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I N S E N A T E

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Introduced by Sens. AUBERTINE, MAZIARZ, BRESLIN, FOLEY, C. JOHNSON, VALESKY -- 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, 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; to amend 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; and to amend the tax law, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program; and to amend the economic development law and the public authorities law, in relation to the creation of the economic benefit power program

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

1 Section 1. Section 182 of the economic development law, as amended by
2 chapter 289 of the laws of 2000, is amended to read as follows:
3 S 182. The New York state economic development power allocation board.
4 There is hereby created a New York state economic development power
5 allocation board, which shall possess the powers and duties herein spec-
6 ified and all the powers necessary or proper to carry out the purposes
7 of this article. The board shall consist of [four] NINE members, [two]
8 ONE OF WHOM SHALL BE THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION
9 AND ONE of whom shall be [appointed by the governor and one] THE PRESI-
10 DENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY,
11 ONE OF WHOM SHALL BE THE PRESIDENT OF THE POWER AUTHORITY OF THE STATE
12 OF NEW YORK, TWO of whom shall be appointed by the speaker of the assem-
13 bly [and one] , TWO of whom shall be appointed by the TEMPORARY presi-
14 dent [pro tempore] of the senate ONE OF WHOM SHALL BE APPOINTED BY THE
15 MINORITY LEADER OF THE ASSEMBLY, AND ONE OF WHOM SHALL BE APPOINTED BY
16 THE MINORITY LEADER OF THE SENATE. Each member shall be appointed for
17 terms of three years or until a successor shall have been named and
18 qualified. The chairman shall be [designated by the governor from
19 amongst the members] THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION.

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

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1 [Three] FIVE members shall constitute a quorum for the purposes of
2 organizing the board and conducting the business thereof; and no actions
3 of the board may be taken except upon the affirmative vote of at least
4 [three] FIVE members. Videoconferencing may be used for attendance and
5 participation by members of the board. If videoconferencing is used the
6 board shall provide an opportunity for the public to attend, listen and
7 observe at any site at which a member participates. The public notice
8 for the meeting shall inform the public that [vidioconferencing] VIDEO-
9 CONFERENCING will be used, identify the locations for the meeting, and
10 state that the public has the right to attend the meeting at any of the
11 locations. Members of the board, except those who are employees or offi-
12 cers of the state, its authorities or agencies shall not receive a sala-
13 ry or other compensation, but shall be allowed the necessary and actual
14 expenses incurred in the performance of duties under this article.

15 S 2. Paragraphs 2 and 4 of subdivision (h) of section 183 of the
16 economic development law, as amended by chapter 217 of the laws of 2009,
17 are amended to read as follows:

18 2. During the period commencing on November first, two thousand five
19 and ending on [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN
20 eligible businesses shall only include customers served under the power
21 authority of the state of New York's high load factor, economic develop-
22 ment power and other business customers served by political subdivisions
23 of the state authorized by law to engage in the distribution of electric
24 power that were authorized to be served by the authority from the
25 authority's former James A. Fitzpatrick nuclear power plant as of the
26 effective date of this subdivision whose power prices may be subject to
27 increase before [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEV-
28 EN. Provided, however, that the total amount of megawatts of replace-
29 ment and preservation power which, due to the extension of the energy
30 cost savings benefits, are not relinquished by or withdrawn from a
31 recipient shall be deemed to be relinquished or withdrawn for purposes
32 of offering such megawatts by the authority for reallocation pursuant to
33 subdivision thirteen of section one thousand five of the public authori-
34 ties law. Provided, further, that for any such reallocation, the author-
35 ity shall maintain the same energy cost savings benefit level for all
36 eligible businesses using any available authority resources as deemed
37 feasible and advisable by the trustees pursuant to section seven of part
38 U of chapter fifty-nine of the laws of two thousand six.

39 4. Applications for an energy cost savings benefit shall be in the
40 form and contain such information, exhibits and supporting data as the
41 board may prescribe. The board shall review the applications received
42 and shall determine the applications which best meet the criteria estab-
43 lished for the benefits pursuant to this subdivision and it shall recom-
44 mend such applications to the power authority of the state of New York
45 with such terms and conditions as it deems appropriate; provided, howev-
46 er, that for energy cost savings benefits granted on or after [June
47 thirtieth] MAY FIFTEENTH, two thousand [nine] TEN through [May
48 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN, the board shall
49 expedite the awarding of such benefits and shall defer the review of
50 compliance with such criteria until after the applicant has been awarded
51 an energy cost savings benefit. Such terms and conditions shall include
52 reasonable provisions providing for the partial or complete withdrawal
53 of the energy cost savings benefit in the event the recipient fails to
54 maintain mutually agreed upon commitments that may include, but are not
55 limited to, levels of employment, capital investment and power utiliza-
56 tion. Recommendation for approval of an energy cost savings benefit

1 shall qualify an applicant to receive an energy cost savings benefit
2 from the power authority of the state of New York pursuant to the terms
3 and conditions of the recommendation. ANY ENERGY COST SAVINGS BENEFIT
4 WHICH IS RELINQUISHED OR WITHDRAWN AFTER THE EFFECTIVE DATE OF THE CHAP-
5 TER OF THE LAWS OF TWO THOUSAND TEN WHICH AMENDED THIS PARAGRAPH SHALL
6 BE AVAILABLE FOR REALLOCATION TO ELIGIBLE BUSINESSES AS DEFINED IN PARA-
7 GRAPH TWO OF THIS SUBDIVISION PURSUANT TO THE PROVISIONS OF THIS ARTI-
8 CLE.

9 S 3. The opening paragraph of paragraph 5 of subdivision (a) of
10 section 189 of the economic development law, as amended by chapter 217
11 of the laws of 2009, is amended to read as follows:

12 "Power for jobs electricity savings reimbursements" shall mean
13 payments made by the power authority of the state of New York as recom-
14 mended by the board to recipients of allocations of power under phases
15 four and five of the power for jobs program for a period of time until
16 November thirtieth, two thousand four, subsequent to the expiration of
17 their phase four or five power for jobs contract provided however that
18 any power for jobs recipient may choose to receive an electricity
19 savings reimbursement as a substitute for a contract extension for the
20 period from the date the recipient's contract expires through [May
21 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN. The "basic
22 reimbursement" is an amount that when credited against the recipient's
23 actual "unit cost of electricity" during a quarter (meaning the cost for
24 commodity and delivery per kilowatt-hour for the quantity of electricity
25 purchased and delivered under the power for jobs program during a simi-
26 lar period in the final year of the recipient's contract), results in an
27 effective unit cost of electricity during the quarter equal to the aver-
28 age unit cost of electricity such recipient paid during the final year
29 of the contract for power allocated under phase four or five of the
30 power for jobs program, PROVIDED HOWEVER THAT NOTWITHSTANDING THE FORE-
31 GOING, FOR THE PERIOD MAY SIXTEENTH, TWO THOUSAND TEN THROUGH JUNE THIR-
32 TIETH, TWO THOUSAND ELEVEN, THE BASIC REIMBURSEMENT SHALL BE AN AMOUNT
33 SUCH THAT THE RECIPIENT RECEIVES UNIT (PER KILOWATT-HOUR) ELECTRICITY
34 SAVINGS EQUIVALENT TO THE AVERAGE UNIT ELECTRICITY SAVINGS RECEIVED
35 DURING THE TWELVE MONTHS ENDING ON MAY FIFTEENTH, TWO THOUSAND TEN.

