

STATE OF NEW YORK

7769

IN SENATE

February 21, 2018

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the economic development law, in relation to enacting the take charge New York power program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 188-a of the economic development law is amended by
2 adding a new subdivision (i) to read as follows:

3 (i) Any applicant currently receiving proceeds under this section
4 shall also be permitted to apply for benefits under section one hundred
5 eighty-eight-b of this article.

6 § 2. The economic development law is amended by adding a new section
7 188-b to read as follows:

8 § 188-b. Take charge New York power program. (a) Definitions. For the
9 purposes of this section, the following terms shall have the following
10 meanings:

11 (1) "Applicable criteria" shall mean the criteria specified in subdivi-
12 vision (c) of this section.

13 (2) "Authority" shall mean the power authority of the state of New
14 York.

15 (3) "Eligible applicant" shall mean an eligible business, eligible
16 small business, eligible industrial development agency or eligible not-
17 for-profit corporation as defined in this section, provided however,
18 that an eligible applicant shall not include retail businesses as
19 defined by the board, including, without limitation, sports venues,
20 gaming or entertainment-related establishments or places of overnight
21 accommodation.

22 (4) "Eligible business" shall mean a business other than a not-for-
23 profit corporation which normally utilizes a minimum peak electric
24 demand in excess of four hundred kilowatts.

25 (5) "Eligible not-for-profit corporation" shall mean a corporation
26 defined in subparagraph five of paragraph (a) of section one hundred two
27 of the not-for-profit corporation law.

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

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1 (6) "Eligible small business" shall mean a business other than a not-
2 for-profit corporation which normally utilizes a minimum peak electric
3 demand equal to or less than four hundred kilowatts.

4 (7) "Microgrid" shall mean a group of interconnected loads and
5 distributed energy resources within clearly defined electrical bounda-
6 ries that acts as a single controllable entity with respect to the grid
7 and that disconnects from such grid to enable it to operate in both
8 grid-connected or island mode. Any entity providing microgrid technology
9 shall be structured as a special purpose entity.

10 (8) "Infrastructure" shall mean the components necessary for trans-
11 mission and distribution of energy on the microgrid.

12 (9) "Takecharge New York power" shall mean a subsidy provided by the
13 authority, subject to an equity assurance to be matched by the appli-
14 cant, to cover the development and infrastructure needed to install and
15 maintain a microgrid at each applicant's place of business, as it
16 relates to a microgrid the allocation would be the value of the monetary
17 equivalent of the power allocation that would have been granted under
18 section one hundred eighty-eight-a of this article.

19 (b) Applications for takecharge New York power. (1) The board may
20 solicit applications for takecharge New York power under the program
21 created by this section by public notice beginning no later than Septem-
22 ber first, two thousand nineteen. Such notice may include newspaper
23 advertisements, press releases, website postings, paper or electronic
24 mailing, and/or such other form of notice as the board finds appropriate
25 in consultation with the authority. The board shall also work with local
26 industrial development agencies and economic development agencies
27 located throughout the state to identify and solicit applications from
28 businesses and corporate parks that meet the criteria set forth in
29 subdivision (c) of this section.

30 (2) Applications for takecharge New York power allocations shall be in
31 the form and contain such information, exhibits and supporting data as
32 the board prescribes in consultation with the authority. A copy of each
33 application received shall be made available for review by each board
34 member, and a copy shall be provided to the authority.

35 (3) Subject to confidentiality requirements, upon receipt of each
36 application from the board, the authority shall promptly notify by elec-
37 tronic means, including website postings and such other methods the
38 board deems appropriate in consultation with the authority, the gover-
39 nor, the speaker of the assembly, the minority leader of the assembly,
40 the temporary president of the senate, the minority leader of the
41 senate, and each member of the state legislature in whose district any
42 portion of the facility for which an allocation is requested is located.
43 Such notice shall provide the name and a description of the applicant,
44 and the address of the facility for which the allocation is requested.
45 The authority shall also develop a listing which contains the name and a
46 description of each applicant, the takecharge New York power benefit
47 sought by each applicant, and the address of the facility for which the
48 applicant requests the benefit, and shall make the listing available for
49 public review on the authority's website.

50 (4) Applications may be made by multiple eligible applicants, subject
51 to acceptance by the board, if each eligible applicant is located in a
52 geographic proximity to each other. The board shall set the requirements
53 of what constitutes geographic proximity. The board shall treat such
54 combined applications as a single application, and use the cumulative
55 totals when evaluating the applicable criteria set for in subdivision
56 (c) of this section.

1 (5) Applications may be made by an industrial development agency,
2 subject to acceptance by the board, if the board determines the indus-
3 trial development agency's application is feasible with microgrid tech-
4 nology.

