S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. OAKS, BARRA, CROUCH, FINCH, WALKER -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BARCLAY, BUTLER, DUPREY, ERRIGO, GIGLIO, JORDAN, KOLB, McDONOUGH, MILLER, RABBITT, SAYWARD, SCOZZAFAVA, TOWNSEND -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to establishing the natural gas infrastructure act; 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:

Section 1. Legislative intent. The legislature hereby recognizes that in order to retain and create jobs in rural communities, the availability of natural gas distribution systems is often critical to certain manufacturers and other energy users. The legislature further recognizes that under current law, the public service commission will not approve projects submitted by gas utilities if the project costs exceed anticipated revenues. In order to make such projects viable, the natural gas infrastructure grant fund established by this act would provide up to fifty percent of the total costs of an eligible project in the form of a grant to a requesting county industrial development agency, or agencies if the project crossed county lines. The agency would own those facilities paid for by this fund and would provide local input and oversight in addition to the franchise powers already given to municipalities. The franchised natural gas local distribution company would operate those sections of the distribution system owned by the industrial development agency.

S 2. Short title. This act shall be known and may be cited as the "natural gas infrastructure act".

S 3. The public service law is amended by adding a new article 12 to read as follows:

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

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ARTICLE 12
NATURAL GAS INFRASTRUCTURE ACT

SECTION 236. DEFINITIONS.
237. CREATION OF THE NATURAL GAS INFRASTRUCTURE GRANT FUND.
238. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT IN RESPECT TO THE NATURAL GAS INFRASTRUCTURE GRANT FUND.
239. CRITERIA FOR SELECTION OF AND FINANCIAL ASSISTANCE TO ELIGIBLE PROJECTS.
240. GRANT AGREEMENTS.
241. INSPECTION AND CERTIFICATION.
242. NONCOMPLIANCE; NOTIFICATION; APPLICATION FOR SERVICE.

S 236. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CONSTRUCTION" MEANS THE ERECTION, BUILDING, ACQUISITION, ALTERATION, RECONSTRUCTION, IMPROVEMENT, ENLARGEMENT OR EXTENSION OF AN ELIGIBLE PROJECT; THE INSPECTION AND SUPERVISION THEREOF; AND THE ENGINEERING, ARCHITECTURAL, LEGAL, FISCAL, AND ECONOMIC INVESTIGATIONS AND STUDIES, SURVEYS, DESIGNS, PLANS, WORKING DRAWINGS, SPECIFICATIONS, PROCEDURES, AND OTHER ACTIONS NECESSARY THERETO.

2. "ELIGIBLE PROJECT" MEANS A PROJECT INTENDED TO EXTEND NATURAL GAS SUPPLY FACILITIES TO RURAL AREAS FOR ECONOMIC DEVELOPMENT PURPOSES BY THE CONSTRUCTION OF NATURAL GAS DISTRIBUTION FACILITIES TO ONE OR MORE IDENTIFIED USERS WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, MAIN LINE, SERVICE LINE, AND APPURTENANT FACILITIES WITH A PROPOSAL JOINTLY SUBMITTED BY THE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND LOCAL DISTRIBUTION COMPANY TO THE DEPARTMENT IN A MANNER PRESCRIBED BY THE DEPARTMENT.

SUCH ELIGIBLE PROJECTS WILL BE TO EXTEND GAS TO TOWNS WHOLLY MORE THAN FIFTEEN MILES FROM THE BOUNDARY OF A CITY WITH A POPULATION OF FIFTY THOUSAND OR MORE PEOPLE, AND WHOLLY MORE THAN TWENTY-FIVE MILES FROM THE BOUNDARY OF A CITY WITH A POPULATION OF TWO HUNDRED THOUSAND OR MORE PEOPLE; AND THE POPULATION DENSITY OF SUCH A TOWN, INCLUDING ITS MUNICIPAL SUBDIVISIONS, CAN BE NO MORE THAN FOUR HUNDRED FIFTY PEOPLE PER SQUARE MILE. A PROJECT WILL NOT BE CONSIDERED AN ELIGIBLE PROJECT IF ITS COMPLETION WOULD RESULT IN A BYPASS OR RISK OF BYPASS TO ANY LOCAL DISTRIBUTION COMPANY. A BYPASS OR RISK OF BYPASS WILL EXIST IF THE COMPLETED PROJECT DISPLACES ANY OTHER LOCAL DISTRIBUTION COMPANY'S GAS LOAD OR GAS LOAD OPPORTUNITY, UNLESS THAT LOCAL DISTRIBUTION COMPANY CHOOSES NOT TO EXERCISE SUCH GAS LOAD OPPORTUNITY.

