

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 ASSEM-  
BLY, 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 electricity generating facilities in New York city. In August  
8 2010 the board of directors of the New York city industrial development  
9 agency revised its uniform tax exemption policy to provide a discretion-  
10 ary tax abatement program, and other benefits, for certain peaking  
11 generating facilities. However, the tax benefits of the program were  
12 not recognized by the federal energy regulatory commission in setting  
13 the installed capacity demand curves for the City of New York for  
14 2011/2012, 2012/2013 and 2013/2014, potentially resulting in a signif-  
15 icant increase in the level of the demand curves and corresponding  
16 capacity prices paid by customers in the city of New York. The legisla-  
17 ture further finds that it is in the best interest of customers to  
18 prevent such impacts by amending the real property tax law for the  
19 purpose of making peaking units eligible for benefits, as of right,  
20 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

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, PEAKING UNITS SHALL NOT BE CONSIDERED UTILI-  
18 TY PROPERTY. FOR PURPOSES OF THIS TITLE, "PEAKING UNIT" SHALL MEAN A  
19 GENERATING UNIT THAT: (A) IS DETERMINED BY THE NEW YORK INDEPENDENT  
20 SYSTEM OPERATOR OR A FEDERAL OR NEW YORK STATE ENERGY REGULATORY COMMIS-  
21 SION TO CONSTITUTE A PEAKING UNIT AS SET FORTH IN SECTION 5.14.1.2 OF  
22 THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION AND  
23 CONTROL AREA SERVICES TARIFF, AS SUCH TERM EXISTED AS OF APRIL FIRST,  
24 TWO THOUSAND ELEVEN; OR (B) HAS AN ANNUAL AVERAGE OPERATION, DURING THE  
25 CALENDAR YEAR PRECEDING THE TAXABLE STATUS DATE, OF LESS THAN EIGHTEEN  
26 HOURS FOLLOWING EACH START OF THE UNIT; FOR PURPOSES OF CALCULATING THE  
27 ANNUAL AVERAGE, OPERATIONS DURING ANY PERIOD COVERED BY ANY MAJOR EMER-  
28 GENCY DECLARATION ISSUED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR,  
29 NORTHEAST POWER COORDINATING COUNCIL, OR OTHER SIMILAR ENTITY SHALL BE  
30 EXCLUDED. A "PEAKING UNIT" UNDER THIS TITLE SHALL INCLUDE ALL REAL PROP-  
31 erty USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY, AND ANY  
32 FACILITIES USED TO INTERCONNECT THE PEAKING UNIT WITH THE ELECTRIC TRAN-  
33 SMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT INCLUDE ANY FACILITIES  
34 THAT ARE PART OF THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM; IT  
35 MAY BE COMPRISED OF A SINGLE TURBINE AND GENERATOR OR MULTIPLE TURBINES  
36 AND GENERATORS LOCATED AT THE SAME SITE. NOTWITHSTANDING ANY PROVISION  
37 OF THIS TITLE TO THE CONTRARY, A PEAKING UNIT SHALL BE CONSIDERED INDUS-  
38 TRIAL PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD FOR A PEAKING  
39 UNIT SHALL BE AS SET FORTH IN PARAGRAPH (B-1) OF SUBDIVISION THREE OF  
40 SECTION FOUR HUNDRED EIGHTY-NINE-BBBBBB OF THIS TITLE.

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

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

48 (I) AMOUNT OF ABATEMENT. THE FIRST YEAR OF THE ABATEMENT SHALL BE THE  
49 TAX YEAR WITH THE FIRST TAXABLE STATUS DATE THAT FOLLOWS THE SOONER OF  
50 (A) COMPLETION OF CONSTRUCTION; OR (B) FOUR YEARS FROM THE DATE THE  
51 FIRST BUILDING PERMIT WAS ISSUED, OR IF NO PERMIT WAS REQUIRED, THE  
52 COMMENCEMENT OF CONSTRUCTION. FOR YEARS ONE THROUGH FIFTEEN, THE ABATE-  
53 MENT SHALL BE THE AMOUNT OF THE ABATEMENT BASE. THE ABATEMENT SHALL BE  
54 ADJUSTED FOR INFLATION PROTECTION AS PROVIDED IN SUBPARAGRAPH (II) OF  
55 THIS PARAGRAPH. THE FOLLOWING TABLE ILLUSTRATES THE ABATEMENT COMPUTA-  
56 TION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 5-A. CONVERSION OF USE BY PEAKING UNITS. ANY APPLICANT WHOSE PROPERTY  
9 HAS BEEN GRANTED BENEFITS UNDER THIS TITLE FOR INDUSTRIAL CONSTRUCTION  
10 WORK AS A PEAKING UNIT AND WHO CONVERTS SUCH PROPERTY IN ANY TAX YEAR TO  
11 A USE THAT NO LONGER QUALIFIES IT AS A PEAKING UNIT, OR WHO USES SUCH  
12 PROPERTY IN A MANNER INCONSISTENT WITH THE DEFINITION OF A PEAKING UNIT,  
13 SHALL BE INELIGIBLE FOR ABATEMENT BENEFITS DURING ANY SUCH TAX YEAR. ANY  
14 SUCH RECIPIENT OF BENEFITS SHALL PAY WITH INTEREST TAXES FOR WHICH AN  
15 ABATEMENT WAS CLAIMED DURING ANY PORTION OF SUCH TAX YEAR.

