

4692

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the energy law, the public authorities law and the public service law, in relation to refuge facilities

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

1 Section 1. The legislature hereby finds that there is a need to  
2 protect the public from potential disruptions to the energy transmission  
3 and distribution system, whether caused by natural or man-made occur-  
4 rences. Such needs can be met through the creation of refuge facilities  
5 in every locality in the state that can assure the public of continuous  
6 provision of electric, heat and other necessary utility services in  
7 times of disruption of the delivery of such services. Such refuge facil-  
8 ities shall be either existing or new buildings which have energy and  
9 heat producing equipment and which provide electricity and heat through  
10 such on-site technologies and that such equipment is capable of opera-  
11 tion independent of the receipt of power or other services from the  
12 local electric utility transmission and distribution system.

13 The legislature also finds that, in order to promote the development  
14 of appropriate facilities and energy production equipment, it is appro-  
15 priate for state agencies to provide financial assistance in the form of  
16 low-interest or zero-interest loans, grants, performance contracts and  
17 other appropriate financing mechanisms. In addition, the legislature  
18 also finds that current technologies exist which could provide the dual  
19 purpose of reducing energy costs for such facilities, and thus also  
20 provide benefits to local taxpayers for lower public facilities costs.  
21 In addition, to ensure that such facilities do not create additional  
22 cost burdens for local taxpayers, and in consideration of the public  
23 safety and security to be provided to the localities, such facilities  
24 shall be exempt from any statutory or regulatory requirements for utili-

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

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1 ty standby rates, unreasonable interconnection charges, or exit fees or  
2 other similar rates or requirements.

3 S 2. The energy law is amended by adding a new article 22 to read as  
4 follows:

5 ARTICLE 22  
6 REFUGE FACILITIES

7 SECTION 22-101. DEFINITIONS.

8 22-102. REFUGE FACILITIES, CREATION.

9 22-103. UTILITY RATE TREATMENT.

10 22-104. PERFORMANCE CONTRACTS.

11 S 22-101. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

12 1. "REFUGE FACILITY" SHALL MEAN A FACILITY OWNED AND OPERATED BY A  
13 MUNICIPALITY, AS DEFINED IN SECTION NINE HUNDRED EIGHTY OF THE GENERAL  
14 MUNICIPAL LAW, OR A SCHOOL DISTRICT, AS PURSUANT TO TITLE TWO OF THE  
15 EDUCATION LAW, INCLUDING BUT NOT LIMITED TO SCHOOL BUILDINGS, MUNICIPAL  
16 OFFICE BUILDINGS, COMMUNITY CENTERS, OR PUBLIC UNIVERSITIES, COLLEGES OR  
17 COMMUNITY COLLEGES, AS DEFINED PURSUANT TO THE EDUCATION LAW, OR OTHER  
18 APPROPRIATE STRUCTURE OR FACILITY THAT IS CAPABLE OF PROVIDING SHELTER  
19 FOR A SIGNIFICANT PORTION OF THE LOCAL POPULATION DURING TIMES OF  
20 MAN-MADE OR NATURAL DISASTER.

21 2. "COGENERATION TECHNOLOGY" SHALL MEAN ANY ONE OF THE SEVERAL TECH-  
22 NOLOGIES THAT CAN BE USED FOR COMBINED HEAT AND POWER APPLICATIONS, AND  
23 WHICH CONSIST OF APPLICATIONS OF TECHNOLOGIES WHEREIN WASTE HEAT FROM  
24 ON-SITE ELECTRIC GENERATION PROCESS IS RECOVERED TO PROVIDE STEAM OR HOT  
25 WATER TO MEET ON-SITE NEEDS, SUCH AS HEATING AND/OR AIR CONDITIONING.  
26 FOR PURPOSES OF THIS ARTICLE, COGENERATION TECHNOLOGIES MUST ATTAIN  
27 OVERALL SYSTEM EFFICIENCY OF SIXTY PERCENT, CONSIDERING BOTH THERMAL AND  
28 ELECTRICAL PROCESSES TOGETHER.

29 3. "FINANCIAL ASSISTANCE" SHALL MEAN GRANTS, LOANS, INTEREST SUBSI-  
30 DIES, LOAN GUARANTEES AND OTHER APPROPRIATE FUNDING MECHANISMS, INCLUD-  
31 ING PERFORMANCE CONTRACTING, CONSIDERING THE CIRCUMSTANCES OF THE  
32 PROJECT. WITH THE EXCEPTION OF GRANTS, ANY FINANCIAL ASSISTANCE  
33 PROVIDED ACCORDING TO THIS SUBDIVISION SHALL BE REPAID TO THE ISSUING  
34 AUTHORITY, OVER A PERIOD NOT TO EXCEED TEN YEARS, WITH SAVINGS IN ENERGY  
35 COSTS AND RELATED COSTS WHICH ACCRUE TO THE FACILITY OWNER AS A RESULT  
36 OF INSTALLING AND OPERATING SUCH COGENERATION EQUIPMENT.

