

S T A T E O F N E W Y O R K

11507--A

I N A S S E M B L Y

June 18, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Sweeney) --
read once and referred to the Committee on Environmental Conservation
-- committee discharged, bill amended, ordered reprinted as amended
and recommitted to said committee

AN ACT to amend the environmental conservation law and the executive
law, in relation to global warming pollution control

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

1 Section 1. Legislative findings. Global warming poses a serious threat
2 to the economic well-being, public health, natural resources and envi-
3 ronment of New York. The potential adverse impacts of global warming
4 include the exacerbation of air quality problems, a reduction in the
5 quality and supply of water to the state, a rise in sea levels resulting
6 in the displacement of coastal businesses, residents and infrastructure,
7 damage to marine ecosystems and the natural environment, and an increase
8 in the incidences of infectious diseases, asthma, and other human
9 health-related problems. Global warming will have detrimental effects
10 on some of New York's largest industries, including agriculture, tour-
11 ism, skiing, recreational and commercial fishing and forestry.
12 The Intergovernmental Panel on Climate Change, awarded the 2007 Nobel
13 Peace Prize, determined that burning coal, oil and gas has led to higher
14 temperatures that are already impacting physical and biological systems.
15 The panel also projected temperatures would rise more rapidly if green-
16 house gases are not abated. The panel concluded that reducing emissions
17 80 percent below current emissions by mid-century would prevent the
18 worst impacts of global warming.
19 National and international actions are necessary to fully address the
20 issue of global warming. Action taken by New York and other states to
21 reduce emissions of greenhouse gases will have far-reaching effects by
22 encouraging the federal government, and other countries to act including
23 encouraging the development of sustainable, non-polluting technologies
24 such as solar, wind, geothermal and ocean currents. New York state
25 needs to continue its leadership in addressing global warming; building
26 on the progress gained by creating the regional greenhouse gas initi-

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

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ative. The legislature recognizes the steps taken by the state in moving forward on the Renewable Portfolio Standard (RPS) to generate thirty percent of our energy needs from renewable sources by 2015, the energy efficiency portfolio standard to reduce electric usage by fifteen percent by 2015, and the work of the state climate action plan to reduce our greenhouse gas emissions.

S 2. Article 19 of the environmental conservation law is amended by adding a new title 13 to read as follows:

TITLE 13

GLOBAL WARMING POLLUTION CONTROL

SECTION 19-1301. SHORT TITLE.

19-1303. DEFINITIONS.

19-1305. GREENHOUSE GAS REPORTING.

19-1307. GREENHOUSE GAS LIMITS.

S 19-1301. SHORT TITLE.

THIS TITLE MAY BE CITED AS THE "GLOBAL WARMING POLLUTION CONTROL ACT".

S 19-1303. DEFINITIONS.

WHEN USED IN THIS TITLE:

1. "GREENHOUSE GAS" MEANS CARBON DIOXIDE, METHANE, NITROUS OXIDE, HYDROFLUOROCARBONS, PERFLUOROCARBONS, SULFUR HEXAFLUORIDE, AND ANY OTHER GAS DETERMINED BY THE DEPARTMENT TO BE A SIGNIFICANT CONTRIBUTOR TO GLOBAL WARMING.

2. "GREENHOUSE GAS EMISSION SOURCE" MEANS ANY SOURCE OR CATEGORY OF SOURCES OF GREENHOUSE GAS EMISSIONS AND SHALL INCLUDE, BUT NOT BE LIMITED TO EMISSIONS:

(A) ASSOCIATED WITH FOSSIL FUELS USED IN THE STATE BY ENTITIES THAT ARE MANUFACTURERS AND DISTRIBUTORS OF FOSSIL FUELS;

(B) FROM ANY UTILITY GENERATING OR DELIVERING ELECTRICITY CONSUMED IN THE STATE, WHETHER THE ELECTRICITY IS GENERATED IN THE STATE, OR GENERATED OUTSIDE THE STATE AND IMPORTED INTO THE STATE, AND ACCOUNTING FOR TRANSMISSION AND DISTRIBUTION LINE LOSSES; AND

(C) FROM ANY ADDITIONAL ENTITIES THAT ARE SIGNIFICANT EMITTERS OF GREENHOUSE GASES, AS DETERMINED BY THE DEPARTMENT, AND APPROPRIATE TO ENABLE THE DEPARTMENT TO MONITOR COMPLIANCE WITH THE EMISSIONS LIMITS FOR GREENHOUSE GASES ESTABLISHED PURSUANT TO THIS TITLE.

