

PROGRAM BILL # 21

Legislative Bill Drafting Commission
12069-07-1

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

S. _____
Senate

s20 Adams	s44 Farley	s58 Kennedy	s18 Montgomery	s23 Savino
s15 Addabbo	s02 Flanagan	s34 Klein	s54 Nozzolio	s28 Serrano
s55 Alesi	s08 Fuschillo	s26 Krueger	s53 O'Mara	s51 Seward
s11 Avella	s59 Gallivan	s27 Kruger	s37 Oppenheimer	s09 Skelos
s40 Ball	s12 Gianaris	s24 Lanza	s21 Parker	s14 Smith
s42 Bonacic	s22 Golden	s39 Larkin	s13 Peralta	s25 Squadron
s46 Breslin	s47 Griffo	s01 LaVelle	s30 Perkins	s16 Stavisky
s38 Carlucci	s60 Grisanti	s52 Libous	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	s06 Hannon	s45 Little	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s05 Marcellino	s33 Rivera	s49 Valesky
s17 Diian	Thompson	s07 Martins	s56 Robach	s57 Young
s29 Duane	s10 Huntley	s62 Maziarz	s41 Saland	s03 Zeldin
s31 Espalliat	s04 Johnson	s43 McDonald	s19 Sampson	

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

IN ASSEMBLY--Introduced by M. of A.

a049 Abbate	a107 Crouch	a095 Jaffee	a038 Miller, M.	a012 Saladino
a092 Abinanti	a014 Curran	a057 Jeffries	a052 Millman	a113 Seyward
a105 Amedore	a063 Cusick	a135 Johns	a103 Molinaro	a029 Scarborough
a084 Arroyo	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a016 Schimel
a035 Aubry	a034 DenDekker	a099 Katz	a132 Morelle	a140 Schimminger
a124 Barclay	a081 Dinowitz	a074 Kavanagh	a039 Moya	a145 Schroeder
a040 Barron	a114 Duprey	a065 Kellner	a003 Murray	a064 Silver
a082 Benedetto	a004 Englebright	a100 Kirwan	a037 Nolan	a036 Simotas
a073 Bing	a071 Farrell	a129 Kolb	a128 Oaks	a146 Smardz
a122 Blankenbush	a123 Finch	a025 Lancman	a069 O'Donnell	a093 Spano
a055 Boyland	a007 Fitzpatrick	a091 Latimer	a051 Ortiz	a079 Stevenson
a008 Boyle	a137 Friend	a013 Lavine	a136 Palmesano	a011 Sweeney
a026 Braunstein	a143 Gabryszak	a050 Lentol	a088 Paulin	a110 Tedisco
a044 Brennan	a090 Galaf	a125 Lifton	a141 Peoples-	a115 Tenney
a131 Bronson	a133 Gantt	a072 Linares	Stokes	a002 Thiele
a046 Brook-Krasny	a077 Gibson	a127 Lopez, F.	a058 Perry	a061 Titone
a147 Burling	a149 Giglio	a053 Lopez, V.	a087 Pretlow	a031 Titus
a117 Butler	a066 Glick	a001 Losquadro	a021 Ra	a062 Tobacco
a101 Cahill	a150 Goodell	a126 Lupardo	a097 Rabbitt	a041 Weinstein
a096 Calhoun	a075 Gottfried	a111 Magee	a009 Raia	a020 Weisenberg
a043 Camara	a005 Graf	a120 Magnarelli	a006 Ramos	a024 Weprin
a106 Canestrari	a098 Gunther	a059 Maisel	a134 Reilich	a070 Wright
a089 Castelli	a130 Hanna	a060 Malliotakis	a109 Reilly	a094 Zebrowski
a086 Castro	a139 Hawley	a030 Markey	a078 Rivera, J.	a023
a138 Ceretto	a148 Hayes	a019 McDonough	a080 Rivera, N.	a027
a033 Clark	a083 Heastie	a104 McEneny	a076 Rivera, P.	a054
a047 Colton	a028 Hevesi	a017 McKevitt	a119 Roberts	a116
a010 Coate	a048 Hixind	a108 McLaughlin	a056 Robinson	
a032 Cook	a018 Hooper	a022 Meng	a068 Rodriguez	
a142 Corwin	a144 Hoyt	a121 Miller, D.	a067 Rosenthal	
a085 Crespo	a042 Jacobs	a102 Miller, J.	a118 Russell	

with M. of A. as co-sponsors

--read once and referred to the
Committee on

PUBSERLA
(Establishes the "power NY act of
2011")

Pub Serv. pwr NY act of 2011

AN ACT

to amend the public service law, the
public authorities law, the real
property law, the state finance law,
and the environmental conservation
law, in relation to establishing the
power NY act of 2011

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

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. This act shall be known and may be cited as the "power NY
2 act of 2011".

3 § 2. Subdivision 2 of section 18-a of the public service law is
4 amended by adding a new paragraph (h) to read as follows:

5 (h) On-bill recovery charges billed pursuant to section sixty-six-m of
6 this chapter shall be excluded from any determination of an entity's
7 gross operating revenues derived from intrastate utility operations for
8 purposes of this section.

9 § 3. Section 42 of the public service law is amended by adding a new
10 subdivision 3 to read as follows:

11 3. The rights and responsibilities of residential customers partic-
12 ipating in green jobs-green New York on-bill recovery pursuant to
13 section sixty-six-m of this chapter shall be substantially comparable to
14 those of electric and gas customers not participating in on-bill recov-
15 ery, and charges for on-bill recovery shall be treated as charges for
16 utility service for the purpose of this article, provided that:

17 (a) all determinations and safeguards related to the termination and
18 reconnection of service shall apply to on-bill recovery charges billed
19 by a utility pursuant to such section;

20 (b) in the event that the responsibility for making utility payments
21 has been assumed by occupants of a multiple dwelling pursuant to section
22 thirty-three of this article or by occupants of a two-family dwelling
23 pursuant to section thirty-four of this article, such occupants shall
24 not be billed for any arrears of on-bill recovery charges or any
25 prospective on-bill recovery charges, which shall remain the responsi-
26 bility of the incurring customer;

27 (c) deferred payment agreements pursuant to section thirty-seven of
28 this article shall be available to customers participating in on-bill

1 recovery on the same terms as other customers, and the utility shall
2 retain the same discretion to defer termination of service as for any
3 other delinquent customer;

4 (d) where a customer has a budget billing plan or levelized payment
5 plan pursuant to section thirty-eight of this article, the utility shall
6 recalculate the payments under such plan to reflect the projected
7 effects of installing energy efficiency measures as soon as practicable
8 after receipt of information on the energy audit and qualified energy
9 efficiency services selected;

10 (e) on-bill recovery charges shall not be subject to the provisions of
11 section forty-one of this article;

12 (f) late payment charges on unpaid on-bill recovery charges shall be
13 determined as provided in this section, or as otherwise consented to by
14 the customer in the agreement for green jobs-green New York on-bill
15 recovery and any such charges shall be remitted to the New York state
16 energy research and development authority;

17 (g) notwithstanding the provisions of section forty-three of this
18 article, when a complaint is related solely to work performed under the
19 green jobs-green New York program or to the appropriate amount of
20 on-bill recovery charges, the utility shall only be required to inform
21 the customer of the complaint handling procedures of the New York state
22 energy research and development authority, which shall retain responsi-
23 bility for handling such complaints, and such complaints shall not be
24 deemed to be complaints about utility service in any other commission
25 action or proceeding; and

26 (h) billing information provided pursuant to section forty-four of
27 this article shall include information on green jobs-green New York
28 on-bill recovery charges, including the basis for such charges, and any

1 information or inserts provided by the New York state energy research
2 and development authority related thereto. In addition, at least annual-
3 ly the authority shall provide the utility with information for inclu-
4 sion or insertion in the customer's bill that sets forth the amount and
5 duration of remaining on-bill recovery charges and the authority's
6 contact information and procedures for resolving customer complaints
7 with such charges.

8 § 4. Paragraph (d) of subdivision 6 of section 65 of the public
9 service law, as added by chapter 204 of the laws of 2010, is amended to
10 read as follows:

11 (d) for installation of capital improvements and fixtures to promote
12 energy efficiency upon the request and consent of the customer, includ-
13 ing but not limited to the performance of qualified energy efficiency
14 services for customers participating in green jobs-green New York
15 on-bill recovery pursuant to section sixty-six-m of this article.

16 § 5. The public service law is amended by adding a new section 66-m
17 to read as follows:

18 § 66-m. Green jobs-green New York on-bill recovery. 1.(a) The commis-
19 sion shall, within forty-five days of the effective date of this
20 section, commence a proceeding to investigate the implementation by each
21 combination electric and gas corporation having annual revenues in
22 excess of two hundred million dollars of a billing and collection
23 service for on-bill recovery charges in payment of obligations of its
24 customers to the green jobs-green New York revolving loan fund estab-
25 lished pursuant to title nine-A of article eight of the public authori-
26 ties law and, within one hundred fifty days of the effective date of
27 this section, the commission shall make a determination establishing the
28 billing and collection procedures for such on-bill recovery charges. The

1 department shall consult with the New York state energy research and
2 development authority in the preparation of its recommendations to the
3 commission for such determination. The commission shall require such
4 electric and gas corporations to offer billing and collection services
5 for green jobs-green New York on-bill recovery charges for eligible
6 customers within three hundred days of the effective date of this
7 section. To the extent practicable, such electric and gas corporations
8 shall utilize existing electronic data interchange infrastructure or
9 other existing billing infrastructure to implement their billing and
10 collection responsibilities under this section, and shall utilize fund-
11 ing available from the New York state energy research and development
12 authority to defray any costs associated with electronic data inter-
13 change improvements or other costs of initiating and implementing this
14 program.

15 (b) To ensure proper program design and implementation, each electric
16 and gas corporation shall initially limit the number of customers who
17 pay a green jobs-green New York on-bill recovery charge at any given
18 time to no more than one half of one percent of its total customers, on
19 a first come, first served basis. Prior to reaching such limit, the New
20 York state energy research and development authority shall petition the
21 commission to review said limit, and the commission shall increase such
22 limit provided that the commission finds that the program has not caused
23 significant harm to the electric or gas company or its ratepayers.

24 (c) The commission may suspend such an electric and gas corporation's
25 offering of the on-bill recovery charge provided that the commission,
26 after conducting a hearing as provided in section twenty of this chap-
27 ter, makes a finding that there is a significant increase in arrears or
28 utility service disconnections that the commission determines is direct-

1 ly related to the on-bill recovery charge, or a finding of other good
2 cause.

3 (d) The on-bill recovery charge shall be collected on the bill from
4 the customer's electric corporation unless the qualified energy effi-
5 ciency services at that customer's premises result in more projected
6 energy savings on the customer's gas bill than the electric bill, in
7 which case such charge shall be collected on the customer's gas corpo-
8 ration bill.

9 (e) The commission shall determine an appropriate percentage, up to
10 fifteen percent, of the energy savings from qualified energy efficiency
11 services, financed with a loan pursuant to section eighteen hundred
12 ninety-six of the public authorities law that is subject to an on-bill
13 recovery charge, to be credited to the combination electric and gas
14 corporation that is issuing the bill for such charge, for purposes of
15 meeting such corporation's targets under energy efficiency programs
16 established by the commission.

