

LOOPHOLES IN NY'S CCPA¹ CLIMATE BILL THAT NEED TO BE REMOVED

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May 2019

GREENHOUSE GAS EMISSIONS LOOPHOLE

(CCPA Section 2: Section 75-0101 Definitions, Subdivision 9, page 5)

- 14 9. "Greenhouse gas emission source" or "source" means any anthropogen-
15 ic source or category of anthropogenic sources of greenhouse gas emis-
16 sions, with the exception of agricultural emissions from livestock,
17 determined by the department:
18 a. that its participation in the program will enable the department to
19 effectively reduce greenhouse gas emissions; and,
20 b. to be capable of being monitored for compliance.

For the CCPA's goal of 100% greenhouse gas (GHG) reduction to be credible, it needs to address all, or nearly all, GHG emissions. The bill's definition of "greenhouse gas emission source" does not do this. The current definition would let DEC ignore any source that it decides will not "enable the department to effectively reduce GHG emissions" or is not "capable of being monitored for compliance." The first part of this could be interpreted to let DEC simply not count whatever source that it thinks is too difficult to reduce. The second part could exempt the vast majority of sources in the state, depending on how the word "monitor" is interpreted. It is important to understand that GHG emissions from most sources in NY (including cars, heating systems, and other types of fossil fuel-burning equipment) are not directly "monitored." Instead, they are estimated using empirical data and statistics, with those estimates contributing to the state's total GHG inventory.

As written, this loophole could render the bill's 100% GHG reduction mandate meaningless. Fighting climate change will require the most accurate and complete inventory of GHG emissions possible with an honest effort to ensure that their net total is brought as close as possible to zero. If there are to be any exemptions, it should only be for sources that the state is truly incapable of influencing (like airplanes that fly non-stop across NY airspace). Any emission source that the state can regulate, or influence through non-regulatory programs should be counted.

The definition should be changed to something like:

9. "Greenhouse gas emission source" or "source" means any anthropogenic source or category of anthropogenic sources of greenhouse gas emissions for which the state has regulatory authority or has the ability to influence through non-regulatory programs.

COMPLIANCE LOOPHOLE (CCPA Section 9: Subdivision 2, pages 16-17)

- 49 § 9. Climate change actions by state agencies. 1. All state agencies
50 shall assess and implement strategies to reduce their greenhouse gas
51 emissions.
52 2. In considering and issuing permits, licenses, and other administra-
53 tive approvals and decisions, including but not limited to the execution
54 of grants, loans, and contracts, all state agencies, offices, authori-

¹<https://www.nysenate.gov/legislation/bills/2019/S2992>

55 ties, and divisions shall consider whether such decisions are inconsis-
56 ent with or will interfere with the attainment of the statewide green-

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1 house gas emissions limits established in article 75 of the
2 environmental conservation law. Where such decisions are deemed to be
3 inconsistent with or will interfere with the attainment of the statewide
4 greenhouse gas emissions limits, each agency, office, authority, or
5 division shall provide a detailed statement of justification as to why
6 such limits/criteria may not be met, and identify alternatives or green-
7 house gas mitigation measures to be required where such project is
8 located.

Transforming New York's energy system won't be possible if emission limits are violated. Near the end of the bill, the CCPA says that all agencies must consider whether approvals or decisions are "inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits." If they are, then the bill merely requires a "statement of justification as to why such limits/criteria may not be met" and the "identification" of alternatives or some amount GHG mitigation "where the project is located." The bill does not require that those alternatives or mitigation measures fully compensate for additional GHG emissions caused by the project approval or decision. Furthermore, since it says that any mitigation must be "where the project is located," the amount of mitigation provided is likely to be trivial. This loophole should be closed by requiring that actions taken ensure that statewide GHG emission limits are not violated.

The second sentence in this section should be modified to say:

Where an approval or decision is deemed to be inconsistent with or will interfere with the attainment of statewide greenhouse gas emissions limits, the agency, office, authority, or division shall either reject the approval or decision, or shall require additional greenhouse gas reduction measures of equal value to ensure attainment of statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.

WEAK ELECTRICITY MANDATE (CCPA Section 4: Section 66-P, Subdivision 2, pages 12-13)

53 2. No later than January first, two thousand twenty, the commission
54 shall establish a program to require that a minimum of fifty percent of
55 the statewide electric generation secured by load serving entities to
56 meet the electrical energy requirements of all end-use customers in New

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1 York state in two thousand thirty shall be generated by renewable energy
2 systems.
3 The commission shall set annual minimum percentage levels of electric-
4 ity generated by renewable energy systems and delivered to end-use
5 customers in New York state for each year of the program.

