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

6544

2013-2014 Regular Sessions

I N A S S E M B L Y

April 4, 2013

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

AN ACT to amend the public service law and the state finance law, in relation to establishing the natural gas infrastructure act

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

Section 1. Legislative intent. The legislature hereby recognizes that the availability of natural gas distribution systems is critical to certain manufacturers and other energy users. The legislature further recognizes that, in the wake of imminent increase of natural gas production, the state will subsequently realize excess revenue associated with additional economic activity. As the energy industry alone lacks the ability to sustain infrastructure projects that would connect all potential consumers of natural gas in the state, the legislature herein acts to remedy the issue. In order to make such projects viable, the natural gas infrastructure fund established by this act would provide up to one hundred percent of the total costs of an eligible project to a requesting eligible entity. The entity would own those facilities paid for by this fund, would provide oversight in addition to the franchise powers already given to municipalities of the facilities, and would solicit local input with regard to oversight. The franchised natural gas local distribution company would operate those sections of the distribution system owned by the entity.

S 2. Short title. This act shall be known and may be cited as the "natural gas infrastructure act".

S 3. The public service law is amended by adding a new article 12 to read as follows:

ARTICLE 12

NATURAL GAS INFRASTRUCTURE ACT

SECTION 236. DEFINITIONS.

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

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237. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT IN RESPECT TO THE NATURAL GAS INFRASTRUCTURE FUND.
238. CRITERIA FOR SELECTION OF ELIGIBLE PROJECTS.
239. FINANCING AGREEMENTS.
240. INSPECTION AND CERTIFICATION.
241. NONCOMPLIANCE; NOTIFICATION; APPLICATION FOR SERVICE.

S 236. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CONSTRUCTION" MEANS THE ERECTION, BUILDING, ACQUISITION, ALTERATION, RECONSTRUCTION, IMPROVEMENT, ENLARGEMENT OR EXTENSION OF AN ELIGIBLE PROJECT; THE INSPECTION AND SUPERVISION THEREOF; AND THE ENGINEERING, ARCHITECTURAL, LEGAL, FISCAL, AND ECONOMIC INVESTIGATIONS AND STUDIES, SURVEYS, DESIGNS, PLANS, WORKING DRAWINGS, SPECIFICATIONS, PROCEDURES, AND OTHER ACTIONS NECESSARY THERETO.

2. "ELIGIBLE PROJECT" MEANS A PROJECT INTENDED TO EXTEND NATURAL GAS SUPPLY TO RURAL OR UNDERSERVED AREAS FOR ECONOMIC DEVELOPMENT PURPOSES BY THE CONSTRUCTION OF NATURAL GAS DISTRIBUTION FACILITIES.

A PROJECT WILL NOT BE CONSIDERED AN ELIGIBLE PROJECT IF ITS COMPLETION WOULD RESULT IN A BYPASS OR RISK OF BYPASS TO ANY LOCAL DISTRIBUTION COMPANY. A BYPASS OR RISK OF BYPASS WILL EXIST IF THE COMPLETED PROJECT DISPLACES ANY OTHER LOCAL DISTRIBUTION COMPANY'S GAS LOAD OR GAS LOAD OPPORTUNITY, UNLESS THAT LOCAL DISTRIBUTION COMPANY CHOOSES NOT TO EXERCISE SUCH GAS LOAD OPPORTUNITY.

3. "ELIGIBLE COSTS" MEANS THAT PORTION OF AN ELIGIBLE PROJECT THAT MAY QUALIFY FOR FUNDING HEREIN.

4. "FINANCING AGREEMENT" MEANS AN AGREEMENT BETWEEN THE DEPARTMENT, THE AUTHORITY, AND ONE OR MORE RECIPIENTS MEETING THE REQUIREMENTS OF THIS ARTICLE.

5. "FUND" MEANS THE NATURAL GAS INFRASTRUCTURE FUND ESTABLISHED PURSUANT TO THIS ARTICLE AND SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.

6. "LOCAL DISTRIBUTION COMPANY" MEANS A FRANCHISED NATURAL GAS UTILITY FULLY SUBJECT TO THE JURISDICTION AND SUPERVISION OF THE DEPARTMENT IN ALL RESPECTS AND HAVING A TARIFF PUBLICLY FILED AND APPROVED BY THE COMMISSION PRIOR TO THE DISBURSEMENT OF ANY MONIES.

