



TESTIMONY OF PATRICK MCCLELLAN
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BEFORE THE JOINT LEGISLATIVE PUBLIC HEARING ON THE 2021-2022 EXECUTIVE
BUDGET

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Thank you Senator Krueger, Assemblymember Weinstein, Senator Kaminsky, Assemblymember Englebright, and members of the finance and environmental conservation committees. The New York League of Conservation Voters (NYLCV) appreciates your strong leadership on environmental issues and we look forward to partnering with you this year to advance an ambitious climate change and conservation agenda.¹

The past year has been the most challenging in memory for New York, with the pandemic and all of its associated grief and isolation also costing hundreds of thousands of jobs and decreasing revenue for the State and many county and local governments. Nevertheless, we must continue to invest in the environment, not just because fighting climate change can't wait but also because the investments we make now will ensure that our economic recovery is based on green jobs and accelerates a just transition off of fossil fuels.

FUNDING

NYLCV strongly supports a \$300 million Environmental Protection Fund (EPF), \$500 million in new funding for clean water infrastructure, and timely implementation of the Climate Leadership and Community Protection Act (CLCPA). To that end, we are pleased both that the Executive Budget maintains investments in the EPF and clean water, and adds 31 new staff at the Department of State to support the newly created Office of Renewable Energy Siting (ORES) and seven new staff at the Department of Environmental Conservation (DEC) to support implementation of the CLCPA. We also strongly support the NY Parks 100 allocation of \$440 million over four years to the state parks system, continuing the hugely successful Parks 2020 campaign.

Last year, NYLCV strongly supported the \$3 billion Restore Mother Nature Environmental Bond Act, and we were disappointed that it was removed from the ballot last summer. We continue to believe that a sustained investment in natural resiliency measures will both better prepare New York for the impacts of climate change and create green jobs. In fact, a study released earlier

¹ https://nylcv.org/wp-content/uploads/NYS-2021-Policy-Agenda_WEB.pdf

this week found that the Environmental Bond Act could support as many as 65,000 jobs.² We urge the Legislature to reauthorize the Bond Act, as negotiated and passed in the FY 2021 budget, and place it on the ballot for voter approval.

As you look to identify new funds to implement the CLCPA and invest in environmental justice communities, we urge you to look at tax expenditures that benefit fossil fuels which could be repurposed to support our climate goals. NYLCV co-authored a report on this topic with the Citizens Budget Commission last year, and Senator Krueger and Assemblymember Cahill carry legislation to identify and phase out many of these expenditures.³

TRANSPORTATION

NYLCV supports the Rail Advantaged Housing Act, Part DD of the Transportation, Economic Development and Environmental Conservation (TED) Article VII legislation, in order to advance transit-oriented development in the MTA service region. Allowing more housing to be built within walking distance of mass transit is a vital strategy for reducing automobile emissions by expanding access to non-car modes of transportation. While this legislation leaves it to county governments to choose whether or not they wish to upzone areas within one half-mile of commuter rail stations and avail themselves of Part DD, streamlining the environmental review and permitting process for such projects is a step in the right direction.

NYLCV supports Part E of TED Article VII, which would impose a \$500 fine for deliberately defacing, altering, or covering a license plate in an attempt to evade cashless tolling or the congestion pricing zone in Manhattan. License plate defacement to evade automated enforcement is a growing problem in New York City, often paired with parking placard fraud and abuse.⁴ Cracking down on it is important for making congestion pricing work when it is implemented, which we hope will be no later than January 2022 now that there is a new federal administration which just this week we learned expressed its support to Senator Schumer.⁵

There are also two policies to advance zero-emission vehicles (ZEVs) in New York that we hope to see included in the final budget agreement. The first is a Clean Fuel Standard (CFS), which is carried by Assemblymember Woerner in the Assembly and Senator Parker in the Senate.⁶ A CFS works by requiring producers of high carbon intensity fuels to purchase credits from

² <http://rebuildbydesign.org/data/files/1433.pdf>

³ https://cbcny.org/sites/default/files/media/files/CBC-NYLCV-REPORT_CLCPA_08172020.pdf
<https://www.nysenate.gov/legislation/bills/2021/S2721>

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<https://www.nydailynews.com/opinion/ny-oped-to-reform-policing-tackle-placard-abuse-20200616-4ppkjr5vz5dp3onsgjfirjc6oy-story.html>

<https://nypost.com/2017/02/09/nypd-cops-are-using-illegal-license-plate-covers-to-thwart-traffic-cameras/>
NYLCV also supports legislation from Assemblymember Paulin to reform the parking placard system and address placard corruption.

