

Fourth Extraordinary Session

I N S E N A T E

June 25, 2009

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public authorities law, in relation to energy efficiency and clean energy initiatives of the power authority of the state of New York, and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Section 1005 of the public authorities law is amended by
2 adding a new subdivision 16 to read as follows:
3 16. (A) AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, TO FINANCE
4 AND DESIGN, DEVELOP, CONSTRUCT, IMPLEMENT, PROVIDE AND ADMINISTER ENER-
5 GY-RELATED PROJECTS, PROGRAMS AND SERVICES FOR ANY PUBLIC ENTITY AND ANY
6 RECIPIENT OF THE ECONOMIC DEVELOPMENT POWER, EXPANSION POWER, REPLACE-
7 MENT POWER, PRESERVATION POWER, HIGH LOAD FACTOR POWER, MUNICIPAL
8 DISTRIBUTION AGENCY POWER, AND THE POWER FOR JOBS PROGRAMS ADMINISTERED
9 BY THE AUTHORITY. IN ESTABLISHING AND PROVIDING HIGH PERFORMANCE AND
10 SUSTAINABLE BUILDING PROGRAMS AND SERVICES AUTHORIZED BY THIS SUBDIVI-
11 SION, THE AUTHORITY IS AUTHORIZED TO CONSULT STANDARDS, GUIDELINES,
12 RATING SYSTEMS, AND/OR CRITERIA ESTABLISHED OR ADOPTED BY OTHER ORGAN-
13 IZATIONS, INCLUDING BUT NOT LIMITED TO THE UNITED STATES GREEN BUILDING
14 COUNCIL UNDER ITS LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)
15 PROGRAMS, THE GREEN BUILDING INITIATIVE'S GREEN GLOBES RATING SYSTEM,
16 AND THE AMERICAN NATIONAL STANDARDS INSTITUTE. THE SOURCE OF ANY FINANC-
17 ING AND/OR LOANS PROVIDED BY THE AUTHORITY FOR THE PURPOSES OF THIS
18 SUBDIVISION MAY BE THE PROCEEDS OF NOTES ISSUED PURSUANT TO SECTION ONE
19 THOUSAND NINE-A OF THIS TITLE, THE PROCEEDS OF BONDS ISSUED PURSUANT TO
20 SECTION ONE THOUSAND TEN OF THIS TITLE, OR ANY OTHER AVAILABLE AUTHORITY
21 FUNDS.

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

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(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT INDICATES ANOTHER MEANING OR INTENT:

(1) "AGENCY" MEANS ANY AGENCY, DEPARTMENT, OR OFFICE OF THE STATE OF NEW YORK.

(2) "ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES" MEANS ENERGY EFFICIENCY PROJECTS AND SERVICES, CLEAN ENERGY TECHNOLOGY PROJECTS AND SERVICES, AND HIGH PERFORMANCE AND SUSTAINABLE BUILDING PROGRAMS AND SERVICES, AND THE CONSTRUCTION, INSTALLATION AND/OR OPERATION OF FACILITIES OR EQUIPMENT DONE IN CONNECTION WITH ANY SUCH PROJECTS, PROGRAMS OR SERVICES.

(3) "ENERGY SERVICES CONTRACT" OR "CONTRACT" MEANS A CONTRACT PURSUANT TO WHICH THE AUTHORITY PROVIDES ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES.

(4) "HIGH PERFORMANCE AND SUSTAINABLE BUILDING PROGRAMS AND SERVICES" MEANS PROGRAMS AND SERVICES RELATED TO THE RENOVATION AND RETROFITTING OF BUILDINGS THROUGH THE INCORPORATION OF STANDARDS, GUIDELINES, RATING SYSTEMS, AND/OR CRITERIA RELATING TO DESIGN AND BUILDING TECHNIQUES ESTABLISHED BY THE AUTHORITY PURSUANT TO THIS SECTION, WHICH ARE ADDRESSED TO SUCH ISSUES AS ENERGY EFFICIENCY, ENERGY CONSERVATION, THE USE OF RENEWABLE ENERGY, THE REDUCTION OF AIR AND OTHER POLLUTION, AND THE CONSERVATION OF MATERIALS AND RESOURCES SUCH AS WATER.

