

7573--A

I N S E N A T E

April 22, 2010

Introduced by Sens. AUBERTINE, MAZIARZ, BRESLIN, FOLEY, C. JOHNSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law, chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development; chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the New York power authority to make contributions to the general fund; and the tax law, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program; and to amend the economic development law and the public authorities law, in relation to the creation of the economic benefit power program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 182 of the economic development law, as amended by
2 chapter 289 of the laws of 2000, is amended to read as follows:
3 S 182. The New York state economic development power allocation board.
4 There is hereby created a New York state economic development power
5 allocation board, which shall possess the powers and duties herein specified
6 and all the powers necessary or proper to carry out the purposes
7 of this article. The board shall consist of [four] NINE members, [two]
8 ONE OF WHOM SHALL BE THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION
9 AND ONE of whom shall be [appointed by the governor and one] THE PRESIDENT
10 OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY,
11 ONE OF WHOM SHALL BE THE PRESIDENT OF THE POWER AUTHORITY OF THE STATE
12 OF NEW YORK, TWO of whom shall be appointed by the speaker of the assembly
13 [and one] , TWO of whom shall be appointed by the TEMPORARY president
14 [pro tempore] of the senate ONE OF WHOM SHALL BE APPOINTED BY THE
15 MINORITY LEADER OF THE ASSEMBLY, AND ONE OF WHOM SHALL BE APPOINTED BY
16 THE MINORITY LEADER OF THE SENATE. Each member shall be appointed for
17 terms of three years or until a successor shall have been named and

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

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1 qualified. The chairman shall be [designated by the governor from
2 amongst the members] THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION.
3 [Three] FIVE members shall constitute a quorum for the purposes of
4 organizing the board and conducting the business thereof; and no actions
5 of the board may be taken except upon the affirmative vote of at least
6 [three] FIVE members. Videoconferencing may be used for attendance and
7 participation by members of the board. If videoconferencing is used the
8 board shall provide an opportunity for the public to attend, listen and
9 observe at any site at which a member participates. The public notice
10 for the meeting shall inform the public that [vidioconferencing] VIDEO-
11 CONFERENCING will be used, identify the locations for the meeting, and
12 state that the public has the right to attend the meeting at any of the
13 locations. Members of the board, except those who are employees or offi-
14 cers of the state, its authorities or agencies shall not receive a sala-
15 ry or other compensation, but shall be allowed the necessary and actual
16 expenses incurred in the performance of duties under this article.

17 S 2. Paragraphs 2 and 4 of subdivision (h) of section 183 of the
18 economic development law, as amended by chapter 217 of the laws of 2009,
19 are amended to read as follows:

20 2. During the period commencing on November first, two thousand five
21 and ending on [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN
22 eligible businesses shall only include customers served under the power
23 authority of the state of New York's high load factor, economic develop-
24 ment power and other business customers served by political subdivisions
25 of the state authorized by law to engage in the distribution of electric
26 power that were authorized to be served by the authority from the
27 authority's former James A. Fitzpatrick nuclear power plant as of the
28 effective date of this subdivision whose power prices may be subject to
29 increase before [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEV-
30 EN. Provided, however, that the total amount of megawatts of replace-
31 ment and preservation power which, due to the extension of the energy
32 cost savings benefits, are not relinquished by or withdrawn from a
33 recipient shall be deemed to be relinquished or withdrawn for purposes
34 of offering such megawatts by the authority for reallocation pursuant to
35 subdivision thirteen of section one thousand five of the public authori-
36 ties law. Provided, further, that for any such reallocation, the author-
37 ity shall maintain the same energy cost savings benefit level for all
38 eligible businesses using any available authority resources as deemed
39 feasible and advisable by the trustees pursuant to section seven of part
40 U of chapter fifty-nine of the laws of two thousand six.

41 4. Applications for an energy cost savings benefit shall be in the
42 form and contain such information, exhibits and supporting data as the
43 board may prescribe. The board shall review the applications received
44 and shall determine the applications which best meet the criteria estab-
45 lished for the benefits pursuant to this subdivision and it shall recom-
46 mend such applications to the power authority of the state of New York
47 with such terms and conditions as it deems appropriate; provided, howev-
48 er, that for energy cost savings benefits granted on or after [June
49 thirtieth] MAY FIFTEENTH, two thousand [nine] TEN through [May
50 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN, the board shall
51 expedite the awarding of such benefits and shall defer the review of
52 compliance with such criteria until after the applicant has been awarded
53 an energy cost savings benefit. Such terms and conditions shall include
54 reasonable provisions providing for the partial or complete withdrawal
55 of the energy cost savings benefit in the event the recipient fails to
56 maintain mutually agreed upon commitments that may include, but are not

1 limited to, levels of employment, capital investment and power utiliza-
2 tion. Recommendation for approval of an energy cost savings benefit
3 shall qualify an applicant to receive an energy cost savings benefit
4 from the power authority of the state of New York pursuant to the terms
5 and conditions of the recommendation. ANY ENERGY COST SAVINGS BENEFIT
6 WHICH IS RELINQUISHED OR WITHDRAWN AFTER THE EFFECTIVE DATE OF THE CHAP-
7 TER OF THE LAWS OF TWO THOUSAND TEN WHICH AMENDED THIS PARAGRAPH SHALL
8 BE AVAILABLE FOR REALLOCATION TO ELIGIBLE BUSINESSES AS DEFINED IN PARA-
9 GRAPH TWO OF THIS SUBDIVISION PURSUANT TO THE PROVISIONS OF THIS ARTI-
10 CLE.

11 S. 3. The opening paragraph of paragraph 5 of subdivision (a) of
12 section 189 of the economic development law, as amended by chapter 217
13 of the laws of 2009, is amended to read as follows:

14 "Power for jobs electricity savings reimbursements" shall mean
15 payments made by the power authority of the state of New York as recom-
16 mended by the board to recipients of allocations of power under phases
17 four and five of the power for jobs program for a period of time until
18 November thirtieth, two thousand four, subsequent to the expiration of
19 their phase four or five power for jobs contract provided however that
20 any power for jobs recipient may choose to receive an electricity
21 savings reimbursement as a substitute for a contract extension for the
22 period from the date the recipient's contract expires through [May
23 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN. The "basic
24 reimbursement" is an amount that when credited against the recipient's
25 actual "unit cost of electricity" during a quarter (meaning the cost for
26 commodity and delivery per kilowatt-hour for the quantity of electricity
27 purchased and delivered under the power for jobs program during a simi-
28 lar period in the final year of the recipient's contract), results in an
29 effective unit cost of electricity during the quarter equal to the aver-
30 age unit cost of electricity such recipient paid during the final year
31 of the contract for power allocated under phase four or five of the
32 power for jobs program, PROVIDED HOWEVER THAT NOTWITHSTANDING THE FORE-
33 GOING, FOR THE PERIOD MAY SIXTEENTH, TWO THOUSAND TEN THROUGH JUNE THIR-
34 TIETH, TWO THOUSAND ELEVEN, THE BASIC REIMBURSEMENT SHALL BE AN AMOUNT
35 SUCH THAT THE RECIPIENT RECEIVES UNIT (PER KILOWATT-HOUR) ELECTRICITY
36 SAVINGS EQUIVALENT TO THE AVERAGE UNIT ELECTRICITY SAVINGS RECEIVED
37 DURING THE TWELVE MONTHS ENDING ON MAY FIFTEENTH, TWO THOUSAND TEN.

