

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CAHILL, DESTITO, ROSENTHAL, HEVESI, SWEENEY,
BRENNAN -- Multi-Sponsored by -- M. of A. FARRELL, GLICK, GOTTFRIED,
SCHIMEL -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to utility intervenor reimbursement; and to amend the state finance law in relation to establishing the utility intervenor account

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

1 Section 1. The public service law is amended by adding a new section
2 24-c to read as follows:

3 S 24-C. UTILITY INTERVENOR REIMBURSEMENT. 1. AS USED IN THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

5 (A) "COMPENSATION" MEANS PAYMENT FROM THE UTILITY INTERVENOR ACCOUNT
6 FUND ESTABLISHED BY SECTION NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW,
7 FOR ALL OR PART, AS DETERMINED BY THE COMMISSION, OF REASONABLE ADVOCATE'S
8 FEES, REASONABLE EXPERT WITNESS FEES, AND OTHER REASONABLE COSTS
9 FOR PREPARATION AND PARTICIPATION IN A PROCEEDING.

10 (B) "PARTICIPANT" MEANS A GROUP OF PERSONS THAT APPLY JOINTLY FOR AN
11 AWARD OF COMPENSATION UNDER THIS SECTION AND WHO REPRESENT THE INTERESTS
12 OF A SIGNIFICANT NUMBER OF RESIDENTIAL OR SMALL BUSINESS CUSTOMERS, OR A
13 NOT-FOR-PROFIT ORGANIZATION IN THIS STATE AUTHORIZED PURSUANT TO ITS
14 ARTICLES OF INCORPORATION OR BYLAWS TO REPRESENT THE INTERESTS OF RESIDENTIAL
15 OR SMALL BUSINESS UTILITY CUSTOMERS. FOR PURPOSES OF THIS
16 SECTION, A PARTICIPANT DOES NOT INCLUDE A NON-PROFIT ORGANIZATION OR
17 OTHER ORGANIZATION WHOSE PRINCIPAL INTERESTS ARE THE WELFARE OF A PUBLIC
18 UTILITY OR ITS INVESTORS OR EMPLOYEES, OR THE WELFARE OF ONE OR MORE
19 BUSINESSES OR INDUSTRIES WHICH RECEIVE UTILITY SERVICE ORDINARILY AND
20 PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-SEEKING MANUFACTURE,
21 SALE, OR DISTRIBUTION OF GOODS OR SERVICES.

22 (C) "COMMISSION" MEANS THE NEW YORK STATE PUBLIC SERVICE COMMISSION.

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

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1 (D) "OTHER REASONABLE COSTS" MEANS REASONABLE OUT-OF-POCKET EXPENSES
2 DIRECTLY INCURRED BY A PARTICIPANT THAT ARE DIRECTLY RELATED TO THE
3 CONTENTIONS OR RECOMMENDATIONS MADE BY THE PARTICIPANT THAT RESULTED IN
4 A SUBSTANTIAL CONTRIBUTION.

5 (E) "PARTY" MEANS ANY INTERESTED PARTY, RESPONDENT PUBLIC UTILITY, OR
6 COMMISSION STAFF IN A HEARING OR PROCEEDING.

7 (F) "PROCEEDING" MEANS A COMPLAINT, OR INVESTIGATION, RULEMAKING, OR
8 OTHER FORMAL PROCEEDING BEFORE THE COMMISSION, OR ALTERNATIVE DISPUTE
9 RESOLUTION PROCEDURES IN LIEU OF FORMAL PROCEEDINGS AS MAY BE SPONSORED
10 OR ENDORSED BY THE COMMISSION, PROVIDED HOWEVER SUCH PROCEEDINGS SHALL
11 BE LIMITED TO THOSE ARISING UNDER AND PROCEEDING PURSUANT TO THE FOLLOW-
12 ING ARTICLES OF THIS CHAPTER: (1) THE REGULATION OF THE PRICE OF GAS AND
13 ELECTRICITY, PURSUANT TO ARTICLE FOUR OF THIS CHAPTER; (2) THE REGU-
14 LATION OF THE PRICE OF STEAM, PURSUANT TO ARTICLE FOUR-A OF THIS CHAP-
15 TER; (3) THE SUBMETERING, REMETERING OR RESALE OF ELECTRICITY TO RESI-
16 DENTIAL PREMISES, PURSUANT TO SECTION SIXTY-FIVE AND SIXTY-SIX OF THIS
17 CHAPTER, AND PURSUANT TO 16 NYCRR PART 96; AND (4) SUCH SECTIONS OF THIS
18 CHAPTER AS ARE APPLICABLE TO A PROCEEDING IN WHICH THE COMMISSION MAKES
19 A FINDING ON THE RECORD THAT THE PUBLIC INTEREST REQUIRES THE REIMBURSE-
20 MENT OF UTILITY INTERVENOR FEES PURSUANT TO THIS SECTION.

