STATE OF NEW YORK

5423

2017-2018 Regular Sessions

IN ASSEMBLY

February 8, 2017

Introduced by M. of A. KOLB, BARCLAY, BLANKENBUSH, BRABENEC, BUTLER, CROUCH, CURRAN, DiPIETRO, FINCH, FITZPATRICK, FRIEND, GARBARINO, GIGLIO, GOODELL, GRAF, HAWLEY, JOHNS, LALOR, LAWRENCE, LOPEZ, LUPINACCI, MALLIOTAKIS, McDONOUGH, McKEVITT, MONTESANO, MURRAY, OAKS, PALMESANO, PALUMBO, RA, RAIA, STEC, WALTER -- Multi-Sponsored by -- M. of A. MAGEE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to a tax deduction for small business (Part A); to amend the tax law, in relation to small business employee retention tax credit (Part B); to amend the tax law in relation to small business hire-NY tax credit (Part C); relating to directing the commissioner of taxation and finance to develop a small business sales tax amnesty program (Part D); to amend the public service law, in relation to the temporary state energy and utility service conservation assessment; and to repeal certain provisions of such law relating thereto (Part E); to amend the tax law, in relation to the college to work program and credit (Part F); to amend the executive law, the state administrative procedure act and the legislative law, in relation to the division of regulatory review and economic growth (Part G); relating to directing the commissioner of the department of economic development to develop a small business regulatory amnesty program (Part H); and to amend the legislative law, in relation to an unfunded mandate moratorium (Part I)

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 "Small Business Full Employment Act".

§ 2. This act enacts into law components of legislation relating to "Small Business Full Employment Act". Each component is wholly contained within a Part identified as Parts A through I. The effective date for each particular provision contained within such Part is set forth in the

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

LBD08211-01-7

last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found.

PART A

Section 1. Subparagraph (iv) of paragraph (a) of subdivision 1 of section 210 of the tax law, as amended by section 12 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(iv) **(A)** for taxable years beginning before January first, two thousand sixteen, if the business income base is not more than two hundred ninety thousand dollars the amount shall be six and one-half percent of the business income base; if the business income base is more than two hundred ninety thousand dollars but not over three hundred ninety thousand dollars the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-tenth percent of the excess of the business income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) four and thirty-five hundredths percent of the excess of the business income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars;

(B) for taxable years beginning on or after January first, two thousand seventeen, if the business income base is not more than five hundred thousand dollars the amount shall be four percent of the business income base; if the business income base is more than five hundred thousand dollars but not over six hundred thousand dollars the amount shall be the sum of (1) twenty thousand dollars, (2) six and one-half percent of the excess of the business income base over five hundred thousand dollars but not over six hundred thousand dollars and (3) twenty-five percent of the excess of the business income base over five hundred fifty thousand dollars but not over six hundred thousand dollars;

(C) for taxable years beginning on or after January first, two thousand eighteen, if the business income base is not more than five hundred thousand dollars the amount shall be two and one-half percent of the business income base; if the business income base is more than five hundred thousand dollars but not over six hundred thousand dollars the amount shall be the sum of (1) twelve thousand five hundred dollars, (2) six and one-half percent of the excess of the business income base over five hundred thousand dollars but not over six hundred thousand dollars and (3) forty percent of the excess of the business income base over five hundred fifty thousand dollars but not over six hundred thousand dollars.

§ 2. Paragraph 39 of subsection (c) of section 612 of the tax law, as added by section 1 of part Y of chapter 59 of the laws of 2013, is amended to read as follows:

(39) **(A)** In the case of a taxpayer who is a small business **or a taxpayer who is a member, partner, or shareholder of a limited liability company, partnership, or New York S corporation, respectively, that is a small business,** who **or which** has business income [~~and/or farm income~~] as defined in the laws of the United States, an amount equal to [~~three~~] **five** percent of the net items of income, gain, loss and deduction attributable to such business [~~or farm~~] entering into federal adjusted gross income, but not less than zero, for taxable years beginning after

two thousand [~~thirteen~~] seventeen, an amount equal to [~~three and three-quarters~~] ten percent of the net items of income, gain, loss and deduction attributable to such business [~~or farm~~] entering into federal adjusted gross income, but not less than zero, for taxable years beginning after two thousand [~~fourteen~~] eighteen, [~~and~~] an amount equal to [~~five~~] fifteen percent of the net items of income, gain, loss and deduction attributable to such business [~~or farm~~] entering into federal adjusted gross income, but not less than zero[~~, for taxable years beginning after two thousand fifteen.~~]

(B) In the case of a taxpayer who is a farm business or a taxpayer who is a member, partner, or shareholder of a limited liability company, partnership, or New York S corporation, respectively, that is a farm business, who or which has farm income as defined by the laws of the United States, an amount equal to twenty percent of the net items of income, gain, loss and deduction attributable to such farm. The term farm business shall mean a farm business that has net farm income of less than six hundred thousand dollars.

