S T A T E   O F   N E W   Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

June 19, 2009

Introduced by M. of A. CAHILL, SILVER, FARRELL -- Multi-Sponsored by -- M. of A. ALESSI, AMEDORE, BENEDETTO, BOYLAND, CHRISTENSEN, CLARK, COLTON, CRESPO, DESTITO, EDDINGTON, ENGLEBRIGHT, GABRYSZAK, GALEF, GORDON, JACOBS, JAFFEE, KOON, LANCMAN, LATIMER, LAVINE, LIFTON, LUPARDO, MARKEY, PHEFFER, RAMOS, REILLY, RUSSELL, SCHIMEL, SKARTADOS, SPANO, STIRPE, TITONE, WEINSTEIN -- read once and referred to the Committee on Energy

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, the tax law and 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, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program; to amend the public authorities law, in relation to authorizing an additional voluntary contribution into the state treasury under the power for jobs program; and to amend the public authorities law, in relation to an energy audit program

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

Section 1. Paragraphs 2 and 4 of subdivision (h) of section 183 of the economic development law, paragraph 2 as amended by section 1 of part Y of chapter 59 of the laws of 2008 and paragraph 4 as amended by chapter 89 of the laws of 2007, are amended to read as follows:

2. During the period commencing on November first, two thousand five and ending on [June thirtieth] MAY FIFTEENTH, two thousand [nine] TEN eligible businesses shall only include customers served under the power authority of the state of New York's high load factor, economic development power and other business customers served by political subdivisions of the state authorized by law to engage in the distribution of electric

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

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power that were authorized to be served by the authority from the authority's former James A. Fitzpatrick nuclear power plant as of the effective date of this subdivision whose power prices may be subject to increase before [June thirtieth] MAY FIFTEENTH, two thousand [nine] TEN. Provided, however, that the total amount of megawatts of replacement and preservation power which, due to the extension of the energy cost savings benefits, are not relinquished by or withdrawn from a recipient shall be deemed to be relinquished or withdrawn for purposes of offering such megawatts by the authority for reallocation pursuant to subdivision thirteen of section one thousand five of the public authorities law. Provided, further, that for any such reallocation, the authority shall maintain the same energy cost savings benefit level for all eligible businesses using any available authority resources as deemed feasible and advisable by the trustees pursuant to section seven of part U of chapter fifty-nine of the laws of two thousand six.

4. Applications for an energy cost savings benefit shall be in the form and contain such information, exhibits and supporting data as the board may prescribe. The board shall review the applications received and shall determine the applications which best meet the criteria established for the benefits pursuant to this subdivision and it shall recommend such applications to the power authority of the state of New York with such terms and conditions as it deems appropriate; provided, however, that for energy cost savings benefits granted on or after June thirtieth, two thousand [seven] NINE through [June thirtieth] MAY FIFTEENTH, two thousand [eight] TEN, the board shall expedite the awarding of such benefits and shall defer the review of compliance with such criteria until after the applicant has been awarded an energy cost savings benefit. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the energy cost savings benefit in the event the recipient fails to maintain mutually agreed upon commitments that may include, but are not limited to, levels of employment, capital investment and power utilization. Recommendation for approval of an energy cost savings benefit shall qualify an applicant to receive an energy cost savings benefit from the power authority of the state of New York pursuant to the terms and conditions of the recommendation.

S 2. The opening paragraph of paragraph 5 of subdivision (a) of section 189 of the economic development law, as amended by section 2 of part Y of chapter 59 of the laws of 2008, is amended to read as follows:

"Power for jobs electricity savings reimbursements" shall mean payments made by the power authority of the state of New York as recommended by the board to recipients of allocations of power under phases four and five of the power for jobs program for a period of time until November thirtieth, two thousand four, subsequent to the expiration of their phase four or five power for jobs contract provided however that any power for jobs recipient may choose to receive an electricity savings reimbursement as a substitute for a contract extension for the period from the date the recipient's contract expires through [June thirtieth] MAY FIFTEENTH, two thousand [nine] TEN. The "basic reimbursement" is an amount that when credited against the recipient's actual "unit cost of electricity" during a quarter (meaning the cost for commodity and delivery per kilowatt-hour for the quantity of electricity purchased and delivered under the power for jobs program during a similar period in the final year of the recipient's contract), results in an effective unit cost of electricity during the quarter equal to the average unit cost of electricity such recipient paid during the final year of the contract for power allocated under phase four or five of the power for jobs program.

