

STATE OF NEW YORK

4931--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT in relation to directing state agencies to adopt a sustainability and decarbonization program

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

1 Section 1. 1. Definitions. For the purposes of this act, the following
2 terms shall have the following meanings:

3 (a) "affected entities" shall mean any agency or department over which
4 the governor has executive authority, including all offices and divi-
5 sions thereof, as well as all public authorities for which the governor
6 appoints the chair, the chief executive, or the majority of board
7 members, including all offices and divisions thereof, except for the
8 port authority of New York and New Jersey. This shall also include the
9 state university of New York and the city university of New York;

10 (b) "BuildSmart 2025" shall mean the collective effort by affected
11 entities to reduce site energy use by 11 trillion British thermal units
12 (BTUs) by 2025 from a 2015 baseline;

13 (c) "council" shall mean the GreenNY council established under subdi-
14 vision 2 of this act;

15 (d) "disadvantaged communities" shall mean communities that bear
16 burdens of negative public health effects, environmental pollution,
17 impacts of climate change, and possess certain socioeconomic criteria,
18 or comprise high-concentrations of low- and moderate-income households,
19 as identified pursuant to section 75-0111 of the environmental conserva-
20 tion law;

21 (e) "light-duty vehicles" shall mean vehicles equal to or less than
22 10,000 pounds gross weight;

23 (f) "medium- and heavy-duty vehicles" shall mean vehicles more than
24 10,000 pounds gross weight;

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

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1 (g) "new construction" shall mean the construction of a new building
2 that is occupied during all four seasons and is 5,000 square feet or
3 larger;

4 (h) "qualifying tier" shall mean any tier of the New York state public
5 service commission's Clean Energy Standard (Case 15-E-0302) ("CES") that
6 is designed to incentivize the delivery of additional, incremental clean
7 energy to New York state or a specific location within New York state,
8 which as of the effective date of this act includes Tier 1, Offshore
9 Wind and Tier 4 but not Tier 2 or Zero-Emission Credits.

10 2. GreenNY council. (a) There is hereby established the GreenNY coun-
11 cil. The council shall be comprised of the director of the division of
12 the budget; the commissioner of general services; the commissioner of
13 environmental conservation; the commissioner of health; the commissioner
14 of economic development; the commissioner of transportation; the commis-
15 sioner of parks, recreation, and historic preservation; the president of
16 the environmental facilities corporation; the president of the New York
17 state energy research and development authority; the president of the
18 New York power authority; the president of the dormitory authority of
19 the state of New York; and the chief executive officer of the metropol-
20 itan transportation authority.

21 (b) Members of the council may designate a staff member, and an alter-
22 nate, to represent them and participate on the council on their behalf.

23 (c) The council shall be led and co-chaired by the commissioner of
24 general services, the commissioner of environmental conservation, the
25 director of the division of the budget, the president of the New York
26 state energy research and development authority, and the president of
27 the New York power authority, or their designees. The day-to-day work of
28 the council shall be performed by executive and program staff of these
29 leadership agencies and authorities, in consultation with any other
30 agency or authority staff that participate in council work.

31 (d) The office of information technology services shall support the
32 council's performance of its responsibilities under this act.

33 (e) The council shall meet as needed, but no less than quarterly, to
34 conduct public business. A majority of the members of the council (or
35 their designees), shall constitute a quorum, and all actions and recom-
36 mendations of the council shall require approval by a majority of the
37 total members of the council.

38 (f) The council may form advisory subcommittees or workgroups, both
39 standing and ad hoc, as the council sees fit, made up of executive and
40 program staff, to provide advice and assistance to the council regarding
41 matters assigned to such subcommittees or workgroups by the council.

42 3. Training, staff, and support. (a) Each affected entity shall, no
43 later than thirty days from the effective date of this act, assign an
44 employee to serve as its sustainability coordinator. Sustainability
45 coordinators shall be given management support and provided with the
46 necessary resources to enable the affected entity to comply with this
47 act. Sustainability coordinators shall serve as the affected entity's
48 liaison to the council.

49 (b) Affected entities may create a sustainability team in-house to
50 support the work of the council. This sustainability team should be
51 comprised of appropriate staff involved in identifying, approving, and
52 implementing sustainability or energy projects, and environmental
53 justice matters. The sustainability team should include an executive
54 sponsor at the deputy or associate commissioner, or vice president level
55 or equivalent.

1 (c) The council shall design and implement training and outreach
2 programs for sustainability coordinators and other affected entity staff
3 that participate in council work to assist with carrying out the
4 requirements of this act.

