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

1260--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, the public service law, and the real property law, in relation to establishing the "Commercial on-bill repayment act of 2015"

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

Section 1. Legislative findings. The legislature finds and declares that promoting widespread dissemination of energy conservation and clean energy technologies represents a clear and cost-effective strategy for building owners and occupants in New York state to curtail the emission of greenhouse gases and harmful air contaminants, reducing the state's contribution to climate change, reducing dependence on fossil fuels, and creating green jobs to sustain and enhance our economy. However, lack of affordable and accessible financing for many owners of commercial buildings has hindered progress in fully realizing the promise of these technologies. On-bill repayment facilitates the financing of clean energy projects through the utility bill, which can allow for more affordable financing terms than would be otherwise available due to the security of utility bill payments. On-bill repayment will incentivize private investors to invest in clean energy improvements in New York, will stimulate the state's economy by creating jobs for contractors and other persons who complete new energy improvements, and will reinforce the leadership role of the state in the new energy economy, thereby attracting clean energy manufacturing facilities and related jobs to the state. On-bill repayment expands access to clean energy upgrades without relying on public funding.

Therefore, it is the intent of the legislature to enact a "Commercial On-Bill Repayment" program to animate the market for clean energy improvements and accelerate the flow of private capital into clean ener-

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

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gy projects, and thus achieve significant reductions in greenhouse gas emissions and toxic emissions well above the level of reductions that would be achieved through business as usual.

S 2. Article 8 of the public authorities law is amended by adding a new title 9-B to read as follows:

TITLE 9-B

COMMERCIAL ON-BILL REPAYMENT PROGRAM

SECTION 1900. SHORT TITLE.
1901. DEFINITIONS.
1902. PURPOSE.
1903. ADMINISTRATION BY THE AUTHORITY.
1904. COMMERCIAL ON-BILL REPAYMENT PROGRAM.
1905. ADVISORY COUNCIL.
1906. ANNUAL REPORTING.
1907. FUNDS, ADMINISTRATION AND EVALUATION AND COORDINATION.

S 1900. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "COMMERCIAL ON-BILL REPAYMENT ACT OF 2015".

S 1901. DEFINITIONS. AS USED IN THIS TITLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "APPLICANT" MEANS A PERSON WHO OWNS, LEASES OR MANAGES AN ELIGIBLE STRUCTURE OR A PORTION OF SUCH ELIGIBLE STRUCTURE AND WHO HAS THE AUTHORITY TO CONTRACT FOR THE PROVISION OF QUALIFIED CLEAN ENERGY IMPROVEMENTS TO SUCH ELIGIBLE STRUCTURE OR PORTION OF SUCH ELIGIBLE STRUCTURE.

2. "AUTHORITY" SHALL HAVE THE SAME MEANING AS IN SUBDIVISION TWO OF SECTION EIGHTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE.

3. "COMMERCIAL STRUCTURE" MEANS A BUILDING OTHER THAN A NON-RESIDENTIAL STRUCTURE, MULTI-FAMILY STRUCTURE, OR RESIDENTIAL STRUCTURE.

4. "DISTRIBUTION UTILITY" MEANS A COMBINATION ELECTRIC AND GAS CORPORATION HAVING ANNUAL REVENUES IN EXCESS OF TWO HUNDRED MILLION DOLLARS AND THE LONG ISLAND POWER AUTHORITY.

5. "MULTI-FAMILY STRUCTURE" MEANS A MULTI-FAMILY STRUCTURE AS SUCH TERM IS DEFINED IN SECTION EIGHTEEN HUNDRED NINETY-ONE OF THIS ARTICLE.

6. "NON-RESIDENTIAL STRUCTURE" MEANS A NON-RESIDENTIAL STRUCTURE AS SUCH TERM IS DEFINED IN SECTION EIGHTEEN HUNDRED NINETY-ONE OF THIS ARTICLE.

7. "ELIGIBLE PROJECT" MEANS QUALIFIED CLEAN ENERGY IMPROVEMENTS FOR AN ELIGIBLE STRUCTURE.

8. "ELIGIBLE STRUCTURE" MEANS (A) A COMMERCIAL STRUCTURE OR (B) A NON-RESIDENTIAL STRUCTURE.

9. "OBR AGREEMENT" MEANS A STANDARD WRITTEN AGREEMENT EXECUTED BY A DISTRIBUTION UTILITY CUSTOMER OF RECORD WITH RESPECT TO THE SUBJECT PROPERTY, THE OWNER OF THE SUBJECT PROPERTY AND AN OBR PARTNER OR ITS AGENT GOVERNING THE TERMS OF AN OBR OBLIGATION.

10. "OBR MASTER SERVICER" MEANS AN ENTITY RETAINED BY THE AUTHORITY TO IMPLEMENT THE TASKS SET FORTH IN SECTION NINETEEN HUNDRED FOUR OF THIS TITLE.

11. "OBR MASTER SERVICER AGREEMENT" MEANS AN AGREEMENT DEVELOPED BY THE AUTHORITY AS PROVIDED IN SECTION NINETEEN HUNDRED FOUR OF THIS TITLE.

12. "OBR OBLIGATION" MEANS AN OBLIGATION TO REPAY A FINANCING PROVIDED TO A UTILITY CUSTOMER FOR THE INSTALLATION OF AN ELIGIBLE PROJECT PURSUANT TO AN ON-BILL REPAYMENT PROGRAM. AN OBR OBLIGATION WILL EXIST WHERE A FINANCING PURSUANT TO AN OBR AGREEMENT HAS BEEN APPROVED BY THE OBR MASTER SERVICER AND HAS NOT BEEN SATISFIED.

