STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

April 29, 2021

Introduced by Sens. PARKER, SALAZAR, ADDABBO, BAILEY, BIAGGI, BRESLIN, BRISPORT, CLEARE, GIANARIS, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MYRIE, RAMOS, RIVERA, SANDERS, SEPULVEDA, SERRANO, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to implementing the "New York State Build Public Renewables 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 "New York State Build Public Renewables Act".

§ 2. Section 1005 of the public authorities law is amended by adding fourteen new subdivisions 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 to read as follows:

30. (a) The authority is authorized and directed to purchase, acquire, plan, design, engineer, finance, construct, operate, manage, improve and/or maintain any renewable energy project.

(b) For the purposes of this subdivision and subdivisions thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three of this section, the following terms shall have the following meanings:

(i) "renewable energy" shall have the same meaning as renewable energy systems as set forth in section sixty-six-p of the public service law.

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

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(ii) "renewable energy project" shall be defined as all infrastructure which generates, stores, distributes or transmits renewable energy or thermal energy as defined in subparagraph (i) of this paragraph, and includes the construction, installation and/or operation of ancillary facilities or equipment done in connection with any such renewable energy generating projects, including, but not limited to, energy storage systems, electric vehicle charging infrastructure and offshore wind support and installation vessels owned by the authority, and the production, use, and sale of green hydrogen defined as hydrogen produced through electrolysis powered using one hundred percent renewable energy.

31. Where a renewable energy site appropriate for New York state falls into federal jurisdiction, the authority may participate in lease auctions in an attempt to obtain ownership of that area.

32. (a) Notwithstanding any other provision of law, the authority shall, on or after January first, two thousand thirty, only generate renewable energy and shall only purchase, acquire, plan, design, engineer, finance, and construct generation and transmission facilities for the purpose of generating, storing, distributing and transmitting renewable energy. The authority shall phase out its use of existing non-renewable generation no later than December thirtieth, two thousand thirty, unless the authority provides to its trustees, and makes publicly available, an attestation in writing, signed by the independent system operator and a representative of the regional clean energy hub in which the facility is located, identifying the existence of a reliability need. The authority shall work with the New York state energy research and development authority to provide any funding necessary for a regional clean energy hub to meet the needs of this subdivision. The authority, in consultation with the independent system operator, shall ensure that the phase out of its existing non-renewable generation does not lead to an increase in the delivery of out-of-state non-renewable generation into the New York state electric grid. For the purposes of this subdivision, a "reliability need" means an electricity system need, which if unmet, would result in a violation of the electric power system planning and operating policies, standards, criteria, guidelines, procedures, and rules promulgated by the North American Electric Reliability Corporation ("NERC"), Northeast Power Coordinating Council ("NPCC"), and the New York State Reliability Council ("NYSRC"), as they may be amended from time to time.

(b) The authority shall prioritize funding, siting, building, and owning renewable energy projects which: (i) actively benefit disadvantaged communities as defined by the climate justice working group; (ii) minimize harm to wildlife, ecosystems, public health, and public safety; (iii) do not violate Indigenous rights or sovereignty; and (iv) which are the most cost-effective to the state according to the best available cost modeling research. The types of renewable energy projects the authority builds shall be determined and prioritized in consultation with affected labor unions and community organizations via the New York state energy research and development authority's regional clean energy hubs.

33. (a) Within two years of the effective date of this subdivision, the authority shall make public a ten-year climate and resiliency plan. Such climate and resiliency plan shall be designed to minimize costs to ratepayers, while balancing the interests of employees, grid reliability and resiliency, disadvantaged communities as defined by the climate justice working group, and the environment. Such plan shall be developed in consultation with the New York state independent system operator,

