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

5905

2013-2014 Regular Sessions

I N A S S E M B L Y

March 8, 2013

Introduced by M. of A. GABRYSZAK -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law and the environmental conservation law, in relation to the power generation modernization act and directing the power authority of the state of New York to release requests for proposals on certain natural gas powered generating facilities in and around New York city

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 Generation Modernization Act".

S 2. The state finance law is amended by adding a new section 85 to read as follows:

S 85. POWER PLANT MODERNIZATION AND COMMUNITY ASSISTANCE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE DEPARTMENT OF TAXATION AND FINANCE A POWER PLANT MODERNIZATION AND COMMUNITY ASSISTANCE FUND, DIVIDED INTO A GENERAL FUND AND INDIVIDUAL REPOWERING SAVINGS ACCOUNTS UNIQUE AND SPECIFIC TO INDIVIDUAL MAJOR ELECTRIC GENERATING FACILITIES WHICH MEET SPECIFIC CRITERIA SET FORTH IN THIS SECTION RELATING TO MODERNIZATION OF SUCH FACILITIES TO MEET SPECIFIC ENVIRONMENTAL STANDARDS.

2. (A) THE POWER PLANT MODERNIZATION AND COMMUNITY ASSISTANCE FUND SHALL CONSIST OF REVENUES FROM THE POTENTIAL SALE OF SPECIFIED ASSETS OF THE NEW YORK POWER AUTHORITY PURSUANT TO SECTION FOUR OF THE CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN WHICH ADDED THIS SECTION, ANY REVENUES DERIVED FROM REGULATIONS ADOPTED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO SUBDIVISION SIX OF SECTION 19-0301 OF THE ENVIRONMENTAL CONSERVATION LAW, PROCEEDS COLLECTED BUT NOT ALLOCATED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FROM THE AUCTION, PURSUANT TO REGULATIONS OF SUCH AUTHORITY, OF EMISSION ALLOWANCES ALLOCATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SUCH

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

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AUTHORITY PURSUANT TO REGULATIONS ADOPTED BY SUCH DEPARTMENT, ANY REVENUES DERIVED FROM POTENTIAL DEVELOPMENT OF THE MARCELLUS OR UTICA SHALE AREAS OVER AND ABOVE THAT WHICH IS NEEDED TO ENSURE APPROPRIATE STAFF AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DEPARTMENT OF HEALTH, DEPARTMENT OF PUBLIC SERVICE AND OTHER RELEVANT STATE AGENCIES, AND ANY OTHER ENERGY RELATED REVENUE THAT THE STATE MAY ACQUIRE IN CONNECTION WITH THE DEVELOPMENT OF SUCH AREA THAT IS NOT ALREADY COMMITTED TO A DEDICATED PROJECT OR SOURCE. MONEYS IN THE FUND SHALL BE KEPT SEPARATELY FROM AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE STATE COMPTROLLER. UNDER NO CIRCUMSTANCE SHALL FUNDS IN THIS ACCOUNT BE SWEPT, REPURPOSED OR OTHERWISE EXPENDED EXCEPT FOR THE EXPRESS PURPOSES OUTLINED HEREIN.

(B) MONEYS IN THIS FUND SHALL BE USED AS SET FORTH IN THIS SECTION TO ASSIST MAJOR ELECTRIC GENERATING FACILITIES OPERATING WITHIN THE STATE OF NEW YORK WITH INVESTMENTS IN QUALIFIED ENERGY INFRASTRUCTURE, QUALIFIED NEW CONSTRUCTION OR REPOWERING PROJECTS; AND TO MITIGATE NEGATIVE PROPERTY TAX OR PAYMENT IN LIEU OF TAXES IMPACTS ON COMMUNITIES WHO HAVE LOST A MAJOR ELECTRIC GENERATING FACILITY.

3. (A) A MAJOR ELECTRIC GENERATING FACILITY WHICH UNDERTAKES A REPOWERING PROJECT, QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT OR A QUALIFIED NEW CONSTRUCTION PROJECT AS DEFINED IN THIS SUBDIVISION MAY APPLY FOR ASSISTANCE FROM THE FUND PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(B) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(I) "REPOWERING PROJECT" SHALL MEAN IMPROVEMENTS TO AN EXISTING MAJOR ELECTRIC GENERATING FACILITY THAT WILL ALLOW THE FACILITY, OR A NEW UNIT OR UNITS AT THE FACILITY, OR THE COMBINATION OF THE NEW UNIT OR UNITS AND THE FACILITY TO MEET THE RELEVANT ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III), AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

