

STATE OF NEW YORK

6010

2017-2018 Regular Sessions

IN ASSEMBLY

February 21, 2017

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the creation of the downstate New York power authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 5 of the public authorities law is amended by
2 adding a new title 6-E to read as follows:

TITLE 6-E

DOWNSTATE NEW YORK POWER AUTHORITY

Section 1148. Short title.

6 1148-a. Establishment of authority.

7 1148-b. Establishment of downstate New York power
8 authority.

9 1148-c. Members of the authority.

10 1148-d. Powers and duties of the authority.

11 1148-e. Deposit for temporary possession of property.

12 1148-f. Application of public service law.

13 1148-g. Furnishing service within the authority.

14 1148-h. Liabilities for bonds.

15 1148-i. Bonds and notes of the authority.

16 1148-j. Rights of redemption.

17 1148-k. Bonds and obligations legal investments of fiduciaries.

18 1148-l. Exemption from taxation; payments in lieu of taxes.

19 1148-m. The city of New York and counties of Westchester,
20 Rockland and Orange may levy taxes within the authority.

21 1148-n. Examination by comptroller.

22 1148-o. Reports of the authority.

23 § 1148. Short title. This title may be cited as the "downstate New
24 York power authority act".

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

LBD07587-01-7

1 § 1148-a. Establishment of authority. There is hereby established and
2 defined a public authority to be known as the "downstate New York power
3 authority", which shall embrace the service territory of the Consol-
4 idated Edison Company, including that portion of Westchester, Rockland
5 and Orange counties served by the aforesaid company.

6 § 1148-b. Establishment of downstate New York power authority. There
7 is hereby created a public utility district corporation, to be known as
8 the "downstate New York power authority", hereinafter referred to as the
9 authority. The authority shall be a body corporate and politic consti-
10 tuting a public benefit corporation, the objects of which, in the judg-
11 ment of the legislature, cannot be obtained under general laws. The
12 corporation shall have the power to sue and be sued, and to adopt a
13 seal. It shall have the power to acquire real and other forms of proper-
14 ty by purchase, eminent domain or otherwise, to incur debts, liabilities
15 and obligations, to issue bonds and notes and to exercise all powers
16 authorized by this title and reasonably necessary for accomplishing its
17 purposes, or properly incidental thereto, subject to the constitution
18 and laws of the United States and the state of New York. Such powers
19 shall be exercised in the name of the authority.

20 § 1148-c. Members of the authority. The members, constituting the
21 board of directors of the authority, shall consist of eleven persons,
22 seven of whom shall reside within the city of New York and shall be
23 appointed by the mayor of the city of New York and confirmed by the city
24 council. Two persons shall reside in Westchester county and shall be
25 appointed by the county executive of Westchester county and confirmed by
26 the county legislature. One person shall reside in Rockland county and
27 shall be appointed by the county executive of Rockland county and
28 confirmed by the county legislature. One person shall reside in Orange
29 county and shall be appointed by the county executive of Orange county
30 and confirmed by the county legislature.

31 The term of office of each member shall be four years, but in the
32 first instance the mayor shall appoint two members each for terms of
33 one, two and three years, respectively, and one member for a four-year
34 term. The Westchester county executive shall, in the first instance,
35 appoint members for one and two years, respectively.

36 Upon resignation of a member, or a vacancy occurring in any other
37 manner, it shall be filled by the officer previously appointing the
38 member to that office to fill the remainder of the term. Each member
39 before entering upon the duties of his office shall take the constitu-
40 tional oath of office, which shall be filed in the office of the secre-
41 tary of state. Seven directors shall constitute a quorum for the trans-
42 action of business, provided, however, that at least one member shall be
43 from Westchester, and, notwithstanding any other provision of law, the
44 concurrence of a majority of those present at a meeting shall be neces-
45 sary for the passage of any resolution, order or determination. Any
46 member may be removed by the attorney general for inefficiency, neglect
47 of duty or misconduct in office after a hearing upon charges and an
48 opportunity to be heard in person or by counsel upon not less than ten
49 days notice. No director shall receive a salary, but each shall be enti-
50 tled to reimbursement for any ordinary and necessary actual expenses
51 related directly to the business of the authority. They may elect one
52 of the members as president and may elect or appoint other officers and
53 determine their powers.

