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:

Section 1. Legislative intent. New York state's continued use of fossil fuels, including coal, oil, and natural gas, is having devastating impacts on our climate and communities. Our state's ongoing use of nuclear fuels continues to create immensely radioactive wastes that will be dangerous to future generations for millennia. It is in the best interest of the people of New York to move the state into a clean energy revolution, meeting 100 percent of our energy needs from clean, renewable sources by 2030. Transitioning to clean energy is fundamental to protecting our communities, particularly communities of color and lower income communities that are disproportionately affected by the worsening air and water quality that results from the incineration of fossil fuels. A transition to a 100 percent clean energy system will be achieved in a way that protects displaced fossil fuel workers, impacted 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.

LBD04918-03-8

creates hundreds of thousands of new jobs, while at the same time eliminating New York's contribution to the biggest environmental threat facing our planet, climate change.

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

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

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

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

(c) The plan shall not include provisions for the continued use of biomass, including biogas from landfills, agricultural operations and other sources of biogas, including methane. Instead, the state shall develop a plan to phase out landfills and convert to a zero waste disposal system and reduce greenhouse gas emissions in the animal agricultural sector by promoting pasture-based, sustainable animal agricultural systems and eliminating industrial style concentrated animal feeding operations from operating in the state.

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

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

(i) forty percent by two thousand twenty; and

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

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

(g) The plan shall incorporate measures related to reduction in energy use, increased energy conservation, and improvements in energy efficiency; it shall also promote regenerative agriculture to help return carbon to the soil.

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

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

(j) The provisions of this subdivision shall supersede any inconsistent provisions of this section.

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

§ 54-1525. Climate action plan.

1. a. The department shall adopt a state climate action plan to implement the goals established in section 6-104 of the energy law. The plan shall address all aspects of climate change, including mitigation, adaptation, and resiliency, including impacts caused by agriculture, heating and cooling, and transportation. The department shall release and publicize on its website a draft plan no later than nine months after the effective date of this section. Following the release of the draft plan, the department shall conduct regional public hearings to obtain public feedback on the draft plan. The final plan will be completed no later than eighteen months after the effective date of this section. The department shall release and publicize on its website the final plan.

b. Within one year after the release of the department's final climate action plan, each state agency and public authority shall adopt regulations consistent with and in furtherance of the goals of the climate action plan, and shall develop an agency or authority climate action plan, as appropriate, which shall be updated annually, to achieve such goals for the agency's or authority's own internal operations as well as for regulatory purposes and other actions under the purview of the agency or authority.

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

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

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

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

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

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

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

b. The climate action council shall:

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

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

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

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

(i) the commissioner;

(ii) the commissioner of agriculture and markets;

(iii) the commissioner of economic development;

(iv) the commissioner of housing and community renewal;

(v) the commissioner of transportation;

(vi) the chair of the public service commission;

(vii) the chair of the metropolitan transportation authority;

(viii) the president of the New York state energy research and development authority;

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

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

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

(xii) the secretary of state;

(xiii) the director of the budget;

(xiv) the director of state operations; and

(xv) the counsel to the governor.

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

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

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

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

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

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

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

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

5. a. The commissioner shall appoint a statewide climate justice working group for the following purposes:

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

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

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

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

c. The state climate justice working group shall be comprised of thirteen members who are residents of low-income communities or environmental justice communities. Members shall serve for no more than three four-year terms each as follows:

(i) five members shall be representatives of community-based organizations that advise or assist minority and low-income communities on environmental matters;

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

(iii) two members shall be representatives of environmental conservation offices of local government;

(iv) two members shall be representatives of state or national organizations promoting environmental conservation, researchers, educators and members of the general public; and

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

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

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

b. Each local climate justice working group shall:

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

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

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

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

d. Each local climate justice working group shall be empowered to receive reports and other relevant information from companies, utilities, and other entities necessary to develop recommendations on the plans and their implementation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 6. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.