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

7905

2011-2012 Regular Sessions

I N A S S E M B L Y

May 23, 2011

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

AN ACT to amend the economic development law, the public authorities law and the state finance law, in relation to establishing the western New York power proceeds allocation board; and to repeal chapter 436 of the laws of 2010 amending the public authorities law and the economic development law, relating to authorizing unallocated expansion or replacement power to be allocated for western New York economic development fund benefits

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

Section 1. Short title. This act shall be known as the western New York power proceeds allocation act.

S 2. The economic development law is amended by adding a new article 6-a to read as follows:

ARTICLE 6-A

WESTERN NEW YORK POWER PROCEEDS ALLOCATION ACT

SECTION 189-A. DEFINITIONS.
189-B. THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD.
189-C. GENERAL POWERS AND DUTIES OF THE BOARD.
189-D. ADVISORY GROUP.
189-E. MISCELLANEOUS PROVISIONS.

S 189-A. DEFINITIONS. 1. "AUTHORITY" IS THE POWER AUTHORITY OF THE STATE OF NEW YORK.

2. "BOARD" IS THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD CREATED BY THIS ARTICLE.

3. "BENEFITS" OR "FUND BENEFITS" ARE PAYMENTS TO ELIGIBLE PROJECTS THAT ARE DERIVED FROM NET EARNINGS THAT HAVE BEEN DEPOSITED INTO THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND.

4. "CORPORATION" IS THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION DOING BUSINESS AS THE EMPIRE STATE DEVELOPMENT CORPORATION.

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

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5. "ELIGIBLE PROJECTS" ARE ECONOMIC DEVELOPMENT PROJECTS THAT ARE LOCATED WITHIN A THIRTY-MILE RADIUS OF THE NIAGARA POWER PROJECT LOCATED IN LEWISTON, NEW YORK. ELIGIBLE PROJECTS INCLUDE, BUT ARE NOT LIMITED TO, CAPITAL INVESTMENTS IN PLANT AND EQUIPMENT AND DIRECTLY RELATED SOFT COSTS OF SUCH CAPITAL INVESTMENTS; TRAINING AND THE IMPROVEMENT OF WORKER PRODUCTIVITY; REMOVAL OF HAZARDOUS OR CONTAMINATED CONDITIONS; INFRASTRUCTURE PROJECTS INCLUDING, BUT NOT LIMITED TO, ROADS, RAIL LINES, WATER, SEWER, TELECOMMUNICATIONS, AND OTHER UTILITY EXTENSIONS, EXPANSIONS OR IMPROVEMENTS; THE ACQUISITION OF LAND NEEDED FOR A PROJECT; RESEARCH AND DEVELOPMENT WHERE THE RESULTS OF SUCH RESEARCH AND DEVELOPMENT WILL DIRECTLY BENEFIT NEW YORK STATE; AND FOR OTHER SIMILAR USES AND ACTIVITIES. ELIGIBLE PROJECTS DO NOT INCLUDE, AND FUND BENEFITS MAY NOT BE USED FOR, PUBLIC INTEREST ADVERTISING OR ADVOCACY; LOBBYING; THE SUPPORT OR OPPOSITION OF ANY CANDIDATE FOR PUBLIC OFFICE; THE SUPPORT OR OPPOSITION TO ANY PUBLIC ISSUE; LEGAL FEES RELATED TO LITIGATION OF ANY KIND; EXPENSES RELATED TO ADMINISTRATIVE PROCEEDINGS BEFORE STATE OR LOCAL AGENCIES; OR FOR SIMILAR USES OR ACTIVITIES.

