

## **Economic Development Law**

### **ARTICLE 6-A**

#### **WESTERN NEW YORK POWER PROCEEDS ALLOCATION ACT**

*Section 189-a. Definitions.*

*189-b. The western New York power proceeds allocation board.*

*189-c. General powers and duties of the board.*

*189-d. Rules and regulations.*

§ 189-a. Definitions. For the purposes of this article, the following

terms shall have the following meanings:

1. "Authority" is the power authority of the state of New York.
2. "Board" is the western New York power proceeds allocation board created by this article.
3. "Benefits" or "fund benefits" are payments to eligible applicants selected by the authority for the purpose of funding eligible projects with monies derived from net earnings that have been deposited into the western New York economic development fund.
4. "Eligible applicant" means a private business, including a not-for-profit corporation.
5. "Eligible projects" are economic development projects by eligible applicants that are physically located within the state of New York within a thirty mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, "infrastructure") owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.
6. "Energy-related projects, programs and services" shall have the same meaning as such term is defined in subparagraph two of paragraph (b) of subdivision seventeen of section one thousand five of the public authorities law.
7. "Expansion power" is the two hundred fifty megawatts of firm Niagara project hydroelectric power and "replacement power" is the four hundred forty-five megawatts of firm Niagara project hydroelectric power

as such terms are defined in subdivision thirteen of section one thousand five of the public authorities law. For purposes of this article, "expansion and replacement power" means the energy associated with such power. Notwithstanding any law, rule, regulation, or policy to the contrary, as of the first day of July, two thousand twelve, the term replacement power as used in this article includes a certain seventy megawatts of power that is referred to in subdivision thirteen of section one thousand five of the public authorities law.

8. "Net earnings" is the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion or replacement power customer under the applicable tariff or contract.

9. "Western New York economic development fund" or "fund" is a fund of the authority into which all net earnings are deposited by the authority in accordance with subdivision twenty of section one thousand five of the public authorities law and from which allocations of fund benefits to eligible projects may be made.

§ 189-b. The western New York power proceeds allocation board. 1. There is hereby created the western New York power proceeds allocation board, which shall possess the powers and duties herein specified. The board shall consist of five members who shall be appointed by the governor as follows: one of whom shall be appointed upon the recommendation of the temporary president of the senate and shall reside within the thirty mile radius of the Niagara power project, one of whom shall be appointed upon the recommendation of the speaker of the assembly and shall reside within the thirty mile radius of the Niagara power project, and at least one additional member who shall also reside within the thirty mile radius of the Niagara power project. The governor shall designate a chair from amongst the board's members.

2. Each member shall serve a term of five years or until a successor shall have been named and qualified. Members may be reappointed to successive terms.

3. Notwithstanding any other provision of law to the contrary, three members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof. No action of the board may be taken except upon an affirmative vote of at least three-fifths of the full board membership at any meeting at which at least three members are present or participating by videoconferencing. Videoconferencing may be used for attendance and participation by members of the board. If videoconferencing is used, the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall identify, if practicable, all locations where a member will participate in the meeting by videoconference and shall state that the public has the right to attend the meeting at any such location.

4. Members of the board, except those that are employees or officers of the state, its authorities or agencies, shall not receive a salary or

other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

§ 189-c. General powers and duties of the board. 1. The board shall establish procedures and guidelines relating to the activities of the board.

2. The board shall establish procedures through written policies or standards for reviewing applications for an allocation of fund benefits that shall include a review of applications no less frequently than twice each year. The board, or a member designated by the board, shall receive all applications from, or on behalf of, eligible applicants for fund benefits. Applications shall be in a form and contain such information, data and exhibits as the board, in consultation with the authority, may prescribe.

3. The board may request from the authority an analysis of any application along with any recommendations. In addition, the authority shall supply any such additional information as is reasonably necessary for the board to perform its duties.

4. In reviewing applications for fund benefits, the board shall use the criteria for eligibility for expansion, replacement and preservation power and for revitalization of industry as provided in section one thousand five of the public authorities law. In addition, the board shall consider the extent to which an award of fund benefits is consistent with any regional economic development council strategies and priorities having responsibility for the region in which the eligible project is located. The board shall issue a written statement of its findings and recommendations for each application reviewed.

5. The board shall recommend to the authority the allocation of fund benefits to eligible projects that the board finds are consistent with the applicable criteria in subdivision four of this section. The board may include within its recommendations such recommended terms and conditions as it deems appropriate, including, but not limited to, reasonable provision for the allocation of fund benefits over time as the eligible applicant achieves milestones towards project completion, the partial or complete withdrawal or return of fund benefits where the recipient has failed to achieve or maintain mutually agreed upon commitments, or such other terms and conditions as the board deems advisable. The board shall not recommend an allocation of fund benefits prior to establishing procedures for reviewing applications pursuant to subdivision two of this section.

6. A recommendation by the board that an eligible applicant receive an allocation of fund benefits shall be a prerequisite to an award of fund benefits by the authority. The authority shall award fund benefits to an applicant upon a recommendation of the board; provided, however, that upon a showing of good cause, the authority shall have discretion as to whether to adopt the board's recommendation, or to award benefits in a different amount or on different terms and conditions than those contained in the recommendation of the board. Allocations of fund benefits shall only be made on the basis of net earnings that have been deposited in the western New York economic development fund. No award of fund benefits shall encumber future net earnings or net earnings that

have been received but not deposited in the western New York economic development fund.

7. Upon making an allocation of fund benefits, the authority shall include within the agreement providing for the terms and conditions applicable to such allocation all terms and conditions the authority deems appropriate, taking into account the recommendations made by the board.

§ 189-d. Rules and regulations. The authority is hereby authorized to promulgate such rules and regulations as it deems necessary to fulfill the purposes of this article.