

6010

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. AUBERTINE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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; and to amend the public authorities law, in relation to authorizing an additional voluntary contribution into the state treasury under the power for jobs program

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

1 Section 1. Paragraphs 2 and 4 of subdivision (h) of section 183 of the
2 economic development law, paragraph 2 as amended by section 1 of part Y
3 of chapter 59 of the laws of 2008 and paragraph 4 as amended by chapter
4 89 of the laws of 2007, are amended to read as follows:
5 2. During the period commencing on November first, two thousand five
6 and ending on [June thirtieth] MARCH THIRTY-FIRST, two thousand [nine]
7 ELEVEN eligible businesses shall only include customers served under the
8 power authority of the state of New York's high load factor, economic
9 development power and other business customers served by political
10 subdivisions of the state authorized by law to engage in the distrib-
11 ution of electric power that were authorized to be served by the author-
12 ity from the authority's former James A. Fitzpatrick nuclear power plant
13 as of the effective date of this subdivision whose power prices may be
14 subject to increase before [June thirtieth] MARCH THIRTY-FIRST, two
15 thousand [nine] ELEVEN. Provided, however, that the total amount of
16 megawatts of replacement and preservation power which, due to the exten-
17 sion of the energy cost savings benefits, are not relinquished by or

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

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1 withdrawn from a recipient shall be deemed to be relinquished or with-
2 drawn for purposes of offering such megawatts by the authority for real-
3 location pursuant to subdivision thirteen of section one thousand five
4 of the public authorities law. Provided, further, that for any such
5 reallocation, the authority shall maintain the same energy cost savings
6 benefit level for all eligible businesses using any available authority
7 resources as deemed feasible and advisable by the trustees pursuant to
8 section seven of part U of chapter fifty-nine of the laws of two thou-
9 sand six.

10 4. Applications for an energy cost savings benefit shall be in the
11 form and contain such information, exhibits and supporting data as the
12 board may prescribe. The board shall review the applications received
13 and shall determine the applications which best meet the criteria estab-
14 lished for the benefits pursuant to this subdivision and it shall recom-
15 mend such applications to the power authority of the state of New York
16 with such terms and conditions as it deems appropriate; provided, howev-
17 er, that for energy cost savings benefits granted on or after June thir-
18 tieth, two thousand [seven] NINE through June thirtieth, two thousand
19 [eight] TEN, the board shall expedite the awarding of such benefits and
20 shall defer the review of compliance with such criteria until after the
21 applicant has been awarded an energy cost savings benefit. Such terms
22 and conditions shall include reasonable provisions providing for the
23 partial or complete withdrawal of the energy cost savings benefit in the
24 event the recipient fails to maintain mutually agreed upon commitments
25 that may include, but are not limited to, levels of employment, capital
26 investment and power utilization. Recommendation for approval of an
27 energy cost savings benefit shall qualify an applicant to receive an
28 energy cost savings benefit from the power authority of the state of New
29 York pursuant to the terms and conditions of the recommendation.

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

33 "Power for jobs electricity savings reimbursements" shall mean
34 payments made by the power authority of the state of New York as recom-
35 mended by the board to recipients of allocations of power under phases
36 four and five of the power for jobs program for a period of time until
37 November thirtieth, two thousand four, subsequent to the expiration of
38 their phase four or five power for jobs contract provided however that
39 any power for jobs recipient may choose to receive an electricity
40 savings reimbursement as a substitute for a contract extension for the
41 period from the date the recipient's contract expires through [June
42 thirtieth] MARCH THIRTY-FIRST, two thousand [nine] ELEVEN. The "basic
43 reimbursement" is an amount that when credited against the recipient's
44 actual "unit cost of electricity" during a quarter (meaning the cost for
45 commodity and delivery per kilowatt-hour for the quantity of electricity
46 purchased and delivered under the power for jobs program during a simi-
47 lar period in the final year of the recipient's contract), results in an
48 effective unit cost of electricity during the quarter equal to the aver-
49 age unit cost of electricity such recipient paid during the final year
50 of the contract for power allocated under phase four or five of the
51 power for jobs program.

52 S 3. Subdivisions (f) and (l) of section 189 of the economic develop-
53 ment law, as amended by section 3 of part Y of chapter 59 of the laws of
54 2008, are amended to read as follows:

55 (f) Eligibility. The board shall recommend applications for allo-
56 cations of power under the power for jobs program to or for the use of

