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

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2013-2014 Regular Sessions

I N S E N A T E

June 19, 2013

Introduced by Sen. RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the economic development law and the public authorities law, in relation to enacting the northern New York power proceeds allocation act

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

Section 1. Short title. This act shall be known and may be cited as the "northern New York power proceeds allocation act".

S 2. The economic development law is amended by adding a new article 6-B to read as follows:

ARTICLE 6-B

NORTHERN NEW YORK POWER PROCEEDS ALLOCATION ACT

SECTION 189-E. DEFINITIONS.
189-F. THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD.
189-G. GENERAL POWERS AND DUTIES OF THE BOARD.
189-H. RULES AND REGULATIONS.

S 189-E. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AUTHORITY" IS THE POWER AUTHORITY OF THE STATE OF NEW YORK.

2. "BOARD" IS THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD CREATED BY THIS ARTICLE.

3. "BENEFITS" OR "FUND BENEFITS" ARE PAYMENTS TO ELIGIBLE APPLICANTS SELECTED BY THE AUTHORITY FOR THE PURPOSE OF FUNDING ELIGIBLE DEVELOPMENT POWER PROJECTS WITH MONIES DERIVED FROM NET EARNINGS THAT HAVE BEEN DEPOSITED INTO THE NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND.

4. "ELIGIBLE APPLICANT" MEANS A PRIVATE BUSINESS, INCLUDING A NOT-FOR-PROFIT CORPORATION WITH THE EXCEPTION OF QUALIFIED TRANSPORTATION CAPACITY EXPANSION PROJECTS WHERE A PUBLIC ENTITY MAY BE AN ELIGIBLE APPLICANT.

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

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5. "ELIGIBLE DEVELOPMENT POWER PROJECTS" ARE ECONOMIC DEVELOPMENT PROJECTS BY ELIGIBLE APPLICANTS THAT IN THE CASE OF PROJECTS RECEIVING AN ALLOCATION OF DEVELOPMENT POWER NET EARNINGS ARE PHYSICALLY LOCATED WITHIN THE STATE OF NEW YORK WITHIN ST. LAWRENCE COUNTY, OR IN THE CASE OF PROJECTS RECEIVING AN ALLOCATION OF PRESERVATION POWER NET EARNINGS ARE PHYSICALLY LOCATED WITHIN THE STATE OF NEW YORK WITHIN ST. LAWRENCE, JEFFERSON OR FRANKLIN COUNTIES, THAT WILL SUPPORT THE GROWTH OF BUSINESS IN THE STATE AND THEREBY LEAD TO THE CREATION OR MAINTENANCE OF JOBS AND TAX REVENUES FOR THE STATE AND LOCAL GOVERNMENTS. ELIGIBLE DEVELOPMENT POWER PROJECTS MAY INCLUDE CAPITAL INVESTMENTS IN BUILDINGS, EQUIPMENT, AND ASSOCIATED INFRASTRUCTURE (COLLECTIVELY, "INFRASTRUCTURE") OWNED BY AN ELIGIBLE APPLICANT FOR FUND BENEFITS; TRANSPORTATION PROJECTS UNDER STATE OR FEDERALLY APPROVED PLANS; THE ACQUISITION OF LAND NEEDED FOR INFRASTRUCTURE; RESEARCH AND DEVELOPMENT WHERE THE RESULTS OF SUCH RESEARCH AND DEVELOPMENT WILL DIRECTLY BENEFIT NEW YORK STATE; SUPPORT FOR TOURISM AND MARKETING AND ADVERTISING EFFORTS FOR NORTHERN NEW YORK STATE TOURISM AND BUSINESS; ENERGY-RELATED PROJECTS; ELECTRIC RATE RELIEF PROGRAMS FOR AGRICULTURAL CUSTOMERS; AND WATERFRONT REVITALIZATION PROJECTS. ELIGIBLE DEVELOPMENT POWER PROJECTS DO NOT INCLUDE, AND FUND BENEFITS MAY NOT BE USED FOR, PUBLIC INTEREST ADVERTISING OR ADVOCACY; LOBBYING; THE SUPPORT OR OPPOSITION OF ANY CANDIDATE FOR PUBLIC OFFICE; THE SUPPORT OR OPPOSITION TO ANY PUBLIC ISSUE; LEGAL FEES RELATED TO LITIGATION OF ANY KIND; EXPENSES RELATED TO ADMINISTRATIVE PROCEEDINGS BEFORE STATE OR LOCAL AGENCIES; OR RETAIL BUSINESSES AS DEFINED BY THE BOARD, INCLUDING WITHOUT LIMITATION, SPORTS VENUES, GAMING AND GAMBLING OR ENTERTAINMENT-RELATED ESTABLISHMENTS, RESIDENTIAL PROPERTIES, OR PLACES OF OVERNIGHT ACCOMMODATION.

