

5367

2011-2012 Regular Sessions

I N S E N A T E

May 12, 2011

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

AN ACT to amend the real property tax law and the administrative code of the city of New York, in relation to applications for tax abatements for industrial and construction work on properties in a city of one million or more persons and to tax abatements for certain energy generating facilities in such city

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

1 Section 1. Legislative findings. The legislature hereby finds that the  
2 New York city industrial and commercial incentive program granted, as of  
3 right, reductions in real property taxes to new industrial and commer-  
4 cial projects, including power plants. That program lapsed in 2008 and  
5 its successor, the industrial and commercial abatement program, enacted  
6 by chapter 119 of the laws of 2008, did not provide for tax abatements  
7 for new generating facilities in New York city. In August 2010 the board  
8 of directors of the New York city industrial development agency revised  
9 its uniform tax exemption policy to provide a discretionary tax abate-  
10 ment program, and other benefits, for certain electric generating facil-  
11 ities. However, the tax benefits of the program were not recognized by  
12 the federal energy regulatory commission in setting the installed capac-  
13 ity demand curves for the City of New York for 2011/2012, 2012/2013 and  
14 2013/2014, potentially resulting in a significant increase in the level  
15 of the demand curves and corresponding capacity prices paid by customers  
16 in the city of New York. The legislature further finds that it is the  
17 best interest of customers to prevent such impacts by amending the real  
18 property tax law for the purpose of making electric generating facili-  
19 ties eligible for benefits, as of right, under the industrial and  
20 commercial abatement program.

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

LBD11617-02-1

1 S 2. Subdivision 17 of section 489-aaaaaa of the real property tax  
2 law, as added by chapter 119 of the laws of 2008, is amended to read as  
3 follows:

4 17. "Utility property" means property and equipment as described in  
5 paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section  
6 one hundred two of this chapter that is used in the ordinary course of  
7 business by its owner or any other entity or property as described in  
8 paragraphs (a) and (b) of subdivision twelve of section one hundred two  
9 of this chapter that is owned by any entity that uses in the ordinary  
10 course of business property and equipment as described in paragraphs  
11 (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred  
12 two of this chapter, without regard to the classification of such prop-  
13 erty and equipment for real property tax purposes pursuant to section  
14 eighteen hundred two of this chapter, except that any such property and  
15 equipment used solely to serve the building to which they are attached  
16 shall not be deemed utility property. NOTWITHSTANDING ANY PROVISION OF  
17 THIS TITLE TO THE CONTRARY, ELECTRIC GENERATING FACILITIES OWNED BY  
18 ENTITIES OTHER THAN UTILITIES OWNING GREATER THAN ONE HUNDRED MILES OF  
19 TRANSMISSION FACILITIES SHALL NOT BE CONSIDERED UTILITY PROPERTY. FOR  
20 PURPOSES OF THIS TITLE, "ELECTRIC GENERATING FACILITY" SHALL MEAN A  
21 GENERATING UNIT THAT IS DETERMINED BY THE NEW YORK INDEPENDENT SYSTEM  
22 OPERATOR TO SATISFY THE DEFINITION OF A GENERATOR SET FORTH IN SECTION  
23 2.7 OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION  
24 AND CONTROL AREA SERVICES TARIFF, AS SUCH DEFINITION EXISTED AS OF APRIL  
25 FIRST, TWO THOUSAND ELEVEN. AN "ELECTRIC GENERATING FACILITY" UNDER THIS  
26 TITLE INCLUDES ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION  
27 OF ELECTRICITY, AND ANY FACILITIES USED TO INTERCONNECT THE ELECTRIC  
28 GENERATING FACILITY WITH THE ELECTRIC TRANSMISSION OR DISTRIBUTION  
29 SYSTEM, BUT SHALL NOT INCLUDE ANY FACILITIES WHICH ARE PART OF THE ELEC-  
30 TRIC TRANSMISSION OR DISTRIBUTION SYSTEM; IT MAY BE COMPRISED OF A  
31 SINGLE TURBINE AND GENERATOR OR MULTIPLE TURBINES AND GENERATORS LOCATED  
32 AT THE SAME SITE. NOTWITHSTANDING ANY PROVISION OF THIS TITLE TO THE  
33 CONTRARY, AN ELECTRIC GENERATING FACILITY SHALL BE CONSIDERED INDUSTRIAL  
34 PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD FOR AN ELECTRIC  
35 GENERATING FACILITY SHALL NOT EXCEED FIFTEEN YEARS.

