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

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2011-2012 Regular Sessions

I N A S S E M B L Y

July 13, 2011

Introduced by M. of A. GABRYSZAK, SCHIMMINGER -- 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 -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law and the public authorities 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 relating thereto

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. RULES AND REGULATIONS.

S 189-A. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: 1. "AUTHORITY" IS THE POWER AUTHORITY OF THE STATE OF NEW YORK.

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

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

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

4. "ELIGIBLE PROJECTS" ARE ECONOMIC DEVELOPMENT PROJECTS THAT ARE LOCATED WITHIN A THIRTY-MILE RADIUS OF THE NIAGARA POWER PROJECT LOCATED IN LEWISTON, NEW YORK THAT WILL SUPPORT THE GROWTH OF BUSINESSES IN THE STATE AND THEREBY LEAD TO THE CREATION OR MAINTENANCE OF JOBS AND TAX REVENUES FOR THE STATE. ELIGIBLE PROJECTS MAY INCLUDE CAPITAL INVESTMENTS IN PLANT AND EQUIPMENT, AND ASSOCIATED BUILDINGS AND INFRASTRUCTURE (COLLECTIVELY, "INFRASTRUCTURE") OWNED BY AN APPLICANT FOR FUND BENEFITS, INCLUDING TRANSPORTATION PROJECTS UNDER STATE OR FEDERALLY APPROVED PLANS; REMOVAL OF HAZARDOUS OR CONTAMINATED CONDITIONS AT INFRASTRUCTURE SITES; THE ACQUISITION OF LAND NEEDED FOR INFRASTRUCTURE; RESEARCH AND DEVELOPMENT WHERE THE RESULTS OF SUCH RESEARCH AND DEVELOPMENT WILL DIRECTLY BENEFIT NEW YORK STATE; SUPPORT FOR TOURISM AND MARKETING AND ADVERTISING EFFORTS FOR WESTERN NEW YORK STATE TOURISM AND BUSINESS AND FOR OTHER SIMILAR USES AND ACTIVITIES; AND ENERGY-RELATED PROJECTS. 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; RETAIL BUSINESSES AS DEFINED BY THE BOARD, INCLUDING WITHOUT LIMITATION, SPORTS VENUES, GAMING AND GAMBLING OR ENTERTAINMENT-RELATED ESTABLISHMENTS, RESIDENTIAL PROPERTIES, OR PLACES OF OVERNIGHT ACCOMMODATION; OR FOR SIMILAR USES OR ACTIVITIES OR FOR THE REMOVAL OF HAZARDOUS OR CONTAMINATED CONDITIONS AT INFRASTRUCTURE SITES WHERE SUCH CONDITIONS WERE THE RESULT OF AN APPLICANT'S ACTIVITIES.

5. "ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SUBDIVISION SEVENTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

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 THE ENERGY ASSOCIATED WITH SUCH POWER. NOTWITHSTANDING ANY LAW, RULE, REGULATION, OR POLICY TO THE CONTRARY, AS OF THE FIRST DAY OF JULY, TWO THOUSAND TWELVE 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 ENERGY MARKET OVER WHAT REVENUES WOULD HAVE BEEN RECEIVED HAD SUCH 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 AUTHORITY INTO WHICH ALL NET EARNINGS ARE DEPOSITED BY THE AUTHORITY

AND FROM WHICH ALLOCATIONS OF FUND BENEFITS TO ELIGIBLE PROJECTS MAY BE 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. THE BOARD SHALL CONSIST OF FIVE MEMBERS WHO SHALL BE APPOINTED BY THE GOVERNOR AS FOLLOWS: ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND SHALL RESIDE WITHIN THE THIRTY MILE RADIUS OF THE NIAGARA POWER PROJECT AND ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY AND SHALL RESIDE WITHIN THE THIRTY MILE RADIUS OF THE NIAGARA POWER PROJECT. AT LEAST ONE ADDITIONAL MEMBER SHALL ALSO RESIDE WITHIN THE THIRTY MILE RADIUS OF THE NIAGARA POWER PROJECT. THE GOVERNOR SHALL DESIGNATE A CHAIR FROM AMONGST THE BOARD'S MEMBERS.

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

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THREE 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 AN AFFIRMATIVE VOTE OF AT LEAST THREE-FIFTHS OF THE FULL BOARD MEMBERSHIP AT ANY MEETING AT WHICH AT LEAST THREE MEMBERS ARE PRESENT OR PARTICIPATING BY VIDEOCONFERENCING. 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.

4. 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 ADOPT RULES AND REGULATIONS AND ESTABLISH A PROCEDURE FOR REVIEWING APPLICATIONS FOR AN ALLOCATION OF FUND BENEFITS THAT SHALL INCLUDE A REVIEW OF APPLICATIONS NO LESS FREQUENTLY THAN TWICE EACH YEAR. THE BOARD, OR A MEMBER DESIGNATED BY THE BOARD, SHALL RECEIVE ALL APPLICATIONS FROM, OR ON BEHALF OF, APPLICANTS FOR FUND BENEFITS. APPLICATIONS SHALL BE IN A FORM AND CONTAIN SUCH INFORMATION, DATA AND EXHIBITS AS THE BOARD, IN CONSULTATION WITH THE AUTHORITY, MAY PRESCRIBE.

