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2009-2010 Regular Sessions

I N S E N A T E

June 4, 2009

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

AN ACT to amend the public authorities law and the economic development law, in relation to authorizing unallocated expansion and replacement power and a percentage of relinquished or withdrawn expansion and replacement power to be allocated for the purposes of western New York economic development fund benefits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19 relinquished or withdrawn after the effective date of chapter three  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

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

LBD10545-04-9

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12 energy cost savings benefits that are relinquished by or withdrawn from  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

1 shall address the expansion of industry and employment pursuant to para-  
2 graph (a) of this subdivision and the revitalization of existing indus-  
3 try pursuant to paragraph (b) of this subdivision.

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

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

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

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

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

1 3. EACH APPLICATION FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND  
2 BENEFIT SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE WESTERN NEW  
3 YORK ADVISORY GROUP, IN CONSULTATION WITH THE POWER AUTHORITY OF THE  
4 STATE OF NEW YORK, WHICH CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC  
5 DEVELOPMENT, MAINTAIN AND DEVELOP JOBS, AND ENCOURAGE NEW CAPITAL  
6 INVESTMENT THROUGHOUT THE STATE OF NEW YORK. SUCH CRITERIA SHALL ADDRESS  
7 BUT NEED NOT BE LIMITED TO:

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

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

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

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

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

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

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

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