STATE OF NEW YORK

2225

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Ways and Means

AN ACT in relation to enacting the empire state apprenticeship program; to amend the labor law, in relation to establishing the empire state apprenticeship tax credit program and granting the commissioner of the department of labor the power to administer such program; and to amend the tax law, in relation to the empire state apprenticeship tax credit (Part A); to amend the labor law, in relation to establishing the empire state apprenticeship grant program for small business and not-for-profit corporations (Part B)

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 "empire state apprenticeship program".

§ 2. This act enacts into law components of legislation relating to the empire state apprenticeship program. Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the 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. Section four of this act sets forth the general effective date of this act.

PART A

Section 1. The labor law is amended by adding a new section 25-c to read as follows:

§ 25-c. Power to administer the empire state apprenticeship tax credit program. (a) The commissioner is authorized to establish and administer the empire state apprenticeship tax credit program to provide tax incentives to qualified and certified employers for employing qualified apprentices pursuant to an apprenticeship agreement registered with the

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

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department pursuant to paragraph (d) of subdivision one of section eight hundred eleven of this chapter. The commissioner is authorized to provide tax credits to be allocated up to ten million dollars of tax credits annually, beginning taxable year two thousand seventeen and ending before taxable year two thousand twenty-one. Any unused allocation of the credit shall be made available in each of the subsequent taxable years for all eligible years of the apprenticeship allowed under subdivision (c) of this section.

(b) Definitions. (1) The term "apprenticeship agreement" means the agreement as defined by section eight hundred sixteen of this chapter.

(2) The term "qualified employer" means an employer that has entered into a registered apprenticeship agreement. For the purposes of this section a "qualified employer" shall not include an employer that is a contractor or subcontractor who is a partnership, firm, corporation, limited liability company, association or other legal entity permitted by law to do business within the state who engages in construction as defined in this section and whose apprenticeship agreement includes skills related to the construction industry.

(3) For purposes of this section, the term "construction" means constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating, fabricating, servicing, or demolition of any building, structure, or improvement, or component, or relating to the excavation of or other development or improvement to land.

(4) The term "certified employer" means a qualified employer that has been certified as eligible by the commissioner to participate in the empire state apprenticeship tax credit program established in this section.

(5) The term "qualified apprentice" means an individual employed in a full time position for at least six months of a taxable year and who has entered into an agreement with a qualified employer pursuant to section eight hundred sixteen of this chapter.

(6) The term "mentor" means an individual who provides instruction, guidance, and support to the apprentice on a regular basis throughout their apprenticeship until the completion of their apprenticeship and for the year after they complete their apprenticeship as the apprentice seeks employment in the field or industry of their apprenticeship. The goal of the mentor is to help train the apprentice in his or her trade and to help the apprentice successfully complete the apprenticeship and to secure and retain employment.

(c) (1) A certified employer shall be entitled to a tax credit against income tax for each qualified apprentice for tax year equal to: (A) the lesser of two thousand dollars or the total amount of wages paid for the first year of the apprenticeship; (B) the lesser of three thousand dollars or the total amount of wages paid for the second year of the apprenticeship; and (C) the lesser of four thousand dollars or the total amount of wages paid for each of the third, fourth, and fifth years of the apprenticeship.

(2) A certified employer shall be entitled to an enhanced tax credit if the employer can show that the apprentice for which the employer received the tax credit pursuant to this subdivision is being trained in his or her trade by a mentor as defined in this section. The enhanced credit shall be an additional five hundred dollars for each year of the apprenticeship in addition to the base tax credit described in paragraph one of this subdivision.

(d) To participate in the program established under this section, a qualified employer must submit an application (in a form prescribed by the commissioner) to the commissioner after January first, but no later than November thirtieth of each year during taxable years the credit is allocated. The qualified apprentices must start their employment on or after January first but no later than December thirty-first, of the year for which the qualified employer seeks the tax credit.

