NYLCV
NEW YORK LEAGUE OF CONSERVATION VOTERS

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Testimony of Patrick McClellan, Policy Director, New York League of Conservation Voters

Before the Joint Legislative Public Hearing on the 2023-2024 Executive Budget

My name is Patrick McClellan and I am the Policy Director for the New York League of Conservation Voters, a statewide environmental advocacy organization. Thank you to Chairs Krueger, Weinstein, Harckham, Glick, Parker, and Barrett and all of the members of the committees present today for the opportunity to testify. My testimony will touch on areas of environmental conservation and protection including clean water, lead remediation, and reducing exposure to toxic chemicals but will primarily focus on how the Fiscal Year 2024 budget can best support implementation of the Climate Leadership and Community Protection Act (CLCPA) now that the Climate Action Council has approved its first scoping plan.

Agency Staffing

The Department of Environmental Conservation (DEC), Department of Health (DOH), New York State Energy Research and Development Authority (NYSERDA), and other State agencies that protect the environment and fight climate change have been asked to do more with less for many years. To that end, NYLCV strongly supports the Executive Budget's proposal to add 231 new full time equivalent (FTE) staff to DEC in order to implement the CLCPA, the Clean Water, Clean Air, and Green Jobs Environmental Bond Act, the proposed cap-and-invest program, the cleanup of forever chemicals, and the proposed Waste Reduction and Recycling Infrastructure Act. We also support the proposal to add 237 FTE to the Office of Parks, Recreation, and Historic Preservation (OPRHP); 39 new FTE to the Department of Health; and 26 new FTE to the Department of Agriculture and Markets.

While we are very supportive of these proposed staffing increases, we strongly oppose the proposal to offload funds from the Environmental Protection Fund (EPF) in order to pay for some portion of these new staff. The EPF is not meant to be used for the State's personnel costs and every dollar taken out of it means one less dollar funding an important environmental project somewhere in the state. We urge you to reject this misguided raid on the EPF as you have on many occasions in the past.

Capital Funding

NYLCV is pleased to see another allocation of $500 million for the Clean Water Infrastructure Act in the Executive Budget, although our goal is for the State to allocate $1 billion for clean water per year. It is important for New York to continue to address failing infrastructure, lead pipes, emerging contaminants, harmful algal blooms, nitrogen pollution, and other water issues even and especially as the federal government finally invests significant dollars in the Clean Water and Drinking Water Revolving Loan Funds through the Infrastructure Investment and Jobs Act.

We support funding the EPF at $400 million in this year's budget as the Executive proposes. As I mentioned before, we strongly oppose the Executive's proposal to offload EPF funds to cover staff. Finally, we are concerned that the Executive Budget proposes cuts to the municipal recycling and Climate Smart Communities lines within the EPF. These are two budget lines that are oversubscribed and completely spent every year. Given the importance that these lines can play in achieving the CLCPA's goals and supporting local recycling, if anything they should be increased.

We are disappointed that the capital budget for OPRHP is proposed at $200 million in the Executive Budget, $50 million less than what was appropriated in last year's budget. We urge you to fund the OPRHP capital budget at $250 million in this year's budget.

Green Buildings

NYLCV strongly supports Part WW of the TED Article VII legislation in the Executive Budget. NYLCV views this proposal as a must do in 2023. It is important to meet our greenhouse gas (GHG) emission reduction goals that we ban the use of on-site fossil fuel combustion as soon as is feasible for new construction and that we have a plan in place to phase out the use of existing on-site fossil fuel combustion systems when they reach the end of their useful life spans. While the dates proposed for phase out of existing systems seem appropriate to us and we would accept the dates proposed for new construction, it also seems feasible to move up the proposed dates for new construction by one year for both buildings above and below three stories.

We also support creating a new tax abatement in New York City for decarbonization retrofits. Senator Parker has introduced legislation (S. 943-A) to create such an abatement, which would be scaled to the depth of retrofits.[1] This is important for New York City's ability to implement Local Law 97 of 2019, which requires deep energy efficiency retrofits in buildings citywide. We urge you to use this bill as a starting point for discussions in this year's budget.

We believe there are two missed opportunities in the Executive Budget that we hope the Legislature will address through your one-house budget resolutions and through negotiations with the Governor. First, in order to stop the expansion of New York's natural gas system that the CLCPA scoping plan calls for we must repeal the obligation to serve for gas utilities, repeal

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[1] NY State Senate Bill S943A (nysenate.gov)

the so-called 100 foot rule that socializes the cost of connecting new customers to the gas grid, and require utilities to begin planning for significant reductions in natural gas use in their rate cases. Senator Krueger's NY HEAT bill meets the moment and we urge you to consider including it in the final negotiated budget.

