

S. 6913

A. 10002

S E N A T E - A S S E M B L Y

February 24, 2010

IN SENATE -- Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

IN ASSEMBLY -- Introduced by M. of A. DELMONTE, GABRYSZAK -- read once and referred to the Committee on Energy

AN ACT to amend the public authorities law and the economic development law, in relation to authorizing unallocated expansion or replacement power to be allocated for western New York economic development fund benefits

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

1 Section 1. The opening paragraph of subdivision 13 of section 1005 of  
2 the public authorities law, as amended by chapter 645 of the laws of  
3 2006, is amended to read as follows:  
4 Notwithstanding any other provision of law to the contrary but subject  
5 to the terms and conditions of federal energy regulatory commission  
6 licenses, to allocate or reallocate directly or by sale for resale, two  
7 hundred fifty megawatts of firm Niagara project hydroelectric power as  
8 "expansion power" and four hundred forty-five megawatts of firm Niagara  
9 project hydroelectric power as "replacement power" to businesses within  
10 the state located within thirty miles of the Niagara project, and four  
11 hundred ninety megawatts of firm and interruptible power from the Saint  
12 Lawrence-FDR project as "preservation power" sold to businesses located  
13 within the counties of Jefferson, Saint Lawrence and Franklin, provided  
14 that the amount of expansion power allocated to businesses in Chautauqua  
15 county on January first, nineteen hundred eighty-seven shall continue to  
16 be allocated in such county and, provided further that up to seventy  
17 megawatts of replacement power, up to thirty-eight and six-tenths mega-  
18 watts of preservation power from the Saint Lawrence-FDR project which is  
19 relinquished or withdrawn after the effective date of chapter three  
20 hundred thirteen of the laws of two thousand five which amended this  
21 subdivision and, for the period ending on December thirty-first, two  
22 thousand six, up to twenty megawatts of other power from the Saint

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

LBD10545-10-9

1 Lawrence-FDR project which is unallocated as of the effective date of  
2 chapter three hundred thirteen of the laws of two thousand five which  
3 amended this subdivision, shall be allocated by the authority together  
4 with such other funds of the authority as the trustees deem feasible and  
5 advisable for energy cost savings benefits AND FOR WESTERN NEW YORK  
6 ECONOMIC DEVELOPMENT FUND BENEFITS pursuant to the twelfth undesignated  
7 paragraph of this section. Provided, however, that the amount of  
8 replacement, preservation power, or the additional twenty megawatts of  
9 Saint Lawrence-FDR power for the period ending December thirty-first,  
10 two thousand six made available for such purpose, used for energy cost  
11 savings benefits that are relinquished by or withdrawn from a recipient  
12 thereof shall be offered by the authority proportionately for a period  
13 of six months for reallocation to applicants who qualify respectively  
14 for replacement or preservation power allocations as provided in this  
15 subdivision. If such power is not allocated within such period it shall  
16 be allocated for the purpose of energy cost savings benefits pursuant to  
17 subdivision (h) of section one hundred eighty-three of the economic  
18 development law. The authority shall negotiate contracts on reasonable  
19 terms and conditions to renew or extend every permanent contract allo-  
20 cation of expansion power in effect on the effective date of this subdivi-  
21 sion and, to the extent consistent with such contracts, the authority  
22 shall negotiate contracts on reasonable terms and conditions to extend  
23 or renew all other allocations or allotments of such power in effect on  
24 such date. The authority shall negotiate contracts on reasonable terms  
25 and conditions to renew or extend for a period of at least five years  
26 every permanent contract allocation of replacement power in effect on  
27 the effective date of chapter three hundred thirteen of the laws of two  
28 thousand five which added this sentence and that would expire by its  
29 terms on or before the end of the initial federal energy regulatory  
30 commission license for the Niagara project; provided that, in negotiat-  
31 ing the terms and conditions of such contracts, the authority may  
32 consider a business' compliance with all current contractual obli-  
33 gations, including employment and power usage commitments. Contracts  
34 entered into pursuant to this subdivision shall contain reasonable  
35 provisions providing for the partial or complete withdrawal of the power  
36 in the event the recipient fails to maintain mutually agreed levels of  
37 employment, investment, and power utilization. Expansion or replacement  
38 power relinquished by businesses or withdrawn by the authority shall be  
39 allocated directly or by sale for resale by the authority to businesses  
40 within the state located within thirty miles of the Niagara project  
41 provided, that the PROCEEDS FROM THE SALE OF SUCH UNALLOCATED AND ALLO-  
42 CATED, BUT RELINQUISHED OR WITHDRAWN OR CURRENTLY NOT ACCESSED EXPANSION  
43 OR REPLACEMENT POWER, AS SHALL BE DETERMINED BY THE TRUSTEES, SHALL BE  
44 ALLOCATED FOR THE PURPOSES OF WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND  
45 BENEFITS PURSUANT TO THE TWELFTH UNDESIGNATED PARAGRAPH OF THIS SECTION.  
46 PROCEEDS TO SUCH WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND SHALL NOT  
47 PRECLUDE THE AUTHORITY FROM ALLOCATING EXPANSION OR REPLACEMENT POWER TO  
48 ELIGIBLE COMPANIES UNDER THE PROVISIONS OF THIS SECTION. THE amount of  
49 power allocated to businesses in Chautauqua county on January first,  
50 nineteen hundred eighty-seven shall be allocated in such county. Preser-  
51 vation power that is relinquished by businesses or withdrawn by the  
52 authority shall be allocated directly or by sale for resale by the  
53 authority within the counties of Jefferson, Saint Lawrence and Franklin.  
54 Allocations made pursuant to this paragraph shall be made in accordance  
55 with criteria established by the trustees. Such criteria shall address  
56 the expansion of industry and employment pursuant to paragraph (a) of