(e) As part of such application, each qualified employer must:

(1) Agree to allow the department of taxation and finance to share its tax information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(2) Allow the department and its agents access to any and all books and records the department may require to monitor compliance.

(f) The commissioner shall establish guidelines and criteria that specify requirements for qualified employers to participate in the program including criteria for certifying qualified apprentices. Any regulations that the commissioner determines are necessary and are consistent with the purpose of this article may be adopted on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedure act. The commissioner may give preference to qualified employers that are engaged in demand occupations or industries, or in regional growth sectors, including those identified by the department, such as clean energy, health care, advanced manufacturing and conservation.

(g)(i) If, after reviewing the application submitted by a qualified employer, the commissioner determines that such qualified employer is eligible to participate in the program established under this section, the commissioner shall issue the qualified employer a certificate within ninety days of application of eligibility that establishes the qualified employer as a certified employer. The certificate of eligibility shall specify the maximum amount of tax credit that the certified employer will be allowed to claim.

(ii) For each subsequent application submitted by a qualified employer who was certified by the commissioner in a prior tax year, the commissioner may consider the following factors when determining if the qualified employer should be re-certified:

(A) the length of the apprenticeship agreement the employer has entered into;

(B) how many apprentices have graduated from the apprenticeship program to which the qualified apprentice employed by the employer belongs;

(C) how many apprentices in the first, second, third, fourth, or fifth year of an apprenticeship program the qualified employer has hired; and

(D) any other factors the commissioner deems relevant.

(h) Certified employers that employ a qualified apprentice pursuant to an apprenticeship agreement as defined by section eight hundred sixteen of this article that requires the apprentice to be taught trade or craft divisions by more than one employer shall be eligible for the credit based on the total number of hours such apprentice is employed by each such employer if the total number of hours employed exceeds the minimum number of hours required to be a qualified apprenticeship under paragraph five of subdivision (b) of this section, as determined pursuant to regulations of the department.

(i) The commissioner shall annually publish a report within one hundred eighty days of the close of the tax year. Such report must contain the names and addresses of any certified employer issued a certificate of eligibility under this section, and the maximum amount of empire state apprenticeship tax credit allowed to the certified employer as specified on such certificate of eligibility. The commissioner shall include in such report recommendations for legislative or other action to further the intent and purpose of the empire state apprenticeship tax credit program.

(j) The commissioner shall promote, publish and disseminate information concerning the empire state apprenticeship tax credit and other available funding, particularly targeting industries and fields of business not currently taking advantage of apprenticeships.

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 49 to read as follows:

49. Empire state apprenticeship tax credit. (a) A taxpayer that has been certified by the commissioner of labor as a certified employer pursuant to section twenty-five-c of the labor law shall be allowed a credit against the tax imposed by this article, for each qualified apprentice, up to (i) two thousand five hundred dollars for the first year of the apprenticeship; (ii) three thousand five hundred dollars for the second year of the apprenticeship; (iii) four thousand five hundred dollars for the third year of the apprenticeship; (iv) four thousand five hundred dollars for the fourth year of the apprenticeship; and (v) four thousand five hundred dollars for the fifth year of the apprenticeship. For purposes of this subdivision, the term "qualified apprentice" shall have the same meaning as set forth in subdivision (b) of section twenty-five-c of the labor law. The portion of the credit described in subparagraphs (i) through (v) of this paragraph shall be allowed for the taxable years in which the wages are paid to the qualified apprentice.

(b) The credit allowed under this subdivision for any taxable year may not reduce the tax due for that 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 the credit allowed under this subdivision for any taxable year reduces the tax to that amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in that 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, no interest will be paid thereon.