17 2. Schedules for the collection and billing of on-bill recovery charg-
18 es shall provide:

19 (a) that billing and collection services shall be available to all
20 customers who have met the standards established by the New York state
21 energy research and development authority for participation in the
22 on-bill recovery mechanism under the green jobs-green New York program
23 and have executed an agreement for the performance of qualified energy
24 efficiency services under such program; provided, however, that for
25 residential properties any such customer must hold primary ownership or
26 represent the primary owner or owners of the premises and hold primary
27 meter account responsibility or represent the primary holder or holders

1 of meter account responsibility for all meters to which such on-bill
2 recovery charges will apply;

3 (b) that the responsibilities of such electric and gas corporation are
4 limited to providing billing and collection services for on-bill recov-
5 ery charges as directed by the authority;

6 (c) that the rights and responsibilities of residential customers
7 paying on-bill recovery charges shall be governed by the provisions of
8 article two of this chapter;

9 (d) unless fully satisfied prior to sale or transfer, that (i) the
10 on-bill recovery charges for any services provided at the customer's
11 premises shall survive changes in ownership, tenancy or meter account
12 responsibility, and (ii) that arrears in on-bill recovery charges at the
13 time of account closure or meter transfer shall remain the responsibil-
14 ity of the incurring customer, unless expressly assumed by a subsequent
15 purchaser of the property subject to such charges;

16 (e) not less than forty-five days after closure of an account that is
17 subject to an on-bill recovery charge, and provided that the customer
18 does not re-establish service with such electric and gas corporation, it
19 shall be the responsibility of the New York state energy research and
20 development authority and not the electric and gas corporation to
21 collect any arrears that are due and owing;

22 (f) a customer remitting less than the total amount due for electric
23 and/or gas services and on-bill recovery charges shall have such partial
24 payment first applied as payment for electric and/or gas services and
25 any remaining amount will be applied to the on-bill recovery charge;

26 (g) billing and collection services shall be available without regard
27 to whether the energy or fuel delivered by the utility is the customer's
28 primary energy source;

1 (h) unless otherwise precluded by law, participation in the green
2 jobs-green New York program shall not affect a customer's eligibility
3 for any rebate or incentive offered by a utility; and

4 (i) any other provisions necessary to provide for the billing and
5 collection of on-bill recovery charges.

6 3. The commission shall not approve any application for the conversion
7 to submetering of any master meter which is subject to any on-bill
8 recovery charges.

9 § 6. Sections 1020-hh, 1020-ii and 1020-jj of the public authorities
10 law, as renumbered by chapter 433 of the laws of 2009, are renumbered
11 sections 1020-ii, 1020-jj and 1020-kk and a new section 1020-hh is added
12 to read as follows:

13 § 1020-hh. Green jobs-green New York on-bill recovery. 1. Within three
14 hundred days of the effective date of this section, the authority shall
15 establish a program to provide for the billing and collection of on-bill
16 recovery charges for payment of obligations of its customers to the
17 green jobs-green New York revolving loan fund established pursuant to
18 title nine-A of article eight of the public authorities law. Such
19 program shall be consistent with the standards set forth in subdivision
20 three of section forty-two and section sixty-six-m of the public service
21 law. To the maximum extent practicable, funding available from the New
22 York state energy research and development authority shall be utilized
23 to defray any costs associated with electronic data interchange improve-
24 ments or other costs of initiating and implementing this program. Bill-
25 ing and collection services under such tariffs shall commence as soon as
26 practicable after establishment of the program.

27 2. The authority may suspend its offering of the on-bill recovery
28 charge provided that the authority makes a finding that there is a

1 significant increase in arrears or utility service disconnections that
2 the authority determines is directly related to such charge, or a find-
3 ing of other good cause.

4 § 7. Subdivision 5 of section 1891 of the public authorities law, as
5 added by chapter 487 of the laws of 2009, is amended to read as follows:

6 5. "Eligible project" means qualified energy efficiency services for a
7 non-residential structure, a residential structure or a multi-family
8 structure. An eligible project shall not be considered (a) a major
9 capital improvement pursuant to subparagraph (g) of paragraph one of
10 subdivision g of section 26-405 of the administrative code of the city
11 of New York, subparagraph (k) of paragraph one of subdivision g of
12 section 26-405 of the administrative code of the city of New York, para-
13 graph six of subdivision c of section 26-511 of the administrative code
14 of the city of New York, paragraph three of subdivision d of section six
15 of section four of chapter five hundred seventy-six of the laws of nine-
16 teen hundred seventy-four, and the second undesignated paragraph of
17 paragraph (a) of subdivision four of section four of chapter two hundred
18 seventy-four of the laws of nineteen hundred forty-six; or (b) an indi-
19 vidual apartment improvement pursuant to subparagraph (e) of paragraph
20 one of subdivision g of section 26-405 of the administrative code of the
21 city of New York, paragraph thirteen of subdivision c of section 26-511
22 of the administrative code of the city of New York, paragraph one of
23 subdivision d of section six of section four of chapter five hundred
24 seventy-six of the laws of nineteen hundred seventy-four, and clause
25 five of the second undesignated paragraph of paragraph (a) of subdivi-
26 sion four of section four of chapter two hundred seventy-four of the
27 laws of nineteen hundred forty-six.

1 § 7-a. Section 1894 of the public authorities law is amended by adding
2 a new subdivision 4 to read as follows:

3 4. Any organization using funding provided under the program for
4 marketing or other outreach activities shall not commingle such market-
5 ing or outreach activities with any other advocacy or policy promotion
6 efforts.

7 § 8. Section 1896 of the public authorities law, as added by chapter
8 487 of the laws of 2009, is amended to read as follows:

9 § 1896. Green jobs-green New York revolving loan fund. 1. (a) There is
10 hereby created a green jobs-green New York revolving loan fund. The
11 revolving loan fund shall consist of:

12 (i) all moneys made available for the purpose of the revolving loan
13 fund pursuant to section eighteen hundred ninety-nine-a of this title;

14 (ii) payments of principal and interest, including any late payment
15 charges, made pursuant to loan or financing agreements entered into with
16 the authority or its designee pursuant to this section; and

17 (iii) any interest earned by the investment of moneys in the revolving
18 loan fund.

19 (b) The revolving loan fund shall consist of two accounts:

20 (i) one account which shall be maintained for monies to be made avail-
21 able to provide loans to finance the cost of approved qualified energy
22 efficiency services for residential structures and multi-family struc-
23 tures, and

24 (ii) one account which shall be maintained for monies made available
25 to provide loans to finance the cost of approved qualified energy effi-
26 ciency services for non-residential structures. The initial balance of
27 the residential account established in [clause] subparagraph (i) of this
28 paragraph shall represent at least fifty percent of the total balance of

1 the two accounts. The authority shall not commingle the monies of the
2 revolving loan fund with any other monies of the authority or held by
3 the authority, nor shall the authority commingle the monies between
4 accounts. Payments of principal, interest and fees shall be deposited
5 into the account created and maintained for the appropriate type of
6 eligible project.

7 (c) In administering such program, the authority is authorized and
8 directed to:

9 (i) use monies made available for the revolving loan fund to achieve
10 the purposes of this section by section eighteen hundred ninety-nine-a
11 of this title, including but not limited to making loans available for
12 eligible projects;

13 (ii) enter into contracts with one or more program implementers to
14 perform such functions as the authority deems appropriate; [and]

15 (iii) establish an on-bill recovery mechanism for repayment of loans
16 for the performance of qualified energy efficiency services for eligible
17 projects provided that such on-bill recovery mechanism shall provide for
18 the utilization of any on-bill recovery programs established pursuant to
19 section sixty-six-m of the public service law and section one thousand
20 twenty-hh of this chapter;

21 (iv) establish standards for customer participation in such on-bill
22 recovery mechanism, including standards for reliable utility bill
23 payment, current good standing on any mortgage obligations, and such
24 additional standards as the authority deems necessary; provided that in
25 order to provide broad access to on-bill recovery, the authority shall,
26 to the fullest extent practicable, consider alternative measures of
27 creditworthiness that are prudent in order to include participation by

1 customers who are less likely to have access to traditional sources of
2 financing;

3 (v) to the extent feasible, make available on a pro rata basis, based
4 on the number of electric customers within the utility service territo-
5 ry, to combination electric and gas corporations that offer on-bill
6 recovery pursuant to section sixty-six-m of the public service law and
7 the Long Island power authority, up to five hundred thousand dollars to
8 defray costs directly associated with changing or upgrading billing
9 systems to accommodate on-bill recovery charges;

10 (vi) within thirty days of closing of a loan to a customer, pay a fee
11 of one hundred dollars per loan to the combination electric and gas
12 corporation in whose service territory such customer is located or to
13 the Long Island power authority if such customer is located in the
14 service territory of that authority to help defray the costs that are
15 directly associated with implementing the program;

16 (vii) within thirty days of closing of a loan to a customer, pay a
17 servicing fee of one percent of the loan amount to the combination elec-
18 tric and gas corporation in whose service territory such customer is
19 located or to the Long Island power authority if such customer is
20 located in the service territory of that authority to help defray the
21 costs that are directly associated with the program; and

22 (viii) exercise such other powers as are necessary for the proper
23 administration of the program, including at the discretion of the
24 authority, entering into agreements with applicants and with such state
25 or federal agencies as necessary to directly receive rebates and grants
26 available for eligible projects and apply such funds to repayment of
27 applicant loan obligations.

1 2. (a) The authority shall provide financial assistance in the form of
2 loans for the performance of qualified energy efficiency services for
3 eligible projects on terms and conditions established by the authority.

4 (b) Loans made by the authority pursuant to this section shall be
5 subject to the following limitations:

6 (i) eligible projects shall meet cost effectiveness standards devel-
7 oped by the authority;

8 (ii) loans shall not exceed thirteen thousand dollars per applicant
9 for approved qualified energy efficiency services for residential struc-
10 tures, and twenty-six thousand dollars per applicant for approved quali-
11 fied energy efficiency services for non-residential structures,
12 provided, however, that the authority may permit a loan in excess of
13 such amounts if the total cost of energy efficiency measures financed by
14 such loan will achieve a payback period of fifteen years or less, but in
15 no event shall any such loan exceed twenty-five thousand dollars per
16 applicant for residential structures and fifty thousand dollars per
17 applicant for non-residential structures; and for multi-family struc-
18 tures loans shall be in amounts determined by the authority, provided,
19 however, that the authority shall assure that a significant number of
20 residential structures are included in the program; [and]

21 (iii) no fees or penalties shall be charged or collected for prepay-
22 ment of any such loan; and

23 (iv) loans shall be at interest rates determined by the authority to
24 be no higher than necessary to make the provision of the qualified ener-
25 gy efficiency services feasible.

26 In determining whether to make a loan, and the amount of any loan that
27 is made, the authority is authorized to consider whether the applicant
28 or borrower has received, or is eligible to receive, financial assist-

1 ance and other incentives from any other source for the qualified energy
2 efficiency services which would be the subject of the loan. In deter-
3 mining whether a loan will achieve a payback period of fifteen years or
4 less pursuant to subparagraph (ii) of this paragraph, the authority may
5 consider the amount of the loan to be reduced by the amount of any
6 rebates for qualified energy efficiency services received by the appli-
7 cant or by the authority on behalf of an applicant.

8 (c) Applications for financial assistance pursuant to this section
9 shall be reviewed and evaluated by the authority or its designee pursu-
10 ant to eligibility and qualification requirements and criteria estab-
11 lished by the authority. The authority shall establish standards for (i)
12 qualified energy efficiency services, and (ii) measurement and verifica-
13 tion of energy savings. Such standards shall meet or exceed the stand-
14 ards used by the authority for similar programs in existence on the
15 effective date of this section.

16 (d) The amount of a fee paid for an energy audit provided under
17 section eighteen hundred ninety-five of this title may be added to the
18 amount of a loan that is made under this section to finance the cost of
19 an eligible project conducted in response to such energy audit. In such
20 a case, the amount of the fee may be reimbursed from the fund to the
21 borrower.

22 (e) In establishing an on-bill recovery mechanism:

23 (i) the cost-effectiveness of an eligible project shall be evaluated
24 solely on the basis of the costs and projected savings to the applying
25 customer, using standard engineering assessments and prior billing data
26 and usage patterns; provided however that based upon the most recent
27 customer data available, on an annualized basis, the monthly on-bill
28 repayment amount for a package of measures shall not exceed one-twelfth

1 of the savings projected to result from the installation of the measures
2 provided further that nothing herein shall be construed to prohibit or
3 prevent customers whose primary heating energy source is from delivera-
4 ble fuels from participating in the program;

5 (ii) the authority shall establish a process for receipt and resol-
6 ution of customer complaints concerning on-bill recovery charges and for
7 addressing delays and defaults in customer payments; and

8 (iii) the authority may limit the availability of lighting measures or
9 household appliances that are not permanently affixed to real property.

