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2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. MAZIARZ, KENNEDY -- read twice and ordered printed,
and when printed to be committed to the Committee on Energy and Tele-
communications

AN ACT to amend the economic development law, the public authorities law
and the state finance law, in relation to establishing the western New
York power proceeds allocation board; and to repeal chapter 436 of the
laws of 2010 amending the public authorities law and the economic
development law, relating to authorizing unallocated expansion or
replacement power to be allocated for western New York economic devel-
opment fund benefits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known as the western New
2 York power proceeds allocation act.

3 S 2. The economic development law is amended by adding a new article
4 6-a to read as follows:

5 ARTICLE 6-A

6 WESTERN NEW YORK POWER PROCEEDS ALLOCATION ACT

7 SECTION 189-A. DEFINITIONS.

8 189-B. THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD.

9 189-C. GENERAL POWERS AND DUTIES OF THE BOARD.

10 189-D. ADVISORY GROUP.

11 189-E. MISCELLANEOUS PROVISIONS.

12 S 189-A. DEFINITIONS. 1. "AUTHORITY" IS THE POWER AUTHORITY OF THE
13 STATE OF NEW YORK.

14 2. "BOARD" IS THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD
15 CREATED BY THIS ARTICLE.

16 3. "BENEFITS" OR "FUND BENEFITS" ARE PAYMENTS TO ELIGIBLE PROJECTS
17 THAT ARE DERIVED FROM NET EARNINGS THAT HAVE BEEN DEPOSITED INTO THE
18 WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 4. "CORPORATION" IS THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION
2 DOING BUSINESS AS THE EMPIRE STATE DEVELOPMENT CORPORATION.

3 5. "ELIGIBLE PROJECTS" ARE ECONOMIC DEVELOPMENT PROJECTS THAT ARE
4 LOCATED WITHIN A THIRTY-MILE RADIUS OF THE NIAGARA POWER PROJECT LOCATED
5 IN LEWISTON, NEW YORK. ELIGIBLE PROJECTS INCLUDE, BUT ARE NOT LIMITED
6 TO, CAPITAL INVESTMENTS IN PLANT AND EQUIPMENT AND DIRECTLY RELATED SOFT
7 COSTS OF SUCH CAPITAL INVESTMENTS; TRAINING AND THE IMPROVEMENT OF WORK-
8 ER PRODUCTIVITY; REMOVAL OF HAZARDOUS OR CONTAMINATED CONDITIONS;
9 INFRASTRUCTURE PROJECTS INCLUDING, BUT NOT LIMITED TO, ROADS, RAIL
10 LINES, WATER, SEWER, TELECOMMUNICATIONS, AND OTHER UTILITY EXTENSIONS,
11 EXPANSIONS OR IMPROVEMENTS; THE ACQUISITION OF LAND NEEDED FOR A
12 PROJECT; RESEARCH AND DEVELOPMENT WHERE THE RESULTS OF SUCH RESEARCH AND
13 DEVELOPMENT WILL DIRECTLY BENEFIT NEW YORK STATE; AND FOR OTHER SIMILAR
14 USES AND ACTIVITIES. ELIGIBLE PROJECTS DO NOT INCLUDE, AND FUND BENEFITS
15 MAY NOT BE USED FOR, PUBLIC INTEREST ADVERTISING OR ADVOCACY; LOBBYING;
16 THE SUPPORT OR OPPOSITION OF ANY CANDIDATE FOR PUBLIC OFFICE; THE
17 SUPPORT OR OPPOSITION TO ANY PUBLIC ISSUE; LEGAL FEES RELATED TO LITI-
18 GATION OF ANY KIND; EXPENSES RELATED TO ADMINISTRATIVE PROCEEDINGS
19 BEFORE STATE OR LOCAL AGENCIES; OR FOR SIMILAR USES OR ACTIVITIES.