S 3. Subdivisions (f) and (l) of section 189 of the economic development law, as amended by section 3 of part Y of chapter 59 of the laws of 2008, are amended to read as follows:

(f) Eligibility. The board shall recommend applications for allocations of power under the power for jobs program to or for the use of businesses which normally utilize a minimum peak electric demand in excess of four hundred kilowatts; provided, however, that up to one hundred megawatts of power available for allocation during the initial three phases of the power for jobs program may be recommended for allocations to not-for-profit corporations and to small businesses; and, provided, further that up to seventy-five megawatts of power available for allocation during the fourth phase of the program may be recommended for allocations to not-for-profit corporations and to small businesses. The board may require small businesses that normally utilize a minimum peak electric demand of less than one hundred kilowatts to aggregate their electric demand in amounts of no less than one hundred kilowatts, for the purposes of applying to the board for an allocation of power. The board shall recommend allocations of the additional three hundred megawatts available during the fourth phase of the program to any such eligible applicant, including any recipient of power allocated during the first phase of the program. The board shall recommend allocations of the additional one hundred eighty-three megawatts available during the fifth phase of the program to any eligible applicant, including any recipient of power allocated during the second and third phases of the program; provided, however, that the term of contracts for allocations under the fifth phase of the program shall in no case extend beyond [June thirtieth] MAY FIFTEENTH, two thousand [nine] TEN. Notwithstanding any provision of law to the contrary, and, in particular, the provisions of this chapter concerning the terms of contracts for allocations under the power for jobs program, the terms of any contract with a recipient of power allocated under phase two of the power for jobs program that has expired or will expire on or before the thirty-first day of August, two thousand two, may be extended by the power authority of the state of New York for an additional period of three months effective on the date of such expiration, pending the filing and approval of an application by such recipient for an allocation under the fifth phase of the program. The term of any new contract with such recipient under the fifth phase of the program shall be deemed to include any three month contract extension made pursuant to this subdivision and the termination date of any such new contract under phase five shall be no later than if such new contract had commenced upon the expiration of the recipient's original phase two contract. The terms of any contract with a recipient of power allocated under phase four and/or phase five of the power for jobs program that has expired or will expire on or before the thirty-first day of December, two thousand five, may be extended by the power authority of the state of New York from a date beginning no earlier than the first day of December, two thousand four and extending through [June thirtieth] MAY FIFTEENTH, two thousand [nine] TEN.

(l) The board shall solicit and review applications for the power for jobs electricity savings reimbursements and contract extensions from recipients of power for jobs allocations under phases four and five of the program for the award of such reimbursements and/or contract extensions. The board may prescribe a simplified form and content for an application for such reimbursements or extensions. An applicant shall be eligible for such reimbursements and/or extensions only if it is in compliance with and agrees to continue to meet the job retention and creation commitments set forth in its prior power for jobs contract, or such other commitments as the board deems reasonable; provided, however, that for the power for jobs electricity savings reimbursements and contract extensions granted on or after June thirtieth, two thousand [seven] NINE through [June thirtieth] MAY FIFTEENTH, two thousand [eight] TEN, the board shall expedite the awarding of such reimbursements and/or extensions and shall defer the review of compliance with such commitments until after the applicant has been awarded a power for jobs electricity savings reimbursement and/or contract extension. The board shall review such applications and make recommendations for the award: 1. of such reimbursements through the power authority of the state of New York for a period of time up to November thirtieth, two thousand four, and 2. of such contract extensions or reimbursements as applied for by the recipient for a period of time beginning December first, two thousand four and ending [June thirtieth] MAY FIFTEENTH, two thousand [nine] TEN. At no time shall a recipient receive both a reimbursement and extension after December first, two thousand four. The power authority of the state of New York shall receive notification from the board regarding the award of power for jobs electricity savings reimbursements and/or contract extensions.

S 4. Section 9 of 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, as amended by section 4 of part Y of chapter 59 of the laws of 2008, is amended to read as follows:

S 9. This act shall take effect immediately and shall expire and be deemed repealed [June 30] MAY 15, [2009] 2010.