6. "EXPANSION POWER" IS THE TWO HUNDRED FIFTY MEGAWATTS OF FIRM NIAGARA PROJECT HYDROELECTRIC POWER AND "REPLACEMENT POWER" IS THE FOUR HUNDRED FORTY-FIVE MEGAWATTS OF FIRM NIAGARA PROJECT HYDROELECTRIC POWER AS SUCH TERMS ARE DEFINED IN SUBDIVISION THIRTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. FOR PURPOSES OF THIS SECTION, EXPANSION AND REPLACEMENT POWER INCLUDES ALL ENERGY ASSOCIATED WITH SUCH POWER. NOTWITHSTANDING ANY LAW, RULE, REGULATION, OR POLICY TO THE CONTRARY, THE TERM REPLACEMENT POWER AS USED IN THIS ARTICLE INCLUDES A CERTAIN SEVENTY MEGAWATTS OF POWER THAT IS REFERRED TO IN SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

7. "NET EARNINGS" IS THE AGGREGATE EXCESS OF REVENUES RECEIVED BY THE POWER AUTHORITY OF THE STATE OF NEW YORK FROM THE SALE OF EXPANSION AND REPLACEMENT POWER AND ENERGY PRODUCED AT THE NIAGARA PROJECT THAT WAS SOLD IN THE WHOLESALE POWER AND ENERGY MARKET OVER WHAT REVENUES WOULD HAVE BEEN RECEIVED HAD SUCH POWER AND ENERGY BEEN SOLD ON A FIRM BASIS TO AN ELIGIBLE EXPANSION OR REPLACEMENT POWER CUSTOMER UNDER THE APPLICABLE TARIFF OR CONTRACT.

8. "WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND" OR "FUND" IS A FUND OF THE CORPORATION INTO WHICH ALL NET EARNINGS ARE DEPOSITED BY THE AUTHORITY AND FROM WHICH ALLOCATIONS OF FUND BENEFITS TO ELIGIBLE PROJECTS ARE MADE.

S 189-B. THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD. 1. THERE IS HEREBY CREATED THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD, WHICH SHALL POSSESS THE POWERS AND DUTIES HEREIN SPECIFIED AND ALL THE POWERS NECESSARY OR PROPER TO CARRY OUT THE PURPOSES OF THIS ARTICLE. THE BOARD SHALL CONSIST OF SIX MEMBERS WHO SHALL BE APPOINTED BY THE GOVERNOR AS FOLLOWS: (A) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE THE REGIONAL DIRECTOR OF THE EMPIRE STATE DEVELOPMENT CORPORATION FOR WESTERN NEW YORK; (B) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED BY THE CHAIR OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY; (C) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED BY THE CHAIR OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY; (D) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED BY THE CHAIR OF THE BOARD OF BUFFALO-NIAGARA ENTERPRISE; (E) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE THE REGIONAL EXECUTIVE OF THE NATIONAL GRID COMPANY; AND (F) ONE MEMBER APPOINTED BY THE GOVERNOR SHALL BE NOMINATED BY THE CHAIR OF THE AUTHORITY.

EACH SUCH BOARD MEMBER SHALL BE AUTHORIZED TO APPOINT AN ALTERNATE BOARD MEMBER TO SERVE IN THEIR ABSENCE FROM TIME TO TIME. ALTERNATE

BOARD MEMBERS SHALL BE COUNTED AS PRESENT FOR THE DETERMINATION OF A QUORUM, TO VOTE, TO FULLY PARTICIPATE IN MEETINGS, AND TO TAKE ALL SUCH OTHER ACTIONS AS A BOARD MEMBER, EXCEPT THAT THEY MAY NOT APPOINT ADDITIONAL ALTERNATE BOARD MEMBERS. A BOARD MEMBER MAY REMOVE OR REPLACE THEIR ALTERNATE BOARD MEMBER AT ANY TIME, FOR ANY REASON, AND MAY LATER REAPPOINT SUCH ALTERNATE BOARD MEMBER.

2. THE GOVERNOR SHALL DESIGNATE A CHAIR AND VICE CHAIR FROM AMONGST THE MEMBERS. THE BOARD MEMBERS MAY SELECT SUCH OTHER OFFICERS AS THEY DEEM ADVISABLE.

3. EACH MEMBER SHALL SERVE A TERM OF THREE YEARS OR UNTIL A SUCCESSOR SHALL HAVE BEEN NAMED AND QUALIFIED. MEMBERS MAY BE REAPPOINTED TO SUCCESSIVE TERMS.