6. "ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SUBDIVISION SEVENTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

7. "DEVELOPMENT POWER" IS THE TWENTY MEGAWATTS OF FIRM SAINT LAWRENCE-FDR PROJECT HYDROELECTRIC POWER AS APPORTIONED PURSUANT TO SUBDIVISION THIRTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. FOR THE PURPOSES OF THIS ARTICLE, "DEVELOPMENT POWER" MEANS THE ENERGY ASSOCIATED WITH SUCH POWER.

8. "DEVELOPMENT POWER NET EARNINGS" IS THE AGGREGATE EXCESS OF REVENUES RECEIVED BY THE AUTHORITY FROM THE SALE OF DEVELOPMENT POWER AND ENERGY PRODUCED AT THE SAINT LAWRENCE-FDR PROJECT THAT WAS SOLD IN THE WHOLESALE ENERGY MARKET OVER WHAT REVENUES WOULD HAVE BEEN RECEIVED HAD SUCH ENERGY BEEN SOLD ON A FIRM BASIS TO AN ELIGIBLE DEVELOPMENT POWER CUSTOMER UNDER THE APPLICABLE TARIFF OR CONTRACT.

9. "PRESERVATION POWER" IS THE FOUR HUNDRED NINETY MEGAWATTS OF FIRM SAINT LAWRENCE-FDR PROJECT HYDROELECTRIC POWER AS SUCH TERM IS DEFINED IN SUBDIVISION THIRTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. FOR PURPOSES OF THIS ARTICLE, "PRESERVATION POWER" MEANS THE ENERGY ASSOCIATED WITH SUCH POWER.

10. "PRESERVATION POWER NET EARNINGS" IS THE AGGREGATE EXCESS OF REVENUES RECEIVED BY THE AUTHORITY FROM THE SALE OF PRESERVATION POWER AND ENERGY PRODUCED AT THE SAINT LAWRENCE-FDR PROJECT THAT WAS SOLD IN THE WHOLESALE ENERGY MARKET OVER WHAT REVENUES WOULD HAVE BEEN RECEIVED HAD SUCH ENERGY BEEN SOLD ON A FIRM BASIS TO AN ELIGIBLE PRESERVATION POWER CUSTOMER UNDER THE APPLICABLE TARIFF OR CONTRACT.

11. "NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND" OR "FUND" IS A FUND OF THE AUTHORITY INTO WHICH ALL DEVELOPMENT AND PRESERVATION POWER NET EARNINGS ARE DEPOSITED BY THE AUTHORITY IN ACCORDANCE WITH SUBDIVISION

TWENTY-FIVE OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AND FROM WHICH ALLOCATIONS OF FUND BENEFITS TO ELIGIBLE PROJECTS MAY BE MADE. THE AUTHORITY SHALL, WITHIN THE FUND, SEPARATELY ACCOUNT FOR AND MAKE ALLOCATIONS FROM DEVELOPMENT AND PRESERVATION POWER NET EARNINGS.

12. "SAINT LAWRENCE RIVER VALLEY REDEVELOPMENT AGENCY" IS THE ACTIVE PARTNERSHIP OF THE COUNTY OF ST. LAWRENCE AND THE TOWNS OF LISBON, LOUISVILLE, MASSENA AND WADDINGTON ESTABLISHED FOR THE PURPOSE OF FUNDING ECONOMIC DEVELOPMENT PROJECTS WITH THE FUNDS RECEIVED FROM THE NORTHERN NEW YORK POWER PROCEEDS BOARD FROM THE SALE OF UNALLOCATED DEVELOPMENT POWER OR UNALLOCATED PRESERVATION POWER.

S 189-F. THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD. 1. THERE IS HEREBY CREATED THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD, WHICH SHALL POSSESS THE POWERS AND DUTIES HEREIN SPECIFIED. THE BOARD SHALL CONSIST OF FIVE MEMBERS WHO SHALL BE APPOINTED BY THE GOVERNOR AS FOLLOWS: ONE OF WHOM SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND ONE OF WHOM SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY. AT LEAST THREE OF THE MEMBERS SHALL RESIDE IN THE TOWN OF LISBON, LOUISVILLE, MASSENA, OR WADDINGTON PROVIDED THAT ALL OF THE MEMBERS SHALL RESIDE IN THE COUNTY OF ST. LAWRENCE. THE GOVERNOR SHALL DESIGNATE A CHAIR FROM AMONGST THE BOARD'S MEMBERS.

