

Legislative Bill Drafting Commission  
12067-02-9

**PROGRAM BILL # 39**

S. -----  
Senate  
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IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
Assembly  
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IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

**\*ECONDVLA\***

(Extends the expiration of the power  
for jobs program and the energy cost  
savings benefits program and author-  
izes additional voluntary contrib-  
ution)

Ec Dev. extend; power jobs/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 develop-  
ment; 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

**IN SENATE**

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal

a20 Adams	a03 Foley	a24 Lanza	a12 Onorato	a09 Skelos
a15 Addabbo	a08 Fuschillo	a39 Larkin	a37 Oppenheimer	a14 Smith
a55 Alessi	a22 Golden	a01 LaValle	a11 Padavan	a25 Squadron
a48 Aubertine	a47 Griffo	a40 Leibell	a21 Parker	a58 Stachowski
a42 Bonacic	a06 Hannon	a52 Libous	a30 Perkins	a16 Stavisky
a46 Breslin	a26 Hassell-	a45 Little	a61 Ranzenhofner	a35 Stewart-
a50 DeFranciaco	Thompson	a05 Marcellino	a56 Robach	Cousins
a32 Diaz	a10 Huntley	a62 Maxiarz	a41 Saland	a60 Thompson
a17 Dilan	a07 Johnson, C.	a43 McDonald	a19 Sampson	a43 Volesky
a29 Duane	a04 Johnson, O.	a13 Monserrate	a23 Savino	a59 Volker
a33 Espada	a14 Klein	a18 Montgomery	a31 Schneiderman	a53 Winner
a44 Farley	a26 Krueger	a38 Morahan	a28 Serrano	a57 Young
a02 Flanagan	a27 Kruger	a54 Nozzolio	a51 Seward	

**IN ASSEMBLY**

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

a049 Abbate	a047 Colton	a148 Hayes	a104 McBney	a067 Rosenthal
a001 Alessi	a010 Conte	a083 Hoastie	a017 McKevitt	a118 Russell
a021 Alfano	a032 Cook	a028 Revasi	a022 Wang	a012 Saladino
a105 Amadora	a142 Corwin	a048 Mikind	a102 Miller	a113 Hayward
a084 Arroyo	a107 Crouch	a018 Hooper	a052 Millman	a029 Scarborough
a035 Aubry	a063 Cusick	a144 Hoyt	a103 Molinaro	a016 Schmel
a136 Bacalles	a045 Cymbrowitz	a060 Nyar-Spencer	a132 Morelle	a140 Schminiger
a099 Ball	a138 DeMonte	a042 Jacobs	a037 Nolan	a145 Schroeder
a124 Barclay	a034 DenDekker	a095 Jaffee	a128 Oaks	a122 Scorzafava
a014 Barra	a116 Destito	a057 Jeffries	a069 O'Donnell	a038 Seminario
a040 Barron	a081 Dinovits	a131 John	a137 O'Hara	a064 Silver
a082 Benedetto	a114 Duprey	a112 Jordan	a051 Ortiz	a100 Skartados
a079 Benjamin	a003 Eddington	a074 Kavanagh	a150 Farment	a093 Spano
a073 Bing	a006 Englebright	a065 Kellner	a088 Paulin	a121 Stirpe
a055 Boyland	a130 Errigo	a129 Kolb	a141 Peoples	a011 Sweeney
a008 Boyle	a072 Espaillat	a135 Koon	a039 Peralta	a110 Tediaco
a089 Bradley	a071 Farrell	a025 Lancaen	a058 Perry	a002 Thiele
a044 Brennan	a005 Fields	a091 Latimer	a023 Pheffer	a061 Titone
a092 Brodsky	a123 Finch	a013 Lavine	a068 Powell	a031 Titus
a046 Brook-Krasny	a007 Fitzpatrick	a050 Lantol	a087 Fretlow	a062 Tobacco
a147 Burling	a143 Gabryszak	a125 Lifton	a146 Quinn	a054 Towns
a117 Butler	a090 Galef	a127 Lopez, P.	a097 Rabbitt	a115 Townsend
a101 Cahill	a133 Gantt	a053 Lopez, V.	a009 Raia	a015 Walker
a096 Calboun	a035 Gianaris	a126 Lupardo	a006 Ramos	a041 Weinstein
a043 Camara	a149 Giglio	a111 Magee	a134 Reilich	a020 Weisberg
a106 Canestrari	a066 Glick	a120 Magarelli	a109 Reilly	a024 Weprip
a026 Carrozza	a108 Gordon	a059 Maisel	a078 Rivera, J.	a070 Wright
a086 Castro	a075 Gottfried	a030 Markey	a080 Rivera, N.	a094 Zebrowski
a119 Christensen	a098 Gunther	a027 Mayersohn	a076 Rivers, P.	a077
a033 Clark	a139 Hawley	a019 McDonough	a056 Robinson	a085