10 (f) Prior to or at the closing of each loan made pursuant to this
11 section, the authority shall cause a notice to be provided to each
12 customer receiving such loan stating, in clear and conspicuous terms:

13 (i) the financial and legal obligations and risks of accepting such
14 loan responsibilities, including the obligation to provide or consent to
15 the customer's utility providing the authority information on the sourc-
16 es and quantities of energy used in the customer's premises and any
17 improvements or modifications to the premises, use of the premises or
18 energy consuming appliances or equipment of any type that may signif-
19 icantly affect energy usage;

20 (ii) that the on-bill recovery charge will be billed by such customer
21 utility company and that failure to pay such on-bill recovery charge may
22 result in the customer having his or her electricity and/or gas termi-
23 nated for non-payment, provided that such utility company follows the
24 requirements of article two of the public service law with respect to
25 residential customers;

26 (iii) that incurring such loan to undertake energy-efficiency
27 projects may not result in lower monthly energy costs over time, based
28 on additional factors that contribute to monthly energy costs;

1 (iv) that the program is operated by the authority and it is the sole
2 responsibility of the authority to handle consumer inquiries and
3 complaints related to the operation and lending associated with the
4 program, provided further that the authority shall provide a mechanism
5 to receive such consumer inquiries and complaints.

6 (g) Any person entering into a loan agreement pursuant to this section
7 shall have the right to cancel any such loan agreement until midnight of
8 the fifth business day following the day on which such person signs such
9 agreement provided the loan proceeds have not yet been disbursed.

10 3. The authority shall evaluate the cost-effectiveness of the on-bill
11 recovery mechanism on an on-going basis. (a) In conducting such evalu-
12 ation, the authority shall request each customer to provide:

13 (i) information on energy usage and/or permission to collect informa-
14 tion on energy usage from utilities and other retail vendors, including
15 but not limited to information required to be furnished to consumers
16 under article seventeen of the energy law;

17 (ii) information on other sources of energy used in the customer's
18 premises; and

19 (iii) information on any improvements or modifications to the premises
20 that may significantly affect energy usage.

21 (b) At a minimum the authority shall collect and maintain information
22 for dates prior to the performance of qualified energy efficiency
23 services, to establish a baseline, and for dates covering a subsequent
24 time period to measure the effectiveness of such measures. Such data
25 shall be correlated with information from the energy audit and any other
26 relevant information, including information on local weather conditions,
27 and shall be used to evaluate the on-bill recovery program and to
28 improve the accuracy of projections of cost-effectiveness on an on-going

1 basis. An analysis of such data shall be included in the annual report
2 prepared pursuant to section eighteen hundred ninety-nine of this title.

3 (c) All information collected by the authority shall be confidential
4 and shall be used exclusively for the purposes of this subdivision.

5 4. (a) Qualified energy efficiency services repaid through an on-bill
6 recovery mechanism shall be considered a special energy project pursuant
7 to section eighteen hundred fifty-one of this article. The New York
8 state energy research and development authority shall secure every loan
9 issued for such services that are to be repaid through an on-bill recov-
10 ery mechanism with a mortgage upon the real property that is improved by
11 such services. Such mortgage shall be recorded pursuant to section two
12 hundred ninety-one-d of the real property law.

13 (b) All terms and provisions of a green jobs-green New York mortgage
14 pursuant to this subdivision shall be subject and subordinate to the
15 lien of any mortgage or mortgages on such property. When a subsequent
16 purchaser of the property is granted a mortgage, the green jobs-green
17 New York mortgage shall be subordinate to the terms of that mortgage.

18 (c) The mortgagee shall not retain any right to enforce payment or
19 foreclose upon the property.

20 § 9. Section 1897 of the public authorities law is amended by adding a
21 new subdivision 7 to read as follows:

22 7. The authority shall prescribe conditions for training that will
23 include identifiable standards for all education and training activities
24 authorized under this section, and will designate a certificate to be
25 issued to any trainee that successfully meets such standards and
26 completes the required education and training.

27 § 10. Subdivision 3 of section 1899 of the public authorities law, as
28 added by chapter 487 of the laws of 2009, is amended to read as follows:

1 3. The status of the authority's activities and outcomes related to
2 section eighteen hundred ninety-six of this title. Such report shall
3 include, but not be limited to:

4 (a) the number of persons who have applied for and received financial
5 assistance through the revolving loan fund;

6 (b) the revolving loan fund account balances;

7 (c) the number of loans in default; [and]

8 (d) the amount and nature of the costs incurred by the authority for
9 the activities described in paragraph (c) of subdivision one of section
10 eighteen hundred ninety-six of this title;

11 (e) the authority's activities and outcomes related to establishing an
12 on-bill recovery mechanism, including the number of persons who have
13 applied for and who have received financial assistance that utilizes
14 on-bill recovery and the results of the evaluation program performed
15 pursuant to subdivision three of section eighteen hundred ninety-six of
16 this title;

17 (f) the amount expended by the authority in support of the program
18 and the purposes for which such funds have been expended;

19 (g) the number of customers participating in the program, separately
20 stating the number of residential and non-residential customers and the
21 amounts financed;

22 (h) the number of program participants who are in arrears in their
23 utility accounts for electric and/or gas service;

24 (i) the number of program participants who are in arrears in their
25 on-bill recovery charge payments;

26 (j) the number of program participants whose utility service has been
27 terminated for non-payment;

28 (k) a description of the geographic distribution of loans made;

- 1 (l) an estimate of the energy savings resulting from this program;
2 (m) an estimate of the average project cost; and
3 (n) in consultation with the department of labor, an estimate of the
4 number of jobs created under the program.

5 § 11. Section 242 of the real property law is amended by adding a new
6 subdivision 4 to read as follows:

7 4. Disclosure prior to the sale of real property to which a green
8 jobs-green New York on-bill recovery charge applies. (a) Any person,
9 firm, company, partnership or corporation offering to sell real property
10 which is subject to a green jobs-green New York on-bill recovery charge
11 pursuant to title nine-A of article eight of the public authorities law
12 shall provide written notice to the prospective purchaser or the
13 prospective purchaser's agent, stating as follows: "This property is
14 subject to a green jobs-green New York on-bill recovery charge". Such
15 notice shall also state the total amount of the original charge, the
16 payment schedule and the approximate remaining balance, a description of
17 the energy efficiency services performed, including improvements to the
18 property, and an explanation of the benefit of the green jobs-green New
19 York qualified energy efficiency services. Such notice shall be provided
20 by the seller prior to accepting a purchase offer.

21 (b) Any prospective or actual purchaser who has suffered a loss due to
22 a violation of this subdivision is entitled to recover any actual
23 damages incurred from the person offering to sell or selling said real
24 property.

25 § 12. The public service law is amended by adding a new article 10 to
26 read as follows:

27 ARTICLE 10

28 SITING OF MAJOR ELECTRIC GENERATING FACILITIES

1 Section 160. Definitions.

2 161. General provisions relating to the board.

3 162. Board certificate.

4 163. Pre-application procedures.

5 164. Application for a certificate.

6 165. Hearing schedule.

7 166. Parties to a certification proceeding.

8 167. Conduct of hearing.

9 168. Board decisions.

10 169. Opinion to be issued with decision.

11 170. Rehearing and judicial review.

12 171. Jurisdiction of courts.

13 172. Powers of municipalities and state agencies.

14 173. Applicability to public authorities.

15 § 160. Definitions. Where used in this article, the following terms,
16 unless the context otherwise requires, shall have the following mean-
17 ings:

18 1. "Municipality" means a county, city, town or village located in
19 this state.

20 2. "Major electric generating facility" means an electric generating
21 facility with a nameplate generating capacity of twenty-five thousand
22 kilowatts or more, including interconnection electric transmission lines
23 and fuel gas transmission lines that are not subject to review under
24 article seven of this chapter.

25 3. "Person" means any individual, corporation, public benefit corpo-
26 ration, political subdivision, governmental agency, municipality, part-
27 nership, co-operative association, trust or estate.

1 4. "Board" means the New York state board on electric generation
2 siting and the environment, which shall be in the department and consist
3 of seven persons: the chair of the department, who shall serve as chair
4 of the board; the commissioner of environmental conservation; the
5 commissioner of health; the chair of the New York state energy research
6 and development authority; the commissioner of economic development and
7 two ad hoc public members, both of whom shall reside within the munici-
8 pality in which the facility is proposed to be located, except if such
9 facility is proposed to be located within the city of New York, then all
10 ad hoc members shall reside within the community district in which the
11 facility is proposed to be located. One ad hoc member shall be appointed
12 by the president pro tem of the senate and one ad hoc member shall be
13 appointed by the speaker of the assembly, in accordance with subdivision
14 two of section one hundred sixty-one of this article. The term of the ad
15 hoc public members shall continue until a final determination is made in
16 the particular proceeding for which they were appointed.

17 5. "Certificate" means a certificate of environmental compatibility
18 and public need authorizing the construction of a major electric gener-
19 ating facility issued by the board pursuant to this article.

20 6. "Fuel waste byproduct" shall mean waste or combination of wastes
21 produced as a byproduct of generating electricity from a major electric
22 generating facility in an amount which requires storage or disposal and,
23 because of its quantity, concentration, or physical, chemical or other
24 characteristics, may pose a substantial present or potential hazard to
25 human health or the environment.

26 7. "Nameplate" means a manufacturer's designation, generally as
27 affixed to the generator unit, which states the total output of such

1 generating facility as originally designed according to the manufactur-
2 er's original design specifications.

3 8. "Public information coordinator" means an office created within the
4 department which shall assist and advise interested parties and members
5 of the public in participating in the siting and certification of major
6 electric generating facilities. The duties of the public information
7 officer shall include, but not be limited to: (a) implementing measures
8 that assure full and adequate public participation in matters before the
9 board; (b) responding to inquiries from the public for information on
10 how to participate in matters before the board; (c) assisting the public
11 in requesting records relating to matters before the board; (d) ensuring
12 all interested persons are provided with a reasonable opportunity to
13 participate at public meetings relating to matters before the board; (e)
14 ensuring that all necessary or required documents are available for
15 public access on the department's website within any time periods speci-
16 fied within this article; and (f) any other duties as may be prescribed
17 by the board, after consultation with the department.

18 9. "Local parties" shall mean persons residing in a community who may
19 be affected by the proposed major electric generating facility who indi-
20 vidually or collectively seek intervenor funding pursuant to sections
21 one hundred sixty-three and one hundred sixty-four of this article.

22 § 161. General provisions relating to the board. 1. The board,
23 exclusive of the ad hoc members, shall have the power to adopt the rules
24 and regulations relating to the procedures to be used in certifying
25 facilities under the provisions of this article, including the suspen-
26 sion or revocation thereof, and shall further have the power to seek
27 delegation from the federal government pursuant to federal regulatory
28 programs applicable to the siting of major electric facilities. The

1 chairperson, after consultation with the other members of the board
2 exclusive of the ad hoc members, shall have exclusive jurisdiction to
3 issue declaratory rulings regarding the applicability of, or any other
4 question under, this article and rules and regulations adopted hereunder
5 and to grant requests for extensions or amendments to or transfers of
6 certificate terms and conditions, provided that no party to the proceed-
7 ing opposes such request for extensions or amendments within thirty days
8 of the filing of such request. Regulations adopted by the board may
9 provide for renewal applications for pollutant control permits to be
10 submitted to and acted upon by the department of environmental conserva-
11 tion following commercial operation of a certified facility. The board
12 shall not accept any pre-application preliminary scoping statement or
13 application for a certificate, or exercise any powers or functions until
14 the department of environmental conservation has promulgated rules and
15 regulations required by paragraphs (f) and (g) of subdivision one of
16 section one hundred sixty-four of this article and section 19-0312 of
17 the environmental conservation law; provided however that the board
18 shall be authorized to adopt rules and regulations required by this
19 article.

