

5997--A

2013-2014 Regular Sessions

I N S E N A T E

November 27, 2013

Introduced by Sens. GIPSON, DILAN, MONTGOMERY, PARKER, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the New York state urban development corporation act, in relation to enacting the HIRE NY act; and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "hire individuals in the real economy New York (HIRE NY) act".
2
3 S 2. Section 1 of chapter 174 of the laws of 1968, constituting the
4 New York state urban development corporation act, is amended by adding a
5 new section 16-w to read as follows:
6 S 16-W. THE HIRE NEW YORK PROGRAM. 1. LEGISLATIVE INTENT. THE LEGISLATURE
7 HEREBY FINDS THAT MICRO-BUSINESSES ARE THE ENGINES OF OUR ECONOMY
8 AND ARE VITAL TO THE REVITALIZATION OF COMMUNITIES AND NEIGHBORHOODS
9 THROUGHOUT THE STATE. THE LEGISLATURE FURTHER FINDS THAT CURRENT LAW
10 FAILS TO MOTIVATE PEOPLE TO START OR EXPAND BUSINESSES. THE LEGISLATURE
11 FINDS THAT IT IS IMPORTANT TO SPUR START-UP MICRO-BUSINESSES THAT HAVE
12 THE POTENTIAL TO BECOME THE JOB ENGINES FOR TOMORROW'S ECONOMY. THE
13 LEGISLATURE FURTHER FINDS INVESTMENTS IN ECONOMIC DEVELOPMENT FAIL TO
14 PROVIDE ANY FUNDING TO MICRO-BUSINESSES. THE LEGISLATURE FURTHER FINDS
15 THAT SMALL MICRO-BUSINESSES WITH THE PROPER INCENTIVES ARE POISED TO
16 PROVIDE SIGNIFICANT LOCAL JOB CREATION ACROSS THE STATE. THE LEGISLATURE
17 FURTHER FINDS THAT TAX CREDITS ARE NOT AN EFFECTIVE JOB CREATION INCENTIVE
18 FOR MICRO-BUSINESSES BECAUSE MANY OF THESE BUSINESSES LACK THE
19 INCOME THAT MAKES A TAX CREDIT MEANINGFUL. THE LEGISLATURE FURTHER FINDS
20 THAT CREATION OF A STATEWIDE HIRE NEW YORK FUND WILL PROVIDE THE NEEDED

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 CAPITAL FOR THE BUSINESSES OF TOMORROW TO GROW AND EMPLOY MORE NEW YORK-
2 ERS.

3 2. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL
4 HAVE THE MEANINGS INDICATED:

5 (A) "FUND" MEANS THE HIRE NEW YORK FUND AS ESTABLISHED BY SUBDIVISION
6 THREE OF THIS SECTION.

7 (B) "LOCAL JOB" MEANS A JOB FILLED BY AN EMPLOYEE THAT RESIDES WITHIN
8 THE SAME OR AN ADJACENT COUNTY AS THE APPLICANT'S PLACE OF BUSINESS.
9 FOR THE PURPOSES OF THIS PARAGRAPH, FOR THE CITY OF NEW YORK, THE ADJA-
10 CENT COUNTIES SHALL BE DEEMED TO BE NASSAU, SUFFOLK, ROCKLAND AND WEST-
11 CHESTER.

12 (C) "MICRO-BUSINESS" MEANS A BUSINESS WITH FEWER THAN FIVE EMPLOYEES.
13 A BUSINESS THAT IS OWNED IN ANY PORTION BY ANOTHER BUSINESS ENTITY SHALL
14 NOT QUALIFY AS A "MICRO-BUSINESS."

