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:

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

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

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

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

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

(c) "Co-pollutants" shall have the same meaning as set forth in subdivision 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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(d) "Emergency generator" shall mean the set of diesel generators located on Sheridan Avenue in Albany, New York as of the effective date of this section, that are intended to power the empire state plaza complex during an emergency fault condition causing an interruption to normal electricity service from the grid.

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

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

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

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

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

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

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

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

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

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

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

(b) The project and the empire state plaza complex shall comply with the CLCPA, and any rules and regulations issued thereunder, and, in particular, section seven of such law; the statewide greenhouse gas emissions limits set forth in section 75-0107 of the environmental conservation law; and the targets established in subdivision two of section sixty-six-p of the public service law. Nothing in this paragraph shall preclude the office from mandating lower greenhouse gas emissions limits or compliance with greenhouse gas emissions limits in a shorter timeframe than set forth in section 75-0107 of the environmental conservation law, or in mandating a higher percentage of renewables or in a shorter timeframe than in subdivision two of section sixty-six-p of the public service law. Except in regard to the provision regarding to the emergency generator as set forth in paragraph (a) of this subdivision, any action taken in furtherance of the project that leads to any increase in the emissions of greenhouse gases shall be deemed inconsistent with and in interference with the attainment of the statewide greenhouse gas emissions limits established in article seventy-five of the environmental conservation law and therefore shall trigger the process set forth in subdivision two of section seven of the CLCPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

any properties, buildings and equipment at the sites thereof or ancillary thereto, for the generation and sale of thermal energy and the cogeneration and sale of electricity for use by facilities of the state within the county of Albany. All the authority's costs, including its acquisition, capital, operating and maintenance costs, shall be recovered fully from the customers receiving service from such project or projects. Thermal energy and electricity not required by the state may be sold by the authority to others. The authority is not authorized to use refuse or refuse-derived fuel in operating the project or projects. **As of the time period specified in paragraph (a) of subdivision two of section two hundred four of the executive law, all of the energy, including but not limited to heat, cooling and electricity, produced at the Sheridan Avenue steam plant shall utilize renewable energy systems.** Any agreement for such acquisition shall insure that the authority is not liable or otherwise responsible for circumstances arising from the prior operation of such facilities. The acquisition and purchase of such land, buildings and equipment by the authority, and any actions taken to effect such acquisition and purchase, are hereby exempt from the provisions of article eight of the environmental conservation law. The application of such exemption shall be strictly limited to the acquisition and purchase of such land, buildings and equipment by the authority and such agreements with the state. Nothing herein shall exempt the authority from otherwise applicable laws respecting the expansion, conversion, operation and maintenance of such land, buildings and equipment. **For the purposes of this subdivision, the terms "renewable energy systems" and "Sheridan Avenue steam plant" shall have the same meanings as in subdivision one of section two hundred four of the executive law.**

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

2. "Decarbonization" and "decarbonize" means eliminating all on-site combustion of fossil-fuels and associated co-pollutants with the exception of back-up emergency generators and redundant systems needed to address public health, safety and security, providing heating and cooling through thermal energy, and thermal energy networks, from non-combustion sources, and to the greatest extent feasible producing on-site electricity that is one hundred percent renewable. **Notwithstanding the provisions of this subdivision, for purposes of the empire state plaza complex, such term shall mean meeting the requirements of subdivisions two and three of section two hundred four of the executive law, and section ninety-one of this article, as such requirements are applicable to the empire state plaza complex.**

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

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

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

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

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

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

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

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

§ 7. This act shall take effect immediately.