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

7006

2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, the public authorities law, the real property law, the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law, in relation to green jobs-green New York on-bill recovery

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

Section 1. Subdivision 2 of section 18-a of the public service law is amended by adding a new paragraph (h) to read as follows:

(H) ON-BILL RECOVERY CHARGES BILLED PURSUANT TO SECTION SIXTY-SIX-M OF THIS CHAPTER SHALL BE EXCLUDED FROM ANY DETERMINATION OF AN ENTITY'S GROSS OPERATING REVENUES DERIVED FROM INTRASTATE UTILITY OPERATIONS FOR PURPOSES OF THIS SECTION.

S 2. Section 42 of the public service law is amended by adding a new subdivision 3 to read as follows:

3. THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL CUSTOMERS PARTICIPATING IN GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THIS CHAPTER SHALL BE SUBSTANTIALLY COMPARABLE TO THOSE OF GAS AND ELECTRIC CUSTOMERS NOT PARTICIPATING IN SUCH ON-BILL RECOVERY, AND CHARGES FOR ON-BILL RECOVERY SHALL BE TREATED AS CHARGES FOR UTILITY SERVICE FOR THE PURPOSE OF THIS ARTICLE, PROVIDED THAT:

(A) ALL DETERMINATIONS AND SAFEGUARDS RELATED TO THE TERMINATION AND RECONNECTION OF SERVICE SHALL APPLY TO ON-BILL RECOVERY CHARGES BILLED BY A UTILITY PURSUANT TO SUCH SECTION;

(B) IN THE EVENT THAT THE RESPONSIBILITY FOR MAKING UTILITY PAYMENTS HAS BEEN ASSUMED BY OCCUPANTS OF A MULTIPLE DWELLING PURSUANT TO SECTION THIRTY-THREE OF THIS ARTICLE OR BY OCCUPANTS OF A TWO-FAMILY DWELLING PURSUANT TO SECTION THIRTY-FOUR OF THIS ARTICLE, SUCH OCCUPANTS SHALL NOT BE BILLED FOR ANY ARREARS OF ON-BILL RECOVERY CHARGES OR ANY

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

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PROSPECTIVE ON-BILL RECOVERY CHARGES, WHICH SHALL REMAIN THE RESPONSIBILITY OF THE INCURRING CUSTOMER;

(C) DEFERRED PAYMENT AGREEMENTS PURSUANT TO SECTION THIRTY-SEVEN OF THIS ARTICLE SHALL BE AVAILABLE TO CUSTOMERS PARTICIPATING IN ON-BILL RECOVERY ON THE SAME TERMS AS OTHER CUSTOMERS, AND THE UTILITY SHALL RETAIN THE SAME DISCRETION TO DEFER TERMINATION OF SERVICE AS FOR ANY OTHER DELINQUENT CUSTOMER;

(D) WHERE A CUSTOMER HAS A BUDGET BILLING PLAN OR LEVELIZED PAYMENT PLAN PURSUANT TO SECTION THIRTY-EIGHT OF THIS ARTICLE, THE UTILITY SHALL RECALCULATE THE PAYMENTS UNDER SUCH PLAN TO REFLECT THE PROJECTED EFFECTS OF INSTALLING ENERGY EFFICIENCY MEASURES AS SOON AS PRACTICABLE AFTER RECEIPT OF INFORMATION ON THE ENERGY AUDIT AND QUALIFIED ENERGY EFFICIENCY SERVICES SELECTED;

(E) ON-BILL RECOVERY CHARGES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION FORTY-ONE OF THIS ARTICLE;

(F) LATE PAYMENT CHARGES ON UNPAID ON-BILL RECOVERY CHARGES SHALL BE DETERMINED AS PROVIDED IN THIS SECTION, AND ANY SUCH CHARGES SHALL BE REMITTED TO THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;

(G) NOTWITHSTANDING THE PROVISIONS OF SECTION FORTY-THREE OF THIS ARTICLE, WHEN A COMPLAINT IS RELATED SOLELY TO WORK PERFORMED UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM OR TO THE APPROPRIATE AMOUNT OF ON-BILL RECOVERY CHARGES, THE UTILITY SHALL ONLY BE REQUIRED TO INFORM THE CUSTOMER OF THE COMPLAINT HANDLING PROCEDURES OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, WHICH SHALL RETAIN RESPONSIBILITY FOR HANDLING SUCH COMPLAINTS, AND SUCH COMPLAINTS SHALL NOT BE DEEMED TO BE COMPLAINTS ABOUT UTILITY SERVICE IN ANY OTHER COMMISSION ACTION OR PROCEEDING; AND

