STATE OF NEW YORK

9206

IN SENATE

May 12, 2022

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

AN ACT to amend the state finance law, the public service law and the environmental conservation law, in relation to establishing the tax base stabilization reserve fund

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

Section 1. Legislative intent. The legislature hereby finds that several New York school districts have experienced severe reductions in their tax base as a result of tax certiorari challenges of certain power plants that have dramatically reduced their funding. These losses result in instability in the real property tax base as well as the budgets of school districts and have the potential to dramatically increase costs to residents as the burden is shifted to taxpayers. The legislature therefore establishes a tax base stabilization reserve fund with the purpose of supporting local governments by defraying the costs of this lost revenue.

§ 2. The state finance law is amended by adding a new section 95-k to read as follows:

§ 95-k. Tax base stabilization reserve fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a fund to be known as the "tax base stabilization reserve fund".

2. The tax base stabilization reserve fund shall consist of one account, the tax base stabilization account. Moneys in this account shall be kept separate and not commingled with any other moneys in the custody of the comptroller.

3. Such account shall consist of revenues received from siting application fees for electric generating facilities pursuant to sections one hundred sixty-three and one hundred sixty-four of the public service law, penalties against utilities imposed by the public service commission pursuant to sections twenty-five and twenty-five-a of the public service law, permit fees pursuant to titles three and six of article

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

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seventy-two of the environmental conservation law, and any additional funds appropriated thereto.

4. The commissioner shall annually certify to the comptroller the amount of all revenues so received during the year as a result of the taxes, interest and penalties so imposed.

5. The sum of fifty million dollars, or so much thereof as may be necessary after certification by the comptroller of the other revenues received pursuant to subdivision three of this section in excess of that amount, is hereby made immediately available for the purposes of supporting school districts that experience severe reductions in their tax base as a result of a tax certiorari challenge that represents a significant portion of the tax base. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner or the duly designated officer in the manner prescribed by law. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

§ 3. Subdivision 4 of section 163 of the public service law, as added by chapter 388 of the laws of 2011, is amended to read as follows:

4. (a) Each pre-application preliminary scoping statement shall be accompanied by a fee in an amount equal to [~~three~~] four hundred fifty dollars for each thousand kilowatts of generating capacity of the subject facility, but no more than two hundred thousand dollars, to be deposited in the intervenor account established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the hearing examiner's direction to defray pre-application expenses incurred by municipal and local parties (except for a municipality submitting the pre-application scoping statement) for expert witness, consultant, administrative and legal fees. If at any time subsequent to the filing of the pre-application the pre-application is substantially modified or revised, the board may require an additional pre-application intervenor fee in an amount not to exceed twenty-five thousand dollars. No fees made available under this paragraph shall be used for judicial review or litigation. Any moneys remaining in the intervenor account upon the submission of an application for a certificate shall be made available to intervenors according to paragraph (a) of subdivision six of section one hundred sixty-four of this article.

(b) Pre-application disbursements from the intervenor account shall be made in accordance with rules and regulations established pursuant to paragraph (b) of subdivision six of section one hundred sixty-four of this article which rules shall provide for an expedited pre-application disbursement schedule to assure early and meaningful public involvement, with at least one-half of pre-application intervenor funds becoming available through an application process to commence within sixty days of the filing of a pre-application preliminary scoping statement.

(c) One hundred dollars for each thousand kilowatts of generating capacity of the subject facility for fees accompanying pre-application preliminary scoping statements as required by this section shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

§ 4. Subdivision 6 of section 164 of the public service law, as added by chapter 388 of the laws of 2011, is amended to read as follows:

6. (a) Each application shall be accompanied by a fee in an amount (i) equal to one thousand one hundred dollars for each thousand kilowatts of capacity, but no more than four hundred thousand dollars, (ii) and for facilities that will require storage or disposal of fuel waste byproduct an additional fee of five hundred dollars for each thousand kilowatt of

capacity, but no more than fifty thousand dollars shall be deposited in the intervenor account, established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the board's direction, to defray expenses incurred by municipal and other local parties to the proceeding (except a municipality which is the applicant) for expert witness, consultant, administrative and legal fees, provided, however, such expenses shall not be available for judicial review or litigation. If at any time subsequent to the filing of the application, the application is amended in a manner that warrants substantial additional scrutiny, the board may require an additional intervenor fee in an amount not to exceed seventy-five thousand dollars. The board shall provide for notices, for municipal and other local parties, in all appropriate languages. Any moneys remaining in the intervenor account after the board's jurisdiction over an application has ceased shall be returned to the applicant.

(b) Notwithstanding any other provision of law to the contrary, the board shall provide by rules and regulations for the management of the intervenor account and for disbursements from the account, which rules and regulations shall be consistent with the purpose of this section to make available to municipal parties at least one-half of the amount of the intervenor account and for uses specified in paragraph (a) of this subdivision. In addition, the board shall provide other local parties up to one-half of the amount of the intervenor account, provided, however, that the board shall assure that the purposes for which moneys in the intervenor account will be expended will contribute to an informed decision as to the appropriateness of the site and facility and are made available on an equitable basis in a manner which facilitates broad public participation.

(c) One hundred dollars for each thousand kilowatts of generating capacity of the subject facility from each application fee as required by this section shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

§ 5. Subdivisions 3 and 4 of section 25 of the public service law, as added by chapter 665 of the laws of 1980, paragraphs (a) of subdivisions 3 and 4 as amended by chapter 375 of the laws of 1986, are amended to read as follows:

3. **(a)** Notwithstanding the provisions of subdivision two of this section, any such public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter, adopted specifically for the protection of human safety, including but not limited to the commission's code of gas safety regulations shall, if it is determined by the commission that such safety violation caused or constituted a contributing factor in bringing about a death or personal injury, forfeit to the state of New York a sum not to exceed the greater of:

[~~(a) two hundred and fifty~~] **(i) three hundred fifty** thousand dollars constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

[~~(b)~~] **(ii)** the maximum forfeiture determined in accordance with subdivision two of this section.

(b) One hundred thousand dollars of any penalty imposed pursuant to this subdivision shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

4. **(a)** Notwithstanding the provisions of subdivision one or two of this section, a public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, shall forfeit to the state of New York a sum not to exceed the greater of:

[~~(a) five~~] **(i) six** hundred thousand dollars constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

[~~(b)~~] **(ii)** the maximum forfeiture determined in accordance with subdivision two of this section.

(b) One hundred thousand dollars of any penalty imposed pursuant to this subdivision shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

§ 6. Subdivisions 3, 4, 5, and 6 of section 25-a of the public service law, as added by section 2 of part X of chapter 57 of the laws of 2013, are amended to read as follows:

3. **(a)** Any combination gas and electric corporation determined by the commission to have failed to reasonably comply as shown by a preponderance of the evidence with a provision of this chapter, regulation or an order adopted under authority of this chapter so long as the same shall be in force shall forfeit a sum not exceeding the greater of one hundred **twenty** thousand dollars or [~~two~~] **three** one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.

(b) Twenty thousand dollars or one one-hundredth of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, of any penalty imposed pursuant to this subdivision shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

4. **(a)** Notwithstanding the provisions of subdivision three of this section, any such combination gas and electric corporation determined by the commission to have failed to reasonably comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter specifically for the protection of human safety or prevention of significant damage to real property, including, but not limited to, the commission's code of gas safety regulations shall, if it is determined by the commission by a preponderance of the evidence that such safety violation caused or constituted a contributing factor in bringing about: [~~(a)~~] **(i)** a death or personal injury; or [~~(b)~~] **(ii)** damage to real property in excess of fifty thousand dollars, forfeit a sum not to exceed the greater of:

[~~(i) two hundred fifty~~] **(1) three thousand** dollars or [~~three~~] **four** one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph, each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

[~~(ii)~~] **(2)** the maximum forfeiture determined in accordance with subdivision three of this section.

