STATE OF NEW YORK

365

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. PAULIN, GALEF, OTIS, SEAWRIGHT, COLTON, D'URSO -- Multi-Sponsored by -- M. of A. CROUCH, GLICK -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to establishing environmental standards for public authorities

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

Section 1. Article 9 of the public authorities law is amended by adding a new title 13 to read as follows:

TITLE 13

ENERGY EFFICIENCY

Section 2990. Definitions.
2991. Applicability.
2992. Energy targets.
2993. Energy assessments and efficiency plan.
2994. Solid waste management plan.
2995. New construction, renovations and leases.
2996. Procurement.
2997. State authorities energy efficiency council.
2998. Reports.
2999. Assistance from other authorities.

§ 2990. Definitions. For the purposes of this title, the following words and terms shall have the following meanings:

1. "Building or facility" means a single building or facility or a group of buildings or structures at a single site that is owned, leased, operated or funded by a state authority that exceeds twenty thousand square feet of space. For the purposes of this title, the term "facility" shall include any highway, parkway or public road owned, operated or maintained by a state authority.

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

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2. "Council" means the state authorities energy efficiency council established pursuant to section twenty-nine hundred ninety-seven of this title.

3. "DEC" means the department of environmental conservation.

4. "Fuel cell" means a device that produces electricity directly from hydrogen or hydrocarbon fuel through a non-combustive electro-chemical process.

5. "Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride.

6. "NYSERDA" means the New York state energy research and development authority.

7. "OGS" means the office of general services.

8. "Renewable energy" means energy produced from the following sources: solar thermal, photovoltaics, wind, hydroelectric, geo-exchange and tidal/wave energy.

9. "State authority" shall mean the state authorities listed in section twenty-nine hundred ninety-one of this title.

10. "State interagency committee" means the state interagency committee on sustainability and green procurement established pursuant to executive order number four of two thousand eight.

§ 2991. Applicability. 1. The provisions of this title shall only apply to the following state authorities:

Battery Park City Authority
Capital District Transportation Authority
Central New York Regional Transportation Authority
Development Authority of the North Country
Dormitory Authority of the State of New York
Long Island Power Authority
Metropolitan Transportation Authority
New York Convention Center Operating Corporation
New York State Bridge Authority
New York State Energy Research and Development Authority
New York State Olympic Regional Development Authority
New York State Thruway Authority
Niagara Frontier Transportation Authority
North Country Power Authority
Power Authority of the State of New York
Rochester-Genesee Regional Transportation Authority

2. Notwithstanding the provisions of subdivision one of this section, the provisions of this title shall not apply to a building or facility owned, leased or operated by a state authority established pursuant to titles one and one-A of article five of this chapter, which building or facility or vehicle or vehicle fleet is used primarily to produce, generate, transmit or store energy and power.

§ 2992. Energy targets. 1. All buildings or facilities or vehicles or vehicle fleets owned, leased, under which the state authority pays directly for energy, or operated by a state authority shall meet the following targets and timetable to achieve reductions in greenhouse gas emissions, energy and water consumption:

(a) reduce greenhouse gas emissions that result from state authority operations from the established baseline measurements by twenty percent by the year two thousand twenty-three, thirty percent by the year two thousand twenty-eight and forty percent by the year two thousand thirty-three. Emission reductions shall be measured on an absolute basis and not adjusted for facility expansion, load growth or weather;

(b) reduce overall energy consumption at buildings or facilities or vehicles or vehicle fleets owned or leased, under which the state authority pays directly for energy, by the state authority from the established baseline measurements by fifteen percent by the year two thousand twenty-three, twenty percent by the year two thousand twenty-eight and thirty percent by the year two thousand thirty-three;

(c) reduce potable water use from the established baseline measurement by ten percent by the year two thousand twenty-three, twenty percent by the year two thousand twenty-eight and thirty percent by the year two thousand thirty-three; and

(d) obtain by generation or procurement fifteen percent of annual electricity consumption from renewable sources by the year two thousand twenty-three, twenty-five percent by the year two thousand twenty-eight and fifty percent by the year two thousand thirty-three.