13. "OBR PARTNER" MEANS A PERSON OR ENTITY PROVIDING FINANCING FOR QUALIFIED CLEAN ENERGY IMPROVEMENTS PURSUANT TO THE COMMERCIAL ON-BILL REPAYMENT PROGRAM WHICH ENTERS INTO AN OBR MASTER SERVICER AGREEMENT. OBR PARTNERS MAY INCLUDE, BUT ARE NOT LIMITED TO, BANKS, SAVINGS AND LOAN INSTITUTIONS, CREDIT UNIONS, PROJECT DEVELOPERS, OR ENERGY SERVICE COMPANIES. FINANCING MAY BE PROVIDED IN THE FORM OF A LOAN, LEASE, POWER PURCHASE AGREEMENT, ENERGY SERVICE AGREEMENT, OR OTHER FINANCING STRUCTURE APPROVED BY THE AUTHORITY.

14. "ON-BILL REPAYMENT CHARGE" MEANS A CHARGE, CONSTITUTING REPAYMENT OF ALL OR A PORTION OF ANY OBR OBLIGATION, THAT IS INCLUDED ON A UTILITY BILL.

15. "PROGRAM" MEANS THE COMMERCIAL ON-BILL REPAYMENT PROGRAM CREATED BY THIS TITLE.

16. "QUALIFIED CLEAN ENERGY IMPROVEMENTS" MEANS IMPROVEMENTS, INCLUDING CLEAN ENERGY RESOURCES SUCH AS ENERGY EFFICIENCY, RENEWABLE ENERGY, COMBINED HEAT AND POWER, DEMAND RESPONSE, AND ANY OTHER LOW-CARBON ENERGY TECHNOLOGY REASONABLY DESIGNATED BY THE AUTHORITY, THAT ARE PERMANENTLY AFFIXED TO REAL PROPERTY AND MEET COST EFFECTIVENESS STANDARDS ESTABLISHED BY THE AUTHORITY.

17. "RESIDENTIAL STRUCTURE" MEANS A RESIDENTIAL STRUCTURE AS SUCH TERM IS DEFINED IN SECTION EIGHTEEN HUNDRED NINETY-ONE OF THIS ARTICLE.

S 1902. PURPOSE. THERE IS HEREBY CREATED A COMMERCIAL ON-BILL REPAYMENT PROGRAM. THE PURPOSE OF THE PROGRAM IS TO:

1. PROMOTE ENERGY EFFICIENCY, ENERGY CONSERVATION AND THE INSTALLATION OF CLEAN ENERGY TECHNOLOGIES;

2. REDUCE ENERGY CONSUMPTION AND ENERGY COSTS;

3. REDUCE GREENHOUSE GAS EMISSIONS;

4. CREATE GREEN JOB OPPORTUNITIES; AND

5. PROMULGATE A REPLICABLE, SCALABLE APPROACH TO FINANCING CLEAN ENERGY PROJECTS FOR THE PURPOSE OF ANIMATING THE MARKET FOR SUCH PROJECTS AND ACCELERATING THE FLOW OF CAPITAL INTO SUCH PROJECTS.

S 1903. ADMINISTRATION BY THE AUTHORITY. WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS TITLE, THE AUTHORITY IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH AND ADMINISTER THE COMMERCIAL ON-BILL REPAYMENT PROGRAM. THE AUTHORITY SHALL IMPLEMENT THE PROGRAM IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC SERVICE, THE POWER AUTHORITY OF THE STATE OF NEW YORK, THE LONG ISLAND POWER AUTHORITY, THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

S 1904. COMMERCIAL ON-BILL REPAYMENT PROGRAM. 1. (A) THERE IS HEREBY CREATED A COMMERCIAL ON-BILL REPAYMENT PROGRAM.

(B) IN ADMINISTERING SUCH PROGRAM, THE AUTHORITY IS AUTHORIZED AND DIRECTED TO:

(I) ENTER INTO CONTRACTS WITH ONE OR MORE PROGRAM IMPLEMENTERS TO PERFORM SUCH FUNCTIONS AS THE AUTHORITY DEEMS APPROPRIATE;

(II) RETAIN THE SERVICES OF A MASTER SERVICER;

(III) DEVELOP, IN CONSULTATION WITH THE DISTRIBUTION UTILITIES AND THE DEPARTMENT OF PUBLIC SERVICE, AN OBR MASTER SERVICER AGREEMENT THAT INCLUDES, BUT IS NOT LIMITED TO, PROVISIONS REGARDING THE FOLLOWING:

(1) PROTOCOLS FOR COMMUNICATION BETWEEN AND AMONG THE OBR PARTNERS, THE DISTRIBUTION UTILITIES AND THE OBR MASTER SERVICER;

(2) APPROVAL BY THE MASTER SERVICER OF OBR AGREEMENTS, UPON SUBMISSION OF CONFORMING AGREEMENTS BY OBR PARTNERS ALONG WITH CERTIFICATION BY A LICENSED ENGINEER THAT THE WORK SCOPE FINANCED UNDER THE OBR AGREEMENT CONFORMS WITH STANDARDS SET BY THE AUTHORITY AND THAT THE WORK WAS COMPLETED AND CERTIFICATION BY THE OBR PARTNER THAT THE NOTICE REQUIRED

BY PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION WAS DELIVERED TO THE APPLICANT;

