

# STATE OF NEW YORK

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2023-2024 Regular Sessions

## IN SENATE

January 24, 2023

Introduced by Sens. BRESLIN, BRISPORT, GONZALEZ, GOUNARDES, HARCKHAM, HOYLMAN-SIGAL, JACKSON, KRUEGER, MAY, MAYER, SALAZAR, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- reported favorably from said committee and committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Procurement and Contracts 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

AN ACT to amend the executive law, the public authorities law and the public buildings law, in relation to the utilization of renewable energy at state-owned facilities in Albany

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Renewable Capitol Act".

3 § 2. The executive law is amended by adding a new section 204 to read  
4 as follows:

5 § 204. Renewable capitol project. 1. For the purpose of this section,  
6 the following terms shall have the following meanings:

7 (a) The "advisory committee" shall mean the committee established  
8 pursuant to paragraph (a) of subdivision three of this section.

9 (b) The "CLCPA" shall mean the New York state climate leadership and  
10 community protection act enacted as chapter one hundred six of the laws  
11 of two thousand nineteen, as it shall from time to time be amended.

12 (c) "Co-pollutants" shall have the same meaning as set forth in subdi-  
13 vision three of section 75-0101 of the environmental conservation law.

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

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1 (d) "Emergency generator" shall mean the set of diesel generators  
2 located on Sheridan Avenue in Albany, New York as of the effective date  
3 of this section, that are intended to power the empire state plaza  
4 complex during an emergency fault condition causing an interruption to  
5 normal electricity service from the grid.

6 (e) "Empire state plaza complex" or the "complex" shall mean the  
7 complex of state-owned buildings and the land thereon in Albany, New  
8 York that utilize the steam distribution network of the Sheridan Avenue  
9 steam plant, including what are popularly known as Empire State Plaza,  
10 the State Capitol Building, the State Museum, the Alfred E. Smith Build-  
11 ing, the State Education Building, the Sheridan Avenue steam plant, and  
12 the former Albany New York Solid Waste Energy Recovery System incinera-  
13 tor building.

14 (f) "Greenhouse gas" shall have the same meaning as set forth in  
15 subdivision seven of section 75-0101 of the environmental conservation  
16 law.

17 (g) The "local community" shall mean the portion of Albany, New York  
18 designated as the local community under the plan, which shall include,  
19 at a minimum, the Albany Sheridan Hollow, Arbor Hill, Center Square,  
20 Mansion, Washington Park, West Hill and South End neighborhoods.

21 (h) "NYSERDA" shall mean the New York state energy research and devel-  
22 opment authority created under section eighteen hundred fifty-two of the  
23 public authorities law.

24 (i) The "office of general services" or the "office" shall mean the  
25 agency created under section two hundred of this article.

26 (j) The "empire state plaza decarbonization plan" or "plan" shall mean  
27 the plan set forth in subdivision three of this section, and mandated by  
28 this section and section ninety-one of the public buildings law.

29 (k) The "project" shall mean the work on the empire state plaza  
30 complex mandated by this section and section ninety-one of the public  
31 buildings law.

32 (l) A "power purchase agreement" shall mean an agreement between two  
33 parties, the seller and the buyer, to enter into a contractual obli-  
34 gation for the purchase of electricity.

35 (m) "Renewable energy systems" means systems that entirely generate  
36 electricity or thermal energy through use of the following technologies:  
37 solar thermal, photovoltaics, on land and offshore wind, hydroelectric,  
38 geothermal electric, geothermal ground source heat, tidal energy, wave  
39 energy, ocean thermal, and fuel cells which do not utilize a fossil fuel  
40 resource in the process of generating electricity or thermal energy.

41 (n) "Sheridan Avenue steam plant" shall mean the steam plant facility  
42 owned by New York state located as of the time of the effective date of  
43 this section at 79 Sheridan Avenue in Albany, New York.