(C)(i) For the purposes of this paragraph, the term small business shall mean: (I) a sole proprietor [~~or a farm business who employs one or more persons during the taxable year and~~] who has net business income [~~or net farm income~~] of less than [~~two hundred fifty~~] six hundred thousand dollars ; or (II) a limited liability company, partnership or New York S corporation that during the taxable year has New York gross business income attributable to a non-farm business that is greater than zero but less than one million five hundred thousand dollars or net farm income attributable to a farm business that is greater than zero but less than six hundred thousand dollars.

(ii) For purposes of this paragraph, the term New York gross business income shall mean: (I) in the case of a limited liability company or a partnership, New York source gross income as defined in subparagraph (B) of paragraph three of subsection (c) of section six hundred fifty-eight of this article, and, (II) in the case of a New York S corporation, New York receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of this chapter for the taxable year.

(D) To qualify for this modification in relation to a non-farm small business that is a limited liability company, partnership or New York S corporation, the taxpayer's income attributable to the net business income from its ownership interests in non-farm limited liability companies, partnerships or New York S corporations must be less than six hundred thousand dollars.

§ 3. Paragraph 35 of subdivision (c) of section 11-1712 of the administrative code of the city of New York, as added by section 2 of part Y of chapter 59 of the laws of 2013, is amended to read as follows:

(35) (A) In the case of a taxpayer who is a small business or a taxpayer who is a member, partner, or shareholder of a limited liability company, partnership, or New York S corporation, respectively, that is a small business, who or which has business income [~~and/or farm income~~] as defined in the laws of the United States, an amount equal to [~~three~~] fifteen percent of the net items of income, gain, loss and deduction attributable to such business [~~or farm~~] entering into federal adjusted gross income, but not less than zero[~~, for taxable years beginning after two thousand thirteen, an amount equal to three and three-quarters percent of the net items of income, gain, loss and deduction attributable to such business or farm entering into federal adjusted gross income, but not less than zero, for taxable years beginning after two~~

~~thousand fourteen, and an amount equal to five percent of the net items of income, gain, loss and deduction attributable to such business or farm entering into federal adjusted gross income, but not less than zero, for taxable years beginning after two thousand fifteen~~].

(B) In the case of a taxpayer who is a farm business or a taxpayer who is a member, partner, or shareholder of a limited liability company, partnership, or New York S corporation, respectively, that is a farm business, who or which has farm income as defined by the laws of the United States, an amount equal to twenty percent of the net items of income, gain, loss and deduction attributable to such farm. The term farm business shall mean a farm business that has net farm income of less than six hundred thousand dollars.

(C) (i) For the purposes of this paragraph, the term small business shall mean**: (I)** a sole proprietor [~~or a farm business who employs one or more persons during the taxable year and~~] who has net business income [~~or net farm income~~] of less than [~~two hundred fifty~~] **six hundred** thousand dollars **; or (II) a limited liability company, partnership or New York S corporation that during the taxable year has New York gross business income attributable to a non-farm business that is greater than zero but less than one million five hundred thousand dollars or net farm income attributable to a farm business that is greater than zero but less than six hundred thousand dollars.**

(ii) For purposes of this paragraph, the term New York gross business income shall mean: (I) in the case of a limited liability company or partnership, New York source gross income as defined in subparagraph (B) of paragraph three of subsection (c) of section six hundred fifty-eight of the tax law, and, (II) in the case of a New York S corporation, New York receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of the tax law for the taxable year.

(D) To qualify for this modification in relation to a non-farm small business that is a limited liability company, partnership or New York S corporation, the taxpayer's income attributable to the net business income from its ownership interests in non-farm limited liability companies, partnerships or New York S corporations must be less than six hundred thousand dollars.

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2018.

PART B

Section 1. The tax law is amended by adding a new section 42 to read as follows:

§ 42. Small business employee retention tax credit. (a) Allowance of credit. A small business taxpayer, which is subject to tax under article nine-A or twenty-two of this chapter and retains the base year employment level, shall be allowed a credit against such tax. The credit shall be one thousand dollars for small businesses that retain between one and ten employees; two thousand five hundred dollars for small businesses that retain between eleven and twenty-five employees; three thousand five hundred dollars for small businesses that retain between twenty-six and fifty employees; and five thousand dollars for small businesses that retain between fifty-one and one hundred employees.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Small business taxpayer" shall mean an employer with at least one employee but not more than one hundred full-time employees.

(2) "Base year" shall mean the prior tax year.

(3) "Employee" shall mean an individual employed on a full-time basis.

(c) No credit shall be allowed under this section to a taxpayer for any new employee if the taxpayer claims any other credit under this article for such new employee where the basis of such other credit is an increase in employment.