(II) "QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT" SHALL MEAN ANY INVESTMENT NEEDED TO DELIVER A NEW FUEL SOURCE TO AN EXISTING MAJOR ELECTRIC GENERATING FACILITY, REPLACE OR RETROFIT A BURNER OR TURBINE, UTILIZE ON-SITE RENEWABLE ENERGY GENERATION OR ANY OTHER SUBSTANTIAL INVESTMENT THAT WILL HAVE A DIRECT IMPACT ON THE FACILITY'S ABILITY TO MEET THE ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III), AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

(III) "QUALIFIED NEW CONSTRUCTION PROJECT" SHALL MEAN CONSTRUCTING A NEW MAJOR ELECTRIC GENERATING FACILITY ON THE SAME PROPERTY AS AN EXISTING FACILITY OR ON PROPERTY DIRECTLY ADJACENT OR CONTIGUOUS TO SAID PROPERTY, WHERE THE NEW FACILITY BY ITSELF OR IN COMBINATION WITH THE EXISTING FACILITY WILL ALLOW THE SITE AS A WHOLE TO MEET THE ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III), AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

(IV) "MAJOR ELECTRIC GENERATING FACILITY" SHALL MEAN AN ELECTRIC GENERATING FACILITY WITH A NAMEPLATE GENERATING CAPACITY OF TWENTY-FIVE THOUSAND KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THE PUBLIC SERVICE LAW.

4. THE EMPIRE STATE DEVELOPMENT CORPORATION SHALL CONDUCT COMPETITIVE SOLICITATIONS FOR PROPOSALS SUBMITTED BY MAJOR ELECTRIC GENERATING FACILITIES UNDERTAKING ANY REPOWERING PROJECT, QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT PROJECT OR QUALIFIED NEW CONSTRUCTION PROJECT AS

SUCH TERMS ARE DEFINED IN THIS SECTION, FOR ASSISTANCE FROM THE FUND ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS SECTION. SUCH COMPETITIVE SOLICITATIONS SHALL BE DESIGNED IN A MANNER AND FORM TO BE DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE AND THE COMPTROLLER. A SCHEDULE FOR SUCH COMPETITIVE SOLICITATIONS, AWARD SELECTION, AND DISTRIBUTION OF FUNDS SHALL BE ESTABLISHED BY THE EMPIRE STATE DEVELOPMENT CORPORATION IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE AND THE COMPTROLLER. THE EMPIRE STATE DEVELOPMENT CORPORATION SHALL RANK THE PROPOSALS IT RECEIVED IN RESPONSE TO COMPETITIVE SOLICITATIONS AND CHOOSE THE HIGHEST RANKED PROPOSALS MEASURED ON THE FOLLOWING CRITERIA TO BE CONSIDERED IN THE AGGREGATE:

(A) THE AMOUNT OF ASSISTANCE REQUESTED IN PROPORTION TO THE TOTAL QUANTITY OF MEGAWATTS OF NEW GENERATION CAPACITY THAT WILL BE CONSTRUCTED;

(B) THE EXTENT TO WHICH AN AWARD WILL RESULT IN NEW CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT;

(C) THE TYPE AND COST OF FACILITIES AND EQUIPMENT TO BE CONSTRUCTED, ENLARGED OR INSTALLED IF THE APPLICANT WERE TO RECEIVE AN AWARD;

(D) THE APPLICANT'S PAYROLL, SALARIES, BENEFITS AND NUMBER OF JOBS AT THE FACILITY FOR WHICH AN AWARD IS REQUESTED;

(E) THE NUMBER OF JOBS THAT WILL BE CREATED OR RETAINED, AS APPLICABLE, WITHIN THE STATE IN RELATION TO THE REQUESTED AWARD AND THE EXTENT TO WHICH THE APPLICANT WILL AGREE TO COMMIT TO CREATING OR RETAINING, AS APPLICABLE, SUCH JOBS AS A CONDITION TO RECEIVING AN AWARD;

(F) WHETHER THE APPLICANT IS AT RISK OF CLOSING OR CURTAILING FACILITIES OR OPERATIONS IN THE STATE, RELOCATING FACILITIES OR OPERATIONS OUT OF THE STATE, OR LOSING A SIGNIFICANT NUMBER OF JOBS IN THE STATE, IN THE ABSENCE OF AN AWARD;

(G) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY TO THE ECONOMY OF THE AREA IN WHICH SUCH FACILITY IS LOCATED; AND

(H) THE EXTENT TO WHICH AN AWARD WILL RESULT IN AN ADVANTAGE FOR AN APPLICANT IN RELATION TO THE APPLICANT'S COMPETITORS WITHIN THE STATE.

