STATE OF NEW YORK

6010

2017-2018 Regular Sessions

IN ASSEMBLY

February 21, 2017

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the creation of the downstate New York power authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 5 of the public authorities law is amended by adding a new title 6-E to read as follows:

TITLE 6-E

DOWNSTATE NEW YORK POWER AUTHORITY

Section 1148. Short title.

1148-a. Establishment of authority.

1148-b. Establishment of downstate New York power authority.

1148-c. Members of the authority.

1148-d. Powers and duties of the authority.

1148-e. Deposit for temporary possession of property.

1148-f. Application of public service law.

1148-g. Furnishing service within the authority.

1148-h. Liabilities for bonds.

1148-i. Bonds and notes of the authority.

1148-j. Rights of redemption.

1148-k. Bonds and obligations legal investments of fiduciaries.

1148-l. Exemption from taxation; payments in lieu of taxes.

1148-m. The city of New York and counties of Westchester, Rockland and Orange may levy taxes within the authority.

1148-n. Examination by comptroller.

1148-o. Reports of the authority.

§ 1148. Short title. This title may be cited as the "downstate New York power authority act".

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

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§ 1148-a. Establishment of authority. There is hereby established and defined a public authority to be known as the "downstate New York power authority", which shall embrace the service territory of the Consolidated Edison Company, including that portion of Westchester, Rockland and Orange counties served by the aforesaid company.

§ 1148-b. Establishment of downstate New York power authority. There is hereby created a public utility district corporation, to be known as the "downstate New York power authority", hereinafter referred to as the authority. The authority shall be a body corporate and politic constituting a public benefit corporation, the objects of which, in the judgment of the legislature, cannot be obtained under general laws. The corporation shall have the power to sue and be sued, and to adopt a seal. It shall have the power to acquire real and other forms of property by purchase, eminent domain or otherwise, to incur debts, liabilities and obligations, to issue bonds and notes and to exercise all powers authorized by this title and reasonably necessary for accomplishing its purposes, or properly incidental thereto, subject to the constitution and laws of the United States and the state of New York. Such powers shall be exercised in the name of the authority.

§ 1148-c. Members of the authority. The members, constituting the board of directors of the authority, shall consist of eleven persons, seven of whom shall reside within the city of New York and shall be appointed by the mayor of the city of New York and confirmed by the city council. Two persons shall reside in Westchester county and shall be appointed by the county executive of Westchester county and confirmed by the county legislature. One person shall reside in Rockland county and shall be appointed by the county executive of Rockland county and confirmed by the county legislature. One person shall reside in Orange county and shall be appointed by the county executive of Orange county and confirmed by the county legislature.

The term of office of each member shall be four years, but in the first instance the mayor shall appoint two members each for terms of one, two and three years, respectively, and one member for a four-year term. The Westchester county executive shall, in the first instance, appoint members for one and two years, respectively.

Upon resignation of a member, or a vacancy occurring in any other manner, it shall be filled by the officer previously appointing the member to that office to fill the remainder of the term. Each member before entering upon the duties of his office shall take the constitutional oath of office, which shall be filed in the office of the secretary of state. Seven directors shall constitute a quorum for the transaction of business, provided, however, that at least one member shall be from Westchester, and, notwithstanding any other provision of law, the concurrence of a majority of those present at a meeting shall be necessary for the passage of any resolution, order or determination. Any member may be removed by the attorney general for inefficiency, neglect of duty or misconduct in office after a hearing upon charges and an opportunity to be heard in person or by counsel upon not less than ten days notice. No director shall receive a salary, but each shall be entitled to reimbursement for any ordinary and necessary actual expenses related directly to the business of the authority. They may elect one of the members as president and may elect or appoint other officers and determine their powers.