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 52 to read as follows:

52. Small business employee retention tax credit. (a) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section forty-two of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

§ 3. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(ccc) Small business employee retention tax credit. (1) A taxpayer will be allowed a credit, to the extent allowed under section forty-two of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount or credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

§ 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xliii) to read as follows:

(xliii) Small business employee retention tax credit under subsection (ccc)	Amount of credit under subdivision fifty-two of section two hundred ten-B

§ 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2018.

PART C

Section 1. The tax law is amended by adding a new section 43 to read as follows:

§ 43. Small business hire-NY tax credit. (a) Allowance of credit. A small business taxpayer, which is subject to tax under article nine-A or

twenty-two of this chapter and creates a new job, shall be allowed a credit against such tax. The credit shall be five thousand dollars for any new job for one full year of employment by an employee; if that employee has been hired for less than a full tax year this amount shall be prorated and apportioned to each tax year.

(b) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Small business taxpayer" shall mean an employer with at least one employee but not more than one hundred full-time employees.

(2) "Base year" shall mean the prior tax year.

(3) "New job" shall mean the number of full-time employees or full-time equivalent employees above the number of employees during the base year. For a new business, base employment shall begin at zero.

(4) "Employee" shall mean an individual employed on a full-time basis.

(c) No credit shall be allowed under this section to a taxpayer for any new employee if the taxpayer claims any other credit under this article for such new employee where the basis of such other credit is an increase in employment.

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Small business hire-NY tax credit. (a) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section forty-three of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

§ 3. Section 606 of the tax law is amended by adding a new subsection (hhh) to read as follows:

(hhh) Small business hire-NY tax credit. (1) A taxpayer will be allowed a credit, to the extent allowed under section forty-three of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

§ 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xliv) to read as follows:

(xliv) Small business hire-NY tax credit under subsection (eee)	Amount of credit under subdivision fifty-three of section two hundred ten-B

§ 5. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2018.

PART D

Section 1. The commissioner of taxation and finance shall develop and implement a "sales tax amnesty program" which allows a period of time for small businesses to pay a defined payment of tax amount due as a result of an audit by the department of taxation and finance, in exchange for forgiveness of a tax liability, including interest and penalties. Small businesses are businesses with less than one hundred employees.

§ 2. This act shall take effect immediately.

PART E

Section 1. Subdivision 6 of section 18-a of the public service law is REPEALED.

§ 2. Paragraph (g) of subdivision 2 of section 18-a of the public service law, as amended by section 2 of part A of chapter 173 of the laws of 2013, is amended to read as follows:

(g) The total amount which may be charged to any public utility company and the Long Island power authority under authority of this subdivision for any state fiscal year shall not exceed **one-third of** one per centum of such public utility company's or authority's gross operating revenues derived from intrastate utility operations in the last preceding calendar year, or other twelve month period as determined by the chairman; provided, however, that no corporation or person that is subject to the jurisdiction of the commission only with respect to safety, or the power authority of the state of New York, shall be subject to the general assessment provided for under this subdivision.

Notwithstanding the provisions of subdivision one of this section, for telephone corporations as defined in subdivision seventeen of section two of this article, the total amount which may be charged such corporations for department expenses under the authority of subdivision one of this section for any state fiscal year shall not exceed one-third of one percentum of such corporation's gross operating revenue, over and above five hundred thousand dollars, derived from intrastate utility operations in the last preceding calendar year, or other twelve month period as determined by the chairman.

§ 3. This act shall take effect immediately.

PART F

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 54 to read as follows:

54. Credit for college to work program. (a) Allowance of credit. A taxpayer who is a small business shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, based upon its payment of tuition to an institution of higher education on behalf of a qualified individual employee for a number of years, as set forth in a written agreement between the small business taxpayer and the individual employee.

(b) Tuition. For the purposes of this credit, the term "tuition" shall mean the tuition and fees paid for the enrollment and attendance of a qualified individual employee at an institution of higher education, as

well as monies paid for textbooks in connection with attendance at an institution of higher education. Provided, however, any amounts which have been paid for or reimbursed by any other scholarships or financial aid, or tuition required for enrollment or attendance in a course of study leading to the granting of a post baccalaureate or other graduate degree, shall be excluded form the definition of "tuition".

(c) Institution of higher education. For the purposes of this credit, the term "institution of higher education" shall mean any institution of higher education, recognized and approved by the regents, or any successor organization, of the university of the state of New York or accredited by a nationally recognized accrediting agency or association accepted as such by the regents, or any successor organization, of the university of the state of New York, which provides a course of study leading to the granting of a post-secondary degree, certificate or diploma.

(d) Qualified individual employee. For purposes of this credit, the term "qualified individual employee" shall mean any individual employee who is not a spouse, child or dependent of the taxpayer or any individual employee who is not a spouse, child or dependent of any officer or employee of the taxpayer.

