

PROGRAM BILL # 8

S.

Senate

IN SENATE--Introduced by Sen

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

A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

REALTXLA

(Relates to applications for certain
tax abatements for industrial and
commercial construction work on
properties in certain cities)

RPT L. applications for tax abate

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

IN SENATE

Senate introducer's signature

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

s20 Adams	s44 Farley	s58 Kennedy	s18 Montgomery	s23 Savino
s15 Addabbo	s02 Flanagan	s34 Klein	s54 Nozzolio	s28 Serrano
s55 Alesi	s08 Fuschillo	s26 Krueger	s53 O'Mara	s51 Seward
s11 Avella	s59 Gullivan	s27 Kruger	s37 Oppenheimer	s09 Skelos
s40 Ball	s12 Gianaris	s24 Lanza	s21 Parker	s14 Smith
s42 Bonacic	s22 Golden	s39 Larkin	s13 Peralta	s25 Squadron
s46 Brealin	s47 Griffo	s01 LaValle	s30 Perkins	s16 Stavisky
s38 Carlucci	s60 Grisanti	s52 Libous	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	s06 Hamon	s45 Little	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s05 Marcellino	s33 Rivera	s49 Valesky
s17 Dilan	Thompson	s07 Martins	s56 Robach	s57 Young
s29 Duane	s10 Huntley	s62 Maziarz	s41 Saland	s03 Zeldin
s31 Espaillet	s04 Johnson	s43 McDonald	s19 Sampson	

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	a107 Crouch	a042 Jacobs	a102 Miller, J.	a067 Rosenthal
a092 Abinanti	a014 Curran	a095 Jaffee	a038 Miller, M.	a118 Russell
a105 Amedore	a063 Cusick	a057 Jeffries	a052 Millman	a012 Saladino
a084 Arroyo	a045 Cymbrowitz	a135 Johns	a103 Molinaro	a113 Sayward
a035 Aubry	a034 DenDekker	a112 Jordan	a015 Montesano	a029 Scarborough
a124 Barclay	a116 Destito	a099 Katz	a132 Morelle	a016 Schimel
a040 Barron	a081 Dinowitz	a074 Kavanagh	a039 Moya	a140 Schimminger
a082 Benedetto	a114 Duprey	a065 Kellner	a003 Murray	a145 Schroeder
a073 Bing	a004 Englebright	a100 Kirwan	a037 Nolan	a064 Silver
a122 Blankenbush	a071 Farrell	a129 Kolb	a128 Oaks	a036 Simotas
a055 Boyland	a123 Finch	a025 Lancman	a069 O'Donnell	a146 Smardz
a008 Boyle	a007 Fitzpatrick	a091 Latimer	a051 Ortiz	a093 Spano
a026 Braunstein	a137 Friend	a013 Lavine	a136 Palmesano	a079 Stevenson
a044 Brennan	a143 Gabryszak	a050 Lentol	a088 Paulin	a011 Sweeney
a131 Bronson	a090 Galef	a125 Lifton	a141 Peoples-	a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a072 Linares	Stokes	a115 Tanney
a147 Burling	a077 Gibson	a127 Lopez, P.	a058 Perry	a002 Thiale
a117 Butler	a149 Giglio	a053 Lopez, V.	a023 Pheffer	a061 Titone
a101 Cahill	a066 Glick	a001 Losquadro	a087 Pretlow	a031 Titus
a096 Calhoun	a150 Goodell	a126 Lupardo	a021 Ra	a062 Tobacco
a043 Camara	a075 Gottfried	a111 Magee	a097 Rabbitt	a041 Weinstein
a106 Canestrari	a005 Graf	a120 Magnarelli	a009 Raia	a020 Weisenberg
a089 Castelli	a098 Gunther	a059 Maisel	a006 Ramos	a024 Weprin
a086 Castro	a130 Hanna	a060 Malliotakis	a134 Reillich	a070 Wright
a138 Ceretto	a139 Hawley	a030 Markey	a109 Reilly	a094 Zebrowski
a033 Clark	a148 Hayes	a019 McDonough	a078 Rivera, J.	a027
a047 Colton	a083 Heastie	a104 McEneny	a080 Rivera, N.	a054
a010 Conte	a028 Hevesi	a017 McKeivitt	a076 Rivera, P.	
a032 Cook	a048 Hixind	a108 McLaughlin	a119 Roberts	
a142 Corwin	a018 Hooper	a022 Meng	a056 Robinson	
a085 Crespo	a144 Hoyt	a121 Miller, D.	a068 Rodriguez	

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).