(H) BILLING INFORMATION PROVIDED PURSUANT TO SECTION FORTY-FOUR OF THIS ARTICLE SHALL INCLUDE INFORMATION ON GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGES, INCLUDING THE BASIS FOR SUCH CHARGES, AND ANY INFORMATION OR INSERTS PROVIDED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY RELATED THERETO. IN ADDITION, AT LEAST ANNUALLY THE AUTHORITY SHALL PROVIDE THE UTILITY WITH INFORMATION FOR INCLUSION OR INSERTION IN THE CUSTOMER'S BILL THAT SETS FORTH THE AMOUNT AND DURATION OF REMAINING ON-BILL RECOVERY CHARGES AND THE AUTHORITY'S CONTACT INFORMATION AND PROCEDURES FOR RESOLVING CUSTOMER COMPLAINTS WITH SUCH CHARGES.

S 3. Paragraph (d) of subdivision 6 of section 65 of the public service law, as added by chapter 204 of the laws of 2010, is amended to read as follows:

(d) for installation of capital improvements and fixtures to promote energy efficiency upon the request and consent of the customer, INCLUDING BUT NOT LIMITED TO THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES FOR CUSTOMERS PARTICIPATING IN GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THIS ARTICLE.

S 4. The public service law is amended by adding a new section 66-m to read as follows:

S 66-M. GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY. 1. (A) THE COMMISSION SHALL REQUIRE EACH GAS AND ELECTRIC CORPORATION TO FILE TARIFFS TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL RECOVERY CHARGES FOR PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS TO THE GREEN JOBS-GREEN NEW YORK REVOLVING LOAN FUND ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. TO THE EXTENT PRACTICABLE, GAS AND ELECTRIC CORPORATIONS SHALL UTILIZE EXISTING ELECTRONIC DATA INTERCHANGE INFRASTRUCTURE OR OTHER EXISTING BILLING INFRAS-

TRUCTURE TO IMPLEMENT THEIR BILLING AND COLLECTION RESPONSIBILITIES UNDER THIS SECTION. TO THE MAXIMUM EXTENT PRACTICABLE, ELECTRIC AND GAS CORPORATIONS SHALL UTILIZE FUNDING AVAILABLE FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY TO DEFRAY ANY COSTS ASSOCIATED WITH ELECTRONIC DATA INTERCHANGE IMPROVEMENTS OR OTHER COSTS OF INITIATING AND IMPLEMENTING THIS PROGRAM. WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION SHALL REQUIRE ALL ELECTRIC AND GAS CORPORATIONS TO FILE TARIFFS TO IMPLEMENT BILLING AND COLLECTION SERVICES FOR GREEN JOBS-GREEN NEW YORK RECOVERY CHARGES FOR ELIGIBLE CUSTOMERS WITHIN THEIR SERVICE TERRITORIES. WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION AND CONSISTENT WITH THE REQUIREMENTS OF THE STATE ADMINISTRATIVE PROCEDURE ACT, THE COMMISSION SHALL TAKE FINAL ACTION ON SUCH TARIFFS AND SHALL PROVIDE THAT BILLING AND COLLECTION SERVICES UNDER SUCH TARIFFS SHALL COMMENCE AS SOON AS PRACTICABLE THEREAFTER.

(B) TO ENSURE PROPER PROGRAM DESIGN AND IMPLEMENTATION, EACH ELECTRIC AND GAS CORPORATION SHALL INITIALLY LIMIT THE NUMBER OF CUSTOMERS WHO PAY A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE AT ANY GIVEN TIME TO NO MORE THAN THREE PERCENT OF ITS TOTAL CUSTOMERS, ON A FIRST COME, FIRST SERVED BASIS. PRIOR TO REACHING SUCH LIMIT, THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL PETITION THE COMMISSION TO REVIEW SAID LIMIT, AND THE COMMISSION SHALL INCREASE SUCH LIMIT UNLESS THE COMMISSION FINDS THAT THE PROGRAM HAS CAUSED SIGNIFICANT HARM TO THE ELECTRIC OR GAS COMPANY OR ITS RATEPAYERS.

