

IN SENATE

PROGRAM BILL # 40 R

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

ECONDVLA *Governor 40 R-1*
(Enacts the "Northern New York power
proceeds allocation act")

Ec Dev. Northern NY pwr procds al

AN ACT

to amend the economic development
law and the public authorities law,
in relation to enacting the northern
New York power proceeds allocation
act

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

Senate introducer's signature

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

| | | | | |
|-----------------|--------------|----------------|-----------------|--------------|
| s15 Addabbo | s02 Flanagan | s28 Krueger | s55 O'Brien | s51 Seward |
| s11 Avella | s59 Gallivan | s24 Lanza | s58 O'Mara | s09 Skelos |
| s40 Ball | s12 Gianaris | s39 Larkin | s21 Parker | s14 Smith |
| s42 Bonacic | s41 Gipson | s37 Latimer | s13 Peralta | s26 Squadron |
| s04 Boyle | s22 Golden | s01 LaValle | s30 Perkins | s16 Stavisky |
| s44 Breslin | s47 Griffo | s52 Libous | s61 Ranzenhofer | s35 Stewart- |
| s38 Carlucci | s60 Grisanti | s45 Little | s48 Ritchie | Cousins |
| s50 DeFrancisco | s06 Hannon | s05 Marcellino | s33 Rivera | s46 Tkaczyk |
| s32 Diaz | s36 Hassell- | s43 Marchione | s56 Robach | s53 Valesky |
| s18 Dilan | Thompson | s07 Martins | s19 Sampson | s57 Young |
| s31 Espaillet | s27 Hoylman | s62 Maziarz | s10 Sanders | s03 Zeldin |
| s49 Farley | s63 Kennedy | s25 Montgomery | s23 Savino | s08 |
| s17 Felder | s34 Klein | s54 Nozzolio | s29 Serrano | s20 |

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 | a147 DiPietro | a076 Kellner | a132 Palmesano | a099 Skoufis |
| a092 Abinanti | a115 Duprey | a040 Kim | a002 Palumbo | a022 Solages |
| a084 Arroyo | a004 Englebright | a131 Kolb | a088 Paulin | a114 Stec |
| a035 Aubry | a109 Faby | a105 Lalor | a141 Peoples- | a110 Steck |
| a120 Barclay | a071 Farrell | a013 Lavine | Stokes | a127 Stirpe |
| a106 Barrett | a126 Finch | a050 Lentol | a058 Ferry | a011 Sweeney |
| a082 Benedetto | a008 Fitzpatrick | a125 Lifton | a086 Pichardo | a112 Tediaco |
| a117 Blankenbush | a124 Friend | a102 Lopez, P. | a089 Pretlow | a101 Tenney |
| a062 Borelli | a095 Galef | a123 Lupardo | a073 Quart | a001 Thiele |
| a026 Braunstein | a137 Gantt | a010 Lupinacci | a019 Ra | a061 Titone |
| a044 Brennan | a007 Garbarino | a121 Magee | a012 Raia | a031 Titus |
| a119 Brindisi | a148 Giglio | a129 Magnarelli | a006 Ramos | a146 Walter |
| a138 Bronson | a080 Gjonaj | a064 Malliotakis | a078 Rivera | a041 Weinstein |
| a046 Brook-Krasny | a066 Glick | a030 Markey | a128 Roberts | a020 Weisenberg |
| a093 Buchwald | a023 Goldfeder | a090 Mayer | a056 Robinson | a024 Weprin |
| a118 Butler | a150 Goodell | a108 McDonald | a068 Rodriguez | a070 Wright |
| a103 Cahill | a075 Gottfried | a014 McDonough | a072 Rosa | a096 Zebrowski |
| a043 Camara | a005 Graf | a017 McKeVitt | a067 Rosenthal | a054 |
| a145 Ceretto | a100 Gunther | a107 McLaughlin | a025 Rozic | a055 |
| a033 Clark | a139 Hawley | a038 Miller | a116 Russell | a059 |
| a047 Colton | a083 Heastie | a052 Millman | a149 Ryan | a060 |
| a032 Cook | a003 Hennessey | a015 Montesano | a009 Saladino | a077 |
| a144 Corwin | a028 Hevesi | a136 Morelle | a111 Santabarbara | a079 |
| a085 Crespo | a048 Hikind | a057 Mosley | a029 Scarborough | a098 |
| a122 Crouch | a018 Hooper | a039 Moya | a016 Schimel | a113 |
| a021 Curran | a042 Jacobs | a133 Nojay | a140 Schimminger | a134 |
| a063 Cusick | a097 Jaffee | a037 Nolan | a087 Sepulveda | a143 |
| a045 Cymbrowitz | a135 Johns | a130 Oaks | a065 Silver | |
| a053 Davila | a094 Katz | a069 O'Donnell | a027 Simanowitz | |
| a034 DenDekker | a074 Kavanagh | a051 Ortiz | a036 Simotas | |
| a081 Dinowitz | a142 Kearns | a091 Otis | a104 Skartados | |

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).