5 4. Reporting. (a) All affected entities shall furnish such information
6 and assistance as the council determines is reasonably necessary to
7 accomplish its purposes. All affected entities shall share data in the
8 most efficient manner identified by the council for purposes of inform-
9 ing any progress reports, and the council shall follow applicable state
10 data governance procedures regarding any interagency data sharing or
11 collection.

12 (b) The New York power authority shall provide affected entities with
13 access to the New York Energy Manager ("NYEM"), with necessary technical
14 support, at cost. The NYEM shall serve as the system of record for all
15 energy data from covered facilities. All affected entities shall ensure
16 that their energy data is entered into the NYEM system. The council
17 shall leverage this data to develop a greenhouse gas (GHG) baseline for
18 affected entity operations.

19 (c) The council shall develop an annual survey to gather information
20 from affected entities regarding:

21 (i) the progress each affected entity has made toward achieving the
22 directives, targets and goals provided for or established pursuant to
23 this act;

24 (ii) the effectiveness and usage of the procurement specifications;

25 (iii) efforts the affected entity has undertaken to advance environ-
26 mental justice; and

27 (iv) the specific sustainability and energy efficiency projects that
28 have been implemented and the effectiveness of such programs in meeting
29 the targets, goals, and other requirements of this act.

30 (d) Affected entities shall submit each year on or before a date as
31 the council may direct, a completed survey in the form and containing
32 the information specified by the council.

33 (e) The council, during the month of September in the year following
34 the effective date of this act, and each year thereafter, shall submit a
35 progress report to the governor, which shall compile the information
36 submitted by affected entities pursuant to this act and report on
37 progress made on the implementation of this act. Such progress report
38 shall be published on a website established by the council.

39 5. Exemptions. (a) Exemptions from any of the specific targets, goals,
40 or other requirements under this act may be granted by the council
41 co-chairs, provided, however, that any exemptions to paragraph (a) of
42 subdivision 7 of this section may only be granted by the president of
43 the New York state energy research and development authority in consul-
44 tation with the chief executive officer of the New York state department
45 of public service and director of the budget.

46 (b) Affected entities may request such an exemption from council
47 co-chairs and shall justify such request based upon the affected enti-
48 ty's particular circumstances or as set forth in this act.

49 6. Buying and operating green. (a) (i) The council shall develop and
50 issue sustainable procurement specifications (procurement specifica-
51 tions) for use by affected entities in the procurement of commodities,
52 services, and technology, or where applicable, in the development of new
53 public works solicitations and contracts.

54 (ii) Any procurement specifications developed, approved, or issued by
55 the interagency committee on sustainability and green procurement under
56 executive order number 4, issued on April 24, 2008, shall carry forward

1 in full effect as if issued by the council until modified by the coun-
2 cil.

3 (b) In developing the procurement specifications, the council shall
4 consider the following factors:

5 (i) protection of public health and the environment, including vulner-
6 able populations and residents in disadvantaged communities;

7 (ii) avoidance of hazards from the use or release of toxic substances;
8 (iii) pollution reduction and prevention;

9 (iv) sustainable resource management and use, and sustainable manufac-
10 turing and production processes;

11 (v) low impact development and climate resilient design practices, and
12 standards and priorities for entities providing construction, engineer-
13 ing, and other similar services;

14 (vi) reduction of greenhouse gas emissions;

15 (vii) the use of renewable and zero-emission resources, remanufactured
16 components, and reused or recycled content;

17 (viii) waste reduction, materials reuse, recyclability, and composta-
18 bility;

19 (ix) water conservation;

20 (x) quality, durability and utility of the item of procurement;

21 (xi) minimizing adverse impacts throughout a commodity or technology's
22 life cycle (i.e., as identified by life-cycle assessment or other
23 supply-chain impacts);

24 (xii) cost;

25 (xiii) extended producer responsibility; and

26 (xiv) legal and regulatory requirements applicable to the use and
27 procurement of commodities, services, and technology, or where applica-
28 ble, the procurement of public works.

29 (c) Affected entities shall follow the GreenNY procurement specifica-
30 tions approved by the council when procuring under existing contracts or
31 when developing new solicitations and contracts for the procurement of
32 commodities, services, and technology, or where applicable, in the
33 development of new public works solicitations and contracts.

34 (d) Where an affected entity determines: (i) that such commodities,
35 services, or technology set forth in an approved GreenNY procurement
36 specification will not meet required form, function or utility; (ii) the
37 cost of the commodities, services or technology set forth in an approved
38 GreenNY procurement specification is not competitive; or (iii) there is
39 a compelling public health or safety reason not to purchase such commod-
40 ities, services or technology set forth in an approved GreenNY procure-
41 ment specification, the affected entity may seek an exemption from the
42 council for its particular circumstances pursuant to subdivision 5 of
43 this section.

