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

7339

I N S E N A T E

March 30, 2010

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

AN ACT to amend the economic development law, the public authorities law, the tax law and the public service law, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program and to the provision of low cost power to foster statewide economic development; and to amend 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, in relation to the effectiveness thereof; and to repeal section 188 of the economic development law relating to industrial incentive awards; and providing for the repeal of certain provisions upon expiration thereof

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

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

(g) [The] (1) BEGINNING JULY FIRST, TWO THOUSAND ELEVEN, THE board shall [solicit applications for economic development power and for power under the power for jobs program by public notice. Such notice shall be in the form of newspaper advertisements, press releases, and by such other means as the board finds appropriate] COMBINE ECONOMIC DEVELOPMENT POWER AND HIGH LOAD FACTOR PROGRAMS WITH THE POWER FOR JOBS PROGRAM TO FORM ONE PROGRAM, WHICH SHALL BE KNOWN AS THE ECONOMIC DEVELOPMENT POWER PROGRAM. THE ECONOMIC DEVELOPMENT POWER PROGRAM SHALL BE ADMINISTERED USING A SINGLE APPLICATION. THE PROGRAM SHALL CONSIST OF FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF POWER PREVIOUSLY ALLOCATED TO RESIDENTIAL CUSTOMERS FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC PROJECTS AND AN ELECTRICITY COST DISCOUNT AS PROVIDED IN SECTION ONE HUNDRED EIGHTY-SEVEN-A OF THIS ARTICLE.

(2) Solicitations of preliminary applications for power under the [power for jobs] ECONOMIC DEVELOPMENT POWER program shall begin promptly

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

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after the effective date of [chapter three hundred sixteen of the laws of nineteen hundred ninety-seven establishing] THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN WHICH AMENDED THIS SUBDIVISION AND ESTABLISHED such program. The board shall solicit applications for the [additional three hundred megawatts of power available during the fourth phase of the] program by public notice, written notification to each recipient of power allocated [during the first phase of the program] UNDER THE POWER FOR JOBS, ECONOMIC DEVELOPMENT, AND HIGH LOAD FACTOR PROGRAMS, and such other means as the board finds appropriate. [Solicitations of applications for such three hundred megawatts of power available in phase four of the program shall begin promptly after the effective date of part KK of chapter sixty-three of the laws of two thousand making such power available. The board shall solicit applications for the additional one hundred eighty-three megawatts of power available during the fifth phase of the program by public notice, written notification to each recipient of power allocated during the second and third phases of the program, and by such other means as the board finds appropriate. Solicitations for such one hundred eighty-three megawatts of power available in phase five of the program shall begin promptly after the effective date of the chapter of the laws of two thousand two making such power available.] PARTICIPANTS IN THE POWER FOR JOBS, ECONOMIC DEVELOPMENT, AND HIGH LOAD FACTOR PROGRAMS AS OF JUNE THIRTIETH, TWO THOUSAND ELEVEN, SHALL BE REQUIRED TO REAPPLY FOR CONTINUED PARTICIPATION IN THE PROGRAM, BUT WILL BE OFFERED CONTRACTS FOR PARTICIPATION IN THE ECONOMIC DEVELOPMENT POWER PROGRAM. THE PURPOSE FOR SUCH REAPPLICATION SHALL BE TO CLASSIFY THOSE PARTICIPANTS INTO THE PROGRAM'S TWO TIERED SYSTEM AS DESCRIBED IN PARAGRAPH THREE OF THIS SUBDIVISION. THEREAFTER, THE BOARD SHALL ACCEPT APPLICATIONS FOR ANY REMAINING POWER UNDER THE PROGRAM FROM INDUSTRIAL AND COMMERCIAL BUSINESSES WITH PEAK ENERGY DEMANDS OF FOUR HUNDRED KILOWATTS OR MORE.

(3) BASED ON INFORMATION CONTAINED IN THE PRELIMINARY APPLICATIONS, THE BOARD SHALL CLASSIFY EACH APPLICANT AS EITHER A TIER I APPLICANT OR A TIER II APPLICANT.

(A) TIER I APPLICANTS ARE BUSINESSES WHICH:

(I) ARE CONSIDERED ENERGY INTENSIVE, AS DEFINED IN PARAGRAPH FOUR OF THIS SUBDIVISION; AND

(II) ARE NOT LOCATED IN CITIES WITH POPULATIONS OF ONE MILLION OR MORE; AND

(III) ARE NOT LOCATED IN THE COUNTIES OF NASSAU, ORANGE, PUTNAM, ROCKLAND, SUFFOLK, OR WESTCHESTER.

(B) TIER II APPLICANTS ARE BUSINESSES WHICH:

(I) ARE CONSIDERED ENERGY INTENSIVE, AS DEFINED IN PARAGRAPH FOUR OF THIS SUBDIVISION; AND

(II) ARE LOCATED:

(A) IN CITIES WITH A POPULATION OF ONE MILLION OR MORE; OR

(B) IN THE COUNTIES OF NASSAU, ORANGE, PUTNAM, ROCKLAND, SUFFOLK, OR WESTCHESTER.

(4) A BUSINESS IS CONSIDERED ENERGY INTENSIVE IF:

(A) THE COST OF ENERGY REPRESENTS A SIGNIFICANT COMPONENT OF THE OPERATING COST OF THE BUSINESS;

(B) THE COST OF ENERGY HAS A SIGNIFICANT EFFECT ON THE COMPETITIVE POSITION OF THE BUSINESS; AND

(C) THE BUSINESS NORMALLY UTILIZES A MINIMUM PEAK ELECTRIC DEMAND OF ONE HUNDRED KILOWATTS.

S 2. Paragraphs 2 and 3 of subdivision (h) of section 183 of the economic development law, paragraph 2 as amended by chapter 217 of the

laws of 2009, paragraph 3 as added by chapter 313 of the laws of 2005, are amended and a new subdivision (i) is added to read as follows:

2. During the period commencing on November first, two thousand five and ending on [May fifteenth, two thousand ten] JUNE THIRTIETH, TWO THOUSAND ELEVEN 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 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 [May fifteenth, two thousand ten] JUNE THIRTIETH, TWO THOUSAND ELEVEN. 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.

