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Before the Joint Legislative Public Hearing on the 2022-2023 Executive Budget

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Thank you Senator Krueger, Assemblymember Weinstein, Senator Kaminsky, Assemblymember Englebright, Senator Parker, Assemblymember Cusick, Senator Hinchey, and Assemblymember Lupardo and members of the Committees on Finance, Environmental Conservation, Energy, and Agriculture. 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 the most ambitious pro-environment budget in many years.

FUNDING

The Executive Budget proposes the largest ever Environmental Protection Fund (EPF) at $400 million - a $100 million increase from the EPF's previous high. The EPF funds critically important environmental and public health work in every corner of the state and enjoys support from a large and diverse coalition of advocates. Support for the program, which generates approximately $7 in economic activity for every $1 spent, also historically enjoys bipartisan support in the Legislature. NYLCV applauds Governor Hochul for making this commitment, which we strongly support and which is a big step toward our goal of a $500 million EPF.

I would like to highlight several budget lines within the EPF that NYLCV specifically advocates for in partnership with various coalitions that we work with. First, we urge you to create a $1 million budget line for the Upper Delaware River Watershed to maximize funding from the federal Delaware River Basin Restoration Program and improve and restore habitat, protect water quality, strengthen climate resilience, upgrade failing infrastructure, improve access to the Delaware River, and create good local jobs.

Second, I would like to praise the increase in the Oceans Great Lakes Initiative budget line from $18.5 million to $22 million. This is an important investment in protecting aquatic ecosystems and understanding the impact of climate change on our waters. NYLCV supports a gradual increase to $25 million for this line as part of a $500 million EPF.

Third, I would like to note that funding for the Pollution Prevention Institute is proposed at $4 million - the same as in last year's budget. The Pollution Prevention Institute plays an important research role in state policy around recycling and chemicals. Given how much progress has been made on these issues in the last few legislative sessions, the Institute is being asked to do more than ever before and should be funded commensurately. We support a gradual increase to $7.5 million, including $500,000 (up from $100,000) for the Interstate Chemical Clearinghouse, as part of a $500 million EPF.

NYLCV is pleased to see a commitment of $500 million for clean water infrastructure funding in the Executive Budget. It is important that the State continue to make significant investments in clean water given that the unmet need dwarfs even the last five years' nation-leading clean water funding, which is why we support a $1 billion investment in the Clean Water Infrastructure Act in this year's budget, including $100 million for the Lead Service Line Replacement Program. Coupled with the clean water funding in the environmental bond act, this spending will give New York maximum access to the unprecedented clean water funding in the federal Infrastructure Investment and Jobs Act and, if it passes, the Build Back Better Act.

The executive agencies that are charged with protecting our environment and fighting climate change have been short staffed for more than a decade. We are pleased that the Executive Budget includes 94 new staff for the Department of Environmental Conservation (DEC), 53 new staff for the Office of Parks, Recreation and Historic Preservation (Parks) and 31 new staff for the Department of Agriculture and Markets. These agencies, and others that you heard from earlier today, will continue to need new staff in order to fully implement the CLCPA and other major responsibilities that they have been tasked with.

NYLCV is also pleased to see capital budget increases for DEC and Parks, especially a $90 million increase to $200 million for Parks. We support a goal of increasing the Parks capital budget to $300 million.

NYLCV opposes the Executive Budget's sweep of $23 million in funds raised by the Regional Greenhouse Gas Initiative (RGGI) to the General Fund. These funds are meant to be spent on specific programs that help communities fight climate change and air pollution.

CLEAN WATER, CLEAN AIR, AND GREEN JOBS ENVIRONMENTAL BOND ACT

Parts NN and OO of the TED Art. VII legislation make strong improvements to the environmental bond act that was approved by the Legislature last year and will appear on the ballot this November. First, the Budget proposes that the bond act be renamed the Clean Water, Clean Air, and Green Jobs Environmental Bond Act.[1] This is a clearer description of the bond act's purpose that will be easier for voters to understand. NYLCV supports this change. Second, the Budget proposes that the bond act be increased from $3 billion to $4 billion, with the following specific changes in funding allocation:

- Restoration and Flood Risk Resilience increased from $1 billion to $1.2 billion
- Open Space Land Conservation and Recreation increased from $550 million to $650 million
- Climate Change Mitigation increased from $700 million to $1.1 billion

[1] Its current name is the Restore Mother Nature Bond Act.

- Water Quality Improvement and Resilient Infrastructure increased from $550 million to $650 million

NYLCV supports these changes and urges the legislature to approve the increase to the Bond Act, the largest environmental bond act in New York State history and one of the largest in the country. We also hope to see funding in the Bond Act specifically allocated for electric school buses and for the expanded Clean, Green Schools initiative.

