

# STATE OF NEW YORK

5105--A

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

Introduced by M. of A. COLTON, MOSLEY, L. ROSENTHAL, WALKER, SKARTADOS, STECK, LIFTON, COOK, BLAKE, ORTIZ, D'URSO, PEOPLES-STOKES, BARRON, RIVERA, HARRIS, SEAWRIGHT, ABINANTI, CARROLL, QUART, WILLIAMS, DINOWITZ, THIELE, GOTTFRIED, PELLEGRINO, GLICK -- Multi-Sponsored by -- M. of A. HOOPER, LENTOL, RODRIGUEZ, SIMON -- read once and referred to the Committee on Energy -- recommitted to the Committee on Energy in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law, in relation to establishing a one hundred percent energy system by two thousand thirty; to amend the environmental conservation law, in relation to the adoption of a climate action plan; to amend the state finance law, in relation to establishing the renewable energy revolving fund; and to provide for legal standing to sue for enforcement of the state's clean energy plan

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. New York state's continued use of  
2 fossil fuels, including coal, oil, and natural gas, is having devastat-  
3 ing impacts on our climate and communities. Our state's ongoing use of  
4 nuclear fuels continues to create immensely radioactive wastes that will  
5 be dangerous to future generations for millennia. It is in the best  
6 interest of the people of New York to move the state into a clean energy  
7 revolution, meeting 100 percent of our energy needs from clean, renewa-  
8 ble sources by 2030. Transitioning to clean energy is fundamental to  
9 protecting our communities, particularly communities of color and lower  
10 income communities that are disproportionately affected by the worsening  
11 air and water quality that results from the incineration of fossil  
12 fuels. A transition to a 100 percent clean energy system will be  
13 achieved in a way that protects displaced fossil fuel workers, impacted  
14 communities, builds a stronger economy for everyone in the State, and

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

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1 creates hundreds of thousands of new jobs, while at the same time elimi-  
2 nating New York's contribution to the biggest environmental threat  
3 facing our planet, climate change.

4 § 2. Subdivision 1 of section 6-104 of the energy law, as added by  
5 chapter 433 of the laws of 2009, is amended to read as follows:

6 1. The board shall adopt a state energy plan in accordance with the  
7 provisions of this article.

8 (a) The plan shall establish a goal of achieving a one hundred percent  
9 clean energy system by two thousand thirty, with zero net greenhouse gas  
10 emissions. As used in this section, "clean renewable energy" shall  
11 include energy derived from solar, wind, geothermal, and tidal sources,  
12 but does not include nuclear power, natural gas, biomass, or fossil  
13 fuels.

14 (b) The plan shall not include any provisions for the continued use  
15 past two thousand thirty of nuclear power. The state shall develop a  
16 plan for the phase out of all nuclear plants by two thousand twenty-five  
17 and replace such plants with sources of renewable energy.

18 (c) The plan shall not include provisions for the continued use of  
19 biomass, including biogas from landfills, agricultural operations and  
20 other sources of biogas, including methane. Instead, the state shall  
21 develop a plan to phase out landfills and convert to a zero waste  
22 disposal system and reduce greenhouse gas emissions in the animal agri-  
23 cultural sector by promoting pasture-based, sustainable animal agricul-  
24 tural systems and eliminating industrial style concentrated animal feed-  
25 ing operations from operating in the state.

26 (d) The plan shall provide for the discontinuance of state investment  
27 in, and the development of, infrastructure related to the distribution,  
28 processing, storage, or extraction of fossil fuels. No state agency or  
29 authority shall issue new permits for the construction or operation of  
30 such facilities.

31 (e) The plan shall include, in two-year increments, detailed bench-  
32 marks and steps needed to achieve the goal of a one hundred percent  
33 clean renewable energy system by two thousand thirty. Interim goals for  
34 one hundred percent clean energy shall be as follows:

35 (i) forty percent by two thousand twenty; and

36 (ii) seventy percent by two thousand twenty-five.

37 (f) Any provisions of this chapter relating to fossil fuels, natural  
38 gas, oil, coal, and petroleum products shall be controlling only for the  
39 sole purpose of providing guidance on how to discontinue the use of such  
40 fuels by two thousand thirty.