(3) BILLING AND COLLECTION OF ON-BILL REPAYMENT CHARGES BY THE DISTRIBUTION UTILITIES AND PAYMENT OF SUCH CHARGES TO THE OBR PARTNERS;

(4) DEFAULTS IN PAYMENT BY APPLICANTS;

(5) HANDLING OF DISPUTES AND COMPLAINTS BY PARTICIPANTS IN THE COMMERCIAL OBR PROGRAM, PROVIDED THAT WITH RESPECT TO DISPUTES AND COMPLAINTS INVOLVING OBR OBLIGATIONS RELATING TO ELIGIBLE STRUCTURES OTHER THAN COMMERCIAL STRUCTURES, THE AUTHORITY SHALL BE RESPONSIBLE FOR RESOLVING SUCH COMPLAINTS AND DISPUTES, AND THAT WITH RESPECT TO DISPUTES AND COMPLAINTS INVOLVING OBR OBLIGATIONS RELATING TO COMMERCIAL STRUCTURES, SUCH MATTERS SHALL BE ADDRESSED THROUGH BINDING ARBITRATION.

(6) PAYMENT OF A FEE BY THE OBR PARTNER WITHIN THIRTY DAYS OF INITIATION OF AN ON-BILL REPAYMENT CHARGE OF ONE HUNDRED DOLLARS PER OBR OBLIGATION TO THE DISTRIBUTION UTILITY IN WHOSE SERVICE TERRITORY SUCH CUSTOMER IS LOCATED TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH IMPLEMENTING THE PROGRAM;

(7) PAYMENT OF A FEE BY THE OBR PARTNER WITHIN THIRTY DAYS OF THE INITIATION OF THE ON-BILL REPAYMENT CHARGE TO THE AUTHORITY TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH THE PROGRAM;

(8) PAYMENT OF A FEE BY THE OBR PARTNER WITHIN THIRTY DAYS OF INITIATION OF THE ON-BILL REPAYMENT CHARGE OF ONE QUARTER OF ONE PERCENT OF THE AMOUNT OF THE OBR OBLIGATION TO THE DISTRIBUTION UTILITY IN WHOSE SERVICE TERRITORY SUCH CUSTOMER IS LOCATED TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH THE PROGRAM;

(9) PAYMENT OF A FEE BY THE OBR PARTNER TO THE MASTER SERVICER AS REQUIRED BY THE AGREEMENT BETWEEN THE AUTHORITY AND THE MASTER SERVICER; AND

(10) PAYMENT OF A FEE BY THE OBR PARTNER TO THE MASTER SERVICER AS REQUIRED BY THE AGREEMENT BETWEEN THE AUTHORITY AND THE MASTER SERVICER FOR FEES ASSOCIATED WITH RECORDING THE DECLARATION AND SATISFACTION OF THE OBR OBLIGATION.

(IV) ESTABLISH GUIDANCE CONCERNING QUALIFIED CLEAN ENERGY IMPROVEMENTS;

(V) ESTABLISH COST EFFECTIVENESS STANDARDS FOR SUCH IMPROVEMENTS. THE COST-EFFECTIVENESS OF AN ELIGIBLE PROJECT SHALL BE EVALUATED SOLELY ON THE BASIS OF THE COSTS AND PROJECTED SAVINGS TO THE APPLYING CUSTOMER OR SUCH OTHER PARTY AS MAY STEP INTO THE SHOES OF THE APPLYING CUSTOMER, USING AN ENGINEERING PROCESS THAT INCORPORATES BEST PRACTICES AS DETERMINED BY THE AUTHORITY FOR (1) STANDARD BASELINING, INCLUDING PRIOR BILLING DATA AND USAGE PATTERNS, (2) SAVINGS PROJECTIONS, (3) DESIGN, CONSTRUCTION AND COMMISSIONING, (4) OPERATIONS, MAINTENANCE AND MONITORING, AND (5) MEASUREMENT AND VERIFICATION; PROVIDED HOWEVER THAT BASED UPON THE MOST RECENT CUSTOMER DATA AVAILABLE, ON AN ANNUALIZED BASIS, THE MONTHLY ON-BILL REPAYMENT AMOUNT FOR A PACKAGE OF MEASURES SHALL NOT EXCEED ONE-TWELFTH OF THE SAVINGS PROJECTED TO RESULT FROM THE INSTALLATION OF THE MEASURES PROVIDED FURTHER THAT NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT OR PREVENT CUSTOMERS WHOSE PRIMARY HEATING ENERGY SOURCE IS FROM DELIVERABLE FUELS FROM PARTICIPATING IN THE PROGRAM; AND

(VI) ESTABLISH REQUIREMENTS FOR ONGOING DISCLOSURE TO THE AUTHORITY OF (A) SELECTED DATA CONCERNING THE ENERGY, ENVIRONMENTAL AND FINANCIAL OUTCOMES OF QUALIFIED ENERGY PROJECTS IMPLEMENTED WITH FINANCING PROVIDED THROUGH THE COMMERCIAL OBR PROGRAM AND (B) ALL INFORMATION THAT THE AUTHORITY SHALL BE REQUIRED TO INCLUDE IN ITS ANNUAL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF

THE ASSEMBLY CONCERNING THE AUTHORITY'S ACTIVITIES RELATED TO THE COMMERCIAL ON-BILL REPAYMENT PROGRAM AS SET FORTH IN SECTION NINETEEN HUNDRED SEVEN OF THIS TITLE; AND

(VII) EXERCISE SUCH OTHER POWERS AS ARE NECESSARY OR CONVENIENT FOR THE PROPER ADMINISTRATION OF THE PROGRAM, INCLUDING, AT THE DISCRETION OF THE AUTHORITY, ENTERING INTO AGREEMENTS WITH APPLICANTS AND WITH SUCH STATE OR FEDERAL AGENCIES AS NECESSARY TO DIRECTLY RECEIVE REBATES AND GRANTS AVAILABLE FOR ELIGIBLE PROJECTS AND APPLY SUCH FUNDS TO REPAYMENT OF APPLICANT OBR OBLIGATIONS.

