

Environmental LAW

New York legislature eyes unilateral elimination of greenhouse gas emissions

"We'll always have Paris"—Rick Blaine, "Casablanca"

On the heels of the United States' announced exit from the Paris Accord, the New York State Assembly is renewing the effort to keep the Accord alive in New York and to make the state a national model for the control of greenhouse gases, as well as leading the way to prepare the state for the inevitable impacts of a warming climate.

On June 5, Assembly Member Steve Englebright, who chairs the Assembly's Environmental Conservation Committee, introduced the proposed Climate and Community Protection Act of 2017 (A8270). This bill would make greenhouse gas emission reductions and a transition to clean energy binding, as well as set the state on a path to 100% clean, renewable energy by 2050.

The Legislature took steps in this direction with the enactment of the Community Risk and Resiliency Act of 2014. That law made it state statutory policy to acknowledge that climate change is occurring, and that a warming climate will raise sea levels and generate stronger, more frequent and more variable storms. Without addressing the sources of climate change, the Risk and Resiliency Act garnered strong, bipartisan support for the goal of hardening the state's infrastructure to survive and mitigate the impacts of a warming climate.



By **RONALD G. HULL**
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The goals of the Climate and Community Protection Act are more ambitious and controversial.

The bill, if enacted, will codify legislative findings that climate change will adversely affect New York's economy, public health and natural resources and that

the degree of climate change can be reduced through reducing greenhouse gas emissions. The bill would embrace and enforce a goal of a 100% reduction in greenhouse gas emissions from all anthropogenic sources by the year 2050. The proposed legislation also accepts that some impacts of climate change are already observable and that more change is inevitable, and proposes to enhance the Community Risk and Resiliency Act adopted just three years ago.

The bill proposes to add a new article to the Environmental Conservation Law devoted entirely to climate change. This new statute would create a New York State Climate Action Council under the leadership of the Department of Environmental Conservation. The council and the DEC would be under a strict timetable to develop a plan and adopt regulations

to implement the legislative timetable for the elimination of greenhouse gas emissions from manmade sources. Every five years these regulatory controls are supposed to achieve defined targets, beginning with a reduction of 15% of 1990 emissions by 2020, then progressing to 50% by 2030, 80% by 2040, and 100% by 2050. The plan must address emission standards in all sectors of the economy. Regulations must be in place no later than three years after the effective date of the statute (which will already be after the first emission reduction target date of 2020). In those three years, DEC is directed to: organize the council; develop a scoping plan; evaluate the best available economic models, emission estimation techniques and other scientific methods; consider all relevant information from around the world; and hold public workshops and consult with all stakeholders. This would be a daunting task to successfully accomplish in twice the time.

The regulations adopted by the DEC are supposed to ensure that greenhouse gas emissions reductions are real, permanent, quantifiable, verifiable and enforceable, and ensure that there is no net increase in co-pollutant emissions nor a disproportionate burden to disadvantaged communities.

The legislation would make com-

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plementary amendments to the Public Service Law and the Public Authorities Law to establish a renewable energy program. The bill also proposes an amendment to the Labor Law to require all state agencies involved in implementing the climate protection to implement strategies that increase employment opportunities in renewable energy.

When issuing permits, licenses and other administrative approvals, all state agencies will be required to consider whether such decisions will interfere with the attainment of statewide greenhouse gas emissions limits. Where such decisions are deemed to

interfere with the limits, alternatives or greenhouse gas mitigation measures will be required. This blanket mandate has the potential for far-reaching consequences in unanticipated ways as the scope is very broad—all permits, licenses and approvals, and the threshold is low—just “interference” with attainment of an emissions limit.

Finally, the bill would require DEC to help state agencies and “other entities” assess the reasonably foreseeable risks of climate change on proposed projects, and identify measures that could mitigate significant climate-related risks.

An earlier version of this bill passed the Assembly in 2016, but failed to

get through the Senate. It is unclear whether the prospects for passing the Senate have improved in light of the president’s decision to reject the Paris Accord. There is considerable pressure for New York to step into the perceived leadership vacuum. And the challenge is great, to shift our entire state economy to 100% renewable energy and eliminate greenhouse gas emissions within 33 years.

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