

2008 ANNUAL REPORT

NEW YORK STATE ASSEMBLY

COMMITTEE ON
ENERGY



Sheldon Silver, Speaker

Kevin A. Cahill, Chairman



KEVIN A. CAHILL
Assemblymember 101st
District

CHAIR
Assembly Energy
Committee

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

COMMITTEES
Ways and Means
Economic Development, Job Creation,
Commerce & Industry
Ethics and Guidance
Health
Higher Education

December 8, 2008

Honorable Sheldon Silver
Speaker of the Assembly
932 Legislative Office Building
Albany, New York 12248

Dear Mr. Speaker:

I am pleased to submit to you the 2008 Annual Report of the Assembly Standing Committee on Energy. Since February of this year when you entrusted me as the Chair of this important committee, my colleagues and I have been busy advancing a significant, progressive agenda.

This year the Committee addressed several important issues including a package of legislation that would protect consumers from continually rising fuel costs while providing for a substantial increase in funding for the Low Income Home Energy Assistance Program. The Committee also introduced legislation that would create a comprehensive and dynamic State Energy Plan, to assess New York's current and future energy needs and to provide a context for energy security for the 21st Century.

Focusing on the economy, the Committee passed legislation that significantly improved New York's existing net-metering law, by expanding the program to all utility customers and providing significant incentives to grow renewable energy production. Bills were also passed to encourage the proliferation of green building practices through state construction and renovation standards and the creation of a residential grant program. Taken together, these initiatives will help to reduce costly strains on our energy infrastructure while encouraging the creation of "green" jobs. Finally, the Assembly extended the Power for Jobs program, in order to continue assisting business in creating and maintaining jobs across the state.

I would be remiss to conclude without mentioning the important contributions of my colleagues on the Energy Committee and the Assembly. Partisanship was largely set aside. Important and innovative concepts presented by the best and the brightest of the Assembly Majority were advanced, maintaining New York's preeminence in this field. Assembly, Committee and my staff should also be recognized for their professional, compassionate, engaged and effective role in repowering and energizing legislative action. Finally, I commend you on your leadership on issues related to energy, particularly your support of legislation adopted to assist working families during a period of volatile home heating costs.

Sincerely,

Kevin A. Cahill
Chair of the Assembly Energy Committee

**2008
Annual Report**

**New York State Assembly
Standing Committee on Energy**

**Kevin A. Cahill
Chairman**

Committee Members

Susan John
Steve Englebright
Sam Hoyt
William Scarborough
Francine DelMonte
Andrew Hevesi
Marc S. Alessi
Linda Rosenthal
Michelle Schimel
Dennis Gabryszak
Timothy Gordon
Janele Hyer-Spencer

Thomas O'Mara, Ranking Minority Member
Gary D. Finch
Rob Walker
Gregory Ball

Staff

Brian Snowdon, Legislative Analyst
Julia Mallalieu, Legislative Coordinator
Christian Malanga, Associate Counsel
Kristen McManus, Committee Clerk
Judy Alfonso, Program & Counsel Executive Secretary

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2008 ENERGY REPORT

I. INTRODUCTION

The Assembly Energy Committee, now in its 27th year, has jurisdiction over legislation relating to energy availability and sources, policy and planning, conservation, and electric and gas rate-making in New York State. The Committee considers legislation that amends the Energy Law, the Public Service Law, the Public Authorities Law, and the Economic Development Law. The Committee works closely with the Assembly Committee on Corporations, Authorities and Commissions, which considers legislation concerning the structure and operations of the Power Authority of the State of New York (PASNY), the Public Service Commission (PSC), the Energy Research and Development Authority (ERDA), and the Long Island Power Authority (LIPA). The Committee also works with other State agencies including the Department of Economic Development (DED), the Department of Environmental Conservation (DEC), and the Department of Transportation (DOT).

In 2008, 100 bills were referenced to the Committee and 30 bills were reported from the Committee. The full Assembly considered and passed 14 of these bills. Five of those bills were signed into law. This report outlines the legislation which incorporates many of the Assembly's proposals developed by the Committee to address the challenges facing us regarding New York State energy policy during the 2008 legislative session.