2. (A) APPLICANTS SEEKING TO PARTICIPATE IN THE COMMERCIAL OBR PROGRAM SHALL ARRANGE TO OBTAIN, FROM OBR PARTNERS, FINANCING FOR QUALIFIED CLEAN ENERGY IMPROVEMENTS. EACH OBR PARTNER SHALL ESTABLISH ITS OWN CREDIT STANDARDS FOR SUCH FINANCING; AND THE AUTHORITY SHALL ESTABLISH A PROCESS FOR RECEIPT AND RESOLUTION OF CUSTOMER COMPLAINTS CONCERNING ON-BILL REPAYMENT CHARGES ARISING FROM OBR OBLIGATIONS RELATING TO ELIGIBLE STRUCTURES OTHER THAN COMMERCIAL STRUCTURES AND FOR ADDRESSING DELAYS AND DEFAULTS IN CUSTOMER PAYMENTS WITH RESPECT TO SUCH OBR OBLIGATIONS.

(B) PRIOR TO THE APPROVAL BY THE AUTHORITY OF EACH OBR AGREEMENT ENTERED INTO BY AN APPLICANT PURSUANT TO THIS SECTION, THE OBR PARTNER SHALL CAUSE TO BE PROVIDED TO EACH APPLICANT PROPOSING TO INCUR SUCH OBR OBLIGATION A NOTICE STATING, IN CLEAR AND CONSPICUOUS TERMS:

(I) THE FINANCIAL AND LEGAL OBLIGATIONS AND RISKS OF PUTTING IN PLACE THE OBR OBLIGATION, INCLUDING THE OBLIGATION TO PROVIDE OR CONSENT TO THE CUSTOMER'S UTILITY PROVIDING THE AUTHORITY INFORMATION ON THE SOURCES AND QUANTITIES OF ENERGY USED IN THE CUSTOMER'S PREMISES AND ANY IMPROVEMENTS OR MODIFICATIONS TO THE PREMISES, USE OF THE PREMISES OR ENERGY CONSUMING APPLIANCES OR EQUIPMENT OF ANY TYPE THAT MAY SIGNIFICANTLY AFFECT ENERGY USAGE;

(II) THAT THE ON-BILL REPAYMENT CHARGE WILL BE BILLED BY SUCH CUSTOMER'S UTILITY COMPANY AND THAT FAILURE TO PAY SUCH ON-BILL REPAYMENT CHARGE MAY RESULT IN THE CUSTOMER HAVING HIS OR HER ELECTRICITY AND/OR GAS SERVICE TERMINATED FOR NON-PAYMENT;

(III) THAT PERFORMANCE OF THE QUALIFIED CLEAN ENERGY IMPROVEMENTS MAY NOT RESULT IN LOWER MONTHLY ENERGY COSTS OVER TIME, BASED ON ADDITIONAL FACTORS THAT CONTRIBUTE TO MONTHLY ENERGY COSTS; AND

(IV) (1) IN THE CASE OF OBR OBLIGATIONS RELATING TO ELIGIBLE PROJECTS PERFORMED ON ELIGIBLE STRUCTURES OTHER THAN COMMERCIAL STRUCTURES, THAT IT IS THE SOLE RESPONSIBILITY OF THE AUTHORITY TO HANDLE CONSUMER INQUIRIES AND COMPLAINTS RELATED TO THE OPERATION AND LENDING ASSOCIATED WITH THE PROGRAM, PROVIDED FURTHER THAT THE AUTHORITY SHALL PROVIDE A MECHANISM TO RECEIVE SUCH CONSUMER INQUIRIES AND COMPLAINTS.

(2) IN THE CASE OF OBR OBLIGATIONS RELATING TO ELIGIBLE PROJECTS PERFORMED ON COMMERCIAL STRUCTURES, THAT ALL DISPUTES RELATED TO THE OPERATION AND FINANCING ASSOCIATED WITH THE PROGRAM SHALL BE SUBJECT TO ARBITRATION, AS PROVIDED IN THE OBR MASTER AGREEMENT.

3. THE AUTHORITY SHALL MAKE AVAILABLE TO THE PUBLIC, ON AN ANONYMIZED BASIS, SELECTED DATA CONCERNING THE ENERGY, ENVIRONMENTAL AND FINANCIAL OUTCOMES OF QUALIFIED ENERGY PROJECTS IMPLEMENTED WITH FINANCING PROVIDED THROUGH THE COMMERCIAL OBR PROGRAM.