36 S 4. Subdivisions (f) and (l) of section 189 of the economic develop-
37 ment law, as amended by chapter 217 of the laws of 2009, are amended to
38 read as follows:

39 (f) Eligibility. The board shall recommend applications for allo-
40 cations of power under the power for jobs program to or for the use of
41 businesses which normally utilize a minimum peak electric demand in
42 excess of four hundred kilowatts; provided, however, that up to one
43 hundred megawatts of power available for allocation during the initial
44 three phases of the power for jobs program may be recommended for allo-
45 cations to not-for-profit corporations and to small businesses; and,
46 provided, further that up to seventy-five megawatts of power available
47 for allocation during the fourth phase of the program may be recommended
48 for allocations to not-for-profit corporations and to small businesses.
49 The board may require small businesses that normally utilize a minimum
50 peak electric demand of less than one hundred kilowatts to aggregate
51 their electric demand in amounts of no less than one hundred kilowatts,
52 for the purposes of applying to the board for an allocation of power.
53 The board shall recommend allocations of the additional three hundred
54 megawatts available during the fourth phase of the program to any such
55 eligible applicant, including any recipient of power allocated during
56 the first phase of the program. The board shall recommend allocations of

1 the additional one hundred eighty-three megawatts available during the
2 fifth phase of the program to any eligible applicant, including any
3 recipient of power allocated during the second and third phases of the
4 program; provided, however, that the term of contracts for allocations
5 under the fifth phase of the program shall in no case extend beyond [May
6 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN. Notwithstanding
7 any provision of law to the contrary, and, in particular, the provisions
8 of this chapter concerning the terms of contracts for allocations under
9 the power for jobs program, the terms of any contract with a recipient
10 of power allocated under phase two of the power for jobs program that
11 has expired or will expire on or before the thirty-first day of August,
12 two thousand two, may be extended by the power authority of the state of
13 New York for an additional period of three months effective on the date
14 of such expiration, pending the filing and approval of an application by
15 such recipient for an allocation under the fifth phase of the program.
16 The term of any new contract with such recipient under the fifth phase
17 of the program shall be deemed to include any three month contract
18 extension made pursuant to this subdivision and the termination date of
19 any such new contract under phase five shall be no later than if such
20 new contract had commenced upon the expiration of the recipient's
21 original phase two contract. The terms of any contract with a recipient
22 of power allocated under phase four and/or phase five of the power for
23 jobs program that has expired or will expire on or before the thirty-
24 first day of December, two thousand five, may be extended by the power
25 authority of the state of New York from a date beginning no earlier than
26 the first day of December, two thousand four and extending through [May
27 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN.

28 (1) The board shall solicit and review applications for the power for
29 jobs electricity savings reimbursements and contract extensions from
30 recipients of power for jobs allocations under phases four and five of
31 the program for the award of such reimbursements and/or contract exten-
32 sions. The board may prescribe a simplified form and content for an
33 application for such reimbursements or extensions. An applicant shall be
34 eligible for such reimbursements and/or extensions only if it is in
35 compliance with and agrees to continue to meet the job retention and
36 creation commitments set forth in its prior power for jobs contract, or
37 such other commitments as the board deems reasonable; provided, however,
38 that for the power for jobs electricity savings reimbursements and
39 contract extensions granted on or after June thirtieth, two thousand
40 nine through [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN,
41 the board shall expedite the awarding of such reimbursements and/or
42 extensions and shall defer the review of compliance with such commit-
43 ments until after the applicant has been awarded a power for jobs elec-
44 tricity savings reimbursement and/or contract extension. The board shall
45 review such applications and make recommendations for the award: 1. of
46 such reimbursements through the power authority of the state of New York
47 for a period of time up to November thirtieth, two thousand four, and 2.
48 of such contract extensions or reimbursements as applied for by the
49 recipient for a period of time beginning December first, two thousand
50 four and ending [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEV-
51 EN. At no time shall a recipient receive both a reimbursement and exten-
52 sion after December first, two thousand four. The power authority of the
53 state of New York shall receive notification from the board regarding
54 the award of power for jobs electricity savings reimbursements and/or
55 contract extensions. ANY POWER FOR JOBS ALLOCATION WHICH IS RELIN-
56 QUISHED OR WITHDRAWN AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS

1 OF TWO THOUSAND TEN WHICH AMENDED THIS SUBDIVISION SHALL BE AVAILABLE
2 FOR REALLOCATION TO CUSTOMERS ELIGIBLE FOR POWER FOR JOBS ALLOCATIONS AS
3 DEFINED IN SUBDIVISION (F) OF THIS SECTION.

4 S 5. Section 9 of chapter 316 of the laws of 1997 amending the public
5 authorities law and other laws relating to the provision of low cost
6 power to foster statewide economic development, as amended by chapter
7 217 of the laws of 2009, is amended to read as follows:

8 S 9. This act shall take effect immediately and shall expire and be
9 deemed repealed [May 15, 2010] JUNE 30, 2011.

10 S 6. Subdivision 9 of section 186-a of the tax law, as amended by
11 chapter 217 of the laws of 2009, is amended to read as follows:

12 9. Notwithstanding any other provision of this chapter or any other
13 law to the contrary, for taxable periods nineteen hundred ninety-seven
14 through and including two thousand [ten] ELEVEN, any utility which
15 delivers power under the power for jobs program, as established by
16 section one hundred eighty-nine of the economic development law, shall
17 be allowed a credit, subject to the limitations thereon contained in
18 this subdivision, against the tax imposed under this section equal to
19 net lost revenues from the delivery of power under such power for jobs
20 program. Net lost revenues means the "net receipts" less "net utility
21 revenue" from such delivery of power. For purposes of this subdivision,
22 "net receipts" shall mean the amount that the utility would have other-
23 wise received from customers receiving power pursuant to allocations by
24 the New York state economic development power allocation board in
25 accordance with section one hundred eighty-nine of the economic develop-
26 ment law, or from customers whose allocation has been transferred to an
27 energy service company, or from energy service companies to which such
28 allocation has been transferred, pursuant to its tariff supervised by
29 the public service commission for substantially comparable service
30 otherwise applicable to such customers or energy service companies in
31 the absence of such designation, less the utility's annual average
32 incremental short-term variable and capacity costs of providing such
33 power in the absence of such purchase. For the purposes of this subdivi-
34 sion, "net utility revenue" shall mean the revenues the utility actually
35 receives in accordance with such section one hundred eighty-nine from
36 such customers so designated by the New York state economic development
37 power allocation board or from customers whose allocation has been
38 transferred to an energy service company, or from the energy service
39 companies to which a power for jobs allocation has been transferred,
40 less the utility's cost of such power under such program. Provided,
41 however, that any credit under this section shall be used only with
42 respect to the same taxable year during which such credit arose and
43 shall not be capable of being carried forward or backward to any other
44 taxable period. Nor shall any credit be allowed to any utility for the
45 total amount of power, expressed in kilowatt hours, purchased by the
46 customers of such utility under such program during the taxable period
47 that exceeds the prorated "baseline energy use" by all customers of that
48 utility purchasing power under such program during the taxable period.
49 "Baseline energy use" with respect to each customer shall mean the larg-
50 est amount of kilowatt hours of energy used by such customer during any
51 twelve consecutive month period occurring during the preceding thirty
52 months immediately preceding the New York state economic development
53 power allocation board's recommendation of such customer's application,
54 prorated to reflect the length of time of the customer's participation
55 in such program during the taxable period. Provided further, however,
56 that in accordance with subdivision (k) of section one hundred eighty-

1 nine of the economic development law no tax credit shall be available
2 for any revenue losses when a utility has declined to purchase power
3 allocated for sale under such program. No electric corporation shall be
4 allowed the tax credit authorized by this subdivision until it shall
5 file a certificate from the department of public service for the period
6 covered by the return verifying that the calculation of such tax credit
7 complies with this subdivision and the department of public service has
8 approved such certificate and forwarded a copy of such approved certifi-
9 cate to the commissioner or any amended certificate resulting from the
10 need for correction. The credit allowed by this subdivision shall not be
11 applicable in calculating any other tax imposed or authorized to be
12 imposed by this chapter or any other law, and the amount of the tax
13 surcharge imposed under section one hundred eighty-six-c of this article
14 shall be calculated and payable as if the credit provided for by this
15 subdivision were not allowed.

16 S 7. Section 11 of chapter 645 of the laws of 2006 amending the
17 economic development law and other laws relating to reauthorizing the
18 New York power authority to make contributions to the general fund, as
19 amended by chapter 217 of the laws of 2009, is amended to read as
20 follows:

21 S 11. This act shall take effect immediately and shall be deemed to
22 have been in full force and effect on and after April 1, 2006; provided,
23 however, that the amendments to section 183 of the economic development
24 law and subparagraph 2 of paragraph g of the ninth undesignated para-
25 graph of section 1005 of the public authorities law made by sections two
26 and six of this act shall not affect the expiration of such section and
27 subparagraph, respectively, and shall be deemed to expire therewith;
28 provided further, however, that the amendments to section 189 of the
29 economic development law and subdivision 9 of section 186-a of the tax
30 law made by sections three, four, five and ten of this act shall not
31 affect the repeal of such section and subdivision, respectively, and
32 shall be deemed to be repealed therewith; provided further, however,
33 that section seven of this act shall expire and be deemed repealed [May
34 15, 2010] JUNE 30, 2011.