38 S. 4. Subdivisions (f) and (l) of section 189 of the economic develop-
39 ment law, as amended by chapter 217 of the laws of 2009, are amended to
40 read as follows:

41 (f) Eligibility. The board shall recommend applications for allo-
42 cations of power under the power for jobs program to or for the use of
43 businesses which normally utilize a minimum peak electric demand in
44 excess of four hundred kilowatts; provided, however, that up to one
45 hundred megawatts of power available for allocation during the initial
46 three phases of the power for jobs program may be recommended for allo-
47 cations to not-for-profit corporations and to small businesses; and,
48 provided, further that up to seventy-five megawatts of power available
49 for allocation during the fourth phase of the program may be recommended
50 for allocations to not-for-profit corporations and to small businesses.
51 The board may require small businesses that normally utilize a minimum
52 peak electric demand of less than one hundred kilowatts to aggregate
53 their electric demand in amounts of no less than one hundred kilowatts,
54 for the purposes of applying to the board for an allocation of power.
55 The board shall recommend allocations of the additional three hundred
56 megawatts available during the fourth phase of the program to any such

1 eligible applicant, including any recipient of power allocated during
2 the first phase of the program. The board shall recommend allocations of
3 the additional one hundred eighty-three megawatts available during the
4 fifth phase of the program to any eligible applicant, including any
5 recipient of power allocated during the second and third phases of the
6 program; provided, however, that the term of contracts for allocations
7 under the fifth phase of the program shall in no case extend beyond [May
8 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN. Notwithstanding
9 any provision of law to the contrary, and, in particular, the provisions
10 of this chapter concerning the terms of contracts for allocations under
11 the power for jobs program, the terms of any contract with a recipient
12 of power allocated under phase two of the power for jobs program that
13 has expired or will expire on or before the thirty-first day of August,
14 two thousand two, may be extended by the power authority of the state of
15 New York for an additional period of three months effective on the date
16 of such expiration, pending the filing and approval of an application by
17 such recipient for an allocation under the fifth phase of the program.
18 The term of any new contract with such recipient under the fifth phase
19 of the program shall be deemed to include any three month contract
20 extension made pursuant to this subdivision and the termination date of
21 any such new contract under phase five shall be no later than if such
22 new contract had commenced upon the expiration of the recipient's
23 original phase two contract. The terms of any contract with a recipient
24 of power allocated under phase four and/or phase five of the power for
25 jobs program that has expired or will expire on or before the thirty-
26 first day of December, two thousand five, may be extended by the power
27 authority of the state of New York from a date beginning no earlier than
28 the first day of December, two thousand four and extending through [May
29 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN.

30 (1) The board shall solicit and review applications for the power for
31 jobs electricity savings reimbursements and contract extensions from
32 recipients of power for jobs allocations under phases four and five of
33 the program for the award of such reimbursements and/or contract exten-
34 sions. The board may prescribe a simplified form and content for an
35 application for such reimbursements or extensions. An applicant shall be
36 eligible for such reimbursements and/or extensions only if it is in
37 compliance with and agrees to continue to meet the job retention and
38 creation commitments set forth in its prior power for jobs contract, or
39 such other commitments as the board deems reasonable; provided, however,
40 that for the power for jobs electricity savings reimbursements and
41 contract extensions granted on or after June thirtieth, two thousand
42 nine through [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN,
43 the board shall expedite the awarding of such reimbursements and/or
44 extensions and shall defer the review of compliance with such commit-
45 ments until after the applicant has been awarded a power for jobs elec-
46 tricity savings reimbursement and/or contract extension. The board shall
47 review such applications and make recommendations for the award: 1. of
48 such reimbursements through the power authority of the state of New York
49 for a period of time up to November thirtieth, two thousand four, and 2.
50 of such contract extensions or reimbursements as applied for by the
51 recipient for a period of time beginning December first, two thousand
52 four and ending [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEV-
53 EN. At no time shall a recipient receive both a reimbursement and exten-
54 sion after December first, two thousand four. The power authority of the
55 state of New York shall receive notification from the board regarding
56 the award of power for jobs electricity savings reimbursements and/or

1 contract extensions. ANY POWER FOR JOBS ALLOCATION WHICH IS RELIN-
2 QUISHED OR WITHDRAWN AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS
3 OF TWO THOUSAND TEN WHICH AMENDED THIS SUBDIVISION SHALL BE AVAILABLE
4 FOR REALLOCATION TO CUSTOMERS ELIGIBLE FOR POWER FOR JOBS ALLOCATIONS AS
5 DEFINED IN SUBDIVISION (F) OF THIS SECTION.

6 S 5. Section 9 of chapter 316 of the laws of 1997 amending the public
7 authorities law and other laws relating to the provision of low cost
8 power to foster statewide economic development, as amended by chapter
9 217 of the laws of 2009, is amended to read as follows:

10 S 9. This act shall take effect immediately and shall expire and be
11 deemed repealed [May 15, 2010] JUNE 30, 2011.

12 S 6. Subdivision 9 of section 186-a of the tax law, as amended by
13 chapter 217 of the laws of 2009, is amended to read as follows:

14 9. Notwithstanding any other provision of this chapter or any other
15 law to the contrary, for taxable periods nineteen hundred ninety-seven
16 through and including two thousand [ten] ELEVEN, any utility which
17 delivers power under the power for jobs program, as established by
18 section one hundred eighty-nine of the economic development law, shall
19 be allowed a credit, subject to the limitations thereon contained in
20 this subdivision, against the tax imposed under this section equal to
21 net lost revenues from the delivery of power under such power for jobs
22 program. Net lost revenues means the "net receipts" less "net utility
23 revenue" from such delivery of power. For purposes of this subdivision,
24 "net receipts" shall mean the amount that the utility would have other-
25 wise received from customers receiving power pursuant to allocations by
26 the New York state economic development power allocation board in
27 accordance with section one hundred eighty-nine of the economic develop-
28 ment law, or from customers whose allocation has been transferred to an
29 energy service company, or from energy service companies to which such
30 allocation has been transferred, pursuant to its tariff supervised by
31 the public service commission for substantially comparable service
32 otherwise applicable to such customers or energy service companies in
33 the absence of such designation, less the utility's annual average
34 incremental short-term variable and capacity costs of providing such
35 power in the absence of such purchase. For the purposes of this subdivi-
36 sion, "net utility revenue" shall mean the revenues the utility actually
37 receives in accordance with such section one hundred eighty-nine from
38 such customers so designated by the New York state economic development
39 power allocation board or from customers whose allocation has been
40 transferred to an energy service company, or from the energy service
41 companies to which a power for jobs allocation has been transferred,
42 less the utility's cost of such power under such program. Provided,
43 however, that any credit under this section shall be used only with
44 respect to the same taxable year during which such credit arose and
45 shall not be capable of being carried forward or backward to any other
46 taxable period. Nor shall any credit be allowed to any utility for the
47 total amount of power, expressed in kilowatt hours, purchased by the
48 customers of such utility under such program during the taxable period
49 that exceeds the prorated "baseline energy use" by all customers of that
50 utility purchasing power under such program during the taxable period.
51 "Baseline energy use" with respect to each customer shall mean the larg-
52 est amount of kilowatt hours of energy used by such customer during any
53 twelve consecutive month period occurring during the preceding thirty
54 months immediately preceding the New York state economic development
55 power allocation board's recommendation of such customer's application,
56 prorated to reflect the length of time of the customer's participation

1 in such program during the taxable period. Provided further, however,
2 that in accordance with subdivision (k) of section one hundred eighty-
3 nine of the economic development law no tax credit shall be available
4 for any revenue losses when a utility has declined to purchase power
5 allocated for sale under such program. No electric corporation shall be
6 allowed the tax credit authorized by this subdivision until it shall
7 file a certificate from the department of public service for the period
8 covered by the return verifying that the calculation of such tax credit
9 complies with this subdivision and the department of public service has
10 approved such certificate and forwarded a copy of such approved certif-
11 icate to the commissioner or any amended certificate resulting from the
12 need for correction. The credit allowed by this subdivision shall not be
13 applicable in calculating any other tax imposed or authorized to be
14 imposed by this chapter or any other law, and the amount of the tax
15 surcharge imposed under section one hundred eighty-six-c of this article
16 shall be calculated and payable as if the credit provided for by this
17 subdivision were not allowed.

