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

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I N A S S E M B L Y

June 21, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cahill) -- read once and referred to the Committee on Energy

AN ACT to amend the economic development law, chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development; and 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, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program and making certain provisions permanent; to amend the economic development law, in relation to the creation of the power solutions program; to amend the public authorities law, in relation to payments under the power solutions program and energy audits as a condition for an award under the economic development power award; to amend the tax law, in relation to credits for the power solution program; and providing for the repeal of certain provisions upon the expiration thereof

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

Section 1. Section 182 of the economic development law, as amended by chapter 289 of the laws of 2000, is amended to read as follows:

S 182. The New York state economic development power allocation board. There is hereby created a New York state economic development power allocation board, which shall possess the powers and duties herein specified and all the powers necessary or proper to carry out the purposes of this article. The board shall consist of [four] TWELVE members, [two] ONE OF WHOM SHALL BE THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION AND FIVE of whom shall be appointed by the governor [and one] TWO of whom shall be appointed by the speaker of the assembly [and one], TWO of whom shall be appointed by the president pro tempore of the senate, ONE OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY AND ONE OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE. Each member shall be appointed for terms of three years or until a successor shall have been named and qualified. The chairman shall be

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

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[designated by the governor from amongst the members] THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION. [Three] SEVEN members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof; and no actions of the board may be taken except upon the affirmative vote of at least [three] SEVEN members. Videoconferencing may be used for attendance and participation by members of the board. If videoconferencing is used the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall inform the public that [vidioconferencing] VIDEOCONFERENCING will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations. Members of the board, except those who are employees or officers of the state, its authorities or agencies shall not receive a salary or other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

S 2. The opening paragraph of paragraph 5 of subdivision (a) of section 189 of the economic development law, as amended by chapter 88 of the laws of 2010, is amended to read as follows:

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

S 3. Subdivisions (f) and (l) of section 189 of the economic development law, as amended by chapter 88 of the laws of 2010, are amended to read as follows:

(f) Eligibility. The board shall recommend applications for allocations of power under the power for jobs program to or for the use of businesses which normally utilize a minimum peak electric demand in excess of four hundred kilowatts; provided, however, that up to one hundred megawatts of power available for allocation during the initial three phases of the power for jobs program may be recommended for allocations to not-for-profit corporations and to small businesses; and, provided, further that up to seventy-five megawatts of power available for allocation during the fourth phase of the program may be recommended for allocations to not-for-profit corporations and to small businesses. The board may require small businesses that normally utilize a minimum peak electric demand of less than one hundred kilowatts to aggregate their electric demand in amounts of no less than one hundred kilowatts, for the purposes of applying to the board for an allocation of power. The board shall recommend allocations of the additional three hundred

megawatts available during the fourth phase of the program to any such eligible applicant, including any recipient of power allocated during the first phase of the program. The board shall recommend allocations of the additional one hundred eighty-three megawatts available during the fifth phase of the program to any eligible applicant, including any recipient of power allocated during the second and third phases of the program; provided, however, that the term of contracts for allocations under the fifth phase of the program shall in no case extend beyond [June second] JUNE THIRTIETH, two thousand [ten] ELEVEN. Notwithstanding any provision of law to the contrary, and, in particular, the provisions of this chapter concerning the terms of contracts for allocations under the power for jobs program, the terms of any contract with a recipient of power allocated under phase two of the power for jobs program that has expired or will expire on or before the thirty-first day of August, two thousand two, may be extended by the power authority of the state of New York for an additional period of three months effective on the date of such expiration, pending the filing and approval of an application by such recipient for an allocation under the fifth phase of the program. The term of any new contract with such recipient under the fifth phase of the program shall be deemed to include any three month contract extension made pursuant to this subdivision and the termination date of any such new contract under phase five shall be no later than if such new contract had commenced upon the expiration of the recipient's original phase two contract. The terms of any contract with a recipient of power allocated under phase four and/or phase five of the power for jobs program that has expired or will expire on or before the thirty-first day of December, two thousand five, may be extended by the power authority of the state of New York from a date beginning no earlier than the first day of December, two thousand four and extending through [June second] JUNE THIRTIETH, two thousand [ten] ELEVEN.

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

the award of power for jobs electricity savings reimbursements and/or contract extensions.

S 4. Section 9 of chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development, as amended by chapter 88 of the laws of 2010, is amended to read as follows:

S 9. This act shall take effect immediately [and]; PROVIDED HOWEVER THAT SECTIONS ONE, TWO, THREE, FIVE AND SIX OF THIS ACT shall expire and be deemed repealed [June 2, 2010] JUNE 30, 2011.

S 5. Section 11 of chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the New York power authority to make contributions to the general fund, as amended by chapter 88 of the laws of 2010, is amended to read as follows:

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

S 6. Section 183 of the economic development law, as amended by chapter 316 of the laws of 1997, subdivision (g) as amended by chapter 226 of the laws of 2002, subdivision (h) as added by chapter 313 of the laws of 2005 and paragraphs 2 and 4 of subdivision (h) as amended by chapter 88 of the laws of 2010, is amended to read as follows:

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

(a) To adopt, within one hundred twenty days after appointment, eligibility criteria and rules and regulations, IN CONSULTATION WITH THE POWER AUTHORITY OF THE STATE OF NEW YORK AND THE URBAN DEVELOPMENT CORPORATION, relating to the activities of the board, AS DESCRIBED IN THIS ARTICLE.

