

STATE OF NEW YORK

6453--B

2021-2022 Regular Sessions

IN SENATE

April 29, 2021

Introduced by Sens. PARKER, SALAZAR, ADDABBO, BAILEY, BIAGGI, BRESLIN, BRISPORT, CLEARE, GIANARIS, HOYLMAN, JACKSON, KAVANAGH, MAY, MYRIE, RAMOS, RIVERA, SANDERS, SEPULVEDA, SERRANO, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to implementing the "New York State Build Public Renewables Act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York State Build Public Renewables Act".

3 § 2. Section 1005 of the public authorities law is amended by adding
4 thirteen new subdivisions 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41
5 and 42 to read as follows:

6 30. (a) The authority is authorized and directed to purchase, acquire,
7 plan, design, engineer, finance, construct, operate, manage, improve
8 and/or maintain any renewable energy project.

9 (b) For the purposes of this subdivision and subdivisions thirty-one,
10 thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-
11 seven, thirty-eight, thirty-nine, forty, forty-one and forty-two of this
12 section, the following terms shall have the following meanings:

13 (i) "renewable energy" shall have the same meaning as renewable energy
14 systems as set forth in section sixty-six-p of the public service law.

15 (ii) "renewable energy project" shall be defined as all infrastructure
16 which generates, stores, distributes or transmits renewable energy or
17 thermal energy as defined in subparagraph (i) of this paragraph, and
18 includes the construction, installation and/or operation of ancillary

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

LBD05455-19-2

1 facilities or equipment done in connection with any such renewable ener-
2 gy generating projects, including, but not limited to, energy storage
3 systems, electric vehicle charging infrastructure and offshore wind
4 support and installation vessels owned by the authority, and the
5 production, use, and sale of green hydrogen defined as hydrogen produced
6 through electrolysis powered using one hundred percent renewable energy.

7 31. Where a renewable energy site appropriate for New York state falls
8 into federal jurisdiction, the authority may participate in lease
9 auctions in an attempt to obtain ownership of that area.

10 32. (a) Notwithstanding any other provision of law, the authority
11 shall, on or after January first, two thousand thirty, only generate
12 renewable energy and shall only purchase, acquire, plan, design, engi-
13 neer, finance, and construct generation and transmission facilities for
14 the purpose of generating, storing, distributing and transmitting renew-
15 able energy. The authority shall phase out its use of existing non-re-
16 newable generation no later than December thirtieth, two thousand thir-
17 ty, unless the authority provides to its trustees, and makes publicly
18 available, an attestation in writing, signed by the independent system
19 operator and a representative of the regional clean energy hub in which
20 the facility is located, identifying the existence of a reliability
21 need. The authority shall work with the New York state energy research
22 and development authority to provide any funding necessary for a
23 regional clean energy hub to meet the needs of this subdivision. The
24 authority, in consultation with the independent system operator, shall
25 ensure that the phase out of its existing non-renewable generation does
26 not lead to an increase in the delivery of out-of-state non-renewable
27 generation into the New York state electric grid. For the purposes of
28 this subdivision, a "reliability need" means an electricity system need,
29 which if unmet, would result in a violation of the electric power system
30 planning and operating policies, standards, criteria, guidelines, proce-
31 dures, and rules promulgated by the North American Electric Reliability
32 Corporation ("NERC"), Northeast Power Coordinating Council ("NPCC"), and
33 the New York State Reliability Council ("NYSRC"), as they may be amended
34 from time to time.

35 (b) The authority shall prioritize funding, siting, building, and
36 owning renewable energy projects which: (i) actively benefit disadvan-
37 tagged communities as defined by the climate justice working group; (ii)
38 minimize harm to wildlife, ecosystems, public health, and public safety;
39 (iii) do not violate Indigenous rights or sovereignty; and (iv) which
40 are the most cost-effective to the state according to the best available
41 cost modeling research. The types of renewable energy projects the
42 authority builds shall be determined and prioritized in consultation
43 with affected labor unions and community organizations via the New York
44 state energy research and development authority's regional clean energy
45 hubs.