II. MAJOR ISSUES FOR 2008

A. NET METERING EXPANSION

(Chapters 452, 480 and 483 of the Law of 2008)

Previously, the Public Service Law only required utilities to engage in net metering with residential and farm customers with on-site solar and wind electric generating systems. The law also allowed farm customers with farm waste electric generating systems to participate in net metering. The law severely limited these systems' capacity size; 10 kilowatt (kw) maximum for solar electric systems, 400kw for farm waste systems, 25kw for residential wind systems and 150kw for wind systems for farms. This legislation amends the net metering provision to allow all electric utility customers and Long Island Power Authority customers to install on-site solar and wind generating equipment to participate in net metering programs.

The legislation also increases the allowed generating capacity for solar and wind systems to 25kw for residential customers and up to 2 megawatts for non-residential customers. The capacity for farm waste systems is increased to five hundred kilowatts.

The legislation also increases the limits of the combined capacity of all the net metered systems in a utility's service area. The old law limited the combined capacity of a net metered systems to 0.1% of the utilities electric demand for 1996 for solar, 0.4% of the utilities electric demand for 1996 for farm waste, and 0.2% of the utilities electric demand for 2003 for wind. In the new law, the limit was raised to 1% of the utilities electric demand for 2005 for solar and farm waste and 0.3% of the utilities electric demand for 2005 for wind.

B. GREEN BUILDING CONSTRUCTION CODE

(Chapters 565 of the Law of 2008)

This legislation amends the Energy Law to require State buildings to comply with green building principles. This applies to all new construction and reconstruction of occupied agency buildings owned by the State, except those new construction or substantial reconstruction projects for which the consultant selection process or in house design has been completed. In addition, the Department of Environmental Conservation, in consultation with the New York State Energy and Research Development Authority (NYSERDA) is directed and authorized to promulgate rules and regulations in order to comply with this act.

C. GREEN RESIDENTIAL BUILDING PROGRAM

(Chapters 631 of the Law of 2008)

This legislation directs the New York State Energy Research Development Authority (NYSERDA) to establish a Green Residential Building Grant Program. The program authorizes grants, up to \$120,000 within a calendar year, to qualified owners and developers of residential buildings who build new homes or renovate existing homes that meet the green building standards created by NYSERDA. Under this legislation, NYSERDA will develop a Green Building Standard after consulting with existing protocols, such as Leadership in Energy and Environmental Design (LEED) and the American National Standards Institute.

D. POWER FOR JOBS

(Chapter 59 of the Laws of 2008)

The Power for Jobs program was originally enacted into law as Chapter 316 of the Laws of 1997 to provide low-cost power to businesses and to not-for-profit corporations to create and retain jobs in this State. The 2008 Enacted Budget extends the Power For Jobs program along with other lapsing economic development power programs until June 30, 2009. The Power Authority of the State of New York is required to pay for the program extensions, but without increasing hydropower rates. The Power Authority is also required to make a \$30 million contribution to the General Fund to offset lost tax revenue due to the program.

E. ENERGY PLANNING

(A.11587; Ordered to Third Reading)

This legislation would re-enact Article 6 of the Energy Law, in respect to energy planning. The legislation establishes a State Energy Planning Board empowered to adopt a State Energy Plan. The Board would provide guidance for energy-related decisions made by the public and private sectors within New York State. The plan would consist of regional and statewide analyses of power generation, transmission and distribution; reliability and affordability; short and long term fuel forecasts; renewable energy technologies and distributed generation; environmental justice and public health; efficiency and conservation; transportation; residential, commercial and industrial construction; emergency management; and economic development.