(e) Written agreement. For purposes of this credit, the term "written agreement" shall mean a document signed and dated by both the small business taxpayer and the qualified individual employee which contains provisions including but not limited to the minimum salary which the taxpayer will pay to the qualified individual upon completion of the individual's degree; the required duration of employment upon completion of the individual's degree; and the parties' respective responsibilities in the event that the taxpayer ceases operations or later decides not to offer employment to the individual upon completion of his/her degree or in the event that the qualified individual fails to complete the degree or to work for the taxpayer for the agreed upon term.

(f) Small business. For purposes of this credit, the term "small business" shall mean any business with less than one hundred employees.

(g) Amount of credit. Notwithstanding the provision of any other law, a taxpayer which provides for the payment of an individual employee's tuition under the college to work program established by this subdivision, shall be allowed a credit against the tax imposed by this article, to the extent of twenty-five percent of monies paid for each individual's tuition, but such credit shall not exceed five thousand dollars for one year for each such qualified individual.

(h) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

§ 2. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xiiv) to read as follows:

(xiiv) College to work program credit under subsection (s-1)	Amount of credit under subdivision fifty-four of section two hundred ten-B

§ 3. Section 606 of the tax law is amended by adding a new subsection (s-1) to read as follows:

(s-1) Credit for college to work program. (1) Allowance of credit. A taxpayer who is a small business shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, based upon such taxpayer's payment of tuition to an institution of higher education on behalf of a qualified individual employee in exchange for the individual agreeing to work for the taxpayer for a number of years, as set forth in a written agreement between the taxpayer and the individual. For the purpose of this subsection "small business" shall mean a business which has one hundred or fewer employees.

(2) Tuition. For the purposes of this credit, the term "tuition" shall mean the tuition and fees paid for the enrollment and attendance of an individual at an institution of higher education, as well as monies paid for textbooks in connection with attendance at an institution of higher education. Provided, however, any amounts which have been paid for or reimbursed by any other scholarships or financial aid, or tuition required for enrollment or attendance in a course of study leading to the granting of a post baccalaureate or other graduate degree, shall be excluded from the definition of "tuition".

(3) Institution of higher education. For the purposes of this credit, the term "institution of higher education" shall mean any institution of higher education, recognized and approved by the regents, or any successor organization, of the university of the state of New York or accredited by a nationally recognized accrediting agency or association accepted as such by the regents, or any successor organization, of the university of the state of New York, which provides a course of study leading to the granting of a post-secondary degree, certificate or diploma.

(4) Qualified individual employee. For purposes of this credit, the term "qualified individual employee" shall mean any individual employee who is not a spouse, child or dependent of the taxpayer or any individual employee who is not a spouse, child or dependent of any officer or employee of the taxpayer.

(5) Written agreement. For purposes of this credit, the term "written agreement" shall mean a document signed and dated by both the small business taxpayer and the qualified individual employee which contains provisions including but not limited to the minimum salary which the taxpayer will pay to the qualified individual upon completion of the individual's degree; the required duration of employment upon completion of the individual's degree; and the parties' respective responsibilities in the event that the taxpayer ceases operations or later decides not to offer employment to the individual upon completion of his/her degree or in the event that the qualified individual fails to complete the degree or to work for the taxpayer for the agreed upon term.

(6) Small business. For purposes of this credit, the term "small business" shall mean any business with less than one hundred employees.

(7) Amount of credit. Notwithstanding the provisions of any other law, a taxpayer who provides for the payment of an individual employee's tuition under the college to work program established by this subsection, shall be allowed a credit against the tax imposed by this article, to the extent of twenty-five percent of monies paid for each individual's tuition, but such credit shall not exceed five thousand dollars for one year for each such qualified individual.

(8) Carryover. If the amount of credit allowable under this subsection for any taxable year exceeds the taxpayer's tax for such year, any amount of credit not deductible in such taxable year may be carried over

to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 4. This act shall take effect immediately and shall apply to all taxable years commencing after January 1, 2018.

PART G

Section 1. Article 50 and sections 1000, 1001, 1002 and 1003 of the executive law, as renumbered by chapter 770 of the laws of 1978 are renumbered article 52 and sections 1050, 1051, 1052 and 1053 and a new article 50 is added to read as follows:

ARTICLE 50

DIVISION OF REGULATORY REVIEW AND ECONOMIC GROWTH

Section 1010. Definitions.
1011. Division of regulatory review and economic growth.
1012. General functions, powers and duties.
1013. Assistance of other state agencies.
1014. Regulation review.
1014-a. Regulations affecting small business.
1015. Division annual recommendations.
1016. Implementation of recommendations.
1017. Cost of regulation study.

§ 1010. Definitions. When used in this article, the following terms shall have the following meanings:

1. "Commissioner" means the commissioner of the division of regulatory review and economic growth.

2. "Division" means the division of regulatory review and economic growth created by this article.