S 19-1305. GREENHOUSE GAS REPORTING.

1. NO LATER THAN MAY 1, 2011, THE DEPARTMENT SHALL PROMULGATE RULES AND REGULATIONS REQUIRING ANNUAL GREENHOUSE GAS EMISSIONS REPORTING FROM GREENHOUSE GAS EMISSION SOURCES. THE REGULATIONS SHALL:

(A) INCLUDE GREENHOUSE GAS EMISSIONS FROM ALL GREENHOUSE GAS EMISSION SOURCES EXPRESSED IN TONS OF CARBON DIOXIDE EQUIVALENTS;

(B) ENSURE RIGOROUS AND CONSISTENT ACCOUNTING OF EMISSIONS, AND PROVIDE REPORTING TOOLS AND FORMATS TO ENSURE COLLECTION OF NECESSARY DATA;

(C) ENSURE THAT EACH GREENHOUSE GAS EMISSION SOURCE MAINTAINS COMPREHENSIVE EMISSIONS RECORDS OF ANY GREENHOUSE GAS REPORTED FOR AT LEAST THREE YEARS; AND

(D) NOT REQUIRE THE REPORTING OF GREENHOUSE GAS EMISSIONS FROM AGRICULTURAL SOURCES THAT ARE EXEMPT FROM ENVIRONMENTAL PROTECTION AGENCY REPORTING REQUIREMENTS UNDER RULE 40 CFR 98.

2. THE DEPARTMENT SHALL:

(A) PERIODICALLY REVIEW AND UPDATE ITS EMISSION REPORTING REQUIREMENTS AT LEAST EVERY FIVE YEARS; AND

(B) MAKE REASONABLE EFFORTS TO MAKE ITS REPORTING REGULATIONS CONSISTENT WITH INTERNATIONAL, FEDERAL AND OTHER STATES' GREENHOUSE GAS EMISSION REPORTING PROGRAMS.

3. NO LATER THAN JANUARY 1, 2013, AND EVERY THREE YEARS THEREAFTER, THE DEPARTMENT SHALL ISSUE A REPORT ON:

(A) THE ANNUAL GREENHOUSE GAS EMISSIONS FROM ALL SIGNIFICANT GREENHOUSE GAS EMISSION SOURCES, INCLUDING THE RELATIVE CONTRIBUTION OF EACH GREENHOUSE GAS EMISSION SOURCE TO STATEWIDE GREENHOUSE GAS EMISSIONS; AND

(B) THE PROGRESS MADE BY THE STATE IN ACHIEVING THE REQUIREMENTS OF SECTION 19-1307 OF THIS TITLE.

S 19-1307. GREENHOUSE GAS LIMITS.

1. NO LATER THAN JANUARY 1, 2013, THE DEPARTMENT, AFTER PUBLIC HEARINGS, SHALL PROMULGATE RULES AND REGULATIONS SETTING AN ENFORCEABLE LIMIT ON THE AGGREGATE LEVEL OF GREENHOUSE GAS EMISSIONS FROM ALL GREENHOUSE GAS EMISSION SOURCES AS ESTABLISHED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY'S NEW YORK STATE ECONOMY-WIDE GREENHOUSE GAS EMISSIONS INVENTORY WHICH SHALL ANNUALLY BE UPDATED AND MADE PUBLIC, PROVIDED, HOWEVER, THE AGGREGATE LIMIT SHALL BE EQUIVALENT TO THE AGGREGATE LEVEL OF GREENHOUSE GAS EMISSIONS FOR CALENDAR YEAR 1990.