18 S 7. Section 11 of chapter 645 of the laws of 2006 amending the
19 economic development law and other laws relating to reauthorizing the
20 New York power authority to make contributions to the general fund, as
21 amended by chapter 217 of the laws of 2009, is amended to read as
22 follows:

23 S 11. This act shall take effect immediately and shall be deemed to
24 have been in full force and effect on and after April 1, 2006; provided,
25 however, that the amendments to section 183 of the economic development
26 law and subparagraph 2 of paragraph g of the ninth undesignated para-
27 graph of section 1005 of the public authorities law made by sections two
28 and six of this act shall not affect the expiration of such section and
29 subparagraph, respectively, and shall be deemed to expire therewith;
30 provided further, however, that the amendments to section 189 of the
31 economic development law and subdivision 9 of section 186-a of the tax
32 law made by sections three, four, five and ten of this act shall not
33 affect the repeal of such section and subdivision, respectively, and
34 shall be deemed to be repealed therewith; provided further, however,
35 that section seven of this act shall expire and be deemed repealed [May
36 15, 2010] JUNE 30, 2011.

37 S 8. Subdivision (b) of section 183 of the economic development law,
38 as amended by chapter 316 of the laws of 1997, is amended to read as
39 follows:

40 (b) To evaluate applications for allocations of economic development
41 power and of power under the power for jobs program and to make recom-
42 mendations with respect to such proposed allocations; PROVIDED HOWEVER,
43 THAT THE BOARD SHALL NOT ACCEPT ANY NEW APPLICATION THAT REQUESTS AN
44 ALLOCATION OF ECONOMIC DEVELOPMENT POWER OR POWER UNDER THE POWER FOR
45 JOBS PROGRAM AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND TEN; AND PROVIDED
46 FURTHER THAT THE BOARD SHALL NOT EXTEND THE TERM OF ANY CONTRACT FOR AN
47 ALLOCATION UNDER THE ECONOMIC DEVELOPMENT PROGRAM THAT WILL EXPIRE ON OR
48 BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN FOR THE PURPOSE OF PROVIDING
49 AN ALLOCATION AFTER JUNE THIRTIETH, TWO THOUSAND ELEVEN.

50 S 9. Section 183 of the economic development law is amended by adding
51 a new subdivision (i) to read as follows:

52 (I) TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE ECONOMIC BENEFIT
53 POWER PROGRAM AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE
54 STATE OF NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED
55 IN SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

1 S 10. Subdivision (g) of section 183 of the economic development law,
2 as amended by chapter 226 of the laws of 2002, is amended to read as
3 follows:

4 (g) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE board
5 shall solicit applications for economic development power and for power
6 under the power for jobs program by public notice. Such notice shall be
7 in the form of newspaper advertisements, press releases, and by such
8 other means as the board finds appropriate. Solicitations of preliminary
9 applications for power under the power for jobs program shall begin
10 promptly after the effective date of chapter three hundred sixteen of
11 the laws of nineteen hundred ninety-seven establishing such program. The
12 board shall solicit applications for the additional three hundred mega-
13 watts of power available during the fourth phase of the program by
14 public notice, written notification to each recipient of power allocated
15 during the first phase of the program, and such other means as the board
16 finds appropriate. Solicitations of applications for such three hundred
17 megawatts of power available in phase four of the program shall begin
18 promptly after the effective date of part KK of chapter sixty-three of
19 the laws of two thousand making such power available. The board shall
20 solicit applications for the additional one hundred eighty-three mega-
21 watts of power available during the fifth phase of the program by public
22 notice, written notification to each recipient of power allocated during
23 the second and third phases of the program, and by such other means as
24 the board finds appropriate. Solicitations for such one hundred eighty-
25 three megawatts of power available in phase five of the program shall
26 begin promptly after the effective date of the chapter of the laws of
27 two thousand two making such power available.

28 S 11. Section 183 of the economic development law, as added by chapter
29 32 of the laws of 1987, is amended to read as follows:

30 S 183. General powers and duties of the board. In furtherance of the
31 purposes set forth in this article, the board shall have the following
32 powers:

33 (a) To adopt, within one hundred twenty days after appointment, AND
34 AMEND FROM TIME TO TIME, AS NECESSARY, eligibility criteria and rules
35 and regulations, IN CONSULTATION WITH THE POWER AUTHORITY OF THE STATE
36 OF NEW YORK AND THE URBAN DEVELOPMENT CORPORATION, relating to the
37 activities of the board AS DESCRIBED IN AND CONSISTENT WITH THIS
38 ARTICLE.

39 (b) To evaluate applications for allocations of economic development
40 power and to make recommendations with respect to such proposed allo-
41 cations, PROVIDED HOWEVER, THAT THE BOARD SHALL NOT ACCEPT NEW APPLICA-
42 TIONS OR EXTEND ANY CONTRACTS FOR ALLOCATIONS OF ECONOMIC DEVELOPMENT
43 POWER TO EXTEND BEYOND JUNE THIRTIETH, TWO THOUSAND ELEVEN.

44 (c) [To evaluate economic development plans for the use of industrial
45 incentive awards submitted by the power authority of the state of New
46 York pursuant to this article.]

47 (d) To provide advice and assistance when appropriate to applicants on
48 state economic development programs and services in addition to the
49 economic development power and industrial incentive awards specifically
50 provided for in this section.]

51 TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE ECONOMIC BENEFIT POWER
52 PROGRAM, AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF
53 NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED IN
54 SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

55 (D) WITH THE ASSISTANCE AND COOPERATION OF THE POWER AUTHORITY OF THE
56 STATE OF NEW YORK, THE URBAN DEVELOPMENT CORPORATION, AND THE NEW YORK

1 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, TO PROVIDE ADVICE AND
2 ASSISTANCE TO APPLICANTS WHERE APPROPRIATE, AND TO COORDINATE AND FACIL-
3 ITATE THE OPPORTUNITY FOR APPLICANTS TO AVAIL THEMSELVES OF ANY STATE OR
4 LOCAL ECONOMIC DEVELOPMENT PROGRAMS OTHER THAN THOSE PROVIDED FOR BY
5 THIS SECTION, FOR WHICH THEY MAY ALSO BE ELIGIBLE; IN SO DOING TO OPTI-
6 MIZE, TO THE EXTENT PRACTICABLE, THE USE OF AVAILABLE STATE ECONOMIC
7 DEVELOPMENT RESOURCES TO ACHIEVE THEIR DEDICATED PURPOSES IN A COORDI-
8 NATED MANNER, AS WELL AS THE ABILITY OF APPLICANTS TO INITIALLY ACCESS
9 AS MANY OF SUCH PROGRAMS AS POSSIBLE THROUGH A SINGLE STATE OFFICE OR
10 REPRESENTATIVE AND APPLICATIONS PROCESS.

11 (E) The [department, the] power authority of the state of New York,
12 [the urban development corporation, and all other state officers,
13 departments, boards, divisions and commissions] WITH THE ASSISTANCE OF
14 THE URBAN DEVELOPMENT CORPORATION AND THE DEPARTMENT OF ECONOMIC DEVEL-
15 OPMENT, shall render such services to the board [within their respective
16 functions], IN ADDITION TO THOSE PROVIDED FOR IN SUBDIVISION (D) OF THIS
17 SECTION, as may be requested by the board. IN ADDITION, EVERY AGENCY,
18 DEPARTMENT, OFFICE, DIVISION OR PUBLIC AUTHORITY OF THIS STATE SHALL
19 COOPERATE WITH THE BOARD AND FURNISH SUCH INFORMATION AND ASSISTANCE AS
20 THE BOARD DETERMINES IS REASONABLY NECESSARY TO ACCOMPLISH ITS PURPOSE

21 [The board shall solicit applications for economic development power
22 by public notice. Such notice shall be in the form of newspaper adver-
23 tisements, press releases, and by such other means as the board finds
24 appropriate].

25 S 12. The economic development law is amended by adding a new section
26 188-a to read as follows:

27 S 188-A. ECONOMIC BENEFIT POWER PROGRAM. 1. DEFINITIONS. FOR THE
28 PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
29 MEANINGS:

30 (A) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDI-
31 VISION THREE OF THIS SECTION.

32 (B) "AUTHORITY" SHALL MEAN THE POWER AUTHORITY OF THE STATE OF NEW
33 YORK.

