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

3643--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. BRENNAN, SWEENEY, GOLDFEDER, CRESPO, ABINANTI -- Multi-Sponsored by -- M. of A. ABBATE, AUBRY, CLARK, COOK, GOTTFRIED, GUNTHER, JACOBS, JAFFEE, LUPARDO, MAGEE, MAGNARELLI, MARKEY, O'DONNELL, ROSENTHAL, SCARBOROUGH, TITONE, TITUS, WEISENBERG, WEPRIN, WRIGHT -- read once and referred to the Committee on Corporations, Authorities and Commissions -- ordered to a third reading -- committed to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to the department of public service; and to amend the public authorities law, in relation to the power authority of the State of New York

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

Section 1. This act shall be known and may be cited as the "Power Authority of the State of New York oversight and accountability act".

S 2. The opening paragraph of section 3 of the public service law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. THE DEPARTMENT SHALL, UPON NOTIFICATION TO THE POWER AUTHORITY OF THE STATE OF NEW YORK, UNDERTAKE A COMPREHENSIVE AND REGULAR MANAGEMENT AND OPERATIONS AUDIT OF SAID AUTHORITY PURSUANT TO SUBDIVISION TWENTY-FIVE OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. THE DEPARTMENT SHALL HAVE DISCRETION TO HAVE SUCH AN AUDIT PERFORMED BY ITS STAFF, OR BY AN INDEPENDENT CONTRACTOR. IN EVERY CASE IN WHICH AN AUDIT IS REQUIRED PURSUANT TO SUBDIVISION TWENTY-FIVE OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW PERFORMED BY AN INDEPENDENT AUDITOR, THE DEPARTMENT SHALL HAVE THE AUTHORITY TO SELECT THE AUDITOR, AND TO REQUIRE THE POWER AUTHORITY OF THE STATE OF NEW YORK TO ENTER INTO A CONTRACT WITH THE AUDITOR THAT IS CONSISTENT WITH THE CONTRACT-

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

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ING-RELATED REQUIREMENTS SPECIFIED IN SUBDIVISION NINETEEN OF SECTION SIXTY-SIX OF THIS CHAPTER AND THE REQUIREMENTS OF SUBDIVISION TWENTY-FIVE OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. SUCH CONTRACT SHALL PROVIDE FURTHER THAT THE AUDITOR SHALL WORK FOR AND UNDER THE DIRECTION OF THE DEPARTMENT ACCORDING TO SUCH TERMS AS THE DEPARTMENT MAY DETERMINE ARE NECESSARY AND REASONABLE.

S 3. Section 1005 of the public authorities law is amended by adding a new subdivision 25 to read as follows:

25. COMPREHENSIVE AND REGULAR MANAGEMENT AND OPERATIONS AUDITS. (A) THE AUTHORITY SHALL COOPERATE IN THE UNDERTAKING AND COMPLETION OF A REGULAR AND COMPREHENSIVE MANAGEMENT AND OPERATIONS AUDIT CONDUCTED PURSUANT TO THE REQUIREMENTS OF THIS SUBDIVISION AND SUBDIVISION TWO OF SECTION THREE OF THE PUBLIC SERVICE LAW. SUCH AUDIT SHALL REVIEW AND EVALUATE THE AUTHORITY'S OVERALL OPERATIONS AND MANAGEMENT, INCLUDING, BUT NOT BE LIMITED TO: (I) THE AUTHORITY'S CONSTRUCTION AND CAPITAL PROGRAM PLANNING IN RELATION TO THE NEEDS OF ITS CUSTOMERS FOR RELIABLE SERVICE; (II) THE OVERALL EFFICIENCY OF THE AUTHORITY'S OPERATIONS; (III) THE MANNER IN WHICH THE AUTHORITY IS MEETING ITS DEBT SERVICE OBLIGATIONS; (IV) THE AUTHORITY'S ANNUAL BUDGETING PROCEDURES AND PROCESS; (V) THE AUTHORITY'S COMPLIANCE WITH DEBT COVENANTS; (VI) THE IMPLEMENTATION OF RECHARGE NEW YORK POWER PROGRAM PURSUANT TO SUBDIVISION THIRTEEN-A OF THIS SECTION; (VII) THE IMPLEMENTATION AND EFFICACY OF THE ENERGY EFFICIENCY PROGRAM PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THIRTEEN-B OF THIS SECTION; (VIII) THE IMPLEMENTATION OF THE ENERGY EFFICIENCY PROJECTS PROGRAM PURSUANT TO SUBDIVISION SEVENTEEN OF THIS SECTION; AND (IX) SUCH OTHER SERVICES, OPERATIONS AND FINANCES OF THE AUTHORITY AS THE COMMISSION SHALL DEEM ADVISABLE.