37 S 22-102. REFUGE FACILITIES, CREATION. 1. FOR PURPOSES OF IMPLEMENTING  
38 THE PROVISIONS OF THIS ARTICLE, EVERY COUNTY, EXCEPT THOSE CONTAINED  
39 WITHIN THE CITY OF NEW YORK, AND THE CITY OF NEW YORK SHALL INITIATE AND  
40 IMPLEMENT A PROGRAM TO IDENTIFY AND CREATE FACILITIES WHICH CAN BE  
41 UTILIZED AS REFUGE FACILITIES. SUCH REFUGE FACILITIES SHALL BE IDENTI-  
42 FIED AND INCLUDED IN ANY AND ALL LOCAL DISASTER PREPAREDNESS PLANS TO BE  
43 COMPLETED AND IMPLEMENTED ACCORDING TO SECTION TWENTY-THREE OF THE EXEC-  
44 UTIVE LAW. COUNTY EMERGENCY MANAGEMENT OFFICIALS AND THE CITY OF NEW  
45 YORK EMERGENCY MANAGEMENT OFFICIAL SHALL COOPERATE AND COORDINATE  
46 EFFORTS TO IDENTIFY AND ESTABLISH REFUGE FACILITIES WITH THE DIRECTOR OF  
47 THE STATE EMERGENCY MANAGEMENT OFFICE AND THE DISASTER PREPAREDNESS  
48 COMMISSION. TO THE EXTENT POSSIBLE AND FEASIBLE, COUNTY EMERGENCY  
49 MANAGEMENT OFFICIALS AND THE CITY OF NEW YORK EMERGENCY MANAGEMENT OFFI-  
50 CIAL SHALL INTEGRATE ANY SUCH ACTIVITIES WITH THOSE OF ANY AND ALL STATE  
51 DISASTER PREPAREDNESS PLANS AS REQUIRED PURSUANT TO SECTION TWENTY-TWO  
52 OF THE EXECUTIVE LAW.

53 2. COUNTY EMERGENCY MANAGEMENT OFFICIALS, WORKING IN COORDINATION  
54 WITH APPROPRIATE STATE, CITY, TOWN AND VILLAGE OFFICIALS, SHALL IDENTIFY  
55 AN APPROPRIATE NUMBER OF REFUGE FACILITIES TO BE LOCATED WITHIN THE  
56 COUNTY, WITH RESPECT TO THE POPULATION AND OTHER CONSIDERATIONS NECES-

1 SARY TO PROVIDE ADEQUATE RELIEF IN TIMES OF AN EMERGENCY. THE CITY OF  
2 NEW YORK EMERGENCY MANAGEMENT OFFICIAL SHALL WORK IN COORDINATION WITH  
3 ALL APPROPRIATE STATE OFFICIALS TO IDENTIFY AN APPROPRIATE NUMBER OF  
4 REFUGE FACILITIES TO BE LOCATED WITHIN THAT CITY, WITH RESPECT TO THE  
5 POPULATION AND OTHER CONSIDERATIONS NECESSARY TO PROVIDE ADEQUATE RELIEF  
6 IN TIMES OF AN EMERGENCY.

7 3. EACH REFUGE FACILITY SHALL BE REGISTERED WITH THE COUNTY EMERGENCY  
8 MANAGEMENT OFFICE IN THE COUNTY IN WHICH SUCH FACILITY IS SITUATED,  
9 EXCEPT IN THE CITY OF NEW YORK WHEREIN THE CITY EMERGENCY MANAGEMENT  
10 OFFICE SHALL MAINTAIN SUCH REGISTRATION. THE REGISTRIES SHALL BE UPDATED  
11 ANNUALLY. SUCH REGISTRIES SHALL ALSO BE PROVIDED TO THE STATE EMERGENCY  
12 MANAGEMENT OFFICE.

