CHAPTER 4

AN ACT in relation to economic development, constituting chapter fifteen of the consolidated laws

Became a law January 20, 1944, with the approval of the Governor. Passed, three-fifths being present

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

CHAPTER XV OF THE CONSOLIDATED LAWS

ECONOMIC DEVELOPMENT LAW

ARTICLE 1

SHORT TITLE; DEFINITIONS

§ 1. Short title. This chapter shall be known as the "economic development law".

§ 2. Definitions. Whenever used in this chapter:

1. "Department" shall mean the state department of economic development.

2. "Commissioner" shall mean the commissioner of economic development.

3. The term "atomic energy" means all forms of energy released in the course of nuclear fission or nuclear fusion or other nuclear transformation.

4. The term "science oriented industry and applied research" means industrial or commercial activities and applied research in the fields of atomic energy, space development, marine sciences, ocean engineering and other science oriented or advanced technology industry.

5. "Telecommuting" shall mean the conservation of energy through the reduction of travel by employees of the department to and from their designated workplace through the use of telecommunication and computer technology in tasks including, but not limited to, information transfer and processing.

6. "Animal fiber" means natural fibers that have formed the covering, or fleece, of sheep or other hairy animals such as goats or alpacas, shorn for the purpose of creating textile products.

7. "Plant fiber" means natural fibers that are obtained from plants and used to create textile products including, but not limited to, hemp.

ARTICLE 2

DEPARTMENT OF ECONOMIC DEVELOPMENT

§ 10. Department of economic development; commissioner. There shall be in the state government a department of economic development. The head of the department shall be the commissioner of economic development who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office until the end of the term of the governor by whom he was appointed and until his successor is appointed and has qualified. The principal office of the department shall be in the city of Albany. Regional offices may be established and maintained by the department in such places as the commissioner may determine and for which appropriations are made by the legislature. The commissioner may, with the commissioners of general services, transportation and labor, develop and institute a procedure for the uniform collection of employment and economic data within the state for use in connection with the scheduling of public works projects.

§ 11. Investing in care. 1. The commissioner shall study, develop, and propose how to implement a long-term strategy to support the growth of the caregiving industry in New York state. Such strategy shall be developed in consultation with the department of health, the department of labor, the office of children and family services and any other state agencies or other such organizations or persons as the commissioner shall deem appropriate. Such strategy shall be based on an analysis of financial support needed for:

(a) growth of caregiving industry businesses and non-profits;

(b) workforce development, recruitment, and retention needs in the caregiving industry; and

(c) innovation and new modes of caregiving delivery in the caregiving industry.

2. Within one year of the effective date of this section, the commissioner shall submit a report of his or her findings, recommendations, and plan for implementation of such long-term strategy, to the governor, the temporary president of the senate and the speaker of the assembly.

3. For the purposes of this section, "caregiving industry" shall include, but not be limited to: direct care, home care, child care, adult care, private and non-profit nursing homes and residential facilities, and other entities that support formal and informal caregiving, as the commissioner shall deem necessary and appropriate.

§ 12. Technical assistance to municipalities related to college and university closures. The department shall provide to any municipality, upon request, technical assistance in the event of a college or university closing in such municipality, on topics including but not limited to:

1. workforce transition and development;

2. attracting new employers and economic opportunities;

3. developing plans for the land and buildings formerly occupied by such college or university; and

4. recommendations and planning assistance for dealing with creditors and other entities having a financial interest in such college or university's assets located in such municipality, provided, however, that the state shall not become a party to any legal proceedings pursuant to this section.

ARTICLE 3

ORGANIZATION OF DEPARTMENT; OFFICERS AND EMPLOYEES

Section 50. Organization of department; officers and employees.

§ 50. Organization of department; officers and employees. The existing divisions and bureaus of the department are continued; provided, however, that the commissioner, with the approval of the governor, may establish additional divisions and bureaus, change the names of existing divisions or bureaus, or may consolidate divisions and bureaus as he may deem necessary or appropriate to carry out the functions of the department. The commissioner may appoint deputy commissioners and assistant deputy commissioners to serve during his pleasure and assign to each the work which shall be under his supervision. Each deputy commissioner and assistant deputy commissioner shall be a person qualified by training and experience for the performance of the duties assigned to him. Deputy commissioners and assistant deputy commissioners shall be deemed to occupy confidential positions to the commissioner, and may be appointed without competitive examination. Subject to the provisions of the civil service law and rules, the commissioner may appoint such other officers, employees, agents and consultants as may be necessary, prescribe their duties, fix their compensation and provide for payment of their reasonable expenses, all within amounts available therefor by appropriation. The commissioner may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions.

ARTICLE 4

GENERAL POWERS OF DEPARTMENT

§ 100. General powers of department. The commissioner acting by and through the department of economic development shall have power and it shall be his duty:

1. to investigate, study and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of New York business, industry and commerce, within and outside the state;

2. to serve as a clearing house for industrial problems of the state;

3. to promote and encourage the expansion and development of markets for New York products;

4. to promote and encourage the location and development of new business in the state as well as the maintenance and expansion of existing business and for that purpose to cooperate with state and local agencies and individuals both within and outside the state;

5. to investigate and study conditions affecting New York business, industry and commerce, and to collect and disseminate information, and engage in technical studies, scientific investigations and statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the department in promoting and developing New York business, industry and commerce both within and outside the state;

6. to plan and develop an effective business information service both for the direct assistance of industry of the state and for the encouragement of industries outside the state to use business facilities within the state;

7. to compile, collect and develop periodically, or otherwise make available, scientific indices and other information relating to current business conditions;

8. to encourage and develop commerce with other states and foreign countries, and to devise ways and means of removing trade barriers hampering the free flow of commerce between this state and other states, including such barriers as preferences and similar price distorting mechanisms and other forms of discrimination used in the procurement of goods and services by the public sector or influenced by the public sector;

9. to cooperate with interstate commissions engaged in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce;

10. to conduct or encourage research designed to further new and more extensive uses of the natural and other resources of the state, and designed to develop new products and industrial processes;

11. to study trends and developments in the industries of the state and to analyze the reasons underlying such trends; to study costs and other factors affecting successful operation of businesses within the state; and to make recommendations regarding circumstances promoting or hampering industrial development;

12. to compile periodically a census of business and industry in the state with the cooperation of other agencies; and to analyze and publish this information in such form as to be most valuable to the business and industry of the state;

13. to make to the governor and to the legislature, from time to time, recommendations for the study or improvement of any conditions, and for the elimination of any restrictions and burdens imposed by law, or otherwise existing, which adversely affect or retard the legitimate development and expansion of business, industry or commerce;

14. to publicize the material and economic advantages of the state which render it a desirable place for business and residence;

15. (a) to collect, compile and distribute information and literature as to the facilities, advantages and attractions of the state, the historical and scenic points and places of interest within the state and the transportation and highway facilities of the state;

(b) in the discharge of this power, the commissioner may enter into a contract for publication of a state travel guide to promote tourism. Such contract may provide for the sale of advertising by the contractor. A contract for publication of a state travel guide shall be awarded following consideration of factors which shall include, but not be limited to, the most favorable financial advantage for the state, the best representation of the state of New York and its services, and the greatest utility to the traveller. The commissioner shall promulgate regulations by the first day of November next succeeding the effective date of this paragraph to guide the preparation of bids and the deadlines for selection of a competent contractor and publication of the state travel guide. The regulations shall, at a minimum, limit advertising content to no more than thirty percent of the space available and establish responsibility for preparation and placement of appropriate editorial content and an equitable listing without charge or other consideration of attractions and activities available to the tourist in New York state. Such regulations shall provide for approval of the commissioner at critical stages of state travel guide development and advertising standards and rates. Furthermore, such regulations shall provide minimum financial terms and responsibilities of the state and the contractor, the allocation of any revenues derived from the production of the travel guide and securities which shall be required of the contractor.

16. to plan and conduct a program of information and publicity designed to attract tourists, visitors and other interested persons from outside the state to this state and also to encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the state for the same purposes;

16-a. to promote the growth of fruit growing, fruit processing, and winery businesses in cooperation with the commissioner of agriculture and markets and the urban development corporation. The commissioner in promoting such businesses may also help to promote tourist programs specified in subdivision sixteen of this section and encourage the retention of agricultural lands and preservation of open spaces.

16-b. to promote the expansion of animal and plant fiber production, fiber processing, and textile manufacturing from animal or plant fiber grown or produced predominantly in New York state in cooperation with the commissioner of agriculture and markets and the urban development corporation. The commissioner in promoting such businesses may also help to promote tourist programs specified in subdivision sixteen of this section and encourage the retention of agricultural lands and preservation of open spaces.

16-c. to promote local small businesses listed on the registry of historic businesses maintained pursuant to section 14.11 of the parks, recreation and historic preservation law.

18. to encourage and cooperate with other public and private organizations or groups in publicizing the attractions and industrial advantages of the state;

18-a. (a) to establish, in cooperation with the commissioner of agriculture and markets and the state liquor authority, procedures for proposing to the governor nominations for annual awards to be known as "New York state wine retailers awards". These non-monetary awards shall be given in recognition of unusual efforts made by restaurants, and/or retailers licensed to sell alcoholic beverages for off-premises consumption, to inform consumers as to the availability, diversity and excellence of wines made in the state from grapes grown in the state, and to feature these wines. The governor shall, at their discretion, issue up to three awards annually.

(b) to establish, in cooperation with the commissioner of agriculture and markets and the state liquor authority, procedures for proposing to the governor nominations for annual awards to be known as "New York state liquor retailers awards", "New York state beer retailers awards", "New York state cider retailer awards", and "New York state mead retailers awards". These non-monetary awards shall be given in recognition of unusual efforts made by restaurants, and/or retailers licensed to sell alcoholic beverages for off-premises consumption, to inform consumers as to the availability, diversity and excellence of liquors, beers, cider, and mead made in the state from products grown in the state, and to feature these products. The governor shall, at their discretion, issue up to three awards in each category annually.