15 (D) "MICRO-BUSINESS QUALIFYING NEW HIRE" MEANS EITHER A NEW FULL-TIME
16 WAGE-PAYING JOB OR THE EQUIVALENT OF A FULL-TIME WAGE-PAYING JOB REQUIR-
17 ING AT LEAST THIRTY-FIVE HOURS PER WEEK AND IS FILLED FOR ONE YEAR. A
18 MICRO-BUSINESS QUALIFYING NEW HIRE SHALL NOT BE:

19 (I) AN EMPLOYEE WHO HAS BEEN TRANSFERRED FROM EMPLOYMENT WITH ANOTHER
20 BUSINESS LOCATED IN THIS STATE, THROUGH AN ACQUISITION, MERGER, CONSOL-
21 IDATION OR OTHER REORGANIZATION OF BUSINESSES OR THE ACQUISITION OF
22 ASSETS OF ANOTHER BUSINESS, OR

23 (II) AN EMPLOYEE WHO HAS BEEN TRANSFERRED FROM EMPLOYMENT WITH A
24 RELATED PERSON OR BUSINESS ENTITY, OR

25 (III) AN EMPLOYEE WHO IS HIRED TO FILL A CURRENTLY EXISTING POSITION
26 THAT RESULTS FROM A TERMINATION OR DEPARTURE OF A PREVIOUS EMPLOYEE, OR

27 (IV) A TEMPORARY OR PART-TIME EMPLOYEE.

28 3. ESTABLISHMENT AND PURPOSES. THE CORPORATION SHALL ESTABLISH A FUND
29 TO BE KNOWN AS THE "HIRE NEW YORK FUND" AND SHALL PAY INTO SUCH FUND ANY
30 MONIES MADE AVAILABLE TO THE CORPORATION FOR SUCH FUND FROM ANY SOURCE.
31 THE FUND SHALL CONSIST OF SUCH AMOUNTS AS MAY BE APPROPRIATED, ANY
32 REPAYMENT OF THE PRINCIPAL AMOUNT OF ANY LOAN MADE FROM THE FUND, AND
33 ANY INTEREST EARNED BY THE CORPORATION FROM THE INVESTMENT OF MONEYS OF
34 THE FUND. THE CORPORATION IS AUTHORIZED TO ACCEPT, AS AGENT OF THE
35 STATE, ANY GIFT, GRANT, DEVISE OR BEQUEST, WHETHER CONDITIONAL OR UNCON-
36 DITIONAL, INCLUDING BUT NOT LIMITED TO FEDERAL GRANTS, AND TO USE MONIES
37 MADE AVAILABLE FOR THE PROGRAM FROM ANY PUBLIC OR PRIVATE SOURCE, FOR
38 THE PURPOSE OF IMPLEMENTING THE PROGRAM. THE CORPORATION SHALL BE ENTI-
39 TLED TO RECOVER FROM THE MONIES MADE AVAILABLE FOR THE PROGRAM ITS OWN
40 NECESSARY AND DOCUMENTED COSTS INCURRED IN ADMINISTERING THE PROGRAM AND
41 EVALUATING THE EFFECTIVENESS OF THE PROGRAM; PROVIDED, HOWEVER, THE SUM
42 THAT MAY BE RECOVERED FOR THE CORPORATION'S ADMINISTRATIVE COSTS SHALL
43 NOT EXCEED FIVE PERCENT OF THE MONIES MADE AVAILABLE FOR THE PROGRAM,
44 AND THE SUM THAT MAY BE RECOVERED FOR THE CORPORATION'S EVALUATION COSTS
45 SHALL NOT EXCEED THREE PERCENT OF THE MONIES MADE AVAILABLE FOR THE
46 PROGRAM. THE MONIES HELD IN OR CREDITED TO THE FUND SHALL BE EXPENDED
47 SOLELY FOR THE PURPOSES SET FORTH IN THIS SECTION. THE CORPORATION SHALL
48 NOT COMMINGLE THE MONIES OF SUCH FUND WITH ANY OTHER MONIES OF THE
49 CORPORATION OR ANY MONIES HELD IN TRUST BY THE CORPORATION. THE CORPO-
50 RATION IS AUTHORIZED, WITHIN AVAILABLE APPROPRIATIONS AND LOAN REPAY-
51 MENTS TO PROVIDE ZERO INTEREST LOANS TO MICRO-BUSINESSES TO HIRE NEW
52 EMPLOYEES.