⁵ <https://gothamist.com/news/schumer-confident-about-hudson-river-tunnel-project-congestion-pricing>

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https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A00862&term=&Summary=Y&Memo=Y&Text=Y

producers of low carbon intensity fuels such as electricity, biodiesel, and renewable gas. The cleaner a fuel is, the more credits it generates, and the dirtier a fuel is the more credits it must purchase, which could eventually drive the dirtiest fuels from the market entirely as the cap on carbon intensity is lowered over time. Furthermore, while a state CFS could not apply to maritime and aviation fuels due to federal preemption issues, it would stimulate the market for renewable liquid fuels, which will in all likelihood be necessary for those sectors even after 2050. As a starting point, a CFS would reduce on-road transportation emissions by 20-30%, depending on how aggressive the State chooses to make it, within a decade at no cost to the State. In fact, based on California's experience, a CFS could result in annual investments of approximately \$1 billion in clean fuels that is paid for by the fossil fuel industry.

While a CFS would be a valuable tool in reducing transportation emissions, it is of course not a silver bullet and would need to be paired with other policies in order to meet our transportation climate goals. These policies include expanding mandates for clean cars and trucks that DEC should pursue administratively, and access to ZEVs, leading to the second policy that we would like to see included in the final budget agreement. Currently, only one ZEV manufacturer, Tesla, is allowed to sell directly to New Yorkers, and only at five locations statewide. This places artificial constraints on Tesla's ability to sell ZEVs to New Yorkers and is now blocking multiple other ZEV manufacturers from entering the New York market at all. NYLCV supports legislation carried by Senator Kaminsky in the Senate to lift this artificial cap on direct sales by ZEV manufacturers.⁷

Finally, we are pleased that the Governor's State of the State included the announcement that the MTA will purchase 45 new electric transit buses this year and that the State will assist public transit systems in Buffalo, Rochester, Albany, Westchester, and Suffolk in purchasing 55 new electric transit buses. While there are many policy tools, including a Clean Fuel Standard, that can reduce overall transportation emissions and be targeted to prioritize environmental justice communities, advancing environmental justice also requires direct investment in things like electric transit buses, electric school buses, e-bikes, and used ZEV rebates.

CLEAN ENERGY

There are several proposals related to clean energy in the TED and Revenue Article VII bills that NYLCV has a position on.

Part Q of TED exempts ORES from State Environmental Quality Review (SEQR), allows ORES to recover its operating expenses instead of just permitting expenses through project fees, and designates all projects above 25 megawatts as electric corporations. These are common sense changes that should have been included in the legislation that created ORES last year and would bring the ORES process in line with how Article 10 worked; we view Part Q as simply correcting a drafting oversight.

⁷ <https://www.nysenate.gov/legislation/bills/2021/S1763>

Part T of TED allows the Long Island Power Authority (LIPA) to restructure its debt in order to finance certain resiliency and transmission upgrades. This is important because of the Long Island electric grid's vulnerability to climate change and importance to the success of offshore wind.

Part BB of TED grants land easements related to the Alle-Cat wind project. These are very low-impact changes that are necessary for the project to move forward, and we support them.

Part EE of TED authorizes NYSERDA to create holding companies to more easily transfer the development rights for renewable energy sites identified through the Build Ready program. Build Ready is intended to accelerate the siting of renewable energy projects on lands that are the most obvious candidates for such projects, and Part EE contributes to this acceleration, which is necessary to achieve the CLCPA's goal of 70% renewable energy by 2030.

Part NN of TED increases the cap on the Electric Generation Facility Cessation Mitigation Fund from \$69 million to \$140 million. A core condition of a just transition is investing in communities that are impacted by fossil fuel power plant closures, and increasing the Mitigation Fund makes sense to ensure that we can live up to our obligations.

Part R of TED authorizes Tier 2 Renewable Energy Credits (RECs) to be used as emissions offsets under New York City Local Law (LL) 97 of 2019, which sets statutory emission reduction obligations for much of the city's building stock beginning in 2024. NYLCV supported the creation of Tier 4 RECs under the updated Clean Energy Standard (CES) in 2020 as a way to incentivize new clean energy transmission into Zone J, thereby satisfying LL 97's requirement that building owners only be able to purchase REC offsets that feed into Zone J. While we support the creation of Tier 4, we have many concerns about allowing Tier 2 RECs to count for LL 97 offsets that must be addressed before we could support Part R.