44 (e) The council may issue green operational directives ("operational
45 directives") in a form substantially similar to its procurement specifi-
46 cations. In developing the operational directives, the council shall
47 consider the factors set forth in paragraph (b) of this subdivision.

48 (f) The council shall provide affected entities with a description of
49 projects, programs and services that can be leveraged to implement the
50 requirements of this act.

51 (g) Affected entities shall follow the council's operational direc-
52 tives when conducting the affected entity's operations on real property
53 and facilities under the affected entity's jurisdiction.

54 (h) The council shall work with the preferred sources and minority and
55 woman-owned business enterprises and service-disabled veteran owned

1 businesses in order to increase awareness of the GreenNY procurement
2 specifications.

3 (i) The council shall develop a baseline for sustainable purchasing by
4 affected entities and issue targets to achieve greater compliance.

5 7. Reducing greenhouse gas emissions. (a) By 2030 and thereafter,
6 subject to available supply, 100 percent of the electricity used by
7 affected entities for their own operations, except electricity needed to
8 support the generation of electricity by an affected entity in accord-
9 ance with its enabling authority, shall come from energy systems that
10 are eligible under the CES ("eligible systems") as part of an all-of-go-
11 vernment approach to meet the goals of the climate leadership and commu-
12 nity protection act in a cost-effective manner.

13 (i) Each affected entity shall first count the amount of clean energy
14 generated by eligible systems across the state that the affected entity
15 pays for in its electricity bills or otherwise towards compliance with
16 the CES, based on calculations provided by the New York state energy
17 research and development authority. Affected entities shall provide
18 information requested by the New York state energy research and develop-
19 ment authority to perform the applicable calculations, including load
20 data, CES compliance payments, and any other necessary information.

21 (ii) For the remainder of its electricity usage, each affected entity
22 shall next be required to demonstrate meeting this obligation, where
23 feasible, through the use of on- or off-site eligible systems providing
24 energy dedicated to the affected entity's operations.

25 (iii) For the portion of electricity that cannot be served by such
26 eligible systems, each affected entity shall, in consultation and agree-
27 ment with the New York state energy research and development authority
28 and the department of public service, procure renewable energy certif-
29 icates ("RECs") qualified under a qualifying tier of the CES.

30 (iv) The New York state energy research and development authority and
31 the department of public service shall establish further detailed guide-
32 lines and requirements with respect to how each affected entity shall
33 comply and report compliance with this subdivision.

34 (v) The council shall monitor progress towards this requirement, and
35 the New York state energy research and development authority and the
36 department of public service shall make adjustments to this obligation
37 as needed based on statewide progress towards climate leadership and
38 community protection act mandates.

39 (b) To the fullest extent feasible, beginning January 1, 2024, all new
40 construction submitted for permitting by affected entities shall avoid
41 infrastructure, building systems or equipment that can be used for the
42 combustion of fossil fuels, excluding the necessary use for backup emer-
43 gency generation and process loads, provided that affected entities
44 shall avoid the use of backup emergency diesel generators where practi-
45 cable. This shall not affect the continued operation and maintenance of
46 state or affected entity owned or operated electric generating facili-
47 ties. The council shall monitor progress towards this goal.

48 (c) Affected entities shall achieve 11 trillion BTUs of energy savings
49 at their facilities by 2025 as outlined in the BuildSmart 2025 program.

50 (i) Each affected entity shall work with the New York power authority
51 to achieve their allotted portion of the overall savings target for
52 state operations. Affected entities should consult the BuildSmart 2025
53 program guidelines for types of projects and programs to undertake,
54 including master planning, operations and maintenance program develop-
55 ment, participation in demand response and similar programs, submeter-

1 ing, LED lighting, and other projects that reduce energy consumption and
2 enhance building efficiency.

3 (ii) Prior to 2025, the council shall issue a 2030 energy savings goal
4 based on an evaluation of progress towards the 2025 goal and the addi-
5 tional opportunities that remain for cost-effective energy savings.
6 Such 2030 goal shall be aligned with the most recent version of the
7 state's scoping plan developed pursuant the climate leadership and
8 community protection act.

9 (d) The council shall issue operational directives and guidance for
10 common construction materials to reduce the amount of embodied carbon in
11 such materials. Starting January 1, 2024, affected entities shall seek
12 to reduce the embodied carbon in all new construction or construction
13 projects consisting of adaptive reuse or significant renovations that
14 cost greater than 50 percent of the cost of new construction, submitted
15 for permitting by affected entities, by taking the following actions:

16 (i) design teams shall calculate the total embodied carbon that will
17 result from the project, including shipping, transportation, and
18 construction equipment requirements; and

19 (ii) bidders shall be required to submit environmental product decla-
20 rations when available, that include the amount of embodied carbon in
21 given building materials.