46 33. (a) Within two years of the effective date of this subdivision,
47 the authority shall make public a ten-year climate and resiliency plan.
48 Such climate and resiliency plan shall be designed to minimize costs to
49 ratepayers, while balancing the interests of employees, grid reliability
50 and resiliency, disadvantaged communities as defined by the climate
51 justice working group, and the environment. Such plan shall be developed
52 in consultation with the New York state independent system operator,
53 the New York state energy research and development authority, the
54 New York state department of public service, and climate and resiliency
55 experts, labor organizations, environmental justice communities, resi-
56 dential and small business ratepayer advocates, and community organiza-

1 tions via the New York state energy research and development authori-
2 ty's regional clean energy hubs. Such resiliency plan shall outline the
3 renewable energy projects the authority plans to build, how the authori-
4 ty plans to phase out non-renewable assets and how the authority plans
5 to comply with the climate leadership and community protection act and
6 the renewable energy targets in subdivisions thirty-two and thirty-four
7 of this section, and efforts to improve energy and electric grid resili-
8 ency. The authority shall update such plan annually, after public
9 comment and a hearing. Such updated plan shall include a review of the
10 state's progress towards the renewable energy goals of the climate lead-
11 ership and community protection act. If the authority, in consultation
12 with the New York state energy research and development authority,
13 determines that the renewable energy goals of the climate leadership and
14 community protection act are not likely to be met within the timeframe
15 established by the law, the authority shall include in the updated plan
16 the renewable energy projects it plans to build to ensure the state
17 meets such goals, including the permit applications submitted, the stage
18 of each project in the development process, when such projects are
19 expected to be commissioned, and any barriers to deployment experienced
20 by the authority. If the authority has identified a reliability need to
21 maintain its existing non-renewable generation pursuant to subdivision
22 thirty-two of this section, the authority shall identify in the annual
23 report the renewable energy project, energy storage project, trans-
24 mission or distribution infrastructure, demand response, or other such
25 project or projects that the authority, or another entity, only if such
26 entity has obtained all the necessary permits and has begun
27 construction, plans to develop to meet the reliability need.

28 (b) Within two years of the effective date of this subdivision, the
29 authority shall make public a democratization plan, with a mandate to
30 implement the plan within two years of its completion. Such plan shall
31 be created in partnership with, and codesigned with, a statewide alli-
32 ance of community organizations with at least five years' history of
33 working on energy democracy and implementation issues, providing funding
34 for this alliance as necessary for their participation in the completion
35 of the plan. Such plan shall ensure that the scale up of renewable build
36 out across the state occurs in line with the principles of energy democ-
37 racy and transparency.

38 (c) The authority shall hold at least eight public hearings within two
39 years of the effective date of this subdivision related to the climate
40 and resiliency plan. The hearing shall be publicized in various forms
41 of media, including but not limited to the authority's website, local
42 newspapers and social media platforms, and shall also be accessible via
43 livestream. In advance of such hearing, the authority shall conspicu-
44 ously post written notice of such hearing in all authority facilities
45 and New York state energy research and development authority regional
46 clean energy hubs on a sign posted at each facility entrance and exit
47 used by employees, and shall provide at least two weeks advance notice
48 of such hearing to authority customers by directly communicating such
49 notice to customer phone, email and mailing lists. Hearings shall be
50 permitted between 12:00 PM to 3:00 PM and 6:00 PM to 9:00 PM, and the
51 authority shall provide all speakers with the option to sign up to speak
52 within those three hour windows such that no speaker shall wait longer
53 than three hours to speak. In addition to oral testimony, written
54 testimony from the public for such hearings shall be accepted by the
55 authority no less than two weeks after each hearing. Each speaker shall
56 have at least three minutes to speak, and a remote option shall be

1 provided for submitting comments via video conference, phone, including
2 short message services (SMS) text messages and/or written comment, which
3 shall be read aloud. Provisions for translation services, American sign
4 language interpretation, closed captioning, and access to accommodations
5 provided by the Americans with Disabilities Act shall be provided upon
6 request.