1 businesses which normally utilize a minimum peak electric demand in
2 excess of four hundred kilowatts; provided, however, that up to one
3 hundred megawatts of power available for allocation during the initial
4 three phases of the power for jobs program may be recommended for allo-
5 cations to not-for-profit corporations and to small businesses; and,
6 provided, further that up to seventy-five megawatts of power available
7 for allocation during the fourth phase of the program may be recommended
8 for allocations to not-for-profit corporations and to small businesses.
9 The board may require small businesses that normally utilize a minimum
10 peak electric demand of less than one hundred kilowatts to aggregate
11 their electric demand in amounts of no less than one hundred kilowatts,
12 for the purposes of applying to the board for an allocation of power.
13 The board shall recommend allocations of the additional three hundred
14 megawatts available during the fourth phase of the program to any such
15 eligible applicant, including any recipient of power allocated during
16 the first phase of the program. The board shall recommend allocations of
17 the additional one hundred eighty-three megawatts available during the
18 fifth phase of the program to any eligible applicant, including any
19 recipient of power allocated during the second and third phases of the
20 program; provided, however, that the term of contracts for allocations
21 under the fifth phase of the program shall in no case extend beyond
22 [June thirtieth] MARCH THIRTY-FIRST, two thousand [nine] ELEVEN.
23 Notwithstanding any provision of law to the contrary, and, in partic-
24 ular, the provisions of this chapter concerning the terms of contracts
25 for allocations under the power for jobs program, the terms of any
26 contract with a recipient of power allocated under phase two of the
27 power for jobs program that has expired or will expire on or before the
28 thirty-first day of August, two thousand two, may be extended by the
29 power authority of the state of New York for an additional period of
30 three months effective on the date of such expiration, pending the
31 filing and approval of an application by such recipient for an allo-
32 cation under the fifth phase of the program. The term of any new
33 contract with such recipient under the fifth phase of the program shall
34 be deemed to include any three month contract extension made pursuant to
35 this subdivision and the termination date of any such new contract under
36 phase five shall be no later than if such new contract had commenced
37 upon the expiration of the recipient's original phase two contract. The
38 terms of any contract with a recipient of power allocated under phase
39 four and/or phase five of the power for jobs program that has expired or
40 will expire on or before the thirty-first day of December, two thousand
41 five, may be extended by the power authority of the state of New York
42 from a date beginning no earlier than the first day of December, two
43 thousand four and extending through [June thirtieth] MARCH THIRTY-FIRST,
44 two thousand [nine] ELEVEN.

45 (l) The board shall solicit and review applications for the power for
46 jobs electricity savings reimbursements and contract extensions from
47 recipients of power for jobs allocations under phases four and five of
48 the program for the award of such reimbursements and/or contract exten-
49 sions. The board may prescribe a simplified form and content for an
50 application for such reimbursements or extensions. An applicant shall be
51 eligible for such reimbursements and/or extensions only if it is in
52 compliance with and agrees to continue to meet the job retention and
53 creation commitments set forth in its prior power for jobs contract, or
54 such other commitments as the board deems reasonable; provided, however,
55 that for the power for jobs electricity savings reimbursements and
56 contract extensions granted on or after June thirtieth, two thousand

1 [seven] NINE through June thirtieth, two thousand [eight] TEN, the board
2 shall expedite the awarding of such reimbursements and/or extensions and
3 shall defer the review of compliance with such commitments until after
4 the applicant has been awarded a power for jobs electricity savings
5 reimbursement and/or contract extension. The board shall review such
6 applications and make recommendations for the award: 1. of such
7 reimbursements through the power authority of the state of New York for
8 a period of time up to November thirtieth, two thousand four, and 2. of
9 such contract extensions or reimbursements as applied for by the recipi-
10 ent for a period of time beginning December first, two thousand four and
11 ending [June thirtieth] MARCH THIRTY-FIRST, two thousand [nine] ELEVEN.
12 At no time shall a recipient receive both a reimbursement and extension
13 after December first, two thousand four. The power authority of the
14 state of New York shall receive notification from the board regarding
15 the award of power for jobs electricity savings reimbursements and/or
16 contract extensions.

17 S 4. Section 9 of chapter 316 of the laws of 1997 amending the public
18 authorities law and other laws relating to the provision of low cost
19 power to foster statewide economic development, as amended by section 4
20 of part Y of chapter 59 of the laws of 2008, is amended to read as
21 follows:

22 S 9. This act shall take effect immediately and shall expire and be
23 deemed repealed [June 30] MARCH 31, [2009] 2011.

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

27 9. Notwithstanding any other provision of this chapter or any other
28 law to the contrary, for taxable periods nineteen hundred ninety-seven
29 through and including two thousand [nine] ELEVEN, any utility which
30 delivers power under the power for jobs program, as established by
31 section one hundred eighty-nine of the economic development law, shall
32 be allowed a credit, subject to the limitations thereon contained in
33 this subdivision, against the tax imposed under this section equal to
34 net lost revenues from the delivery of power under such power for jobs
35 program. Net lost revenues means the "net receipts" less "net utility
36 revenue" from such delivery of power. For purposes of this subdivision,
37 "net receipts" shall mean the amount that the utility would have other-
38 wise received from customers receiving power pursuant to allocations by
39 the New York state economic development power allocation board in
40 accordance with section one hundred eighty-nine of the economic develop-
41 ment law, or from customers whose allocation has been transferred to an
42 energy service company, or from energy service companies to which such
43 allocation has been transferred, pursuant to its tariff supervised by
44 the public service commission for substantially comparable service
45 otherwise applicable to such customers or energy service companies in
46 the absence of such designation, less the utility's annual average
47 incremental short-term variable and capacity costs of providing such
48 power in the absence of such purchase. For the purposes of this subdivi-
49 sion, "net utility revenue" shall mean the revenues the utility actually
50 receives in accordance with such section one hundred eighty-nine from
51 such customers so designated by the New York state economic development
52 power allocation board or from customers whose allocation has been
53 transferred to an energy service company, or from the energy service
54 companies to which a power for jobs allocation has been transferred,
55 less the utility's cost of such power under such program. Provided,
56 however, that any credit under this section shall be used only with