18-b. (a) to promote, in cooperation with the New York wine and grape foundation, state policies that will encourage the production and sale of New York labelled wines.

(b) to promote, in cooperation with the department of agriculture and markets and the state liquor authority, state policies that will encourage the production and sale of New York labelled beers, ciders, liquors, and mead.

18-c. to establish, in cooperation with the commissioner of agriculture and markets, procedures for proposing nominations, including procedures to coordinate with such commissioner to determine which department shall make nominations for awards in categories that may be similar to those listed in subdivision nine of section three hundred nine of the agriculture and markets law to the governor for four annual, non-monetary awards to be known as: (a) New York State Direct Farm Marketing Award; (b) New York State Agri-Tourism Award; (c) New York State Specialty Food Product Award; and (d) New York Animal or Plant Fiber and Textile Award. These awards shall be given in recognition of unusual efforts by farmers, food processors, food retailers, fiber processors, and textile manufacturers and retailers for the marketing of New York state grown agricultural commodities, foods processed from or primarily containing New York state agricultural commodities, or textiles manufactured in New York state from animal or plant fiber grown or produced predominantly in New York state and for promoting New York state farms that are also tourist destinations.

18-d. To establish, in consultation with the New York state tourism advisory council, a New York hall of fame passport permitting admission to recognized halls of fame situated within the state.

18-e. to establish, in cooperation with the urban development corporation and the commissioner of agriculture and markets and other economic development agencies a program to promote the agriculture industry and other related industries in the state in a manner consistent with the provisions of article five-D of this chapter.

18-f. to establish procedures, guidelines or regulations related to implementation of the "NY-USA Proud" employer of distinction award. These non-monetary awards shall be given in recognition of companies that show exceptional support for military personnel including military reservists and national guard members. To promote and market such award, the commissioner may design an appropriate symbol that may be registered as a trademark in the office of the secretary of state. Any such trademark shall be registered by the secretary of state without the exaction of any fee therefor. The commissioner may in his or her discretion register any such mark with the United States government and any other state or foreign country.

18-g. to establish procedures, guidelines or regulations related to implementation of the "Patriot Support and Discount Program". This voluntary program shall recognize those merchants, businesses or companies that provide exceptional support to their employees who serve in the military, including military reservists and national guard members, or agree to provide reduced price discounts for merchandise and services for military personnel including military reservists and national guard members. At the discretion of the commissioner, participating merchants, businesses or companies may become eligible for inclusion in the "NY-USA Proud" program.

18-h. to include in the "NY-USA Proud" program those companies who provide accident prevention courses approved by the commissioner of motor vehicles at a reduced rate to the servicemen and women who have returned from a combat theater or combat zone of operations.

18-i. To aid the department of agriculture and markets and office of general services in providing a training program once per year, in each economic development region, established in article eleven of this chapter, to encourage and increase participation in the procurement process, pursuant to article eleven of the state finance law, by small businesses, as defined in section one hundred thirty-one of this chapter, including farms, selling food or food products grown, produced, harvested, or processed in New York state, or selling animal or plant fiber products grown, harvested and processed in New York state and textile products manufactured in New York state from animal or plant fiber grown or produced predominantly in New York state, and assist such businesses in identifying such food, food products, or animal or plant fiber products and textile products which may help to meet state agencies' needs.

18-j. to assist the urban development corporation to establish a searchable database pursuant to section fifty-eight of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight, constituting the New York state urban development corporation act.

18-k. to promote, in cooperation with associations representing New York growers, fiber processors, and textile manufacturers, state policies that will encourage the production and sale of textile products manufactured in New York state from animal or plant fiber grown or produced predominantly in New York state.

19. (a) to study changes in and to suggest policies for the economic development and conservation of the resources of the state and to develop an annual statewide economic development strategic plan. Such strategic plan, shall include but shall not be limited to, a statewide inventory of all industry associations and clusters; a list of industries that have a competitive advantage; and a list of industries that demonstrate the potential for growth. The department shall work in cooperation with the New York State Foundation for Science, Technology and Innovation in creating the strategic plan. The annual statewide economic development strategic plan shall be submitted to the temporary president of the senate and the speaker of the assembly on January first, two thousand eight and every year thereafter.

(b) to cause to be prepared program plans for the economic development financial assistance programs of the state, in cooperation with the agency or public benefit corporation or public authority, consistent with the legislative intent and statutory authorization for such programs. Program plans shall be derived from and shall be consistent with the annual economic development strategic plan and, accordingly, may be updated as necessary. Such plans shall be transmitted to the agency or public authority or public benefit corporation responsible for administering the program and to the speaker of the assembly and the temporary president of the senate within ninety days of the effective date of any statute authorizing such program. With respect to existing economic development financial assistance programs, the commissioner shall transmit program plans on or before July first, nineteen hundred eighty-eight.

Program plans shall describe the goals, objectives and priorities of each financial assistance program, shall guide the development of operating procedures and rules and regulations governing each financial assistance program, shall set forth the manner in which the financial assistance program shall be coordinated with other economic development programs and shall set forth a description of the operating relationships with relevant agencies and regional and local public and private organizations;

20. to cooperate with and assist other state departments, boards, commissions, agencies, public benefit corporations and public authorities in the preparation of policies for the economic development of the state and to assist in such entities' development of rules and regulations governing economic development financial assistance programs, and policies for the use and conservation of its resources;

21. to inquire into and report to the governor when requested by the governor, with respect to any program of public state improvements and the financing thereof; and to request and obtain information from the state department of transportation and other state departments or agencies such information and data as may be needed properly to report thereon;

22. to advise and cooperate with municipal, county, regional and other local agencies within the state for the purpose of promoting coordination between the state and the localities as to economic development;

23. to confer and cooperate with the authorities of the United States and neighboring states and of the counties and municipalities of such neighboring states, for the purpose of bringing about a coordination between the economic development of such neighboring states, counties and municipalities and the economic development of the state of New York;

24. to adopt such measures as may best be calculated to promote public interest in and understanding of the problems of economic development, and to that end may publish and distribute copies of any plan or any report and may employ such other means of publicity and education as shall give full effect to the provisions of this chapter;

25. To act as the agent of the state and its political subdivisions for the purpose of approving applicants for financial assistance from any federal agency for industrial development or redevelopment purposes, whenever the terms of any act of congress heretofore or hereafter enacted for such purposes require the state or any political subdivision thereof to approve applicants for such assistance, and to take any further action which may be required under the terms of such act.

26. To provide all necessary staff services, accounting, clerical and secretarial assistance, and office space and equipment requested by the New York job development authority.

27. To act as the agent of the state to administer, carry out and coordinate any federal law now or hereafter enacted by the congress to promote economic growth by supporting state and regional centers to place the findings of science usefully in the hands of American enterprise and, for such purposes, to receive federal funds for technical services programs and enter into any necessary contracts or compacts in connection therewith, to take any further action which may be required under the terms of any such federal act, including but not limited to the establishment and operation of state or regional technical information centers.

28. To provide all necessary staff services, accounting, clerical and secretarial assistance and office space and equipment requested by the New York state job incentive board.

29. to advise the governor, the legislature and other state agencies with regard to research and development and the establishment of state policies relating thereto, in connection with science oriented industry and applied research.

29-a. to advise the governor, the legislature and other state agencies with regard to research and development and the establishment of state policies relating thereto, in connection with the animal and plant fiber and fiber textile manufacturing industries and applied research.

30. to cooperate with all private persons and governmental entities concerned with science oriented industry and applied research.

30-a. to cooperate with all private persons and governmental entities concerned with the animal and plant fiber and fiber textile manufacturing industries and applied research.

31. to sponsor, foster and support research and to sponsor or conduct studies relating to science oriented industry and applied research.

31-a. to sponsor, foster and support research and to sponsor or conduct studies relating to the animal and plant fiber and fiber textile manufacturing industries and applied research.

32. to review and evaluate the status and to encourage and promote the development of science oriented industry and applied research designed to further new and more extensive use of the resources and manpower of the state.

32-a. to review and evaluate the status and to encourage and promote the development of the animal and plant fiber and fiber textile manufacturing industries and applied research designed to further new and more extensive use of the resources and manpower of the state.

33. the department shall adopt, amend or rescind, in accordance with the state administrative procedure act, such rules, regulations and orders as may be necessary or convenient to the performance of its functions, powers and duties under this chapter. Such rules and regulations shall be consistent with any program plans required by subdivision nineteen of section one hundred of this chapter.

34. the department may enter into contracts with any person, firm, corporation or governmental agency, and do all things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article.

35. to promote, publish, and disseminate the rules and regulations promulgated by the industrial commissioner pursuant to article twenty-six of the labor law.

36. (a) The commissioner shall solicit research firms to evaluate the promotional effectiveness and economic impact of the department's tourism advertising campaigns. The commissioner shall cause said research firms to submit to the department and the legislative fiscal committees, at least six weeks prior to the conducting of their research, a research design indicating the techniques planned to measure such promotional effectiveness and economic impact; provided, however, that no firm selected shall do both the promotional effectiveness and economic impact studies nor shall have participated in the development of marketing the tourism campaign.

(b) The commissioner shall submit all preliminary reports of such firms to the legislative fiscal committees within two weeks of receipt of such reports; the final reports shall be submitted by the commissioner to the legislative fiscal committees and the tourism advisory council no later than December first of each year.

37. to review and evaluate the economic impact of the downhill ski industry on the state's economy and to advise the governor, legislature, and other state agencies of the results of such review and evaluation.

37-a. The commissioner shall make an annual report to the governor and legislature on or before the fifteenth day of May for the preceding calendar year. It shall include a summary of all contacts received from business entities by the department, including the department's district offices. The report shall set forth the types of contacts, the purposes of such contacts and include a summary of the results of all such contacts by business entities. The report shall also indicate which contacts were made by small business concerns as defined by section one hundred thirty-five-a of the state finance law. No provision of this subdivision shall be deemed to require or authorize the disclosure of confidential information or trade secrets.