2. EACH MEMBER SHALL SERVE A TERM OF FIVE YEARS OR UNTIL A SUCCESSOR SHALL HAVE BEEN NAMED AND QUALIFIED. MEMBERS MAY BE REAPPOINTED TO SUCCESSIVE TERMS.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THREE MEMBERS SHALL CONSTITUTE A QUORUM FOR THE PURPOSES OF ORGANIZING THE BOARD AND CONDUCTING THE BUSINESS THEREOF. NO ACTION OF THE BOARD MAY BE TAKEN EXCEPT UPON AN AFFIRMATIVE VOTE OF AT LEAST THREE-FIFTHS OF THE FULL BOARD MEMBERSHIP AT ANY MEETING AT WHICH AT LEAST THREE MEMBERS ARE PRESENT OR PARTICIPATING BY VIDEOCONFERENCING. VIDEOCONFERENCING MAY BE USED FOR ATTENDANCE AND PARTICIPATION BY MEMBERS OF THE BOARD. IF VIDEOCONFERENCING IS USED, THE BOARD SHALL PROVIDE AN OPPORTUNITY FOR THE PUBLIC TO ATTEND, LISTEN AND OBSERVE AT ANY SITE AT WHICH A MEMBER PARTICIPATES. THE PUBLIC NOTICE FOR THE MEETING SHALL IDENTIFY, IF PRACTICABLE, ALL LOCATIONS WHERE A MEMBER WILL PARTICIPATE IN THE MEETING BY VIDEOCONFERENCE AND SHALL STATE THAT THE PUBLIC HAS THE RIGHT TO ATTEND THE MEETING AT ANY SUCH LOCATION.

4. MEMBERS OF THE BOARD, EXCEPT THOSE THAT ARE EMPLOYEES OR OFFICERS OF THE STATE, ITS AUTHORITIES OR AGENCIES, SHALL NOT RECEIVE A SALARY OR OTHER COMPENSATION, BUT SHALL BE ALLOWED THE NECESSARY AND ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF DUTIES UNDER THIS ARTICLE.

S 189-G. GENERAL POWERS AND DUTIES OF THE BOARD. 1. THE BOARD SHALL ESTABLISH PROCEDURES AND GUIDELINES RELATING TO THE ACTIVITIES OF THE BOARD.

2. THE BOARD SHALL ESTABLISH PROCEDURES THROUGH WRITTEN POLICIES OR STANDARDS FOR REVIEWING APPLICATIONS FOR AN ALLOCATION OF FUND BENEFITS OR A RECOMMENDATION TO THE AUTHORITY FOR AN ALLOCATION OF DEVELOPMENT OR PRESERVATION POWER THAT SHALL INCLUDE A REVIEW OF APPLICATIONS NO LESS FREQUENTLY THAN TWICE EACH YEAR. THE BOARD, OR A MEMBER DESIGNATED BY THE BOARD, SHALL RECEIVE ALL APPLICATIONS FROM, OR ON BEHALF OF, ELIGIBLE APPLICANTS FOR FUND BENEFITS. APPLICATIONS SHALL BE IN A FORM AND CONTAIN SUCH INFORMATION, DATA AND EXHIBITS AS THE BOARD, IN CONSULTATION WITH THE AUTHORITY, MAY PRESCRIBE.

3. THE BOARD MAY REQUEST FROM THE AUTHORITY AN ANALYSIS OF ANY APPLICATION ALONG WITH ANY RECOMMENDATIONS. IN ADDITION, THE AUTHORITY SHALL SUPPLY ANY SUCH ADDITIONAL INFORMATION AS IS REASONABLY NECESSARY FOR THE BOARD TO PERFORM ITS DUTIES.

4. IN REVIEWING APPLICATIONS FOR FUND BENEFITS, THE BOARD SHALL EVALUATE ELIGIBLE DEVELOPMENT POWER OR PRESERVATION POWER PROJECTS AS PROVIDED IN SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. THE BOARD SHALL ISSUE A WRITTEN STATEMENT OF ITS FINDINGS AND RECOMMENDATIONS FOR EACH APPLICATION REVIEWED.

