

# STATE OF NEW YORK

5200

2019-2020 Regular Sessions

## IN SENATE

April 16, 2019

Introduced by Sen. METZGER -- 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:

- 1 Section 1. This act shall be known and may be cited as the "freedom  
2 from fossil fuels act".
- 3 § 2. Subdivisions 1, 4 and 5 of section 3-101 of the energy law,  
4 subdivision 1 as amended by chapter 253 of the laws of 2013 and subdivi-  
5 sion 5 as amended by chapter 396 of the laws of 1978, are amended to  
6 read as follows:
- 7 1. to obtain and maintain an adequate and continuous supply of safe,  
8 dependable and economical energy for the people of the state and to  
9 accelerate development and use within the state of renewable energy  
10 sources, all in order to mitigate the severity of climate change, to  
11 promote the state's economic growth, to create employment within the  
12 state, to protect [~~its~~] the state's environmental values and agricul-  
13 tural heritage, to husband its resources for future generations, and to  
14 promote the health and welfare of its people;
- 15 4. to encourage transportation modes and equipment which conserve the  
16 use of energy and reduce and/or eliminate emissions of carbon dioxide  
17 and co-pollutants;
- 18 5. to foster, encourage and promote the prudent development and wise  
19 use of [~~all indigenous state~~] the state's renewable energy resources  
20 including, but not limited to, [~~on-shore oil and natural gas, off-shore~~  
21 ~~oil and natural gas, natural gas from Devonian shale formations,~~] small  
22 head hydro, [~~wood,~~] solar, wind, solid waste, energy from biomass, fuel  
23 cells, geothermal, offshore wind and cogeneration; and

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

LBD11128-02-9

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 Subdivision 7 of section 3-101 of the energy law is REPEALED and  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

3 7. to conduct energy planning in an integrated and comprehensive  
4 manner through development of a master plan which shall provide a plan  
5 for achieving one hundred percent fossil fuel free electricity gener-  
6 ation by two thousand thirty, if practicable, but no later than two  
7 thousand forty. If the two thousand thirty target cannot be achieved the  
8 state energy planning board shall issue a report detailing and describ-  
9 ing the failure to reach such target.

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

13 1. There shall be established a state energy planning board, herein-  
14 after referred to as the "board", which shall consist of the chair of  
15 the public service commission, the commissioner of environmental conser-  
16 vation, the commissioner of economic development, the commissioner of  
17 transportation, the commissioner of labor, the commissioner of the divi-  
18 sion of homeland security and emergency services, the commissioner of  
19 agriculture and markets, the commissioner of health, the secretary of  
20 state and the president of the New York state energy research and devel-  
21 opment authority. The [~~governor, the~~] speaker of the assembly and the  
22 temporary president of the senate shall each appoint [~~one~~] three addi-  
23 tional [~~representative~~] representatives to serve on the board. The  
24 representatives appointed by the speaker of the assembly and the tempo-  
25 rary president of the senate shall include at all times individuals with  
26 expertise in issues relating to climate change mitigation and/or adapta-  
27 tion, such as environmental justice, energy planning, labor, public  
28 health and regulated industries. The presiding officer of the federally  
29 designated electric bulk system operator (BSO) shall serve as a non-vot-  
30 ing member of the board. Any decision or action by the board shall be by  
31 majority vote. The president of the New York state energy research and  
32 development authority shall serve as chair of the board. Members of the  
33 board may designate an executive staff representative to participate on  
34 the board on their behalf.

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

37 (a) [~~Downstate region — New York City and Dutchess, Nassau, Orange,~~  
38 ~~Putnam, Rockland,~~] Region one: Nassau and Suffolk [~~, Ulster and Westches-~~  
39 ~~ter~~] counties;

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

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

51 (d) Region four: Albany, Columbia, Delaware, Montgomery, Otsego, Rens-  
52 selaer, Schenectady, and Schoharie counties;

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

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

1 (g) Region seven: Broome, Cayuga, Chenango, Cortland, Madison, Ononda-  
2 ga, Oswego, Tioga, and Tompkins counties;

3 (h) Region eight: Chemung, Genesee, Livingston, Monroe, Ontario, Orle-  
4 ans, Schuyler, Seneca, Steuben, Wayne, and Yates counties; and

