

February 7, 2018



Joint Legislative Public Hearing
2018-19 Executive Budget Proposal
Environmental Conservation
Legislative Office Building
181 State Street, Hearing Room B
Albany, NY 12247

Dear honorable Senators and Assembly members:

Thank you for your consideration of the Sierra Club Atlantic Chapter's budget testimony. We are a volunteer led environmental organization of 50,000 members statewide dedicated to protecting New York's air, land, water and remaining wild places. Your diligence in protecting the environment through the New York State budget process is extremely important to our membership and we hope that the legislature will continue to see the strong connection between ecological health and economic prosperity.

With new regressive policies at the federal level, 2018 presents great economic uncertainty for New Yorkers. The Trump Administration's financial assault on New York's economy, with cuts to federal spending and harmful new tax reform, places a special burden on New York's environmental programs where there is a history of deeper cuts to funding than in other budget sectors. With an estimated \$4.4 billion deficit resulting from federal cutbacks it is important to note that previous Governors and legislatures have plugged such budget holes by raiding environmental funds first. We applaud Governor Cuomo for recognizing in his executive budget proposal that investments in the environment are pillars of stability for our economy and short-changing clean air and water can have devastating long term impacts on New York's fiscal health. We hope that the Senate and Assembly share that vision. Holding the EPF, water infrastructure spending, and RGGI funds (unswept) at historic funding highs reflects values that deserve our praise. But after a year of unprecedented climate disruption and a dangerous shift in US policies on the global scale, there are legitimate question as to whether we should be asking for even more to out of the budget process when it comes to protecting the environment.

The Cuomo administration and the legislature must anticipate the urgency of a weakened EPA and greater pressure for NYS to lead on environmental protection where federal agencies and policies have come up short. If indeed the Trump administration casts a long shadow over the planet on environmental and social issues – New York should be that beacon of light that shows the way and leads the country back to the values that make our nation great. In light of this obligation, here are some ways the Legislature can support New York’s environment through the 2018-19 state budget process:

Support Department of Environmental Conservation Funding and Staffing

With the presumed pull back of EPA and the Army Corps of Engineers from some of their regulatory and enforcement work in New York, our State environmental agencies are going to be asked to do more with less. Over the past 9 years of New York's economic recovery, the Department of Environmental Conservation (DEC) has shouldered disproportionate cuts to staffing and funding when compared with other agencies that saw mere reductions to their rate of growth. We have lost nearly a quarter of the DEC’s workforce since the 1990s which has meant fewer enforcement actions of polluters, increased spread of invasive species and less review of impending threats to our environment. Now that the Empire State has recovered economically and we anticipate losses in federal support, New Yorkers can no longer afford to keep environmental Agency spending at austerity levels. Governor Cuomo and the Legislature deserve credit for stemming the losses that began in 2008 but there is little left to cut from this bare-bones agency that is increasingly asked to do more. Over the past ten years of staff decline and funding shortfalls DEC has expanded its core mission to include:

The Brownfield Cleanup Program, The Regional Greenhouse Gas Initiative, Development of a State Climate Action Plan, The Waste Tire Recycling and Management Act, The Diesel Emissions Reduction Act, the Methane Action Plan, Water Withdrawal Permitting, The Electronic Equipment Recycling and Reuse Act of 2010, The Mercury Thermostat Collection Act of 2013, regulating mercury emissions from power plants and cement kilns, updating State regulations to implement new federal clean air standards, regulations to phase out coal generation, invasive species control, The Sewage Right to Know Act and the transportation of crude oil through the State by rail and barge.

While we can appreciate the more equitable, across the board cuts to all agency spending that has occurred over the past 6 years, we have deep concerns about the cumulative impacts that the disproportionately deep cuts, through previous budget cycles, have had on NY’s environmental agencies. The legislature must now fill those gaps through the budget process. The Executive Budget recommends keeping staffing levels at 2946 FTEs which represents no change to the DEC work force. In consideration of the current budget gap this can be seen as a significant achievement. But in the not too distant future the Legislature should commit to rebuilding our environmental agencies as the responsibility and challenge to address climate change will only become more urgent.