3. Each application for an energy cost savings benefit (UP AND UNTIL JULY FIRST, TWO THOUSAND ELEVEN) OR AN ECONOMIC DEVELOPMENT POWER PROGRAM ALLOCATION shall be evaluated under criteria adopted by the board [in consultation with the power authority of the state of New York], which criteria shall be designed to promote economic development, maintain and develop jobs, and encourage new capital investment throughout the state of New York. Such criteria shall address but need not be limited to:

(a) the overall economic impact of the applicant in terms of the number of jobs to be created or retained, average annual payroll, capital investment and use of New York state suppliers;

(b) the likelihood that in the absence of approval of an energy cost savings benefit OR AN ECONOMIC DEVELOPMENT POWER PROGRAM ALLOCATION, the applicant would close, contract or relocate outside the state of New York;

(c) [the applicant's compliance with the commitment to retain and/or create jobs contained in its prior power contract with the power authority of the state of New York] THE APPLICANT'S CURRENT OR COMMITTED INVESTMENT IN ENERGY EFFICIENCY MEASURES; and

(d) the extent to which an energy cost savings benefit OR AN ECONOMIC DEVELOPMENT POWER PROGRAM ALLOCATION will affect the overall productivity or competitiveness of the applicant's business and its existing employment within the state.

(I) TO SOLICIT APPLICATIONS FOR ELECTRICITY COST DISCOUNTS AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF NEW YORK IN THE MANNER AUTHORIZED IN SECTION ONE HUNDRED EIGHTY-SEVEN-A OF THIS ARTICLE.

S 3. Section 184 of the economic development law, as added by chapter 32 of the laws of 1987, is amended to read as follows:

S 184. Criteria for eligibility for THE economic development power PROGRAM. Each application for an allocation of economic development power shall be evaluated under criteria adopted by the board. Such criteria shall address[, but need not be limited to]:

(a) [the number of new jobs created as a result of an economic development power allocation] THE SIGNIFICANCE OF THE COST OF ENERGY TO THE COMPETITIVE POSITION AND OPERATING COST OF THE APPLICANT;

(b) [the applicant's long-term commitment to New York state, as evidenced by the applicant's current and/or planned capital investment in business facilities in New York state] THE APPLICANT'S CURRENT AND PLANNED USE OF CASH FLOW FOR CAPITAL INVESTMENT WITHIN NEW YORK STATE;

(c) [the ratio of the number of jobs to be created to the amount of economic development power requested by the applicant] THE SIZE OF THE APPLICANT'S PAYROLL AND NUMBER OF JOBS THAT ARE PLANNED OR AT RISK;

(d) [the types of jobs created, as measured by wage and benefit levels, security and stability of employment] WHETHER PROGRAM BENEFITS WOULD PREVENT THE CLOSURE OR RELOCATION OF THE APPLICANT'S FACILITIES;

(e) [the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed] THE CONTRIBUTION MADE BY THE APPLICANT TO THE LOCAL ECONOMY; AND

(f) [the extent to which economic development power will affect the overall productivity or competitiveness of the applicant's business and its existing employment within the state;] THE APPLICANT'S CURRENT OR COMMITTED INVESTMENT IN ENERGY EFFICIENCY MEASURES.

[(g) the extent to which an allocation of economic development power may result in a competitive disadvantage for other businesses in the state;

(h) the general economic conditions and economic distress in the area in which the applicant's business facility would be located and the extent to which economic development power could contribute to the alleviation of such distress;

(i) the growth potential of the business facility and the contribution of economic strength to the area in which the business facility is or would be located;

(j) the extent of the applicant's willingness to make jobs available to persons defined as eligible for services under the federal job training partnership act of nineteen hundred eighty-two and the extent of the applicant's willingness to satisfy affirmative action goals;

(k) the extent to which an allocation of economic development power is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located; and

(l) the impact of the allocation on the operation of any other facilities of the applicant, on other businesses within the state, and upon other electric ratepayers.]

S 4. The opening paragraph of section 185 of the economic development law, as added by chapter 32 of the laws of 1987, is amended to read as follows:

In addition to the criteria described in section one hundred eighty-four of this article and such other criteria as the board may by rule or regulation define, an economic development power PROGRAM allocation may be made to a business in serious, long-term distress that is not primarily caused by normal, short-term changes in the business cycle, when the applicant demonstrates to the satisfaction of the board:

S 5. The section heading and subdivisions (c), (d), (f) and (g) of section 187 of the economic development law, as amended by chapter 316 of the laws of 1997, are amended and two new subdivisions (h) and (i) are added to read as follows:

Economic development power [and power for jobs] PROGRAM allocations.

(c) The board shall review the applications received and shall determine the applications which best meet the criteria established for the allocations authorized under this article 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. Except for allocations subject to subdivision (g) of this section, PARAGRAPH TWO OF SUBDIVISION (G) OF SECTION ONE HUNDRED EIGHTY-THREE, and section one hundred eighty-five of this article, each allocation of economic development power recommended by the board shall be to serve new electrical demand at facilities [at which new jobs are created] THAT MEET THE CRITERIA ESTABLISHED IN SECTION ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE; PROVIDED, HOWEVER, THAT IF AN APPLICANT MEETS ALL OTHER ESTABLISHED CRITERIA EXCEPT FOR THE REQUIREMENT RELATING TO THE USE AND INVESTMENT IN ENERGY EFFICIENCY MEASURES, THEN SUCH APPLICANT IS ELIGIBLE TO BE COUNSELED ON AVAILABLE STATE APPROVED EFFICIENCY PROGRAMS AND OFFERED PARTICIPATION IN SUCH PROGRAMS WHERE POSSIBLE AND APPLICABLE, AND SHALL NOT BE EXCLUDED FROM RECOMMENDATION OF A POWER ALLOCATION SOLELY ON THE GROUNDS OF A FAILURE TO MEET THIS CRITERIA. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the economic development power in the event the recipient fails to maintain [mutually agreed upon levels of employment and power utilization] THE CRITERIA ESTABLISHED IN SECTION ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE.