(B) THE DEPARTMENT OF PUBLIC SERVICE SHALL NOTIFY THE AUTHORITY THAT SAID DEPARTMENT IS IN THE PROCESS OF INITIATING A COMPREHENSIVE MANAGEMENT AND OPERATIONS AUDIT AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION IN A MANNER THAT ENSURES THE TIMELINESS OF SUCH AUDIT, AND IN ACCORDANCE WITH THE FOLLOWING TIMEFRAME: THE FIRST COMPREHENSIVE MANAGEMENT AND OPERATIONS AUDIT SHALL BE INITIATED AS OF THE EFFECTIVE DATE OF THIS SUBDIVISION; THE SECOND COMPREHENSIVE MANAGEMENT AND OPERATIONS AUDIT SHALL BE INITIATED NO LATER THAN DECEMBER FIFTEENTH, TWO THOUSAND EIGHTEEN; AND ALL ADDITIONAL COMPREHENSIVE MANAGEMENT AND OPERATIONS AUDITS SHALL BE INITIATED AT LEAST ONCE EVERY FIVE YEARS THEREAFTER. WITHIN A REASONABLE TIME AFTER SUCH NOTIFICATION TO THE AUTHORITY, SAID DEPARTMENT OR THE INDEPENDENT AUDITOR RETAINED BY THE AUTHORITY TO UNDERTAKE SUCH AUDIT SHALL HOLD PUBLIC STATEMENT HEARINGS, WITH PROPER NOTICE, IN EACH JUDICIAL DEPARTMENT IN THE STATE FOR THE PURPOSE OF RECEIVING BOTH ORAL AND WRITTEN COMMENTS FROM THE PUBLIC ON MATTERS RELATED TO SUCH AUDIT AS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION.

(C) EACH SUCH AUDIT SHALL BE COMPLETED WITHIN EIGHTEEN MONTHS OF INITIATION UNLESS AN EXTENSION IS GRANTED FOR GOOD CAUSE SHOWN BY THE DEPARTMENT OF PUBLIC SERVICE OR THE INDEPENDENT AUDITOR UNDER CONTRACT WITH THE AUTHORITY WITH NOTICE OF SUCH EXTENSION TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE CHAIRS OF THE AUTHORITY AND THE DEPARTMENT OF PUBLIC SERVICE. SUCH AUDIT SHALL BE PROVIDED TO THE BOARD OF THE AUTHORITY IMMEDIATELY UPON ITS COMPLETION. THE DEPARTMENT OF PUBLIC SERVICE SHALL PROVIDE NOTICE OF COMPLETION OF SUCH AUDIT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE MINORITY LEADERS OF THE SENATE AND ASSEMBLY, AND THE AUTHORITY, UPON RECEIPT OF SUCH AUDIT, SHALL POST A COPY OF SUCH AUDIT, INCLUDING FINDINGS AND RECOMMENDATIONS, ON ITS WEBSITE. UNLESS THE BOARD OF THE AUTHORITY MAKES A PRELIMINARY

DETERMINATION THAT ANY PARTICULAR FINDING OR RECOMMENDATION CONTAINED IN SUCH AUDIT IS INCONSISTENT WITH THE AUTHORITY'S SOUND FISCAL OPERATING PRACTICES, ANY EXISTING CONTRACTUAL OR OPERATING OBLIGATION, OR THE PROVISION FOR SAFE AND ADEQUATE SERVICE, THE BOARD SHALL IMPLEMENT SUCH FINDINGS AND RECOMMENDATIONS IN ACCORDANCE WITH THE TIMEFRAME SPECIFIED UNDER SUCH AUDIT.

(D) THE BOARD OF THE AUTHORITY SHALL MAKE ANY PRELIMINARY DETERMINATION OF INCONSISTENCY WITH RESPECT TO ANY SUCH FINDING OR RECOMMENDATION WITHIN THIRTY DAYS OF RECEIPT OF THE AUDIT, WITH NOTICE AND THE BASIS OF SUCH DETERMINATION BEING PROVIDED TO THE DEPARTMENT OF PUBLIC SERVICE. SUCH NOTICE AND BASIS SHALL BE POSTED CONTEMPORANEOUSLY ON THE AUTHORITY'S WEBSITE AND THE BOARD SHALL, WITHIN THIRTY DAYS OF SUCH POSTING AND WITH DUE ADVANCE NOTICE TO THE PUBLIC, HOLD A PUBLIC HEARING WITH RESPECT TO ITS PRELIMINARY DETERMINATION OF INCONSISTENCY. AT SUCH HEARING THE DEPARTMENT OF PUBLIC SERVICE OR THE INDEPENDENT AUDITOR RESPONSIBLE FOR UNDERTAKING SUCH AUDIT SHALL PRESENT THE BASIS FOR ITS FINDINGS AND RECOMMENDATIONS AND THE BOARD SHALL PRESENT THE BASIS FOR ITS DETERMINATION OF INCONSISTENCY. THE AUTHORITY AND AUDITOR MAY DURING THE TIME PERIOD PRIOR TO SUCH PUBLIC HEARING REACH AGREEMENT ON DISPUTED ISSUES. WITHIN THIRTY DAYS AFTER SUCH PUBLIC HEARING, THE BOARD OF THE AUTHORITY SHALL ANNOUNCE ITS FINAL DETERMINATION AND PLANNED IMPLEMENTATIONS WITH RESPECT TO ANY SUCH FINDINGS AND/OR RECOMMENDATIONS. THE BOARD'S FINAL DETERMINATION OF INCONSISTENCY SHALL BE SUBJECT TO ANY APPLICABLE JUDICIAL REVIEW PROCEEDING, INCLUDING REVIEW AVAILABLE UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 4. This act shall take effect immediately.