4. (A) FOR EACH OBR OBLIGATION THAT IS APPROVED BY THE AUTHORITY, THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL RECORD OR CAUSE TO BE RECORDED, PURSUANT TO ARTICLE NINE OF THE REAL PROPERTY LAW, IN THE OFFICE OF THE APPROPRIATE RECORDING OFFICER, A DECLARATION WITH RESPECT TO THE PROPERTY IMPROVED BY SUCH SERVICES OF THE EXISTENCE OF THE OBR OBLIGATION AND STATING THE TOTAL AMOUNT OF THE OBR OBLIGATION,

THE TERM OF THE OBR OBLIGATION, AND THAT THE OBR OBLIGATION IS BEING REPAID THROUGH A CHARGE ON AN ELECTRIC OR GAS METER ASSOCIATED WITH THE PROPERTY. THE DECLARATION SHALL FURTHER STATE THAT IT IS BEING FILED PURSUANT TO THIS SECTION AND, UNLESS FULLY SATISFIED PRIOR TO SALE OR TRANSFER OF THE PROPERTY, THE OBR OBLIGATION SHALL SURVIVE CHANGES IN OWNERSHIP, TENANCY, OR METER ACCOUNT RESPONSIBILITY AND, UNTIL FULLY SATISFIED, SHALL CONSTITUTE THE OBLIGATION OF THE PERSON RESPONSIBLE FOR THE METER ACCOUNT. SUCH DECLARATION SHALL NOT CONSTITUTE A MORTGAGE AND SHALL NOT CREATE ANY SECURITY INTEREST OR LIEN ON THE PROPERTY. UPON SATISFACTION OF THE OBR OBLIGATION, THE AUTHORITY SHALL FILE A DECLARATION OF REPAYMENT PURSUANT TO ARTICLE NINE OF THE REAL PROPERTY LAW.

(B) THE RECORDING OFFICER SHALL RECORD SUCH DECLARATIONS IN THE SAME BOOK, PROVIDED UNDER SECTION THREE HUNDRED FIFTEEN OF THE REAL PROPERTY LAW, IN WHICH SUCH RECORDING OFFICER RECORDS DEEDS.

S 1905. ADVISORY COUNCIL. 1. THE AUTHORITY SHALL ESTABLISH A COMMERCIAL ON-BILL REPAYMENT ADVISORY COUNCIL TO ADVISE THE AUTHORITY ON THE CREATION AND IMPLEMENTATION OF THE PROGRAM. THE COUNCIL SHALL CONSIST OF:

(A) THE PRESIDENT OF THE AUTHORITY; THE SECRETARY OF STATE; THE CHAIR OF THE DEPARTMENT OF PUBLIC SERVICE; THE PRESIDENT OF THE POWER AUTHORITY OF THE STATE OF NEW YORK; THE PRESIDENT OF THE LONG ISLAND POWER AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; OR THE DESIGNEES OF SUCH PERSONS; AND

(B) UNIONS, INCLUDING BUILDING TRADES AND PROPERTY SERVICES; LARGE-SCALE CONSTRUCTION CONTRACTORS; INVESTMENT MARKET EXPERTS; FINANCIAL MARKET EXPERTS; ENVIRONMENTAL NON-GOVERNMENTAL ORGANIZATIONS; AND REAL ESTATE EXPERTS.

2. THE PRESIDENT OF THE AUTHORITY SHALL SERVE AS THE CHAIR OF THE COUNCIL.

S 1906. ANNUAL REPORTING. 1. NO LATER THAN OCTOBER FIRST, TWO THOUSAND SIXTEEN AND OCTOBER FIRST OF EACH YEAR THEREAFTER, THE PRESIDENT OF THE AUTHORITY SHALL ISSUE AN ANNUAL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY CONCERNING THE AUTHORITY'S ACTIVITIES RELATED TO THE COMMERCIAL ON-BILL REPAYMENT PROGRAM CREATED PURSUANT TO THIS TITLE. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING INFORMATION:

2. THE STATUS OF THE AUTHORITY'S ACTIVITIES AND OUTCOMES RELATED TO SECTION NINETEEN HUNDRED FOUR OF THIS TITLE. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) THE NUMBER OF PERSONS WHO HAVE APPLIED FOR OBR OBLIGATIONS TO BE ESTABLISHED THROUGH THE PROGRAM;

(B) THE NUMBER OF OBR OBLIGATIONS IN DEFAULT;

(C) THE AMOUNT AND NATURE OF THE COSTS INCURRED BY THE AUTHORITY FOR THE ACTIVITIES DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION NINETEEN HUNDRED FOUR OF THIS TITLE;

(D) THE AUTHORITY'S ACTIVITIES AND OUTCOMES RELATED TO ESTABLISHING THE COMMERCIAL ON-BILL REPAYMENT MECHANISM, INCLUDING THE NUMBER OF PERSONS WHO HAVE APPLIED THE OPPORTUNITY TO UTILIZE ON-BILL REPAYMENT AND THE RESULTS OF THE EVALUATION PROGRAM PERFORMED PURSUANT TO SUBDIVISION THREE OF SECTION NINETEEN HUNDRED FOUR OF THIS TITLE;

(E) THE AMOUNT EXPENDED BY THE AUTHORITY IN SUPPORT OF THE PROGRAM AND THE PURPOSES FOR WHICH SUCH FUNDS HAVE BEEN EXPENDED;

(F) THE NUMBER OF CUSTOMERS PARTICIPATING IN THE PROGRAM AND THE AMOUNTS FINANCED PURSUANT TO OBR AGREEMENTS WITH RESPECT TO WHICH OBR OBLIGATIONS HAVE BEEN ESTABLISHED;

(G) THE NUMBER OF PROGRAM PARTICIPANTS WHO ARE IN ARREARS IN THEIR UTILITY ACCOUNTS FOR ELECTRIC AND/OR GAS SERVICE;

(H) THE NUMBER OF PROGRAM PARTICIPANTS WHO ARE IN ARREARS IN THEIR ON-BILL REPAYMENT CHARGE PAYMENTS;

(I) THE NUMBER OF PROGRAM PARTICIPANTS WHOSE UTILITY SERVICE HAS BEEN TERMINATED FOR NON-PAYMENT;

(J) A DESCRIPTION OF THE GEOGRAPHIC DISTRIBUTION OF OBR OBLIGATIONS MADE;

(K) AN ESTIMATE OF THE ENERGY SAVINGS RESULTING FROM THIS PROGRAM; AND

(L) AN ESTIMATE OF THE AVERAGE PROJECT COST.