13 S 22-103. UTILITY RATE TREATMENT. NO ELECTRIC CORPORATION, AS DEFINED  
14 BY SUBDIVISION THIRTEEN OF SECTION TWO OF THE PUBLIC SERVICE LAW, SHALL  
15 ESTABLISH OR MODIFY ANY TARIFFS WITH RESPECT TO REFUGE FACILITIES THAT  
16 INSTALL COGENERATION EQUIPMENT. ANY REFUGE FACILITY THAT IS REGISTERED  
17 WITH THE STATE EMERGENCY MANAGEMENT OFFICE SHALL FURTHER BE EXEMPT FROM  
18 PAYMENT OF ANY EXIT FEES OR ANY LOST REVENUES RESULTING FROM THE INSTAL-  
19 LATION AND OPERATION OF COGENERATION EQUIPMENT AT THE REFUGE FACILITY.  
20 TO THE EXTENT THAT THE REFUGE FACILITY REQUIRES INTERCONNECTION WITH THE  
21 LOCAL ELECTRIC UTILITY SYSTEM, NO ELECTRIC CORPORATION SHALL ESTABLISH  
22 OR MODIFY ANY TARIFF TO ESTABLISH A STANDBY RATE THAT DOES NOT TAKE INTO  
23 ACCOUNT THE ACTUAL COSTS AND BENEFITS OF THE DISTRIBUTED GENERATION  
24 RESOURCE. SUCH STANDBY RATE SHALL CONSIDER THE RELIABILITY OF THE  
25 ON-SITE GENERATION, AS DETERMINED BY THE FREQUENCY AND DURATION OF  
26 OUTAGES, SO THAT CUSTOMERS WITH MORE RELIABLE ON-SITE GENERATION AND  
27 THOSE THAT REDUCE PEAK DEMAND PAY A LOWER COST-BASED RATE. TO THE EXTENT  
28 THE INSTALLATION OF ANY COGENERATION EQUIPMENT RESULTS IN INTERCON-  
29 NECTION FEES, AN ELECTRIC CORPORATION SHALL ONLY COLLECT INTERCONNECTION  
30 FEES THAT ARE REASONABLE.

31 S 22-104. PERFORMANCE CONTRACTS. FOR PURPOSES OF IMPLEMENTING THIS  
32 ARTICLE, THE PROVISIONS OF ARTICLE NINE OF THIS CHAPTER SHALL BE APPLI-  
33 CABLE FOR THOSE PROJECTS FOR WHICH PERFORMANCE CONTRACTING IS A PREFERA-  
34 BLE METHOD FOR THE FINANCING, INSTALLATION AND OPERATION OF COGENERATION  
35 TECHNOLOGY EQUIPMENT.

36 S 3. Section 1005 of the public authorities law is amended by adding a  
37 new subdivision 16 to read as follows:

38 16. TO PROVIDE FINANCIAL ASSISTANCE FOR THE INSTALLATION OF COGENERA-  
39 TION TECHNOLOGIES FOR THE PURPOSE OF CREATING AND MAINTAINING REFUGE  
40 FACILITIES PURSUANT TO ARTICLE TWENTY-TWO OF THE ENERGY LAW.

41 A. THE AUTHORITY MAY MAKE AVAILABLE FINANCIAL ASSISTANCE; PROVIDED  
42 THAT NO COSTS ASSOCIATED WITH SUCH FINANCIAL ASSISTANCE SHALL BE CHARGED  
43 TO THE AUTHORITY'S CUSTOMERS. SUCH FUNDS SHALL BE USED FOR THE DEVELOP-  
44 MENT OF REFUGE FACILITIES AS IDENTIFIED AMONG THE AUTHORITY'S CUSTOMERS.

45 B. THE AUTHORITY MAY SOLICIT APPLICATIONS FOR FINANCIAL ASSISTANCE BY  
46 PUBLIC NOTICE. SUCH NOTICE SHALL BE IN THE FORM OF ADVERTISEMENTS, PRESS  
47 RELEASES, AND BY SUCH OTHER MEANS AS THE AUTHORITY FINDS APPROPRIATE.

48 C. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A  
49 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY  
50 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE  
51 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-  
52 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF  
53 FINANCIAL ASSISTANCE REQUIRED.

54 S 4. Sections 1020-gg, 1020-hh and 1020-ii of the public authorities  
55 law, as renumbered by chapter 234 of the laws of 2004, are renumbered

1 sections 1020-hh, 1020-ii and 1020-jj and a new section 1020-gg is added  
2 to read as follows:

3 S 1020-GG. REFUGE FACILITIES; COMPLIANCE. 1. THE AUTHORITY MAY ASSIST  
4 WITH THE IMPLEMENTATION OF THE REFUGE FACILITIES, AS STATED IN ARTICLE  
5 TWENTY-TWO OF THE ENERGY LAW, WITHIN THE SERVICE TERRITORY.