First, there needs to be a defined deadline by which buildings would no longer be able to use Tier 2 RECs to meet their obligations under LL 97. If authorized, Tier 2 RECs should only be allowed to count for LL 97 offsets as a stopgap until new transmission projects and offshore wind come online. Second, New York City must have final authority to decide whether or not a Tier 2 REC purchase should count to offset a building's emissions. We appreciate that the City necessarily, if perhaps accidentally, created a role for the State in implementing LL 97 when it authorized REC purchases to offset building emissions, but we believe that this role was fulfilled by the creation of Tier 4. The final accounting of whether or not a building is in compliance with LL 97 and whether or not any RECs, of any Tier, purchased from NYSERDA are allowable as offsets must be in the City's hands.

Third, and related to my second point, the City must be authorized to cap how many Tier 2 RECs a building can purchase to offset its emissions, recognizing that Tier 2 RECs by definition cannot provide the same benefits to the city that Tier 4 RECs will once they are operational. The REC provision of LL 97 requires that covered RECs apply to energy delivered into Zone J because the law intends for REC offsets to only be allowed when they create in-city community

benefit. In other words, a building that is struggling to reduce its emissions as required by the law would invest in clean energy that feeds into the city's grid, thereby displacing fossil fuel power generation, much of which is located in environmental justice communities in the city and contributes to poor air quality in those communities. So even though a building is not reducing its own emissions by the amount required by LL 97, it is still contributing to cleaner air and lower greenhouse gas emissions citywide, and likely with a specific benefit to environmental justice communities. There are no Tier 2 facilities in New York City and I do not believe that there has been an accounting of how many Tier 2 facilities produce power that feeds into Zone J. Therefore by definition Tier 2 RECs will not provide the same community benefits in New York City that Tier 4 RECs will. If Part R moves forward, it should give the City authority to account for the fact that Tier 2 RECs, while an important part of achieving the CLCPA in their own right, provide fewer community benefits in NYC.

Finally, Part X of the Revenue Article VII bill reforms the property tax and payment in lieu of taxes (PILOT) process for renewable energy projects, providing more certainty to both renewable energy project developers and host communities. Similarly to Parts Q and EE of TED, Part X of the Revenue bill will accelerate the siting and construction of renewable energy projects by providing all parties with more regulatory certainty.

SUSTAINABLE WASTE MANAGEMENT

Sustainable waste management is an important part of both fighting climate change and preserving natural habitats.

NYLCV supports the passage of an extended producer responsibility (EPR) bill that covers packaging materials as part of the final budget agreement, based on legislation carried by Senator Kaminsky and Assemblymember Englebright.⁸ Packaging waste makes up an increasing share of the curbside waste stream due to the growth in e-commerce, yet recycling these materials has become much more expensive for local governments as commodity prices in the recycling market have plummeted. A packaging EPR bill would require the producers responsible for packaging waste to fund municipal curbside collection and recycling programs or provide their own curbside collection and recycling programs, set minimum recycled content requirements, and incentivize producers to create less packaging waste in the first place. This legislation would reduce waste, increase recycling rates, and provide financial relief to local governments.

NYLCV also supports Part Y of TED, which would clarify aspects of the plastic bag ban that have confused retailers and led to legislative intent being decided by the courts. Part Y clarifies that the plastic bag ban applies to single-use plastic bags, and that the law did not intend to ban bags that are reusable, subject to strict DEC review, that are made with plastic. We should be wary of plastic bags that are only marginally thicker than standard single-use bags but claim to be reusable, but it is not only possible but common for woven plastic, often made from recycled

⁸ <https://www.nysenate.gov/legislation/bills/2021/S1185>

plastic, to be used in bags that can be and are intended to be used hundreds of times before they begin degrading.

NYLCV continues to believe that we should revisit the Bottle Bill and consider adding liquor and wine bottles to the list of covered container types. At minimum, we support Part CC of TED, which extends local enforcement power over the Bottle Bill for two more years. However, we note that there is no clear rationale for why local enforcement power should sunset at all rather than being made permanent.

Finally, sustainable waste management also includes management of wastewater. The most forward-thinking plan in recent memory to advance sustainable wastewater management on Long Island is upgrades to the Bay Park sewage treatment plant and Bay Park Conveyance Project, which will reduce nitrogen pollution in Long Island waters. In order to complete that project in a timely manner, NYLCV supports Part Z of TED, which authorizes certain temporary and permanent parkland easements, with strict DEC oversight in place, in order to construct an underground sewer main that is necessary for the project's completion.

CONCLUSION

NYLCV is pleased with the broad outlines of the budget that Governor Cuomo has proposed. However, there is room for improvement, especially relating to clean transportation policy and Part R of TED. Thank you for the opportunity to testify and for your continued leadership on environmental issues.