STATE OF NEW YORK

9467

IN SENATE

May 31, 2022

Introduced by Sen. COONEY -- 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 allowing for eligibility of Green CHIPS projects in the Excelsior tax credit program

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

Section 1. Subdivision 16 of section 352 of the economic development law, as amended by section 1 of part K of chapter 59 of the laws of 2017, is amended and two new subdivisions 3-a and 24 are added to read as follows:

3-a. "Green CHIPS benefit-cost ratio" means the following calculation with respect to Green CHIPS projects: the ratio where the numerator is the sum of: (a) the value of all remuneration projected to be paid for all net new jobs during the period of participation in the program; (b) the value of capital investments to be made by the business enterprise during the period of participation in the program; and (c) all research and development expenditures by the participant in New York State during the period of participation in the program; and the denominator is the amount of total tax benefits under this article that will be used and refunded as well as any state grants provided to the participant.

16. "Preliminary schedule of benefits" means the maximum aggregate amount of each component of the tax credit that a participant in the excelsior jobs program is eligible to receive pursuant to this article. The schedule shall indicate the annual amount of each component of the credit a participant may claim in each of its ten years of eligibility. The preliminary schedule of benefits shall be issued by the department when the department approves the application for admission into the program. The commissioner may amend that schedule, provided that the commissioner complies with the credit caps in section three hundred fifty-nine of this article **as applicable**.

24. "Green CHIPS project" means a project meeting all of the following criteria: (a) is within the semiconductor manufacturing and related

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

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equipment and material supplier sector; (b) includes sustainability measures to mitigate the project's greenhouse gas emissions impact over its lifetime; (c) provides for the payment of not less than federal prevailing wage rates for its project construction; (d) makes commitments to worker and community investment, including through training and education benefits paid by the participant and programs to expand employment opportunity for economically disadvantaged individuals; (e) will create at least five hundred net new jobs and make at least three billion dollars in qualified investment; and (f) the participant undertaking a Green CHIPS project shall maintain a Green CHIPS benefit-cost ratio of at least fifteen to one. Such projects are eligible to enter into a phase one of a Green CHIPS project ten-year benefit term. Such projects, provided they are in good standing with all requirements of this chapter, are also eligible to enter into a phase two of a Green CHIPS project, and therefore to initiate a new and separate ten-year schedule related to phase two, provided that phase two will create at least five hundred net new jobs beyond those created in phase one, and that phase two will make at least three billion dollars in qualified investment beyond the investment total associated with phase one. For Green CHIPS projects, phase one and phase two terms may overlap, depending on the time of initiation for both projects. In no event shall credits be awarded for a Green CHIPS project beyond two thousand fifty.

§ 2. Subdivisions 1 and 3 of section 353 of the economic development law, subdivision 1 as amended by section 2 of part L of chapter 59 of the laws of 2020, paragraphs (k) and (l) of subdivision 1 as amended and paragraph (m) as added by section 2 of part D of chapter 59 of the laws of 2021, and subdivision 3 as separately amended by section 2 of part K and section 2 of part ZZ of chapter 59 of the laws of 2017, are amended and a new subdivision 7 is added 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;

(k) as a life sciences company;

(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 participant operating in one of the industries listed in paragraphs (a) through (k) of this subdivision and operating or sponsoring child care services to its employees as defined in section three hundred fifty-two of this article; or

(n) as a Green CHIPS 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 **or Green CHIPS project** as defined in this article; or

7. Notwithstanding subdivision sixteen of section three hundred fifty-two of this article, the department is hereby authorized to allow phase two of a Green CHIPS project to enter into a new and separate schedule of benefits which may overlap with the phase one of a Green CHIPS project schedule of benefits, for a new ten-year benefit term. Notwithstanding paragraph three of subdivision a of section three hundred fifty-four of this article, such phase two of a Green CHIPS project shall be admitted into the program. Provided however, for such phase two of a Green CHIPS project, the new benefit term shall exclusively be provided for net new investments, new research and development expenditures, and net new job creation above the commitments outlined in the schedule of benefits for a business' phase one of a Green CHIPS project with the department. Assuming the requirements of this article have been met, both a Green CHIPS project and any phase two of such project shall be eligible for benefits under section three hundred fifty-five of this article.

§ 3. Subdivisions 1, 2, 3, and 7 of section 355 of the economic development law, subdivisions 1 and 3 as amended by section 4 of part L of chapter 59 of the laws of 2020, subdivision 2 as amended by section 3 of part D of chapter 59 of the laws of 2021, and subdivision 7 as added by section 4 of part G of chapter 61 of the laws of 2011, 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, 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**, or a Green CHIPS 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. **Provided, however, given the transformational nature of Green CHIPS projects, only the first two hundred thousand dollars of gross wages per job shall be eligible for this credit. The maximum amount of gross wages per job for a Green CHIPS project may be adjusted for inflation at an annual amount determined by the commissioner in a manner substantially similar to the cost of living**

adjustments calculated by the United States Social Security Administration based on changes in consumer price indices or a rate of four percent per year, whichever is higher.

