

# STATE OF NEW YORK

7427--A

2017-2018 Regular Sessions

## IN ASSEMBLY

April 25, 2017

Introduced by M. of A. SCHIMMINGER, THIELE, WALTER, BARRETT, BARRON, BRAUNSTEIN, BRINDISI, BRONSON, BUTLER, CAHILL, CROUCH, ERRIGO, JENNE, SKARTADOS, SKOUFIS, BENEDETTO, LUPARDO, M. G. MILLER, HYNDMAN, JEAN-PIERRE, WILLIAMS, GALEF, ROZIC, ABINANTI, D'URSO, MORINELLO, JAFFEE, GOTTFRIED, ORTIZ, OAKS, RA, MURRAY, MONTESANO, BLANKENBUSH, DICKENS, HEVESI, LAWRENCE, BRABENEC, BLAKE, SEPULVEDA, KOLB, LAVINE, WRIGHT, FAHY, COOK, HAWLEY -- Multi-Sponsored by -- M. of A. BARCLAY, BUCHWALD, GLICK, MAGEE, McDONOUGH, PRETLOW, SIMON, WALSH, WEINSTEIN -- read once and referred to the Committee on Economic Development -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law, in relation to reporting requirements for the START-UP NY program including specific data relating to net new jobs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Notwithstanding the provisions of article 5 of the general  
2 construction law, the provisions of section 438 of the economic develop-  
3 ment law, as amended by section two of this act, are hereby revived and  
4 shall continue in full force and effect as such provisions existed on  
5 April 10, 2017.

6 § 2. Section 438 of the economic development law, as added by section  
7 1 of part A of chapter 68 of the laws of 2013, is amended to read as  
8 follows:

9 § 438. Disclosure authorization and reporting requirements. 1. The  
10 commissioner and the department shall disclose publicly the names and  
11 addresses of the businesses located within a tax-free NY area. In addi-  
12 tion, the commissioner and the department shall disclose publicly and  
13 include in the annual report required under subdivision two of this

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

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1 section such other information contained in such businesses' applica-  
2 tions and annual reports, including the projected number of net new jobs  
3 to be created, as they determine is relevant and necessary to evaluate  
4 the success of this program.

5 2. (a) The commissioner shall prepare an annual report to the governor  
6 and the legislature no later than April first, two thousand nineteen and  
7 annually thereafter. Such report shall include the number of business  
8 applicants, number of businesses approved, the names and addresses of  
9 the businesses located within a tax-free NY area, total amount of bene-  
10 fits distributed, benefits received per business, number of net new jobs  
11 created, net new jobs created per business, new investment per business,  
12 the types of industries represented and such other information as the  
13 commissioner determines is necessary to evaluate the progress of the  
14 START-UP NY program. Such annual report shall, at a minimum, include  
15 annual program data and information attributable solely to the preceding  
16 calendar year. In addition, such report shall include cumulative annual  
17 program data including all net new jobs previously recorded, adjusted  
18 for net new jobs that have been subsequently lost. Cumulative data shall  
19 be presented separate and distinct from annual program data reporting.  
20 Such report shall be posted as a separate document on the department's  
21 website.

22 (b) Any business located in a tax-free NY area must submit an annual  
23 report to the commissioner in a form and at such time and with such  
24 information as prescribed by the commissioner in consultation with the  
25 commissioner of taxation and finance. Such information shall be suffi-  
26 cient for the commissioner and the commissioner of taxation and finance  
27 to: (i) monitor the continued eligibility of the business and its  
28 employees to participate in the START-UP NY program and receive the tax  
29 benefits described in section thirty-nine of the tax law; (ii) evaluate  
30 the progress of the START-UP NY program; and (iii) prepare the annual  
31 report required by paragraph (a) of this subdivision. Such annual report  
32 shall also include information regarding the wages paid during the year  
33 to its employees employed in the net new jobs created and maintained in  
34 the tax-free NY area.

35 § 3. Subdivision 1 of section 433 of the economic development law, as  
36 amended by section 3 of part UUU of chapter 59 of the laws of 2017, is  
37 amended to read as follows:

38 1. In order to participate in the START-UP NY program, a business must  
39 satisfy all of the following criteria.

40 (a) The mission and activities of the business must align with or  
41 further the academic mission of the campus, college or university spon-  
42 soring the tax-free NY area in which it seeks to locate, and the busi-  
43 ness's participation in the START-UP NY program must have positive  
44 community and economic benefits.

45 (b) The business must demonstrate that it will, in its first year of  
46 operation, create net new jobs. After its first year of operation, the  
47 business must maintain net new jobs. In addition, the average number of  
48 employees of the business and its related persons in the state during  
49 the year must equal or exceed the sum of: (i) the average number of  
50 employees of the business and its related persons in the state during  
51 the year immediately preceding the year in which the business submits  
52 its application to locate in a tax-free NY area; and (ii) net new jobs  
53 of the business in the tax-free NY area during the year. The average  
54 number of employees of the business and its related persons in the state  
55 shall be determined by adding together the total number of employees of  
56 the business and its related persons in the state on March thirty-first,

1 June thirtieth, September thirtieth and December thirty-first and divid-  
2 ing the total by the number of such dates occurring within such year.

3 (c) Except as provided in paragraphs [~~(f)~~] (g) and [~~(g)~~] (h) of this  
4 subdivision, at the time it submits its application for the START-UP NY  
5 program, the business must be a new business to the state.

6 (d) The business may be organized as a corporation, a partnership,  
7 limited liability company or a sole proprietorship.

8 (e) Upon completion of its first year in the START-UP NY program and  
9 thereafter, the business must complete and timely file the annual report  
10 required under section four hundred thirty-eight of this article.

11 (f) Except as provided in paragraphs [~~(f)~~] (g) and [~~(g)~~] (h) of this  
12 subdivision, the business must not be engaged in a line of business that  
13 is currently or was previously conducted by the business or a related  
14 person in the last five years in New York state.

15 [~~(f)~~] (g) If a business does not satisfy the eligibility standard set  
16 forth in paragraph (c) or [~~(e)~~] (f) of this subdivision, because at one  
17 point in time it operated in New York state but moved its operations out  
18 of New York state on or before June first, two thousand thirteen, the  
19 commissioner shall grant that business permission to apply to partic-  
20 ipate in the START-UP NY program if the commissioner determines that the  
21 business has demonstrated that it will substantially restore the jobs in  
22 New York state that it previously had moved out of state.

23 [~~(g)~~] (h) If a business seeks to expand its current operations in New  
24 York state into a tax-free NY area but the business does not qualify as  
25 a new business because it does not satisfy the criteria in paragraph (c)  
26 of subdivision six of section four hundred thirty-one of this article or  
27 the business does not satisfy the eligibility standard set forth in  
28 paragraph [~~(e)~~] (f) of this subdivision, the commissioner shall grant  
29 the business permission to apply to participate in the START-UP NY  
30 program if the commissioner determines that the business has demon-  
31 strated that it will create net new jobs in the tax-free NY area and  
32 that it or any related person has not eliminated any jobs in the state  
33 in connection with this expansion.

34 § 4. This act shall take effect immediately.