3. "Permit" shall mean the whole or part of any state agency permit, license, certificate, approval, registration, charter, or similar form of permission or authority required by law or by state agency rule having the force and effect of law, which is required for a business undertaking, project or activity; provided, however, it shall not mean individual licenses for practicing a profession prescribed in title eight of the education law, filings under the uniform commercial code, or routine licenses and permits for individual privileges, including licenses for operating a motor vehicle and amateur sporting licenses, such as for hunting and fishing.

4. "Rule" means a rule as defined in subparagraph (i) of paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act, including rules of the workers' compensation board, but does not include the rules of the state comptroller or attorney general, rules regarding jurisdictional classifications pursuant to subdivision one of section six of the civil service law, and the alteration of hunting or fishing seasons pursuant to article eleven of the environmental conservation law.

5. "State agency" means an agency as defined in subdivision one of section one hundred two of the state administrative procedure act.

6. "Small business" shall have the same meaning as set forth in subdivision twenty of section three hundred ten of this chapter.

§ 1011. Division of regulatory review and economic growth. 1. There is hereby created in the executive department the division of regulatory review and economic growth. The head of the division shall be the commissioner of the division who shall be appointed by the governor with the consent of the senate and serve a term of five years.

2. The commissioner must have at least ten years of experience running a for-profit business, with at least three years experience as the chief executive officer, chief operating officer, chief financial officer, president, owner, or any other title used for the highest ranking officer, administrator or manager of a for-profit business.

3. The commissioner shall be appointed by the governor within thirty days of the effective date of this section and within thirty days of the expiration of every five year term thereafter, and upon confirmation of the senate shall serve a term of five years effective from the date of confirmation. If the senate rejects an appointment, the governor shall have thirty days from the date of the rejection to appoint another commissioner.

4. The commissioner may only be removed from office by a felony conviction or a crime involving a violation of his or her oath of office or by the assent of two-thirds of the members elected to each branch of the legislature voting separately.

5. Such commissioner shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation and shall be allowed his or her actual and necessary expenses in the performance of his or her duties.

6. Upon appointment and until such term expires, the commissioner shall not (a) participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which he or she is registered to vote; (b) endorse any candidate or political party; or (c) make contributions to any candidate, political party committee, political action committee or political committee pursuant to subdivision ten of section 14-114 of the election law.

7. The commissioner shall direct the work of the division and shall be the chief executive officer of the division. The commissioner may enter into contracts and expend money, and appoint such officers and employees as he or she may deem necessary, prescribe their duties, fix their compensation, and provide for the reimbursement of their expenses, all within amounts made available therefor by appropriation. Such staff shall be management confidential employees with an understanding of private sector business.

§ 1012. General functions, powers and duties. The division of regulatory review and economic growth, by and through the commissioner or his or her duly authorized officers and employees, shall have the following functions, powers and duties:

1. To provide an oversight, review and analysis of the rules and regulatory processes of state agencies.

2. To make binding recommendations to the governor and legislature on burdensome New York state codes, rules, regulations, regulatory processes, and permit requirements to eliminate or amend them, pursuant to section one thousand fifteen of this article.

3. To review the environmental quality review process established under article eight of the environmental conservation law and make recommendations pursuant to subdivision two of this section to establish a more efficient, predictable, timely, and transparent process, and to ensure that the process does not stifle economic growth in New York state.

4. To review permit requirements and the need by the state to require such permits. The division shall make recommendations pursuant to subdivision two of this section to eliminate, consolidate, simplify, expe-

dite, or otherwise improve permits, permit procedures, and paperwork burdens affecting local governments, school districts or businesses.

5. To encourage and facilitate the participation of federal and local government agencies in regulatory review.

6. To establish an 800 hotline and website to provide businesses with one contact number to direct questions and to provide assistance to businesses in the state or businesses looking to open or expand in New York state. Such hotline may be used to report regulatory burdens, state agencies overreaching their power, excessive fines and to submit requests for regulatory review by the commissioner.

7. To adopt such rules and regulations, procedures, instructions, and forms as are necessary or desirable to carry out the functions, powers, and duties imposed upon the division by this article.

8. To publish an annual report, after January first and before February first, commencing two thousand twenty, including all recommendations proposed by the division and those recommendations implemented by the state during the prior calendar year. Such report shall include specific details concerning estimated cost savings to the taxpayers from proposed recommendations and actual cost savings to the taxpayers from implemented recommendations.

§ 1013. Assistance of other state agencies. To effectuate the purposes of this article, the commissioner may request and shall be entitled to receive from any state agency, and the same are authorized to provide, such assistance, services, facilities, and data as will enable the division to carry out its functions, powers and duties.

§ 1014. Regulation review. 1. In developing a rule, each agency head shall, prior to submitting a notice of proposed or revised rulemaking for publication in the state register pursuant to section two hundred two of the state administrative procedure act, submit to the commissioner, in such form and manner as the commissioner may prescribe, the complete text of the rule, any impact statements which would be required by article two of the state administrative procedure act to propose the rule, and any cost-benefit analysis, risk assessment and/or the results of a negotiated rulemaking or policy dialogue undertaken in conjunction with the development of the rule.

