STATE OF NEW YORK

4527

2021-2022 Regular Sessions

IN SENATE

February 5, 2021

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the energy law, in relation to the mitigation of the severity of climate change; and to repeal certain provisions of the energy law relating thereto

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

Section 1. This act shall be known and may be cited as the "freedom from fossil fuels act".

§ 2. Subdivisions 1, 4 and 5 of section 3-101 of the energy law, subdivision 1 as amended by chapter 253 of the laws of 2013 and subdivision 5 as amended by chapter 396 of the laws of 1978, are amended to read as follows:

1. to obtain and maintain an adequate and continuous supply of safe, dependable and economical energy for the people of the state and to accelerate development and use within the state of renewable energy sources, all in order **to mitigate the severity of climate change,** to promote the state's economic growth, to create employment within the state, to protect [~~its~~] **the state's** environmental values and agricultural heritage, to husband its resources for future generations, and to promote the health and welfare of its people;

4. to encourage transportation modes and equipment which conserve the use of energy **and reduce and/or eliminate emissions of carbon dioxide and co-pollutants**;

5. to foster, encourage and promote the prudent development and wise use of [~~all indigenous state~~] **the state's renewable** energy resources including, but not limited to, [~~on-shore oil and natural gas, off-shore oil and natural gas, natural gas from Devonian shale formations,~~] small head hydro, [~~wood,~~] solar, wind, solid waste, energy from biomass, fuel cells**, geothermal, offshore wind** and cogeneration; and

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

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§ 3. Subdivision 7 of section 3-101 of the energy law is REPEALED and a new subdivision 7 is added to read as follows:

7. to conduct energy planning in an integrated and comprehensive manner through development of a master plan designed to achieve the goals set forth in the New York state climate leadership and community protection act, which includes but is not limited to, the following:

a. By two thousand thirty, reducing greenhouse gas emissions by forty percent, based on 1990 emissions levels, and meeting seventy percent of electricity needs from renewable resources;

b. By two thousand fifty, reducing greenhouse gas emissions by eighty-five percent, based on 1990 emissions levels, and meeting one hundred percent of electricity needs from fossil fuel-free resources.

The master plan shall also be designed to meet the clean energy resource and energy efficiency targets set forth in section sixty six-p of the public service law, as added by chapter one hundred six of the laws of two thousand nineteen.

§ 4. Subdivisions 1 and 2 of section 6-102 of the energy law, as amended by chapter 195 of the laws of 2011, are amended to read as follows:

1. There shall be established a state energy planning board, hereinafter referred to as the "board", which shall consist of the chair of the public service commission, the commissioner of environmental conservation, the commissioner of economic development, the commissioner of transportation, the commissioner of labor, the commissioner of the division of homeland security and emergency services, the commissioner of agriculture and markets, the commissioner of health, the secretary of state and the president of the New York state energy research and development authority. The [~~governor, the~~] speaker of the assembly and the temporary president of the senate shall each appoint [~~one~~] **three** additional [~~representative~~] **representatives** to serve on the board. **The representatives appointed by the speaker of the assembly and the temporary president of the senate shall include at all times individuals with expertise in issues relating to climate change mitigation and/or adaptation, such as environmental justice, energy planning, labor, public health and regulated industries.** The presiding officer of the federally designated electric bulk system operator (BSO) shall serve as a non-voting member of the board. Any decision or action by the board shall be by majority vote. The president of the New York state energy research and development authority shall serve as chair of the board. Members of the board may designate an executive staff representative to participate on the board on their behalf.

2. Regional planning councils shall be established. [~~Two~~] **Nine** regions shall be established as follows:

(a) [~~Downstate region - New York City and Dutchess, Nassau, Orange, Putnam, Rockland,~~] **Region one: Nassau and** Suffolk[~~, Ulster and Westchester~~] counties;

(b) [~~Upstate region - Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates counties.~~] **Region two: Kings, Bronx, New York, Queens, and Richmond counties;**

(c) Region three: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester counties;

(d) Region four: Albany, Columbia, Delaware, Montgomery, Otsego, Rensselaer, Schenectady, and Schoharie counties;

(e) Region five: Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, and Washington counties;

(f) Region six: Herkimer, Jefferson, Lewis, Oneida, and St. Lawrence counties;

(g) Region seven: Broome, Cayuga, Chenango, Cortland, Madison, Onondaga, Oswego, Tioga, and Tompkins counties;

(h) Region eight: Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, and Yates counties; and

(i) Region nine: Allegany, Chautauqua, Cattaraugus, Erie, Niagara, and Wyoming counties.

