S T A T E   O F   N E W   Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

June 12, 2009

Introduced by Sens. NOZZOLIO, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general municipal law and the tax law, in relation to certification and decertification of businesses as empire zone enterprises; creating a commission on regulatory reform and economic competitiveness; to repeal certain provisions of Part S-1 of chapter 57 of the laws of 2009, relating to enacting reforms to the empire zones program; relating to sales taxes; and to repeal certain provisions of the tax law relating to the carryover of certain tax credits and tax refunds of certain tax credits; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Subdivision (a) of section 959 of the general municipal law, as amended by section 3 of part S-1 of chapter 57 of the laws of 2009, is amended and a new subdivision (a-1) is added to read as follows:

(a) After consultation with the director of the budget, the commissioner of labor, and the commissioner of taxation and finance, promulgate regulations, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, governing (i) criteria of eligibility for empire zone designation, provided, however, that such criteria be approved by the director of the budget; (ii) the application process; (iii) the certification by the commissioner as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article, which shall be governed by criteria including, but not limited to: (1) whether the business enterprise, if certified, is reasonably likely to create new employment or prevent a loss of employment in the zone, (2) whether such new employment opportunities will be for individuals who will perform a substantial part of their employment activities in the

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

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zone, (3) whether certification will have the undesired effect of causing individuals to transfer from existing employment with another business enterprise to similar employment with the business enterprise so certified, and transferring existing employment from one or more other municipalities, towns or villages in the state, or transferring existing employment from one or more other businesses in the zone, (4) whether such enterprise is likely to enhance the economic climate of the zone, (5) whether the commissioner of labor establishes that such business enterprise, during the three years preceding the submission of an application for certification, has engaged in a substantial violation or a pattern of violations of laws regulating unemployment insurance, workers compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding; (6) whether such business meets the requirements of the cost benefit analysis as established in paragraph (p) of section nine hundred fifty-seven of this article, and (7) if the commissioner of labor establishes that the business enterprise has been found in a criminal proceeding to have violated, in the previous three years, any of the laws referred to in subparagraph five of this paragraph or regulations promulgated pursuant to such laws, the conditions of any permit issued thereunder, or similar statute, regulation, order or permit condition of any other government agency, foreign or domestic, such business shall not be certified; provided, however, that a business enterprise that has shifted its operations, or some portions thereof, from an area within New York state not designated as an empire zone or zone equivalent area to an area so designated shall not be certified to receive such benefits except where such shift is entirely within a municipality and has been approved by the local governing body of such municipality or in situations where it has been established, after a public hearing, that extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an empire zone or a zone equivalent area from another municipality and the municipality from which the business is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms; and (iv) the decertification by the commissioner, upon the recommendation of the commissioner of labor, so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding that the business enterprise has committed substantial violations of laws for the protection of workers including all federal, state and local labor laws, rules or regulations; and (v) the decertification by the commissioner so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding of any one of the following: (1) the business enterprise made material misrepresentations of fact on its application for certification or in any of its business annual reports, or the business enterprise failed to disclose facts in its application for certification that would constitute grounds for not issuing a certification; (2) the business enterprise has failed to construct, expand, rehabilitate or operate or invest in its facility substantially in accordance with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the empire zone or zone equivalent area; (4) where applicable, the business enterprise has failed to submit an annual report after it has applied for zone tax benefits or program assistance based on new hires or investments or failed to submit other information when due; (5) the business enterprise, if first certified pursuant to this article prior to the first day of August, two thousand two, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (6) the business enterprise has failed to provide economic returns to the state in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; PROVIDED, HOWEVER, QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE EMPIRE ZONE LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY ELECT TO BE REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION; PROVIDED, FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE DIFFERENT FEDERAL TAX IDENTIFICATION NUMBERS AND ARE SUBSIDIARIES OF A PARENT BUSINESS ENTERPRISE MAY ELECT TO BE REVIEWED IN AGGREGATE BASED UPON THE PARENT BUSINESS ENTERPRISE AND NOT PER SUBSIDIARY OR EMPIRE ZONE LOCATION; or (7) the business enterprise has changed ownership RESULTING IN THE BUSINESS ENTERPRISE HAVING A DIFFERENT FEDERAL TAX IDENTIFICATION NUMBER THAN THAT WHICH THEY WERE ORIGINALLY CERTIFIED UNDER or moved its operations out of the empire zone; said regulations shall provide that whenever any business enterprise is decertified with respect to an empire zone: (A) the [date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification] EFFECTIVE DATE OF DECERTIFICATION SHALL NOT BE EARLIER THAN THE FIRST DAY OF THE BUSINESS ENTITY'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN; (B) its certified single enterprise, if any, may also be decertified; and (C) the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred, and such notification should include the effective date of such decertification and the zone or zone equivalent area to which such decertification applies;