5 (c) Review applicable criteria and recommendations. (1) The board
6 shall review applications submitted under the takecharge New York power
7 program. The board shall make an initial determination of whether the
8 applicant is an eligible applicant. In the case of multiple eligible
9 applicants or an industrial development agency making a single applica-
10 tion, the board shall treat the cumulative application as a single
11 application. In the case of an eligible applicant, the board may recom-
12 mend to the authority that an allocation of a microgrid be awarded to an
13 applicant for a facility located in the state of New York based on
14 consideration of the following criteria which shall be considered in the
15 aggregate and no one of which shall be presumptively determinative:

16 (i) the significance of the cost of overall energy usage to the appli-
17 cant's overall cost of doing business, and the impact that a takecharge
18 New York power allocation will have on the applicant's operating costs;

19 (ii) the extent to which a takecharge New York power benefit will
20 result in new capital investment in the state by the applicant;

21 (iii) the extent to which a takecharge New York power benefit is
22 consistent with any regional economic development council strategies and
23 priorities;

24 (iv) the type and cost of buildings, equipment and facilities to be
25 constructed, enlarged or installed if the applicant were to receive a
26 benefit;

27 (v) the applicant's payroll, salaries, benefits and number of jobs at
28 the facility for which a takecharge New York power benefit is requested;

29 (vi) the number of jobs that will be created or retained within the
30 state in relation to the requested takecharge New York power benefit,
31 and the extent to which the applicant will agree to commit to creating
32 or retaining such jobs as a condition to receiving a takecharge New York
33 power benefit;

34 (vii) whether the applicant, due to the cost of energy, is at risk of
35 closing or curtailing facilities or operations in the state, relocating
36 facilities or operations out of the state, or losing a significant
37 number of jobs in the state, in the absence of a takecharge New York
38 benefit;

39 (viii) the significance of the applicant's facility that would receive
40 the takecharge New York benefit to the economy of the area in which such
41 facility is located;

42 (ix) will agree to place an equity amount, to be determined by the
43 board, for the installation and maintenance of a microgrid and to be
44 released upon reimbursement of the subsidy amount provided by the
45 authority;

46 (x) in addition to the foregoing criteria, in the case of a not-for-
47 profit corporation, whether the applicant provides critical services or
48 substantial benefits to the local community in which the facility for
49 which the benefit is requested is located;

50 (xi) the minimum load requirements by the applicant; and

51 (xii) in addition to the foregoing criteria, the applicant must also
52 agree to pay back the subsidy provided by the authority for microgrid
53 development, under a timeline developed by the board.

54 (2) A recommendation by the board that the authority provide a takec-
55 harge New York power benefit in the form of a microgrid to an eligible
56 applicant shall include, but need not be limited to:

1 (i) an effective initial term of the contract between the eligible
2 applicant and the authority which shall not exceed the effective life of
3 the microgrid;

4 (ii) provisions for effective periodic audits of the recipient of a
5 benefit for the purpose of determining contract and program compliance,
6 and for the partial or complete withdrawal of a benefit if the recipient
7 fails to maintain mutually agreed upon commitments, relating to, among
8 other things, employment levels, capital investments, and/or energy
9 efficiency measures;

10 (iii) a requirement for an agreement by the recipient of a benefit to
11 (A) undertake at its own expense an energy audit of its facilities at
12 which receives the benefit at least once during the term of the contract
13 but in any event not less than once every five years, provided, however,
14 that such requirement may be waived or modified by the authority on a
15 showing of good cause by the recipient, and (B) provide the authority
16 with a copy of any such audit or, at the authority's option, a report
17 describing the results of such audit, and provide documentation
18 requested by the authority relating to the implementation of any effi-
19 ciency measures at the facilities;

20 (iv) a requirement for an agreement between the recipient of an allo-
21 cation and the authority for the installation of a microgrid and mainte-
22 nance of such equipment for a period of years; and

23 (v) a requirement for an agreement by the recipient of a benefit to
24 (A) make its facilities available at reasonable times and intervals for
25 energy audits and related assessments that the authority desires to
26 perform, if any, at the authority's own expense, and (B) provide infor-
27 mation requested by the authority or its designee in surveys, question-
28 naires and other information requests relating to energy efficiency and
29 energy-related projects, programs and services.

30 (3) The board may base its recommendation on which eligible applicants
31 it determines best meet the applicable criteria.

32 (4) The board shall issue a written statement of its findings and
33 conclusions with respect to every application and the reasons for its
34 recommendation to the authority.

35 (5) A recommendation for a takecharge New York power benefit shall
36 qualify an applicant to enter into a contract with the authority pursu-
37 ant to the terms and conditions of the recommendation by the board and
38 on such other terms as the authority determines to be appropriate.

39 (d) The authority shall, at a minimum, report quarterly to the board
40 on the success of the takecharge New York benefits.

41 (e) For the purposes of this section, the authority shall own and
42 maintain all microgrid infrastructure, and shall use its powers set
43 forth in section one thousand five of the public authorities law to
44 implement any microgrid infrastructure.

45 (f) (1) The board, in consultation with the authority, shall submit to
46 the governor, temporary president of the senate, speaker of the assem-
47 bly, minority leader of the senate and minority leader of the assembly
48 an evaluation of the effectiveness of the takecharge New York power
49 program. Such evaluation shall focus on how the program has aided recip-
50 ients of microgrid, and may include recommendations for how the program
51 can be made more effective. Such evaluation shall be submitted by Decem-
52 ber thirty-first, two thousand eighteen and by December thirty-first
53 every five years thereafter.

54 (2) The board, with assistance from the authority, shall maintain the
55 necessary records and data required to perform such evaluation and

1 respond to requests for information pursuant to article six of the
2 public officers law.

3 (g) The authority shall have the power to effectuate all necessary
4 regulations to carry out the intent and purpose of this chapter.

5 (h) Nothing in this section shall prohibit an applicant from also
6 receiving power allocations under section one hundred eighty-eight-a of
7 this article.

8 § 3. This act shall take effect on the ninetieth day after it shall
9 have become a law.