(C) THE COMMISSION MAY SUSPEND AN ELECTRIC OR GAS CORPORATION'S OFFER OF THE ON-BILL RECOVERY CHARGE PROVIDED THAT THE COMMISSION, AFTER CONDUCTING A HEARING AS PROVIDED IN SECTION TWENTY OF THIS CHAPTER, MAKES A FINDING THAT: (I) THERE IS A SIGNIFICANT INCREASE IN UTILITY SERVICE ARREARS OR DISCONNECTIONS THAT THE COMMISSION DETERMINES IS DIRECTLY RELATED TO THE ON-BILL RECOVERY CHARGE, OR (II) OTHER GOOD CAUSE.

(D) THE ON-BILL RECOVERY CHARGE SHALL BE COLLECTED ON THE BILL FROM THE CUSTOMER'S ELECTRIC CORPORATION UNLESS THE QUALIFIED ENERGY EFFICIENCY SERVICES AT THAT CUSTOMER'S PREMISES RESULT IN MORE PROJECTED ENERGY SAVINGS ON THE CUSTOMER'S GAS BILL THAN THE ELECTRIC BILL, IN WHICH CASE THE ON-BILL RECOVERY CHARGE SHALL BE COLLECTED ON THE CUSTOMER'S GAS CORPORATION BILL.

2. TARIFFS FOR THE COLLECTION AND BILLING OF ON-BILL RECOVERY CHARGES SHALL PROVIDE:

(A) THAT BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE TO CUSTOMERS WHO HAVE MET THE STANDARDS ESTABLISHED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR PARTICIPATION IN THE ON-BILL RECOVERY MECHANISM UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM AND HAVE EXECUTED AN AGREEMENT FOR THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES UNDER SUCH PROGRAM; PROVIDED, HOWEVER, THAT FOR RESIDENTIAL PROPERTIES ANY SUCH CUSTOMER MUST HOLD PRIMARY OWNERSHIP OR REPRESENT THE PRIMARY OWNER OR OWNERS OF THE PREMISES AND HOLD PRIMARY METER ACCOUNT RESPONSIBILITY OR REPRESENT THE PRIMARY HOLDER OR HOLDERS OF METER ACCOUNT RESPONSIBILITY FOR ALL METERS TO WHICH SUCH ON-BILL RECOVERY CHARGES WILL APPLY;

(B) THAT THE RESPONSIBILITIES OF THE ELECTRIC OR GAS CORPORATION ARE LIMITED TO PROVIDING BILLING AND COLLECTION SERVICES FOR ON-BILL RECOVERY CHARGES AS DIRECTED BY THE AUTHORITY;

(C) THAT THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL CUSTOMERS PAYING ON-BILL RECOVERY CHARGES SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE TWO OF THIS CHAPTER;

(D) UNLESS FULLY SATISFIED PRIOR TO SALE OR TRANSFER, THAT (I) THE ON-BILL RECOVERY CHARGES FOR ANY SERVICES PROVIDED AT THE CUSTOMER'S PREMISES SHALL SURVIVE CHANGES IN OWNERSHIP, TENANCY OR METER ACCOUNT RESPONSIBILITY, AND (II) THAT ARREARS IN ON-BILL RECOVERY CHARGES AT THE TIME OF ACCOUNT CLOSURE OR METER TRANSFER SHALL REMAIN THE RESPONSIBILITY OF THE INCURRING CUSTOMER, UNLESS EXPRESSLY ASSUMED BY A SUBSEQUENT PURCHASER OF THE PROPERTY SUBJECT TO SUCH ON-BILL RECOVERY CHARGES;

(E) THAT UNDERPAYMENTS OF BILLS SHALL BE ALLOCATED BETWEEN ON-BILL RECOVERY CHARGES AND OTHER CHARGES IN THE SAME PROPORTION SUCH CHARGES COMPRISE OF THE OVERALL BILL TOTAL;

(F) BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE WITHOUT REGARD TO WHETHER THE ENERGY OR FUEL DELIVERED BY THE UTILITY IS THE CUSTOMER'S PRIMARY ENERGY SOURCE;

(G) UNLESS OTHERWISE PRECLUDED BY LAW, PARTICIPATION IN THE GREEN JOBS-GREEN NEW YORK PROGRAM SHALL NOT AFFECT A CUSTOMER'S ELIGIBILITY FOR ANY REBATE OR INCENTIVE OFFERED BY A UTILITY; AND

(H) ANY OTHER PROVISIONS NECESSARY TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL RECOVERY CHARGES.

3. THE COMMISSION SHALL NOT APPROVE ANY APPLICATION FOR THE CONVERSION TO SUBMETERING OF ANY MASTER METER WHICH IS SUBJECT TO ANY ON-BILL RECOVERY CHARGES.