(A-1) NOTWITHSTANDING THE PROVISIONS IN PARAGRAPH (A) OF THIS SECTION, A BUSINESS ENTERPRISE WHICH MEETS THE CRITERIA SET FORTH IN CLAUSE FIVE OF PARAGRAPH (V) OF SUBDIVISION (A) OF THIS SECTION WILL NOT BE SUBJECT TO DECERTIFICATION IF: (I) THE BUSINESS ENTERPRISE HAS PROVIDED ECONOMIC RETURNS TO THE STATE IN THE FORM OF TOTAL REMUNERATION TO ITS EMPLOYEES (I.E. WAGES AND BENEFITS) AND INVESTMENTS IN ITS FACILITY GREATER IN VALUE TO THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT; AND (II) EITHER (1) THE BUSINESS ENTERPRISE HAS PAID WAGES AND BENEFITS TO ITS EMPLOYEES WHO WERE NEVER EMPLOYED WITHIN THE STATE BY A RELATED PERSON TO THE QEZE AND MADE CAPITAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND THE TOTAL AMOUNT OF SUCH WAGES, BENEFITS, AND CAPITAL INVESTMENT IS GREATER IN VALUE THAN THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT; OR (2) THE BUSINESS ENTERPRISE HAS PAID WAGES AND BENEFITS TO ITS EMPLOYEES WHO WERE NEVER EMPLOYED WITHIN THE STATE BY A RELATED PERSON TO THE QEZE AND MADE CAPITAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND SUCH WAGES, BENEFITS, AND CAPITAL INVESTMENT TOTAL MORE THAN THIRTY MILLION DOLLARS. FOR PURPOSES OF THIS SUBDIVISION THE TERM "RELATED PERSON" IS DEFINED IN

SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, AND SHALL INCLUDE AN ENTITY WHICH WOULD HAVE QUALIFIED AS A "RELATED PERSON" TO THE QEZE IF IT HAD NOT BEEN DISSOLVED, LIQUIDATED, MERGED WITH ANOTHER ENTITY, OR OTHERWISE CEASED TO EXIST OR OPERATE. THE ANALYSES SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS SUBDIVISION SHALL BE BASED UPON THE WAGES AND BENEFITS PAID AND CAPITAL INVESTMENTS MADE FROM THE FIRST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN. SUCH ANALYSIS SHALL BE BASED ON A REVIEW OF THE AGGREGATE ECONOMIC RETURNS AT ALL ZONE CERTIFIED LOCATIONS. THE VALUE OF THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT FOR THE ANALYSIS SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS SUBDIVISION WILL EQUAL THOSE TAX BENEFITS USED OR REFUNDED TO THE BUSINESS ENTERPRISE DURING ALL TAXABLE YEARS FROM THE TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN.

S 2. Paragraph (e-1) of subdivision 19 of section 210 of the tax law is REPEALED.

S 3. Paragraph 5-a of subsection (k) of section 606 of the tax law is REPEALED.

S 4. Paragraph 5-a of subsection (e) of section 1456 of the tax law is REPEALED.

S 5. Paragraph 5-a of subsection (g) of section 1511 of the tax law is REPEALED.

S 6. Paragraph (d-1) of subdivision 12-B of section 210 of the tax law is REPEALED.

S 7. Paragraph 4-a of subsection (j) of section 606 of the tax law is REPEALED.

S 8. Paragraph (c-1) of subdivision 12-C of section 210 of the tax law is REPEALED.

S 9. Paragraph 3-a of subsection (j-1) of section 606 of the tax law is REPEALED.

S 10. Paragraph (b-1) of subdivision 20 of section 210 of the tax law is REPEALED.