54 § 1148-d. Powers and duties of the authority. The powers and duties
55 conferred by this title shall be exercised by the board of directors of
56 the authority, subject to the terms of this title. In the exercise of

1 such powers and duties the board shall have the following powers,
2 together with such other powers as may be reasonably necessary for
3 accomplishing the purposes and duties declared and set forth in this
4 title;

5 1. To own and operate electric generating facilities in the New York
6 City and Westchester, Rockland and Orange county areas for the benefit
7 of the people and businesses of the city of New York and the counties of
8 Westchester, Rockland and Orange;

9 2. To acquire, by purchase, condemnation or otherwise, the facilities
10 formerly owned by the Consolidated Edison Company for the production of
11 electricity;

12 3. To determine upon the location, type, size, construction, lease,
13 purchase, ownership, acquisition, use and operation of any plant or
14 plants or other structure or property, within or without the territorial
15 limits of the authority;

16 4. To appoint and at pleasure discharge a secretary or treasurer and
17 such clerical, engineering, legal and other professional assistance as
18 it may deem necessary for the purposes of this title and fix their
19 compensation;

20 5. To appoint and at pleasure remove all employees, to transfer
21 employees from their positions to other positions and to consolidate or
22 abolish such positions, except that any collective bargaining agreements
23 in force between the Consolidated Edison Company or any other company
24 and any certified collective bargaining representative for any employees
25 shall remain in full force and effect, and such employees shall be
26 exempt from the provisions of the public employees fair employment act
27 as set forth in article fourteen of the civil service law;

28 6. To enter upon any lands and within any building whenever in its
29 judgment it may be necessary for the purpose of making surveys and exam-
30 inations to accomplish any purposes set forth in this title;

31 7. By the whole, or by any three or more, of the members of the
32 authority, to make any investigation which it may deem necessary to
33 enable it effectively to carry out the provisions of this title and, for
34 that purpose, to take and hear proofs and testimony and to compel by
35 subpoena the attendance of witnesses and the production of records,
36 books, papers, accounts and other documents including public records;

37 8. To execute contracts, borrow money, issue bonds and other certif-
38 icates of indebtedness and sell or dispose of same in such amounts and
39 at such rates of interest as may be advisable. This shall include the
40 power to borrow money from any state or federal agency, including the
41 power authority of the state of New York, and to contract with the power
42 authority of the state of New York for any administrative, legal, engi-
43 neering or other services as may be necessary to effectuate the orderly
44 transition of operations from the previous owners to the authority;

45 9. (a) To hold public hearings, on the initiative of any three members
46 of the board or on the request of any person or persons, upon any matter
47 the board deems in the public interest;

48 (b) Further, to develop and adopt by October thirtieth of each calen-
49 dar year a capital budget plan for the following calendar year and to
50 hold at least two public hearings on said budget in each county in the
51 city of New York and in the counties of Westchester, Rockland and Orange
52 with both a day and an evening session, beginning at least forty-five
53 days prior to the adoption of said capital budget;

54 (c) To make such proposed capital budget available for public
55 inspection at all offices of the authority, in the main libraries of
56 both said counties and in such other places as the public service

1 commission may require so that the same may be available for public
2 inspection; the public shall be notified of said hearings in bills
3 rendered for service at least thirty days prior to the first such hear-
4 ing.

5 § 1148-e. Deposit for temporary possession of property. Whenever the
6 authority, in any proceedings instigated by it for the acquisition of
7 any existing plant or plants by condemnation, shall make application for
8 temporary possession pursuant to the provisions of the eminent domain
9 procedure law, the sum to be fixed by the court for deposit as a condi-
10 tion for granting such application need not exceed twenty per centum of
11 the assessed valuation of the real property sought to be acquired in
12 such proceeding as such assessed valuation appeared upon the last
13 assessment rolls for state and city taxes prior to the commencement of
14 such proceeding.

15 § 1148-f. Application of public service law. The rates, charges,
16 services, practices and finances of the authority shall remain subject
17 to the jurisdiction of the public service commission and the provisions
18 of the public service law, including the provisions of the home energy
19 fair practices act, the home insulation and energy conservation act and
20 the provisions related to the siting and certification of major generat-
21 ing plants and transmission lines. Notwithstanding the aforesaid appli-
22 cation of the provisions of the public service law, the following
23 provisions shall govern with respect to the rates, charges, services,
24 practices and finances of the authority and, where such provisions are
25 inconsistent with the public service law, shall be deemed to supersede
26 it:

27 1. The amount of consideration paid and the issuance of securities by
28 the authority for the acquisition of the aforesaid facilities shall not
29 require the approval of the public service commission.

30 2. The cost of acquisition of said facilities, including the costs of
31 the issuance of bonds and notes related to such acquisition such as
32 legal and engineering fees, underwriters' discount and other reasonable
33 and necessary fees related to such issuance, shall be deemed by the
34 public service commission to be the original cost of said facilities
35 upon which the rate base shall be determined. Any contingency funds and
36 any debt service reserve funds raised as a result of the issuance of
37 bonds and notes shall be deemed cash assets and capital surplus liabil-
38 ities, respectively, and any income from such cash assets shall be
39 determined to be other than operating income for the authority.