4. FOUR MEMBERS SHALL CONSTITUTE A QUORUM FOR THE PURPOSES OF ORGANIZING THE BOARD AND CONDUCTING THE BUSINESS THEREOF; AND NO ACTION OF THE BOARD MAY BE TAKEN EXCEPT UPON THE AFFIRMATIVE VOTE OF AT LEAST FOUR MEMBERS. VIDEOCONFERENCING MAY BE USED FOR ATTENDANCE AND PARTICIPATION BY MEMBERS OF THE BOARD. IF VIDEOCONFERENCING IS USED, THE BOARD SHALL PROVIDE AN OPPORTUNITY FOR THE PUBLIC TO ATTEND, LISTEN AND OBSERVE AT ANY SITE AT WHICH A MEMBER PARTICIPATES. THE PUBLIC NOTICE FOR THE MEETING SHALL IDENTIFY, IF PRACTICABLE, ALL LOCATIONS WHERE A MEMBER WILL PARTICIPATE IN THE MEETING BY VIDEOCONFERENCE AND SHALL STATE THAT THE PUBLIC HAS THE RIGHT TO ATTEND THE MEETING AT ANY SUCH LOCATION.

5. MEMBERS OF THE BOARD, EXCEPT THOSE THAT ARE EMPLOYEES OR OFFICERS OF THE STATE, ITS AUTHORITIES OR AGENCIES, SHALL NOT RECEIVE A SALARY OR OTHER COMPENSATION, BUT SHALL BE ALLOWED THE NECESSARY AND ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF DUTIES UNDER THIS ARTICLE.

S 189-C. GENERAL POWERS AND DUTIES OF THE BOARD. 1. THE BOARD SHALL ADOPT RULES AND REGULATIONS RELATING TO THE ACTIVITIES OF THE BOARD.

2. THE BOARD SHALL PREPARE, DISTRIBUTE AND RECEIVE ALL APPLICATIONS FROM, OR ON BEHALF OF, ELIGIBLE PROJECTS FOR THE ALLOCATION OR REALLOCATION OF FUND BENEFITS, AS THIS TERM IS DEFINED IN SUBDIVISION THREE OF SECTION ONE HUNDRED EIGHTY-NINE-A OF THIS ARTICLE. APPLICATIONS SHALL BE IN A FORM AND CONTAIN SUCH INFORMATION, DATA AND EXHIBITS AS THE BOARD MAY PRESCRIBE. THE BOARD MAY BY RESOLUTION DIRECT THAT APPLICATIONS BE SUBMITTED ON BEHALF OF THE BOARD TO THE CORPORATION OR TO ANY PUBLIC SECTOR ENTITY THAT HAS THE RIGHT UNDER THIS ARTICLE TO NOMINATE A BOARD MEMBER TO THE GOVERNOR.

3. FUND BENEFITS MAY BE ALLOCATED TO ELIGIBLE PROJECTS THAT ARE SPONSORED BY FOR-PROFIT BUSINESS ENTITIES, NOT-FOR-PROFIT ENTITIES, SUBDIVISIONS OF THE STATE, PUBLIC BENEFIT CORPORATIONS, OR PUBLIC AUTHORITIES.

4. THE BOARD SHALL SUBMIT COPIES OF ALL SUCH APPLICATIONS TO THE AUTHORITY. THE BOARD MAY REQUEST FROM THE AUTHORITY, AND THE AUTHORITY SHALL SUPPLY, AN ANALYSIS OF ALL SUCH APPLICATIONS ALONG WITH ANY RECOMMENDATIONS OF THE AUTHORITY. IN ADDITION, THE BOARD MAY REQUEST, AND THE AUTHORITY SHALL SUPPLY, SUCH ADDITIONAL INFORMATION AS IS REASONABLY NECESSARY FOR THE BOARD TO PROPERLY PERFORM ITS DUTIES.

5. THE BOARD SHALL ESTABLISH A SCHEDULE FOR A REVIEW OF APPLICATIONS FOR FUND BENEFITS THAT SHALL OCCUR NO LESS FREQUENTLY THAN TWICE EACH YEAR.

