

1044

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. KAVANAGH, GALEF, JAFFEE, MILLMAN, ROSENTHAL,  
SCARBOROUGH -- Multi-Sponsored by -- M. of A. CLARK, COLTON, GLICK,  
GOTTFRIED, HIKIND, HOOPER, V. LOPEZ, RIVERA, ROBINSON, SWEENEY,  
THIELE, WEISENBERG, WRIGHT -- read once and referred to the Committee  
on Energy

AN ACT to amend the energy law, the public authorities law and the  
public service law, in relation to refuge facilities

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

1     Section 1. The legislature hereby finds that there is a need to  
2     protect the public from potential disruptions to the energy transmission  
3     and distribution system, whether caused by natural or man-made occur-  
4     rences. Such needs can be met through the creation of refuge facilities  
5     in every locality in the state that can assure the public of continuous  
6     provision of electric, heat and other necessary utility services in  
7     times of disruption of the delivery of such services. Such refuge facil-  
8     ities shall be either existing or new buildings which have energy and  
9     heat producing equipment and which provide electricity and heat through  
10    such on-site technologies and that such equipment is capable of opera-  
11    tion independent of the receipt of power or other services from the  
12    local electric utility transmission and distribution system.  
13    The legislature also finds that, in order to promote the development  
14    of appropriate facilities and energy production equipment, it is appro-  
15    priate for state agencies to provide financial assistance in the form of  
16    low-interest or zero-interest loans, grants, performance contracts and  
17    other appropriate financing mechanisms. In addition, the legislature  
18    also finds that current technologies exist which could provide the dual  
19    purpose of reducing energy costs for such facilities, and thus also  
20    provide benefits to local taxpayers for lower public facilities costs.  
21    In addition, to ensure that such facilities do not create additional

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

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cost burdens for local taxpayers, and in consideration of the public safety and security to be provided to the localities, such facilities shall be exempt from any statutory or regulatory requirements for utility standby rates, unreasonable interconnection charges, or exit fees or other similar rates or requirements.

S 2. The energy law is amended by adding a new article 22 to read as follows:

ARTICLE 22  
REFUGE FACILITIES

SECTION 22-101. DEFINITIONS.

22-102. REFUGE FACILITIES, CREATION.

22-103. UTILITY RATE TREATMENT.

22-104. PERFORMANCE CONTRACTS.

S 22-101. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. "REFUGE FACILITY" SHALL MEAN A FACILITY OWNED AND OPERATED BY A MUNICIPALITY, AS DEFINED IN SECTION NINE HUNDRED EIGHTY OF THE GENERAL MUNICIPAL LAW, OR A SCHOOL DISTRICT, AS PURSUANT TO TITLE TWO OF THE EDUCATION LAW, INCLUDING BUT NOT LIMITED TO SCHOOL BUILDINGS, MUNICIPAL OFFICE BUILDINGS, COMMUNITY CENTERS, OR PUBLIC UNIVERSITIES, COLLEGES OR COMMUNITY COLLEGES, AS DEFINED PURSUANT TO THE EDUCATION LAW, OR OTHER APPROPRIATE STRUCTURE OR FACILITY THAT IS CAPABLE OF PROVIDING SHELTER FOR A SIGNIFICANT PORTION OF THE LOCAL POPULATION DURING TIMES OF MAN-MADE OR NATURAL DISASTER.

2. "COGENERATION TECHNOLOGY" SHALL MEAN ANY ONE OF THE SEVERAL TECHNOLOGIES THAT CAN BE USED FOR COMBINED HEAT AND POWER APPLICATIONS, AND WHICH CONSIST OF APPLICATIONS OF TECHNOLOGIES WHEREIN WASTE HEAT FROM ON-SITE ELECTRIC GENERATION PROCESS IS RECOVERED TO PROVIDE STEAM OR HOT WATER TO MEET ON-SITE NEEDS, SUCH AS HEATING AND/OR AIR CONDITIONING. FOR PURPOSES OF THIS ARTICLE, COGENERATION TECHNOLOGIES MUST ATTAIN OVERALL SYSTEM EFFICIENCY OF SIXTY PERCENT, CONSIDERING BOTH THERMAL AND ELECTRICAL PROCESSES TOGETHER.

3. "FINANCIAL ASSISTANCE" SHALL MEAN GRANTS, LOANS, INTEREST SUBSIDIES, LOAN GUARANTEES AND OTHER APPROPRIATE FUNDING MECHANISMS, INCLUDING PERFORMANCE CONTRACTING, CONSIDERING THE CIRCUMSTANCES OF THE PROJECT. WITH THE EXCEPTION OF GRANTS, ANY FINANCIAL ASSISTANCE PROVIDED ACCORDING TO THIS SUBDIVISION SHALL BE REPAID TO THE ISSUING AUTHORITY, OVER A PERIOD NOT TO EXCEED TEN YEARS, WITH SAVINGS IN ENERGY COSTS AND RELATED COSTS WHICH ACCRUE TO THE FACILITY OWNER AS A RESULT OF INSTALLING AND OPERATING SUCH COGENERATION EQUIPMENT.