(5) "PUBLIC ENTITY" MEANS AN AGENCY, PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION, PUBLIC CORPORATION, MUNICIPAL CORPORATION, SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, PUBLIC UNIVERSITY, FIRE DISTRICT, DISTRICT CORPORATION, OR SPECIAL IMPROVEMENT DISTRICT GOVERNED BY A SEPARATE BOARD OF COMMISSIONERS.

(6) "PUBLIC AUTHORITY" MEANS A PUBLIC AUTHORITY FORMED BY OR UNDER THE LAWS OF THE STATE OF NEW YORK TO THE EXTENT ITS FACILITIES ARE LOCATED WITHIN THE STATE, AND THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY TO THE EXTENT THAT ITS FACILITIES ARE LOCATED WITHIN THE STATE.

(7) "PUBLIC BENEFIT CORPORATION" MEANS A PUBLIC BENEFIT CORPORATION AS DEFINED IN SUBDIVISION FOUR OF SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW.

(8) "PUBLIC UNIVERSITY" MEANS THE CITY UNIVERSITY OF NEW YORK INCLUDING ANY SENIOR COLLEGE OR COMMUNITY COLLEGE AS DEFINED IN SECTION SIXTY-TWO HUNDRED TWO OF THE EDUCATION LAW, AND THE STATE UNIVERSITY OF NEW YORK INCLUDING FOUR-YEAR COLLEGES ESTABLISHED PURSUANT TO SECTION SIXTY-THREE HUNDRED SEVEN OF THE EDUCATION LAW AND COMMUNITY COLLEGES AS DEFINED IN SECTION SIXTY-THREE HUNDRED ONE OF THE EDUCATION LAW.

(C) ANY PUBLIC ENTITY IS AUTHORIZED TO ENTER INTO AN ENERGY SERVICES CONTRACT WITH THE AUTHORITY FOR ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES THAT ARE AUTHORIZED BY THIS SUBDIVISION, PROVIDED THAT (I) THE AUTHORITY ISSUES AND ADVERTISES WRITTEN REQUESTS FOR PROPOSALS FROM THIRD PARTY PROVIDERS OF GOODS AND SERVICES IN ACCORDANCE WITH THE AUTHORITY'S PROCUREMENT POLICIES, PROCEDURES AND/OR GUIDELINES, AND (II) THE AUTHORITY SHALL NOT CONTRACT WITH A THIRD PARTY PROVIDER OF GOODS AND SERVICES IF SUCH PERSON IS LISTED ON A DEBARMENT LIST MAINTAINED AND PUBLISHED IN ACCORDANCE WITH NEW YORK LAW, AS BEING INELIGIBLE TO SUBMIT A BID ON OR BE AWARDED ANY PUBLIC CONTRACT OR SUBCONTRACT WITH THE STATE, ANY MUNICIPAL CORPORATION OR PUBLIC BODY.

(D)(I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY ENERGY SERVICES CONTRACT ENTERED INTO BY THE AUTHORITY WITH ANY PUBLIC ENTITY: (1) MAY HAVE A TERM OF UP TO THIRTY-FIVE YEARS DURATION, PROVIDED, HOWEVER, THAT THE DURATION OF ANY SUCH CONTRACT SHALL NOT EXCEED THE REASONABLY EXPECTED USEFUL LIFE OF ANY FACILITIES OR EQUIP-