41 (g) The plan shall incorporate measures related to reduction in energy  
42 use, increased energy conservation, and improvements in energy efficien-  
43 cy; it shall also promote regenerative agriculture to help return carbon  
44 to the soil.

45 (h) The plan shall require any new vehicles sold in the state to be  
46 all-electric or otherwise no carbon emissions by two thousand twenty-  
47 five.

48 (i) By two thousand twenty, any new structures constructed in the  
49 state shall be net zero emission structures. The plan will include a  
50 rapid transition to renewable heating and cooling provided by heat pumps  
51 powered by renewable electricity.

52 (j) The provisions of this subdivision shall supersede any inconsist-  
53 ent provisions of this section.

54 § 3. The environmental conservation law is amended by adding a new  
55 section 54-1525 to read as follows:

56 § 54-1525. Climate action plan.

1 1. a. The department shall adopt a state climate action plan to imple-  
2 ment the goals established in section 6-104 of the energy law. The plan  
3 shall address all aspects of climate change, including mitigation, adap-  
4 tation, and resiliency, including impacts caused by agriculture, heating  
5 and cooling, and transportation. The department shall release and publi-  
6 cize on its website a draft plan no later than nine months after the  
7 effective date of this section. Following the release of the draft plan,  
8 the department shall conduct regional public hearings to obtain public  
9 feedback on the draft plan. The final plan will be completed no later  
10 than eighteen months after the effective date of this section. The  
11 department shall release and publicize on its website the final plan.

12 b. Within one year after the release of the department's final climate  
13 action plan, each state agency and public authority shall adopt regu-  
14 lations consistent with and in furtherance of the goals of the climate  
15 action plan, and shall develop an agency or authority climate action  
16 plan, as appropriate, which shall be updated annually, to achieve such  
17 goals for the agency's or authority's own internal operations as well as  
18 for regulatory purposes and other actions under the purview of the agen-  
19 cy or authority.

20 c. Within one year after the release of the department's final climate  
21 action plan, each county government and each municipality representing  
22 more than fifty thousand individuals shall adopt a community climate  
23 action plan. Such plans shall support the development of community and  
24 publicly owned renewable energy. The department shall establish a state-  
25 wide environmental and climate justice task force to work with community  
26 groups in impacted areas to assist in the development and implementation  
27 of the community climate action plans, focusing on low-income communi-  
28 ties and communities of color.

29 d. The climate action plans referred to in paragraphs b and c of this  
30 subdivision shall incorporate goals of environmental justice and be  
31 developed with meaningful input and analysis from environmental justice  
32 organizations.

33 e. The department shall ensure that climate action plans developed  
34 pursuant to paragraphs b and c of this subdivision achieve the state's  
35 goal of one hundred percent renewable energy by two thousand thirty in a  
36 manner that benefits the state's most disadvantaged communities and is  
37 transparent and accountable to the public and the legislature.

38 2. a. The state climate action plan shall include provisions for a  
39 just transition from current energy sources to clean renewable energy as  
40 described in subdivision one of section 6-104 of the energy law. Such  
41 provisions shall include providing training and ensuring comparable jobs  
42 and wages to individuals presently working in the fossil fuel industry  
43 and in the nuclear power industry.

44 b. The department, in conjunction with the New York state energy  
45 research and development authority and the commissioner of labor, shall  
46 develop programs to transition workers in the fossil fuel industry and  
47 nuclear power industries into jobs in the renewable energy sector,  
48 including job training programs, relocation assistance, higher educa-  
49 tion, and temporary financial support to extend unemployment benefits.  
50 Such programs shall also be open to workers previously employed in the  
51 fossil fuel industry who are out of work due to reduction in demand for  
52 jobs in that industry, or to people who live in communities that have  
53 been disproportionately impacted by fossil fuels as determined by the  
54 commissioner. Such programs shall be funded through the renewable energy  
55 revolving fund, established by section eighty-three-b of the state  
56 finance law.

1 c. The department, in conjunction with the New York state energy  
2 research and development authority and the commissioner of labor, shall  
3 develop criteria for grants and low-interest loans to support the gener-  
4 ation of renewable energy and job training programs in the renewable  
5 energy sector, with priority given to projects in low-income communi-  
6 ties, communities of color, immigrant communities and communities  
7 disproportionately impacted by fossil fuel development.