(c) The taxpayer shall be required to attach to its tax return its certificate of eligibility issued by the commissioner of labor pursuant to section twenty-five-c of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the certificate of eligibility. Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees shall release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

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

(vvv) Empire state apprenticeship tax credit. (1)(A) A taxpayer that has been certified by the commissioner of labor as a certified employer pursuant to section twenty-five-c of the labor law shall be allowed a credit against the tax imposed by this article, for each qualified apprentice, up to (i) two thousand five hundred dollars for the first year of the apprenticeship; (ii) three thousand five hundred dollars for the second year of the apprenticeship; (iii) four thousand five hundred dollars for the third year of the apprenticeship; (iv) four thousand five hundred dollars for the fourth year of the apprenticeship; and (v) four thousand five hundred dollars for the fifth year of the apprenticeship.

(B) A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in an S corporation that has been certified by the commissioner of labor as a certified employer pursuant to section twenty-five-c of the labor law shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation.

(C) For purposes of this subsection, the term "qualified apprentice" shall have the same meaning as set forth in subdivision (b) of section twenty-five-c of the labor law. The portion of the credit described in clause (i) through (v) of subparagraph (A) of this paragraph shall be allowed for the taxable years in which the wages are paid to the qualified apprentice.

(2) If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article. Provided, however, no interest will be paid thereon.

(3) The taxpayer shall be required to attach to its tax return its certificate of eligibility issued by the commissioner of labor pursuant to section twenty-five-c of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the certificate of eligibility. Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees shall release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company, a partner in a partnership, or a shareholder in a subchapter S corporation, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

§ 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) Empire state apprenticeship tax credit under subsection (vvv)	Amount of credit under subdivision forty-nine of section two hundred ten-B

§ 5. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2017.

PART B

Section 1. The labor law is amended by adding a new article 23-D to read as follows:

ARTICLE 23-D
EMPIRE STATE APPRENTICESHIP GRANT PROGRAM FOR SMALL BUSINESS AND NOT-FOR-PROFIT CORPORATIONS

Section 833. Empire state apprenticeship grant program for small business and not-for-profit corporations.

§ 833. Empire state apprenticeship grant program for small business and not-for-profit corporations. 1. The department shall establish a grant program designed to encourage the adoption of apprenticeships administered by small businesses and not-for-profit corporations. The department shall provide grants within available appropriations, on a competitive basis, in response to a request for proposal from eligible entities. The program shall provide one to one state matching funds to eligible entities not to exceed fifty thousand dollars annually. An eligible entity shall include a business employing and/or training an apprentice pursuant to an apprenticeship agreement registered with the department pursuant to paragraph (d) of subdivision one of section eight hundred eleven of this chapter which is resident in this state, independently owned and operated, and employs twenty-five or less persons, or a not-for-profit organization employing and/or training an apprentice pursuant to an apprenticeship agreement as defined by section eight hundred sixteen of this chapter and registered with the department. An eligible entity shall not include an employer who is a contractor or subcontractor who is a partnership, firm, corporation, limited liability company, association or other legal entity permitted by law to do business within the state who engages in construction. For purposes of this section, the term "construction" means constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating, fabricating, servicing, or demolition of any building, structure, or improvement, or component, or relating to the excavation of or other development or improvement to land. The department may use grant funds only for costs related to apprenticeship programs for capital and/or operating expenses, and to support dedicated mentors for apprentices. The commissioner is directed to establish guidelines and an application process. Total statewide expenditures for the grant program shall not exceed two million five hundred thousand dollars per year.

2. The state apprenticeship and training council shall review requests for proposals and will recommend project applications deemed to meet the intent of the program to the department.

3. The department shall report on or before October first, two thousand eighteen and annually thereafter to the governor, temporary president of the senate, speaker of the assembly, and chairs of the assembly committee on labor and the legislative commission on skills development and career education on activities and progress of the grant. Such report shall contain the names, addresses and descriptions of any eligible entity issued a grant under this section, the amount of the grant allowed to the employer, for what purposes, the number of apprentices and their trade or trades, and whether each apprenticeship is a new job created after being issued a grant pursuant to this program.

§ 2. This act shall take effect immediately.

§ 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 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.

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