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

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2011-2012 Regular Sessions

I N S E N A T E

March 9, 2011

Introduced by Sen. MAZIARZ -- (at request of the Energy Research Development Authority) -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the energy law, in relation to the composition, responsibilities and discretion of the state energy planning board and making technical changes related thereto

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

Section 1. Subdivisions 1 and 2 of section 6-102 of the energy law, as added by chapter 433 of the laws of 2009, are amended to read as follows:

1. There shall be established a state energy planning board, hereinafter referred to as the "board", which shall consist of the chair of the public service commission, the commissioner of environmental conservation, the commissioner of economic development, the commissioner of transportation, the commissioner of labor, the director of the state emergency management office, the chair of the consumer protection board, the commissioner of health, [the president of the New York state urban development corporation,] the secretary of state and the president of the New York state energy research and development authority. The governor, the speaker of the assembly and the temporary president of the senate shall each appoint one ADDITIONAL representative to serve on the board. [The presiding officer of the federally designated electric bulk system operator (BSO) shall serve as a non-voting member of the board.] Any decision or action by the board shall be by majority vote. The president of the New York state energy research and development authority shall serve as chair of the board. Members of the board may designate an executive staff representative to participate on the board on their behalf.

2. Regional planning councils shall be established[, whose members shall work with the state energy planning board. Regional planning coun-

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

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cil members shall not be considered to be members of the state energy planning board for purposes of participation in board meetings, except council members may participate as non-voting members when items relating specifically to that member's region, as determined by the board, are on the agenda of a board meeting]. Two regions shall be established as follows:

(a) Downstate region - New York City and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Ulster and Westchester counties;

(b) Upstate region - Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates counties.

The governor, temporary president of the senate and the speaker of the assembly shall each appoint three regional planning council members per region. Regional planning council members shall serve without compensation, and shall have their principal residence within the region for which they are appointed. Such regional council members may solicit input from stakeholder interests within their region, including but not limited to local governments, municipal utilities, rural electric cooperatives, utilities, labor unions, ratepayers, businesses, trade associations, generators, and community organizations[, and]. EACH REGIONAL PLANNING COUNCIL shall transmit to the board a report containing any recommendations specific to [their] ITS region on a schedule [concurrent with the release] DETERMINED BY THE BOARD TO BE APPROPRIATE FOR CONSIDERATION OF SUCH REPORT IN THE DEVELOPMENT of the draft energy plan.

S 2. Paragraphs (a) and (l) of subdivision 2, subdivisions 3 and 4, and paragraph (b) of subdivision 5 of section 6-104 of the energy law, as added by chapter 433 of the laws of 2009, are amended to read as follows:

(a) forecasts for [periods] A MINIMUM PERIOD of [five,] ten [and fifteen] years, OR FOR SUCH OTHER PERIODS AS THE BOARD MAY DETERMINE, of: (i) demand for electricity, natural gas, coal, petroleum products, including heating and transportation fuels, and alternate fuels, including ethanol and other biofuels, to the extent possible, [for each region of the state, as well as the state as a whole,] taking into account energy conservation, load management and other demand-reducing measures which can be achieved in a cost-effective manner, including the basis for such projection, including an examination of possible alternate levels of demand and discussion of the forecasting methodologies and input variables used in making the forecasts;

(ii) energy supply requirements needed to satisfy demand for electricity, natural gas, coal, petroleum products, including heating and transportation fuels, and alternate energy sources and fuels, for each region of the state, and for the state as a whole, including with respect to electricity, the amount of capacity needed to provide adequate reserve margins and capacity needed to ensure reliability and competitive markets in the various regions of the state;

(iii) an assessment of the ability of the existing energy supply sources and the existing transmission or fuel transportation systems, to satisfy, together with those sources or systems reasonably certain to be available, such energy supply requirements, indicating planned addi-

tions, retirements, deratings, substantial planned outages, and any other expected changes in levels of generating and production capacity;

(iv) additional electric capacity and/or transmission or fuel transportation systems needed to meet such energy supply requirements that will not be met by existing sources of supply and those reasonably certain to be available, where such analysis should identify system constraints and possible alternatives available, both supply-side and demand-side alternatives, including but not limited to distributed generation, energy efficiency and conservation measures, to redress such constraint; and

(v) [an inventory of] projected greenhouse emissions [over the five, ten and fifteen year periods, and strategies for facilitating and accelerating the use of low carbon energy sources and/or carbon mitigation measures].

(l) Such additional information as the board deems appropriate, such as but not limited to, information developed from consultation with the [BSO] ELECTRIC BULK SYSTEM OPERATOR.

3. [To the extent practicable, and where not otherwise specified, the] THE elements of the state energy plan as enumerated in subdivision two of this section shall be provided on a statewide basis [as well as], AND AS DETERMINED FEASIBLE AND NECESSARY BY THE BOARD, for the two regions described in subdivision two of section 6-102 of this article.