20 6. "EXPANSION POWER" IS THE TWO HUNDRED FIFTY MEGAWATTS OF FIRM
21 NIAGARA PROJECT HYDROELECTRIC POWER AND "REPLACEMENT POWER" IS THE FOUR
22 HUNDRED FORTY-FIVE MEGAWATTS OF FIRM NIAGARA PROJECT HYDROELECTRIC POWER
23 AS SUCH TERMS ARE DEFINED IN SUBDIVISION THIRTEEN OF SECTION ONE THOU-
24 SAND FIVE OF THE PUBLIC AUTHORITIES LAW. FOR PURPOSES OF THIS SECTION,
25 EXPANSION AND REPLACEMENT POWER INCLUDES ALL ENERGY ASSOCIATED WITH SUCH
26 POWER. NOTWITHSTANDING ANY LAW, RULE, REGULATION, OR POLICY TO THE
27 CONTRARY, THE TERM REPLACEMENT POWER AS USED IN THIS ARTICLE INCLUDES A
28 CERTAIN SEVENTY MEGAWATTS OF POWER THAT IS REFERRED TO IN SECTION ONE
29 THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

30 7. "NET EARNINGS" IS THE AGGREGATE EXCESS OF REVENUES RECEIVED BY THE
31 POWER AUTHORITY OF THE STATE OF NEW YORK FROM THE SALE OF EXPANSION AND
32 REPLACEMENT POWER AND ENERGY PRODUCED AT THE NIAGARA PROJECT THAT WAS
33 SOLD IN THE WHOLESALE POWER AND ENERGY MARKET OVER WHAT REVENUES WOULD
34 HAVE BEEN RECEIVED HAD SUCH POWER AND ENERGY BEEN SOLD ON A FIRM BASIS
35 TO AN ELIGIBLE EXPANSION OR REPLACEMENT POWER CUSTOMER UNDER THE APPLI-
36 CABLE TARIFF OR CONTRACT.

37 8. "WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND" OR "FUND" IS A FUND OF
38 THE CORPORATION INTO WHICH ALL NET EARNINGS ARE DEPOSITED BY THE AUTHOR-
39 ITY AND FROM WHICH ALLOCATIONS OF FUND BENEFITS TO ELIGIBLE PROJECTS ARE
40 MADE.

41 S 189-B. THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD. 1.
42 THERE IS HEREBY CREATED THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION
43 BOARD, WHICH SHALL POSSESS THE POWERS AND DUTIES HEREIN SPECIFIED AND
44 ALL THE POWERS NECESSARY OR PROPER TO CARRY OUT THE PURPOSES OF THIS
45 ARTICLE. THE BOARD SHALL CONSIST OF SIX MEMBERS WHO SHALL BE APPOINTED
46 BY THE GOVERNOR AS FOLLOWS: (A) ONE MEMBER APPOINTED BY THE GOVERNOR
47 SHALL BE THE REGIONAL DIRECTOR OF THE EMPIRE STATE DEVELOPMENT CORPO-
48 RATION FOR WESTERN NEW YORK; (B) ONE MEMBER APPOINTED BY THE GOVERNOR
49 SHALL BE NOMINATED BY THE CHAIR OF THE ERIE COUNTY INDUSTRIAL DEVELOP-
50 MENT AGENCY; (C) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED
51 BY THE CHAIR OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; (D)
52 ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED BY THE CHAIR OF
53 THE BOARD OF BUFFALO-NIAGARA ENTERPRISE; (E) ONE MEMBER APPOINTED BY THE
54 GOVERNOR SHALL BE THE REGIONAL EXECUTIVE OF THE NATIONAL GRID COMPANY;
55 AND (F) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED BY THE
56 CHAIR OF THE AUTHORITY.

1 EACH SUCH BOARD MEMBER SHALL BE AUTHORIZED TO APPOINT AN ALTERNATE
2 BOARD MEMBER TO SERVE IN THEIR ABSENCE FROM TIME TO TIME. ALTERNATE
3 BOARD MEMBERS SHALL BE COUNTED AS PRESENT FOR THE DETERMINATION OF A
4 QUORUM, TO VOTE, TO FULLY PARTICIPATE IN MEETINGS, AND TO TAKE ALL SUCH
5 OTHER ACTIONS AS A BOARD MEMBER, EXCEPT THAT THEY MAY NOT APPOINT ADDI-
6 TIONAL ALTERNATE BOARD MEMBERS. A BOARD MEMBER MAY REMOVE OR REPLACE
7 THEIR ALTERNATE BOARD MEMBER AT ANY TIME, FOR ANY REASON, AND MAY LATER
8 REAPPOINT SUCH ALTERNATE BOARD MEMBER.

9 2. THE GOVERNOR SHALL DESIGNATE A CHAIR AND VICE CHAIR FROM AMONGST
10 THE MEMBERS. THE BOARD MEMBERS MAY SELECT SUCH OTHER OFFICERS AS THEY
11 DEEM ADVISABLE.