S 5. Subdivision 9 of section 186-a of the tax law, as amended by section 5 of part Y of chapter 59 of the laws of 2008, is amended to read as follows:

9. Notwithstanding any other provision of this chapter or any other law to the contrary, for taxable periods nineteen hundred ninety-seven through and including two thousand [nine] TEN, any utility which delivers power under the power for jobs program, as established by section one hundred eighty-nine of the economic development law, shall be allowed a credit, subject to the limitations thereon contained in this subdivision, against the tax imposed under this section equal to net lost revenues from the delivery of power under such power for jobs program. Net lost revenues means the "net receipts" less "net utility revenue" from such delivery of power. For purposes of this subdivision, "net receipts" shall mean the amount that the utility would have otherwise received from customers receiving power pursuant to allocations by the New York state economic development power allocation board in accordance with section one hundred eighty-nine of the economic development law, or from customers whose allocation has been transferred to an energy service company, or from energy service companies to which such allocation has been transferred, pursuant to its tariff supervised by the public service commission for substantially comparable service otherwise applicable to such customers or energy service companies in the absence of such designation, less the utility's annual average incremental short-term variable and capacity costs of providing such power in the absence of such purchase. For the purposes of this subdivision, "net utility revenue" shall mean the revenues the utility actually receives in accordance with such section one hundred eighty-nine from

such customers so designated by the New York state economic development power allocation board or from customers whose allocation has been transferred to an energy service company, or from the energy service companies to which a power for jobs allocation has been transferred, less the utility's cost of such power under such program. Provided, however, that any credit under this section shall be used only with respect to the same taxable year during which such credit arose and shall not be capable of being carried forward or backward to any other taxable period. Nor shall any credit be allowed to any utility for the total amount of power, expressed in kilowatt hours, purchased by the customers of such utility under such program during the taxable period that exceeds the prorated "baseline energy use" by all customers of that utility purchasing power under such program during the taxable period. "Baseline energy use" with respect to each customer shall mean the largest amount of kilowatt hours of energy used by such customer during any twelve consecutive month period occurring during the preceding thirty months immediately preceding the New York state economic development power allocation board's recommendation of such customer's application, prorated to reflect the length of time of the customer's participation in such program during the taxable period. Provided further, however, that in accordance with subdivision (k) of section one hundred eighty-nine of the economic development law no tax credit shall be available for any revenue losses when a utility has declined to purchase power allocated for sale under such program. No electric corporation shall be allowed the tax credit authorized by this subdivision until it shall file a certificate from the department of public service for the period covered by the return verifying that the calculation of such tax credit complies with this subdivision and the department of public service has approved such certificate and forwarded a copy of such approved certificate to the commissioner or any amended certificate resulting from the need for correction. The credit allowed by this subdivision shall not be applicable in calculating any other tax imposed or authorized to be imposed by this chapter or any other law, and the amount of the tax surcharge imposed under section one hundred eighty-six-c of this article shall be calculated and payable as if the credit provided for by this subdivision were not allowed.

S 6. Section 11 of 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, as amended by section 6 of part Y of chapter 59 of the laws of 2008, is amended to read as follows:

S 11. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2006; provided, however, that the amendments to section 183 of the economic development law and subparagraph 2 of paragraph g of the ninth undesignated paragraph of section 1005 of the public authorities law made by sections two and six of this act shall not affect the expiration of such section and subparagraph, respectively, and shall be deemed to expire therewith; provided further, however, that the amendments to section 189 of the economic development law and subdivision 9 of section 186-a of the tax law made by sections three, four, five and ten of this act shall not affect the repeal of such section and subdivision, respectively, and shall be deemed to be repealed therewith; provided further, however, that section seven of this act shall expire and be deemed repealed [June 30] MAY 15, [2009] 2010.

