STATE OF NEW YORK

5180--A

2023-2024 Regular Sessions

IN SENATE

February 24, 2023

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- 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:

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

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

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

(c) "council" shall mean the GreenNY council established under subdivision 2 of this act;

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

(e) "light-duty vehicles" shall mean vehicles equal to or less than 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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(f) "medium- and heavy-duty vehicles" shall mean vehicles more than 10,000 pounds gross weight;

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

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

2. GreenNY council. (a) There is hereby established the GreenNY council. The council shall be comprised of the director of the division of the budget; the commissioner of general services; the commissioner of environmental conservation; the commissioner of health; the commissioner of economic development; the commissioner of transportation; the commissioner of parks, recreation, and historic preservation; the president of the environmental facilities corporation; the president of the New York state energy research and development authority; the president of the New York power authority; the president of the dormitory authority of the state of New York; and the chief executive officer of the metropolitan transportation authority.

(b) Members of the council may designate a staff member, and an alternate, to represent them and participate on the council on their behalf.

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

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

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

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

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

(b) Affected entities may create a sustainability team in-house to support the work of the council. This sustainability team should be comprised of appropriate staff involved in identifying, approving, and implementing sustainability or energy projects, and environmental justice matters. The sustainability team should include an executive

sponsor at the deputy or associate commissioner, or vice president level or equivalent.

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

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

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

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

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

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

(iii) efforts the affected entity has undertaken to advance environmental justice; and

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

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

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

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

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

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

(ii) Any procurement specifications developed, approved, or issued by the interagency committee on sustainability and green procurement under executive order number 4, issued on April 24, 2008, shall carry forward in full effect as if issued by the council until modified by the council.

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

(i) protection of public health and the environment, including vulnerable populations and residents in disadvantaged communities;

(ii) avoidance of hazards from the use or release of toxic substances;

(iii) pollution reduction and prevention;

(iv) sustainable resource management and use, and sustainable manufacturing and production processes;

(v) low impact development and climate resilient design practices, and standards and priorities for entities providing construction, engineering, and other similar services;

(vi) reduction of greenhouse gas emissions;

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

(viii) waste reduction, materials reuse, recyclability, and compostability;

(ix) water conservation;

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

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

(xii) cost;

(xiii) extended producer responsibility; and

(xiv) legal and regulatory requirements applicable to the use and procurement of commodities, services, and technology, or where applicable, the procurement of public works.

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

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

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

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

(g) Affected entities shall follow the council's operational directives when conducting the affected entity's operations on real property and facilities under the affected entity's jurisdiction.

(h) The council shall work with the preferred sources and minority and woman-owned business enterprises and service-disabled veteran owned businesses in order to increase awareness of the GreenNY procurement specifications.

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

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

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

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

(iii) For the portion of electricity that cannot be served by such eligible systems, each affected entity shall, in consultation and agreement with the New York state energy research and development authority and the department of public service, procure renewable energy certificates ("RECs") qualified under a qualifying tier of the CES.

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

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

(b) To the fullest extent feasible, beginning January 1, 2024, all new construction submitted for permitting by affected entities shall avoid infrastructure, building systems or equipment that can be used for the combustion of fossil fuels, excluding the necessary use for backup emergency generation and process loads, provided that affected entities shall avoid the use of backup emergency diesel generators where practicable. This shall not affect the continued operation and maintenance of state or affected entity owned or operated electric generating facilities. The council shall monitor progress towards this goal.

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

(i) Each affected entity shall work with the New York power authority to achieve their allotted portion of the overall savings target for state operations. Affected entities should consult the BuildSmart 2025 program guidelines for types of projects and programs to undertake, including master planning, operations and maintenance program develop-

ment, participation in demand response and similar programs, submetering, LED lighting, and other projects that reduce energy consumption and enhance building efficiency.

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

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

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

(ii) bidders shall be required to submit environmental product declarations when available, that include the amount of embodied carbon in given building materials.

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

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

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

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

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

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

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

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

(vi) Affected entities shall consult with the office of general services to develop ZEV charging infrastructure for their fleets. The office of general services shall provide guidance to agencies and coordinate the phased implementation of ZEV charging infrastructure.

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

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

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

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

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

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

(iii) The waste diversion plan shall incorporate at least the following elements:

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

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

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

(D) consideration of whether the affected entity should, by 2025, transition to dual-stream recycling that source separates recyclable items into subcategories of mixed paper and commingled containers (plastic, glass, and metal), at all facilities where it is practicable and where dual-stream material recovery facilities are available, cost-effective and efficient.

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

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

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

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

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

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

(b) The council, in collaboration with the environmental facilities corporation, shall provide guidance on incorporating green infrastructure concepts to affected entities.

(c) (i) New infrastructure and building projects shall be designed and built to account for the climate changes that may occur over their lifespans. This includes incorporating climate projections and adaptation strategies in upfront design and expected operations and management. Preservation of open space shall be considered as a strategy for climate risk mitigation in new and existing construction.

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

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

11. Promoting biodiversity and habitat protection. (a) Affected entities that have jurisdiction over real property shall, where practicable, seek opportunities to enhance the ecological integrity of their real property to support native biodiversity and the New York state pollinator protection plan, protect threatened and endangered species, and increase climate resilience and natural carbon storage. This includes prioritizing the use of native plants and minimizing the use of non-native plants in landscaping and other planting efforts and other activities that may be identified in the New York natural heritage program conservation guide and its management recommendations regarding listed plants.

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.