53 4. APPLICATIONS FOR LOAN. AN APPLICATION FOR A LOAN SHALL BE SUBMITTED
54 IN SUCH FORM AND IN ACCORDANCE WITH SUCH PROCEDURES AS THE CORPORATION
55 SHALL ESTABLISH. APPLICATIONS SUBMITTED TO THE FUND MAY INCLUDE BUT
56 SHALL NOT BE LIMITED TO:

1 (A) A BUSINESS PLAN;

2 (B) A JOB DESCRIPTION AND REQUIRED EMPLOYEE QUALIFICATIONS;

3 (C) A GUARANTOR;

4 (D) THE GUARANTOR'S NAME AND ADDRESS, AUDITED FINANCIAL STATEMENTS OR
5 TAX RECORDS FOR THE PREVIOUS THREE YEARS, AND OTHER FINANCIAL DOCUMENTA-
6 TION THE CORPORATION SHALL DEEM APPROPRIATE;

7 (E) A DESCRIPTION OF HOW THE APPLICANT ANTICIPATES THE BUSINESS WILL
8 GROW AS A RESULT OF THE ADDITIONAL WORKFORCE;

9 (F) A LIST OF CURRENT EMPLOYEES AND JOB DESCRIPTION FOR EACH EMPLOYEE;
10 AND

11 (G) ANY ADDITIONAL INFORMATION THAT THE CORPORATION SHALL REQUIRE.

12 ALL INFORMATION COLLECTED BY THE CORPORATION SHALL BE CONFIDENTIAL AND
13 SHALL BE USED EXCLUSIVELY FOR PURPOSES OF THIS SECTION.

14 5. APPLICATION FEE. EACH APPLICATION MUST BE ACCOMPANIED BY A MINIMUM
15 ONE HUNDRED-DOLLAR APPLICATION FEE. THIS APPLICATION FEE IS TO BE
16 APPLIED TO THE CORPORATION'S ADMINISTRATIVE EXPENSES. APPLICATION FEES
17 ARE TO BE REFUNDED TO ALL SUCCESSFUL APPLICANTS WITHIN THIRTY DAYS OF
18 RECEIPT OF THE FINAL PAYMENT OF PRINCIPAL. THE PURPOSE OF THIS APPLICA-
19 TION FEE IS TO ENSURE THAT APPLICATIONS ARE MADE IN GOOD FAITH AND TO
20 AVOID WASTED ADMINISTRATIVE FEES THAT OCCUR FROM BAD FAITH APPLICATIONS.
21 THE CORPORATION MAY REFUND ALL APPLICATION FEES, EVEN IF APPLICATION IS
22 DENIED WHEN IT BELIEVED THAT THE APPLICANT IN GOOD FAITH BELIEVED IT WAS
23 ENTITLED TO RECEIVE A LOAN UNDER THIS SECTION.

24 6. LOAN TERMS. (A) THE CORPORATION SHALL PROVIDE FUNDS FOR EACH OF THE
25 FIRST THREE YEARS OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S EMPLOY-
26 MENT.

27 (B) IN EACH OF THOSE YEARS THE CORPORATION WILL PROVIDE NO MORE THAN
28 TWENTY PERCENT OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S ANNUAL SALA-
29 RY.

30 (C) IN EACH YEAR THE CORPORATION WILL PROVIDE NO MORE THAN TWENTY
31 THOUSAND DOLLARS PER MICRO-BUSINESS QUALIFYING NEW HIRE.

32 (D) LOAN PAYMENTS TO THE CORPORATION FROM THE BUSINESS ARE DEFERRED
33 UNTIL THREE YEARS FROM MICRO-BUSINESS QUALIFYING NEW HIRE'S START DATE.

34 (E) PRINCIPAL IS TO BE PAID TO THE CORPORATION IN MONTHLY INSTALL-
35 MENTS.

36 (F) NO INTEREST SHALL BE CHARGED ON ANY LOAN PROVIDED PURSUANT TO THIS
37 SECTION.

38 (G) THE LOAN WILL BE PAID BY THE CORPORATION IN THREE INSTALLMENTS AS
39 FOLLOWS:

40 (I) THE FIRST INSTALLMENT WILL BE PROVIDED BY THE CORPORATION NO LATER
41 THAN TEN DAYS AFTER RECEIPT OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S
42 W-2 AND PROOF OF RESIDENCE; AND

43 (II) THE PAYMENTS FOR EACH ADDITIONAL INSTALLMENT SHALL BE MADE WITHIN
44 TEN DAYS OF THE DATE OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S ANNI-
45 VERSARY OF EMPLOYMENT.