35 S 8. Subdivision (b) of section 183 of the economic development law,
36 as amended by chapter 316 of the laws of 1997, is amended to read as
37 follows:

38 (b) To evaluate applications for allocations of economic development
39 power and of power under the power for jobs program and to make recom-
40 mendations with respect to such proposed allocations; PROVIDED HOWEVER,
41 THAT THE BOARD SHALL NOT ACCEPT ANY NEW APPLICATION THAT REQUESTS AN
42 ALLOCATION OF ECONOMIC DEVELOPMENT POWER OR POWER UNDER THE POWER FOR
43 JOBS PROGRAM AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND TEN; AND PROVIDED
44 FURTHER THAT THE BOARD SHALL NOT EXTEND THE TERM OF ANY CONTRACT FOR AN
45 ALLOCATION UNDER THE ECONOMIC DEVELOPMENT PROGRAM THAT WILL EXPIRE ON OR
46 BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN FOR THE PURPOSE OF PROVIDING
47 AN ALLOCATION AFTER JUNE THIRTIETH, TWO THOUSAND ELEVEN.

48 S 9. Section 183 of the economic development law is amended by adding
49 a new subdivision (i) to read as follows:

50 (I) TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE ECONOMIC BENEFIT
51 POWER PROGRAM AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE
52 STATE OF NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED
53 IN SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

54 S 10. Subdivision (g) of section 183 of the economic development law,
55 as amended by chapter 226 of the laws of 2002, is amended to read as
56 follows:

1 (g) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE board
2 shall solicit applications for economic development power and for power
3 under the power for jobs program by public notice. Such notice shall be
4 in the form of newspaper advertisements, press releases, and by such
5 other means as the board finds appropriate. Solicitations of preliminary
6 applications for power under the power for jobs program shall begin
7 promptly after the effective date of chapter three hundred sixteen of
8 the laws of nineteen hundred ninety-seven establishing such program. The
9 board shall solicit applications for the additional three hundred mega-
10 watts of power available during the fourth phase of the program by
11 public notice, written notification to each recipient of power allocated
12 during the first phase of the program, and such other means as the board
13 finds appropriate. Solicitations of applications for such three hundred
14 megawatts of power available in phase four of the program shall begin
15 promptly after the effective date of part KK of chapter sixty-three of
16 the laws of two thousand making such power available. The board shall
17 solicit applications for the additional one hundred eighty-three mega-
18 watts of power available during the fifth phase of the program by public
19 notice, written notification to each recipient of power allocated during
20 the second and third phases of the program, and by such other means as
21 the board finds appropriate. Solicitations for such one hundred eighty-
22 three megawatts of power available in phase five of the program shall
23 begin promptly after the effective date of the chapter of the laws of
24 two thousand two making such power available.

25 S 11. Section 183 of the economic development law, as added by chapter
26 32 of the laws of 1987, is amended to read as follows:

27 S 183. General powers and duties of the board. In furtherance of the
28 purposes set forth in this article, the board shall have the following
29 powers:

30 (a) To adopt, within one hundred twenty days after appointment, AND
31 AMEND FROM TIME TO TIME, AS NECESSARY, eligibility criteria and rules
32 and regulations, IN CONSULTATION WITH THE POWER AUTHORITY OF THE STATE
33 OF NEW YORK AND THE URBAN DEVELOPMENT CORPORATION, relating to the
34 activities of the board AS DESCRIBED IN AND CONSISTENT WITH THIS
35 ARTICLE.

36 (b) To evaluate applications for allocations of economic development
37 power and to make recommendations with respect to such proposed allo-
38 cations, PROVIDED HOWEVER, THAT THE BOARD SHALL NOT ACCEPT NEW APPLICA-
39 TIONS OR EXTEND ANY CONTRACTS FOR ALLOCATIONS OF ECONOMIC DEVELOPMENT
40 POWER TO EXTEND BEYOND JUNE THIRTIETH, TWO THOUSAND ELEVEN.

41 (c) [To evaluate economic development plans for the use of industrial
42 incentive awards submitted by the power authority of the state of New
43 York pursuant to this article.

44 (d) To provide advice and assistance when appropriate to applicants on
45 state economic development programs and services in addition to the
46 economic development power and industrial incentive awards specifically
47 provided for in this section.]

48 TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE ECONOMIC BENEFIT POWER
49 PROGRAM, AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF
50 NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED IN
51 SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

52 (D) WITH THE ASSISTANCE AND COOPERATION OF THE POWER AUTHORITY OF THE
53 STATE OF NEW YORK, THE URBAN DEVELOPMENT CORPORATION, AND THE NEW YORK
54 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, TO PROVIDE ADVICE AND
55 ASSISTANCE TO APPLICANTS WHERE APPROPRIATE, AND TO COORDINATE AND FACIL-
56 ITATE THE OPPORTUNITY FOR APPLICANTS TO AVAIL THEMSELVES OF ANY STATE OR

1 LOCAL ECONOMIC DEVELOPMENT PROGRAMS OTHER THAN THOSE PROVIDED FOR BY
2 THIS SECTION, FOR WHICH THEY MAY ALSO BE ELIGIBLE; IN SO DOING TO OPTI-
3 MIZE, TO THE EXTENT PRACTICABLE, THE USE OF AVAILABLE STATE ECONOMIC
4 DEVELOPMENT RESOURCES TO ACHIEVE THEIR DEDICATED PURPOSES IN A COORDI-
5 NATED MANNER, AS WELL AS THE ABILITY OF APPLICANTS TO INITIALLY ACCESS
6 AS MANY OF SUCH PROGRAMS AS POSSIBLE THROUGH A SINGLE STATE OFFICE OR
7 REPRESENTATIVE AND APPLICATIONS PROCESS.

8 (E) The [department, the] power authority of the state of New York,
9 [the urban development corporation, and all other state officers,
10 departments, boards, divisions and commissions] WITH THE ASSISTANCE OF
11 THE URBAN DEVELOPMENT CORPORATION AND THE DEPARTMENT OF ECONOMIC DEVEL-
12 OPMENT, shall render such services to the board [within their respective
13 functions], IN ADDITION TO THOSE PROVIDED FOR IN SUBDIVISION (D) OF THIS
14 SECTION, as may be requested by the board. IN ADDITION, EVERY AGENCY,
15 DEPARTMENT, OFFICE, DIVISION OR PUBLIC AUTHORITY OF THIS STATE SHALL
16 COOPERATE WITH THE BOARD AND FURNISH SUCH INFORMATION AND ASSISTANCE AS
17 THE BOARD DETERMINES IS REASONABLY NECESSARY TO ACCOMPLISH ITS PURPOSE.

18 [The board shall solicit applications for economic development power
19 by public notice. Such notice shall be in the form of newspaper adver-
20 tisements, press releases, and by such other means as the board finds
21 appropriate.]

22 S 12. The economic development law is amended by adding a new section
23 188-a to read as follows:

24 S 188-A. ECONOMIC BENEFIT POWER PROGRAM. 1. DEFINITIONS. FOR THE
25 PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
26 MEANINGS:

27 (A) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDI-
28 VISION THREE OF THIS SECTION.

29 (B) "AUTHORITY" SHALL MEAN THE POWER AUTHORITY OF THE STATE OF NEW
30 YORK.

31 (C) "ECONOMIC BENEFIT POWER AWARD" OR "AWARD" SHALL MEAN AND CONSIST
32 OF EQUAL AMOUNTS OF (I) UP TO FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF FIRM
33 HYDROELECTRIC POWER FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC
34 PROJECTS TO BE WITHDRAWN AS OF JUNE FIRST, TWO THOUSAND TEN FROM UTILITY
35 CORPORATIONS THAT, AS OF MAY THIRTY-FIRST, TWO THOUSAND TEN, PURCHASED
36 SUCH POWER FOR THE BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS
37 ("ECONOMIC BENEFIT POWER HYDROPOWER"), AND (II) POWER PROCURED BY THE
38 AUTHORITY THROUGH A COMPETITIVE PROCUREMENT PROCESS, AUTHORITY SOURCES
39 (OTHER THAN THE NIAGARA AND SAINT LAWRENCE PROJECTS) OR THROUGH AN
40 ALTERNATE METHOD ("ECONOMIC BENEFIT POWER MARKET POWER").