S 7. Subparagraph 2 of paragraph g of the ninth undesignated paragraph of section 1005 of the public authorities law, as amended by section 7 of part Y of chapter 59 of the laws of 2008, is amended to read as follows:

2. The authority, as deemed feasible and advisable by the trustees, is authorized to make payments to recipients of the power for jobs electricity savings reimbursements and additional annual voluntary contributions into the state treasury to the credit of the general fund. The authority shall make such contributions to the state treasury no later than ninety days after the end of the calendar year in which a credit under subdivision nine of section one hundred eighty-six-a of the tax law is available: (a) for the additional three hundred megawatts of power under the fourth phase of the program provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two; and (b) for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program. Payments for any electricity savings reimbursement under section one hundred eighty-nine of the economic development law shall be made pursuant to such section. Such annual contributions shall be equal to fifty percent of the total amount of such credits available each year to all local distributors of electricity. In addition, such authorization for contribution in state fiscal year two thousand two--two thousand three shall be equal to the total amount of credit available in two thousand one and two thousand two; and such authorization for contribution in state fiscal year two thousand three--two thousand four shall be equal to the total amount of credit available in two thousand three; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In state fiscal year two thousand four--two thousand five, such authorized annual contribution shall be equal to one hundred percent of the total amount of such credits available each year to all local distributors of electricity. Such authorization for contribution in state fiscal years two thousand four and two thousand five shall be equal to the total amount of credit available in two thousand four and two thousand five; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In addition, such authorization for contribution for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program in each state fiscal year shall be equal to the total amount of credit or reimbursement available in state fiscal year two thousand four--two thousand five, state fiscal year two thousand five--two thousand six and two thousand six--two thousand seven. Additionally, notwithstanding any other section of law, the authority is authorized to make a contribution in an amount related to total amounts of credit received under phases one, two, three, four and five of the program. In no case shall the contribution for state fiscal year two thousand five--two thousand six be less than seventy-five million dollars. The contribution for state

fiscal year two thousand six--two thousand seven shall be one hundred million dollars. The contribution for state fiscal year two thousand seven--two thousand eight shall be thirty million dollars. The contribution for state fiscal year two thousand eight--two thousand nine shall be twenty-five million dollars. THE CONTRIBUTION FOR STATE FISCAL YEAR TWO THOUSAND NINE--TWO THOUSAND TEN SHALL BE TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS. The department of public service shall estimate the payment due by the end of the calendar year in which the credit is available. In no case shall the amount of the total annual contributions for the years during which delivery and sale of power associated with all power for jobs phases and any extensions thereof takes place exceed the aggregate total of four hundred [forty-nine] SIXTY-ONE million FIVE HUNDRED THOUSAND dollars.

S 8. Section 1005 of the public authorities law is amended by adding a new subdivision 16 to read as follows:

16. THE AUTHORITY SHALL CREATE AN ENERGY AUDIT PROGRAM FOR THE RECIPIENTS OF THE AUTHORITY'S LOW COST POWER PROGRAMS.

A. TO ENSURE THE MOST JUDICIAL AND PRUDENT USE OF ENERGY RESOURCES, RECIPIENTS OF ECONOMIC DEVELOPMENT POWER, EXPANSION POWER, REPLACEMENT POWER, PRESERVATION POWER, HIGH LOAD FACTOR POWER, MUNICIPAL DISTRIBUTION AGENCY POWER AND THE POWER FOR JOBS PROGRAMS SHALL UNDERGO ENERGY AUDITS AS DESCRIBED IN PARAGRAPH B OF THIS SUBDIVISION.

B. THE AUTHORITY SHALL COMMENCE TO PERFORM OR CAUSE TO BE PERFORMED ENERGY AUDITS FOR ALL RECIPIENTS OF ECONOMIC DEVELOPMENT POWER, EXPANSION POWER, REPLACEMENT POWER, PRESERVATION POWER, HIGH LOAD FACTOR POWER, MUNICIPAL DISTRIBUTION AGENCY POWER AND POWER UNDER THE POWER FOR JOBS PROGRAMS. THE AUDITS SHALL ASSESS A RECIPIENT'S ELECTRICITY USE TO DETERMINE (I) POSSIBLE ENERGY CONSERVATION AND EFFICIENCY MEASURES THAT MAY BE INSTALLED AND (II) THE FEASIBILITY OF ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENERATION PURPOSES. THE AUTHORITY SHALL CONDUCT THE AUDITS IN A MANNER THAT WILL PROVIDE FOR A REPRESENTATIVE SAMPLE OF THE PROGRAM RECIPIENTS, AS CATEGORIZED BY THE PROGRAM OF ENROLLMENT, TYPE OF BUSINESS, GEOGRAPHY FOR STATEWIDE PROGRAMS AND ALLOCATION SIZE. RECIPIENTS THAT HAVE HAD AN ENERGY AUDIT PERFORMED UP TO FIVE YEARS PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION MAY BE CONSIDERED TO HAVE SATISFIED THE REQUIREMENTS OF THIS SUBDIVISION, IF THE AUTHORITY FINDS THE AUDIT TO BE SUFFICIENT. COSTS ASSOCIATED WITH PERFORMING ENERGY AUDITS SHALL BE PAID BY THE POWER AUTHORITY OF THE STATE OF NEW YORK AS DEEMED FEASIBLE AND ADVISABLE BY THE BOARD.

