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

5997--B

2013-2014 Regular Sessions

I N S E N A T E

November 27, 2013

Introduced by Sens. GIPSON, DILAN, KRUEGER, LATIMER, MONTGOMERY, PARKER, STAVISKY, 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 -- 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

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

Section 1. This act shall be known and may be cited as the "hire individuals in the real economy New York (HIRE NY) act".

S 2. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 16-x to read as follows:

S 16-X. THE HIRE NEW YORK PROGRAM. 1. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS THAT MICRO-BUSINESSES ARE THE ENGINES OF OUR ECONOMY AND ARE VITAL TO THE REVITALIZATION OF COMMUNITIES AND NEIGHBORHOODS THROUGHOUT THE STATE. THE LEGISLATURE FURTHER FINDS THAT CURRENT LAW FAILS TO MOTIVATE PEOPLE TO START OR EXPAND BUSINESSES. THE LEGISLATURE FINDS THAT IT IS IMPORTANT TO SPUR START-UP MICRO-BUSINESSES THAT HAVE THE POTENTIAL TO BECOME THE JOB ENGINES FOR TOMORROW'S ECONOMY. THE LEGISLATURE FURTHER FINDS INVESTMENTS IN ECONOMIC DEVELOPMENT FAIL TO PROVIDE ANY FUNDING TO MICRO-BUSINESSES. THE LEGISLATURE FURTHER FINDS THAT SMALL MICRO-BUSINESSES WITH THE PROPER INCENTIVES ARE POISED TO PROVIDE SIGNIFICANT LOCAL JOB CREATION ACROSS THE STATE. THE LEGISLATURE FURTHER FINDS THAT TAX CREDITS ARE NOT AN EFFECTIVE JOB CREATION INCENTIVE FOR MICRO-BUSINESSES BECAUSE MANY OF THESE BUSINESSES LACK THE INCOME THAT MAKES A TAX CREDIT MEANINGFUL. THE LEGISLATURE FURTHER FINDS 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.

LBD13164-08-4

CAPITAL FOR THE BUSINESSES OF TOMORROW TO GROW AND EMPLOY MORE NEW YORKERS.

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

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

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

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

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

(I) AN EMPLOYEE WHO HAS BEEN TRANSFERRED FROM EMPLOYMENT WITH ANOTHER BUSINESS LOCATED IN THIS STATE, THROUGH AN ACQUISITION, MERGER, CONSOLIDATION OR OTHER REORGANIZATION OF BUSINESSES OR THE ACQUISITION OF ASSETS OF ANOTHER BUSINESS, OR

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

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

(IV) A TEMPORARY OR PART-TIME EMPLOYEE.

3. ESTABLISHMENT AND PURPOSES. THE CORPORATION SHALL ESTABLISH A FUND TO BE KNOWN AS THE "HIRE NEW YORK FUND" AND SHALL PAY INTO SUCH FUND ANY MONIES MADE AVAILABLE TO THE CORPORATION FOR SUCH FUND FROM ANY SOURCE. THE FUND SHALL CONSIST OF SUCH AMOUNTS AS MAY BE APPROPRIATED, ANY REPAYMENT OF THE PRINCIPAL AMOUNT OF ANY LOAN MADE FROM THE FUND, AND ANY INTEREST EARNED BY THE CORPORATION FROM THE INVESTMENT OF MONEYS OF THE FUND. THE CORPORATION IS AUTHORIZED TO ACCEPT, AS AGENT OF THE STATE, ANY GIFT, GRANT, DEVISE OR BEQUEST, WHETHER CONDITIONAL OR UNCONDITIONAL, INCLUDING BUT NOT LIMITED TO FEDERAL GRANTS, AND TO USE MONIES MADE AVAILABLE FOR THE PROGRAM FROM ANY PUBLIC OR PRIVATE SOURCE, FOR THE PURPOSE OF IMPLEMENTING THE PROGRAM. THE CORPORATION SHALL BE ENTITLED TO RECOVER FROM THE MONIES MADE AVAILABLE FOR THE PROGRAM ITS OWN NECESSARY AND DOCUMENTED COSTS INCURRED IN ADMINISTERING THE PROGRAM AND EVALUATING THE EFFECTIVENESS OF THE PROGRAM; PROVIDED, HOWEVER, THE SUM THAT MAY BE RECOVERED FOR THE CORPORATION'S ADMINISTRATIVE COSTS SHALL NOT EXCEED FIVE PERCENT OF THE MONIES MADE AVAILABLE FOR THE PROGRAM, AND THE SUM THAT MAY BE RECOVERED FOR THE CORPORATION'S EVALUATION COSTS SHALL NOT EXCEED THREE PERCENT OF THE MONIES MADE AVAILABLE FOR THE PROGRAM. THE MONIES HELD IN OR CREDITED TO THE FUND SHALL BE EXPENDED SOLELY FOR THE PURPOSES SET FORTH IN THIS SECTION. THE CORPORATION SHALL NOT COMMINGLE THE MONIES OF SUCH FUND WITH ANY OTHER MONIES OF THE CORPORATION OR ANY MONIES HELD IN TRUST BY THE CORPORATION. THE CORPORATION IS AUTHORIZED, WITHIN AVAILABLE APPROPRIATIONS AND LOAN REPAYMENTS TO PROVIDE ZERO INTEREST LOANS TO MICRO-BUSINESSES TO HIRE NEW EMPLOYEES.

