

LAWS OF NEW YORK, 2009

CHAPTER 487

AN ACT to amend the public authorities law, in relation to establishing the "green jobs-green New York act of 2009"; and to amend the state finance law, in relation to establishing the green jobs-green New York fund

Became a law October 9, 2009, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Legislative findings. The legislature finds and declares that promoting widespread dissemination of energy conservation and clean energy technologies represents a clear and cost-effective strategy for communities in New York state to curtail the emission of greenhouse gases and harmful air contaminants, reducing dependence on fossil fuels, lowering housing costs, supporting community development and creating green jobs to sustain and enhance our economy. These jobs will provide meaningful employment opportunities for displaced workers, the long-term unemployed and new workforce entrants. Installation of energy efficiency improvements to reduce the loss or waste of energy will allow consumers to pay for these improvements through energy savings over a reasonable period of time. However, lack of affordable and accessible financing for many owners of residential properties, small businesses and non-profit organizations has hindered progress in fully realizing the promise of these technologies. Therefore, it is the intent of the legislature to enact a "Green Jobs-Green New York" program to perform energy-efficient retrofits at no initial cost to residential property owners, with the ultimate goals of improving at least one million residential units over the next five years, creating thousands of new green jobs, training workers to fill them and demonstrating the effectiveness of innovative financing mechanisms in reaching this goal.

§ 2. Article 8 of the public authorities law is amended by adding a new title 9-A to read as follows:

TITLE 9-A

GREEN JOBS-GREEN NEW YORK PROGRAM

- Section 1890. Short title.**
1891. Definitions.
1892. Purpose.
1893. Administration by the authority.
1894. Competitive grants for outreach, enrollment and related services.
1895. Energy audits.
1896. Green jobs-green New York revolving loan fund.
1897. Training services.
1898. Advisory council.
1899. Annual reporting.
1899-a. Funds, administration and evaluation and coordination.

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

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§ 1890. Short title. This title shall be known and may be cited as the "green jobs-green New York act of 2009".

§ 1891. Definitions. As used in this section, the following terms shall have the following meanings:

1. "Applicant" means a person who owns, leases or manages a structure and who has the authority to contract for the provision of qualified energy efficiency services to such structure.

2. "Authority" shall have the same meaning as in subdivision two of section eighteen hundred fifty-one of this article.

3. "Constituency-based organization" means an organization incorporated for the purpose of providing services or other assistance to economically or socially disadvantaged persons within a specified community, and which is supported by, or whose actions are directed by, members of the community in which it operates.

4. "Distribution utility" means any gas or electric corporation providing gas or electricity to end use consumers that is a public utility company, including a municipality, or a public utility authority organized pursuant to article five of this chapter.

5. "Eligible project" means qualified energy efficiency services for a non-residential structure, a residential structure or a multi-family structure.

6. "Energy audit" means a formal evaluation of a building's energy consumption for the purpose of identifying methods to improve energy efficiency and conserve energy, including associated health and safety issues, conducted pursuant to standards established by the authority.

7. "Green jobs-green New York revolving loan fund" or "revolving loan fund" means the green jobs-green New York revolving loan fund created by subdivision one of section eighteen hundred ninety-six of this title.

8. "Multi-family structure" means a multi-unit residential building with five or more dwelling units.

9. "Non-residential structure" means a building that is used or occupied by a small business or a not-for-profit corporation.

10. "Not-for-profit corporation" means a corporation defined in subdivision five of paragraph (a) of section one hundred two of the not-for-profit corporation law.

11. "Program" means the green jobs-green New York energy conservation and community sustainability program created by this title.

12. "Qualified energy efficiency services" means a modification to a structure, based on recommendations contained in an energy audit performed under the program created under section eighteen hundred ninety-two of this title or as otherwise approved by the authority, which is consistent with standards established by the authority, that will increase the energy efficiency and conservation of an existing structure, including but not limited to:

(a) application of weatherstripping, caulking, sealant and other materials around doors, windows, and other areas of a building for the purpose of insulating or sealing openings in the building envelope and within the building to mitigate energy loss;

(b) testing, repairing and replacing heating or cooling systems or components of such systems;

(c) thermostat upgrades;

(d) water heater repair and replacement;

(e) roof, chimney, fireplace and roof vent repair, insofar as such repairs are determined by an energy audit to be necessary to mitigate energy loss or resolve energy-system related health and safety issues;

- (f) repair and replacement of storm windows, permanent windows and exterior doors;
- (g) repair or replacement of major household appliances;
- (h) installation of thermal solar heat or hot water systems;
- (i) addition of insulation to exterior walls or ceilings;
- (j) replacement of inefficient light bulbs and lighting fixtures and systems;
- (k) minor repairs that are necessary to ensure maximum efficiency from the provision of qualified energy efficiency services;
- (l) installation of carbon monoxide detectors and indoor environmental testing and mitigation deemed necessary as a result of the provision of other qualified energy efficiency services; and
- (m) fuel switching to convert an electrically-heated building to a more efficient heating source provided that significant energy cost-savings can be demonstrated pursuant to standards established by the authority.

