STATE OF NEW YORK

4682

2025-2026 Regular Sessions

IN ASSEMBLY

February 4, 2025

Introduced by M. of A. BOLOGNA -- read once and referred to the Committee on Energy

AN ACT to amend the public service law and the public authorities law, in relation to requiring a public referendum to approve a final siting permit

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

Section 1. Section 137 of the public service law is amended by adding a new subdivision 14 to read as follows:

14. "Battery energy storage site", which, for purposes of the siting of a major renewable energy facility, excludes standalone battery energy storage systems and sites, shall mean a site housing a battery energy storage system equipped with rechargeable batteries that can store electricity from the grid or renewable sources like solar and wind power, to be released later when needed, helping to balance energy supply and demand. "Battery energy storage system" denotes one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone twelve-volt car battery or an electric motor vehicle, and may be classified as a tier one or tier two battery energy storage system as follows: (a) tier one battery energy storage systems shall possess an aggregate energy capacity less than or equal to six hundred kilowatt hours and, if in a room or enclosed area, consist of only a single energy storage system technology; and (b) tier two battery energy storage systems shall possess an aggregate energy capacity greater than six hundred kilowatt hours or are comprised of more than one storage battery technology in a room or enclosed area.

§ 2. Subdivision 1 of section 138 of the public service law, as added by section 11 of part O of chapter 58 of the laws of 2024, is amended to read as follows:

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

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1. (a) ORES shall be authorized to establish and amend, subject to the approval of the commission, a set of uniform standards and conditions for the siting, design, construction and operation of each type of major renewable energy facility subject to this article**, and accompanying battery energy storage sites,** relevant to issues that are common for particular classes and categories of major renewable energy facilities, in consultation with other offices within the department, the New York state energy research and development authority, the department of environmental conservation, the department of agriculture and markets, and other relevant state agencies and authorities with subject matter expertise.

(b) The uniform standards and conditions established pursuant to this subdivision shall be designed to avoid or minimize, to the maximum extent practicable, any potential significant adverse environmental impacts related to the siting, design, construction and operation of a major renewable energy facility **and accompanying battery energy storage sites**. Such uniform standards and conditions shall apply to those environmental impacts ORES determines are common to each type of major renewable energy facility.

(c) In its review of an application for a permit to develop a major-renewable energy facility, ORES, in consultation with the department of environmental conservation, shall identify those site-specific adverse environmental impacts, if any, that may be caused or contributed to by a specific proposed major renewable energy facility **and accompanying battery energy storage sites,** and are unable to be addressed by the uniform standards and conditions. ORES shall draft, in consultation with the department of environmental conservation, site-specific permit terms and conditions for such impacts, including provisions for the avoidance or mitigation thereof, taking into account the CLCPA targets and the environmental benefits of the proposed major renewable energy facility; provided, however, that ORES shall require that the application of uniform standards and conditions and site-specific conditions shall achieve a net conservation benefit to any impacted endangered and threatened species.

§ 3. Subdivision 1 of section 140 of the public service law, as added by section 11 of part O of chapter 58 of the laws of 2024, is amended to read as follows:

1. No person shall commence the preparation of a site for, or begin the construction of, a major renewable energy facility**, or a battery energy storage site accompanying such facility,** in the state, or increase the capacity of an existing major renewable energy facility, without having first obtained a major renewable energy facility siting permit pursuant to this article. Any major renewable energy facility subject to this article with respect to which a siting permit is issued shall not thereafter be built, maintained, or operated except in conformity with such major renewable energy facility siting permit and any terms, limitations, or conditions contained therein, provided that nothing in this subdivision shall exempt such facility from compliance with federal laws and regulations.