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

4. IN EVALUATING APPLICATIONS FOR FUND BENEFITS, THE BOARD SHALL USE THE CRITERIA FOR ELIGIBILITY FOR EXPANSION, REPLACEMENT AND PRESERVATION POWER, AND FOR REVITALIZATION OF INDUSTRY, PROVIDED IN SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. IN ADDITION, THE BOARD SHALL CONSIDER THE EXTENT TO WHICH AN AWARD OF FUND BENEFITS IS CONSISTENT WITH ANY REGIONAL ECONOMIC DEVELOPMENT COUNCIL STRATEGIES AND PRIORI-

TIES. THE BOARD SHALL ISSUE A WRITTEN STATEMENT OF ITS FINDINGS AND CONCLUSIONS FOR EACH APPLICATION REVIEWED.

5. THE BOARD SHALL RECOMMEND TO THE CORPORATION THE ALLOCATION OF FUND BENEFITS TO ELIGIBLE PROJECTS THAT THE BOARD BELIEVES BEST MEET THE APPLICABLE CRITERIA IN SUBDIVISION FOUR OF THIS SECTION. 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.

6. A RECOMMENDATION BY THE BOARD THAT AN APPLICANT RECEIVE AN ALLOCATION OF FUND BENEFITS SHALL BE A PREREQUISITE TO AN AWARD OF FUND BENEFITS BY THE AUTHORITY. THE AUTHORITY SHALL AWARD FUND BENEFITS TO AN APPLICANT UPON A RECOMMENDATION OF THE BOARD, PROVIDED HOWEVER THAT UPON A SHOWING OF GOOD CAUSE, THE AUTHORITY SHALL HAVE DISCRETION AS TO WHETHER TO ADOPT THE BOARD'S RECOMMENDATION, OR TO AWARD BENEFITS IN A DIFFERENT AMOUNT AND ON DIFFERENT TERMS AND CONDITIONS THAN THOSE CONTAINED IN THE RECOMMENDATION OF THE BOARD.

7. UPON MAKING AN ALLOCATION OF FUND BENEFITS, THE AUTHORITY SHALL INCLUDE WITHIN THE AGREEMENT PROVIDING FOR THE TERMS AND CONDITIONS APPLICABLE TO SUCH ALLOCATION ALL TERMS AND CONDITIONS THE AUTHORITY DEEMS APPROPRIATE, TAKING INTO ACCOUNT THE RECOMMENDATIONS MADE BY THE BOARD.

S 189-D. RULES AND REGULATIONS. THE AUTHORITY IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS AS ARE NECESSARY TO FULFILL THE PURPOSES OF THIS ARTICLE.

S 3. Section 1005 of the public authorities law is amended by adding five new subdivisions 19, 20, 21, 22 and 23 to read as follows:

19. TO COOPERATE WITH THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD AND PROVIDE THE BOARD WITH SUCH INFORMATION AND ASSISTANCE AS THE BOARD REASONABLY REQUESTS INCLUDING REASONABLE STAFF SERVICES, ACCOUNTING, CLERICAL AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REASONABLY REQUESTED BY THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD TO FULFILL ITS DUTIES.

20. TO ESTABLISH AN ACCOUNT TO BE KNOWN AS THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND, WHICH SHALL CONSIST OF "NET EARNINGS" AS DEFINED IN ARTICLE SIX-A OF THE ECONOMIC DEVELOPMENT LAW. SUCH EARNINGS SHALL BE DEPOSITED NO LESS FREQUENTLY THAN QUARTERLY. THE FIRST PAYMENT INTO THE FUND SHALL BE MADE NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, AND SHALL INCLUDE ALL SUCH NET EARNINGS ACCRUED SINCE THE EFFECTIVE DATE OF CHAPTER FOUR HUNDRED THIRTY-SIX OF THE LAWS OF TWO THOUSAND TEN. AT LEAST FIFTEEN PERCENT OF SUCH FINDS SHALL BE DEDICATED TOWARDS ELIGIBLE PROJECTS WHICH ARE ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES AS SUCH TERM IS DEFINED IN SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SUBDIVISION SEVENTEEN OF SECTION ONE THOUSAND FIVE OF THIS CHAPTER. IN ADDITION TO FUNDING ELIGIBLE PROJECTS, AS DEFINED IN ARTICLE SIX-A OF THE ECONOMIC DEVELOPMENT LAW, THE AUTHORITY MAY USE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND MONIES TO COVER REASONABLE COSTS AND EXPENSES OF THE AUTHORITY RELATED TO THE MANAGEMENT AND ADMINISTRATION OF SUCH FUND.

21. THE AUTHORITY MAY, IN ITS DISCRETION, CONSULT WITH THE WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD IN THE APPLICATION PROCESS RELATING TO THE ALLOCATION OF EXPANSION POWER AND REPLACEMENT POWER.

22. THE AUTHORITY SHALL ESTABLISH PROCESSES FOR APPLICATION REVIEW AND ALLOCATION OF FUND BENEFITS PROVIDED IN ARTICLE SIX-A OF THE ECONOMIC DEVELOPMENT LAW.

23. THE AUTHORITY SHALL INCLUDE IN THE ANNUAL REPORT PREPARED PURSUANT TO SUBDIVISION EIGHTEEN OF THIS SECTION, AN ACCOUNTING FOR THE SUBJECT YEAR THAT PROVIDES (A) THE AMOUNT OF EXPANSION POWER AND REPLACEMENT POWER SOLD INTO THE WHOLESALE MARKET BY THE AUTHORITY, AND (B) THE NET EARNINGS, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED EIGHTY-NINE-A OF THE ECONOMIC DEVELOPMENT LAW, PAID INTO THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND.

S 4. 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 5. This act shall take effect immediately.