46 (H) NO FEES OR PENALTIES SHALL BE CHARGED OR COLLECTED FOR PREPAYMENT
47 OF ANY SUCH LOAN.

48 7. LOAN APPROVAL. IN AWARDING THE LOAN, THE CORPORATION SHALL SELECT
49 FROM ELIGIBLE BUSINESS APPLICANTS BASED ON THE FOLLOWING CRITERIA:

50 (A) THE LIKELIHOOD OF SUCCESS OF THE APPLICANT IN MEETING THE GOALS OF
51 ITS STRATEGIC PLAN;

52 (B) THE EXTENT OF NEED FOR LOANS AND DEVELOPMENT SERVICES WITHIN THE
53 INVESTMENT AREAS OR TARGETED POPULATIONS;

54 (C) THE CREDIT SCORE OF THE APPLICANT;

55 (D) THE CREDIT SCORE OF THE GUARANTOR;

56 (E) GOOD STANDING ON OTHER LOAN OBLIGATIONS; AND

(F) OTHER FACTORS DEEMED TO BE APPROPRIATE BY THE CORPORATION.

8. APPLICATION CRITERIA. THE CORPORATION SHALL DEVELOP AND USE A STANDARD APPLICATION FORM. IN ADDITION TO SUCH OTHER CRITERIA AS THE CORPORATION MAY ADOPT IN RULES AND REGULATIONS FOR THE CONSIDERATION OF APPLICATIONS FOR LOANS OR LOAN GUARANTEES PURSUANT TO THIS SECTION, THE CORPORATION SHALL:

(A) DETERMINE THAT THE COMPANY IS UNABLE TO OBTAIN SUFFICIENT FUNDING ON REASONABLE TERMS FROM OTHER PUBLIC OR PRIVATE SOURCES TO PERMIT THE COMPANY'S PLANNED HIRING;

(B) CONSIDER WHETHER THE LOAN OR LOAN GUARANTEE WILL RESULT IN A REASONABLE LIKELIHOOD OF SUCCESS IN MEETING THE PURPOSES FOR WHICH IT WAS SOUGHT BY THE APPLICANT COMPANY; AND

(C) ASSESS THE DEMONSTRATED NEED FOR SUCH ASSISTANCE, ESTABLISHED BY A SHOWING OF A SHORT-TERM LACK OF LIQUIDITY OF AN EXISTING SOLVENT BUSINESS.

9. USE OF LOAN. A MICRO-BUSINESS MAY UTILIZE FUNDS ONLY FOR SALARY OF A MICRO-BUSINESS QUALIFYING NEW HIRE.

10. ADVISORY COMMITTEE. THE CORPORATION MAY CREATE AN ADVISORY COMMITTEE, CONSISTING OF AT LEAST FIVE MEMBERS, TO ADVISE THE CORPORATION IN THE PROMOTION, IMPLEMENTATION AND ADMINISTRATION OF THE HIRE NEW YORK PROGRAM.

11. REPORTING REQUIREMENTS. THE CORPORATION SHALL SUBMIT A REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ON OR BEFORE THE FIRST OF OCTOBER, AND ANNUALLY THEREAFTER, DESCRIBING THE FINANCIAL AND TECHNICAL ASSISTANCE PROVIDED PURSUANT TO THIS SECTION, INCLUDING: THE NUMBER OF LOAN APPLICATIONS FILED AND ACCEPTED; THE AMOUNT AND TYPE OF ASSISTANCE PROVIDED; A DESCRIPTION OF BUSINESSES ASSISTED BY FUND MONIES; THE NUMBER OF JOBS CREATED THROUGH THE LOANS OF FUND MONIES; AND SUCH OTHER INFORMATION AS THE CORPORATION MAY DEEM APPROPRIATE.

12. RULES AND REGULATIONS. THE CORPORATION IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT THAT ARE NECESSARY TO FULFILL THE PURPOSES OF THIS SECTION. SUCH RULES AND REGULATIONS MUST BE COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

S 3. The sum of twenty million dollars (\$20,000,000), is hereby appropriated to the urban development corporation out of the moneys in the state treasury in the general fund to the credit of hire New York fund established pursuant to section 16-w of the New York state urban development corporation act.

S 4. This act shall take effect immediately.