44 2. (a) Within three years after the effective date of this section,  
45 the office of general services, in consultation with the power authority  
46 of the state of New York, shall ensure that all operations that power,  
47 heat or cool the empire state plaza complex shall entirely use renewable  
48 energy systems. In satisfying this requirement, the office may demon-  
49 strate that the amount of electrical energy credited to the complex  
50 annually from renewable sources through a power purchase agreement or  
51 similar instrument is not less than the amount of electrical energy  
52 consumed annually by the complex. Notwithstanding this mandate, the  
53 emergency generator shall be permitted to utilize non-renewable energy,  
54 but the office shall be empowered to retire or convert the emergency  
55 generator to wholly or entirely utilize renewables if possible.

1 (b) The project and the empire state plaza complex shall comply with  
2 the CLCPA, and any rules and regulations issued thereunder, and, in  
3 particular, section seven of such law; the statewide greenhouse gas  
4 emissions limits set forth in section 75-0107 of the environmental  
5 conservation law; and the targets established in subdivision two of  
6 section sixty-six-p of the public service law. Nothing in this paragraph  
7 shall preclude the office from mandating lower greenhouse gas emissions  
8 limits or compliance with greenhouse gas emissions limits in a shorter  
9 timeframe than set forth in section 75-0107 of the environmental conser-  
10 vation law, or in mandating a higher percentage of renewables or in a  
11 shorter timeframe than in subdivision two of section sixty-six-p of the  
12 public service law. Except in regard to the provision regarding to the  
13 emergency generator as set forth in paragraph (a) of this subdivision,  
14 any action taken in furtherance of the project that leads to any  
15 increase in the emissions of greenhouse gases shall be deemed inconsist-  
16 ent with and in interference with the attainment of the statewide green-  
17 house gas emissions limits established in article seventy-five of the  
18 environmental conservation law and therefore shall trigger the process  
19 set forth in subdivision two of section seven of the CLCPA.

20 3. (a) Within sixty days of the effective date of this section, the  
21 office shall establish an advisory committee to advise it on the prepa-  
22 ration, design and content of the plan. Such plan shall be completed no  
23 later than January thirty-first, two thousand twenty-six. The advisory  
24 committee shall consist of the commissioner of the department of envi-  
25 ronmental conservation and the chief executive officer of NYSERDA, or  
26 their designees, and additional members which shall be appointed by such  
27 commissioner in consultation with such chief executive officer, as  
28 follows: three representatives of Albany community organizations, at  
29 least two of which are from organizations whose mission, in whole or in  
30 part, is to represent the interests of the Arbor Hill and/or Sheridan  
31 Hollow neighborhoods in Albany; two additional representatives of local  
32 environmental justice organizations; one individual not employed by New  
33 York state with recognized expertise in renewable energy; a represen-  
34 tative of labor organizations; a scientist with expertise in energy and  
35 climate policy; an engineer with expertise in energy (including geother-  
36 mal) and climate policy; and the mayor of Albany or his or her designee.  
37 The advisory committee shall meet at least three times annually, or  
38 additional times as the committee shall by majority vote determine. At  
39 such meetings, which shall be open to the public, the office, among  
40 other things, shall report on the progress made in completing the  
41 project and otherwise implementing this section. The advisory committee  
42 members shall receive no compensation for their services but shall be  
43 reimbursed for their actual and necessary expenses incurred in the  
44 performance of their duties. All agencies of the state or subdivisions  
45 thereof may, at the request of the advisory panel or the office, provide  
46 the advisory panel with such facilities, assistance and data as will  
47 enable the advisory panel to carry out its powers and duties.

48 (b) Each member of the advisory committee shall be entitled to one  
49 vote. No action may be taken by the advisory committee unless there is  
50 a quorum, which shall at all times be a majority of the members of the  
51 committee.

52 (c) The office shall retain a third party to perform an engineering  
53 study to be completed within one hundred eighty days after the effective  
54 date of this section, which shall consider the matters set forth in  
55 paragraph (f) of this subdivision and any other matters consistent with  
56 this section that the office shall direct. For the purposes of this

1 paragraph, the term "third party" shall mean a professional engineer,  
2 not employed by the state of New York, or an engineering firm, provided  
3 that none of the engineers employed by such firm shall also be employed  
4 by the state of New York.