The governor, temporary president of the senate and the speaker of the assembly shall each appoint [~~three~~] two regional planning council members per region. Regional planning council members shall serve without compensation, and shall have their principal residence within the region for which they are appointed. Such regional council members may solicit input from stakeholder interests within their region, including but not limited to local governments, municipal utilities, rural electric cooperatives, utilities, labor unions, ratepayers, businesses, trade associations, generators, social justice organizations, and community organizations with a focus on, including but not limited to, climate change mitigation, the environment, environmental justice, and/or public health. Each regional planning council shall transmit to the board a report containing any recommendations specific to its region on a schedule determined by the board to be appropriate for consideration of such report in the development of the draft energy plan.

§ 5. Subdivision 2 and paragraph (b) of subdivision 5 of section 6-104 of the energy law, as added by chapter 433 of the laws of 2009, paragraph (a) of subdivision 2 as amended by chapter 195 of the laws of 2011, are amended and two new subdivisions 2-a and 6 are added to read as follows:

2. The state energy plan shall include: (a) forecasts for a minimum period of ten years, and for such other periods as the board may determine, of: (i) demand for electricity[~~, natural gas, coal, petroleum products, including heating and transportation fuels~~] and other fuel sources for heating, transportation and industrial processes, and alternate fuels, including ethanol and other biofuels, to the extent possible, taking into account energy conservation, load management and other demand-reducing measures including, but not limited to, carbon pricing, which can be achieved in a cost-effective manner, including the basis for such projection, including an examination of possible alternate levels of demand and discussion of the forecasting methodologies and input variables used in making the forecasts;

(ii) energy supply requirements needed to satisfy demand for electricity, [~~natural gas, coal, petroleum products, including heating and transportation fuels~~] and other fuel sources for heating, transportation, industrial processes, and alternate energy sources and fuels, for each region of the state, and for the state as a whole, including with respect to electricity, the amount of capacity needed to provide adequate reserve margins and capacity needed to ensure reliability and competitive markets in the various regions of the state and to ensure electric capacity for beneficial electrification of additional sectors

including, but not limited to heating, transportation and industrial processes;

(iii) an assessment of the ability of the existing energy supply sources and the existing transmission or fuel transportation systems, to satisfy, together with those sources or systems reasonably certain to be available, such energy supply requirements, indicating planned additions, retirements, deratings, substantial planned outages, and any other expected changes in levels of generating and production capacity;

(iv) additional electric capacity and/or transmission or fuel transportation systems needed to meet such energy supply requirements that will not be met by existing sources of supply and those reasonably certain to be available, where such analysis should identify system constraints and possible alternatives available, both supply-side and demand-side alternatives, including but not limited to distributed generation, energy efficiency and conservation measures, to redress such constraint; and

(v) projected greenhouse emissions **assessed using a life-cycle method of analysis for each fuel type**.

(b) Identification and assessment of the costs, risks, benefits, uncertainties and market potential of **all** energy supply source alternatives[~~, including demand-reducing measures, renewable energy resources of electric generation, distributed generation technologies, cogeneration technologies, biofuels and other methods and technologies reasonably available for satisfying energy supply requirements which are not reasonably certain to be met by the energy supply sources identified in paragraph (a) of this subdivision, provided that such analysis shall include the factors identified in paragraph (d) of this subdivision~~];

(c) Identification and analysis of emerging trends related to energy supply, price and demand, including trends related to the transportation sector;

(d) An assessment of current energy policies and programs, and their contributions to achieving long-range energy planning objectives including, but not limited to, the least cost integration of energy supply sources, energy transportation and distribution system and demand-reducing measures for satisfying energy supply requirements, giving due regard to such factors as required capital investments, cost, ratepayer **and climate** impacts, security and diversity of fuel supplies and generating modes, protection of public health and safety, adverse and beneficial environmental impacts, conservation of energy and energy resources, the ability of the state to compete economically, and any other policy objectives deemed appropriate;

(e) In order to assist the board in such evaluation, the power authority of the state of New York and the Long Island power authority shall individually submit to the planning board: (i) a strategic plan specifying the mission and goals of the authority, the policies and programs utilized to fulfill such mission and goals, and an explanation of how such policies and programs relate to the state energy plan, (ii) an annual five-year operating plan, and (iii) a ten-year projected capital budget for their respective operations. Such plans shall include major new capital and programmatic initiatives, as well as descriptions and achievements of existing programs, including program objectives and the numbers of clients and/or customers served for each service or program;

(f) An analysis of security issues, considering both natural and human threats to the state's energy systems;