- 1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).
- 2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

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, paragraph 2 as amended by section 1 of part Y  
3 of chapter 59 of the laws of 2008 and paragraph 4 as amended by chapter  
4 89 of the laws of 2007, are amended to read as follows:

5 2. During the period commencing on November first, two thousand five  
6 and ending on June thirtieth, two thousand [nine] ten eligible busi-  
7 nesses shall only include customers served under the power authority of  
8 the state of New York's high load factor, economic development power and  
9 other business customers served by political subdivisions of the state  
10 authorized by law to engage in the distribution of electric power that  
11 were authorized to be served by the authority from the authority's  
12 former James A. Fitzpatrick nuclear power plant as of the effective date  
13 of this subdivision whose power prices may be subject to increase before  
14 June thirtieth, two thousand [nine] ten. Provided, however, that the  
15 total amount of megawatts of replacement and preservation power which,  
16 due to the extension of the energy cost savings benefits, are not relin-  
17 quished by or withdrawn from a recipient shall be deemed to be relin-  
18 quished or withdrawn for purposes of offering such megawatts by the  
19 authority for reallocation pursuant to subdivision thirteen of section  
20 one thousand five of the public authorities law. Provided, further, that  
21 for any such reallocation, the authority shall maintain the same energy  
22 cost savings benefit level for all eligible businesses using any avail-  
23 able authority resources as deemed feasible and advisable by the trus-  
24 tees pursuant to section seven of part U of chapter fifty-nine of the  
25 laws of two thousand six.

26 4. Applications for an energy cost savings benefit shall be in the  
27 form and contain such information, exhibits and supporting data as the  
28 board may prescribe. The board shall review the applications received

1 and shall determine the applications which best meet the criteria estab-  
2 lished for the benefits pursuant to this subdivision and it shall recom-  
3 mend such applications to the power authority of the state of New York  
4 with such terms and conditions as it deems appropriate; provided, howev-  
5 er, that for energy cost savings benefits granted on or after June thir-  
6 tieth, two thousand [seven] nine through June thirtieth, two thousand  
7 [eight] ten, the board shall expedite the awarding of such benefits and  
8 shall defer the review of compliance with such criteria until after the  
9 applicant has been awarded an energy cost savings benefit. Such terms  
10 and conditions shall include reasonable provisions providing for the  
11 partial or complete withdrawal of the energy cost savings benefit in the  
12 event the recipient fails to maintain mutually agreed upon commitments  
13 that may include, but are not limited to, levels of employment, capital  
14 investment and power utilization. Recommendation for approval of an  
15 energy cost savings benefit shall qualify an applicant to receive an  
16 energy cost savings benefit from the power authority of the state of New  
17 York pursuant to the terms and conditions of the recommendation. Any  
18 energy cost savings benefit which is relinquished or withdrawn after the  
19 effective date of the chapter of the laws of two thousand nine which  
20 amended this paragraph shall be available for reallocation to eligible  
21 businesses as defined in paragraph two of this subdivision.