6 2. THE AUTHORITY MAY MAKE AVAILABLE FINANCIAL ASSISTANCE; PROVIDED  
7 THAT NO COSTS ASSOCIATED WITH SUCH FINANCIAL ASSISTANCE SHALL BE CHARGED  
8 TO THE AUTHORITY'S CUSTOMERS. SUCH FUNDS SHALL BE USED FOR THE DEVELOP-  
9 MENT OF REFUGE FACILITIES WITHIN THE AUTHORITY'S SERVICE TERRITORY.

10 3. THE AUTHORITY MAY SOLICIT APPLICATIONS FOR FINANCIAL ASSISTANCE BY  
11 PUBLIC NOTICE. SUCH NOTICE SHALL BE IN THE FORM OF ADVERTISEMENT, PRESS  
12 RELEASES, AND BY SUCH OTHER MEANS AS THE AUTHORITY FINDS APPROPRIATE.

13 4. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A  
14 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY  
15 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE  
16 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-  
17 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF  
18 FINANCIAL ASSISTANCE REQUIRED.

19 S 5. Section 1854 of the public authorities law is amended by adding a  
20 new subdivision 18 to read as follows:

21 18. TO PROVIDE FINANCIAL ASSISTANCE FOR THE INSTALLATION OF COGENERA-  
22 TION TECHNOLOGIES FOR THE PURPOSE OF CREATING AND MAINTAINING REFUGE  
23 FACILITIES PURSUANT TO ARTICLE TWENTY-TWO OF THE ENERGY LAW. THE  
24 AUTHORITY MAY SOLICIT APPLICATIONS FOR FINANCIAL ASSISTANCE BY PUBLIC  
25 NOTICE, WHICH PUBLIC NOTICE SHALL BE IN THE FORM OF ADVERTISEMENTS,  
26 PRESS RELEASES, AND BY SUCH OTHER MEANS AS THE AUTHORITY FINDS APPROPRI-  
27 ATE. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A  
28 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY  
29 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE  
30 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-  
31 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF  
32 FINANCIAL ASSISTANCE REQUIRED. WHERE APPROPRIATE, THE AUTHORITY MAY  
33 ACCESS FUNDS RECEIVED FROM UTILITY ASSESSMENTS FOR ENERGY EFFICIENCY AND  
34 OTHER RESEARCH AND DEVELOPMENT ACTIVITIES IN ORDER TO PROVIDE GRANTS FOR  
35 PROJECTS REQUIRING ADDITIONAL FINANCIAL ASSISTANCE, AND WHERE PERFORM-  
36 ANCE CONTRACTING IS NOT AVAILABLE. THE AUTHORITY MAY MAKE AVAILABLE  
37 FINANCIAL ASSISTANCE, WHICH SHALL BE MADE AVAILABLE FOR PROJECTS IN  
38 UTILITY SERVICE TERRITORIES WHEREIN THE RATEPAYERS OF SUCH UTILITIES  
39 CONTRIBUTE TO SUCH ASSESSMENT FOR ENERGY EFFICIENCY AND RESEARCH AND  
40 DEVELOPMENT.

41 S 6. Section 66 of the public service law is amended by adding a new  
42 subdivision 29 to read as follows:

43 29. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO  
44 REFUGE FACILITY THAT IS IDENTIFIED AND IMPLEMENTED IN ACCORDANCE WITH  
45 ARTICLE TWENTY-TWO OF THE ENERGY LAW SHALL BE SUBJECT TO ANY TRANSITION  
46 COSTS, EXIT FEES, OR ADDITIONAL PAYMENTS, SUCH AS STANDBY RATES, RELATED  
47 TO THE DISCONTINUANCE OF SERVICES FROM ITS FORMER SUPPLIER OF RETAIL  
48 DISTRIBUTION SERVICE WHEN SUCH REFUGE FACILITY RECEIVES ELECTRIC SERVICE  
49 IN WHOLE OR IN PART FROM A SOURCE OF ELECTRICITY ACCORDING TO THE  
50 PROVISIONS OF ARTICLE TWENTY-TWO OF THE ENERGY LAW AND GENERATES A  
51 SUBSTANTIAL PORTION OF ITS OWN POWER AND DISTRIBUTES THAT POWER IN A  
52 MANNER WHICH BYPASSES THE RETAIL DISTRIBUTION SYSTEM OF ITS FORMER  
53 SUPPLIER.

54 S 7. The New York state energy research and development authority  
55 shall assess the feasibility, costs, and benefits of installing renewa-  
56 ble energy technologies, including cogeneration technology on the prem-

1 ises of refuge facilities as established under article 22 of the energy  
2 law. The authority shall report back to the legislature with its find-  
3 ings within 6 months of the effective date of this act.  
4 S 8. This act shall take effect immediately.