8 3. a. A state climate action council shall be established within the  
9 department for the purpose of providing recommendations to the depart-  
10 ment and relevant state agencies and public authorities regarding the  
11 development, adoption, and implementation of the state climate action  
12 plan and the agency and authority climate action plans.

13 b. The climate action council shall:

14 (i) prepare annual budget requests for climate action measures to be  
15 included in the proposed state budget;

16 (ii) propose needed state legislation and agency and public authority  
17 regulations. If such regulations or laws are rejected, a written expla-  
18 nation justifying such rejection shall be provided by the relevant  
19 acting body along with possible alternative approaches; and

20 (iii) recommend the overturning of any state regulations adopted after  
21 the state climate action plan and the agency and public authority plans  
22 that are inconsistent with the state climate action plan.

23 c. The climate action council shall consist of the following members:

24 (i) the commissioner;

25 (ii) the commissioner of agriculture and markets;

26 (iii) the commissioner of economic development;

27 (iv) the commissioner of housing and community renewal;

28 (v) the commissioner of transportation;

29 (vi) the chair of the public service commission;

30 (vii) the chair of the metropolitan transportation authority;

31 (viii) the president of the New York state energy research and devel-  
32 opment authority;

33 (ix) the president of the Long Island power authority;

34 (x) the president of the power authority of the state of New York;

35 (xi) the president of the dormitory authority of the state of New  
36 York;

37 (xii) the secretary of state;

38 (xiii) the director of the budget;

39 (xiv) the director of state operations; and

40 (xv) the counsel to the governor.

41 d. Additional appointments shall be made by the governor and leaders  
42 of the state legislature to represent the renewable energy industry,  
43 businesses, farmers, health professionals, small business, and academ-  
44 ics. At least one-third of the members shall represent community groups,  
45 labor unions, environmental justice organizations, and climate advocacy  
46 groups. The temporary president of the senate and the speaker of the  
47 assembly shall each appoint two members, and the minority leaders of the  
48 senate and the assembly shall each appoint one member.

49 e. The climate action council shall meet at least quarterly. Each  
50 state agency and public authority shall provide the council with quar-  
51 terly updates of the measures taken by the agency or authority to reduce  
52 greenhouse gas emissions and promote one hundred percent clean renewable  
53 energy.

54 f. The council shall submit an annual report to the legislature as to  
55 its progress in achieving its goals. The assembly and the senate will

1 hold a joint public hearing to review the report and to provide an  
2 opportunity for public input.

3 4. a. The department shall establish a state renewable energy board  
4 and regional renewable energy boards under the climate action council  
5 and shall appoint members thereto based upon recommendations by the  
6 climate action council. The state and regional boards shall be comprised  
7 of membership from organizations that represent environmental justice  
8 communities, labor unions, environmental organizations, academics know-  
9 ledgeable about energy systems, consumer organizations, utilities, and  
10 businesses. The boards will be responsible for approving utilities'  
11 clean energy compliance plans and approving and allocating funds from  
12 the state renewable energy revolving fund established by section eight-  
13 y-three-b of the state finance law.

14 b. Within one year of the effective date of this section, each utility  
15 subject to the provisions of the public service law shall submit plans  
16 detailing the utility's plans to comply with the goals established in  
17 section 6-104 of the energy law for approval to the state renewable  
18 energy board. Each utility shall submit annual reports documenting its  
19 progress towards meeting the goals, and any proposed amendments to its  
20 plan. If a utility fails to meet the clean energy benchmarks established  
21 in section 6-104 of the energy law, it shall submit an updated plan that  
22 documents how the utility will come into compliance with the benchmarks  
23 the following year.

24 c. Any utility failing to comply with the provisions of paragraph b of  
25 this subdivision shall be fined an amount that is two times the marginal  
26 cost difference between the highest priced fossil fuel they are burning  
27 and the lowest cost renewable energy per kilowatt hour. Fines collected  
28 from violations shall be deposited into the state renewable energy  
29 revolving fund established by section eighty-three-b of the state  
30 finance law and used to develop renewable energy generation, energy  
31 efficiency, and job training programs in the communities where fossil  
32 fuels continue to be utilized for energy. No fines collected for these  
33 violations shall be passed through to ratepayers.

