

27--A

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 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 DEPARTMENT, OF REASONABLE ADVO-
8 CATE'S 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 RESI-
15 DENTIAL 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

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

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1 PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-SEEKING MANUFACTURE,
2 SALE, OR DISTRIBUTION OF GOODS OR SERVICES.

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

7 (D) "PARTY" MEANS ANY INTERESTED PARTY, RESPONDENT PUBLIC UTILITY, OR
8 COMMISSION STAFF IN A HEARING OR PROCEEDING.

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

25 (F) "SIGNIFICANT FINANCIAL HARDSHIP" MEANS THAT THE PARTICIPANT WILL
26 BE UNABLE TO AFFORD, WITHOUT UNDUE HARDSHIP, TO PAY THE COSTS OF EFFEC-
27 TIVE PARTICIPATION, INCLUDING ADVOCATE'S FEES, EXPERT WITNESS FEES, AND
28 OTHER REASONABLE COSTS OF PARTICIPATION.

29 (G) "SMALL BUSINESS" MEANS A BUSINESS WITH A GROSS ANNUAL REVENUE OF
30 TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS.

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

37 2. A PARTICIPANT MAY APPLY FOR AN AWARD OF COMPENSATION UNDER THIS
38 SECTION IN A PROCEEDING IN WHICH SUCH PARTICIPANT HAS SOUGHT ACTIVE
39 PARTY STATUS AS DEFINED BY THE DEPARTMENT. THE DEPARTMENT SHALL DETER-
40 MINE APPROPRIATE PROCEDURES FOR ACCEPTING AND RESPONDING TO SUCH APPLI-
41 CATIONS. AT THE TIME OF APPLICATION, SUCH PARTICIPANT SHALL SERVE ON
42 EVERY PARTY TO THE PROCEEDING NOTICE OF INTENT TO APPLY FOR AN AWARD OF
43 COMPENSATION.

44 AN APPLICATION SHALL INCLUDE:

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

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

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

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

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

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

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

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

30 (E) THE DEPARTMENT SHALL REQUIRE THAT PARTICIPANTS SEEKING PAYMENT
31 MAINTAIN AN ITEMIZED RECORD OF ALL EXPENDITURES INCURRED AS A RESULT OF
32 SUCH PROCEEDING.

33 (I) THE DEPARTMENT MAY USE THE ITEMIZED RECORD OF EXPENSES TO VERIFY
34 THE CLAIM OF FINANCIAL HARDSHIP BY A PARTICIPANT SEEKING PAYMENT PURSU-
35 ANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION.

36 (II) THE DEPARTMENT MAY USE THE RECORD OF EXPENDITURES IN DETERMINING,
37 AFTER THE COMPLETION OF A PROCEEDING, IF ANY UNUSED FUNDS REMAIN.

38 (III) THE DEPARTMENT SHALL PRESERVE THE CONFIDENTIALITY OF THE PARTIC-
39 IPANT'S RECORDS IN MAKING ANY AUDIT OR DETERMINING THE AVAILABILITY OF
40 FUNDS AFTER THE COMPLETION OF A PROCEEDING.

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

45 4. ANY COMPENSATION PURSUANT TO THIS SECTION SHALL BE PAID AT THE
46 CONCLUSION OF THE PROCEEDING BY THE PUBLIC UTILITY OR UTILITIES SUBJECT
47 TO THE PROCEEDING WITHIN THIRTY DAYS. SUCH COMPENSATION SHALL BE REMIT-
48 TED TO THE DEPARTMENT WHICH SHALL THEN REMIT SUCH COMPENSATION TO THE
49 PARTICIPANT.

50 5. THE DEPARTMENT SHALL DENY ANY AWARD TO ANY PARTICIPANT WHO ATTEMPTS
51 TO DELAY OR OBSTRUCT THE ORDERLY AND TIMELY FULFILLMENT OF THE DEPART-
52 MENT'S RESPONSIBILITIES.

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

55 S 97-KKKK. UTILITY INTERVENOR ACCOUNT. 1. THERE IS HEREBY ESTABLISHED
56 IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF

1 TAXATION AND FINANCE A FUND TO BE KNOWN AS THE UTILITY INTERVENOR
2 ACCOUNT.

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

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