41 (D) "ELIGIBLE APPLICANT" SHALL MEAN AN ELIGIBLE BUSINESS, ELIGIBLE
42 SMALL BUSINESS, OR ELIGIBLE NOT-FOR-PROFIT CORPORATION AS DEFINED IN
43 THIS SECTION, PROVIDED HOWEVER, THAT AN ELIGIBLE APPLICANT SHALL NOT
44 INCLUDE RETAIL BUSINESSES AS DEFINED BY THE BOARD, INCLUDING, WITHOUT
45 LIMITATION, SPORTS VENUES, GAMING OR ENTERTAINMENT-RELATED ESTABLISH-
46 MENTS OR PLACES OF OVERNIGHT ACCOMMODATION.

47 (E) "ELIGIBLE BUSINESS" SHALL MEAN A BUSINESS OTHER THAN A
48 NOT-FOR-PROFIT CORPORATION WHICH NORMALLY UTILIZES A MINIMUM PEAK ELEC-
49 TRIC DEMAND IN EXCESS OF FOUR HUNDRED KILOWATTS.

50 (F) "ELIGIBLE SMALL BUSINESS" SHALL MEAN A BUSINESS OTHER THAN A NOT-
51 FOR-PROFIT CORPORATION WHICH NORMALLY UTILIZES A MINIMUM PEAK ELECTRIC
52 DEMAND EQUAL TO OR LESS THAN FOUR HUNDRED KILOWATTS.

53 (G) "LOCAL DISTRIBUTOR OF ELECTRIC SERVICE" SHALL MEAN AN ELECTRIC
54 CORPORATION AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION TWO OF THE
55 PUBLIC SERVICE LAW OR THE LONG ISLAND POWER AUTHORITY.

1 (H) "ELIGIBLE NOT-FOR-PROFIT CORPORATION" SHALL MEAN A CORPORATION
2 DEFINED IN SUBDIVISION FIVE OF PARAGRAPH (A) OF SECTION ONE HUNDRED TWO
3 OF THE NOT-FOR-PROFIT CORPORATION LAW.

4 2. APPLICATIONS. (A) THE BOARD SHALL SOLICIT APPLICATIONS FOR AWARDS
5 UNDER THE ECONOMIC BENEFIT POWER PROGRAM BY PUBLIC NOTICE BEGINNING ON
6 JANUARY FIRST, TWO THOUSAND ELEVEN. SUCH NOTICE MAY INCLUDE NEWSPAPER
7 ADVERTISEMENTS, PRESS RELEASES, WEBSITE POSTINGS, PAPER OR ELECTRONIC
8 MAILING, AND/OR SUCH OTHER FORM AS THE BOARD FINDS APPROPRIATE IN
9 CONSULTATION WITH THE AUTHORITY.

10 (B) APPLICATIONS FOR THE ECONOMIC BENEFIT POWER PROGRAM SHALL BE IN
11 THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS
12 THE BOARD PRESCRIBES IN CONSULTATION WITH THE AUTHORITY. A COPY OF EACH
13 APPLICATION RECEIVED SHALL BE MADE AVAILABLE FOR REVIEW BY EACH BOARD
14 MEMBER.

15 (C) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH
16 APPLICATION BY THE AUTHORITY, THE AUTHORITY SHALL PROMPTLY NOTIFY BY
17 ELECTRONIC MEANS, INCLUDING WEB SITE POSTINGS AND SUCH OTHER METHODS THE
18 BOARD DEEMS APPROPRIATE IN CONSULTATION WITH THE AUTHORITY, THE GOVER-
19 NOR, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY,
20 THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE
21 SENATE, AND EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY
22 PORTION OF THE FACILITY OWNED OR OPERATED BY THE APPLICANT IS LOCATED.
23 SUCH NOTICE SHALL PROVIDE THE NAME AND A DESCRIPTION OF THE APPLICANT,
24 AND THE ADDRESS OF THE APPLICANT'S FACILITIES THAT WOULD RECEIVE AN
25 AWARD UNDER THE PROGRAM. THE AUTHORITY SHALL ALSO DEVELOP A LISTING
26 WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH APPLICANT, THE AWARD
27 SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE FACILITIES FOR WHICH
28 THE APPLICANT SEEKS THE AWARD, AND MAKE THE LISTING AVAILABLE FOR PUBLIC
29 REVIEW ON THE AUTHORITY'S WEBSITE.

30 3. REVIEW, APPLICABLE CRITERIA AND RECOMMENDATIONS. (A) THE BOARD
31 SHALL REVIEW APPLICATIONS SUBMITTED UNDER THE ECONOMIC BENEFIT POWER
32 PROGRAM. THE BOARD SHALL MAKE AN INITIAL DETERMINATION OF WHETHER THE
33 APPLICANT IS AN ELIGIBLE APPLICANT, OR WHETHER A CURRENT APPLICANT
34 CONTINUES TO BE ELIGIBLE. THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT
35 THE ECONOMIC BENEFIT POWER PROGRAM AWARD BE AWARDED TO AN APPLICANT, OR
36 THAT AN EXISTING REWARD BE EXTENDED OR RENEWED, BASED ON AN APPLICATION
37 OF THE FOLLOWING CRITERIA WHICH SHALL BE CONSIDERED IN THE AGGREGATE AND
38 NO ONE OF WHICH SHALL BE PRESUMPTIVELY DETERMINATIVE:

39 (I) THE SIGNIFICANCE OF THE COST OF ELECTRICITY TO THE APPLICANT'S
40 OVERALL COST OF DOING BUSINESS, AND THE IMPACT THAT AN ECONOMIC BENEFIT
41 POWER AWARD WILL HAVE ON THE APPLICANT'S OPERATING COSTS;

42 (II) THE EXTENT TO WHICH AN ECONOMIC BENEFIT POWER AWARD WILL RESULT
43 IN NEW CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT, THE EXTENT TO
44 WHICH THE APPLICANT WILL AGREE TO COMMIT TO MAKING NEW CAPITAL INVEST-
45 MENT AS A CONDITION TO RECEIVING AN ECONOMIC BENEFIT POWER AWARD, AND
46 ANY PREVIOUS CAPITAL INVESTMENT, AT THE LOCATION OR ELSEWHERE IN THE
47 STATE, WHETHER UNDERTAKEN BY THE APPLICANT UNDER OTHER ECONOMIC DEVELOP-
48 MENT PROGRAMS OR OTHERWISE;

49 (III) THE SIZE OF THE APPLICANT'S TOTAL PAYROLL (SALARY, BENEFITS AND
50 THE NUMBER AND NATURE OF JOBS) AT THE FACILITY THAT WOULD RECEIVE THE
51 AWARD;

52 (IV) THE NUMBER OF JOBS THAT WILL BE CREATED OR RETAINED WITHIN THE
53 STATE IN RELATION TO THE REQUESTED AWARD, AND THE EXTENT TO WHICH THE
54 APPLICANT WILL AGREE TO COMMIT TO CREATING OR RETAINING SUCH JOBS AS A
55 CONDITION TO RECEIVING AN ECONOMIC BENEFIT POWER AWARD;

1 (V) WHETHER THE APPLICANT, DUE TO THE COST OF ELECTRICITY, IS AT RISK
2 OF CLOSING OR CURTAILING FACILITIES OR OPERATIONS IN THE STATE, RELOCAT-
3 ING FACILITIES OR OPERATIONS OUT OF THE STATE, OR LOSING A SIGNIFICANT
4 NUMBER OF JOBS IN THE STATE, IN THE ABSENCE OF AN ECONOMIC BENEFIT POWER
5 AWARD;