7. "RECIPIENT" MEANS A UTILITY OR OTHER ENTITY DEEMED ELIGIBLE, WHICH IS EMPOWERED TO CONSTRUCT A PORTION OF THE ELIGIBLE PROJECT, OR ANY TWO OR MORE SUCH ENTITIES WHICH ARE ACTING JOINTLY AND WITH THE PRIOR CONSENT OF THE LOCAL DISTRIBUTION COMPANY HOLDING A FRANCHISE IN THE AREA IN WHICH THE PROPOSED PROJECT IS LOCATED.

8. "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

9. "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SERVICE.

10. "AUTHORITY" MEANS THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.

11. "FRANCHISE" MEANS A GAS FRANCHISE IN ACCORDANCE WITH SECTION SIXTY-EIGHT OF THIS CHAPTER OR, IN THE ABSENCE OF AN EXPRESS FRANCHISE, THE CURRENT AND HISTORIC RIGHT AND OBLIGATION TO SUPPLY GAS SERVICE IN THE PROJECT AREA.

12. "PROJECT FACILITIES" SHALL MEAN, BUT NOT BE LIMITED TO, ANY MAIN LINE, SERVICE LINE AND APPURTENANT FACILITIES CONSTRUCTED PURSUANT TO THE AUTHORITY OF THIS ARTICLE.

S 237. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT IN RESPECT TO THE NATURAL GAS INFRASTRUCTURE FUND. THE DEPARTMENT SHALL WORK IN CONJUNCTION WITH THE AUTHORITY TO PROVIDE ASSISTANCE IN SUPPORT OF THE PROGRAM TO MAKE AVAILABLE TO ELIGIBLE RECIPIENTS FUNDING FOR THE CONSTRUCTION OF NATURAL GAS DISTRIBUTION FACILITIES IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE OR ANY OTHER PROVISION OF LAW, AS DETERMINED BY THE COMMIS-

SION. THE DEPARTMENT SHALL ACT IN A MANNER AS TO DIRECT THE AUTHORITY REGARDING DETERMINATIONS OF PROJECT ELIGIBILITY, AND THE AUTHORITY WILL SUBSEQUENTLY ADMINISTER FUNDING TO RECIPIENTS.

S 238. CRITERIA FOR SELECTION OF ELIGIBLE PROJECTS. 1. THE COMMISSION SHALL ESTABLISH PROCEDURES, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, CRITERIA AND STANDARDS FOR SELECTION OF ELIGIBLE PROJECTS; DETERMINING THE AMOUNT OF FINANCIAL ASSISTANCE TO A RECIPIENT FOR AN ELIGIBLE PROJECT; AND THE MANNER IN WHICH FUNDING SHALL BE APPLIED AND DISTRIBUTED WITH THE AUTHORITY.

2. THE COMMISSION SHALL DEVISE, AND THE DEPARTMENT THEREAFTER IMPLEMENT, AN APPROPRIATE APPLICATION PROCESS FOR ENTITIES TO REQUEST PROJECT FUNDING FROM THE FUND.

3. PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE COMMISSION SHALL REVIEW, WITH THE ADVICE OF LOCAL DISTRIBUTION COMPANIES AND IN CONSULTATION WITH THE STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, THE AUTHORITY AND ANY STATE AGENCY OR ENTITY WHICH IN THE DISCRETION OF THE COMMISSION IT SHOULD WISH TO CONSULT, APPLICATIONS FOR FUNDING OF POTENTIALLY ELIGIBLE PROJECTS. REVIEW OF SUCH APPLICATIONS SHALL INCLUDE, BUT NEED NOT BE LIMITED TO,

(A) AN ASSESSMENT OF THE POTENTIAL AMOUNT OF CUSTOMERS WHO WOULD GAIN CAPACITY TO PURCHASE NATURAL GAS SUPPLY;

(B) A DEMONSTRATION THAT THE PROPOSED AFFECTED AREA IS EITHER UNDERSERVED, OR HAS SEEN A LACK OF APPROPRIATE INFRASTRUCTURAL IMPROVEMENT FOR ANY PERIOD OF TIME;

(C) CONSIDERATION OF THE REGION'S AND THE STATE'S INFRASTRUCTURAL, ENERGY PLANNING AND ECONOMIC DEVELOPMENT GOALS;

(D) AN INDEPENDENT ENVIRONMENTAL REVIEW, WHICH OUTLINES THE POTENTIALLY AFFECTED NATURAL RESOURCES THROUGHOUT THE AREA OF THE PROJECT, AND A SPECIFIC PLAN TO AVOID ENVIRONMENTAL HEALTH AND SAFETY RISKS SURROUNDING THAT AREA DURING CONSTRUCTION;

(E) DEMONSTRATION OF THE TOTAL PROJECT COST, ALONG WITH JUSTIFICATION FOR THE COST, INCLUDING BUT NOT LIMITED TO THE APPLICANT'S CONSIDERATION OF USING MATERIALS SOURCED WITHIN THE STATE AS WELL AS THE MOST ENVIRONMENTALLY SOUND PRODUCTS DURING CONSTRUCTION. NO PROVISION IN THIS SECTION SHALL BE DEEMED TO REQUIRE APPLICANTS TO, OR LIMIT APPLICANTS FROM, PURCHASING SPECIFIC MATERIALS; AND

(F) AN ASSESSMENT OF COMPLIANCE WITH STATE AND FEDERAL LAWS, RULES AND REGULATIONS.

4. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO REQUIRE A LOCAL DISTRIBUTION COMPANY HOLDING A FRANCHISE IN, OR HISTORICALLY SERVING THE AREA IN WHICH THE PROPOSED PROJECT IS LOCATED, TO UNDERTAKE A PROPOSED PROJECT.

5. FOR ALL ELIGIBLE RECIPIENTS, PROVISIONS HEREIN MAY BE COMBINED WITH EXISTING TAX CREDITS, EXEMPTIONS AND OTHER INCENTIVES WHICH SUPPORT NATURAL GAS INFRASTRUCTURE, INCLUDING, BUT NOT LIMITED TO, ELIGIBLE RECIPIENTS UNDERGOING NATURAL GAS SERVICE EXPANSION AND PROJECTS AFFECTING THE RETENTION OF JOBS IN THE STATE.

S 239. FINANCING AGREEMENTS. 1. PRIOR TO THE DISBURSEMENT OF ANY FUNDING FROM THE FUND, THE DEPARTMENT, THE AUTHORITY AND ANY RECIPIENT HAVING THE POWER TO CONTRACT WITH RESPECT TO THE FINANCING OF AN ELIGIBLE PROJECT, SHALL ENTER INTO A GRANT DISBURSEMENT AGREEMENT, PROVIDING FOR THE CONSTRUCTION PLAN OF THE ELIGIBLE PROJECT. THE DEPARTMENT SHALL PREPARE EACH AGREEMENT, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING PROVISIONS:

(A) A DETAILED DESCRIPTION OF THE ELIGIBLE PROJECT AND THE TOTAL PROJECT COST;

(B) THE RIGHT OF THE DEPARTMENT TO APPROVE ANY CONTRACTS FOR FUNDING PURSUANT TO THE AGREEMENT, AND TO INSPECT AND REVIEW THE CONSTRUCTION OF ELIGIBLE PROJECTS TO THE EXTENT PERMITTED BY THE LAWS, RULES AND REGULATIONS OF THE DEPARTMENT;

(C) REMEDIES IN THE EVENT OF A RECIPIENT'S FAILURE TO COMPLY WITH THE TERMS OF AN AGREEMENT;

(D) AN AGREEMENT BY THE AUTHORITY TO GRANT TO THE RECIPIENT, FOR THE PARTIAL CONSTRUCTION OF AN ELIGIBLE PROJECT, A SPECIFIED AMOUNT OF FUNDING, SUBJECT TO THE ABILITY OF THE AUTHORITY TO PROVIDE SUCH FUNDS, INCLUDING ANY OTHER APPROVALS REQUIRED BY STATE OR FEDERAL LAW AND SUCH OTHER CONDITIONS AS THE DEPARTMENT SHALL DETERMINE NECESSARY OR DESIRABLE; AND

(E) AN AGREEMENT BY THE RECIPIENT TO:

(I) PROCEED EXPEDITIOUSLY WITH AND COMPLETE THE ELIGIBLE PROJECT IN ACCORDANCE WITH PLANS APPROVED;

(II) OPERATE AND MAINTAIN THE ELIGIBLE PROJECT IN ACCORDANCE WITH APPLICABLE REQUIREMENTS OF FEDERAL AND STATE LAW;

(III) ESTABLISH AND MAINTAIN PROJECT ACCOUNTS IN ACCORDANCE WITH THE AGREEMENT AND GENERALLY ACCEPTED ACCOUNTING STANDARDS; AND

(IV) PERMIT ANY REVIEWS OR AUDITS AND PROVIDE ASSISTANCE DETERMINED TO BE REASONABLE AND NECESSARY BY THE COMMISSIONER.

2. NO PROVISION OF THIS ARTICLE SHALL BE DEEMED TO LIMIT THE DEPARTMENT'S ABILITY TO TERMINATE OR IMPOSE CONDITIONS UPON THE OPERATION OF AN ELIGIBLE PROJECT PURSUANT TO THE PROVISIONS OF THIS CHAPTER OR ANY OTHER PROVISION OF LAW.