§ 1148-d. Powers and duties of the authority. The powers and duties conferred by this title shall be exercised by the board of directors of the authority, subject to the terms of this title. In the exercise of

such powers and duties the board shall have the following powers, together with such other powers as may be reasonably necessary for accomplishing the purposes and duties declared and set forth in this title:

1. To own and operate electric generating facilities in the New York City and Westchester, Rockland and Orange county areas for the benefit of the people and businesses of the city of New York and the counties of Westchester, Rockland and Orange;

2. To acquire, by purchase, condemnation or otherwise, the facilities formerly owned by the Consolidated Edison Company for the production of electricity;

3. To determine upon the location, type, size, construction, lease, purchase, ownership, acquisition, use and operation of any plant or plants or other structure or property, within or without the territorial limits of the authority;

4. To appoint and at pleasure discharge a secretary or treasurer and such clerical, engineering, legal and other professional assistance as it may deem necessary for the purposes of this title and fix their compensation;

5. To appoint and at pleasure remove all employees, to transfer employees from their positions to other positions and to consolidate or abolish such positions, except that any collective bargaining agreements in force between the Consolidated Edison Company or any other company and any certified collective bargaining representative for any employees shall remain in full force and effect, and such employees shall be exempt from the provisions of the public employees fair employment act as set forth in article fourteen of the civil service law;

6. To enter upon any lands and within any building whenever in its judgment it may be necessary for the purpose of making surveys and examinations to accomplish any purposes set forth in this title;

7. By the whole, or by any three or more, of the members of the authority, to make any investigation which it may deem necessary to enable it effectively to carry out the provisions of this title and, for that purpose, to take and hear proofs and testimony and to compel by subpoena the attendance of witnesses and the production of records, books, papers, accounts and other documents including public records;

8. To execute contracts, borrow money, issue bonds and other certificates of indebtedness and sell or dispose of same in such amounts and at such rates of interest as may be advisable. This shall include the power to borrow money from any state or federal agency, including the power authority of the state of New York, and to contract with the power authority of the state of New York for any administrative, legal, engineering or other services as may be necessary to effectuate the orderly transition of operations from the previous owners to the authority;

9. (a) To hold public hearings, on the initiative of any three members of the board or on the request of any person or persons, upon any matter the board deems in the public interest;

(b) Further, to develop and adopt by October thirtieth of each calendar year a capital budget plan for the following calendar year and to hold at least two public hearings on said budget in each county in the city of New York and in the counties of Westchester, Rockland and Orange with both a day and an evening session, beginning at least forty-five days prior to the adoption of said capital budget;

(c) To make such proposed capital budget available for public inspection at all offices of the authority, in the main libraries of both said counties and in such other places as the public service

commission may require so that the same may be available for public inspection; the public shall be notified of said hearings in bills rendered for service at least thirty days prior to the first such hearing.

§ 1148-e. Deposit for temporary possession of property. Whenever the authority, in any proceedings instigated by it for the acquisition of any existing plant or plants by condemnation, shall make application for temporary possession pursuant to the provisions of the eminent domain procedure law, the sum to be fixed by the court for deposit as a condition for granting such application need not exceed twenty per centum of the assessed valuation of the real property sought to be acquired in such proceeding as such assessed valuation appeared upon the last assessment rolls for state and city taxes prior to the commencement of such proceeding.

§ 1148-f. Application of public service law. The rates, charges, services, practices and finances of the authority shall remain subject to the jurisdiction of the public service commission and the provisions of the public service law, including the provisions of the home energy fair practices act, the home insulation and energy conservation act and the provisions related to the siting and certification of major generating plants and transmission lines. Notwithstanding the aforesaid application of the provisions of the public service law, the following provisions shall govern with respect to the rates, charges, services, practices and finances of the authority and, where such provisions are inconsistent with the public service law, shall be deemed to supersede it:

1. The amount of consideration paid and the issuance of securities by the authority for the acquisition of the aforesaid facilities shall not require the approval of the public service commission.

2. The cost of acquisition of said facilities, including the costs of the issuance of bonds and notes related to such acquisition such as legal and engineering fees, underwriters' discount and other reasonable and necessary fees related to such issuance, shall be deemed by the public service commission to be the original cost of said facilities upon which the rate base shall be determined. Any contingency funds and any debt service reserve funds raised as a result of the issuance of bonds and notes shall be deemed cash assets and capital surplus liabilities, respectively, and any income from such cash assets shall be determined to be other than operating income for the authority.