Continue Funding the Environmental Protection Fund at \$300 million

For the Third year in a row the Executive Budget proposal maintains historic \$300 million Environmental Protection Fund (EPF) funding levels. The EPF is NY’s primary funding source for critical programs like land acquisition, farmland and habitat protection, drinking water

infrastructure and waste reduction. The initiatives the EPF funds are proven economic generators and job creators. Increased funding to the EPF at a time of budget deficit can help revitalize tourism and make entire regions more attractive to businesses, secure clean water resources for wineries and breweries, and ensure that farm land is preserved and is affordable to new generations of farmers. The Sierra Club is grateful that the massive increase of \$123 million from 2015's \$177 million allocation will go to much needed environmental programs that have not reached full potential due years of disproportionate cuts. Equally encouraging are promises to continue funding the EPF at the \$300 million mark in future budget cycles.

The primary and traditional source of revenue for the EPF is the state's Real Estate Transfer Tax (RETT), a tax that was designed in part to offset the environmental impacts that come with land development. In the recent economic downturn, RETT revenue dropped to less than \$400 million perhaps justifying some cuts to EFP spending. But now that New York's economy has rebounded, the annual RETT revenue is expected to grow back to historic levels of over \$1 billion annually. As the RETT has fully recovered, so should sustained investments in the EPF. The Sierra Club thanks the Governor for yet again proposing a fully funded EPF in 2018 and urges the legislature to approve the \$300 million allocation.

Continue Funding New York's Water Infrastructure Improvement Act

The Sierra Club thanks the Legislature for their leadership in passing New York State's Water Infrastructure Improvement Act (WIIA) in the last year's budget and we enthusiastically support the continuation of the \$2.5 billion spending program over 5 years which will see a second installment of \$500 million dollars over the 2018-19 fiscal year. This essential program will provide grants to repair failing sewage and drinking water infrastructure, upgrade and replace septic systems, remediate and replace contaminated drinking water, fund source water protection through land acquisition projects, confront harmful algal blooms in our waterways, address water pollution caused by agricultural run-off, replace lead drinking water service lines, upgrade mapping technologies for water systems, and more.

Communities across NY will now be able to fix their most pressing water infrastructure needs and protect the quality of their drinking water. This significant investment will serve as a down-payment toward our state's massive wastewater and drinking water infrastructure needs, which are estimated at approximately \$80 billion over the next twenty years. New York State will need to identify additional resources to increase funding to meet these vast water infrastructure needs in the years to come. The Sierra Club looks forward to working with the Governor and the Legislature to meet those goals.

Address the Scourge of Single Use Plastic Bags in the 2018-19 Budget

One of the most discouraging events of the 2017 legislative session was the legislative override of NYC's fee based solution to plastic bag pollution, with no remedy offered by either the Senate or Assembly as an alternative. The New York State Plastic Bag Task Force, created in the Governor's approval of that override, did not make a specific recommendation but provided a menu of options which we believe is imperative for the legislature to resolve in the 2018-19 budget. The Task force report provides valuable information of successful bag abatement programs in NY State, the US and other countries. One clear conclusion of the report is that fee based strategies work better to reduce plastic bag use and the higher the fee the more successful

the program. Legislation will be essential to provide the necessary framework to make a statewide program successful.

Disposable plastic bags are an environmental menace – littering our parks, despoiling our communities and clogging our waterways; all with the potential to strangle and poison wildlife. As cited in the task force report, by 2050, in terms of sheer weight, there will be more plastic in our oceans than fish. With the popularity, availability, and affordability of reusable bags today, the state of New York and its municipalities now have the tools to address this unnecessary blight through deposit programs, bag fees and prohibitions, which could eventually put an end to this unnecessary pollution.