1 this subdivision and the revitalization of existing industry pursuant to  
2 paragraph (b) of this subdivision.

3 S 2. The twelfth undesignated paragraph of section 1005 of the public  
4 authorities law, as amended by section 7 of part U of chapter 59 of the  
5 laws of 2006, is amended to read as follows:

6 The authority is authorized to allocate up to seventy megawatts of  
7 unallocated power from the Niagara project sold prior to the effective  
8 date of this paragraph as replacement power, up to thirty-eight and  
9 six-tenths megawatts of preservation power from the Saint Lawrence-FDR  
10 project which is relinquished or withdrawn after the effective date of  
11 this paragraph, and for the period ending on December thirty-first, two  
12 thousand six, up to an additional twenty megawatts of power from the  
13 Saint Lawrence-FDR project which is unallocated as of the effective date  
14 of this paragraph, for sale into the wholesale market, the net earnings  
15 from which and such other funds of the authority as deemed feasible and  
16 advisable by the trustees, shall be used for energy cost savings bene-  
17 fits. Such energy cost savings benefits shall be made upon recommenda-  
18 tion of the economic development power allocation board, pursuant to  
19 subdivision (h) of section one hundred eighty-three of the economic  
20 development law. THE AUTHORITY IS AUTHORIZED TO ALLOCATE UNALLOCATED  
21 EXPANSION AND REPLACEMENT POWER FROM THE NIAGARA PROJECT, AND RELIN-  
22 QUISHED OR WITHDRAWN EXPANSION AND REPLACEMENT POWER, FOR SALE INTO THE  
23 WHOLESALE MARKET, THE NET EARNINGS FROM WHICH AND SUCH OTHER FUNDS OF  
24 THE AUTHORITY AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, SHALL BE  
25 USED FOR WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS. SUCH WEST-  
26 ERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS SHALL BE MADE UPON  
27 RECOMMENDATION OF THE WESTERN NEW YORK ADVISORY GROUP, AS ESTABLISHED  
28 UNDER "MEMORANDUM OF UNDERSTANDING REGARDING WESTERN NEW YORK HYDROPOW-  
29 ER" AGREED TO BY THE AUTHORITY ON OCTOBER TWENTY-SECOND, TWO THOUSAND  
30 THREE, PURSUANT TO SUBDIVISION (I) OF SECTION ONE HUNDRED EIGHTY-THREE  
31 OF THE ECONOMIC DEVELOPMENT LAW. For purposes of this paragraph, the  
32 term net earnings shall mean any excess of revenues earned from the sale  
33 of such power allocated to the wholesale market from the Niagara and  
34 Saint Lawrence-FDR projects over the revenues that would have been  
35 received had such firm power been allocated and sold on a firm basis by  
36 the authority prior to the effective date of this paragraph.