2. Each state authority that owns, leases or operates a building or facility or vehicle or vehicle fleet shall establish a baseline measurement of greenhouse gas emissions, electricity and water consumption levels for the period beginning January first, two thousand fifteen and ending December thirty-first, two thousand sixteen for such building or facility or vehicle or vehicle fleet. The baseline measurement shall be the average of the two year period.

3. The council is authorized, upon the application of a state authority, to reduce or decrease one or more efficiency targets required under this section if the state authority can demonstrate to the satisfaction of the council that it has achieved substantially the overall target or goal prior to the final target year. For the purposes of this subdivision, substantial achievement shall mean meeting ninety percent or more of the target or goal.

§ 2993. Energy assessments and efficiency plan. 1. Energy assessments. (a) A state authority that owns, leases or operates a building or facility shall conduct an annual onsite assessment and evaluation of energy and water consumption and expenses of such building or facility. The assessment shall include the following information:

(1) the total number of buildings and facilities owned, leased or operated by the state authority and the total square footage for such buildings and facilities;

(2) the total annual energy consumption, listed by energy source, for each building or facility;

(3) the total annual energy cost calculated per square foot, and listed by energy source, for each building or facility;

(4) the total annual water consumption for each building or facility;

(5) the total annual cost for fuel used by authority-owned vehicles, listed by fuel type and the average mileage efficiency of vehicles by vehicle class owned or leased by the state authority; and

(6) a breakdown by percentage of the total renewable energy used by each building or facility.

(b) In developing this assessment, the state authority may seek the advice and assistance of other state agencies and entities, such as DEC, NYSERDA or OGS.

2. Energy efficiency plan. (a) Based on the initial assessment conducted pursuant to subdivision one of this section, each state authority shall develop and submit to the council for its approval an energy efficiency plan to meet the targets, goals and timetable established pursuant to subdivision one of section twenty-nine hundred ninety-two of this title.

(b) The plan shall describe specific measures to be taken to reduce the state authority's greenhouse gas emissions, energy and water consumption in accordance with such targets and goals. The plan shall also describe any policies adopted, and projects pursued, by the state authority to increase the use of renewable energy sources and other alternative sources.

(c) The council shall approve the plan if the plan:

(1) provides a detailed and comprehensive plan for achieving the targets and goals set forth in section twenty-nine hundred ninety-two of this title; and

(2) can be implemented in a cost-effective manner.

(d) The plan shall be amended to reflect any changes or updates reported in the annual assessment pursuant to subdivision one of this section.

(e) With respect to buildings and facilities that contain less than twenty thousand square feet in space, a state authority is encouraged to assess, develop and implement efficiency and waste management plans consistent with the targets, goals and timetables required pursuant to this title.

§ 2994. Solid waste management plan. 1. For purposes of this section, "solid waste" shall have the same meaning as is found in subdivision one of section 27-0701 of the environmental conservation law, but shall not include source, special nuclear or by-product material as defined in the atomic energy act of 1954, as amended, or hazardous waste which appears on the list or satisfies the characteristics of hazardous waste promulgated pursuant to section 27-0903 of the environmental conservation law, or low level radioactive waste as defined in section 29-0101 of the environmental conservation law.

2. (a) All state authorities shall prepare and submit to the council for its review and approval a solid waste management plan for such authority for at least a ten-year period.

(b) The solid waste management plan, which shall be in a form developed by the council, shall, at a minimum:

(1) identify, describe and characterize the solid waste stream to be managed in the planning period;

(2) assess existing and alternate proposed solid waste management programs and facilities;

(3) identify the parties with responsibility to implement each element of the plan and the steps which must be undertaken by each; and

(4) set forth a timetable for implementing the plan, including establishing annual goals.

(c) Such plan shall strive to achieve the objectives of the state solid waste management policy set forth in section 27-0106 of the environmental conservation law, provide for or take into account management of all solid waste within the planning unit, and embody, as may be appropriate to the circumstances, sound principles of solid waste management, natural resources conservation, energy production, and employment creating opportunities.

(d) The council shall approve a plan if the plan contains the elements set forth in paragraph (b) of this subdivision. Thereafter such plan shall become the solid waste management plan in effect for such authority. If the plan as submitted does not contain the elements set forth in paragraph (b) of this subdivision, the council shall state the reasons for its determination and require the state authority to re-submit an amended plan for approval.