13. "Residential structure" means a residential building that has four or fewer dwelling units.

14. "Small business" shall have the same meaning as in section one hundred thirty-one of the economic development law.

15. "Structure" means (a) a non-residential structure, (b) a residential structure, and (c) a multi-family structure.

§ 1892. Purpose. There is hereby created a green jobs-green New York program. The purpose of the program is to:

1. promote energy efficiency, energy conservation and the installation of clean energy technologies;
2. reduce energy consumption and energy costs;
3. reduce greenhouse gas emissions;
4. support sustainable community development;
5. create green job opportunities, including opportunities for new entrants into the state's workforce, the long-term unemployed and displaced workers; and
6. use innovative financing mechanisms to finance energy efficiency improvements through energy cost savings.

§ 1893. Administration by the authority. Within six months of the effective date of this title, the authority is hereby authorized and directed to establish and administer the green jobs-green New York program. The authority shall implement the program in consultation with the division of housing and community renewal, the department of labor, the office of temporary and disability assistance, the department of public service, the power authority of the state of New York, the Long Island power authority, the department of economic development and the department of environmental conservation. The authority is authorized and directed to:

1. use monies made available for the program pursuant to section eighteen hundred ninety-nine-a of this title to achieve the purposes of the program;
2. enter into contracts with constituency-based organizations and other entities through the competitive grants process authorized by this title;
3. enter into contracts with one or more program implementers to perform such functions as the authority deems appropriate; and
4. exercise such other powers as are necessary for the proper administration of the program.

§ 1894. Competitive grants for outreach, enrollment and related services. 1. The authority shall issue one or more program opportunity

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notices or requests for proposals to solicit applications from partnerships or consortia comprised of constituency-based organizations which can connect community members to the program, including facilitating awareness of the program and enrollment, and (a) distribution utilities, (b) contractors that have signed enforceable agreements to meet standards set by the authority, including standards for local hiring and pre-apprenticeship and apprenticeship and other labor-management training program participation, (c) workforce development organizations that will recruit unemployed individuals, and provide training and job placement in conjunction with contractors pursuant to section eighteen hundred ninety-seven of this title; and/or (d) organized trades and their certification or apprenticeship programs. The authority shall specifically solicit applications that propose to demonstrate the feasibility of innovative financing mechanisms, including but not limited to applications undertaken in partnership with distribution utilities that propose to demonstrate the feasibility of on-bill financing. The public service commission and other appropriate agencies are authorized to coordinate with the authority and applicants in developing and implementing proposed demonstrations of innovative financing mechanisms.

2. In awarding grants, the authority shall:

(a) target communities in areas where energy costs are particularly high in relation to a measure of median household income as determined by the authority; or which have been designated as a nonattainment area for one or more pollutants pursuant to section 107 of the federal Clean Air Act (42 U.S.C. section 4207);

(b) give preference in awards to applicants that include significant participation by minority and women owned business enterprises and/or to applications to serve economically distressed communities;

(c) ensure that the awards as a whole reflect the geographic diversity of the state; and

(d) award a sufficient number of grants to make it possible to fully commit the resources allocated during the initial phase of the program.

3. (a) The authority is authorized to consult with the department of public service, the division of housing and community renewal, the department of labor and the department of environmental conservation, as appropriate, in making any determinations contemplated by this section.

(b) The authority shall consult with representatives of businesses who provide home heating oil, propane and other petroleum-based heating products to develop innovative financing mechanisms for energy efficiency retrofits.

(c) The authority shall consult with the division of housing and community renewal and the council established pursuant to section eighteen hundred ninety-eight of this title to develop strategies to mitigate any adverse economic impact of the program on tenants, including but not limited to residents of in rent-regulated housing or recipients of housing subsidies.

§ 1895. Energy audits. 1. The program shall make available to applicants who would be eligible to apply for financial assistance under this section energy audits performed by certified auditors or auditors using commonly-employed energy auditing tools and technologies, as determined appropriate by the authority. The authority shall be authorized to dedicate an appropriate portion of program funds allocated for the funding of energy audits pursuant to section eighteen hundred ninety-nine-a of this title to non-residential properties that are occupied or used by a small business or not-for-profit corporation with ten or fewer employees.

