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2011-2012 Regular Sessions

I N A S S E M B L Y

March 21, 2011

Introduced by M. of A. KOLB, AMEDORE, BARCLAY, BUTLER, CORWIN, FINCH, OAKS, CASTELLI -- Multi-Sponsored by -- M. of A. BOYLE, BURLING, CALHOUN, CONTE, CROUCH, DUPREY, FITZPATRICK, GIGLIO, HAWLEY, HAYES, JORDAN, P. LOPEZ, McDONOUGH, McKEVITT, J. MILLER, MOLINARO, RABBITT, RAI, REILICH, SAYWARD, TEDISCO, THIELE, TOBACCO -- 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, 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, as amended by chapter 311 of the laws of 2010,
3 are amended to read as follows:
4 2. During the period commencing on November first, two thousand five
5 and ending on May fifteenth, two thousand [eleven] TWELVE eligible busi-
6 nesses shall only include customers served under the power authority of
7 the state of New York's high load factor, economic development power and
8 other business customers served by political subdivisions of the state
9 authorized by law to engage in the distribution of electric power that
10 were authorized to be served by the authority from the authority's
11 former James A. Fitzpatrick nuclear power plant as of the effective date
12 of this subdivision whose power prices may be subject to increase before
13 May fifteenth, two thousand [eleven] TWELVE. Provided, however, that the

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

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3 quished by or withdrawn from a recipient shall be deemed to be relin-
4 quished or withdrawn for purposes of offering such megawatts by the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

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

36 S 2. The opening paragraph of paragraph 5 of subdivision (a) of
37 section 189 of the economic development law, as amended by chapter 311
38 of the laws of 2010, is amended to read as follows:

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

1 contract for power allocated under phase four or five of the power for
2 jobs program.

3 S 3. Subdivisions (f) and (l) of section 189 of the economic develop-
4 ment law, as amended by chapter 311 of the laws of 2010, are amended to
5 read as follows:

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

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

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

27 S 4. Section 9 of chapter 316 of the laws of 1997 amending the public
28 authorities law and other laws relating to the provision of low cost
29 power to foster statewide economic development, as amended by chapter
30 311 of the laws of 2010, is amended to read as follows:

31 S 9. This act shall take effect immediately and shall expire and be
32 deemed repealed May 15, [2011] 2012.

33 S 5. Subdivision 9 of section 186-a of the tax law, as amended by
34 chapter 217 of the laws of 2009, is amended to read as follows:

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

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

39 S 6. Section 11 of chapter 645 of the laws of 2006 amending the
40 economic development law and other laws relating to reauthorizing the
41 New York power authority to make contributions to the general fund, as
42 amended by chapter 311 of the laws of 2010, is amended to read as
43 follows:

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

1 that section seven of this act shall expire and be deemed repealed May
2 15, [2011] 2012.

3 S 7. Subparagraph 2 of paragraph g of the ninth undesignated paragraph
4 of section 1005 of the public authorities law, as amended by chapter 217
5 of the laws of 2009, is amended to read as follows:

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

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

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