§ 2995. New construction, renovations and leases. 1. (a) The design and construction of any new buildings or facility, or the substantial renovation of an existing building or facility, by a state authority shall comply with the standards and regulations promulgated by OGS pursuant to article four-C of the public buildings law. This subdivision shall also apply to a building or facility, fifty percent or more of the funding for the purchase, lease, design, construction or substantial renovation thereof is funded directly or indirectly by a state authority.

(b) For the purposes of this section, the term "substantial renovation" shall mean: a capital project in which the scope of work involves at least two of the following primary building systems: electrical, plumbing, boiler, elevator, HVAC, roof replacement, window replacement, lighting or external masonry, painting and plastering; and the building area in which the construction is performed will be unoccupied due to the nature of the construction for thirty days or more.

2. Any leases entered into by a state authority, including the renegotiation or extension of existing leases, shall:

(a) incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of facility performance;

(b) include a preference for facilities having the ENERGY STAR building label in their selection criteria for acquiring leased facilities; and

(c) encourage lessors to apply for an ENERGY STAR building label and to explore and implement projects that will reduce costs, including projects carried out through the lessors' energy-savings contracts.

§ 2996. Procurement. 1. Procurement from specification list. (a) All purchases of commodity, equipment, services and technologies made by a state authority shall be pursuant to procurement lists and specifications promulgated by the state interagency committee. Such committee shall review annually newly developed or manufactured products, commodities, equipment, services and technologies, and shall issue updated procurement lists and specifications, if necessary.

(b) In addition, all state authorities shall procure commodities, equipment, services and technologies that meet or exceed the following minimum specifications:

(1) Recycled content. To the maximum extent possible, state authorities shall seek to reduce the use of copy paper and other paper products. Any purchase of copy paper and other paper supplies for which the United States environmental protection agency has developed recycled content recommendations pursuant to section six thousand two of the federal resource conservation and recovery act shall be required to meet or exceed the state authority's minimum post-consumer material content percentages recommended in the most recent recovered materials advisory notice issued for such commodity in the federal register; provided, however, that xerographic paper shall contain no less than thirty percent post-consumer recycled content. All copy and janitorial paper shall be processed chlorine-free to the extent practicable. All state authorities shall print publications on recycled paper, and minimum percentages shall be met unless costs for such paper exceed the cost of other available commodities by more than ten percent.

(2) Waste reduction. State authorities shall seek to reduce waste in products and packaging, including the formulation of policies to promote the use of double-sided copying and printing to the greatest extent

practicable. State authorities shall favor durability, repairability and reuse when purchasing supplies.

2. If a commodity or equipment is not on a procurement list, the state authority shall select ENERGY STAR and energy-efficient products when acquiring energy-using products or equipment. For products or equipment for which ENERGY STAR labels are not yet available, the state authority shall follow the guidelines adopted by the department of state pursuant to article sixteen of the energy law that designate target energy efficiency levels for such product or equipment.

3. A state authority may procure a commodity, equipment, service or technology through a process that does not comply with this section when the purchase of the commodity, equipment, service or technology is necessary to respond to an emergency which endangers public health or safety, provided such authority shall within seven business days file a written report with the authority's budget office and the office of the state comptroller, which shall become part of the procurement record. The report shall contain the following information:

(a) a description of the emergency that prevented compliance with subdivisions one and two of this section;

(b) the name of the commodity or technology, or a description of the service, its use and intensity of use;

(c) a description of the steps being taken to safeguard public health and safety during the emergency; and

(d) an explanation of how such an emergency can be avoided in the future.

4. (a) Beginning one year after the effective date of this section, all state authorities, when procuring commodities, equipment, services or technology, shall follow practices and develop solicitation specifications that meet or exceed the minimum specifications established in subdivision one of this section. All such contracts shall include a statement describing how such minimum specifications were met.

(b) In the event that a state authority receives no bids or proposals that meet the specifications developed pursuant to paragraph (a) of this subdivision, such agency or authority may withdraw the request for bids or proposals and begin a new procurement with new specifications without such specifications and award a contract in accordance with other applicable statutes; provided, however that such authority shall document the reasons why such procurement does not meet the minimum specifications established in subdivision one of this section, and submit such documentation for inclusion in the annual report required pursuant to this title and to the office of the state comptroller for inclusion in the procurement record, provided further that the length of any such contract shall be limited to a period of two years. Prior to the termination of the contract, the state authority shall issue a new request for bids or proposals with the specifications developed pursuant to paragraph (a) of this subdivision.