7 (d) The authority shall maintain all data, meeting minutes, recordings
8 and documents that do not include personal customer information, includ-
9 ing but not limited to depreciation schedules, annual financial state-
10 ments of itemized spending, environmental impact statements, cost-bene-
11 fit analyses, climate and resiliency plans, renewable energy project
12 plans, and annual reports on operations, customer service, reliability,
13 resiliency and sustainability. All such data, meeting minutes,
14 recordings and documents shall be made available on the authority's
15 website, or otherwise made accessible by the authority upon request.
16 All such records shall be maintained as business records for a minimum
17 of ten years. The state comptroller shall audit the authority at least
18 once every two years until two thousand thirty to ascertain whether the
19 authority is in compliance with the renewable energy targets outlined in
20 this subdivision and subdivisions thirty-two, thirty-four and thirty-
21 five of this section and whether the authority's spending and operations
22 are effectively and efficiently promoting the common good. The most
23 recent comptroller audits shall also be made available on the authori-
24 ty's website, or otherwise made accessible by the authority upon
25 request.

26 (e) (i) The authority, in consultation with the New York state energy
27 research and development authority and the public service commission,
28 shall develop and conduct an energy efficiency and energy audit program
29 to identify public buildings most in need of retrofits and efficiency
30 measures. Such program shall provide for the installation of renewable
31 heating and cooling systems, and, when feasible, other green building
32 projects as defined in section 58-0101 of the environmental conservation
33 law, in public housing and public schools by the year two thousand thir-
34 ty-five, prioritizing first public affordable housing and public schools
35 in disadvantaged communities. The authority shall hire authority employ-
36 ees or contractors to perform energy audits, retrofits and other effi-
37 ciency programs for these buildings, and provide incentives, in conjunc-
38 tion with the New York state energy research and development authority,
39 for energy efficient appliances and induction stoves, as needed, to meet
40 the climate goals outlined in the climate leadership and community
41 protection act. If the buildings selected for this program need mold
42 remediation measures or lead abatement measures to be carried out before
43 energy efficiency measures can be safely implemented, the authority
44 shall also hire employees or contractors to perform lead abatement meas-
45 ures and/or mold remediation measures for these buildings.

46 (ii) The authority shall annually post on its website a report evalu-
47 ating the energy efficiency program, including, but not limited to, the
48 number of customers served by the efficiency program, the customer demo-
49 graphics, the number of retrofits and energy audits performed, the
50 number of jobs created and employee demographics, and the amount of
51 energy and dollars saved as a result of the program.

52 (iii) All work subject to this subdivision shall be considered public
53 work, subject to articles eight and nine of the labor law, and shall
54 utilize a project labor agreement. For purposes of this subdivision,
55 "project labor agreement" shall mean a pre-hire collective bargaining
56 agreement between the authority, or a third party on behalf of the

1 authority, and a bona fide building and construction trade labor organ-
2 ization establishing the labor organization as the collective bargaining
3 representative for all persons who will perform work on a public work
4 project, and which provides that only contractors and subcontractors who
5 sign a pre-negotiated agreement with the labor organization can perform
6 project work. All contractors and subcontractors associated with this
7 work shall be required to utilize apprenticeship agreements as defined
8 by article twenty-three of the labor law.