(d) Allocations FROM THE FOUR HUNDRED FIFTY-FIVE MEGAWATTS of economic development power shall be recommended only to or for the use of businesses which [normally utilize a minimum peak electric demand of four hundred kilowatts] ARE CLASSIFIED IN TIER I PURSUANT TO SUBDIVISION (G) OF SECTION ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE. [At least one half of all economic development power allocations shall be recommended for applicants within the geographic areas served by Long Island Lighting Company, Consolidated Edison Company of New York, Orange and Rockland Utilities, Incorporated, Central Hudson Gas and Electric Corporation and that part of Westchester, Putnam and Dutchess counties served by New York State Electric and Gas Corporation. No more than fifty percent of the available economic development power shall be recommended for allocation to applicants located within a single municipality except upon the unanimous recommendation of the board.]

(f) Upon approval or denial of any application for POWER UNDER THE POWER FOR JOBS PROGRAM OR UNDER THE economic development power or power PROGRAM, under the power for jobs program, the board shall issue in writing a statement of its findings and conclusions with respect to such application and the reasons for its approval or denial.

(g) [Within cities of a population of one million or more and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, an economic development power allocation may be recommended for the purpose of job retention by unanimous approval of the board applying the criteria developed pursuant to section one hundred eighty-four of this article and when an applicant on behalf of a business within such city or county demonstrates to the board (a) the business' plans to relocate out of state resulting in the loss of a substantial number of jobs and its commitment to new investments in real property of at least twelve and one-half percent of the effective market value or to relocate within such city or county to comparable facilities, upon receiving an economic development allocation, and (b) that the applicant or the business first has made the greatest practicable use of all other potential assistance and means, including but not limited to other low

cost power and/or energy, tax and energy cost abatement measures and administrative steps to make possible the business' new investment or relocation. For the purposes of this subdivision, effective market value for special assessing units, as defined in article eighteen of the real property tax law, shall be determined by dividing the assessed value of the property on the latest completed assessment roll by the latest class ratio applicable to the class in which the property is classified, and for all other assessing units, effective market value shall be determined by dividing the assessed value of the property on the latest completed assessment roll by the final state equalization rate for special equalization rate as promulgated by the office of real property services pursuant to article twelve of the real property tax law.] THE FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF ECONOMIC DEVELOPMENT POWER SHALL BE MADE AVAILABLE FOR ALLOCATION IN THREE PHASES DURING A THREE-YEAR PERIOD. ONE HUNDRED MEGAWATTS, CONSTITUTING THE FIRST PHASE OF THE PROGRAM, SHALL BE ALLOCATED DURING THE FIRST YEAR, AN ADDITIONAL ONE HUNDRED FIFTY MEGAWATTS, CONSTITUTING THE SECOND PHASE OF THE PROGRAM, SHALL BE ALLOCATED DURING THE SECOND YEAR, AND TWO HUNDRED FIVE MEGAWATTS, CONSTITUTING THE THIRD PHASE, SHALL BE ALLOCATED DURING THE THIRD YEAR. IF THE BOARD DOES NOT RECOMMEND ALLOCATIONS FOR THE FULL ONE HUNDRED MEGAWATTS IN THE FIRST YEAR OF THE PROGRAM, SUCH POWER SHALL BE ALLOCATED DURING THE SECOND YEAR OF THE PROGRAM, PROVIDED THAT TWO HUNDRED FIFTY MEGAWATTS OF ALLOCATIONS MUST BE ALLOCATED WITHIN TWO YEARS OF THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN WHICH AMENDED THIS SUBDIVISION AND PROVIDED FURTHER THAT THE REMAINING TWO HUNDRED FIVE MEGAWATTS MUST BE ALLOCATED WITHIN THREE YEARS OF SUCH EFFECTIVE DATE.

(H) TIER I APPLICANTS THAT ARE DEEMED TO BE IN SUBSTANTIAL COMPLIANCE WITH ALL OF THEIR CONTRACTUAL COMMITMENTS WILL BE AUTOMATICALLY ELIGIBLE FOR AN ALLOCATION.

(I) CONTRACTS FOR POWER ALLOCATIONS TO TIER I APPLICANTS.

(1) TIER I APPLICANTS ENROLLED IN THE HIGH LOAD FACTOR, ECONOMIC DEVELOPMENT OR POWER FOR JOBS PROGRAMS AS OF THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN WHICH AMENDED THIS SUBDIVISION SHALL BE GRANDFATHERED INTO THE ECONOMIC DEVELOPMENT POWER PROGRAM BUT SHALL BE REQUIRED TO ENTER INTO NEW CONTRACTS WITH THE BOARD. SUCH NEW CONTRACTS SHALL PHASE OUT THE BENEFITS RECEIVED UNDER THE HIGH LOAD FACTOR, ECONOMIC DEVELOPMENT OR POWER FOR JOBS PROGRAMS OVER TERMS THAT COINCIDE WITH THE PHASE IN OF POWER ALLOCATIONS UNDER SUBDIVISIONS (G) AND (H) OF THIS SECTION.

(2) THE BOARD SHALL RECOMMEND ALLOCATIONS OF POWER UNDER THE THREE PHASES OF SUBDIVISION (G) THIS SECTION UNDER CONTRACTS WITH AN EFFECTIVE TERM OF AT LEAST SEVEN YEARS AND OTHER TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE. CONTRACTS UNDER THIS SECTION SHALL BE REVIEWED ON AN ANNUAL BASIS TO DETERMINE CONTINUED ELIGIBILITY. UPON DETERMINATION OF CONTINUED ELIGIBILITY, THE CONTRACTS SHALL BE RENEWED FOR AN ADDITIONAL YEAR, THUS RETAINING THE FULL TERM OF THE CONTRACTS.