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, 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 project for child care services **or a Green CHIPS project**, the credit shall be up to five percent of the cost or other basis for federal income tax purposes of the qualified investment in child care services **or in the Green CHIPS project as applicable**. 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 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.

3. Excelsior research and development tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit equal to fifty percent of the portion of the participant's federal research and development tax credit that relates to the participant's research and development expenditures in New York state during the taxable year; provided however, if not a green project, the excelsior research and development tax credit shall not exceed six percent of the qualified research and development expenditures attributable to activities conducted in New York state, or, if a green project **or a Green CHIPS project**, the excelsior research and development tax credit shall not exceed eight percent of the research and development expenditures attributable to activities conducted in New York state. If the federal research and development credit has expired, then the research and development expenditures relating to the federal research and development credit shall be calculated as if the federal research and development credit structure and definition in effect in two thousand nine were still in effect. Notwithstanding any other provision of this chapter to the contrary, research and development expenditures in this state, including salary or wage expenses for jobs related to research and development activities in this state, may be used as the basis for the excelsior research and development tax credit component and the quali-

fied emerging technology company facilities, operations and training credit under the tax law.

7. For availability of special excelsior jobs program rates governing the provision of gas or electric service, see subdivision twelve-d of section sixty-six of the public service law. Such special excelsior jobs program rates may remain available to participants as defined in this article for a period of up to ten years commencing in the first taxable year that the participant receives a certificate of tax credit, or the first taxable year listed on its preliminary schedule of benefits, whichever is later. **Notwithstanding any other provision of this section, such special excelsior job program rates shall remain available to a Green CHIPS project which enters into a phase two of such project for the entirety of both of its schedules of benefits.** Provided however, if a participant is removed from the excelsior jobs program pursuant to this article, the excelsior jobs program rates may be denied.

§ 4. Section 359 of the economic development law, as amended by section 5 of part L of chapter 59 of the laws of 2020, is amended to read as follows:

§ 359. Cap on tax credit. [~~The~~] **1. Except with respect to tax credits issued to Green CHIPS projects as articulated in subdivision four of this section, the** total amount of tax credits issued by the commissioner for any taxable year may not exceed the limitations set forth in this [~~section~~] **subdivision**. [~~One-half~~] **Except with respect to tax credits issued to Green CHIPS projects as articulated in subdivision four of this section, one-half** of any amount of tax credits not awarded for a particular taxable year may be used by the commissioner to award tax credits in another taxable year.

Credit components in the aggregate shall not exceed:	With respect to taxable years beginning in:
$ 50 million	2011
$ 100 million	2012
$ 150 million	2013
$ 200 million	2014
$ 250 million	2015
$ 183 million	2016
$ 183 million	2017
$ 183 million	2018
$ 183 million	2019
$ 183 million	2020
$ 183 million	2021
$ 133 million	2022
$ 83 million	2023
$ 36 million	2024
$ 200 million	2025
$ 200 million	2026
$ 200 million	2027
$ 200 million	2028
$ 200 million	2029

2. Twenty-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision four of section three hundred fifty-three of this article and seventy-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision three of section three hundred fifty-three of this article.

3. Provided, however, if by September thirtieth of a calendar year, the department has not allocated the full amount of credits available in that year to either: (i) businesses accepted into the program under subdivision four of section three hundred fifty-three of this article or (ii) businesses accepted into the program under subdivision three of section three hundred fifty-three of this article, the commissioner may allocate any remaining tax credits to businesses referenced in this paragraph as needed; provided, however, that under no circumstances may the aggregate statutory cap for all program years be exceeded. One hundred percent of the unawarded amounts remaining at the end of two thousand twenty-nine may be allocated in subsequent years, notwithstanding the fifty percent limitation on any amounts of tax credits not awarded in taxable years two thousand eleven through two thousand twenty-nine. Provided, however, no tax credits may be allowed for taxable years beginning on or after January first, two thousand forty.

4. The total amount of tax credits issued by the commissioner for the taxable years two thousand twenty-two to two thousand forty-one for Green CHIPS projects shall not exceed five hundred million per year. One hundred percent of any amount of tax credits not awarded for a particular taxable year may be used by the commissioner to award tax credits in another taxable year. Notwithstanding the foregoing, Green CHIPS projects may be allowed to claim credits for taxable years up to January first, two thousand fifty.

§ 5. The act shall take effect immediately.