22 § 2. The opening paragraph of paragraph 5 of subdivision (a) of  
23 section 189 of the economic development law, as amended by section 2 of  
24 part Y of chapter 59 of the laws of 2008, is amended to read as follows:  
25 "Power for jobs electricity savings reimbursements" shall mean  
26 payments made by the power authority of the state of New York as recom-  
27 mended by the board to recipients of allocations of power under phases  
28 four and five of the power for jobs program for a period of time until

1 November thirtieth, two thousand four, subsequent to the expiration of  
2 their phase four or five power for jobs contract provided however that  
3 any power for jobs recipient may choose to receive an electricity  
4 savings reimbursement as a substitute for a contract extension for the  
5 period from the date the recipient's contract expires through June thir-  
6 tieth, two thousand [nine] ten. The "basic reimbursement" is an amount  
7 that when credited against the recipient's actual "unit cost of elec-  
8 tricity" during a quarter (meaning the cost for commodity and delivery  
9 per kilowatt-hour for the quantity of electricity purchased and deliv-  
10 ered under the power for jobs program during a similar period in the  
11 final year of the recipient's contract), results in an effective unit  
12 cost of electricity during the quarter equal to the average unit cost of  
13 electricity such recipient paid during the final year of the contract  
14 for power allocated under phase four or five of the power for jobs  
15 program.

16 § 3. Subdivisions (f) and (l) of section 189 of the economic develop-  
17 ment law, as amended by section 3 of part Y of chapter 59 of the laws of  
18 2008, are amended to read as follows:

19 (f) Eligibility. The board shall recommend applications for allo-  
20 cations of power under the power for jobs program to or for the use of  
21 businesses which normally utilize a minimum peak electric demand in  
22 excess of four hundred kilowatts; provided, however, that up to one  
23 hundred megawatts of power available for allocation during the initial  
24 three phases of the power for jobs program may be recommended for allo-  
25 cations to not-for-profit corporations and to small businesses; and,  
26 provided, further that up to seventy-five megawatts of power available  
27 for allocation during the fourth phase of the program may be recommended  
28 for allocations to not-for-profit corporations and to small businesses.

1 The board may require small businesses that normally utilize a minimum  
2 peak electric demand of less than one hundred kilowatts to aggregate  
3 their electric demand in amounts of no less than one hundred kilowatts,  
4 for the purposes of applying to the board for an allocation of power.  
5 The board shall recommend allocations of the additional three hundred  
6 megawatts available during the fourth phase of the program to any such  
7 eligible applicant, including any recipient of power allocated during  
8 the first phase of the program. The board shall recommend allocations of  
9 the additional one hundred eighty-three megawatts available during the  
10 fifth phase of the program to any eligible applicant, including any  
11 recipient of power allocated during the second and third phases of the  
12 program; provided, however, that the term of contracts for allocations  
13 under the fifth phase of the program shall in no case extend beyond June  
14 thirtieth, two thousand [nine] ten. Notwithstanding any provision of  
15 law to the contrary, and, in particular, the provisions of this chapter  
16 concerning the terms of contracts for allocations under the power for  
17 jobs program, the terms of any contract with a recipient of power allo-  
18 cated under phase two of the power for jobs program that has expired or  
19 will expire on or before the thirty-first day of August, two thousand  
20 two, may be extended by the power authority of the state of New York for  
21 an additional period of three months effective on the date of such expi-  
22 ration, pending the filing and approval of an application by such recip-  
23 ient for an allocation under the fifth phase of the program. The term of  
24 any new contract with such recipient under the fifth phase of the  
25 program shall be deemed to include any three month contract extension  
26 made pursuant to this subdivision and the termination date of any such  
27 new contract under phase five shall be no later than if such new  
28 contract had commenced upon the expiration of the recipient's original

1 phase two contract. The terms of any contract with a recipient of power  
2 allocated under phase four and/or phase five of the power for jobs  
3 program that has expired or will expire on or before the thirty-first  
4 day of December, two thousand five, may be extended by the power author-  
5 ity of the state of New York from a date beginning no earlier than the  
6 first day of December, two thousand four and extending through June  
7 thirtieth, two thousand [nine] ten.

