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

8104

2013-2014 Regular Sessions

I N A S S E M B L Y

June 18, 2013

Introduced by M. of A. SILVER, MORELLE, GLICK, FARRELL -- read once and referred to the Committee on Ways and Means

AN ACT to amend a chapter of the laws of 2013 amending the economic development law, the tax law, the administrative code of the city of New York, the real property tax law and the education law relating to establishing the START-UP NY program, as proposed in legislative bill number A. 8096, in relation to the mandate and regulatory relief council and in relation to enhancing the excelsior jobs program

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

Section 1. The title of a chapter of the laws of 2013 amending the economic development law, the tax law, the administrative code of the city of New York, the real property tax law and the education law relating to establishing the START-UP NY program, as proposed in legislative bill number A. 8096, is amended to read as follows:

AN ACT to amend the economic development law, the tax law, the administrative code of the city of New York, the real property tax law and the education law, in relation to establishing the START-UP NY program; TO AMEND THE EXECUTIVE LAW, IN RELATION TO THE MANDATE AND REGULATORY RELIEF COUNCIL (PART B); AND TO AMEND THE ECONOMIC DEVELOPMENT LAW AND THE TAX LAW, IN RELATION TO ENHANCING THE EXCELSIOR JOBS PROGRAM ACT (PART C)

S 2. A chapter of the laws of 2013 amending the economic development law, the tax law, the administrative code of the city of New York, the real property tax law and the education law relating to establishing the START-UP NY program, as proposed legislative bill number A. 8096, is amended by adding two new Parts B and C to read as follows:

PART B

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

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Section 1. Section 666 of the executive law, as added by section 2 of subpart H of part C of chapter 97 of the laws of 2011, is amended to read as follows:

S 666. Mandate AND REGULATORY relief council. 1. Definitions. a. "Mandate" means (I) any requirement that a local government perform or administer any program, project or activity, required or imposed by a state law or state agency that requires a higher level of service for an existing local government program, project or activity; OR (II) ANY REQUIREMENT A BUSINESS MUST PERFORM IN ORDER TO DO BUSINESS IN NEW YORK STATE.

b. "Local government" means a county, city, town, village, school district, or special district.

c. "State agency" or "agency" means any state agency, department, office, board, bureau, division, committee, council or office under the direction or control of the executive.

D. "BUSINESS" MEANS ANY ENTITY DOING BUSINESS IN OR AUTHORIZED TO OPERATE IN THE STATE OF NEW YORK, INCLUDING, BUT NOT LIMITED TO, FOR-PROFIT AND NOT-FOR-PROFIT CORPORATIONS, SOLE PROPRIETORSHIPS, PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES.

2. Mandate relief council. There is hereby created within the executive department the mandate relief council, which shall be comprised of eleven members as follows: the secretary to the governor, who shall chair the council, the counsel to the governor, the director of the division of the budget, the secretary of state, and three additional members to be appointed by the governor from among his or her executive chamber staff, two members to be appointed by the temporary president of the senate, and two members to be appointed by the speaker of the assembly.

a. Six members of the council, or their designees in the case of the director of the division of the budget and the secretary of state, shall constitute a quorum.

b. The council shall meet regularly upon the call of its chair and as frequently as its business may require. The members of the council shall serve without compensation but shall receive reimbursement for their reasonable and necessary expenses.

c. The council shall, upon request of a local government OR BUSINESS or one of the members of the council, identify and review mandates that can be eliminated or reformed, and make such other and further inquiries, reports and recommendations as the council may deem necessary and prudent to effectuate its mission of mandate relief. In identifying and determining whether such mandates are unsound, unduly burdensome or costly, the council shall receive and consider public comment about them and shall review them in light of cost-benefit principles and such other and further factors as the council shall deem necessary and prudent. The council shall not make a referral to the governor that a mandate be eliminated or reformed regarding any of the following mandates:

(i) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements;

(ii) those which reapportion the costs of activities between boards of education, counties, and municipalities;

(iii) those which implement provisions of the state constitution; and

(iv) those which the council determines are necessary for the maintenance of the public health or safety of the people of New York state.

d. All votes of the council, and all deliberations and reports of its proceedings shall be open to the public pursuant to article seven of the public officers law.