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

7 The governor, temporary president of the senate and the speaker of the  
8 assembly shall each appoint [~~three~~] two regional planning council  
9 members per region. Regional planning council members shall serve with-  
10 out compensation, and shall have their principal residence within the  
11 region for which they are appointed. Such regional council members may  
12 solicit input from stakeholder interests within their region, including  
13 but not limited to local governments, municipal utilities, rural elec-  
14 tric cooperatives, utilities, labor unions, ratepayers, businesses,  
15 trade associations, generators, social justice organizations, and commu-  
16 nity organizations with a focus on, including but not limited to,  
17 climate change mitigation, the environment, environmental justice,  
18 and/or public health. Each regional planning council shall transmit to  
19 the board a report containing any recommendations specific to its region  
20 on a schedule determined by the board to be appropriate for consider-  
21 ation of such report in the development of the draft energy plan.

22 § 5. Subdivision 2 and paragraph (b) of subdivision 5 of section 6-104  
23 of the energy law, as added by chapter 433 of the laws of 2009, para-  
24 graph (a) of subdivision 2 as amended by chapter 195 of the laws of  
25 2011, are amended and two new subdivisions 2-a and 6 are added to read  
26 as follows:

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

39 (ii) energy supply requirements needed to satisfy demand for electric-  
40 ity, [~~natural gas, coal, petroleum products, including heating and~~  
41 ~~transportation fuels~~] and other fuel sources for heating, transporta-  
42 tion, industrial processes, and alternate energy sources and fuels, for  
43 each region of the state, and for the state as a whole, including with  
44 respect to electricity, the amount of capacity needed to provide  
45 adequate reserve margins and capacity needed to ensure reliability and  
46 competitive markets in the various regions of the state and to ensure  
47 electric capacity for beneficial electrification of additional sectors  
48 including, but not limited to heating, transportation and industrial  
49 processes;

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

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

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

11 (b) Identification and assessment of the costs, risks, benefits,  
12 uncertainties and market potential of all energy supply source alterna-  
13 tives[~~, including demand-reducing measures, renewable energy resources~~  
14 ~~of electric generation, distributed generation technologies, cogenera-~~  
15 ~~tion technologies, biofuels and other methods and technologies reason-~~  
16 ~~ably available for satisfying energy supply requirements which are not~~  
17 ~~reasonably certain to be met by the energy supply sources identified in~~  
18 ~~paragraph (a) of this subdivision, provided that such analysis shall~~  
19 ~~include the factors identified in paragraph (d) of this subdivision];~~

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

23 (d) An assessment of current energy policies and programs, and their  
24 contributions to achieving long-range energy planning objectives includ-  
25 ing, but not limited to, the least cost integration of energy supply  
26 sources, energy transportation and distribution system and demand-reduc-  
27 ing measures for satisfying energy supply requirements, giving due  
28 regard to such factors as required capital investments, cost, ratepayer  
29 and climate impacts, security and diversity of fuel supplies and gener-  
30 ating modes, protection of public health and safety, adverse and benefi-  
31 cial environmental impacts, conservation of energy and energy resources,  
32 the ability of the state to compete economically, and any other policy  
33 objectives deemed appropriate;

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

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

47 (g) An environmental justice analysis including an analysis of the  
48 barriers to, and opportunities for, community ownership of renewable  
49 generation and energy efficiency services in low-income and environ-  
50 mental justice communities;

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

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

4 (j) Recommendations, as appropriate and desirable, for administrative  
5 and legislative actions to implement such policies, objectives and stra-  
6 tegies;

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

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

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

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

19 2-a. The state energy plan shall not include any provisions for new  
20 construction or implementation of: (a) any infrastructure used to trans-  
21 fer fossil fuels or fuel gasses; or

22 (b) electricity generation or storage electricity which utilize fossil  
23 fuels gasses.

24 (b) Any energy-related action or decision of a state agency, board,  
25 commission or authority shall be ~~reasonably~~ consistent with the fore-  
26 casts and the policies and long-range energy planning objectives and  
27 strategies contained in the plan, including its most recent update~~+~~  
28 ~~provided, however, that any such action or decision which is not reason-~~  
29 ~~ably consistent with the plan shall be deemed in compliance with this~~  
30 ~~section, provided that such action or decision includes a finding that~~  
31 ~~the relevant provisions of the plan are no longer reasonable or probable~~  
32 ~~based on a material and substantial change in fact or circumstance, and~~  
33 ~~a statement explaining the basis for this finding]. No state agency,~~  
34 board, commission, or authority shall act inconsistently with the  
35 provisions of this section.