S 11. Paragraph 1-a of subsection (1) of section 606 of the tax law is REPEALED.

S 12. Paragraph 2-a of subsection (d) of section 1456 of the tax law is REPEALED.

S 13. Paragraph 2-a of subdivision (h) of section 1511 of the tax law is REPEALED.

S 14. Subsection (h) of section 1088 of the tax law is REPEALED.

S 15. Subsection (h) of section 688 of the tax law is REPEALED.

S 16. Paragraph 4 of subsection (c) of section 1089 of the tax law is REPEALED.

S 17. Paragraph 4 of subsection (c) of section 689 of the tax law is REPEALED.

S 18. Subsection (k-2) of section 1085 of the tax law is REPEALED.

S 19. Subsection (p-2) of section 685 of the tax law is REPEALED.

S 20. Subdivision (p) of section 957 of the general municipal law, as amended by section 1 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(p) "Cost benefit analysis" shall mean, for purposes of paragraph (iii) of subdivision (a) of section nine hundred fifty-nine of this article, a method of determining whether to certify a business enterprise based on the business enterprise's projected job creation and/or investment in the zone versus the total amount of empire zone tax benefits the business enterprise will potentially be allowed to use and have refunded to it and shall be a ratio of at least 10Aging [for manufacturing enterprises and 20Aging for all other business enterprises], the numerator of which is the sum of (i) the estimated value of all wages and benefits paid for the first three years of certification to all existing and projected employees of the business enterprise in the zone and (ii) the estimated value of capital investments for the first three years of certification in the zone, and the denominator of which is the estimated amount of total empire zone tax benefits that may be used and may be refunded for the first three years of certification. NON-QUANTIFIABLE FACTORS MAY INCLUDE A BUSINESS ENTERPRISE'S POSITIVE IMPACT ON AN AREA THAT HAS HIGH COMMERCIAL VACANCY RATES, AND/OR IS CHARACTERIZED BY BLIGHT AND DISINVESTMENT OR THE BUSINESS ENTERPRISE IS PART OF A STRATEGIC INDUSTRY CLUSTER OR SUPPLY CHAIN; OR IS ANTICIPATED TO ACCESS ZONE CAPITAL CREDITS.

S 21. Subdivision (b) of section 959-b of the general municipal law, as amended by section 4 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(b) The commissioner of economic development shall serve as the sole certification officer for businesses seeking certification as a clean energy enterprise. The commissioner of economic development, after consultation with the executive director of the New York state energy research and development authority, shall promulgate regulations governing (i) criteria of eligibility for designation of a clean energy enterprise, (ii) the application process, and (iii) the certification by the commissioner of economic development as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article. A business so certified shall be deemed to be eligible for such benefits as if such business were located in an investment zone as defined in paragraph (i) of subdivision (d) of section nine hundred fifty-seven of this article. No such certification shall be made after [June thirtieth, two thousand ten] DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN.

S 22. Paragraph 3 of subdivision (b) of section 15 of the tax law is REPEALED.

S 23. Sections 30 and 31 of part S-1 of chapter 57 of the laws of 2009 amending the general municipal law and the tax law relating to enacting reforms to the empire zones program are REPEALED.

S 24. Paragraph 2 of subdivision (a) of section 14 of the tax law, as amended by section 32 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(2) for purposes of articles twenty-eight and twenty-nine of this chapter, during the "sales and use tax benefit period." Such period shall consist of one hundred twenty consecutive months beginning on the later of (A) March first, two thousand one, or (B) [with regard to business enterprises certified pursuant to article eighteen-B of the general municipal law prior to April first, two thousand nine,] the first day of the month next following the date of issuance of a qualified empire zone enterprise certification by the commissioner under subdivision (h) of this section[, or (C) with regard to business enterprises certified pursuant to such article eighteen-B on or after April first, two thousand nine, the first day of the month next following the date of certification under article eighteen-B as an empire zone business]. Provided however, such period shall not include any month falling within a taxa-

ble year immediately preceded by a taxable year with respect to which the business enterprise did not meet the employment test.