34 (C) "ECONOMIC BENEFIT POWER AWARD" OR "AWARD" SHALL MEAN AND CONSIST
35 OF EQUAL AMOUNTS OF (I) UP TO FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF FIRM
36 HYDROELECTRIC POWER FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC
37 PROJECTS TO BE WITHDRAWN AS OF JUNE FIRST, TWO THOUSAND TEN FROM UTILITY
38 CORPORATIONS THAT, AS OF MAY THIRTY-FIRST, TWO THOUSAND TEN, PURCHASED
39 SUCH POWER FOR THE BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS
40 ("ECONOMIC BENEFIT POWER HYDROPOWER"), AND (II) POWER PROCURED BY THE
41 AUTHORITY THROUGH A COMPETITIVE PROCUREMENT PROCESS, AUTHORITY SOURCES
42 (OTHER THAN THE NIAGARA AND SAINT LAWRENCE PROJECTS) OR THROUGH AN
43 ALTERNATE METHOD ("ECONOMIC BENEFIT POWER MARKET POWER").

44 (D) "ELIGIBLE APPLICANT" SHALL MEAN AN ELIGIBLE BUSINESS, ELIGIBLE
45 SMALL BUSINESS, OR ELIGIBLE NOT-FOR-PROFIT CORPORATION AS DEFINED IN
46 THIS SECTION, PROVIDED HOWEVER, THAT AN ELIGIBLE APPLICANT SHALL NOT
47 INCLUDE RETAIL BUSINESSES AS DEFINED BY THE BOARD, INCLUDING, WITHOUT
48 LIMITATION, SPORTS VENUES, GAMING OR ENTERTAINMENT-RELATED ESTABLISH-
49 MENTS OR PLACES OF OVERNIGHT ACCOMMODATION.

50 (E) "ELIGIBLE BUSINESS" SHALL MEAN A BUSINESS OTHER THAN A
51 NOT-FOR-PROFIT CORPORATION WHICH NORMALLY UTILIZES A MINIMUM PEAK ELEC-
52 TRIC DEMAND IN EXCESS OF FOUR HUNDRED KILOWATTS.

53 (F) "ELIGIBLE SMALL BUSINESS" SHALL MEAN A BUSINESS OTHER THAN A NOT-
54 FOR-PROFIT CORPORATION WHICH NORMALLY UTILIZES A MINIMUM PEAK ELECTRIC
55 DEMAND EQUAL TO OR LESS THAN FOUR HUNDRED KILOWATTS.

(G) "LOCAL DISTRIBUTOR OF ELECTRIC SERVICE" SHALL MEAN AN ELECTRIC CORPORATION AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION TWO OF THE PUBLIC SERVICE LAW OR THE LONG ISLAND POWER AUTHORITY.

(H) "ELIGIBLE NOT-FOR-PROFIT CORPORATION" SHALL MEAN A CORPORATION DEFINED IN SUBDIVISION FIVE OF PARAGRAPH (A) OF SECTION ONE HUNDRED TWO OF THE NOT-FOR-PROFIT CORPORATION LAW.

2. APPLICATIONS. (A) THE BOARD SHALL SOLICIT APPLICATIONS FOR AWARDS UNDER THE ECONOMIC BENEFIT POWER PROGRAM BY PUBLIC NOTICE BEGINNING ON JANUARY FIRST, TWO THOUSAND ELEVEN. SUCH NOTICE MAY INCLUDE NEWSPAPER ADVERTISEMENTS, PRESS RELEASES, WEBSITE POSTINGS, PAPER OR ELECTRONIC MAILING, AND/OR SUCH OTHER FORM AS THE BOARD FINDS APPROPRIATE IN CONSULTATION WITH THE AUTHORITY.

(B) APPLICATIONS FOR THE ECONOMIC BENEFIT POWER PROGRAM SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE BOARD PRESCRIBES IN CONSULTATION WITH THE AUTHORITY. A COPY OF EACH APPLICATION RECEIVED SHALL BE MADE AVAILABLE FOR REVIEW BY EACH BOARD MEMBER.

(C) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH APPLICATION BY THE AUTHORITY, THE AUTHORITY SHALL PROMPTLY NOTIFY BY ELECTRONIC MEANS, INCLUDING WEB SITE POSTINGS AND SUCH OTHER METHODS THE BOARD DEEMS APPROPRIATE IN CONSULTATION WITH THE AUTHORITY, THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, AND EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY OWNED OR OPERATED BY THE APPLICANT IS LOCATED. SUCH NOTICE SHALL PROVIDE THE NAME AND A DESCRIPTION OF THE APPLICANT, AND THE ADDRESS OF THE APPLICANT'S FACILITIES THAT WOULD RECEIVE AN AWARD UNDER THE PROGRAM. THE AUTHORITY SHALL ALSO DEVELOP A LISTING WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH APPLICANT, THE AWARD SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE FACILITIES FOR WHICH THE APPLICANT SEEKS THE AWARD, AND MAKE THE LISTING AVAILABLE FOR PUBLIC REVIEW ON THE AUTHORITY'S WEBSITE.

3. REVIEW, APPLICABLE CRITERIA AND RECOMMENDATIONS. (A) THE BOARD SHALL REVIEW APPLICATIONS SUBMITTED UNDER THE ECONOMIC BENEFIT POWER PROGRAM. THE BOARD SHALL MAKE AN INITIAL DETERMINATION OF WHETHER THE APPLICANT IS AN ELIGIBLE APPLICANT, OR WHETHER A CURRENT APPLICANT CONTINUES TO BE ELIGIBLE. THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT THE ECONOMIC BENEFIT POWER PROGRAM AWARD BE AWARDED TO AN APPLICANT, OR THAT AN EXISTING REWARD BE EXTENDED OR RENEWED, BASED ON AN APPLICATION OF THE FOLLOWING CRITERIA WHICH SHALL BE CONSIDERED IN THE AGGREGATE AND NO ONE OF WHICH SHALL BE PRESUMPTIVELY DETERMINATIVE:

(I) THE SIGNIFICANCE OF THE COST OF ELECTRICITY TO THE APPLICANT'S OVERALL COST OF DOING BUSINESS, AND THE IMPACT THAT AN ECONOMIC BENEFIT POWER AWARD WILL HAVE ON THE APPLICANT'S OPERATING COSTS;

(II) THE EXTENT TO WHICH AN ECONOMIC BENEFIT POWER AWARD WILL RESULT IN NEW CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT, THE EXTENT TO WHICH THE APPLICANT WILL AGREE TO COMMIT TO MAKING NEW CAPITAL INVESTMENT AS A CONDITION TO RECEIVING AN ECONOMIC BENEFIT POWER AWARD, AND ANY PREVIOUS CAPITAL INVESTMENT, AT THE LOCATION OR ELSEWHERE IN THE STATE, WHETHER UNDERTAKEN BY THE APPLICANT UNDER OTHER ECONOMIC DEVELOPMENT PROGRAMS OR OTHERWISE;

(III) THE SIZE OF THE APPLICANT'S TOTAL PAYROLL (SALARY, BENEFITS AND THE NUMBER AND NATURE OF JOBS) AT THE FACILITY THAT WOULD RECEIVE THE AWARD;

(IV) THE NUMBER OF JOBS THAT WILL BE CREATED OR RETAINED WITHIN THE STATE IN RELATION TO THE REQUESTED AWARD, AND THE EXTENT TO WHICH THE

1 APPLICANT WILL AGREE TO COMMIT TO CREATING OR RETAINING SUCH JOBS AS A
2 CONDITION TO RECEIVING AN ECONOMIC BENEFIT POWER AWARD;

3 (V) WHETHER THE APPLICANT, DUE TO THE COST OF ELECTRICITY, IS AT RISK
4 OF CLOSING OR CURTAILING FACILITIES OR OPERATIONS IN THE STATE, RELOCAT-
5 ING FACILITIES OR OPERATIONS OUT OF THE STATE, OR LOSING A SIGNIFICANT
6 NUMBER OF JOBS IN THE STATE, IN THE ABSENCE OF AN ECONOMIC BENEFIT POWER
7 AWARD;