2. (A) ON JANUARY 1, 2020 THE LIMIT ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION SHALL BE REDUCED BY 20 PERCENT.

(B) ON JANUARY 1, 2030 THE LIMIT ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION SHALL BE REDUCED BY 40 PERCENT.

(C) NO LATER THAN JANUARY 1, 2030, THE DEPARTMENT, BASED ON FINDINGS FROM THE CLIMATE ACTION COUNCIL AND SUBJECT TO PUBLIC HEARINGS, SHALL MAKE A RECOMMENDATION TO THE GOVERNOR AND THE LEGISLATURE TO ENACT A LAW SETTING AN ENFORCEABLE LIMIT ON THE AGGREGATE LEVEL OF GREENHOUSE GAS EMISSIONS FROM ALL GREENHOUSE GAS EMISSION SOURCES TO BE ESTABLISHED ON JANUARY 1, 2040 THAT MAXIMIZES THE ABILITY OF THE STATE TO MEET THE STATEWIDE EMISSION LIMIT STATED IN PARAGRAPH (D) OF THIS SUBDIVISION.

(D) ON JANUARY 1, 2050, AND EACH YEAR THEREAFTER, THE LIMIT SHALL REMAIN AT 80 PERCENT BELOW THE LIMIT ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION.

3. ANY RULE OR REGULATION THE COMMISSIONER ADOPTS TO COMPLY WITH THIS SECTION AND TO IMPLEMENT THE CLIMATE ACTION PLAN CREATED BY THE CLIMATE ACTION COUNCIL PURSUANT TO ARTICLE TWENTY-ONE-C OF THE EXECUTIVE LAW MUST:

(A) BE ADOPTED IN AN OPEN PUBLIC PROCESS;

(B) ACHIEVE EMISSION REDUCTIONS FROM SOURCES IN A MANNER THAT IS EQUITABLE, SEEKS TO MINIMIZE COSTS AND MAXIMIZE THE TOTAL BENEFITS TO THE STATE, AND ENCOURAGE EARLY ACTION TO REDUCE GREENHOUSE GAS EMISSIONS;

(C) CONSIDER OVERALL SOCIETAL BENEFITS, INCLUDING REDUCTIONS IN OTHER AIR POLLUTANTS, DIVERSIFICATION OF ENERGY SOURCE, AND OTHER BENEFITS TO THE ECONOMY, ENVIRONMENT, AND PUBLIC HEALTH;

(D) CONSIDER THE SIGNIFICANCE OF THE CONTRIBUTION OF EACH SOURCE OR CATEGORY OF SOURCES TO STATEWIDE EMISSIONS OF GREENHOUSE GASES;

(E) CONSIDER UTILIZING APPROACHES WHICH ARE DESIGNED TO AVOID UNDUE DELETERIOUS ECONOMIC EFFECTS OR OVERLY BURDENSOME IMPACTS UPON PERSONS DIRECTLY OR INDIRECTLY AFFECTED BY THE RULE OR REGULATION OR UPON THE ECONOMY OR ADMINISTRATION OF STATE OR LOCAL GOVERNMENT AGENCIES;

(F) NOT PLACE OR INCREASE AN ADDITIONAL ENVIRONMENTAL OR HEALTH BURDEN ON A COMMUNITY THAT HAS A SIGNIFICANT LEVEL OF REGULATED AIR CONTAMINANT SOURCE EMISSIONS WITHIN THE COMMUNITY AS COMPARED WITH THE COUNTY AVERAGE;

(G) BE COMPATIBLE WITH OTHER EMISSIONS REDUCTIONS PROGRAMS; AND

(H) INCLUDE A PLAN TO THE EXTENT PRACTICABLE TO ADDRESS ADAPTATION TO CLIMATE CHANGE INCLUDING BUT NOT LIMITED TO TERRESTRIAL AND AQUATIC HABITATS, PLANTS AND ANIMAL SPECIES, CONNECTIVITY OF HABITATS, AND ECOSYSTEM SERVICES PROVIDED BY NATURAL RESOURCES INCLUDING BUT NOT LIMITED TO FLOOD CONTROL AND DRINKING WATER SUPPLY.