12 3. EACH MEMBER SHALL SERVE A TERM OF THREE YEARS OR UNTIL A SUCCESSOR
13 SHALL HAVE BEEN NAMED AND QUALIFIED. MEMBERS MAY BE REAPPOINTED TO
14 SUCCESSIVE TERMS.

15 4. FOUR MEMBERS SHALL CONSTITUTE A QUORUM FOR THE PURPOSES OF ORGANIZ-
16 ING THE BOARD AND CONDUCTING THE BUSINESS THEREOF; AND NO ACTION OF THE
17 BOARD MAY BE TAKEN EXCEPT UPON THE AFFIRMATIVE VOTE OF AT LEAST FOUR
18 MEMBERS. VIDEOCONFERENCING MAY BE USED FOR ATTENDANCE AND PARTICIPATION
19 BY MEMBERS OF THE BOARD. IF VIDEOCONFERENCING IS USED, THE BOARD SHALL
20 PROVIDE AN OPPORTUNITY FOR THE PUBLIC TO ATTEND, LISTEN AND OBSERVE AT
21 ANY SITE AT WHICH A MEMBER PARTICIPATES. THE PUBLIC NOTICE FOR THE MEET-
22 ING SHALL IDENTIFY, IF PRACTICABLE, ALL LOCATIONS WHERE A MEMBER WILL
23 PARTICIPATE IN THE MEETING BY VIDEOCONFERENCE AND SHALL STATE THAT THE
24 PUBLIC HAS THE RIGHT TO ATTEND THE MEETING AT ANY SUCH LOCATION.

25 5. MEMBERS OF THE BOARD, EXCEPT THOSE THAT ARE EMPLOYEES OR OFFICERS
26 OF THE STATE, ITS AUTHORITIES OR AGENCIES, SHALL NOT RECEIVE A SALARY OR
27 OTHER COMPENSATION, BUT SHALL BE ALLOWED THE NECESSARY AND ACTUAL
28 EXPENSES INCURRED IN THE PERFORMANCE OF DUTIES UNDER THIS ARTICLE.

29 S 189-C. GENERAL POWERS AND DUTIES OF THE BOARD. 1. THE BOARD SHALL
30 ADOPT RULES AND REGULATIONS RELATING TO THE ACTIVITIES OF THE BOARD.

31 2. THE BOARD SHALL PREPARE, DISTRIBUTE AND RECEIVE ALL APPLICATIONS
32 FROM, OR ON BEHALF OF, ELIGIBLE PROJECTS FOR THE ALLOCATION OR REALLO-
33 CATION OF FUND BENEFITS, AS THIS TERM IS DEFINED IN SUBDIVISION THREE OF
34 SECTION ONE HUNDRED EIGHTY-NINE-A OF THIS ARTICLE. APPLICATIONS SHALL BE
35 IN A FORM AND CONTAIN SUCH INFORMATION, DATA AND EXHIBITS AS THE BOARD
36 MAY PRESCRIBE. THE BOARD MAY BY RESOLUTION DIRECT THAT APPLICATIONS BE
37 SUBMITTED ON BEHALF OF THE BOARD TO THE CORPORATION OR TO ANY PUBLIC
38 SECTOR ENTITY THAT HAS THE RIGHT UNDER THIS ARTICLE TO NOMINATE A BOARD
39 MEMBER TO THE GOVERNOR.

40 3. FUND BENEFITS MAY BE ALLOCATED TO ELIGIBLE PROJECTS THAT ARE SPON-
41 SORED BY FOR-PROFIT BUSINESS ENTITIES, NOT-FOR-PROFIT ENTITIES, SUBDIVI-
42 SIONS OF THE STATE, PUBLIC BENEFIT CORPORATIONS, OR PUBLIC AUTHORITIES.

43 4. THE BOARD SHALL SUBMIT COPIES OF ALL SUCH APPLICATIONS TO THE
44 AUTHORITY. THE BOARD MAY REQUEST FROM THE AUTHORITY, AND THE AUTHORITY
45 SHALL SUPPLY, AN ANALYSIS OF ALL SUCH APPLICATIONS ALONG WITH ANY RECOM-
46 MENDATIONS OF THE AUTHORITY. IN ADDITION, THE BOARD MAY REQUEST, AND THE
47 AUTHORITY SHALL SUPPLY, SUCH ADDITIONAL INFORMATION AS IS REASONABLY
48 NECESSARY FOR THE BOARD TO PROPERLY PERFORM ITS DUTIES.

49 5. THE BOARD SHALL ESTABLISH A SCHEDULE FOR A REVIEW OF APPLICATIONS
50 FOR FUND BENEFITS THAT SHALL OCCUR NO LESS FREQUENTLY THAN TWICE EACH
51 YEAR.

52 6. THE BOARD SHALL DEVELOP AND ADOPT A MULTI-YEAR ECONOMIC DEVELOPMENT
53 PLAN THAT IS CONSISTENT WITH REGIONAL ECONOMIC DEVELOPMENT PLANS THAT
54 HAVE OR MAY BE ADOPTED BY STATE AND REGIONAL ECONOMIC DEVELOPMENT AGEN-
55 CIES. THE BOARD'S MULTI-YEAR ECONOMIC DEVELOPMENT PLAN SHALL SET POLI-
56 CIES AND PRIORITIES THAT WILL BE USED TO EVALUATE ALL APPLICATIONS FOR

1 ALLOCATION OF FUND BENEFITS. IF THE REGIONAL ECONOMIC DEVELOPMENT COUN-
2 CIL FOR WESTERN NEW YORK ADOPTS SUCH AN ECONOMIC DEVELOPMENT PLAN, SUCH
3 PLAN SHALL BE ADOPTED BY THE BOARD.

4 7. THE BOARD SHALL ADOPT CRITERIA TO BE USED TO EVALUATE ALL APPLICA-
5 TIONS FOR AN ALLOCATION OF FUND BENEFITS. THE CRITERIA SHALL BE DESIGNED
6 TO PROMOTE ECONOMIC DEVELOPMENT, MAINTAIN JOBS, AND ENCOURAGE NEW CAPI-
7 TAL INVESTMENT WITHIN THIRTY MILES OF THE NIAGARA POWER PROJECT. THE
8 CRITERIA SHALL ADDRESS, BUT NEED NOT BE LIMITED TO:

9 (A) THE OVERALL ECONOMIC IMPACT OF THE PROPOSAL IN TERMS OF THE NUMBER
10 OF JOBS TO BE CREATED OR RETAINED, THE AVERAGE ANNUAL PAYROLL, THE CAPI-
11 TAL INVESTMENT THAT IS PROJECTED, AND THE EXTENT TO WHICH NEW YORK
12 SUPPLIERS ARE USED;

13 (B) THE LIKELIHOOD THAT IN THE ABSENCE OF APPROVAL OF AN ALLOCATION OF
14 FUND BENEFITS, THE APPLICANT WOULD NOT UNDERTAKE THE PROPOSED PROJECT,
15 CLOSE, CONTRACT, OR RELOCATE OUTSIDE OF WESTERN NEW YORK;

16 (C) THE APPLICANT'S COMPLIANCE WITH ANY PRIOR COMMITMENT TO THE CORPO-
17 RATION, THE AUTHORITY, THE STATE OF NEW YORK, THE ERIE COUNTY INDUSTRIAL
18 DEVELOPMENT AGENCY, THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, OR
19 ANY LOCAL INDUSTRIAL DEVELOPMENT AGENCY TO RETAIN AND/OR CREATE JOBS OR
20 TO MAKE CAPITAL INVESTMENTS IN EXCHANGE FOR A BENEFIT FROM SUCH ENTITY;

21 (D) THE EXTENT TO WHICH AN ALLOCATION OF FUND BENEFITS WILL AFFECT THE
22 OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS AND
23 ITS EXISTING EMPLOYMENT WITHIN WESTERN NEW YORK AND THE STATE OF NEW
24 YORK;

25 (E) THE EXTENT OF OTHER BENEFITS BEING OFFERED TO THE APPLICANT FROM
26 THE STATE OF NEW YORK, ITS POLITICAL SUBDIVISIONS, PUBLIC AUTHORITIES,
27 INDUSTRIAL DEVELOPMENT AGENCIES, PUBLIC BENEFIT CORPORATIONS, LOCAL
28 DEVELOPMENT AGENCIES, OR OTHER PUBLIC AGENCIES; AND

29 (F) THE OVERALL IMPACT OF THE SITE OR USER INCLUDING THE PROJECT'S
30 ABILITY TO INDUCE ADDITIONAL COMMERCIAL OR INDUSTRIAL ACTIVITY TO WEST-
31 ERN NEW YORK, REVITALIZE AN URBAN AREA, AND ITS COMPLIANCE WITH REGIONAL
32 DEVELOPMENT PLANS.

33 8. THE BOARD SHALL RECOMMEND TO THE CORPORATION THE ALLOCATION OF FUND
34 BENEFITS TO ELIGIBLE PROJECTS THAT BEST MEET THE CRITERIA ESTABLISHED
35 FOR THE EVALUATION OF APPLICATIONS.

36 9. THE BOARD MAY INCLUDE WITHIN ITS RECOMMENDATIONS SUCH TERMS AND
37 CONDITIONS AS IT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO,
38 REASONABLE PROVISION FOR THE ALLOCATION OF FUND BENEFITS OVER TIME AS
39 THE APPLICANT ACHIEVES MILESTONES TOWARDS PROJECT COMPLETION, THE
40 PARTIAL OR COMPLETE WITHDRAWAL OR RETURN OF FUND BENEFITS WHERE THE
41 RECIPIENT HAS FAILED TO ACHIEVE OR MAINTAIN MUTUALLY AGREED UPON COMMIT-
42 MENTS, OR SUCH OTHER TERMS AND CONDITIONS AS THE BOARD DEEMS ADVISABLE.

43 10. RECOMMENDATION FOR APPROVAL OF THE ALLOCATION OF FUND BENEFITS BY
44 THE BOARD SHALL QUALIFY AN APPLICANT TO RECEIVE SUCH FUND BENEFITS FOR
45 ELIGIBLE PROJECTS.

46 11. THE CORPORATION SHALL NOT WITHDRAW ANY NET PROCEEDS FROM THE FUND
47 AND MAY NOT ALLOCATE ANY FUND BENEFIT UNLESS THE BOARD HAS RECOMMENDED
48 SUCH A WITHDRAWAL OR ALLOCATION. THE TRANSFER OR USE OF ANY FUND BENEFIT
49 IS PROHIBITED UNLESS SPECIFICALLY RECOMMENDED BY THE BOARD.

50 12. WHEN THE CORPORATION MAKES AN ALLOCATION OF FUND BENEFITS IT SHALL
51 INCLUDE WITHIN SUCH CONTRACT OR GRANT DISBURSEMENT AGREEMENT ALL TERMS
52 AND CONDITIONS THAT HAVE BEEN RECOMMENDED BY THE BOARD.

53 S 189-D. ADVISORY GROUP. NOTWITHSTANDING ANY LAW, RULE, REGULATION OR
54 ADMINISTRATIVE POLICY TO THE CONTRARY, THERE IS HEREBY CREATED THE WEST-
55 ERN NEW YORK HYDRO-POWER ALLOCATION ADVISORY GROUP THAT SHALL BE CONSTI-
56 TUTED AND HAVE THE POWERS DESCRIBED IN THIS SECTION. 1. THE WESTERN NEW

YORK HYDRO-POWER ALLOCATION ADVISORY GROUP SHALL CONSIST OF SIX MEMBERS AS FOLLOWS:

(A) THE REGIONAL DIRECTOR OF THE EMPIRE STATE DEVELOPMENT CORPORATION FOR WESTERN NEW YORK;

(B) THE CHAIR OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY;

(C) THE COMMISSIONER OF THE NIAGARA COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT;

(D) THE CHAIR OF THE BOARD OF BUFFALO-NIAGARA ENTERPRISE;

(E) THE REGIONAL DIRECTOR OF THE NATIONAL GRID COMPANY; AND

(F) THE CHAIR OF THE BOARD OF THE NEW YORK STATE POWER AUTHORITY.

2. MEMBERS OF THE ADVISORY GROUP ARE AUTHORIZED TO APPOINT AN ALTERNATE MEMBER TO SERVE IN THEIR ABSENCE FROM TIME TO TIME. ALTERNATE MEMBERS SHALL BE COUNTED AS PRESENT FOR THE DETERMINATION OF A QUORUM, TO VOTE AND TO FULLY PARTICIPATE IN MEETINGS AND TO TAKE ALL SUCH OTHER ACTIONS AS AN ADVISORY GROUP MEMBER, EXCEPT THAT THEY MAY NOT APPOINT ADDITIONAL ADVISORY GROUP MEMBERS. AN ADVISORY GROUP MEMBER MAY REMOVE OR REPLACE THEIR ALTERNATE MEMBER AT ANY TIME FOR ANY REASON AND MAY REAPPOINT SUCH ALTERNATE ADVISORY GROUP MEMBER.

3. THE ADVISORY GROUP SHALL SELECT A CHAIR AND VICE CHAIR AND SUCH OTHER OFFICERS AS IT DEEMS ADVISABLE.

4. ADVISORY GROUP MEMBERS SHALL SERVE SO LONG AS THEY CONTINUE TO HOLD THE POSITION SPECIFIED IN SUBDIVISION ONE OF THIS SECTION.

5. FOUR MEMBERS SHALL CONSTITUTE A QUORUM FOR THE PURPOSE OF ORGANIZING THE ADVISORY GROUP AND CONDUCTING THE BUSINESS THEREOF; AND NO ACTION OF THE ADVISORY GROUP MAY BE TAKEN EXCEPT UPON THE AFFIRMATIVE VOTE OF AT LEAST FOUR MEMBERS. VIDEOCONFERENCING OR TELECONFERENCING MAY BE USED FOR ATTENDANCE AND PARTICIPATION BY MEMBERS OF THE ADVISORY GROUP.

6. MEMBERS OF THE ADVISORY GROUP, EXCEPT THOSE THAT ARE EMPLOYEES OR OFFICERS OF THE STATE, ITS AUTHORITIES OR AGENCIES, SHALL NOT RECEIVE A SALARY OR OTHER COMPENSATION, BUT SHALL BE ALLOWED THE NECESSARY AND ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF DUTIES UNDER THIS SECTION.

7. THE ADVISORY GROUP SHALL RECEIVE FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK ALL APPLICATIONS THAT THE POWER AUTHORITY HAS RECEIVED FROM, OR ON BEHALF OF, ANY ELIGIBLE ENTITIES FOR THE ALLOCATION OR REALLOCATION OF POWER OR ENERGY FROM THE NIAGARA POWER PROJECT'S EXPANSION POWER OR REPLACEMENT POWER BLOCS AS SUCH TERMS ARE DEFINED IN SUBDIVISION SIX OF SECTION ONE HUNDRED EIGHTY-NINE-A OF THIS ARTICLE AT LEAST THIRTY DAYS PRIOR TO A DECISION BY THE POWER AUTHORITY TRUSTEES TO APPROVE OR DENY SUCH ALLOCATION. THE ADVISORY GROUP MAY CHOOSE TO WAIVE OR SHORTEN THE THIRTY DAY NOTICE PERIOD FOR GOOD CAUSE, BY A MAJORITY VOTE. THE ADVISORY GROUP MAY CHOOSE TO ACCEPT FROM THE AUTHORITY A SUMMARY OF SUCH APPLICATIONS, BUT MAY REQUEST AND THE POWER AUTHORITY SHALL SUPPLY, SUCH ADDITIONAL INFORMATION AS IS REASONABLY NECESSARY FOR THE ADVISORY GROUP TO PROPERLY PERFORM ITS DUTIES.

8. UPON RECEIPT OF AN APPLICATION FOR THE ALLOCATION OF POWER OR ENERGY FROM THE NIAGARA PROJECT, THE ADVISORY GROUP SHALL MEET AND SHALL MAKE A RECOMMENDATION TO THE POWER AUTHORITY TO APPROVE, DENY, OR APPROVE AS MODIFIED AN APPLICATION FOR A POWER OR ENERGY ALLOCATION. THE ADVISORY GROUP SHALL STATE ITS REASONS FOR SUCH A RECOMMENDATION. SUCH RECOMMENDATION SHALL BE PRESENTED TO THE POWER AUTHORITY TRUSTEES FOR ITS DELIBERATION AND CONSIDERATION, BUT SHALL BE ADVISORY ONLY AND SHALL NOT BE BINDING UPON THE POWER AUTHORITY.

9. THE ADVISORY GROUP SHALL MEET AS NEEDED TO PROVIDE THE POWER AUTHORITY WITH TIMELY RECOMMENDATIONS REGARDING PENDING APPLICATIONS FOR

1 THE ALLOCATION OF HYDRO-POWER. SUCH MEETINGS SHALL OCCUR NO LESS
2 FREQUENTLY THAN TWICE EACH YEAR.

3 10. IN MAKING ITS RECOMMENDATIONS FOR THE ALLOCATION OF POWER AND
4 ENERGY, THE ADVISORY GROUP SHALL REFER TO AND RELY UPON THE ECONOMIC
5 DEVELOPMENT PLAN AND STRATEGY ESTABLISHED BY SUBDIVISION SIX OF SECTION
6 ONE HUNDRED EIGHTY-NINE-C OF THIS ARTICLE.

7 11. IN MAKING ITS RECOMMENDATIONS FOR THE ALLOCATION OF POWER AND
8 ENERGY, THE ADVISORY GROUP SHALL REFER TO AND RELY UPON THE CRITERIA
9 ESTABLISHED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED EIGHTY-NINE-C OF
10 THIS ARTICLE.

11 12. THE ADVISORY GROUP SHALL RECOMMEND THE ALLOCATION OF POWER AND
12 ENERGY TO THE COMPANY OR COMPANIES WHICH BEST MEET THE CRITERIA ESTAB-
13 LISHED FOR THE EVALUATION OF EACH APPLICATION.

14 13. THE ADVISORY GROUP MAY INCLUDE WITHIN ITS RECOMMENDATIONS SUCH
15 TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED
16 TO: REASONABLE PROVISION FOR THE ALLOCATION OF POWER AND ENERGY OVER
17 TIME AS THE APPLICANT ACHIEVES MILESTONES TOWARDS PROJECT COMPLETION;
18 THE PARTIAL OR COMPLETE WITHDRAWAL OR RETURN OF POWER AND ENERGY WHERE
19 THE RECIPIENT HAS FAILED TO ACHIEVE OR MAINTAIN MUTUALLY AGREED UPON
20 COMMITMENTS; OR SUCH OTHER TERMS AND CONDITIONS AS THE ADVISORY GROUP
21 DEEMS ADVISABLE.

22 S 189-E. MISCELLANEOUS PROVISIONS. NOTWITHSTANDING ANY OTHER PROVISION
23 OF LAW TO THE CONTRARY, A MEMBER OF THE BOARD IS NOT DISQUALIFIED FROM
24 FULL PARTICIPATION IN ALL BOARD ACTIVITIES, INCLUDING VOTING, SOLELY ON
25 THE GROUNDS THAT AN ORGANIZATION THAT EMPLOYS SUCH MEMBER HAS INDICATED
26 THAT IT SUPPORTS OR OPPOSES SUCH AN APPLICATION.

27 S 3. Section 100 of the economic development law is amended by adding
28 three new subdivisions 26-a, 26-b and 26-c to read as follows:

29 26-A. TO PROVIDE ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL,
30 AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REQUESTED BY THE
31 WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD.

32 26-B. TO PROVIDE ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL
33 AND SECRETARIAL ASSISTANCE, AND OFFICE SPACE AND EQUIPMENT REQUESTED BY
34 THE WESTERN NEW YORK HYDRO-POWER ALLOCATION ADVISORY GROUP.

35 26-C. TO ESTABLISH A FUND TO BE KNOWN AS THE WESTERN NEW YORK ECONOMIC
36 DEVELOPMENT FUND AS PROVIDED FOR IN ARTICLE SIX-A OF THIS CHAPTER.

37 S 4. Section 1005 of the public authorities law is amended by adding
38 three new subdivisions 19, 20 and 21 to read as follows:

39 19. TO FULLY AND COMPLETELY COOPERATE WITH THE WESTERN NEW YORK
40 HYDRO-POWER ALLOCATION ADVISORY GROUP, THE AUTHORITY SHALL PROVIDE THE
41 ADVISORY GROUP WITH ALL MATERIALS, INFORMATION AND REPORTS THAT ARE
42 REASONABLY REQUESTED BY SUCH ADVISORY GROUP. THE AUTHORITY IS FURTHER
43 AUTHORIZED AND DIRECTED TO PROVIDE ALL NECESSARY STAFF SERVICES,
44 ACCOUNTING, CLERICAL AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND
45 EQUIPMENT REQUESTED BY THE WESTERN NEW YORK HYDRO-POWER ALLOCATION ADVI-
46 SORY GROUP.

47 20. TO FULLY AND COMPLETELY COOPERATE WITH THE WESTERN NEW YORK POWER
48 PROCEEDS ALLOCATION BOARD, THE AUTHORITY SHALL PROVIDE THE BOARD WITH
49 ALL MATERIALS, INFORMATION AND REPORTS THAT ARE REASONABLY REQUESTED BY
50 SUCH BOARD. THE AUTHORITY IS FURTHER AUTHORIZED AND DIRECTED TO PROVIDE
51 ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL AND SECRETARIAL
52 ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REQUESTED BY THE WESTERN NEW
53 YORK POWER PROCEEDS ALLOCATION BOARD.