S 1907. FUNDS, ADMINISTRATION AND EVALUATION AND COORDINATION. THE AUTHORITY IS AUTHORIZED TO ACCEPT, AS AGENT OF THE STATE, ANY GIFT, GRANT, DEVISE OR BEQUEST, WHETHER CONDITIONAL OR UNCONDITIONAL, INCLUDING BUT NOT LIMITED TO FEDERAL GRANTS, AND TO USE MONIES MADE AVAILABLE FOR THE PROGRAM FROM ANY PUBLIC OR PRIVATE SOURCE, FOR THE PURPOSE OF ADMINISTERING AND EVALUATING THE EFFECTIVENESS OF THE PROGRAM.

S 3. Subdivision 4 of section 1855 of the public authorities law, as amended by chapter 487 of the laws of 2009, is amended to read as follows:

4. To make rules and regulations governing the exercise of its corporate powers and the fulfillment of its corporate purposes under this title [and title] AND TITLES nine-A AND NINE-B of this article, which shall be filed with the department of state in the manner provided by section one hundred two of the executive law.

S 4. Paragraph (h) of subdivision 2 of section 18-a of the public service law, as amended by section 2 of part A of chapter 173 of the laws of 2013, is amended to read as follows:

(h) On-bill recovery charges billed pursuant to section sixty-six-m of this chapter AND ON-BILL REPAYMENT CHARGES BILLED PURSUANT TO SECTION SIXTY-SIX-O OF THIS CHAPTER shall be excluded from any determination of an entity's gross operating revenues derived from intrastate utility operations for purposes of this section.

S 5. Paragraph (d) of subdivision 6 of section 65 of the public service law, as amended by chapter 388 of the laws of 2011, is amended to read as follows:

(d) for installation of capital improvements and fixtures to promote energy efficiency upon the request and consent of the customer, including but not limited (I) to the performance of qualified energy efficiency services for customers participating in green jobs-green New York on-bill recovery pursuant to section sixty-six-m of this article; OR (II) THE PERFORMANCE OF QUALIFIED ENERGY CLEAN ENERGY IMPROVEMENTS FOR CUSTOMERS PARTICIPATING IN THE COMMERCIAL ON-BILL REPAYMENT PROGRAM PURSUANT TO SECTION SIXTY-SIX-O OF THIS ARTICLE.

S 6. The public service law is amended by adding a new section 66-o to read as follows:

S 66-O. COMMERCIAL ON-BILL REPAYMENT PROGRAM. 1. (A) THE COMMISSION SHALL, WITHIN FORTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS SECTION, COMMENCE A PROCEEDING TO INVESTIGATE THE IMPLEMENTATION BY EACH COMBINATION ELECTRIC AND GAS CORPORATION HAVING ANNUAL REVENUES IN EXCESS OF TWO HUNDRED MILLION DOLLARS OF A BILLING AND COLLECTION SERVICE FOR ON-BILL REPAYMENT CHARGES IN PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS PURSUANT TO THE COMMERCIAL ON-BILL REPAYMENT PROGRAM ESTABLISHED PURSUANT TO TITLE NINE-B OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW AND, WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION SHALL MAKE A DETERMINATION ESTABLISHING THE BILLING AND COLLECTION PROCEDURES FOR SUCH ON-BILL REPAYMENT CHARGES. THE DEPARTMENT

SHALL CONSULT WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IN THE PREPARATION OF ITS RECOMMENDATIONS TO THE COMMISSION FOR SUCH DETERMINATION. THE COMMISSION SHALL REQUIRE SUCH ELECTRIC AND GAS CORPORATIONS TO OFFER BILLING AND COLLECTION SERVICES FOR COMMERCIAL ON-BILL REPAYMENT CHARGES FOR ELIGIBLE CUSTOMERS WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS SECTION. TO THE EXTENT PRACTICABLE, SUCH ELECTRIC AND GAS CORPORATIONS SHALL UTILIZE EXISTING ELECTRONIC DATA INTERCHANGE INFRASTRUCTURE OR OTHER EXISTING BILLING INFRASTRUCTURE TO IMPLEMENT THEIR BILLING AND COLLECTION RESPONSIBILITIES UNDER THIS SECTION.

(B) THE COMMISSION MAY SUSPEND SUCH AN ELECTRIC AND GAS CORPORATION'S PARTICIPATION IN THE COMMERCIAL ON-BILL REPAYMENT PROGRAM PROVIDED THAT THE COMMISSION, AFTER CONDUCTING A HEARING AS PROVIDED IN SECTION TWENTY OF THIS CHAPTER, MAKES A FINDING THAT THERE IS A SIGNIFICANT INCREASE IN ARREARS OR UTILITY SERVICE DISCONNECTIONS THAT THE COMMISSION DETERMINES IS DIRECTLY RELATED TO ON-BILL REPAYMENT CHARGES, OR A FINDING OF OTHER GOOD CAUSE. ANY SUSPENSION PURSUANT TO THIS SUBDIVISION SHALL NOT AFFECT SUCH ELECTRIC AND GAS CORPORATION'S OBLIGATIONS WITH RESPECT TO ANY EXISTING OBR OBLIGATIONS OUTSTANDING AT THE TIME OF SUCH SUSPENSION, INCLUDING THE CONTINUED COLLECTION OF ALL ON-BILL REPAYMENT CHARGES RELATED THERETO.

