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

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I N S E N A T E

January 27, 2010

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law, in relation to creating the business employment incentive program

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

Section 1. The economic development law is amended by adding a new article 17 to read as follows:

ARTICLE 17

BUSINESS EMPLOYMENT INCENTIVE PROGRAM

SECTION 400. GENERAL.
401. PROJECT REQUIREMENTS.
402. GRANT APPLICATION.
403. INCENTIVE AGREEMENT.
404. SUBMISSION OF NEW YORK TAX RETURN, OTHER INFORMATION; AUDIT.
405. FAILURE OF BUSINESS TO COMPLY, CIRCUMSTANCES.
406. DISBURSEMENT CONDITIONS.
407. GRANT LIMITATIONS.
408. IMPLEMENTATION, STUDY.
409. FEES.
410. RULES.
411. ANNUAL REPORT.

S 400. GENERAL. THERE IS HEREBY ESTABLISHED A BUSINESS EMPLOYMENT INCENTIVE PROGRAM. THE PROGRAM IS TO BE ADMINISTERED BY THE DEPARTMENT. IN ORDER TO FOSTER JOB CREATION IN THIS STATE, THE DEPARTMENT MAY ENTER INTO AGREEMENTS WITH BUSINESSES TO PROVIDE BUSINESS EMPLOYMENT INCENTIVE GRANTS, WITHIN AVAILABLE APPROPRIATIONS, WITH THE PROVISIONS OF THIS ARTICLE IF THE DEPARTMENT FINDS THAT:

1. THE PROJECT PROPOSED BY THE BUSINESS WILL CREATE, DURING THE TERM OF THE AGREEMENT, A NET INCREASE IN EMPLOYMENT BY THE BUSINESS AND ITS RELATED PERSONS AS PROVIDED IN SECTION FOUR HUNDRED ONE OF THIS ARTICLE;

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

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2. THE PROJECT IS ECONOMICALLY SOUND AND WILL BENEFIT THE PEOPLE OF NEW YORK BY INCREASING OPPORTUNITIES FOR EMPLOYMENT AND BY STRENGTHENING NEW YORK'S ECONOMY; AND

3. THE DEPARTMENT DETERMINES THAT THE RECEIPT OF THE BUSINESS EMPLOYMENT INCENTIVE GRANT WILL BE A MATERIAL FACTOR IN THE BUSINESS' DECISION TO GO FORWARD WITH THE PROJECT.

S 401. PROJECT REQUIREMENTS. 1. A BUSINESS MAY APPLY TO THE DEPARTMENT FOR A GRANT FOR ANY PROJECT WHICH:

(A) WILL CREATE AT LEAST SEVENTY-FIVE ELIGIBLE POSITIONS IN THE BASE YEARS; OR

(B) WILL CREATE AT LEAST TWENTY-FIVE ELIGIBLE POSITIONS IN A TARGETED AREA IN THE BASE YEARS.

2. IN THE CASE WHERE A BUSINESS IS A LANDLORD, THE BUSINESS MAY APPLY TO THE DEPARTMENT FOR A GRANT FOR ANY PROJECT IN WHICH:

(A)(I) AT LEAST SEVENTY-FIVE ELIGIBLE POSITIONS ARE CREATED IN THE BASE YEARS; OR

(II) AT LEAST TWENTY-FIVE ELIGIBLE POSITIONS ARE CREATED IN A TARGETED AREA IN THE BASE YEARS; AND

(B) THE TENANTS OR PROPOSED TENANTS HAVE AGREED TO ASSIGN TO THE LANDLORD ANY CLAIM OF RIGHT THAT THEY MAY HAVE TO A GRANT PROVIDED BY THIS ARTICLE; AND

(C) THE TENANT OR PROPOSED TENANTS HAVE AGREED TO COOPERATE WITH THE LANDLORD BY ANNUALLY PROVIDING TO THE DEPARTMENT THE NUMBER OF NEW EMPLOYEES IN ELIGIBLE POSITIONS, THE WITHHOLDINGS AND ANY OTHER INFORMATION WHICH MAY BE REQUIRED BY THE DEPARTMENT.