8 (VI) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY THAT WOULD RECEIVE
9 THE BENEFIT OF THE AWARD TO THE ECONOMY OF THE AREA IN WHICH SUCH FACIL-
10 ITY IS LOCATED OR TO THE STATE AS A WHOLE, INCLUDING THE EXTENT TO WHICH
11 THE AWARD IS LIKELY TO STIMULATE OR CREATE OTHER ECONOMIC ACTIVITY IN
12 THE REGION OR STATE;

13 (VII) THE EXTENT TO WHICH THE APPLICANT HAS PREVIOUSLY UNDERTAKEN
14 ENERGY AUDITS AND/OR INVESTED IN ENERGY EFFICIENCY MEASURES INCLUDING
15 CONSIDERATION OF THE TIMING OF SUCH AUDITS OR MEASURES, THE AMOUNT OF
16 INVESTMENTS IN ENERGY EFFICIENCY RELATIVE TO THE SIZE, NATURE AND
17 HISTORIC ENERGY CONSUMPTION, AND OTHER CAPITAL INVESTMENTS OF THE BUSI-
18 NESS, THE RELATIVE IMPROVEMENT IN ENERGY EFFICIENCY AND/OR NET ENERGY OR
19 FINANCIAL SAVINGS RESULTING FROM SUCH INVESTMENTS, AND SUCH OTHER
20 FACTORS AS THE BOARD MAY CONSIDER APPROPRIATE, AND/OR THE EXTENT TO
21 WHICH THE APPLICANT WILL AGREE, IF RECOMMENDED BY THE BOARD, TO COMMIT
22 TO MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEAS-
23 URES;

24 (VIII) THE EXTENT TO WHICH THE APPLICANT'S OPERATIONS ARE CONSISTENT
25 WITH THE POLICIES AND GOALS OF THE STATE ENERGY PLAN;

26 (IX) THE EXTENT TO WHICH THE APPLICANT PREVIOUSLY RECEIVED BENEFITS
27 UNDER OTHER POWER-RELATED PROGRAMS OF THE AUTHORITY, AND THE APPLICANT'S
28 PRIOR PERFORMANCE UNDER SUCH PROGRAMS WHERE APPLICABLE;

29 (X) IN THE CASE OF A NOT-FOR-PROFIT CORPORATION, THE EXTENT TO WHICH
30 IT PROVIDES CRITICAL SERVICES OR SUBSTANTIAL BENEFITS TO THE LOCAL
31 COMMUNITY;

32 (XI) THE EXTENT TO WHICH AN AWARD IS CONSISTENT WITH STATE, REGIONAL
33 AND LOCAL ECONOMIC DEVELOPMENT STRATEGIES IN THE AREA IN WHICH THE BUSI-
34 NESS IS LOCATED OR TO BE LOCATED;

35 (XII) THE EXTENT TO WHICH AN AWARD MIGHT RESULT IN INEQUITY FOR AN
36 APPLICANT AS COMPARED TO ITS COMPETITORS WITHIN THE STATE;

37 (XIII) IMPACT OF CURRENT ECONOMIC CONDITIONS ON THE APPLICANT; AND

38 (XIV) THE BOARD MAY ALSO CONSIDER THE EXTENT TO WHICH THE APPLICANT
39 HAS INVESTED IN ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER
40 AND/OR DISTRIBUTED GENERATION PURPOSES OR WILL AGREE, IF RECOMMENDED BY
41 THE BOARD, TO CONSIDER MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN
42 ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED
43 GENERATION PURPOSES AS IDENTIFIED PURSUANT TO SUBDIVISION SEVENTEEN OF
44 SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AS A CONDITION
45 TO RECEIVING AN AWARD; PROVIDED HOWEVER, THAT IN NO EVENT SHALL THE
46 ABSENCE OF SUCH INVESTMENT OR CONSIDERATION COUNT AGAINST THE APPLI-
47 CANT'S ELIGIBILITY FOR AN AWARD.

48 (B) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE AN
49 ECONOMIC BENEFIT POWER PROGRAM AWARD OR THE RENEWAL OR EXTENSION OF AN
50 EXISTING AWARD TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (1) A DESCRIPTION
51 OF THE AWARD THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED TO SUCH
52 APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN AWARD THAT
53 DIFFERS FROM THE AWARD REQUESTED BY AN ELIGIBLE APPLICANT; (2) AN EFFEC-
54 TIVE TERM OF CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE AUTHORITY
55 WHICH SHALL NOT EXCEED SEVEN YEARS, PROVIDED HOWEVER THAT THE TERM OF
56 ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JULY FIRST, TWO

1 THOUSAND ELEVEN; (3) THE DATE OF THE MANDATORY ANNUAL COMPLIANCE REVIEW
2 AT WHICH TIME, AND ANNUALLY AT THE SAME TIME EACH YEAR THEREAFTER, THE
3 ELIGIBLE APPLICANT, IF FOUND IN COMPLIANCE MAY APPLY FOR A SUBSEQUENT
4 CONTRACT FOR AN ADDITIONAL TERM OF ONE YEAR TO GO INTO EFFECT AT THE
5 CONCLUSION OF THE THEN CURRENT CONTRACT AS LONG AS COMPLIANCE CONTINUES
6 THROUGH THE CONCLUSION OF SUCH CONTRACT; AND (4) SUCH OTHER TERMS AND
7 CONDITIONS THAT THE BOARD RECOMMENDS AS APPROPRIATE. SUCH TERMS AND
8 CONDITIONS SHALL INCLUDE PROVISIONS FOR EFFECTIVE PERIODIC AUDITS OF
9 PROGRAM PARTICIPANTS FOR THE PURPOSE OF DETERMINING CONTRACT AND PROGRAM
10 COMPLIANCE, AND THE PARTIAL OR COMPLETE WITHDRAWAL OF AN ECONOMIC BENE-
11 FIT POWER PROGRAM AWARD IN THE CASE OF A PROGRAM PARTICIPANT THAT FAILS
12 TO MAINTAIN MUTUALLY AGREED UPON COMMITMENTS, INCLUDING BUT NOT LIMITED
13 TO LEVELS OF EMPLOYMENT, POWER UTILIZATION, CAPITAL INVESTMENTS, AND
14 ENERGY EFFICIENCY MEASURES.

15 (C) THE BOARD MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS
16 IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED HOWEVER THAT
17 THE BOARD SHALL SET ASIDE A PORTION OF THE BENEFITS AVAILABLE UNDER THE
18 ECONOMIC BENEFIT POWER PROGRAM IN AN AMOUNT UP TO ONE HUNDRED MEGAWATTS
19 FOR ELIGIBLE SMALL BUSINESSES AND ELIGIBLE NOT-FOR-PROFIT CORPORATIONS;
20 AND PROVIDED FURTHER THAT THE BOARD SHALL SET ASIDE A PORTION OF THE
21 BENEFITS AVAILABLE UNDER THE PROGRAM IN AN AMOUNT NOT LESS THAN ONE
22 HUNDRED MEGAWATTS FOR ELIGIBLE HIGH LOAD FACTOR MANUFACTURERS AS DEFINED
23 IN THE FOURTH UNDESIGNATED PARAGRAPH OF SECTION ONE THOUSAND FIVE OF THE
24 PUBLIC AUTHORITIES LAW.

25 (D) A RECOMMENDATION FOR AN ECONOMIC BENEFIT POWER PROGRAM AWARD SHALL
26 QUALIFY AN APPLICANT TO ENTER INTO A CONTRACT, WITH THE AUTHORITY TO
27 RECEIVE SUCH AWARD FROM THE AUTHORITY PURSUANT TO THE TERMS AND CONDI-
28 TIONS OF THE RECOMMENDATION OR ON SUCH OTHER TERMS AS THE AUTHORITY
29 DETERMINES TO BE APPROPRIATE. IN THE EVENT THAT THE AWARD INCLUDES THE
30 PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND SERVICES AS DEFINED
31 IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC
32 AUTHORITIES LAW, THE CONTRACT SHALL ALLOW FOR REIMBURSEMENT FOR COSTS TO
33 AN ENTITY OTHER THAN THE POWER AUTHORITY OF THE STATE OF NEW YORK SO
34 LONG AS SUCH COSTS ARE DEEMED REASONABLE AND APPROPRIATE. SUCH
35 CONTRACTS SHALL PROVIDE THAT THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE
36 WILL PROVIDE CUSTOMER AND BILLING SERVICES UPON MUTUALLY AGREED TERMS
37 AND CONDITIONS.