3. Council actions on regulatory mandates. Upon a determination that a mandate in any regulation, rule or order of any state agency has been imposed upon any local government OR BUSINESS in an unsound, unduly burdensome or costly manner so as to necessitate that it be eliminated or reformed, the council shall have the power to:

a. refer a request by a local government for a review of such regulatory mandate, for petition by such local government for a waiver, modification or repeal of such regulatory mandate pursuant to section two hundred four-a of the state administrative procedure act. In the event the council votes to make such referral on behalf of a local government, the state agency that is charged with reviewing the petition shall provide the technical assistance and support for such local government to properly prepare and submit such petition. In the event that such state agency reviewing the petition of the local government pursuant to section two hundred four-a of the state administrative procedure act does not provide the remedy sought by such local government, the council may hear and consider an appeal of such decision and grant such relief as it deems appropriate, including the making of a referral to the governor for the waiving, modifying or repealing of such regulatory mandate. The council shall adopt procedures by which it shall consider, decide and effectuate the remedies of such appeals consistent with this section.

b. upon a two-thirds vote, refer a regulation to the governor for repeal or modification, where the council has previously determined that such regulation imposes upon any local government a mandate in an unsound, unduly burdensome or costly manner, so as to necessitate that it be eliminated or reformed. Upon receipt of such referral by the council, the governor shall within sixty days, direct the state agency responsible for the promulgation, repeal or modification of such regulation to effectuate such repeal or modification of the regulation pursuant to the procedures that such agency would otherwise be required to follow under the law, had such agency on its own accord sought to repeal or modify the regulation.

4. Council actions on statutory mandates. The council may, upon a vote of seven members, refer a statute to the governor for repeal or modification, where the council has previously determined that such statute imposes upon any local government OR BUSINESS a mandate in an unsound, unduly burdensome or costly manner, so as to necessitate that it be eliminated or reformed. Upon receipt of the referral by the council, the governor, within sixty days, shall have prepared a governor's program bill, for introduction in both houses of the legislature, to effectuate such repeal or modification of the statute.

5. Local government request. A local government may, by resolution of its governing body, ask the council to review a specific statute, regulation, rule or order of state government to determine whether such statute, regulation, rule or order of state government is an unfunded mandate or is otherwise unsound, unduly burdensome or costly so as to require that it be eliminated or reformed. No local government may make more than three such requests in each calendar year. Upon such review, the council shall, by majority vote, determine whether such mandate has been imposed upon such local government in an unsound, unduly burdensome or costly manner, so as to necessitate that it be eliminated or reformed. A determination of the council shall resolve any dispute regarding whether such a statute, regulation, rule or order constitutes such an unfunded mandate, but shall not be deemed a judicial determination under the law.

6. Appeals. Upon an appeal of a petition previously decided by a state agency pursuant to section two hundred four-a of the state administrative procedure act, the council, upon request of the local government, shall review the state agency's determination and may affirm, modify or reject such determination. Such appeal shall not preclude or limit a local government or any other party with standing from pursuing any right it may have pursuant to a proceeding instituted in accordance with the provisions of article seventy-eight of the civil practice law and rules or any other statute.

7. Reports. The council shall by December fifteenth of each year report to the governor and legislature regarding its activities, and regarding the issues, statutes, regulations, rules and orders which it reviewed, examined, proposed, referred, and/or considered. Such reports, which shall be adopted upon a majority vote of the members of the council, or their designees in the case of the director of the division of the budget or the secretary of state. All reports of the council shall be posted on a publicly accessible website.

8. Assistance of other agencies. To effectuate the purposes of this section, any state agency shall, at the request of the council, provide to the council such facilities, assistance and data as will enable the council to properly carry out its responsibilities and duties.

S 2. This act shall take effect immediately, provided that the amendments to section 666 of the executive law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.