8 (1) The board shall solicit and review applications for the power for  
9 jobs electricity savings reimbursements and contract extensions from  
10 recipients of power for jobs allocations under phases four and five of  
11 the program for the award of such reimbursements and/or contract exten-  
12 sions. The board may prescribe a simplified form and content for an  
13 application for such reimbursements or extensions. An applicant shall be  
14 eligible for such reimbursements and/or extensions only if it is in  
15 compliance with and agrees to continue to meet the job retention and  
16 creation commitments set forth in its prior power for jobs contract, or  
17 such other commitments as the board deems reasonable; provided, however,  
18 that for the power for jobs electricity savings reimbursements and  
19 contract extensions granted on or after June thirtieth, two thousand  
20 [seven] nine through June thirtieth, two thousand [eight] ten, the board  
21 shall expedite the awarding of such reimbursements and/or extensions and  
22 shall defer the review of compliance with such commitments until after  
23 the applicant has been awarded a power for jobs electricity savings  
24 reimbursement and/or contract extension. The board shall review such  
25 applications and make recommendations for the award: 1. of such  
26 reimbursements through the power authority of the state of New York for  
27 a period of time up to November thirtieth, two thousand four, and 2. of  
28 such contract extensions or reimbursements as applied for by the recipi-

1 ent for a period of time beginning December first, two thousand four and  
2 ending June thirtieth, two thousand [nine] ten. At no time shall a  
3 recipient receive both a reimbursement and extension after December  
4 first, two thousand four. The power authority of the state of New York  
5 shall receive notification from the board regarding the award of power  
6 for jobs electricity savings reimbursements and/or contract extensions.  
7 Any power for jobs allocation which is relinquished or withdrawn after  
8 the effective date of the chapter of the laws of two thousand nine which  
9 amended this subdivision shall be available for reallocation to custom-  
10 ers eligible for power for jobs allocations as defined in subdivision  
11 (f) of this section.

12 § 4. Section 9 of chapter 316 of the laws of 1997 amending the public  
13 authorities law and other laws relating to the provision of low cost  
14 power to foster statewide economic development, as amended by section 4  
15 of part Y of chapter 59 of the laws of 2008, is amended to read as  
16 follows:

17 § 9. This act shall take effect immediately and shall expire and be  
18 deemed repealed June 30, [2009] 2010.

19 § 5. Subdivision 9 of section 186-a of the tax law, as amended by  
20 section 5 of part Y of chapter 59 of the laws of 2008, is amended to  
21 read as follows:

22 9. Notwithstanding any other provision of this chapter or any other  
23 law to the contrary, for taxable periods nineteen hundred ninety-seven  
24 through and including two thousand [nine] ten, any utility which deliv-  
25 ers power under the power for jobs program, as established by section  
26 one hundred eighty-nine of the economic development law, shall be  
27 allowed a credit, subject to the limitations thereon contained in this  
28 subdivision, against the tax imposed under this section equal to net