20 2. Upon receipt of a pre-application preliminary scoping statement
21 under this article, the chair shall promptly notify the governor, the
22 president pro tem of the senate, the speaker of the assembly, the chief
23 executive officers representing the municipality and the county in which
24 the facility is proposed to be located, and, if such facility is
25 proposed to be located within the city of New York, the mayor of the
26 city of New York, as well as the chairperson of the community board and
27 the borough president representing the area in which the facility is
28 proposed to be located. One ad hoc member shall be appointed by the

1 president pro tem of the senate and one ad hoc member shall be appointed
2 by the speaker of the assembly from a list of candidates submitted to
3 them, in the following manner. If such facility is proposed to be
4 located outside of the city of New York, the chief executive officer
5 representing the municipality shall nominate four candidates and the
6 chief executive officer representing the county shall nominate four
7 candidates for consideration. If such facility is proposed to be located
8 outside of the city of New York and in a village located within a town,
9 the chief executive officer representing the town shall nominate four
10 candidates, the chief executive officer representing the county shall
11 nominate four candidates, and the chief executive officer representing
12 the village shall nominate four candidates for consideration. If such
13 facility is proposed to be located in the city of New York, the chair-
14 person of the community board, the borough president, and the mayor of
15 the city of New York shall each nominate four candidates for consider-
16 ation. Nominations shall be submitted to the president pro tem of the
17 senate and the speaker of the assembly within fifteen days of receipt of
18 notification of the pre-application preliminary scoping statement. In
19 the event that the president pro tem of the senate does not appoint one
20 of the candidates within thirty days of such nominations, the governor
21 shall appoint the ad hoc member from the list of candidates. In the
22 event that the speaker of the assembly does not appoint one of the
23 candidates within thirty days of such nominations, the governor shall
24 appoint the ad hoc member from the list of candidates. In the event
25 that one or both of the ad hoc public members have not been appointed
26 within forty-five days, a majority of persons named to the board shall
27 constitute a quorum.

1 3. In addition to the requirements of the public officers law, no
2 person shall be eligible to be an appointee to the board who holds
3 another state or local office. No member of the board may retain or hold
4 any official relation to, or any securities of an electric utility
5 corporation operating in the state or proposed for operation in the
6 state, any affiliate thereof or any other company, firm, partnership,
7 corporation, association or joint-stock association that may appear
8 before the board, nor shall either of the appointees have been a direc-
9 tor, officer or, within the previous ten years, an employee thereof. The
10 ad hoc appointees shall receive the sum of two hundred dollars for each
11 day in which they are actually engaged in the performance of their
12 duties pursuant to this article plus actual and necessary expenses
13 incurred by them in the performance of such duties. The chairperson
14 shall provide such personnel, hearing examiners, subordinates and
15 employees and such legal, technological, scientific, engineering and
16 other services and such meeting rooms, hearing rooms and other facili-
17 ties as may be required in proceedings under this article. The board
18 under the direction of the chairperson, may provide for its own repre-
19 sentation and appearance in all actions and proceedings involving any
20 question under this article. The department of environmental conserva-
21 tion shall provide associate hearing examiners. Each member of the board
22 other than the ad hoc appointees may designate an alternate to serve
23 instead of the member with respect to all proceedings pursuant to this
24 article. Such designation shall be in writing and filed with the chair-
25 person.

26 § 162. Board certificate. 1. Following the promulgation of rules and
27 regulations pursuant to paragraphs (f) and (g) of subdivision one of
28 section one hundred sixty-four of this article, and section 19-0312 of

1 the environmental conservation law, no person shall commence the prepa-
2 ration of a site for, or begin the construction of a major electric
3 generating facility in the state, or increase the capacity of an exist-
4 ing electric generating facility by more than twenty-five thousand kilo-
5 watts without having first obtained a certificate issued with respect to
6 such facility by the board. Any such facility with respect to which a
7 certificate is issued shall not thereafter be built, maintained or oper-
8 ated except in conformity with such certificate and any terms, limita-
9 tions or conditions contained therein, provided that nothing herein
10 shall exempt such facility from compliance with federal, state and local
11 laws and regulations except as otherwise provided in this article. A
12 certificate for a major electric generating facility, or an increase in
13 the capacity of an existing electric generating facility by more than
14 twenty-five thousand kilowatts, may be issued only pursuant to this
15 article.

16 2. A certificate may be transferred, subject to the approval of the
17 board, to a person who agrees to comply with the terms, limitations and
18 conditions contained therein.

19 3. A certificate issued under this article may be amended pursuant to
20 this section.

21 4. This article shall not apply: (a) To a major electric generating
22 facility over which any agency or department of the federal government
23 has exclusive siting jurisdiction, or has jurisdiction concurrent with
24 that of the state and has exercised such jurisdiction to the exclusion
25 of regulation of the facility by the state;

26 (b) To normal repairs, replacements, modifications and improvements of
27 a major electric generating facility, whenever built, which do not
28 constitute a violation of any certificate issued under this article and

1 which do not result in an increase in capacity of the facility of more
2 than twenty-five thousand kilowatts;

3 (c) To a major electric generating facility (i) constructed on lands
4 dedicated to industrial uses, (ii) the output of which shall be used
5 solely for industrial purposes, on the premises, and (iii) the generat-
6 ing capacity of which does not exceed two hundred thousand kilowatts; or

7 (d) To a major electric generating facility if, on or before the
8 effective date of the rules and regulations promulgated pursuant to this
9 article and section 19-0312 of the environmental conservation law, an
10 application has been made for a license, permit, certificate, consent or
11 approval from any federal, state or local commission, agency, board or
12 regulatory body, in which application the location of the major electric
13 generating facility has been designated by the applicant; or if the
14 facility is under construction at such time.

15 5. Any person intending to construct a major electric generating
16 facility excluded from this article pursuant to paragraph (b), (c), or
17 (d) of subdivision four of this section may elect to become subject to
18 the provisions of this article by delivering notice of such election to
19 the chair of the board. This article shall thereafter apply to each
20 electric generating facility identified in such notice from the date of
21 its receipt by the chair of the board. For the purposes of this article,
22 each such facility shall be treated in the same manner as a major elec-
23 tric generating facility as defined in this article.

24 § 163. Pre-application procedures. 1. Any person proposing to submit
25 an application for a certificate shall file with the board a preliminary
26 scoping statement containing a brief discussion, on the basis of avail-
27 able information, of the following items:

1 (a) description of the proposed facility and its environmental
2 setting;

3 (b) potential environmental and health impacts resulting from the
4 construction and operation of the proposed facility;

5 (c) proposed studies or program of studies designed to evaluate poten-
6 tial environmental and health impacts, including, for proposed wind-pow-
7 ered facilities, proposed studies during pre-construction activities and
8 a proposed period of post-construction operations monitoring for poten-
9 tial impacts to avian and bat species;

10 (d) measures proposed to minimize environmental impacts; and

11 (e) where the proposed facility intends to use petroleum or other
12 back-up fuel for generating electricity, a discussion and/or study of
13 the sufficiency of the proposed on-site fuel storage capacity and
14 supply; and

15 (f) reasonable alternatives to the facility that may be required by
16 paragraph (i) of subdivision one of section one hundred sixty-four of
17 this article;

18 (g) identification of all other state and federal permits, certifi-
19 cations, or other authorizations needed for construction, operation or
20 maintenance of the proposed facility; and

21 (h) any other information that may be relevant or that the board may
22 require.

23 2. Such person shall serve copies of the preliminary scoping statement
24 on persons enumerated in paragraph (a) of subdivision two of section one
25 hundred sixty-four of this article and provide notice of such statement
26 as provided in paragraph (b) of such subdivision in plain language, in
27 English and in any other language spoken as determined by the board by a
28 significant portion of the population in the community, that describes

1 the proposed facility and its location, the range of potential environ-
2 mental and health impacts of each pollutant, the application and review
3 process, and a contact person, with phone number and address, from whom
4 information will be available as the application proceeds.

5 3. To facilitate the pre-application and application processes and
6 enable citizens to participate in decisions that affect their health and
7 safety and the environment, the department and such person shall provide
8 opportunities for citizen involvement. Such opportunities shall encour-
9 age consultation with the public early in the pre-application and appli-
10 cation processes, especially before any parties enter a stipulation
11 pursuant to subdivision five of this section. The primary goals of the
12 citizen participation process shall be to facilitate communication
13 between the applicant and interested or affected persons. The process
14 shall foster the active involvement of the interested or affected
15 persons.

16 4. (a) Each pre-application preliminary scoping statement shall be
17 accompanied by a fee in an amount equal to three hundred fifty dollars
18 for each thousand kilowatts of generating capacity of the subject facil-
19 ity, but no more than two hundred thousand dollars, to be deposited in
20 the intervenor account established pursuant to section ninety-seven-kkkk
21 of the state finance law, to be disbursed at the hearing examiner's
22 direction to defray pre-application expenses incurred by municipal and
23 local parties (except for a municipality submitting the pre-application
24 scoping statement) for expert witness, consultant, administrative and
25 legal fees. If at any time subsequent to the filing of the pre-applica-
26 tion the pre-application is substantially modified or revised, the board
27 may require an additional pre-application intervenor fee in an amount
28 not to exceed twenty-five thousand dollars. No fees made available

1 under this paragraph shall be used for judicial review or litigation.
2 Any moneys remaining in the intervenor account upon the submission of an
3 application for a certificate shall be made available to intervenors
4 according to paragraph (a) of subdivision six of section one hundred
5 sixty-four of this article.

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

14 5. After meeting the requirements of subdivisions one through three of
15 this section, and after pre-application intervenor funds have been allo-
16 cated by the pre-hearing examiner pursuant to paragraph (b) of subdivi-
17 sion four of this section, such person may consult and seek agreement
18 with any interested person, including, but not limited to, the staff of
19 the department, the department of environmental conservation and the
20 department of health, as appropriate, as to any aspect of the prelimi-
21 nary scoping statement and any study or program of studies made or to be
22 made to support such application. The staff of the department, the
23 department of environmental conservation, the department of health, the
24 person proposing to file an application, and any other interested person
25 may enter into a stipulation setting forth an agreement on any aspect of
26 the preliminary scoping statement and the studies or program of studies
27 to be conducted. Any such person proposing to submit an application for
28 a certificate shall serve a copy of the proposed stipulation upon all

1 persons enumerated in paragraph (a) of subdivision two of section one
2 hundred sixty-four of this article, provide notice of such stipulation
3 to those persons identified in paragraph (b) of such subdivision, and
4 afford the public a reasonable opportunity to submit comments on the
5 stipulation before it is executed by the interested parties. Nothing in
6 this section, however, shall bar any party to a hearing on an applica-
7 tion, other than any party to a pre-application stipulation, from timely
8 raising objections to any aspect of the preliminary scoping statement
9 and the methodology and scope of any stipulated studies or program of
10 studies in any such agreement. In order to attempt to resolve any ques-
11 tions that may arise as a result of such consultation, the department
12 shall designate a hearing examiner who shall oversee the pre-application
13 process and mediate any issue relating to any aspect of the preliminary
14 scoping statement and the methodology and scope of any such studies or
15 programs of study. Upon completion of the notice provisions provided in
16 this section, such hearing examiner shall, within sixty days of the
17 filing of a preliminary scoping statement, convene a meeting of inter-
18 ested parties in order to initiate the stipulation process.