3. THE COMMISSION SHALL MAKE ANY SUCH OTHER AGREEMENTS OR COVENANTS AS THE COMMISSION MAY DEEM NECESSARY OR DESIRABLE IN CONNECTION WITH THE FUNDING APPLICABLE HEREIN.

S 240. INSPECTION AND CERTIFICATION. 1. THE DEPARTMENT SHALL ENSURE COMPLIANCE OF RECIPIENTS WITH EACH FINANCING AGREEMENT BY:

(A) RETAINING THE RIGHT TO INSPECT AND REVIEW WORK ON EACH ELIGIBLE PROJECT IN PROGRESS AND UPON COMPLETION, AND DETERMINING WHETHER SUCH WORK WAS UNDERTAKEN AND COMPLETED IN COMPLIANCE WITH ALL RELEVANT PLANS AND THE TERMS OF SUCH FINANCING AGREEMENT TO THE EXTENT THAT SUCH INSPECTIONS AND REVIEW ARE PERMITTED BY LAW AND RULES AND REGULATIONS OF THE DEPARTMENT;

(B) RETAINING THE RIGHT TO DISBURSE OR REFUSE TO DISBURSE PAYMENTS TO A RECIPIENT PURSUANT TO A FINANCING AGREEMENT BASED UPON THE DETERMINATIONS OF ANY REVIEW OR AUDIT;

(C) ESTABLISHING REMEDIES IF WORK ON A ELIGIBLE PROJECT HAS NOT BEEN COMPLETED IN ACCORDANCE WITH ALL RELEVANT PLANS AND THE TERMS OF SUCH FINANCING AGREEMENT DUE TO FACTORS WITHIN THE RECIPIENT'S CONTROL; AND

(D) REQUIRING A RECIPIENT TO MAINTAIN APPROPRIATE PROJECT ACCOUNTS AND RECORDS WITH RESPECT TO ANY ELIGIBLE PROJECT.

2. NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT OR DIMINISH THE GENERAL AUTHORITY OF THE DEPARTMENT TO INSPECT AND REVIEW THE WORK ON ANY PROJECT FINANCED PURSUANT TO THIS ARTICLE, OR TO INSPECT THE RECORDS RELATING TO SUCH PROJECT, FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH ANY OTHER PROVISIONS OF THIS CHAPTER.

S 241. NONCOMPLIANCE; NOTIFICATION; APPLICATION FOR SERVICE. IN THE EVENT THAT THE WORK COMPLETED PURSUANT TO AN AGREEMENT IS DEEMED NOT IN COMPLIANCE WITH SUCH FINANCING AGREEMENT, THE DEPARTMENT SHALL EXPEDITIOUSLY NOTIFY THE RECIPIENT OF SUCH NONCOMPLIANCE AND INDICATE THE REASONS FOR SUCH DETERMINATION.

S 4. The state finance law is amended by adding a new section 99-u to read as follows:

S 99-U. NATURAL GAS INFRASTRUCTURE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, HEREAFTER "THE AUTHORITY", AND THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "NATURAL GAS INFRASTRUCTURE FUND". THE STATE COMPTROLLER MAY ESTABLISH WITHIN THE NATURAL GAS INFRASTRUCTURE FUND ADDITIONAL ACCOUNTS OR SUBACCOUNTS AND SPECIFY ANY CONDITIONS APPLICABLE TO THE TRANSFER OF FUNDS BETWEEN SUCH ACCOUNTS OR SUBACCOUNTS. WITH RESPECT TO EACH ELIGIBLE PROJECT, THE AUTHORITY SHALL ESTABLISH AND MAINTAIN A RECORD OF THE FUNDS ALLOCATED TO EACH PROJECT.

2. SUCH FUND SHALL CONSIST OF FUNDING APPROPRIATED BY THE LEGISLATURE FOR THE PURPOSE OF SUCH FUND OR OTHERWISE TRANSFERRED BY LAW, AS WELL AS INVESTMENT EARNINGS ON AMOUNTS IN SUCH FUND. FUNDING SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSION.

3. FUNDS OF THE NATURAL GAS INFRASTRUCTURE FUND SHALL BE APPLIED OR DISTRIBUTED BY THE AUTHORITY IN ACCORDANCE WITH ARTICLE TWELVE OF THE PUBLIC SERVICE LAW TO PROVIDE FINANCIAL ASSISTANCE TO RECIPIENTS FOR ACQUISITION AND CONSTRUCTION OF ELIGIBLE PROJECTS AND TO PROVIDE FOR THE COSTS OF THE ADMINISTRATION AND MANAGEMENT OF THE FUND.

S 5. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 6. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.