(b) To evaluate applications for allocations of economic development power and of power under the power for jobs program AND THE POWER SOLUTIONS PROGRAM and to make recommendations with respect to such proposed allocations; PROVIDED HOWEVER, THAT THE BOARD SHALL NOT ACCEPT ANY NEW APPLICATION THAT REQUESTS AN ALLOCATION OF POWER UNDER THE POWER FOR JOBS PROGRAM AFTER JUNE THIRTIETH, TWO THOUSAND ELEVEN.

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

(d) To provide advice and assistance when appropriate to applicants on state economic development programs and services in addition to the economic development power and power under the power [for jobs] SOLUTIONS program and industrial incentive awards specifically provided for in this section.

(e) In consultation with the department of public service, to establish and develop guidelines for a competitive procurement process as provided in subdivision (c) of section one hundred eighty-nine of this article.

(f) TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE POWER SOLUTIONS PROGRAM, AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED IN SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

The [department, the] power authority of the state of New York, [the urban development corporation, and all other state officers, departments, boards, divisions and commissions] WITH THE ASSISTANCE OF URBAN DEVELOPMENT CORPORATION AND THE DEPARTMENT OF ECONOMIC DEVELOPMENT, shall render such services to the board [within their respective functions] as may be requested by the board. IN ADDITION, EVERY AGENCY, DEPARTMENT, OFFICE, DIVISION OR PUBLIC AUTHORITY OF THIS STATE SHALL COOPERATE WITH THE BOARD AND FURNISH SUCH INFORMATION AND ASSISTANCE AS THE BOARD DETERMINES IS REASONABLY NECESSARY TO ACCOMPLISH ITS PURPOSE.

(g) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE board shall solicit applications for economic development power and for power under the power [for jobs] SOLUTIONS 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. Solicitations of [preliminary] applications for power under the power [for jobs] SOLUTIONS program shall begin [promptly after the effective date of chapter three hundred sixteen of the laws of nineteen hundred ninety-seven establishing 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, 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] JANUARY THIRTY-FIRST, TWO THOUSAND ELEVEN.

(h) 1. The board shall solicit applications for and make recommendations for approval of energy cost savings benefits [in amounts made available pursuant to the twelfth undesignated paragraph of section one thousand five of the public authorities law] for the purpose of lowering the cost of electricity to eligible businesses.

2. [During the period commencing] COMMENCING on November first, two thousand five [and ending on June second, two thousand ten] eligible businesses shall only include customers served under the power authority of the state of New York's high load factor, economic development power and other business customers served by political subdivisions of the state authorized by law to engage in the distribution of electric power [that were authorized to be served by the authority from the authority's former James A. Fitzpatrick nuclear power plant as of the effective date of this subdivision whose power prices may be subject to increase

before June second, two thousand ten. Provided, however, that the total amount of megawatts of replacement and preservation power which, due to the extension of the energy cost savings benefits, are not relinquished by or withdrawn from a recipient shall be deemed to be relinquished or withdrawn for purposes of offering such megawatts by the authority for reallocation pursuant to subdivision thirteen of section one thousand five of the public authorities law. Provided, further, that for any such reallocation, the authority shall maintain the same energy cost savings benefit level for all eligible businesses using any available authority resources as deemed feasible and advisable by the trustees pursuant to section seven of part U of chapter fifty-nine of the laws of two thousand six].

3. Each application for an energy cost savings benefit 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, 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; and

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

(E) THE EXTENT TO WHICH THE APPLICANT HAS PREVIOUSLY UNDERTAKEN ENERGY AUDITS AND/OR INVESTED IN ENERGY EFFICIENCY MEASURES INCLUDING CONSIDERATION OF THE TIMING OF SUCH AUDITS OR MEASURES, THE AMOUNT OF INVESTMENTS IN ENERGY EFFICIENCY RELATIVE TO THE SIZE, NATURE AND HISTORIC ENERGY CONSUMPTION, AND OTHER CAPITAL INVESTMENTS OF THE BUSINESS, THE RELATIVE IMPROVEMENT IN ENERGY EFFICIENCY AND/OR NET ENERGY OR FINANCIAL SAVINGS RESULTING FROM SUCH INVESTMENTS, AND SUCH OTHER FACTORS AS THE BOARD MAY CONSIDER APPROPRIATE, AND/OR THE EXTENT TO WHICH THE APPLICANT WILL AGREE, IF RECOMMENDED BY THE BOARD, TO COMMIT TO MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEASURES;

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

4. Applications for an energy cost savings benefit shall be in the form and contain such information, exhibits and supporting data as the board may prescribe. The board shall review the applications received and shall determine the applications which best meet the criteria established for the benefits pursuant to this subdivision and it shall recommend such applications to the power authority of the state of New York

with such terms and conditions as it deems appropriate; provided, however, that for energy cost savings benefits granted on or after June thirtieth, two thousand nine through June second, two thousand ten, the board shall expedite the awarding of such benefits and shall defer the review of compliance with such criteria until after the applicant has been awarded an energy cost savings benefit. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the energy cost savings benefit in the event the recipient fails to maintain mutually agreed upon commitments that may include, but are not limited to, levels of employment, capital investment, ENERGY EFFICIENCY MEASURES and power utilization. Recommendation for approval of an energy cost savings benefit shall qualify an applicant to receive an energy cost savings benefit from the power authority of the state of New York pursuant to the terms and conditions of the recommendation.