S 6. The economic development law is amended by adding a new section 187-a to read as follows:

S 187-A. ELECTRICITY COST DISCOUNTS. (A) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDIVISION (C) OF THIS SECTION.

(2) "AUTHORITY" SHALL MEAN THE POWER AUTHORITY OF THE STATE OF NEW YORK.

(3) "BOARD" SHALL MEAN THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD.

(4) "ELECTRICITY COST DISCOUNT" OR "DISCOUNT" SHALL MEAN A DISCOUNT PAID BY THE AUTHORITY PURSUANT TO SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW IN THE FORM OF AN ELECTRIC BILL CREDIT ON THE INVOICE PROVIDED BY THE RECIPIENT'S LOCAL DISTRIBUTOR OF ELECTRIC SERVICE PURSUANT TO THE ELECTRICITY COST DISCOUNT PROGRAM CREATED BY THIS SECTION.

(5) "ELIGIBLE APPLICANT" SHALL MEAN AN APPLICANT CLASSIFIED UNDER TIER II PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (G) OF SECTION ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE, PROVIDED HOWEVER, THAT AN ELIGIBLE APPLICANT SHALL NOT INCLUDE RETAIL BUSINESSES AS DEFINED BY THE BOARD, INCLUDING, WITHOUT LIMITATION, SPORTS VENUES, GAMING OR ENTERTAINMENT-RELATED ESTABLISHMENTS OR PLACES OF OVERNIGHT ACCOMMODATION.

(6) "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.

(B) APPLICATIONS. (1) THE BOARD MAY SOLICIT APPLICATIONS FOR ELECTRICITY COST DISCOUNTS 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.

(2) APPLICATIONS FOR ELECTRICITY COST DISCOUNTS SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE BOARD, IN CONSULTATION WITH THE AUTHORITY, PRESCRIBES. A COPY OF EACH APPLICATION RECEIVED SHALL BE PROVIDED TO THE AUTHORITY.

(3) AN APPLICANT WHO IS ALSO A RECIPIENT OF OTHER BENEFITS UNDER ANOTHER POWER PROGRAM OF THE AUTHORITY SHALL BE ELIGIBLE TO APPLY FOR ELECTRICITY COST DISCOUNTS ONLY IF IT IS IN COMPLIANCE WITH ITS CONTRACTUAL COMMITMENTS MADE IN CONNECTION WITH SUCH OTHER PROGRAM; PROVIDED, HOWEVER THAT AN APPLICANT SHALL NOT BE ENTITLED TO RECEIVE BOTH AN ELECTRICITY COST DISCOUNT UNDER THIS SECTION AND BENEFITS UNDER ANY POWER AUTHORITY ECONOMIC DEVELOPMENT POWER PROGRAM WITH RESPECT TO THE SAME QUANTITY OF ELECTRICITY CONSUMED AT A PREMISES.

(4) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH APPLICATION BY THE BOARD, THE BOARD SHALL PROMPTLY POST ON ITS WEBSITE THE NAME AND A DESCRIPTION OF THE APPLICANT, AND THE ADDRESS OF THE APPLICANT'S FACILITIES THAT WOULD RECEIVE THE BENEFIT OF THE DISCOUNT, AND THE AMOUNT OF BENEFIT SOUGHT. THE AUTHORITY SHALL ALSO DEVELOP A SIMILAR LISTING AND MAKE IT AVAILABLE FOR PUBLIC REVIEW ON ITS WEBSITE.

(C) REVIEW, APPLICABLE CRITERIA AND RECOMMENDATIONS. (1) THE BOARD SHALL REVIEW APPLICATIONS SUBMITTED FOR ELECTRICITY COST DISCOUNTS AND MAKE AN INITIAL DETERMINATION OF WHETHER THE APPLICANT IS AN ELIGIBLE APPLICANT. IN THE CASE OF AN ELIGIBLE APPLICANT, THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT AN ELECTRICITY COST DISCOUNT BE AWARDED TO AN APPLICANT BASED ON AN APPLICATION OF THE CRITERIA FOUND IN SECTION ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE.

(2) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE AN ELECTRICITY COST DISCOUNT TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (I) THE AMOUNT OF THE ELECTRICITY COST DISCOUNT THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED TO SUCH APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN ELECTRICITY COST DISCOUNT IN AN AMOUNT THAT IS LESS THAN THE AMOUNT REQUESTED BY AN ELIGIBLE APPLICANT; (II) A CONTRACT TERM BETWEEN THE ELIGIBLE APPLICANT AND THE AUTHORITY WHICH SHALL NOT BE LESS

THAN SEVEN YEARS, PROVIDED HOWEVER THAT THE TERM OF ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JULY FIRST, TWO THOUSAND ELEVEN; AND (III) SUCH OTHER TERMS AND CONDITIONS THAT THE BOARD DEEMS APPROPRIATE.

(3) WHEN THE BOARD CHOOSES AMONG ELIGIBLE APPLICANTS, IT MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED HOWEVER THAT THE BOARD MAY SET ASIDE A PORTION OF THE BENEFITS AVAILABLE UNDER THE ELECTRICITY COST DISCOUNT PROGRAM FOR APPLICANTS THAT WILL COMMIT TO CREATE NEW JOBS OR RETAIN EXISTING JOBS, OR MAKE A NEW CAPITAL INVESTMENT.

(4) A RECOMMENDATION FOR AN ELECTRICITY COST DISCOUNT SHALL QUALIFY AN APPLICANT TO ENTER INTO A CONTRACT TO RECEIVE SUCH DISCOUNT FROM THE AUTHORITY PURSUANT TO THE TERMS AND CONDITIONS OF THE RECOMMENDATION OR ON SUCH OTHER TERMS AS THE AUTHORITY DETERMINES TO BE APPROPRIATE. SUCH CONTRACTS SHALL PROVIDE THAT THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE WILL PROVIDE CUSTOMER AND BILLING SERVICES UPON MUTUALLY AGREED TERMS AND CONDITIONS.