(g) An environmental justice analysis **including an analysis of the barriers to, and opportunities for, community ownership of renewable**

generation and energy efficiency services in low-income and environmental justice communities;

(h) An assessment of [~~the ability of urban planning alternative~~] land use planning, including but not limited to smart growth [~~and~~], mass transportation improvements to reduce energy and transportation fuel demand, and building code changes which will reduce the use of energy, carbon emissions, and other co-pollutants;

(i) An inventory of greenhouse gas emissions, and strategies for facilitating and accelerating the use of zero or low carbon energy sources and/or carbon mitigation measures;

(j) Recommendations, as appropriate and desirable, for administrative and legislative actions to implement such policies, objectives and strategies;

(k) Assessment of the impacts of implementation of the plan upon economic development, health, safety and welfare, environmental quality, and energy costs for consumers, specifically low-income consumers; [~~and~~]

(l) A statewide plan for the conversion to zero-emission vehicles including, but not limited to, the necessary infrastructure to reduce range anxiety, the conversion of the state fleet to zero-emission vehicles, and the overall electrification of the transportation sector;

(m) A statewide plan for development of non-fossil fuels for heating, cooling and industrial processes; and

(n) Such additional information as the board deems appropriate, such as but not limited to, information developed from consultation with the BSO.

2-a. The state energy plan shall not include any provisions for new construction or implementation of: (a) any infrastructure used to transfer fossil fuels or fuel gasses; or

(b) electricity generation or storage electricity which utilize fossil fuels gases.

(b) Any energy-related action or decision of a state agency, board, commission or authority shall be [~~reasonably~~] consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update[~~; provided, however, that any such action or decision which is not reasonably consistent with the plan shall be deemed in compliance with this section, provided that such action or decision includes a finding that the relevant provisions of the plan are no longer reasonable or probable based on a material and substantial change in fact or circumstance, and a statement explaining the basis for this finding~~]. No state agency, board, commission, or authority shall act inconsistently with the provisions of this section.

6. Any person may bring an action in his or her own name to enforce the provisions of this article through a private right of action.

§ 6. Paragraph (c) of subdivision 2 and subdivision 3 of section 6-106 of the energy law, subdivision 3 as added by chapter 433 of the laws of 2009, paragraph (c) of subdivision 2, the opening paragraph, subparagraphs (i) and (ii) of paragraph (a), subparagraphs (i) and (ii) of paragraph (b), and paragraphs (c) and (d) as amended and paragraph (e) of subdivision 3 as added by chapter 195 of the laws of 2011, are amended to read as follows:

(c) Public comment hearings, with at least [~~three~~] one in each region described in subdivision two of section 6-102 of this article and provide an opportunity to submit written comments, subsequent to the issuance of a draft plan, to obtain views and comments of interested persons on any aspect of, or issue addressed in, such draft plan;

3. As determined by the board in each instance to be appropriate with respect to the particular entity or entities from which information, if any, shall be required, the information to be provided to the board by energy transmission [~~and~~], distribution **and generation** companies, electric, gas, or steam corporations, major energy suppliers including owners or operators of electric generation facilities, commodity and/or end-use energy service providers, state agencies or authorities, including the power authority of the state of New York and the Long Island power authority, and/or others, shall include the following:

(a) Comprehensive long-range plans for future operations:

(i) a forecast of electricity demands over a period as the board may determine appropriate, including annual in-state electric energy sales and summer and winter peak loads by utility service area where applicable, and total any annual in-state electric energy sales and coincident peak load, specifically identifying the extent to which energy conservation, load management and other demand-reducing measures, and electric energy generated by cogeneration, small hydro and [~~alternate energy production facilities~~] **distributed generation**, **energy generated by fossil fuels and fuel gases,** including renewable energy technologies and fuel cells, consumed on site, have been incorporated within such forecast;

(ii) a forecast of electricity supply requirements over a period as the board may determine appropriate, by utility service area where applicable, specifically identifying the reserve margins required for reliable electric service, the transmission and distribution losses assumed, and the amount of out-of-state sales commitments;

(iii) an assessment of the ability of existing electricity supply sources, and those reasonably certain to be available, to satisfy electricity supply requirements, including electric generating facilities which can be retained in service beyond their original design life through routine maintenance and repairs **and anticipatory estimates of beneficial electrification for new sectors including, but not limited to, heating, cooling, cooking, transportation, and industrial processes**;