21 (G) "SIGNIFICANT FINANCIAL HARDSHIP" MEANS THAT THE PARTICIPANT WILL
22 BE UNABLE TO AFFORD, WITHOUT UNDUE HARDSHIP, TO PAY THE COSTS OF EFFEC-
23 TIVE PARTICIPATION, INCLUDING ADVOCATE'S FEES, EXPERT WITNESS FEES, AND
24 OTHER REASONABLE COSTS OF PARTICIPATION.

25 (H) "SMALL BUSINESS" MEANS A BUSINESS WITH A GROSS ANNUAL REVENUE OF
26 TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS.

27 (I) "SUBSTANTIAL CONTRIBUTION" MEANS THAT, IN THE JUDGMENT OF THE
28 DEPARTMENT, THE PARTICIPANT'S APPLICATION MAY SUBSTANTIALLY ASSIST THE
29 COMMISSION IN MAKING ITS DECISION BECAUSE THE DECISION MAY ADOPT IN
30 WHOLE OR IN PART ONE OR MORE FACTUAL CONTENTIONS, LEGAL CONTENTIONS, OR
31 SPECIFIC POLICY OR PROCEDURAL RECOMMENDATIONS THAT WILL BE PRESENTED BY
32 THE PARTICIPANT.

33 (J) "DEPARTMENT" MEANS THE NEW YORK STATE DEPARTMENT OF PUBLIC
34 SERVICE.

35 2. A PARTICIPANT MAY APPLY FOR AN AWARD OF COMPENSATION UNDER THIS
36 SECTION IN A PROCEEDING IN WHICH SUCH PARTICIPANT HAS SOUGHT ACTIVE
37 PARTY STATUS AS DEFINED BY THE DEPARTMENT OR COMMISSION. THE DEPARTMENT
38 OR COMMISSION SHALL DETERMINE APPROPRIATE PROCEDURES FOR ACCEPTING AND
39 RESPONDING TO SUCH APPLICATIONS. AT THE TIME OF APPLICATION, SUCH
40 PARTICIPANT SHALL SERVE ON EVERY PARTY TO THE PROCEEDING NOTICE OF
41 INTENT TO APPLY FOR AN AWARD OF COMPENSATION.

42 AN APPLICATION SHALL INCLUDE:

43 (A) A STATEMENT OF THE NATURE AND EXTENT AND THE FACTUAL AND LEGAL
44 BASIS OF THE PARTICIPANT'S PLANNED PARTICIPATION IN THE PROCEEDING AS
45 FAR AS IT IS POSSIBLE TO DESCRIBE SUCH PARTICIPATION WITH REASONABLE
46 SPECIFICITY AT THE TIME THE APPLICATION IS FILED.

47 (B) AT MINIMUM, A REASONABLY DETAILED DESCRIPTION OF ANTICIPATED ADVO-
48 CATES AND EXPERT WITNESS FEES AND OTHER COSTS OF PREPARATION AND PARTIC-
49 IPATION THAT THE PARTICIPANT EXPECTS TO REQUEST AS COMPENSATION.

50 (C) IF PARTICIPATION OR INTERVENTION WILL IMPOSE A SIGNIFICANT FINAN-
51 CIAL HARDSHIP AND THE PARTICIPANT SEEKS PAYMENT IN ADVANCE TO AN AWARD
52 OF COMPENSATION IN ORDER TO INITIATE, CONTINUE OR COMPLETE PARTICIPATION
53 IN THE HEARING OR PROCEEDING, SUCH PARTICIPANT MUST INCLUDE EVIDENCE OF
54 SUCH SIGNIFICANT FINANCIAL HARDSHIP IN ITS APPLICATION.

55 (D) ANY OTHER REQUIREMENTS AS REQUIRED BY THE DEPARTMENT.

1 3. (A) WITHIN THIRTY DAYS AFTER THE FILING OF AN APPLICATION THE
 2 DEPARTMENT SHALL ISSUE A DECISION THAT DETERMINES WHETHER OR NOT THE
 3 PARTICIPANT MAY MAKE A SUBSTANTIAL CONTRIBUTION TO THE FINAL DECISION IN
 4 THE HEARING OR PROCEEDING. IF THE DEPARTMENT FINDS THAT THE PARTICIPANT
 5 REQUESTING COMPENSATION MAY MAKE A SUBSTANTIAL CONTRIBUTION, THE DEPART-
 6 MENT SHALL DESCRIBE THIS SUBSTANTIAL CONTRIBUTION AND DETERMINE THE
 7 AMOUNT OF COMPENSATION TO BE PAID PURSUANT TO SUBDIVISION FOUR OF THIS
 8 SECTION.

