

NEW YORK STATE CLIMATE ACTION COUNCIL

BYLAWS

I. TITLE AND STATUTORY AUTHORITY

The Climate Action Council is established pursuant to Article 75 Section 103 of the Environmental Conservation Law.

II. MEMBERS OF THE CLIMATE ACTION COUNCIL

- (a) The Climate Action Council (“Council”) shall consist of twenty-two (22) voting members: the Chair of the Public Service Commission, the Commissioner of Environmental Conservation, the Commissioner of Economic Development, the Commissioner of Transportation, the Commissioner of Labor, the Commissioner of Health, the Commissioner of Housing and Community Renewal, the Secretary of State, the Commissioner of Agriculture and Markets, the President of the New York State Energy Research and Development Authority, the President of the New York Power Authority, and the Chief Operating Officer of the Long Island Power Authority (collectively the “Agency Members”); as well as two non-agency representatives appointed by the Governor, three representatives appointed by the Speaker of the Assembly, one representative appointed by the minority leader of the Assembly, three representatives appointed by the Temporary President of the Senate, and one representative appointed by the minority leader of the Senate (collectively the “At-large Members”).
- (b) Agency Members of the Council described in section (a) above may designate an executive staff representative to participate on the Council on their behalf. Such designation should be made in advance and in writing to the Co-chairs.
- (c) Any At-large Member may resign at any time by providing advance written notification to the Co-Chairs of the Council.
- (d) Any vacancies on the Council shall be filled in the manner provided for by the initial appointment.

III. OFFICERS/LEGAL COUNSEL

- (a) Pursuant to Section 103 of Article 75 of the Environmental Conservation Law, the President and CEO of the New York State Energy Research and Development Authority (NYSERDA) and Commissioner of the Department of Environmental Conservation (DEC), or their designees, shall serve as the Co-chairs of the Climate Action Council. The Co-chairs shall be responsible for presiding over the meetings of the Council and the administration of its affairs.
- (b) The General Counsel of DEC and the General Counsel of NYSERDA shall serve as legal counsel to the Council and shall represent the Council at the direction of the Co-chairs; for the avoidance of doubt, the client for the purposes of this representation shall be the Council and not any individual member thereof.
- (c) The Co-chairs may designate a member of DEC or NYSERDA staff as Secretary to the Council.
- (d) The Co-chairs may hire and appoint an Executive Director of the Council and any staff deemed necessary or advisable to support the work of the Council, and the Co-chairs may assign duties to, manage, and direct the Executive Director and staff as needed or advisable.

IV. POWERS AND DUTIES

- (a) The Council shall have the powers and duties set forth in Section 103 of Article 75 of the Environmental Conservation Law, including but not limited to the power to approve and adopt a scoping plan that identifies and makes recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits established pursuant to section 75-0107 of the Environmental Conservation Law, and convene and dissolve advisory panels in addition to those named by statute.
- (b) Each member of the Council is allowed one vote for purposes of approving any Council action.

V. MEETINGS

- (a) Meetings of the Council shall be called by the Co-chairs.
- (b) Whenever possible, the Co-chairs shall provide the Council with written notice at least ten (10) days prior to each meeting of the time, place, and purpose of such meeting. Such notice shall be accompanied, if practicable, by such background information as the Co-chairs determine may be necessary for fulsome discussion at the meeting.
- (c) The Co-chairs shall furnish public notice of all meetings in accordance with the requirements of Article 7 of the Public Officers Law. Meetings of the Council shall be open to the public pursuant to the provisions of such law.
- (d) Twelve (12) members of the Council shall constitute a quorum. No action may be taken by the Council without a quorum present.
- (e) The Co-chairs shall provide for the keeping of minutes of the proceedings of the Council and for the preservation of documentary records pertaining to the actions and proceedings of the Council, which may be performed by the Secretary to the Council or Co-chairs' designee.
- (f) Except as provided in paragraph V(g) below, all decisions or actions by the Council shall require an affirmative vote of at least twelve (12) members of the Council.
- (g) Approval and adoption of the final scoping plan pursuant to Section 75-0103 of the Environmental Conservation Law, as well as of any subsequent interim updates thereto, shall require a supermajority. A supermajority shall be defined as an affirmative vote of at least fifteen (15) members of the Council.
- (h) As provided for by NYS Public Officers Law Section 103-a, upon its adoption of a resolution by the Council providing for such, and in accordance with the written procedures of the Council contained within V.(h) through V.(l) herein, videoconferencing may be used by the Council to conduct its meetings for any meeting where a minimum number of members are present to fulfill the Council quorum requirement in the same physical location (or locations) where the public is permitted to attend.
- (i) Regarding the use of videoconferencing, absent a declared State or local disaster, Members of the Council shall be physically present at any location designated for in-person public attendance for Council meetings, unless a Member is unable to be physically present at any such meeting location due to extraordinary circumstances.
 - (1) Extraordinary circumstances shall include disability, illness or other medical condition, caregiving responsibilities, military service, death of a relative, or other urgent or unexpected circumstances that prevents the Member's physical presence.
 - (2) An extraordinary circumstances notification shall be made to the Executive Director as soon as practicable prior to the meeting.
 - (3) The minutes of the meeting shall include which, if any, Member participated by videoconferencing from a private location due to such extraordinary circumstances, in addition to identifying all other Members who participated remotely at publicly accessible locations.

