUDING PALLETS, CRATES, DUNNAGE, MANUFACTURING  
8 AND CONSTRUCTION MATERIALS (OTHER THAN PRESSURE-TREATED,  
9 CHEMICALLY-TREATED, OR PAINTED WOOD PRODUCTS), AND LANDSCAPE OR  
10 RIGHT-OF-WAY TREE TRIMMINGS.

11 B. "BOILER", "COMBUSTION TURBINE", "COMBINED CYCLE SYSTEM", "FOSSIL  
12 FUEL-FIRED", AND "PRIMARY FUEL" SHALL HAVE THE SAME MEANINGS AS ASCRIBED  
13 TO SUCH TERMS IN 6 NYCRR 242-1.2.

14 S 5. This act shall take effect on the ninetieth day after it shall  
15 have become a law and shall apply to all control periods commencing on  
16 or after January 1, 2012; provided however, that effective immediately  
17 the department of environmental conservation is authorized and directed  
18 to amend, revise and/or repeal any rule, regulation or policy necessary  
19 for the implementation of this act on or before such effective date.