40 3. Any rate increases or decreases resulting from the creation of the
41 authority shall be uniform among all classes of customers. In addition,
42 the authority shall not seek any changes, other than the uniform changes
43 for all classes of customers, in any tariff, rate or schedule for at
44 least two years after the acquisition of the aforementioned generating
45 facilities. After such period, all changes among rates, tariffs and
46 schedules among classes of customers shall be subject to the approval of
47 the public service commission.

48 4. The board of directors shall annually make the report required by
49 subdivision seven of section sixty-six of the public service law to the
50 public service commission, which report shall be verified by the oath of
51 the president of the authority.

52 § 1148-g. Furnishing service within the authority. It shall be the
53 obligation of the authority to furnish safe and reliable electric gener-
54 ation service to the persons and businesses in the authority at just and
55 reasonable rates. The authority shall have the power to construct or
56 acquire, within or without the territorial limits of the authority, such

1 additional facilities beyond the former facilities of the Consolidated
2 Edison Company as shall reasonably be necessary to meet such obli-
3 gations. The authority may purchase power and energy from any persons,
4 and sell power and energy to any person, within or without the territo-
5 rial limits of the authority, where the board of directors deems such
6 sales or purchases to be in the best interest of the people and busi-
7 nesses of the authority.

8 § 1148-h. Liabilities for bonds. The bonds or other obligations of the
9 authority shall not be debts of the state of New York, the city of New
10 York or the county of Westchester, and the board of directors shall have
11 no power to make them payable except out of revenues of the authority.

12 § 1148-i. Bonds and notes of the authority. 1. The authority shall
13 have the power, and is hereby authorized, from time to time to issue its
14 negotiable bonds or notes, in conformity with the applicable provisions
15 of the local finance law, for the purpose of financing the acquisition
16 of the former electric generating facilities of the Consolidated Edison
17 Company and for the financing of any further projects authorized by this
18 title, including the acquisition of any real or personal property deemed
19 necessary by the authority.

20 2. In anticipation of the sale of such bonds the authority may issue
21 negotiable bond anticipation notes in conformity with the applicable
22 provisions of the local finance law and may renew the same from time to
23 time but the maximum maturity of any such note, including renewals ther-
24 eof, shall not exceed five years from the date of issue of such original
25 notes. Such notes shall be paid from any moneys of the authority avail-
26 able therefor and not otherwise pledged or from the proceeds of sale of
27 the bonds of the authority in anticipation of which they were issued.
28 Such notes shall not be issued in any amount in excess of the amount of
29 bonds which the authority is authorized to issue less the amount of any
30 bonds or other notes theretofore issued and outstanding. The notes shall
31 be issued in the same manner as the bonds. Such notes and the resolution
32 authorizing the same may contain any provisions, conditions or limita-
33 tions which a bond resolution of the authority may contain.

34 3. The authority shall have power from time to time, whenever it deems
35 refunding expedient, to refund any bonds by the issuance of new bonds,
36 whether the bonds to be refunded have or have not matured, and may issue
37 bonds and notes partly to refund bonds and notes then outstanding and
38 partly for any other purpose authorized by this title. Refunding bonds
39 and notes may be exchanged for the bonds and notes to be refunded, with
40 such cash adjustments as may be agreed, or may be sold with the proceeds
41 applied to the purchase or payment of the bonds and notes to be
42 refunded.

43 4. The bonds and notes may be issued payable in annual installments or
44 as term bonds of the authority or the authority may, in its discretion,
45 issue bonds and notes of both types. Such bonds and notes shall be
46 authorized by resolution of the board of directors and shall bear such
47 date or dates, mature at such time or times not exceeding fifty years
48 from their respective dates, bear interest at such rate or rates payable
49 annually or semi-annually, be in such denominations, be in registered
50 form only, be executed in such manner, be payable in lawful money of the
51 United States of America at such place or places and be subject to such
52 terms of redemption as such resolution or resolutions may provide. In
53 the event that term bonds are issued, the resolution authorizing same
54 may make such provisions for the establishment and management of
55 adequate sinking funds for the payment thereof as the authority may deem
56 necessary. The bonds or notes shall be sold at public sale and may be

1 sold for such price or prices as the authority shall determine.
2 Announcements of such public sale may appear in any bills rendered for
3 service by the authority. The resolution or resolutions authorizing any
4 such obligations may contain provisions, which shall be part of the
5 contract with the holders thereof, which provisions may:

6 (a) pledge the revenues of the authority to secure the payment of such
7 bonds and agree to maintain schedules of rates, tariffs and charges
8 adequate to pay the interest and principal of such obligations;

9 (b) give to the holders of such bonds and other obligations, or their
10 authorized representatives, a lien upon such revenues and maintain such
11 accounts as may be required by such holders, subject to agreement by the
12 public service commission and the state comptroller;

13 (c) require such revenues to be set aside for sinking funds and
14 reserve funds, safeguarding the deposit, use and investment thereof;