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

19 q. "Utility property" means property and equipment as described in  
20 paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section  
21 one hundred two of the real property tax law that is used in the ordi-  
22 nary course of business by its owner or any other entity or property as  
23 described in paragraphs (a) and (b) of subdivision twelve of section one  
24 hundred two of such law that is owned by any entity that uses in the  
25 ordinary course of business property and equipment as described in para-  
26 graphs (c), (d), (e), (f) and (i) of subdivision twelve of section one  
27 hundred two of such law, without regard to the classification of such  
28 property and equipment for real property tax purposes pursuant to  
29 section eighteen hundred two of such law, except that any such property  
30 and equipment used solely to serve the building to which they are  
31 attached shall not be deemed utility property. NOTWITHSTANDING ANY  
32 PROVISION OF THIS PART TO THE CONTRARY, PEAKING UNITS SHALL NOT BE  
33 CONSIDERED UTILITY PROPERTY. FOR PURPOSES OF THIS PART, "PEAKING UNIT"  
34 SHALL MEAN A GENERATING UNIT THAT: (A) IS DETERMINED BY THE NEW YORK  
35 INDEPENDENT SYSTEM OPERATOR OR A FEDERAL OR NEW YORK STATE ENERGY REGU-  
36 LATORY COMMISSION TO CONSTITUTE A PEAKING UNIT AS SET FORTH IN SECTION  
37 5.14.1.2 OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINIS-  
38 TRATION AND CONTROL AREA SERVICES TARIFF, AS SUCH TERM EXISTED AS OF  
39 APRIL FIRST, TWO THOUSAND ELEVEN; OR (B) HAS AN ANNUAL AVERAGE OPERA-  
40 TION, DURING THE CALENDAR YEAR PRECEDING THE TAXABLE STATUS DATE, OF  
41 LESS THAN EIGHTEEN HOURS FOLLOWING EACH START OF THE UNIT; FOR PURPOSES  
42 OF CALCULATING THE ANNUAL AVERAGE, OPERATIONS DURING ANY PERIOD COVERED  
43 BY ANY MAJOR EMERGENCY DECLARATION ISSUED BY THE NEW YORK INDEPENDENT  
44 SYSTEM OPERATOR, NORTHEAST POWER COORDINATING COUNCIL, OR OTHER SIMILAR  
45 ENTITY SHALL BE EXCLUDED. A "PEAKING UNIT" UNDER THIS PART SHALL INCLUDE  
46 ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY,  
47 AND ANY FACILITIES USED TO INTERCONNECT THE PEAKING UNIT WITH THE ELEC-  
48 TRIC TRANSMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT INCLUDE ANY  
49 FACILITIES THAT ARE PART OF THE ELECTRIC TRANSMISSION OR DISTRIBUTION  
50 SYSTEM; IT MAY BE COMPRISED OF A SINGLE TURBINE AND GENERATOR OR MULTI-  
51 PLE TURBINES AND GENERATORS LOCATED AT THE SAME SITE. NOTWITHSTANDING  
52 ANY PROVISION OF THIS PART TO THE CONTRARY, A PEAKING UNIT SHALL BE  
53 CONSIDERED INDUSTRIAL PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD  
54 FOR A PEAKING UNIT SHALL BE AS SET FORTH IN PARAGRAPH TWO-A OF SUBDIVI-  
55 SION C OF SECTION 11-269 OF THIS PART.

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

4 (2-A) ABATEMENT FOR INDUSTRIAL CONSTRUCTION WORK ON A PEAKING UNIT.  
5 UPON APPROVAL BY THE DEPARTMENT OF A FINAL APPLICATION FOR BENEFITS, AN  
6 APPLICANT WHO HAS PERFORMED INDUSTRIAL CONSTRUCTION WORK IN ANY AREA ON  
7 A PEAKING UNIT, SHALL BE ELIGIBLE FOR AN ABATEMENT OF REAL PROPERTY  
8 TAXES, AS FOLLOWS:

9 (A) AMOUNT OF ABATEMENT. THE FIRST YEAR OF THE ABATEMENT SHALL BE THE  
10 TAX YEAR WITH THE FIRST TAXABLE STATUS DATE THAT FOLLOWS THE SOONER OF  
11 (I) COMPLETION OF CONSTRUCTION; OR (II) FOUR YEARS FROM THE DATE THE  
12 FIRST BUILDING PERMIT WAS ISSUED, OR IF NO PERMIT WAS REQUIRED, THE  
13 COMMENCEMENT OF CONSTRUCTION. FOR YEARS ONE THROUGH FIFTEEN, THE ABATE-  
14 MENT SHALL BE THE AMOUNT OF THE ABATEMENT BASE. THE ABATEMENT SHALL BE  
15 ADJUSTED FOR INFLATION PROTECTION AS PROVIDED IN SUBPARAGRAPH (B) OF  
16 THIS PARAGRAPH. THE FOLLOWING TABLE ILLUSTRATES THE ABATEMENT COMPUTA-  
17 TION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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