3. "ELIGIBLE COSTS" MEANS THAT PORTION OF AN ELIGIBLE PROJECT THAT MAY QUALIFY FOR MONEYS FROM THE FUND. IN NO EVENT MAY ELIGIBLE COSTS EXCEED FIFTY PERCENT OF THE TOTAL COSTS OF THE ELIGIBLE PROJECT.

4. "GRANT AGREEMENT" MEANS AN AGREEMENT BETWEEN THE DEPARTMENT AND ONE OR MORE RECIPIENTS MEETING THE REQUIREMENTS OF THIS ARTICLE.

5. "FUND" MEANS THE NATURAL GAS INFRASTRUCTURE GRANT FUND ESTABLISHED PURSUANT TO THIS ARTICLE.

6. "LOCAL DISTRIBUTION COMPANY" MEANS A FRANCHISED NATURAL GAS UTILITY FULLY SUBJECT TO THE JURISDICTION AND SUPERVISION OF THE DEPARTMENT IN ALL RESPECTS AND HAVING A TARIFF PUBLICLY FILED AND APPROVED BY THE COMMISSION PRIOR TO THE DISBURSEMENT OF ANY MONIES.

7. "RECIPIENT" MEANS A COUNTY INDUSTRIAL DEVELOPMENT AGENCY, IN ACCORDANCE WITH ARTICLE EIGHTEEN-A OF THE GENERAL MUNICIPAL LAW, WHICH IS EMPOWERED TO CONSTRUCT A PORTION OF THE ELIGIBLE PROJECT, OR ANY TWO OR MORE OF THE FOREGOING WHICH ARE ACTING JOINTLY AND WITH THE PRIOR CONSENT OF THE LOCAL DISTRIBUTION COMPANY HOLDING A FRANCHISE IN THE AREA IN WHICH THE PROPOSED PROJECT IS LOCATED.

8. "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

9. "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SERVICE.

10. "FRANCHISE" MEANS A GAS FRANCHISE IN ACCORDANCE WITH SECTION SIXTY-EIGHT OF THIS CHAPTER OR, IN THE ABSENCE OF AN EXPRESS FRANCHISE, THE CURRENT AND HISTORIC RIGHT AND OBLIGATION TO SUPPLY GAS SERVICE IN THE PROJECT AREA.

11. "PROJECT FACILITIES" SHALL MEAN, BUT NOT BE LIMITED TO, ANY MAIN LINE, SERVICE LINE AND APPURTENANT FACILITIES CONSTRUCTED PURSUANT TO THE AUTHORITY OF THIS ARTICLE.

S 237. CREATION OF THE NATURAL GAS INFRASTRUCTURE GRANT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE DEPARTMENT AND THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "NATURAL GAS INFRASTRUCTURE GRANT FUND". THE STATE COMPTROLLER MAY ESTABLISH WITHIN THE NATURAL GAS INFRASTRUCTURE GRANT FUND ADDITIONAL ACCOUNTS OR SUBACCOUNTS AND SPECIFY ANY CONDITIONS APPLICABLE TO THE TRANSFER OF MONEYS BETWEEN SUCH ACCOUNTS OR SUBACCOUNTS. WITH RESPECT TO EACH ELIGIBLE PROJECT, THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN A RECORD OF THE FUNDS ALLOCATED TO EACH PROJECT.

2. SUCH FUND SHALL CONSIST OF MONEYS APPROPRIATED BY THE LEGISLATURE FOR THE PURPOSE OF SUCH FUND OR OTHERWISE TRANSFERRED BY LAW, AS WELL AS INVESTMENT EARNINGS ON AMOUNTS IN SUCH FUND. MONEYS SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSION.

3. MONEYS IN THE NATURAL GAS INFRASTRUCTURE GRANT FUND SHALL BE APPLIED OR DISTRIBUTED BY THE DEPARTMENT IN ACCORDANCE WITH THIS ARTICLE AND THE APPLICABLE PROVISIONS OF THIS CHAPTER TO PROVIDE FINANCIAL ASSISTANCE TO RECIPIENTS FOR ACQUISITION AND CONSTRUCTION OF ELIGIBLE PROJECTS AND TO PROVIDE FOR THE COSTS OF THE ADMINISTRATION AND MANAGEMENT OF THE FUND.