(5) UPON APPROVAL OR DENIAL OF ANY APPLICATION FOR AN ELECTRICITY COST DISCOUNT, THE BOARD SHALL ISSUE IN WRITING A STATEMENT OF ITS FINDINGS AND CONCLUSIONS WITH RESPECT TO SUCH APPLICATION AND THE REASONS FOR ITS APPROVAL OR DENIAL.

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WITH RESPECT TO APPLICANTS WHO AS OF DECEMBER FIRST, TWO THOUSAND TEN, ARE IN SUBSTANTIAL COMPLIANCE WITH ALL CONTRACTUAL COMMITMENTS AND RECEIVING BENEFITS UNDER THE POWER FOR JOBS, ECONOMIC DEVELOPMENT, OR HIGH LOAD FACTOR, THE BOARD SHALL RECOMMEND AND THE AUTHORITY SHALL PROVIDE AN AWARD OF AN ELECTRICITY COST DISCOUNT AN AMOUNT THAT IS EQUAL TO THE VALUE OF SUCH BENEFIT RECEIVED IN THE PRECEDING TWELVE MONTHS. THE AUTHORITY SHALL CONTINUE TO SUPPLY LOW COST POWER AND ENERGY AND APPLY AUTHORITY RESOURCES TO SUPPORT THE ECONOMIC DEVELOPMENT POWER PROGRAM DESCRIBED IN SUBDIVISION (G) OF SECTION ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE.

(7) SUBJECT TO THE TWELFTH UNDESIGNATED PARAGRAPH OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW, THE BOARD SHALL NOT RECOMMEND ANY ELECTRICITY COST DISCOUNTS UNDER THIS PROGRAM FOR USAGE IN EXCESS OF ONE THOUSAND MEGAWATTS OF ELECTRICITY.

(8) EACH CONTRACT ENTERED INTO BETWEEN AN ELIGIBLE APPLICANT RECOMMENDED BY THE BOARD AND THE AUTHORITY SHALL CONTAIN A PROVISION CALLING FOR AN ANNUAL REVIEW BY THE AUTHORITY OF THE RECIPIENT'S CONTINUED ELIGIBILITY FOR THE ELECTRICITY COST DISCOUNT AND A SEPARATE PROVISION PERMITTING THE CANCELLATION OF THE CONTRACT UPON A DETERMINATION OF THE LACK OF ELIGIBILITY.

S 7. Section 188 of the economic development law is REPEALED.

S 8. The second undesignated paragraph of section 1005 of the public authorities law, as amended by chapter 313 of the laws of 2005, is amended to read as follows:

The authority is authorized to procure through a competitive solicitation process power and energy from the competitive market and to construct, improve and/or rehabilitate throughout its area of service (a) such hydroelectric or energy storage projects, as it deems necessary or desirable to contribute to the adequacy, economy and reliability of the supply of electric power and energy or to conserve fuel and (b) such base-load nuclear generating facilities or other facilities utilizing new energy technologies as in its judgment are necessary (i) to supply sufficient supplemental energy to make possible optimum use of the generating capacity of the authority's Saint Lawrence and Niagara hydroelectric projects, (ii) to supply low cost power and energy to high load

factor manufacturers which will build new facilities in the authority's area of service or expand existing facilities provided such power and energy is made available to them[, and] (iii) to supply the future needs of the authority's existing municipal electric and rural electric cooperative customers, AND (IV) TO SUPPLY LOW COST POWER AND ENERGY AND APPLY AUTHORITY RESOURCES TO SUPPORT THE ECONOMIC DEVELOPMENT POWER PROGRAM DESCRIBED IN SUBDIVISION (G) OF SECTION ONE HUNDRED EIGHTY-THREE OF THE ECONOMIC DEVELOPMENT LAW.

S 9. Paragraphs a, b, d, e and f of the ninth undesignated paragraph of section 1005 of the public authorities law, paragraphs a, b and f as amended by chapter 313 of the laws of 2005, and paragraphs d and e as amended by section 1 of part KK of chapter 63 of the laws of 2000, are amended to read as follows:

a. Notwithstanding any inconsistent provision of this title, the authority shall make available all economic development power for allocation to or for businesses and whose allocation of such power is recommended by the New York state economic development power allocation board pursuant to section one hundred eighty-seven of the economic development law. "Economic development power" shall mean any power that is voluntarily relinquished by businesses to the authority, except that PRIOR TO JULY FIRST, TWO THOUSAND ELEVEN, it shall not include any power from the Niagara or Saint Lawrence-FDR projects or power under the power for jobs program which may be voluntarily relinquished by businesses, small businesses and not-for-profit corporations.

b. Notwithstanding any inconsistent provision of this title, the authority shall make available all power under the power for jobs program for allocation to or for businesses, small businesses and not-for-profit corporations and whose allocation of such power is recommended by such board AND COMMENCING JULY FIRST, TWO THOUSAND ELEVEN THE AUTHORITY SHALL MAKE AVAILABLE FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF POWER FROM THE NIAGARA AND SAINT LAWRENCE-FDR PROJECTS TO THE BOARD FOR THE ECONOMIC DEVELOPMENT POWER PROGRAM pursuant to section one hundred [eighty-nine] EIGHTY-SEVEN of the economic development law. Power under the power for jobs program shall mean four hundred fifty megawatts of power in the initial three phases of the program, three hundred megawatts of power in the fourth phase of the program, and one hundred eighty-three megawatts in the fifth phase of the program. The authority shall provide the least cost power available acquired through a competitive procurement process, from authority sources, or through an alternate method. The authority shall conduct a competitive procurement process and may provide power through an alternate method if the cost is lower than the cost of power obtained through a competitive procurement process; provided, however, that the use of such lower cost power from authority sources shall not reduce the availability of, or cause an increase in the price of, power provided by the authority for any other program authorized in this article or pursuant to any other statute. Such competitive procurement process shall be established by the economic development power allocation board, in consultation with the department of public service, and implemented by the authority. Notwithstanding the foregoing, the power to be provided by the authority for the fifth phase of the power for jobs program shall include, for the purpose of determining the total amount of power to be delivered to recipients, power provided to program participants by other suppliers under the energy service company option pursuant to paragraph four of subdivision a of section one hundred eighty-nine of the economic development law. For the purposes of this paragraph and subdivision fourteen of this

section, "local distributor of electric service" shall mean an electric corporation as defined in subdivision thirteen of section two of the public service law that was a member of the New York power pool on January first, nineteen hundred ninety-five, or its successor in interest.