4. In the development of the state energy plan the board shall, to the extent practicable, take cognizance of any comprehensive reliability planning process undertaken by the [BSO] ELECTRIC BULK SYSTEM OPERATOR.

(b) Any energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts [and], the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update; provided, [however, that any such action or decision which is not reasonably consistent with the plan shall be deemed in compliance with this section, provided that such action or decision includes a finding that the relevant provisions of the plan are no longer reasonable or probable based on a material and substantial change in fact or circumstance, and a statement explaining the basis for this finding] THAT NO SUCH ACTION OR DECISION SHALL BE DEEMED BY A COURT OF LAW TO BE UNREASONABLY INCONSISTENT WITH SUCH FORECASTS, POLICIES, OBJECTIVES AND STRATEGIES, UNDER THIS OR ANY OTHER PROVISION OF LAW, UNLESS A DETERMINATION TO THIS EFFECT IS MADE BY THE BOARD UPON ITS OWN INITIATIVE OR FOLLOWING THE REFERRAL OF THE ISSUE TO THE BOARD BY A COURT AFTER THE COMMENCEMENT OF A PROCEEDING CHALLENGING SUCH ACTION.

S 3. The opening paragraph and subparagraphs (i) and (ii) of paragraph (a), subparagraphs (i) and (ii) of paragraph (b), and paragraphs (c) and (d) of subdivision 3 of section 6-106 of the energy law, as added by chapter 433 of the laws of 2009, are amended and a new paragraph (e) is added to read as follows:

[Individually prepared comprehensive] COMPREHENSIVE long-range plans for future operations:

(i) a forecast of electricity demands over a period [of five, ten and fifteen years] AS THE BOARD MAY DETERMINE APPROPRIATE, including annual in-state electric energy sales and summer and winter peak loads by utility service area where applicable, and total any annual in-state electric energy sales and coincident peak load, specifically identifying the extent to which energy conservation, load management and other demand-reducing measures, and electric energy generated by cogeneration, small hydro and alternate energy production facilities, including renewable

energy technologies and fuel cells, consumed on site, have been incorporated within such forecast;

(ii) a forecast of electricity supply requirements over a period [of five, ten and fifteen years] AS THE BOARD MAY DETERMINE APPROPRIATE, by utility service area where applicable, specifically identifying the reserve margins required for reliable electric service, the transmission and distribution losses assumed, and the amount of out-of-state sales commitments;

(i) a forecast over a period [of five, ten and fifteen years] AS THE BOARD MAY DETERMINE APPROPRIATE, by utility service area, of estimated annual in-state gas sales, winter season sales and peak day sales by appropriate end-use classifications, specifically identifying the extent to which energy conservation measures and the sale of gas owned by persons other than natural gas transmission and distribution utilities have been incorporated within such forecast;

(ii) a forecast of gas supply requirements over a period [of five, ten and fifteen years] AS THE BOARD MAY DETERMINE APPROPRIATE, by utility service area, specifically identifying the amounts of gas needed to meet severe weather conditions, lost and unaccounted for gas, out-of-state sales commitments and internal use;

(c) Such information from major petroleum suppliers and major coal suppliers as the board may[, by regulation,] require to carry out the purposes of this article.

(d) Such other information from owners and operators of electric generating power plants as the board may[, by regulation,] require to carry out the purposes of this article.

(E) A SINGLE COMPREHENSIVE SUBMISSION FROM INDUSTRY GROUPS, TRADE ASSOCIATIONS, OR COMBINATIONS OF SUCH GROUPS AND ASSOCIATIONS IN PLACE OF SUBMISSIONS BY INDIVIDUAL MEMBER COMPANIES.

S 4. Subdivision 6 of section 6-106 of the energy law, as added by chapter 433 of the laws of 2009, is amended to read as follows:

6. The board may amend the state energy plan, or aspects thereof, upon its own initiative or upon the written application of any interested person. In connection with any such amendment, the board may require the filing of such information as may be required, consistent with regulation. Prior to adopting any proposed amendment to an element of the plan identified in subdivision two of section 6-104 of this article, the board shall hold PUBLIC COMMENT HEARINGS AND MAY HOLD evidentiary hearings[,] upon the written application of an interested party. Prior to adopting a proposed amendment to any element of the plan, the board shall prepare and publish in the state register notice of any draft amendment and reasons therefor and shall solicit public comments thereon. The board shall adopt an amendment to the state energy plan, or aspects thereof, upon a finding by the board that there has been a material and substantial change in fact or circumstance since the most recent plan was adopted. A decision of the board that no amendment is necessary, together with the reasons supporting such determination, shall be final.

S 5. The opening paragraph of section 6-108 of the energy law, as added by chapter 433 of the laws of 2009, is amended to read as follows:

The board shall undertake the following studies AND OTHER STUDIES OR REPORTS to supplement information for future energy planning AS IT DEEMS NECESSARY:

S 6. This act shall take effect immediately.