1 MENT CONSTRUCTED, INSTALLED OR OPERATED AS PART OF SUCH ENERGY-RELATED
2 PROJECTS, PROGRAMS AND SERVICES SUBJECT TO SUCH CONTRACT; AND (2) SHALL
3 CONTAIN THE FOLLOWING CLAUSE: "THIS CONTRACT SHALL BE DEEMED EXECUTORY
4 ONLY TO THE EXTENT OF THE MONIES APPROPRIATED AND AVAILABLE FOR THE
5 PURPOSE OF THE CONTRACT, AND NO LIABILITY ON ACCOUNT THEREFOR SHALL BE
6 INCURRED BEYOND THE AMOUNT OF SUCH MONIES. IT IS UNDERSTOOD THAT NEITHER
7 THIS CONTRACT NOR ANY REPRESENTATION BY ANY PUBLIC EMPLOYEE OR OFFICER
8 CREATES ANY LEGAL OR MORAL OBLIGATION TO REQUEST, APPROPRIATE OR MAKE
9 AVAILABLE MONIES FOR THE PURPOSE OF THE CONTRACT." A SCHOOL DISTRICT OR
10 BOARD OF COOPERATIVE EDUCATIONAL SERVICES MAY ONLY ENTER INTO AN ENERGY
11 SERVICES CONTRACT WITH THE AUTHORITY FOR SUCH MAXIMUM TERM AS IS
12 PRESCRIBED IN THE REGULATIONS PROMULGATED BY THE COMMISSIONER OF EDUCA-
13 TION OR THE USEFUL LIFE OF THE FACILITIES OR EQUIPMENT BEING
14 CONSTRUCTED, INSTALLED OR OPERATED, WHICHEVER IS LESS.

15 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN
16 ORDER TO PROVIDE AN INTEREST IN REAL OR OTHER PROPERTY NECESSARY FOR THE
17 CONSTRUCTION OF FACILITIES OR THE OPERATION OF EQUIPMENT PROVIDED FOR IN
18 AN ENERGY SERVICES CONTRACT, A PUBLIC ENTITY MAY ENTER INTO A LEASE OR
19 OTHER AGREEMENT WITH THE AUTHORITY CONCERNING REAL OR OTHER PROPERTY TO
20 WHICH IT HOLDS TITLE OR WHICH IS UNDER ITS ADMINISTRATIVE JURISDICTION,
21 AS IS NECESSARY FOR SUCH CONSTRUCTION OR OPERATION, FOR THE SAME LENGTH
22 OF TIME AS THE TERM OF THE ENERGY SERVICES CONTRACT AND ON SUCH TERMS
23 AND CONDITIONS AS MAY BE AGREEABLE TO THE PARTIES THERETO AND ARE NOT
24 OTHERWISE INCONSISTENT WITH LAW, AND NOTWITHSTANDING THAT SUCH REAL OR
25 OTHER PROPERTY MAY REMAIN USEFUL TO SUCH ENTITY FOR THE PURPOSE FOR
26 WHICH SUCH REAL OR OTHER PROPERTY WAS ORIGINALLY ACQUIRED OR DEVOTED OR
27 FOR WHICH SUCH REAL OR OTHER PROPERTY IS BEING USED.

28 (E) NOTHING CONTAINED IN THIS SUBDIVISION IS INTENDED TO LIMIT, IMPAIR
29 OR AFFECT THE AUTHORITY'S LEGAL AUTHORITY TO PROVIDE ENERGY EFFICIENCY
30 AND ENERGY SERVICES PROGRAMS THAT EXISTED AS OF THE EFFECTIVE DATE OF
31 THIS SUBDIVISION.

32 (F) THE AUTHORITY SHALL COMPLETE AND SUBMIT A REPORT, ON OR BEFORE
33 JANUARY THIRTY-FIRST, TWO THOUSAND TWELVE, ON THOSE ACTIVITIES UNDERTAK-
34 EN PURSUANT TO THIS SUBDIVISION TO THE GOVERNOR, THE SPEAKER OF THE
35 ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF
36 THE SENATE, THE MINORITY LEADER OF THE ASSEMBLY, THE CHAIR OF THE SENATE
37 FINANCE COMMITTEE, THE CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE,
38 THE CHAIR OF THE ASSEMBLY ENERGY COMMITTEE AND THE CHAIR OF THE SENATE
39 ENERGY COMMITTEE.

40 S 2. This act shall take effect immediately and shall expire three
41 years after it shall have become a law; provided that such expiration
42 shall not affect the validity of any energy services contract authorized
43 by this act and entered into prior to its expiration.