Second, there is a tremendous opportunity for the State to lead the way on both green buildings and green jobs. NYLCV is part of UpgradeNY, a collaboration with the Building Decarbonization Coalition, the New York State AFL-CIO, the New York State Building and Construction Trades Council, ALIGN, WE ACT for Environmental Justice, the Sierra Club, and AGREE, which is advocating for the elimination of on-site fossil fuel combustion at all State-owned facilities by 2040. These decarbonization projects must have robust labor standards including Project Labor Agreements, direct entry pre-apprenticeship programs, training programs for existing workers, and a commitment to direct at least 40% of overall investments and benefits, including jobs, pre-apprenticeship program grants, stipends, and wrap-around services to disadvantaged communities.

This proposal builds on the Utility Thermal Energy Jobs Act that was passed last year and, if enacted, would demonstrate that New York State is serious about ensuring a just transition for both unionized workers who currently work in fossil fuel industries and for the green economy workers of tomorrow who have grown up in the communities most harmed by climate change. To put it more bluntly, a just transition requires creating green jobs for workers currently employed in fossil fuel industries today rather than making promises about the jobs that will be available in 15 years.

Of course, we recognize that an ambitious 2040 goal must be broken down into year-by-year cost estimates and budget asks. To that end, we believe that the goals of UpgradeNY can be set in motion by having 15 of the highest-emitting State facilities be shovel-ready for decarbonization projects by 2025 if $115 million is included in this year's budget and allocated as follows:

- $75 million, or $5 million per site for feasibility studies including choosing the best, most technically appropriate decarbonization option for the site and detailed design to get the project shovel-ready
- $9.5 million to prepare these sites for electrification, including weatherization
- $30 million to fund work on decarbonization projects in State facilities that are already shovel-ready, such as chillers for zero-emission air conditioning
- Funding for pre-apprenticeship programs, including $500,000 for the Workforce Development Institute's Statewide Pre-Apprenticeship Program to support residents of disadvantaged communities who want to join the union workforce

Beyond the UpgradeNY ask for State facilities, we believe that it is important for strong labor standards to be weaved throughout all of the State's climate programs, including the various green building proposals, in order to ensure a just transition.

Cap-and-Invest

NYLCV is conceptually supportive of an economy-wide cap-and-invest program as proposed in Part AAA of TED. This is a bold, market-based, polluter pays approach that has successfully been implemented in California, Oregon and in the beginning stages of implementation in Washington State. It will create a recurring source of funds needed to achieve the CLCPA's ambitious climate reductions and ease the transition to a green energy economy. We are pleased that the Executive's proposal makes allowances both for rebates to New Yorkers who may be impacted by higher prices for certain goods and for relief of potentially impacted small businesses. We believe that it is appropriate for many of the details of the cap-and-invest program to be worked out through regulations issued by DEC and NYSERDA, subject to the robust public engagement process that all State regulatory issues are. However, there is plenty of room in the final budget to provide more clarity on equity, certainty of emission reductions, and how funds in the proposed Greenhouse Gas Emissions Reduction Account would be spent.

NYPA and Renewable Energy

Regarding the proposed Part XX of TED authorizing the New York Power Authority (NYPA) to build renewable energy generating projects, it is clear that NYPA can and should play a role in helping to achieve the CLCPA's goals and objectives, especially with decarbonizing State facilities as discussed above and some local government facilities. However, we are concerned that an overly broad grant of this power would discourage or crowd out private investment in renewable energy. There is no shortage of renewable energy companies eager to help New York achieve 100% clean power by 2040, and indeed in some parts of the state there are more potential developers than there are easily developable sites. To the extent that there are concerns about our ability to achieve 70% renewable power by 2030 and 100% clean power by 2040 as mandated by the CLCPA, these concerns are primarily driven by long, litigious permitting processes, the need for upgrades to the grid including substation expansions and retrofits, and the need for new transmission lines, which are themselves often subject to long, litigious permitting and construction processes. This is why NYLCV strongly supported the creation of the Office of Renewable Energy Siting (ORES) in 2020 and has urged it to be appropriately funded in each subsequent budget. We urge the Legislature to hold further oversight hearings on potential legislation to accelerate the permitting and construction of new transmission lines in the same way that ORES is meant to accelerate the permitting and construction of renewable energy projects.

We strongly support Part XX's proposed new subdivisions 27-c and 27-d of Section 1005 of the Public Authorities Law requiring NYPDA to issue a plan for the phase out of its natural gas "peaker" plants by 2035 and allocate $25 million annually to support job training for employment in the renewable energy field, respectively. It should go without saying, but we believe these job training funds are and ought to be subject to the CLCPA's requirement that at least 35%, with a target of 40% or more, of these funds must be invested in disadvantaged communities.