the New York state energy research and development authority, the New York state department of public service, and climate and resiliency experts, labor organizations, environmental justice communities, residential and small business ratepayer advocates, and community organizations via the New York state energy research and development authority's regional clean energy hubs. Such resiliency plan shall outline the renewable energy projects the authority plans to build, how the authority plans to phase out non-renewable assets and how the authority plans to comply with the climate leadership and community protection act and the renewable energy targets in subdivisions thirty-two and thirty-four of this section, and efforts to improve energy and electric grid resiliency. The authority shall update such plan annually, after public comment and a hearing. Such updated plan shall include a review of the state's progress towards the renewable energy goals of the climate leadership and community protection act. If the authority, in consultation with the New York state energy research and development authority, determines that the renewable energy goals of the climate leadership and community protection act are not likely to be met within the timeframe established by the law, the authority shall include in the updated plan the renewable energy projects it plans to build to ensure the state meets such goals, including the permit applications submitted, the stage of each project in the development process, when such projects are expected to be commissioned, and any barriers to deployment experienced by the authority. If the authority has identified a reliability need to maintain its existing non-renewable generation pursuant to subdivision thirty-two of this section, the authority shall identify in the annual report the renewable energy project, energy storage project, transmission or distribution infrastructure, demand response, or other such project or projects that the authority, or another entity, only if such entity has obtained all the necessary permits and has begun construction, plans to develop to meet the reliability need.

(b) Within two years of the effective date of this subdivision, the authority shall make public a democratization plan, with a mandate to implement the plan within two years of its completion. Such plan shall be created in partnership with, and codesigned with, a statewide alliance of community organizations with at least five years' history of working on energy democracy and implementation issues, providing funding for this alliance as necessary for their participation in the completion of the plan. Such plan shall ensure that the scale up of renewable build out across the state occurs in line with the principles of energy democracy and transparency.

(c) The authority shall hold at least eight public hearings within two years of the effective date of this subdivision related to the climate and resiliency plan. The hearing shall be publicized in various forms of media, including but not limited to the authority's website, local newspapers and social media platforms, and shall also be accessible via livestream. In advance of such hearing, the authority shall conspicuously post written notice of such hearing in all authority facilities and New York state energy research and development authority regional clean energy hubs on a sign posted at each facility entrance and exit used by employees, and shall provide at least two weeks advance notice of such hearing to authority customers by directly communicating such notice to customer phone, email and mailing lists. Hearings shall be permitted between 12:00 PM to 3:00 PM and 6:00 PM to 9:00 PM, and the authority shall provide all speakers with the option to sign up to speak within those three hour windows such that no speaker shall wait longer

than three hours to speak. In addition to oral testimony, written testimony from the public for such hearings shall be accepted by the authority no less than two weeks after each hearing. Each speaker shall have at least three minutes to speak, and a remote option shall be provided for submitting comments via video conference, phone, including short message services (SMS) text messages and/or written comment, which shall be read aloud. Provisions for translation services, American sign language interpretation, closed captioning, and access to accommodations provided by the Americans with Disabilities Act shall be provided upon request.

(d) The authority shall maintain all data, meeting minutes, recordings and documents that do not include personal customer information, including but not limited to depreciation schedules, annual financial statements of itemized spending, environmental impact statements, cost-benefit analyses, climate and resiliency plans, renewable energy project plans, and annual reports on operations, customer service, reliability, resiliency and sustainability. All such data, meeting minutes, recordings and documents shall be made available on the authority's website, or otherwise made accessible by the authority upon request. All such records shall be maintained as business records for a minimum of ten years. The state comptroller shall audit the authority at least once every two years until two thousand thirty to ascertain whether the authority is in compliance with the renewable energy targets outlined in this subdivision and subdivisions thirty-two, thirty-four and thirty-five of this section and whether the authority's spending and operations are effectively and efficiently promoting the common good. The most recent comptroller audits shall also be made available on the authority's website, or otherwise made accessible by the authority upon request.