S 5. Sections 1020-hh, 1020-ii and 1020-jj of the public authorities law, as renumbered by chapter 433 of the laws of 2009, are renumbered sections 1020-ii, 1020-jj and 1020-kk and a new section 1020-hh is added to read as follows:

S 1020-HH. GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY. 1. WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE AUTHORITY SHALL ESTABLISH A PROGRAM TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL RECOVERY CHARGES FOR PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS TO THE GREEN JOBS-GREEN NEW YORK REVOLVING LOAN FUND ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THIS CHAPTER. SUCH PROGRAM SHALL BE CONSISTENT WITH THE STANDARDS SET FORTH IN SUBDIVISION THREE OF SECTION FORTY-TWO AND SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW. TO THE MAXIMUM EXTENT PRACTICABLE, FUNDING AVAILABLE FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL BE UTILIZED TO DEFRAY ANY COSTS ASSOCIATED WITH ELECTRONIC DATA INTERCHANGE IMPROVEMENTS OR OTHER COSTS OF INITIATING AND IMPLEMENTING THIS PROGRAM. BILLING AND COLLECTION SERVICES UNDER SUCH TARIFFS SHALL COMMENCE AS SOON AS PRACTICABLE AFTER ESTABLISHMENT OF THE PROGRAM.

2. THE AUTHORITY MAY SUSPEND ITS OFFERING OF THE ON-BILL RECOVERY CHARGE PROVIDED THAT, AFTER CONDUCTING A PUBLIC HEARING, THE AUTHORITY MAKES A FINDING THAT THERE IS A SIGNIFICANT INCREASE IN UTILITY SERVICE ARREARS OR DISCONNECTIONS THAT THE AUTHORITY DETERMINES IS DIRECTLY RELATED TO THE ON-BILL RECOVERY CHARGE, OR A FINDING OF OTHER GOOD CAUSE.

S 6. Section 1896 of the public authorities law, as added by chapter 487 of the laws of 2009, is amended to read as follows:

S 1896. Green jobs-green New York revolving loan fund. 1. (a) There is hereby created a green jobs-green New York revolving loan fund. The revolving loan fund shall consist of:

(i) all moneys made available for the purpose of the revolving loan fund pursuant to section eighteen hundred ninety-nine-a of this title;

(ii) payments of principal and interest, INCLUDING ANY LATE PAYMENT CHARGES, made pursuant to loan or financing agreements entered into with the authority or its designee pursuant to this section; and

(iii) any interest earned by the investment of moneys in the revolving loan fund.

(b) The revolving loan fund shall consist of two accounts:

(i) one account which shall be maintained for monies to be made available to provide loans to finance the cost of approved qualified energy efficiency services for residential structures and multi-family structures, and

(ii) one account which shall be maintained for monies made available to provide loans to finance the cost of approved qualified energy efficiency services for non-residential structures. The initial balance of the residential account established in [clause] SUBPARAGRAPH (i) of this paragraph shall represent at least fifty percent of the total balance of the two accounts. The authority shall not commingle the monies of the revolving loan fund with any other monies of the authority or held by the authority, nor shall the authority commingle the monies between accounts. Payments of principal, interest and fees shall be deposited into the account created and maintained for the appropriate type of eligible project.

(c) In administering such program, the authority is authorized and directed to:

(i) use monies made available for the revolving loan fund to achieve the purposes of this section by section eighteen hundred ninety-nine-a of this title, including but not limited to making loans available for eligible projects;

(ii) enter into contracts with one or more program implementers to perform such functions as the authority deems appropriate; [and]

(iii) ESTABLISH AN ON-BILL RECOVERY MECHANISM FOR REPAYMENT OF LOANS FOR THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES FOR ELIGIBLE PROJECTS IN THE FORM OF A CHARGE APPEARING ON THE PARTICIPATING CUSTOMER'S UTILITY BILL PROVIDED THAT SUCH ON-BILL RECOVERY MECHANISM SHALL PROVIDE FOR THE UTILIZATION OF ANY ON-BILL RECOVERY PROGRAMS ESTABLISHED PURSUANT TO SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW AND SECTION ONE THOUSAND TWENTY-HH OF THIS CHAPTER;