The People of the State of New
York, represented in Senate and
Assembly, 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.

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

24 17. "Utility property" means property and equipment as described in
25 paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section
26 one hundred two of this chapter that is used in the ordinary course of
27 business by its owner or any other entity or property as described in
28 paragraphs (a) and (b) of subdivision twelve of section one hundred two

1 of this chapter that is owned by any entity that uses in the ordinary
2 course of business property and equipment as described in paragraphs
3 (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred
4 two of this chapter, without regard to the classification of such prop-
5 erty and equipment for real property tax purposes pursuant to section
6 eighteen hundred two of this chapter, except that any such property and
7 equipment used solely to serve the building to which they are attached
8 shall not be deemed utility property. Notwithstanding any provision of
9 this title to the contrary, peaking units shall not be considered utili-
10 ty property. For purposes of this title, "peaking unit" shall mean a
11 generating unit that: (a) is determined by the New York independent
12 system operator or a federal or New York state energy regulatory commis-
13 sion to constitute a peaking unit as set forth in section 5.14.1.2 of
14 the New York independent system operator's market administration and
15 control area services tariff, as such term existed as of April first,
16 two thousand eleven; or (b) has an annual average operation, during the
17 calendar year preceding the taxable status date, of less than eighteen
18 hours following each start of the unit; for purposes of calculating the
19 annual average, operations during any period covered by any major emer-
20 gency declaration issued by the New York independent system operator,
21 northeast power coordinating council, or other similar entity shall be
22 excluded. A "peaking unit" under this title shall include all real prop-
23 erty used in connection with the generation of electricity, and any
24 facilities used to interconnect the peaking unit with the electric tran-
25 mission or distribution system, but shall not include any facilities
26 that are part of the electric transmission or distribution system; it
27 may be comprised of a single turbine and generator or multiple turbines
28 and generators located at the same site. Notwithstanding any provision

1 of this title to the contrary, a peaking unit shall be considered indus-
 2 trial property, provided however that the benefit period for a peaking
 3 unit shall be as set forth in paragraph (b-1) of subdivision three of
 4 section four hundred eighty-nine-bbbbbbb of this title.

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

7 (b-1) Abatement for industrial construction work on a peaking unit.
 8 Upon approval by the department of a final application for benefits, an
 9 applicant who has performed industrial construction work in any area on
 10 a peaking unit, shall be eligible for an abatement of real property
 11 taxes, as follows:

12 (i) Amount of abatement. The first year of the abatement shall be the
 13 tax year with the first taxable status date that follows the sooner of
 14 (A) completion of construction; or (B) four years from the date the
 15 first building permit was issued, or if no permit was required, the
 16 commencement of construction. For years one through fifteen, the abate-
 17 ment shall be the amount of the abatement base. The abatement shall be
 18 adjusted for inflation protection as provided in subparagraph (ii) of
 19 this paragraph. The following table illustrates the abatement computa-
 20 tion:

21 <u>Tax year during benefit period:</u>	<u>Amount of abatement:</u>
22 <u>Years 1 through 15</u>	<u>100% of abatement base</u>

23 (ii) Inflation protection. (A) Industrial construction work, effect of
 24 assessed valuation increases. For years two through thirteen of the
 25 benefit period, except as provided in clause (B) of this subparagraph,
 26 if there is any increase in tax in that year that is based on an
 27 increase of taxable assessed valuation since the immediately prior tax
 28 year, such excess tax liability shall be added to the amount of the

1 abatement base. Such addition to the amount of the abatement base shall
2 be determined using the initial tax rate.

3 (B) Physical increases. Notwithstanding the provisions of clause (A)
4 of this subparagraph, if in any of years two through thirteen of the
5 benefit period, a physical change to the property results in an increase
6 in the taxable assessed value of the property of more than five percent
7 for that year, then any increase in taxes for that year shall not be
8 added to the amount of the abatement base in any year.