9 (B) NOTWITHSTANDING SUBDIVISION FOUR OF THIS SECTION, IF THE DEPART-
 10 MENT FINDS THAT THE PARTICIPANT HAS A SIGNIFICANT FINANCIAL HARDSHIP,
 11 THE DEPARTMENT MAY DIRECT THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE
 12 PROCEEDING TO PAY ALL OR PART OF THE COMPENSATION TO THE DEPARTMENT TO
 13 BE PROVIDED TO THE PARTICIPANT PRIOR TO THE END OF THE PROCEEDING. IN
 14 THE EVENT THAT THE PARTICIPANT DISCONTINUES ITS PARTICIPATION IN THE
 15 PROCEEDING WITHOUT THE CONSENT OF THE DEPARTMENT, THE DEPARTMENT SHALL
 16 BE ENTITLED TO, IN WHOLE OR IN PART, RECOVER ANY PAYMENTS MADE TO SUCH
 17 PARTICIPANT TO BE REFUNDED TO THE PUBLIC UTILITY OR UTILITIES THAT
 18 PROVIDED SUCH PAYMENT.

19 (C) THE COMPUTATION OF COMPENSATION PURSUANT TO PARAGRAPH (A) OF THIS
 20 SUBDIVISION SHALL TAKE INTO CONSIDERATION THE MARKET RATES PAID TO
 21 PERSONS OF COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR
 22 SERVICES. THE COMPENSATION AWARDED MAY NOT, IN ANY CASE, EXCEED THE
 23 COMPARABLE MARKET RATE FOR SERVICES PAID BY THE DEPARTMENT OR THE PUBLIC
 24 UTILITY, WHICHEVER IS GREATER, TO PERSONS OF COMPARABLE TRAINING AND
 25 EXPERIENCE WHO ARE OFFERING SIMILAR SERVICES.

26 (D) ANY COMPENSATION AWARDED TO A PARTICIPANT AND NOT USED BY SUCH
 27 PARTICIPANT SHALL BE RETURNED TO THE COMMISSION FOR REFUND TO THE PUBLIC
 28 UTILITY OR UTILITIES THAT PROVIDED SUCH PAYMENT.

29 (E) THE COMMISSION MAY AUDIT THE RECORDS AND BOOKS OF A PARTICIPANT
 30 SEEKING PAYMENT PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS
 31 SECTION TO THE EXTENT NECESSARY TO VERIFY THE CLAIM OF SIGNIFICANT
 32 FINANCIAL HARDSHIP. THE DEPARTMENT SHALL PRESERVE THE CONFIDENTIALITY OF
 33 THE PARTICIPANT'S RECORDS IN MAKING ITS AUDIT.

34 (F) IN THE EVENT THAT THE DEPARTMENT FINDS THAT TWO OR MORE PARTIC-
 35 IPANTS' APPLICATIONS HAVE SUBSTANTIALLY SIMILAR INTERESTS, THE DEPART-
 36 MENT MAY REQUIRE SUCH PARTICIPANTS TO APPLY JOINTLY IN ORDER TO RECEIVE
 37 COMPENSATION.

38 4. ANY COMPENSATION PURSUANT TO THIS SECTION SHALL BE PAID AT THE
 39 CONCLUSION OF THE PROCEEDING BY THE PUBLIC UTILITY OR UTILITIES SUBJECT
 40 TO THE PROCEEDING WITHIN THIRTY DAYS. SUCH COMPENSATION SHALL BE REMIT-
 41 TED TO THE COMMISSION WHICH SHALL THEN REMIT SUCH COMPENSATION TO THE
 42 PARTICIPANT.

43 5. THE COMMISSION SHALL DENY ANY AWARD TO ANY PARTICIPANT WHO ATTEMPTS
 44 TO DELAY OR OBSTRUCT THE ORDERLY AND TIMELY FULFILLMENT OF THE DEPART-
 45 MENT'S OR COMMISSION'S RESPONSIBILITIES.

46 S 2. The state finance law is amended by adding a new section 97-kkkk
 47 to read as follows:

48 S 97-KKKK. UTILITY INTERVENOR ACCOUNT. 1. THERE IS HEREBY ESTABLISHED
 49 IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF
 50 TAXATION AND FINANCE A FUND TO BE KNOWN AS THE UTILITY INTERVENOR
 51 ACCOUNT.

52 2. SUCH ACCOUNT SHALL CONSIST OF ALL UTILITY INTERVENOR REIMBURSEMENT
 53 MONIES RECEIVED FROM UTILITIES PURSUANT TO SECTION TWENTY-FOUR-C OF THE
 54 PUBLIC SERVICE LAW.

55 S 3. This act shall take effect on the thirtieth day after it shall
 56 have become a law.