Of all the options before the legislature, the Sierra Club advocates for a fee based approach to plastic bag reduction because it has worked in other countries, states and municipalities where outright bans have largely failed. A fee on individual single use thin film bags at stores creates a record of sale that can help enforce the law and properly track revenue. The slight increase in consumer cost – over bringing one's own reusable bag – has been demonstrated to change public behavior.

We ask that the legislature come to a budget agreement that will:

- Impose a 5-cent fee on all plastic bags and paper bags distributed to the consumer in NY
- Provide an exemption for those making purchases under state programs benefiting the economically disadvantaged such as exemptions for individuals and families in the SNAP program and/or on Medicaid.
- Direct 4/5^{ths} of the revenue to the Environmental Protection Fund and 1/5th of the revenue to retailers as an administrative fee to pay for tracking and reporting income from fees.
- Create a program by which the producers of thin film single use bags would have to be responsible for setting up collection and recycling programs for their market share of plastic bags sold in NY
- Create a public education bring-your-own-bag campaign accompanied by distribution of durable reusable shopping bags, especially to low income communities

Beyond the external threat of bags littering our environment – the oil and gas consumption required to make disposable plastic bags can be quite staggering. The petroleum in 14 plastic bags alone supplies enough fuel to drive the average car one mile. Americans can use and dispose of an estimated 100 billion plastic bags each year, and this many bags use at least 12 million barrels of oil in their manufacture. The needless waste these bags generate can cause flooding issues (when stuck in storm drains), are the fourth most commonly found type of litter on U.S. beaches, and in New York City alone, an estimated 91,000 tons of plastic and paper carry out bags in landfills cost the City an estimated \$12.5 million each year. The Sierra Club urges the legislature to take action in the 2018-19 budget to finally put an end to this unnecessary source of pollution.

Prevent Rampant Food Waste in New York Through Innovative Redistribution and Composting Programs in the Budget (Part BB of the TED S.7508 /A.9508)

According to the Pollution Prevention Institute of New York (P2I), close to 40 percent of the food produced in the United States is never eaten - approximately 50 million tons annually - resulting in \$218 billion spent on wasted food. This wasted food is not only a lost resource opportunity for food banks, soup kitchens and shelters, but when this waste ends up in landfills, the methane generated by the decomposing organic waste becomes a powerful greenhouse gas and contributes significantly to climate change.

The Governor's 2018-19 budget proposal creates a framework for all restaurants, supermarkets, universities, etc. that generate two tons per week or more of excess food and food scraps to track and reduce the amount of food waste sent directly to landfills or incinerators. The Sierra Club Atlantic Chapter supports this program that would encourage, to the maximum extent, donation for human consumption (in accordance with applicable laws, rules and regulations for food donation), followed by organics recycling and anaerobic digestion. Within this framework the Department of Environmental Conservation will be charged with developing and making available educational materials to assist food generators in complying with this proposed legislation. The DEC will also develop educational materials on food waste minimization and encourage municipalities to disseminate these materials to their municipal websites and in any future mailings to residents, as source reduction is the most preferred form of food recovery. The Governor's budget proposal provides \$8 million to implement the program, with \$4M to the largest generators, \$2.8 to food banks and \$1.2 to municipalities.

Additional benefits of reducing food waste include: a reduction in labor demands through efficient handling and storage; increased donations of fresh and non-perishable foods, providing essential meals to less fortunate families and individuals; reducing costs to businesses that may waste less and spend less by finding ways to prevent waste in purchasing, as well as reducing energy and labor costs associated with handling food that is prepared and thrown away. A number of states and several cities have recently adopted new laws restricting food and organic waste disposal in landfills – New York City (this legislation does exclude cities with populations of one million or more with local ordinances in place), Seattle, California, Connecticut, Massachusetts, Rhode Island, and Vermont. New York can join in this forward-thinking and cost-effective practice and we encourage the Senate and Assembly to support this smart and economical legislative initiative in the final budget.