5. THE BOARD SHALL RECOMMEND TO THE AUTHORITY THE ALLOCATION OF FUND BENEFITS OR POWER ALLOCATIONS TO ELIGIBLE POWER PROJECTS THAT THE BOARD FINDS ARE CONSISTENT WITH THE APPLICABLE CRITERIA IN SUBDIVISION FOUR OF THIS SECTION; PROVIDED HOWEVER, DEVELOPMENT POWER AND PRESERVATION POWER PROCEEDS EQUALING SEVENTY PERCENT OF AVAILABLE MONETIZED POWER SHALL ANNUALLY BE ALLOCATED TO ELIGIBLE APPLICANTS RECOMMENDED BY THE SAINT LAWRENCE RIVER VALLEY REDEVELOPMENT AGENCY, OR ITS SUCCESSOR ENTITY, TO THE BOARD WITH THE REQUIREMENT THAT THREE HUNDRED THOUSAND DOLLARS OF SUCH DEVELOPMENT POWER PROCEEDS SHALL BE APPORTIONED FOR THE ADMINISTRATIVE COSTS OF THE SAINT LAWRENCE RIVER VALLEY REDEVELOPMENT AGENCY; PROVIDED FURTHER THAT DEVELOPMENT POWER PROCEEDS EQUALING THIRTY PERCENT OF AVAILABLE MONETIZED POWER SHALL ANNUALLY BE ALLOCATED FOR THE PURPOSES OF PROVIDING NECESSARY STATE MATCHES FOR FUNDING THE DESIGN, DEVELOPMENT, CONSTRUCTION AND OTHER COSTS ASSOCIATED WITH THE IMPROVEMENT OF A HIGHWAY TRANSPORTATION CAPACITY EXPANSION PROJECT LOCATED IN THE COUNTY OF ST. LAWRENCE. THE BOARD MAY RECOMMEND TO THE AUTHORITY AN ALLOCATION OF DEVELOPMENT OR PRESERVATION POWER TO AN ELIGIBLE APPLICANT, PROVIDED THAT SUCH ALLOCATION SHALL NOT BE IN ADDITION TO AN ALLOCATION OF MONETIZED ECONOMIC DEVELOPMENT POWER OR PRESERVATION POWER. THE BOARD MAY INCLUDE WITHIN ITS RECOMMENDATIONS SUCH RECOMMENDED TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE, INCLUDING, BUT NOT LIMITED TO, REASONABLE PROVISION FOR THE ALLOCATION OF FUND BENEFITS OVER TIME AS THE ELIGIBLE APPLICANT ACHIEVES MILESTONES TOWARDS PROJECT COMPLETION, THE PARTIAL OR COMPLETE WITHDRAWAL OR RETURN OF FUND BENEFITS WHERE THE RECIPIENT HAS FAILED TO ACHIEVE OR MAINTAIN MUTUALLY AGREED UPON COMMITMENTS, OR SUCH OTHER TERMS AND CONDITIONS AS THE BOARD DEEMS ADVISABLE. THE BOARD SHALL NOT RECOMMEND AN ALLOCATION OF FUND BENEFITS PRIOR TO ESTABLISHING PROCEDURES FOR REVIEWING APPLICATIONS PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

6. A RECOMMENDATION BY THE BOARD THAT AN ELIGIBLE APPLICANT RECEIVE AN ALLOCATION OF FUND BENEFITS SHALL BE A PREREQUISITE TO AN AWARD OF FUND BENEFITS BY THE AUTHORITY. THE AUTHORITY SHALL AWARD FUND BENEFITS TO AN APPLICANT UPON A RECOMMENDATION OF THE BOARD; PROVIDED, HOWEVER, THAT UPON A SHOWING OF GOOD CAUSE, THE AUTHORITY SHALL HAVE DISCRETION AS TO WHETHER TO ADOPT THE BOARD'S RECOMMENDATION, OR TO AWARD BENEFITS IN A DIFFERENT AMOUNT OR ON DIFFERENT TERMS AND CONDITIONS THAN THOSE CONTAINED IN THE RECOMMENDATION OF THE BOARD. ALLOCATIONS OF FUND BENEFITS SHALL ONLY BE MADE ON THE BASIS OF DEVELOPMENT POWER OR PRESERVATION POWER NET EARNINGS THAT HAVE BEEN DEPOSITED IN THE NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND. NO AWARD OF FUND BENEFITS SHALL ENCUMBER FUTURE DEVELOPMENT POWER OR PRESERVATION POWER NET EARNINGS OR DEVELOPMENT POWER OR PRESERVATION POWER NET EARNINGS THAT HAVE BEEN RECEIVED, BUT NOT DEPOSITED, IN THE NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND.