S 22-102. REFUGE FACILITIES, CREATION. 1. FOR PURPOSES OF IMPLEMENTING THE PROVISIONS OF THIS ARTICLE, EVERY COUNTY, EXCEPT THOSE CONTAINED WITHIN THE CITY OF NEW YORK, AND THE CITY OF NEW YORK SHALL INITIATE AND IMPLEMENT A PROGRAM TO IDENTIFY AND CREATE FACILITIES WHICH CAN BE UTILIZED AS REFUGE FACILITIES. SUCH REFUGE FACILITIES SHALL BE IDENTIFIED AND INCLUDED IN ANY AND ALL LOCAL DISASTER PREPAREDNESS PLANS TO BE COMPLETED AND IMPLEMENTED ACCORDING TO SECTION TWENTY-THREE OF THE EXECUTIVE LAW. COUNTY EMERGENCY MANAGEMENT OFFICIALS AND THE CITY OF NEW YORK EMERGENCY MANAGEMENT OFFICIAL SHALL COOPERATE AND COORDINATE EFFORTS TO IDENTIFY AND ESTABLISH REFUGE FACILITIES WITH THE DIRECTOR OF THE STATE EMERGENCY MANAGEMENT OFFICE AND THE DISASTER PREPAREDNESS COMMISSION. TO THE EXTENT POSSIBLE AND FEASIBLE, COUNTY EMERGENCY MANAGEMENT OFFICIALS AND THE CITY OF NEW YORK EMERGENCY MANAGEMENT OFFICIAL SHALL INTEGRATE ANY SUCH ACTIVITIES WITH THOSE OF ANY AND ALL STATE DISASTER PREPAREDNESS PLANS AS REQUIRED PURSUANT TO SECTION TWENTY-TWO OF THE EXECUTIVE LAW.

1 2. COUNTY EMERGENCY MANAGEMENT OFFICIALS, WORKING IN COORDINATION  
2 WITH APPROPRIATE STATE, CITY, TOWN AND VILLAGE OFFICIALS, SHALL IDENTIFY  
3 AN APPROPRIATE NUMBER OF REFUGE FACILITIES TO BE LOCATED WITHIN THE  
4 COUNTY, WITH RESPECT TO THE POPULATION AND OTHER CONSIDERATIONS NECES-  
5 SARY TO PROVIDE ADEQUATE RELIEF IN TIMES OF AN EMERGENCY. THE CITY OF  
6 NEW YORK EMERGENCY MANAGEMENT OFFICIAL SHALL WORK IN COORDINATION WITH  
7 ALL APPROPRIATE STATE OFFICIALS TO IDENTIFY AN APPROPRIATE NUMBER OF  
8 REFUGE FACILITIES TO BE LOCATED WITHIN THAT CITY, WITH RESPECT TO THE  
9 POPULATION AND OTHER CONSIDERATIONS NECESSARY TO PROVIDE ADEQUATE RELIEF  
10 IN TIMES OF AN EMERGENCY.

11 3. EACH REFUGE FACILITY SHALL BE REGISTERED WITH THE COUNTY EMERGENCY  
12 MANAGEMENT OFFICE IN THE COUNTY IN WHICH SUCH FACILITY IS SITUATED,  
13 EXCEPT IN THE CITY OF NEW YORK WHEREIN THE CITY EMERGENCY MANAGEMENT  
14 OFFICE SHALL MAINTAIN SUCH REGISTRATION. THE REGISTRIES SHALL BE UPDATED  
15 ANNUALLY. SUCH REGISTRIES SHALL ALSO BE PROVIDED TO THE STATE EMERGENCY  
16 MANAGEMENT OFFICE.