1 lost revenues from the delivery of power under such power for jobs  
2 program. Net lost revenues means the "net receipts" less "net utility  
3 revenue" from such delivery of power. For purposes of this subdivision,  
4 "net receipts" shall mean the amount that the utility would have other-  
5 wise received from customers receiving power pursuant to allocations by  
6 the New York state economic development power allocation board in  
7 accordance with section one hundred eighty-nine of the economic develop-  
8 ment law, or from customers whose allocation has been transferred to an  
9 energy service company, or from energy service companies to which such  
10 allocation has been transferred, pursuant to its tariff supervised by  
11 the public service commission for substantially comparable service  
12 otherwise applicable to such customers or energy service companies in  
13 the absence of such designation, less the utility's annual average  
14 incremental short-term variable and capacity costs of providing such  
15 power in the absence of such purchase. For the purposes of this subdivi-  
16 sion, "net utility revenue" shall mean the revenues the utility actually  
17 receives in accordance with such section one hundred eighty-nine from  
18 such customers so designated by the New York state economic development  
19 power allocation board or from customers whose allocation has been  
20 transferred to an energy service company, or from the energy service  
21 companies to which a power for jobs allocation has been transferred,  
22 less the utility's cost of such power under such program. Provided,  
23 however, that any credit under this section shall be used only with  
24 respect to the same taxable year during which such credit arose and  
25 shall not be capable of being carried forward or backward to any other  
26 taxable period. Nor shall any credit be allowed to any utility for the  
27 total amount of power, expressed in kilowatt hours, purchased by the  
28 customers of such utility under such program during the taxable period

1 that exceeds the prorated "baseline energy use" by all customers of that  
2 utility purchasing power under such program during the taxable period.  
3 "Baseline energy use" with respect to each customer shall mean the larg-  
4 est amount of kilowatt hours of energy used by such customer during any  
5 twelve consecutive month period occurring during the preceding thirty  
6 months immediately preceding the New York state economic development  
7 power allocation board's recommendation of such customer's application,  
8 prorated to reflect the length of time of the customer's participation  
9 in such program during the taxable period. Provided further, however,  
10 that in accordance with subdivision (k) of section one hundred eighty-  
11 nine of the economic development law no tax credit shall be available  
12 for any revenue losses when a utility has declined to purchase power  
13 allocated for sale under such program. No electric corporation shall be  
14 allowed the tax credit authorized by this subdivision until it shall  
15 file a certificate from the department of public service for the period  
16 covered by the return verifying that the calculation of such tax credit  
17 complies with this subdivision and the department of public service has  
18 approved such certificate and forwarded a copy of such approved certif-  
19 icate to the commissioner or any amended certificate resulting from the  
20 need for correction. The credit allowed by this subdivision shall not be  
21 applicable in calculating any other tax imposed or authorized to be  
22 imposed by this chapter or any other law, and the amount of the tax  
23 surcharge imposed under section one hundred eighty-six-c of this article  
24 shall be calculated and payable as if the credit provided for by this  
25 subdivision were not allowed.

26 § 6. Section 11 of chapter 645 of the laws of 2006 amending the  
27 economic development law and other laws relating to reauthorizing the  
28 New York power authority to make contributions to the general fund, as

1 amended by section 6 of part Y of chapter 59 of the laws of 2008, is  
2 amended to read as follows:

3 § 11. This act shall take effect immediately and shall be deemed to  
4 have been in full force and effect on and after April 1, 2006; provided,  
5 however, that the amendments to section 183 of the economic development  
6 law and subparagraph 2 of paragraph g of the ninth undesignated para-  
7 graph of section 1005 of the public authorities law made by sections two  
8 and six of this act shall not affect the expiration of such section and  
9 subparagraph, respectively, and shall be deemed to expire therewith;  
10 provided further, however, that the amendments to section 189 of the  
11 economic development law and subdivision 9 of section 186-a of the tax  
12 law made by sections three, four, five and ten of this act shall not  
13 affect the repeal of such section and subdivision, respectively, and  
14 shall be deemed to be repealed therewith; provided further, however,  
15 that section seven of this act shall expire and be deemed repealed June  
16 30, [2009] 2010.