34 d. Onsite and community renewable energy shall be credited at the  
35 retail rate of electricity for energy generated up to one hundred twenty  
36 percent of energy consumption at the time of installation, taken as an  
37 average of annual usage for the past five years. Energy generated beyond  
38 one hundred twenty percent shall be reimbursed at the wholesale rate. In  
39 months where energy generation exceeds usage, the difference shall be  
40 credited to the electric bill, and at the end of the year, excess owed  
41 to the electric customer shall be paid to the customer. Any utility that  
42 captures energy generated in excess of one hundred twenty percent shall  
43 deposit an amount equal to the retail price of electricity for the  
44 amount generated into the state renewable energy revolving fund estab-  
45 lished by section eighty-three-b of the state finance law.

46 5. a. The commissioner shall appoint a statewide climate justice work-  
47 ing group for the following purposes:

48 (i) to evaluate the climate action plans developed by each state agen-  
49 cy and public authority and to advise the department on an on going  
50 basis as to progress made by respective agencies and public authorities;

51 (ii) to consult with the department of public service and the public  
52 service commission to assess the progress made by utilities subject to  
53 the provisions of the public service law in coming into compliance with  
54 the state energy plan mandated by subdivision one of section 6-104 of  
55 the energy law and to advise the department on an on-going basis as to  
56 progress made by such utilities; and

1 (iii) to advise the department regarding measures to expand access to  
2 renewable energy in low-income and immigrant communities in ways that  
3 advance environmental, climate, economic, and racial justice interests.

4 b. The state climate justice working group shall be empowered to  
5 request and receive reports and other relevant information from agen-  
6 cies, public authorities, the department of public service and the  
7 public service commission, utilities subject to the provisions of the  
8 public service law, and other entities necessary to evaluate and advise  
9 the department on plans and progress towards the transition to one  
10 hundred percent renewable energy. All state agencies, authorities,  
11 commissions and departments shall cooperate with the state climate  
12 justice working group in fulfilling its mandate.

13 c. The state climate justice working group shall be comprised of thir-  
14 teen members who are residents of low-income communities or environ-  
15 mental justice communities. Members shall serve for no more than three  
16 four-year terms each as follows:

17 (i) five members shall be representatives of community-based organiza-  
18 tions that advise or assist minority and low-income communities on envi-  
19 ronmental matters;

20 (ii) four members shall be representatives of businesses involved with  
21 energy, heating and cooling, transportation and agriculture;

22 (iii) two members shall be representatives of environmental conserva-  
23 tion offices of local government;

24 (iv) two members shall be representatives of state or national organ-  
25 izations promoting environmental conservation, researchers, educators  
26 and members of the general public; and

27 (v) three of such members shall be nominated by the governor; two of  
28 such members shall be nominated by the temporary president of the  
29 senate; two members shall be nominated by the speaker of the assembly;  
30 two members shall be nominated by the chairs of the senate environmental  
31 conservation and energy and telecommunications committees; and two  
32 members shall be nominated by the chairs of the assembly environmental  
33 conservation and energy committees.

34 d. The department shall include the costs of administrating and  
35 resourcing the climate justice working group in its annual budget  
36 requests to the legislature. In any given year that the legislature  
37 fails to approve adequate funding for the climate justice working group  
38 as a distinct line item, the department shall fund the operations of the  
39 climate justice working group through re-allocation of its approved  
40 administrative budget.

41 6. a. Each county government and each municipality representing more  
42 than fifty thousand individuals shall create a local climate justice  
43 working group to evaluate the performance of the county or municipality  
44 in expanding access to renewable energy and to advancing environmental,  
45 climate, economic and racial justice.

46 b. Each local climate justice working group shall:

47 (i) issue recommendations on local plans to further the objectives of  
48 the state climate action plan and implementation of these plans to  
49 achieve one hundred percent clean renewable energy; and

50 (ii) offer endorsements or rejections of plans and reports, and offer  
51 specific analysis of the plans' impacts on expanding access to renewable  
52 energy and advancing environmental, climate, economic and racial  
53 justice.