3. Any rate increases or decreases resulting from the creation of the authority shall be uniform among all classes of customers. In addition, the authority shall not seek any changes, other than the uniform changes for all classes of customers, in any tariff, rate or schedule for at least two years after the acquisition of the aforementioned generating facilities. After such period, all changes among rates, tariffs and schedules among classes of customers shall be subject to the approval of the public service commission.

4. The board of directors shall annually make the report required by subdivision seven of section sixty-six of the public service law to the public service commission, which report shall be verified by the oath of the president of the authority.

§ 1148-g. Furnishing service within the authority. It shall be the obligation of the authority to furnish safe and reliable electric generation service to the persons and businesses in the authority at just and reasonable rates. The authority shall have the power to construct or acquire, within or without the territorial limits of the authority, such

additional facilities beyond the former facilities of the Consolidated Edison Company as shall reasonably be necessary to meet such obligations. The authority may purchase power and energy from any persons, and sell power and energy to any person, within or without the territorial limits of the authority, where the board of directors deems such sales or purchases to be in the best interest of the people and businesses of the authority.

§ 1148-h. Liabilities for bonds. The bonds or other obligations of the authority shall not be debts of the state of New York, the city of New York or the county of Westchester, and the board of directors shall have no power to make them payable except out of revenues of the authority.

§ 1148-i. Bonds and notes of the authority. 1. The authority shall have the power, and is hereby authorized, from time to time to issue its negotiable bonds or notes, in conformity with the applicable provisions of the local finance law, for the purpose of financing the acquisition of the former electric generating facilities of the Consolidated Edison Company and for the financing of any further projects authorized by this title, including the acquisition of any real or personal property deemed necessary by the authority.

2. In anticipation of the sale of such bonds the authority may issue negotiable bond anticipation notes in conformity with the applicable provisions of the local finance law and may renew the same from time to time but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of such original notes. Such notes shall be paid from any moneys of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. Such notes shall not be issued in any amount in excess of the amount of bonds which the authority is authorized to issue less the amount of any bonds or other notes theretofore issued and outstanding. The notes shall be issued in the same manner as the bonds. Such notes and the resolution authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

3. The authority shall have power from time to time, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds and notes partly to refund bonds and notes then outstanding and partly for any other purpose authorized by this title. Refunding bonds and notes may be exchanged for the bonds and notes to be refunded, with such cash adjustments as may be agreed, or may be sold with the proceeds applied to the purchase or payment of the bonds and notes to be refunded.

4. The bonds and notes may be issued payable in annual installments or as term bonds of the authority or the authority may, in its discretion, issue bonds and notes of both types. Such bonds and notes shall be authorized by resolution of the board of directors and shall bear such date or dates, mature at such time or times not exceeding fifty years from their respective dates, bear interest at such rate or rates payable annually or semi-annually, be in such denominations, be in registered form only, be executed in such manner, be payable in lawful money of the United States of America at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. In the event that term bonds are issued, the resolution authorizing same may make such provisions for the establishment and management of adequate sinking funds for the payment thereof as the authority may deem necessary. The bonds or notes shall be sold at public sale and may be

sold for such price or prices as the authority shall determine. Announcements of such public sale may appear in any bills rendered for service by the authority. The resolution or resolutions authorizing any such obligations may contain provisions, which shall be part of the contract with the holders thereof, which provisions may:

(a) pledge the revenues of the authority to secure the payment of such bonds and agree to maintain schedules of rates, tariffs and charges adequate to pay the interest and principal of such obligations;

(b) give to the holders of such bonds and other obligations, or their authorized representatives, a lien upon such revenues and maintain such accounts as may be required by such holders, subject to agreement by the public service commission and the state comptroller;

(c) require such revenues to be set aside for sinking funds and reserve funds, safeguarding the deposit, use and investment thereof;