36 S 3. Paragraph (a) of subdivision 1 of section 489-ddddddd of the real  
37 property tax law, as amended by chapter 138 of the laws of 2008, is  
38 amended to read as follows:

39 (a) Application for benefits pursuant to this title may be made imme-  
40 diately following the effective date of a local law enacted pursuant to  
41 this title and, EXCEPT FOR APPLICATIONS FOR BENEFITS PURSUANT TO THIS  
42 TITLE BY ELECTRIC GENERATING FACILITIES, continuing until March first,  
43 two thousand [eleven] FIFTEEN.

44 S 4. Section 489-ddddddd of the real property tax law is amended by  
45 adding a new subdivision 3 to read as follows:

46 3. (A) EXCEPT FOR BENEFITS GRANTED PURSUANT TO THIS TITLE TO ELECTRIC  
47 GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS TITLE SHALL BE  
48 GRANTED FOR CONSTRUCTION WORK PERFORMED PURSUANT TO A BUILDING PERMIT  
49 ISSUED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

50 (B) IF NO BUILDING PERMIT WAS REQUIRED, THEN, EXCEPT FOR ELECTRIC  
51 GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS TITLE SHALL BE  
52 GRANTED FOR CONSTRUCTION WORK THAT IS NOT COMMENCED ON OR BEFORE APRIL  
53 FIRST, TWO THOUSAND FIFTEEN.

54 S 5. Subdivision 1 of section 489-eeeeeee of the real property tax law,  
55 as added by chapter 119 of the laws of 2008, is amended to read as  
56 follows:

1 1. Continuing use. For the duration of the benefit period, the recipi-  
2 ent of benefits shall file biennially with the department, on or before  
3 the appropriate taxable status date, a statement of the continuing use  
4 of such property and any changes in use that have occurred, PROVIDED,  
5 HOWEVER, THAT ANY RECIPIENT OF BENEFITS RECEIVING BENEFITS FOR PROPERTY  
6 DEFINED AS AN ELECTRIC GENERATING FACILITY SHALL FILE SUCH STATEMENT  
7 BIANNUALLY. This statement shall be in a form determined by the depart-  
8 ment and may be in any format the department determines, in its  
9 discretion, is appropriate, including electronic format. The department  
10 shall have authority to terminate such benefits upon failure of a recipi-  
11 ent to file such statement by the appropriate taxable status date. The  
12 burden of proof shall be on the recipient to establish continuing eligi-  
13 bility for benefits and the department shall have the authority to  
14 require that statements filed under this subdivision be certified.

15 S 6. Subdivision q of section 11-268 of the administrative code of the  
16 city of New York, as added by local law number 47 of the city of New  
17 York for the year 2008, is amended to read as follows:

18 q. "Utility property" means property and equipment as described in  
19 paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section  
20 one hundred two of the real property tax law that is used in the ordi-  
21 nary course of business by its owner or any other entity or property as  
22 described in paragraphs (a) and (b) of subdivision twelve of section one  
23 hundred two of such law that is owned by any entity that uses in the  
24 ordinary course of business property and equipment as described in para-  
25 graphs (c), (d), (e), (f) and (i) of subdivision twelve of section one  
26 hundred two of such law, without regard to the classification of such  
27 property and equipment for real property tax purposes pursuant to  
28 section eighteen hundred two of such law, except that any such property  
29 and equipment used solely to serve the building to which they are  
30 attached shall not be deemed utility property. NOTWITHSTANDING ANY  
31 PROVISION OF THIS PART TO THE CONTRARY, ELECTRIC GENERATING FACILITIES  
32 SHALL NOT BE CONSIDERED UTILITY PROPERTY. FOR PURPOSES OF THIS PART,  
33 "ELECTRIC GENERATING FACILITY" SHALL MEAN A GENERATING UNIT THAT IS  
34 DETERMINED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR TO SATISFY THE  
35 DEFINITION OF A GENERATOR SET FORTH IN SECTION 2.7 OF THE NEW YORK INDE-  
36 PENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION AND CONTROL AREA  
37 SERVICES TARIFF, AS SUCH DEFINITION EXISTED AS OF APRIL FIRST, TWO THOU-  
38 SAND ELEVEN. AN "ELECTRIC GENERATING FACILITY" UNDER THIS PART INCLUDES  
39 ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY,  
40 AND ANY FACILITIES USED TO INTERCONNECT THE ELECTRIC GENERATOR FACILITY  
41 WITH THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT  
42 INCLUDE ANY FACILITIES WHICH ARE PART OF THE ELECTRIC TRANSMISSION OR  
43 DISTRIBUTION SYSTEM; IT MAY BE COMPRISED OF A SINGLE TURBINE AND GENERA-  
44 TOR OR MULTIPLE TURBINES AND GENERATORS LOCATED AT THE SAME SITE.  
45 NOTWITHSTANDING ANY PROVISION OF THIS PART TO THE CONTRARY, AN ELECTRIC  
46 GENERATOR FACILITY SHALL BE CONSIDERED INDUSTRIAL PROPERTY, PROVIDED  
47 HOWEVER THAT THE BENEFIT PERIOD FOR AN ELECTRIC GENERATOR FACILITY SHALL  
48 NOT EXCEED FIFTEEN YEARS.

49 S 7. Paragraph 1 of subdivision a of section 11-271 of the administra-  
50 tive code of the city of New York, as added by local law number 47 of  
51 the city of New York for the year 2008, is amended to read as follows:

52 (1) Application for benefits pursuant to this part may be made imme-  
53 diately following the effective date of the local law that added this  
54 section and, EXCEPT FOR APPLICATIONS FOR BENEFITS PURSUANT TO THIS PART  
55 BY ELECTRIC GENERATING FACILITIES, continuing until March first, two  
56 thousand [eleven] FIFTEEN.

1 S 8. Section 11-271 of the administrative code of the city of New York  
2 is amended by adding a new subdivision c to read as follows:

3 C. (1) EXCEPT FOR BENEFITS GRANTED PURSUANT TO THIS PART TO ELECTRIC  
4 GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS PART SHALL BE GRANT-  
5 ED FOR CONSTRUCTION WORK PERFORMED PURSUANT TO A BUILDING PERMIT ISSUED  
6 AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

7 (2) IF NO BUILDING PERMIT WAS REQUIRED, THEN, EXCEPT FOR ELECTRIC  
8 GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS PART SHALL BE GRANT-  
9 ED FOR CONSTRUCTION WORK THAT IS NOT COMMENCED ON OR BEFORE APRIL FIRST,  
10 TWO THOUSAND FIFTEEN.

11 S 9. Subdivision a of section 11-272 of the administrative code of the  
12 city of New York, as added by local law number 47 of the city of New  
13 York for the year 2008, is amended to read as follows:

14 a. Continuing use. For the duration of the benefit period, the recipi-  
15 ent of benefits shall file biennially with the department, on or before  
16 the appropriate taxable status date, a statement of the continuing use  
17 of such property and any changes in use that have occurred, PROVIDED,  
18 HOWEVER, THAT ANY RECIPIENT OF BENEFITS RECEIVING BENEFITS FOR PROPERTY  
19 DEFINED AS AN ELECTRIC GENERATING FACILITY SHALL FILE SUCH STATEMENT  
20 BIANNUALLY. This statement shall be in a form determined by the depart-  
21 ment and may be in any format the department determines, in its  
22 discretion, is appropriate, including electronic format. The department  
23 shall have authority to terminate such benefits upon failure of a recipi-  
24 ent to file such statement by the appropriate taxable status date. The  
25 burden of proof shall be on the recipient to establish continuing eligi-  
26 bility for benefits and the department shall have the authority to  
27 require that statements filed under this subdivision be certified.

28 S 10. This act shall take effect immediately and shall be deemed to  
29 have been in full force and effect on and after April 1, 2011.