2. The commissioner shall review the agency's submission to determine whether it is complete and in accordance with the goals, criteria and requirements of this article and article two of the state administrative procedure act, including whether the rule:

(a) is clearly within the authority delegated by law;

(b) is consistent with and necessary to achieve a specific legislative intent of promoting economic growth or protecting the health and safety of the public;

(c) is consistent with state statutory requirements;

(d) does not impose a mandate on local governments, school districts or businesses that is not fully funded, except as specifically required by state statute;

(e) is clearly written so that its meaning will be easily understood by those persons affected by it;

(f) does not unnecessarily duplicate or exceed existing federal or state statutes or rules;

(g) prescribes methodologies or requirements that allow regulated parties flexibility and encourage innovation in meeting the legislative or administrative requirements and objectives underlying the rule;

(h) is based on credible assessments, using recognized standards, of the degree and nature of the risks which may be regulated, including a comparison with everyday risks familiar to the public;

(i) gives preference to the least costly, least burdensome regulatory and paperwork requirements needed to accomplish legislative and administrative objectives;

(j) is based upon the best scientific, technical and economic information that can reasonably and affordably be obtained; and

(k) if possible and practical, favors market-oriented solutions and performance standards over command-and-control regulation.

3. If the commissioner determines that the submission is complete, complies with the provisions of subdivision two of this section, will promote economic growth, or is vital to protect the health and safety of the public, the commissioner shall authorize the agency to submit the rulemaking for publication in the state register pursuant to section two hundred two of the state administrative procedure act.

4. If the commissioner determines the submission is not complete or does not comply with the requirements of subdivision two of this section, or is detrimental to economic growth in New York state, or is not vital to protect the health and safety of the public, the commissioner may reject the rule or return it to the agency, together with any direction that the agency amend, prepare or revise the rule, any supporting impact statements, cost benefit analysis, risk assessment, and/or undertake a negotiated rulemaking or policy dialogue to develop a rule for proposal. The division may assist the agency in developing a proposal that meets the requirements of subdivision two of this section.

5. An agency may consult informally with the division regarding proposed rules, supporting impact statements, and other documents at any time prior to the submission of such materials pursuant to subdivision one of this section. Such informal consultation shall not be binding on the division or the agency.

6. No agency head shall submit a notice of proposed or revised rulemaking for publication in the state register pursuant to section two hundred two of the state administrative procedure act, without express approval by the commissioner. The commissioner, in his or her sole discretion, may reject any particular rule or category of rules he or she determines is detrimental to economic growth in New York state, or is not vital to protect the health and safety of the public. The divisions shall promptly notify the agency of any such rejection.

§ 1014-a. Regulations affecting small business. 1. Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

(a) an identification and estimate of the number of the small businesses subject to the proposed regulation;

(b) the projected reporting, record keeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) a statement of the probable effect on impacted small businesses; and

(d) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

2. Prior to the adoption of any proposed regulation, each agency shall prepare a regulatory flexibility analysis with the goal of minimizing adverse impact on small businesses. The agency must consider each of the

following methods of reducing the impact of the proposed regulation on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(e) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

3. (a) Within four years of the effective date of this section, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses.

(b) Rules adopted after the effective date of this section should be reviewed every five years after the publication of such rules as the final rule to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

(i) the continued need for the rule;

(ii) the nature of complaints or comments received concerning the rule from the public;

(iii) the complexity of the rule;

(iv) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local governmental rules; and

(v) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

§ 1015. Division annual recommendations. On or before January first, two thousand eighteen and annually thereafter, the division shall transmit to the governor and the legislature a report containing its recommendations, which shall include:

1. specific recommendations for repealing or amending New York state codes, rules, regulations, regulatory processes, and permit requirements as it deems necessary to lower costs for local governments, school districts and businesses or promote economic growth; and

2. recommended dates by which such actions should occur.

§ 1016. Implementation of recommendations. 1. Notwithstanding any contrary provision of law, rule or regulation related to the repeal or amendment of any New York state codes, rules, regulations, regulatory processes, and permit requirements identified in the division's recommendations, the secretary of state shall take all actions necessary to implement, in a reasonable, cost-efficient manner, the recommendations of the division pursuant to section one thousand fifteen of this article, including, but not limited to coordination with state agencies, authorities, and other parties as the commissioner deems appropriate.

2. The provisions of subdivision one of this section shall not apply: (a) unless the governor has transmitted the division's report under section one thousand fifteen of this article with his or her written

approval of the recommendations of the division pursuant to section one thousand fifteen of this article to the secretary of state and transmitted a message to the legislature stating his or her approval or rejection of the report within five days of receiving such report; and (b) if a majority of the members of each house of the legislature vote to adopt a concurrent resolution rejecting the recommendations of the division pursuant to section one thousand fifteen of this article in their entirety within sixty days, after receiving a message from the governor under this subdivision. In no event shall the secretary of state begin to implement the recommendations of the division pursuant to section one thousand fifteen of this article prior to the expiration of the legislature's sixty day review period.