(I) TAKE INTO ACCOUNT ACTIONS TAKEN BY ENTITIES THAT HAVE VOLUNTARILY AND NOT UNDER REQUIREMENTS OF OTHER STATE GREENHOUSE GAS REDUCTION PROGRAMS, REDUCED THEIR GREENHOUSE GAS EMISSIONS PRIOR TO THE IMPLEMENTATION OF THIS TITLE RECEIVE APPROPRIATE CREDIT FOR EARLY VOLUNTARY REDUCTIONS.

S 3. The executive law is amended by adding a new article 21-C to read as follows:

ARTICLE 21-C
CLIMATE ACTION COUNCIL

SECTION 615. LEGISLATIVE INTENT.

616. CLIMATE ACTION COUNCIL; CREATION; MEMBERSHIP.

617. GENERAL FUNCTIONS; POWERS AND DUTIES.

S 615. LEGISLATIVE INTENT. IT SHALL BE THE GOAL OF THE STATE OF NEW YORK TO REDUCE CURRENT GREENHOUSE GAS EMISSIONS FROM ALL SOURCES WITHIN THE STATE EIGHTY PERCENT BELOW LEVELS EMITTED IN THE YEAR NINETEEN HUNDRED NINETY BY THE YEAR TWO THOUSAND FIFTY. TO THAT END, THE CLIMATE ACTION COUNCIL IS NEEDED TO FORM AND COORDINATE A PLAN TO REDUCE SUCH EMISSIONS. THE CLIMATE ACTION COUNCIL AND ITS PLAN FOR REDUCING SUCH EMISSIONS IS NOT INTENDED TO BE STATIC, BUT RATHER A DYNAMIC AND CONTINUALLY EVOLVING STRATEGY TO ASSESS AND ACHIEVE THE GOAL OF SUSTAINED REDUCTIONS OF GREENHOUSE GAS EMISSIONS.

S 616. CLIMATE ACTION COUNCIL; CREATION; MEMBERSHIP. 1. THERE IS HEREBY CREATED A CLIMATE ACTION COUNCIL ("COUNCIL") CONSISTING OF THE COMMISSIONERS OF AGRICULTURE AND MARKETS, ECONOMIC DEVELOPMENT, ENVIRONMENTAL CONSERVATION, HOUSING AND COMMUNITY RENEWAL, AND TRANSPORTATION; THE CHAIRS OF THE PUBLIC SERVICE COMMISSION AND THE METROPOLITAN TRANSPORTATION AUTHORITY; THE PRESIDENTS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, LONG ISLAND POWER AUTHORITY, NEW YORK POWER AUTHORITY AND DORMITORY AUTHORITY OF THE STATE OF NEW YORK; THE SECRETARY OF STATE; THE DIRECTOR OF THE BUDGET; THE DIRECTOR OF STATE OPERATIONS; AND THE COUNSEL TO THE GOVERNOR; PLUS SIX ADDITIONAL MEMBERS WITH INDIVIDUAL EXPERTISE IN AGRICULTURE, ECONOMIC DEVELOPMENT, ENVIRONMENTAL CONSERVATION, HOUSING, TRANSPORTATION, AND ENERGY ISSUES, WHO SHALL BE APPOINTED AS FOLLOWS; TWO MEMBERS BY THE TEMPORARY PRESIDENT OF THE SENATE, TWO MEMBERS BY THE SPEAKER OF THE ASSEMBLY, ONE MEMBER BY THE MINORITY LEADER OF THE SENATE AND ONE MEMBER BY THE MINORITY LEADER OF THE ASSEMBLY. ALL SUCH APPOINTMENTS SHALL BE MADE BY FEBRUARY FIRST, TWO THOUSAND ELEVEN. THE DIRECTOR OF STATE OPERATIONS SHALL SERVE AS THE CHAIR OF THE COUNCIL.