37-b. The requirements to report contained in the following provisions of this chapter shall be satisfied, notwithstanding any inconsistent provision appearing therein, by the commissioner who shall consolidate into one combined annual report all of the information required to be submitted in separate reports by the following provisions of this chapter. This consolidated annual report of the commissioner shall be submitted to the governor and the legislature on or before October first of each year and shall replace the requirements for separate reports contained in the following provisions of this chapter. In order to fulfill his or her responsibility under this subdivision, the commissioner may require the submission to him or her a sufficient period of time in advance of October first of each year by any advisory committee or other body required to submit a report pursuant to the following provisions of this chapter of all information which would otherwise be required to be included in the report of such advisory committee or other body. The following provisions of this chapter containing requirements to submit recurring reports shall be subject to the requirements of this subdivision:

(a) Section one hundred ninety-five, on the operation and accomplishments of the industrial effectiveness program.

(b) Paragraph (a) of subdivision seven of section two hundred two, regarding the current status of the skills development assistance program.

(c) Subdivision two of section two hundred twelve of this chapter, submitting the results of the annual evaluation of the entrepreneurial assistance programs established under article nine of this chapter.

(d) Subdivision two of section two hundred twenty-three, reporting the results of the annual evaluation of the effectiveness of the export trade development projects and other technical assistance programs authorized under article ten.

(e) Paragraph (a) of subdivision three of section two hundred forty-one, submitting the annual findings and recommendations of the advisory council on economic information and research.

(f) Subdivision eight of section two hundred fifty, regarding the current status of the industrial infrastructure development program.

38. to contract for and to accept any gifts or grants or loans of funds or property of financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source, for any or all of the purposes specified in this chapter, with the terms and conditions thereof; and

39. (a) To assist the superintendent of financial services to solicit, evaluate, develop and provide information to banking corporations, principally engaged in doing business within the state, about various methods used by banking corporations to provide financing for businesses engaged in the export of products and services to foreign countries.

(b) The commissioner shall evaluate such information as may be available to the department and help identify local regional banking corporations currently serving the state exporters and shall assist the superintendent of financial services in determining the status of local and regional banking corporations in export financing so that in cooperation with the department of financial services, a program shall be developed by which new banking corporations may be brought into the export financing sector and potential and current state exporters may be given a wider choice of available financing sources for medium and small export transactions.

(c) The commissioner shall further inform the superintendent of financial services of any changes which the department projects may occur in the international business community about which the commissioner may become aware so that the superintendent of financial services may provide the most timely and accurate information to the state banking community.

(d) The commissioner shall promote, publish and disseminate information concerning the current export trade engaged in by corporations doing business in the state, in particularly identifying those areas, fields of endeavor and under-utilized industrial resources which could be exported in greater volume creating an increased need for financing by local and regional banks.

40. to assist the secretary of state to promote and make information available regarding technical and financial assistance for waterfront revitalization programs for economically distressed and severely economically distressed municipalities on inland waterways, as provided by section nine hundred fifteen-a of the executive law.

40-a. to develop a plan to maximize the use of telecommuting to conserve energy otherwise used by the personnel of the department in commuting to their assigned workplace. Within one year of the effective date of this subdivision, the department shall submit a report to the governor and the legislature on the impact of such plan to include, but not be limited to, energy conservation, air quality, workforce acceptance, office costs and potential cost savings.

* 41. To investigate innovative approaches to private sector work and employee compensation arrangements, such as flexible hours and job sharing, flexible compensation and benefit plans including employee assistance programs, employer-supported dependent care and family leave, which will benefit both employers and employees by improving productivity and morale, lowering rates of absenteeism, tardiness and turnover, and enhancing a company's image.

* NB There are 2 sb 41's

* 41. to administer and operate a linked deposit program pursuant to article fifteen of the state finance law.

* NB There are 2 sb 41's

42. To promote the advantages of such flexible work arrangements and benefit plans to business organizations and associations and to individual firms and to assist such groups or firms with instituting such arrangements and benefit plans.

43. To work with the New York job development authority, the New York state urban development corporation and other economic development agencies in promoting the inclusion of dependent care facilities as part of business expansion, industrial park, multi-tenant building or other projects assisted by the authority, the corporation or other agencies.

44. to foster and promote, and to enlist the New York job development authority, the New York urban development corporation and other public authorities, public benefit corporations and state agencies to foster and promote, the re-use and rehabilitation of existing buildings or sites, or both, as part of business expansion, industrial park, multi-tenant building or other projects assisted by a public authority, a public benefit corporation and/or a state agency.

45. to license, maintain and lease where appropriate an official brand, "I Love NY". Such brand shall be maintained, leased and applied pursuant to section one hundred fifty-two of this chapter.

46. to prepare an annual summary for the small business community of the key legislative, budgetary and regulatory changes impacting small businesses. Agencies shall cooperate with the department in developing the annual summary. The annual summary shall be written in plain language and shall provide specific contact information within the appropriate agency for inquiries regarding implementation and compliance. The annual summary shall be posted on the department website on or before September first of each year.

47. to, with funds appropriated for this purpose, post on the department's website information related to New York state programs providing assistance to small businesses or minority and women-owned business enterprises. The commissioner shall determine which programs to feature on the department's website, in consultation with the urban development corporation, which may include, but not be limited to, programs offered by state and federal agencies or other entities, to provide financial and technical assistance to minority and women-owned business enterprises and small businesses, provided that the website shall provide information on any department or urban development corporation programs relating to obtaining bonding or bridge loans. Posted information may include, but not necessarily be limited to, a program description, the type of assistance offered, application information, and contact information or website address for the entity offering such assistance. The department shall post the information described herein so as to allow individuals to: (a) search for featured

minority and women-owned business enterprises and small businesses assistance programs pursuant to article nine of this chapter; (b) complete applications for assistance in obtaining bonding, as well as applications to any other programs providing financial assistance that the department deems feasible; and (c) obtain access to census data from the most recent United States census.

48. to cooperate with and provide assistance to the commissioners of environmental conservation and transportation to implement the provisions of title five of article forty-nine of the environmental conservation law.

49. to exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in this chapter.

§ 100-a. Comprehensive economic development reporting. The department shall prepare an annual comprehensive economic development report, no later than December thirty-first of each year, listing economic development assistance provided by the New York state urban development corporation and the department, including but not limited to tax expenditures, marketing and advertising, grants, awards and loans. Such comprehensive report shall include aggregate totals for each economic development program administered by the New York state urban development corporation and the department, including but not limited to program progress, program participation rates, economic impact, regional distribution, industry trends, and any other information deemed necessary by the commissioner. The department shall prominently post the comprehensive economic development report on its website no later than January first of each year.

§ 100-b. Comprehensive report on the activities of the office of strategic workforce development. Beginning on February first, two thousand twenty-four, and every February first thereafter, the department shall prepare a comprehensive annual report on the activities and efficacy of the office of strategic workforce development. In preparing the report, the department shall coordinate with the department of labor, the department of education, the state university of New York, the city university of New York, the office of temporary and disability assistance, the office of children and family services, the urban development corporation and its subsidiaries, and any other relevant agency or entity. Such report shall include, but need not be limited to: aggregate totals for each economic development program administered directly by the office of strategic workforce development, and aggregate totals for related programs in other agencies wherein such program funds are appropriated within the office of strategic workforce development, the number of awards made since the last report as well as the number of awards made to date, the number of business partners secured through such awards, the dollar total of such awards, regional distribution of such awards, the identified statewide and regional priority sectors as identified by the urban development corporation with input from the regional economic development councils including a description of each such sector, the number of trainees assisted through such awards, leveraged matching funds associated with awards, program participation rates, industry trends, and any other information deemed necessary by the commissioner. The department shall prominently post the comprehensive economic development report on its website no later than February first of each year.

§ 101. Assistance of other departments, agencies and political subdivisions. The commissioner may request from any department, division, office, commission or other agency of the state or any political subdivision thereof, and the same are authorized to provide, such assistance, services and data as may be required by the department in carrying out the purposes of this article, and such funding, including but not limited to charge backs for allocated costs, as the director of the budget may approve.

§ 102. Atomic energy council. 1. There shall be within the department, the atomic energy council (hereinafter sometimes referred to as the "council"), which shall consist of the commissioner and such other representatives of state departments, agencies and instrumentalities importantly concerned with atomic energy and such other persons as the governor may from time to time designate who shall serve at the pleasure of the governor.

2. Each member of the council may, by official order filed with the council, designate a deputy, who, in the case of a member who is an official of the state, any instrumentality, agency or subdivision thereof, shall be an officer of his department, commission or public benefit corporation, to perform his duties under this article. The designation of such deputy shall be deemed temporary only and shall not affect the civil service or retirement rights of any person so designated.

3. The members of the council and their respective deputies, if any, shall serve without compensation, but each of them shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

4. The commissioner shall serve as chairman of the council and may appoint such subordinates and employees as may be necessary to carry out the duties imposed upon the council by law. At any meeting or proceeding not attended by the chairman, the council shall elect an acting chairman. Legal, technical, scientific, engineering and other services for the council, other than those performed by employees of the council, shall be performed by personnel of the department, the state departments of health and labor, or other departments or agencies of the state.

§ 103. General functions, powers and duties of council. The council shall have the following functions, powers and duties:

1. To advise the governor and the legislature with regard to programs for the regulation and control of atomic energy activities, and to make recommendations to the governor and the legislature designed to assure that the regulatory programs of the state, including its political

subdivisions, affecting atomic energy activities encourage the development and use of atomic energy for peaceful purposes within the state, while fully protecting the interest, health and safety of the public.

2. To advise and assist the governor and the legislature in developing and implementing state policies and programs for the regulation and control of atomic energy activities.

3. To coordinate the regulatory programs of the agencies, and instrumentalities of the state and its political subdivisions and agencies of such subdivisions, affecting atomic energy activities, and to correlate such programs with the regulatory programs of the federal government and other states.