- (4) A Member who is participating by videoconference from a private location due to extraordinary circumstances shall not count toward a quorum but may participate and vote if a quorum of Members is attending at physical locations open to the public.
- (j) Except in the case of Executive Sessions, the Council shall ensure that Members can be heard, seen, and identified while the meeting is being conducted, including for motions, proposals, resolutions, and any other matter formally discussed or voted upon. For Members attending in person, this shall include placards physically placed in front of Members with first and last name and for Members attending by videoconferencing, such Members shall ensure that their first and last name appears on their videoconferencing screen or by placard.
- (k) Absent a declared State or local disaster, the public may attend meetings of the Council at the designated physical location or locations where a collective quorum of the Council is present. The physical location(s) will be conspicuously posted prior to each scheduled Council meeting.
- (l) Consistent with NYS Public Officers Law Section 103-a, Sections V (h), (i), (j), and (k) are in effect until July 1, 2024, unless otherwise extended by statute.

VI. ADVISORY PANELS

- (a) The purpose of an Advisory Panel is to provide the Council with specific expertise. This expertise is intended to support the development of recommendations to inform the scoping plan.
- (b) Recommendations provided by an Advisory Panel should strive to be consensus-based. Recommendations may also provide for a minority option.
- (c) The Council shall initially convene six Advisory Panels: transportation; energy efficiency and housing; agriculture and forestry; power generation; energy intensive and trade-exposed industries; and land-use and local government.
- (d) The Advisory Panels shall be chaired by the relevant agency head(s) or his or her designee, as determined by the Co-chairs.
- (e) Additional Advisory Panels may be considered and empaneled upon an affirmative vote of the Council and may be dissolved upon an affirmative vote of the Council.
- (f) Advisory Panel members shall consist of subject matter experts or stakeholders, no more than five of whom shall be voting members.

VII. JUST TRANSITION WORKING GROUP

- (a) The Council shall convene a Just Transition Working Group.
- (b) The purpose of the Just Transition Working Group (“Working Group”) as set forth in Section 103 of Article 75 of the Environmental Conservation Law includes but is not limited to preparing recommendations for the Council, at a time frame determined by the Council, on how to address: issues and opportunities related to the energy-intensive and trade exposed entities; workforce development for trade-exposed entities, disadvantaged communities, and underrepresented segments of the population; and measures to minimize the carbon leakage risk and minimize anti-competitiveness impacts of any potential carbon policies and energy sector mandates, as well as a climate jobs study.
- (c) Recommendations provided by the Working Group should strive to be consensus-based. Recommendations may also provide for a minority option.
- (d) The Working Group shall consist of no less than thirteen and no more than seventeen members, including the Commissioner of Labor, the President of NYSERDA, the Chair of the Public Service Commission, the Commissioner of Housing and Community Renewal, representatives of environmental justice communities and labor organizations, clean energy developers, and at least five representatives of distinct energy-intensive industries.
- (e) The Working Group shall be co-chaired by the Commissioner of Labor and the President of NYSERDA.

VIII. TREATMENT OF CONFIDENTIAL INFORMATION

- (a) Confidential Information received by a participant by virtue of a participant's position on the Council or any of its Advisory Panels or Working Groups shall not be used for their personal benefit or for the benefit of any other person or organization outside of the Council, or to further their own personal advantage or financial interests or the financial interests of other entities or persons.
- (b) These confidentiality provisions shall apply to all Council, Advisory Panel, or Working Group members.
- (c) "Confidential Information" means confidential or proprietary information obtained as a result of participation as a member of the Council, Advisory Panel or any Working Group that has been submitted to the Council by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.
- (d) Confidential Information shall not include: information that (i) has been or becomes publicly available; (ii) was previously known to the participant; (iii) is independently developed by the member; (iv) is received from a third party who, to the knowledge of the member, is entitled to disclose it; (v) is disclosed by the member with the owner of the confidential information's prior written approval.
- (e) The participant shall protect and not disclose the Confidential Information of the Council, except that the participant may disclose Confidential Information to its employees, so long as those employees have a need to review the information and are legally obligated to honor the confidentiality provisions herein.

IX. CONFLICTS OF INTEREST; GIFTS

- (a) A "Conflict of Interest" includes any known existing, potential, apparent or perceived conflict of interest that compromises or reasonably may appear to compromise the ability of the Council to receive informed yet objective advice in exchange for compensation to the individual or entity providing such information. A Conflict of Interest is not deemed to arise merely by virtue of a member of the Council, an Advisory Group or Working Group participating in activities or deliberations in the course of appointed duties and in so doing providing advice from the perspective of the organization or entity to which the participant is affiliated. A Conflict of Interest may arise, however, when a member of the Council, an Advisory Group or Working Group or an entity to which such member is affiliated, executes, or responds to a solicitation for, a contract for services in support of the work of the Council, whether it is with respect to a procurement by the Council, or one of its affiliated agencies.
- (b) These Conflict of Interest provisions shall apply to all Council, Advisory Panel, or Working Group members.
- (c) In the event any such member believes, or has a question with respect to whether, a Conflict of Interest exists, the member has a duty to disclose the potential Conflict of Interest to either the General Counsel of DEC or the General Counsel of NYSERDA, in each of their respective capacities as legal counsel to the Council. Such General Counsel will work with the member to determine whether a Conflict of Interest does in fact exist, and if so, to mitigate or eliminate, most likely through a recusal framework, the Conflict of Interest.

- (d) Council, Advisory Panel, or Working Group members shall not accept gifts or anything of value where (a) it could reasonably be inferred that it is a gift intended to influence the member in the performance of his or her Council, Advisory Panel, or Working Group duties; or (b) was given as a sign of appreciation for Council, Advisory Panel, or Working Group service. It is advised that a member seek guidance from one of the co-chairing General Counsels to determine the appropriate course of action in a particular circumstance.

X. AMENDMENTS

- (a) These rules of procedure may be amended by resolution put forward by any member of the Council and adopted by an affirmative vote of the Council.