

STATE OF NEW YORK

3395--A

2017-2018 Regular Sessions

IN SENATE

January 23, 2017

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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; 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); and to amend the education law, in relation to developing guidelines to encouraging participation in apprenticeships and raising awareness in apprenticeship opportunities (Part C)

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

1 Section 1. This act shall be known and may be cited as the "empire
2 state apprenticeship program".
3 § 2. This act enacts into law components of legislation relating to
4 the empire state apprenticeship program. Each component is wholly
5 contained within a Part identified as Parts A through C. The effective
6 date for each particular provision contained within such Part is set
7 forth in the last section of such Part. Any provision in any section
8 contained within a Part, including the effective date of the Part, which
9 makes reference to a section "of this act", when used in connection with
10 that particular component, shall be deemed to mean and refer to the
11 corresponding section of the Part in which it is found. Section four of
12 this act sets forth the general effective date of this act.

13 PART A

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

LBD00278-08-7

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

3 § 25-c. Power to administer the empire state apprenticeship tax credit
4 program. (a) The commissioner is authorized to establish and administer
5 the empire state apprenticeship tax credit program to provide tax incen-
6 tives to qualified and certified employers for employing qualified
7 apprentices pursuant to an apprenticeship agreement registered with the
8 department pursuant to paragraph (d) of subdivision one of section eight
9 hundred eleven of this chapter. The commissioner is authorized to
10 provide tax credits to be allocated up to ten million dollars of tax
11 credits annually, beginning taxable year two thousand seventeen and
12 ending before taxable year two thousand twenty-one. Any unused allo-
13 cation of the credit shall be made available in each of the subsequent
14 taxable years for all eligible years of the apprenticeship allowed under
15 subdivisions (c) and (d) of this section.

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

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

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

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

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

39 (6) The term "disadvantaged youth" means an individual:
40 (i) who is between the age of sixteen and twenty-four; and
41 (ii) who is low-income or at-risk, as those terms are defined by the
42 commissioner.

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

51 (c) A certified employer shall be entitled to a tax credit against
52 income tax for each qualified apprentice for tax year equal to: (1) the
53 lesser of two thousand dollars or the total amount of wages paid for the
54 first year of the apprenticeship; (2) the lesser of three thousand
55 dollars or the total amount of wages paid for the second year of the
56 apprenticeship; and (3) the lesser of four thousand dollars or the total

1 amount of wages paid for each of the third, fourth, and fifth years of
2 the apprenticeship.

3 (d) (1) A certified employer shall be entitled to a tax credit against
4 income tax for each qualified apprentice who is considered a disadvan-
5 tagged youth for each tax year equal to: (A) the lesser of five thousand
6 dollars or the total amount of wages paid for the first year of the
7 apprenticeship; (B) the lesser of six thousand dollars or the total
8 amount of wages paid for the second year of the apprenticeship; and (C)
9 the lesser of seven thousand dollars or the total amount of wages paid
10 for each of the third, fourth, and fifth years of the apprenticeship.

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

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

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

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

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

32 (g) The commissioner shall establish guidelines and criteria that
33 specify requirements for qualified employers to participate in the
34 program including criteria for certifying qualified apprentices. Any
35 regulations that the commissioner determines are necessary and are
36 consistent with the purpose of this article may be adopted on an emer-
37 gency basis notwithstanding any provisions to the contrary in the state
38 administrative procedure act. The commissioner shall give preference to
39 qualified employers that are minority and women-owned businesses or
40 engaged in demand occupations or industries, or in regional growth
41 sectors, including those identified by the department, such as clean
42 energy, health care, advanced manufacturing and conservation.

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

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

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

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

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

6 (D) any other factors the commissioner deems relevant.