(iv) an inventory of: (A) all existing electric generating and transmission facilities including those owned or operated by the power authority of the state of New York and the Long Island power authority; (B) electric generating and transmission facilities planned or under construction including the power authority of the state of New York and the Long Island power authority, including the dates for completion and operation; (C) the anticipated retirement dates for any electric generating facilities currently operated including those owned or operated by the power authority of the state of New York and the Long Island power authority; (D) land owned or leased including that owned or leased by the power authority of the state of New York and the Long Island power authority and held for future use as sites for major electric generating facilities; and (E) electric generating, transmission, and related facilities operated, or planned to be operated, by others, to the extent information concerning the same is known;

(v) recommended supply additions and demand reducing measures for satisfying the electricity supply requirements, not reasonably certain to be met by electricity supply sources identified in subparagraph (iii) of this paragraph, including the life extension of existing electric generating facilities, and reasons therefor;

(vi) a statement of research and development plans, including objectives and programs in the areas of energy conservation, **climate change mitigation, beneficial electrification,** load management, electric gener-

ation and transmission, new energy technologies and pollution abatement and control, which are not funded through regulatory required programs, recent results of such programs undertaken or funded to date, and an assessment of the potential impacts of such results;

(vii) a projection of estimated electricity prices to consumers over the forecast period, and a sensitivity analysis of that forecast relating to a number of factors including fuel prices and the levels of available capacity and demand in the regions of the state;

(viii) a description of the load forecasting methodology and the assumptions and data used in the preparation of the forecasts, specifically including projections of demographic and economic activity and such other factors, statewide and by service area, which may influence electricity demand, and the bases for such projections;

(ix) proposed policies, objectives and strategies for meeting the state's future electricity needs; and

(x) such additional information as the board may, by regulation, require to carry out the purposes of this article.

(b) All providers of natural gas transmission, distribution and/or marketing services to customers shall individually prepare and submit a comprehensive long-range plan for future operations, which shall include, as appropriate:

(i) a forecast over a period as the board may determine appropriate, by utility service area, of estimated annual in-state gas sales, winter season sales and peak day sales by appropriate end-use classifications, specifically identifying the extent to which energy conservation measures and the sale of gas owned by persons other than natural gas transmission and distribution utilities have been incorporated within such forecast;

(ii) a forecast of gas supply requirements over a period as the board may determine appropriate, by utility service area, specifically identifying the amounts of gas needed to meet severe weather conditions, lost and unaccounted for gas, out-of-state sales commitments and internal use;

(iii) an assessment of the ability of existing gas supply sources, and those reasonably certain to be available, to satisfy gas supply requirements;

(iv) an inventory of: (A) all existing supply sources, storage facilities, and transmission facilities which are used in providing service within the state, (B) the transmission and storage facilities under construction which would be used in providing service within the state, their projected costs and capacities, including peaking capacity, (C) transmission facility additions proposed to be constructed by natural gas transmission and distribution utilities, (D) transmission facilities operated, or planned to be operated, by others, to the extent information concerning the same is known;

(v) [~~recommended supply additions and demand-reducing measures for satisfying the gas supply requirements, not reasonably certain to be met by gas supply sources identified in subparagraph (iii) of this paragraph and the reasons therefor;~~

~~(vi)~~] a projection of estimated gas prices to consumers over the forecast period, and a sensitivity analysis of that forecast relating to a number of factors including the levels of commodity supply availability, of available pipeline and storage capacity, and of demand in the regions of the state;

[~~(vii)~~] **(vi)** a description of the load forecasting methodology and the assumptions and data used in the preparation of the forecasts, specif-

ically including projections of demographic and economic activity and such other factors, statewide and by service area where applicable, which may influence demand for natural gas, and the bases for such projections;

[~~(viii)~~] **(vii)** a statement of research and development plans, including objectives and programs in the areas of energy conservation and new energy technologies, recent results of such programs undertaken or funded to date, and an assessment of the potential impacts of such results;

[~~(ix)~~] **(viii)** proposed policies, objectives and strategies for meeting the state's future gas needs; and

[~~(x)~~] **(ix)** such additional information as the board may, by regulation, require to carry out the purposes of this article.

(c) Such information from major petroleum suppliers and major coal suppliers as the board may require to carry out the purposes of this article.

(d) Such other information from owners and operators of electric generating power plants as the board may require to carry out the purposes of this article.

[~~(e) A single comprehensive submission from industry groups, trade associations, or combinations of such groups and associations in place of submissions by individual member companies.~~]

§ 7. No agency, commission, or authority shall approve or permit the construction of any fossil fuel or fuel gas generation facility or infrastructure until the completion of an energy plan developed in accordance with the provisions of this act.

§ 8. This act shall take effect immediately.