5 (d) The office shall be transparent in its work to develop the plan  
6 and shall maintain a website where a draft plan and other documents  
7 relevant to its development shall be posted for public review at least  
8 fourteen days prior to the first of the public hearings mandated by this  
9 paragraph. The advisory committee shall hold at least two public hear-  
10 ings at least sixty days prior to the release of the final plan, of  
11 which one shall be held in the Arbor Hill or Sheridan Hollow neighbor-  
12 hoods and one shall be held during the evening or weekend hours. The  
13 advisory committee shall make provisions for online and telephonic  
14 attendance and participation. At such public hearings, the draft plan  
15 shall be made available in written form for those physically attending.  
16 Provisions shall also be made for written comments on the draft plan.

17 (e) The plan shall contain recommendations on regulatory measures and  
18 other state actions to ensure that the mandates in subdivisions two and  
19 three of this section and section ninety-one of the public buildings law  
20 are met. The measures and actions set forth in the plan shall include:

21 i. a timeline for planned steps toward the completion of the project,  
22 including, but not limited to construction of the project and obtaining  
23 the necessary permits to begin operation. The timeline should maximize  
24 the potential for achieving, and if feasible making greater emissions  
25 reductions than the statewide greenhouse gas emissions limits set forth  
26 in section 75-0107 of the environmental conservation law and meeting the  
27 other mandates of the CLCPA;

28 ii. measures to maximize the benefits to the local community, includ-  
29 ing prioritizing the reduction of greenhouse gases and co-pollutants and  
30 improving public health in the local community;

31 iii. measures to optimize thermal load sharing, energy efficiency,  
32 demand response, and energy conservation;

33 iv. comprehensive consideration of renewable heat exchange systems or  
34 a combination of such systems to meet the heating and cooling needs of  
35 the empire state plaza complex, including but not limited to: geothermal  
36 heat exchange with the earth, geothermal heat exchange with the Hudson  
37 River, open-loop and closed-loop geothermal heat exchange with the aqui-  
38 fer, heat exchange with potable water supplies, heat recovery from  
39 wastewater sources, air-source heat pump technology, and thermal stor-  
40 age, provided that such systems do not use combustion-based or fossil  
41 fuel energy;

42 v. prioritization of electricity procurement from renewable sources  
43 within New York Independent System Operator (NYISO) Zone F, especially  
44 sources most capable of providing electricity serving real-time load  
45 conditions of the empire state plaza complex. This shall include, but  
46 not be limited to, consideration of projects that expand electricity  
47 generation from ecologically-responsible, run-of-the-river hydroelectric  
48 facilities within the region; and

49 vi. electricity service upgrades for the empire state plaza complex  
50 necessary to support measures identified in this section.

51 (f) In designing the plan, the office shall be guided by any recommen-  
52 dations contained in the engineering study mandated by paragraph (c) of  
53 this subdivision, and any comments or recommendations made by the advi-  
54 sory committee, including as to such engineering study. Such advisory  
55 committee shall also be entitled to reject or modify any recommendation  
56 upon a finding that such recommendation would be inconsistent with or

1 will interfere with the attainment of the statewide greenhouse gas emis-  
2 sions limits established in article seventy-five of the environmental  
3 conservation law, the climate justice provisions of the CLCPA, any rules  
4 or regulations issued thereunder, or this section. If the advisory  
5 committee rejects or modifies any recommendation, the original version  
6 of the recommendations as set forth in the engineering study shall  
7 presumptively not be considered by the office, unless substantial  
8 evidence exists to support the study's initial recommendations.

9 (g) The plan shall designate the geographic boundaries of the local  
10 community. In designating such boundaries, which shall include the Alba-  
11 ny Sheridan Hollow, Arbor Hill, Center Square, Mansion, Washington Park,  
12 West Hill, and South End neighborhoods, the office shall consider  
13 including in its designation any other communities that experience  
14 impacts on their water, air quality, noise and traffic from the empire  
15 state plaza complex.

16 (h)(i) Any project that may be funded as a result of the renewable  
17 capitol project completed pursuant to this section shall: (A) be deemed  
18 a public work project subject to article eight of the labor law; (B)  
19 require that the component parts of any renewable capitol project are  
20 produced or made in whole or substantial part in the United States, its  
21 territories or possessions, subject to a waiver provision similar to the  
22 one contained in subdivision two of section sixty-six-s of the public  
23 service law; (C) contain a requirement that any public owner or third  
24 party acting on behalf of a public owner enter into a project labor  
25 agreement as defined by section two hundred twenty-two of the labor law  
26 for all construction work; and (D) require the payment of prevailing  
27 wage standards consistent with article nine of the labor law for build-  
28 ing services work.

29 (ii) Notwithstanding any provision of law to the contrary, all rights  
30 or benefits, including terms and conditions of employment, and  
31 protection of civil service and collective bargaining status of all  
32 existing public employees and the work jurisdiction, covered job  
33 titles, and work assignments, set forth in the civil service law and  
34 collective bargaining agreements with labor organizations represent-  
35 ing public employees shall be preserved and protected. Any such project  
36 shall not result in the: (A) displacement of any currently employed  
37 worker or loss of position (including partial displacement as such a  
38 reduction in the hours of non-overtime work, wages, or employment bene-  
39 fits) or result in the impairment of existing collective bargaining  
40 agreements; (B) transfer of existing duties and functions related to  
41 maintenance and operations currently performed by existing employees of  
42 authorized entities to a contracting entity; or (C) transfer of future  
43 duties and functions ordinarily performed by employees of authorized  
44 entities to a contracting entity.

45 (i) In the case of any conflict as to the requirements of this section  
46 and section ninety-one of the public buildings law in regard to the  
47 project, this section shall prevail.

48 § 3. The tenth undesignated paragraph of section 1005 of the public  
49 authorities law, as added by chapter 55 of the laws of 1992, is amended  
50 to read as follows:

51 The authority is further authorized, as deemed feasible and advisable  
52 by the trustees, to acquire, maintain, manage, operate, improve and  
53 reconstruct as a project or projects of the authority one or both of the  
54 steam generation facilities owned by the state known as the Sheridan  
55 [~~avenue~~ Avenue steam [~~generating~~] plant [~~on Sheridan avenue in the city~~  
56 ~~of Albany and used to supply steam to state facilities~~], together with

1 any properties, buildings and equipment at the sites thereof or ancil-  
2 lary thereto, for the generation and sale of thermal energy and the  
3 cogeneration and sale of electricity for use by facilities of the state  
4 within the county of Albany. All the authority's costs, including its  
5 acquisition, capital, operating and maintenance costs, shall be recov-  
6 ered fully from the customers receiving service from such project or  
7 projects. Thermal energy and electricity not required by the state may  
8 be sold by the authority to others. The authority is not authorized to  
9 use refuse or refuse-derived fuel in operating the project or projects.

10 As of the time period specified in paragraph (a) of subdivision two of  
11 section two hundred four of the executive law, all of the energy,  
12 including but not limited to heat, cooling and electricity, produced at  
13 the Sheridan Avenue steam plant shall utilize renewable energy systems.

14 Any agreement for such acquisition shall insure that the authority is  
15 not liable or otherwise responsible for circumstances arising from the  
16 prior operation of such facilities. The acquisition and purchase of such  
17 land, buildings and equipment by the authority, and any actions taken to  
18 effect such acquisition and purchase, are hereby exempt from the  
19 provisions of article eight of the environmental conservation law. The  
20 application of such exemption shall be strictly limited to the acquisi-  
21 tion and purchase of such land, buildings and equipment by the authority  
22 and such agreements with the state. Nothing herein shall exempt the  
23 authority from otherwise applicable laws respecting the expansion,  
24 conversion, operation and maintenance of such land, buildings and equip-  
25 ment. For the purposes of this subdivision, the terms "renewable energy  
26 systems" and "Sheridan Avenue steam plant" shall have the same meanings  
27 as in subdivision one of section two hundred four of the executive law.

28 § 4. Subdivisions 2 and 3 of section 90 of the public buildings law,  
29 as added by section 5 of part RR of chapter 56 of the laws of 2023, are  
30 amended to read as follows:

31 2. "Decarbonization" and "decarbonize" means eliminating all on-site  
32 combustion of fossil-fuels and associated co-pollutants with the excep-  
33 tion of back-up emergency generators and redundant systems needed to  
34 address public health, safety and security, providing heating and cool-  
35 ing through thermal energy, and thermal energy networks, from non-com-  
36 bustion sources, and to the greatest extent feasible producing on-site  
37 electricity that is one hundred percent renewable. Notwithstanding the  
38 provisions of this subdivision, for purposes of the empire state plaza  
39 complex, such term shall mean meeting the requirements of subdivisions  
40 two and three of section two hundred four of the executive law, and  
41 section ninety-one of this article, as such requirements are applicable  
42 to the empire state plaza complex.

43 3. "Highest-emitting facilities" means state-owned facilities that are  
44 among the highest producers of greenhouse gas emissions and collectively  
45 account for at least thirty percent of the greenhouse gas emissions as  
46 recorded by the authority's Build Smart NY program established pursuant  
47 to Executive Order 88 of 2012. Notwithstanding the provisions of this  
48 subdivision, one of such facilities shall be the empire state plaza  
49 complex. For purposes of this article, the "empire state plaza complex"  
50 shall have the same meaning as defined in paragraph (e) of subdivision  
51 one of section two hundred four of the executive law.

52 § 5. The opening paragraph and paragraph (g) of subdivision 1 and  
53 subdivision 2 of section 91 of the public buildings law, as added by  
54 section 5 of part RR of chapter 56 of the laws of 2023, are amended and  
55 a new paragraph (l) is added to subdivision 1 to read as follows:

1 The authority is hereby authorized and directed to establish decarbon-  
2 ization action plans for fifteen of the highest-emitting facilities that  
3 will serve as a basis for decarbonizing the facilities to the maximum  
4 extent practicable, and subject to any needed redundant systems and  
5 back-up systems needed for public safety and security. [~~Decarboniza-~~  
6 ~~tion~~] Except as provided in paragraph (h) of subdivision three of  
7 section two hundred four of the executive law, decarbonization action  
8 plans shall address the following matters at a minimum:

9 (g) [~~Identification~~] Except for the empire state plaza decarbonization  
10 plan, identification of any parts of the facilities that cannot be  
11 decarbonized, with explanations.

12 (1) In the case of the empire state plaza complex decarbonization  
13 action plan, the items listed in paragraph (f) of subdivision three of  
14 section two hundred four of the executive law.

15 2. [~~The~~] Except for the decarbonization plan for the empire state  
16 plaza complex, the authority shall complete the decarbonization action  
17 plans no later than January thirty-first, two thousand twenty-six,  
18 provided that such date shall be extended for justifiable delay outside  
19 the control of the authority, including, but not limited to, previously  
20 planned or current major renovations or replacements to the facilities,  
21 delayed permitting or approval by building owners, local authorities, or  
22 other essential parties, external resource bottlenecks, pending or unre-  
23 solved investigations into utility grid capacity or similar circum-  
24 stances where crucial information is not yet available or determined.  
25 Such extension shall be limited to the time necessary to address the  
26 factors causing such delay. The empire state decarbonization plan shall  
27 be completed by January thirty-first, two thousand twenty-six, and no  
28 exclusions for justifiable delays shall be permitted.

29 § 6. Subdivisions 5, 6 and 7 of section 91 of the public buildings law  
30 are renumbered subdivisions 6, 7 and 8, and a new subdivision 5 is added  
31 to read as follows:

32 5. The authority shall be authorized to use the funding provided in  
33 subdivision four of this section to prepare the decarbonization action  
34 plan for the empire state plaza complex, to update or modify any study  
35 or plan undertaken, with the goal, in whole or in part of reducing  
36 greenhouse gas emissions applicable to such complex, or to perform the  
37 engineering study mandated by paragraph (d) of subdivision three of  
38 section two hundred four of the executive law, provided that such plan  
39 or study in the view of the authority would provide information useful  
40 for achieving the purposes of such section.

41 § 7. This act shall take effect immediately.