54 c. Each local climate justice working group shall be comprised of  
55 residents of low-income communities and environmental justice communi-  
56 ties. Members shall be appointed by local government consistent with

1 rules adopted by such local government. Members shall number at least  
2 eight and no more than twelve individuals. Members shall serve for no  
3 more than three four-year terms each.

4 d. Each local climate justice working group shall be empowered to  
5 receive reports and other relevant information from companies, utili-  
6 ties, and other entities necessary to develop recommendations on the  
7 plans and their implementation.

8 e. The department shall include the costs of administrating and  
9 resourcing the local climate justice working groups in its annual budget  
10 requests to the legislature. In any given year that the legislature  
11 fails to approve funding for the local climate justice working groups as  
12 a distinct line item, the department shall fund the operations of the  
13 local climate justice working groups through re-allocation of its  
14 approved administrative budget.

15 § 4. The state finance law is amended by adding a new section 83-b to  
16 read as follows:

17 § 83-b. State renewable energy revolving fund. 1. There is hereby  
18 established in the joint custody of the comptroller and the commissioner  
19 of taxation and finance a special fund to be known as the "state renewa-  
20 ble energy revolving fund".

21 2. The fund shall consist of moneys appropriated thereto, fines  
22 collected pursuant to paragraph c of subdivision four of section 54-1525  
23 of the environmental conservation law, and funds transferred from any  
24 other fund or source.

25 3. The comptroller shall establish the following separate and distinct  
26 accounts within the renewable energy revolving fund:

27 a. the loan fund, which shall fund grants and low-interest loans to  
28 support the generation of renewable energy and job training programs in  
29 the renewable energy sector pursuant to paragraph c of subdivision two  
30 of section 54-1525 of the environmental conservation law;

31 b. the training account, which will fund training programs and other  
32 benefits for displaced workers pursuant to paragraph b of subdivision  
33 two of section 54-1525 of the environmental conservation law; and

34 c. the localities assistance account, which shall reimburse localities  
35 for any revenue loss occurring from the shutdown of fossil fuel or  
36 nuclear power plants. Such account shall also be used to provide  
37 payments in lieu to taxes related to the siting of any renewable energy  
38 facilities or projects.

39 4. Priority in distribution among the accounts specified in subdivi-  
40 sion three of this section shall be given to the training account.  
41 Moneys allotted to such account shall be sufficient to ensure that every  
42 displaced fossil fuel worker and nuclear power worker in the state  
43 receives the opportunity to transition into jobs in the renewable energy  
44 sector.

45 5. Revenues in the renewable energy revolving fund shall be kept sepa-  
46 rate and shall not be commingled with any other moneys in the custody of  
47 the comptroller. All deposits of such revenues shall, if required by the  
48 comptroller, be secured by obligations of the United States or of the  
49 state having a market value equal at all times to the amount of such  
50 deposits and all banks and trust companies are authorized to give secu-  
51 rity for such deposits. Any such revenues in such fund may, upon the  
52 discretion of the comptroller, be invested in obligations in which the  
53 comptroller is authorized to invest pursuant to section ninety-eight-a  
54 of this article.

55 6. All payments of moneys from the loan account of the fund shall be  
56 made on the audit and warrant of the comptroller. All payments from the

1 training account of the fund shall be made on the audit and warrant of  
2 the commissioner of labor.

3 § 5. a. The attorney general is hereby authorized to commence an  
4 action or special proceeding in any court of competent jurisdiction in  
5 the state in the name of the people of the state to enforce the  
6 provisions of this act, recover any fine or penalty due pursuant to  
7 section 54-1525 of the environmental conservation law, or for injunctive  
8 relief to compel compliance with the provisions of this act. All moneys  
9 recovered in any such action or special proceeding, together with the  
10 costs thereof shall be paid into the state treasury to the credit of the  
11 state renewable energy revolving fund established by section 83-b of the  
12 state finance law.

13 b. Notwithstanding any law, rule or regulation to the contrary, any  
14 resident of the state of New York, over the age of twenty-one, shall  
15 have legal standing to sue to ensure satisfaction of the provisions of  
16 this act.

17 § 6. This act shall take effect on the first of January next succeed-  
18 ing the date upon which it shall have become a law.