6. THE BOARD SHALL DEVELOP AND ADOPT A MULTI-YEAR ECONOMIC DEVELOPMENT PLAN THAT IS CONSISTENT WITH REGIONAL ECONOMIC DEVELOPMENT PLANS THAT HAVE OR MAY BE ADOPTED BY STATE AND REGIONAL ECONOMIC DEVELOPMENT AGENCIES. THE BOARD'S MULTI-YEAR ECONOMIC DEVELOPMENT PLAN SHALL SET POLICIES AND PRIORITIES THAT WILL BE USED TO EVALUATE ALL APPLICATIONS FOR ALLOCATION OF FUND BENEFITS. IF THE REGIONAL ECONOMIC DEVELOPMENT COUN-

CIL FOR WESTERN NEW YORK ADOPTS SUCH AN ECONOMIC DEVELOPMENT PLAN, SUCH PLAN SHALL BE ADOPTED BY THE BOARD.

7. THE BOARD SHALL ADOPT CRITERIA TO BE USED TO EVALUATE ALL APPLICATIONS FOR AN ALLOCATION OF FUND BENEFITS. THE CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC DEVELOPMENT, MAINTAIN JOBS, AND ENCOURAGE NEW CAPITAL INVESTMENT WITHIN THIRTY MILES OF THE NIAGARA POWER PROJECT. THE CRITERIA SHALL ADDRESS, BUT NEED NOT BE LIMITED TO:

(A) THE OVERALL ECONOMIC IMPACT OF THE PROPOSAL IN TERMS OF THE NUMBER OF JOBS TO BE CREATED OR RETAINED, THE AVERAGE ANNUAL PAYROLL, THE CAPITAL INVESTMENT THAT IS PROJECTED, AND THE EXTENT TO WHICH NEW YORK SUPPLIERS ARE USED;

(B) THE LIKELIHOOD THAT IN THE ABSENCE OF APPROVAL OF AN ALLOCATION OF FUND BENEFITS, THE APPLICANT WOULD NOT UNDERTAKE THE PROPOSED PROJECT, CLOSE, CONTRACT, OR RELOCATE OUTSIDE OF WESTERN NEW YORK;

(C) THE APPLICANT'S COMPLIANCE WITH ANY PRIOR COMMITMENT TO THE CORPORATION, THE AUTHORITY, THE STATE OF NEW YORK, THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, OR ANY LOCAL INDUSTRIAL DEVELOPMENT AGENCY TO RETAIN AND/OR CREATE JOBS OR TO MAKE CAPITAL INVESTMENTS IN EXCHANGE FOR A BENEFIT FROM SUCH ENTITY;

(D) THE EXTENT TO WHICH AN ALLOCATION OF FUND BENEFITS WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS AND ITS EXISTING EMPLOYMENT WITHIN WESTERN NEW YORK AND THE STATE OF NEW YORK;

(E) THE EXTENT OF OTHER BENEFITS BEING OFFERED TO THE APPLICANT FROM THE STATE OF NEW YORK, ITS POLITICAL SUBDIVISIONS, PUBLIC AUTHORITIES, INDUSTRIAL DEVELOPMENT AGENCIES, PUBLIC BENEFIT CORPORATIONS, LOCAL DEVELOPMENT AGENCIES, OR OTHER PUBLIC AGENCIES; AND

(F) THE OVERALL IMPACT OF THE SITE OR USER INCLUDING THE PROJECT'S ABILITY TO INDUCE ADDITIONAL COMMERCIAL OR INDUSTRIAL ACTIVITY TO WESTERN NEW YORK, REVITALIZE AN URBAN AREA, AND ITS COMPLIANCE WITH REGIONAL DEVELOPMENT PLANS.

8. THE BOARD SHALL RECOMMEND TO THE CORPORATION THE ALLOCATION OF FUND BENEFITS TO ELIGIBLE PROJECTS THAT BEST MEET THE CRITERIA ESTABLISHED FOR THE EVALUATION OF APPLICATIONS.