9 (f) The authority shall submit an annual report to the governor and to
10 the legislature which shall be made available to the public. Such report
11 shall include the:

12 (A) Ten year climate and resiliency plan described in paragraph (a) of
13 this subdivision;

14 (B) Amount of energy produced by each facility;

15 (C) Energy transferred between facilities within the authority;

16 (D) Energy transferred outside of the authority for sale;

17 (E) Kilowatt-hour sales by project;

18 (F) Revenues and costs for each project facility;

19 (G) Accumulated provision for depreciation of each project facility;

20 (H) Financial and operating information of the energy efficiency
21 program;

22 (I) Enrollment in and effectiveness of renewable energy auto-enroll-
23 ment, retrofit, and energy efficient appliance programs;

24 (J) Any projected rate increase for the year; and

25 (K) An analysis of the authority's actions to ensure the state will
26 meet the renewable energy goals of the climate leadership and community
27 protection act.

28 34. Notwithstanding any other provision of law, on or after January
29 first, two thousand thirty, the authority shall be the sole provider of
30 electricity to all state owned, leased, controlled, or operated build-
31 ings and on or after January first, two thousand thirty-five, the
32 authority shall be the sole provider of electricity to all municipal
33 owned, leased, controlled, or operated buildings that use electricity,
34 provided that the energy supply rate of such electricity is less than
35 the energy supply rate of the utility in the municipal building's
36 service territory.

37 35. (a) The authority is authorized to sell or provide renewable ener-
38 gy to residential end-use customers and CCA communities. Any excess
39 renewable energy produced by the authority and not used or stored by
40 state or municipal owned or leased buildings shall be sold directly to
41 low-to-moderate income households first, prioritizing low-to-moderate
42 income households in disadvantaged communities, and at a rate that is
43 fifty percent less than the energy supply rate of the utility in the
44 customer's service territory. Any remaining excess renewable energy
45 produced by the authority shall be sold to residential end-use customers
46 or CCA's at the wholesale cost. This subdivision shall not interfere
47 with the authority's existing Recharge New York power program or any
48 other power allocation program managed by the authority as of the effec-
49 tive date of this subdivision. For the purposes of this paragraph, the
50 term "low-to-moderate income households" shall mean households with
51 annual incomes at or below eighty percent of the area median income of
52 the county or metro area where they reside.

53 (b) Within three years following the effective date of this subdivi-
54 sion, the authority's trustees, in consultation with the New York state
55 energy research and development authority's regional clean energy hubs,

1 shall develop a progressive rate structure based on income and energy
2 usage to be offered to end-use customers and CCA communities.

3 (c) The authority shall work with the office of temporary and disabili-
4 ty assistance to assist low-income customers to access the low income
5 home energy assistance program and other utility benefits and shall
6 offer deferred payment agreement payment plans for customers that fall
7 into arrears.

8 (d) The authority is authorized to sell up to thirty percent of the
9 electricity that it provides to residential and commercial customers to
10 customers of the long island power authority, established under title
11 one-A of this article, and the long island power authority is authorized
12 to purchase this power.

13 36. All new renewable energy projects subject to this section shall be
14 considered public work, subject to articles eight and nine of the labor
15 law and shall utilize a project labor agreement. For purposes of this
16 subdivision, "project labor agreement" shall mean a pre-hire collective
17 bargaining agreement between the authority, or a third party on behalf
18 of the authority, and a bona fide building and construction trade labor
19 organization establishing the labor organization as the collective
20 bargaining representative for all persons who will perform work on a
21 public work project, and which provides that only contractors and
22 subcontractors who sign a pre-negotiated agreement with the labor organ-
23 ization can perform project work. All contractors and subcontractors
24 associated with this work shall be required to utilize apprenticeship
25 agreements as defined by article twenty-three of the labor law.

26 37. The authority, in consultation with labor organizations, shall
27 develop a comprehensive plan to transition, train, or retrain employees
28 that are impacted by the New York state build public renewables act, and
29 shall establish and contribute to a just transition fund that shall make
30 funding available for worker transition and retraining.