S 25. Section 14 of the tax law is amended by adding a new subdivision (h) to read as follows:

(H) SALES AND USE TAX. (1) IN ADDITION TO THE OTHER REQUIREMENTS OF THIS SECTION, IN ORDER FOR THE EXEMPTIONS DESCRIBED IN SUBDIVISION (Z) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR ANY LIKE EXEMPTIONS FROM TAXES IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER TO APPLY WITH RESPECT TO A QUALIFIED EMPIRE ZONE ENTERPRISE, SUCH ENTERPRISE SHALL APPLY TO THE COMMISSIONER OF TAXATION AND FINANCE FOR THE ISSUANCE OF A QUALIFIED EMPIRE ZONE ENTERPRISE CERTIFICATION, IN THE MANNER PRESCRIBED BY SUCH COMMISSIONER. IF SUCH COMMISSIONER GRANTS SUCH CERTIFICATION, SUCH CERTIFICATION SHALL BE SUBJECT TO CONDITIONS SPECIFIED BY SUCH COMMISSIONER. AN ENTERPRISE TO WHICH THE COMMISSIONER ISSUES SUCH CERTIFICATION MAY FURNISH A QUALIFIED EMPIRE ZONE ENTERPRISE EXEMPT PURCHASE CERTIFICATE TO A PERSON REQUIRED TO COLLECT SALES AND COMPENSATING USE TAXES IMPOSED UNDER OR PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-EIGHT OR TWENTY-NINE OF THIS CHAPTER, WHICH CERTIFICATE SHALL BE DEEMED TO BE AN EXEMPTION CERTIFICATE UNDER SUBDIVISION (C) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS CHAPTER. NOTHING HEREIN OR IN ANY OTHER LAW SHALL BE CONSTRUED TO PROHIBIT THE DISCLOSURE, IN SUCH MANNER AS THE COMMISSIONER OF TAXATION AND FINANCE DEEMS APPROPRIATE, OF THE NAMES AND OTHER APPROPRIATE IDENTIFYING INFORMATION OF THOSE PERSONS HOLDING QUALIFIED EMPIRE ZONE ENTERPRISE CERTIFICATIONS PURSUANT TO THIS SUBDIVISION, THOSE PERSONS WHOSE QUALIFIED EMPIRE ZONE ENTERPRISE CERTIFICATIONS HAVE BEEN REVOKED OR THOSE PERSONS WHOSE QUALIFIED EMPIRE ZONE ENTERPRISE CERTIFICATIONS HAVE EXPIRED.

(2) DURING THE PERIOD THAT A BUSINESS ENTERPRISE IS ELIGIBLE TO APPLY, OR IS QUALIFIED, FOR EXEMPTIONS FROM SALES AND COMPENSATING USE TAXES UNDER THIS SECTION, THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL, AT THE TIME SUCH COMMISSIONER CERTIFIES OR DECERTIFIES A BUSINESS ENTERPRISE UNDER ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW, NOTIFY THE COMMISSIONER OF TAXATION AND FINANCE OF SUCH CERTIFICATION OR DECERTIFICATION, WHICH NOTIFICATION SHALL INCLUDE THE FULL LEGAL NAME, ADDRESS AND FEDERAL EMPLOYER IDENTIFICATION NUMBER OF SUCH ENTERPRISE. THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL, AT THE TIME OF ANY SUCH CERTIFICATION, ALSO ADVISE SUCH ENTERPRISE OF THE REQUIREMENTS IN PARAGRAPH ONE OF THIS SUBDIVISION.

S 26. Sections 34, 35, 36, 37, 38, 39, 40, 41 and 42 of part S-1 of chapter 57 of the laws of 2009 amending the general municipal law and the tax law relating to enacting reforms to the empire zones program, are REPEALED.

S 27. Legislative findings. The legislature hereby finds and declares that the current regulatory environment in New York state has a significant impact on the state's businesses, economy and global economic competitiveness. In order to provide New York businesses the opportunity for growth and the ability to compete, along with providing the citizens of this state the ability to find gainful employment and the benefits of a strong economy, New York state must provide a regulatory environment that reduces the cost of doing business in the state, promotes business growth and encourages job creation.

The legislature further finds that it is in the interest of the state to undertake at this time a rational, independent review of all regulations that impact the business environment of this state which stifles the potential of New York's workers and businesses. In order to undertake such review rationally and equitably, the legislature determines that it is necessary to establish a commission separate and apart from existing bodies responsible for promulgating rules and regulations which affect the business environment, to review all existing rules and regulations and to provide continued oversight on future proposed rules and regulations in an effort to cut waste, reduce paperwork and create an efficient and cost effective environment for doing business in New York.