4. To develop a coordinated position with respect to regulatory programs of the federal government affecting atomic energy activities in the state, taking into account the interests of all agencies and instrumentalities of the state and its political subdivisions, and agencies of such subdivisions; to coordinate the participation of all such bodies in the regulatory processes of the federal government relating to such regulatory programs; and to coordinate the presentation of views concerning such regulatory programs of all such bodies for consideration by the federal government.

5. To consider, in cooperation and consultation with appropriate officials of other states, existing interstate compacts relating to regulation of atomic energy activities and adaptations, modifications or changes of such compacts and new compacts or other arrangements for cooperation, coordination or joint or mutual action by this state and other states, with respect to regulation of atomic energy activities, and to make such recommendations with respect thereto to the governor and the legislature as the council deems appropriate.

6. To carry out the obligations of the state to the New York state atomic and space development authority under any contract providing for the assumption of jurisdiction in the event of conditions specified in

any such contract over land and facilities held or developed by such authority for the concentration and storage of radioactive byproducts; to enter into amendments to any such contract subject to the approval of the director of the budget; and, after any such assumption of jurisdiction by the council, pursuant to any such contract or amendments, to operate, develop and manage in the name of the state such land and facilities, and to care for, manage, use and dispose of any radioactive byproducts concentrated or stored at such land and facilities.

7. To review periodically the programs of the agencies and instrumentalities of the state and political subdivisions thereof, and agencies of such subdivisions, for responding, handling and providing assistance, in the event of an accident, fire or disaster believed to involve radioactive materials and to make such recommendations with respect to such programs as the council deems appropriate to such bodies.

§ 104. Assistance of other departments, agencies and political subdivisions; review of regulations. 1. All agencies and instrumentalities of the state, all political subdivisions thereof and all agencies of such subdivisions shall keep the council fully and currently informed as to their activities relating to atomic energy or ionizing radiation.

2. The council may request from any such agency, instrumentality or any such political subdivision or any agency of such subdivision, and the same are authorized to provide, such assistance, services and data as may be required by the council in carrying out its functions, powers and duties.

3. No rule, regulation or ordinance or amendment thereto or repeal thereof, primarily and directly relating to atomic energy or the use of atomic energy, which any agency, instrumentality of the state, any political subdivision thereof or agency of such subdivision may propose to issue or promulgate, shall become effective until ninety days after

it has been submitted to the council, unless either the governor by order or the council by resolution waives such waiting period.

§ 104-a. Special powers and duties of the department with respect to employee ownership assistance. With respect to employee ownership assistance loans provided for in subtitle six of title eight of article eight of the public authorities law and paragraph (o) of subdivision one of section sixteen-m of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight, constituting the New York state urban development corporation act, the department shall have the power and duty and in cooperation with the job development authority, the empire state development corporation and any other applicable state agency or office to:

1. Assist and counsel new employee-owned enterprises in their dealings with federal, state and local governments, including but not limited to providing ready access to information regarding government requirements which affect employee-owned enterprises;

2. Receive complaints and suggestions concerning policies and activities of federal, state and local governmental agencies which affect employee-owned enterprises, and develop, in cooperation with the agency involved, proposals for changes in policies or activities to alleviate any unnecessary adverse effects on employee-owned enterprises;

3. Conduct investigations, research, studies and analyses of matters affecting the interests of employee-owned enterprises;

4. Assist employee-owned enterprises in obtaining available managerial, technical, and financial assistance;

5. Initiate and encourage educational programs relating to employee-owned enterprises, including programs in cooperation with various public and private educational institutions;

6. Help new employee-owned enterprises in this state by simplifying

and streamlining license and application procedures wherever possible;

7. Identify industrial and manufacturing businesses that are in danger of being permanently closed or relocated out of state, which results in the loss of jobs and increasing unemployment, and assist the businesses and employees of such businesses by distributing information about the provisions of this section.

The department may impose fees, pursuant to rules and regulations, to defray departmental expenses incurred in providing the services set forth in this section.

§ 105. Radioactive byproducts special fund. 1. There is hereby continued in the custody of the state comptroller a special fund, known as the "radioactive byproducts special fund."

2. All moneys received by the council from making charges or administering, controlling, or disposing of radioactive byproducts or from otherwise operating, developing and managing facilities after assumption of jurisdiction thereof by the council pursuant to subdivision six of section one hundred four of this article, and all moneys received by the council in connection with such assumption of jurisdiction, shall be deposited directly in the radioactive byproducts special fund.

3. The moneys of the radioactive byproducts special fund, subject to segregation by the director of the budget, shall be available for payment of any and all costs and expenditures, including those incurred pursuant to contracts and arrangements entered into, in carrying out the purposes of subdivision six of section one hundred four of this article, and costs and expenditures incidental and appurtenant thereto. All payments from such fund shall be made on the audit and warrant of the state comptroller on vouchers approved by the executive director or any other person designated by the council.

4. In the event that the council shall determine by resolution that

the purposes for which the radioactive byproducts special fund is established have ceased to exist, or that such fund contains money in excess of the amount of money required to accomplish such purposes, it shall deliver a copy of such resolution to the state comptroller, who thereupon shall pay forthwith all moneys in the radioactive byproducts special fund or such excess, as the case may be, into the state treasury to the credit of the general fund.

5. Subject to the provisions of subdivision four of this section, the state comptroller shall invest and keep invested the moneys of the radioactive byproducts special fund.

§ 106. No disqualification. No member of the council, no deputy of such member, and no member of any advisory committee serving without compensation other than reimbursement of expenses incurred, shall be disqualified from holding any other public office or employment, nor shall he forfeit any such office or employment by reason of his appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

ARTICLE 4-A

DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT

§ 115. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Division" shall mean the division of minority and women's business

development created by this article.

2. "Technical assistance" shall mean assistance and services designed to improve the efficiency, effectiveness and viability of a minority or women-owned business enterprise, including, but not limited to, management assistance, problem solving, the development of business and marketing plans, market analysis, financial planning, regulatory compliance, safety and security measures, export assistance, procurement assistance, application assistance, state program assistance, referral to private and public financing sources, contracting assistance, and other forms of assistance which the commissioner deems necessary and appropriate.

§ 116. Office of minority and women's business development; transfer. All the functions and powers possessed by and all the obligations and duties of the governor's office of minority and women's business development office, created and established in the executive law pursuant to and by chapter two hundred sixty-one of the laws of nineteen hundred eighty-eight, are hereby transferred and assigned to, assumed by and devolved upon the department of economic development.

§ 117. Division of minority and women's business development. There is hereby created within the department of economic development a division of minority and women-owned business development. The director of such division shall be appointed by the governor, shall report directly to the commissioner on the activities of the division, and shall hold office at the pleasure of the commissioner. The commissioner may appoint such officers, employees, agents, consultants and special committees as he or she may deem necessary to carry out the provisions of this article and prescribe their duties.

§ 118. Power and duties. In addition to the power and duties conferred by section one hundred sixteen of this article, the division shall have the additional power and duty to:

1. Coordinate with all state agencies performing functions affecting the operations of minority business enterprises, and women-owned business enterprises, as such terms are defined in section two hundred ten of this chapter;

2. Receive complaints and inquiries of operators of minority and women-owned business enterprises and refer them to the appropriate federal, state or local agency for appropriate action on such complaints;

3. Solicit recommendations from the operators of minority and women-owned business enterprises for improving existing state programs and refer such recommendations to the governor, the legislature and appropriate state agencies or authorities;

4. Advise and make recommendations to the commissioner and the legislature on matters affecting the minority and women-owned business enterprises of the state and promote and encourage the protection of the legitimate interests of minority and women-owned business enterprises within the state;

5. Conduct investigations, research, studies and analyses of matters affecting the interests of minority and women-owned business enterprises;

6. Study the implementation of the laws affecting minority and women-owned business enterprises and recommend to the commissioner new laws and amendments of laws for the benefit of minority and women-owned business enterprises; and review pending legislation affecting minority and women-owned business enterprises and report its findings to the commissioner;

7. Provide technical assistance and information to minority and women-owned business enterprises in the state on economic development programs administered by the department, including, but not limited to: (a) the empire zones program, established pursuant to article eighteen-B

of the general municipal law, (b) the industrial effectiveness program, established pursuant to article seven of this chapter, (c) the economic development skills training program, established pursuant to article eight of this chapter, and (d) the entrepreneurial assistance program, established pursuant to article nine of this chapter;

8. Provide technical assistance and information to minority and women-owned business enterprises in the state on economic development programs administered by agencies other than the department, including, but not limited to programs administered by the urban development corporation, the job development authority and the science and technology foundation;

9. Be responsible for conducting minority and women-owned business enterprise assistance programs and for coordinating the activities of all other state agencies acting within the scope of this section; and

10. Carry out the activities to implement the minority and women-owned business enterprise assistance programs, to the extent practicable, within amounts appropriated therefor by;

(a) collecting and maintaining information identifying certified minority and women-owned business enterprises within New York state;

(b) collecting, maintaining, and providing information to potential users identifying existing contracting and procurement opportunities within and outside New York state;

(c) maintaining, providing and marketing a compilation of existing programs providing assistance for minority and women-owned business enterprises;

(d) identifying special needs and problems facing minority and women-owned business enterprises within New York state;

(e) contacting institutions, organizations and commercial enterprises that are potential consumers of minority and women-owned business products and services; urging their expanded consumption of such goods and services;

(f) facilitating the establishment of minority and women-owned business enterprises; and

(g) providing information concerning local and regional opportunities for minority and women-owned business enterprises.

§ 119. Assistance of other agencies. To effectuate the purposes of this article, the commissioner may request from any department, division, board, bureau, commission or other agency of the state or from any public corporation or district, and the same are authorized to provide, such assistance, services and data as will enable the office to properly carry out its functions, powers and duties hereunder.