(e) (i) The authority, in consultation with the New York state energy research and development authority and the public service commission, shall develop and conduct an energy efficiency and energy audit program to identify public buildings most in need of retrofits and efficiency measures. Such program shall provide for the installation of renewable heating and cooling systems, and, when feasible, other green building projects as defined in section 58-0101 of the environmental conservation law, in public housing and public schools by the year two thousand thirty-five, prioritizing first public affordable housing and public schools in disadvantaged communities. The authority shall hire authority employees or contractors to perform energy audits, retrofits and other efficiency programs for these buildings, and provide incentives, in conjunction with the New York state energy research and development authority, for energy efficient appliances and induction stoves, as needed, to meet the climate goals outlined in the climate leadership and community protection act. If the buildings selected for this program need mold remediation measures or lead abatement measures to be carried out before energy efficiency measures can be safely implemented, the authority shall also hire employees or contractors to perform lead abatement measures and/or mold remediation measures for these buildings.

(ii) The authority shall annually post on its website a report evaluating the energy efficiency program, including, but not limited to, the number of customers served by the efficiency program, the customer demographics, the number of retrofits and energy audits performed, the number of jobs created and employee demographics, and the amount of energy and dollars saved as a result of the program.

(iii) All work subject to this subdivision shall be considered public work, subject to articles eight and nine of the labor law, and shall utilize a project labor agreement. For purposes of this subdivision, "project labor agreement" shall mean a pre-hire collective bargaining agreement between the authority, or a third party on behalf of the authority, and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work. All contractors and subcontractors associated with this work shall be required to utilize apprenticeship agreements as defined by article twenty-three of the labor law.

(f) The authority shall submit an annual report to the governor and to the legislature which shall be made available to the public. Such report shall include the:

(A) Ten year climate and resiliency plan described in paragraph (a) of this subdivision;

(B) Amount of energy produced by each facility;

(C) Energy transferred between facilities within the authority;

(D) Energy transferred outside of the authority for sale;

(E) Kilowatt-hour sales by project;

(F) Revenues and costs for each project facility;

(G) Accumulated provision for depreciation of each project facility;

(H) Financial and operating information of the energy efficiency program;

(I) Enrollment in and effectiveness of renewable energy auto-enrollment, retrofit, and energy efficient appliance programs;

(J) Any projected rate increase for the year; and

(K) An analysis of the authority's actions to ensure the state will meet the renewable energy goals of the climate leadership and community protection act.

34. Notwithstanding any other provision of law, on or after January first, two thousand thirty, the authority shall be the sole provider of electricity to all state owned, leased, controlled, or operated buildings and on or after January first, two thousand thirty-five, the authority shall be the sole provider of electricity to all municipal owned, leased, controlled, or operated buildings that use electricity. A municipal owned, leased, controlled, or operated building that uses electricity may elect not to receive its energy supply from the authority if (i) the authority's energy supply rate is higher than the energy supply rate of the utility in the municipal building's service territory, as determined by the twelve-month average utility supply rate; (ii) the municipal building is being served by a municipal electric utility that shall supply only renewable energy to the building; or (iii) the municipal building elects to participate in a community choice aggregation program that shall supply only renewable energy to the building.

35. (a) The authority is authorized to sell or provide renewable energy to residential end-use customers and CCA communities. Any excess renewable energy produced by the authority and not used or stored by state or municipal owned or leased buildings shall be sold directly to low-to-moderate income households first, prioritizing low-to-moderate income households in disadvantaged communities, and at a rate that is fifty percent less than the energy supply rate of the utility in the customer's service territory. Any remaining excess renewable energy produced by the authority shall be sold to residential end-use customers

or CCA's at the wholesale cost. For the purposes of this paragraph, the term "low-to-moderate income households" shall mean households with annual incomes at or below eighty percent of the area median income of the county or metro area where they reside.

(b) Within three years following the effective date of this subdivision, the authority's trustees, in consultation with the New York state energy research and development authority's regional clean energy hubs, shall develop a progressive rate structure based on income and energy usage to be offered to end-use customers and CCA communities.

(c) The authority shall work with the office of temporary and disability assistance to assist low-income customers to access the low income home energy assistance program and other utility benefits and shall offer deferred payment agreement payment plans for customers that fall into arrears.

(d) The authority is authorized to sell up to thirty percent of the electricity that it provides to residential and commercial customers to customers of the long island power authority, established under title one-A of this article, and the long island power authority is authorized to purchase this power.