1 respect to the same taxable year during which such credit arose and
2 shall not be capable of being carried forward or backward to any other
3 taxable period. Nor shall any credit be allowed to any utility for the
4 total amount of power, expressed in kilowatt hours, purchased by the
5 customers of such utility under such program during the taxable period
6 that exceeds the prorated "baseline energy use" by all customers of that
7 utility purchasing power under such program during the taxable period.
8 "Baseline energy use" with respect to each customer shall mean the larg-
9 est amount of kilowatt hours of energy used by such customer during any
10 twelve consecutive month period occurring during the preceding thirty
11 months immediately preceding the New York state economic development
12 power allocation board's recommendation of such customer's application,
13 prorated to reflect the length of time of the customer's participation
14 in such program during the taxable period. Provided further, however,
15 that in accordance with subdivision (k) of section one hundred eighty-
16 nine of the economic development law no tax credit shall be available
17 for any revenue losses when a utility has declined to purchase power
18 allocated for sale under such program. No electric corporation shall be
19 allowed the tax credit authorized by this subdivision until it shall
20 file a certificate from the department of public service for the period
21 covered by the return verifying that the calculation of such tax credit
22 complies with this subdivision and the department of public service has
23 approved such certificate and forwarded a copy of such approved certif-
24 icate to the commissioner or any amended certificate resulting from the
25 need for correction. The credit allowed by this subdivision shall not be
26 applicable in calculating any other tax imposed or authorized to be
27 imposed by this chapter or any other law, and the amount of the tax
28 surcharge imposed under section one hundred eighty-six-c of this article
29 shall be calculated and payable as if the credit provided for by this
30 subdivision were not allowed.

31 S 6. Section 11 of chapter 645 of the laws of 2006 amending the
32 economic development law and other laws relating to reauthorizing the
33 New York power authority to make contributions to the general fund, as
34 amended by section 6 of part Y of chapter 59 of the laws of 2008, is
35 amended to read as follows:

36 S 11. This act shall take effect immediately and shall be deemed to
37 have been in full force and effect on and after April 1, 2006; provided,
38 however, that the amendments to section 183 of the economic development
39 law and subparagraph 2 of paragraph g of the ninth undesignated para-
40 graph of section 1005 of the public authorities law made by sections two
41 and six of this act shall not affect the expiration of such section and
42 subparagraph, respectively, and shall be deemed to expire therewith;
43 provided further, however, that the amendments to section 189 of the
44 economic development law and subdivision 9 of section 186-a of the tax
45 law made by sections three, four, five and ten of this act shall not
46 affect the repeal of such section and subdivision, respectively, and
47 shall be deemed to be repealed therewith; provided further, however,
48 that section seven of this act shall expire and be deemed repealed [June
49 30] MARCH 31, [2009] 2011.

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

54 2. The authority, as deemed feasible and advisable by the trustees, is
55 authorized to make payments to recipients of the power for jobs elec-
56 tricity savings reimbursements and additional annual voluntary contrib-

utions 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 THE LESSER OF TWENTY MILLION DOLLARS OR THE VALUE OF THE CREDITS AUTHORIZED BY SUBDIVISION

1 NINE OF SECTION ONE HUNDRED EIGHTY-SIX-A OF THE TAX LAW AS CERTIFIED TO
2 THE COMMISSIONER. The department of public service shall estimate the
3 payment due by the end of the calendar year in which the credit is
4 available. In no case shall the amount of the total annual contributions
5 for the years during which delivery and sale of power associated with
6 all power for jobs phases and any extensions thereof takes place exceed
7 the aggregate total of four hundred [forty-nine] SIXTY-NINE million
8 dollars.

9 S 8. Severability clause. If any clause, sentence, paragraph, subdivi-
10 sion, section or part of this act shall be adjudged by any court of
11 competent jurisdiction to be invalid, such judgment shall not affect,
12 impair, or invalidate the remainder thereof, but shall be confined in
13 its operation to the clause, sentence, paragraph, subdivision, section
14 or part thereof directly involved in the controversy in which such judg-
15 ment shall have been rendered. It is hereby declared to be the intent of
16 the legislature that this act would have been enacted even if such
17 invalid provisions had not been included therewith.

18 S 9. This act shall take effect immediately; provided that the amend-
19 ments to sections 183 and 189 of the economic development law, subdivi-
20 sion 9 of section 186-a of the tax law and subparagraph 2 of paragraph g
21 of the ninth undesignated paragraph of section 1005 of the public
22 authorities law, made by sections one, two, three, five and seven of
23 this act, shall not affect the expiration or repeal of such provisions
24 and shall be deemed repealed therewith.