1 Section 1. Short title. This act shall be known and may be cited as
2 the "northern New York power proceeds allocation act".

3 § 2. The economic development law is amended by adding a new article
4 7-A to read as follows:

5 ARTICLE 7-A

6 NORTHERN NEW YORK POWER PROCEEDS ALLOCATION ACT

7 Section 197-a. Definitions.

8 197-b. The northern New York power proceeds allocation board.

9 197-c. General powers and duties of the board.

10 § 197-a. Definitions. For the purposes of this article, the following
11 terms shall have the following meanings:

12 1. "Authority" is the power authority of the state of New York.

13 2. "Authority-TMED contract" refers to a certain contract between the
14 authority and the town of Massena electric department, entitled "Agree-
15 ment Governing the Sale of St. Lawrence-FDR Project Power and Energy to
16 the Town of Massena Electric Department for Economic Development
17 Purposes," executed and dated by the authority on October eighteenth,
18 two thousand twelve, and the associated authority service tariff issued
19 and effective August twenty-first, two thousand twelve.

20 3. "Board" is the northern New York power proceeds allocation board
21 created by this article.

22 4. "Benefits" or "fund benefits" are payments to eligible applicants
23 selected by the authority for the purpose of funding eligible projects
24 with monies derived from net earnings that have been deposited into the
25 northern New York economic development fund by the authority in accord-
26 ance with subdivision twenty-four of section one thousand five of the
27 public authorities law.

1 5. "Eligible applicant" means a private business, including a not-for-
2 profit corporation.

3 6. "Eligible projects" are economic development projects that are or
4 would be physically located within the state of New York in St. Lawrence
5 county that will support the growth of business in St. Lawrence county
6 and thereby lead to the creation or maintenance of jobs and tax revenues
7 for the state and local governments. Eligible projects may include capi-
8 tal investments in buildings, equipment, and associated infrastructure
9 (collectively, "infrastructure") owned by an eligible applicant for fund
10 benefits; transportation projects under state or federally approved
11 plans; the acquisition of land needed for infrastructure; research and
12 development where the results of such research and development will
13 directly benefit New York state; support for tourism and marketing and
14 advertising efforts for St. Lawrence county tourism and business; and
15 energy-related projects. Eligible projects do not include, and fund
16 benefits may not be used for, public interest advertising or advocacy;
17 lobbying; the support or opposition of any candidate for public office;
18 the support or opposition to any public issue; legal fees related to
19 litigation of any kind; expenses related to administrative proceedings
20 before state or local agencies; or retail businesses as defined by the
21 board, including without limitation, sports venues, gaming and gambling
22 or entertainment-related establishments, residential properties, or
23 places of overnight accommodation.

24 7. "Energy-related projects, programs and services" shall have the
25 same meaning as such term is defined in subparagraph two of paragraph
26 (b) of subdivision seventeen of section one thousand five of the public
27 authorities law.

1 8. "Net earnings" is the aggregate excess of revenues received by the
2 authority from the sale of energy associated with St. Lawrence county
3 economic development power sold by the authority in the wholesale energy
4 market over what revenues would have been received had such energy been
5 sold on a firm basis under the terms of the authority-TMED contract.

6 9. "Northern New York economic development fund" or "fund" is a fund
7 of the authority into which net earnings are deposited by the authority
8 in accordance with subdivision twenty-four of section one thousand five
9 of the public authorities law and from which allocations of fund bene-
10 fits to eligible projects may be made by the authority.

11 10. "St. Lawrence county economic development power" means firm hydro-
12 electric energy produced by the authority's St. Lawrence power project
13 that the authority has made available for allocation and sale to the
14 town of Massena electric department for resale and sub-allocation to
15 qualified end users pursuant to the authority-TMED contract.