9 (C) If the taxable assessed value upon which an adjustment to the
10 abatement under this paragraph is based is later reduced by a court
11 order or application to the tax commission, then the appropriate adjust-
12 ment to the abatement base shall be made in accordance with the reduced
13 taxable assessed value.

14 (iii) Minimum required expenditure. For industrial construction work
15 on a peaking unit, the minimum required expenditure is thirty percent of
16 the property's taxable assessed value in the tax year with a taxable
17 status date immediately preceding the issuance of the first building
18 permit, or if no permit was required, the commencement of construction.
19 Expenditures for residential construction work or construction work on
20 portions of property to be used for restricted activities shall not be
21 included in the minimum required expenditure.

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

25 (a) Application for benefits pursuant to this title may be made imme-
26 diately following the effective date of a local law enacted pursuant to
27 this title and continuing until March first, two thousand [eleven]
28 fifteen.

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

3 3. (a) No benefits pursuant to this title shall be granted for
4 construction work performed pursuant to a building permit issued after
5 April first, two thousand fifteen.

6 (b) If no building permit was required, then no benefits pursuant to
7 this title shall be granted for construction work that is commenced
8 after April first, two thousand fifteen.

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

12 1. Continuing use. For the duration of the benefit period, the recipi-
13 ent of benefits shall file biennially with the department, on or before
14 the appropriate taxable status date, a statement of the continuing use
15 of such property and any changes in use that have occurred, provided,
16 however, that any recipient of benefits receiving benefits for property
17 defined as a peaking unit shall file such statement biannually. This
18 statement shall be in a form determined by the department and may be in
19 any format the department determines, in its discretion, is appropriate,
20 including electronic format. The department shall have authority to
21 terminate such benefits upon failure of a recipient to file such state-
22 ment by the appropriate taxable status date. The burden of proof shall
23 be on the recipient to establish continuing eligibility for benefits and
24 the department shall have the authority to require that statements filed
25 under this subdivision be certified.

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

1 5-a. Conversion of use by peaking units. Any applicant whose property
2 has been granted benefits under this title for industrial construction
3 work as a peaking unit and who converts such property in any tax year to
4 a use that no longer qualifies it as a peaking unit, or who uses such
5 property in a manner inconsistent with the definition of a peaking unit,
6 shall be ineligible for abatement benefits during any such tax year. Any
7 such recipient of benefits shall pay with interest taxes for which an
8 abatement was claimed during any portion of such tax year.

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

12 q. "Utility property" means property and equipment as described in
13 paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section
14 one hundred two of the real property tax law that is used in the ordi-
15 nary course of business by its owner or any other entity or property as
16 described in paragraphs (a) and (b) of subdivision twelve of section one
17 hundred two of such law that is owned by any entity that uses in the
18 ordinary course of business property and equipment as described in para-
19 graphs (c), (d), (e), (f) and (i) of subdivision twelve of section one
20 hundred two of such law, without regard to the classification of such
21 property and equipment for real property tax purposes pursuant to
22 section eighteen hundred two of such law, except that any such property
23 and equipment used solely to serve the building to which they are
24 attached shall not be deemed utility property. Notwithstanding any
25 provision of this part to the contrary, peaking units shall not be
26 considered utility property. For purposes of this part, "peaking unit"
27 shall mean a generating unit that: (a) is determined by the New York
28 independent system operator or a federal or New York state energy regu-

1 latory commission to constitute a peaking unit as set forth in section
2 5.14.1.2 of the New York independent system operator's market adminis-
3 tration and control area services tariff, as such term existed as of
4 April first, two thousand eleven; or (b) has an annual average opera-
5 tion, during the calendar year preceding the taxable status date, of
6 less than eighteen hours following each start of the unit; for purposes
7 of calculating the annual average, operations during any period covered
8 by any major emergency declaration issued by the New York independent
9 system operator, northeast power coordinating council, or other similar
10 entity shall be excluded. A "peaking unit" under this part shall include
11 all real property used in connection with the generation of electricity,
12 and any facilities used to interconnect the peaking unit with the elec-
13 tric transmission or distribution system, but shall not include any
14 facilities that are part of the electric transmission or distribution
15 system; it may be comprised of a single turbine and generator or multi-
16 ple turbines and generators located at the same site. Notwithstanding
17 any provision of this part to the contrary, a peaking unit shall be
18 considered industrial property, provided however that the benefit period
19 for a peaking unit shall be as set forth in paragraph two-a of subdivi-
20 sion c of section 11-269 of this part.

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

24 (2-a) Abatement for industrial construction work on a peaking unit.
25 Upon approval by the department of a final application for benefits, an
26 applicant who has performed industrial construction work in any area on
27 a peaking unit, shall be eligible for an abatement of real property
28 taxes, as follows:

1 (a) Amount of abatement. The first year of the abatement shall be the
 2 tax year with the first taxable status date that follows the sooner of
 3 (i) completion of construction; or (ii) four years from the date the
 4 first building permit was issued, or if no permit was required, the
 5 commencement of construction. For years one through fifteen, the abate-
 6 ment shall be the amount of the abatement base. The abatement shall be
 7 adjusted for inflation protection as provided in subparagraph (b) of
 8 this paragraph. The following table illustrates the abatement computa-
 9 tion:

10 <u>Tax year during benefit period:</u>	<u>Amount of abatement:</u>
11 <u>Years 1 through 15</u>	<u>100% of abatement base</u>

12 (b) Inflation protection. (i) Industrial construction work, effect of
 13 assessed valuation increases. For years two through thirteen of the
 14 benefit period, except as provided in clause (ii) of this subparagraph,
 15 if there is any increase in tax in that year that is based on an
 16 increase of taxable assessed valuation since the immediately prior tax
 17 year, such excess tax liability shall be added to the amount of the
 18 abatement base. Such addition to the amount of the abatement base shall
 19 be determined using the initial tax rate.

20 (ii) Physical increases. Notwithstanding the provisions of clause (i)
 21 of this subparagraph, if in any of years two through thirteen of the
 22 benefit period, a physical change to the property results in an increase
 23 in the taxable assessed value of the property of more than five percent
 24 for that year, then any increase in taxes for that year shall not be
 25 added to the amount of the abatement base in any year.

26 (iii) If the taxable assessed value upon which an adjustment to the
 27 abatement under this paragraph is based is later reduced by a court
 28 order or application to the tax commission, then the appropriate adjust-

1 ment to the abatement base shall be made in accordance with the reduced
2 taxable assessed value.

3 (c) Minimum required expenditure. For industrial construction work on
4 a peaking unit, the minimum required expenditure is thirty percent of
5 the property's taxable assessed value in the tax year with a taxable
6 status date immediately preceding the issuance of the first building
7 permit, or if no permit was required, the commencement of construction.
8 Expenditures for residential construction work or construction work on
9 portions of property to be used for restricted activities shall not be
10 included in the minimum required expenditure.

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

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

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

19 c. (1) No benefits pursuant to this part shall be granted for
20 construction work performed pursuant to a building permit issued after
21 April first, two thousand fifteen.

22 (2) If no building permit was required, then no benefits pursuant to
23 this part shall be granted for construction work that is commenced after
24 April first, two thousand fifteen.

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

1 a. Continuing use. For the duration of the benefit period, the recipi-
2 ent of benefits shall file biennially with the department, on or before
3 the appropriate taxable status date, a statement of the continuing use
4 of such property and any changes in use that have occurred, provided,
5 however, that any recipient of benefits receiving benefits for property
6 defined as a peaking unit shall file such statement biannually. This
7 statement shall be in a form determined by the department and may be in
8 any format the department determines, in its discretion, is appropriate,
9 including electronic format. The department shall have authority to
10 terminate such benefits upon failure of a recipient to file such state-
11 ment by the appropriate taxable status date. The burden of proof shall
12 be on the recipient to establish continuing eligibility for benefits and
13 the department shall have the authority to require that statements filed
14 under this subdivision be certified.

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

17 e-1. Conversion of use by peaking units. Any applicant whose property
18 has been granted benefits under this part for industrial construction
19 work as a peaking unit and who converts such property in any tax year to
20 a use that no longer qualifies it as a peaking unit, or who uses such
21 property in a manner inconsistent with the definition of a peaking unit,
22 shall be ineligible for abatement benefits during any such tax year. Any
23 such recipient of benefits shall pay with interest taxes for which an
24 abatement was claimed during any portion of such tax year.

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