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

38 § 6. Paragraph (c) of subdivision 2 and subdivision 3 of section 6-106  
39 of the energy law, subdivision 3 as added by chapter 433 of the laws of  
40 2009, paragraph (c) of subdivision 2, the opening paragraph, subpara-  
41 graphs (i) and (ii) of paragraph (a), subparagraphs (i) and (ii) of  
42 paragraph (b), and paragraphs (c) and (d) as amended and paragraph (e)  
43 of subdivision 3 as added by chapter 195 of the laws of 2011, are  
44 amended to read as follows:

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

50 3. As determined by the board in each instance to be appropriate with  
51 respect to the particular entity or entities from which information, if  
52 any, shall be required, the information to be provided to the board by  
53 energy transmission ~~and~~, distribution and generation companies, elec-  
54 tric, gas, or steam corporations, major energy suppliers including  
55 owners or operators of electric generation facilities, commodity and/or  
56 end-use energy service providers, state agencies or authorities, includ-

1 ing the power authority of the state of New York and the Long Island  
2 power authority, and/or others, shall include the following:

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

4 (i) a forecast of electricity demands over a period as the board may  
5 determine appropriate, including annual in-state electric energy sales  
6 and summer and winter peak loads by utility service area where applica-  
7 ble, and total any annual in-state electric energy sales and coincident  
8 peak load, specifically identifying the extent to which energy conserva-  
9 tion, load management and other demand-reducing measures, and electric  
10 energy generated by cogeneration, small hydro and [~~alternate energy~~  
11 ~~production facilities~~] distributed generation, energy generated by  
12 fossil fuels and fuel gases, including renewable energy technologies and  
13 fuel cells, consumed on site, have been incorporated within such fore-  
14 cast;

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

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

27 (iv) an inventory of: (A) all existing electric generating and trans-  
28 mission facilities including those owned or operated by the power  
29 authority of the state of New York and the Long Island power authority;  
30 (B) electric generating and transmission facilities planned or under  
31 construction including the power authority of the state of New York and  
32 the Long Island power authority, including the dates for completion and  
33 operation; (C) the anticipated retirement dates for any electric gener-  
34 ating facilities currently operated including those owned or operated by  
35 the power authority of the state of New York and the Long Island power  
36 authority; (D) land owned or leased including that owned or leased by  
37 the power authority of the state of New York and the Long Island power  
38 authority and held for future use as sites for major electric generating  
39 facilities; and (E) electric generating, transmission, and related  
40 facilities operated, or planned to be operated, by others, to the extent  
41 information concerning the same is known;

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

47 (vi) a statement of research and development plans, including objec-  
48 tives and programs in the areas of energy conservation, climate change  
49 mitigation, beneficial electrification, load management, electric gener-  
50 ation and transmission, new energy technologies and pollution abatement  
51 and control, which are not funded through regulatory required programs,  
52 recent results of such programs undertaken or funded to date, and an  
53 assessment of the potential impacts of such results;

54 (vii) a projection of estimated electricity prices to consumers over  
55 the forecast period, and a sensitivity analysis of that forecast relat-

1 ing to a number of factors including fuel prices and the levels of  
2 available capacity and demand in the regions of the state;

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

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

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

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

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

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

28 (iii) an assessment of the ability of existing gas supply sources, and  
29 those reasonably certain to be available, to satisfy gas supply require-  
30 ments;

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

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

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

49 ~~[(vii)]~~ (vii) a description of the load forecasting methodology and the  
50 assumptions and data used in the preparation of the forecasts, specif-  
51 ically including projections of demographic and economic activity and  
52 such other factors, statewide and by service area where applicable,  
53 which may influence demand for natural gas, and the bases for such  
54 projections;

55 ~~[(viii)]~~ (viii) a statement of research and development plans, includ-  
56 ing objectives and programs in the areas of energy conservation and new

1 energy technologies, recent results of such programs undertaken or fund-  
2 ed to date, and an assessment of the potential impacts of such results;

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

5 [~~(x)~~] (ix) such additional information as the board may, by regu-  
6 lation, require to carry out the purposes of this article.

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

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

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

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

20 § 8. This act shall take effect immediately.