d. The authority shall report quarterly to the New York state economic development power allocation board on the anticipated availability of [economic development] power [and power under the power for jobs] FOR THE ECONOMIC DEVELOPMENT POWER program for the subsequent twelve-month period.

e. When the authority determines that [economic development] power [or power under the power for jobs] FOR THE ECONOMIC DEVELOPMENT POWER program is available, the authority shall notify the New York state economic development power allocation board.

f. The authority shall provide for the sale of power to its economic development power [customers] PROGRAM PARTICIPANTS at a uniform non-discriminatory rate. The authority shall provide for the sale of power from [authority sources, power acquired through a competitive procurement process established by the New York state economic development power allocation board, or power provided by the authority through an alternate method] THE NIAGARA AND SAINT LAWRENCE-FDR HYDROELECTRIC PROJECTS to local distributors of electric service for businesses and not-for-profit corporations receiving allocations of power under the power for jobs OR FOR TIER I PARTICIPANTS IN THE ECONOMIC DEVELOPMENT POWER program at a rate that shall combine the rate set for power from [authority sources and the actual cost of power obtained through the competitive procurement process or from an alternate method] THE NIAGARA AND SAINT LAWRENCE-FDR HYDROELECTRIC PROJECTS, with no mark-up[; provided however, that prior to the time when power is available through the competitive procurement process, the authority shall provide power under the power for jobs program at the rate set for power from authority sources].

S 10. Paragraph (g) of the ninth undesignated paragraph of section 1005 of the public authorities law, as amended by chapter 226 of the laws of 2002, and subparagraph 2 as amended by chapter 217 of the laws of 2009, is amended to read as follows:

g. 1. [The authority is authorized, as deemed feasible and advisable by the trustees, to use revenues from the sale of power from the Fitzpatrick nuclear project under the initial three phases of the power for jobs program established pursuant to chapter three hundred sixteen of the laws of nineteen hundred ninety-seven, to the extent such revenues exceed revenues from the sale of such power in the calendar year prior to the effective date of chapter three hundred sixteen of the laws of nineteen hundred ninety-seven, to make a voluntary contribution no later than sixty days after the end of the state fiscal year into the state treasury to the credit of the general fund.

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 POWER FOR JOBS program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase OF THE POWER FOR JOBS PROGRAM 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 POWER FOR JOBS program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase OF THE POWER FOR JOBS PROGRAM 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 POWER FOR JOBS program and under the fifth phase of the POWER FOR JOBS 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 POWER FOR JOBS 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 sixty-one million five hundred thousand dollars.

[3.] 2. Other authority customers shall not incur any costs in the implementation of the power for jobs [program] OR ECONOMIC DEVELOPMENT POWER PROGRAMS.

S 11. Paragraph h of the ninth undesignated paragraph of section 1005 of the public authorities law, as added by chapter 313 of the laws of 2005, is amended to read as follows:

h. For the purposes of paragraphs b and f of this ninth undesignated paragraph, "authority sources" shall be defined as power and energy supplied by generating facilities of the authority in operation or under construction as of the effective date of this paragraph and power and energy procured by competitive solicitation[; provided, however, that it shall not include], INCLUDING, COMMENCING JULY FIRST, TWO THOUSAND ELEVEN, power from the Niagara and Saint Lawrence-FDR power projects[, except this shall not preclude the use of proceeds from the sale of power from such projects for energy cost savings benefits as provided herein].

S 12. The opening paragraph of subdivision 5 and paragraphs a and b of subdivision 14 of section 1005 of the public authorities law, the opening paragraph of subdivision 5 as amended by chapter 294 of the laws of 1968, paragraph a of subdivision 14 as amended by chapter 313 of the laws of 2005, paragraph b of subdivision 14 as amended by section 2 of part KK of chapter 63 of the laws of 2000, are amended to read as follows:

To develop, maintain, manage and operate those parts of the Niagara and Saint Lawrence hydroelectric projects owned or controlled by it in such manner as to give effect to the policy hereby declared (and all plans and acts, and all contracts for the use, sale, transmission and distribution of the power generated by such projects, shall be made in the light of, consistent with and subject to this policy), namely, that such projects shall be in all respects for the aid, improvement, and benefit of commerce and navigation in, through, along and past the Niagara river, the Saint Lawrence river and the international rapids section thereof, and that in the development of hydro-electric power therefrom such projects shall be considered primarily as for the benefit of the people of the state as a whole [and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue returns to permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity]. In furtherance of this policy and to secure a wider distribution of such power and use of the greatest value to the general public of the state, the authority shall in addition to other methods which it may find advantageous make provision so that municipalities and other political sub-divisions of the state now or hereafter authorized by law to engage in the distribution of electric power may secure a reasonable share of the power generated by such projects, and shall sell the same or cause the same to be sold to such municipalities and political subdivisions at prices representing cost of generation, plus capital and operating charges, plus a fair cost of transmission, all as determined by the trustees[, and subject to conditions which shall assure the resale of such power to domestic and rural consumers at the lowest possible price], provided, however, that in disposing of hydro-electric power pursuant to and in furtherance of the aforementioned policy and purposes, appropriate provision may also be made to allocate a reasonable share of project power to agencies created

or designated by other states and authorized to resell the power to users under the same terms and conditions as power is disposed of in New York state. To that end, the authority may provide in any contract or contracts which it may make for the sale, transmission and distribution of the power that the purchaser, transmitter or distributor shall construct, maintain and operate, on such terms as the authority may deem proper, such connecting lines as may be necessary for transmission of the power from main transmission lines to such municipalities or political subdivisions.