37 S 3. Section 183 of the economic development law is amended by adding  
38 a new subdivision (i) to read as follows:

39 (I) 1. THE WESTERN NEW YORK ADVISORY GROUP SHALL SOLICIT APPLICATIONS  
40 AND MAKE RECOMMENDATIONS FOR APPROVAL OF WESTERN NEW YORK ECONOMIC  
41 DEVELOPMENT FUND BENEFITS IN AMOUNTS MADE AVAILABLE PURSUANT TO THE  
42 TWELFTH UNDESIGNATED PARAGRAPH OF SECTION ONE THOUSAND FIVE OF THE  
43 PUBLIC AUTHORITIES LAW.

44 2. ELIGIBLE PROJECTS SHALL INCLUDE PROJECTS PROPOSED BY ENTITIES FROM  
45 THE PUBLIC, PRIVATE OR NOT-FOR-PROFIT SECTORS LOCATED WITHIN A  
46 THIRTY-MILE RADIUS OF THE NIAGARA POWER PLANT PROJECT THAT DEVELOP OR  
47 MANAGE ECONOMIC DEVELOPMENT PROJECTS THAT HAVE IDENTIFIED THE ULTIMATE  
48 SITE OR USER OF SUCH ECONOMIC DEVELOPMENT FUND BENEFITS. ELIGIBLE  
49 PROJECTS SHALL BE PROPOSED BY ENTITIES THAT ARE CUSTOMERS SERVED UNDER  
50 THE POWER AUTHORITY OF THE STATE OF NEW YORK'S HIGH LOAD FACTOR, ECONOM-  
51 IC DEVELOPMENT POWER AND OTHER BUSINESS CUSTOMERS SERVED BY POLITICAL  
52 SUBDIVISIONS OF THE STATE AUTHORIZED BY LAW TO ENGAGE IN THE DISTRIB-  
53 UTION OF ELECTRIC POWER THAT WERE AUTHORIZED TO BE SERVED BY THE AUTHOR-  
54 ITY'S FORMER JAMES A. FITZPATRICK NUCLEAR POWER PLANT.

55 3. EACH APPLICATION FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND  
56 BENEFIT SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE WESTERN NEW

1 YORK ADVISORY GROUP, IN CONSULTATION WITH THE POWER AUTHORITY OF THE  
2 STATE OF NEW YORK, WHICH CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC  
3 DEVELOPMENT, MAINTAIN AND DEVELOP JOBS, AND ENCOURAGE NEW CAPITAL  
4 INVESTMENT THROUGHOUT THE STATE OF NEW YORK. SUCH CRITERIA SHALL ADDRESS  
5 BUT NEED NOT BE LIMITED TO:

6 (A) THE OVERALL ECONOMIC IMPACT OF THE APPLICANT IN TERMS OF THE  
7 NUMBER OF JOBS TO BE CREATED OR RETAINED, AVERAGE ANNUAL PAYROLL, CAPI-  
8 TAL INVESTMENT AND USE OF NEW YORK STATE SUPPLIERS;