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

(A) A BUSINESS PLAN;
(B) A JOB DESCRIPTION AND REQUIRED EMPLOYEE QUALIFICATIONS;
(C) A GUARANTOR;
(D) THE GUARANTOR'S NAME AND ADDRESS, AUDITED FINANCIAL STATEMENTS OR TAX RECORDS FOR THE PREVIOUS THREE YEARS, AND OTHER FINANCIAL DOCUMENTATION THE CORPORATION SHALL DEEM APPROPRIATE;
(E) A DESCRIPTION OF HOW THE APPLICANT ANTICIPATES THE BUSINESS WILL GROW AS A RESULT OF THE ADDITIONAL WORKFORCE;
(F) A LIST OF CURRENT EMPLOYEES AND JOB DESCRIPTION FOR EACH EMPLOYEE; AND
(G) ANY ADDITIONAL INFORMATION THAT THE CORPORATION SHALL REQUIRE.

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

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

6. LOAN TERMS. (A) THE CORPORATION SHALL PROVIDE FUNDS FOR EACH OF THE FIRST THREE YEARS OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S EMPLOYMENT.
(B) IN EACH OF THOSE YEARS THE CORPORATION WILL PROVIDE NO MORE THAN TWENTY PERCENT OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S ANNUAL SALARY.
(C) IN EACH YEAR THE CORPORATION WILL PROVIDE NO MORE THAN TWENTY THOUSAND DOLLARS PER MICRO-BUSINESS QUALIFYING NEW HIRE.
(D) LOAN PAYMENTS TO THE CORPORATION FROM THE BUSINESS ARE DEFERRED UNTIL THREE YEARS FROM MICRO-BUSINESS QUALIFYING NEW HIRE'S START DATE.
(E) PRINCIPAL IS TO BE PAID TO THE CORPORATION IN MONTHLY INSTALLMENTS.
(F) NO INTEREST SHALL BE CHARGED ON ANY LOAN PROVIDED PURSUANT TO THIS SECTION.
(G) THE LOAN WILL BE PAID BY THE CORPORATION IN THREE INSTALLMENTS AS FOLLOWS:
(I) THE FIRST INSTALLMENT WILL BE PROVIDED BY THE CORPORATION NO LATER THAN TEN DAYS AFTER RECEIPT OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S W-2 AND PROOF OF RESIDENCE; AND
(II) THE PAYMENTS FOR EACH ADDITIONAL INSTALLMENT SHALL BE MADE WITHIN TEN DAYS OF THE DATE OF THE MICRO-BUSINESS QUALIFYING NEW HIRE'S ANNIVERSARY OF EMPLOYMENT.
(H) NO FEES OR PENALTIES SHALL BE CHARGED OR COLLECTED FOR PREPAYMENT OF ANY SUCH LOAN.

7. LOAN APPROVAL. IN AWARDING THE LOAN, THE CORPORATION SHALL SELECT FROM ELIGIBLE BUSINESS APPLICANTS BASED ON THE FOLLOWING CRITERIA:
(A) THE LIKELIHOOD OF SUCCESS OF THE APPLICANT IN MEETING THE GOALS OF ITS STRATEGIC PLAN;
(B) THE EXTENT OF NEED FOR LOANS AND DEVELOPMENT SERVICES WITHIN THE INVESTMENT AREAS OR TARGETED POPULATIONS;
(C) THE CREDIT SCORE OF THE APPLICANT;
(D) THE CREDIT SCORE OF THE GUARANTOR;
(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 LOCAL 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 provisions of this act shall be eligible to be funded from any state agency, public authority, public benefit corporation or any other entity for which this act is consistent with the mission of the state agency, public authority, public benefit corporation or any other entity.

S 4. This act shall take effect immediately.