9. THE BOARD MAY INCLUDE WITHIN ITS RECOMMENDATIONS SUCH TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO, REASONABLE PROVISION FOR THE ALLOCATION OF FUND BENEFITS OVER TIME AS THE APPLICANT ACHIEVES MILESTONES TOWARDS PROJECT COMPLETION, THE PARTIAL OR COMPLETE WITHDRAWAL OR RETURN OF FUND BENEFITS WHERE THE RECIPIENT HAS FAILED TO ACHIEVE OR MAINTAIN MUTUALLY AGREED UPON COMMITMENTS, OR SUCH OTHER TERMS AND CONDITIONS AS THE BOARD DEEMS ADVISABLE.

10. RECOMMENDATION FOR APPROVAL OF THE ALLOCATION OF FUND BENEFITS BY THE BOARD SHALL QUALIFY AN APPLICANT TO RECEIVE SUCH FUND BENEFITS FOR ELIGIBLE PROJECTS.

11. THE CORPORATION SHALL NOT WITHDRAW ANY NET PROCEEDS FROM THE FUND AND MAY NOT ALLOCATE ANY FUND BENEFIT UNLESS THE BOARD HAS RECOMMENDED SUCH A WITHDRAWAL OR ALLOCATION. THE TRANSFER OR USE OF ANY FUND BENEFIT IS PROHIBITED UNLESS SPECIFICALLY RECOMMENDED BY THE BOARD.

12. WHEN THE CORPORATION MAKES AN ALLOCATION OF FUND BENEFITS IT SHALL INCLUDE WITHIN SUCH CONTRACT OR GRANT DISBURSEMENT AGREEMENT ALL TERMS AND CONDITIONS THAT HAVE BEEN RECOMMENDED BY THE BOARD.

S 189-D. ADVISORY GROUP. NOTWITHSTANDING ANY LAW, RULE, REGULATION OR ADMINISTRATIVE POLICY TO THE CONTRARY, THERE IS HEREBY CREATED THE WESTERN NEW YORK HYDRO-POWER ALLOCATION ADVISORY GROUP THAT SHALL BE CONSTITUTED AND HAVE THE POWERS DESCRIBED IN THIS SECTION. 1. THE WESTERN NEW

YORK HYDRO-POWER ALLOCATION ADVISORY GROUP SHALL CONSIST OF SIX MEMBERS AS FOLLOWS:

(A) THE REGIONAL DIRECTOR OF THE EMPIRE STATE DEVELOPMENT CORPORATION FOR WESTERN NEW YORK;

(B) THE CHAIR OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY;

(C) THE COMMISSIONER OF THE NIAGARA COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT;

(D) THE CHAIR OF THE BOARD OF BUFFALO-NIAGARA ENTERPRISE;

(E) THE REGIONAL DIRECTOR OF THE NATIONAL GRID COMPANY; AND

(F) THE CHAIR OF THE BOARD OF THE NEW YORK STATE POWER AUTHORITY.

2. MEMBERS OF THE ADVISORY GROUP ARE AUTHORIZED TO APPOINT AN ALTERNATE MEMBER TO SERVE IN THEIR ABSENCE FROM TIME TO TIME. ALTERNATE MEMBERS SHALL BE COUNTED AS PRESENT FOR THE DETERMINATION OF A QUORUM, TO VOTE AND TO FULLY PARTICIPATE IN MEETINGS AND TO TAKE ALL SUCH OTHER ACTIONS AS AN ADVISORY GROUP MEMBER, EXCEPT THAT THEY MAY NOT APPOINT ADDITIONAL ADVISORY GROUP MEMBERS. AN ADVISORY GROUP MEMBER MAY REMOVE OR REPLACE THEIR ALTERNATE MEMBER AT ANY TIME FOR ANY REASON AND MAY REAPPOINT SUCH ALTERNATE ADVISORY GROUP MEMBER.

3. THE ADVISORY GROUP SHALL SELECT A CHAIR AND VICE CHAIR AND SUCH OTHER OFFICERS AS IT DEEMS ADVISABLE.

4. ADVISORY GROUP MEMBERS SHALL SERVE SO LONG AS THEY CONTINUE TO HOLD THE POSITION SPECIFIED IN SUBDIVISION ONE OF THIS SECTION.

