S T A T E O F N E W Y O R K

5353

2011-2012 Regular Sessions

I N S E N A T E

May 11, 2011

Introduced by Sens. LANZA, GOLDEN -- (at request of the Governor) -- 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 commercial construction work on properties in a city of one million or more persons and to tax abatements for certain electricity generating facilities in such city

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

Section 1. Legislative findings. The legislature hereby finds that the New York city industrial and commercial incentive program granted, as of right, reductions in real property taxes to new industrial and commercial projects, including power plants. That program lapsed in 2008 and its successor, the industrial and commercial abatement program, enacted by chapter 119 of the laws of 2008, did not provide for tax abatements for new electricity generating facilities in New York city. In August 2010 the board of directors of the New York city industrial development agency revised its uniform tax exemption policy to provide a discretionary tax abatement program, and other benefits, for certain peaking generating facilities. However, the tax benefits of the program were not recognized by the federal energy regulatory commission in setting the installed capacity demand curves for the City of New York for 2011/2012, 2012/2013 and 2013/2014, potentially resulting in a significant increase in the level of the demand curves and corresponding capacity prices paid by customers in the city of New York. The legislature further finds that it is in the best interest of customers to prevent such impacts by amending the real property tax law for the purpose of making peaking units eligible for benefits, as of right, under the industrial and commercial abatement program.

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

LBD12038-06-1

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

17. "Utility property" means property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of this chapter that is used in the ordinary course of business by its owner or any other entity or property as described in paragraphs (a) and (b) of subdivision twelve of section one hundred two of this chapter that is owned by any entity that uses in the ordinary course of business property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of this chapter, without regard to the classification of such property and equipment for real property tax purposes pursuant to section eighteen hundred two of this chapter, except that any such property and equipment used solely to serve the building to which they are attached shall not be deemed utility property. NOTWITHSTANDING ANY PROVISION OF THIS TITLE TO THE CONTRARY, PEAKING UNITS SHALL NOT BE CONSIDERED UTILITY PROPERTY. FOR PURPOSES OF THIS TITLE, "PEAKING UNIT" SHALL MEAN A GENERATING UNIT THAT: (A) IS DETERMINED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR OR A FEDERAL OR NEW YORK STATE ENERGY REGULATORY COMMISSION TO CONSTITUTE A PEAKING UNIT AS SET FORTH IN SECTION 5.14.1.2 OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION AND CONTROL AREA SERVICES TARIFF, AS SUCH TERM EXISTED AS OF APRIL FIRST, TWO THOUSAND ELEVEN; OR (B) HAS AN ANNUAL AVERAGE OPERATION, DURING THE CALENDAR YEAR PRECEDING THE TAXABLE STATUS DATE, OF LESS THAN EIGHTEEN HOURS FOLLOWING EACH START OF THE UNIT; FOR PURPOSES OF CALCULATING THE ANNUAL AVERAGE, OPERATIONS DURING ANY PERIOD COVERED BY ANY MAJOR EMERGENCY DECLARATION ISSUED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR, NORTHEAST POWER COORDINATING COUNCIL, OR OTHER SIMILAR ENTITY SHALL BE EXCLUDED. A "PEAKING UNIT" UNDER THIS TITLE SHALL INCLUDE ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY, AND ANY FACILITIES USED TO INTERCONNECT THE PEAKING UNIT WITH THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT INCLUDE ANY FACILITIES THAT ARE PART OF THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM; IT MAY BE COMPRISED OF A SINGLE TURBINE AND GENERATOR OR MULTIPLE TURBINES AND GENERATORS LOCATED AT THE SAME SITE. NOTWITHSTANDING ANY PROVISION OF THIS TITLE TO THE CONTRARY, A PEAKING UNIT SHALL BE CONSIDERED INDUSTRIAL PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD FOR A PEAKING UNIT SHALL BE AS SET FORTH IN PARAGRAPH (B-1) OF SUBDIVISION THREE OF SECTION FOUR HUNDRED EIGHTY-NINE-BBBBBB OF THIS TITLE.

