

GOVERNOR'S PROGRAM BILL  
2011MEMORANDUM

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

PURPOSE:

This bill would amend the Real Property Tax Law and the Administrative Code of the City of New York to reauthorize the Industrial and Commercial Abatement Program (ICAP) for an additional four years to provide tax abatements pursuant to such program and to further modify such program to provide tax abatements for certain electric generating facilities, reducing the cost of electricity in New York City.

SUMMARY OF PROVISIONS:

Section 1 of the bill sets forth the bill's legislative findings including the need to reduce energy capacity prices in New York City.

Section 2 of the bill amends Real Property Tax Law (RPTL) §489-aaaaaa to amend the definition of "utility property" to exclude peaking units from such definition. Peaking units would be defined as generating units determined by the New York Independent System Operator (NYISO), or other federal or New York State energy regulatory body, that constitutes a peaking unit as set forth in §5.14.1.2 of NYISO's Market Administration and Control Area Services Tariff as such term existed on April 1, 2011, or has an annual average operation of less than 18 hours following each start. Section 2 further exempts from calculations of annual averages, major emergency declarations by NYISO, the Northeast Power Coordinating Council (NPCC) or other similar entity. Peaking units shall include all real property used in connection with the facility, but shall exclude transmission and distribution facilities.

Section 3 of the bill amends RPTL §489-bbbbbb(3) to add a new paragraph (b-1) to provide that the amount of the abatement shall be 100% for 15 years with the first year of the abatement beginning in the tax year that is the sooner of the completion of construction or four years from the issuance of the first building permit, or if no permit is required, the commencement of construction. Section 3 further provides for protection against tax increases for inflation and increases and decreases in the taxable assessed value of the property. Section 3 further provides that the minimum required expenditure is 30% of the property's taxable value, as assessed in the tax year immediately preceding

the issuance of the first building permit, or if no permit is required, the commencement of construction.

Section 4 of the bill amends RPTL §489-ddddddd(1) to extend the application deadline of the Industrial and Commercial Abatement Program from March 1, 2011 to March 1, 2015.

Section 5 of the bill amends RPTL §489-ddddddd to add a new subdivision 3 that would prohibit granting benefits under ICAP for construction work performed pursuant to a building permit issued after April 1, 2015. Section 4 further provides where building permits are not required, no benefits shall be granted for construction work commenced after April 1, 2015.

Section 6 of the bill amends RPTL §489-eeeeeee to require that recipients of abatement benefits for peaking units file biannually (rather than biennially) a statement of the continuing use of such property and any changes in use.

Section 7 of the bill amends RPTL §489-ffffff to add a new subdivision 5-a to provide that recipients of abatement benefits who convert the property with the peaking unit to a use that no longer qualifies such facility as a peaking unit, as defined in section two of the bill, or who uses such units in a manner inconsistent with the definition of a peaking unit, shall be ineligible for such tax benefits during such tax year and shall pay, with interest, taxes for which an abatement was claimed during any portion of such tax year. This subdivision will apply the eligibility requirement in an administrative manner.

Section 8 of the bill amends §11-268(q) of the Administrative Code of the City of New York (Administrative Code) to amend the definition of "utility property" to exclude peaking units from such definition, consistent with that established in §2 of the bill.

Section 9 of the bill amends §11-269(c) of the Administrative Code to add a new paragraph (2-a) to provide that the amount of the abatement shall be 100% for 15 years with the first year of the abatement beginning in the tax year that is the sooner of the completion of construction or four years from the issuance of the first building permit, or if no permit is required, the commencement of construction. Section 3 further provides for protection against tax increases for inflation and increases and decreases in the taxable assessed value of the property. Section 3 further provides that the minimum required expenditure is 30% of the property's taxable value, as assessed in the tax year immediately preceding the issuance of the first building permit, or if no permit is required, the commencement of construction.

Section 10 of the bill amends §11-271(l) of the Administrative Code to extend the application date for benefits from March 1, 2011 to March 1, 2015.

Section 11 of the bill amends §11-271 of the Administrative Code to add a new subdivision (c) which would prohibit granting benefits for construction work performed pursuant to a building permit issued after April 1, 2015; where building permits were not required, no benefits shall be granted for construction work commenced after such date.

Section 12 of the bill amends §11-272(a) of the Administrative Code to require that recipients of abatement benefits for peaking units file biannually (rather than biennially) a statement of the continuing use of such property and any changes in use.

Section 13 of the bill amends §11-273 of the Administrative Code to provide that recipients of abatement benefits who convert the property with the peaking unit to a use that no longer qualifies such facility as a peaking unit, or who uses such units in a manner inconsistent with the definition of a peaking unit, as defined in section two of the bill, shall be ineligible for such tax benefits during such tax year and shall pay, with interest, taxes for which an abatement was claimed during any portion of such tax year. This subdivision will apply the eligibility requirement in an administrative manner.

Section 14 of the bill provides that the bill shall take effect immediately and shall be deemed to have been in full force and effect on March 1, 2011.

#### **EXISTING LAW:**

Currently, there is a tax abatement program, the Industrial and Commercial Abatement Program (ICAP), for eligible industrial or commercial work on properties in New York City established pursuant to Chapter 119 of the Laws of 2008. ICAP currently excludes electric peaking generating facilities from eligibility. Owners of peaking units are eligible to apply for tax abatements from New York City for construction, alterations or improvements. Those tax abatements are awarded through a discretionary process.

#### **JUSTIFICATION:**

New York City previously granted property tax abatement as-of-right to electric generating facilities pursuant to the Industrial and Commercial Incentive Program (ICIP) for commercial and industrial properties contained in Title 2-D to Article 4 of the Real Property Tax Law. In 2008, ICIP was allowed to sunset and legislation was enacted that created a new tax abatement program for commercial and industrial properties, which excluded electric generating facilities from eligibility. Owners of electric generating facilities are eligible to apply for tax abatements through a discretionary process.

This bill would remove the uncertainty with respect to property tax assessments on peaking units by returning to an as-of-right property tax abatement program, leaving the City of New York with no discretion in awarding the abatement if the peaking unit satisfies the objective eligibility criteria established in the legislation.

Recently, the Federal Energy Regulatory Commission (FERC) issued a ruling significantly increasing the energy capacity prices for power generators on the grounds that the price now had to incorporate the hypothetical property taxes that a power generator entering the market today could face under a discretionary property tax abatement program. The increased capacity prices will be passed on to the consumers through higher electric rates and will simultaneously result in a windfall for the existing plants that do not pay property taxes. The precise increase in electric rates cannot be determined today, but it has been estimated that the new capacity price curve could

increase the electric bills for residents and businesses in New York City by approximately \$500 million to as much as \$1 billion over the next three years.

**LEGISLATIVE HISTORY:**

This is a new bill.

**FISCAL IMPLICATIONS:**

This bill would have no fiscal impact on the State.

**EFFECTIVE DATE:**

This bill would take effect immediately and shall be deemed to have been in full force and effect on and after March 1, 2011.