5. The transfer of an energy cost savings benefit shall be prohibited unless specifically approved by the board as consistent with the criteria established pursuant to this paragraph. Any transfer which occurs without the board's approval shall be invalid and such transfer may subject the recipient to revocation of its benefit and modification or revocation of its contract.

S 7. The economic development law is amended by adding a new section 188-a to read as follows:

S 188-A. POWER SOLUTIONS PROGRAM. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDIVISION THREE OF THIS SECTION.

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

(C) "POWER SOLUTIONS AWARD" OR "AWARD" SHALL MEAN AN ALLOCATION OF POWER OR AN AWARD 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 POWER SOLUTIONS PROGRAM CREATED BY THIS SECTION AND/OR THE PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND SERVICES AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

(D) "ELIGIBLE APPLICANT" SHALL MEAN AN ELIGIBLE BUSINESS, ELIGIBLE SMALL BUSINESS, OR ELIGIBLE NOT-FOR-PROFIT CORPORATION AS DEFINED IN THIS SECTION.

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

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

(G) "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.

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

2. APPLICATIONS. (A) THE BOARD SHALL SOLICIT APPLICATIONS FOR AWARDS UNDER THE POWER SOLUTIONS PROGRAM BY PUBLIC NOTICE BEGINNING ON JANUARY THIRTY-FIRST, TWO THOUSAND ELEVEN; PROVIDED, HOWEVER, THAT FOR POWER SOLUTIONS PROGRAM AWARDS AND EXTENSIONS GRANTED ON OR AFTER JUNE THIRTI-

ETH, TWO THOUSAND SEVENTEEN THROUGH JUNE THIRTIETH, TWO THOUSAND EIGHTEEN, THE BOARD SHALL EXPEDITE THE AWARDING OF SUCH AWARDS AND/OR EXTENSIONS AND SHALL DEFER THE REVIEW OF COMPLIANCE WITH SUCH COMMITMENTS UNTIL AFTER THE APPLICANT HAS BEEN AWARDED A POWER SOLUTIONS PROGRAM AWARD AND/OR CONTRACT EXTENSION; PROVIDED FURTHER, HOWEVER, THAT THE BOARD SHALL NOT ACCEPT ANY NEW APPLICATION THAT REQUESTS AN ALLOCATION OF POWER UNDER THE POWER SOLUTIONS PROGRAM AFTER JUNE THIRTIETH, TWO THOUSAND EIGHTEEN. 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.

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

(C) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH APPLICATION BY THE AUTHORITY, THE AUTHORITY SHALL PROMPTLY NOTIFY BY ELECTRONIC MEANS THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, AND EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY OWNED OR OPERATED BY THE APPLICANT IS LOCATED. SUCH NOTICE SHALL PROVIDE THE NAME AND A DESCRIPTION OF THE APPLICANT, AND THE ADDRESS OF THE APPLICANT'S FACILITIES THAT WOULD RECEIVE AN AWARD UNDER THE PROGRAM. THE AUTHORITY SHALL ALSO DEVELOP A LISTING WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH APPLICANT, THE AWARD SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE FACILITIES FOR WHICH THE APPLICANT SEEKS THE AWARD, AND MAKE THE LISTING AVAILABLE FOR PUBLIC REVIEW ON THE AUTHORITY'S WEBSITE.

3. REVIEW, APPLICABLE CRITERIA AND RECOMMENDATIONS. (A) THE BOARD SHALL REVIEW APPLICATIONS SUBMITTED UNDER THE POWER SOLUTIONS PROGRAM. THE BOARD SHALL MAKE AN INITIAL DETERMINATION OF WHETHER THE APPLICANT IS AN ELIGIBLE APPLICANT. THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT A POWER SOLUTIONS PROGRAM AWARD BE AWARDED TO AN APPLICANT BASED ON AN APPLICATION OF THE FOLLOWING CRITERIA:

(I) THE SIGNIFICANCE OF THE COST OF ELECTRICITY TO THE APPLICANT'S OVERALL COST OF DOING BUSINESS, AND THE IMPACT THAT A POWER SOLUTIONS AWARD WILL HAVE ON THE APPLICANT'S OPERATING COSTS;

(II) THE EXTENT TO WHICH A POWER SOLUTIONS AWARD WILL RESULT IN NEW CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT, THE EXTENT TO WHICH THE APPLICANT WILL AGREE TO COMMIT TO MAKING NEW CAPITAL INVESTMENT AS A CONDITION TO RECEIVING A POWER SOLUTIONS AWARD, AND ANY PREVIOUS CAPITAL INVESTMENT UNDERTAKEN BY THE APPLICANT UNDER OTHER ECONOMIC DEVELOPMENT PROGRAMS WHERE APPLICABLE;

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

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

(V) WHETHER THE APPLICANT, DUE TO THE HIGH COST OF ELECTRICITY, IS AT RISK OF CLOSING FACILITIES OR OPERATIONS IN THE STATE, RELOCATING FACILITIES OR OPERATIONS OUT OF THE STATE, OR LOSING A SIGNIFICANT NUMBER OF JOBS IN THE STATE, IN THE ABSENCE OF A POWER SOLUTIONS AWARD;

(VI) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY THAT WOULD RECEIVE THE BENEFIT OF THE AWARD TO THE ECONOMY OF THE AREA IN WHICH SUCH FACILITY IS LOCATED;

(VII) THE EXTENT TO WHICH THE APPLICANT HAS PREVIOUSLY UNDERTAKEN ENERGY AUDITS AND/OR INVESTED IN ENERGY EFFICIENCY MEASURES INCLUDING CONSIDERATION OF THE TIMING OF SUCH AUDITS OR MEASURES, THE AMOUNT OF INVESTMENTS IN ENERGY EFFICIENCY RELATIVE TO THE SIZE, NATURE AND HISTORIC ENERGY CONSUMPTION, AND OTHER CAPITAL INVESTMENTS OF THE BUSINESS, THE RELATIVE IMPROVEMENT IN ENERGY EFFICIENCY AND/OR NET ENERGY OR FINANCIAL SAVINGS RESULTING FROM SUCH INVESTMENTS, AND SUCH OTHER FACTORS AS THE BOARD MAY CONSIDER APPROPRIATE, AND/OR THE EXTENT TO WHICH THE APPLICANT WILL AGREE, IF RECOMMENDED BY THE BOARD, TO COMMIT TO MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEASURES;

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

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

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

(XI) THE EXTENT TO WHICH AN AWARD IS CONSISTENT WITH STATE, REGIONAL AND LOCAL ECONOMIC DEVELOPMENT STRATEGIES IN THE AREA IN WHICH THE BUSINESS IS LOCATED OR TO BE LOCATED;

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

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

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

(XV) THE EXTENT OF THE APPLICANT'S APPLICANT'S WILLINGNESS TO MAKE JOBS AVAILABLE TO PERSONS DEFINED AS ELIGIBLE FOR SERVICES UNDER THE FEDERAL WORKFORCE INVESTMENT ACT (P.L. 105-220) AND THE EXTENT OF THE APPLICANT'S WILLINGNESS TO ENHANCE, TO THE DEGREE PRACTICABLE, THE PARTICIPATION OF SMALL BUSINESS CONCERNS AND MINORITY AND WOMEN-OWNED BUSINESSES CERTIFIED PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW; AND

(B) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE A POWER SOLUTIONS PROGRAM AWARD TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (1) A DESCRIPTION OF THE AWARD THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED TO SUCH APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN AWARD THAT DIFFERS FROM THE AWARD REQUESTED BY AN ELIGIBLE APPLICANT; (2) AN EFFECTIVE TERM OF CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE AUTHORITY WHICH MAY BE FOR MULTIPLE YEARS, PROVIDED HOWEVER THAT THE TERM OF ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JULY FIRST, TWO THOUSAND ELEVEN; AND (3) SUCH OTHER TERMS AND CONDITIONS THAT THE BOARD RECOMMENDS AS APPROPRIATE. SUCH TERMS AND CONDITIONS SHALL INCLUDE PROVISIONS FOR EFFECTIVE PERIODIC AUDITS OF PROGRAM PARTICIPANTS FOR THE PURPOSE OF DETERMINING CONTRACT AND PROGRAM COMPLIANCE, AND THE PARTIAL

OR COMPLETE WITHDRAWAL OF A POWER SOLUTIONS PROGRAM AWARD IN THE CASE OF A PROGRAM PARTICIPANT THAT FAILS TO MAINTAIN MUTUALLY AGREED UPON COMMITMENTS, INCLUDING BUT NOT LIMITED TO LEVELS OF EMPLOYMENT, POWER UTILIZATION, CAPITAL INVESTMENTS, AND ENERGY EFFICIENCY MEASURES.

(C) WHEN DETERMINING THE LENGTH OF A CONTRACT OFFERED TO AN APPLICANT PURSUANT TO THIS SECTION, THE BOARD SHALL CONSIDER THE EXTENT OF AN APPLICANT'S COMMITMENT TOWARDS NEW CAPITAL INVESTMENT AND ENERGY EFFICIENCY MEASURES.

(D) THE BOARD MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED HOWEVER THAT THE BOARD SHALL SET ASIDE A PORTION OF THE BENEFITS AVAILABLE UNDER THE POWER SOLUTIONS PROGRAM IN AN AMOUNT NOT LESS THAN ONE HUNDRED MEGAWATTS FOR ELIGIBLE SMALL BUSINESSES AND ELIGIBLE NOT-FOR-PROFIT CORPORATIONS.

(E) A RECOMMENDATION FOR A POWER SOLUTIONS PROGRAM AWARD SHALL QUALIFY AN APPLICANT TO ENTER INTO A CONTRACT WITH THE AUTHORITY TO RECEIVE SUCH AWARD FROM THE AUTHORITY PURSUANT TO THE TERMS AND CONDITIONS OF THE RECOMMENDATION OR ON SUCH OTHER TERMS AS THE AUTHORITY IN CONSULTATION WITH THE BOARD DETERMINES TO BE APPROPRIATE INCLUDING SUCH TERMS THAT MAY BE DEEMED APPROPRIATE AND/OR NECESSARY AS A RESULT OF THE FINDINGS OF AN ENERGY AUDIT CONDUCTED PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. PROVIDED THAT AN APPLICANT'S FAILURE TO COMPLY WITH TERMS DEEMED NECESSARY AS A RESULT OF THE FINDINGS OF SUCH AUDIT SHALL BE A BASIS TO FORFEIT AN AWARD PROVIDED BY SUCH CONTRACT. IN THE EVENT THAT THE AWARD INCLUDES THE PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND SERVICES AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW, THE CONTRACT SHALL ALLOW FOR REIMBURSEMENT FOR COSTS TO AN ENTITY OTHER THAN THE POWER AUTHORITY OF THE STATE OF NEW YORK SO LONG AS SUCH COSTS ARE DEEMED REASONABLE AND APPROPRIATE. SUCH CONTRACTS SHALL PROVIDE THAT THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE WILL PROVIDE CUSTOMER AND BILLING SERVICES UPON MUTUALLY AGREED TERMS AND CONDITIONS.

(F) UPON APPROVAL OR DENIAL OF ANY APPLICATION FOR A POWER SOLUTIONS PROGRAM AWARD, 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) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WITH RESPECT TO APPLICANTS WHO AS OF JUNE FIRST, TWO THOUSAND ELEVEN, ARE IN SUBSTANTIAL COMPLIANCE WITH ALL CONTRACTUAL COMMITMENTS AND RECEIVING BENEFITS UNDER THE POWER FOR JOBS PROGRAM, BUT WOULD OTHERWISE NOT RECEIVE A RECOMMENDATION FROM THE BOARD FOR A POWER SOLUTIONS PROGRAM AWARD, THE BOARD SHALL RECOMMEND AND THE AUTHORITY SHALL PROVIDE AN AWARD OF THE POWER SOLUTIONS PROGRAM AND SHALL PHASE OUT SUCH AWARD OVER A PERIOD NOT TO EXCEED TWO YEARS ON THE FOLLOWING TERMS: IN THE FIRST YEAR, THE AWARD SHALL BE IN AN AMOUNT THAT IS EQUAL TO SIXTY-SIX PERCENT OF THE VALUE OF SUCH BENEFIT RECEIVED IN THE PRECEDING TWELVE MONTHS, AND IN THE SECOND YEAR THE AWARD SHALL BE EQUAL TO THIRTY-THREE PERCENT OF THE VALUE OF SUCH BENEFIT. NOTHING HEREIN SHALL PROHIBIT OR IN ANY WAY LIMIT ANY APPLICANTS WHO ARE IN SUBSTANTIAL COMPLIANCE WITH ALL CONTRACTUAL COMMITMENTS AND RECEIVING BENEFITS UNDER THE POWER FOR JOBS PROGRAM WHETHER OR NOT THEY ARE SUBJECT TO AN AWARD PHASE OUT PURSUANT TO THIS PARAGRAPH, FROM APPLYING FOR OR RECEIVING A POWER SOLUTIONS AWARD FOR WHICH THEY WOULD OTHERWISE QUALIFY, PROVIDED HOWEVER THAT THE RECEIPT OF AN ECONOMIC BENEFIT POWER AWARD BY AN APPLICANT SHALL BAR ANY FURTHER ELIGIBILITY FOR AN AWARD PHASE OUT, AND NO APPLICANT SHALL RECEIVE BOTH

A POWER SOLUTIONS AWARD AND AN AWARD PHASE OUT PURSUANT TO THIS PARAGRAPH FOR THE SAME CALENDAR OR BILLING PERIOD.

(H) THE BOARD SHALL NOT RECOMMEND POWER SOLUTIONS PROGRAM AWARDS UNDER THE POWER SOLUTIONS PROGRAM IN EXCESS OF FOUR HUNDRED EIGHTY-THREE MEGAWATTS OF ELECTRICITY. ANY POWER SOLUTIONS AWARD WHICH IS RELINQUISHED OR WITHDRAWN SHALL BE AVAILABLE FOR REALLOCATION TO ELIGIBLE APPLICANTS.

(I) (1) THE BOARD SHALL SUBMIT TO THE DIRECTOR OF THE BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE AN EVALUATION OF THE SUCCESS OF EACH ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS. SUCH EVALUATION SHALL DETERMINE WHETHER THE SERVICES PROVIDED HAVE HELPED RECIPIENTS TO SUCCEED, BASED ON A COMPARISON OF THE PERFORMANCE OF THE RECIPIENTS AGAINST THE NORMS OF THEIR SPECIFIC INDUSTRY, AND SHALL ASSESS THE EFFECTIVENESS, IF ANY, OF EACH ECONOMIC DEVELOPMENT POWER PROGRAM. SUCH AN EVALUATION SHALL BE SUBMITTED BY JUNE THIRTIETH, TWO THOUSAND TWELVE AND BY JUNE THIRTIETH EVERY TWO YEARS THEREAFTER.

(2) BETWEEN EVALUATION DUE DATES, THE BOARD SHALL MAINTAIN THE NECESSARY RECORDS AND DATA REQUIRED TO SATISFY SUCH EVALUATION REQUIREMENTS AND TO SATISFY INFORMATION REQUESTS RECEIVED FROM THE DIRECTOR OF THE BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE BETWEEN SUCH EVALUATION DUE DATES.

S 8. Subparagraph 2 of paragraph g of the ninth undesignated paragraph of section 1005 of the public authorities law, as amended by chapter 217 of the laws of 2009, is amended to read as follows:

2. The authority, as deemed feasible and advisable by the trustees, is authorized to make payments to recipients of the power for jobs electricity savings reimbursements, POWER SOLUTIONS PROGRAM ELECTRICITY SAVINGS REIMBURSEMENTS AND/OR PAYMENTS 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; AND (C) FOR MEGAWATTS ALLOCATED UNDER THE POWER SOLUTIONS PROGRAM. Payments for any electricity savings reimbursement under section one hundred eighty-nine OR ONE HUNDRED EIGHTY-EIGHT-A of the economic development law shall be made pursuant to such section. Such annual contributions shall be equal to fifty percent of the total amount of such credits available each year to all local distributors of electricity. In addition, such authorization for contribution in state fiscal year two thousand two--two thousand three shall be equal to the total amount of credit available in two thousand one and two thousand two; and such authorization for contribution in state fiscal year two thousand three--two thousand four shall be equal to the total amount of credit available in two thousand three; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the

laws of two thousand two. In state fiscal year two thousand four--two thousand five, such authorized annual contribution shall be equal to one hundred percent of the total amount of such credits available each year to all local distributors of electricity. Such authorization for contribution in state fiscal years two thousand four and two thousand five shall be equal to the total amount of credit available in two thousand four and two thousand five; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In addition, such authorization for contribution for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program in each state fiscal year shall be equal to the total amount of credit or reimbursement available in state fiscal year two thousand four--two thousand five, state fiscal year two thousand five--two thousand six and two thousand six--two thousand seven. Additionally, notwithstanding any other section of law, the authority is authorized to make a contribution in an amount related to total amounts of credit received under phases one, two, three, four and five of the program. In no case shall the contribution for state fiscal year two thousand five--two thousand six be less than seventy-five million dollars. The contribution for state fiscal year two thousand six--two thousand seven shall be one hundred million dollars. The contribution for state fiscal year two thousand seven--two thousand eight shall be thirty million dollars. The contribution for state fiscal year two thousand eight--two thousand nine shall be twenty-five million dollars. The contribution for state fiscal year two thousand nine--two thousand ten shall be twelve million five hundred thousand dollars. THE CONTRIBUTION FOR EACH STATE FISCAL YEAR BEGINNING WITH TWO THOUSAND TEN--TWO THOUSAND ELEVEN SHALL BE EQUAL TO THE AMOUNT OF THE CREDITS ALLOWED PURSUANT TO SUBDIVISION NINE OF SECTION ONE HUNDRED EIGHTY-SIX-A OF THE TAX LAW. 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] SEVENTY-FOUR million [five hundred thousand] dollars.

S 9. The opening paragraph of subdivision 13 of section 1005 of the public authorities law, as amended by chapter 645 of the laws of 2006, is amended to read as follows:

Notwithstanding any other provision of law to the contrary but subject to the terms and conditions of federal energy regulatory commission licenses, to allocate or reallocate directly or by sale for resale, two hundred fifty megawatts of firm Niagara project hydroelectric power as "expansion power" and four hundred forty-five megawatts of firm Niagara project hydroelectric power as "replacement power" to businesses within the state located within thirty miles of the Niagara project, and four hundred ninety megawatts of firm and interruptible power from the Saint Lawrence-FDR project as "preservation power" sold to businesses located within the counties of Jefferson, Saint Lawrence and Franklin, provided that the amount of expansion power allocated to businesses in Chautauqua county on January first, nineteen hundred eighty-seven shall continue to be allocated in such county [and, provided further that up to seventy

megawatts of replacement power, up to thirty-eight and six-tenths megawatts of preservation power from the Saint Lawrence-FDR project which is relinquished or withdrawn after the effective date of chapter three hundred thirteen of the laws of two thousand five which amended this subdivision and, for the period ending on December thirty-first, two thousand six, up to twenty megawatts of other power from the Saint Lawrence-FDR project which is unallocated as of the effective date of chapter three hundred thirteen of the laws of two thousand five which amended this subdivision, shall be allocated by the authority together with such other funds of the authority as the trustees deem feasible and advisable for energy cost savings benefits pursuant to the twelfth undesignated paragraph of this section. Provided, however, that the amount of replacement, preservation power, or the additional twenty megawatts of Saint Lawrence-FDR power for the period ending December thirty-first, two thousand six made available for such purpose, used for energy cost savings benefits that are relinquished by or withdrawn from a recipient thereof shall be offered by the authority proportionately for a period of six months for reallocation to applicants who qualify respectively for replacement or preservation power allocations as provided in this subdivision. If such power is not allocated within such period it shall be allocated for the purpose of energy cost savings benefits pursuant to subdivision (h) of section one hundred eighty-three of the economic development law]. The authority shall negotiate contracts on reasonable terms and conditions to renew or extend every permanent contract allocation of expansion power in effect on the effective date of this subdivision and, to the extent consistent with such contracts, the authority shall negotiate contracts on reasonable terms and conditions to extend or renew all other allocations or allotments of such power in effect on such date. The authority shall negotiate contracts on reasonable terms and conditions to renew or extend for a period of at least five years every permanent contract allocation of replacement power in effect on the effective date of chapter three hundred thirteen of the laws of two thousand five which added this sentence and that would expire by its terms on or before the end of the initial federal energy regulatory commission license for the Niagara project; provided that, in negotiating the terms and conditions of such contracts, the authority may consider a business' compliance with all current contractual obligations, including employment and power usage commitments. Contracts entered into pursuant to this subdivision shall contain reasonable provisions providing for the partial or complete withdrawal of the power in the event the recipient fails to maintain mutually agreed levels of employment, investment, and power utilization. Expansion or replacement power relinquished by businesses or withdrawn by the authority shall be allocated directly or by sale for resale by the authority to businesses within the state located within thirty miles of the Niagara project provided, that the amount of power allocated to businesses in Chautauqua county on January first, nineteen hundred eighty-seven shall be allocated in such county. Preservation power that is relinquished by businesses or withdrawn by the authority shall be allocated directly or by sale for resale by the authority within the counties of Jefferson, Saint Lawrence and Franklin. Allocations made pursuant to this paragraph shall be made in accordance with criteria established by the trustees. Such criteria shall address the expansion of industry and employment pursuant to paragraph (a) of this subdivision and the revitalization of existing industry pursuant to paragraph (b) of this subdivision.

S 10. Paragraph (a) of subdivision 16 of section 1005 of the public authorities law, as added by chapter 477 of the laws of 2009, is amended to read as follows:

(a) As deemed feasible and advisable by the trustees, to finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity and any recipient of the economic development power, expansion power, replacement power, preservation power, high load factor power, municipal distribution agency power, [and] the power for jobs AND THE POWER SOLUTIONS programs administered by the authority. In establishing and providing high performance and sustainable building programs and services authorized by this subdivision, the authority is authorized to consult standards, guidelines, rating systems, and/or criteria established or adopted by other organizations, including but not limited to the United States green building council under its leadership in energy and environmental design (LEED) programs, the green building initiative's green globes rating system, and the American National Standards Institute. The source of any financing and/or loans provided by the authority for the purposes of this subdivision may be the proceeds of notes issued pursuant to section one thousand nine-a of this title, the proceeds of bonds issued pursuant to section one thousand ten of this title, or any other available authority funds.

S 11. Section 1005 of the public authorities law is amended by adding two new subdivisions 17 and 18 to read as follows:

17. TO PROMOTE THE CONSERVATION AND EFFICIENT USE OF ELECTRICITY, THE POWER AUTHORITY OF THE STATE OF NEW YORK SHALL UNDERTAKE OR CAUSE TO UNDERTAKE AN ENERGY AUDIT OF EVERY APPLICANT THAT THE BOARD HAS RECOMMENDED TO RECEIVE AN AWARD UNDER THE POWER SOLUTIONS PROGRAM AND ENERGY COST SAVINGS BENEFITS. SUCH AUDIT SHALL BE CONDUCTED WITHIN TWO YEARS AFTER RECEIVING A CONTRACT FOR AN AWARD. THE AUDITS SHALL ASSESS (I) A RECIPIENT'S ELECTRICITY USE TO DETERMINE BASED ON A COMPARISON OF THE NORMS OF THEIR SPECIFIC INDUSTRY, COST-EFFECTIVE MEASURES THAT COULD BE EMPLOYED TO REDUCE ENERGY COSTS, ENERGY USE, OR IMPROVE THE EFFICIENCY OF BUILDINGS, BUILDING SYSTEMS, EQUIPMENT, PROCESSES OR OPERATIONS; AND (II) THE FEASIBILITY OF ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENERATION PURPOSES. APPLICANTS' ENERGY AUDITS PERFORMED UP TO FIVE YEARS PRIOR TO THE DATE OF APPLICATION SUBMISSION MAY BE CONSIDERED BY THE BOARD IN SATISFACTION OF THE REQUIREMENTS OF THIS SUBDIVISION. COSTS OF THE ENERGY AUDITS SHALL BE PAID BY THE POWER AUTHORITY OF THE STATE OF NEW YORK AS DEEMED FEASIBLE AND ADVISABLE BY THE BOARD. FOR PURPOSES OF IMPLEMENTING THIS SUBDIVISION ONLY, THE POWER AUTHORITY OR ITS AGENT IS AUTHORIZED TO APPLY FOR FUNDING FROM ANY PROGRAM THAT PAYS ALL OR SOME OF THE COSTS OF SUCH AUDITS, AND THE POWER AUTHORITY OR ITS AGENT SHALL BE ENTITLED TO RECEIVE SUCH FUNDING AS IF THE RECIPIENT OF SUCH LOW-COST POWER HAD APPLIED FOR THE FUNDING DIRECTLY.

18. FOR THE PURPOSE OF FURNISHING THE STATE WITH SYSTEMATIC INFORMATION REGARDING THE STATUS AND THE ACTIVITIES OF THE AUTHORITY, THE AUTHORITY SHALL SUBMIT TO THE GOVERNOR, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE, THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE STATE COMPTROLLER, WITHIN NINETY DAYS AFTER THE END OF ITS FISCAL YEAR, A COMPLETE AND DETAILED ANNUAL REPORT ON THE ECONOMIC DEVELOPMENT ASSISTANCE IT ADMINISTERS. SUCH ANNUAL REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

(A) THE NUMBER OF COMMERCIAL/INDUSTRIAL RECIPIENTS OF ECONOMIC DEVELOPMENT ASSISTANCE BENEFITS, THE ECONOMIC DEVELOPMENT REGION, WHERE THE

RECIPIENTS ARE LOCATED, WHAT TYPE AND HOW MUCH ASSISTANCE IS PROVIDED, MEGAWATTS OF ELECTRICITY AWARDED, LENGTH OF CURRENT CONTRACT, CURRENT CONTRACT COMPLIANCE STATUS, LAST AUDIT, NUMBER OF JOBS RETAINED AND/OR ADDED IN THE FISCAL YEAR, APPROXIMATE ENERGY EFFICIENCY SAVINGS AND AMOUNT OF POWER REALLOCATED FROM PREVIOUS YEARS DUE TO FORFEITED BENEFITS;

(B) COST TO THE AUTHORITY TO PROVIDE ECONOMIC DEVELOPMENT ASSISTANCE BENEFITS DURING THE PREVIOUS FISCAL YEAR;

(C) SOURCES, TYPES AND COSTS OF POWER OBTAINED FOR THE ECONOMIC DEVELOPMENT ASSISTANCE IT ADMINISTERS, INCLUDING, BUT NOT LIMITED TO, AN EXPLANATION OF HOW POWER IS OBTAINED BY THE AUTHORITY TO SUPPORT THE ECONOMIC DEVELOPMENT ASSISTANCE IT ADMINISTERS, AND A SUMMARY OF NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) OR ITS SUCCESSOR CHARGES PAID BY AUTHORITY CUSTOMERS; AND

(D) RECOMMENDATIONS AS TO IMPROVEMENTS TO AND/OR EXPANSION OF THE POWER SOLUTIONS PROGRAM.

S 12. 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] THEREAFTER, any utility which delivers power under the power for jobs program OR THE POWER SOLUTIONS PROGRAM, as established by section one hundred eighty-nine OR ONE HUNDRED EIGHTY-EIGHT-A 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 OR POWER SOLUTIONS PROGRAM. Net lost revenues means the "net receipts" less "net utility revenue" from such delivery of power. For purposes of this subdivision, "net receipts" shall mean the amount that the utility would have otherwise received from customers receiving power pursuant to allocations by the New York state economic development power allocation board in accordance with section one hundred eighty-nine OR ONE HUNDRED EIGHTY-EIGHT-A 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 OR ONE HUNDRED EIGHTY-EIGHT-A 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 POWER SOLUTIONS allocation has been transferred, less the utility's cost of such power under such program. Provided, however, that any credit under this section shall be used only with respect to the same taxable year during which such credit arose and shall not be capable of being carried forward or backward to any other taxable period. Nor shall any credit be allowed to any utility for the total amount of power, expressed in kilowatt hours, purchased by the customers of such utility under such program during the taxable period that exceeds the prorated "baseline energy use" by all customers of that

utility purchasing power under such program during the taxable period. "Baseline energy use" with respect to each customer shall mean the largest amount of kilowatt hours of energy used by such customer during any twelve consecutive month period occurring during the preceding thirty months immediately preceding the New York state economic development power allocation board's recommendation of such customer's application, prorated to reflect the length of time of the customer's participation in such program during the taxable period. Provided further, however, that in accordance with subdivision (k) of section one hundred eighty-nine of the economic development law no tax credit shall be available for any revenue losses when a utility has declined to purchase power allocated for sale under such program. No electric corporation shall be allowed the tax credit authorized by this subdivision until it shall file a certificate from the department of public service for the period covered by the return verifying that the calculation of such tax credit complies with this subdivision and the department of public service has approved such certificate and forwarded a copy of such approved certificate to the commissioner or any amended certificate resulting from the need for correction. The credit allowed by this subdivision shall not be applicable in calculating any other tax imposed or authorized to be imposed by this chapter or any other law, and the amount of the tax surcharge imposed under section one hundred eighty-six-c of this article shall be calculated and payable as if the credit provided for by this subdivision were not allowed.

S 13. 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 14. Notwithstanding the provisions of article 5 of the general construction law, the provisions of chapter 316 of the laws of 1997, and section 7 of chapter 645 of the laws of 2006, are hereby revived and shall continue in full force and effect as such provisions existed on June 2, 2010.

S 15. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after June 2, 2010; provided that the amendments to section 189 of the economic development law made by sections two and three of this act shall not affect the repeal of such section and shall be deemed repealed therewith; provided further, that section 188-a of the economic development law as added by section seven of this act shall expire and be deemed repealed June 30, 2018; provided further, that the amendments to the ninth undesignated paragraph and paragraph (a) of subdivision sixteen of section 1005 of the public authorities law made by sections eight and ten of this act, respectively, shall not affect the expiration of such provisions and shall expire therewith and, provided further, that the addition of subdivisions 17 and 18 of section 1005 of the public authorities law made by section eleven of this act shall expire and be deemed repealed June 30, 2018; provided that the amendment to subdivision 9 of section 186-a of the tax law made by section twelve of this act shall not affect the repeal of such subdivision and shall expire and be deemed repealed therewith.