(b) Fifty thousand dollars or one one-hundredth of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, of any penalty imposed pursuant to this subdivision shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

5. **(a)** Notwithstanding the provisions of subdivision three or four of this section, a combination gas and electric corporation determined by the commission to have failed to reasonably comply by a preponderance of the evidence with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, including but not limited to the restoration of electric service following a major outage event or emergency, shall forfeit a sum not to exceed the greater of:

[~~(a) five~~] **(i) six** hundred thousand dollars or [~~four~~] **five** one-hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

[~~(b)~~] **(ii)** the maximum forfeiture determined in accordance with subdivision three of this section.

(b) One hundred thousand dollars or one one-hundredth of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, of any penalty imposed pursuant to this subdivision shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

6. **(a)** Any officer of any combination gas and electric corporation determined by the commission to have violated the provisions of subdivision three, four, or five of this section, and who knowingly violates a provision of this chapter, regulation or an order adopted under authority of this chapter so long as the same shall be in force shall forfeit a sum not to exceed one hundred **twenty-five** thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.

(b) Twenty-five thousand dollars of any penalty imposed pursuant to this subdivision shall be deposited in the tax base stabilization

account established pursuant to section ninety-five-k of the state finance law.

§ 7. The opening paragraph of subdivision 1 of section 72-0303 of the environmental conservation law, as amended by section 1 of part Y of chapter 58 of the laws of 2015, is amended to read as follows:

Commencing January first, two thousand fifteen and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual base fee of [~~two~~] three thousand five hundred dollars. This base fee shall be in addition to the fees listed below. Commencing January first, nineteen hundred ninety-four and every year thereafter all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual fee not to exceed the per ton fees described below. The per ton fee is assessed on each ton of emissions up to seven thousand tons annually of each regulated air contaminant as follows: [~~sixty~~] seventy-five dollars per ton for facilities with total emissions less than one thousand tons annually; [~~seventy~~] eighty-five dollars per ton for facilities with total emissions of one thousand or more but less than two thousand tons annually; [~~eighty~~] ninety-five dollars per ton for facilities with total emissions of two thousand or more but less than five thousand tons annually; and [~~ninety~~] one hundred ten dollars per ton for facilities with total emissions of five thousand or more tons annually. Such fee shall be sufficient to support an appropriation approved by the legislature for the direct and indirect costs associated with the operating permit program established in section 19-0311 of this chapter. Such fee shall be established by the department and shall be calculated by dividing the amount of the current year appropriation from the operating permit program account of the clean air fund by the total tons of emissions of regulated air contaminants that are subject to the operating permit program fees from sources subject to the operating permit program pursuant to section 19-0311 of this chapter up to seven thousand tons annually of each regulated air contaminant from each source; provided that, in making such calculation, the department shall adjust their calculation to account for any deficit or surplus in the operating permit program account of the clean air fund established pursuant to section ninety-seven-oo of the state finance law; any loan repayment from the mobile source account of the clean air fund established pursuant to section ninety-seven-oo of the state finance law; [~~and~~] the rate of collection by the department of the bills issued for the fee for the prior year; and that fifteen percent of such fees collected pursuant to this subdivision shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law.

§ 8. Subdivision i of section 72-0602 of the environmental conservation law, as amended by section 3 of part Y of chapter 58 of the laws of 2015, is amended to read as follows.

i. [~~$56,000.00~~] $66,000.00 for any power plant whose nameplate is for twenty-five thousand kilowatts of generating capacity or less and an additional $1,000 for each thousand kilowatts of generating capacity over twenty-five thousand kilowatts. Ten thousand dollars plus one thousand dollars for each thousand kilowatts of generating capacity over twenty-five thousand kilowatts shall be deposited in the tax base stabilization account established pursuant to section ninety-five-k of the state finance law;

§ 9. This act shall take effect immediately.