38 (E) UPON APPROVAL OR DENIAL OF ANY APPLICATION FOR AN ECONOMIC BENEFIT
39 POWER PROGRAM AWARD, THE BOARD SHALL ISSUE IN WRITING A STATEMENT OF ITS
40 FINDINGS AND CONCLUSIONS WITH RESPECT TO SUCH APPLICATION AND THE
41 REASONS FOR ITS APPROVAL OR DENIAL.

42 (F) (1) THE BOARD SHALL SUBMIT TO THE DIRECTOR OF THE BUDGET, THE
43 CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE
44 ASSEMBLY WAYS AND MEANS COMMITTEE AN EVALUATION OF THE SUCCESS OF EACH
45 ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS PREPARED BY AN INDE-
46 PENDENT THIRD PARTY. SUCH EVALUATION SHALL DETERMINE WHETHER THE
47 SERVICES PROVIDED HAVE HELPED RECIPIENTS TO SUCCEED, BASED ON A COMPAR-
48 ISON OF THE PERFORMANCE OF THE RECIPIENTS AGAINST THE NORMS OF THEIR
49 SPECIFIC INDUSTRY, AND SHALL ASSESS THE EFFECTIVENESS, IF ANY, OF EACH
50 ECONOMIC DEVELOPMENT POWER PROGRAM. SUCH AN EVALUATION SHALL BE SUBMIT-
51 TED BY DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN AND BY DECEMBER
52 THIRTY-FIRST EVERY FIVE YEARS THEREAFTER.

53 (2) BETWEEN EVALUATION DUE DATES, THE BOARD SHALL MAINTAIN THE NECES-
54 SARY RECORDS AND DATA REQUIRED TO SATISFY SUCH EVALUATION REQUIREMENTS
55 AND TO SATISFY INFORMATION REQUESTS RECEIVED FROM THE DIRECTOR OF THE
56 BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIR-

1 PERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE BETWEEN SUCH EVALUATION
2 DUE DATES.

3 S 13. The opening paragraph of subdivision 5 of section 1005 of the
4 public authorities law, as amended by chapter 294 of the laws of 1968,
5 is amended to read as follows:

6 To develop, maintain, manage and operate those parts of the Niagara
7 and Saint Lawrence hydroelectric projects owned or controlled by it in
8 such manner as to give effect to the policy hereby declared (and all
9 plans and acts, and all contracts for the use, sale, transmission and
10 distribution of the power generated by such projects, shall be made in
11 the light of, consistent with and subject to this policy), namely, that
12 such projects shall be in all respects for the aid, improvement, and
13 benefit of commerce and navigation in, through, along and past the
14 Niagara river, the Saint Lawrence river and the international rapids
15 section thereof, and that in the development of hydro-electric power
16 therefrom such projects shall be considered primarily as for the benefit
17 of the people of the state as a whole [and particularly the domestic and
18 rural consumers to whom the power can economically be made available,
19 and accordingly that sale to and use by industry shall be a secondary
20 purpose, to be utilized principally to secure a sufficiently high load
21 factor and revenue returns to permit domestic and rural use at the
22 lowest possible rates and in such manner as to encourage increased
23 domestic and rural use of electricity]. In furtherance of this policy
24 and to secure a wider distribution of such power and use of the greatest
25 value to the general public of the state, the authority shall in addi-
26 tion to other methods which it may find advantageous make provision so
27 that municipalities and other political [sub-divisions] SUBDIVISIONS of
28 the state now or hereafter authorized by law to engage in the distrib-
29 ution of electric power may secure a reasonable share of the power
30 generated by such projects, and shall sell the same or cause the same to
31 be sold to such municipalities and political subdivisions at prices
32 representing cost of generation, plus capital and operating charges,
33 plus a fair cost of transmission, all as determined by the trustees, and
34 subject to conditions which shall assure the resale of such power to
35 [domestic and rural consumers] SUCH CUSTOMERS at the lowest possible
36 price, provided, however, that in disposing of hydro-electric power
37 pursuant to and in furtherance of the aforementioned policy and
38 purposes, appropriate provision may also be made to allocate a reason-
39 able share of project power to agencies created or designated by other
40 states and authorized to resell the power to users under the same terms
41 and conditions as power is disposed of in New York state. To that end,
42 the authority may provide in any contract or contracts which it may make
43 for the sale, transmission and distribution of the power that the
44 purchaser, transmitter or distributor shall construct, maintain and
45 operate, on such terms as the authority may deem proper, such connecting
46 lines as may be necessary for transmission of the power from main trans-
47 mission lines to such municipalities or political subdivisions.

48 S 14. Section 1005 of the public authorities law is amended by adding
49 a new subdivision 13-a to read as follows:

50 13-A. ECONOMIC BENEFIT POWER PROGRAM. (A) NOTWITHSTANDING ANY OTHER
51 PROVISION OF LAW TO THE CONTRARY, BUT SUBJECT TO THE TERMS AND CONDI-
52 TIONS OF FEDERAL ENERGY REGULATORY COMMISSION LICENSES, TO ALLOCATE,
53 REALLOCATE OR EXTEND, DIRECTLY OR BY SALE FOR RESALE, UP TO NINE HUNDRED
54 TEN MEGAWATTS OF ECONOMIC BENEFIT POWER TO ELIGIBLE APPLICANTS LOCATED
55 WITHIN THE STATE OF NEW YORK UPON THE RECOMMENDATION OF THE NEW YORK

1 STATE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD PURSUANT TO SECTION
2 ONE HUNDRED EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOPMENT LAW.

3 (B) ECONOMIC BENEFIT POWER SHALL MEAN AND CONSIST OF EQUAL AMOUNTS OF
4 (1) UP TO FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF FIRM HYDROELECTRIC POWER
5 FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC PROJECTS TO BE WITH-
6 DRAWN AS OF JUNE FIRST, TWO THOUSAND TEN FROM UTILITY CORPORATIONS THAT,
7 AS OF MAY THIRTY-FIRST, TWO THOUSAND TEN, PURCHASED SUCH POWER FOR THE
8 BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS ("ECONOMIC BENEFIT POWER
9 HYDROPOWER"), AND (2) POWER PROCURED BY THE AUTHORITY THROUGH A COMPET-
10 ITIVE PROCUREMENT PROCESS, AUTHORITY SOURCES (OTHER THAN THE NIAGARA AND
11 SAINT LAWRENCE PROJECTS) OR THROUGH AN ALTERNATE METHOD ("ECONOMIC BENE-
12 FIT POWER MARKET POWER"). WITH RESPECT TO ECONOMIC BENEFIT POWER MARKET
13 POWER, THE AUTHORITY MAY PROVIDE POWER THROUGH AN ALTERNATE METHOD IF
14 THE COST IS LOWER THAN THE COST OF POWER OBTAINED THROUGH A COMPETITIVE
15 PROCUREMENT PROCESS; PROVIDED, HOWEVER, THAT IF SUCH LOWER COST POWER
16 COMES FROM AUTHORITY SOURCES, THE USE OF THAT POWER SHALL NOT REDUCE THE
17 AVAILABILITY OF, OR CAUSE AN INCREASE IN THE PRICE OF, POWER PROVIDED BY
18 THE AUTHORITY FOR ANY OTHER PROGRAM AUTHORIZED IN THIS ARTICLE OR PURSU-
19 ANT TO ANY OTHER STATUTE.

