

# PROGRAM BILL # 40

S. \_\_\_\_\_  
Senate  
\_\_\_\_\_

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\***

(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:

## IN SENATE

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 Renzenhofer	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 Espallat	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 Fahy	a105 Lalor	a141 Peoples-	a110 Steck
a120 Barclay	a071 Farrell	a013 Lavina	Stokes	a127 Stirpe
a106 Barrett	a126 Finch	a050 Lentol	a058 Perry	a011 Sweeney
a082 Benedetto	a008 Fitzpatrick	a125 Lifton	a086 Pichardo	a112 Tedisco
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 Magparelli	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 Hennessy	a015 Montesano	a009 Saladino	a077
a144 Corwin	a028 Hevesi	a136 Morelle	a111 Santabarbara	a079
a085 Crespo	a048 Hkind	a057 Mosley	a029 Scarborough	a098
a122 Crouch	a018 Hooper	a039 Moya	a016 Schimmel	a113
a021 Curran	a042 Jacobs	a133 Nojay	a140 Schimlinger	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; and energy-related projects. Eligible  
14 projects do not include, and fund benefits may not be used for, public  
15 interest advertising or advocacy; lobbying; the support or opposition of  
16 any candidate for public office; the support or opposition to any public  
17 issue; legal fees related to litigation of any kind; expenses related to  
18 administrative proceedings before state or local agencies; or retail  
19 businesses as defined by the board, including without limitation, sports  
20 venues, gaming and gambling or entertainment-related establishments,  
21 residential properties, or places of overnight accommodation.

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

26 8. "Net earnings" is the aggregate excess of revenues received by the  
27 authority from the sale of energy associated with St. Lawrence county  
28 economic development power sold by the authority in the wholesale energy

1 market over what revenues would have been received had such energy been  
2 sold on a firm basis under the terms of the authority-TMED contract.

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

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

13 § 197-b. The northern New York power proceeds allocation board. 1.  
14 There is hereby created the northern New York power proceeds allocation  
15 board, which shall possess the powers and duties herein specified. The  
16 board shall consist of five members who shall be appointed by the gover-  
17 nor as follows: one of whom shall be appointed upon the recommendation  
18 of the temporary president of the senate and reside within St. Lawrence  
19 county, one of whom shall be appointed upon the recommendation of the  
20 speaker of the assembly and reside within St. Lawrence county, and at  
21 least one additional member who shall reside within St. Lawrence coun-  
22 ty. The governor shall designate a chair from amongst the board's  
23 members.

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

27 3. Notwithstanding any other provision of law to the contrary, three  
28 members shall constitute a quorum for the purposes of organizing the

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

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

16 § 197-c. General powers and duties of the board. 1. The board shall  
17 establish written procedures relating to the activities of the board.  
18 The board shall also establish procedures through written policies or  
19 standards for reviewing applications for fund benefits and which shall  
20 provide for a review of applications for fund benefits no less frequent-  
21 ly than twice each year. The board shall not make any recommendations  
22 for an allocation of fund benefits prior to establishing the procedures  
23 provided for in this subdivision.

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

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

5 4. The board shall review applications submitted for fund benefits.  
6 The board shall make an initial determination of whether the application  
7 is made by an eligible applicant and proposes an eligible project. In  
8 the case of an application by an eligible applicant that proposes an  
9 eligible project, the board shall review the application using the  
10 following criteria:

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

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

16 (iii) other assistance the eligible applicant may receive to support  
17 the eligible project;

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

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

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

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

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

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

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

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

24 6. The board may recommend to the authority the allocation of fund  
25 benefits to eligible applicants for eligible projects which the board  
26 finds are consistent with the applicable criteria in subdivision four of  
27 this section. The board may include within its recommendations recom-  
28 mended terms and conditions, including, but not limited to, reasonable

1 provision for the allocation of fund benefits over time as the eligible  
2 applicant achieves milestones towards project completion, the partial or  
3 complete withdrawal or return of fund benefits where the recipient has  
4 failed to achieve or maintain mutually agreed upon commitments, or such  
5 other terms and conditions as the board deems advisable.

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

15 8. Allocations of fund benefits shall only be made on the basis of net  
16 earnings that have been deposited in the northern New York economic  
17 development fund. No award of fund benefits shall encumber future net  
18 earnings or net earnings that have been received but not deposited in  
19 the northern New York economic development fund.

20 9. Upon making an allocation of fund benefits, the authority shall be  
21 authorized to enter into an agreement with the eligible applicant which  
22 provides the terms and conditions that the authority determines will be  
23 applicable to the award of fund benefits taking into account the recom-  
24 mendations made by the board.

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

27 24. (a) For purposes of this subdivision, the terms "authority-TMED  
28 contract", "eligible project", "net earnings", "northern New York power

1 proceeds allocation board" and "St. Lawrence county economic development  
2 power" shall have the meanings ascribed to such terms in article seven-A  
3 of the economic development law.

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

10 (c) The authority shall establish an account to be known as the north-  
11 ern New York economic development fund, which shall consist solely of  
12 net earnings. The authority, as determined to be feasible and advisable  
13 by the trustees, shall deposit net earnings into the fund no less than  
14 quarterly, provided, however, that the amount of St. Lawrence county  
15 economic development power that may be used by the authority to generate  
16 net earnings shall not exceed the lesser of twenty megawatts or the  
17 amount of St. Lawrence county economic development power that has not  
18 been allocated by the authority under the authority-TMED contract for  
19 sub-allocations, and provided further that beginning five years from the  
20 effective date of this subdivision, 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 ten megawatts or the amount  
23 of St. Lawrence county economic development power that has not been  
24 allocated by the authority under the authority-TMED contract for sub-al-  
25 locations. At least fifteen percent of net earnings paid into the fund  
26 shall be dedicated to eligible projects which are energy-related  
27 projects, programs and services as such term is defined in subparagraph  
28 two of paragraph (b) of subdivision seventeen of this section. In addi-

1 tion to funding eligible projects, the authority may use northern New  
2 York economic development fund monies to cover reasonable costs and  
3 expenses of the authority related to the management and administration  
4 of the northern New York power proceeds allocation program created by  
5 article seven-A of the economic development law.

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

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

16 § 4. This act shall take effect immediately.