5. FOUR MEMBERS SHALL CONSTITUTE A QUORUM FOR THE PURPOSE OF ORGANIZING THE ADVISORY GROUP AND CONDUCTING THE BUSINESS THEREOF; AND NO ACTION OF THE ADVISORY GROUP MAY BE TAKEN EXCEPT UPON THE AFFIRMATIVE VOTE OF AT LEAST FOUR MEMBERS. VIDEOCONFERENCING OR TELECONFERENCING MAY BE USED FOR ATTENDANCE AND PARTICIPATION BY MEMBERS OF THE ADVISORY GROUP.

6. MEMBERS OF THE ADVISORY GROUP, EXCEPT THOSE THAT ARE EMPLOYEES OR OFFICERS OF THE STATE, ITS AUTHORITIES OR AGENCIES, SHALL NOT RECEIVE A SALARY OR OTHER COMPENSATION, BUT SHALL BE ALLOWED THE NECESSARY AND ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF DUTIES UNDER THIS SECTION.

7. THE ADVISORY GROUP SHALL RECEIVE FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK ALL APPLICATIONS THAT THE POWER AUTHORITY HAS RECEIVED FROM, OR ON BEHALF OF, ANY ELIGIBLE ENTITIES FOR THE ALLOCATION OR REALLOCATION OF POWER OR ENERGY FROM THE NIAGARA POWER PROJECT'S EXPANSION POWER OR REPLACEMENT POWER BLOCS AS SUCH TERMS ARE DEFINED IN SUBDIVISION SIX OF SECTION ONE HUNDRED EIGHTY-NINE-A OF THIS ARTICLE AT LEAST THIRTY DAYS PRIOR TO A DECISION BY THE POWER AUTHORITY TRUSTEES TO APPROVE OR DENY SUCH ALLOCATION. THE ADVISORY GROUP MAY CHOOSE TO WAIVE OR SHORTEN THE THIRTY DAY NOTICE PERIOD FOR GOOD CAUSE, BY A MAJORITY VOTE. THE ADVISORY GROUP MAY CHOOSE TO ACCEPT FROM THE AUTHORITY A SUMMARY OF SUCH APPLICATIONS, BUT MAY REQUEST AND THE POWER AUTHORITY SHALL SUPPLY, SUCH ADDITIONAL INFORMATION AS IS REASONABLY NECESSARY FOR THE ADVISORY GROUP TO PROPERLY PERFORM ITS DUTIES.

8. UPON RECEIPT OF AN APPLICATION FOR THE ALLOCATION OF POWER OR ENERGY FROM THE NIAGARA PROJECT, THE ADVISORY GROUP SHALL MEET AND SHALL MAKE A RECOMMENDATION TO THE POWER AUTHORITY TO APPROVE, DENY, OR APPROVE AS MODIFIED AN APPLICATION FOR A POWER OR ENERGY ALLOCATION. THE ADVISORY GROUP SHALL STATE ITS REASONS FOR SUCH A RECOMMENDATION. SUCH RECOMMENDATION SHALL BE PRESENTED TO THE POWER AUTHORITY TRUSTEES FOR ITS DELIBERATION AND CONSIDERATION, BUT SHALL BE ADVISORY ONLY AND SHALL NOT BE BINDING UPON THE POWER AUTHORITY.

9. THE ADVISORY GROUP SHALL MEET AS NEEDED TO PROVIDE THE POWER AUTHORITY WITH TIMELY RECOMMENDATIONS REGARDING PENDING APPLICATIONS FOR

THE ALLOCATION OF HYDRO-POWER. SUCH MEETINGS SHALL OCCUR NO LESS FREQUENTLY THAN TWICE EACH YEAR.

10. IN MAKING ITS RECOMMENDATIONS FOR THE ALLOCATION OF POWER AND ENERGY, THE ADVISORY GROUP SHALL REFER TO AND RELY UPON THE ECONOMIC DEVELOPMENT PLAN AND STRATEGY ESTABLISHED BY SUBDIVISION SIX OF SECTION ONE HUNDRED EIGHTY-NINE-C OF THIS ARTICLE.