16 § 197-b. The northern New York power proceeds allocation board. 1.
17 There is hereby created the northern New York power proceeds allocation
18 board, which shall possess the powers and duties herein specified. The
19 board shall consist of five members who shall be appointed by the gover-
20 nor as follows: one of whom shall be appointed upon the recommendation
21 of the temporary president of the senate and reside within St. Lawrence
22 county, one of whom shall be appointed upon the recommendation of the
23 speaker of the assembly and reside within St. Lawrence county, and at
24 least one additional member who shall reside within St. Lawrence coun-
25 ty. The governor shall designate a chair from amongst the board's
26 members.

1 2. Each member shall serve a term of five years or until a successor
2 shall have been named and qualified. Members may be reappointed to
3 successive terms.

4 3. Notwithstanding any other provision of law to the contrary, three
5 members shall constitute a quorum for the purposes of organizing the
6 board and conducting the business thereof. No action of the board may be
7 taken except upon an affirmative vote of at least three-fifths of the
8 full board membership at any meeting at which at least three members are
9 present or participating by videoconferencing. Videoconferencing may be
10 used for attendance and participation by members of the board. If video-
11 conferencing is used, the board shall provide an opportunity for the
12 public to attend, listen and observe at any site at which a member
13 participates. The public notice for the meeting shall identify, if prac-
14 ticable, all locations where a member will participate in the meeting by
15 videoconference and shall state that the public has the right to attend
16 the meeting at any such location.

17 4. Members of the board, except those that are employees or officers
18 of the state, its authorities, or agencies, shall not receive a salary
19 or other compensation, but shall be allowed the necessary and actual
20 expenses incurred in the performance of duties under this article.

21 § 197-c. General powers and duties of the board. 1. The board shall
22 establish written procedures relating to the activities of the board.
23 The board shall also establish procedures through written policies or
24 standards for reviewing applications for fund benefits and which shall
25 provide for a review of applications for fund benefits no less frequent-
26 ly than twice each year. The board shall not make any recommendations
27 for an allocation of fund benefits prior to establishing the procedures
28 provided for in this subdivision.

1 2. The board, or a member designated by the board, shall receive all
2 applications from, or on behalf of, eligible applicants for fund bene-
3 fits. Applications shall be in a form and contain such information, data
4 and exhibits as the board may prescribe and to which the authority has
5 consented.

6 3. The board may request from the authority an analysis of any appli-
7 cation for fund benefits along with any recommendations, and any such
8 additional information and assistance as is reasonably necessary for the
9 board to perform its duties.

10 4. The board shall review applications submitted for fund benefits.
11 The board shall make an initial determination of whether the application
12 is made by an eligible applicant and proposes an eligible project. In
13 the case of an application by an eligible applicant that proposes an
14 eligible project, the board shall review the application using the
15 following criteria:

16 (i) whether the eligible project would occur in the absence of an
17 award of fund benefits;

18 (ii) the extent to which an award of fund benefits will result in new
19 capital investment in the state by the eligible applicant and the extent
20 of such investment;

21 (iii) other assistance the eligible applicant may receive to support
22 the eligible project;

23 (iv) the type and cost of buildings, equipment and facilities to be
24 constructed, enlarged or installed if the eligible applicant were to
25 receive an award of fund benefits;

26 (v) the eligible applicant's payroll, salaries, benefits and number of
27 jobs at the eligible project for which an award of fund benefits is
28 requested;

1 (vi) the number of jobs that will be created or retained within St.
2 Lawrence county and any other parts of the state in relation to the
3 requested award of fund benefits, and the extent to which the eligible
4 applicant will agree to commit to creating or retaining such jobs as a
5 condition to receiving an award of fund benefits;

6 (vii) whether the eligible applicant is at risk of closing or curtail-
7 ing facilities or operations in St. Lawrence county and other parts of
8 the state, relocating facilities or operations out of St. Lawrence
9 county and other parts of the state, or losing a significant number of
10 jobs in St. Lawrence county and other parts of the state, in the
11 absence of an award of fund benefits;

12 (viii) the significance of the eligible project that would receive an
13 award of fund benefits to the economy of the area in which such eligible
14 project is located; and

15 (ix) for new, expanded and/or rehabilitated facilities, the extent to
16 which the eligible applicant will commit to implement or otherwise make
17 tangible investments in energy efficiency measures as a condition to
18 receiving an award of fund benefits.

19 In addition, the board shall consider the extent to which an award of
20 fund benefits would be consistent with the strategies and priorities of
21 any regional economic development council having responsibility for the
22 region in which the eligible project would be located. The board is also
23 authorized to solicit the views of organizations that have an interest
24 in economic development in St. Lawrence county regarding such matters as
25 proposed funding strategies and priorities, and applications for fund
26 benefits.