6 (VI) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY THAT WOULD RECEIVE
7 THE BENEFIT OF THE AWARD TO THE ECONOMY OF THE AREA IN WHICH SUCH FACIL-
8 ITY IS LOCATED OR TO THE STATE AS A WHOLE, INCLUDING THE EXTENT TO WHICH
9 THE AWARD IS LIKELY TO STIMULATE OR CREATE OTHER ECONOMIC ACTIVITY IN
10 THE REGION OR STATE;

11 (VII) THE EXTENT TO WHICH THE APPLICANT HAS PREVIOUSLY UNDERTAKEN
12 ENERGY AUDITS AND/OR INVESTED IN ENERGY EFFICIENCY MEASURES INCLUDING
13 CONSIDERATION OF THE TIMING OF SUCH AUDITS OR MEASURES, THE AMOUNT OF
14 INVESTMENTS IN ENERGY EFFICIENCY RELATIVE TO THE SIZE, NATURE AND
15 HISTORIC ENERGY CONSUMPTION, AND OTHER CAPITAL INVESTMENTS OF THE BUSI-
16 NESS, THE RELATIVE IMPROVEMENT IN ENERGY EFFICIENCY AND/OR NET ENERGY OR
17 FINANCIAL SAVINGS RESULTING FROM SUCH INVESTMENTS, AND SUCH OTHER
18 FACTORS AS THE BOARD MAY CONSIDER APPROPRIATE, AND/OR THE EXTENT TO
19 WHICH THE APPLICANT WILL AGREE, IF RECOMMENDED BY THE BOARD, TO COMMIT
20 TO MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEAS-
21 URES;

22 (VIII) THE EXTENT TO WHICH THE APPLICANT'S OPERATIONS ARE CONSISTENT
23 WITH THE POLICIES AND GOALS OF THE STATE ENERGY PLAN;

24 (IX) THE EXTENT TO WHICH THE APPLICANT PREVIOUSLY RECEIVED BENEFITS
25 UNDER OTHER POWER-RELATED PROGRAMS OF THE AUTHORITY, AND THE APPLICANT'S
26 PRIOR PERFORMANCE UNDER SUCH PROGRAMS WHERE APPLICABLE;

27 (X) IN THE CASE OF A NOT-FOR-PROFIT CORPORATION, THE EXTENT TO WHICH
28 IT PROVIDES CRITICAL SERVICES OR SUBSTANTIAL BENEFITS TO THE LOCAL
29 COMMUNITY;

30 (XI) THE EXTENT TO WHICH AN AWARD IS CONSISTENT WITH STATE, REGIONAL
31 AND LOCAL ECONOMIC DEVELOPMENT STRATEGIES IN THE AREA IN WHICH THE BUSI-
32 NESS IS LOCATED OR TO BE LOCATED;

33 (XII) THE EXTENT TO WHICH AN AWARD MIGHT RESULT IN INEQUITY FOR AN
34 APPLICANT AS COMPARED TO ITS COMPETITORS WITHIN THE STATE;

35 (XIII) IMPACT OF CURRENT ECONOMIC CONDITIONS ON THE APPLICANT; AND

36 (XIV) THE BOARD MAY ALSO CONSIDER THE EXTENT TO WHICH THE APPLICANT
37 HAS INVESTED IN ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER
38 AND/OR DISTRIBUTED GENERATION PURPOSES OR WILL AGREE, IF RECOMMENDED BY
39 THE BOARD, TO CONSIDER MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN
40 ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED
41 GENERATION PURPOSES AS IDENTIFIED PURSUANT TO SUBDIVISION SEVENTEEN OF
42 SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AS A CONDITION
43 TO RECEIVING AN AWARD; PROVIDED HOWEVER, THAT IN NO EVENT SHALL THE
44 ABSENCE OF SUCH INVESTMENT OR CONSIDERATION COUNT AGAINST THE APPLI-
45 CANT'S ELIGIBILITY FOR AN AWARD.

46 (B) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE AN
47 ECONOMIC BENEFIT POWER PROGRAM AWARD OR THE RENEWAL OR EXTENSION OF AN
48 EXISTING AWARD TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (1) A DESCRIPTION
49 OF THE AWARD THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED TO SUCH
50 APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN AWARD THAT
51 DIFFERS FROM THE AWARD REQUESTED BY AN ELIGIBLE APPLICANT; (2) AN EFFEC-
52 TIVE TERM OF CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE AUTHORITY
53 WHICH SHALL NOT EXCEED SEVEN YEARS, PROVIDED HOWEVER THAT THE TERM OF
54 ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JULY FIRST, TWO
55 THOUSAND ELEVEN; (3) THE DATE OF THE MANDATORY ANNUAL COMPLIANCE REVIEW
56 AT WHICH TIME, AND ANNUALLY AT THE SAME TIME EACH YEAR THEREAFTER, THE

1 ELIGIBLE APPLICANT, IF FOUND IN COMPLIANCE MAY APPLY FOR A SUBSEQUENT
2 CONTRACT FOR AN ADDITIONAL TERM OF ONE YEAR TO GO INTO EFFECT AT THE
3 CONCLUSION OF THE THEN CURRENT CONTRACT AS LONG AS COMPLIANCE CONTINUES
4 THROUGH THE CONCLUSION OF SUCH CONTRACT; AND (4) SUCH OTHER TERMS AND
5 CONDITIONS THAT THE BOARD RECOMMENDS AS APPROPRIATE. SUCH TERMS AND
6 CONDITIONS SHALL INCLUDE PROVISIONS FOR EFFECTIVE PERIODIC AUDITS OF
7 PROGRAM PARTICIPANTS FOR THE PURPOSE OF DETERMINING CONTRACT AND PROGRAM
8 COMPLIANCE, AND THE PARTIAL OR COMPLETE WITHDRAWAL OF AN ECONOMIC BENE-
9 FIT POWER PROGRAM AWARD IN THE CASE OF A PROGRAM PARTICIPANT THAT FAILS
10 TO MAINTAIN MUTUALLY AGREED UPON COMMITMENTS, INCLUDING BUT NOT LIMITED
11 TO LEVELS OF EMPLOYMENT, POWER UTILIZATION, CAPITAL INVESTMENTS, AND
12 ENERGY EFFICIENCY MEASURES.

13 (C) THE BOARD MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS
14 IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED HOWEVER THAT
15 THE BOARD SHALL SET ASIDE A PORTION OF THE BENEFITS AVAILABLE UNDER THE
16 ECONOMIC BENEFIT POWER PROGRAM IN AN AMOUNT NOT LESS THAN ONE HUNDRED
17 MEGAWATTS FOR ELIGIBLE SMALL BUSINESSES AND ELIGIBLE NOT-FOR-PROFIT
18 CORPORATIONS; AND PROVIDED FURTHER THAT THE BOARD SHALL SET ASIDE A
19 PORTION OF THE BENEFITS AVAILABLE UNDER THE PROGRAM IN AN AMOUNT NOT
20 LESS THAN ONE HUNDRED MEGAWATTS FOR ELIGIBLE HIGH LOAD FACTOR MANUFAC-
21 TURERS AS DEFINED IN THE FOURTH UNDESIGNATED PARAGRAPH OF SECTION ONE
22 THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

23 (D) A RECOMMENDATION FOR AN ECONOMIC BENEFIT POWER PROGRAM AWARD SHALL
24 QUALIFY AN APPLICANT TO ENTER INTO A CONTRACT, WITH THE AUTHORITY TO
25 RECEIVE SUCH AWARD FROM THE AUTHORITY PURSUANT TO THE TERMS AND CONDI-
26 TIONS OF THE RECOMMENDATION OR ON SUCH OTHER TERMS AS THE AUTHORITY
27 DETERMINES TO BE APPROPRIATE. IN THE EVENT THAT THE AWARD INCLUDES THE
28 PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND SERVICES AS DEFINED
29 IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC
30 AUTHORITIES LAW, THE CONTRACT SHALL ALLOW FOR REIMBURSEMENT FOR COSTS TO
31 AN ENTITY OTHER THAN THE POWER AUTHORITY OF THE STATE OF NEW YORK SO
32 LONG AS SUCH COSTS ARE DEEMED REASONABLE AND APPROPRIATE. SUCH
33 CONTRACTS SHALL PROVIDE THAT THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE
34 WILL PROVIDE CUSTOMER AND BILLING SERVICES UPON MUTUALLY AGREED TERMS
35 AND CONDITIONS.

