

5598

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I N S E N A T E

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Introduced by Sens. STACHOWSKI, AUBERTINE, BRESLIN, THOMPSON, VALESKY --
read twice and ordered printed, and when printed to be committed to
the Committee on Local Government

AN ACT to amend the general municipal law, in relation to certification
and decertification of businesses as empire zone enterprises

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

1 Section 1. Subdivisions (a) and (w) of section 959 of the general
2 municipal law, as amended by section 3 of part S-1 of chapter 57 of the
3 laws of 2009, are amended and a new subdivision (a-1) is added to read
4 as follows:
5 (a) After consultation with the director of the budget, the commis-
6 sioner of labor, and the commissioner of taxation and finance, promul-
7 gate regulations, which, notwithstanding any provisions to the contrary
8 in the state administrative procedure act, may be adopted on an emergen-
9 cy basis, governing (i) criteria of eligibility for empire zone desig-
10 nation, provided, however, that such criteria be approved by the direc-
11 tor of the budget; (ii) the application process; (iii) the certification
12 by the commissioner as to the eligibility of business enterprises for
13 benefits referred to in section nine hundred sixty-six of this article,
14 which shall be governed by criteria including, but not limited to: (1)
15 whether the business enterprise, if certified, is reasonably likely to
16 create new employment or prevent a loss of employment in the zone, (2)
17 whether such new employment opportunities will be for individuals who
18 will perform a substantial part of their employment activities in the
19 zone, (3) whether certification will have the undesired effect of caus-
20 ing individuals to transfer from existing employment with another busi-
21 ness enterprise to similar employment with the business enterprise so
22 certified, and transferring existing employment from one or more other
23 municipalities, towns or villages in the state, or transferring existing
24 employment from one or more other businesses in the zone, (4) whether

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

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1 such enterprise is likely to enhance the economic climate of the zone,
2 (5) whether the commissioner of labor establishes that such business
3 enterprise, during the three years preceding the submission of an appli-
4 cation for certification, has engaged in a substantial violation or a
5 pattern of violations of laws regulating unemployment insurance, workers
6 compensation, public work, child labor, employment of minorities and
7 women, safety and health, or other laws for the protection of workers as
8 determined by final judgment of a judicial or administrative proceeding;
9 (6) whether such business meets the requirements of the cost benefit
10 analysis as established in paragraph (p) of section nine hundred fifty-
11 seven of this article, and (7) if the commissioner of labor establishes
12 that the business enterprise has been found in a criminal proceeding to
13 have violated, in the previous three years, any of the laws referred to
14 in subparagraph five of this paragraph or regulations promulgated pursu-
15 ant to such laws, the conditions of any permit issued thereunder, or
16 similar statute, regulation, order or permit condition of any other
17 government agency, foreign or domestic, such business shall not be
18 certified; provided, however, that a business enterprise that has shift-
19 ed its operations, or some portions thereof, from an area within New
20 York state not designated as an empire zone or zone equivalent area to
21 an area so designated shall not be certified to receive such benefits
22 except where such shift is entirely within a municipality and has been
23 approved by the local governing body of such municipality or in situ-
24 ations where it has been established, after a public hearing, that
25 extraordinary circumstances exist which warrant the relocation of a
26 business, in whole or part, into an empire zone or a zone equivalent
27 area from another municipality and the municipality from which the busi-
28 ness is relocating approves of such relocation; or where such shift in
29 operations is from a business incubator facility operated by a munici-
30 pality or by a public or private not-for-profit entity which provides
31 space and business support services to newly established firms; and (iv)
32 the decertification by the commissioner, upon the recommendation of the
33 commissioner of labor, so as to revoke the certification of business
34 enterprises for benefits referred to in section nine hundred sixty-six
35 of this article with respect to an empire zone or zone equivalent area
36 upon a finding that the business enterprise has committed substantial
37 violations of laws for the protection of workers including all federal,
38 state and local labor laws, rules or regulations; and (v) the decertif-
39 ication by the commissioner so as to revoke the certification of busi-
40 ness enterprises for benefits referred to in section nine hundred
41 sixty-six of this article with respect to an empire zone or zone equiv-
42 alent area upon a finding of any one of the following: (1) the business
43 enterprise made material misrepresentations of fact on its application
44 for certification or in any of its business annual reports, or the busi-
45 ness enterprise failed to disclose facts in its application for certifi-
46 cation that would constitute grounds for not issuing a certification;
47 (2) the business enterprise has failed to construct, expand, rehabili-
48 tate or operate or invest in its facility substantially in accordance
49 with the representations contained in its application for certification;
50 (3) the business enterprise has failed to create new employment or
51 prevent a loss of employment in the empire zone or zone equivalent area;
52 (4) where applicable, the business enterprise has failed to submit an
53 annual report after it has applied for zone tax benefits or program
54 assistance based on new hires or investments or failed to submit other
55 information when due; (5) the business enterprise, if first certified
56 pursuant to this article prior to the first day of August, two thousand