A fundamental flaw in the CCPA is that it is completely silent about electricity after 2030. Fixing this part of the bill is critical—especially since the electrification of other sectors (transportation, heating, and industry) will require more electricity than today. New York must plan now for the renewables it will need after 2030 so that it will have the electricity to meet demand.

The CCPA should adopt 2030 and 2040 mandates for electricity from load-serving entities meeting statewide electrical energy demand that are at least as strong as Governor Cuomo’s climate bill, the Climate Leadership Act. Like the Governor’s bill, the CCPA should also require the establishment of minimum annual percentage targets.

While the January 31, 2019 version of the CCPA - S. 2992/A.3876 includes references to greenhouse gas emissions after 2030, it does not include anything statutory concerning electricity generation after 2030. **The bill has to specify the percent renewable generation for the electricity sector in the years post 2030.**

It is critical that there is planning now for the years after 2030 in the electricity sector. Otherwise, short term decisions that serve the 2030 emissions target will be made, but adequate needed infrastructure to serve the electric needs after 2030 will not be in place.

Even considering the emissions savings from increased efficiencies, NYS will be using more electricity in the coming decades than it does now due to the transition to more electric vehicles and electric equipment and heat pumps. There are estimates that almost twice as much will be needed.

Installing the infrastructure to serve both the reduced emissions targets and the increased electricity needs is a massive undertaking. To accomplish what is needed in this time of climate emergency, the long-term planning must start now and specific mandates must be in place.

The following reference to the goal of reducing anthropogenic greenhouse gas emissions 100% over 1990 by the year 2050 is in the legislative intent section.

page 2

41 4. It shall therefore be a goal of the state of New York to reduce
42 greenhouse gas emissions from all anthropogenic sources 100% over 1990
43 levels by the year 2050, with an incremental target of at least a 50
44 percent reduction in climate pollution by the year 2030, in line with
45 USGCRP and IPCC projections of what is necessary to avoid the most
46 severe impacts of climate change.

The following references to establishing a goal of reducing greenhouse gas emissions 80% by 2050 and the electricity sector’s greenhouse gas emissions 100% by 2040 are statements of history referring to executive order no. 24 (2009). They are not part of ARTICLE 75.

pages 3-4

51 12. By exercising a global leadership role on greenhouse gas miti-
52 gation and climate change adaptation, New York will position its econo-
53 my, technology centers, financial institutions, and businesses to bene-
54 fit from national and international efforts to address climate change.
55 New York state has already demonstrated leadership in this area by
56 undertaking efforts such as:

1 a. executive order no. 24 (2009), establishing a goal to reduce green-
2 house gas emissions 80% by the year 2050, creating a climate action
3 council, and calling for preparation of a climate action plan;

10 d. the adoption of a state energy plan establishing clean energy goals
11 for the year 2030 aimed at reducing greenhouse gas emission levels by
12 40% from 1990 levels, producing 50% of electricity from renewable sourc-
13 es, increasing energy efficiency from 2012 levels by 23% and the addi-
14 tional expressed goal of reducing 100% of the electricity sector's
15 greenhouse gas emissions by 2040;

The following reference to greenhouse gas reductions are statewide and are not specific to the electricity sector. Furthermore, these numbers allow for the loopholes including the elimination of sources by the DEC.

pages 7-8

47 § 75-0107. Statewide greenhouse gas emissions limits.
48 1. No later than one year after the effective date of this article,
49 the department shall, pursuant to rules and regulations promulgated
50 after at least one public hearing, establish a statewide greenhouse gas
51 emissions limit as a percentage of 1990 emissions, as estimated pursuant
52 to section 75-0105 of this article, as follows:
53 a. 2020: 85% of 1990 emissions.
54 b. 2025: 65% of 1990 emissions.
55 c. 2030: 50% of 1990 emissions.
56 d. 2035: 35% of 1990 emissions.
1 e. 2040: 20% of 1990 emissions.
2 f. 2045: 10% of 1990 emissions.
3 g. 2050: 0% of 1990 emissions.