19 § 164. Application for a certificate. 1. An applicant for a certifi-
20 cate shall file with the board an application, in such form as the
21 board may prescribe containing the following information and materials:

22 (a) A description of the site and a description of the facility to be
23 built thereon; including available site information, maps and
24 descriptions, present and proposed development, source and volume of
25 water required for plant operation and cooling, anticipated emissions to
26 air, including but not limited to federal criteria pollutants and mercu-
27 ry, anticipated discharges to water and groundwater, pollution control
28 equipment, and, as appropriate, geological, visual or other aesthetic,

1 ecological, tsunami, seismic, biological, water supply, population and
2 load center data;

3 (b) An evaluation of the expected environmental and health impacts and
4 safety implications of the facility, both during its construction and
5 its operation, including any studies, identifying the author and date
6 thereof, used in the evaluation, which identifies (i) the anticipated
7 gaseous, liquid and solid wastes to be produced at the facility includ-
8 ing their source, anticipated volumes, composition and temperature, and
9 such other attributes as the board may specify and the probable level of
10 noise during construction and operation of the facility; (ii) the treat-
11 ment processes to reduce wastes to be released to the environment, the
12 manner of disposal for wastes retained and measures for noise abatement;
13 (iii) the anticipated volumes of wastes to be released to the environ-
14 ment under any operating condition of the facility, including such
15 meteorological, hydrological and other information needed to support
16 such estimates; (iv) conceptual architectural and engineering plans
17 indicating compatibility of the facility with the environment; (v) how
18 the construction and operation of the facility, including transportation
19 and disposal of wastes would comply with environmental health and safety
20 standards, requirements, regulations and rules under state and municipal
21 laws, and a statement why any variances or exceptions should be granted;
22 (vi) water withdrawals from and discharges to the watershed; (vii) a
23 description of the fuel interconnection and supply for the project; and
24 (viii) an electric interconnection study, consisting generally of a
25 design study and a system reliability impact study;

26 (c) Such evidence as will enable the board and the commissioner of
27 environmental conservation to evaluate the facility's pollution control
28 systems and to reach a determination to issue therefor, subject to

1 appropriate conditions and limitations, permits pursuant to federal
2 recognition of state authority in accordance with the federal Clean
3 Water Act, the federal Clean Air Act and the federal Resource Conserva-
4 tion and Recovery Act, and permits pursuant to section 15-1503 and arti-
5 cle nineteen of the environmental conservation law;

6 (d) Where the proposed facility intends to use petroleum or other
7 back-up fuel for generating electricity, evidence and an evaluation on
8 the adequacy of the facility's on-site back-up fuel storage and supply;

9 (e) A plan for security of the proposed facility during construction
10 and operation of such facility and the measures to be taken to ensure
11 the safety and security of the local community, including contingency,
12 emergency response and evacuation control, to be reviewed by the board
13 in consultation with the New York state division of homeland security
14 and emergency services and in cities with a population over one million,
15 such plan shall also be reviewed by the local office of emergency
16 management;

17 (f) In accordance with rules and regulations that shall be promulgated
18 by the department of environmental conservation for the analysis of
19 environmental justice issues, including the requirements of paragraphs
20 (g) and (h) of subdivision one of this section, an evaluation of signif-
21 icant and adverse disproportionate environmental impacts of the proposed
22 facility, if any, resulting from its construction and operation, includ-
23 ing any studies identifying the author and dates thereof, which were
24 used in the evaluation;

25 (g) A cumulative impact analysis of air quality within a half-mile of
26 the facility, or other radius as determined by standards established by
27 department of environmental conservation regulations, that considers
28 available data associated with projected emissions of air pollutants,

1 including but not limited to federal criteria pollutants and mercury,
2 from sources, including, but not limited to, the facility, facilities
3 that have been proposed under this article and have submitted an appli-
4 cation determined to be in compliance by the board, existing sources,
5 and sources permitted but not yet constructed that were permitted sixty
6 or more days prior to the filing of the application under title V of the
7 clean air act, provided that such analysis and standards shall be in
8 accordance with rules and regulations that shall be promulgated by the
9 department of environmental conservation pursuant to this paragraph;

10 (h) A comprehensive demographic, economic and physical description of
11 the community within which the facility is located, within a half-mile
12 radius of the location of the proposed facility, compared and contrasted
13 with the county in which the facility is proposed and with adjacent
14 communities within such county, including reasonably available data on
15 population, racial and ethnic characteristics, income levels, open
16 space, and public health data, including available department of public
17 health data on incidents of asthma and cancer provided that such
18 description and comparison shall be in accordance with rules and regu-
19 lations promulgated pursuant to paragraph (f) of this subdivision;

20 (i) A description and evaluation of reasonable and available alternate
21 locations to the proposed facility, if any; a description of the compar-
22 ative advantages and disadvantages as appropriate; and a statement of
23 the reasons why the primary proposed location and source, as appropri-
24 ate, is best suited, among the alternatives considered, to promote
25 public health and welfare, including the recreational and other concur-
26 rent uses which the site may serve, provided that the information
27 required pursuant to this paragraph shall be no more extensive than
28 required under article eight of the environmental conservation law;

1 (j) For proposed wind-powered facilities, the expected environmental
2 impacts of the facility on avian and bat species based on pre-construc-
3 tion studies conducted pursuant to paragraph (c) of subdivision one of
4 section one hundred sixty-three of this article; and a proposed plan to
5 avoid or, where unavoidable, minimize and mitigate any such impacts
6 during construction and operation of the facility based on existing
7 information and results of post-construction monitoring proposed in the
8 plan;

9 (k) An analysis of the potential impact that the proposed facility
10 will have on the wholesale generation markets, both generally and for
11 the location-based market in which the facility is proposed, as well as
12 the potential impact of the proposed facility on fuel costs;

13 (l) A statement demonstrating that the facility is reasonably consist-
14 ent with the most recent state energy plan, including, but not limited
15 to, impacts on fuel diversity, regional requirements for capacity, elec-
16 tric transmission and fuel delivery constraints and other issues as
17 appropriate, including the comparative advantages and disadvantages of
18 reasonable and available alternate locations or properties identified
19 for power plant construction, and a statement of the reasons why the
20 proposed location and source is best suited, among the alternatives
21 identified, to promote public health and welfare;

22 (m) Such other information as the applicant may consider relevant or
23 as may be required by the board. Copies of the application, including
24 the required information, shall be filed with the board and shall be
25 available for public inspection; and

26 2. Each application shall be accompanied by proof of service, in such
27 manner as the board shall prescribe, of:

1 (a) A copy of such application on (i) each municipality in which any
2 portion of such facility is to be located as proposed or in any alterna-
3 tive location listed. Such copy to a municipality shall be addressed to
4 the chief executive officer thereof and shall specify the date on or
5 about which the application is to be filed;

6 (ii) each member of the board;

7 (iii) the department of agriculture and markets;

8 (iv) the secretary of state;

9 (v) the attorney general;

10 (vi) the department of transportation;

11 (vii) the office of parks, recreation and historic preservation;

12 (viii) a library serving the district of each member of the state
13 legislature in whose district any portion of the facility is to be
14 located as proposed or in any alternative location listed;

15 (ix) in the event that such facility or any portion thereof as
16 proposed or in any alternative location listed is located within the
17 Adirondack park, as defined in subdivision one of section 9-0101 of the
18 environmental conservation law, the Adirondack park agency; and

19 (x) the public information coordinator for placement on the website of
20 the department; and

21 (b) A notice of such application on (i) persons residing in munici-
22 palities entitled to receive a copy of the application under subpara-
23 graph (i) of paragraph (a) of this subdivision. Such notice shall be
24 given by the publication of a summary of the application and the date on
25 or about which it will be filed, to be published under regulations to be
26 promulgated by the board, in such form and in such newspaper or newspa-
27 pers, including local community and general circulation newspapers, as
28 will serve substantially to inform the public of such application, in

1 plain language, in English and in any other language spoken as deter-
2 mined by the board by a significant portion of the population in the
3 community, that describes the proposed facility and its location, the
4 range of potential environmental and health impacts of each pollutant,
5 the application and review process, and a contact person, with phone
6 number and address, from whom information will be available as the
7 application proceeds;

8 (ii) each member of the state legislature in whose district any
9 portion of the facility is to be located as proposed or in any alterna-
10 tive location listed; and

11 (iii) persons who have filed a statement with the secretary within the
12 past twelve months that they wish to receive all such notices concerning
13 facilities in the area in which the facility is to be located as
14 proposed or in any alternative location listed.

15 3. Inadvertent failure of service on any of the municipalities,
16 persons, agencies, bodies or commissions named in subdivision two of
17 this section shall not be jurisdictional and may be cured pursuant to
18 regulations of the board designed to afford such persons adequate notice
19 to enable them to participate effectively in the proceeding. In addi-
20 tion, the board may, after filing, require the applicant to serve notice
21 of the application or copies thereof or both upon such other persons and
22 file proof thereof as the board may deem appropriate.

23 4. The board shall prescribe the form and content of an application
24 for an amendment of a certificate to be issued pursuant to this article.
25 Notice of such an application shall be given as set forth in subdivision
26 two of this section.

27 5. If a reasonable and available alternate location not listed in the
28 application is proposed in the certification proceeding, notice of such

1 proposed alternative shall be given as set forth in subdivision two of
2 this section.

3 6. (a) Each application shall be accompanied by a fee in an amount (i)
4 equal to one thousand dollars for each thousand kilowatts of capacity,
5 but no more than four hundred thousand dollars, (ii) and for facilities
6 that will require storage or disposal of fuel waste byproduct an addi-
7 tional fee of five hundred dollars for each thousand kilowatt of capaci-
8 ty, but no more than fifty thousand dollars shall be deposited in the
9 intervenor account, established pursuant to section ninety-seven-kkkk of
10 the state finance law, to be disbursed at the board's direction, to
11 defray expenses incurred by municipal and other local parties to the
12 proceeding (except a municipality which is the applicant) for expert
13 witness, consultant, administrative and legal fees, provided, however,
14 such expenses shall not be available for judicial review or litigation.
15 If at any time subsequent to the filing of the application, the applica-
16 tion is amended in a manner that warrants substantial additional scruti-
17 ny, the board may require an additional intervenor fee in an amount not
18 to exceed seventy-five thousand dollars. The board shall provide for
19 notices, for municipal and other local parties, in all appropriate
20 languages. Any moneys remaining in the intervenor account after the
21 board's jurisdiction over an application has ceased shall be returned to
22 the applicant.

23 (b) Notwithstanding any other provision of law to the contrary, the
24 board shall provide by rules and regulations for the management of the
25 intervenor account and for disbursements from the account, which rules
26 and regulations shall be consistent with the purpose of this section to
27 make available to municipal parties at least one-half of the amount of
28 the intervenor account and for uses specified in paragraph (a) of this

1 subdivision. In addition, the board shall provide other local parties up
2 to one-half of the amount of the intervenor account, provided, however,
3 that the board shall assure that the purposes for which moneys in the
4 intervenor account will be expended will contribute to an informed deci-
5 sion as to the appropriateness of the site and facility and are made
6 available on an equitable basis in a manner which facilitates broad
7 public participation.

8 § 165. Hearing schedule. 1. After the receipt of an application filed
9 pursuant to section one hundred sixty-four of this article, the chair of
10 the board shall, within sixty days of such receipt, determine whether
11 the application complies with such section and upon finding that the
12 application so complies, fix a date for the commencement of a public
13 hearing. The department of environmental conservation shall advise the
14 board within said sixty day period whether an application filed pursuant
15 to paragraph (b) of subdivision four of this section contains sufficient
16 information meeting the requirements specified under subparagraphs (i)
17 through (iv) of such paragraph to qualify for the expedited procedure
18 provided for in such paragraph. No later than the date of the determi-
19 nation that an application complies with section one hundred sixty-four
20 of this article, the department of environmental conservation shall
21 initiate its review pursuant to federally delegated or approved environ-
22 mental permitting authority. The chair of the board may require the
23 filing of any additional information needed to supplement an application
24 before or during the hearings.