31 38. The authority shall include requirements in any procurement or
32 development of a renewable energy project, as defined in subdivision
33 thirty of this section, that the components and parts shall be supplied
34 with equipment produced or made in whole or substantial part in the
35 United States, its territories or possessions. The authority's trustees,
36 in consultation with the New York state energy research and development
37 authority, may waive the procurement and development requirements set
38 forth in this subdivision if the trustees determine that: the require-
39 ments would not be in the public interest; the requirements would result
40 in unreasonable costs; obtaining such infrastructure components and
41 parts in the United States would increase the cost of a renewable energy
42 project by an unreasonable amount; or such components or parts cannot be
43 produced, made, or assembled in the United States in sufficient and
44 reasonably available quantities or of satisfactory quality. Such deter-
45 mination must be made on an annual basis no later than December thirty-
46 first after providing notice and an opportunity for public comment, and
47 be made publicly available, in writing, on the authority's website with
48 a detailed explanation of the findings leading to such determination. If
49 the authority's trustees have issued determinations for three consec-
50 utive years that no such waiver is warranted pursuant to this subdivi-
51 sion, then the authority shall no longer be required to provide the
52 annual determination required by this subdivision.

53 39. The authority shall work with existing workforce development
54 programs, union apprenticeship programs, and regional community energy
55 hubs to publish a report on the ways that the construction of renewable
56 projects can best support the development of skilled, well paid local

1 workforces in the renewable energy sector, and shall provide financial
2 support through the just transition fund established pursuant to subdi-
3 vision thirty-seven of this section for pre-apprenticeship programs
4 through local community based organizations that work with disadvantaged
5 communities and union run workforce development institutions, where
6 this support is found to be necessary to the effective development of
7 this workforce according to the report.

8 40. For energy projects that the authority builds on properties of the
9 New York city housing authority, including heat pump installations,
10 retrofits, weatherization measures, and lead, mold, and asbestos remedi-
11 ation, both the authority and its contractors shall prioritize hiring
12 residents of these properties, provided that residents meet consider-
13 ations of availability, interest, skill level and training. No
14 provisions of this subdivision shall alter the status of any Section 9
15 housing. The authority shall consult the residents or occupants of all
16 public buildings where the authority is building projects to assess
17 their needs and minimize disruption, nuisance, public health risks, and
18 displacement during any remediation, retrofit, weatherization, heat pump
19 installations, or other construction the authority or its contractors
20 perform. All work subject to this subdivision shall be considered
21 public work, subject to articles eight and nine of the labor law, and
22 shall utilize a project labor agreement. For purposes of this subdivi-
23 sion, "project labor agreement" shall mean a pre-hire collective
24 bargaining agreement between the authority, or a third party on behalf
25 of the authority, and a bona fide building and construction trade labor
26 organization establishing the labor organization as the collective
27 bargaining representative for all persons who will perform work on a
28 public work project, and which provides that only contractors and
29 subcontractors who sign a pre-negotiated agreement with the labor organ-
30 ization can perform project work. All contractors and subcontractors
31 associated with this work shall be required to utilize apprenticeship
32 agreements as defined by article twenty-three of the labor law.

33 41. (a) Nothing in the New York state build public renewables act
34 shall alter the rights or benefits, and privileges, including, but not
35 limited to terms and conditions of employment, civil service status, and
36 collective bargaining unit membership, of any current employees of the
37 authority.

38 (b) Nothing in the New York state build public renewables act shall
39 result in: (i) the discharge, displacement, or loss of position, includ-
40 ing partial displacement such as a reduction in the hours of non-over-
41 time work, wages, or employment benefits; (ii) the impairment of exist-
42 ing collective bargaining agreements; (iii) the transfer of existing
43 duties and functions; or (iv) the transfer of future duties and func-
44 tions, of any currently employed worker impacted by this act who agrees
45 to be retrained.