(C) THE ON-BILL REPAYMENT CHARGE SHALL BE COLLECTED ON THE BILL FROM THE CUSTOMER'S ELECTRIC CORPORATION UNLESS THE QUALIFIED CLEAN ENERGY IMPROVEMENTS AT THAT CUSTOMER'S PREMISES RESULT IN MORE PROJECTED ENERGY SAVINGS ON THE CUSTOMER'S GAS BILL THAN THE ELECTRIC BILL, IN WHICH CASE SUCH CHARGE SHALL BE COLLECTED ON THE CUSTOMER'S GAS CORPORATION BILL.

2. SCHEDULES FOR THE COLLECTION AND BILLING OF ON-BILL REPAYMENT CHARGES SHALL PROVIDE:

(A) THAT BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE TO ALL CUSTOMERS WHO HAVE MET THE STANDARDS ESTABLISHED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR PARTICIPATION IN THE COMMERCIAL ON-BILL REPAYMENT PROGRAM AND HAVE EXECUTED AN OBR AGREEMENT FOR THE PERFORMANCE OF QUALIFIED CLEAN ENERGY IMPROVEMENTS UNDER SUCH PROGRAM AND HAVE ESTABLISHED AN OBR OBLIGATION PURSUANT TO SECTION NINE-TEEN HUNDRED FOUR OF THE PUBLIC AUTHORITIES LAW;

(B) THAT THE RESPONSIBILITIES OF SUCH ELECTRIC AND GAS CORPORATION ARE LIMITED TO PROVIDING BILLING AND COLLECTION SERVICES FOR ON-BILL REPAY-MENT CHARGES AS DIRECTED BY THE AUTHORITY;

(C) UNLESS FULLY SATISFIED PRIOR TO SALE OR TRANSFER, THAT (I) THE ON-BILL REPAYMENT CHARGES FOR ANY SERVICES PROVIDED AT THE CUSTOMER'S PREMISES SHALL SURVIVE CHANGES IN OWNERSHIP, TENANCY OR METER ACCOUNT RESPONSIBILITY, AND (II) THAT ARREARS IN ON-BILL REPAYMENT CHARGES AT THE TIME OF ACCOUNT CLOSURE OR METER TRANSFER SHALL REMAIN THE RESPONSI-BILITY OF THE INCURRING CUSTOMER, UNLESS EXPRESSLY ASSUMED BY A SUBSE-QUENT PURCHASER OF THE PROPERTY SUBJECT TO SUCH CHARGES;

(D) WITH RESPECT TO A CUSTOMER ACCOUNT WITH AN ELECTRIC AND GAS CORPO-RATION THAT HAS BEEN CLOSED AND IN WHICH ARREARAGES EXIST, INCLUDING AN ARREARAGE WITH RESPECT TO AN ON-BILL REPAYMENT CHARGE, THE COMMISSION MAY ADOPT RULES PROVIDING THAT AFTER A PERIOD OF TIME TO BE DETERMINED BY THE COMMISSION, THE SHARE OF TOTAL ARREARAGE THAT IS ATTRIBUTABLE TO THE ON-BILL REPAYMENT CHARGE MAY BE DEEMED, AS OF A DATE CERTAIN, TO BE AN OBLIGATION OWED DIRECTLY TO THE OBR PARTNER AND NOT TO THE ELECTRIC AND GAS CORPORATION;

(E) WITH RESPECT TO A CUSTOMER REMITTING LESS THAN THE TOTAL AMOUNT DUE FOR ELECTRIC AND/OR GAS SERVICES AND ON-BILL REPAYMENT CHARGES, THE AUTHORITY MAY REQUIRE THAT PAYMENTS BE ALLOCATED TO THE UTILITY AND THE

OBR PARTNER IN ACCORDANCE WITH A WATERFALL, SUCH WATERFALL TO BE DESIGNED WITH AN OBJECTIVE OF NOT INCREASING UTILITY BAD DEBT EXPENSE, WITH PRIORITY IN THE WATERFALL BEING GIVEN TO PAST-DUE AMOUNTS IN ACCORDANCE WITH THE BILLING PERIOD DURING WHICH ANY SUCH AMOUNTS WERE ACCRUED, WITH NO ALLOCATIONS OF ARREARAGES OR CURRENT CHARGES BEING MADE TO EITHER THE UTILITY OR THE OBR PARTNER WHILE ARREARAGES OF EITHER TYPE FROM ANY EARLIER BILLING PERIOD REMAIN OUTSTANDING, AND, WITH RESPECT TO CHARGES THAT ACCRUED DURING THE SAME BILLING PERIOD, ALLOCATIONS TO THE UTILITY IN RESPECT OF ANY NON-OBR CHARGES IN ALL CASES BEING MADE AHEAD OF ALLOCATIONS TO THE OBR PARTNER FOR ANY OBR CHARGES;

(F) BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE WITHOUT REGARD TO WHETHER THE ENERGY OR FUEL DELIVERED BY THE UTILITY IS THE CUSTOMER'S PRIMARY ENERGY SOURCE;

(G) UNLESS OTHERWISE PRECLUDED BY LAW, PARTICIPATION IN THE COMMERCIAL ON-BILL REPAYMENT PROGRAM SHALL NOT AFFECT A CUSTOMER'S ELIGIBILITY FOR ANY REBATE OR INCENTIVE OFFERED BY A UTILITY OR THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; AND

(H) ANY OTHER PROVISIONS NECESSARY TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL REPAYMENT CHARGES.