S 3. Subdivision 3 of section 489-bbbbbb of the real property tax law is amended by adding a new paragraph (b-1) to read as follows:

(B-1) ABATEMENT FOR INDUSTRIAL CONSTRUCTION WORK ON A PEAKING UNIT. UPON APPROVAL BY THE DEPARTMENT OF A FINAL APPLICATION FOR BENEFITS, AN APPLICANT WHO HAS PERFORMED INDUSTRIAL CONSTRUCTION WORK IN ANY AREA ON A PEAKING UNIT, SHALL BE ELIGIBLE FOR AN ABATEMENT OF REAL PROPERTY TAXES, AS FOLLOWS:

(I) AMOUNT OF ABATEMENT. THE FIRST YEAR OF THE ABATEMENT SHALL BE THE TAX YEAR WITH THE FIRST TAXABLE STATUS DATE THAT FOLLOWS THE SOONER OF (A) COMPLETION OF CONSTRUCTION; OR (B) FOUR YEARS FROM THE DATE THE FIRST BUILDING PERMIT WAS ISSUED, OR IF NO PERMIT WAS REQUIRED, THE COMMENCEMENT OF CONSTRUCTION. FOR YEARS ONE THROUGH FIFTEEN, THE ABATEMENT SHALL BE THE AMOUNT OF THE ABATEMENT BASE. THE ABATEMENT SHALL BE ADJUSTED FOR INFLATION PROTECTION AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH. THE FOLLOWING TABLE ILLUSTRATES THE ABATEMENT COMPUTATION:

TAX YEAR DURING BENEFIT PERIOD:	AMOUNT OF ABATEMENT:
YEARS 1 THROUGH 15	100% OF ABATEMENT BASE

(II) INFLATION PROTECTION. (A) INDUSTRIAL CONSTRUCTION WORK, EFFECT OF ASSESSED VALUATION INCREASES. FOR YEARS TWO THROUGH THIRTEEN OF THE BENEFIT PERIOD, EXCEPT AS PROVIDED IN CLAUSE (B) OF THIS SUBPARAGRAPH, IF THERE IS ANY INCREASE IN TAX IN THAT YEAR THAT IS BASED ON AN INCREASE OF TAXABLE ASSESSED VALUATION SINCE THE IMMEDIATELY PRIOR TAX YEAR, SUCH EXCESS TAX LIABILITY SHALL BE ADDED TO THE AMOUNT OF THE ABATEMENT BASE. SUCH ADDITION TO THE AMOUNT OF THE ABATEMENT BASE SHALL BE DETERMINED USING THE INITIAL TAX RATE.

(B) PHYSICAL INCREASES. NOTWITHSTANDING THE PROVISIONS OF CLAUSE (A) OF THIS SUBPARAGRAPH, IF IN ANY OF YEARS TWO THROUGH THIRTEEN OF THE BENEFIT PERIOD, A PHYSICAL CHANGE TO THE PROPERTY RESULTS IN AN INCREASE IN THE TAXABLE ASSESSED VALUE OF THE PROPERTY OF MORE THAN FIVE PERCENT FOR THAT YEAR, THEN ANY INCREASE IN TAXES FOR THAT YEAR SHALL NOT BE ADDED TO THE AMOUNT OF THE ABATEMENT BASE IN ANY YEAR.

(C) IF THE TAXABLE ASSESSED VALUE UPON WHICH AN ADJUSTMENT TO THE ABATEMENT UNDER THIS PARAGRAPH IS BASED IS LATER REDUCED BY A COURT ORDER OR APPLICATION TO THE TAX COMMISSION, THEN THE APPROPRIATE ADJUSTMENT TO THE ABATEMENT BASE SHALL BE MADE IN ACCORDANCE WITH THE REDUCED TAXABLE ASSESSED VALUE.

(III) MINIMUM REQUIRED EXPENDITURE. FOR INDUSTRIAL CONSTRUCTION WORK ON A PEAKING UNIT, THE MINIMUM REQUIRED EXPENDITURE IS THIRTY PERCENT OF THE PROPERTY'S TAXABLE ASSESSED VALUE IN THE TAX YEAR WITH A TAXABLE STATUS DATE IMMEDIATELY PRECEDING THE ISSUANCE OF THE FIRST BUILDING PERMIT, OR IF NO PERMIT WAS REQUIRED, THE COMMENCEMENT OF CONSTRUCTION. EXPENDITURES FOR RESIDENTIAL CONSTRUCTION WORK OR CONSTRUCTION WORK ON PORTIONS OF PROPERTY TO BE USED FOR RESTRICTED ACTIVITIES SHALL NOT BE INCLUDED IN THE MINIMUM REQUIRED EXPENDITURE.