46 42. The authority shall enter into a memorandum of understanding for
47 the operation and maintenance of a renewable energy project developed
48 pursuant to the New York state build public renewables act with a bona
49 fide labor organization of jurisdiction that is actively engaged in
50 representing transitioning employees from non-renewable generation
51 facilities. The memorandum shall only apply to the employees necessary
52 for the maintenance and operation of such renewable energy generation
53 projects. Such memorandum shall contain but not be limited to safety and
54 training standards, disaster response measures, guaranteed hours, staff-
55 ing levels, pay rate protection and retraining programs. The employees
56 eligible for these positions shall first be selected from and offered to

a pool of transitioning workers who have lost their employment or will be losing their employment in the non-renewable energy generation sector. Such list of potential employees will be provided by affected unions and provided to the department of labor. The department of labor shall update and provide such list to the authority ninety days prior to purchase, acquisition, and/or construction of any project under the New York state build public renewables act.

§ 3. Section 1003 of the public authorities law, as amended by chapter 766 of the laws of 2005, is amended to read as follows:

§ 1003. Trustees. 1. The authority shall consist of [seven] seventeen trustees, five of whom shall serve respectively for terms of one, two, three, four and five years, to be appointed by the governor, by and with the advice and consent of the senate. The sixth and seventh trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve initial terms of one and two years respectively. All other trustees shall be appointed as follows: two by the governor, four by the temporary president of the senate, and four by the speaker of the assembly, and shall proportionally be selected from labor union representatives that represent both employees of the authority and employees of construction contractors of the authority, environmental justice advocates, community renewable energy advocates, consumer advocates, and building electrification and energy efficiency experts. For any appointment and vacant trustee position, the New York state energy research and development authority's clean energy hubs shall select qualified candidates that shall be given reasonable consideration for an appointment as trustee by the governor, senate, and assembly. Each trustee shall hold office until a successor has been appointed and qualified or until removed by a majority vote of the legislature or the governor. At the expiration of the term of each trustee and of each succeeding trustee ~~[the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for a term of five years, or until a successor has been appointed and qualified. In the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for the unexpired term. Four trustees shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof.],~~ or the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, the original entities who appointed that trustee shall appoint a successor, after consideration of clean energy hub candidates, who shall hold office for the unexpired term. Nine trustees shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof. Any authority trustee or board member may be terminated by either a majority vote of the senate or assembly, or by the governor. Reasons for termination may include, but are not limited to: failure to meet the renewable energy targets outlined in this bill; conflicts of interest; failure to prioritize climate justice, environmental justice, or economic justice in the authority's operations; sexual assault or harassment; or corruption.

2. The trustee chosen as chairman as provided in section one thousand four of this title, shall receive an annual salary which shall be set by the trustees of the authority, and which shall not exceed the salary prescribed for the positions listed in paragraph (f) of subdivision one of section one hundred sixty-nine of the executive law. [Each other trustee shall not receive a salary or other compensation.] Each trustee shall receive his or her reasonable expenses in the performance of his

1 or her duties hereunder. The trustee chosen as chairman may elect to
2 become a member of the New York state and local employees' retirement
3 system on the basis of such compensation to which he or she shall be
4 entitled as herein provided notwithstanding the provisions of any gener-
5 al, special or local law, municipal charter, or ordinance.

6 § 4. Nothing in this act is intended to limit, impair, or affect the
7 legal authority of the power authority of the state of New York under
8 any other provision of title 1 of article 5 of the public authorities
9 law.

10 § 5. No section of this act or any action required to be taken under
11 this act shall be delayed or made contingent upon the completion of the
12 plan required by subdivision 33 of section 1005 of the public authori-
13 ties law, as added by section two of this act.

14 § 6. Severability clause. If any clause, sentence, paragraph, subdi-
15 vision, or section of this act shall be adjudged by any court of compe-
16 tent jurisdiction to be invalid, such judgment shall not affect, impair,
17 or invalidate the remainder thereof, but shall be confined in its opera-
18 tion to the clause, sentence, paragraph, subdivision, or section thereof
19 directly involved in the controversy in which such judgment shall have
20 been rendered. It is hereby declared to be the intent of the legislature
21 that this act would have been enacted even if such invalid provisions
22 had not been included herein.

23 § 7. This act shall take effect immediately.