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

16 (j) The commissioner shall annually publish a report within one
17 hundred eighty days of the close of the tax year. Such report must
18 contain the names and addresses of any certified employer issued a
19 certificate of eligibility under this section, the maximum amount of
20 empire state apprenticeship tax credit allowed to the certified employer
21 as specified on such certificate of eligibility, the number of employers
22 who received tax credits for employing one or more disadvantaged youths,
23 the total number of disadvantaged youths for which such credits are
24 awarded, the number of apprentices hired broken down by age, race,
25 gender, and how they meet the definition of disadvantaged as defined in
26 section twenty-five-a of this article, the number of total and new
27 certificates granted each year, the total amount of credits claimed to
28 date, and the number of years credits have been received for individual
29 apprentices. The commissioner shall include in such report recommenda-
30 tions for legislative or other action to further the intent and purpose
31 of the empire state apprenticeship tax credit program. The annual
32 report shall be aligned with the goals of the New York state workforce
33 innovation and opportunity act four year combine state plan where appro-
34 priate.

35 (k) The commissioner shall promote, publish and disseminate informa-
36 tion concerning the empire state apprenticeship tax credit and other
37 available funding, particularly targeting industries and fields of busi-
38 ness not currently taking advantage of apprenticeships, minority and
39 women-owned businesses, and businesses engaged in demand occupations or
40 industries, or in regional growth sectors, including those identified by
41 the department, such as clean energy, health care, advanced manufactur-
42 ing and conservation.

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

45 49. Empire state apprenticeship tax credit. (a) A taxpayer that has
46 been certified by the commissioner of labor as a certified employer
47 pursuant to section twenty-five-c of the labor law shall be allowed a
48 credit against the tax imposed by this article, for each qualified
49 apprentice, up to (i) two thousand five hundred dollars for the first
50 year of the apprenticeship; (ii) three thousand five hundred dollars for
51 the second year of the apprenticeship; (iii) four thousand five hundred
52 dollars for the third year of the apprenticeship; (iv) four thousand
53 five hundred dollars for the fourth year of the apprenticeship; and (v)
54 four thousand five hundred dollars for the fifth year of the apprentice-
55 ship. For purposes of this subdivision, the term "qualified apprentice"
56 shall have the same meaning as set forth in subdivision (b) of section

1 twenty-five-c of the labor law. The portion of the credit described in
2 subparagraphs (i) through (v) of this paragraph shall be allowed for the
3 taxable years in which the wages are paid to the qualified apprentice.

4 (b) The credit allowed under this subdivision for any taxable year may
5 not reduce the tax due for that year to less than the amount prescribed
6 in paragraph (d) of subdivision one of section two hundred ten of this
7 article. However, if the amount of the credit allowed under this subdivi-
8 vision for any taxable year reduces the tax to that amount or if the
9 taxpayer otherwise pays tax based on the fixed dollar minimum amount,
10 any amount of credit not deductible in that taxable year will be treated
11 as an overpayment of tax to be credited or refunded in accordance with
12 the provisions of section one thousand eighty-six of this chapter.
13 Provided, however, no interest will be paid thereon.

14 (c) A taxpayer shall be entitled to a tax credit against income tax
15 for each qualified apprentice who is considered a disadvantaged youth
16 for each tax year equal to: (i) the lesser of five thousand dollars or
17 the total amount of wages paid for the first year of the apprenticeship;
18 (ii) the lesser of six thousand dollars of the total amount of wages
19 paid for the second year of the apprenticeship; and (iii) the lesser of
20 seven thousand dollars or the total amount of wages paid for each of the
21 third, fourth, and fifth years of the apprenticeship. Employers who hire
22 apprentices who are identified as disadvantaged youth and who are guided
23 throughout their apprenticeship by a mentor as certified by the depart-
24 ment shall also be eligible to receive an additional five hundred
25 dollars each taxable year.

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

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

40 (vvv) Empire state apprenticeship tax credit. (1)(A) (i) A taxpayer
41 that has been certified by the commissioner of labor as a certified
42 employer pursuant to section twenty-five-c of the labor law shall be
43 allowed a credit against the tax imposed by this article, for each qual-
44 ified apprentice, up to (I) two thousand five hundred dollars for the
45 first year of the apprenticeship; (II) three thousand five hundred
46 dollars for the second year of the apprenticeship; (III) four thousand
47 five hundred dollars for the third year of the apprenticeship; (IV) four
48 thousand five hundred dollars for the fourth year of the apprenticeship;
49 and (V) four thousand five hundred dollars for the fifth year of the
50 apprenticeship.