3. A PROJECT WHICH CONSISTS SOLELY OF POINT-OF-FINAL-PURCHASE RETAIL FACILITIES SHALL NOT BE ELIGIBLE FOR A GRANT UNDER THIS ARTICLE. IF A PROJECT CONSISTS OF BOTH POINT-OF-FINAL-PURCHASE RETAIL FACILITIES AND NON-RETAIL FACILITIES, ONLY THE PORTION OF THE PROJECT CONSISTING OF NON-RETAIL FACILITIES SHALL BE ELIGIBLE FOR A GRANT, AND ONLY THE WITHHOLDINGS FROM NEW EMPLOYEES WHICH ARE EMPLOYED IN THE PORTION OF THE PROJECT WHICH REPRESENTS NON-RETAIL FACILITIES SHALL BE USED TO DETERMINE THE AMOUNT OF THE GRANT. IF A WAREHOUSE FACILITY IS PART OF A POINT-OF-FINAL-PURCHASE RETAIL FACILITY AND SUPPLIES ONLY THAT FACILITY, THE WAREHOUSE FACILITY SHALL NOT BE ELIGIBLE FOR A GRANT. FOR THE PURPOSES OF THIS ARTICLE, CATALOG DISTRIBUTION CENTERS SHALL NOT BE CONSIDERED POINT-OF-FINAL-PURCHASE RETAIL FACILITIES.

S 402. GRANT APPLICATION. 1. A BUSINESS SHALL APPLY TO THE DEPARTMENT FOR A GRANT ON A FORM PRESCRIBED BY THE DEPARTMENT WHICH SHALL INCLUDE:

(A) THE NAME OF THE BUSINESS, THE PROPOSED LOCATION OF THE PROJECT, AND THE TYPE OF ACTIVITY WHICH WILL BE ENGAGED IN AT THE PROJECT SITE;

(B) THE NAMES AND ADDRESSES OF THE PRINCIPALS OR MANAGEMENT OF THE BUSINESS, AND THE NATURE OF THE FORM OF BUSINESS ORGANIZATION UNDER WHICH IT IS OPERATED;

(C) THE MOST RECENT FINANCIAL STATEMENT OF THE BUSINESS;

(D) THE NUMBER OF ELIGIBLE POSITIONS PROPOSED TO BE CREATED DURING THE BASE YEARS AND THEREAFTER; AND

(E) AN ESTIMATE OF THE TOTAL WITHHOLDINGS.

2. A COOPERATIVE ASSOCIATION MAY APPLY, IN ONE CONSOLIDATED APPLICATION IN A FORM AND MANNER DETERMINED BY THE DEPARTMENT, FOR A GRANT ON ITS OWN BEHALF AS A BUSINESS AND FOR GRANTS ON BEHALF OF THE MEMBERS OF THE ASSOCIATION WHO MAY QUALIFY UNDER THIS ARTICLE.

3. IF A COOPERATIVE ASSOCIATION IS APPLYING FOR GRANTS ON BEHALF OF ITS MEMBERS, THE MEMBERS FOR WHOM THE APPLICATION IS SUBMITTED SHALL ASSIGN TO THE ASSOCIATION ANY CLAIM OF RIGHT THE MEMBERS MAY HAVE UNDER THIS ARTICLE TO APPLY FOR GRANTS INDIVIDUALLY DURING THE TERM OF THE

BUSINESS EMPLOYMENT INCENTIVE AGREEMENT, AND AGREE TO COOPERATE WITH THE ASSOCIATION IN PROVIDING TO THE DEPARTMENT ALL THE INFORMATION REQUIRED FOR THE INITIAL APPLICATION, THE BUSINESS EMPLOYMENT INCENTIVE AGREEMENT, AND ANY OTHER INFORMATION THE DEPARTMENT MAY REQUIRE FOR THE PURPOSES OF THIS ARTICLE. THE COOPERATIVE ASSOCIATION SHALL BE RESPONSIBLE FOR PROVIDING TO THE DEPARTMENT ALL THE INFORMATION REQUIRED UNDER THIS ARTICLE.