11. IN MAKING ITS RECOMMENDATIONS FOR THE ALLOCATION OF POWER AND ENERGY, THE ADVISORY GROUP SHALL REFER TO AND RELY UPON THE CRITERIA ESTABLISHED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED EIGHTY-NINE-C OF THIS ARTICLE.

12. THE ADVISORY GROUP SHALL RECOMMEND THE ALLOCATION OF POWER AND ENERGY TO THE COMPANY OR COMPANIES WHICH BEST MEET THE CRITERIA ESTABLISHED FOR THE EVALUATION OF EACH APPLICATION.

13. THE ADVISORY GROUP MAY INCLUDE WITHIN ITS RECOMMENDATIONS SUCH TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO: REASONABLE PROVISION FOR THE ALLOCATION OF POWER AND ENERGY OVER TIME AS THE APPLICANT ACHIEVES MILESTONES TOWARDS PROJECT COMPLETION; THE PARTIAL OR COMPLETE WITHDRAWAL OR RETURN OF POWER AND ENERGY WHERE THE RECIPIENT HAS FAILED TO ACHIEVE OR MAINTAIN MUTUALLY AGREED UPON COMMITMENTS; OR SUCH OTHER TERMS AND CONDITIONS AS THE ADVISORY GROUP DEEMS ADVISABLE.

S 189-E. MISCELLANEOUS PROVISIONS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A MEMBER OF THE BOARD IS NOT DISQUALIFIED FROM FULL PARTICIPATION IN ALL BOARD ACTIVITIES, INCLUDING VOTING, SOLELY ON THE GROUNDS THAT AN ORGANIZATION THAT EMPLOYS SUCH MEMBER HAS INDICATED THAT IT SUPPORTS OR OPPOSES SUCH AN APPLICATION.

S 3. Section 100 of the economic development law is amended by adding three new subdivisions 26-a, 26-b and 26-c to read as follows:

26-A. TO PROVIDE ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL, AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REQUESTED BY THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD.

26-B. TO PROVIDE ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL AND SECRETARIAL ASSISTANCE, AND OFFICE SPACE AND EQUIPMENT REQUESTED BY THE WESTERN NEW YORK HYDRO-POWER ALLOCATION ADVISORY GROUP.

26-C. TO ESTABLISH A FUND TO BE KNOWN AS THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND AS PROVIDED FOR IN ARTICLE SIX-A OF THIS CHAPTER.

S 4. Section 1005 of the public authorities law is amended by adding three new subdivisions 19, 20 and 21 to read as follows:

19. TO FULLY AND COMPLETELY COOPERATE WITH THE WESTERN NEW YORK HYDRO-POWER ALLOCATION ADVISORY GROUP, THE AUTHORITY SHALL PROVIDE THE ADVISORY GROUP WITH ALL MATERIALS, INFORMATION AND REPORTS THAT ARE REASONABLY REQUESTED BY SUCH ADVISORY GROUP. THE AUTHORITY IS FURTHER AUTHORIZED AND DIRECTED TO PROVIDE ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REQUESTED BY THE WESTERN NEW YORK HYDRO-POWER ALLOCATION ADVISORY GROUP.

20. TO FULLY AND COMPLETELY COOPERATE WITH THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD, THE AUTHORITY SHALL PROVIDE THE BOARD WITH ALL MATERIALS, INFORMATION AND REPORTS THAT ARE REASONABLY REQUESTED BY SUCH BOARD. THE AUTHORITY IS FURTHER AUTHORIZED AND DIRECTED TO PROVIDE ALL NECESSARY STAFF SERVICES, ACCOUNTING, CLERICAL AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REQUESTED BY THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD.

21. TO ALLOCATE FUNDS OF THE AUTHORITY TO THE EMPIRE STATE DEVELOPMENT CORPORATION'S WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND AS REQUIRED BY

ARTICLE SIX-A OF THE ECONOMIC DEVELOPMENT LAW AND SUCH ADDITIONAL AMOUNTS AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES.