The legislation would empower the Board to hold hearings, adopt rules and regulations and issue subpoenas. It would require all major utilities to file information necessary to the development of an Energy Plan. It would also direct the Power Authority of the State of New York and the Long Island Power Authority to participate in the planning process and to submit strategic, operating and capital plans. The Board would be required to submit to the Governor, Temporary President of the Senate, Speaker of the Assembly, Assembly Chair of the Energy Committee and Senate Chair of the Committee on Energy and Telecommunications a completed Energy Plan on or before January 1, 2010. The Board would then be directed to adopt a new plan at least every four years thereafter and provide biennial reports on the plan's implementation.

F. GASOLINE SALES TAX RECAPTURE AND STATE LIHEAP APPROPRIATION

(A.11590; Passed Assembly)

The gasoline sales tax cap, passed in 2006, provides tax relief by converting the state sales and compensating use tax on motor fuel and diesel motor fuel into an \$.08 per gallon tax on motor fuels, effectively capping the state imposition of sales tax at a \$2.00 per gallon price point. It also provides a local option to adopt a cents-per-gallon tax in lieu of percentage-based rate method.

The tax cap was supposed to provide relief to New York consumers, but the relief never came as big oil companies quickly raised prices, negating the benefit. The Recapture Tax is meant to reclaim the revenue savings that should have been realized by consumers and to direct those funds to help New York's families pay for winter home heating costs and for energy efficiency programs.

In this legislation, at the point of first import into the State, a tax cut recapture would be paid by first importers equal to four percent times the excess of the average retail sales price of motor fuel over two dollars. The legislation also would impose a separate windfall profits tax on major oil companies equal to two percent of their gross receipts allocated to the State. To ensure that New Yorkers would not suffer increased costs, the legislation would prohibit the pass-through of this tax to consumers and provide for significant civil penalties should this provision be violated.

The two taxes were estimated to have provided approximately \$800 million annually. The legislation called for the creation of the State Home Energy Assistance Program to supplement the existing federally funded Low Income Home Energy Assistance Program with up to an additional \$550 million annually. Half the funds directed to supplement State HEAP would be used to increase the size of the grants awarded in the existing program. This is a needed measure as federal funding has failed to keep up with inflation and HEAP grants have continued to shrink in their effectiveness to provide financial relief to recipients. The remaining funds directed to State HEAP, would be used to provide grants to households with incomes between 60% and 80% of the state median income. The current program limits eligibility at 60% of the state median income. The remaining revenues generated by these levies would be dedicated to weatherization and efficiency projects.

In addition, the Assembly passed Resolution K1986 memorializing Congress to appropriate additional funding for LIHEAP. Specifically, the Assembly called for the rejection of the President's proposal to cut \$280 million from the program, increased funding adjusted for inflation and the passage of legislation to guarantee the allotment of future appropriations on an entitlement basis as opposed to the current discretionary grant model. Subsequently, Congress approved and the President signed a continuing resolution fully funding LIHEAP at \$5.1 billion of which New York will receive \$476 million, an increase of \$118 million over the previous year.

G. UTILITY PORTFOLIO MANAGEMENT

(A.9461; Passed Assembly)

This legislation would reauthorize and amend Section 66-i of the Public Service Law with respect to energy portfolio management services for utility customers and place new requirements on utility companies to protect their customers from increasing volatility in energy prices.

The legislation would require electric utilities to consider all reasonably available resources to provide "portfolio management" services to their customers. Such portfolio management services would include mechanisms such as long and short-term energy contracts, energy efficiency, distributed generation and renewable energy technology which would reduce the volatility of wholesale electrical prices and minimize customer bills.

Within six months of the passage of this law, utility companies would be required to submit drafts outlining proposed portfolio service management plans to the Public Service Commission. After public comment and participation and, upon finding that such plan met the established requirements, the Commission would approve the plan. The Commission would then establish a set of performance-based rewards and penalties to be applied to utility companies in response to the efficacy of their plans.

H. ENERGY CONSUMER MEASURES

1. Rural Co-op Switch

(A.5058; Passed Assembly)

New York rural electric cooperatives were created in 1941 to provide electric service in areas not served by private power companies. Each cooperative is a non-profit electric utility owned by the customers it serves and governed by a board of directors elected by the cooperative membership.