17 § 7. Subparagraph 2 of paragraph g of the ninth undesignated paragraph  
18 of section 1005 of the public authorities law, as amended by section 7  
19 of part Y of chapter 59 of the laws of 2008, is amended to read as  
20 follows:

21 2. The authority, as deemed feasible and advisable by the trustees, is  
22 authorized to make payments to recipients of the power for jobs elec-  
23 tricity savings reimbursements and additional annual voluntary contrib-  
24 utions into the state treasury to the credit of the general fund. The  
25 authority shall make such contributions to the state treasury no later  
26 than ninety days after the end of the calendar year in which a credit  
27 under subdivision nine of section one hundred eighty-six-a of the tax  
28 law is available: (a) for the additional three hundred megawatts of

1 power under the fourth phase of the program provided under chapter  
2 sixty-three of the laws of two thousand and under the fifth phase for  
3 the additional one hundred eighty-three megawatts provided under chapter  
4 two hundred twenty-six of the laws of two thousand two; and (b) for any  
5 extension of any contract for allocations under the fourth phase of the  
6 program and under the fifth phase of the program. Payments for any elec-  
7 tricity savings reimbursement under section one hundred eighty-nine of  
8 the economic development law shall be made pursuant to such section.  
9 Such annual contributions shall be equal to fifty percent of the total  
10 amount of such credits available each year to all local distributors of  
11 electricity. In addition, such authorization for contribution in state  
12 fiscal year two thousand two--two thousand three shall be equal to the  
13 total amount of credit available in two thousand one and two thousand  
14 two; and such authorization for contribution in state fiscal year two  
15 thousand three--two thousand four shall be equal to the total amount of  
16 credit available in two thousand three; under subdivision nine of  
17 section one hundred eighty-six-a of the tax law under the fourth phase  
18 of the program for the additional three hundred megawatts provided under  
19 chapter sixty-three of the laws of two thousand and under the fifth  
20 phase for the additional one hundred eighty-three megawatts provided  
21 under chapter two hundred twenty-six of the laws of two thousand two. In  
22 state fiscal year two thousand four--two thousand five, such authorized  
23 annual contribution shall be equal to one hundred percent of the total  
24 amount of such credits available each year to all local distributors of  
25 electricity. Such authorization for contribution in state fiscal years  
26 two thousand four and two thousand five shall be equal to the total  
27 amount of credit available in two thousand four and two thousand five;  
28 under subdivision nine of section one hundred eighty-six-a of the tax

1 law under the fourth phase of the program for the additional three  
2 hundred megawatts provided under chapter sixty-three of the laws of two  
3 thousand and under the fifth phase for the additional one hundred eight-  
4 y-three megawatts provided under chapter two hundred twenty-six of the  
5 laws of two thousand two. In addition, such authorization for contrib-  
6 ution for any extension of any contract for allocations under the fourth  
7 phase of the program and under the fifth phase of the program in each  
8 state fiscal year shall be equal to the total amount of credit or  
9 reimbursement available in state fiscal year two thousand four--two  
10 thousand five, state fiscal year two thousand five--two thousand six and  
11 two thousand six--two thousand seven. Additionally, notwithstanding any  
12 other section of law, the authority is authorized to make a contribution  
13 in an amount related to total amounts of credit received under phases  
14 one, two, three, four and five of the program. In no case shall the  
15 contribution for state fiscal year two thousand five--two thousand six  
16 be less than seventy-five million dollars. The contribution for state  
17 fiscal year two thousand six--two thousand seven shall be one hundred  
18 million dollars. The contribution for state fiscal year two thousand  
19 seven--two thousand eight shall be thirty million dollars. The contrib-  
20 ution for state fiscal year two thousand eight--two thousand nine shall  
21 be twenty-five million dollars. The contribution for state fiscal year  
22 two thousand nine--two thousand ten shall be the lesser of twenty  
23 million dollars or the value of the credits authorized by subdivision  
24 nine of section one hundred eighty-six-a of the tax law as certified to  
25 the commissioner. The department of public service shall estimate the  
26 payment due by the end of the calendar year in which the credit is  
27 available. In no case shall the amount of the total annual contributions  
28 for the years during which delivery and sale of power associated with

1 all power for jobs phases and any extensions thereof takes place exceed  
2 the aggregate total of four hundred [forty-nine] sixty-nine million  
3 dollars.

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