4. IF A COOPERATIVE ASSOCIATION APPLIES FOR A GRANT ON BEHALF OF ITS MEMBERS, THE MEMBERS INCLUDED IN THE APPLICATION MAY BE PERMITTED TO MEET THE QUALIFICATIONS FOR A GRANT COLLECTIVELY BY PARTICIPATING IN A PROJECT THAT WILL MEET THE REQUIREMENTS OF SECTIONS FOUR HUNDRED AND FOUR HUNDRED ONE OF THIS ARTICLE, THE AMOUNT OF A GRANT SHALL BE CALCULATED UNDER THE TERMS OF THIS ARTICLE AS IF THE MEMBERS ARE ALL COLLECTIVELY ONE BUSINESS ENTITY, AND ANY RESTRICTIONS ON THE QUALIFICATION FOR A GRANT SHALL APPLY TO EACH MEMBER WHO IS LISTED IN THE APPLICATION AS PARTICIPATING IN THE PROJECT. THE GRANTS AWARDED SHALL BE PAID TO THE COOPERATIVE ASSOCIATION. A GRANT RECEIVED UNDER THIS ARTICLE BY A COOPERATIVE ASSOCIATION MAY BE APPORTIONED TO THE MEMBERS OF THE ASSOCIATION IN A MANNER DETERMINED BY THE ASSOCIATION. EACH MEMBER INCLUDED IN THE APPLICATION SHALL BE REQUIRED TO SIGN THE BUSINESS EMPLOYMENT INCENTIVE AGREEMENT AND SHALL ABIDE BY ITS TERMS.

5. (A) THE AMOUNT OF THE EMPLOYMENT INCENTIVE AWARDED AS A GRANT IN EACH CASE SHALL BE NOT LESS THAN TEN PERCENT AND NOT MORE THAN EIGHTY PERCENT OF THE WITHHOLDINGS OF THE BUSINESS, OR NOT LESS THAN TEN PERCENT AND NOT MORE THAN FIFTY PERCENT OF THE ESTIMATED TAX OF PARTNERS OF AN ELIGIBLE PARTNERSHIP WHETHER PAID DIRECTLY BY THE PARTNER OR BY THE ELIGIBLE PARTNERSHIP ON BEHALF OF SUCH PARTNER'S ACCOUNT, OR ANY COMBINATION THEREOF, AND SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS FOUR HUNDRED SIX AND FOUR HUNDRED SEVEN OF THIS ARTICLE. THE EMPLOYMENT INCENTIVE SHALL BE BASED ON CRITERIA DEVELOPED BY THE DEPARTMENT AFTER CONSIDERING THE FOLLOWING:

(I) THE NUMBER OF ELIGIBLE POSITIONS TO BE CREATED;

(II) THE EXPECTED DURATION OF THOSE POSITIONS;

(III) THE TYPE OF CONTRIBUTION THE BUSINESS CAN MAKE TO THE LONG-TERM GROWTH OF THE STATE'S ECONOMY;

(IV) THE AMOUNT OF OTHER FINANCIAL ASSISTANCE THE BUSINESS WILL RECEIVE FROM THE STATE FOR THE PROJECT; AND

(V) THE TOTAL DOLLAR INVESTMENT THE BUSINESS IS MAKING IN THE PROJECT.

(B) THE TERM OF THE GRANT SHALL NOT EXCEED TEN YEARS.

(C) AT THE DISCRETION OF THE DEPARTMENT, THE GRANT MAY APPLY ONLY TO NEW EMPLOYEES OR PARTNERS IN ELIGIBLE POSITIONS CREATED DURING THE BASE YEARS, OR TO ADDITIONAL NEW EMPLOYEES OR PARTNERS IN ELIGIBLE POSITIONS CREATED DURING THE REMAINDER OF THE TERM OF THE GRANT.

S 403. INCENTIVE AGREEMENT. THE BUSINESS EMPLOYMENT INCENTIVE AGREEMENT SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

1. A DETAILED DESCRIPTION OF THE PROPOSED PROJECT WHICH WILL RESULT IN JOB CREATION, AND THE NUMBER OF NEW EMPLOYEES TO BE HIRED IN THE BASE YEARS;

2. THE TERM OF THE GRANT, AND THE FIRST YEAR FOR WHICH THE GRANT MAY BE CLAIMED;

3. THE NEW EMPLOYEES WHOSE POSITIONS ARE SUBJECTS OF THE GRANT, PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED TWO OF THIS ARTICLE;

4. A REQUIREMENT THAT THE APPLICANT MAINTAIN THE PROJECT AT A LOCATION IN NEW YORK FOR AT LEAST ONE AND A HALF TIMES THE NUMBER OF YEARS OF THE

TERM OF THE GRANT, WITH AT LEAST THE NUMBER OF ELIGIBLE POSITIONS AS REQUIRED BY SECTION FOUR HUNDRED ONE OF THIS ARTICLE;

