

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

5914--A

2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. KAVANAGH, GALEF, JAFFEE, MILLMAN, ROSENTHAL, SCARBOROUGH -- Multi-Sponsored by -- M. of A. CLARK, COLTON, GLICK, GOTTFRIED, HIKIND, HOOPER, V. LOPEZ, MCENENY, J. RIVERA, ROBINSON, SWEENEY, THIELE, WEISENBERG, WRIGHT -- read once and referred to the Committee on Energy -- recommitted to the Committee on Energy in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD00679-03-2

1 provide benefits to local taxpayers for lower public facilities costs.
2 In addition, to ensure that such facilities do not create additional
3 cost burdens for local taxpayers, and in consideration of the public
4 safety and security to be provided to the localities, such facilities
5 shall be exempt from any statutory or regulatory requirements for utili-
6 ty standby rates, unreasonable interconnection charges, or exit fees or
7 other similar rates or requirements.

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

10 ARTICLE 22
11 REFUGE FACILITIES

12 SECTION 22-101. DEFINITIONS.

13 22-102. REFUGE FACILITIES, CREATION.

14 22-103. UTILITY RATE TREATMENT.

15 22-104. PERFORMANCE CONTRACTS.

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

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

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

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

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

1 DISASTER PREPAREDNESS PLANS AS REQUIRED PURSUANT TO SECTION TWENTY-TWO
2 OF THE EXECUTIVE LAW.

3 2. COUNTY EMERGENCY MANAGEMENT OFFICIALS, WORKING IN COORDINATION
4 WITH APPROPRIATE STATE, CITY, TOWN AND VILLAGE OFFICIALS, SHALL IDENTIFY
5 AN APPROPRIATE NUMBER OF REFUGE FACILITIES TO BE LOCATED WITHIN THE
6 COUNTY, WITH RESPECT TO THE POPULATION AND OTHER CONSIDERATIONS NECES-
7 SARY TO PROVIDE ADEQUATE RELIEF IN TIMES OF AN EMERGENCY. THE CITY OF
8 NEW YORK EMERGENCY MANAGEMENT OFFICIAL SHALL WORK IN COORDINATION WITH
9 ALL APPROPRIATE STATE OFFICIALS TO IDENTIFY AN APPROPRIATE NUMBER OF
10 REFUGE FACILITIES TO BE LOCATED WITHIN THAT CITY, WITH RESPECT TO THE
11 POPULATION AND OTHER CONSIDERATIONS NECESSARY TO PROVIDE ADEQUATE RELIEF
12 IN TIMES OF AN EMERGENCY.

13 3. EACH REFUGE FACILITY SHALL BE REGISTERED WITH THE COUNTY EMERGENCY
14 MANAGEMENT OFFICE IN THE COUNTY IN WHICH SUCH FACILITY IS SITUATED,
15 EXCEPT IN THE CITY OF NEW YORK WHEREIN THE CITY EMERGENCY MANAGEMENT
16 OFFICE SHALL MAINTAIN SUCH REGISTRATION. THE REGISTRIES SHALL BE UPDATED
17 ANNUALLY. SUCH REGISTRIES SHALL ALSO BE PROVIDED TO THE STATE EMERGENCY
18 MANAGEMENT OFFICE.

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

37 S 22-104. PERFORMANCE CONTRACTS. FOR PURPOSES OF IMPLEMENTING THIS
38 ARTICLE, THE PROVISIONS OF ARTICLE NINE OF THIS CHAPTER SHALL BE APPLI-
39 CABLE FOR THOSE PROJECTS FOR WHICH PERFORMANCE CONTRACTING IS A PREFERA-
40 BLE METHOD FOR THE FINANCING, INSTALLATION AND OPERATION OF COGENERATION
41 TECHNOLOGY EQUIPMENT.

42 S 3. Section 1005 of the public authorities law is amended by adding a
43 new subdivision 19 to read as follows:

44 19. TO PROVIDE FINANCIAL ASSISTANCE FOR THE INSTALLATION OF COGENERA-
45 TION TECHNOLOGIES FOR THE PURPOSE OF CREATING AND MAINTAINING REFUGE
46 FACILITIES PURSUANT TO ARTICLE TWENTY-TWO OF THE ENERGY LAW.

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

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

54 C. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A
55 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY
56 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE

1 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-
2 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF
3 FINANCIAL ASSISTANCE REQUIRED.

4 S 4. Sections 1020-ii, 1020-jj and 1020-kk of the public authorities
5 law, as renumbered by chapter 388 of the laws of 2011, are renumbered
6 sections 1020-jj, 1020-kk and 1020-ll and a new section 1020-ii is added
7 to read as follows:

8 S 1020-II. REFUGE FACILITIES; COMPLIANCE. 1. THE AUTHORITY MAY ASSIST
9 WITH THE IMPLEMENTATION OF THE REFUGE FACILITIES, AS STATED IN ARTICLE
10 TWENTY-TWO OF THE ENERGY LAW, WITHIN THE SERVICE TERRITORY.

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

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

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

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

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

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

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

1 MANNER WHICH BYPASSES THE RETAIL DISTRIBUTION SYSTEM OF ITS FORMER
2 SUPPLIER.

3 S 7. The New York state energy research and development authority
4 shall assess the feasibility, costs, and benefits of installing renewa-
5 ble energy technologies, including cogeneration technology on the prem-
6 ises of refuge facilities as established under article 22 of the energy
7 law. The authority shall report back to the legislature with its find-
8 ings within 6 months of the effective date of this act.

9 S 8. This act shall take effect immediately.