§ 1017. Cost of regulation study. The commissioner is hereby authorized and directed to prepare or have prepared a comprehensive study to measure and report the cost of regulations to businesses throughout the state of New York.

2. Such study shall be completed within eighteen months of the effective date of the chapter of the laws of two thousand seventeen that added this article.

§ 2. Paragraph (a) of subdivision 6-a of section 202 of the state administrative procedure act, as amended by chapter 171 of the laws of 1994, is amended to read as follows:

(a) An agency shall transmit a copy of any rule making notice prepared pursuant to this article and approved by the commissioner of the division of regulatory review and economic growth pursuant to article fifty of the executive law to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the administrative regulations review commission and the office of regulatory and management assistance at the time such notice is submitted to the secretary of state for publication in the state register. Such transmittal shall include the complete rule text, regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis, or revisions thereof, and any other information submitted to the secretary of state pursuant to this article.

§ 3. Section 86 of the legislative law, as added by chapter 689 of the laws of 1978, is amended to read as follows:

§ 86. Administrative regulations review commission. There is hereby created an administrative regulations review commission to consist of two members of the senate to be appointed by the temporary president of the senate, two members of the assembly to be appointed by the speaker of the assembly, [~~one member~~] two members of the senate to be appointed by the minority leader of the senate and [~~one member~~] two members of the assembly to be appointed by the minority leader of the assembly. The temporary president of the senate and the speaker of the assembly shall each appoint a co-chairman from among the commission membership. Any vacancies shall be filled in the same manner as the original appointment. Such appointees shall serve at the pleasure of the respective legislative member making such appointment.

§ 4. Section 87 of the legislative law, as added by chapter 689 of the laws of 1978, is amended to read as follows:

§ 87. Powers and duties. 1. The commission shall exercise continuous oversight of the process of rule making and examine rules, as defined in subdivision two of section one hundred two of the state administrative procedure act, adopted or proposed by each agency with respect to (i) statutory authority, (ii) compliance with legislative intent, (iii)

impact on the economy and on the government operations of the state and its local governments, and (iv) impact on affected parties; and, in furtherance of such duties, may examine other issues it deems appropriate. For purpose of this article, the term agency shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the governor.

2. **The commission shall review any legislation requiring a commissioner or agency as defined by subdivision one of section one hundred two of the state administrative procedure act, to promulgate any codes, rules and regulations necessary for the implementation and make recommendations to the members of the legislature. Such recommendations should include the commission's approval if the legislation is deemed necessary to protect the health and safety of the public or the commission's disapproval if such legislation is deemed detrimental to economic growth in New York state, or is not vital to protect the health and safety of the public.**

3. The commission shall review New York state laws that result in the promulgation of codes, rules or regulations by a commissioner or agency as defined by subdivision one of section one hundred two of the state administrative procedure act, or any laws the commission deems a regulatory burden on local governments, school districts or businesses and make recommendations to the members of the legislature. Such recommendations should include the commission's request for the repeal of laws it deems increase costs for local governments, school districts or businesses or are detrimental to economic growth in New York state, or are not vital to protect the health and safety of the public.

4. The commission may employ such staff and retain such consultants and expert services as may be necessary and fix their compensation and expenses within the amounts appropriated therefor. Employment by the commission shall be deemed to be employment by the legislature for all purposes.

[~~3~~] **5**. The commission shall have the power, subject to the provisions of section seventy-three of the civil rights law, to hold hearings, subpoena witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in furtherance of its duties; provided, however, that no subpoena shall issue except upon the affirmative vote of a majority of the whole membership of the commission. The commission may request and shall receive from all agencies such assistance and data as will enable it properly to consummate any such examination, and review.

§ 5. Section 88 of the legislative law, as amended by chapter 850 of the laws of 1990, is amended to read as follows:

§ 88. Reports. The commission shall, [~~from time to time~~] **annually**, report its findings and recommendations to the governor, the temporary president of the senate and the speaker of the assembly, **the minority leader of the senate, the minority leader of the assembly,** and to the members of the legislature, and may at any time make recommendations to **the division of regulatory review and economic growth and** an agency based upon its review of that agency's rule making process, or any of the agency's proposed, revised or adopted rules.

§ 6. The legislative law is amended by adding a new section 88-a to read as follows:

§ 88-a. Regulatory Wednesdays. 1. Every Wednesday, which is a scheduled session day for the legislature in every week beginning with a scheduled session day on Monday, shall be deemed regulatory Wednesday.

The commission shall be required to meet on every regulatory Wednesday to perform its powers and duties pursuant to section eighty-seven of this article.