a. To provide to the governor, to the speaker of the assembly, and to the temporary president of the senate, on or before April first of each year, an economic development report including projections for the next succeeding twelve months of the amount 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 AND THE ECONOMIC DEVELOPMENT POWER programs which will be or is expected to be available with a listing of the current recipients of such power, and data on the number and types of jobs resulting from allocation of power under each such program. Such report shall include the amount of revenues collected and used in the previous calendar year pursuant to the eighth unnumbered paragraph of this section. Such report shall describe the process by which the authority obtained lowest cost power made available under the power for jobs PROGRAM, AND THEREAFTER THE ECONOMIC DEVELOPMENT POWER program. Such report shall contain a record of wholesale power supply bids provided to the authority under a competitive procurement process and the price of power obtained through any alternate methods. Such report shall state the reasons for choosing each specific source of power under each of the foregoing power programs and the price at which that power was available.

b. To provide to the governor, to the speaker of the assembly, and to the temporary president of the senate on or before December first, two thousand, a report on the power for jobs PROGRAM, AND THEREAFTER THE ECONOMIC DEVELOPMENT POWER program. Such report shall include the amount of power provided under the program, number of jobs created and number of jobs retained as a result of allocations of power under the program, and number of jobs per megawatt of power provided. Such report shall separately list such information for the state, businesses, small businesses, not-for-profit corporations, and service territory of each local distributor of electric service. Such report shall also include an evaluation with regard to the need for continuation of economic development programs, including the power for jobs program, AND THEREAFTER THE ECONOMIC DEVELOPMENT POWER PROGRAM.

S 13. Paragraph (b) of subdivision 1 of section 186-a of the tax law, as amended by section 4 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(b) a tax equal to (1) two and five-tenths percent on and after January first, two thousand through December thirty-first, two thousand, two and forty-five one hundredths percent from January first, two thousand one through December thirty-first, two thousand one, two and four-tenths percent from January first, two thousand two through December thirty-first, two thousand two, two and twenty-five one hundredths percent from January first, two thousand three through December thirty-first, two thousand three, two and one hundred twenty-five one thousandths percent from January first, two thousand four through December thirty-first, two thousand four and two percent commencing January first, two thousand five and thereafter of that portion of its gross income derived from the

transportation, transmission or distribution of gas or NON-RESIDENTIAL electricity by means of conduits, mains, pipes, wires, lines or the like and (2) two and one-tenth percent from January first, two thousand through December thirty-first, two thousand, two percent from January first, two thousand one through December thirty-first, two thousand one, one and nine-tenths percent from January first, two thousand two through December thirty-first, two thousand two, eighty-five one hundredths of one percent from January first, two thousand three through December thirty-first, two thousand three, four-tenths of one percent from January first, two thousand four through December thirty-first, two thousand four and zero percent commencing January first, two thousand five of all of its other gross income, is hereby imposed upon every utility not taxed under paragraph (a) of this subdivision doing business in this state which is subject to the supervision of the state department of public service which has a gross income for the year ending December thirty-first in excess of five hundred dollars, except motor carriers or brokers subject to such supervision under the public service law; and

S 14. Subdivision 9 of section 186-a of the tax law, as amended by chapter 217 of the laws of 2009, 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 ten, AND THEREAFTER any utility which delivers power under the power for jobs program OR, ANY UTILITY DELIVERS POWER UNDER THE ECONOMIC DEVELOPMENT POWER PROGRAM COMMENCING THE FIRST OF JULY, TWO THOUSAND ELEVEN, 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] PROGRAMS. 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 OR ECONOMIC DEVELOPMENT POWER PROGRAM allocation has been transferred, less the utility's cost of such power under such [program] PROGRAMS. 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] PROGRAMS 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] PROGRAMS 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] PROGRAMS. 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 15. Subdivision 6 of section 18-a of the public service law, as added by section 4 of part NN of chapter 59 of the laws of 2009, is amended to read as follows:

6. (a) Notwithstanding any provision of law to the contrary, and subject to the exceptions provided for in paragraph (b) of this subdivision, for the state fiscal year beginning on April first, two thousand nine and four state fiscal years thereafter, a temporary annual assessment (hereinafter "temporary state energy and utility service conservation assessment") is hereby imposed on public utility companies (including for the purposes of this subdivision municipalities other than municipalities as defined in section eighty-nine-l of this chapter), corporations (including for purposes of this subdivision the Long Island power authority), and persons subject to the commission's regulation (hereinafter such public utility companies, corporations, and persons are referred to collectively as the "utility entities") to encourage the conservation of energy and other resources provided through utility entities, to be assessed in the manner provided in this subdivision; provided, however, that such assessment shall not be imposed upon telephone corporations as defined in subdivision seventeen of section two of this article.

(b) The temporary state energy and utility service conservation assessment shall be equal to two percentum of the utility entity's gross operating revenues derived from intrastate utility operations WITH RESPECT TO NON-RESIDENTIAL CUSTOMERS in the last preceding calendar year, minus the amount, if any, that such utility entity is assessed pursuant to subdivisions one and two of this section for the corresponding state fiscal year period. With respect to the Long Island power authority, the temporary state energy and utility service conservation assessment shall be equal to one percentum of such authority's gross operating revenues FROM NON-RESIDENTIAL CUSTOMERS derived from intra-

state utility operations in the last preceding calendar year. No corporation or person subject to the jurisdiction of the commission only with respect to safety, or the power authority of the state of New York, shall be subject to the temporary state energy and utility service conservation assessment provided for under this subdivision. Utility entities whose gross operating revenues from intrastate utility operations WITH RESPECT TO NON-RESIDENTIAL CUSTOMERS are five hundred thousand dollars or less in the preceding calendar year shall not be subject to the temporary state energy and utility service conservation assessment. The minimum temporary state energy and utility service conservation assessment to be billed to any utility entity whose gross revenues FROM NON-RESIDENTIAL CUSTOMERS from intrastate utility operations are in excess of five hundred thousand dollars in the preceding calendar year shall be two hundred dollars.