§ 120. Advisory board; creation. 1. There is hereby created in the division of minority and women's business development a minority and women-owned business enterprise advisory board. The board shall consist of twelve members to be appointed by the governor. The governor shall designate a chairperson from the members of the advisory board, to serve as such at the pleasure of the governor. In appointing the members of the advisory board the governor shall ensure that six of the members are individuals who are currently involved in the ownership and/or operation of a minority or women-owned business enterprise or who have extensive experience in minority and women-owned business enterprise ownership and/or operation, and that at least two of the members are individuals representing banking, community development financial, insurance or surety bonding institutions.

2. All members of the advisory board shall serve for terms of three years, such terms to commence on April first, and expire on March thirty-first; provided, however, that of the six members first appointed two shall be appointed for one-year terms expiring on March thirty-first, nineteen hundred ninety-three, two shall be appointed for two-year terms expiring on March thirty-first, nineteen hundred ninety-four, and two shall be appointed for three year terms expiring on March thirty-first, nineteen hundred ninety-five; and that four additional members, one on the recommendation of the temporary president of the senate, one on the recommendation of the minority leader of the senate, one on the recommendation of the speaker of the assembly and one on the recommendation of the minority leader of the assembly shall be

appointed for three year terms expiring on March thirty-first, nineteen hundred ninety-five and every three years thereafter.

3. The advisory board shall meet regularly at least one time in each year. Special meetings may be called by its chairperson and shall be called by the chairperson at the request of the director of the division of minority and women's business development.

4. No member of the advisory board shall be disqualified from holding any other public office or employment, nor forfeit any such office or employment by reason of appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

5. The members of the advisory board shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

6. The board shall have the power and duty to:

(a) advise the commissioner in carrying out the functions, powers and duties of the division, as set forth in this article;

(b) advise the commissioner, the governor, and the legislature concerning recommended legislation necessary to foster and promote the prosperity, expansion and development of minority and women-owned business enterprises within the state;

(c) advise the commissioner, the governor, and the legislature concerning existing laws, rules, regulations and practices of state agencies which are counter-productive or inimical to the prosperity, expansion and development of minority and women-owned business enterprises within the state;

(d) advise the commissioner, the governor, and the legislature concerning the development of inter-governmental cooperation among agencies of the federal, state and local governments and cooperation between private industry and government so as to assure the optimum development of minority and women-owned business enterprises; and

(e) serve as a catalyst for creating and maintaining a minority and women-owned business enterprise consciousness in New York state.

(f) establish procedures for making annual awards to be known as "New York State Minority and Women-Owned Business Excelsior Awards". These non-monetary awards shall be given in recognition of unusual performance by persons, firms and organizations which are engaged in the operation of a New York state minority and women-owned business enterprise or which are engaged in activities to assist minority and women-owned business enterprises in the state. The board may nominate up to five award winners annually and forward such names to the governor for consideration. The governor may designate award winners from these nominees. Current members of the advisory board are not eligible as nominees.

7. The commissioner shall provide the board with such staff assistance and support services as necessary for the board to perform the functions required of it under this section.

ARTICLE 4-B

DIVISION FOR SMALL-BUSINESS

§ 130. Legislative findings and objectives. The legislature hereby finds and declares that:

1. small-business has been a major positive factor in the political, economic and social development of the state;

2. the future welfare of the state depends on the continued development of small-business;

3. the state has a responsibility to assist in small-business development in furtherance of the general welfare.

§ 131. Definition of a small business. For the purposes of this chapter, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

§ 132. Division for small-business; commissioner; employees. There is hereby created within the department of economic development a division for small-business. The head of such office shall be a deputy commissioner, who shall be appointed by the commissioner, and shall hold office during the pleasure of the commissioner. The commissioner may appoint such officers, employees, agents, consultants and special committees as he may deem necessary to carry out the provisions of this article and prescribe their duties.

§ 133. Small-business advisory board; creation. 1. There is hereby created in the division for small business a small business advisory board. The board shall consist of seventeen members to be appointed by the governor, with the advice and consent of the senate. The governor shall designate a chairman from the members of the advisory board, to serve as such at the pleasure of the governor. In appointing the members of the advisory board the governor shall ensure that at least nine of the members are individuals who are currently involved in the ownership and/or operation of a small business or who have extensive experience in small business ownership and/or operation, and that at least two of the members are individuals representing banking, community development financial, insurance or surety bonding institutions.

2. All members of the advisory board shall serve for terms of three years, such terms to commence on April first, and expire on March thirty-first; provided, however, that of the nine members first appointed three shall be appointed for one-year terms expiring on March thirty-first, nineteen hundred seventy-eight, three shall be appointed for two-year terms expiring on March thirty-first, nineteen hundred seventy-nine, and three shall be appointed for three year terms expiring on March thirty-first, nineteen hundred eighty; and that six additional members, two on the recommendation of the temporary president of the senate, one on the recommendation of the minority leader of the senate, two on the recommendation of the speaker of the assembly and one on the recommendation of the minority leader of the assembly shall be appointed for three year terms expiring on March thirty-first, nineteen hundred eighty-four and every three years thereafter.

3. The advisory board shall meet regularly at least four times in each year. Special meetings may be called by its chairman and shall be called by him at the request of the deputy commissioner of the division for small-business.

4. No member of the advisory board shall be disqualified from holding any other public office or employment, nor shall he forfeit any such office or employment by reason of his appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

5. The members of the advisory board shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

6. The board shall have the power and duty to:

(a) advise the commissioner in carrying out the functions, powers and duties of the division, as set forth in this article;

(b) advise the commissioner, the governor, and the legislature concerning recommended legislation necessary to foster and promote the prosperity, expansion and development of small business concerns within the state;

(c) advise the commissioner, the governor, and the legislature concerning existing laws, rules, regulations and practices of state agencies which are counter-productive or inimical to the prosperity, expansion and development of small business concerns within the state;

(d) advise the commissioner, the governor, and the legislature concerning the development of inter-governmental cooperation among agencies of the federal, state and local governments and cooperation between private industry and government so as to assure the optimum development of small business concerns;

(e) issue an annual report to the commissioner, the governor and the legislature recommending cost-effective ways to simplify access to state government for small businesses;

(f) serve as a catalyst for creating and maintaining a small business consciousness in New York state;

(g) establish procedures for making annual awards to be known as "New York State Small Business Awards". These non-monetary awards shall be given in recognition of unusual performance by persons, firms and organizations which are engaged in the operation of New York state small businesses or which are engaged in activities to assist small businesses in the state. The board may nominate up to five award winners annually and forward such names to the governor for his consideration. The governor may designate award winners from these nominees at his discretion. Current members of the advisory board are not eligible as nominees;

(h) advise the commissioner on recommendations for the selection of a minority and women-owned business enterprise statewide advocate as set forth by section three hundred eleven-a of the executive law; and

(i) report to the commissioner, the governor and the legislature on agency use of streamlined optional adjudicatory proceedings for small businesses.

7. The commissioner shall provide the board with such staff assistance and support services as necessary for the board to perform the functions required of it under this section.

§ 134. Powers and duties of the division for small-business. The division shall have the power and duty to:

1. coordinate the activities of all state agencies performing functions affecting the operation of small-businesses in the state;

2. receive complaints of operators of small-businesses and refer them to the appropriate federal, state or local agency authorized by law for appropriate action on such complaints;

3. advise and make recommendations to the commissioner on matters affecting the small-businesses of the state and promote and encourage the protection of the legitimate interests of small-businesses within the state;

4. conduct investigations, research, studies and analyses of matters affecting the interests of small-businesses;

5. represent the interests of small-businesses in the state before federal, state and local administrative and regulatory agencies;

6. study the operation of the laws affecting small-businesses and recommend to the commissioner new laws and amendments of laws for the benefit of small-businesses;

7. review pending legislation affecting small-businesses and report its findings to the commissioner; and

8. initiate and encourage small-business education programs in general and to coordinate with the functions of the office of general services an information and outreach program directed toward informing small-businesses in the state of procedures necessary for competing for state purchases and to coordinate with the functions of every state agency, department or authority described in section one hundred thirty-nine-g of the state finance law, pursuant to subdivision (b) of section one hundred thirty-nine-g of the state finance law, an information and outreach program directed toward informing small-businesses in the state of procedures necessary for competing for

state contracts, including without limitation educating small contractors about surety bonding requirements on state contracts, and identifying resources available to such contractors in obtaining their first bond and in increasing their bonding capacity, including but not limited to the federal small business administration bond guarantee program.

9. the commissioner and the commissioners of agriculture and markets and the office of general services shall initiate and encourage small-business education programs and coordinate with the functions of the office of general services, pursuant to subdivision (b) of section one hundred sixty-one-b of the state finance law, an information and outreach program directed toward informing eligible businesses in the state of procedures necessary for competing for purchases of food products pursuant to section one hundred seventy-four-a of the state finance law and subdivision eight-a of section one hundred three of the general municipal law, and to coordinate with the functions of every state agency or department described in subdivision (b) of section one hundred thirty-nine-g of the state finance law, an information and outreach program directed toward informing eligible businesses in the state of procedures necessary for competing for contracts for the purchase of food products pursuant to section one hundred seventy-four-a of the state finance law and subdivision eight-a of section one hundred three of the general municipal law.

10. conduct a survey of all business incubators in the state and assess the need for additional incubator facilities to nurture the growth and development of small businesses.