17 S 22-103. UTILITY RATE TREATMENT. NO ELECTRIC CORPORATION, AS DEFINED  
18 BY SUBDIVISION THIRTEEN OF SECTION TWO OF THE PUBLIC SERVICE LAW, SHALL  
19 ESTABLISH OR MODIFY ANY TARIFFS WITH RESPECT TO REFUGE FACILITIES THAT  
20 INSTALL COGENERATION EQUIPMENT. ANY REFUGE FACILITY THAT IS REGISTERED  
21 WITH THE STATE EMERGENCY MANAGEMENT OFFICE SHALL FURTHER BE EXEMPT FROM  
22 PAYMENT OF ANY EXIT FEES OR ANY LOST REVENUES RESULTING FROM THE INSTAL-  
23 LATION AND OPERATION OF COGENERATION EQUIPMENT AT THE REFUGE FACILITY.  
24 TO THE EXTENT THAT THE REFUGE FACILITY REQUIRES INTERCONNECTION WITH THE  
25 LOCAL ELECTRIC UTILITY SYSTEM, NO ELECTRIC CORPORATION SHALL ESTABLISH  
26 OR MODIFY ANY TARIFF TO ESTABLISH A STANDBY RATE THAT DOES NOT TAKE INTO  
27 ACCOUNT THE ACTUAL COSTS AND BENEFITS OF THE DISTRIBUTED GENERATION  
28 RESOURCE. SUCH STANDBY RATE SHALL CONSIDER THE RELIABILITY OF THE  
29 ON-SITE GENERATION, AS DETERMINED BY THE FREQUENCY AND DURATION OF  
30 OUTAGES, SO THAT CUSTOMERS WITH MORE RELIABLE ON-SITE GENERATION AND  
31 THOSE THAT REDUCE PEAK DEMAND PAY A LOWER COST-BASED RATE. TO THE EXTENT  
32 THE INSTALLATION OF ANY COGENERATION EQUIPMENT RESULTS IN INTERCON-  
33 NECTION FEES, AN ELECTRIC CORPORATION SHALL ONLY COLLECT INTERCONNECTION  
34 FEES THAT ARE REASONABLE.

35 S 22-104. PERFORMANCE CONTRACTS. FOR PURPOSES OF IMPLEMENTING THIS  
36 ARTICLE, THE PROVISIONS OF ARTICLE NINE OF THIS CHAPTER SHALL BE APPLI-  
37 CABLE FOR THOSE PROJECTS FOR WHICH PERFORMANCE CONTRACTING IS A PREFERA-  
38 BLE METHOD FOR THE FINANCING, INSTALLATION AND OPERATION OF COGENERATION  
39 TECHNOLOGY EQUIPMENT.

40 S 3. Section 1005 of the public authorities law is amended by adding a  
41 new subdivision 24 to read as follows:

42 24. TO PROVIDE FINANCIAL ASSISTANCE FOR THE INSTALLATION OF COGENERA-  
43 TION TECHNOLOGIES FOR THE PURPOSE OF CREATING AND MAINTAINING REFUGE  
44 FACILITIES PURSUANT TO ARTICLE TWENTY-TWO OF THE ENERGY LAW.

45 A. THE AUTHORITY MAY MAKE AVAILABLE FINANCIAL ASSISTANCE; PROVIDED  
46 THAT NO COSTS ASSOCIATED WITH SUCH FINANCIAL ASSISTANCE SHALL BE CHARGED  
47 TO THE AUTHORITY'S CUSTOMERS. SUCH FUNDS SHALL BE USED FOR THE DEVELOP-  
48 MENT OF REFUGE FACILITIES AS IDENTIFIED AMONG THE AUTHORITY'S CUSTOMERS.

49 B. THE AUTHORITY MAY SOLICIT APPLICATIONS FOR FINANCIAL ASSISTANCE BY  
50 PUBLIC NOTICE. SUCH NOTICE SHALL BE IN THE FORM OF ADVERTISEMENTS, PRESS  
51 RELEASES, AND BY SUCH OTHER MEANS AS THE AUTHORITY FINDS APPROPRIATE.

52 C. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A  
53 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY  
54 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE  
55 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-

1 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF  
2 FINANCIAL ASSISTANCE REQUIRED.

3 S 4. Sections 1020-ii, 1020-jj and 1020-kk of the public authorities  
4 law, as renumbered by chapter 388 of the laws of 2011, are renumbered  
5 sections 1020-jj, 1020-kk and 1020-ll and a new section 1020-ii is added  
6 to read as follows:

7 S 1020-II. REFUGE FACILITIES; COMPLIANCE. 1. THE AUTHORITY MAY ASSIST  
8 WITH THE IMPLEMENTATION OF THE REFUGE FACILITIES, AS STATED IN ARTICLE  
9 TWENTY-TWO OF THE ENERGY LAW, WITHIN THE SERVICE TERRITORY.

10 2. THE AUTHORITY MAY MAKE AVAILABLE FINANCIAL ASSISTANCE; PROVIDED  
11 THAT NO COSTS ASSOCIATED WITH SUCH FINANCIAL ASSISTANCE SHALL BE CHARGED  
12 TO THE AUTHORITY'S CUSTOMERS. SUCH FUNDS SHALL BE USED FOR THE DEVELOP-  
13 MENT OF REFUGE FACILITIES WITHIN THE AUTHORITY'S SERVICE TERRITORY.