(IV) ESTABLISH STANDARDS FOR CUSTOMER PARTICIPATION IN SUCH ON-BILL RECOVERY MECHANISM, INCLUDING STANDARDS FOR RELIABLE UTILITY BILL PAYMENT, CURRENT GOOD STANDING ON ANY MORTGAGE OBLIGATIONS, ALTERNATIVE MEASURES OF CREDIT WORTHINESS AND SUCH ADDITIONAL STANDARDS AS THE AUTHORITY DEEMS NECESSARY; PROVIDED THAT IN ORDER TO PROVIDE BROAD ACCESS TO ON-BILL RECOVERY, THE AUTHORITY SHALL INCLUDE PARTICIPATION BY CUSTOMERS WHO ARE LESS LIKELY TO HAVE ACCESS TO TRADITIONAL SOURCES OF FINANCING; AND

(V) exercise such other powers as are necessary for the proper administration of the program, INCLUDING AT THE DISCRETION OF THE AUTHORITY, ENTERING INTO AGREEMENTS WITH APPLICANTS AND WITH SUCH STATE OR FEDERAL AGENCIES AS NECESSARY TO DIRECTLY RECEIVE REBATES AND GRANTS AVAILABLE FOR ELIGIBLE PROJECTS AND APPLY SUCH FUNDS TO REPAYMENT OF APPLICANT LOAN OBLIGATIONS.

2. (a) The authority shall provide financial assistance in the form of loans for the performance of qualified energy efficiency services for eligible projects on terms and conditions established by the authority.

(b) Loans made by the authority pursuant to this section shall be subject to the following limitations:

(i) eligible projects shall meet cost effectiveness standards developed by the authority;

(ii) loans shall not exceed thirteen thousand dollars per applicant for approved qualified energy efficiency services for residential struc-

tures, and twenty-six thousand dollars per applicant for approved qualified energy efficiency services for non-residential structures, PROVIDED, HOWEVER, THAT THE AUTHORITY MAY PERMIT A LOAN IN EXCESS OF SUCH AMOUNTS IF THE TOTAL COST OF ENERGY EFFICIENCY MEASURES FINANCED BY SUCH LOAN WILL ACHIEVE A PAYBACK PERIOD OF FIFTEEN YEARS OR LESS, BUT IN NO EVENT SHALL ANY SUCH LOAN EXCEED TWENTY-FIVE THOUSAND DOLLARS PER APPLICANT FOR RESIDENTIAL STRUCTURES AND FIFTY THOUSAND DOLLARS PER APPLICANT FOR NON-RESIDENTIAL STRUCTURES; and for multi-family structures loans shall be in amounts determined by the authority, provided, however, that the authority shall assure that a significant number of residential structures are included in the program; [and]

(iii) NO FEES OR PENALTIES SHALL BE CHARGED OR COLLECTED FOR PREPAYMENT OF ANY SUCH LOAN; AND

(IV) loans shall be at interest rates determined by the authority to be no higher than necessary to make the provision of the qualified energy efficiency services feasible.

In determining whether to make a loan, and the amount of any loan that is made, the authority is authorized to consider whether the applicant or borrower has received, or is eligible to receive, financial assistance and other incentives from any other source for the qualified energy efficiency services which would be the subject of the loan. IN DETERMINING WHETHER A LOAN WILL ACHIEVE A PAYBACK PERIOD OF FIFTEEN YEARS OR LESS PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE AUTHORITY MAY CONSIDER THE AMOUNT OF THE LOAN TO BE REDUCED BY THE AMOUNT OF ANY REBATES FOR QUALIFIED ENERGY EFFICIENCY SERVICES RECEIVED BY THE APPLICANT OR BY THE AUTHORITY ON BEHALF OF AN APPLICANT.

(c) Applications for financial assistance pursuant to this section shall be reviewed and evaluated by the authority or its designee pursuant to eligibility and qualification requirements and criteria established by the authority. The authority shall establish standards for (i) qualified energy efficiency services, and (ii) measurement and verification of energy savings. Such standards shall meet or exceed the standards used by the authority for similar programs in existence on the effective date of this section.

(d) The amount of a fee paid for an energy audit provided under section eighteen hundred ninety-five of this title may be added to the amount of a loan that is made under this section to finance the cost of an eligible project conducted in response to such energy audit. In such a case, the amount of the fee may be reimbursed from the fund to the borrower.