2. The authority shall establish standards for energy audits based on building type and other relevant considerations.

3. The authority shall establish a schedule of fees for energy audits based on the type and nature of the energy audit and other relevant considerations. The schedule shall include a sliding scale which provides that audit fees shall be waived for residential applicants whose demonstrated income is less than two times the median county household income, and the full fees shall be paid by applicants whose median county household income is not less than four times the median county household income. Applicants whose demonstrated incomes fall between these levels shall pay a pro rata percentage of the audit fees. The authority may provide for discounted fees for small businesses or not-for-profit corporations with ten or fewer employees.

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

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

(ii) payments of principal and interest made pursuant to loan or financing agreements entered into with the authority or its designee pursuant to this section; and

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

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

(i) one account which shall be maintained for monies to be made available to provide loans to finance the cost of approved qualified energy efficiency services for residential structures and multi-family structures, and

(ii) one account which shall be maintained for monies made available to provide loans to finance the cost of approved qualified energy efficiency services for non-residential structures. The initial balance of the residential account established in clause (i) of this paragraph shall represent at least fifty percent of the total balance of the two accounts. The authority shall not commingle the monies of the revolving loan fund with any other monies of the authority or held by the authority, nor shall the authority commingle the monies between accounts. Payments of principal, interest and fees shall be deposited into the account created and maintained for the appropriate type of eligible project.

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

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

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

(iii) exercise such other powers as are necessary for the proper administration of the program.

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

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

(i) eligible projects shall meet cost effectiveness standards developed by the authority;

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(ii) loans shall not exceed thirteen thousand dollars per applicant for approved qualified energy efficiency services for residential structures, and twenty-six thousand dollars per applicant for approved qualified energy efficiency services for non-residential structures, and for multi-family structures loans shall be in amounts determined by the authority, provided, however, that the authority shall assure that a significant number of residential structures are included in the program; and

(iii) loans shall be at interest rates determined by the authority to be no higher than necessary to make the provision of the qualified energy efficiency services feasible.

In determining whether to make a loan, and the amount of any loan that is made, the authority is authorized to consider whether the applicant or borrower has received, or is eligible to receive, financial assistance and other incentives from any other source for the qualified energy efficiency services which would be the subject of the loan.

(c) Applications for financial assistance pursuant to this section shall be reviewed and evaluated by the authority or its designee pursuant to eligibility and qualification requirements and criteria established by the authority. The authority shall establish standards for (i) qualified energy efficiency services, and (ii) measurement and verification of energy savings. Such standards shall meet or exceed the standards used by the authority for similar programs in existence on the effective date of this section.

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

§ 1897. Training services. 1. The authority, in consultation with the department of labor, shall enter into contracts with constituency-based organizations, workforce development organizations, labor organizations, and other training-related organizations, for the purpose of supporting the "green jobs-green New York program" with employment and training services. Such contracts shall provide for (a) training of individuals to participate in outreach and marketing activities, perform energy audits and provide qualified energy efficiency services and (b) provision of job placement services to such individuals. To the extent permitted by statute, regulation or federal grant a preference shall be given for training and placement of women, minorities, low-income individuals and populations with barriers to employment.

2. Training services authorized pursuant to this subdivision shall include, as appropriate, but not be limited to:

(a) incremental occupational training to unemployed workers with good work histories;

(b) work-readiness and entry-level technical training to individuals with weak work histories;

(c) apprenticeship qualifying, apprenticeship and labor-management certification training;

(d) training that is designed to lead to certification in energy auditing and energy performance contracting;

(e) skills upgrading for incumbent workers, including workers performing weatherization activities under division of housing and community renewal programs;

(f) work support, where appropriate and to the extent that funding is available, to individuals who obtain employment through the "green jobs-green New York program" created by this title, to assist such individuals to retain employment and continue to upgrade their skills.

3. For quality assurance purposes, organizations providing training services pursuant to this section shall possess certifications and accreditations deemed appropriate by the authority, in consultation with the department of labor.

4. The authority, in cooperation with the department of labor, shall facilitate coordination between constituency-based organizations, workforce development organizations, labor organizations and auditing and energy performance services contractors to provide job opportunities for individuals participating in training programs and receiving placement services pursuant to this section.

5. The authority, in cooperation with the department of labor, shall:

(a) encourage local workforce investment boards created pursuant to the federal workforce investment act of 1998 (Public Laws 105-220) to make available training and job placement services authorized pursuant to this subdivision within each local workforce investment area:

(b) access training services available through the department of labor; and

(c) apply for available federal funding for appropriate training services pursuant to the provisions of the american recovery and reinvestment act of 2009 (Public Laws 111-5) and any other applicable federal law.