22 (e) Affected entities shall have 100 percent of their light-duty non-
23 emergency vehicle fleets be zero-emission vehicles (ZEVs) by 2035 and
24 100 percent of their medium- and heavy-duty vehicle fleet be ZEVs by
25 2040.

26 (i) All affected entities shall create and file a light-duty vehicle
27 fleet decarbonization plan and a medium- and heavy-duty decarbonization
28 plan with the council. The council shall provide technical assistance
29 and guidance to agencies for the development of decarbonization plans.
30 Such decarbonization plans shall include, at minimum, the following
31 elements:

32 (A) a purchasing plan that includes interim targets for how they will
33 achieve the fleet decarbonization goals of this act; and

34 (B) a plan for providing staff training and engagement necessary for
35 the successful decarbonization of their fleet.

36 (ii) Affected entities shall file such light-duty vehicle fleet decar-
37 bonization plans with the council within one year of the effective date
38 of this act and shall file such medium- and heavy-duty decarbonization
39 plans with the council within three years of the effective date of this
40 act.

41 (iii) Affected entities shall file progress updates to their light-
42 and medium- and heavy-duty vehicle decarbonization plans every three
43 years after the filing of their first plan.

44 (iv) Priority shall be given to purchasing battery electric vehicles
45 and hydrogen fuel cell vehicles, and if they are not practicable for an
46 affected entity's needs, then plug-in hybrid electric vehicles may be
47 considered in limited circumstances as specifically authorized by the
48 council.

49 (v) Affected entities that operate emergency vehicles shall, at least
50 annually, evaluate and test various ZEV technologies to determine if
51 they can meet the use cases for these vehicles.

52 (vi) Affected entities shall consult with the office of general
53 services to develop ZEV charging infrastructure for their fleets. The
54 office of general services shall provide guidance to agencies and coor-
55 dinate the phased implementation of ZEV charging infrastructure.

1 (vii) Affected entities are encouraged to maximize employee access to
2 and promote the use of ZEV charging infrastructure employee workplace
3 charging at state owned and maintained parking facilities.

4 (viii) Affected entities shall evaluate the inclusion of distributed
5 energy resources and energy storage to the maximum extent practicable.
6 The New York power authority and New York state energy research and
7 development authority shall collaborate to provide affected entities
8 with needed technical assistance regarding new energy storage systems.

9 (ix) Affected entities shall seek to utilize the department of envi-
10 ronmental conservation value of carbon guidance, where appropriate, to
11 aid in their decision-making on greenhouse gas emission reductions under
12 this act.

13 8. Reducing waste. (a) The council shall create a waste diversion plan
14 template that affected entities shall use to complete their plans. All
15 affected entities shall create a waste diversion plan and file such plan
16 with the council that outlines how they will meet the following goals:

17 (i) a decrease in waste disposal of 10 percent every five years from a
18 baseline of fiscal year 2018-19, until reaching a goal of 75 percent.

19 (ii) waste data reported for these goals should be broken out into the
20 following categories: recycled materials; compostable materials and
21 other organics; material sent to landfills (including construction and
22 demolition waste); and special waste (including hazardous waste).

23 (iii) The waste diversion plan shall incorporate at least the follow-
24 ing elements:

25 (A) a schedule for conducting routine waste audits of facilities and
26 how the findings from the waste audit will be utilized in advancing
27 waste reduction;

28 (B) a plan for diverting organic waste from landfills to meet the
29 diversion goals;

30 (C) identifying all instances where single-use plastics are used and
31 creating a plan to eliminate their use in all circumstances where doing
32 so will not endanger employee or public health and safety; and

33 (D) consideration of whether the affected entity should, by 2025,
34 transition to dual-stream recycling that source separates recyclable
35 items into subcategories of mixed paper and commingled containers (plas-
36 tic, glass, and metal), at all facilities where it is practicable and
37 where dual-stream material recovery facilities are available, cost-ef-
38 fective and efficient.

39 (iv) in addition, technical assistance in compiling the plans will be
40 provided by the department of environmental conservation.

41 (v) the council shall reassess the waste diversion goals of this act
42 at least every five years, and if the goals are updated by the council,
43 it shall require updated waste diversion plans to be submitted by
44 affected entities on how each will meet the new goals.

45 (vi) affected entities shall file such plans with the council within
46 one year of the receipt of the waste diversion plan template.