Make NY Truly Resilient by Releasing Backlogged Wetlands Maps

On February 28, 2017, President Trump signed an executive order rolling back Obama's Clean Water Rule under the Clean Water Act, endangering huge swaths of NY's wetlands while hobbling enforcement efforts with even greater cut backs to the Army Corps of Engineers and Environmental Protection Agency. In this context, the Sierra Club supports the proposed NYS Environmental Protection Fund's Budget for 2018-2019 that allocates significantly more resources (\$3 million) to **Resilient NY** a program designed to anticipate climate change induced sea level rise, flooding and storm surge in a way that re-envision NY's built environment and enhances our natural infrastructure to protect our communities from catastrophic weather events.

Wetlands perform a variety of important functions that benefit both people and the natural world. For example, wetlands soak up water run-off from rain and snowmelt, preventing floods. Studies by the U.S Fish and Wildlife Service show that an acre of wetland can store more than 1.5 million gallons of floodwater. A study by the Illinois State Water Survey found that destroying just 1% of a watershed's wetlands increases total flood potential in the watershed volume by almost 7%. Clearly, filling wetlands increases the risk of flood. Protecting people from flooding is one compelling reason to protect wetlands.

A key component of Resilient NY will be for the state to update and improve its maps of wetlands as outlined in the Governor's State of the State Policy Book (Pg. 300) This is welcome news, in consideration of the backlog of wetland maps currently at the Department of Environmental Conservation. Currently, in order for a wetland to be subject to regulation under the law, it has to be delineated on existing freshwater wetland maps prepared by DEC after lengthy public comment. Most of these maps have not been updated in over twenty years making them significantly incomplete. This is why updating the maps is so important – each watershed survey yields thousands of new wetlands that qualify for protection and should be added through the amendment process.

Recent map amendments conducted by the DEC in 2005 for Putnam and Dutchess Counties included an additional 5,450 acres not present in the original mapping. In 2009, the DEC's Freshwater Wetlands Program received a \$250,992 Federal Program Development Grant to survey three watersheds; the Genesee Valley, the Wallkill watershed, and the Oswego/Onondaga watershed. The DEC contributed an additional \$325,596 in in-kind staff time as a match to the federal funds. But political pressure from land developers has prevented the DEC from releasing these maps to the public over these past 9 years– essentially blocking them from state protection. The legislature must take action to ensure that this expenditure of public funds is not wasted and this critical information becomes part of the Resilient NY program by demanding that DEC finally release the maps!

In addition, for the half million dollars that went into creating these map amendments, lack of state funding has negated the intended benefit of this exhaustive survey. Again, in order for these newly mapped wetlands to receive NYS protection they must go through a map amendment process, which requires public notice. Currently state law requires that 2 certified notices must go to every landowner adjacent to a wetland subject to a DEC map amendment process. In addition, notices must go to at least 2 newspapers. The federal government will pay for the wetland surveys not the administrative cost of implementing the results. As it stands now the Program needs more than \$219,000 just for certified mailings and newspaper notices to promulgate the maps developed with the 9 year old EPA project. The Legislature should explore legislative reform of these costly regulations and streamline public notice so that important natural infrastructure can be more easily identified and protected.

Achieve NY's Climate Goals Through a Carbon Pricing Program in the Budget.

Based upon an analysis of past budgets it would be difficult to argue that the 2018-19 Executive Budget is not among the strongest in decades for environmental protection. With the EPF and Water infrastructure spending at all-time highs, and off budget commitments to purchase 2.4 gigawatts of off shore wind, build 1500 Mw of battery storage, put 230,000 electric vehicles on

the road by 2020, set aggressive new energy efficiency standards, address fundamental Environmental Justice concerns, and divest \$200 billion from the State pension fund, New York feels like the antidote to every regressive policy coming out of Washington.