11. provide assistance to small business in the state, and facilitate access to programs serving small business, to ensure that such businesses benefit, as needed, from technical, managerial, financial, and general business assistance; training; marketing; organization and personnel skill development; project management assistance; technology assistance; bond and insurance education assistance; online marketplace lending awareness and assistance; and other business development assistance. In addition, either independently or in conjunction with

other state agencies:

(a) develop a clearinghouse of information on programs and services provided by entities that may assist such businesses;

(b) seek to maximize utilization by small businesses of available federal resources including but not limited to federal grants, loans, loan guarantees, surety bonding guarantees, technical assistance, and programs and services of the federal small business administration; and

(c) develop and implement, in conjunction with the department of financial services, a small business online marketplace lending education and outreach campaign to educate businesses in plain-language as to the true costs associated with obtaining loans from online marketplace lenders including true and up-front transparent pricing and terms, the disclosure of annualized percentage rates, interest rates, fees and charges; disclosure of terms for repayment, early repayment, and refinancing of a loan and any penalties that may be applied; and any other information that is deemed necessary by the department of economic development. The department of economic development shall develop and implement a plan to distribute such information to small business owners, including but not limited to, printed material, publication on the internet and through coordination with other state entities that routinely interact with small businesses in this state. The department of economic development shall make translations of all educational materials available in languages other than English, including the six most common non-English languages spoken by individuals in this state.

12. compile an annual report on the state of small businesses, particularly those with twenty-five employees or less which shall be known as micro-businesses under this subdivision. The commissioner shall, on or before June first, two thousand fourteen and annually thereafter, submit to the governor, the temporary president of the senate and the speaker of the assembly a report that shall include, but not be limited to, the following information for each calendar year:

(a) the growth and economic trends of small businesses which may be categorized by various small business sizes and/or sectors;

(b) an analysis of relevant and available employment, statistical and economic data of the various small business sectors throughout New York state, which may be categorized by various small business sizes;

(c) suggestions to improve the efficiency of existing loan programs;
(d) suggestions to improve small business growth;
(e) statistical and economic analysis of the state of small businesses by various small business sizes and/or sectors; and
(f) identification and review of the local and state regulations, fines and penalties particular to small businesses which may be categorized by various small business sizes and/or sectors.

The division shall collaborate with other state and local agencies to develop the annual report. The office shall maintain and publish such information on the small business directory webpage in a manner that allows individuals to search the report by name, date, or type of statistics. The format of the annual report shall be developed in consultation with various small business owners to ensure the information collected, analyzed, and published for the purposes of this subdivision is representative of all small businesses in the state.

§ 135. Assistance of other agencies. 1. To effectuate the purposes of this article, the commissioner may request from any department, division, board, bureau, commission or other agency of the state or from any public corporation or district, and the same are authorized to provide, such assistance, services and data as will enable the office properly to carry out its functions, powers and duties hereunder.

2. On or before July first, two thousand twenty-one, and on or before such date annually thereafter, every state agency and public authority shall provide to the department of economic development a list of programs, including a description of each of such programs, offered by such state agency or public authority to assist small businesses doing business within this state and the contact information for such programs. Such program information provided to the department shall include employment level requirements or business industry or ownership requirements of the business and will be categorized as such by the department of economic development.

§ 136. Rules and regulations. The commissioner shall adopt rules and regulations to effectuate the purposes of this article. The division of small-business advisory board shall recommend to him criteria for inclusion therein.

§ 137. Small business stationary source ombudsman program. 1. There is hereby established within the division for small businesses a small business stationary source ombudsman program. The primary purpose of the small business stationary source ombudsman program is to represent small business stationary sources on issues relating to compliance with the federal Clean Air Act, 42 U.S.C. Section 7401 et seq. as amended by Public Law 101-549, November fifteenth, nineteen hundred ninety, hereinafter referred to as the "Act", and to refer small business stationary sources to appropriate entities for assistance in compliance with article nineteen of the environmental conservation law and the Act. For purposes of this section a small business stationary source shall have the same meaning as in section 19-0313 of the environmental conservation law.

2. The department shall, through the small business stationary source ombudsman program, perform all functions necessary to implement the requirements of section 7661f of the Act including:

a. soliciting input from small business stationary sources regarding compliance with the Act and article nineteen of the environmental conservation law, including interacting with organizations representing small businesses such as trade associations or other entities;

b. participating in, and facilitating and promoting the participation of small business stationary sources in the development and implementation of rules and regulations adopted pursuant to article nineteen of the environmental conservation law;

c. participating in, and sponsoring meetings with the department of environmental conservation, local air pollution control agencies, industry groups and small business representatives;

d. providing guidance and recommendations to the department of environmental conservation on the development, content and operation of the small business stationary source technical and environmental compliance assistance program as created by section 19-0313 of the environmental conservation law;

e. distributing to small business stationary sources information and materials on the requirements of the Act and article nineteen of the environmental conservation law;

f. reporting to the small business stationary source compliance advisory panel as established pursuant to section 19-0315 of the environmental conservation law on any problems or difficulties experienced by small business stationary sources in complying with article nineteen of the environmental conservation law and the Act, including the degree and severity of enforcement;

g. aiding in the investigation and resolution of complaints and disputes from small business stationary sources against the department of environmental conservation and local air pollution control authorities;

h. conducting periodic evaluations of all aspects of the small business stationary source technical and environmental compliance assistance program as identified under section 19-0313 of the environmental conservation law including reviewing the work and services of the program with trade associations and representatives of small business;

i. reviewing and providing comments and recommendations to the United States environmental protection agency and the department of environmental conservation regarding the development and implementation of regulations that impact small business stationary sources;

j. arranging for and assisting in the preparation of guidance documents by the small business stationary source technical and environmental compliance assistance program as required pursuant to section 19-0313 of the environmental conservation law to ensure that the language is readily understandable by the lay person;

k. referring small business stationary sources to specialists for information and assistance on affordable alternative technologies, process changes, products and operational methods to help reduce air pollution;

l. providing information to small business stationary sources on state-sponsored programs offering financial and technical assistance, and in locating sources of funding for compliance with the requirements of article nineteen of the environmental conservation law and the Act; and

m. establishing procedures for assuring the confidentiality of information received from small business stationary sources.

3. The provisions of article six of the public officers law shall not apply to records containing information supplied by small business stationary sources pursuant to the provisions of this section.

§ 138. Small business pollution prevention and environmental compliance ombudsman program. 1. There is hereby established within the division for small businesses a small business pollution prevention and environmental compliance ombudsman program. The primary purpose of such program is to represent small businesses on issues relating to pollution prevention and compliance with the environmental conservation law.

2. The department shall, through the small business pollution prevention and environmental compliance ombudsman program, provide the following services:

a. soliciting input from small businesses regarding pollution prevention and compliance with the environmental conservation law, including interacting with organizations representing small businesses such as trade associations or other entities;

b. participating in, facilitating and promoting the participation of small businesses in the development and implementation of rules and regulations adopted pursuant to the environmental conservation law;

c. participating in and sponsoring meetings with the department of environmental conservation, local environmental agencies, industry groups and small business representatives;

d. providing guidance and recommendations to the department of environmental conservation on the development, content and operation of the small business pollution prevention and environmental compliance assistance program as created by section 28-0109 of the environmental conservation law;

e. distributing to small businesses information and materials on pollution prevention and the requirements of the environmental conservation law;

f. reporting to the pollution prevention and environmental compliance coordinating council as established pursuant to section 28-0111 of the environmental conservation law on any problems or difficulties experienced by small businesses in complying with the environmental conservation law, including the degree and severity of enforcement;

g. aiding in the investigation and resolution of complaints and disputes from small businesses against the department of environmental conservation and local environmental authorities;

h. conducting periodic evaluations of all aspects of the small business pollution prevention and environmental compliance assistance program created pursuant to section 28-0109 of the environmental conservation law including reviewing the work and services of the program with trade associations and representatives of small business;

i. reviewing and providing comments and recommendations to the United

States environmental protection agency and the department of environmental conservation regarding the development and implementation of regulations that impact small businesses;

j. arranging for and assisting in the preparation of guidance documents by the small business pollution prevention and environmental compliance assistance program as required pursuant to section 28-0109 of the environmental conservation law to ensure that the language is readily understandable by the layperson;

k. referring small businesses to specialists for information and assistance on affordable alternative technologies, process changes, products and operational methods to help achieve pollution prevention;

l. providing information to small businesses on state-sponsored programs offering financial and technical assistance, and in locating sources of funding for pollution prevention and compliance with the requirements of the environmental conservation law; and

m. establishing procedures for assuring the confidentiality of information received from small businesses.

3. The small business pollution prevention and environmental compliance ombudsman program shall coordinate its services with the office of waste prevention services established pursuant to article fourteen of this chapter.

*** § 139. Advisory panel on employee-owned enterprises.** 1. Definition. As used in this section, the term "employee-owned enterprise" shall mean a business in which the employees control the majority of the voting stock, or if the business is held in a trust which controls the majority of the voting stock, the trustees are elected by the employees. The term "employee-owned enterprise" shall also refer to a worker cooperative as defined in section eighty-one of the cooperative corporations law.

2. Establishment of advisory panel. An advisory panel is hereby

created within the department for the purpose of reviewing state laws and programs in order to report and make recommendations on how best to support existing employee-owned enterprises, promoting the formation of new employee-owned enterprises, and promoting the continued growth of such businesses in the state.

3. Composition of advisory panel. (a) The advisory panel shall consist of thirteen members, including:

(i) the commissioner, or his or her designee, who shall be designated as chair of the advisory panel;

(ii) the commissioner of labor, or his or her designee;

(iii) the commissioner of tax and finance, or his or her designee; and

(iv) ten members to be appointed as follows: four shall be appointed by the governor, two shall be appointed by the speaker of the assembly, two shall be appointed by the temporary president of the senate, one shall be appointed by the minority leader of the assembly, and one shall be appointed by the minority leader of the senate. Such appointed members shall represent entities and organizations with expertise related to employee-owned enterprises or business development, particularly those with an emphasis on small businesses, minority and women-owned businesses, and veteran-owned businesses, including, but not limited to:

(1) employee-owned enterprises;

(2) employee-owned enterprise advocacy, service, support, or development organizations;

(3) business development organizations;

(4) New York state college and university programs with expertise in business development;

(5) commercial lending organizations focusing on access to capital and community development; and

(6) labor organizations.