27 5. The board shall issue a written statement of its findings and
28 recommendations for each application reviewed.

1 6. The board may recommend to the authority the allocation of fund
2 benefits to eligible applicants for eligible projects which the board
3 finds are consistent with the applicable criteria in subdivision four of
4 this section. The board may include within its recommendations recom-
5 mended terms and conditions, including, but not limited to, reasonable
6 provision for the allocation of fund benefits over time as the eligible
7 applicant achieves milestones towards project completion, the partial or
8 complete withdrawal or return of fund benefits where the recipient has
9 failed to achieve or maintain mutually agreed upon commitments, or such
10 other terms and conditions as the board deems advisable.

11 7. A recommendation by the board that an eligible applicant receive an
12 award of fund benefits shall be a prerequisite to an award of fund bene-
13 fits by the authority. The authority shall award fund benefits to an
14 applicant upon a recommendation of the board; provided, however, that
15 upon a showing of good cause, the authority shall have discretion as to
16 whether to adopt the board's recommendation, or to award benefits in a
17 different amount than recommended by the board. In addition, the author-
18 ity shall be authorized to establish the terms and conditions that will
19 apply to any award of fund benefits.

20 8. Allocations of fund benefits shall only be made on the basis of net
21 earnings that have been deposited in the northern New York economic
22 development fund. No award of fund benefits shall encumber future net
23 earnings or net earnings that have been received but not deposited in
24 the northern New York economic development fund.

25 9. Upon making an allocation of fund benefits, the authority shall be
26 authorized to enter into an agreement with the eligible applicant which
27 provides the terms and conditions that the authority determines will be

1 applicable to the award of fund benefits taking into account the recom-
2 mendations made by the board.

3 § 3. Section 1005 of the public authorities law is amended by adding a
4 new subdivision 24 to read as follows:

5 24. (a) For purposes of this subdivision, the terms "authority-TMED
6 contract", "eligible project", "net earnings", "northern New York power
7 proceeds allocation board" and "St. Lawrence county economic development
8 power" shall have the meanings ascribed to such terms in article seven-A
9 of the economic development law.

10 (b) The authority shall be authorized to cooperate with the northern
11 New York power proceeds allocation board, and provide such board with
12 such information and assistance, including reasonable staff services,
13 accounting, clerical and secretarial assistance, office space, and
14 equipment, as the board reasonably requests in order to fulfill its
15 duties under article seven-A of the economic development law.

16 (c) The authority shall establish an account to be known as the north-
17 ern New York economic development fund, which shall consist solely of
18 net earnings. The authority, as determined to be feasible and advisable
19 by the trustees, shall deposit net earnings into the fund no less than
20 quarterly, provided, however, that the amount of St. Lawrence county
21 economic development power that may be used by the authority to generate
22 net earnings shall not exceed the lesser of twenty megawatts or the
23 amount of St. Lawrence county economic development power that has not
24 been allocated by the authority under the authority-TMED contract for
25 sub-allocations, and provided further that beginning five years from the
26 effective date of this subdivision, the amount of St. Lawrence county
27 economic development power that may be used by the authority to generate
28 net earnings shall not exceed the lesser of ten megawatts or the amount

1 of St. Lawrence county economic development power that has not been
2 allocated by the authority under the authority-TMED contract for sub-al-
3 locations. At least fifteen percent of net earnings paid into the fund
4 shall be dedicated to eligible projects which are energy-related
5 projects, programs and services as such term is defined in subparagraph
6 two of paragraph (b) of subdivision seventeen of this section. In addi-
7 tion to funding eligible projects, the authority may use northern New
8 York economic development fund monies to cover reasonable costs and
9 expenses of the authority related to the management and administration
10 of the northern New York power proceeds allocation program created by
11 article seven-A of the economic development law.

12 (d) The authority is hereby authorized to establish processes for
13 application review and allocation of fund benefits, and to promulgate
14 such rules and regulations as it deems necessary to fulfill the purposes
15 of this subdivision and the duties assigned to it under article seven-A
16 of the economic development law.

17 (e) The authority shall include in the annual report prepared pursuant
18 to subdivision eighteen of this section, an accounting for the subject
19 year that provides the amount of St. Lawrence county economic develop-
20 ment power sold into the wholesale market by the authority, and the net
21 earnings paid into the northern New York economic development fund.

22 § 4. This act shall take effect immediately.