14 3. THE AUTHORITY MAY SOLICIT APPLICATIONS FOR FINANCIAL ASSISTANCE BY  
15 PUBLIC NOTICE. SUCH NOTICE SHALL BE IN THE FORM OF ADVERTISEMENT, PRESS  
16 RELEASES, AND BY SUCH OTHER MEANS AS THE AUTHORITY FINDS APPROPRIATE.

17 4. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A  
18 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY  
19 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE  
20 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-  
21 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF  
22 FINANCIAL ASSISTANCE REQUIRED.

23 S 5. Section 1854 of the public authorities law is amended by adding a  
24 new subdivision 20 to read as follows:

25 20. TO PROVIDE FINANCIAL ASSISTANCE FOR THE INSTALLATION OF COGENERA-  
26 TION TECHNOLOGIES FOR THE PURPOSE OF CREATING AND MAINTAINING REFUGE  
27 FACILITIES PURSUANT TO ARTICLE TWENTY-TWO OF THE ENERGY LAW. THE  
28 AUTHORITY MAY SOLICIT APPLICATIONS FOR FINANCIAL ASSISTANCE BY PUBLIC  
29 NOTICE, WHICH PUBLIC NOTICE SHALL BE IN THE FORM OF ADVERTISEMENTS,  
30 PRESS RELEASES, AND BY SUCH OTHER MEANS AS THE AUTHORITY FINDS APPROPRI-  
31 ATE. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE BY ENTERING INTO A  
32 CONTRACT WITH A CONTRACTOR FOR THE COGENERATION SERVICES. THE AUTHORITY  
33 SHALL EVALUATE APPLICATIONS FOR FINANCIAL ASSISTANCE BASED UPON THE  
34 AMOUNT OF POWER SAVED AS A RESULT OF THE INSTALLATION OF THE COGENERA-  
35 TION EQUIPMENT AND THE SAVINGS IN ENERGY COSTS RELATIVE TO THE AMOUNT OF  
36 FINANCIAL ASSISTANCE REQUIRED. WHERE APPROPRIATE, THE AUTHORITY MAY  
37 ACCESS FUNDS RECEIVED FROM UTILITY ASSESSMENTS FOR ENERGY EFFICIENCY AND  
38 OTHER RESEARCH AND DEVELOPMENT ACTIVITIES IN ORDER TO PROVIDE GRANTS FOR  
39 PROJECTS REQUIRING ADDITIONAL FINANCIAL ASSISTANCE, AND WHERE PERFORM-  
40 ANCE CONTRACTING IS NOT AVAILABLE. THE AUTHORITY MAY MAKE AVAILABLE  
41 FINANCIAL ASSISTANCE, WHICH SHALL BE MADE AVAILABLE FOR PROJECTS IN  
42 UTILITY SERVICE TERRITORIES WHEREIN THE RATEPAYERS OF SUCH UTILITIES  
43 CONTRIBUTE TO SUCH ASSESSMENT FOR ENERGY EFFICIENCY AND RESEARCH AND  
44 DEVELOPMENT.

45 S 6. Section 66 of the public service law is amended by adding a new  
46 subdivision 29 to read as follows:

47 29. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO  
48 REFUGE FACILITY THAT IS IDENTIFIED AND IMPLEMENTED IN ACCORDANCE WITH  
49 ARTICLE TWENTY-TWO OF THE ENERGY LAW SHALL BE SUBJECT TO ANY TRANSITION  
50 COSTS, EXIT FEES, OR ADDITIONAL PAYMENTS, SUCH AS STANDBY RATES, RELATED  
51 TO THE DISCONTINUANCE OF SERVICES FROM ITS FORMER SUPPLIER OF RETAIL  
52 DISTRIBUTION SERVICE WHEN SUCH REFUGE FACILITY RECEIVES ELECTRIC SERVICE  
53 IN WHOLE OR IN PART FROM A SOURCE OF ELECTRICITY ACCORDING TO THE  
54 PROVISIONS OF ARTICLE TWENTY-TWO OF THE ENERGY LAW AND GENERATES A  
55 SUBSTANTIAL PORTION OF ITS OWN POWER AND DISTRIBUTES THAT POWER IN A

1 MANNER WHICH BYPASSES THE RETAIL DISTRIBUTION SYSTEM OF ITS FORMER  
2 SUPPLIER.

3 S 7. The New York state energy research and development authority  
4 shall assess the feasibility, costs, and benefits of installing renewa-  
5 ble energy technologies, including cogeneration technology on the prem-  
6 ises of refuge facilities as established under article 22 of the energy  
7 law. The authority shall report back to the legislature with its find-  
8 ings within 6 months of the effective date of this act.

9 S 8. This act shall take effect immediately.