

5905

2013-2014 Regular Sessions

I N   A S S E M B L Y

March 8, 2013

---

Introduced by M. of A. GABRYSZAK -- read once and referred to the  
Committee on Ways and Means

AN ACT to amend the state finance law and the environmental conservation law, in relation to the power generation modernization act and directing the power authority of the state of New York to release requests for proposals on certain natural gas powered generating facilities in and around New York city

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

1     Section 1. This act shall be known and may be cited as the "Power  
2     Generation Modernization Act".  
3     S 2. The state finance law is amended by adding a new section 85 to  
4     read as follows:  
5     S 85. POWER PLANT MODERNIZATION AND COMMUNITY ASSISTANCE FUND. 1.  
6     THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND  
7     THE DEPARTMENT OF TAXATION AND FINANCE A POWER PLANT MODERNIZATION AND  
8     COMMUNITY ASSISTANCE FUND, DIVIDED INTO A GENERAL FUND AND INDIVIDUAL  
9     REPOWERING SAVINGS ACCOUNTS UNIQUE AND SPECIFIC TO INDIVIDUAL MAJOR  
10    ELECTRIC GENERATING FACILITIES WHICH MEET SPECIFIC CRITERIA SET FORTH IN  
11    THIS SECTION RELATING TO MODERNIZATION OF SUCH FACILITIES TO MEET  
12    SPECIFIC ENVIRONMENTAL STANDARDS.  
13    2. (A) THE POWER PLANT MODERNIZATION AND COMMUNITY ASSISTANCE FUND  
14    SHALL CONSIST OF REVENUES FROM THE POTENTIAL SALE OF SPECIFIED ASSETS OF  
15    THE NEW YORK POWER AUTHORITY PURSUANT TO SECTION FOUR OF THE CHAPTER OF  
16    THE LAWS OF TWO THOUSAND THIRTEEN WHICH ADDED THIS SECTION, ANY REVENUES  
17    DERIVED FROM REGULATIONS ADOPTED BY THE DEPARTMENT OF ENVIRONMENTAL  
18    CONSERVATION PURSUANT TO SUBDIVISION SIX OF SECTION 19-0301 OF THE ENVI-  
19    RONMENTAL CONSERVATION LAW, PROCEEDS COLLECTED BUT NOT ALLOCATED BY THE  
20    NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FROM THE  
21    AUCTION, PURSUANT TO REGULATIONS OF SUCH AUTHORITY, OF EMISSION ALLOW-  
22    ANCES ALLOCATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SUCH

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

LBD04684-04-3

1 AUTHORITY PURSUANT TO REGULATIONS ADOPTED BY SUCH DEPARTMENT, ANY REVEN-  
2 UES DERIVED FROM POTENTIAL DEVELOPMENT OF THE MARCELLUS OR UTICA SHALE  
3 AREAS OVER AND ABOVE THAT WHICH IS NEEDED TO ENSURE APPROPRIATE STAFF AT  
4 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DEPARTMENT OF HEALTH,  
5 DEPARTMENT OF PUBLIC SERVICE AND OTHER RELEVANT STATE AGENCIES, AND ANY  
6 OTHER ENERGY RELATED REVENUE THAT THE STATE MAY ACQUIRE IN CONNECTION  
7 WITH THE DEVELOPMENT OF SUCH AREA THAT IS NOT ALREADY COMMITTED TO A  
8 DEDICATED PROJECT OR SOURCE. MONEYS IN THE FUND SHALL BE KEPT SEPARATELY  
9 FROM AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF  
10 THE STATE COMPTROLLER. UNDER NO CIRCUMSTANCE SHALL FUNDS IN THIS ACCOUNT  
11 BE SWEEPED, REPURPOSED OR OTHERWISE EXPENDED EXCEPT FOR THE EXPRESS  
12 PURPOSES OUTLINED HEREIN.

13 (B) MONEYS IN THIS FUND SHALL BE USED AS SET FORTH IN THIS SECTION TO  
14 ASSIST MAJOR ELECTRIC GENERATING FACILITIES OPERATING WITHIN THE STATE  
15 OF NEW YORK WITH INVESTMENTS IN QUALIFIED ENERGY INFRASTRUCTURE, QUALI-  
16 FIED NEW CONSTRUCTION OR REPOWERING PROJECTS; AND TO MITIGATE NEGATIVE  
17 PROPERTY TAX OR PAYMENT IN LIEU OF TAXES IMPACTS ON COMMUNITIES WHO HAVE  
18 LOST A MAJOR ELECTRIC GENERATING FACILITY.