S 238. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT IN RESPECT TO THE NATURAL GAS INFRASTRUCTURE GRANT FUND. THE DEPARTMENT SHALL UNDERTAKE AND PROVIDE ASSISTANCE IN SUPPORT OF THE PROGRAM TO MAKE FINANCIAL ASSISTANCE AVAILABLE TO RECIPIENTS TO ENCOURAGE AND SUPPORT THE CONSTRUCTION OF NATURAL GAS DISTRIBUTION FACILITIES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE OR ANY OTHER PROVISION OF LAW, AS DETERMINED BY THE COMMISSION.

S 239. CRITERIA FOR SELECTION OF AND FINANCIAL ASSISTANCE TO ELIGIBLE PROJECTS. 1. THE DEPARTMENT SHALL ESTABLISH PROCEDURES AND PROMULGATE REGULATIONS, WHICH SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, CRITERIA AND STANDARDS FOR SELECTION OF ELIGIBLE PROJECTS; DETERMINING THE AMOUNT OF FINANCIAL ASSISTANCE TO A RECIPIENT FOR AN ELIGIBLE PROJECT; AND THE MANNER IN WHICH GRANT MONEYS SHALL BE APPLIED AND DISTRIBUTED.

2. PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE DEPARTMENT SHALL REVIEW, WITH THE ADVICE OF LOCAL DISTRIBUTION COMPANIES AND IN CONSULTATION WITH THE STATE DEPARTMENT OF ECONOMIC DEVELOPMENT AND ANY STATE AGENCY OR ENTITY WHICH IN THE DISCRETION OF THE DEPARTMENT IT SHOULD WISH TO CONSULT, APPLICATIONS FOR GRANT MONEYS OF POTENTIALLY ELIGIBLE PROJECTS. REVIEW OF SUCH APPLICATIONS SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, AN ASSESSMENT OF (A) THE IMPACT ON JOB GROWTH AND JOB RETENTION IN THE AFFECTED MUNICIPALITIES; (B) THE IMPACT ON ANY OTHER GEOGRAPHICAL AREA OF THE STATE; (C) THE POPULATION DENSITY OF THE AFFECTED MUNICIPALITY; (D) THE AFFECTED MUNICIPALITY'S LACK OF PROXIMITY TO A METROPOLITAN AREA; (E) THE AVAILABILITY OF AN ALTERNATE SOURCE OF FUNDING FOR THE PROPOSED PROJECT; (F) THE IMPACT ON ACHIEVING THE REGION'S AND THE STATE'S TECHNOLOGY AND ECONOMIC DEVELOPMENT GOALS; (G) PUBLIC HEALTH AND SAFETY; AND (H) COMPLIANCE WITH STATE AND FEDERAL LAW, RULES AND REGULATIONS.

3. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO REQUIRE A LOCAL DISTRIBUTION COMPANY HOLDING A FRANCHISE IN, OR HISTORICALLY SERVING, THE AREA IN WHICH THE PROPOSED PROJECT IS LOCATED TO UNDERTAKE A PROPOSED PROJECT.

S 240. GRANT AGREEMENTS. 1. PRIOR TO THE DISBURSEMENT OF ANY MONIES FROM THE FUND, THE DEPARTMENT AND ANY RECIPIENT HAVING THE POWER TO CONTRACT WITH RESPECT TO THE FINANCING OF AN ELIGIBLE PROJECT SHALL ENTER INTO A GRANT DISBURSEMENT AGREEMENT PROVIDING FOR THE CONSTRUCTION OF THE ELIGIBLE PROJECT. THE DEPARTMENT SHALL PREPARE EACH AGREEMENT, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING PROVISIONS:

(A) A DESCRIPTION OF THE ELIGIBLE PROJECT AND THE TOTAL PROJECT COST;

(B) A DETAILED ESTIMATE OF THE ELIGIBLE PROJECT COST;

(C) THE RIGHT OF THE DEPARTMENT TO APPROVE ANY CONTRACTS FOR CONSTRUCTION FUNDING PURSUANT TO THE AGREEMENT, AND TO INSPECT AND REVIEW THE CONSTRUCTION OF ELIGIBLE PROJECTS TO THE EXTENT PERMITTED BY LAW AND RULES AND REGULATIONS OF THE DEPARTMENT.