The reference on lines 46-48 below on page 9 refer to the statewide limits on pages 7-8 discussed above and refer to the promulgation of regulations “no later than three years after the effective date of this article.”

page 9

33 § 75-0111. Promulgation of regulations to achieve statewide greenhouse
34 gas emissions reductions.
35 1. No later than three years after the effective date of this article,
36 the department, after public workshops and consultation with the coun-
37 cil, the environmental justice advisory group, and the climate justice
38 working group established pursuant to section 75-0113 of this article,
39 representatives of regulated entities, community organizations, environ-
40 mental groups, health professionals, labor unions, municipal corpo-

41 rations, trade associations and other stakeholders, shall, after no less
42 than two public hearings, promulgate rules and regulations to ensure
43 compliance with the statewide emissions reduction limits.
44 2. The regulations promulgated by the department pursuant to this
45 section shall:
46 a. Ensure that the aggregate emissions of greenhouse gases from green-
47 house gas emission sources will not exceed the statewide greenhouse gas
48 emissions limits established in section 75-0107 of this article.
49 b. Include legally enforceable emissions limits, performance stand-
50 ards, or measures or other requirements to control emissions from green-
51 house gas emission sources.

The statement on lines 54-2 on pages 12-13 that a minimum of 50% of statewide electric generation from load serving entities be from renewables by 2030 is the only mandate in the bill concerning electricity generation.

pages 12-13

53 2. No later than January first, two thousand twenty, the commission
54 shall establish a program to require that a minimum of fifty percent of
55 the statewide electric generation secured by load serving entities to
56 meet the electrical energy requirements of all end-use customers in New
1 York state in two thousand thirty shall be generated by renewable energy
2 systems.

ELECTRICITY LOOPHOLES (CCPA Section 4: Section 66-P, Subdivision 3, 4, page 13)

6 3. No later than July first, two thousand twenty-one and every two
7 years thereafter, the commission shall, after notice and provision for
8 the opportunity to comment, issue a comprehensive review of the program
9 established pursuant to this section. The commission shall determine,
10 among other matters: (a) progress in meeting the overall annual targets
11 for deployment of renewable energy systems; (b) distribution of systems
12 by size and load zone; and (c) annual funding commitments and expendi-
13 tures. The commission shall evaluate the annual targets established
14 pursuant to subdivision two of this section and determine whether the
15 annual targets should be accelerated, increased or extended, taking into
16 consideration load modifications associated with, but not limited to,
17 energy efficiency measures and the electrification of transportation,
18 heating systems and industrial processes.
19 4. The commission may temporarily suspend or modify the obligations
20 under such program provided that the commission, after conducting a
21 hearing as provided in section twenty of this chapter, makes a finding
22 that the program impedes the provision of safe and adequate electric
23 service or that there is a significant increase in arrears or service
24 disconnections that the commission determines is related to the program.

Loopholes in the CCPA that allow the state to miss its electricity targets should be eliminated. Subdivision 3 (after Subdivision 2 above), allows targets to be extended for various reasons, including "the electrification of transportation, heating, and industrial processes." This defeats the

purpose of electrifying other sectors, because if those targets are missed, additional demand for electricity will have to be met with fossil fuels. Furthermore, if target dates are missed, New York will have failed to act within the short amount of time we have left to avoid climate catastrophe. To be effective, climate legislation must synchronously provide for both the electrification of sectors and the electricity needed to support doing so. Following this, Subdivision 4 (after Subdivision 3 above) allows the state to "suspend or modify obligations" to ensure safe, adequate, and affordable electricity. Again, these fundamental provisions, along with affordability assistance for those who may need it, should be part of the plan. (The Governor already has executive authority that he can take in the event of extreme emergencies.)

These loopholes are NOT in the Governor's climate bill. So they should not be in the CCPA either. To close them, the last sentence of subdivision 3 and all of subdivision 4 described above should be deleted.

It would also be helpful to include language requiring that the state plan for additional electricity needed to support the electrification of other sectors:

The Climate Action Council shall recommend plans for the procurement of electricity necessary to meet demand caused by the electrification of end-user systems, consistent with achieving statewide greenhouse gas emission limits and the requirements of subdivision 2 of this section.

COORDINATION OF EFFORTS (CCPA, 75-0103, Subdivision 1-4, page 5-6)

48 1. There is hereby established, within the department, the New York
49 state climate action council ("council") which shall consist of the
50 following twenty-five members:

51 a. the commissioners of transportation, health, economic development,
52 agriculture and markets, housing and community renewal, general
53 services, labor, environmental conservation, homeland security and emer-
54 gency services, the chairperson of the public service commission, the
55 superintendent of financial services, the presidents of the New York
56 state energy research and development; New York power authority; Long

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1 Island power authority; secretary of state, the chairman of the metro-
2 politan transportation authority and dormitory of the state of New York,
3 or their designee.