(E) IN ESTABLISHING AN ON-BILL RECOVERY MECHANISM:

(I) THE COST-EFFECTIVENESS OF AN ELIGIBLE PROJECT SHALL BE EVALUATED SOLELY ON THE BASIS OF THE COSTS AND PROJECTED SAVINGS TO THE APPLYING CUSTOMER, USING STANDARD ENGINEERING ASSESSMENTS AND PRIOR BILLING DATA AND USAGE PATTERNS; PROVIDED HOWEVER THAT BASED UPON THE MOST RECENT CUSTOMER DATA AVAILABLE, ON AN ANNUALIZED BASIS, THE MONTHLY ON-BILL REPAYMENT AMOUNT FOR A PACKAGE OF MEASURES SHALL NOT EXCEED ONE-TWELFTH OF THE SAVINGS PROJECTED TO RESULT FROM THE INSTALLATION OF THE MEASURES PROVIDED FURTHER THAT NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT OR PREVENT CUSTOMERS WHOSE PRIMARY HEATING ENERGY SOURCE IS FROM DELIVERABLE FUELS FROM PARTICIPATING IN THE PROGRAM;

(II) THE AUTHORITY SHALL ESTABLISH A PROCESS FOR RECEIPT AND RESOLUTION OF CUSTOMER COMPLAINTS CONCERNING ON-BILL RECOVERY CHARGES AND FOR ADDRESSING DELAYS AND DEFAULTS IN CUSTOMER PAYMENTS; AND

(III) THE AUTHORITY MAY LIMIT THE AVAILABILITY OF LIGHTING MEASURES OR HOUSEHOLD APPLIANCES THAT ARE NOT PERMANENTLY AFFIXED TO REAL PROPERTY.

3. THE AUTHORITY SHALL EVALUATE THE COST-EFFECTIVENESS OF THE ON-BILL RECOVERY MECHANISM ON AN ON-GOING BASIS. (A) IN CONDUCTING SUCH EVALUATION, THE AUTHORITY SHALL REQUEST EACH CUSTOMER TO PROVIDE:

(I) INFORMATION ON ENERGY USAGE AND/OR PERMISSION TO COLLECT INFORMATION ON ENERGY USAGE FROM UTILITIES AND OTHER RETAIL VENDORS, INCLUDING BUT NOT LIMITED TO INFORMATION REQUIRED TO BE FURNISHED TO CONSUMERS UNDER ARTICLE SEVENTEEN OF THE ENERGY LAW;

(II) INFORMATION ON OTHER SOURCES OF ENERGY USED IN THE CUSTOMER'S PREMISES; AND

(III) INFORMATION ON ANY IMPROVEMENTS OR MODIFICATIONS TO THE PREMISES THAT MAY SIGNIFICANTLY AFFECT ENERGY USAGE INCLUDING INFORMATION REGARDING ENERGY USAGE PRIOR TO AND SUBSEQUENT TO ANY QUALIFIED ENERGY EFFICIENCY SERVICES COMPLETED.

(B) AT A MINIMUM THE AUTHORITY SHALL COLLECT AND MAINTAIN INFORMATION FOR DATES PRIOR TO THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES, TO ESTABLISH A BASELINE, AND FOR DATES COVERING A SUBSEQUENT TIME PERIOD TO MEASURE THE EFFECTIVENESS OF SUCH MEASURES. SUCH DATA SHALL BE CORRELATED WITH INFORMATION FROM THE ENERGY AUDIT AND ANY OTHER RELEVANT INFORMATION, INCLUDING INFORMATION ON LOCAL WEATHER CONDITIONS, AND SHALL BE USED TO EVALUATE THE USE OF ON-BILL RECOVERY AND TO IMPROVE THE ACCURACY OF PROJECTIONS OF COST-EFFECTIVENESS ON AN ON-GOING BASIS. AN ANALYSIS OF SUCH DATA SHALL BE INCLUDED IN THE ANNUAL REPORT PREPARED PURSUANT TO SECTION EIGHTEEN HUNDRED NINETY-NINE OF THIS TITLE.

(C) ALL INFORMATION COLLECTED BY THE AUTHORITY SHALL BE CONFIDENTIAL AND SHALL BE USED EXCLUSIVELY FOR THE PURPOSES OF THIS SUBDIVISION.

4. (A) QUALIFIED ENERGY EFFICIENCY SERVICES REPAID THROUGH AN ON-BILL RECOVERY MECHANISM SHALL BE CONSIDERED A SPECIAL ENERGY PROJECT PURSUANT TO SECTION EIGHTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE. THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL SECURE EVERY LOAN ISSUED FOR SUCH SERVICES THAT ARE TO BE REPAID THROUGH AN ON-BILL RECOVERY MECHANISM WITH A MORTGAGE UPON THE REAL PROPERTY THAT IS IMPROVED BY SUCH SERVICES. SUCH MORTGAGE SHALL BE RECORDED PURSUANT TO SECTION TWO HUNDRED NINETY-ONE-D OF THE REAL PROPERTY LAW.