5. THE EMPLOYMENT INCENTIVE, AS DETERMINED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED TWO OF THIS ARTICLE;

6. A METHOD FOR DETERMINING THE NUMBER OF NEW EMPLOYEES WHO ARE EMPLOYED DURING A GRANT YEAR;

7. A METHOD FOR THE BUSINESS TO REPORT ANNUALLY TO THE DEPARTMENT THE NUMBER OF NEW EMPLOYEES FOR WHICH THE GRANT IS TO BE MADE;

8. A REQUIREMENT THAT THE BUSINESS REPORT TO THE DEPARTMENT ANNUALLY THE AGGREGATE AMOUNT OF WITHHOLDINGS DURING THE GRANT YEAR;

9. A PROVISION PERMITTING AN AUDIT OF THE PAYROLL RECORDS OF THE BUSINESS BY THE DEPARTMENT FROM TIME TO TIME, AS THE DEPARTMENT DEEMS NECESSARY;

10. A PROVISION WHICH PERMITS THE DEPARTMENT TO AMEND AN AGREEMENT PURSUANT TO SECTION FOUR HUNDRED FIVE OF THIS ARTICLE;

11. A PROVISION WHICH REQUIRES THE BUSINESS TO MAINTAIN OPERATIONS AT THE PROJECT LOCATION OR ANOTHER LOCATION APPROVED BY THE DEPARTMENT FOR AT LEAST ONE AND A HALF TIMES THE TERM OF THE GRANT, AND A PROVISION TO PERMIT THE DEPARTMENT TO RECAPTURE ALL OR PART OF THE GRANT AT ITS DISCRETION IF THE BUSINESS DOES NOT REMAIN AT THE SITE FOR THE REQUIRED TERM; AND

12. A PROVISION ESTABLISHING THE CONDITIONS UNDER WHICH THE GRANT AGREEMENT MAY BE TERMINATED AND GRANT FUNDS RECAPTURED BY THE DEPARTMENT.

S 404. SUBMISSION OF NEW YORK TAX RETURN, OTHER INFORMATION; AUDIT. 1. NO LATER THAN FEBRUARY FIRST OF EACH YEAR, FOR THE PRECEDING GRANT YEAR, EVERY BUSINESS WHICH IS AWARDED A GRANT UNDER THIS ARTICLE SHALL SUBMIT TO THE DEPARTMENT A COPY OF ITS APPLICABLE NEW YORK TAX RETURN SHOWING BUSINESS INCOME AND WITHHOLDINGS AS A CONDITION OF ITS CONTINUATION IN THE GRANT PROGRAM, TOGETHER WITH AN ANNUAL PAYROLL REPORT SHOWING (A) THE ELIGIBLE POSITIONS WHICH ARE CREATED DURING THE BASE YEARS AND (B) THE NEW ELIGIBLE POSITIONS CREATED DURING EACH SUBSEQUENT YEAR OF THE GRANT.

2. THE DEPARTMENT MAY REQUIRE BY REGULATION ANY INFORMATION WHICH IT DEEMS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS ARTICLE.

3. THE DEPARTMENT MAY CAUSE AN AUDIT OF ANY BUSINESS RECEIVING A GRANT TO BE CONDUCTED AT ANY TIME.

S 405. FAILURE OF BUSINESS TO COMPLY, CIRCUMSTANCES. 1. IF THE BUSINESS RECEIVING A GRANT FAILS TO MEET OR COMPLY WITH ANY CONDITION OR REQUIREMENT SET FORTH IN A GRANT AGREEMENT OR IN RULES AND REGULATIONS OF THE DEPARTMENT, THE DEPARTMENT MAY AMEND THE AGREEMENT TO REDUCE THE AMOUNT OF THE EMPLOYMENT INCENTIVE OR THE TERM OF THE GRANT AGREEMENT. THE REDUCTION OF THE EMPLOYMENT INCENTIVE SHALL BE APPLICABLE TO THE GRANT YEAR IMMEDIATELY FOLLOWING THE GRANT YEAR IN WHICH THE DEPARTMENT AMENDS THE AGREEMENT.

2. IF A BUSINESS FAILS TO MAINTAIN EMPLOYMENT AT THE LEVELS STIPULATED IN THE AGREEMENT OR OTHERWISE FAILS TO COMPLY WITH ANY CONDITION OF THE GRANT AGREEMENT FOR ANY TWO CONSECUTIVE YEARS, THE DEPARTMENT MAY TERMINATE THE AGREEMENT.