(c) The chairman of the department shall determine, prior to the start of each state fiscal year, the amount of the temporary state energy and utility service conservation assessment for utility entities for the fiscal year. Based on that determination, a bill shall be rendered for each utility entity on or before February first preceding each state fiscal year for the amount as set forth in paragraph (b) of this subdivision.

(d) Each utility entity must pay the bill rendered to it pursuant to paragraph (c) of this subdivision as follows:

(i) The amount of such bill shall be paid by such public utility company to the department on or before April first; provided, however, that a utility company may elect to make partial payments for such costs and expenses on March tenth of the preceding fiscal year and on September tenth of such fiscal year. Each such partial payment shall be a sum equal to fifty percentum of the estimate of costs and expenses to be assessed against such utility company under the provisions of this subdivision and shall not be less than two hundred dollars.

(ii) During the course of any state fiscal year, the chairman may adjust the amount of the bills as appropriate to reflect, among other things, the actual reported revenues. In such case, revised bills shall be sent to each utility entity subject to the provisions of this subdivision, and such increase or decrease shall be equally apportioned against the remaining payments for such fiscal year;

(e) For the purposes of calculating the commodity cost component of its gross operating revenue, where the utility delivers to end-use NON-RESIDENTIAL customers electricity and/or natural gas commodities that are sold to such customers by a third party, such utility shall include in its revenues an estimate of the sales revenue for the electric and/or natural gas commodities that it delivers, including all such commodities sold to end-use customers by third parties, in such manner as to assure that all end-use delivery customers, regardless of the entity from which they purchase their electric and/or natural gas commodities, bear a fair and proportionate share of the assessment imposed herein, as the commission may determine.

(f) Notwithstanding any provision of law to the contrary, all temporary state energy and utility service conservation assessment monies collected and received by the department shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total amount collected, the comptroller

shall retain the amount determined by the chairman to be necessary for refund of overpayments out of which the comptroller must pay any refunds to which a utility entity may be entitled pursuant to paragraph (g) of this subdivision. After reserving the amount to pay refunds, the comptroller shall, on or before the tenth day of each month, or more frequently as he or she may deem appropriate, pay all temporary state energy and utility service conservation assessment monies collected and received under this subdivision and remaining to the comptroller's credit into the state general fund.

(g) On or before October tenth of each year, the chairman may compute adjustments or other corrections as needed for the preceding state fiscal year and, shall, on or before October twentieth, send to each utility entity affected thereby, a statement setting forth the amount due and payable by, or the amount standing to the credit of, such utility entity. Any amount owing by any utility entity shall be paid not later than thirty days following the date such statement is received. Any such amount standing to the credit of any utility entity shall be refunded by the chairman.

(h) The chairman is authorized to coordinate the implementation of this subdivision with the other subdivisions of this section, including for purposes of, but not limited to, billing and collection of the assessments provided for under this section.

(I) NO PUBLIC UTILITY COMPANY OR OTHER UTILITY ENTITY SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL CHARGE OR PASS ALONG THE AMOUNT OF ASSESSMENT IMPOSED UNDER THIS SECTION TO ANY RESIDENTIAL CUSTOMER IN THIS STATE.

S 16. 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 chapter 217 of the laws of 2009, is amended to read as follows:

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

S 17. The power authority of the state of New York shall within 60 days of the effective date of this act issue a request for proposals to purchase from the authority one or more of the ten gas turbine electric generating facilities with a nameplate capacity of less than 80 megawatts each, owned by the authority in and around the City of New York.

Facilities included are: Two Units at the Harlem River Yard plant located at E. 132nd St. Bronx, N.Y. 10454; Two Units at Vernon Boulevard located at 41-98, 44-02, 42-16 Vernon Boulevard in Long Island City, Queens, N.Y. 11101; Two Units at the Hell Gate Plant located at Locust Avenue, E. 132nd St. to E. 134th St. Bronx, N.Y. 10454; Two Units at the Windsor Terrace Power plant located at 3rd Avenue and 23rd St. Brooklyn, N.Y. 11211; One Unit at Pouch Terminal located at 1 Edgewater St. Staten Island, New York 11211; and One Unit at North First Avenue and River St. located at 47-79 River St. Brooklyn, N.Y. 11211.

The authority shall within 30 days of the end of the solicitation period report on the solicited bids to the Governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the energy and telecommunications chair of the senate and the energy chair of the assembly. The authority shall then commence actions to effectuate the sale of such facilities.

Such proceeds as are realized from these sales, shall be used solely for two purposes:

(1) To pay for the residential abatement from the fee assessment under section 18-a of the public service law as provided in this act; and

(2) If any additional funds exist they shall be placed into a dedicated fund, administered by the empire state development corporation. The purpose of this fund will be to spur additional economic development in upstate New York. The empire state development corporation shall study the issue and develop guidelines and policies for its administration and shall provide a detailed report and accounting of any disbursements made, including the recipient and rationale, to the Governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the energy and telecommunications chair of the senate and the energy chair of the assembly, the commerce, economic development and small business chair in the senate and the economic development, commerce and industry chair in the assembly. Such report shall be made available by February first of each and every successive year, as applicable.

No portion of the proceeds from the sale of the enumerated New York state power authority assets shall be used for general fund expenses under any circumstances.

S 18. Severability clause. If any clause, sentence, paragraph, subdivision, 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 19. This act shall take effect immediately; provided that:

(a) sections one through six and eight through fifteen of this act shall take effect July 1, 2011;

(b) section seven of this act shall take effect June 30, 2011; and

(c) the amendments to subdivision six of section 18-a of the public service law made by section fifteen of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.