36. All new renewable energy projects subject to this section shall be considered public work, subject to articles eight and nine of the labor law and shall utilize a project labor agreement. For purposes of this subdivision, "project labor agreement" shall mean a pre-hire collective bargaining agreement between the authority, or a third party on behalf of the authority, and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work. All contractors and subcontractors associated with this work shall be required to utilize apprenticeship agreements as defined by article twenty-three of the labor law.

37. The authority, in consultation with labor organizations, shall develop a comprehensive plan to transition, train, or retrain employees that are impacted by the New York state build public renewables act, and shall establish and contribute to a just transition fund that shall make funding available for worker transition and retraining.

38. The authority shall include requirements in any procurement or development of a renewable energy project, as defined in subdivision thirty of this section, that the components and parts shall be supplied with equipment produced or made in whole or substantial part in the United States, its territories or possessions. The authority's trustees, in consultation with the New York state energy research and development authority, may waive the procurement and development requirements set forth in this subdivision if the trustees determine that: the requirements would not be in the public interest; the requirements would result in unreasonable costs; obtaining such infrastructure components and parts in the United States would increase the cost of a renewable energy project by an unreasonable amount; or such components or parts cannot be produced, made, or assembled in the United States in sufficient and reasonably available quantities or of satisfactory quality. Such determination must be made on an annual basis no later than December thirty-first after providing notice and an opportunity for public comment, and be made publicly available, in writing, on the authority's website with a detailed explanation of the findings leading to such determination. If the authority's trustees have issued determinations for three consec-

utive years that no such waiver is warranted pursuant to this subdivision, then the authority shall no longer be required to provide the annual determination required by this subdivision.

39. The authority shall work with existing workforce development programs, union apprenticeship programs, and regional community energy hubs to publish a report on the ways that the construction of renewable projects can best support the development of skilled, well paid local workforces in the renewable energy sector, and shall provide financial support through the just transition fund established pursuant to subdivision thirty-seven of this section for pre-apprenticeship programs through local community based organizations that work with disadvantaged communities and union run workforce development institutions, where this support is found to be necessary to the effective development of this workforce according to the report.

40. For energy projects that the authority builds on properties of the New York city housing authority, including heat pump installations, retrofits, weatherization measures, and lead, mold, and asbestos remediation, both the authority and its contractors shall prioritize hiring residents of these properties, provided that residents meet considerations of availability, interest, skill level and training. No provisions of this subdivision shall alter the status of any Section 9 housing. The authority shall consult the residents or occupants of all public buildings where the authority is building projects to assess their needs and minimize disruption, nuisance, public health risks, and displacement during any remediation, retrofit, weatherization, heat pump installations, or other construction the authority or its contractors perform. All work subject to this subdivision shall be considered public work, subject to articles eight and nine of the labor law, and shall utilize a project labor agreement. For purposes of this subdivision, "project labor agreement" shall mean a pre-hire collective bargaining agreement between the authority, or a third party on behalf of the authority, and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work. All contractors and subcontractors associated with this work shall be required to utilize apprenticeship agreements as defined by article twenty-three of the labor law.

41. (a) Nothing in the New York state build public renewables act shall alter the rights or benefits, and privileges, including, but not limited to terms and conditions of employment, civil service status, and collective bargaining unit membership, of any current employees of the authority.

(b) Nothing in the New York state build public renewables act shall result in: (i) the discharge, displacement, or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits; (ii) the impairment of existing collective bargaining agreements; (iii) the transfer of existing duties and functions; or (iv) the transfer of future duties and functions, of any currently employed worker impacted by this act who agrees to be retrained.