2. On every regulatory Wednesday, the senate and assembly shall take up any bills on any order of third reading that are before each respective house for final disposition, that have gained the approval of the commission prior to taking up any other bill on any order of third reading, unless such action is waived, without debate, upon a majority vote of the members present.

§ 7. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 8. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to rules and revised rules to be submitted for publication in the state register on and after such date.

PART H

Section 1. The commissioner of the department of economic development shall develop and implement a "regulatory amnesty" period to allow for small businesses to remedy rules or regulations violations before any violations or sanctions are levied. Such regulatory amnesty period must be at least six months. If a small business remedies the violation within the time period established by the commissioner, such business shall not be subjected to fines or penalties.

§ 2. This act shall take effect immediately.

PART I

Section 1. The legislative law is amended by adding a new section 51-a to read as follows:

§ 51-a. Moratorium on unfunded mandates. 1. Definitions. As used in this section, the following terms shall have the following meanings:

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

(b) "Small business" means any business with less than one hundred employees.

(c) "Net additional cost" means the cost or costs incurred or anticipated to be incurred within a one year period by a local government in performing or administering any program, project, or activity after subtracting therefrom any revenues received or receivable by such local government in relation to such program, project, or activity, including but not limited to: (i) fees charged to the recipients of such program, project, or activity; (ii) state or federal funds received for such program, project, or activity; and (iii) an offsetting savings resulting from the diminution or elimination of any other program, project, or activity that state law requires such local government to provide or undertake.

(d) "Unfunded mandate" means: (i) any state law that requires a local government to provide or undertake any new program, project or activity that results in an annual net additional cost to any local government in excess of ten thousand dollars or an aggregate annual net additional cost to all local governments within the state in excess of one million dollars; or (ii) any state law that requires a local government to provide a higher level of service or funding for an existing program, project or activity that results in an annual net additional cost to any local government in excess of ten thousand dollars or an aggregate annual net additional cost to all local governments within the state in excess of one million dollars; or (iii) any state law that requires a local government to grant any new property tax exemption or that broadens the eligibility or increases the dollar amount of any existing property tax exemption, on property that otherwise would have generated revenue under the current property tax rate of such local government in excess of ten thousand dollars in any local government or in excess of one million dollars statewide; or (iv) any state law with a legal requirement that would otherwise likely have the effect of raising property taxes in excess of ten thousand dollars in any local government or in excess of one million dollars statewide; or (v) any state law that requires a small business to undertake any new program, project or activity that results in an annual net additional cost to the business.

2. Moratorium on unfunded mandates. Notwithstanding any other provision of law, no unfunded mandates shall be enacted.

3. Exemptions. (a) A state law shall not be considered an unfunded mandate where such law: (i) is required by a court order or judgment; or (ii) is provided at the option of the local government under a law that is permissive rather than mandatory; or (iii) results from the passage of a home rule message whereby a local government requests authority to implement the program or service specified in the statute, and the statute imposes costs only upon that local government which requests the authority to impose the program or service; or (iv) is required by statute or executive order that implements a federal law or regulation and results from costs mandated by the federal government to be borne at the local level, unless the statute or executive order results in costs which exceed the costs mandated by the federal government; or (v) is imposed on both government and non-government entities in the same or substantially similar circumstances; or (vi) repeals or revises a state law to ease an existing requirement that a local government provide or undertake a program, project, or activity, or reapportions the costs of activities between local governments; or (vii) is necessary to protect against an immediate threat to public health or safety.

(b) The effective date of any act establishing a mandate shall provide a reasonable time for the state and any local government to plan implementation thereof and shall be consistent with the availability of required funds.

§ 2. Section 51 of the legislative law, as added by chapter 985 of the laws of 1983, is amended to read as follows:

§ 51. Fiscal [~~impact~~] notes on bills affecting political subdivisions. 1. For the purpose of this section, the term "political subdivision" means any county, city, town, village, special district or school district.

2. [~~The legislature shall by concurrent resolution of the senate and assembly prescribe rules requiring fiscal notes to accompany, on a separate form, bills and amendments to bills, except as otherwise prescribed by such rules, which~~] A bill that would substantially affect the reven-

ues or expenses, or both, of any political subdivision **shall contain a fiscal note stating the estimated annual cost to the political subdivision affected and the source of such estimate**.

3. Fiscal notes shall not, however, be required for bills: (a) subject to the provisions of section fifty of this chapter, or (b) accompanied by special home rule requests submitted by political subdivisions, or (c) which provide discretionary authority to political subdivisions, or (d) submitted pursuant to section twenty-four of the state finance law.

4. If the estimate or estimates contained in a fiscal note are inaccurate, such inaccuracies shall not affect, impair or invalidate such bill.

§ 3. This act shall take effect immediately, provided, however, that section one of this act shall only apply to laws enacted after such effective date.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through I of this act shall be as specifically set forth in the last section of such Parts.