S 5. The state finance law is amended by adding a new section 99-u to read as follows:

S 99-U. WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD A SPECIAL FUND TO BE KNOWN AS THE "WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND".

2. THE DEFINITIONS OF WORDS AND TERMS CONTAINED IN SECTION ONE HUNDRED EIGHTY-NINE-A OF THE ECONOMIC DEVELOPMENT LAW SHALL APPLY TO THIS SECTION AS IF FULLY SET FORTH IN THIS SECTION.

3. THE CORPORATION SHALL ESTABLISH A SEPARATE ACCOUNT TO BE KNOWN AS THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND.

4. THE AUTHORITY SHALL DEPOSIT INTO THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND ALL NET EARNINGS. SUCH EARNINGS SHALL BE DEPOSITED NO LESS FREQUENTLY THAN MONTHLY. THE FIRST PAYMENT SHALL BE MADE AT THE END OF THE FIRST FULL MONTH SUCCEEDING THIS SECTION BECOMING A LAW AND SHALL INCLUDE ALL ACCRUED NET EARNINGS AS OF THE EFFECTIVE DATE OF CHAPTER FOUR HUNDRED THIRTY-SIX OF THE LAWS OF TWO THOUSAND TEN. THE AUTHORITY SHALL PROVIDE THE BOARD WITH STATEMENTS, NO LESS FREQUENTLY THAN QUARTERLY, THAT CONTAIN A FULL AND COMPLETE ACCOUNTING OF ALL NET EARNINGS AND THE CALCULATIONS THEREOF, A STATEMENT OF ALL DEPOSITS INTO THE FUND AND OTHER SUCH INFORMATION AS THE BOARD MAY REASONABLY REQUIRE TO PERFORM ITS DUTIES.

5. THE BOARD MAY REQUEST, AND THE AUTHORITY SHALL PROVIDE AT SUCH TIMES AND COVERING SUCH PERIODS AND IN SUCH FORM AS IS REASONABLY DETERMINED BY THE BOARD AS CONVENIENT OR APPROPRIATE FOR IT TO CARRY OUT ITS DUTIES, A FULL ACCOUNTING OF THE SALE, USE, AND PROCEEDS FROM ALL CATEGORIES OF POWER AND ENERGY FROM THE NIAGARA PROJECT THAT ARE AVAILABLE FOR INDUSTRIAL AND COMMERCIAL USE INCLUDING, BUT NOT LIMITED TO, EXPANSION AND REPLACEMENT POWER. SUCH REPORT SHALL INCLUDE STATEMENTS THAT SHOW THE AMOUNT AND PROCEEDS FROM THE SALE OF POWER AND/OR ENERGY ON THE MARKET AND UNDER CONTRACT TO AN ELIGIBLE RECIPIENT OF SUCH POWER AND/OR ENERGY, THE AMOUNT OF FUNDS THAT ARE CONSIDERED NET EARNINGS AND THE CALCULATION THEREOF, AND THE DISPOSITION OF ALL SUCH FUNDS.

6. THE CORPORATION MAY NOT WITHDRAW ANY NET EARNINGS FROM THE FUND EXCEPT IN ACCORDANCE WITH SECTION ONE HUNDRED EIGHTY-NINE-C OF THIS ARTICLE.

7. THE CORPORATION SHALL PROVIDE THE BOARD WITH STATEMENTS, NO LESS FREQUENTLY THAN QUARTERLY, THAT CONTAIN A FULL AND COMPLETE ACCOUNTING OF ALL NET EARNINGS DEPOSITED INTO THE FUND INCLUDING ANY STATEMENTS OR REPORTS PROVIDED BY THE AUTHORITY, ALL WITHDRAWALS AND OTHER USES FROM THE FUND AND OTHER SUCH INFORMATION AS THE BOARD MAY REASONABLY REQUIRE TO PERFORM ITS DUTIES.

S 6. Chapter 436 of the laws of 2010 amending the public authorities law and the economic development law, relating to authorizing unallocated expansion or replacement power to be allocated for western New York economic development fund benefits is REPEALED.

S 7. This act shall take effect immediately.