ELECTRIC SCHOOL BUSES

NYLCV is proud to support the Executive Budget's nation-leading mandate that all new school bus purchases statewide be zero-emission beginning in 2027 and that all school buses in operation statewide be zero-emission beginning in 2035. Part B of the ELFA Art. VII legislation smartly makes electric vehicle charging stations for electric school buses (ESBs) and the electricity used to fuel ESBs aidable under state education law. However, there are several changes that NYLCV would like to see made to this proposal.

First, there are aspects of Senator Kennedy and Assemblymember Fahy's bill on ESBs that ought to be incorporated into this budget proposal.[2] Those include not requiring school districts to subtract any money they may receive from NYSERDA for school bus electrification from their education aid apportionment, providing additional funds to school districts for the purchase or lease of ESBs on a sliding scale that more generously subsidizes districts that are more reliant upon state aid, and exempting ESBs from state and local sales taxes.

Second, the State needs to identify funding to aid school districts, especially districts that primarily serve disadvantaged communities, in purchasing ESBs. While we know that funding for ESBs will be available from the federal Infrastructure Investment and Jobs Act, we do not yet know how much will be available to New York State and, generally speaking, in order to maximize federal funding states must have their own skin in the game. Possible sources of this funding include the environmental bond act, NYSERDA, and some kind of special pot of money within the State Education Department (NYSED). Specifically, we urge the State to commit $300 million over five years to this effort, with at least 50% of those funds going to districts that primarily serve disadvantaged communities.

Finally, the State should consider including a best value procurement program to maximize affordability, job creation, and sustainability from ESB contractors. This would involve NYSERDA conducting competitive solicitations for bulk purchase agreements with ESB dealers. Simultaneously, the State should develop job retention and retraining programs to ensure a just transition for school bus mechanics and operators.

TRANSPORTATION DECARBONIZATION

[2] S. 5268/A. 6754

There are two pieces of legislation not in TED Art. VII that NYLCV believes should be included in the final budget agreement and that we urge you to include in your one-house budgets.

The first is allowing the direct sales of electric vehicles. Legislation passed last year and signed by the Governor requires 100% of light-duty vehicles sold in New York State to be zero-emission by 2035, and we are starting from a low baseline, with 75,000 election vehicles (EVs) on the road statewide out of a total of approximately 4.5 million passenger vehicles. In 2020, franchised car dealerships that sell both internal combustion engines vehicles and EVs sold 1,896 EVs across 848 locations. Tesla, a company that only sells EVs, sold 10,220 EVs across just 5 locations, which is the maximum number that they are allowed to operate under State law. Nationwide, approximately 80% of all EVs are purchased from manufacturers like Tesla, Lucid, and Rivian that sell directly to consumers.

If New York is to meet our EV sales goals, we must allow direct sales by lifting the cap that makes Tesla the only EV manufacturer that can sell directly to consumers, and only at five locations. I will note that Florida - a state that does not do nearly as much as New York to encourage the growth of EV sales and use - far outpaces New York in EV sales because they do not have such a cap on direct sales.

The second item is a clean fuel standard (CFS). A CFS works by requiring producers of high carbon intensity fuels to purchase credits from 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 are paid for by the fossil fuel industry. Furthermore, the CFS could be structured to require utilities that accrue credits for electricity that is used as transportation fuel to reinvest their credits in electrification projects in disadvantaged communities.

A CFS was included in the Climate Action Council's Draft Scoping Plan for implementing the CLCPA because it can be an important tool - among others including sales mandates and direct investment from the State - for decarbonizing our transportation system.

BROWNFIELD CLEANUP PROGRAM AND BROWNFIELD OPPORTUNITY AREAS

NYLCV strongly supports a ten-year extension of the Brownfield Cleanup Program (BCP) and reforms to the Brownfield Opportunity Areas (BOA) Program, and we commend Governor Hochul for including a BCP extension and BOA reform in the Executive Budget. The BCP and its associated tax credits, which was last amended and reauthorized in 2015, is set to expire this year.

The BCP is one of the most important tools we have to remediate environmentally contaminated sites, having been used to remediate 452 sites in every county of the state just since 2015. In Western New York, which has a very large number of contaminated sites due to a heavily industrial economy in the 20th century, 269 BCP projects funded with $325 million in tax credits have created jobs, improved the Buffalo area's economic growth, and helped to slow suburban sprawl by revitalizing the urban core. That means that these projects did not just remediate environmental contamination but also avoided greenhouse gas (GHG) emissions that otherwise would have occurred had the projects built on these sites instead been built further from the urban core. The climate and air quality benefits of infill development made possible by the BCP mean that New Yorkers are getting a regional public health benefit from the program beyond the site-specific health benefits from remediating contamination.