(d) limit or restrict the power of the authority under this title, insofar as the same may be deemed advisable, to secure the payment of such bonds and notes, including the authority to issue additional obligations or the disposition of the proceeds of revenues of the authority;

(e) authorize the appointment of a trustee or receiver as provided, limit the rights of the bondholders to enforce their bonds or notes by independent action and, in the event of a receivership, require the return of all properties to the authority when the bonds or notes are paid or redeemed and all costs paid;

(f) contain any other provisions reasonably necessary or deemed advisable to secure and provide for the payment of said bonds and obligations and the rights and remedies of the holders thereof;

(g) provide that the authority, the state of New York, the counties of Westchester, Rockland and Orange and the city of New York may purchase, pledge, cancel, hold or redeem such bonds and notes;

(h) provide for the amendment of any such resolution in any respect and the amount of bonds or obligations the holders of which, after published or written notice, must consent or object thereto in order that such amendment may or may not become effective.

§ 1148-j. Rights of redemption. The authority, the state of New York, the city of New York, and the counties of Westchester, Rockland and Orange shall have the right to redeem the bonds and obligations of the authority, may acquire such bonds and notes and may cancel, hold, sell or otherwise dispose of such bonds and obligations.

§ 1148-k. Bonds and obligations legal investments of fiduciaries. On or before January first of each year, commencing with January first, two thousand eighteen, the comptroller of the state of New York shall file with the public service commission his certificate stating the average annual revenues of the authority, or of the properties acquired or to be acquired by the authority, for the then preceding five years, as the case may be, and the maximum amount required in any future year to meet the interest and maturing principal of the outstanding obligations of the authority. If in his opinion the obligations of the authority are on the facts so determined and in his judgment sufficiently secured so as to constitute a suitable investment for the public funds of the state, he shall so certify, but such certification may later be withdrawn. So long as such certification remains in effect, the comptroller and all other public officers and bodies of the state, all municipalities and other political subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan officers, associations, administrators, guardians, executors and trus-

tees, and all other fiduciaries in the state may properly and legally invest funds in their control in such obligations.

§ 1148-l. Exemption from taxation; payments in lieu of taxes. The real and personal property of the authority and all of its activities and operations shall be exempt from taxation provided, however, that the authority shall pay to all units of state and local government amounts in lieu of taxes equal to the taxes paid or owing by the previous owner in the fiscal year immediately prior to the acquisition of the facilities of said previous owner by the authority. In addition the board may agree to increase payments in lieu of taxes to the city of New York and the counties of Westchester, Rockland and Orange.

§ 1148-m. The city of New York and counties of Westchester, Rockland and Orange may levy taxes within the authority. 1. The city of New York and the county of Westchester may, at any time, levy a special tax assessment upon the real property in such city or county, respectively, benefited by the authority to defray all or any portion of the payment of interest and principal of bonds or other obligations of the authority, to provide sinking funds, guaranty funds or other funds for each payment or to provide for the redemption of such obligations. Such assessment or assessments shall be levied in conformance with the applicable provisions of the United States Internal Revenue Code and any regulations or rulings issued thereunder in order that real property owners in such city and county be enabled to deduct such assessments from federal income taxes.

2. Such city and counties shall establish a system of accounts, with the approval of the state comptroller and the public service commission, for the transfer of the proceeds of such levies to the authority and for such reductions in the rates and charges for electric service in the amounts transferred as shall be required of the authority, except that amounts transferred for the maintenance of sinking funds, guaranty funds or funds other than for the payment of interest or principal maturing within one year shall not presently reduce rates for electric service.

§ 1148-n. Examination by comptroller. The state comptroller and his legally authorized representatives are hereby authorized and empowered from time to time, and in addition to the public service commission, to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

§ 1148-o. Reports of the authority. The authority shall annually report to the governor, the legislature, the city of New York, the county of Westchester, the public service commission and the comptroller upon its activities and operations.

§ 2. This act shall take effect immediately.