

# STATE OF NEW YORK

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3565

2019-2020 Regular Sessions

## IN ASSEMBLY

January 29, 2019

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Introduced by M. of A. COLTON, MOSLEY, L. ROSENTHAL, WALKER, STECK, LIFTON, COOK, BLAKE, ORTIZ, D'URSO, PEOPLES-STOKES, BARRON, RIVERA, SEAWRIGHT, ABINANTI, CARROLL, QUART, WILLIAMS, DINOWITZ, THIELE, GOTTFRIED, GLICK, HUNTER, WEPRIN -- Multi-Sponsored by -- M. of A. DAVILA, EPSTEIN, GALEF, HYNDMAN, LENTOL, RODRIGUEZ, SIMON -- read once and referred to the Committee on Energy

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

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

LBD04435-01-9

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

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

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

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

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

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

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

32 (i) forty percent by two thousand twenty-two; and

33 (ii) seventy percent by two thousand twenty-seven.

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

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

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

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

49 (j) The provisions of this subdivision shall supersede any inconsis-  
50 ent provisions of this section.

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

53 § 54-1525. Climate action plan.

54 1. a. The department shall adopt a state climate action plan to imple-  
55 ment the goals established in section 6-104 of the energy law. The plan  
56 shall address all aspects of climate change, including mitigation, adap-

1 tation, and resiliency, including impacts caused by agriculture, heating  
2 and cooling, and transportation. The department shall release and publi-  
3 cize on its website a draft plan no later than nine months after the  
4 effective date of this section. Following the release of the draft plan,  
5 the department shall conduct regional public hearings to obtain public  
6 feedback on the draft plan. The final plan will be completed no later  
7 than eighteen months after the effective date of this section. The  
8 department shall release and publicize on its website the final plan.

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

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

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

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

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

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

54 c. The department, in conjunction with the New York state energy  
55 research and development authority and the commissioner of labor, shall  
56 develop criteria for grants and low-interest loans to support the gener-

1 ation of renewable energy and job training programs in the renewable  
2 energy sector, with priority given to projects in low-income communi-  
3 ties, communities of color, immigrant communities and communities  
4 disproportionately impacted by fossil fuel development.

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

10 b. The climate action council shall:

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

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

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

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

21 (i) the commissioner;

22 (ii) the commissioner of agriculture and markets;

23 (iii) the commissioner of economic development;

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

25 (v) the commissioner of transportation;

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

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

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

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

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

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

34 (xii) the secretary of state;

35 (xiii) the director of the budget;

36 (xiv) the director of state operations; and

37 (xv) the counsel to the governor.

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

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

51 f. The council shall submit an annual report to the legislature as to  
52 its progress in achieving its goals. The assembly and the senate will  
53 hold a joint public hearing to review the report and to provide an  
54 opportunity for public input.

55 4. a. The department shall establish a state renewable energy board  
56 and regional renewable energy boards under the climate action council

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 b. Each local climate justice working group shall:

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

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

51 c. Each local climate justice working group shall be comprised of  
52 residents of low-income communities and environmental justice communi-  
53 ties. Members shall be appointed by local government consistent with  
54 rules adopted by such local government. Members shall number at least  
55 eight and no more than twelve individuals. Members shall serve for no  
56 more than three four-year terms each.

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

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

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

14 § 83-b. State renewable energy revolving fund. 1. There is hereby  
15 established in the joint custody of the comptroller and the commissioner  
16 of taxation and finance a special fund to be known as the "state renewa-  
17 ble energy revolving fund".

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

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

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

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

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

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

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

52 6. All payments of moneys from the loan account of the fund shall be  
53 made on the audit and warrant of the comptroller. All payments from the  
54 training account of the fund shall be made on the audit and warrant of  
55 the commissioner of labor.

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

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

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