When the BCP was last reauthorized in 2015, the program was tweaked to allow only four project types in New York City: affordable housing, projects in neighborhoods that have high poverty and unemployment, sites where the cost of remediation is higher than the value of the land, and sites that are in underutilized areas. Part LL of the TED Art. VII legislation proposes the addition of projects that are developed as renewable energy sites. NYLCV supports keeping these measures and adding the Governor's renewable energy proposal in the next reauthorization of the BCP as a way to smartly tailor the program toward the highest needs in NYC. I will note for the members of the committees who represent New York City that these changes also mean that more BCP projects are located in Brooklyn, Queens, and the Bronx than in earlier iterations of the program.

One issue related to the BCP extension that the Legislature should take a closer look at is the proposed $50,000 fee for executed brownfield cleanup agreements. Because this fee comes early in the development process, it could be prohibitive for smaller participants in the program, especially outside of New York City. The New York State Bar Association has suggested a fee of around $10,000, which is much less likely to deter participation in the program.

Brownfield Opportunity Areas (BOAs) are areas with a concentration of brownfields, often in neighborhoods that have also been impacted by environmental racism - there are currently 122 BOA study areas and 62 certified BOAs in New York. BOAs are eligible for grants from the State for community-led redevelopment, with eligible activities including community vision and and public participation processes, site-specific contamination assessments and redevelopment plans, and infrastructure improvement studies. Part U of the TED Art. VII legislation proposes adding activities that support job growth, reduce greenhouse gas emissions, increase climate resilience, and achieve environmental justice to the list of activities that are eligible for BOA funding assistance. It also proposes additional State support for pre-development activities in BOAs. NYLCV strongly supports these changes.

BOA grants are funded through the Environmental Protection Fund (EPF), which in last year's budget included $1.75 million for BOAs. This year's proposed EPF would allocate $5 million to the BOA Program. This is a big step in the right direction to adequately fund the program and we hope to see this budget line eventually increase to $10 million as part of a $500 million EPF.

WETLANDS PROTECTION

Part QQ of the TED Art. VII legislation expands DEC's regulatory authority to protect vulnerable wetlands, and NYLCV strongly supports this proposal. New York has not updated its freshwater wetland maps in more than 25 years, while in that same time period wetlands protection has become a political football at the federal level, with each successive EPA administration seeking to strengthen or weaken wetlands protection and the regulations often ending up before the Supreme Court. In the meantime more than 60% of New York's historic wetlands have been lost, destroying ecosystems and depriving our state of some of our most important natural defenses against the impacts of climate change.

Part QQ eliminates regulatory maps, the issuance of which are extremely costly and time-consuming for DEC and therefore a significant barrier to wetlands protection, and allows DEC to regulate all wetlands regardless of size. Wetlands 12.4 acres and larger would be subject to permitting, while wetlands that are smaller than 12.4 acres would be subject to permitting at DEC's discretion if they are of unusual importance. "Unusual importance" is clearly and thoroughly defined in the budget legislation.

This proposal strikes the right balance giving DEC the authority it needs to protect vulnerable wetlands while also providing property owners and developers with greater regulatory certainty.

EXTENDED PRODUCER RESPONSIBILITY

NYLCV strongly supports Part RR of the TED Art. VII legislation, which would establish an extended producer responsibility (EPR) program for packaging and paper waste. EPR is a system of sustainable waste management in which producers - the entities responsible for producing something that will at the end of its useful life enter the waste stream - are responsible for reducing the volume of waste they produce, using higher percentages of post-recycled content in their production, and recycling or otherwise responsibly disposing of the waste they are responsible for when it enters the waste stream. New York already has successful EPR programs in place for tires and electronics, with programs for paint and pharmaceutical drugs underway.

There are several primary benefits of an EPR system for packaging and paper over our existing system:

1. The cost of recycling moves from municipal governments to producers. This alleviates a burden on taxpayers and ensures that successful local recycling programs can continue even if the local government faces a difficult financial situation.

2. Internalizing the cost of the waste they produce creates a strong incentive for producers to reduce the amount of waste they produce in the first place. This would help to solve the problem, particularly with e-commerce, of (for example) multiple layers of plastic and paper packaging accompanying a box that only contains a couple of books that you ordered.
3. An EPR system makes it easier to mandate minimum post-recycled content standards for producers and set minimum recovery rates for recycling that producers must meet. Minimum recovery rates, in particular, are much easier to set and achieve when dealing with producer responsibility organizations.