25 2. Within a reasonable time after the date has been fixed by the chair
26 for commencement of a public hearing, the presiding examiner shall hold
27 a prehearing conference to expedite the orderly conduct and disposition
28 of the hearing, to specify the issues, to obtain stipulations as to

1 matters not disputed, and to deal with such other matters as the presid-
2 ing examiner may deem proper. Thereafter, the presiding examiner shall
3 issue an order identifying the issues to be addressed by the parties
4 provided, however, that no such order shall preclude consideration of
5 additional issues or requests for additional submissions, documentation
6 or testimony at a hearing which warrant consideration in order to devel-
7 op an adequate record as determined by an order of the board. The
8 presiding examiner shall be permitted a reasonable time to respond to
9 any and all interlocutory motions and appeals, but in no case shall such
10 time extend beyond forty-five days.

11 3. All parties shall be prepared to proceed in an expeditious manner
12 at the hearing so that it may proceed regularly until completion, except
13 that hearings shall be of sufficient duration to provide adequate oppor-
14 tunity to hear direct evidence and rebuttal evidence from residents of
15 the area affected by the proposed major electric generating facility. To
16 the extent practicable, the place of the hearing shall be designated by
17 the presiding examiner at a location within two miles of the proposed
18 location of the facility.

19 4. (a) Except as provided in paragraph (b) of this subdivision,
20 proceedings on an application shall be completed in all respects in a
21 manner consistent with federally delegated or approved environmental
22 permitting authority, including a final decision by the board, within
23 twelve months from the date of a determination by the chair that an
24 application complies with section one hundred sixty-four of this arti-
25 cle; provided, however, the board may extend the deadline in extraor-
26 dinary circumstances by no more than six months in order to give consid-
27 eration to specific issues necessary to develop an adequate record. The
28 board must render a final decision on the application by the aforemen-

1 tioned deadlines unless such deadlines are waived by the applicant. If,
2 at any time subsequent to the commencement of the hearing, there is a
3 material and substantial amendment to the application, the deadlines may
4 be extended by no more than six months, unless such deadline is waived
5 by the applicant, to consider such amendment.

6 (b) Proceedings on an application by an owner of an existing major
7 electric generating facility to modify such existing facility or site a
8 new major electric generating facility adjacent or contiguous to such
9 existing facility, shall be completed in all respects in a manner
10 consistent with federally delegated or approved environmental permitting
11 authority, including a final decision by the board, within six months
12 from the date of a determination by the chair that such application
13 complies with section one hundred sixty-four of this article, whenever
14 such application demonstrates that the operation of the modified facili-
15 ty, or of the existing facility and new facility in combination, would
16 result in:

17 (i) a decrease in the rate of emission of each of the relevant siting
18 air contaminants. For facilities that are partially replaced or modi-
19 fied, the percentage decrease shall be calculated by comparing the
20 potential to emit of each such contaminant of the existing unit that is
21 to be modified or replaced as of the date of application under this
22 article to the future potential to emit each such contaminant of the
23 modified or replacement unit as proposed in the application. For facili-
24 ties that are sited physically adjacent or contiguous to an existing
25 facility, the percentage decrease shall be calculated by comparing the
26 potential to emit of each such contaminant of the existing facility as
27 of the date of application under this article, to the future potential

1 to emit each such contaminant of the existing and new facility combined
2 as proposed in the application;

3 (ii) a reduction of the total annual emissions of each of the relevant
4 siting air contaminants emitted by the existing facility. The percent-
5 age reduction shall be calculated by comparing (on a pounds-per-year
6 basis) the past actual emissions of each of the relevant siting air
7 contaminants emitted by the existing facility averaged over the three
8 years preceding the date of application under this article, to the annu-
9 alized potential to emit each such contaminant of the modified facility
10 or of the combined existing and new facility as proposed in the applica-
11 tion;

12 (iii) introduction of a new cooling water intake structure where such
13 structure withdraws water at a rate equal to or less than closed-cycle
14 cooling; and

15 (iv) a lower heat rate than the heat rate of the existing facility.

16 The applicant shall supply the details of the analysis in the applica-
17 tion and such supporting information, as may be requested by the board
18 or, in the exercise of federally delegated or approved environmental
19 permitting authority, the department of environmental conservation,
20 necessary to show compliance with the requirements of subparagraphs (i)
21 through (iv) of this paragraph. The board may extend the deadline in
22 extraordinary circumstances by no more than three months in order to
23 give consideration to specific issues necessary to develop an adequate
24 record. The board shall render a final decision on the application by
25 the aforementioned deadlines unless such deadlines are waived by the
26 applicant. If, at any time subsequent to the commencement of the hear-
27 ing, there is a material and substantial amendment to the application,

1 the deadlines may be extended by no more than three months, unless such
2 deadline is waived by the applicant, to consider such amendment.

3 5. If an application for an amendment of a certificate proposing a
4 change in the facility is likely to result in any material increase in
5 any environmental impact of the facility or a substantial change in the
6 location of all or a portion of such facility, a hearing shall be held
7 in the same manner as a hearing on an application for a certificate. The
8 board shall promulgate rules, regulations and standards under which it
9 shall determine whether hearings are required under this subdivision and
10 shall make such determinations.

11 § 166. Parties to a certification proceeding. 1. The parties to the
12 certification proceedings shall include:

13 (a) The applicant;

14 (b) The department of environmental conservation;

15 (c) The department of economic development;

16 (d) The department of health;

17 (e) The department of agriculture and markets;

18 (f) The New York state energy research and development authority;

19 (g) The department of state;

20 (h) The office of parks, recreation and historic preservation;

21 (i) Where the facility or any portion thereof or of any alternate is
22 to be located within the Adirondack park, as defined in subdivision one
23 of section 9-0101 of the environmental conservation law, the Adirondack
24 park agency;

25 (j) A municipality entitled to receive a copy of the application under
26 paragraph (a) of subdivision two of section one hundred sixty-four of
27 this article, if it has filed with the board a notice of intent to be a
28 party, within forty-five days after the date given in the published

1 notice as the date for the filing of the application; any municipality
2 entitled to be a party herein and seeking to enforce any local ordi-
3 nance, law, resolution or other action or regulation otherwise applica-
4 ble shall present evidence in support thereof or shall be barred from
5 the enforcement thereof;

6 (k) Any individual resident in a municipality entitled to receive a
7 copy of the application under paragraph (a) of subdivision two of
8 section one hundred sixty-four of this article if he or she has filed
9 with the board a notice of intent to be a party, within forty-five days
10 after the date given in the published notice as the date for filing of
11 the application;

12 (l) Any non-profit corporation or association, formed in whole or in
13 part to promote conservation or natural beauty, to protect the environ-
14 ment, personal health or other biological values, to preserve historical
15 sites, to promote consumer interests, to represent commercial and indus-
16 trial groups or to promote the orderly development of any area in which
17 the facility is to be located, if it has filed with the board a notice
18 of intent to become a party, within forty-five days after the date given
19 in the published notice as the date for filing of the application;

20 (m) Any other municipality or resident of such municipality located
21 within a five mile radius of such proposed facility, if it or the resi-
22 dent has filed with the board a notice of intent to become a party,
23 within forty-five days after the date given in the published notice as
24 the date for filing of the application;

25 (n) Any other municipality or resident of such municipality which the
26 board in its discretion finds to have an interest in the proceeding
27 because of the potential environmental effects on such municipality or
28 person, if the municipality or person has filed with the board a notice

1 of intent to become a party, within forty-five days after the date given
2 in the published notice as the date for filing of the application,
3 together with an explanation of the potential environmental effects on
4 such municipality or person; and

5 (o) Such other persons or entities as the board may at any time deem
6 appropriate, who may participate in all subsequent stages of the
7 proceeding.

8 2. The department shall designate members of its staff who shall
9 participate as a party in proceedings under this article.

10 3. Any person may make a limited appearance in the proceeding by
11 filing a statement of his or her intent to limit his or her appearance
12 in writing at any time prior to the commencement of the hearing. All
13 papers and matters filed by a person making a limited appearance shall
14 become part of the record. No person making a limited appearance shall
15 be a party or shall have the right to present testimony or cross-examine
16 witnesses or parties.

17 4. The presiding officer may for good cause shown, permit a munici-
18 pality or other person entitled to become a party under subdivision one
19 of this section, but which has failed to file the requisite notice of
20 intent within the time required, to become a party, and to participate
21 in all subsequent stages of the proceeding.

22 § 167. Conduct of hearing. 1. (a) The hearing shall be conducted in an
23 expeditious manner by a presiding examiner appointed by the department.
24 An associate hearing examiner shall be appointed by the department of
25 environmental conservation prior to the date set for commencement of the
26 public hearing. The associate examiner shall attend all hearings as
27 scheduled by the presiding examiner and shall assist the presiding exam-
28 iner in inquiring into and calling for testimony concerning relevant and

1 material matters. The conclusions and recommendations of the associate
2 examiner shall be incorporated in the recommended decision of the
3 presiding examiner, unless the associate examiner prefers to submit a
4 separate report of dissenting or concurring conclusions and recommenda-
5 tions. In the event that the commissioner of environmental conservation
6 issues permits pursuant to federally delegated or approved authority
7 under the federal Clean Water Act, the federal Clean Air Act and the
8 federal Resource Conservation and Recovery Act, or section 15-1503 and
9 article nineteen of the environmental conservation law, the record in
10 the proceeding and the associate examiner's conclusions and recommenda-
11 tions shall, insofar as is consistent with federally delegated or
12 approved environmental permitting authority, provide the basis for the
13 decision of the commissioner of environmental conservation whether or
14 not to issue such permits.

15 (b) The testimony presented at a hearing may be presented in writing.
16 Oral testimony may be presented at any public statement hearing
17 conducted by the board for the taking of unsworn statements. The board
18 may require any state agency to provide expert testimony on specific
19 subjects where its personnel have the requisite expertise and such
20 testimony is considered necessary to the development of an adequate
21 record. All testimony and information presented by the applicant, any
22 state agency or other party shall be subject to discovery and cross-exa-
23 mination. A record shall be made of the hearing and of all testimony
24 taken and the cross-examinations thereon. The rules of evidence applica-
25 ble to proceedings before a court shall not apply. The presiding examin-
26 er may provide for the consolidation of the representation of parties,
27 other than governmental bodies or agencies, having similar interests. In
28 the case of such a consolidation, the right to counsel of its own choos-

1 ing shall be preserved to each party to the proceeding provided that the
2 consolidated group may be required to be heard through such reasonable
3 number of counsel as the presiding examiner shall determine. Appropri-
4 ate regulations shall be issued by the board to provide for prehearing
5 discovery procedures by parties to a proceeding, consolidation of the
6 representation of parties, the exclusion of irrelevant, repetitive,
7 redundant or immaterial evidence, and the review of rulings by presiding
8 examiners.

9 2. A copy of the record including, but not limited to, testimony,
10 briefs and hearing testimony shall be made available by the board within
11 thirty days of the close of the evidentiary record for examination by
12 the public, and shall be made available on the department's website.

13 3. The chair of the board may enter into an agreement with an agency
14 or department of the United States having concurrent jurisdiction over
15 all or part of the location, construction, or operation of a major elec-
16 tric generating facility subject to this article with respect to provid-
17 ing for joint procedures and a joint hearing of common issues on a
18 combined record, provided that such agreement shall not diminish the
19 rights accorded to any party under this article.

20 4. The presiding examiner shall allow testimony to be received on
21 reasonable and available alternate locations for the proposed facility,
22 alternate energy supply sources and demand-reducing measures, provided
23 notice of the intent to submit such testimony shall be given within such
24 period as the board shall prescribe by regulation, which period shall be
25 not less than thirty nor more than sixty days after the commencement of
26 the hearing. Nevertheless, in its discretion, the board may thereafter
27 cause to be considered other reasonable and available locations for the

1 proposed facility, alternate energy supply sources and, where appropri-
2 ate, demand-reducing measures.