This legislation would authorize a rural electric cooperative to provide electrical service within the service territory where it holds a franchise by mutual agreement with the existing electric service supplier. In effect, this would allow rural residents currently served by other utilities to join rural electric cooperatives.

2. Transmission Line Intervenor Fund

(A.9348; Passed Assembly)

This legislation would require any entity that has submitted a complete application to the Public Service Commission (PSC) to build a new major transmission facility to deposit fees in an intervenor account. The size of the project would determine the amount of funds to be placed in the intervenor account, but would not exceed \$450,000.

The intervenor account would be used by municipalities and other parties who may be affected by the proposed transmission facility, to defray the cost of participating in the PSC rule making process. Such expenses would include costs associated with expert witnesses, consultants, administrative and legal fees. Funds would be disbursed at the PSC's direction.

IV. OUTLOOK FOR 2009

A. COMPREHENSIVE AND DYNAMIC ENERGY PLANNING PROCESS

On April 9, 2008, Governor Paterson signed Executive Order Number Two establishing a state energy planning board and authorizing the creation and implementation of a state energy plan. The Executive's process is scheduled to yield a draft energy plan by March 31, 2009 and a final plan by June 30, 2009. The Governor's board, while entrusted with the responsibility to adopt an energy plan for the administration, has no specific powers and is therefore reliant on the goodwill and cooperation of all interested parties -- including state agencies and authorities, investor owned utilities, power producers and the Independent Systems Operator -- to help develop their plan. Establishing the planning board in statute will enable the creation of an independent and permanent process that is not subject to the will of future Executives.

Accordingly, a top priority of the Energy Committee in 2009 will be the advancement of an Energy Planning Law. Establishing a comprehensive, dynamic and permanent process will ensure that New York has a clear and long-term responsibility to create a roadmap to energy independence. A statutorily empowered independent Energy Planning Board consisting of broad representation from all sectors will have the ability to thoroughly examine our current and future energy related challenges and frame them in both a regional and statewide context. A continually evolving Energy Plan will identify and set priorities for our State in the following areas: power generation, transmission and distribution; reliability and affordability; fuel diversity; the research, development and deployment of renewable energy technologies; the environment and public health; efficiency and conservation; transportation; residential, commercial and industrial construction; workforce training and economic development.

This law will provide the planning board with the tools to mandate the full and complete participation of all entities essential to completing a truly comprehensive State Energy Plan.

B. OVERSIGHT, ACCOUNTABILITY AND TRANSPARENCY

The 2009 Energy Committee agenda will also focus on restoring legislative oversight and accountability to major energy initiatives. Several programs are currently being conducted in the absence of specific statutory or budgetary authority. These initiatives include energy planning, the governance of energy markets, and the implementation of the Renewable Portfolio Standard, Systems Benefit Charge and the Energy Efficiency Portfolio Standard. These programs are spending hundreds of millions of dollars to implement critical policies without the benefit of public scrutiny afforded in the State budget process and through our open government laws. Legislative oversight and accountability is needed to assure these initiatives are being implemented in accordance with their mission, in the best interest of New Yorkers and consistent with clearly enunciated long term energy planning goals.

C. POWER PLANT SITING

The Committee will also work to reenact a power plant siting process that appropriately addresses concerns surrounding environmental justice, community involvement, air quality, public health and fuel sources in balance with the need to encourage the development of appropriate new power generation in New York State.

D. ECONOMIC DEVELOPMENT AND POWER

Another top priority will be reforming the State's economic development power programs to provide a greater emphasis on assisting, attracting and retaining energy intensive industries through a stable and transparent process that is fairly accessible to all regions of the State.

E. ENERGY INDEPENDENCE

A comprehensive energy planning process can provide the framework and moral authority for transparent and effective energy efficiencies and renewable energy initiatives. It can also reveal the context for power plant siting and distribution of our low cost power programs. These factors, together with our proud distinction of being among the most energy efficient people in the nation and leaders in the country in our reliance on renewable resources uniquely positions New York State to lead the nation by achieving a goal of energy independence.