51 (ii) A taxpayer that has been certified by the commissioner of labor
52 as a certified employer pursuant to section twenty-five-c of the labor
53 law shall be allowed a credit against the tax imposed by this article,
54 for each qualified apprentice who is considered a disadvantaged youth,
55 up to (I) the five thousand five hundred dollars or the total amount of
56 wages paid for the first year of the apprenticeship; (II) six thousand

1 five hundred dollars for the second year of the apprenticeship; and
 2 (III) seven thousand five hundred dollars for each of the third, fourth,
 3 and fifth years of the apprenticeship.

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

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

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

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

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

38 (xliii) Empire state apprenticeship Amount of credit under
 39 tax credit under subsection subdivision forty-nine of
 40 (vvy) section two hundred ten-B

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

43 PART B

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

46 ARTICLE 23-D

47 EMPIRE STATE APPRENTICESHIP GRANT PROGRAM FOR SMALL
 48 BUSINESS AND NOT-FOR-PROFIT CORPORATIONS

49 Section 833. Empire state apprenticeship grant program for small busi-
 50 ness and not-for-profit corporations.

51 § 833. Empire state apprenticeship grant program for small business
 52 and not-for-profit corporations. 1. The department shall establish a
 53 grant program designed to encourage the adoption of apprenticeships
 54 administered by small businesses and not-for-profit corporations. The

1 department shall provide grants within available appropriations, on a
2 competitive basis, in response to a request for proposal from eligible
3 entities. The program shall provide one to one state matching funds to
4 eligible entities not to exceed fifty thousand dollars annually. An
5 eligible entity shall include a business employing and/or training an
6 apprentice pursuant to an apprenticeship agreement registered with the
7 department pursuant to paragraph (d) of subdivision one of section eight
8 hundred eleven of this chapter which is resident in this state, inde-
9 pendently owned and operated, and employs twenty-five or less persons,
10 or a not-for-profit organization employing and/or training an apprentice
11 pursuant to an apprenticeship agreement as defined by section eight
12 hundred sixteen of this chapter and registered with the department. An
13 eligible entity shall not include an employer who is a contractor or
14 subcontractor who is a partnership, firm, corporation, limited liability
15 company, association or other legal entity permitted by law to do busi-
16 ness within the state who engages in construction. For purposes of this
17 section, the term "construction" means constructing, reconstructing,
18 altering, maintaining, moving, rehabilitating, repairing, renovating,
19 fabricating, servicing, or demolition of any building, structure, or
20 improvement, or component, or relating to the excavation of or other
21 development or improvement to land. The department may use grant funds
22 only for costs related to apprenticeship programs for capital and/or
23 operating expenses, and to support dedicated mentors for apprentices.
24 The commissioner is directed to establish guidelines and an application
25 process. Total statewide expenditures for the grant program shall not
26 exceed two million five hundred thousand dollars per year.

27 2. The state apprenticeship and training council shall review requests
28 for proposals and will recommend project applications deemed to meet the
29 intent of the program to the department, and shall give preference to
30 employers who employ disadvantaged youth as defined by section twenty-
31 five-c of this chapter.

32 3. The department shall report on or before October first, two thou-
33 sand eighteen and annually thereafter to the governor, temporary presi-
34 dent of the senate, speaker of the assembly, and chairs of the assembly
35 committee on labor and the legislative commission on skills development
36 and career education on activities and progress of the grant. Such
37 report shall contain the names, addresses and descriptions of any eligi-
38 ble entity issued a grant under this section, the amount of the grant
39 allowed to the employer, for what purposes, the number of apprentices
40 and their trade or trades, and the number who are considered disadvan-
41 tagged youths and whether each apprenticeship is a new job created after
42 being issued a grant pursuant to this program.

43 § 2. This act shall take effect immediately.

44 PART C

45 Section 1. Section 305 of the education law is amended by adding a new
46 subdivision 56 to read as follows:

47 56. The commissioner shall, in consultation with the department of
48 labor, develop guidelines for use by high school counselors and guidance
49 counselors to coordinate services with local representatives of local
50 apprenticeship and workforce development programs for the purposes of
51 encouraging participation in apprenticeships and raising awareness
52 surrounding apprenticeship opportunities. Such guidelines shall be made
53 available on the department's website and shall be updated annually.

54 § 2. This act shall take effect immediately.

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

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