ALL PAYMENTS OF MONEYS FROM THE FUND SHALL BE MADE ON THE AUDIT AND THE WARRANT OF THE COMPTROLLER TO BE DISBURSED BY THE DEPARTMENT OF TAXATION AND FINANCE IN CONJUNCTION AND CONSULTATION WITH THE COMPTROLLER. RECOMMENDATIONS FOR AN AWARD UNDER THIS SECTION SHALL BE MADE BY THE EMPIRE STATE DEVELOPMENT CORPORATION IN ORDER TO MAXIMIZE THE ECONOMIC DEVELOPMENT IMPACTS OF EACH POSSIBLE PROJECT.

5. (A) PROPOSALS FOR ASSISTANCE FROM THE FUND MAY BE MADE BY A COUNTY, CITY, TOWN, VILLAGE OR SCHOOL DISTRICT THAT HAS BEEN SUBSTANTIALLY ADVERSELY IMPACTED BY THE LOSS OF PROPERTY TAX REVENUES OR THE LOSS OF REVENUES FROM PAYMENTS IN LIEU OF TAXES DUE TO THE CLOSING OF A MAJOR ELECTRIC GENERATING FACILITY. PROPOSALS SHALL BE FILED IN A MANNER AND FORM TO BE DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE AND THE COMPTROLLER. FOR THE PURPOSES OF THIS SUBDIVISION, SUBSTANTIAL ADVERSE IMPACT SHALL MEAN A SITUATION WHERE THE CLOSURE OF A MAJOR ELECTRIC GENERATING FACILITY REPRESENTS A REDUCTION IN TAX COLLECTIONS TO A MUNICIPAL CORPORATION OF AT LEAST TEN PERCENT OF TOTAL RECEIPTS AND IS EXPECTED TO HAVE AN ADVERSE AND UNEXPECTED NEGATIVE IMPACT ON TAXPAYERS.

(B) APPLICANTS MAY ONLY SEEK ASSISTANCE FOR A MAXIMUM OF FIVE YEARS AND MAY ONLY SEEK ASSISTANCE UNDER THE FOLLOWING LIMITS, WHICH SHALL BE CALCULATED BASED ON THE TOTAL AMOUNT OF TAXES COLLECTED FROM THE ELECTRIC GENERATING FACILITY WHEN AVERAGING THE PAST FIVE TAXABLE YEARS, ENDING WITH THE FINAL YEAR OF PLANT OPERATION:

FIRST YEAR: UP TO EIGHTY PERCENT OF THE PAST FIVE YEAR AVERAGE;
SECOND YEAR: UP TO FIFTY PERCENT OF THE PAST FIVE YEAR AVERAGE;
THIRD YEAR: UP TO FIFTY PERCENT OF THE PAST FIVE YEAR AVERAGE;
FOURTH YEAR: UP TO TWENTY-FIVE PERCENT OF THE PAST FIVE YEAR AVERAGE;
FIFTH YEAR: UP TO TEN PERCENT OF THE PAST FIVE YEAR AVERAGE.

6. THE FUND ESTABLISHED UNDER THIS SECTION SHALL ALSO INCLUDE INDIVIDUAL REPOWERING SAVINGS ACCOUNTS HELD IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE DEPARTMENT OF TAXATION AND FINANCE HELD ON BEHALF OF A PARTICULAR MAJOR ELECTRIC GENERATING FACILITY AND SHALL CONSIST OF FIFTY PERCENT OF THE PROCEEDS COLLECTED BUT NOT ALLOCATED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FROM THE AUCTION, PURSUANT TO REGULATIONS OF SUCH AUTHORITY, OF EMISSION ALLOWANCES ALLOCATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SUCH AUTHORITY PURSUANT TO REGULATIONS ADOPTED BY SUCH DEPARTMENT. FUNDS SHALL BE CREDITED TO THE NAME AND ACCOUNT OF THE SPECIFIC GENERATOR AND EXPENDITURES FROM THE FUND MAY ONLY BE MADE ON BEHALF OF SAID GENERATOR. A MAJOR ELECTRIC GENERATOR WHICH ESTABLISHES AN INDIVIDUAL REPOWERING SAVINGS ACCOUNT UNDER THIS SUBDIVISION MAY USE SUCH FUNDS FOR THE PURPOSES OF A REPOWERING PROJECT, QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT OR A QUALIFIED NEW CONSTRUCTION PROJECT AS DEFINED IN SUBDIVISION THREE OF THIS SECTION. SUCH FUNDS MAY BE ACCESSED FROM AN INDIVIDUAL REPOWERING SAVINGS ACCOUNT AFTER ANY APPLICABLE APPROPRIATE APPROVALS FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF PUBLIC SERVICE AND ANY OTHER STATE ENTITY WHOSE APPROVAL IS REQUIRED PURSUANT TO THE SCOPE OF THE PROJECT PROPOSED. NO DISBURSEMENT FROM AN ACCOUNT MAY EXCEED THE COST OR VALUE OF THE WORK PROPOSED, AND ONLY EXPENSES CONSIDERED DIRECTLY RELATED TO THE BENEFITS OF THE PROJECT WILL BE ALLOWABLE. DISBURSEMENTS FROM ACCOUNTS SHALL ONLY BE REIMBURSEMENT FOR ACTUAL EXPENSES PAID BY THE GENERATOR AND SHALL NOT BE ADVANCES OR OTHER PAYMENTS. FUNDS HELD IN ANY GIVEN INDIVIDUAL REPOWERING SAVINGS ACCOUNT SHALL BE AVAILABLE FOR USE FOR A PERIOD OF TEN YEARS TOWARD ALLOWABLE EXPENSES AND CAN BE RENEWED FOR AN ADDITIONAL TEN YEARS, IF THE GENERATOR APPLIES FOR AN EXTENSION OF THEIR ACCOUNT AND AFTER A THOROUGH REVIEW BY THE PUBLIC SERVICE COMMISSION.