FInally, in support of the CLCPA scoping plan's vision for the energy grid in 2050, we urge you to increase the State's statutory offshore wind goal from 7 gigawatts (GW) by 2035 to 20 GW by 2050.

Transportation

NYLCV strongly urges the Legislature to include a clean fuel standard (CFS), such as A. 964/S. 1292 (Woerner/Parker), in this year's budget.[2] A CFS requires producers of high carbon intensity transportation fuels - namely, fossil fuels - to subsidize low carbon intensity fuels such as electricity, hydrogen, and biofuels, lowering the cost of the transition to 100% zero-emission vehicles while in the interim reducing the GHG emissions and co-pollutants associated with liquid fuels that are still in use. Even in the most aggressive electrification scenarios envisioned by the CLCPA scoping plan, there will still be vehicles on the road in 2050 that run on liquid fuels. CFS policies are already in place and successfully reducing transportation emissions in every state on the West Coast and it is important to note that in California, where the policy originated, the California Air Resources Board does not believe that the Advanced Clean Car Rule requiring all new light-duty vehicle sales to be zero-emission by 2035 - a rule which New York has also adopted - would be feasible without their CFS policy in place. I will note that the CLCPA scoping plan also includes a fairly strong recommendation that New York implement a CFS in order to achieve the CLCPA's transportation emission reduction goals.

Not only would implementing a CFS not require State expenditures, but based on data from California's program we would also expect it to generate between $1-1.4 billion in economic activity in the transportation sector per year. It would also have significant near-term public health benefits by reducing emissions of NOx, SOx, particulate matter, and toxins such as benzene that cause respiratory illnesses such as asthma. We understand that some advocates are skeptical of a CFS' efficacy and equity, but NYLCV believes that the CLCPA scoping plan addressed these concerns by recommending that a New York CFS set a timeline for carbon intensity reductions out to 2050, require certain credits from electrification to be invested in electrification projects in disadvantaged communities, and require public transit agencies and government bodies to prioritize reinvestment of any credits they earn in disadvantaged communities.

Finally, I would like to preemptively acknowledge any concerns that you may have that a CFS cannot coexist with another market-based mechanism like cap-and-invest, as they do in California, Oregon and Washington State. In fact, these two policies complement each other, with each improving the efficacy and lowering the costs of the other. This is true both in economic modeling and in case studies from California that have used real world data, and we would be happy to share these studies with you.

We also believe that it will be difficult to reach the CLCPA's transportation emission reduction goals without expanding the direct sales of zero-emission vehicles (ZEVs). Put simply, vehicle manufacturers who only manufacture ZEVs and who sell directly to consumers, outside the

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[2] https://www.nysenate.gov/legislation/bills/2023/A964

traditional car dealership model, have a much stronger track record of actually putting ZEVs on the road than dealers who sell both ZEVs and internal combustion engine cars do. Florida - a state that has no incentives for ZEV purchases and whose government could charitably be described as skeptical of the need to respond to climate change - sells more ZEVs each year than New York does, and the difference is entirely because Florida allows direct sales and New York does not. It is past time for this to change, the recommendation to allow direct sales of ZEVs was included in the CLCPA scoping plan, and we urge you to include it in the budget this year.

Electrifying four-plus wheeled vehicles will not be enough to achieve the CLCPA's goals no matter how aggressively we make that transition. As the scoping plan makes clear, we must also reduce the number of vehicles on the road and the amount of vehicle miles traveled (VMT). One model for reducing VMT that has been very successful wherever it has been implemented is to provide a purchase rebate for e-bikes and e-scooters. Owners of these two-wheeled, battery-powered vehicles overwhelmingly report using their cars less and in many cases giving up one or more family cars altogether. There are many well-documented studies that I would be happy to share with any legislators or staff who are interested. That is why we urge you to include an e-bike and e-scooter rebate in this year's budget, such as A. 275/S. 314 (Carroll/Salazar).[3]

I understand that many people have concerns about the potential for fires from the batteries on these devices, to which I would reply that the terrible fires we have seen in the last few years are overwhelmingly caused by batteries that are illegally modified, not sold by reputable bike shops, or improperly stored and handled. A rebate program overseen by the State would relieve rather than exacerbate these issues. I understand too that many New Yorkers have safety concerns about how e-bikes and e-scooters are operated on crowded streets. Bikes and scooters, whether they are electric or analog, are an important tool for reducing GHG emissions and improving public health but must have streets that are safe to operate them on both for their riders and for pedestrians. That is why NYLCV supports Part A of TED to expand camera enforcement for MTA bus operations, Part B of TED to authorize speed cameras on roads controlled by the Triborough Bridge and Tunnel Authority, Part F of TED to allow for stricter penalties for license plate defacement, and Part K of TED to allow the City of New York to lower their maximum speed limit to 20 miles per hour on most streets and 10 miles per hour in school zones.