(b) Each member of the panel shall serve at the pleasure of the appointing authority, and any vacancy on the panel shall be filled in the same manner as the original appointment. Such panel members shall serve without compensation except that such members shall be entitled to reimbursement for actual and necessary expenses incurred in such service.

4. Powers and duties of the advisory panel. The advisory panel shall:

(a) identify and recommend strategies to promote the creation and development of new employee-owned enterprises in order to create new jobs and retain existing jobs within the state;

(b) identify and recommend strategies to facilitate the creation of employee-owned enterprises that promote the continuation of existing businesses either as part of a pre-existing business succession of ownership plan or as an alternative option if a business is being offered for sale or transfer by the current owner or the heirs or estate of a deceased owner;

(c) evaluate the effectiveness of current state and local training and assistance programs designed to provide support to employee-owned enterprises, and make recommendations as to how to more effectively utilize these programs and resources to support such enterprises;

(d) examine and identify state and local laws and regulations relating to the governance and administration of employee-owned enterprises and their effect on the creation, retention, and growth of such enterprises;

(e) examine and identify other successful federal, state and local programs designed to provide support to employee-owned enterprises, including any programs currently underutilized by individuals seeking to establish an employee-owned enterprise in the state;

(f) evaluate the ability of new and existing employee-owned enterprises to acquire the capital necessary to form, expand, and develop their operations;

(g) evaluate the role of immigrants and new Americans, minorities, women, and veterans in the formation of employee-owned enterprises;

(h) evaluate the potential for employee-owned enterprises to assist in the revitalization and redevelopment of economically disadvantaged communities; and

(i) recommend a set of best practices and policies as a guide for individuals to use when forming an employee-owned enterprise, and make such guide publicly available on the department's website.

5. Reporting. The advisory panel shall issue a report no later than June thirtieth, two thousand twenty-seven outlining the findings and recommendations of the panel. The report shall be delivered to the

governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly, the minority leader of the senate, the chair of the assembly committee on ways and means, the chair of the senate committee on finance, the chair of the assembly committee on economic development, the chair of the assembly committee on small business, the chair of the senate committee on commerce, economic development, and small business, the chair of the assembly committee on labor, and the chair of the senate committee on labor.

* NB Repealed October 1, 2027

ARTICLE 4-C

PROCUREMENT OPPORTUNITIES NEWSLETTER

§ 140. Legislative findings and declaration. The legislature hereby finds and declares that it is the policy of the state to conserve and protect state revenues through the efficient and prudent use of state funds in state procurement contracts. It further finds that the operation of an efficient procurement information system is an effective tool in the economic development of the state. To promote this policy, it is in the best interest of the state to create a central information source that will alert businesses to new opportunities to participate in state procurement activities. To accomplish these public purposes, public notice of state procurement contracts shall be given by regular publication of a compilation of the state's needs for goods and services.

§ 141. Definitions. For the purposes of this article, the following terms shall have the following meanings as indicated:

1. "Agency" shall mean any agency, department, board, bureau, commission a majority of whose members are appointed by the governor, division, office, council, committee, or officer of the state, or the state university of New York or the city university of New York, or any public benefit corporation or public authority, a majority of whose members are appointed by the governor. Such term shall not include the legislature.

2. "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which had offered for sale, lease or other form of exchange, goods sought by the agency and substantially produced outside of New York state, or services sought by the agency and substantially performed outside New York state.

3. "Procurement contract" shall mean any written agreement entered into by an agency for the acquisition of goods, services, or construction of any kind in the actual or estimated amount of one hundred fifty thousand dollars or more. The term does not include an agreement for employment in the civil service.

§ 142. Procurement opportunities newsletter. 1. The commissioner shall publish on a daily basis a procurement opportunities newsletter, which shall contain notices of procurement contract opportunities and any other information the commissioner deems necessary to effectuate the purposes of this article. Notices of procurement contract opportunities shall be available on the internet for at least fifteen days.

2. Notices of procurement contract opportunities shall mean:
(a) for procurement contracts to be awarded by the office of general services, (i) a description of the centralized commodity contracting program of such office and an explanation of how to apply for placement on any prequalified bidders list established as part of such program; (ii) a description of the centralized construction contracting program of such office and an explanation of how to subscribe to any bid notice

publication established as part of such program; and (iii) for all other procurement contracts awarded by the office, the provisions of paragraph (c) of this subdivision shall apply.

(b) for procurement contracts in excess of ten thousand dollars and less than fifty thousand dollars to be awarded by the state university of New York or the city university of New York, (i) a quarterly listing of projected procurement purchases by commodity for each institution of the state university of New York or the city university of New York; (ii) an explanation of how to apply for placement on any bidder lists maintained by the state university of New York or the city university of New York; and (iii) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by the state university or the city university; and

(c) for all other procurement contracts issued by agencies (i) the name of the contracting agency; (ii) the contract identification number; (iii) a brief description of the goods or services sought, the location where goods are to be delivered or services provided and the contract term; (iv) the address where bids or proposals are to be submitted; (v) the date when bids or proposals are due; (vi) a description of any eligibility or qualification requirement or preference; (vii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (viii) any other information deemed useful to potential contractors; (ix) the name, address, and telephone number of the person to be contacted for additional information; (x) a statement as to whether the goods or services sought had in the immediately preceding three year period been supplied by a foreign business enterprise; and (xi) the name of any individual or business enterprise that has been awarded an identical or substantially similar procurement contract as determined by the contracting agency, within the past five years; provided, however, that in the case of multiple award contracts only, the contracting agency may provide a link to a publicly accessible website listing the information required pursuant to this subparagraph. Such link shall be exclusive to each multiple award contract.

3. The commissioner shall provide for electronic publication, updated daily, accessible at no charge to the general public and may set subscription rates for enhanced access services, including, but not limited to, automated notification of bid opportunities based upon the amounts estimated to be necessary to defray the expenses of preparing, publishing, marketing and distributing the procurement opportunities newsletter. In addition, the commissioner shall immediately make available, upon request, a printed copy of all notices from the date of such request and the fifteen days preceding, and if requested, make available on a weekly basis, the procurement opportunities newsletter, at a subscription rate determined by the commissioner based upon an estimated expense of producing and distributing such printed copy.

4. The commissioner may publish in the procurement opportunities newsletter (a) notices of procurement opportunities originating from political subdivisions of the state or business enterprises, and (b) notices from government or potential government contractors seeking subcontractors and suppliers, in such form and manner as the commissioner shall determine. The commissioner may charge a fee for the publication of such notices of procurement opportunities based upon the amounts estimated to be necessary to defray the expenses of preparing, publishing, marketing and distributing such additional notices of procurement opportunities.

5. In addition to any other notice of procurement contract opportunities required in this section, for procurement contracts in the amount of two hundred thousand dollars or more to be awarded by all state agencies, each agency shall prepare for inclusion in the procurement opportunities newsletter (a) a semi-annual listing of projected procurement purchases by category; (b) an explanation of how to apply for placement on any bidder list maintained by the agency; and (c) a description of procedures for providing advance notification by mail to individuals or business entities on such bidder lists of any request for proposals, in accordance with rules and regulations promulgated by the agency. The commissioner, in consultation with each agency, shall arrange a schedule for each agency's semi-annual listing.

6. The commissioner shall include in the procurement opportunities newsletter the procurement contract award information submitted by agencies pursuant to subdivision three of section one hundred forty-three of this article.

7. Upon receipt of an announcement that an agency has entered into a contract, as provided in subdivision five of section one hundred forty-three of this article, the commissioner shall publish such announcement in the procurement opportunities newsletter. The announcement shall identify the contract, specify the date of the award of the contract and provide the name and contact information for each recipient of the contract.

§ 143. Responsibilities of other agencies. 1. Prior to awarding any procurement contract, each agency shall submit to the commissioner information sufficient to enable publication of the notices of procurement contract opportunities described in subdivision two of section one hundred forty-two of this article. Such information shall be submitted to the commissioner in sufficient time to allow a minimum of fifteen business days between publication of such notice and the date on which a bid or proposal is due, except where a shorter period is specifically authorized by law.

2. No agency shall award a procurement contract unless a notice of a procurement contract opportunity as described in subdivision two of section one hundred forty-two of this article has been published in the procurement opportunities newsletter or unless such procurement contract is exempt from the requirements of this article in accordance with section one hundred forty-four of this article.

3. At the time the agency determination of intent to award a procurement contract is made, each agency shall submit to the commissioner for inclusion in the procurement opportunities newsletter, (a) for procurement contracts let by the invitation for bid process, the result of the bid opening including the names of bidding firms and the amounts bid by each; (b) for procurement contracts let by the request

for proposal process, the names of firms submitting proposals and the proposal selected as the best value offer; and (c) for all other procurement contracts, the name of the proposed awardee.

4. At the time an agency enters into a contract with a single or sole source provider pursuant to section one hundred sixty-three of the state finance law, for an amount in excess of fifty thousand dollars, such agency shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter, and shall specify the recipient of the contract.

5. At the time an agency enters into a contract, such agency shall submit an announcement of the intended contract for inclusion in the procurement opportunities newsletter. Such announcement shall identify the contract, specify the date of the award of the contract and provide the name of and contact information for each recipient of the contract.

§ 144. Exemptions. 1. The provisions of this article shall not apply to:

(a) Procurement contracts, which the comptroller exempts pursuant to the procedures contained in subdivision two of this section, awarded on an emergency or critical basis, or on the basis that publication is not feasible, provided, however, that no exemption shall be granted for any contracts, except for contracts awarded on an emergency or critical basis, for which competitive bidding is required by law;

(b) Procurement contracts being re-bid or re-solicited for substantially the same goods or services, within forty-five business days after the date bids or proposals were originally due;

(c) Procurement contracts awarded pursuant to section one hundred seventy-five, one hundred seventy-five-a, one hundred seventy-five-b or one hundred seventy-five-c of the state finance law;

(d) Procurement contracts in an amount less than ten thousand dollars awarded by the state university of New York or the city university of New York; and

(e) Procurement contracts awarded to not-for-profit providers of human services pursuant to a non-competitive selection process.