S 28. Commission established. (a) There is hereby created in the executive department a commission to be known as the "Commission on Regulatory Reform and Economic Competitiveness," hereafter referred to as the "commission," which shall be charged with examining all current rules and regulations affecting the business community in New York state and recommending changes to that system in light of factors submitted pursuant to section thirty-one of this act and additional factors established by the commission. It shall be further charged to review the economic impact and cost of any new proposed rules or regulations and make recommendations pursuant to section thirty-five of this act.

(b) The commission shall consist of seventeen members. The seventeen members shall be appointed as follows: (i) two members shall be appointed by the temporary president of the senate; (ii) two members shall be appointed by the speaker of the assembly; (iii) one member shall be appointed by the minority leader of the senate; (iv) one member shall be appointed by the minority leader of the assembly; and (v) eleven members shall be appointed by the governor to consist of the following: (1) two members of the business community; (2) one member of the small business community; (3) two members from the labor community; (4) one member from the agricultural community; (5) one member of the local government community; and (6) four at large members. The governor shall designate the chair from among the members of the commission.

(c) The members of the commission shall receive no compensation for their services as members, but shall be allowed their actual and necessary expenses incurred in the performance of their duties. Members of the commission shall be considered public officers for purposes of section 17 of the public officers law.

(d) The commission shall begin to act forty-five days after this act shall have become a law. A quorum shall consist of a majority of the members of the commission entitled to vote on the matter under consideration. Approval of any matter shall require the affirmative vote of a majority of the members voting thereon.

(e) The commission shall adopt by-laws for the management and regulation of its affairs.

S 29. Appointments to commission. The legislative leaders shall submit their appointments to the governor, and the governor shall make his or her appointments, no later than forty-five days after this act becomes a law. If any such appointment is not made by such date, the appointing officer may make the appointment after that date, but the vacant appointment shall not count for calculation of a quorum until it is filled. Vacancies in the commission shall be filled in the same manner as the member whose vacancy is being filled was appointed.

S 30. Commission staff. The commission, acting by the chair of the commission, may employ staff and consultants, who shall be paid from amounts available to the commission for that purpose.

S 31. Factors and information for consideration. The commissioner of each agency or department which promulgates rules and regulations shall submit to the commission, no later than one hundred eighty days after this act becomes a law, a list of factors to be considered in its deliberations, which shall include:

(a) the need for each rule or regulation currently in force;

(b) a list of rules and regulations which may be rescinded;

(c) the economic impact of the rules and regulations on the business environment and job market of the state;

(d) a list of the rules and regulations which generate funds for the state and the amount of funds generated by that rule or regulation;

(e) a list of rules or regulations which may be amended that will result in reduced paperwork and create efficiencies in the agency or department;

(f) a summary of how the department or agency's rules and regulations compare to other states and other nations; and

(g) a summary of the agency or department's plans to create efficiencies, reduce paperwork and promote the business environment in the state.

The agency or department may submit additional relevant factors to be considered in the deliberations of the commission. The commission may also adopt additional factors to be considered in its deliberations.

S 32. Deliberations of commission. The deliberations, meetings and other proceedings of the commission and any committee thereof shall be governed by article 7 of the public officers law, provided that, notwithstanding section 105 of the public officers law, the commission and any committee thereof shall conduct business in executive session anytime it is addressing in detail the medical, financial, or credit history of a particular general hospital or nursing home. Any one or more members of a committee may participate in a meeting of such committee by means of a conference telephone, conference video or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. At any meetings of the commission conducted by means of a conference telephone, conference video or similar communications equipment, other than executive sessions, the public shall be given an opportunity to listen. If a meeting other than an executive session is to be conducted by means of a conference telephone, conference video or similar communications equipment, the public notice for the meeting shall inform the public that such equipment will be used, and identify the means by which the public may listen to such meeting.

S 33. Commission recommendations. (a) The commission shall develop recommendations to (i) eliminate wasteful regulations which increase business costs, stunt business growth and discourage job creation with no clear or significant benefit to the state; and (ii) reduce paperwork, create efficiencies, and increase the competitiveness of the state's business environment.