42. The authority shall enter into a memorandum of understanding for the operation and maintenance of a renewable energy project developed pursuant to the New York state build public renewables act with a bona fide labor organization of jurisdiction that is actively engaged in

representing transitioning employees from non-renewable generation facilities. Such memorandum shall be entered into prior to the completion date of a renewable energy project and shall be an ongoing material condition of authorization to operate and maintain a renewable energy project developed pursuant to the New York state build public renewables act. The memorandum shall only apply to the employees necessary for the maintenance and operation of such renewable energy generation projects. Such memorandum shall contain but not be limited to safety and training standards, disaster response measures, guaranteed hours, staffing levels, pay rate protection and retraining programs. The employees eligible for these positions shall first be selected from and offered to a pool of transitioning workers who have lost their employment or will be losing their employment in the non-renewable energy generation sector. Such list of potential employees will be provided by affected unions and provided to the department of labor. The department of labor shall update and provide such list to the authority ninety days prior to purchase, acquisition, and/or construction of any project under the New York state build public renewables act.

43. The authority shall comply with the objectives and goals of certified minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and certified service-disabled veteran-owned businesses pursuant to article three of the veterans' services law. The authority, in consultation with the commissioner of the division of minority and women's business development and the director of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on renewable energy projects to achieve and maintain compliance with prevailing wage requirements. The authority shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

§ 3. Section 1003 of the public authorities law, as amended by chapter 766 of the laws of 2005, is amended to read as follows:

§ 1003. Trustees. 1. The authority shall consist of [~~seven~~] seventeen trustees, five of whom shall serve respectively for terms of one, two, three, four and five years, to be appointed by the governor, by and with the advice and consent of the senate. The sixth and seventh trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve initial terms of one and two years respectively. All other trustees shall be appointed as follows: two by the governor, four by the temporary president of the senate, and four by the speaker of the assembly, and shall proportionally be selected from labor union representatives that represent both employees of the authority and employees of construction contractors of the authority, environmental justice advocates, community renewable energy advocates, consumer advocates, and building electrification and energy efficiency experts. For any appointment and vacant trustee position, the New York state energy research and development authority's clean energy hubs shall select qualified candidates that shall be given reasonable consideration for an appointment as trustee by the governor, senate, and assembly. Each trustee shall hold office until a successor has been appointed and qualified or until removed by a majority vote of the legislature or the governor. At the expiration of the term of each trustee and of each succeeding trustee [~~the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for a~~

~~term of five years, or until a successor has been appointed and qualified. In the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for the unexpired term. Four trustees shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof.~~], or the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, the original entities who appointed that trustee shall appoint a successor, after consideration of clean energy hub candidates, who shall hold office for the unexpired term. Nine trustees shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof. Any authority trustee or board member may be terminated by either a majority vote of the senate or assembly, or by the governor. Reasons for termination may include, but are not limited to: failure to meet the renewable energy targets outlined in this bill; conflicts of interest; failure to prioritize climate justice, environmental justice, or economic justice in the authority's operations; sexual assault or harassment; or corruption.

2. The trustee chosen as chairman as provided in section one thousand four of this title, shall receive an annual salary which shall be set by the trustees of the authority, and which shall not exceed the salary prescribed for the positions listed in paragraph (f) of subdivision one of section one hundred sixty-nine of the executive law. [~~Each other trustee shall not receive a salary or other compensation.~~] Each trustee shall receive his or her reasonable expenses in the performance of his or her duties hereunder. The trustee chosen as chairman may elect to become a member of the New York state and local employees' retirement system on the basis of such compensation to which he or she shall be entitled as herein provided notwithstanding the provisions of any general, special or local law, municipal charter, or ordinance.

§ 4. Nothing in this act shall impact the power authority of the state of New York's existing recharge New York power program, existing hydropower allocations to any municipal and cooperative electric utility customers, or any other power allocation program managed by such authority.

§ 5. Nothing in this act is intended to limit, impair, or affect the legal authority of the power authority of the state of New York under any other provision of title 1 of article 5 of the public authorities law.

§ 6. No section of this act or any action required to be taken under this act shall be delayed or made contingent upon the completion of the plan required by subdivision 33 of section 1005 of the public authorities law, as added by section two of this act.

§ 7. Severability clause. If any clause, sentence, paragraph, subdivision, or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 8. This act shall take effect immediately.