19 3. (A) A MAJOR ELECTRIC GENERATING FACILITY WHICH UNDERTAKES A REPOW-  
20 ERING PROJECT, QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT OR A QUALIFIED  
21 NEW CONSTRUCTION PROJECT AS DEFINED IN THIS SUBDIVISION MAY APPLY FOR  
22 ASSISTANCE FROM THE FUND PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

23 (B) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE  
24 THE FOLLOWING MEANINGS:

25 (I) "REPOWERING PROJECT" SHALL MEAN IMPROVEMENTS TO AN EXISTING MAJOR  
26 ELECTRIC GENERATING FACILITY THAT WILL ALLOW THE FACILITY, OR A NEW UNIT  
27 OR UNITS AT THE FACILITY, OR THE COMBINATION OF THE NEW UNIT OR UNITS  
28 AND THE FACILITY TO MEET THE RELEVANT ENVIRONMENTAL REQUIREMENTS  
29 CONTAINED IN SUBPARAGRAPHS (I), (II), (III), AND (IV) OF PARAGRAPH (B)  
30 OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-FIVE OF THE PUBLIC  
31 SERVICE LAW.

32 (II) "QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT" SHALL MEAN ANY  
33 INVESTMENT NEEDED TO DELIVER A NEW FUEL SOURCE TO AN EXISTING MAJOR  
34 ELECTRIC GENERATING FACILITY, REPLACE OR RETROFIT A BURNER OR TURBINE,  
35 UTILIZE ON-SITE RENEWABLE ENERGY GENERATION OR ANY OTHER SUBSTANTIAL  
36 INVESTMENT THAT WILL HAVE A DIRECT IMPACT ON THE FACILITY'S ABILITY TO  
37 MEET THE ENVIRONMENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I),  
38 (II), (III), AND (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION  
39 ONE HUNDRED SIXTY-FIVE OF THE PUBLIC SERVICE LAW.

40 (III) "QUALIFIED NEW CONSTRUCTION PROJECT" SHALL MEAN CONSTRUCTING A  
41 NEW MAJOR ELECTRIC GENERATING FACILITY ON THE SAME PROPERTY AS AN EXIST-  
42 ING FACILITY OR ON PROPERTY DIRECTLY ADJACENT OR CONTIGUOUS TO SAID  
43 PROPERTY, WHERE THE NEW FACILITY BY ITSELF OR IN COMBINATION WITH THE  
44 EXISTING FACILITY WILL ALLOW THE SITE AS A WHOLE TO MEET THE ENVIRON-  
45 MENTAL REQUIREMENTS CONTAINED IN SUBPARAGRAPHS (I), (II), (III), AND  
46 (IV) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-  
47 FIVE OF THE PUBLIC SERVICE LAW.

48 (IV) "MAJOR ELECTRIC GENERATING FACILITY" SHALL MEAN AN ELECTRIC  
49 GENERATING FACILITY WITH A NAMEPLATE GENERATING CAPACITY OF TWENTY-FIVE  
50 THOUSAND KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANS-  
51 MISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO  
52 REVIEW UNDER ARTICLE SEVEN OF THE PUBLIC SERVICE LAW.

53 4. THE EMPIRE STATE DEVELOPMENT CORPORATION SHALL CONDUCT COMPETITIVE  
54 SOLICITATIONS FOR PROPOSALS SUBMITTED BY MAJOR ELECTRIC GENERATING  
55 FACILITIES UNDERTAKING ANY REPOWERING PROJECT, QUALIFIED ENERGY INFRAS-  
56 TRUCTURE INVESTMENT PROJECT OR QUALIFIED NEW CONSTRUCTION PROJECT AS

1 SUCH TERMS ARE DEFINED IN THIS SECTION, FOR ASSISTANCE FROM THE FUND  
2 ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS SECTION. SUCH COMPETITIVE  
3 SOLICITATIONS SHALL BE DESIGNED IN A MANNER AND FORM TO BE DETERMINED BY  
4 THE EMPIRE STATE DEVELOPMENT CORPORATION IN CONSULTATION WITH THE  
5 DEPARTMENT OF TAXATION AND FINANCE AND THE COMPTROLLER. A SCHEDULE FOR  
6 SUCH COMPETITIVE SOLICITATIONS, AWARD SELECTION, AND DISTRIBUTION OF  
7 FUNDS SHALL BE ESTABLISHED BY THE EMPIRE STATE DEVELOPMENT CORPORATION  
8 IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE AND THE  
9 COMPTROLLER. THE EMPIRE STATE DEVELOPMENT CORPORATION SHALL RANK THE  
10 PROPOSALS IT RECEIVED IN RESPONSE TO COMPETITIVE SOLICITATIONS AND  
11 CHOOSE THE HIGHEST RANKED PROPOSALS MEASURED ON THE FOLLOWING CRITERIA  
12 TO BE CONSIDERED IN THE AGGREGATE:

13 (A) THE AMOUNT OF ASSISTANCE REQUESTED IN PROPORTION TO THE TOTAL  
14 QUANTITY OF MEGAWATTS OF NEW GENERATION CAPACITY THAT WILL BE  
15 CONSTRUCTED;

16 (B) THE EXTENT TO WHICH AN AWARD WILL RESULT IN NEW CAPITAL INVESTMENT  
17 IN THE STATE BY THE APPLICANT;

18 (C) THE TYPE AND COST OF FACILITIES AND EQUIPMENT TO BE CONSTRUCTED,  
19 ENLARGED OR INSTALLED IF THE APPLICANT WERE TO RECEIVE AN AWARD;

20 (D) THE APPLICANT'S PAYROLL, SALARIES, BENEFITS AND NUMBER OF JOBS AT  
21 THE FACILITY FOR WHICH AN AWARD IS REQUESTED;

22 (E) THE NUMBER OF JOBS THAT WILL BE CREATED OR RETAINED, AS APPLICA-  
23 BLE, WITHIN THE STATE IN RELATION TO THE REQUESTED AWARD AND THE EXTENT  
24 TO WHICH THE APPLICANT WILL AGREE TO COMMIT TO CREATING OR RETAINING, AS  
25 APPLICABLE, SUCH JOBS AS A CONDITION TO RECEIVING AN AWARD;

26 (F) WHETHER THE APPLICANT IS AT RISK OF CLOSING OR CURTAILING FACILI-  
27 TIES OR OPERATIONS IN THE STATE, RELOCATING FACILITIES OR OPERATIONS OUT  
28 OF THE STATE, OR LOSING A SIGNIFICANT NUMBER OF JOBS IN THE STATE, IN  
29 THE ABSENCE OF AN AWARD;

30 (G) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY TO THE ECONOMY OF THE  
31 AREA IN WHICH SUCH FACILITY IS LOCATED; AND

32 (H) THE EXTENT TO WHICH AN AWARD WILL RESULT IN AN ADVANTAGE FOR AN  
33 APPLICANT IN RELATION TO THE APPLICANT'S COMPETITORS WITHIN THE STATE.

34 ALL PAYMENTS OF MONEYS FROM THE FUND SHALL BE MADE ON THE AUDIT AND  
35 THE WARRANT OF THE COMPTROLLER TO BE DISBURSED BY THE DEPARTMENT OF  
36 TAXATION AND FINANCE IN CONJUNCTION AND CONSULTATION WITH THE COMP-  
37 TROLLER. RECOMMENDATIONS FOR AN AWARD UNDER THIS SECTION SHALL BE MADE  
38 BY THE EMPIRE STATE DEVELOPMENT CORPORATION IN ORDER TO MAXIMIZE THE  
39 ECONOMIC DEVELOPMENT IMPACTS OF EACH POSSIBLE PROJECT.

40 5. (A) PROPOSALS FOR ASSISTANCE FROM THE FUND MAY BE MADE BY A COUNTY,  
41 CITY, TOWN, VILLAGE OR SCHOOL DISTRICT THAT HAS BEEN SUBSTANTIALLY  
42 ADVERSELY IMPACTED BY THE LOSS OF PROPERTY TAX REVENUES OR THE LOSS OF  
43 REVENUES FROM PAYMENTS IN LIEU OF TAXES DUE TO THE CLOSING OF A MAJOR  
44 ELECTRIC GENERATING FACILITY. PROPOSALS SHALL BE FILED IN A MANNER AND  
45 FORM TO BE DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION IN  
46 CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE AND THE COMP-  
47 TROLLER. FOR THE PURPOSES OF THIS SUBDIVISION, SUBSTANTIAL ADVERSE  
48 IMPACT SHALL MEAN A SITUATION WHERE THE CLOSURE OF A MAJOR ELECTRIC  
49 GENERATING FACILITY REPRESENTS A REDUCTION IN TAX COLLECTIONS TO A  
50 MUNICIPAL CORPORATION OF AT LEAST TEN PERCENT OF TOTAL RECEIPTS AND IS  
51 EXPECTED TO HAVE AN ADVERSE AND UNEXPECTED NEGATIVE IMPACT ON TAXPAYERS.

