

# STATE OF NEW YORK

---

3471

2021-2022 Regular Sessions

## IN SENATE

January 29, 2021

---

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law, in relation to the excelsior jobs program and certain incentives for medical equipment projects within such program

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

1 Section 1. Section 352 of the economic development law is amended by  
2 adding a new subdivision 8-b to read as follows:

3 8-b. "Medical equipment project" means a project deemed by the commis-  
4 sioner to make products or develop technologies that are primarily used  
5 by medical professionals in a professional or home care setting.  
6 Projects shall include, but not be limited to, the manufacture of devel-  
7 opment of products or technologies such as: personal protective equip-  
8 ment, oxygen and oxygen delivery systems, ventilation and aspiration  
9 devices, respiratory disease management services, monitoring devices,  
10 feeding pumps, medical testing devices, and equipment necessary to  
11 conduct medical tests.

12 § 2. Subdivision 1 of section 353 of the economic development law, as  
13 amended by section 2 of part L of chapter 59 of the laws of 2020, is  
14 amended to read as follows:

15 1. To be a participant in the excelsior jobs program, a business enti-  
16 ty shall operate in New York state predominantly:

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

19 (b) in manufacturing;

20 (c) in software development and new media;

21 (d) in scientific research and development;

22 (e) in agriculture;

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

LBD08063-01-1

(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;

(k) as a life sciences company; ~~or~~

(l) as a company operating in one of the industries listed in paragraphs (b) through (e) of this subdivision and engaging in a green project as defined in section three hundred fifty-two of this article;

or

(m) as a company operating in one of the industries listed in paragraphs (b), (c), (d) or (k) of this subdivision and engaging in a medical equipment project.

§ 3. Subdivisions 1, 2 and 3 of section 355 of the economic development law, as amended by section 4 of part L of chapter 59 of the laws of 2020, are amended to read as follows:

1. Excelsior jobs tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit for each net new job it creates in New York state. In a project that is not a green project or a medical equipment project, the amount of such credit per job shall be equal to the product of the gross wages paid and up to 6.85 percent. In a green project, the amount of such credit per job shall be equal to the product of the gross wages paid and up to 7.5 percent. In a medical equipment project, the amount of such credit per job shall be equal to the product of the gross wages paid and up to 8.5 percent.

2. Excelsior investment tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on qualified investments. In a project that is not a green project or a medical equipment project, the credit shall be equal to two percent of the cost or other basis for federal income tax purposes of the qualified investment. In a green project, the credit shall be equal to five percent of the cost or other basis for federal income tax purposes of the qualified investment. In a medical equipment project, the credit shall be equal to seven 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 one of section two hundred 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

1 the certificate of tax credit to the business enterprise, may be claimed  
2 in the first taxable year for which the business enterprise is allowed  
3 to claim the credit. Expenses incurred prior to the date the certificate  
4 of eligibility is issued are not eligible to be included in the calcu-  
5 lation of the credit.

6 3. Excelsior research and development tax credit component. A partic-  
7 ipant in the excelsior jobs program shall be eligible to claim a credit  
8 equal to fifty percent of the portion of the participant's federal  
9 research and development tax credit that relates to the participant's  
10 research and development expenditures in New York state during the taxa-  
11 ble year; provided however, if not a green project or a medical equip-  
12 ment project, the excelsior research and development tax credit shall  
13 not exceed six percent of the qualified research and development expend-  
14 itures attributable to activities conducted in New York state, or, if a  
15 green project or a medical equipment project, the excelsior research and  
16 development tax credit shall not exceed eight percent of the research  
17 and development expenditures attributable to activities conducted in New  
18 York state. If the federal research and development credit has expired,  
19 then the research and development expenditures relating to the federal  
20 research and development credit shall be calculated as if the federal  
21 research and development credit structure and definition in effect in  
22 two thousand nine were still in effect. Notwithstanding any other  
23 provision of this chapter to the contrary, research and development  
24 expenditures in this state, including salary or wage expenses for jobs  
25 related to research and development activities in this state, may be  
26 used as the basis for the excelsior research and development tax credit  
27 component and the qualified emerging technology company facilities,  
28 operations and training credit under the tax law.

29 § 4. This act shall take effect immediately.