S 7. Sections 1020-ii, 1020-jj and 1020-kk of the public authorities law, as renumbered by chapter 388 of the laws of 2011, are renumbered sections 1020-jj, 1020-kk and 1020-ll and a new section 1020-ii is added to read as follows:

S 1020-II. COMMERCIAL ON-BILL REPAYMENT. 1. WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE AUTHORITY SHALL ESTABLISH A PROGRAM TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL REPAYMENT CHARGES FOR PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS TO THE COMMERCIAL ON-BILL REPAYMENT PROGRAM ESTABLISHED PURSUANT TO TITLE NINE-B OF ARTICLE EIGHT OF THIS CHAPTER. SUCH PROGRAM SHALL BE CONSISTENT WITH THE STANDARDS SET FORTH IN SECTION SIXTY-SIX-O OF THE PUBLIC SERVICE LAW. BILLING AND COLLECTION SERVICES UNDER SUCH TARIFFS SHALL COMMENCE AS SOON AS PRACTICABLE AFTER ESTABLISHMENT OF THE PROGRAM.

2. THE AUTHORITY MAY SUSPEND ITS OFFERING OF THE ON-BILL REPAYMENT CHARGE PROVIDED THAT THE AUTHORITY MAKES A FINDING THAT THERE IS A SIGNIFICANT INCREASE IN ARREARS OR UTILITY SERVICE DISCONNECTIONS THAT THE AUTHORITY DETERMINES IS DIRECTLY RELATED TO SUCH CHARGE, OR A FINDING OF OTHER GOOD CAUSE.

S 8. Section 242 of the real property law is amended by adding a new subdivision 5 to read as follows:

5. DISCLOSURE PRIOR TO THE SALE OF REAL PROPERTY TO WHICH A COMMERCIAL ON-BILL REPAYMENT CHARGE APPLIES. (A) ANY PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION OFFERING TO SELL REAL PROPERTY WHICH IS SUBJECT TO A COMMERCIAL ON-BILL REPAYMENT CHARGE PURSUANT TO TITLE NINE-B OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW SHALL PROVIDE WRITTEN NOTICE TO THE PROSPECTIVE PURCHASER OR THE PROSPECTIVE PURCHASER'S AGENT, STATING AS FOLLOWS: "THIS PROPERTY IS SUBJECT TO A COMMERCIAL ON-BILL REPAYMENT CHARGE". SUCH NOTICE SHALL ALSO INCLUDE, AS AN ATTACHMENT, THE OBR AGREEMENT GOVERNING THE COMMERCIAL ON-BILL REPAYMENT OBLIGATION, INCLUDING ANY MODIFICATIONS THERETO, A DESCRIPTION OF THE CLEAN ENERGY IMPROVEMENTS PERFORMED, INCLUDING IMPROVEMENTS TO THE PROPERTY, AND AN EXPLANATION OF THE BENEFIT OF THE COMMERCIAL ON-BILL REPAYMENT QUALIFIED CLEAN ENERGY SERVICES. SUCH NOTICE SHALL BE PROVIDED BY THE SELLER PRIOR TO ACCEPTING A PURCHASE OFFER.

(B) ANY PROSPECTIVE OR ACTUAL PURCHASER WHO HAS SUFFERED A LOSS DUE TO A VIOLATION OF THIS SUBDIVISION IS ENTITLED TO RECOVER ANY ACTUAL

DAMAGES INCURRED FROM THE PERSON OFFERING TO SELL OR SELLING SAID REAL PROPERTY.

S 9. Section 291-j of the real property law, as added by section 2 of part DD of chapter 58 of the laws of 2012, is amended to read as follows:

S 291-j. Recording of declarations by the New York state energy research and development authority. 1. Pursuant to subdivision five of section eighteen hundred ninety-six of the public authorities law, the New York state energy research and development authority shall record or cause to be recorded, in the office of the appropriate recording officer, a declaration evidencing the existence of a loan as described therein and, upon satisfaction of such loan, such authority shall file a declaration of repayment and full satisfaction of the loan repayment utility meter charge. The recording officer shall record such declarations in the same book, provided under section three hundred fifteen of the real property law, in which such recording officer records deeds.

2. PURSUANT TO SUBDIVISION FOUR OF SECTION NINETEEN HUNDRED FOUR OF THE PUBLIC AUTHORITIES LAW, THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL RECORD OR CAUSE TO BE RECORDED, IN THE OFFICE OF THE APPROPRIATE RECORDING OFFICER, A DECLARATION EVIDENCING THE EXISTENCE OF AN OBR OBLIGATION AS DESCRIBED THEREIN AND, UPON SATISFACTION OF SUCH OBR OBLIGATION, SUCH AUTHORITY SHALL FILE A DECLARATION OF REPAYMENT AND FULL SATISFACTION OF THE OBR OBLIGATION. THE RECORDING OFFICER SHALL RECORD SUCH DECLARATION IN THE SAME BOOK, PROVIDED UNDER SECTION THREE HUNDRED FIFTEEN OF THIS ARTICLE, IN WHICH SUCH RECORDING OFFICER RECORDS DEEDS.

S 10. This act shall take effect immediately.