

9008

2009-2010 Regular Sessions

I N A S S E M B L Y

June 19, 2009

Introduced by M. of A. KOLB, AMEDORE, BARCLAY, BUTLER, CORWIN, FINCH, OAKS, O'MARA -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BALL, BARRA, BOYLE, BURLING, CALHOUN, CHRISTENSEN, CONTE, CROUCH, DUPREY, ERRIGO, FITZPATRICK, GIGLIO, HAWLEY, HAYES, JORDAN, P. LOPEZ, McDO- NOUGH, McKEVITT, MILLER, MOLINARO, QUINN, RABBITT, RAIA, REILICH, SAYWARD, SCOZZAFAVA, TEDISCO, THIELE, TOBACCO, TOWNSEND, WALKER -- 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 develop- ment, the tax law and chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the New York power authority to make contributions to the general fund, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program; and to amend the public authorities law, in relation to authorizing an additional voluntary contribution into the state treasury under the power for jobs program

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

1 Section 1. Paragraphs 2 and 4 of subdivision (h) of section 183 of the  
2 economic development law, paragraph 2 as amended by section 1 of part Y  
3 of chapter 59 of the laws of 2008 and paragraph 4 as amended by chapter  
4 89 of the laws of 2007, are amended to read as follows:  
5 2. During the period commencing on November first, two thousand five  
6 and ending on June thirtieth, two thousand [nine] TEN eligible busi-  
7 nesses shall only include customers served under the power authority of  
8 the state of New York's high load factor, economic development power and  
9 other business customers served by political subdivisions of the state  
10 authorized by law to engage in the distribution of electric power that  
11 were authorized to be served by the authority from the authority's  
12 former James A. Fitzpatrick nuclear power plant as of the effective date

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

LBD14297-01-9

1 of this subdivision whose power prices may be subject to increase before  
2 June thirtieth, two thousand [nine] TEN. Provided, however, that the  
3 total amount of megawatts of replacement and preservation power which,  
4 due to the extension of the energy cost savings benefits, are not relin-  
5 quished by or withdrawn from a recipient shall be deemed to be relin-  
6 quished or withdrawn for purposes of offering such megawatts by the  
7 authority for reallocation pursuant to subdivision thirteen of section  
8 one thousand five of the public authorities law. Provided, further, that  
9 for any such reallocation, the authority shall maintain the same energy  
10 cost savings benefit level for all eligible businesses using any avail-  
11 able authority resources as deemed feasible and advisable by the trus-  
12 tees pursuant to section seven of part U of chapter fifty-nine of the  
13 laws of two thousand six.

14 4. Applications for an energy cost savings benefit shall be in the  
15 form and contain such information, exhibits and supporting data as the  
16 board may prescribe. The board shall review the applications received  
17 and shall determine the applications which best meet the criteria estab-  
18 lished for the benefits pursuant to this subdivision and it shall recom-  
19 mend such applications to the power authority of the state of New York  
20 with such terms and conditions as it deems appropriate; provided, howev-  
21 er, that for energy cost savings benefits granted on or after June thir-  
22 tieth, two thousand [seven] NINE through June thirtieth, two thousand  
23 [eight] TEN, the board shall expedite the awarding of such benefits and  
24 shall defer the review of compliance with such criteria until after the  
25 applicant has been awarded an energy cost savings benefit. Such terms  
26 and conditions shall include reasonable provisions providing for the  
27 partial or complete withdrawal of the energy cost savings benefit in the  
28 event the recipient fails to maintain mutually agreed upon commitments  
29 that may include, but are not limited to, levels of employment, capital  
30 investment and power utilization. Recommendation for approval of an  
31 energy cost savings benefit shall qualify an applicant to receive an  
32 energy cost savings benefit from the power authority of the state of New  
33 York pursuant to the terms and conditions of the recommendation. ANY  
34 ENERGY COST SAVINGS BENEFIT WHICH IS RELINQUISHED OR WITHDRAWN AFTER THE  
35 EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH  
36 AMENDED THIS PARAGRAPH SHALL BE AVAILABLE FOR REALLOCATION TO ELIGIBLE  
37 BUSINESSES AS DEFINED IN PARAGRAPH TWO OF THIS SUBDIVISION.

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

41 "Power for jobs electricity savings reimbursements" shall mean  
42 payments made by the power authority of the state of New York as recom-  
43 mended by the board to recipients of allocations of power under phases  
44 four and five of the power for jobs program for a period of time until  
45 November thirtieth, two thousand four, subsequent to the expiration of  
46 their phase four or five power for jobs contract provided however that  
47 any power for jobs recipient may choose to receive an electricity  
48 savings reimbursement as a substitute for a contract extension for the  
49 period from the date the recipient's contract expires through June thir-  
50 tieth, two thousand [nine] TEN. The "basic reimbursement" is an amount  
51 that when credited against the recipient's actual "unit cost of elec-  
52 tricity" during a quarter (meaning the cost for commodity and delivery  
53 per kilowatt-hour for the quantity of electricity purchased and deliv-  
54 ered under the power for jobs program during a similar period in the  
55 final year of the recipient's contract), results in an effective unit  
56 cost of electricity during the quarter equal to the average unit cost of

1 electricity such recipient paid during the final year of the contract  
2 for power allocated under phase four or five of the power for jobs  
3 program.

4 S 3. Subdivisions (f) and (l) of section 189 of the economic develop-  
5 ment law, as amended by section 3 of part Y of chapter 59 of the laws of  
6 2008, are amended to read as follows:

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

52 (l) The board shall solicit and review applications for the power for  
53 jobs electricity savings reimbursements and contract extensions from  
54 recipients of power for jobs allocations under phases four and five of  
55 the program for the award of such reimbursements and/or contract exten-  
56 sions. The board may prescribe a simplified form and content for an

1 application for such reimbursements or extensions. An applicant shall be  
2 eligible for such reimbursements and/or extensions only if it is in  
3 compliance with and agrees to continue to meet the job retention and  
4 creation commitments set forth in its prior power for jobs contract, or  
5 such other commitments as the board deems reasonable; provided, however,  
6 that for the power for jobs electricity savings reimbursements and  
7 contract extensions granted on or after June thirtieth, two thousand  
8 [seven] NINE through June thirtieth, two thousand [eight] TEN, the board  
9 shall expedite the awarding of such reimbursements and/or extensions and  
10 shall defer the review of compliance with such commitments until after  
11 the applicant has been awarded a power for jobs electricity savings  
12 reimbursement and/or contract extension. The board shall review such  
13 applications and make recommendations for the award: 1. of such  
14 reimbursements through the power authority of the state of New York for  
15 a period of time up to November thirtieth, two thousand four, and 2. of  
16 such contract extensions or reimbursements as applied for by the recipi-  
17 ent for a period of time beginning December first, two thousand four and  
18 ending June thirtieth, two thousand [nine] TEN. At no time shall a  
19 recipient receive both a reimbursement and extension after December  
20 first, two thousand four. The power authority of the state of New York  
21 shall receive notification from the board regarding the award of power  
22 for jobs electricity savings reimbursements and/or contract extensions.  
23 ANY POWER FOR JOBS ALLOCATION WHICH IS RELINQUISHED OR WITHDRAWN AFTER  
24 THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH  
25 AMENDED THIS SUBDIVISION SHALL BE AVAILABLE FOR REALLOCATION TO CUSTOM-  
26 ERS ELIGIBLE FOR POWER FOR JOBS ALLOCATIONS AS DEFINED IN SUBDIVISION  
27 (F) OF THIS SECTION.

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

33 S 9. This act shall take effect immediately and shall expire and be  
34 deemed repealed June 30, [2009] 2010.

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

38 9. Notwithstanding any other provision of this chapter or any other  
39 law to the contrary, for taxable periods nineteen hundred ninety-seven  
40 through and including two thousand [nine] TEN, any utility which deliv-  
41 ers power under the power for jobs program, as established by section  
42 one hundred eighty-nine of the economic development law, shall be  
43 allowed a credit, subject to the limitations thereon contained in this  
44 subdivision, against the tax imposed under this section equal to net  
45 lost revenues from the delivery of power under such power for jobs  
46 program. Net lost revenues means the "net receipts" less "net utility  
47 revenue" from such delivery of power. For purposes of this subdivision,  
48 "net receipts" shall mean the amount that the utility would have other-  
49 wise received from customers receiving power pursuant to allocations by  
50 the New York state economic development power allocation board in  
51 accordance with section one hundred eighty-nine of the economic develop-  
52 ment law, or from customers whose allocation has been transferred to an  
53 energy service company, or from energy service companies to which such  
54 allocation has been transferred, pursuant to its tariff supervised by  
55 the public service commission for substantially comparable service  
56 otherwise applicable to such customers or energy service companies in

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

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

47 S 11. This act shall take effect immediately and shall be deemed to  
48 have been in full force and effect on and after April 1, 2006; provided,  
49 however, that the amendments to section 183 of the economic development  
50 law and subparagraph 2 of paragraph g of the ninth undesignated para-  
51 graph of section 1005 of the public authorities law made by sections two  
52 and six of this act shall not affect the expiration of such section and  
53 subparagraph, respectively, and shall be deemed to expire therewith;  
54 provided further, however, that the amendments to section 189 of the  
55 economic development law and subdivision 9 of section 186-a of the tax  
56 law made by sections three, four, five and ten of this act shall not

1 affect the repeal of such section and subdivision, respectively, and  
2 shall be deemed to be repealed therewith; provided further, however,  
3 that section seven of this act shall expire and be deemed repealed June  
4 30, [2009] 2010.

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

9 2. The authority, as deemed feasible and advisable by the trustees, is  
10 authorized to make payments to recipients of the power for jobs elec-  
11 tricity savings reimbursements and additional annual voluntary contrib-  
12 utions into the state treasury to the credit of the general fund. The  
13 authority shall make such contributions to the state treasury no later  
14 than ninety days after the end of the calendar year in which a credit  
15 under subdivision nine of section one hundred eighty-six-a of the tax  
16 law is available: (a) for the additional three hundred megawatts of  
17 power under the fourth phase of the program provided under chapter  
18 sixty-three of the laws of two thousand and under the fifth phase for  
19 the additional one hundred eighty-three megawatts provided under chapter  
20 two hundred twenty-six of the laws of two thousand two; and (b) for any  
21 extension of any contract for allocations under the fourth phase of the  
22 program and under the fifth phase of the program. Payments for any elec-  
23 tricity savings reimbursement under section one hundred eighty-nine of  
24 the economic development law shall be made pursuant to such section.  
25 Such annual contributions shall be equal to fifty percent of the total  
26 amount of such credits available each year to all local distributors of  
27 electricity. In addition, such authorization for contribution in state  
28 fiscal year two thousand two--two thousand three shall be equal to the  
29 total amount of credit available in two thousand one and two thousand  
30 two; and such authorization for contribution in state fiscal year two  
31 thousand three--two thousand four shall be equal to the total amount of  
32 credit available in two thousand three; under subdivision nine of  
33 section one hundred eighty-six-a of the tax law under the fourth phase  
34 of the program for the additional three hundred megawatts provided under  
35 chapter sixty-three of the laws of two thousand and under the fifth  
36 phase for the additional one hundred eighty-three megawatts provided  
37 under chapter two hundred twenty-six of the laws of two thousand two. In  
38 state fiscal year two thousand four--two thousand five, such authorized  
39 annual contribution shall be equal to one hundred percent of the total  
40 amount of such credits available each year to all local distributors of  
41 electricity. Such authorization for contribution in state fiscal years  
42 two thousand four and two thousand five shall be equal to the total  
43 amount of credit available in two thousand four and two thousand five;  
44 under subdivision nine of section one hundred eighty-six-a of the tax  
45 law under the fourth phase of the program for the additional three  
46 hundred megawatts provided under chapter sixty-three of the laws of two  
47 thousand and under the fifth phase for the additional one hundred eight-  
48 y-three megawatts provided under chapter two hundred twenty-six of the  
49 laws of two thousand two. In addition, such authorization for contrib-  
50 ution for any extension of any contract for allocations under the fourth  
51 phase of the program and under the fifth phase of the program in each  
52 state fiscal year shall be equal to the total amount of credit or  
53 reimbursement available in state fiscal year two thousand four--two  
54 thousand five, state fiscal year two thousand five--two thousand six and  
55 two thousand six--two thousand seven. Additionally, notwithstanding any  
56 other section of law, the authority is authorized to make a contribution

1 in an amount related to total amounts of credit received under phases  
2 one, two, three, four and five of the program. In no case shall the  
3 contribution for state fiscal year two thousand five--two thousand six  
4 be less than seventy-five million dollars. The contribution for state  
5 fiscal year two thousand six--two thousand seven shall be one hundred  
6 million dollars. The contribution for state fiscal year two thousand  
7 seven--two thousand eight shall be thirty million dollars. The contrib-  
8 ution for state fiscal year two thousand eight--two thousand nine shall  
9 be twenty-five million dollars. THE CONTRIBUTION FOR STATE FISCAL YEAR  
10 TWO THOUSAND NINE--TWO THOUSAND TEN SHALL BE THE LESSER OF TWENTY  
11 MILLION DOLLARS OR THE VALUE OF THE CREDITS AUTHORIZED BY SUBDIVISION  
12 NINE OF SECTION ONE HUNDRED EIGHTY-SIX-A OF THE TAX LAW AS CERTIFIED TO  
13 THE COMMISSIONER. The department of public service shall estimate the  
14 payment due by the end of the calendar year in which the credit is  
15 available. In no case shall the amount of the total annual contributions  
16 for the years during which delivery and sale of power associated with  
17 all power for jobs phases and any extensions thereof takes place exceed  
18 the aggregate total of four hundred [forty-nine] SIXTY-NINE million  
19 dollars.

20 S 8. This act shall take effect immediately; provided that the amend-  
21 ments to sections 183 and 189 of the economic development law, subdivi-  
22 sion 9 of section 186-a of the tax law and subparagraph 2 of paragraph g  
23 of the ninth undesignated paragraph of section 1005 of the public  
24 authorities law, made by sections one, two, three, five and seven of  
25 this act, shall not affect the expiration or repeal of such provisions  
26 and shall be deemed repealed therewith.