(B) ALL TERMS AND PROVISIONS OF A GREEN JOBS-GREEN NEW YORK MORTGAGE PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT AND SUBORDINATE TO THE LIEN OF ANY MORTGAGE OR MORTGAGES BY A BANK, CREDIT UNION OR OTHER INSTITUTIONAL LENDER. WHEN A SUBSEQUENT PURCHASER OF THE PROPERTY IS GRANTED A MORTGAGE, THE GREEN JOBS-GREEN NEW YORK MORTGAGE SHALL BE SUBORDINATE TO THE TERMS OF THAT MORTGAGE.

S 7. Subdivision 3 of section 1899 of the public authorities law, as added by chapter 487 of the laws of 2009, is amended to read as follows:

3. The status of the authority's activities and outcomes related to section eighteen hundred ninety-six of this title. Such report shall include, but not be limited to: (a) the number of persons who have applied for and received financial assistance through the revolving loan fund; (b) the revolving loan fund account balances; (c) the number of loans in default; [and] (d) the amount and nature of the costs incurred by the authority for the activities described in paragraph (c) of subdivision one of section eighteen hundred ninety-six of this title; AND (E) THE AUTHORITY'S ACTIVITIES AND OUTCOMES RELATED TO ESTABLISHING AN ON-BILL RECOVERY MECHANISM, INCLUDING THE NUMBER OF PERSONS WHO HAVE APPLIED FOR AND WHO HAVE RECEIVED FINANCIAL ASSISTANCE THAT UTILIZES ON-BILL RECOVERY AND THE RESULTS OF THE EVALUATION PROGRAM PERFORMED PURSUANT TO SUBDIVISION THREE OF SECTION EIGHTEEN HUNDRED NINETY-SIX OF THIS TITLE;

S 8. Section 242 of the real property law is amended by adding a new subdivision 4 to read as follows:

4. DISCLOSURE PRIOR TO THE SALE OF REAL PROPERTY TO WHICH A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE APPLIES. (A) ANY PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION OFFERING TO SELL REAL PROPERTY WHICH IS SUBJECT TO A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW SHALL PROVIDE WRITTEN NOTICE TO THE PROSPECTIVE PURCHASER OR THE PROSPECTIVE PURCHASER'S AGENT, STATING AS FOLLOWS: "THIS PROPERTY IS SUBJECT TO A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE". SUCH NOTICE SHALL ALSO STATE THE TOTAL AMOUNT OF THE ORIGINAL CHARGE, THE PAYMENT SCHEDULE AND THE APPROXIMATE REMAINING BALANCE, A DESCRIPTION OF THE ENERGY EFFICIENCY SERVICES PERFORMED, INCLUDING IMPROVEMENTS TO THE PROPERTY, AND AN EXPLANATION OF THE BENEFIT OF THE GREEN JOBS-GREEN NEW YORK QUALIFIED ENERGY EFFICIENCY SERVICES. SUCH NOTICE SHALL BE PROVIDED BY THE SELLER PRIOR TO ACCEPTING A PURCHASE OFFER.

(B) ANY PROSPECTIVE OR ACTUAL PURCHASER WHO HAS SUFFERED A LOSS DUE TO A VIOLATION OF THIS SUBDIVISION IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES INCURRED FROM THE PERSON OFFERING TO SELL OR SELLING SAID REAL PROPERTY.

S 9. Subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by chapter 749 of the laws of 1990, is amended to read as follows:

(g) There has been since July first, nineteen hundred seventy, a major capital improvement required for the operation, preservation or maintenance of the structure. A MAJOR CAPITAL IMPROVEMENT SHALL NOT INCLUDE AN ELIGIBLE PROJECT UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. An adjustment under this subparagraph [(g)] shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph [(g)] over a seven-year period; or

S 10. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide (a) as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted

operation of the building to meet the three year to three year comparative test periods herein provided; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a seven-year period, based upon cash purchase price exclusive of interest or service charges. A MAJOR CAPITAL IMPROVEMENT SHALL NOT INCLUDE AN ELIGIBLE PROJECT UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

S 11. Paragraph 3 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974 constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 749 of the laws of 1990, is amended to read as follows:

(3) there has been since January first, nineteen hundred seventy-four a major capital improvement required for the operation, preservation or maintenance of the structure. A MAJOR CAPITAL IMPROVEMENT SHALL NOT INCLUDE AN ELIGIBLE PROJECT UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, ESTABLISHED PURSUANT TO TITLE 9-A OF ARTICLE 8 OF THE PUBLIC AUTHORITIES LAW. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over a seven-year period, or

S 12. The second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 21 of the laws of 1962, clause 5 as amended by chapter 253 of the laws of 1993, is amended to read as follows:

No application for adjustment of maximum rent based upon a sales price valuation shall be filed by the landlord under this subparagraph prior to six months from the date of such sale of the property. In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale. Where, however, the assessed valuation of the land exceeds four times the assessed valuation of the buildings thereon, the commission may determine a valuation of the property equal to five times the equalized assessed valuation of the buildings, for the purposes of this

subparagraph. The commission may make a determination that the valuation of the property is an amount different from such equalized assessed valuation where there is a request for a reduction in such assessed valuation currently pending; or where there has been a reduction in the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of the application. Net annual return shall be the amount by which the earned income exceeds the operating expenses of the property, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the value of the buildings exclusive of the land, or the amount shown for depreciation of the buildings in the latest required federal income tax return, whichever is lower; provided, however, that (1) no allowance for depreciation of the buildings shall be included where the buildings have been fully depreciated for federal income tax purposes or on the books of the owner; or (2) the landlord who owns no more than four rental units within the state has not been fully compensated by increases in rental income sufficient to offset unavoidable increases in property taxes, fuel, utilities, insurance and repairs and maintenance, excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the property was acquired by the present owner, whichever is later; or (3) the landlord operates a hotel or rooming house or owns a cooperative apartment and has not been fully compensated by increases in rental income from the controlled housing accommodations sufficient to offset unavoidable increases in property taxes and other costs as are allocable to such controlled housing accommodations, including costs of operation of such hotel or rooming house, but excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the landlord commenced the operation of the property, whichever is later; or (4) the landlord and tenant voluntarily enter into a valid written lease in good faith with respect to any housing accommodation, which lease provides for an increase in the maximum rent not in excess of fifteen per centum and for a term of not less than two years, except that where such lease provides for an increase in excess of fifteen per centum, the increase shall be automatically reduced to fifteen per centum; or (5) the landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations; provided that an owner shall be entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation. The permanent increase in the maximum rent for the affected housing accommodation shall be one-fortieth of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges provided further that an owner who is entitled to a rent increase pursuant to this clause shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The owner shall give written notice to the commission of any such adjustment

pursuant to this clause; or (6) there has been, since March first, nineteen hundred fifty, an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodation therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements; or (7) there has been since March first, nineteen hundred fifty, a major capital improvement required for the operation, preservation or maintenance of the structure. A MAJOR CAPITAL IMPROVEMENT SHALL NOT INCLUDE AN ELIGIBLE PROJECT UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, ESTABLISHED PURSUANT TO TITLE 9-A OF ARTICLE 8 OF THE PUBLIC AUTHORITIES LAW; or (8) there has been since March first, nineteen hundred fifty, in structures containing more than four housing accommodations, other improvements made with the express consent of the tenants in occupancy of at least seventy-five per centum of the housing accommodations, provided, however, that no adjustment granted hereunder shall exceed fifteen per centum unless the tenants have agreed to a higher percentage of increase, as herein provided; or (9) there has been, since March first, nineteen hundred fifty, a subletting without written consent from the landlord or an increase in the number of adult occupants who are not members of the immediate family of the tenant, and the landlord has not been compensated therefor by adjustment of the maximum rent by lease or order of the commission or pursuant to the federal act; or (10) the presence of unique or peculiar circumstances materially affecting the maximum rent has resulted in a maximum rent which is substantially lower than the rents generally prevailing in the same area for substantially similar housing accommodations.

S 13. This act shall take effect immediately; provided, however, that the amendments to section 26-405 of the city rent and rehabilitation law made by section nine of this act shall remain in full force and effect only as long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act; provided further that the amendments to section 26-511 of the rent stabilization law of nineteen hundred sixty-nine made by section ten of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law, as from time to time amended; provided further that the amendments to section 6 of the emergency tenant protection act of nineteen seventy-four made by section eleven of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974, as from time to time amended; and further provided that the amendments to section 4 of the emergency housing rent control law made by section twelve of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided in subdivision 2 of section 1 of chapter 274 of the laws of 1946.