

June 25, 2019

NEW YORK STATE ENACTS SWEEPING EMISSIONS REDUCTION LAW

To Our Clients and Friends:

Last week, the New York State Legislature passed the Climate Leadership and Community Protection Act, Senate Bill S6599 (“**CLCPA**”).^[1] It is considered to impose “the most aggressive legal mandate in the country” for emissions reduction.^[2] New York State Governor Andrew Cuomo called the bill “the most aggressive climate change program in the United States of America, period.”^[3] Governor Cuomo is expected to sign it into law.

The timing of the CLCPA is notable given that the federal Environmental Protection Agency has just promulgated a rule requiring rather scant emissions reductions.^[4] Indeed, one supporter of the CLCPA remarked that “[a]s the White House continues to put fossil fuels first, this legislation is a model for other states to follow.”^[5]

New Law Will Apply to Anything Regulators Deem a “Greenhouse Gas”

Notably, the CLCPA does not only target carbon emissions. Instead, it requires emissions reductions of anything regulators deem to be a “greenhouse gas.” In addition to usual suspects like carbon dioxide and methane, the CLCPA defines the term “greenhouse gas” to include “any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.”^[6] The law thus potentially allows New York to regulate any business that emits substances into the air.

Required Aggressive Emissions Reductions

The CLCPA requires New York’s Department of Environmental Conservation (“Department”) to promulgate regulations to aggressively and rapidly curtail the emission of anything deemed a greenhouse gas. By 2030, greenhouse gas emitters must reduce emissions to “60% of 1990 emissions” levels, and by 2050 they must achieve “15% of 1990 emissions” levels.^[7] The regulations requiring these reductions must be promulgated within a year of the CLCPA’s becoming effective.^[8] Already, some have questioned whether businesses in New York, including those in energy and real estate, can meet the goals set forth in the bill.^[9]

The law also seeks “reduction of emissions beyond eighty-five percent,” and “net zero emissions in all sectors of the economy.”^[10] The details of how these aggressive goals will be met is left to a “state climate action council” (“Council”), which will prepare a “scoping plan” and report within two years of the CLCPA’s becoming effective.^[11] The Council will consist of twenty-two members, including the heads of twelve state agencies “or their designees;” “two non-agency expert members appointed by the

governor;” “three members to be appointed by the temporary president of the senate;” “three members to be appointed by the speaker of the assembly;” “one member to be appointed by the minority leader of the senate;” and “one member to be appointed by the minority leader of the assembly.”[12] The Council must “provide meaningful opportunities for public comment” before issuing its recommendations.[13] Once completed, the Council’s report “shall [be] incorporate[d]” into the “state energy planning board’s” “state energy plan,” which will establish the State’s “clean energy goals” and how to meet them.[14] The Council is broadly empowered to consider all manner of methods for achieving emissions reductions, including “displacing fossil-fuel fired electricity with renewable electricity,” “land-use and transportation planning,” “establishing appliance efficiency standards, strengthening building energy codes,” and “limit[ing] the use of chemicals” that may “contribute to global climate change.”[15]

Alternative Compliance Through Net Zero Emissions Reduction

While the CLCPA generally mandates gross emissions reductions, entities may be able to meet their reductions requirements through “an alternative compliance mechanism” under which they would need to achieve “net zero emissions.”[16] But use of this alternative mechanism will be significantly limited. First, the Department is left to decide whether to create this alternative compliance structure at all.[17] Second, to utilize the alternative compliance mechanism, entities must go through “an application process” in which they must demonstrate that “compliance with” the normal emissions limits is not feasible and that they “ha[ve] reduced emission to the maximum extent practicable.”[18]

Renewable Energy Requirements for Power Companies Serving End-Users

The CLCPA requires New York’s Public Service Commission (“Commission”) to impose new regulations on companies that “secure[] energy to serve the electrical energy requirements of end-use customers in New York.”[19] These companies will be required to meet demand with renewable energy. Specifically, such companies regulated by the Commission will have to meet their customers’ needs with at least 70% renewable energy by 2030, and they will need to meet all demand with zero emissions by 2040.[20] These targets may be suspended or modified if the Commission finds that they will adversely impair safety, existing agreements, or if they cause “arrears or service disconnection.”[21]

Conclusion

The CLCPA will impose hefty requirements on all industries that contribute to greenhouse gas emissions, including energy, transportation, real estate, and any others that New York’s regulators may identify in deciding which emissions contribute to climate change. And because of the size of New York’s economy, businesses that operate within New York to any extent will likely need to adjust their operations and compliance structures to meet the CLCPA’s requirements. Additionally, businesses and other stakeholders may wish to provide comment on how the CLCPA is to be implemented, whether before the Department, the Commission, or the newly-created Council. They may also wish to apply for the alternative net zero emissions compliance channel, or provide comment on what should or should not be considered a greenhouse gas. Thus, in addition to expending considerable resources to adapt to

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the new law's requirements, many businesses may also decide it is necessary to spend resources to engage in the new regulatory processes established by the CLCPA.

[1] <https://www.nysenate.gov/legislation/bills/2019/s6599>

[2] <https://www.politico.com/states/new-york/albany/story/2019/06/19/senate-passes-ambitious-renewable-energy-measure-1067167>

[3] <http://nymag.com/intelligencer/2019/06/new-york-state-to-approve-impressive-ambitious-climate-bill.html>

[4] https://www.washingtonpost.com/climate-environment/trump-epa-finalizes-rollback-of-key-obama-climate-rule-that-targeted-coal-plants/2019/06/19/b8ff1702-8eeb-11e9-8f69-a2795fca3343_story.html

[5] <https://www.nysenate.gov/newsroom/press-releases/velmanette-montgomery/senate-democratic-majority-passes-historic-climate>

[6] **Senate Bill S6599 § 2.**

[7] *Id.*

[8] *Id.*

[9] <https://www.nytimes.com/2019/06/18/nyregion/greenhouse-gases-ny.html>

[10] *Id.*

[11] **Senate Bill S6599 § 2.**

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

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[19] *Id.* § 4.

[20] *Id.*

[21] *Id.*



Gibson, Dunn & Crutcher's lawyers are available to assist with any questions you may have regarding these issues. For further information, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Public Policy or Environmental Litigation and Mass Tort practice groups, or the authors:

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