S 406. DISBURSEMENT CONDITIONS. NO AMOUNT SHALL BE DISBURSED TO A RECIPIENT BUSINESS AS A GRANT UNDER THIS ARTICLE IN ANY YEAR UNTIL THE STATE COMPTROLLER HAS CERTIFIED THAT THE AMOUNT OF WITHHOLDINGS OR ESTIMATED TAXES OF PARTNERS, OR ANY COMBINATION THEREOF, RECEIVED IN THAT YEAR FROM THE BUSINESS OR THE PARTNERS OF THE BUSINESS EQUALS OR EXCEEDS THE AMOUNT OF THE GRANT.

S 407. GRANT LIMITATIONS. A BUSINESS THAT IS RECEIVING ANY OTHER GRANT BY OPERATION OF STATE LAW SHALL NOT RECEIVE AN AMOUNT AS A GRANT PURSUANT TO THIS ARTICLE WHICH, WHEN COMBINED WITH SUCH OTHER GRANTS, EXCEEDS THE TOTAL OF EIGHTY PERCENT OF ITS WITHHOLDINGS OR FIFTY PERCENT OF THE ESTIMATED TAX, OR ANY COMBINATION THEREOF PAID, EXCEPT UPON THE APPROVAL OF THE STATE COMPTROLLER.

S 408. IMPLEMENTATION, STUDY. THE DEPARTMENT SHALL CONDUCT A STUDY TO DETERMINE THE MINIMUM FUNDING LEVEL REQUIRED TO IMPLEMENT THE BUSINESS EMPLOYMENT INCENTIVE PROGRAM SUCCESSFULLY. MAJOR CONSIDERATION SHALL BE GIVEN TO THE RATE OF RETURN FOR EACH JOB CREATED AS A RESULT OF BUSINESS EMPLOYMENT INCENTIVE GRANTS.

S 409. FEES. THE DEPARTMENT SHALL ESTABLISH AN APPLICATION FEE FOR A GRANT APPLICATION AND SERVICE FEES PAYABLE BY EACH BUSINESS WHICH IS A GRANT RECIPIENT TO PAY THE COSTS OF THE ADMINISTRATION OF THE PROGRAM.

S 410. RULES. THE DEPARTMENT SHALL ADOPT RULES NECESSARY TO IMPLEMENT THE PROVISIONS OF THE BUSINESS EMPLOYMENT INCENTIVE PROGRAM NOT RELATED TO THE COLLECTION OR DETERMINATION OF TAXES AND TAX WITHHOLDING. THE RULES SHALL PROVIDE FOR THE RECIPIENTS OF BUSINESS EMPLOYMENT INCENTIVE GRANTS TO BE CHARGED AN INITIAL APPLICATION FEE, AND ONGOING SERVICE FEES, TO COVER THE ADMINISTRATIVE COSTS RELATED TO THE PROGRAM. THE RULES ALSO SHALL INCLUDE THE PROCEDURES TO CLARIFY THE APPLICATION OF THE VARIOUS PROVISIONS OF THIS ARTICLE TO COOPERATIVE ASSOCIATIONS THAT SUBMIT APPLICATIONS ON BEHALF OF THEIR MEMBERS.

S 411. ANNUAL REPORT. THE DEPARTMENT SHALL SUBMIT A REPORT ON THE BUSINESS EMPLOYMENT INCENTIVE PROGRAM TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, AND SPEAKER OF THE ASSEMBLY ON OR BEFORE OCTOBER THIRTY-FIRST OF EACH YEAR. THE REPORT SHALL INCLUDE INFORMATION ON THE NUMBER OF AGREEMENTS ENTERED INTO DURING THE PRECEDING FISCAL YEAR, A DESCRIPTION OF THE PROJECT UNDER EACH AGREEMENT, THE NUMBER OF JOBS CREATED, NEW INCOME TAX REVENUE RECEIVED FROM WITHHOLDINGS, AMOUNTS AWARDED AS GRANTS AND AN UPDATE ON THE STATUS OF PROJECTS UNDER AGREEMENT BEFORE THE PRECEDING FISCAL YEAR. AFTER THE PROGRAM'S FIFTH YEAR, THE DEPARTMENT, IN CONJUNCTION WITH THE STATE COMPTROLLER, SHALL ASSESS THE EFFECTIVENESS OF THE PROGRAM IN CREATING NEW JOBS IN NEW YORK AND THE IMPACT ON STATE REVENUES.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.