S 4. Paragraph (a) of subdivision 1 of section 489-dddddd of the real property tax law, as amended by chapter 138 of the laws of 2008, is amended to read as follows:

(a) Application for benefits pursuant to this title may be made immediately following the effective date of a local law enacted pursuant to this title and continuing until March first, two thousand [eleven] FIFTEEN.

S 5. Section 489-dddddd of the real property tax law is amended by adding a new subdivision 3 to read as follows:

3. (A) NO BENEFITS PURSUANT TO THIS TITLE SHALL BE GRANTED FOR CONSTRUCTION WORK PERFORMED PURSUANT TO A BUILDING PERMIT ISSUED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

(B) IF NO BUILDING PERMIT WAS REQUIRED, THEN NO BENEFITS PURSUANT TO THIS TITLE SHALL BE GRANTED FOR CONSTRUCTION WORK THAT IS COMMENCED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

S 6. Subdivision 1 of section 489-eeeeee of the real property tax law, as added by chapter 119 of the laws of 2008, is amended to read as follows:

1. Continuing use. For the duration of the benefit period, the recipient of benefits shall file biennially with the department, on or before the appropriate taxable status date, a statement of the continuing use of such property and any changes in use that have occurred, PROVIDED, HOWEVER, THAT ANY RECIPIENT OF BENEFITS RECEIVING BENEFITS FOR PROPERTY DEFINED AS A PEAKING UNIT SHALL FILE SUCH STATEMENT BIANNUALLY. This statement shall be in a form determined by the department and may be in any format the department determines, in its discretion, is appropriate, including electronic format. The department shall have authority to

terminate such benefits upon failure of a recipient to file such statement by the appropriate taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department shall have the authority to require that statements filed under this subdivision be certified.

S 7. Section 489-ffffff of the real property tax law is amended by adding a new subdivision 5-a to read as follows:

5-A. CONVERSION OF USE BY PEAKING UNITS. ANY APPLICANT WHOSE PROPERTY HAS BEEN GRANTED BENEFITS UNDER THIS TITLE FOR INDUSTRIAL CONSTRUCTION WORK AS A PEAKING UNIT AND WHO CONVERTS SUCH PROPERTY IN ANY TAX YEAR TO A USE THAT NO LONGER QUALIFIES IT AS A PEAKING UNIT, OR WHO USES SUCH PROPERTY IN A MANNER INCONSISTENT WITH THE DEFINITION OF A PEAKING UNIT, SHALL BE INELIGIBLE FOR ABATEMENT BENEFITS DURING ANY SUCH TAX YEAR. ANY SUCH RECIPIENT OF BENEFITS SHALL PAY WITH INTEREST TAXES FOR WHICH AN ABATEMENT WAS CLAIMED DURING ANY PORTION OF SUCH TAX YEAR.

S 8. Subdivision q of section 11-268 of the administrative code of the city of New York, as added by local law number 47 of the city of New York for the year 2008, is amended to read as follows:

q. "Utility property" means property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of the real property tax law that is used in the ordinary course of business by its owner or any other entity or property as described in paragraphs (a) and (b) of subdivision twelve of section one hundred two of such law that is owned by any entity that uses in the ordinary course of business property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of such law, without regard to the classification of such property and equipment for real property tax purposes pursuant to section eighteen hundred two of such law, except that any such property and equipment used solely to serve the building to which they are attached shall not be deemed utility property. NOTWITHSTANDING ANY PROVISION OF THIS PART TO THE CONTRARY, PEAKING UNITS SHALL NOT BE CONSIDERED UTILITY PROPERTY. FOR PURPOSES OF THIS PART, "PEAKING UNIT" SHALL MEAN A GENERATING UNIT THAT: (A) IS DETERMINED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR OR A FEDERAL OR NEW YORK STATE ENERGY REGULATORY COMMISSION TO CONSTITUTE A PEAKING UNIT AS SET FORTH IN SECTION 5.14.1.2 OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION AND CONTROL AREA SERVICES TARIFF, AS SUCH TERM EXISTED AS OF APRIL FIRST, TWO THOUSAND ELEVEN; OR (B) HAS AN ANNUAL AVERAGE OPERATION, DURING THE CALENDAR YEAR PRECEDING THE TAXABLE STATUS DATE, OF LESS THAN EIGHTEEN HOURS FOLLOWING EACH START OF THE UNIT; FOR PURPOSES OF CALCULATING THE ANNUAL AVERAGE, OPERATIONS DURING ANY PERIOD COVERED BY ANY MAJOR EMERGENCY DECLARATION ISSUED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR, NORTHEAST POWER COORDINATING COUNCIL, OR OTHER SIMILAR ENTITY SHALL BE EXCLUDED. A "PEAKING UNIT" UNDER THIS PART SHALL INCLUDE ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY, AND ANY FACILITIES USED TO INTERCONNECT THE PEAKING UNIT WITH THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT INCLUDE ANY FACILITIES THAT ARE PART OF THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM; IT MAY BE COMPRISED OF A SINGLE TURBINE AND GENERATOR OR MULTIPLE TURBINES AND GENERATORS LOCATED AT THE SAME SITE. NOTWITHSTANDING ANY PROVISION OF THIS PART TO THE CONTRARY, A PEAKING UNIT SHALL BE CONSIDERED INDUSTRIAL PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD FOR A PEAKING UNIT SHALL BE AS SET FORTH IN PARAGRAPH TWO-A OF SUBDIVISION C OF SECTION 11-269 OF THIS PART.

S 9. Subdivision c of section 11-269 of the administrative code of the city of New York is amended by adding a new paragraph 2-a to read as follows:

(2-A) ABATEMENT FOR INDUSTRIAL CONSTRUCTION WORK ON A PEAKING UNIT. UPON APPROVAL BY THE DEPARTMENT OF A FINAL APPLICATION FOR BENEFITS, AN APPLICANT WHO HAS PERFORMED INDUSTRIAL CONSTRUCTION WORK IN ANY AREA ON A PEAKING UNIT, SHALL BE ELIGIBLE FOR AN ABATEMENT OF REAL PROPERTY TAXES, AS FOLLOWS:

(A) AMOUNT OF ABATEMENT. THE FIRST YEAR OF THE ABATEMENT SHALL BE THE TAX YEAR WITH THE FIRST TAXABLE STATUS DATE THAT FOLLOWS THE SOONER OF (I) COMPLETION OF CONSTRUCTION; OR (II) FOUR YEARS FROM THE DATE THE FIRST BUILDING PERMIT WAS ISSUED, OR IF NO PERMIT WAS REQUIRED, THE COMMENCEMENT OF CONSTRUCTION. FOR YEARS ONE THROUGH FIFTEEN, THE ABATEMENT SHALL BE THE AMOUNT OF THE ABATEMENT BASE. THE ABATEMENT SHALL BE ADJUSTED FOR INFLATION PROTECTION AS PROVIDED IN SUBPARAGRAPH (B) OF THIS PARAGRAPH. THE FOLLOWING TABLE ILLUSTRATES THE ABATEMENT COMPUTATION:

TAX YEAR DURING BENEFIT PERIOD:	AMOUNT OF ABATEMENT:
YEARS 1 THROUGH 15	100% OF ABATEMENT BASE

(B) INFLATION PROTECTION. (I) INDUSTRIAL CONSTRUCTION WORK, EFFECT OF ASSESSED VALUATION INCREASES. FOR YEARS TWO THROUGH THIRTEEN OF THE BENEFIT PERIOD, EXCEPT AS PROVIDED IN CLAUSE (II) OF THIS SUBPARAGRAPH, IF THERE IS ANY INCREASE IN TAX IN THAT YEAR THAT IS BASED ON AN INCREASE OF TAXABLE ASSESSED VALUATION SINCE THE IMMEDIATELY PRIOR TAX YEAR, SUCH EXCESS TAX LIABILITY SHALL BE ADDED TO THE AMOUNT OF THE ABATEMENT BASE. SUCH ADDITION TO THE AMOUNT OF THE ABATEMENT BASE SHALL BE DETERMINED USING THE INITIAL TAX RATE.