36 (E) UPON APPROVAL OR DENIAL OF ANY APPLICATION FOR AN ECONOMIC BENEFIT
37 POWER PROGRAM AWARD, THE BOARD SHALL ISSUE IN WRITING A STATEMENT OF ITS
38 FINDINGS AND CONCLUSIONS WITH RESPECT TO SUCH APPLICATION AND THE
39 REASONS FOR ITS APPROVAL OR DENIAL.

40 (F) (1) THE BOARD SHALL SUBMIT TO THE DIRECTOR OF THE BUDGET, THE
41 CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE
42 ASSEMBLY WAYS AND MEANS COMMITTEE AN EVALUATION OF THE SUCCESS OF EACH
43 ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS PREPARED BY AN INDE-
44 PENDENT THIRD PARTY. SUCH EVALUATION SHALL DETERMINE WHETHER THE
45 SERVICES PROVIDED HAVE HELPED RECIPIENTS TO SUCCEED, BASED ON A COMPAR-
46 ISON OF THE PERFORMANCE OF THE RECIPIENTS AGAINST THE NORMS OF THEIR
47 SPECIFIC INDUSTRY, AND SHALL ASSESS THE EFFECTIVENESS, IF ANY, OF EACH
48 ECONOMIC DEVELOPMENT POWER PROGRAM. SUCH AN EVALUATION SHALL BE SUBMIT-
49 TED BY DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN AND BY DECEMBER
50 THIRTY-FIRST EVERY FIVE YEARS THEREAFTER.

51 (2) BETWEEN EVALUATION DUE DATES, THE BOARD SHALL MAINTAIN THE NECES-
52 SARY RECORDS AND DATA REQUIRED TO SATISFY SUCH EVALUATION REQUIREMENTS
53 AND TO SATISFY INFORMATION REQUESTS RECEIVED FROM THE DIRECTOR OF THE
54 BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIR-
55 PERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE BETWEEN SUCH EVALUATION
56 DUE DATES.

1 S 13. The opening paragraph of subdivision 5 of section 1005 of the
2 public authorities law, as amended by chapter 294 of the laws of 1968,
3 is amended to read as follows:

4 To develop, maintain, manage and operate those parts of the Niagara
5 and Saint Lawrence hydroelectric projects owned or controlled by it in
6 such manner as to give effect to the policy hereby declared (and all
7 plans and acts, and all contracts for the use, sale, transmission and
8 distribution of the power generated by such projects, shall be made in
9 the light of, consistent with and subject to this policy), namely, that
10 such projects shall be in all respects for the aid, improvement, and
11 benefit of commerce and navigation in, through, along and past the
12 Niagara river, the Saint Lawrence river and the international rapids
13 section thereof, and that in the development of hydro-electric power
14 therefrom such projects shall be considered primarily as for the benefit
15 of the people of the state as a whole [and particularly the domestic and
16 rural consumers to whom the power can economically be made available,
17 and accordingly that sale to and use by industry shall be a secondary
18 purpose, to be utilized principally to secure a sufficiently high load
19 factor and revenue returns to permit domestic and rural use at the
20 lowest possible rates and in such manner as to encourage increased
21 domestic and rural use of electricity]. In furtherance of this policy
22 and to secure a wider distribution of such power and use of the greatest
23 value to the general public of the state, the authority shall in addi-
24 tion to other methods which it may find advantageous make provision so
25 that municipalities and other political [sub-divisions] SUBDIVISIONS of
26 the state now or hereafter authorized by law to engage in the distrib-
27 ution of electric power may secure a reasonable share of the power
28 generated by such projects, and shall sell the same or cause the same to
29 be sold to such municipalities and political subdivisions at prices
30 representing cost of generation, plus capital and operating charges,
31 plus a fair cost of transmission, all as determined by the trustees, and
32 subject to conditions which shall assure the resale of such power to
33 [domestic and rural consumers] SUCH CUSTOMERS at the lowest possible
34 price, provided, however, that in disposing of hydro-electric power
35 pursuant to and in furtherance of the aforementioned policy and
36 purposes, appropriate provision may also be made to allocate a reason-
37 able share of project power to agencies created or designated by other
38 states and authorized to resell the power to users under the same terms
39 and conditions as power is disposed of in New York state. To that end,
40 the authority may provide in any contract or contracts which it may make
41 for the sale, transmission and distribution of the power that the
42 purchaser, transmitter or distributor shall construct, maintain and
43 operate, on such terms as the authority may deem proper, such connecting
44 lines as may be necessary for transmission of the power from main trans-
45 mission lines to such municipalities or political subdivisions.

46 S 14. Section 1005 of the public authorities law is amended by adding
47 a new subdivision 13-a to read as follows:

48 13-A. ECONOMIC BENEFIT POWER PROGRAM. (A) BEGINNING NO LATER THAN
49 JULY FIRST, TWO THOUSAND ELEVEN, THE AUTHORITY IS AUTHORIZED AND
50 DIRECTED, AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, TO MAKE
51 ANNUAL PAYMENTS IN AN AMOUNT OF UP TO ONE HUNDRED TWENTY MILLION DOLLARS
52 FOR UP TO NINE HUNDRED TEN MEGAWATTS OF ECONOMIC BENEFIT POWER PROGRAM
53 AWARDS UPON THE RECOMMENDATION OF THE ECONOMIC DEVELOPMENT POWER ALLO-
54 CATION BOARD UNDER THE ECONOMIC BENEFIT POWER PROGRAM AS PROVIDED IN
55 SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOPMENT LAW. NOT
56 LESS OFTEN THAN ANNUALLY, THE AUTHORITY SHALL IDENTIFY AND ADVISE THE

1 ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD OF THE AVAILABILITY OF THE
2 FUNDS FOR SUCH AWARD.

3 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, BUT
4 SUBJECT TO THE TERMS AND CONDITIONS OF FEDERAL ENERGY REGULATORY COMMIS-
5 SION LICENSES, TO ALLOCATE, REALLOCATE OR EXTEND, DIRECTLY OR BY SALE
6 FOR RESALE, UP TO NINE HUNDRED TEN MEGAWATTS OF ECONOMIC BENEFIT POWER
7 TO ELIGIBLE APPLICANTS LOCATED WITHIN THE STATE OF NEW YORK UPON THE
8 RECOMMENDATION OF THE NEW YORK STATE ECONOMIC DEVELOPMENT POWER ALLO-
9 CATION BOARD PURSUANT TO SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THE
10 ECONOMIC DEVELOPMENT LAW.

11 (C) ECONOMIC BENEFIT POWER SHALL MEAN AND CONSIST OF EQUAL AMOUNTS OF
12 (1) UP TO FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF FIRM HYDROELECTRIC POWER
13 FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC PROJECTS TO BE WITH-
14 DRAWN AS OF JUNE FIRST, TWO THOUSAND TEN FROM UTILITY CORPORATIONS THAT,
15 AS OF MAY THIRTY-FIRST, TWO THOUSAND TEN, PURCHASED SUCH POWER FOR THE
16 BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS ("ECONOMIC BENEFIT POWER
17 HYDROPOWER"), AND (2) POWER PROCURED BY THE AUTHORITY THROUGH A COMPET-
18 ITIVE PROCUREMENT PROCESS, AUTHORITY SOURCES (OTHER THAN THE NIAGARA AND
19 SAINT LAWRENCE PROJECTS) OR THROUGH AN ALTERNATE METHOD ("ECONOMIC BENE-
20 FIT POWER MARKET POWER"). WITH RESPECT TO ECONOMIC BENEFIT POWER MARKET
21 POWER, THE AUTHORITY MAY PROVIDE POWER THROUGH AN ALTERNATE METHOD IF
22 THE COST IS LOWER THAN THE COST OF POWER OBTAINED THROUGH A COMPETITIVE
23 PROCUREMENT PROCESS; PROVIDED, HOWEVER, THAT IF SUCH LOWER COST POWER
24 COMES FROM AUTHORITY SOURCES, THE USE OF THAT POWER SHALL NOT REDUCE THE
25 AVAILABILITY OF, OR CAUSE AN INCREASE IN THE PRICE OF, POWER PROVIDED BY
26 THE AUTHORITY FOR ANY OTHER PROGRAM AUTHORIZED IN THIS ARTICLE OR PURSU-
27 ANT TO ANY OTHER STATUTE.

