

6011

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

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

AN ACT to amend the economic development law, chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development, the tax law and chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the New York power authority to make contributions to the general fund, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program; and to amend the public authorities law, in relation to authorizing an additional voluntary contribution into the state treasury under the power for jobs program

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

1 Section 1. Paragraphs 2 and 4 of subdivision (h) of section 183 of the
2 economic development law, paragraph 2 as amended by section 1 of part Y
3 of chapter 59 of the laws of 2008 and paragraph 4 as amended by chapter
4 89 of the laws of 2007, are amended to read as follows:
5 2. During the period commencing on November first, two thousand five
6 and ending on June thirtieth, 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
13 of this subdivision whose power prices may be subject to increase before
14 June thirtieth, two thousand [nine] TEN. Provided, however, that the
15 total amount of megawatts of replacement and preservation power which,
16 due to the extension of the energy cost savings benefits, are not relin-
17 quished by or withdrawn from a recipient shall be deemed to be relin-

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

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1 quished or withdrawn for purposes of offering such megawatts by the
2 authority for reallocation pursuant to subdivision thirteen of section
3 one thousand five of the public authorities law. Provided, further, that
4 for any such reallocation, the authority shall maintain the same energy
5 cost savings benefit level for all eligible businesses using any avail-
6 able authority resources as deemed feasible and advisable by the trus-
7 tees pursuant to section seven of part U of chapter fifty-nine of the
8 laws of two thousand six.

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

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

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

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

54 (f) Eligibility. The board shall recommend applications for allo-
55 cations of power under the power for jobs program to or for the use of
56 businesses which normally utilize a minimum peak electric demand in

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

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

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

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

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

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

24 9. Notwithstanding any other provision of this chapter or any other
25 law to the contrary, for taxable periods nineteen hundred ninety-seven
26 through and including two thousand [nine] TEN, any utility which deliv-
27 ers power under the power for jobs program, as established by section
28 one hundred eighty-nine of the economic development law, shall be
29 allowed a credit, subject to the limitations thereon contained in this
30 subdivision, against the tax imposed under this section equal to net
31 lost revenues from the delivery of power under such power for jobs
32 program. Net lost revenues means the "net receipts" less "net utility
33 revenue" from such delivery of power. For purposes of this subdivision,
34 "net receipts" shall mean the amount that the utility would have other-
35 wise received from customers receiving power pursuant to allocations by
36 the New York state economic development power allocation board in
37 accordance with section one hundred eighty-nine of the economic develop-
38 ment law, or from customers whose allocation has been transferred to an
39 energy service company, or from energy service companies to which such
40 allocation has been transferred, pursuant to its tariff supervised by
41 the public service commission for substantially comparable service
42 otherwise applicable to such customers or energy service companies in
43 the absence of such designation, less the utility's annual average
44 incremental short-term variable and capacity costs of providing such
45 power in the absence of such purchase. For the purposes of this subdivi-
46 sion, "net utility revenue" shall mean the revenues the utility actually
47 receives in accordance with such section one hundred eighty-nine from
48 such customers so designated by the New York state economic development
49 power allocation board or from customers whose allocation has been
50 transferred to an energy service company, or from the energy service
51 companies to which a power for jobs allocation has been transferred,
52 less the utility's cost of such power under such program. Provided,
53 however, that any credit under this section shall be used only with
54 respect to the same taxable year during which such credit arose and
55 shall not be capable of being carried forward or backward to any other
56 taxable period. Nor shall any credit be allowed to any utility for the

1 total amount of power, expressed in kilowatt hours, purchased by the
2 customers of such utility under such program during the taxable period
3 that exceeds the prorated "baseline energy use" by all customers of that
4 utility purchasing power under such program during the taxable period.
5 "Baseline energy use" with respect to each customer shall mean the larg-
6 est amount of kilowatt hours of energy used by such customer during any
7 twelve consecutive month period occurring during the preceding thirty
8 months immediately preceding the New York state economic development
9 power allocation board's recommendation of such customer's application,
10 prorated to reflect the length of time of the customer's participation
11 in such program during the taxable period. Provided further, however,
12 that in accordance with subdivision (k) of section one hundred eighty-
13 nine of the economic development law no tax credit shall be available
14 for any revenue losses when a utility has declined to purchase power
15 allocated for sale under such program. No electric corporation shall be
16 allowed the tax credit authorized by this subdivision until it shall
17 file a certificate from the department of public service for the period
18 covered by the return verifying that the calculation of such tax credit
19 complies with this subdivision and the department of public service has
20 approved such certificate and forwarded a copy of such approved certif-
21 icate to the commissioner or any amended certificate resulting from the
22 need for correction. The credit allowed by this subdivision shall not be
23 applicable in calculating any other tax imposed or authorized to be
24 imposed by this chapter or any other law, and the amount of the tax
25 surcharge imposed under section one hundred eighty-six-c of this article
26 shall be calculated and payable as if the credit provided for by this
27 subdivision were not allowed.

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

33 S 11. This act shall take effect immediately and shall be deemed to
34 have been in full force and effect on and after April 1, 2006; provided,
35 however, that the amendments to section 183 of the economic development
36 law and subparagraph 2 of paragraph g of the ninth undesignated para-
37 graph of section 1005 of the public authorities law made by sections two
38 and six of this act shall not affect the expiration of such section and
39 subparagraph, respectively, and shall be deemed to expire therewith;
40 provided further, however, that the amendments to section 189 of the
41 economic development law and subdivision 9 of section 186-a of the tax
42 law made by sections three, four, five and ten of this act shall not
43 affect the repeal of such section and subdivision, respectively, and
44 shall be deemed to be repealed therewith; provided further, however,
45 that section seven of this act shall expire and be deemed repealed June
46 30, [2009] 2010.

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

51 2. The authority, as deemed feasible and advisable by the trustees, is
52 authorized to make payments to recipients of the power for jobs elec-
53 tricity savings reimbursements and additional annual voluntary contrib-
54 utions into the state treasury to the credit of the general fund. The
55 authority shall make such contributions to the state treasury no later
56 than ninety days after the end of the calendar year in which a credit

1 under subdivision nine of section one hundred eighty-six-a of the tax
2 law is available: (a) for the additional three hundred megawatts of
3 power under the fourth phase of the program provided under chapter
4 sixty-three of the laws of two thousand and under the fifth phase for
5 the additional one hundred eighty-three megawatts provided under chapter
6 two hundred twenty-six of the laws of two thousand two; and (b) for any
7 extension of any contract for allocations under the fourth phase of the
8 program and under the fifth phase of the program. Payments for any elec-
9 tricity savings reimbursement under section one hundred eighty-nine of
10 the economic development law shall be made pursuant to such section.
11 Such annual contributions shall be equal to fifty percent of the total
12 amount of such credits available each year to all local distributors of
13 electricity. In addition, such authorization for contribution in state
14 fiscal year two thousand two--two thousand three shall be equal to the
15 total amount of credit available in two thousand one and two thousand
16 two; and such authorization for contribution in state fiscal year two
17 thousand three--two thousand four shall be equal to the total amount of
18 credit available in two thousand three; under subdivision nine of
19 section one hundred eighty-six-a of the tax law under the fourth phase
20 of the program for the additional three hundred megawatts provided under
21 chapter sixty-three of the laws of two thousand and under the fifth
22 phase for the additional one hundred eighty-three megawatts provided
23 under chapter two hundred twenty-six of the laws of two thousand two. In
24 state fiscal year two thousand four--two thousand five, such authorized
25 annual contribution shall be equal to one hundred percent of the total
26 amount of such credits available each year to all local distributors of
27 electricity. Such authorization for contribution in state fiscal years
28 two thousand four and two thousand five shall be equal to the total
29 amount of credit available in two thousand four and two thousand five;
30 under subdivision nine of section one hundred eighty-six-a of the tax
31 law under the fourth phase of the program for the additional three
32 hundred megawatts provided under chapter sixty-three of the laws of two
33 thousand and under the fifth phase for the additional one hundred eight-
34 y-three megawatts provided under chapter two hundred twenty-six of the
35 laws of two thousand two. In addition, such authorization for contrib-
36 ution for any extension of any contract for allocations under the fourth
37 phase of the program and under the fifth phase of the program in each
38 state fiscal year shall be equal to the total amount of credit or
39 reimbursement available in state fiscal year two thousand four--two
40 thousand five, state fiscal year two thousand five--two thousand six and
41 two thousand six--two thousand seven. Additionally, notwithstanding any
42 other section of law, the authority is authorized to make a contribution
43 in an amount related to total amounts of credit received under phases
44 one, two, three, four and five of the program. In no case shall the
45 contribution for state fiscal year two thousand five--two thousand six
46 be less than seventy-five million dollars. The contribution for state
47 fiscal year two thousand six--two thousand seven shall be one hundred
48 million dollars. The contribution for state fiscal year two thousand
49 seven--two thousand eight shall be thirty million dollars. The contrib-
50 ution for state fiscal year two thousand eight--two thousand nine shall
51 be twenty-five million dollars. THE CONTRIBUTION FOR STATE FISCAL YEAR
52 TWO THOUSAND NINE--TWO THOUSAND TEN SHALL BE THE LESSER OF TWENTY
53 MILLION DOLLARS OR THE VALUE OF THE CREDITS AUTHORIZED BY SUBDIVISION
54 NINE OF SECTION ONE HUNDRED EIGHTY-SIX-A OF THE TAX LAW AS CERTIFIED TO
55 THE COMMISSIONER. The department of public service shall estimate the
56 payment due by the end of the calendar year in which the credit is

1 available. In no case shall the amount of the total annual contributions
2 for the years during which delivery and sale of power associated with
3 all power for jobs phases and any extensions thereof takes place exceed
4 the aggregate total of four hundred [forty-nine] SIXTY-NINE million
5 dollars.
6 S 8. This act shall take effect immediately; provided that the amend-
7 ments to sections 183 and 189 of the economic development law, subdivi-
8 sion 9 of section 186-a of the tax law and subparagraph 2 of paragraph g
9 of the ninth undesignated paragraph of section 1005 of the public
10 authorities law, made by sections one, two, three, five and seven of
11 this act, shall not affect the expiration or repeal of such provisions
12 and shall be deemed repealed therewith.