7. UPON MAKING AN ALLOCATION OF FUND BENEFITS, THE AUTHORITY SHALL INCLUDE WITHIN THE AGREEMENT PROVIDING FOR THE TERMS AND CONDITIONS APPLICABLE TO SUCH ALLOCATION ALL TERMS AND CONDITIONS THE AUTHORITY DEEMS APPROPRIATE, TAKING INTO ACCOUNT THE RECOMMENDATIONS MADE BY THE BOARD.

S 189-H. RULES AND REGULATIONS. THE AUTHORITY IS HEREBY AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS IT DEEMS NECESSARY TO FULFILL THE PURPOSES OF THIS ARTICLE.

S 3. Section 1005 of the public authorities law is amended by adding five new subdivisions 24, 25, 26, 27 and 28 to read as follows:

24. TO COOPERATE WITH THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD AND PROVIDE THE BOARD WITH SUCH INFORMATION AND ASSISTANCE AS THE BOARD REASONABLY REQUESTS, INCLUDING REASONABLE STAFF SERVICES, ACCOUNTING, CLERICAL AND SECRETARIAL ASSISTANCE, OFFICE SPACE, AND EQUIPMENT REASONABLY REQUESTED BY THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD TO FULFILL ITS DUTIES.

25. TO ESTABLISH AN ACCOUNT TO BE KNOWN AS THE NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND. SUCH FUND SHALL CONSIST OF "DEVELOPMENT POWER NET EARNINGS" AND "PRESERVATION POWER NET EARNINGS" AS DEFINED IN ARTICLE SIX-B OF THE ECONOMIC DEVELOPMENT LAW. THE DEVELOPMENT POWER NET EARNINGS AND PRESERVATION POWER NET EARNINGS SHALL BE DEPOSITED IN SUCH AMOUNTS AS DETERMINED TO BE FEASIBLE AND ADVISABLE BY THE TRUSTEES. SUCH EARNING SHALL BE DEPOSITED NO LESS FREQUENTLY THAN QUARTERLY. THE FIRST DEPOSITS INTO THE FUND SHALL BE MADE NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, AND SHALL INCLUDE ALL DEVELOPMENT POWER AND PRESERVATION POWER NET EARNINGS ACCRUED SINCE THE EFFECTIVE DATE OF CHAPTER FOUR HUNDRED THIRTY-SIX OF THE LAWS OF TWO THOUSAND TEN. AT LEAST FIFTEEN PERCENT OF SUCH FUNDS SHALL BE DEDICATED TOWARDS ELIGIBLE DEVELOPMENT POWER AND PRESERVATION POWER PROJECTS WHICH ARE ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES AS SUCH TERM IS DEFINED IN SUBPARAGRAPH TWO OF PARAGRAPH (B) OF SUBDIVISION SEVENTEEN OF THIS SECTION. IN ADDITION TO FUNDING ELIGIBLE DEVELOPMENT POWER AND PRESERVATION POWER PROJECTS, AS SUCH TERMS ARE DEFINED IN ARTICLE SIX-B OF THE ECONOMIC DEVELOPMENT LAW, THE AUTHORITY MAY USE NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND MONIES TO COVER REASONABLE COSTS AND EXPENSES OF THE AUTHORITY RELATED TO THE MANAGEMENT AND ADMINISTRATION OF THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION PROGRAM CREATED BY ARTICLE SIX-B OF THE ECONOMIC DEVELOPMENT LAW.

26. TO, IN ITS DISCRETION, CONSULT WITH THE NORTHERN NEW YORK POWER PROCEEDS ALLOCATION BOARD IN THE APPLICATION PROCESS RELATING TO THE ALLOCATION OF DEVELOPMENT POWER AND PRESERVATION POWER.

27. TO ESTABLISH PROCESSES FOR APPLICATION REVIEW AND ALLOCATION OF FUND BENEFITS PROVIDED FOR IN ARTICLE SIX-B OF THE ECONOMIC DEVELOPMENT LAW.

28. TO INCLUDE IN THE ANNUAL REPORT PREPARED PURSUANT TO SUBDIVISION EIGHTEEN OF THIS SECTION, AN ACCOUNTING FOR THE SUBJECT YEAR THAT PROVIDES (A) THE AMOUNT OF DEVELOPMENT POWER AND PRESERVATION POWER SOLD INTO THE WHOLESALE MARKET BY THE AUTHORITY, AND (B) THE DEVELOPMENT POWER AND PRESERVATION POWER NET EARNINGS PAID INTO THE NORTHERN NEW YORK ECONOMIC DEVELOPMENT FUND.

S 4. This act shall take effect immediately.