1 two, caused individuals to transfer from existing employment with another
2 business enterprise with similar ownership and located in New York
3 state to similar employment with the certified business enterprise or if
4 the enterprise acquired, purchased, leased, or had transferred to it
5 real property previously owned by an entity with similar ownership,
6 regardless of form of incorporation or organization; (6) the business
7 enterprise has failed to provide economic returns to the state in the
8 form of total remuneration to its employees (i.e. wages and benefits)
9 and investments in its facility greater in value to the tax benefits the
10 business enterprise used and had refunded to it; PROVIDED, HOWEVER,
11 QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE EMPIRE ZONE
12 LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY ELECT TO BE
13 REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION; PROVIDED,
14 FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE DIFFERENT
15 FEDERAL TAX IDENTIFICATION NUMBERS AND ARE SUBSIDIARIES OF A PARENT
16 BUSINESS ENTERPRISE MAY ELECT TO BE REVIEWED IN AGGREGATE BASED UPON THE
17 PARENT BUSINESS ENTERPRISE AND NOT PER SUBSIDIARY OR EMPIRE ZONE
18 LOCATION; or (7) the business enterprise has changed ownership RESULTING
19 IN THE BUSINESS ENTERPRISE HAVING A DIFFERENT FEDERAL TAX IDENTIFICATION
20 NUMBER THAN THAT WHICH THEY WERE ORIGINALLY CERTIFIED UNDER or moved its
21 operations out of the empire zone; said regulations shall provide that
22 whenever any business enterprise is decertified with respect to an
23 empire zone: (A) the [date determined to be the earliest event consti-
24 tuting grounds for revoking certification shall be the effective date of
25 decertification] EFFECTIVE DATE OF DECERTIFICATION SHALL NOT BE EARLIER
26 THAN THE FIRST DAY OF THE BUSINESS ENTITY'S TAXABLE YEAR BEGINNING ON OR
27 AFTER JANUARY FIRST, TWO THOUSAND NINE; (B) its certified single enter-
28 prise, if any, may also be decertified; and (C) the commissioner shall
29 notify the commissioner of taxation and finance that such decertif-
30 ication has occurred, and such notification should include the effective
31 date of such decertification and the zone or zone equivalent area to
32 which such decertification applies;

33 (A-1) NOTWITHSTANDING THE PROVISIONS IN PARAGRAPH (A) OF THIS SECTION,
34 A BUSINESS ENTERPRISE WHICH MEETS THE CRITERIA SET FORTH IN CLAUSE FIVE
35 OF PARAGRAPH (V) OF SUBDIVISION (A) OF THIS SECTION WILL NOT BE SUBJECT
36 TO DECERTIFICATION IF: (I) THE BUSINESS ENTERPRISE HAS PROVIDED ECONOMIC
37 RETURNS TO THE STATE IN THE FORM OF TOTAL REMUNERATION TO ITS EMPLOYEES
38 (I.E. WAGES AND BENEFITS) AND INVESTMENTS IN ITS FACILITY GREATER IN
39 VALUE TO THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED
40 TO IT; AND (II) EITHER (1) THE BUSINESS ENTERPRISE HAS PAID WAGES AND
41 BENEFITS TO ITS EMPLOYEES WHO WERE NEVER EMPLOYED WITHIN THE STATE BY A
42 RELATED PERSON TO THE QEZE AND MADE CAPITAL INVESTMENTS IN ITS FACILI-
43 TIES IN ZONE LOCATIONS, AND THE TOTAL AMOUNT OF SUCH WAGES, BENEFITS,
44 AND CAPITAL INVESTMENT IS GREATER IN VALUE THAN THE TAX BENEFITS THE
45 BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT; OR (2) THE BUSINESS
46 ENTERPRISE HAS PAID WAGES AND BENEFITS TO ITS EMPLOYEES WHO WERE NEVER
47 EMPLOYED WITHIN THE STATE BY A RELATED PERSON TO THE QEZE AND MADE CAPI-
48 TAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND SUCH WAGES,
49 BENEFITS, AND CAPITAL INVESTMENT TOTAL MORE THAN THIRTY MILLION DOLLARS.
50 FOR PURPOSES OF THIS SUBDIVISION THE TERM "RELATED PERSON" IS DEFINED IN
51 SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR
52 HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, AND SHALL INCLUDE AN
53 ENTITY WHICH WOULD HAVE QUALIFIED AS A "RELATED PERSON" TO THE QEZE IF
54 IT HAD NOT BEEN DISSOLVED, LIQUIDATED, MERGED WITH ANOTHER ENTITY, OR
55 OTHERWISE CEASED TO EXIST OR OPERATE. THE ANALYSES SET FORTH IN PARA-
56 GRAPHS (I) AND (II) OF THIS SUBDIVISION SHALL BE BASED UPON THE WAGES