4 b. two members appointed by the governor;

5 c. two members to be appointed by the temporary president of the
6 senate;

7 d. two members to be appointed by the speaker of the assembly;

8 e. one member to be appointed by the minority leader of the senate;
9 and

10 f. one member to be appointed by the minority leader of the assembly.

11 2. The at large members shall include at all times individuals with

12 expertise in issues relating to climate change mitigation and/or adapta-
13 tion, such as environmental justice, labor, public health and regulated
14 industries.
15 3. Council members shall receive no compensation for their services
16 but shall be reimbursed for actual and necessary expenses incurred in
17 the performance of their duties.
18 4. The chairperson of the council shall be the commissioner of envi-
19 ronmental conservation or his or her designee.

The CCPA presently sets up the Climate Action Council as an arm of DEC, and chaired by DEC. Successfully reducing GHG emissions requires more than setting emission limits. It requires a comprehensive set of rules, regulations, and programs to synchronously phase in and phase out real systems (power plants, heating systems, vehicles, etc). The Governor's Climate Leadership Act actually addresses this in a more comprehensive way with a Climate Action Council co-chaired by both DEC and NYSERDA. This is a very good approach, because it ties emission limits to real action. The Governor's bill also ties work of the Climate Action Council to the State's Energy Plan, which is important.

(CCPA, 75-0109, Subdivision 1, page 8)

§ 75-0109. Scoping plan for statewide greenhouse gas emissions
14 reductions.

15 1. On or before two years of the effective date of this article, the
16 department shall prepare and approve a scoping plan outlining the
17 department's recommendations for attaining the statewide greenhouse gas
18 emissions limits in accordance with the schedule established in section
19 75-0107 of this article.

20 2. The draft scoping plan shall be developed in consultation with the
21 council, environmental justice advisory group, and the climate justice
22 working group established pursuant to section 75-0113 of this article
23 and other stakeholders.

24 a. The department and the council shall hold at least six regional
25 public comment hearings on the draft scoping plan, including three meet-
26 ings in the upstate region and three meetings in the downstate region,
27 and shall allow at least one hundred twenty days for the submission of
28 public comment.

29 b. The department shall provide meaningful opportunities for public
30 comment from all persons who will be impacted by the plan, including
31 persons living in disadvantaged communities as identified pursuant to
32 section 75-0113 of this article.

33 c. On or before thirty months of the effective date of this article,
34 the department shall submit the final scoping plan to the governor, the
35 speaker of the assembly and the temporary president of the senate and
36 post such plan on its website.

The "scoping plan" required by the CCPA should be amplified to the level of an actual plan for implementation, and it should call for the development of specific programs to tackle all aspects of the problem on a sector basis.

Many GHG emission sources, ranging from home furnaces to large power plants, are designed to last 30 or 40 years. This means the technology that consumers and energy companies buy or install will still be in operation decades from now, when emissions will need to have dropped to zero.

Consequently, the only way for New York to meet a goal of zero GHG emissions by 2050 is to require that new technology, starting now, be zero-emission. This is a major lift that will require a well-funded, coordinated approach with programs to facilitate the transition at every level.

Language that conveys the magnitude of this task should be added to the bill. It should require the development of:

- Programs to incentivize renewable energy at every level from residential to utility scale
- Requirements for the phase out of existing fossil fuel power plants and prohibition of new ones (except for onsite backup generators used only during emergencies at facilities, like hospitals, that provide emergency services)
- Improvements to the electrical grid and related techniques such as energy storage, transmission, and demand response
- Requirements for the purchase, sale, and operation of zero-emission technology, such as electric vehicles and heat pumps, taking into account equipment lifetimes
- Requirements for net-zero building in new construction
- Requirements for industry to use electric, rather than fossil fuel machinery
- Revisions to building codes and adoption of expanded efficiency requirements for both new construction and existing buildings (some of this is in the Governor's bill)
- Financial incentives to encourage green investments, including the purchase of electric vehicles, heat pumps, and building efficiency improvements
- Financial disincentives to discourage the use of fossil fuels and products or services with a significant carbon footprint
- Conversion of public facilities to zero-emission technology, including government buildings, government vehicle fleets, and public transportation
- Programs and incentives for the capture of agricultural emissions
- Conservation, forest land protection, and other land management programs that sequester carbon

NUCLEAR ENERGY

Due to the serious potential for contamination of natural resources and health impacts and the high long-term cost of safely isolating and protecting the spent fuel, the state should include mandates for the responsible retirement of its existing nuclear reactors and provide adequate resources for replacement energy from renewables. In no circumstances should the energy from nuclear be replaced by gas nor should this retirement slow the transition from fossil fuels to renewables.

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