7. ALL PAYMENTS OF MONEYS FROM THE FUND SHALL BE MADE ON THE AUDIT AND THE WARRANT OF THE COMPTROLLER TO BE DISBURSED BY THE DEPARTMENT OF TAXATION AND FINANCE IN CONJUNCTION AND CONSULTATION WITH THE COMPTROLLER.

S 3. Section 19-0301 of the environmental conservation law is amended by adding a new subdivision 6 to read as follows:

6. IN ADDITION TO EXISTING REGULATORY AUTHORITY, THE DEPARTMENT MAY:

A. IN COOPERATION WITH THE DEPARTMENT OF PUBLIC SERVICE AND THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, AMEND PART 242 OF TITLE 6 OF THE NEW YORK CODES, RULES AND REGULATIONS TO, IN A MANNER THAT IS CONSISTENT WITH FEDERAL LAW, COVER ELECTRICITY IMPORTED INTO THE STATE THAT IS NOT ALREADY SUBJECT TO THE COMPARABLE REGULATIONS OF OTHER STATES, BY THE IMPOSITION OF FEES ON THE CARBON INTENSITY OF SUCH ELECTRICITY IMPORTED INTO THE STATE DEEMED NECESSARY TO MAINTAIN THE ENVIRONMENTAL INTEGRITY OF THE MULTI-STATE PROGRAM IN WHICH THE STATE PARTICIPATES; AND

B. ASSESS FEES EQUIVALENT TO THE AMOUNT OF PROCEEDS ARISING FROM THE AUCTION, PURSUANT TO REGULATIONS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, OF EMISSION ALLOWANCES ALLOCATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SUCH AUTHORITY PURSUANT TO REGULATIONS ADOPTED BY SUCH DEPARTMENT.

REVENUES DERIVED PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION SHALL BE DIRECTED TO AND DEPOSITED INTO THE "POWER PLANT MODERNIZATION AND COMMUNITY ASSISTANCE FUND" ESTABLISHED UNDER SECTION EIGHTY-FIVE OF THE STATE FINANCE LAW.

S 4. (a) The power authority of the state of New York shall within ninety days of the effective date of this act, issue a request for the proposals to purchase from such authority one or more of the ten gas turbine electric generating facilities with a nameplate capacity of less than eighty megawatts each, owned by such authority as of the effective date of this act and located in and around the city of New York. Such request for proposals to sell such generators shall be put out for bid for a maximum of ninety days and shall include the following sites and generation facilities:

(1) Two units at Harlem River Yard Plant, located in the Harlem River Yards, at E. 132nd Street, Bronx, New York 10454;

(2) Two units at Vernon Boulevard, located at 41-98, 42-02, 42-16 Vernon Boulevard, Long Island City, Queens, New York 11101;

(3) Two units at the Hell Gate Plant, located at Locust Avenue, E. 132nd Street to E. 134th Street, Bronx, New York 10454;

(4) Two units at the Windsor Terrace Power Plant, located at 3rd Avenue and 23rd Street, Brooklyn, New York 11232;

(5) One unit at Pouch Terminal, located at 1 Edgewater Street, Staten Island, New York 10305; and

(6) One unit at North First Avenue and River Street, located at 47-79 River Street, Brooklyn, New York 11211.

(b) The authority shall issue such requests to determine, among other things, the likely value to New York state for the sale of such generators. The authority shall, within thirty days of the end of the solicitation period, report on the range of solicited bids to the governor, the temporary president of the senate and the speaker of the assembly, subject to all appropriate and applicable confidentiality requirements with respect to individual bids and information contained therein. The authority shall commence actions, as the authority's board of trustees determines appropriate and necessary, to effectuate the sale of such facilities.

(c) The authority is authorized and directed to deposit the proceeds of the sale of such generators into the "power plant modernization and community assistance fund" established under section 85 of the state finance law.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.