1 AND BENEFITS PAID AND CAPITAL INVESTMENTS MADE FROM THE FIRST DAY OF THE
2 BUSINESS ENTERPRISE'S TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE
3 WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE
4 YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN. SUCH
5 ANALYSIS SHALL BE BASED ON A REVIEW OF THE AGGREGATE ECONOMIC RETURNS AT
6 ALL ZONE CERTIFIED LOCATIONS. THE VALUE OF THE TAX BENEFITS THE BUSINESS
7 ENTERPRISE USED AND HAD REFUNDED TO IT FOR THE ANALYSIS SET FORTH IN
8 PARAGRAPHS (I) AND (II) OF THIS SUBDIVISION WILL EQUAL THOSE TAX BENE-
9 FITS USED OR REFUNDED TO THE BUSINESS ENTERPRISE DURING ALL TAXABLE
10 YEARS FROM THE TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE WAS
11 CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR
12 BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN.

13 (w) Conduct a review during calendar year two thousand nine of all
14 business enterprises to determine whether the business enterprises
15 should be decertified pursuant to subparagraphs five and six of para-
16 graph (v) of subdivision (a) of this section and the regulations promul-
17 gated under this article. SUCH REVIEW SHOULD BE COMPLETED AND THE FIND-
18 INGS REPORTED TO THE DEPARTMENT OF TAXATION AND FINANCE BY JUNE
19 THIRTIETH, TWO THOUSAND NINE. After such review, the commissioner shall
20 issue an empire zone retention certificate to each firm that the commis-
21 sioner determines is not subject to decertification under subparagraphs
22 five and six of paragraph (v) of subdivision (a) of this section. SUCH
23 RETENTION CERTIFICATES SHALL ALSO BE ISSUED TO THE DEPARTMENT OF TAXA-
24 TION AND FINANCE. WITHIN THIRTY DAYS OF RECEIPT THE DEPARTMENT OF TAXA-
25 TION AND FINANCE SHALL PROVIDE ANY REFUNDS, TO ELIGIBLE QUALIFIED EMPIRE
26 ZONE ENTERPRISES, THAT THEY HAVE CLAIMED ON THEIR TAX FILINGS FOR WHICH
27 THEY ARE QUALIFIED TO RECEIVE. The decertification referred to in
28 subparagraph six of paragraph (v) of subdivision (a) of this section
29 shall be based upon an analysis of data contained in at least three
30 business annual reports filed by the business enterprise. If any busi-
31 ness enterprise fails the analysis described in the immediately preced-
32 ing sentence, or if the commissioner makes the finding described in
33 subparagraph five of paragraph (v) of subdivision (a) of this section,
34 the commissioner shall revoke the certification of such business enter-
35 prise pursuant to paragraph (iv) of subdivision (a) of this section and
36 as specified herein; provided, however, the commissioner may consider,
37 after consultation with the director of the budget, and in his or her
38 sole discretion, other economic, social and environmental factors when
39 evaluating the costs and benefits of a project to the state and whether
40 continued certification is warranted based on such factors. The commis-
41 sioner shall provide written notification to such business enterprise of
42 his or her determination to revoke the certification, including the
43 reasons therefor. Such notification shall state that the business enter-
44 prise may appeal the determination by sending a written notice to the
45 empire zone designation board of such appeal no later than fifteen busi-
46 ness days from the date of the commissioner's revocation notification.
47 Provided that the business enterprise appeals the commissioner's deter-
48 mination within fifteen business days of the commissioner's revocation
49 notification, the business enterprise may present a written submission
50 to the empire zone designation board no later than sixty days following
51 the date the commissioner's revocation notification was sent to the
52 business enterprise explaining why its certification should be contin-
53 ued. The empire zone designation board shall consider the explanation
54 provided by the business enterprise, but shall only reverse the determi-
55 nation to revoke the business enterprise's certification if the empire
56 zone designation board unanimously finds that there was insufficient

1 evidence presented demonstrating that the commissioner's finding, with
2 respect to subparagraph six of paragraph (v) of subdivision (a) of this
3 section, was in error, or that, with respect to subparagraph five of
4 paragraph (v) of subdivision (a) of this section, any extraordinary
5 circumstances occurred which would justify the continued certification
6 of the business enterprise.

7 S 2. This act shall take effect immediately.