PART C

Section 1. Subdivisions 3 and 4 of section 353 of the economic development law, as amended by section 2 of part G of chapter 61 of the laws of 2011, are amended to read as follows:

3. For the purposes of this article, in order to participate in the excelsior jobs program, a business entity operating predominantly in manufacturing must create at least [twenty-five] TEN net new jobs; a business entity operating predominately in agriculture must create at least [ten] FIVE net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least [one hundred] FIFTY net new jobs; a business entity operating predominantly in scientific research and development must create at least [ten] FIVE net new jobs; a business entity operating predominantly in software development must create at least [ten] FIVE net new jobs; a business entity creating or expanding back office operations MUST CREATE AT LEAST FIFTY NET NEW JOBS; or A BUSINESS ENTITY OPERATING PREDOMINANTLY AS a distribution center in the state must create at least [one hundred fifty] SEVENTY-FIVE net new jobs, notwithstanding subdivision five of this section; or a business entity must be a regionally significant project as defined in this article; or

4. A business entity operating predominantly in one of the industries referenced in paragraphs (a) through (h) of subdivision one of this section but which does not meet the job requirements of subdivision three of this section must have at least [fifty] TWENTY-FIVE full-time job equivalents UNLESS SUCH BUSINESS IS A BUSINESS ENTITY OPERATING PREDOMINANTLY IN MANUFACTURING THEN IT MUST HAVE AT LEAST TEN FULL-TIME JOB EQUIVALENTS and must demonstrate that its benefit-cost ratio is at least ten to one.

S 2. Subdivision 5 of section 354 of the economic development law, as amended by section 3 of part G of chapter 61 of the laws of 2011, is amended to read as follows:

5. A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later. A participant may claim such benefits for the next nine consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section in each of those taxable years. IF, IN ANY GIVEN YEAR, A PARTICIPANT WHO HAS SATISFIED THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED FIFTY-THREE OF THIS ARTICLE REALIZES JOB CREATION LESS THAN THE ESTIMATED AMOUNT, THE CREDIT SHALL BE REDUCED BY THE PROPORTION OF ACTUAL JOB CREATION TO THE ESTIMATED AMOUNT, PROVIDED THE PROPORTION IS AT LEAST SEVENTY-FIVE PERCENT OF THE JOBS ESTIMATED.

S 3. Section 359 of the economic development law, as amended by section 6 of part G of chapter 61 of the laws of 2011, is amended to read as follows:

S 359. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed the limitations set forth in this section. [Any] ONE-HALF OF ANY amount of tax credits not awarded for a particular taxable year may [not] be used by the commissioner to award tax credits in another taxable year.

Credit components in the aggregate shall not exceed:	With respect to taxable years beginning in:
$ 50 million	2011
$ 100 million	2012
$ 150 million	2013
$ 200 million	2014
$ 250 million	2015
$ 200 million	2016
$ 200 million	2017
$ 200 million	2018
$ 200 million	2019
$ 200 million	2020
$ 200 million	2021
$ 150 million	2022
$ 100 million	2023
$ 50 million	2024

Twenty-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision four of section three hundred fifty-three of this article and seventy-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision three of section three hundred fifty-three of this article.

Provided, however, if by September thirtieth of a calendar year, the department has not allocated the full amount of credits available in that year to either: (i) businesses accepted into the program under subdivision four of section three hundred fifty-three of this article or (ii) businesses accepted into the program under subdivision three of section three hundred fifty-three of this article, the commissioner may

allocate any remaining tax credits to businesses referenced in paragraphs (i) and (ii) of this section as needed; provided, however, that under no circumstances may the statutory cap be exceeded.

S 4. Section 31 of the tax law, as amended by section 2 of part MM of chapter 59 of the laws of 2010, is amended by adding a new subdivision (f-1) to read as follows:

(F-1) CREDIT RECAPTURE FOR UNREALIZED JOB CREATION. IF, IN ANY GIVEN YEAR, A TAXPAYER WHO HAS SATISFIED THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION THREE HUNDRED FIFTY-THREE OF THE ECONOMIC DEVELOPMENT LAW REALIZES JOB CREATION LESS THAN THE ESTIMATED AMOUNT, THE CREDIT DESCRIBED IN THIS SECTION ALLOWED IN THAT YEAR SHALL BE REDUCED BY THE PROPORTION OF ACTUAL JOB CREATION TO THE ESTIMATED AMOUNT, PROVIDED THE PROPORTION IS AT LEAST SEVENTY-FIVE PERCENT OF THE JOBS ESTIMATED.

S 5. This act shall take effect on the sixtieth day after it shall have become a law.

S 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2013 amending the economic development law, the tax law, the administrative code of the city of New York, the real property tax law and the education law relating to establishing the START-UP NY program, as proposed in legislative bill number A. 8096, takes effect.