Yet what is missing is an overarching frame work set by the legislature to ensure all our climate solutions are synchronized and that there are mechanisms in place to pay for the transition from our fossil fuel past to our renewable energy future. Without such a construct of codified goals and clear funding streams for this massive transformation in our energy economy, the state's current trajectory is piece meal and prone to inconsistency.

There is no denying that climate change is hurting New York. In the past few years, the state has been pounded by superstorms, deluged with floods and scorched with record heat due to the advancing effects of a warming planet. Beyond the growing frequency and intensity of severe weather events, New Yorkers will be facing the economic and social costs of dying oceans, agricultural blight, rapid changes to ecosystems and rising sea levels if we do not work together to significantly reduce carbon emissions. And the Legislature is in a prime position to address these issues through the budget process.

As an example of what is possible, the New York State Climate and Community Protection Act (A.8270) (which has passed the Assembly the past 2 years) would put New York State on the path to 100% renewable energy by 2050 and set benchmarks and reporting requirements to ensure we are meeting our goals along the way. In addition to systematically reducing greenhouse gas emissions across all sectors, the bill promotes healthy communities and will guarantee good jobs and environmental protections for those hardest hit by climate change. With companion legislation coming out this year to put a price on carbon pollution the Legislature can achieve these goals by:

- committing New York State to a binding goal of 80% emissions reductions by 2050 and sets a path toward 100% clean renewable energy, with an interim goal of a 40% cut in climate pollution by 2030 and 50% renewable energy by 2030. This mandate will be implemented across all aspects of state government with an environmental/climate equity screen to identify impacted and disadvantaged communities that ensures the development of community benefits and good jobs.
- creating a legal requirement to equitably disburse 40% of funds collected pursuant to an order of the PSC or from NYSERDA into environmental justice and low-income communities. Such environmental justice “filters” will facilitate the transition to a new clean energy economy that is supportive of localized economies, healthy environments, community well-being and local control of resources.
- Putting a price on greenhouse gases so that fossil fuel companies pay for the damage that they have done to our health and our climate. A modest polluter fee, one that begins at \$35 per ton of emissions and increases gradually would generate over \$7 billion in revenue every year over the first 10 years. This money would be invested in transitioning to clean energy.
- creating local jobs in clean energy and protecting workers impacted by the current transition from fossil fuels – through public investment, renewable energy retraining programs, mandated job standards and targeted local hiring commitments. Schools and

communities are compensated for short-term local tax revenue losses where the energy industry is in transition.

- allocating substantial funding beyond what's currently projected to create a worker and community-centered transition to a 100% clean, non-extractive economy through projects in energy efficiency, renewable energy, energy transmission, transportation (including public transit and zero-emission vehicles), telecommunications, agriculture, and other infrastructure.

This proposal is ambitious, but certainly not as daunting as the challenges climate change has placed before every New Yorker. In 2015, the United States joined with the rest of the world in Paris to set ambitious goals for climate action, including keeping this century's global temperature rise below 1.5 degree Celsius. We are already at 1.1.-degree rise. The recent and tragic political blunder of the Trump administration to pull out of the Paris agreement should not deter New York or any other state from acting on the goals of greenhouse gas reduction. The direction of the global economy favors those that embrace the financial benefits of renewable energy and efficiency technologies. Those that ignore climate science and adhere to fossil fuel dependency will suffer the adverse economic consequences. Ultimately, if we don't act resolutely together, irreversible cycles will perpetuate temperature rises and cause out-of-control warming. Following the pathway set by the New York State Climate and Community Protection Act could give us the best chance to lead the country and the world out of the climate crisis.

Again, we appreciate the contributions that Governor Cuomo the Legislature are making in navigating the federal assault on New York's economy. With greater resources on the horizon, we look forward to working with Governor Cuomo and legislature in rebuilding New York's environmental agencies and strengthening our long-term environmental legacy.

Thank you,

A handwritten signature in cursive script that reads "Roger Downs". The signature is written in black ink on a light-colored background.

Roger Downs, Conservation Director
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