28 (D) NOTWITHSTANDING SECTION ONE THOUSAND NINE OF THIS TITLE OR ANY
29 OTHER PROVISION OF LAW TO THE CONTRARY, THE AUTHORITY IS AUTHORIZED,
30 BEGINNING JULY FIRST, TWO THOUSAND ELEVEN, TO MAKE AVAILABLE, CONTRACT
31 WITH AND SELL TO SUCH ELIGIBLE APPLICANTS AS ARE RECOMMENDED BY THE
32 ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD UP TO NINE HUNDRED TEN MEGA-
33 WATTS OF ECONOMIC BENEFIT POWER FOR ECONOMIC BENEFIT POWER ALLOCATIONS.
34 AN ECONOMIC BENEFIT POWER ALLOCATION SHALL CONSIST OF EQUAL PARTS OF
35 ECONOMIC BENEFIT POWER HYDROPOWER AND ECONOMIC BENEFIT POWER MARKET
36 POWER AS SUCH TERMS ARE DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION;
37 PROVIDED, HOWEVER, THAT PRIOR TO ENTERING INTO A CONTRACT WITH AN ELIGI-
38 BLE APPLICANT FOR THE SALE OF ECONOMIC BENEFIT POWER, AND PRIOR TO THE
39 PROVISION OF ELECTRIC SERVICE RELATING TO THE ECONOMIC BENEFIT POWER
40 ALLOCATION, THE AUTHORITY SHALL OFFER EACH ELIGIBLE APPLICANT THE OPTION
41 TO DECLINE TO PURCHASE THE ECONOMIC BENEFIT POWER MARKET POWER COMPONENT
42 OF SUCH ALLOCATION. IF AN ELIGIBLE APPLICANT DECLINES TO PURCHASE SUCH
43 MARKET POWER FROM THE AUTHORITY, THE AUTHORITY SHALL HAVE NO RESPONSI-
44 BILITY FOR SUPPLYING SUCH MARKET POWER TO THE ELIGIBLE APPLICANT;
45 FURTHER PROVIDED THAT, ANY REVENUES THAT MAY FROM TIME TO TIME RESULT
46 FROM THE SALE OF ANY PORTION OF ECONOMIC BENEFIT POWER HYDROPOWER NOT
47 OTHERWISE REQUIRED OR ALLOCATED TO MEET THE OBLIGATIONS OF THE ECONOMIC
48 BENEFIT POWER PROGRAM AS PROVIDED FOR BY THE PROVISIONS OF TITLE ONE OF
49 ARTICLE FIVE OF THE PUBLIC AUTHORITIES LAW OR ARTICLE SIX OF THE ECONOM-
50 IC DEVELOPMENT LAW, SHALL, AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUS-
51 TEE, BE SOLELY AND EXCLUSIVELY DEDICATED TO AND USED FOR THE PURPOSES OF
52 THE ECONOMIC BENEFIT POWER PROGRAM AND TO ENHANCE AND MAKE AVAILABLE
53 ECONOMIC BENEFIT POWER AWARDS.

54 S 15. Monthly payments for domestic and rural consumers. Notwith-
55 standing any provision of title 1 of article 5 of the public authorities
56 law or article 6 of the economic development law to the contrary, the

1 power authority of the state of New York is authorized, as deemed feasi-
2 ble and advisable by the trustees, to use revenues from the sale of
3 hydroelectric power, and such other funds of the power authority as
4 deemed feasible and advisable by the trustees, to fund monthly payments
5 to be made to such classes of electricity consumers that enjoyed the
6 benefits of authority hydroelectric power withdrawn pursuant to subdivi-
7 sion 13-a of section 1005 of the public authorities law for the purpose
8 of mitigating price impacts associated with the reallocation of such
9 power. Such monthly payments shall commence on June 1, 2010. The total
10 annual amount of monthly payments for each of the 12 month periods from
11 June 1, 2010 through May 31, 2011 and from June 1, 2011 through May 31,
12 2012 shall be seventy million dollars for each such period. The total
13 annual amount of monthly payments for the 12 month period from June 1,
14 2012 through May 31, 2013 shall be sixty million dollars. The total
15 amount of monthly payments for the 12 month period from June 1, 2013
16 through May 31, 2014 shall be fifty million dollars. The total amount of
17 monthly payments for each succeeding 12 month period thereafter shall be
18 forty million dollars. The total amount of such payments shall be
19 apportioned by the power authority of the state of New York among the
20 utility corporations that purchased such hydroelectric power for the
21 benefit of their domestic and rural consumers as of May 31, 2010 accord-
22 ing to the relative amounts of such power purchased by such companies.
23 Payments shall be credited to the electricity bills of such corpo-
24 rations' domestic and rural consumers in a manner to be determined by
25 the public service commission of the state of New York.

26 S 16. Transitional electricity discount. Notwithstanding any provision
27 of title 1 of article 5 of the public authorities law or article 6 of
28 the economic development law to the contrary, with respect to applicants
29 who are in substantial compliance with all contractual commitments and
30 receiving benefits under the power for jobs, energy cost savings bene-
31 fit, economic development, high load factor or municipal distribution
32 agency programs, but would otherwise not receive a recommendation from
33 the New York state economic development power allocation board for an
34 economic benefit power allocation pursuant to section 188-a of the
35 economic development law, such board shall recommend that the power
36 authority of the state of New York provide for a transitional electric-
37 ity discount to such applicants. The power authority of the state of New
38 York is authorized, as deemed feasible and advisable by the trustees, to
39 provide such transitional electricity discounts as recommended by the
40 New York State economic development power allocation board. Not less
41 often than annually, the power authority of the state of New York shall
42 identify and advise such board whether sufficient funds are available
43 for the funding of such transitional electricity discounts. The amount
44 of the transitional electricity discount for the period July 1, 2011
45 through June 30, 2013 shall be equivalent to 66 percent of the unit (per
46 kilowatt-hour) value of the savings received by the applicant under the
47 power for jobs or energy cost savings benefit programs during the 12
48 months ending on May 15, 2010. The amount of the transitional electric-
49 ity discount for the period July 1, 2013 through June 30, 2015 shall be
50 equivalent to 33 percent of the unit (per kilowatt-hour) value of the
51 savings received by the applicant under the power for jobs or energy
52 cost savings benefit programs during the 12 months ending on May 15,
53 2010. Such transitional electricity discount shall not be provided
54 after June 30, 2015. Nothing herein shall prohibit or in any way limit
55 any applicants who are in substantial compliance with all contractual
56 commitments and receiving benefits under the power for jobs, energy cost

1 savings benefit, economic development, high load factor or municipal
2 distribution agency programs, whether or not they are recipients of a
3 transitional electricity discount pursuant to this paragraph, from
4 applying for or receiving an economic benefit power award for which they
5 would otherwise qualify, provided however that the receipt of an econom-
6 ic benefit power award by an applicant shall bar any further eligibility
7 for a transitional electricity discount, and no applicant shall receive
8 both an economic benefit power award and a transitional electricity
9 discount for the same calendar or billing period.