2. MEMBERS OF THE COUNCIL MAY DESIGNATE AN EXECUTIVE STAFF MEMBER TO REPRESENT THEM AND PARTICIPATE ON THE COUNCIL ON THEIR BEHALF, SUBJECT TO THE APPROVAL OF THE CHAIR. A MAJORITY OF THE MEMBERS OF THE COUNCIL SHALL CONSTITUTE A QUORUM, AND ALL ACTIONS AND RECOMMENDATIONS OF THE COUNCIL SHALL REQUIRE APPROVAL OF A MAJORITY OF THE TOTAL MEMBERS OR THEIR REPRESENTATIVES. THE APPOINTED MEMBERS OF THE COUNCIL SHALL SERVE FOUR YEAR TERMS. VACANCIES TO THE COUNCIL SHALL BE FILLED IN THE SAME MANNER AS THE MEMBER WHOSE VACANCY IS BEING FILLED WAS APPOINTED.

S 617. GENERAL FUNCTIONS; POWERS AND DUTIES. 1. THE COUNCIL SHALL PREPARE A DRAFT CLIMATE ACTION PLAN ON OR BEFORE SEPTEMBER THIRTIETH, TWO THOUSAND TEN. THE COUNCIL SHALL HOLD REGIONAL PUBLIC COMMENT HEARINGS ON THE DRAFT PLAN, AND SHALL ALLOW AT LEAST SIXTY DAYS FOR THE

1 SUBMISSION OF PUBLIC COMMENT. ON OR BEFORE SEPTEMBER THIRTIETH, TWO
2 THOUSAND FIFTEEN AND EVERY FIVE YEARS THEREAFTER, THE COUNCIL SHALL
3 UPDATE THE FINAL CLIMATE ACTION PLAN, WHICH ADDRESSES EACH ITEM IDENTI-
4 FIED IN SUBDIVISION TWO OF THIS SECTION. THE CLIMATE ACTION PLAN WHICH
5 SHALL BE REVIEWED AND, IF WARRANTED, ADJUSTED ANNUALLY BY THE COUNCIL,
6 SHALL INCLUDE A DISCUSSION AND EVALUATION OF THE ABILITY OF THE STATE
7 AND PRIVATE MARKETS TO IMPLEMENT THE POLICIES, PROGRAMS, AND OTHER
8 RECOMMENDATIONS AS FOUND IN THE CLIMATE ACTION PLAN, AND RECOMMENDATIONS
9 FOR NEW OR AMENDED POLICIES AS NEEDED TO CONTINUE SUCCESSFUL MOVEMENT
10 TOWARDS IMPLEMENTATION AND REALIZATION OF SUCH POLICES AND PROGRAMS.

11 2. IN ASPIRING TO MEET THE GREENHOUSE GAS EMISSION REDUCTION GOAL, THE
12 COUNCIL, IN PREPARING THE CLIMATE ACTION PLAN, SHALL:

13 A. INVENTORY GREENHOUSE GAS EMISSIONS WITHIN THE STATE, INCLUDING THE
14 RELATIVE CONTRIBUTION OF EACH TYPE OF EMISSION SOURCE;

15 B. IDENTIFY AND ASSESS SHORT-TERM AND LONG-TERM ACTIONS TO REDUCE
16 GREENHOUSE GAS EMISSIONS AND ADAPT TO CLIMATE CHANGE ACROSS ALL ECONOMIC
17 SECTORS, INCLUDING INDUSTRY, TRANSPORTATION, AGRICULTURE, BUILDING
18 CONSTRUCTION AND ENERGY PRODUCTION;

19 C. IDENTIFY AND ANALYZE THE ANTICIPATED REDUCTIONS, AND THE ECONOMIC
20 IMPLICATIONS THEREOF, AS A RESULT OF EACH ACTION;

21 D. IDENTIFY THE ANTICIPATED LIFE-CYCLE IMPLICATIONS, CONSEQUENCES,
22 BENEFITS AND COSTS OF IMPLEMENTING EACH ACTION, INCLUDING IMPLICATIONS,
23 CONSEQUENCES, BENEFITS AND COSTS TO THE STATE, LOCAL GOVERNMENTS, BUSI-
24 NESS AND RESIDENTS FROM IMPLEMENTATION OF EACH OPTION AND ACTION;

