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Environmental LAW

NYS Legislature and governor adopt sweeping legislation in Climate Leadership and Community Protection Act

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On July 18, 2019, Gov. Andrew Cuomo, along with former Vice President Al Gore in attendance, signed the Climate Leadership and Community Protection Act (CLCPA). The legislation is described by the governor's press release as "the most ambitious and comprehensive climate and clean energy legislation in the country." The reaction from the environmental groups has been enthusiastic; however, the feedback from the business community much less so due to uncertainty and cost. Time will tell how the CLCPA works and the ultimate cost of implementation, but the scope of the regulatory requirements appear daunting for New York residents and business.

The overall requirements are significant, intending to re-shape New York's energy, transportation and building sectors in the next few decades. First, CLCPA requires the state to attain a carbon free electricity system by 2040 and reduce greenhouse gas emissions by 85% below 1990 levels by 2050. The governor has touted the program as "setting a new standard for states and the nation to expedite the transition to a clean energy economy." The legislation is said to spur investment in clean energy technologies such as wind, solar, energy efficiency and storage, with targeted investment in disadvantaged communities and thousands of new jobs. The governor has also suggested that CLCPA will improve public health, quality of life and provide the state with more clean energy choices.

The CLCPA will require the NYS Department of Environmental Conservation (DEC) to adopt regulations to attain an initial 40% reduction in emissions from 1990 levels by 2030 and an 85% reduction in greenhouse gas emissions by 2050. Significantly, the legislation provides that the regulations include "legally enforceable emissions limits, performance standards, or measures or other requirements to control emissions from greenhouse gas emission sources." The regulations will cover the entire breadth of the state's economy: energy, transportation, buildings and development. Notably, internal combustion engines (gas or diesel), as well as boilers and furnaces are included under the scope of greenhouse gas emissions sources. While Upstate New York farmers recently took a major hit with overtime legislation, at this point, "agricultural emissions from livestock" are excluded from regulation.

The legislation establishes a 22 member Climate Action Council headed up by NYS Energy Research and Development Agency and DEC, along with other state agency leaders and legislative appointees, will establish policies to attain the goals of the legislation. The Climate Action Council, in conjunction with the Environmental Justice Advisory Group and Climate Justice Working Group, are supposed to create a plan to offset the remaining emissions through carbon capture or other options to result in a carbon-neutral economy.

The CLCPA legislatively adopts the governor's "nation-leading goals as called for under his Green New Deal," requiring that at least 70% of New York's electricity from renewable energy sources such as wind and solar by 2030 in order to attain 100% carbon neutral by 2040. In addition, the governor's goals of "nation-leading commitments" to install 9,000 megawatts of offshore wind by 2035, 6000 megawatts of solar by 2025, and 3,000 megawatts of energy storage by 2030. On the same day as CLCPA was signed, the governor executed an offshore wind agreement to procure about 1,700 megawatts through two offshore wind projects. The state has projected that the agreement will generate enough power for 1 million homes, create more than 1,500 jobs and produce $3.2 billion in economic activity.

A major component of the CLCPA is investment in environmental justice and "just transition." State agencies involved in CLCPA matters are slated to invest at least 35% of clean energy program resources to benefit disadvantaged communities and up to 40%, if feasible. Further, the just transition working group will make efforts to ensure that individuals working in conventional energy industries are provided with training and an opportunity to transition to the clean energy jobs.

As expected, reaction from environmental groups has been highly favorable. For example, the Environmental Defense Fund has said that "[t]hese targets to reduce emissions are among the best in the country and will propel progress toward cutting climate pollution nationwide."

In contrast, New York's Business Council has been somewhat circumspect in noting the adoption of the CLCPA. Stating that "[c]arbon policies that global competitors are not subject to can put businesses at an economic disadvantage. If our companies are not competitive there is risk of job loss to other jurisdictions with weaker standards, ultimately resulting in higher global greenhouse gas emissions. We need to get this right, to avoid a potential shipwreck."

The CLCPA will have a profound and far-reaching impact on the state's economy. It will require massive re-structuring of the energy, transportation and building communities to meet the greenhouse gas emission standards and performance standards to be developed by DEC. While the governor, legislative majority and environmental groups are lauding passage of the legislation, the costs and impacts to New York businesses and residents have not been a part of the discussion. Hence, it remains to be seen whether environmental regulatory technology, public support and cost tolerance will keep pace with the extremely aggressive goals mandated by CLCPA.

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