52 (B) APPLICANTS MAY ONLY SEEK ASSISTANCE FOR A MAXIMUM OF FIVE YEARS  
53 AND MAY ONLY SEEK ASSISTANCE UNDER THE FOLLOWING LIMITS, WHICH SHALL BE  
54 CALCULATED BASED ON THE TOTAL AMOUNT OF TAXES COLLECTED FROM THE ELEC-  
55 TRIC GENERATING FACILITY WHEN AVERAGING THE PAST FIVE TAXABLE YEARS,  
56 ENDING WITH THE FINAL YEAR OF PLANT OPERATION:

1 FIRST YEAR: UP TO EIGHTY PERCENT OF THE PAST FIVE YEAR AVERAGE;  
2 SECOND YEAR: UP TO FIFTY PERCENT OF THE PAST FIVE YEAR AVERAGE;  
3 THIRD YEAR: UP TO FIFTY PERCENT OF THE PAST FIVE YEAR AVERAGE;  
4 FOURTH YEAR: UP TO TWENTY-FIVE PERCENT OF THE PAST FIVE YEAR AVERAGE;  
5 FIFTH YEAR: UP TO TEN PERCENT OF THE PAST FIVE YEAR AVERAGE.

6 6. THE FUND ESTABLISHED UNDER THIS SECTION SHALL ALSO INCLUDE INDIVID-  
7 UAL REPOWERING SAVINGS ACCOUNTS HELD IN THE JOINT CUSTODY OF THE COMP-  
8 TROLLER AND THE DEPARTMENT OF TAXATION AND FINANCE HELD ON BEHALF OF A  
9 PARTICULAR MAJOR ELECTRIC GENERATING FACILITY AND SHALL CONSIST OF FIFTY  
10 PERCENT OF THE PROCEEDS COLLECTED BUT NOT ALLOCATED BY THE NEW YORK  
11 STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FROM THE AUCTION, PURSU-  
12 ANT TO REGULATIONS OF SUCH AUTHORITY, OF EMISSION ALLOWANCES ALLOCATED  
13 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SUCH AUTHORITY PURSU-  
14 ANT TO REGULATIONS ADOPTED BY SUCH DEPARTMENT. FUNDS SHALL BE CREDITED  
15 TO THE NAME AND ACCOUNT OF THE SPECIFIC GENERATOR AND EXPENDITURES FROM  
16 THE FUND MAY ONLY BE MADE ON BEHALF OF SAID GENERATOR. A MAJOR ELECTRIC  
17 GENERATOR WHICH ESTABLISHES AN INDIVIDUAL REPOWERING SAVINGS ACCOUNT  
18 UNDER THIS SUBDIVISION MAY USE SUCH FUNDS FOR THE PURPOSES OF A REPOWER-  
19 ING PROJECT, QUALIFIED ENERGY INFRASTRUCTURE INVESTMENT OR A QUALIFIED  
20 NEW CONSTRUCTION PROJECT AS DEFINED IN SUBDIVISION THREE OF THIS  
21 SECTION. SUCH FUNDS MAY BE ACCESSED FROM AN INDIVIDUAL REPOWERING  
22 SAVINGS ACCOUNT AFTER ANY APPLICABLE APPROPRIATE APPROVALS FROM THE  
23 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF PUBLIC  
24 SERVICE AND ANY OTHER STATE ENTITY WHOSE APPROVAL IS REQUIRED PURSUANT  
25 TO THE SCOPE OF THE PROJECT PROPOSED. NO DISBURSEMENT FROM AN ACCOUNT  
26 MAY EXCEED THE COST OR VALUE OF THE WORK PROPOSED, AND ONLY EXPENSES  
27 CONSIDERED DIRECTLY RELATED TO THE BENEFITS OF THE PROJECT WILL BE  
28 ALLOWABLE. DISBURSEMENTS FROM ACCOUNTS SHALL ONLY BE REIMBURSEMENT FOR  
29 ACTUAL EXPENSES PAID BY THE GENERATOR AND SHALL NOT BE ADVANCES OR OTHER  
30 PAYMENTS. FUNDS HELD IN ANY GIVEN INDIVIDUAL REPOWERING SAVINGS ACCOUNT  
31 SHALL BE AVAILABLE FOR USE FOR A PERIOD OF TEN YEARS TOWARD ALLOWABLE  
32 EXPENSES AND CAN BE RENEWED FOR AN ADDITIONAL TEN YEARS, IF THE GENERA-  
33 TOR APPLIES FOR AN EXTENSION OF THEIR ACCOUNT AND AFTER A THOROUGH  
34 REVIEW BY THE PUBLIC SERVICE COMMISSION.