(II) PHYSICAL INCREASES. NOTWITHSTANDING THE PROVISIONS OF CLAUSE (I) OF THIS SUBPARAGRAPH, IF IN ANY OF YEARS TWO THROUGH THIRTEEN OF THE BENEFIT PERIOD, A PHYSICAL CHANGE TO THE PROPERTY RESULTS IN AN INCREASE IN THE TAXABLE ASSESSED VALUE OF THE PROPERTY OF MORE THAN FIVE PERCENT FOR THAT YEAR, THEN ANY INCREASE IN TAXES FOR THAT YEAR SHALL NOT BE ADDED TO THE AMOUNT OF THE ABATEMENT BASE IN ANY YEAR.

(III) IF THE TAXABLE ASSESSED VALUE UPON WHICH AN ADJUSTMENT TO THE ABATEMENT UNDER THIS PARAGRAPH IS BASED IS LATER REDUCED BY A COURT ORDER OR APPLICATION TO THE TAX COMMISSION, THEN THE APPROPRIATE ADJUSTMENT TO THE ABATEMENT BASE SHALL BE MADE IN ACCORDANCE WITH THE REDUCED TAXABLE ASSESSED VALUE.

(C) MINIMUM REQUIRED EXPENDITURE. FOR INDUSTRIAL CONSTRUCTION WORK ON A PEAKING UNIT, THE MINIMUM REQUIRED EXPENDITURE IS THIRTY PERCENT OF THE PROPERTY'S TAXABLE ASSESSED VALUE IN THE TAX YEAR WITH A TAXABLE STATUS DATE IMMEDIATELY PRECEDING THE ISSUANCE OF THE FIRST BUILDING PERMIT, OR IF NO PERMIT WAS REQUIRED, THE COMMENCEMENT OF CONSTRUCTION. EXPENDITURES FOR RESIDENTIAL CONSTRUCTION WORK OR CONSTRUCTION WORK ON PORTIONS OF PROPERTY TO BE USED FOR RESTRICTED ACTIVITIES SHALL NOT BE INCLUDED IN THE MINIMUM REQUIRED EXPENDITURE.

S 10. Paragraph 1 of subdivision a of section 11-271 of the administrative code of the city of New York, as added by local law number 47 of the city of New York for the year 2008, is amended to read as follows:

(1) Application for benefits pursuant to this part may be made immediately following the effective date of the local law that added this section and continuing until March first, two thousand [eleven] FIFTEEN.

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

C. (1) NO BENEFITS PURSUANT TO THIS PART SHALL BE GRANTED FOR CONSTRUCTION WORK PERFORMED PURSUANT TO A BUILDING PERMIT ISSUED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

(2) IF NO BUILDING PERMIT WAS REQUIRED, THEN NO BENEFITS PURSUANT TO THIS PART SHALL BE GRANTED FOR CONSTRUCTION WORK THAT IS COMMENCED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

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

a. Continuing use. For the duration of the benefit period, the recipient of benefits shall file biennially with the department, on or before the appropriate taxable status date, a statement of the continuing use of such property and any changes in use that have occurred, PROVIDED, HOWEVER, THAT ANY RECIPIENT OF BENEFITS RECEIVING BENEFITS FOR PROPERTY DEFINED AS A PEAKING UNIT SHALL FILE SUCH STATEMENT BIANNUALLY. This statement shall be in a form determined by the department and may be in any format the department determines, in its discretion, is appropriate, including electronic format. The department shall have authority to terminate such benefits upon failure of a recipient to file such statement by the appropriate taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department shall have the authority to require that statements filed under this subdivision be certified.

S 13. Section 11-273 of the administrative code of the city of New York is amended by adding a new subdivision e-1 to read as follows:

E-1. CONVERSION OF USE BY PEAKING UNITS. ANY APPLICANT WHOSE PROPERTY HAS BEEN GRANTED BENEFITS UNDER THIS PART FOR INDUSTRIAL CONSTRUCTION WORK AS A PEAKING UNIT AND WHO CONVERTS SUCH PROPERTY IN ANY TAX YEAR TO A USE THAT NO LONGER QUALIFIES IT AS A PEAKING UNIT, OR WHO USES SUCH PROPERTY IN A MANNER INCONSISTENT WITH THE DEFINITION OF A PEAKING UNIT, SHALL BE INELIGIBLE FOR ABATEMENT BENEFITS DURING ANY SUCH TAX YEAR. ANY SUCH RECIPIENT OF BENEFITS SHALL PAY WITH INTEREST TAXES FOR WHICH AN ABATEMENT WAS CLAIMED DURING ANY PORTION OF SUCH TAX YEAR.

S 14. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2011.