47 (b) 90 days after the effective date of this act, affected entities
48 shall not expend state funds for the purchase of bottled water. If an
49 affected entity determines that it has a need to purchase bottled water
50 for health or safety reasons, it may request an exemption from the coun-
51 cil for its particular circumstances pursuant to subdivision five of
52 this act. The council shall issue guidance on exceptions to this
53 requirement to address public health issues and other appropriate
54 circumstances. This paragraph does not apply to an affected entity
55 purchasing bottled water for emergency purposes.

1 9. Reducing use of toxic substances. Affected entities shall evaluate
2 and incorporate toxic use reduction strategies into their operations, to
3 the extent practicable, to achieve pollution prevention. The council
4 shall, at a minimum, provide agencies with information on healthy build-
5 ings, green cleaning and disinfection, integrated pest management and
6 green procurement.

7 10. Low impact development. (a) Affected entities shall evaluate, and
8 to the maximum extent practicable, incorporate green infrastructure
9 concepts to reduce all stormwater runoff and improve water quality in
10 new construction or redevelopment projects submitted for permitting by
11 affected entities regardless of disturbance threshold. These include
12 activities such as the reconstruction of parking lots and the addition
13 of new landscaping.

14 (b) The council, in collaboration with the environmental facilities
15 corporation, shall provide guidance on incorporating green infrastruc-
16 ture concepts to affected entities.

17 (c) (i) New infrastructure and building projects shall be designed and
18 built to account for the climate changes that may occur over their
19 lifespans. This includes incorporating climate projections and adapta-
20 tion strategies in upfront design and expected operations and manage-
21 ment. Preservation of open space shall be considered as a strategy for
22 climate risk mitigation in new and existing construction.

23 (ii) The council shall provide guidance on incorporating climate
24 projections and climate risk concepts to affected entities.

25 (iii) All affected entities shall evaluate opportunities to harden
26 their infrastructure and mitigate the impacts of climate change with
27 resilience practices such as nature-based solutions and modular infras-
28 tructure.

29 11. Promoting biodiversity and habitat protection. (a) Affected enti-
30 ties that have jurisdiction over real property shall, where practicable,
31 seek opportunities to enhance the ecological integrity of their real
32 property to support native biodiversity and the New York state pollina-
33 tor protection plan, protect threatened and endangered species, and
34 increase climate resilience and natural carbon storage. This includes
35 prioritizing the use of native plants and minimizing the use of non-na-
36 tive plants in landscaping and other planting efforts and other activ-
37 ities that may be identified in the New York natural heritage program
38 conservation guide and its management recommendations regarding listed
39 plants.

40 (b) The council shall provide a template for all affected entities to
41 implement an early detection rapid response protocol in place for inva-
42 sive species on real property over which the affected entity has juris-
43 diction. The council may issue additional operational directives to stop
44 the spread of invasive species on state-owned real property.

45 (c) Affected entities shall give priority to the use of integrated
46 pest management techniques to control invasive species before turning to
47 other means of eradication.

48 (d) All affected entities shall follow available best practices for
49 identifying and properly managing endangered species on real property
50 and ensure that their projects and operations do not have an adverse
51 impact upon any endangered species. The department of environmental
52 conservation shall provide guidance and technical assistance to affected
53 entities regarding properly managing endangered species and data tools
54 to identify locations where endangered species issues may be present.

55 (e) Affected entities shall evaluate opportunities, to the extent
56 practicable, to co-locate new projects with landscaping or habitat to

1 support native pollinator species and the goals of the New York state
2 pollinator protection plan and enhance climate resilience and natural
3 carbon storage.

4 12. Disadvantaged communities. (a) Each affected entity shall, to the
5 maximum extent practicable, lower the impact of its operations on disad-
6 vantaged communities, and shall incorporate lowered environmental impact
7 in these communities into the plans developed by affected entities
8 pursuant to this act.

9 (b) The council shall conduct an inventory of state-owned facilities
10 located in disadvantaged communities.

11 (c) Affected entities shall prioritize facilities over which the
12 affected entity has jurisdiction that are located within disadvantaged
13 communities for efficiency and other environmental upgrades, such as
14 electrifying heating and cooling systems, which will lower the affected
15 entity's environmental impacts on these communities.

16 13. Innovative solutions. The council shall continuously evaluate the
17 potential of new technologies in order to assist affected entities in
18 continuing to reduce their environmental footprint and increase climate
19 resilience (mitigation and adaptation) of its operations, and wherever
20 feasible, test new technologies and equipment to determine if such tech-
21 nologies or equipment are practicable for adoption in affected entity
22 operations.

23 § 2. This act shall take effect immediately.