5. (a) Nothing in this section shall be construed as requiring a state authority to procure a commodity, equipment, service or technology that does not meet the form, function and utility required by such authority, or as requiring a state authority to procure a commodity, equipment, service or technology the cost of which exceeds the cost of an alternative available commodity or service by more than ten percent.

(b) When determining and comparing costs, state agencies and authorities shall consider cost as defined in section one hundred sixty of the state finance law.

6. Training and education. OGS, with the assistance of the DEC, the department of health, and the office of the state comptroller, within twelve months of the effective date of this section, shall design and begin implementation of a training program for senior managers and state authority staff involved in procurement to familiarize them with their responsibilities under this section and ensure the effective and efficient implementation of the provisions of this section. Such program shall provide for new employee training and ongoing training.

§ 2997. State authorities energy efficiency council. There is hereby established within DEC a state authorities energy efficiency council. The commissioner of DEC shall determine the number of, and appoint the members to the council, provided that there shall be at least one representative each from NYSERDA and OGS. The council shall be responsible for monitoring, overseeing and reporting on the actions taken by state authorities to achieve the energy reduction targets required under this title, and shall have the following duties and responsibilities:

1. Develop formats for the energy efficiency plan, solid waste management plan and progress reports, and establish the dates for submission of the plans and reports;

2. Assist state authorities and their coordinators to prepare the energy efficiency and waste management plans, to implement the plans, and to meet the targets and goals set forth in this title;

3. Approve the energy efficiency plan or waste management plan submitted by a state authority;

4. Evaluate the progress of state authorities in implementing their energy efficiency and waste management plans, and meeting the targets and goals set forth in this title;

5. Compile the information submitted by state authorities in the progress reports and report on the progress made toward achieving the goals described in the efficiency plan;

6. Provide technical assistance to state authorities necessary to satisfy reporting requirements;

7. Develop and maintain data management systems as are necessary to document energy usage in a manner consistent with, and in support of, the development and implementation of the energy efficiency targets and goals;

8. Prepare an annual report to the governor and the legislature pursuant to section twenty-nine hundred ninety-eight of this title.

§ 2998. Reports. 1. Progress reports. (a) Each state authority shall prepare and submit to the council an annual progress report in a form or manner, containing such information or data, and on such date determined by the council. The report shall be certified as accurate and complete by the executive director of the state authority.

(b) At a minimum, such report shall describe:

(1) the state authority's efforts regarding reduction in energy and water consumption; waste reduction and recycling activities; recycled product procurement; quantities of material recycled;

(2) the progress made toward achieving the targets and goals mandated in this title;

(3) the progress made toward increasing the use of renewable energy sources; and

(4) barriers to achieving progress towards meeting the targets and goals.

2. Annual report. The council shall prepare and submit to the governor and the legislature an annual report, which shall contain the following:

(a) a summary of the results from the progress reports submitted by the state authorities;

(b) a description of the overall progress by the state authorities towards achieving the energy consumption and water use reduction targets;

(c) a description of the overall progress by the state authorities towards implementing their waste management plans;

(d) a comparison of results of energy efficiency activities taken by the state authorities during prior years;

(e) identifying those state authorities that have performed poorly towards achieving the efficiency targets and goals or implementing their waste management plan;

(f) recommendations to improve or enhance the energy efficiency and waste management efforts of state authorities.

§ 2999. Assistance from other authorities. Upon the request of any state authority that is subject to the provisions of this title and that is located in its service areas, NYSERDA or OGS, whichever is appropriate, shall provide whatever assistance necessary to help the state authority meet the energy efficiency targets and other goals established in this title. Such assistance shall include, but not be limited to:

1. financing and developing programs to increase the efficiency of energy use and to facilitate the development of co-generation;

2. financing, designing, developing and providing energy efficiency and clean energy technology projects, programs and services;

3. financing, designing, developing and providing programs and services related to renovation or retrofitting of buildings and facilities to address energy efficiency, energy conservation, the use of renewable energy and the reduction of air and other pollution.

§ 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

§ 3. This act shall take effect immediately.