3 5. Notwithstanding the provisions of subdivision four of this section,
4 the board may make a prompt determination on the sufficiency of the
5 applicant's consideration and evaluation of reasonable alternatives to
6 its proposed type of major electric generating facility and its proposed
7 location for that facility, as required pursuant to paragraph (i) of
8 subdivision one of section one hundred sixty-four of this article,
9 before resolution of other issues pertinent to a final determination on
10 the application; provided, however, that all interested parties have
11 reasonable opportunity to question and present evidence in support of or
12 against the merits of the applicant's consideration and evaluation of
13 such alternatives, as required pursuant to paragraph (i) of subdivision
14 one of section one hundred sixty-four of this article, so that the board
15 is able to decide, in the first instance, whether the applicant's
16 proposal is preferable to alternatives.

17 § 168. Board decisions. 1. The board shall make the final decision on
18 an application under this article for a certificate or amendment there-
19 of, upon the record made before the presiding examiner, including any
20 briefs or exceptions to any recommended decision of such examiner or to
21 any report of the associate examiner, and after hearing such oral argu-
22 ment as the board shall determine. Except for good cause shown to the
23 satisfaction of the board, a determination under subdivision five of
24 section one hundred sixty-seven of this article that the applicant's
25 proposal is preferable to alternatives shall be final. Such a determi-
26 nation shall be subject to rehearing and review only after the final
27 decision on an application is rendered.

1 2. The board shall not grant a certificate or amendment thereof for
2 the construction or operation of a facility, either as proposed or as
3 modified by the board, without making explicit findings regarding the
4 nature of the probable environmental impacts of the construction and
5 operation of the facility, including the cumulative environmental
6 impacts of the construction and operation of related facilities such as
7 electric lines, gas lines, water supply lines, waste water or other
8 sewage treatment facilities, communications and relay facilities, access
9 roads, rail facilities, or steam lines, including impacts on:

10 (a) ecology, air, ground and surface water, wildlife, and habitat;

11 (b) public health and safety;

12 (c) cultural, historic, and recreational resources, including aesthet-
13 ics and scenic values; and

14 (d) transportation, communication, utilities and other infrastructure.

15 Such findings shall include the cumulative impact of emissions on the
16 local community including whether the construction and operation of the
17 facility results in a significant and adverse disproportionate environ-
18 mental impact, in accordance with regulations promulgated pursuant to
19 paragraph (f) of subdivision one of section one hundred sixty-four of
20 this article by the department of environmental conservation regarding
21 environmental justice issues.

22 3. The board may not grant a certificate for the construction or oper-
23 ation of a major electric generating facility, either as proposed or as
24 modified by the board, unless the board determines that:

25 (a) the facility is a beneficial addition to or substitution for the
26 electric generation capacity of the state; and

27 (b) the construction and operation of the facility will serve the
28 public interest; and

1 (c) the adverse environmental effects of the construction and opera-
2 tion of the facility will be minimized or avoided to the maximum extent
3 practicable; and

4 (d) if the board finds that the facility results in or contributes to
5 a significant and adverse disproportionate environmental impact in the
6 community in which the facility would be located, the applicant will
7 avoid, offset or minimize the impacts caused by the facility upon the
8 local community for the duration that the certificate is issued to the
9 maximum extent practicable using verifiable measures; and

10 (e) the facility is designed to operate in compliance with applicable
11 state and local laws and regulations issued thereunder concerning, among
12 other matters, the environment, public health and safety, all of which
13 shall be binding upon the applicant, except that the board may elect not
14 to apply, in whole or in part, any local ordinance, law, resolution or
15 other action or any regulation issued thereunder or any local standard
16 or requirement, including, but not limited to, those relating to the
17 interconnection to and use of water, electric, sewer, telecommunication,
18 fuel and steam lines in public rights of way, which would be otherwise
19 applicable if it finds that, as applied to the proposed facility, such
20 is unreasonably burdensome in view of the existing technology or the
21 needs of or costs to ratepayers whether located inside or outside of
22 such municipality. The board shall provide the municipality an opportu-
23 nity to present evidence in support of such ordinance, law, resolution,
24 regulation or other local action issued thereunder.

25 4. In making the determinations required in subdivision three of this
26 section, the board shall consider:

27 (a) the state of available technology;

28 (b) the nature and economics of reasonable alternatives;

1 (c) environmental impacts found pursuant to subdivision two of this
2 section;

3 (d) the impact of construction and operation of related facilities,
4 such as electric lines, gas lines, water supply lines, waste water or
5 other sewage treatment facilities, communications and relay facilities,
6 access roads, rail facilities, or steam lines;

7 (e) the consistency of the construction and operation of the facility
8 with the energy policies and long-range energy planning objectives and
9 strategies contained in the most recent state energy plan;

10 (f) the impact on community character and whether the facility would
11 affect communities that are disproportionately impacted by cumulative
12 levels of pollutants; and

13 (g) such additional social, economic, visual or other aesthetic, envi-
14 ronmental and other considerations deemed pertinent by the board.

15 5. The department or the commission shall monitor, enforce and admin-
16 ister compliance with any terms and conditions set forth in the board's
17 order.

18 6. A copy of the board's decision and opinion shall be served on each
19 party electronically or by mail.

20 7. Following any rehearing and any judicial review of the board's
21 decision, the board's jurisdiction over an application shall cease,
22 provided, however, that the permanent board shall retain jurisdiction
23 with respect to the amendment, suspension or revocation of a certif-
24 icate.

25 § 169. Opinion to be issued with decision. In rendering a decision on
26 an application for a certificate, the board shall issue an opinion stat-
27 ing its reasons for the action taken. If the board has found that any
28 local ordinance, law, resolution, regulation or other action issued

1 thereunder or any other local standard or requirement which would be
2 otherwise applicable is unreasonably burdensome pursuant to paragraph
3 (e) of subdivision three of section one hundred sixty-eight of this
4 article, it shall state in its opinion the reasons therefor.

5 § 170. Rehearing and judicial review. 1. Any party aggrieved by the
6 board's decision denying or granting a certificate may apply to the
7 board for a rehearing within thirty days after issuance of the aggriev-
8 ing decision. Any such application shall be considered and decided by
9 the board and any rehearing shall be completed and a decision rendered
10 thereon within ninety days of the expiration of the period for filing
11 rehearing petitions, provided however that the board may extend the
12 deadline by no more than ninety days where a rehearing is required if
13 necessary to develop an adequate record. The applicant may waive such
14 deadline. Thereafter such a party may obtain judicial review of such
15 decision as provided in this section. A judicial proceeding shall be
16 brought in the appellate division of the supreme court of the state of
17 New York in the judicial department embracing the county wherein the
18 facility is to be located or, if the application is denied, the county
19 wherein the applicant has proposed to locate the facility. Such proceed-
20 ing shall be initiated by the filing of a petition in such court within
21 thirty days after the issuance of a final decision by the board upon the
22 application for rehearing together with proof of service of a demand on
23 the board to file with said court a copy of a written transcript of the
24 record of the proceeding and a copy of the board's decision and opinion.
25 The board's copy of said transcript, decision and opinion, shall be
26 available at all reasonable times to all parties for examination without
27 cost. Upon receipt of such petition and demand the board shall forthwith
28 deliver to the court a copy of the record and a copy of the board's

1 decision and opinion. Thereupon, the court shall have jurisdiction of
2 the proceeding and shall have the power to grant such relief as it deems
3 just and proper, and to make and enter an order enforcing, modifying and
4 enforcing as so modified, remanding for further specific evidence or
5 findings or setting aside in whole or in part such decision. The appeal
6 shall be heard on the record, without requirement of reproduction, and
7 upon briefs to the court. No objection that has not been urged by the
8 party in his or her application for rehearing before the board shall be
9 considered by the court, unless the failure or neglect to urge such
10 objection shall be excused because of extraordinary circumstances. The
11 findings of fact on which such decision is based shall be conclusive if
12 supported by substantial evidence on the record considered as a whole
13 and matters of judicial notice set forth in the opinion. The jurisdic-
14 tion of the appellate division of the supreme court shall be exclusive
15 and its judgment and order shall be final, subject to review by the
16 court of appeals in the same manner and form and with the same effect as
17 provided for appeals in a special proceeding. All such proceedings shall
18 be heard and determined by the appellate division of the supreme court
19 and by the court of appeals as expeditiously as possible and with lawful
20 precedence over all other matters.

21 2. The grounds for and scope of review of the court shall be limited
22 to whether the decision and opinion of the board are:

23 (a) In conformity with the constitution, laws and regulations of the
24 state and the United States;

25 (b) Supported by substantial evidence in the record and matters of
26 judicial notice properly considered and applied in the opinion;

27 (c) Within the board's statutory jurisdiction or authority;

1 (d) Made in accordance with procedures set forth in this article or
2 established by rule or regulation pursuant to this article;

3 (e) Arbitrary, capricious or an abuse of discretion; or

4 (f) Made pursuant to a process that afforded meaningful involvement of
5 citizens affected by the facility regardless of age, race, color,
6 national origin and income.

7 3. Except as herein provided article seventy-eight of the civil prac-
8 tice law and rules shall apply to appeals taken hereunder.

9 § 171. Jurisdiction of courts. Except as expressly set forth in
10 section one hundred seventy of this article and except for review by the
11 court of appeals of a decision of the appellate division of the supreme
12 court as provided for therein, no court of this state shall have juris-
13 isdiction to hear or determine any matter, case or controversy concerning
14 any matter which was or could have been determined in a proceeding under
15 this article or to stop or delay the construction or operation of a
16 major electric generating facility except to enforce compliance with
17 this article or the terms and conditions issued thereunder.

18 § 172. Powers of municipalities and state agencies. 1. Notwithstand-
19 ing any other provision of law, no state agency, municipality or any
20 agency thereof may, except as expressly authorized under this article by
21 the board, require any approval, consent, permit, certificate or other
22 condition for the construction or operation of a major electric generat-
23 ing facility with respect to which an application for a certificate
24 hereunder has been filed, including pursuant to paragraph (e) of subdivi-
25 vision three of section one hundred sixty-eight of this article, any
26 such approval, consent, permit, certificate or condition relating to the
27 interconnection to or use of water, electric, sewer, telecommunication,
28 fuel and steam lines in public rights of way, provided that this article

1 shall not impair or abrogate any federal, state or local labor laws or
2 any otherwise applicable state law for the protection of employees
3 engaged in the construction and operation of such facility; provided,
4 however, that in the case of a municipality or an agency thereof, such
5 municipality has received notice of the filing of the application there-
6 for; and provided further, however, that the department of environmental
7 conservation shall be the permitting agency for permits issued pursuant
8 to federally delegated or approved authority under the federal Clean
9 Water Act, the federal Clean Air Act and the federal Resource Conserva-
10 tion and Recovery Act. In issuing such permits, the commissioner of
11 environmental conservation shall follow procedures established in this
12 article to the extent that they are consistent with federally delegated
13 or approved environmental permitting authority. The commissioner of
14 environmental conservation shall provide such permits to the board prior
15 to its determination whether or not to issue a certificate. The issuance
16 by the department of environmental conservation of such permits shall in
17 no way interfere with the required review by the board of the antic-
18 ipated environmental and health impacts relating to the construction and
19 operation of the facility as proposed, or its authority to deny an
20 application for certification pursuant to section one hundred sixty-
21 eight of this article, and, in the event of such a denial, any such
22 permits shall be deemed null and void.

23 2. The Adirondack park agency shall not hold public hearings for a
24 major electric generating facility with respect to which an application
25 hereunder is filed, provided that such agency has received notice of the
26 filing of such application.

27 § 173. Applicability to public authorities. The power authority of
28 the state of New York, the Green Island power authority and the Long

1 Island power authority shall be subject to all provisions of this arti-
2 cle for major electric generating facilities which any such authority
3 builds or causes to be built. For generating facilities which are not
4 major electric generating facilities, none of the above named authori-
5 ties shall be permitted to serve as lead agency for purposes of environ-
6 mental review pursuant to the provisions of the environmental conserva-
7 tion law.