20 (C) NOTWITHSTANDING SECTION ONE THOUSAND NINE OF THIS TITLE OR ANY
21 OTHER PROVISION OF LAW TO THE CONTRARY, THE AUTHORITY IS AUTHORIZED,
22 BEGINNING JULY FIRST, TWO THOUSAND ELEVEN, TO MAKE AVAILABLE, CONTRACT
23 WITH AND SELL TO SUCH ELIGIBLE APPLICANTS AS ARE RECOMMENDED BY THE
24 ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD UP TO NINE HUNDRED TEN MEGA-
25 WATTS OF ECONOMIC BENEFIT POWER FOR ECONOMIC BENEFIT POWER ALLOCATIONS.
26 AN ECONOMIC BENEFIT POWER ALLOCATION SHALL CONSIST OF EQUAL PARTS OF
27 ECONOMIC BENEFIT POWER HYDROPOWER AND ECONOMIC BENEFIT POWER MARKET
28 POWER AS SUCH TERMS ARE DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION;
29 PROVIDED, HOWEVER, THAT PRIOR TO ENTERING INTO A CONTRACT WITH AN ELIGI-
30 BLE APPLICANT FOR THE SALE OF ECONOMIC BENEFIT POWER, AND PRIOR TO THE
31 PROVISION OF ELECTRIC SERVICE RELATING TO THE ECONOMIC BENEFIT POWER
32 ALLOCATION, THE AUTHORITY SHALL OFFER EACH ELIGIBLE APPLICANT THE OPTION
33 TO DECLINE TO PURCHASE THE ECONOMIC BENEFIT POWER MARKET POWER COMPONENT
34 OF SUCH ALLOCATION. IF AN ELIGIBLE APPLICANT DECLINES TO PURCHASE SUCH
35 MARKET POWER FROM THE AUTHORITY, THE AUTHORITY SHALL HAVE NO RESPONSI-
36 BILITY FOR SUPPLYING SUCH MARKET POWER TO THE ELIGIBLE APPLICANT;
37 FURTHER PROVIDED THAT, ANY REVENUES THAT MAY FROM TIME TO TIME RESULT
38 FROM THE SALE OF ANY PORTION OF ECONOMIC BENEFIT POWER HYDROPOWER NOT
39 OTHERWISE REQUIRED OR ALLOCATED TO MEET THE OBLIGATIONS OF THE ECONOMIC
40 BENEFIT POWER PROGRAM AS PROVIDED FOR BY THE PROVISIONS OF TITLE ONE OF
41 ARTICLE FIVE OF THE PUBLIC AUTHORITIES LAW OR ARTICLE SIX OF THE ECONOM-
42 IC DEVELOPMENT LAW, SHALL, AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUS-
43 TEE, BE SOLELY AND EXCLUSIVELY DEDICATED TO AND USED FOR THE PURPOSES OF
44 THE ECONOMIC BENEFIT POWER PROGRAM AND TO ENHANCE AND MAKE AVAILABLE
45 ECONOMIC BENEFIT POWER AWARDS.

46 (D) CONCURRENT WITH THE PROVISION OF ELECTRIC SERVICE RELATING TO THE
47 ECONOMIC BENEFIT POWER PROGRAM, THE AUTHORITY SHALL PROVIDE TO EACH
48 RECIPIENT OF A POWER ALLOCATION, IN EACH BILLING PERIOD, AN ITEMIZATION
49 OF THE CHARGES LEVIED FOR EACH COMPONENT OF SUCH POWER ALLOCATION.

50 S 15. Monthly payments for domestic and rural consumers. Notwith-
51 standing any provision of title 1 of article 5 of the public authorities
52 law or article 6 of the economic development law to the contrary, the
53 power authority of the state of New York is authorized, as deemed feasi-
54 ble and advisable by the trustees, to use revenues from the sale of
55 hydroelectric power, and such other funds of the power authority as
56 deemed feasible and advisable by the trustees, to fund monthly payments

1 to be made to such classes of electricity consumers that enjoyed the
2 benefits of authority hydroelectric power withdrawn pursuant to subdivi-
3 sion 13-a of section 1005 of the public authorities law for the purpose
4 of mitigating price impacts associated with the reallocation of such
5 power. Such monthly payments shall commence on June 1, 2010. The total
6 annual amount of monthly payments for each of the 12 month periods from
7 June 1, 2010 through May 31, 2011 and from June 1, 2011 through May 31,
8 2012 shall be seventy million dollars for each such period. The total
9 annual amount of monthly payments for the 12 month period from June 1,
10 2012 through May 31, 2013 shall be sixty million dollars. The total
11 amount of monthly payments for the 12 month period from June 1, 2013
12 through May 31, 2014 shall be fifty million dollars. The total amount of
13 monthly payments for each succeeding 12 month period thereafter shall be
14 forty million dollars. The total amount of such payments shall be
15 apportioned by the power authority of the state of New York among the
16 utility corporations that purchased such hydroelectric power for the
17 benefit of their domestic and rural consumers as of May 31, 2010 accord-
18 ing to the relative amounts of such power purchased by such companies.
19 Payments shall be credited to the electricity bills of such corpo-
20 rations' domestic and rural consumers in a manner to be determined by
21 the public service commission of the state of New York.

22 S 16. Transitional electricity discount. Notwithstanding any provision
23 of title 1 of article 5 of the public authorities law or article 6 of
24 the economic development law to the contrary, with respect to applicants
25 who are in substantial compliance with all contractual commitments and
26 receiving benefits under the power for jobs, energy cost savings bene-
27 fit, economic development, high load factor or municipal distribution
28 agency programs, but would otherwise not receive a recommendation from
29 the New York state economic development power allocation board for an
30 economic benefit power allocation pursuant to section 188-a of the
31 economic development law, such board shall recommend that the power
32 authority of the state of New York provide for a transitional electric-
33 ity discount to such applicants. The power authority of the state of New
34 York is authorized, as deemed feasible and advisable by the trustees, to
35 provide such transitional electricity discounts as recommended by the
36 New York State economic development power allocation board. Not less
37 often than annually, the power authority of the state of New York shall
38 identify and advise such board whether sufficient funds are available
39 for the funding of such transitional electricity discounts. The amount
40 of the transitional electricity discount for the period July 1, 2011
41 through June 30, 2013 shall be equivalent to 66 percent of the unit (per
42 kilowatt-hour) value of the savings received by the applicant under the
43 power for jobs or energy cost savings benefit programs during the 12
44 months ending on May 15, 2010. The amount of the transitional electric-
45 ity discount for the period July 1, 2013 through June 30, 2015 shall be
46 equivalent to 33 percent of the unit (per kilowatt-hour) value of the
47 savings received by the applicant under the power for jobs or energy
48 cost savings benefit programs during the 12 months ending on May 15,
49 2010. Such transitional electricity discount shall not be provided
50 after June 30, 2015. Nothing herein shall prohibit or in any way limit
51 any applicants who are in substantial compliance with all contractual
52 commitments and receiving benefits under the power for jobs, energy cost
53 savings benefit, economic development, high load factor or municipal
54 distribution agency programs, whether or not they are recipients of a
55 transitional electricity discount pursuant to this paragraph, from
56 applying for or receiving an economic benefit power award for which they

1 would otherwise qualify, provided however that the receipt of an econom-
2 ic benefit power award by an applicant shall bar any further eligibility
3 for a transitional electricity discount, and no applicant shall receive
4 both an economic benefit power award and a transitional electricity
5 discount for the same calendar or billing period.