25 E. IDENTIFY WHETHER SUCH ACTIONS SUPPORT NEW YORK'S GOALS FOR A CLEAN
26 ENERGY ECONOMY, INCLUDING SPECIFIC SHORT-TERM AND LONG-TERM ECONOMIC
27 DEVELOPMENT OPPORTUNITIES AND DISADVANTAGES RELATED TO GREENHOUSE GAS
28 EMISSION REDUCTIONS AND THE DEVELOPMENT AND DEPLOYMENT OF NEW AND EMERG-
29 ING TECHNOLOGIES AND ENERGY SOURCES INCLUDING IDENTIFYING THE AVAILABIL-
30 ITY AND COST EFFECTIVENESS OF BEST AVAILABLE CONTROL TECHNOLOGIES;

31 F. COORDINATE ITS ACTIVITIES WITH THE STATE ENERGY PLANNING PROCESS OF
32 THE STATE ENERGY PLANNING BOARD;

33 G. IDENTIFY EXISTING LEGAL, REGULATORY AND POLICY CONSTRAINTS TO
34 REDUCING GREENHOUSE GAS EMISSIONS, ASSESSING THE IMPACTS OF CLIMATE
35 CHANGE, AND ADAPTING TO CLIMATE CHANGE, AND RECOMMEND MEASURES NEEDED TO
36 ENSURE ECOSYSTEM BASED ADOPTION TO ADDRESS ANY SUCH CONSTRAINTS;

37 H. EVALUATING AND ASSESSING ANY ADAPTIVE MEASURES IDENTIFIED IN TERMS
38 OF FEASIBILITY, ECONOMIC AND PUBLIC HEALTH IMPACTS AND EFFECTIVENESS.
39 FOR THE PURPOSES OF THIS SECTION, THE TERM "ADAPTIVE MEASURES" REFERS TO
40 ACTIONS THAT MAY BE TAKEN TO ADDRESS THE ANTICIPATED CONSEQUENCES OF
41 CLIMATE CHANGE;

42 I. IDENTIFYING AND EVALUATING CURRENT EFFORTS UNDERWAY IN NEW YORK
43 STATE TO EDUCATE THE PUBLIC, AS WELL AS SPECIFIC SECTORS INCLUDING AGRI-
44 CULTURE, HEALTH, TRANSPORTATION, RECREATION, INSURANCE AND INDUSTRIAL
45 AND COMMERCIAL SECTORS ABOUT PROJECTED IMPACTS OF CLIMATE CHANGE;

46 J. ESTABLISH ESTIMATED TIMELINES FOR CONSIDERING AND IMPLEMENTING
47 ACTIONS; AND

48 K. UNDERTAKE SUCH ACTIONS, AND COMPILE SUCH ADDITIONAL MATERIAL, AS
49 DEEMED APPROPRIATE BY THE COUNCIL IN CARRYING OUT ITS RESPONSIBILITIES
50 UNDER THIS SECTION.

51 3. THE ENTITIES REPRESENTED ON THE COUNCIL ARE AUTHORIZED TO PROVIDE
52 THE PRIMARY STAFF AND OTHER RESOURCES THAT ARE NECESSARY FOR THE COUNCIL
53 TO COMPLY WITH THIS SECTION. IN ADDITION, EVERY OTHER AGENCY, DEPART-
54 MENT, OFFICE, DIVISION AND PUBLIC AUTHORITY OF THIS STATE SHALL COOPER-
55 ATE WITH THE COUNCIL AND FURNISH SUCH INFORMATION AND ASSISTANCE AS THE

1 COUNCIL DETERMINES IS REASONABLY NECESSARY FOR IT TO COMPLY WITH THIS
2 SECTION.

3 4. THE COUNCIL MAY CONVENE ADVISORY PANELS TO ASSIST OR ADVISE IT IN
4 AREAS REQUIRING SPECIAL EXPERTISE OR KNOWLEDGE.

5 S 4. This act shall take effect immediately.