8 § 13. The opening paragraph and paragraph (b) of subdivision 5 of
9 section 8-0111 of the environmental conservation law, as added by chap-
10 ter 612 of the laws of 1975, are amended to read as follows:

11 The requirements of [subdivision two of section 8-0109 of] this arti-
12 cle shall not apply to:

13 (b) Actions subject to the provisions requiring a certificate of envi-
14 ronmental compatibility and public need in articles seven [and eight],
15 ten and the former article eight of the public service law; or

16 § 14. Section 17-0823 of the environmental conservation law, as added
17 by chapter 801 of the laws of 1973, is amended to read as follows:

18 § 17-0823. Power plant siting.

19 In the case of a major steam electric generating facility, as defined
20 in section one hundred forty of the public service law, for the
21 construction or operation of which a certificate is required under the
22 former article eight of [such] the public service law, [an applicant
23 shall apply for and obtain such certificate in lieu of filing an appli-
24 cation and obtaining a permit under this article. Any reference in this
25 article to a permit shall, in the case of such major steam electric
26 generating facility, be deemed for all purposes to refer to such certif-
27 icate, provided that nothing] or a major electric generating facility as
28 defined in section one hundred sixty of the public service law, for the

1 construction or operation of which a certificate is required under arti-
2 cle ten of the public service law, such certificate shall be deemed a
3 permit under this section if issued by the state board on electric
4 generation siting and the environment pursuant to federally delegated or
5 approved environmental permit authority. Nothing herein shall limit the
6 authority of the [departments] department of health and [environmental
7 conservation] the department to monitor the environmental and health
8 impacts resulting from the operation of such major steam electric gener-
9 ating facility or major electric generating facility and to enforce
10 applicable provisions of the public health law and [environmental
11 conservation laws] this article and the terms and conditions of the
12 certificate governing the environmental and health impacts resulting
13 from such operation. In such case all powers, duties, obligations and
14 privileges conferred upon the department by this article shall devolve
15 upon the New York state board on electric generation siting and the
16 environment. In considering the granting of permits, such board shall
17 apply the provisions of this article and the Act.

18 § 15. Paragraph j of subdivision 2 of section 19-0305 of the environ-
19 mental conservation law, as amended by chapter 525 of the laws of 1981,
20 is amended to read as follows:

21 j. Consider for approval or disapproval applications for permits and
22 certificates including plans or specifications for air contamination
23 sources and air cleaning installations or any part thereof submitted [to
24 him pursuant to] consistent with the rules of the department, and
25 inspect the installation for compliance with the plans or specifica-
26 tions; provided that in the case of a major steam electric generating
27 facility, as defined in [either] former section one hundred forty of the
28 public service law, for which a certificate is required pursuant to

1 [either] the former article eight of [such] the public service law, or a
2 major electric generating facility as defined in section one hundred
3 sixty of the public service law, for which a certificate is required
4 pursuant to article ten of the public service law, such approval func-
5 tions [shall] may be performed by the state board on electric generation
6 siting and the environment, as defined in [such] the public service law,
7 pursuant to federally delegated or approved environmental permitting
8 authority, and such inspection functions shall be performed by the
9 department[; provided further that nothing]. Nothing herein shall limit
10 the authority of the [departments] department of health and [environ-
11 mental conservation] the department to monitor the environmental and
12 health impacts resulting from the operation of such major steam electric
13 generating facility and to enforce applicable provisions of the public
14 health law and [the environmental conservation laws] this chapter and
15 the terms and conditions of the certificate governing the environmental
16 and health impacts resulting from such operation.

17 § 16. Paragraph (e) of subdivision 3 of section 49-0307 of the envi-
18 ronmental conservation law, as added by chapter 292 of the laws of 1984,
19 is amended to read as follows:

20 (e) where land subject to a conservation easement or an interest in
21 such land is required for a major utility transmission facility which
22 has received a certificate of environmental compatibility and public
23 need pursuant to article seven of the public service law or is required
24 for a major steam electric generating facility which has received a
25 certificate [or] of environmental compatibility and public need pursuant
26 to the former article eight of the public service law, or a major elec-
27 tric generating facility or repowering project which has received a
28 certificate of environmental compatibility and public need pursuant to

1 article ten of the public service law, upon the filing of such certifi-
2 cate in a manner prescribed for recording a conveyance of real property
3 pursuant to section two hundred ninety-one of the real property law or
4 any other applicable provision of law, provided that such certificate
5 contains a finding that the public interest in the conservation and
6 protection of the natural resources, open spaces and scenic beauty of
7 the Adirondack or Catskill parks has been considered.

8 § 17. Section 1014 of the public authorities law, as amended by chap-
9 ter 446 of the laws of 1972, is amended to read as follows:

10 § 1014. Public service law not applicable to authority; inconsistent
11 provisions in other acts superseded. The rates, services and practices
12 relating to the generation, transmission, distribution and sale by the
13 authority, of power to be generated from the projects authorized by this
14 title shall not be subject to the provisions of the public service law
15 nor to regulation by, nor the jurisdiction of the department of public
16 service. Except to the extent article seven of the public service law
17 applies to the siting and operation of a major utility transmission
18 facility as defined therein, and article ten of the public service law
19 applies to the siting of a major electric generating facility as defined
20 therein, and except to the extent section eighteen-a of [such] the
21 public service law provides for assessment of the authority for certain
22 costs relating thereto, the provisions of the public service law and of
23 the environmental conservation law and every other law relating to the
24 department of public service or the public service commission or to the
25 environmental conservation department or to the functions, powers or
26 duties assigned to the division of water power and control by chapter
27 six hundred nineteen[,] of the laws of nineteen hundred twenty-six,
28 shall so far as is necessary to make this title effective in accordance

1 with its terms and purposes be deemed to be superseded, and wherever any
2 provision of law shall be found in conflict with the provisions of this
3 title or inconsistent with the purposes thereof, it shall be deemed to
4 be superseded, modified or repealed as the case may require.

5 § 18. Paragraph c of subdivision 8 of section 1020-c of the public
6 authorities law, as amended by chapter 7 of the laws of 1987, is amended
7 to read as follows:

8 c. Article seven of the public service law shall apply to the authori-
9 ty's siting and operation of a major transmission facility as therein
10 defined and article [eight] ten of the public service law shall apply to
11 the authority's siting and operation of a major [steam] electric gener-
12 ating facility as therein defined.

13 § 19. Section 1020-s of the public authorities law, as added by chap-
14 ter 517 of the laws of 1986, is amended to read as follows:

15 § 1020-s. Public service law generally not applicable to authority;
16 inconsistent provisions in certain other acts superseded. 1. The rates,
17 services and practices relating to the electricity generated by facili-
18 ties owned or operated by the authority shall not be subject to the
19 provisions of the public service law or to regulation by, or the juris-
20 diction of, the public service commission, except to the extent (a)
21 article seven of the public service law applies to the siting and opera-
22 tion of a major utility transmission facility as defined therein, (b)
23 article [eight] ten of such law applies to the siting of a generating
24 facility as defined therein, and (c) section eighteen-a of such law
25 provides for assessment for certain costs, property or operations.

26 2. The issuance by the authority of its obligations to acquire the
27 securities or assets of LILCO shall be deemed not to be "state action"
28 within the meaning of the state environmental quality review act, and

1 such act shall not be applicable in any respect to such acquisition or
2 any action of the authority to effect such acquisition.

3 § 20. The state finance law is amended by adding a new section 97-kkkk
4 to read as follows:

5 § 97-kkkk. Intervenor account. 1. There is hereby established in the
6 joint custody of the state comptroller and the commissioner of taxation
7 and finance an account to be known as the intervenor account.

8 2. Such account shall consist of all revenues received from siting
9 application fees for electric generating facilities pursuant to sections
10 one hundred sixty-three and one hundred sixty-four of the public service
11 law.

12 3. Moneys of the account, following appropriation by the legislature,
13 may be expended in accordance with the provisions of sections one
14 hundred sixty-three and one hundred sixty-four of the public service
15 law. Moneys shall be paid out of the account on the audit and warrant of
16 the state comptroller on vouchers certified or approved by the chair of
17 the public service commission.

18 § 21. The environmental conservation law is amended by adding a new
19 section 19-0312 to read as follows:

20 § 19-0312. Power plant emissions and performance standards.

21 1. Definitions. As used in this section:

22 a. "Mercury" means elemental, oxidized, and particle-bound mercury in
23 source emissions.

24 b. "Major electric generating facility" means any electricity generat-
25 ing facility with a nameplate capacity of twenty-five thousand kilowatts
26 or more.

27 2. Any major electric generating facility shall demonstrate compliance
28 with all applicable emission requirements established by the department

1 for the purpose of complying with all state and federal air quality
2 requirements, including requirements for Sulfur Dioxide, Nitrogen
3 Oxides, Mercury, Carbon Dioxide and particulate matter of less than 2.5
4 microns. Such facility must also comply with other applicable department
5 air quality requirements relating to offsetting of emissions.

6 3. No later than twelve months after the effective date of this
7 section, the commissioner shall promulgate rules and regulations target-
8 ing reductions in emissions of carbon dioxide that would apply to major
9 electric generating facilities that commenced construction after the
10 effective date of the regulations.

11 § 22. Study to Increase Generation from Photovoltaic Devices in New
12 York. 1. Legislative Intent. The legislature hereby finds and declares
13 that solar energy generation from photovoltaic devices in New York
14 represents less than 0.01 percent of the State's electricity generation.
15 While the current cost of electricity from photovoltaic devices is a
16 premium above market price for electricity from most other fuels, the
17 cost of installing such photovoltaic generation is declining and
18 increasing solar energy generation represents a significant opportunity
19 for the development of the State's clean energy economic sector and the
20 creation of new high technology jobs in New York.

21 2. The New York state energy research and development authority, in
22 consultation with the department of public service, is hereby authorized
23 and directed to conduct a study with respect to increasing generation
24 from photovoltaic devices in New York, including, but not limited to,
25 the following:

26 a. Identify administrative and policy options that could be used in
27 achieve goals of two thousand five hundred megawatts of generation from

1 photovoltaic devices in New York by 2020 and five thousand megawatts by
2 2025.

3 b. Conduct a targeted analysis of the per megawatt cost of achieving
4 increased generation from photovoltaic devices and the costs of achiev-
5 ing the goals specified in paragraph a of this subdivision using each of
6 the options identified in the analysis conducted pursuant to such para-
7 graph.

8 c. Conduct an analysis of the net economic and job creation benefits
9 of achieving the goals specified in subdivision a of this section using
10 each of the options identified in the analysis conducted pursuant to
11 such subdivision.

12 d. Conduct an analysis of the environmental benefits of achieving the
13 goals specified in paragraph a of this subdivision using each of the
14 options identified in the analysis conducted pursuant to such paragraph.

15 3. The New York state energy research and development authority shall
16 report to the governor and the legislature on the findings and recommen-
17 dations of the study conducted pursuant to subdivision two of this
18 section on or before January 31, 2012.

19 § 23. Severability. If any clause, sentence, paragraph, section or
20 part of this act shall be adjudged by any court of competent jurisdic-
21 tion to be invalid, such judgment shall not affect, impair or invalidate
22 the remainder thereof, but shall be confined in its operation to the
23 clause, sentence, paragraph, section or part thereof directly involved
24 in the controversy in which such judgment shall have been rendered.

25 § 24. This act shall take effect immediately; provided that nothing in
26 this act shall be construed to limit any administrative authority, with
27 respect to matters included in this act, which authority existed prior
28 to the effective date of this act. Within twelve months of the effec-

1 tive date of this act, all rules and regulations required pursuant to
2 this act shall be adopted. Prior to the adoption of such rules and
3 regulations by the New York state board on electric generation siting
4 and the environment and the department of environmental conservation
5 required under this act, nothing in this act shall affect the right to
6 apply for a permit pursuant to the environmental conservation law
7 including article 8 therein, or other applicable laws, to operate an
8 electric generating facility with a nameplate generating capacity of
9 twenty-five thousand kilowatts or more.