C. THE AUTHORITY SHALL COMPLETE AND SUBMIT AN ANNUAL REPORT ON THE ENERGY AUDIT PROGRAM DETAILING THE PROGRESS OF ITS AUDITS, INCLUDING THE NUMBER OF AUDITS COMPLETED TO DATE, TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY, THE CHAIR OF THE SENATE FINANCE COMMITTEE, THE CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE, THE CHAIR OF THE ASSEMBLY ENERGY COMMITTEE AND THE CHAIR OF THE SENATE ENERGY AND TELECOMMUNICATIONS COMMITTEE AND THE STATE COMPTROLLER BY DECEMBER THIRTIETH, TWO THOUSAND NINE AND ON SUCH DATE EVERY YEAR HEREAFTER UNTIL ALL RECIPIENTS HAVE COMPLETED THE AUDIT PROGRAM.

S 9. (a) The department of economic development and the power authority of the state of New York shall complete and submit a report on the power authority's low cost power programs. The report shall examine the replacement, expansion, preservation power programs, the industrial economic development power program, the power for jobs programs, and the economic cost saving benefits power programs. Information to be presented in the report shall reflect the state of the programs as of June 30, 2009 and the year prior and shall include but not be limited to:

i. a short history of the programs;

ii. a complete list of all recipients of these programs grouped by program;

iii. the city or town and county of each recipient;

iv. the allocation allotted to each recipient;

v. annualized retail value for each recipient's allocation;

vi. the metric for calculating the annualized retail value;

vii. the original employment commitment from each recipient;

viii. the current employment level for each recipient; and

ix. an assessment by the department of economic development of the economic benefits to New York, which shall include, but not be limited to: jobs created and retained, level of capital investment, wage and benefit levels, and the effect of regional economies; and shall include an assessment on the effect of these programs considering the ongoing economic conditions in the state.

The report shall also include a brief description of the preference power program including the total power available to the program as measured in megawatts, the total power used by the program as measured in megawatt hours for the program as a whole and by utility service area, an estimated annualized retail value for the program and the metric for calculating that value.

The report shall be submitted by September 30, 2009 to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, the minority leader of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the assembly energy committee, the chair of the senate energy and telecommunications committee, and the state comptroller and shall be made available on the authority's website and, except for the program's summaries, the report's information shall be presented in a spreadsheet format.

(b) The power authority of the state of New York shall provide copies of all reports required by subdivision 14 of section 1005 of the public authorities law, for the year 2006, 2007, 2008 and 2009 to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the assembly energy committee and the chair of the senate energy and telecommunications committee, and the state comptroller by September 30, 2009.

(c) The power authority of the state of New York shall submit a report or reports detailing in full the energy procurement practices, including all supply side and demand side activities, the authority uses to meet the capacity and needs of their customers, and a complete and detailed report or reports on the authority's commodity pricing practices. The report shall be submitted to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the assembly energy committee and the chair of the senate energy and telecommunications committee, and the state comptroller by September 30, 2009.

S 10. Severability clause. If any clause, sentence, paragraph, subdi- vision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included therewith.

S 11. This act shall take effect immediately; provided that the amendments to sections 183 and 189 of the economic development law, subdivision 9 of section 186-a of the tax law and subparagraph 2 of paragraph g of the ninth undesignated paragraph of section 1005 of the public authorities law, made by sections one, two, three, five and seven of this act, shall not affect the expiration of such provisions and shall be deemed repealed therewith.