10 S 17. Section 1005 of the public authorities law is amended by adding
11 two new subdivisions 13-b and 13-c to read as follows:

12 13-B. RESIDENTIAL CONSUMER ENERGY EFFICIENCY. BEGINNING JUNE FIRST,
13 TWO THOUSAND ELEVEN, THE AUTHORITY, AS DEEMED FEASIBLE AND ADVISABLE BY
14 THE TRUSTEES, IS AUTHORIZED TO USE SUCH FUNDS OF THE AUTHORITY AS DEEMED
15 FEASIBLE AND ADVISABLE BY THE TRUSTEES, TO SUPPLEMENT FUNDING FOR EXIST-
16 ING STATE ENERGY EFFICIENCY PROGRAMS, ADMINISTERED BY THE PUBLIC SERVICE
17 COMMISSION AND/OR NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHOR-
18 ITY. SUCH FUNDING SHALL BE MADE AVAILABLE TO RESIDENTIAL CONSUMERS WHO
19 RESIDE WITHIN THE SERVICE TERRITORIES OF THE UTILITY CORPORATIONS THAT,
20 AS OF MAY THIRTY-FIRST, TWO THOUSAND TEN, PURCHASED SUCH POWER FOR THE
21 BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS. IN MAKING FUNDING DETER-
22 MINATIONS PURSUANT TO THIS PARAGRAPH, THE AUTHORITY SHALL COOPERATE WITH
23 THE PUBLIC SERVICE COMMISSION AND THE NEW YORK STATE ENERGY RESEARCH AND
24 DEVELOPMENT AUTHORITY, AS APPROPRIATE. THE PUBLIC SERVICE COMMISSION AND
25 THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL
26 PROVIDE A REPORT TO THE AUTHORITY NO LESS THAN ANNUALLY WHICH SHALL
27 DESCRIBE THE PURPOSE FOR WHICH THE FUNDS AUTHORIZED BY THIS PARAGRAPH
28 WERE USED. THE REPORT SHALL INCLUDE SUFFICIENT INFORMATION TO DEMON-
29 STRATE THAT THE FUNDS WERE USED FOR THE PURPOSES AUTHORIZED BY THIS
30 PARAGRAPH AND PROVIDE SUCH OTHER INFORMATION AS THE AUTHORITY REQUESTS.

31 13-C. TO PROMOTE THE CONSERVATION AND EFFICIENT USE OF ELECTRICITY,
32 THE POWER AUTHORITY OF THE STATE OF NEW YORK SHALL UNDERTAKE OR CAUSE TO
33 BE UNDERTAKEN ENERGY AUDITS FOR THOSE APPLICANTS THAT THE BOARD HAS
34 DETERMINED WOULD BENEFIT FROM AND WOULD BE ELIGIBLE TO RECEIVE AN
35 ECONOMIC BENEFIT POWER AWARD. THE AUDITS SHALL ASSESS (I) A RECIPIENT'S
36 ELECTRICITY USE TO DETERMINE BASED ON A COMPARISON OF THE NORMS OF THEIR
37 SPECIFIC INDUSTRY, COST-EFFECTIVE MEASURES THAT COULD BE EMPLOYED TO
38 REDUCE ENERGY COSTS, ENERGY USE, OR IMPROVE THE EFFICIENCY OF BUILDINGS,
39 BUILDING SYSTEMS, EQUIPMENT, PROCESSES OR OPERATIONS; AND (II) THE
40 FEASIBILITY OF ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER
41 AND/OR DISTRIBUTED GENERATION PURPOSES. APPLICANTS' ENERGY AUDITS
42 PERFORMED UP TO FIVE YEARS PRIOR TO THE DATE OF APPLICATION SUBMISSION
43 MAY BE CONSIDERED BY THE BOARD AND THE RESULTS THEREOF USED BY THE BOARD
44 IN MAKING ITS DETERMINATION. COSTS OF THE ENERGY AUDITS CAUSED TO BE
45 UNDERTAKEN SHALL BE PAID BY THE POWER AUTHORITY OF THE STATE OF NEW YORK
46 AS DEEMED FEASIBLE AND ADVISABLE BY THE BOARD. FOR PURPOSES OF IMPL-
47 MENTING THIS SUBDIVISION ONLY, THE POWER AUTHORITY OR ITS AGENT IS
48 AUTHORIZED TO APPLY FOR FUNDING FROM ANY PROGRAM THAT PAYS ALL OR SOME
49 OF THE COSTS OF SUCH AUDITS, AND THE POWER AUTHORITY OR ITS AGENT SHALL
50 BE ENTITLED TO RECEIVE SUCH FUNDING AS IF THE RECIPIENT OF SUCH LOW-COST
51 POWER HAD APPLIED FOR THE FUNDING DIRECTLY.

52 S 18. Section 1005 of the public authorities law is amended by adding
53 a new subdivision 17 to read as follows:

54 17. A. FOR THE PURPOSE OF FURNISHING THE STATE WITH SYSTEMATIC INFOR-
55 MATION REGARDING THE STATUS AND THE ACTIVITIES OF THE AUTHORITY, THE
56 AUTHORITY SHALL SUBMIT TO THE GOVERNOR, THE CHAIRPERSON OF THE SENATE

1 FINANCE COMMITTEE, THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS
2 COMMITTEE AND THE STATE COMPTROLLER, WITHIN NINETY DAYS AFTER THE END OF
3 ITS FISCAL YEAR, A COMPLETE AND DETAILED ANNUAL REPORT ON EACH ECONOMIC
4 DEVELOPMENT POWER PROGRAM IT ADMINISTERS. SUCH ANNUAL REPORT SHALL
5 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

6 (I) THE NUMBER OF COMMERCIAL/INDUSTRIAL RECIPIENTS OF ECONOMIC POWER
7 PROGRAM BENEFITS, WHERE THE ECONOMIC REGION CLIENT IS LOCATED, WHAT TYPE
8 AND HOW MUCH ASSISTANCE IS PROVIDED, MEGAWATTS OF ELECTRICITY AWARDED,
9 LENGTH OF CURRENT CONTRACT, CURRENT CONTRACT COMPLIANCE STATUS, LAST
10 AUDIT, NUMBER OF JOBS RETAINED AND/OR ADDED IN THE FISCAL YEAR, APPROXI-
11 MATE ENERGY EFFICIENCY SAVINGS AND AMOUNT OF POWER REALLOCATED FROM
12 PREVIOUS YEARS DUE TO FORFEITED BENEFITS;

13 (II) COST TO THE AUTHORITY TO PROVIDE ECONOMIC DEVELOPMENT POWER
14 PROGRAMS DURING THE PREVIOUS FISCAL YEAR; AND

15 (III) SOURCES, TYPES AND COSTS OF POWER OBTAINED FOR EACH ECONOMIC
16 DEVELOPMENT POWER PROGRAM IT ADMINISTERS, INCLUDING, BUT NOT LIMITED TO,
17 AN EXPLANATION OF HOW POWER IS OBTAINED BY THE AUTHORITY TO SUPPORT EACH
18 ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS, THE PERCENTAGE OF
19 LONG- AND SHORT-TERM POWER PURCHASE AGREEMENTS USED AND DAY-AHEAD AND
20 SPOT MARKET PURCHASES, AND SUMMARY OF NEW YORK INDEPENDENT SYSTEM OPERA-
21 TOR (NYISO) CHARGES PAID BY AUTHORITY CUSTOMERS.

22 B. THE COMPTROLLER SHALL BE CHARGED WITH SEEING THAT THE REPORTS
23 MANDATED IN THIS SUBDIVISION ARE FILED ON TIME AND THAT THEY ARE SUFFI-
24 CIENTLY COMPREHENSIVE. THE COMPTROLLER SHALL REPORT ANY DEFICIENCIES TO
25 THE GOVERNOR AND TO THE LEGISLATIVE CHAIRS NAMED IN SUBDIVISION ONE OF
26 THIS SECTION.

27 S 19. Severability clause. If any clause, sentence, paragraph, subdi-
28 vision, section or part of this act shall be adjudged by any court of
29 competent jurisdiction to be invalid, such judgment shall not affect,
30 impair, or invalidate the remainder thereof, but shall be confined in
31 its operation to the clause, sentence, paragraph, subdivision, section
32 or part thereof directly involved in the controversy in which such judg-
33 ment shall have been rendered. It is hereby declared to be the intent of
34 the legislature that this act would have been enacted even if such
35 invalid provisions had not been included therewith.

36 S 20. This act shall take effect immediately; provided that the amend-
37 ments to section 183 of the economic development law made by sections
38 two, eight, nine and ten of this act shall be subject to the expiration
39 and reversion of such section pursuant to section 9 of chapter 316 of
40 the laws of 1997, as amended, when upon such date the provisions of
41 section eleven of this act shall take effect; provided, further, that
42 the amendments to section 189 of the economic development law made by
43 sections three and four of this act shall not affect the repeal of such
44 section and shall be deemed repealed therewith; and provided, further
45 that the amendments to subdivision 9 of section 186-a of the tax law
46 made by section six of this act shall not affect the repeal of such
47 subdivision and shall be deemed repealed therewith.