(b) Such recommendations shall include: (i) recommended dates by which such actions should occur; (ii) necessary investments, if any, that should be made in each case to carry out the commission's recommendations, including any necessary workforce, training, or other investments; and (iii) the commission's justification for its recommendations, including the use of the factors pursuant to section thirty-one of this act.

(c) In addition, the commission may include in its report: (i) recommended areas of further improvement in agencies or departments outside their rules and regulations; (ii) recommendations for the elimination of duplicative oversight or functions shared by more than one agency or department; (iii) recommendations on the consolidation of agencies or departments which may have concurrent areas of jurisdiction.

(d) On or before December 1, 2011, the commission shall transmit to the governor and the legislature a report containing its recommendations, which shall include specific recommendations regarding the elimination of rules and regulations, elimination of overlapping oversight and functions, proposed rules or regulations, proposed initiatives to reduce paperwork and create efficiencies and other proposals to decrease the cost of doing business in the state.

S 34. Implementation of recommendations. (a) Notwithstanding any contrary provision of law, rule or regulation, the commissioner or head of any rule or regulation making agency or department shall take all actions necessary to implement, in a reasonable, cost-efficient manner, the recommendations of the commission pursuant to subdivisions (b) and (c) of section thirty-three of this act, including, but not limited to coordinating with state or local government officials and other parties as the commissioner deems appropriate.

(b) The provisions of subdivision (a) of this section shall not apply: (i) unless the governor has transmitted the commission's report under section thirty-three of this act with his or her written approval of the recommendations of the commission pursuant to subdivisions (b) and (c) of section thirty-three of this act to the head of each agency or department affected by these recommendations and transmitted a message to the legislature stating his or her approval of the report on or before December 5, 2011; and (ii) if a majority of the members of each house of the legislature vote to adopt a concurrent resolution rejecting the recommendations of the commission pursuant to subdivisions (b) and (c) of section thirty-three of this act in their entirety by December 31, 2011, after receiving a message from the governor under this subdivision.

S 35. Continuing responsibility to review proposed rules and regulations. After submission of the commission's report to the governor and the legislature, the commission shall be responsible for the continued review of any agency or department's proposed rules or regulations which may impact the business environment of this state.

(a) The commission shall within thirty days of the receipt of the proposed rule or regulation and the accompanied report outlined in section thirty-six of this act, vote on whether such rule or regulation shall be implemented;

(b) no rule shall be approved unless a vote of a majority of the commission's members present shall so vote;

(c) upon a vote disapproving a rule or regulation the commission shall give notice to the agency or department that such rule or regulation has been disapproved, the reason for its disapproval and any recommendations the commission shall deem appropriate to improve the proposed rule or regulation;

(d) if the commission shall fail to act upon any proposed rule or regulation within the thirty day period, that rule or regulation shall have been deemed to have been approved and may be implemented; and

(e) any rule or regulation that has been disapproved by the commission may be appealed provided that (i) the department or agency appeals within thirty days of the disapproval; (ii) the agency or department details why the disapproval may be detrimental to the health, safety or welfare of the state or its residents; and (iii) if applicable explain why the commission's recommended improvements are not able to be enacted.

S 36. Department and agency's responsibility to submit proposed rules and regulations. Notwithstanding any contrary provision of law, rule or regulation any agency or department proposing a new rule or regulation may not implement that rule or regulation without the approval of the commission. The department or agency when seeking to gain the approval of a new rule or regulation must:

(a) provide the commission with a copy of the new rule or regulation;

(b) provide a summary of the rule or regulation and the reasoning for implementing it; and

(c) provide an economic impact statement of the proposed rule or regulation to include but not be limited to (i) cost or benefit to the state; (ii) business sector or industry affected by the rule or regulation; (iii) number of jobs affected by the rule or regulation; and (iv) any other information which will assist the commission in understanding the economic impact of the rule or regulation.

S 37. This act shall take effect immediately; provided, however, that: (i) sections twenty through twenty-six of this act shall be deemed to have been in full force and effect on the same date as part S-1 of chapter 57 of the laws of 2009; and (ii) sections twenty-seven through thirty-six of this act shall expire and be deemed repealed June 30, 2014.