9 (B) THE LIKELIHOOD THAT IN THE ABSENCE OF APPROVAL OF A WESTERN NEW  
10 YORK ECONOMIC DEVELOPMENT FUND BENEFIT, THE APPLICANT WOULD CLOSE,  
11 CONTRACT OR RELOCATE OUTSIDE THE STATE OF NEW YORK;

12 (C) THE APPLICANT'S COMPLIANCE WITH THE COMMITMENT TO RETAIN AND/OR  
13 CREATE JOBS CONTAINED IN ITS PRIOR POWER CONTRACT WITH THE POWER AUTHOR-  
14 ITY OF THE STATE OF NEW YORK;

15 (D) THE EXTENT TO WHICH A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND  
16 BENEFIT WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE  
17 APPLICANT'S BUSINESS AND ITS EXISTING EMPLOYMENT WITHIN THE STATE; AND

18 (E) THE OVERALL IMPACT OF THE PROJECT IN TERMS OF THE ECONOMIC VIABIL-  
19 ITY OF IDENTIFIED ULTIMATE SITE OR USER INCLUDING THE PROJECT'S ABILITY  
20 TO INDUCE ADDITIONAL COMMERCIAL ACTIVITY ON THE SITE, REVITALIZE AN  
21 URBAN AREA, AND ITS COMPLIANCE WITH REGIONAL DEVELOPMENT PLANS.

22 4. APPLICATIONS FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENE-  
23 FIT SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND  
24 SUPPORTING DATA AS THE BOARD MAY PRESCRIBE. THE WESTERN NEW YORK ADVI-  
25 SORY GROUP SHALL REVIEW THE APPLICATIONS RECEIVED AND SHALL DETERMINE  
26 THE APPLICATIONS WHICH BEST MEET THE CRITERIA ESTABLISHED FOR THE BENE-  
27 FITS PURSUANT TO THIS SUBDIVISION AND IT SHALL RECOMMEND SUCH APPLICA-  
28 TIONS TO THE POWER AUTHORITY AND THE STATE OF NEW YORK WITH SUCH TERMS  
29 AND CONDITIONS AS IT DEEMS APPROPRIATE. SUCH TERMS AND CONDITIONS SHALL  
30 INCLUDE REASONABLE PROVISIONS PROVIDING FOR THE PARTIAL OR COMPLETE  
31 WITHDRAWAL OF THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT IN  
32 THE EVENT THAT THE RECIPIENT FAILS TO MAINTAIN MUTUALLY AGREED UPON  
33 COMMITMENTS THAT MAY INCLUDE, BUT ARE NOT LIMITED TO, INFRASTRUCTURE  
34 PROJECT COMPLETION. RECOMMENDATION FOR APPROVAL OF A WESTERN NEW YORK  
35 ECONOMIC DEVELOPMENT FUND BENEFIT SHALL QUALIFY AN APPLICANT TO RECEIVE  
36 A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT FROM THE POWER  
37 AUTHORITY OF THE STATE OF NEW YORK PURSUANT TO THE TERMS AND CONDITIONS  
38 OF THE RECOMMENDATION.

39 5. THE TRANSFER OF A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENE-  
40 FIT SHALL BE PROHIBITED UNLESS SPECIFICALLY APPROVED BY THE WESTERN NEW  
41 YORK ADVISORY GROUP AS CONSISTENT WITH THE CRITERIA ESTABLISHED PURSUANT  
42 TO THIS PARAGRAPH. ANY TRANSFER WHICH OCCURS WITHOUT SUCH ADVISORY  
43 GROUP'S APPROVAL SHALL BE INVALID AND SUCH TRANSFER MAY SUBJECT THE  
44 RECIPIENT TO REVOCATION OF ITS BENEFIT AND MODIFICATION OR REVOCATION OF  
45 ITS CONTRACT.

46 S 4. This act shall take effect immediately, provided that the amend-  
47 ments to section 183 of the economic development law made by section  
48 three of this act shall not affect the expiration of such section and  
49 shall be deemed to expire therewith.