6 S 17. Section 1005 of the public authorities law is amended by adding
7 two new subdivisions 13-b and 13-c to read as follows:

8 13-B. RESIDENTIAL CONSUMER ENERGY EFFICIENCY. BEGINNING JUNE FIRST,
9 TWO THOUSAND ELEVEN, THE AUTHORITY, AS DEEMED FEASIBLE AND ADVISABLE BY
10 THE TRUSTEES, IS AUTHORIZED TO USE SUCH FUNDS OF THE AUTHORITY AS DEEMED
11 FEASIBLE AND ADVISABLE BY THE TRUSTEES, TO SUPPLEMENT FUNDING FOR EXIST-
12 ING STATE ENERGY EFFICIENCY PROGRAMS, ADMINISTERED BY THE PUBLIC SERVICE
13 COMMISSION AND/OR NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHOR-
14 ITY. SUCH FUNDING SHALL BE MADE AVAILABLE TO RESIDENTIAL CONSUMERS WHO
15 RESIDE WITHIN THE SERVICE TERRITORIES OF THE UTILITY CORPORATIONS THAT,
16 AS OF MAY THIRTY-FIRST, TWO THOUSAND TEN, PURCHASED SUCH POWER FOR THE
17 BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS. IN MAKING FUNDING DETER-
18 MINATIONS PURSUANT TO THIS PARAGRAPH, THE AUTHORITY SHALL COOPERATE WITH
19 THE PUBLIC SERVICE COMMISSION AND THE NEW YORK STATE ENERGY RESEARCH AND
20 DEVELOPMENT AUTHORITY, AS APPROPRIATE. THE PUBLIC SERVICE COMMISSION AND
21 THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL
22 PROVIDE A REPORT TO THE AUTHORITY NO LESS THAN ANNUALLY WHICH SHALL
23 DESCRIBE THE PURPOSE FOR WHICH THE FUNDS AUTHORIZED BY THIS PARAGRAPH
24 WERE USED. THE REPORT SHALL INCLUDE SUFFICIENT INFORMATION TO DEMON-
25 STRATE THAT THE FUNDS WERE USED FOR THE PURPOSES AUTHORIZED BY THIS
26 PARAGRAPH AND PROVIDE SUCH OTHER INFORMATION AS THE AUTHORITY REQUESTS.

27 13-C. TO PROMOTE THE CONSERVATION AND EFFICIENT USE OF ELECTRICITY,
28 THE POWER AUTHORITY OF THE STATE OF NEW YORK SHALL UNDERTAKE OR CAUSE TO
29 BE UNDERTAKEN ENERGY AUDITS FOR THOSE APPLICANTS THAT THE BOARD HAS
30 DETERMINED WOULD BENEFIT FROM AND WOULD BE ELIGIBLE TO RECEIVE AN
31 ECONOMIC BENEFIT POWER AWARD. THE AUDITS SHALL ASSESS (I) A RECIPIENT'S
32 ELECTRICITY USE TO DETERMINE BASED ON A COMPARISON OF THE NORMS OF THEIR
33 SPECIFIC INDUSTRY, COST-EFFECTIVE MEASURES THAT COULD BE EMPLOYED TO
34 REDUCE ENERGY COSTS, ENERGY USE, OR IMPROVE THE EFFICIENCY OF BUILDINGS,
35 BUILDING SYSTEMS, EQUIPMENT, PROCESSES OR OPERATIONS; AND (II) THE
36 FEASIBILITY OF ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER
37 AND/OR DISTRIBUTED GENERATION PURPOSES. APPLICANTS' ENERGY AUDITS
38 PERFORMED UP TO FIVE YEARS PRIOR TO THE DATE OF APPLICATION SUBMISSION
39 MAY BE CONSIDERED BY THE BOARD AND THE RESULTS THEREOF USED BY THE BOARD
40 IN MAKING ITS DETERMINATION. COSTS OF THE ENERGY AUDITS CAUSED TO BE
41 UNDERTAKEN SHALL BE PAID BY THE POWER AUTHORITY OF THE STATE OF NEW YORK
42 AS DEEMED FEASIBLE AND ADVISABLE BY THE BOARD. FOR PURPOSES OF IMPLE-
43 MENTING THIS SUBDIVISION ONLY, THE POWER AUTHORITY OR ITS AGENT IS
44 AUTHORIZED TO APPLY FOR FUNDING FROM ANY PROGRAM THAT PAYS ALL OR SOME
45 OF THE COSTS OF SUCH AUDITS, AND THE POWER AUTHORITY OR ITS AGENT SHALL
46 BE ENTITLED TO RECEIVE SUCH FUNDING AS IF THE RECIPIENT OF SUCH LOW-COST
47 POWER HAD APPLIED FOR THE FUNDING DIRECTLY.

48 S 18. Section 1005 of the public authorities law is amended by adding
49 a new subdivision 17 to read as follows:

50 17. A. FOR THE PURPOSE OF FURNISHING THE STATE WITH SYSTEMATIC INFOR-
51 MATION REGARDING THE STATUS AND THE ACTIVITIES OF THE AUTHORITY, THE
52 AUTHORITY SHALL SUBMIT TO THE GOVERNOR, THE CHAIRPERSON OF THE SENATE
53 FINANCE COMMITTEE, THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS
54 COMMITTEE AND THE STATE COMPTROLLER, WITHIN NINETY DAYS AFTER THE END OF
55 ITS FISCAL YEAR, A COMPLETE AND DETAILED ANNUAL REPORT ON EACH ECONOMIC

1 DEVELOPMENT POWER PROGRAM IT ADMINISTERS. SUCH ANNUAL REPORT SHALL
2 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

3 (I) THE NUMBER OF COMMERCIAL/INDUSTRIAL RECIPIENTS OF ECONOMIC POWER
4 PROGRAM BENEFITS, WHERE THE ECONOMIC REGION CLIENT IS LOCATED, WHAT TYPE
5 AND HOW MUCH ASSISTANCE IS PROVIDED, MEGAWATTS OF ELECTRICITY AWARDED,
6 LENGTH OF CURRENT CONTRACT, CURRENT CONTRACT COMPLIANCE STATUS, LAST
7 AUDIT, NUMBER OF JOBS RETAINED AND/OR ADDED IN THE FISCAL YEAR, APPROXI-
8 MATE ENERGY EFFICIENCY SAVINGS AND AMOUNT OF POWER REALLOCATED FROM
9 PREVIOUS YEARS DUE TO FORFEITED BENEFITS;

10 (II) COST TO THE AUTHORITY TO PROVIDE ECONOMIC DEVELOPMENT POWER
11 PROGRAMS DURING THE PREVIOUS FISCAL YEAR; AND

12 (III) SOURCES, TYPES AND COSTS OF POWER OBTAINED FOR EACH ECONOMIC
13 DEVELOPMENT POWER PROGRAM IT ADMINISTERS, INCLUDING, BUT NOT LIMITED TO,
14 AN EXPLANATION OF HOW POWER IS OBTAINED BY THE AUTHORITY TO SUPPORT EACH
15 ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS, THE PERCENTAGE OF
16 LONG- AND SHORT-TERM POWER PURCHASE AGREEMENTS USED AND DAY-AHEAD AND
17 SPOT MARKET PURCHASES, AND SUMMARY OF NEW YORK INDEPENDENT SYSTEM OPERA-
18 TOR (NYISO) CHARGES PAID BY AUTHORITY CUSTOMERS.

19 B. THE COMPTROLLER SHALL BE CHARGED WITH SEEING THAT THE REPORTS
20 MANDATED IN THIS SUBDIVISION ARE FILED ON TIME AND THAT THEY ARE SUFFI-
21 CIENTLY COMPREHENSIVE. THE COMPTROLLER SHALL REPORT ANY DEFICIENCIES TO
22 THE GOVERNOR AND TO THE LEGISLATIVE CHAIRS NAMED IN SUBDIVISION ONE OF
23 THIS SECTION.

24 S 19. Severability clause. If any clause, sentence, paragraph, subdi-
25 vision, section or part of this act shall be adjudged by any court of
26 competent jurisdiction to be invalid, such judgment shall not affect,
27 impair, or invalidate the remainder thereof, but shall be confined in
28 its operation to the clause, sentence, paragraph, subdivision, section
29 or part thereof directly involved in the controversy in which such judg-
30 ment shall have been rendered. It is hereby declared to be the intent of
31 the legislature that this act would have been enacted even if such
32 invalid provisions had not been included therewith.

33 S 20. This act shall take effect immediately; provided that the amend-
34 ments to section 183 of the economic development law made by sections
35 two, eight, nine and ten of this act shall be subject to the expiration
36 and reversion of such section pursuant to section 9 of chapter 316 of
37 the laws of 1997, as amended, when upon such date the provisions of
38 section eleven of this act shall take effect; provided, further, that
39 the amendments to section 189 of the economic development law made by
40 sections three and four of this act shall not affect the repeal of such
41 section and shall be deemed repealed therewith; and provided, further
42 that the amendments to subdivision 9 of section 186-a of the tax law
43 made by section six of this act shall not affect the repeal of such
44 subdivision and shall be deemed repealed therewith.