54 21. TO ALLOCATE FUNDS OF THE AUTHORITY TO THE EMPIRE STATE DEVELOPMENT
55 CORPORATION'S WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND AS REQUIRED BY

ARTICLE SIX-A OF THE ECONOMIC DEVELOPMENT LAW AND SUCH ADDITIONAL AMOUNTS AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES.

S 5. The state finance law is amended by adding a new section 99-u to read as follows:

S 99-U. WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD A SPECIAL FUND TO BE KNOWN AS THE "WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND".

2. THE DEFINITIONS OF WORDS AND TERMS CONTAINED IN SECTION ONE HUNDRED EIGHTY-NINE-A OF THE ECONOMIC DEVELOPMENT LAW SHALL APPLY TO THIS SECTION AS IF FULLY SET FORTH IN THIS SECTION.

3. THE CORPORATION SHALL ESTABLISH A SEPARATE ACCOUNT TO BE KNOWN AS THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND.

4. THE AUTHORITY SHALL DEPOSIT INTO THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND ALL NET EARNINGS. SUCH EARNINGS SHALL BE DEPOSITED NO LESS FREQUENTLY THAN MONTHLY. THE FIRST PAYMENT SHALL BE MADE AT THE END OF THE FIRST FULL MONTH SUCCEEDING THIS SECTION BECOMING A LAW AND SHALL INCLUDE ALL ACCRUED NET EARNINGS AS OF THE EFFECTIVE DATE OF CHAPTER FOUR HUNDRED THIRTY-SIX OF THE LAWS OF TWO THOUSAND TEN. THE AUTHORITY SHALL PROVIDE THE BOARD WITH STATEMENTS, NO LESS FREQUENTLY THAN QUARTERLY, THAT CONTAIN A FULL AND COMPLETE ACCOUNTING OF ALL NET EARNINGS AND THE CALCULATIONS THEREOF, A STATEMENT OF ALL DEPOSITS INTO THE FUND AND OTHER SUCH INFORMATION AS THE BOARD MAY REASONABLY REQUIRE TO PERFORM ITS DUTIES.

5. THE BOARD MAY REQUEST, AND THE AUTHORITY SHALL PROVIDE AT SUCH TIMES AND COVERING SUCH PERIODS AND IN SUCH FORM AS IS REASONABLY DETERMINED BY THE BOARD AS CONVENIENT OR APPROPRIATE FOR IT TO CARRY OUT ITS DUTIES, A FULL ACCOUNTING OF THE SALE, USE, AND PROCEEDS FROM ALL CATEGORIES OF POWER AND ENERGY FROM THE NIAGARA PROJECT THAT ARE AVAILABLE FOR INDUSTRIAL AND COMMERCIAL USE INCLUDING, BUT NOT LIMITED TO, EXPANSION AND REPLACEMENT POWER. SUCH REPORT SHALL INCLUDE STATEMENTS THAT SHOW THE AMOUNT AND PROCEEDS FROM THE SALE OF POWER AND/OR ENERGY ON THE MARKET AND UNDER CONTRACT TO AN ELIGIBLE RECIPIENT OF SUCH POWER AND/OR ENERGY, THE AMOUNT OF FUNDS THAT ARE CONSIDERED NET EARNINGS AND THE CALCULATION THEREOF, AND THE DISPOSITION OF ALL SUCH FUNDS.

6. THE CORPORATION MAY NOT WITHDRAW ANY NET EARNINGS FROM THE FUND EXCEPT IN ACCORDANCE WITH SECTION ONE HUNDRED EIGHTY-NINE-C OF THIS ARTICLE.

7. THE CORPORATION SHALL PROVIDE THE BOARD WITH STATEMENTS, NO LESS FREQUENTLY THAN QUARTERLY, THAT CONTAIN A FULL AND COMPLETE ACCOUNTING OF ALL NET EARNINGS DEPOSITED INTO THE FUND INCLUDING ANY STATEMENTS OR REPORTS PROVIDED BY THE AUTHORITY, ALL WITHDRAWALS AND OTHER USES FROM THE FUND AND OTHER SUCH INFORMATION AS THE BOARD MAY REASONABLY REQUIRE TO PERFORM ITS DUTIES.

S 6. Chapter 436 of the laws of 2010 amending the public authorities law and the economic development law, relating to authorizing unallocated expansion or replacement power to be allocated for western New York economic development fund benefits is REPEALED.

S 7. This act shall take effect immediately.