(D) REMEDIES IN THE EVENT OF A RECIPIENT'S FAILURE TO COMPLY WITH THE TERMS OF AN AGREEMENT; AND

(E) AN AGREEMENT BY THE DEPARTMENT TO GRANT TO THE RECIPIENT, FOR THE PARTIAL CONSTRUCTION OF AN ELIGIBLE PROJECT, A SPECIFIED AMOUNT NOT TO EXCEED FIFTY PERCENT OF THE ESTIMATED REASONABLE TOTAL COST OF CONSTRUCTION OF THE ELIGIBLE PROJECT ESTABLISHED IN THE AGREEMENT, SUBJECT TO THE ABILITY OF THE DEPARTMENT TO PROVIDE SUCH MONEYS, INCLUDING ANY OTHER APPROVALS REQUIRED BY STATE OR FEDERAL LAW AND SUCH OTHER CONDITIONS AS THE DEPARTMENT SHALL DETERMINE NECESSARY OR DESIRABLE.

(F) AN AGREEMENT BY THE RECIPIENT TO:

(I) PROCEED EXPEDITIOUSLY WITH AND COMPLETE THE ELIGIBLE PROJECT IN ACCORDANCE WITH PLANS APPROVED;

(II) OPERATE AND MAINTAIN THE ELIGIBLE PROJECT IN ACCORDANCE WITH APPLICABLE REQUIREMENTS OF FEDERAL AND STATE LAW;

(III) ESTABLISH AND MAINTAIN PROJECT ACCOUNTS IN ACCORDANCE WITH THE AGREEMENT AND GENERALLY ACCEPTED ACCOUNTING STANDARDS; AND

(IV) PERMIT ANY REVIEWS OR AUDITS AND PROVIDE ASSISTANCE DETERMINED TO BE REASONABLE AND NECESSARY BY THE COMMISSIONER.

2. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO LIMIT THE DEPARTMENT'S ABILITY TO TERMINATE OR IMPOSE CONDITIONS UPON THE OPERATION OF AN ELIGIBLE PROJECT PURSUANT TO THE PROVISIONS OF THIS CHAPTER OR ANY OTHER PROVISION OF LAW.

3. THE DEPARTMENT SHALL MAKE ANY SUCH OTHER AGREEMENTS OR COVENANTS AS THE DEPARTMENT MAY DEEM NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE BY THE DEPARTMENT OF ITS GRANT.

S 241. INSPECTION AND CERTIFICATION. 1. THE DEPARTMENT SHALL PROVIDE THE MEANS OF ENSURING THE COMPLIANCE OF RECIPIENTS WITH EACH GRANT AGREEMENT BY:

(A) RETAINING THE RIGHT TO INSPECT AND REVIEW WORK ON EACH ELIGIBLE PROJECT IN PROGRESS AND UPON COMPLETION, AND DETERMINING WHETHER SUCH WORK WAS UNDERTAKEN AND COMPLETED IN COMPLIANCE WITH ALL RELEVANT PLANS AND THE TERMS OF SUCH FINANCING AGREEMENT TO THE EXTENT THAT SUCH INSPECTIONS AND REVIEW ARE PERMITTED BY LAW AND RULES AND REGULATIONS OF THE DEPARTMENT;

(B) RETAINING THE RIGHT TO DISBURSE OR REFUSE TO DISBURSE PAYMENTS TO A RECIPIENT PURSUANT TO A GRANT AGREEMENT BASED UPON THE DETERMINATIONS OF ANY REVIEW OR AUDIT;

(C) ESTABLISHING REMEDIES IF WORK ON AN ELIGIBLE PROJECT HAS NOT BEEN COMPLETED IN ACCORDANCE WITH ALL RELEVANT PLANS AND THE TERMS OF SUCH GRANT AGREEMENT DUE TO FACTORS WITHIN THE RECIPIENT'S CONTROL; AND

(D) REQUIRING A RECIPIENT TO MAINTAIN PROJECT ACCOUNTS WITH RESPECT TO ANY ELIGIBLE PROJECT.

2. NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT OR DIMINISH THE GENERAL AUTHORITY OF THE DEPARTMENT TO INSPECT AND REVIEW THE WORK ON ANY PROJECT FINANCED PURSUANT TO THIS ARTICLE, OR TO INSPECT THE RECORDS RELATING TO SUCH PROJECT, FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH ANY OTHER PROVISIONS OF THIS CHAPTER.

S 242. NONCOMPLIANCE; NOTIFICATION; APPLICATION FOR SERVICE. IN THE EVENT THAT THE WORK COMPLETED PURSUANT TO AN AGREEMENT IS DEEMED NOT IN COMPLIANCE WITH SUCH AGREEMENT, THE DEPARTMENT SHALL EXPEDITIOUSLY NOTIFY THE RECIPIENT OF SUCH NONCOMPLIANCE AND INDICATE THE REASONS FOR SUCH DETERMINATION.

S 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 5. This act shall take effect immediately and shall expire and be deemed repealed 4 years after such date; provided, however, that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.