§ 4. Subdivision 5 of section 142 of the public service law, as added by section 11 of part O of chapter 58 of the laws of 2024, is amended and a new subdivision 5-a is added to read as follows:

5. Following the expiration of the public comment period set forth in this section, and following the conclusion of a hearing undertaken pursuant to subdivision four of this section, ORES shall, in the case of a public comment period, issue a written summary of public comments and

an assessment of comments received, and in the case of an adjudicatory hearing, the executive director or any person to whom the executive director has delegated such authority shall issue a final written hearing report. A final siting permit may only be issued if ORES makes a finding that the proposed project, together with any applicable uniform and site-specific standards and conditions, would comply with applicable laws and regulations**, and if such final siting permit is approved pursuant to a referendum held in accordance with subdivision five-a of this section**. In making a final siting permit determination with respect to a major renewable energy facility, ORES may elect not to apply, in whole or in part, any local law or ordinance that would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets, and the environmental benefits.

5-a. Notwithstanding any other provision of law to the contrary, before a determination for a final siting permit may be considered final, such permit shall be subject to approval through public referendum by the municipality in which the facility applying to the office is intended to be located. Such referendum shall be held upon the question of approving an application for a certificate establishing a major renewable energy facility and, if relevant, an accompanying battery energy storage site, as defined in subdivision fourteen of section one hundred thirty-seven of this article, in the municipality where the proposed facility intends to be located, and approved by fifty-one per centum of voters. Such referendum shall be held within sixty days, but not earlier than thirty days after the office's decision. For the purposes of this subdivision, "municipality" shall mean a city or town located in this state.

§ 5. Subdivisions 1 and 3 of section 144 of the public service law, as added by section 11 of part O of chapter 58 of the laws of 2024, are amended to read as follows:

1. Applicants shall, prior to filing an application, conduct meetings with the respective chief executive officer of all municipalities in which the proposed major renewable generation facility **and accompanying battery energy storage site** or major electric transmission facility will be located. The applicant shall provide as part of the application presentation materials and a summary of questions raised, and responses provided during such meetings with municipalities. In the event the applicant is unable to secure a meeting with a relevant municipality the application shall contain a detailed explanation of all of the applicant's best efforts and reasonable attempts to secure such meeting, including, but not limited to, written communications between the applicant and the municipality.

3. This section shall not impair or abrogate any federal, state or local labor laws or any otherwise applicable state law for the protection of employees engaged in the construction and operation of a major renewable energy facility **and accompanying battery energy storage site** or major electric transmission facility.

§ 6. Section 1901 of the public authorities law is amended by adding a new subdivision 10 to read as follows:

10. "Battery energy storage site" shall have the same meaning as in:

(a) subdivision eight of this section, only with regards to paired qualified energy storage systems, when accompanying a build-ready site that is also considered a major renewable energy facility; and

(b) subdivision fourteen of section one hundred thirty-seven of the public service law.

§ 7. Subdivision 3 of section 1902 of the public authorities law, as amended by section 5 of part M of chapter 58 of the laws of 2024, is amended to read as follows:

3. Establish procedures and protocols for the purpose of establishment and transfer of build-ready sites which shall include, at a minimum: (a) written notice at the earliest practicable time to a municipality in which a potential build-ready site has been identified, provided however, that the authority shall not deem any site for qualified energy storage systems suitable without first consulting any municipalities with jurisdiction over the potential build-ready site and obtaining their approval; [~~and~~] (b) **public referendum held in the municipality where a potential build-ready site, including an accompanying battery energy storage site, has been identified, held upon the question of approving a certificate establishing or transferring such build-ready site in such municipality, and approved by fifty-one per centum of voters; and (c)** a preliminary screening process to determine, in consultation with the department of environmental conservation, whether the potential build-ready site is located in or near an environmental justice area and whether an environmental justice area would be adversely affected by development of a build-ready site;

§ 8. This act shall take effect immediately; provided, however, that the amendments to sections 137, 138, 140, 142 and 144 of the public service law made by sections one through five of this act shall not affect the repeal of such sections and shall be deemed to be repealed therewith; and provided further, however, that the amendments to sections 1901 and 1902 of the public authorities law made by sections six and seven of this act shall not affect the repeal of such sections and shall be deemed to be repealed therewith.