Related to the EPR proposal, we are also enthusiastic about Part SS of the TED Art. VII legislation to ban certain toxic chemicals in packaging.

NYLCV looks forward to working with the Legislature to make these proposals even stronger over the next two months.

BUILDING AND APPLIANCE EFFICIENCY STANDARDS

Part EEE of the TED Art. VII legislation sets new, stricter standards for building and appliance energy efficiency. This is low-hanging fruit in the fight to decarbonize buildings, and frankly it is long overdue. Reducing the amount of energy we are using makes it easier for us to achieve 100% clean energy and frees up capacity in the grid for beneficial electrification of transportation and of building heating. This part of the budget would also require energy benchmarking for all buildings (or buildings on the same plot of land owned by the same entity) that are over 25,000 sq. ft. Energy benchmarking allows building owners to see how other buildings in their class - for instance, hotels of a given size - use energy, giving low performers the opportunity to learn from their peers. It also provides policy makers and regulators with insight into which building types may require special attention to decarbonize.

Part EEE also requires that all new construction statewide, to the greatest extent feasible, have zero on-site greenhouse gas emissions no later than 2027. NYLCV strongly supports this requirement but suggests that the date be brought forward for smaller buildings. There are technical and financial impediments to the immediate electrification of heating for larger buildings that suggest moving forward with an immediate ban on new gas hookups could have inadvertent negative impacts on the development of the kind of dense, infill housing and commercial uses that we want to be encouraging. A 2027 implementation date for larger buildings should provide for enough time for these issues to be resolved. However, outside of a few rare and specific cases there is no reason why a ban on gas hookups for construction of new single-family homes could not take effect in 2023.

Finally, in order for the ban on new gas hookups proposed by Part EEE to take effect, the Legislature must also pass Part CCC of TED, which eliminates the so-called 100 Foot Rule that requires utilities to cover the cost of a gas hookup for any customer who is within 100 feet of an existing service line. It is incompatible with an attempt to phase out fossil fuels in home heating to also require utilities to subsidize the cost of new natural gas hookups.

TRANSIT-ORIENTED DEVELOPMENT

Dense, walkable neighborhoods have much lower carbon footprints than neighborhoods of single-family homes in areas that require a personal automobile to do routine things like go to the grocery store or drop children off at school. However, the New York City metropolitan area's extremely high housing prices - and the fact that the most dense, walkable neighborhoods in most cities in this country are typically those cities' most expensive neighborhoods - indicate that there is a large unmet demand for this type of housing in these types of neighborhoods. Therefore, one of the best things we can do to reduce greenhouse gas emissions is make it easier for people who want to live in denser, more urban areas to do so.

Part AA of the ELFA Art. VII legislation permits the creation of accessory dwelling units (ADUs) statewide. ADUs add housing, often affordable housing, to existing properties. Part CC of the ELFA Art. VII legislation amends New York City's floor area ratio for residential density, allowing the City to further upzone areas where there is very high demand for new housing. Part DD of the ELFA Art. VII legislation makes it easier to convert hotel and commercial spaces into residential housing. NYLCV supports all of these proposals in concept without weighing in on the specifics of the language that has been put forth in the Executive Budget.

Part EE of the ELFA Art. VII legislation requires local governments to allow a density of at least 25 dwellings per acre within 0.5 miles of commuter rail stations. The areas immediately surrounding commuter rail stations are excellent opportunities to develop low-carbon, walkable neighborhoods that are well-served by public transit and combine what people love about both urban and suburban living.

REVENUE

NYLCV supports Part I of the Revenue Art. VII legislation to provide a one-year tax credit for the phase out of No. 6 heating oil. The last remaining uses of a particularly harmful fuel type, in this case the most polluting home heating oil, are often the most expensive and difficult to fully phase out. It makes sense for the State to provide a time-limited tax credit to finalize our transition off of No. 6 heating oil.

We oppose Part T of the Revenue Art. VII legislation to provide an exemption from the petroleum business tax for tugboats and towboats. The support memo for this legislation says that this exemption is needed because of issues related to interstate commerce and the difficulty of collecting a tax on vessels that frequently cross state borders. However, that raises the question of why this exemption is only being introduced in 2022. A tax exemption that subsidizes the use of fossil fuels - and a particularly dirty fossil fuel, at that - seems to be on its face incompatible with the CLCPA.

Instead of creating new tax exemptions for fossil fuels, NYLCV supports including Senator Krueger and Assemblymember Cahill's legislation to phase out fossil fuel subsidies in this year's budget.[3]

Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

[3] S. 7438/A. 8483