The other key way to reduce VMT and improve air quality is to boost mass transit reliability and frequency. NYLCV is agnostic on potential sources of new revenue for the Metropolitan Transportation Authority (MTA) but we are pleased to see that the Executive Budget boosts operating aid for the MTA. We urge you to explore ways to fund the MTA such that subway headways during peak service are no longer than six minutes on any line. While the MTA is by far the largest public transit agency in the United States and therefore understandably receives a lot of attention, it is important to note that the CLCPA's goals cannot be achieved without significant new investment in non-MTA transit agencies throughout the state. We urge you to

[3] NY State Assembly Bill A275 (nysenate.gov)

work with all transit agencies in the state to ensure that the final budget prioritizes their need for operating aid and system improvements to the same degree that it does for the MTA.

Waste Reduction and Recycling Infrastructure Act

NYLCV supports Part PP of TED, the Waste Reduction and Recycling Infrastructure Act. It is past time for producers of packaging waste to have a financial incentive to reduce the amount of waste they produce, take on the cost of recycling, and meet minimum recycled content requirements that increase over time. We strongly urge you to include a version of this bill in the final budget and I would like to stress that this is indeed a budget issue because of the significant positive budget implications that it carries for municipal recycling systems as well as the additional agency staff needed to implement this bill. I am sure that you will hear from many diverse stakeholders about this bill and will engage in spirited negotiations both internally and with the Executive; I will note that Senator Harckham's recently-introduced Packaging Reduction and Recycling Infrastructure Act (S. 4246) represents NYLCV's preferred starting point for these negotiations.[4]

Housing

In addition to reducing VMT, one of the most effective things New York State can do to reduce GHG emissions is to allow more people who want to live in dense, walkable, transit-oriented neighborhoods to do so. Our housing costs, especially in the parts of the state served by the MTA, are among the highest in the nation and high housing costs are one of the leading reasons New Yorkers who move to other states cite for their decision to leave, demonstrating that there is significant unmet demand for this style of living. To that end, NYLCV is conceptually supportive of Parts F, G, J, and K of the ELFA Article VII legislation.

To be clear, we are not experts on housing development and I cannot give an informed opinion or endorsement of each and every section of the housing legislation proposed by the Executive Budget. While it may be reasonable to exempt many of the rezonings contemplated by these bills from environmental review because the climate and public health benefits of building dense, walkable, transit-oriented development on previously developed land far exceed the existing uses of that land, we urge the Legislature to carefully consider the extent of the exemptions granted and what kinds of guardrails must be placed around these exemptions. It is a good start for the Executive Budget to automatically consider wetlands, parks, rivers and streams, coastal erosion hazard areas, protected forests, and the 100-year flood plain to be non-buildable land, and we urge you to consider in good faith what other types of environmentally sensitive sites that are otherwise good candidates for upzoning ought to still be subject to at least some level of environmental review.

Nevertheless, strongly encouraging rezonings for accessory dwelling unit legalization, split lots, abolition of minimum lot sizes and parking minimums, smart growth, adaptive reuse, transit-oriented development, and basement apartment legalization would do more at lower cost

[4] NY State Senate Bill S4246 (nysenate.gov)

to decrease New York's per capita carbon footprint than many of the more traditional "green" policies that we have debated over the last few years. Finally, I would stress that if New York State is serious about adding 800,000 units of housing over the next decade this budget <u>must</u> include a version of Part WW of TED to ensure that these units are zero-emission, thereby furthering the climate and air quality benefits of density.

Other Article VII Legislation

NYLCV supports Part II of TED to allow the City of New York to use more alternative project delivery methods because we believe that this capital project flexibility is important for the timely and efficient delivery of climate mitigation and adaptation projects. We support Part OO of TED to make it easier for New York schools to buy from New York farms and support local agriculture. We support Part QQ of TED to support the clean up of forever chemicals.

We are conceptually supportive of Part TT of TED to create the Suffolk County Water Quality Restoration Act but are deeply concerned that the bill as written does not reflect the stated needs of Suffolk County including authorizing the funding needed to accomplish its objectives. The County will be charged with both earning public approval of and administering the program this bill would create and as such we believe their stated preferences for the program's structure should be given deference.

We support Part UU of TED to make it easier for municipal governments to replace lead service lines. We support Part T of the Health and Mental Hygiene Article VII legislation to provide DOH with new powers to investigate and remediate lead paint hazards outside of New York City.

Conclusion

Thank you very much for the opportunity to testify today. I recognize that at several points I referenced studies related to various policies that we are calling for you to include in this year's budget; I would be happy to follow up with you or your staff to share any of those studies that you may have further questions about. I would be happy to answer any questions you may have about my testimony now, and any follow up questions that may arise in the days and weeks to come can be directed to my email or office phone, provided below. Thank you.

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