The economic security of the Empire State depends in part on our commitment to energy independence and the development of a green economy. The Assembly can build upon the momentum generated last year with the passage of new net-metering and green building laws through the consideration of aggressive approaches toward efficiency, weatherization, distributed generation, grid modernization and utility investment in renewable power. Progress in these areas will provide an unprecedented potential for job creation, lower energy costs and a cleaner environment.

APPENDIX A

2008 SUMMARY SHEET

Summary of Action on All Bills Referred to the Committee on
ENERGY

<u>Final Disposition</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total</u>
Total Bills Referred to Committee	94	6	100
<u>Bills Reported With or Without Amendment</u>	30	0	30
To Floor	4	0	2
To Ways and Means	15	0	15
To Codes	6	0	6
To Rules	5	0	5
Total	30	0	30
Bills Having Enacting Clauses Stricken	2	0	0
Bills Never Reported, Remained in Committee	62	6	70
TOTAL NUMBER OF COMMITTEE MEETINGS HELD			7

Chair appointed February 6, 2008

APPENDIX B

BILLS PASSED BY BOTH HOUSES

<u>Governor's Action</u>	<u>Bill Number</u>	<u>Description</u>
Chapter 565	A.2005C Lupardo	Enacts the State Green Building Construction Code.
Chapter 684	A.10684B Cahill	Establishes green residential building grant program
Chapter 452	A.11146 Englebright	Expands solar and farm waste electric net metering program.
Chapter 483	A.11582 Gordon, T.	Expands wind electric net metering program.
Chapter 480	A.11592 Englebright	Provides that farm waste electric generating equipment, for purposes of net energy metering, shall not exceed five hundred kilowatts.

APPENDIX C

BILLS PASSED BY THE ASSEMBLY ONLY

<u>Bill Number</u>	<u>Sponsor</u>	<u>Description</u>
A.2005C	Lupardo	Requires all new construction and substantial reconstruction projects undertaken by the State to comply with green building principles.
A.5049	Espaillet	Requires gas and electric utility companies to make available to any landlord and lessor of residential rental premises, upon the request of a prospective tenant or lessor of a residential unit, information concerning gas and electric charges incurred from prior occupants of the dwelling.
A.5058	Parment	Expands powers of rural electric cooperatives by eliminating the prohibition that such cooperatives shall not distribute, sell, supply or dispose of electric energy to any premises or building receiving and using central station electric service; makes provisions for determining the consideration to be paid for such service by either mutual agreement or by the public service commission.
A.7429	Rosenthal	Expands the type of energy information compiled by NYSERDA to include energy efficient and environmentally sound outdoor lighting.
A.7430	Rosenthal	Relates to state lighting efficiency standards for existing public buildings and to eliminating wasteful artificial night lighting of public buildings.
A.9248A	Destito	Makes funds available to help municipalities, citizens and community groups intervene in proposed electric transmission projects.
A.9461	Brennan	Requires electric utilities to consider all reasonably available resources to protect their customers from unnecessary and unreasonable price fluctuations.
A.9902	Englebright	Expands net metering programs to include all utilities customer classes as well as solar, wind, farm waste and fuel cell electric generating systems.
A.10684B	Cahill	Establishes the Residential Green Building Grant Program.

A.11289	Cahill	Expands the list of energy consuming products that are subject to energy efficiency performance standards under the Energy Law.
A.11410	Hyer-Spencer	Expands the applicability of the State's "one-call" notification system to include certain gas gathering lines designed to operate at 300 pounds per square inch gauge or higher.
A.11146	Englebright	Expands solar net meter programs to include all customer class and system with a capacity up to 2 megawatts.
A.11582	Gordon, T.	Expands wind net meter programs to include all customer class and system with a capacity up to 2 megawatts.
A.11592	Englebright	Includes technical corrections to law governing farm waste net metering and set capacity size of electric generating systems at 500 kilowatts.