6. The department of labor shall coordinate with the authority in implementing this section.

§ 1898. Advisory council. 1. The authority shall establish a green jobs-green New York advisory council to advise the authority on the creation and implementation of the program. The council shall consist of:

(a) the president of the authority; the secretary of state; the commissioner of housing and community renewal; the commissioner of labor; the commissioner of temporary and disability assistance; the chair of the consumer protection board; the chair of the department of public service; the president of the power authority of the state of New York; the president of the Long Island power authority; the commissioner of economic development; the commissioner of environmental conservation; or the designees of such persons; and

(b) representatives of constituency-based community groups; consumer advocates on utility and housing issues; community-based workforce development groups; unions, including building trades and property services; home performance contractors; large-scale construction contractors; and investment market experts.

2. The president of the authority shall serve as the chair of the council.

§ 1899. Annual reporting. No later than October first, two thousand ten and October first of each year thereafter, the president of the authority shall issue an annual report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly concerning the authority's activities related to the green jobs - green New York program created pursuant to this title. Such report shall include, but not be limited to the following information:

1. The status of the authority's activities and outcomes related to section eighteen hundred ninety-five of this title. Such report shall

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include, but not be limited to: (a) the number and type of energy audits performed pursuant to section eighteen hundred ninety-five of this title; (b) any other contracts entered into relating to the program; and (c) any recommendations for program improvements;

2. The status of the authority's activities and outcomes related to section eighteen hundred ninety-four of this title. Such report shall include, but not be limited to: (a) contracts entered into pursuant to section eighteen hundred ninety-four of this title; (b) the geographical area or areas served by each entity; (c) the amount of the grants disbursed to each entity; (d) any other contracts entered into relating to the program; and (e) any recommendations for program improvements;

3. The status of the authority's activities and outcomes related to section eighteen hundred ninety-six of this title. Such report shall include, but not be limited to: (a) the number of persons who have applied for and received financial assistance through the revolving loan fund; (b) the revolving loan fund account balances; (c) the number of loans in default; and (d) the amount and nature of the costs incurred by the authority for the activities described in paragraph (c) of subdivision one of section eighteen hundred ninety-six of this title;

4. The status of the authority's activities and outcomes related to solicitation of applications to demonstrate the feasibility of innovative financing mechanisms as described in subdivision one of section eighteen hundred ninety-four of this title;

5. The status of the authority's activities and outcomes related to section eighteen hundred ninety-seven of this title. Such report shall include, but not be limited to: (a) the number of individuals receiving training services; (b) the type of training services provided to such individuals; (c) the identity of organizations providing training services; (d) the amount of funds awarded to each such organization; and (e) the number of individuals placed in full-time employment; and

6. The overall effectiveness, progress and outcomes by the authority related to the green-jobs green New York program. Such report shall include but not be limited to: (a) key findings by the authority; (b) to the extent possible a calculation of the energy savings achieved; and (c) any recommendations for program improvements and expansion of the program.

§ 1899-a. Funds, administration and evaluation and coordination. 1. The authority is authorized to accept, as agent of the state, any gift, grant, devise or bequest, whether conditional or unconditional, including but not limited to federal grants, and to use monies made available for the program from any public or private source, for the purpose of implementing the components of the program as set forth in section eighteen hundred ninety-three through section eighteen hundred ninety-nine of this title, inclusive.

2. The authority shall be entitled to recover from the monies made available for the program its own necessary and documented costs incurred in administering the program and evaluating the effectiveness of the program; provided, however, the sum that may be recovered for the authority's administrative costs shall not exceed seven percent of the monies made available for the program, and the sum that may be recovered for the authority's evaluation costs shall not exceed five percent of the monies made available for the program.

§ 3. Subdivision 4 of section 1855 of the public authorities law, as added by chapter 210 of the laws of 1962, is amended to read as follows:

4. To make rules and regulations governing the exercise of its corporate powers and the fulfillment of its corporate purposes under this

title and title nine-A of this article, which shall be filed with the department of state in the manner provided by section one hundred two of the executive law.

§ 4. The commissioner of the department of environmental conservation shall provide for the deposit of \$112,000,000 of revenues collected under direct oversight by the department of environmental conservation, from the auction of any emissions allowances for air contaminants to the green jobs-green New York fund established pursuant to section 99-q of the state finance law.

§ 5. The state finance law is amended by adding a new section 99-q to read as follows:

§ 99-q. Green jobs-green New York fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "green jobs-green New York fund". The monies in such fund shall be available for the green jobs-green New York program pursuant to title nine-A of article eight of the public authorities law.

2. Monies in the green jobs-green New York fund shall be kept separately from and shall not be commingled with any other monies in the joint or sole custody of the state comptroller or the commissioner of taxation and finance. Any interest received by the comptroller on moneys deposited in the green jobs-green New York fund shall be retained in and become a part of such fund.

§ 6. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly