

S. 6913

A. 10002

S E N A T E - A S S E M B L Y

February 24, 2010

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

IN ASSEMBLY -- Introduced by M. of A. DELMONTE, GABRYSZAK -- read once and referred to the Committee on Energy

AN ACT to amend the public authorities law and the economic development law, in relation to authorizing unallocated expansion or replacement power to be allocated for western New York economic development fund benefits

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

1 Section 1. The opening paragraph of subdivision 13 of section 1005 of
2 the public authorities law, as amended by chapter 645 of the laws of
3 2006, is amended to read as follows:
4 Notwithstanding any other provision of law to the contrary but subject
5 to the terms and conditions of federal energy regulatory commission
6 licenses, to allocate or reallocate directly or by sale for resale, two
7 hundred fifty megawatts of firm Niagara project hydroelectric power as
8 "expansion power" and four hundred forty-five megawatts of firm Niagara
9 project hydroelectric power as "replacement power" to businesses within
10 the state located within thirty miles of the Niagara project, and four
11 hundred ninety megawatts of firm and interruptible power from the Saint
12 Lawrence-FDR project as "preservation power" sold to businesses located
13 within the counties of Jefferson, Saint Lawrence and Franklin, provided
14 that the amount of expansion power allocated to businesses in Chautauqua
15 county on January first, nineteen hundred eighty-seven shall continue to
16 be allocated in such county and, provided further that up to seventy
17 megawatts of replacement power, up to thirty-eight and six-tenths mega-
18 watts of preservation power from the Saint Lawrence-FDR project which is
19 relinquished or withdrawn after the effective date of chapter three
20 hundred thirteen of the laws of two thousand five which amended this
21 subdivision and, for the period ending on December thirty-first, two
22 thousand six, up to twenty megawatts of other power from the Saint

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

LBD10545-10-9

1 Lawrence-FDR project which is unallocated as of the effective date of
2 chapter three hundred thirteen of the laws of two thousand five which
3 amended this subdivision, shall be allocated by the authority together
4 with such other funds of the authority as the trustees deem feasible and
5 advisable for energy cost savings benefits AND FOR WESTERN NEW YORK
6 ECONOMIC DEVELOPMENT FUND BENEFITS pursuant to the twelfth undesignated
7 paragraph of this section. Provided, however, that the amount of
8 replacement, preservation power, or the additional twenty megawatts of
9 Saint Lawrence-FDR power for the period ending December thirty-first,
10 two thousand six made available for such purpose, used for energy cost
11 savings benefits that are relinquished by or withdrawn from a recipient
12 thereof shall be offered by the authority proportionately for a period
13 of six months for reallocation to applicants who qualify respectively
14 for replacement or preservation power allocations as provided in this
15 subdivision. If such power is not allocated within such period it shall
16 be allocated for the purpose of energy cost savings benefits pursuant to
17 subdivision (h) of section one hundred eighty-three of the economic
18 development law. The authority shall negotiate contracts on reasonable
19 terms and conditions to renew or extend every permanent contract allo-
20 cation of expansion power in effect on the effective date of this subdivi-
21 sion and, to the extent consistent with such contracts, the authority
22 shall negotiate contracts on reasonable terms and conditions to extend
23 or renew all other allocations or allotments of such power in effect on
24 such date. The authority shall negotiate contracts on reasonable terms
25 and conditions to renew or extend for a period of at least five years
26 every permanent contract allocation of replacement power in effect on
27 the effective date of chapter three hundred thirteen of the laws of two
28 thousand five which added this sentence and that would expire by its
29 terms on or before the end of the initial federal energy regulatory
30 commission license for the Niagara project; provided that, in negotiat-
31 ing the terms and conditions of such contracts, the authority may
32 consider a business' compliance with all current contractual obli-
33 gations, including employment and power usage commitments. Contracts
34 entered into pursuant to this subdivision shall contain reasonable
35 provisions providing for the partial or complete withdrawal of the power
36 in the event the recipient fails to maintain mutually agreed levels of
37 employment, investment, and power utilization. Expansion or replacement
38 power relinquished by businesses or withdrawn by the authority shall be
39 allocated directly or by sale for resale by the authority to businesses
40 within the state located within thirty miles of the Niagara project
41 provided, that the PROCEEDS FROM THE SALE OF SUCH UNALLOCATED AND ALLO-
42 CATED, BUT RELINQUISHED OR WITHDRAWN OR CURRENTLY NOT ACCESSED EXPANSION
43 OR REPLACEMENT POWER, AS SHALL BE DETERMINED BY THE TRUSTEES, SHALL BE
44 ALLOCATED FOR THE PURPOSES OF WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND
45 BENEFITS PURSUANT TO THE TWELFTH UNDESIGNATED PARAGRAPH OF THIS SECTION.
46 PROCEEDS TO SUCH WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND SHALL NOT
47 PRECLUDE THE AUTHORITY FROM ALLOCATING EXPANSION OR REPLACEMENT POWER TO
48 ELIGIBLE COMPANIES UNDER THE PROVISIONS OF THIS SECTION. THE amount of
49 power allocated to businesses in Chautauqua county on January first,
50 nineteen hundred eighty-seven shall be allocated in such county. Preser-
51 vation power that is relinquished by businesses or withdrawn by the
52 authority shall be allocated directly or by sale for resale by the
53 authority within the counties of Jefferson, Saint Lawrence and Franklin.
54 Allocations made pursuant to this paragraph shall be made in accordance
55 with criteria established by the trustees. Such criteria shall address
56 the expansion of industry and employment pursuant to paragraph (a) of

1 this subdivision and the revitalization of existing industry pursuant to
2 paragraph (b) of this subdivision.

3 S 2. The twelfth undesignated paragraph of section 1005 of the public
4 authorities law, as amended by section 7 of part U of chapter 59 of the
5 laws of 2006, is amended to read as follows:

6 The authority is authorized to allocate up to seventy megawatts of
7 unallocated power from the Niagara project sold prior to the effective
8 date of this paragraph as replacement power, up to thirty-eight and
9 six-tenths megawatts of preservation power from the Saint Lawrence-FDR
10 project which is relinquished or withdrawn after the effective date of
11 this paragraph, and for the period ending on December thirty-first, two
12 thousand six, up to an additional twenty megawatts of power from the
13 Saint Lawrence-FDR project which is unallocated as of the effective date
14 of this paragraph, for sale into the wholesale market, the net earnings
15 from which and such other funds of the authority as deemed feasible and
16 advisable by the trustees, shall be used for energy cost savings bene-
17 fits. Such energy cost savings benefits shall be made upon recommenda-
18 tion of the economic development power allocation board, pursuant to
19 subdivision (h) of section one hundred eighty-three of the economic
20 development law. THE AUTHORITY IS AUTHORIZED TO ALLOCATE UNALLOCATED
21 EXPANSION AND REPLACEMENT POWER FROM THE NIAGARA PROJECT, AND RELIN-
22 QUISHED OR WITHDRAWN EXPANSION AND REPLACEMENT POWER, FOR SALE INTO THE
23 WHOLESALE MARKET, THE NET EARNINGS FROM WHICH AND SUCH OTHER FUNDS OF
24 THE AUTHORITY AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, SHALL BE
25 USED FOR WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS. SUCH WEST-
26 ERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS SHALL BE MADE UPON
27 RECOMMENDATION OF THE WESTERN NEW YORK ADVISORY GROUP, AS ESTABLISHED
28 UNDER "MEMORANDUM OF UNDERSTANDING REGARDING WESTERN NEW YORK HYDROPOW-
29 ER" AGREED TO BY THE AUTHORITY ON OCTOBER TWENTY-SECOND, TWO THOUSAND
30 THREE, PURSUANT TO SUBDIVISION (I) OF SECTION ONE HUNDRED EIGHTY-THREE
31 OF THE ECONOMIC DEVELOPMENT LAW. For purposes of this paragraph, the
32 term net earnings shall mean any excess of revenues earned from the sale
33 of such power allocated to the wholesale market from the Niagara and
34 Saint Lawrence-FDR projects over the revenues that would have been
35 received had such firm power been allocated and sold on a firm basis by
36 the authority prior to the effective date of this paragraph.

37 S 3. Section 183 of the economic development law is amended by adding
38 a new subdivision (i) to read as follows:

39 (I) 1. THE WESTERN NEW YORK ADVISORY GROUP SHALL SOLICIT APPLICATIONS
40 AND MAKE RECOMMENDATIONS FOR APPROVAL OF WESTERN NEW YORK ECONOMIC
41 DEVELOPMENT FUND BENEFITS IN AMOUNTS MADE AVAILABLE PURSUANT TO THE
42 TWELFTH UNDESIGNATED PARAGRAPH OF SECTION ONE THOUSAND FIVE OF THE
43 PUBLIC AUTHORITIES LAW.

44 2. ELIGIBLE PROJECTS SHALL INCLUDE PROJECTS PROPOSED BY ENTITIES FROM
45 THE PUBLIC, PRIVATE OR NOT-FOR-PROFIT SECTORS LOCATED WITHIN A
46 THIRTY-MILE RADIUS OF THE NIAGARA POWER PLANT PROJECT THAT DEVELOP OR
47 MANAGE ECONOMIC DEVELOPMENT PROJECTS THAT HAVE IDENTIFIED THE ULTIMATE
48 SITE OR USER OF SUCH ECONOMIC DEVELOPMENT FUND BENEFITS. ELIGIBLE
49 PROJECTS SHALL BE PROPOSED BY ENTITIES THAT ARE CUSTOMERS SERVED UNDER
50 THE POWER AUTHORITY OF THE STATE OF NEW YORK'S HIGH LOAD FACTOR, ECONOM-
51 IC DEVELOPMENT POWER AND OTHER BUSINESS CUSTOMERS SERVED BY POLITICAL
52 SUBDIVISIONS OF THE STATE AUTHORIZED BY LAW TO ENGAGE IN THE DISTRIB-
53 UTION OF ELECTRIC POWER THAT WERE AUTHORIZED TO BE SERVED BY THE AUTHOR-
54 ITY'S FORMER JAMES A. FITZPATRICK NUCLEAR POWER PLANT.

55 3. EACH APPLICATION FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND
56 BENEFIT SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE WESTERN NEW

1 YORK ADVISORY GROUP, IN CONSULTATION WITH THE POWER AUTHORITY OF THE
2 STATE OF NEW YORK, WHICH CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC
3 DEVELOPMENT, MAINTAIN AND DEVELOP JOBS, AND ENCOURAGE NEW CAPITAL
4 INVESTMENT THROUGHOUT THE STATE OF NEW YORK. SUCH CRITERIA SHALL ADDRESS
5 BUT NEED NOT BE LIMITED TO:

6 (A) THE OVERALL ECONOMIC IMPACT OF THE APPLICANT IN TERMS OF THE
7 NUMBER OF JOBS TO BE CREATED OR RETAINED, AVERAGE ANNUAL PAYROLL, CAPI-
8 TAL INVESTMENT AND USE OF NEW YORK STATE SUPPLIERS;

9 (B) THE LIKELIHOOD THAT IN THE ABSENCE OF APPROVAL OF A WESTERN NEW
10 YORK ECONOMIC DEVELOPMENT FUND BENEFIT, THE APPLICANT WOULD CLOSE,
11 CONTRACT OR RELOCATE OUTSIDE THE STATE OF NEW YORK;

12 (C) THE APPLICANT'S COMPLIANCE WITH THE COMMITMENT TO RETAIN AND/OR
13 CREATE JOBS CONTAINED IN ITS PRIOR POWER CONTRACT WITH THE POWER AUTHOR-
14 ITY OF THE STATE OF NEW YORK;

15 (D) THE EXTENT TO WHICH A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND
16 BENEFIT WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE
17 APPLICANT'S BUSINESS AND ITS EXISTING EMPLOYMENT WITHIN THE STATE; AND

18 (E) THE OVERALL IMPACT OF THE PROJECT IN TERMS OF THE ECONOMIC VIABIL-
19 ITY OF IDENTIFIED ULTIMATE SITE OR USER INCLUDING THE PROJECT'S ABILITY
20 TO INDUCE ADDITIONAL COMMERCIAL ACTIVITY ON THE SITE, REVITALIZE AN
21 URBAN AREA, AND ITS COMPLIANCE WITH REGIONAL DEVELOPMENT PLANS.

22 4. APPLICATIONS FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENE-
23 FIT SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND
24 SUPPORTING DATA AS THE BOARD MAY PRESCRIBE. THE WESTERN NEW YORK ADVI-
25 SORY GROUP SHALL REVIEW THE APPLICATIONS RECEIVED AND SHALL DETERMINE
26 THE APPLICATIONS WHICH BEST MEET THE CRITERIA ESTABLISHED FOR THE BENE-
27 FITS PURSUANT TO THIS SUBDIVISION AND IT SHALL RECOMMEND SUCH APPLICA-
28 TIONS TO THE POWER AUTHORITY AND THE STATE OF NEW YORK WITH SUCH TERMS
29 AND CONDITIONS AS IT DEEMS APPROPRIATE. SUCH TERMS AND CONDITIONS SHALL
30 INCLUDE REASONABLE PROVISIONS PROVIDING FOR THE PARTIAL OR COMPLETE
31 WITHDRAWAL OF THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT IN
32 THE EVENT THAT THE RECIPIENT FAILS TO MAINTAIN MUTUALLY AGREED UPON
33 COMMITMENTS THAT MAY INCLUDE, BUT ARE NOT LIMITED TO, INFRASTRUCTURE
34 PROJECT COMPLETION. RECOMMENDATION FOR APPROVAL OF A WESTERN NEW YORK
35 ECONOMIC DEVELOPMENT FUND BENEFIT SHALL QUALIFY AN APPLICANT TO RECEIVE
36 A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT FROM THE POWER
37 AUTHORITY OF THE STATE OF NEW YORK PURSUANT TO THE TERMS AND CONDITIONS
38 OF THE RECOMMENDATION.

39 5. THE TRANSFER OF A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENE-
40 FIT SHALL BE PROHIBITED UNLESS SPECIFICALLY APPROVED BY THE WESTERN NEW
41 YORK ADVISORY GROUP AS CONSISTENT WITH THE CRITERIA ESTABLISHED PURSUANT
42 TO THIS PARAGRAPH. ANY TRANSFER WHICH OCCURS WITHOUT SUCH ADVISORY
43 GROUP'S APPROVAL SHALL BE INVALID AND SUCH TRANSFER MAY SUBJECT THE
44 RECIPIENT TO REVOCATION OF ITS BENEFIT AND MODIFICATION OR REVOCATION OF
45 ITS CONTRACT.

46 S 4. This act shall take effect immediately, provided that the amend-
47 ments to section 183 of the economic development law made by section
48 three of this act shall not affect the expiration of such section and
49 shall be deemed to expire therewith.