35 7. ALL PAYMENTS OF MONEYS FROM THE FUND SHALL BE MADE ON THE AUDIT AND  
36 THE WARRANT OF THE COMPTROLLER TO BE DISBURSED BY THE DEPARTMENT OF  
37 TAXATION AND FINANCE IN CONJUNCTION AND CONSULTATION WITH THE COMP-  
38 TROLLER.

39 S 3. Section 19-0301 of the environmental conservation law is amended  
40 by adding a new subdivision 6 to read as follows:

41 6. IN ADDITION TO EXISTING REGULATORY AUTHORITY, THE DEPARTMENT MAY:

42 A. IN COOPERATION WITH THE DEPARTMENT OF PUBLIC SERVICE AND THE NEW  
43 YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, AMEND PART 242 OF  
44 TITLE 6 OF THE NEW YORK CODES, RULES AND REGULATIONS TO, IN A MANNER  
45 THAT IS CONSISTENT WITH FEDERAL LAW, COVER ELECTRICITY IMPORTED INTO THE  
46 STATE THAT IS NOT ALREADY SUBJECT TO THE COMPARABLE REGULATIONS OF OTHER  
47 STATES, BY THE IMPOSITION OF FEES ON THE CARBON INTENSITY OF SUCH ELEC-  
48 TRICITY IMPORTED INTO THE STATE DEEMED NECESSARY TO MAINTAIN THE ENVI-  
49 RONMENTAL INTEGRITY OF THE MULTI-STATE PROGRAM IN WHICH THE STATE  
50 PARTICIPATES; AND

51 B. ASSESS FEES EQUIVALENT TO THE AMOUNT OF PROCEEDS ARISING FROM THE  
52 AUCTION, PURSUANT TO REGULATIONS OF THE NEW YORK STATE ENERGY RESEARCH  
53 AND DEVELOPMENT AUTHORITY, OF EMISSION ALLOWANCES ALLOCATED BY THE  
54 DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO SUCH AUTHORITY PURSUANT TO  
55 REGULATIONS ADOPTED BY SUCH DEPARTMENT.

1 REVENUES DERIVED PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION SHALL  
2 BE DIRECTED TO AND DEPOSITED INTO THE "POWER PLANT MODERNIZATION AND  
3 COMMUNITY ASSISTANCE FUND" ESTABLISHED UNDER SECTION EIGHTY-FIVE OF THE  
4 STATE FINANCE LAW.

5 S 4. (a) The power authority of the state of New York shall within  
6 ninety days of the effective date of this act, issue a request for the  
7 proposals to purchase from such authority one or more of the ten gas  
8 turbine electric generating facilities with a nameplate capacity of less  
9 than eighty megawatts each, owned by such authority as of the effective  
10 date of this act and located in and around the city of New York. Such  
11 request for proposals to sell such generators shall be put out for bid  
12 for a maximum of ninety days and shall include the following sites and  
13 generation facilities:

14 (1) Two units at Harlem River Yard Plant, located in the Harlem River  
15 Yards, at E. 132nd Street, Bronx, New York 10454;

16 (2) Two units at Vernon Boulevard, located at 41-98, 42-02, 42-16  
17 Vernon Boulevard, Long Island City, Queens, New York 11101;

18 (3) Two units at the Hell Gate Plant, located at Locust Avenue, E.  
19 132nd Street to E. 134th Street, Bronx, New York 10454;

20 (4) Two units at the Windsor Terrace Power Plant, located at 3rd  
21 Avenue and 23rd Street, Brooklyn, New York 11232;

22 (5) One unit at Pouch Terminal, located at 1 Edgewater Street, Staten  
23 Island, New York 10305; and

24 (6) One unit at North First Avenue and River Street, located at 47-79  
25 River Street, Brooklyn, New York 11211.

26 (b) The authority shall issue such requests to determine, among other  
27 things, the likely value to New York state for the sale of such genera-  
28 tors. The authority shall, within thirty days of the end of the solici-  
29 tation period, report on the range of solicited bids to the governor,  
30 the temporary president of the senate and the speaker of the assembly,  
31 subject to all appropriate and applicable confidentiality requirements  
32 with respect to individual bids and information contained therein. The  
33 authority shall commence actions, as the authority's board of trustees  
34 determines appropriate and necessary, to effectuate the sale of such  
35 facilities.

36 (c) The authority is authorized and directed to deposit the proceeds  
37 of the sale of such generators into the "power plant modernization and  
38 community assistance fund" established under section 85 of the state  
39 finance law.

40 S 5. This act shall take effect on the ninetieth day after it shall  
41 have become a law.