15 (d) limit or restrict the power of the authority under this title,
16 insofar as the same may be deemed advisable, to secure the payment of
17 such bonds and notes, including the authority to issue additional obli-
18 gations or the disposition of the proceeds of revenues of the authority;

19 (e) authorize the appointment of a trustee or receiver as provided,
20 limit the rights of the bondholders to enforce their bonds or notes by
21 independent action and, in the event of a receivership, require the
22 return of all properties to the authority when the bonds or notes are
23 paid or redeemed and all costs paid;

24 (f) contain any other provisions reasonably necessary or deemed advis-
25 able to secure and provide for the payment of said bonds and obligations
26 and the rights and remedies of the holders thereof;

27 (g) provide that the authority, the state of New York, the counties of
28 Westchester, Rockland and Orange and the city of New York may purchase,
29 pledge, cancel, hold or redeem such bonds and notes;

30 (h) provide for the amendment of any such resolution in any respect
31 and the amount of bonds or obligations the holders of which, after
32 published or written notice, must consent or object thereto in order
33 that such amendment may or may not become effective.

34 § 1148-j. Rights of redemption. The authority, the state of New York,
35 the city of New York, and the counties of Westchester, Rockland and
36 Orange shall have the right to redeem the bonds and obligations of the
37 authority, may acquire such bonds and notes and may cancel, hold, sell
38 or otherwise dispose of such bonds and obligations.

39 § 1148-k. Bonds and obligations legal investments of fiduciaries. On
40 or before January first of each year, commencing with January first, two
41 thousand eighteen, the comptroller of the state of New York shall file
42 with the public service commission his certificate stating the average
43 annual revenues of the authority, or of the properties acquired or to be
44 acquired by the authority, for the then preceding five years, as the
45 case may be, and the maximum amount required in any future year to meet
46 the interest and maturing principal of the outstanding obligations of
47 the authority. If in his opinion the obligations of the authority are on
48 the facts so determined and in his judgment sufficiently secured so as
49 to constitute a suitable investment for the public funds of the state,
50 he shall so certify, but such certification may later be withdrawn. So
51 long as such certification remains in effect, the comptroller and all
52 other public officers and bodies of the state, all municipalities and
53 other political subdivisions, all insurance companies and associations,
54 all savings banks and savings institutions, including savings and loan
55 officers, associations, administrators, guardians, executors and trus-

1 tees, and all other fiduciaries in the state may properly and legally
2 invest funds in their control in such obligations.

3 § 1148-l. Exemption from taxation; payments in lieu of taxes. The
4 real and personal property of the authority and all of its activities
5 and operations shall be exempt from taxation provided, however, that the
6 authority shall pay to all units of state and local government amounts
7 in lieu of taxes equal to the taxes paid or owing by the previous owner
8 in the fiscal year immediately prior to the acquisition of the facili-
9 ties of said previous owner by the authority. In addition the board may
10 agree to increase payments in lieu of taxes to the city of New York and
11 the counties of Westchester, Rockland and Orange.

12 § 1148-m. The city of New York and counties of Westchester, Rockland
13 and Orange may levy taxes within the authority. 1. The city of New York
14 and the county of Westchester may, at any time, levy a special tax
15 assessment upon the real property in such city or county, respectively,
16 benefited by the authority to defray all or any portion of the payment
17 of interest and principal of bonds or other obligations of the authori-
18 ty, to provide sinking funds, guaranty funds or other funds for each
19 payment or to provide for the redemption of such obligations. Such
20 assessment or assessments shall be levied in conformance with the appli-
21 cable provisions of the United States Internal Revenue Code and any
22 regulations or rulings issued thereunder in order that real property
23 owners in such city and county be enabled to deduct such assessments
24 from federal income taxes.

25 2. Such city and counties shall establish a system of accounts, with
26 the approval of the state comptroller and the public service commission,
27 for the transfer of the proceeds of such levies to the authority and for
28 such reductions in the rates and charges for electric service in the
29 amounts transferred as shall be required of the authority, except that
30 amounts transferred for the maintenance of sinking funds, guaranty funds
31 or funds other than for the payment of interest or principal maturing
32 within one year shall not presently reduce rates for electric service.

33 § 1148-n. Examination by comptroller. The state comptroller and his
34 legally authorized representatives are hereby authorized and empowered
35 from time to time, and in addition to the public service commission, to
36 examine the accounts and books of the authority, including its receipts,
37 disbursements, contracts, leases, sinking funds, investments and any
38 other matters relating to its financial standing.

39 § 1148-o. Reports of the authority. The authority shall annually
40 report to the governor, the legislature, the city of New York, the coun-
41 ty of Westchester, the public service commission and the comptroller
42 upon its activities and operations.

43 § 2. This act shall take effect immediately.