STATE OF NEW YORK

9079

IN SENATE

November 4, 2020

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the economic development law, in relation to defining community significant projects and including such projects in the excelsior jobs program

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

Section 1. Subdivisions 17 and 20-a of section 352 of the economic development law, subdivision 17 as amended by section 1 of part K and subdivision 20-a as added by section 1 of part ZZ of chapter 59 of the laws of 2017, are amended and a new subdivision 18-a is added to read as follows:

17. "Qualified investment" means an investment in tangible property (including a building or a structural component of a building) owned by a business enterprise which:

(a) is depreciable pursuant to section one hundred sixty-seven of the internal revenue code;

(b) has a useful life of four years or more;

(c) is acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code;

(d) has a situs in this state; [~~and~~]

(e) is placed in service in the state on or after the date the certificate of eligibility is issued to the business enterprise**; and**

(f) demolition and remediation of costs incurred and paid in the leased building by the business enterprise in a public housing development in the state, as determined by the commissioner.

18-a. "Community significant project" means (a) a business creating or retaining current jobs as determined by the commissioner, with particular emphasis on employment and/or training of current public housing residents; (b) currently located or to be located in existing leased space of a building in a public housing development in the state that is owned and operated by a public housing authority created under article thirteen of the public housing law; (c) which makes significant qualified capital investments to start a business, or improve services and

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

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working conditions for an existing business, when located in such public housing space; and (d) creates at least five new net jobs or retaining current jobs or makes qualified capital investments to such space of a building. The commissioner shall promulgate regulations pursuant to section three hundred fifty-six of this article to determine what additional criteria a business must meet to be eligible as a community significant project, including, but not limited to, incentivizing child care providers and other businesses that support the needs of the workforce residing in such public housing and the social and health needs of residents in such public housing, ensuring that residents are not displaced and ensuring that services or programs being offered to public housing residents by either a public housing authority or an entity already onsite, are not displaced in order to locate or expand a business in a public housing development.

20-a. "Significant capital investment" means a project which will be either a newly constructed facility or a newly constructed addition to, expansion of or improvement of a facility, consisting of tangible personal property and other tangible property, including buildings and structural components of buildings, that are depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, and that is equal to or exceeds (a) one million dollars for a manufacturer; (b) two hundred fifty thousand dollars for an agriculture business; (c) three million dollars for a financial services firm or back office operation; (d) fifteen million dollars for a distribution center; (e) three million dollars for a scientific research and development firm; [~~or~~] (f) three million dollars for other businesses; or (g) one million dollars for a significant project.

§ 2. Subdivisions 1, 3 and 4 of section 353 of the economic development law, subdivision 1 as amended by section 2 of part K, subdivision 3 as separately amended by section 2 of part K and section 2 of part ZZ and subdivision 4 as separately amended by section 3 of part K and section 2 of part ZZ of chapter 59 of the laws of 2017, are amended to read as follows:

1. To be a participant in the excelsior jobs program, a business entity shall operate in New York state predominantly:

(a) as a financial services data center or a financial services back office operation;

(b) in manufacturing;

(c) in software development and new media;

(d) in scientific research and development;

(e) in agriculture;

(f) in the creation or expansion of back office operations in the state;

(g) in a distribution center;

(h) in an industry with significant potential for private-sector economic growth and development in this state as established by the commissioner in regulations promulgated pursuant to this article. In promulgating such regulations the commissioner shall include job and investment criteria;

(i) as an entertainment company;

(j) in music production; [~~or~~]

(k) as a life sciences company; or

(l) as a community significant project.

3. For the purposes of this article, in order to participate in the excelsior jobs program, a business entity operating predominantly in manufacturing must create at least five net new jobs; a business entity operating predominately in agriculture must create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least twenty-five net new jobs; a business entity operating predominantly in scientific research and development must create at least five net new jobs; a business entity operating predominantly in software development must create at least five net new jobs; a business entity creating or expanding back office operations must create at least twenty-five net new jobs; a business entity operating predominately in music production must create at least five net new jobs; a business entity operating predominantly as an entertainment company must create or obtain at least one hundred net new jobs; [~~or~~] a business entity operating predominantly as a distribution center in the state must create at least fifty net new jobs, notwithstanding subdivision five of this section; [~~or~~] a business entity operating predominately as a life sciences company must create at least five net new jobs; [~~or~~] a business entity must be a regionally significant project as defined in this article; or **a community significant project as defined in this article; or**

4. A business entity operating predominantly in one of the industries referenced in paragraphs (a) through (h) or in paragraph (k) **or (l)** of subdivision one of this section but which does not meet the job requirements of subdivision three of this section must have at least twenty-five full-time job equivalents unless such business is a business entity operating predominantly in manufacturing then it must have at least five full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one.

§ 3. Subdivision 2 and paragraph (a) of subdivision 4 of section 355 of the economic development law, as amended by section 4 of part G of chapter 61 of the laws of 2011, are amended to read as follows:

2. Excelsior investment tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on qualified investments. The credit shall be equal to two percent of the cost or other basis for federal income tax purposes of the qualified investment. A participant may not claim both the excelsior investment tax credit component and the investment tax credit set forth in subdivision [~~twelve~~] **one** of section two hundred [~~ten~~] **ten-b**, subsection (a) of section six hundred six, **the former** subsection (i) of section fourteen hundred fifty-six, or subdivision (q) of section fifteen hundred eleven of the tax law for the same property in any taxable year, except that a participant may claim both the excelsior investment tax credit component and the investment tax credit for research and development property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of the tax law may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. A credit may not be claimed until a business enterprise has received a certificate of tax credit, provided that qualified investments made on or after the issuance of the certificate of eligibility but before the issuance of the certificate of tax credit to the business enterprise, may be claimed in the first taxable year for which the business enterprise is allowed to claim the credit. Expenses incurred prior to the date the certificate of eligibility

is issued are not eligible to be included in the calculation of the credit.

(a) A participant in the excelsior jobs program who either qualified as a regionally significant project**, a community significant project** or is located in an investment zone shall be eligible to claim a credit for a period of ten years. **For the purposes of this subdivision, the lease payment paid by the business enterprise pursuant to a public housing development in this state shall be eligible real property tax for purposes of this subdivision.**

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2021.