2. Any exemption requested for a procurement contract described in paragraph (a) of subdivision one of this section may be granted in accordance with the following procedure:

(a) Any agency, which shall not include those public benefit corporations or public authorities whose contracts and payments are not approved and pre-audited by the comptroller, may request an exemption from the comptroller. The request shall, unless an emergency exists, be in writing and state the nature of the contract and reasons for the exemption. The comptroller may accept an oral request for an exemption in an emergency, provided the agency agrees to submit to the comptroller a written request immediately thereafter.

(b) The comptroller shall, as soon as practicable, determine whether an agency's request for an exemption is granted or denied. The comptroller may inform an agency of the decision orally and shall provide an agency with a written determination granting or denying the request for an exemption.

(c) The comptroller shall be responsible for granting or denying an exemption for each individual procurement contract unless the comptroller determines, by regulation, that a specific class of procurement contracts should be exempt.

(d) The comptroller shall, after consultation with the commissioner, promulgate regulations or guidelines to implement the provisions of this subdivision.

(e) Notwithstanding the foregoing, any agency receiving an exemption for a procurement contract in accordance with this subdivision must nevertheless publish notice of either the letting or award of the contract, and the reasons for any such exemption, in the procurement opportunities newsletter as soon as practicable, unless the comptroller determines that publication would affect the ability of (i) law enforcement agencies to carry out investigations, or (ii) agencies to protect security operations, in which case notice of such contract shall not be published. In the case of non-competitive awards, such notice shall also state the recipient of the contract, a brief description of the purpose of the contract, the contract term, and the estimated value.

§ 145. Study and report. The state procurement council established pursuant to section one hundred sixty-one of the state finance law, in consultation with the council on contracting agencies established pursuant to executive order 4.125 dated May twenty-second, nineteen hundred eighty-nine, shall study and report by September first, two thousand nine to the governor, the legislature and the director of the budget with recommendations on implementation of a statewide electronic procurement opportunity notification system, including, but not limited to:

1. plans and a timetable for further integration of existing agency systems of bidder registration and procurement opportunity notification with the procurement opportunities newsletter established pursuant to this article;

2. electronic submission of bids and proposals; auctions and reverse auctions; electronic availability of plans and specifications;

3. feasibility of using open standards software applications for a statewide electronic procurement opportunity notification system;

4. costs and funding models for a statewide electronic procurement opportunity notification system;

5. additional information to be included to increase the transparency and utility of the system, including without limitation, notices by the comptroller of progress payments made to prime contractors, and minority and women-owned business enterprises utilization plans and waivers granted pursuant to article fifteen-A of the executive law.

§ 146. Approval of comptroller. The comptroller shall not approve or file any procurement contract for the acquisition of goods or services in the amount of one hundred fifty thousand dollars or more unless notice as provided in section one hundred forty-two of this article shall first have been published in the procurement opportunities newsletter at least fifteen business days prior to the date on which a bid or proposal was due. Provided, however, such requirement of publication of advance notice shall not apply to contracts exempt from such requirement under section one hundred forty-four of this article; provided further, that the comptroller shall not be required to disapprove a contract if such comptroller determines that there has been substantial compliance with the requirements of section one hundred forty-two and section one hundred forty-three of this article. The foregoing provisions of this section shall not be construed to limit, in any manner, the right of the comptroller to demand evidence of adequate competition or such other proofs as such comptroller may require in the discharge of such comptroller's responsibilities pursuant to section one hundred twelve of the state finance law or any other provision of law.

ARTICLE 5

NEW YORK STATE MARKETING ACT

§ 150. Short title. This article shall be known and may be cited as the "New York state marketing act".

§ 151. Statewide master plan for marketing. 1. The department shall formulate and annually re-evaluate a comprehensive five-year master plan for the balanced development and coordination of adequate marketing programs and facilities necessary to meet the promotional objectives enumerated in section one hundred of this chapter. The plan shall be based upon elements including, but not limited to: the identification and evaluation of the tourism needs for each region of the state and the relation of these findings to the state as a whole; the identification and evaluation of the existing tourism infrastructure of the state including projection of future needs related thereto; and the identification and evaluation of existing tourism promotion activities including projection of future needs relating thereto. The plan shall be developed in consultation with the tourism advisory council and the inter-agency tourism task force.

2. Following the initial enactment of this article, the plan shall include a survey and analysis of all marketing efforts, consistent with the promotional objectives enumerated in section one hundred of this chapter, conducted by any agency, subsidiary or department of the state. The initial five-year plan must include procedures to consolidate all such marketing efforts into the marketing program operated by the department and to expand and apply the "I Love NY" brand in accordance with this article.

3. The department shall submit such plan to the governor, temporary president of the senate, speaker of the assembly and appropriate committees in the legislature. Each such entity shall have the opportunity to review the plan and subsequent re-evaluations in a timely manner as prescribed by the department and send reports with recommendations back to the department for final revisions. The department shall consider such recommendations and integrate them into the final plan and subsequent re-evaluations wherever feasible.

4. The department shall, on January first next succeeding the effective date of this article, submit a new five-year plan in accordance with subdivision three of this section.

§ 152. "I Love NY" brand. 1. The department shall enact guidelines for the use of the brand, which shall include measures to allow for the expansion of the brand to fit niche and thematic marketing efforts. When appropriate, the brand shall be applied to targeted promotional initiatives, and shall be leased at no cost to any public benefit corporation or not-for-profit, New York heritage trail tourism promotion agency, convention and visitors bureau or local government.

2. The department shall annually cause to be conducted an analysis of

the effectiveness of the "I Love NY" brand on an ongoing basis as determined to be necessary by the department, but no less than once every five years.

3. Nothing in this article shall prohibit the department from licensing and leasing the brand to any commercial entity, provided that the appropriate market value for such lease is obtained.

4. Nothing in this article shall prohibit the department from revising the "I Love NY" brand or establishing any number of new and appropriate brands, provided that such changes are supported by at least one independently conducted brand analysis survey.

5. Reporting requirements. The department shall annually, on or before February first, submit to the governor, the temporary president of the senate and the speaker of the assembly, the tourism advisory council and the chairs of the senate and assembly standing committees concerned with tourism a report on the department's activities related to the "I Love NY" brand, including but not limited to the following: (a) marketing plan including the annual and long term goals, specific plans, target regions and performance measures for marketing campaigns using the "I Love NY" brand; (b) licensing activity including a list of all entities that licensed the "I Love NY" brand and the total amount received from all licensing activities; (c) contractual services including a list of each entity providing services related to the "I Love NY" brand, the amount charged, the nature of the services and the relationship of these services to the department's marketing plan; (d) sponsorship activities utilizing the brand; (e) an analysis of the effectiveness of the "I Love NY" brand based promotions in stimulating tourism and recommendations for improved utilization of the brand; and (f) an analysis of the effectiveness of the department's effort to support historic small businesses through "I Love NY" brand based promotions and a list of the historic small businesses highlighted in the brand based promotions.

§ 153. Explore New York state grant program. 1. The department shall create a new grant program designed to encourage an integrated thematic approach to tourism promotion. The program shall provide state matching funds to eligible entities not to exceed fifty thousand dollars annually. Eligible entities shall include two or more counties, or a series or collection of thematically related entities, choosing to market multiple, thematically related assets or activities in a single marketing campaign. The commissioner is directed to establish guidelines and an application process.

2. The New York state tourism advisory council shall review requests for proposals and will recommend project applications deemed to meet the intent of the program to the department.

3. Grantees will report semiannually to the department on activities and progress of the grant. The department shall report annually pursuant to subdivision three of section one hundred fifty-one of this article. Nothing in this article shall prohibit any county, or any entities within the counties of the state from receiving multiple grants under the program in a single year provided that they are for separate and distinct marketing campaigns.

§ 154. State marketing internet website. 1. The department shall maintain an internet website designed to facilitate the marketing purposes in this article.

2. The internet website shall contain a design that facilitates the promotional objectives required by article five-a of this chapter and this article.

3. The internet website shall also contain an area accessible, free of charge, to tourism promotion agencies, conventions and business bureaus, local governments, and any private, not-for-profit or commercial business domiciled in New York state, which contains directly, or maintains active links to, the data, including but not limited to:

(a) labor statistics maintained by the New York state department of labor;

(b) tax receipt data maintained by the New York state department of taxation and finance;

(c) a monthly summary of tourism industry statistics maintained by a national tourism association known as the Tourism Industry Association, Inc.;

(d) all reports and data required to be produced and maintained by this section; and

(e) any other data deemed appropriate.

4. The department shall cause to be produced annually an independent study analyzing the effectiveness of the internet website. The department shall submit the study in accordance with the provisions of subdivision three of section one hundred fifty-one of this article.

ARTICLE 5-A

NEW YORK STATE TOURIST PROMOTION ACT

§ 160. Legislative findings and objectives. The legislature hereby finds and declares that the promotion, attraction, stimulation, development and expansion of tourist travel, resort, vacation, culture and convention activities are vital and necessary concerns of the people of this state, since such activities form an important part of its economy. Therefore, it is hereby determined that a program authorizing matching funds and assistance to tourist promotion agencies for the planning and promotion of programs designed to stimulate and increase the volume of such tourist travel, resort, vacation, culture and convention activities within our state will strengthen its economy, increase employment of our citizens and promote the general welfare of the people.

§ 161. Administration. In futherance of these purposes, the department of economic development is hereby authorized and directed to:

(a) Encourage, facilitate and coordinate the planning and implementation of programs to advertise, stimulate, promote and increase tourist travel, resort, vacation, culture and convention activities within the state and its regions with such flexibility as to bring about as effective and economical a tourist promotion plan as possible. The department shall give a preference to any tourist promotion agency that is promoting the sport of cricket or the sport of stickball;

(b) Establish and publish on an annual basis guidelines relative to the use of funds to be granted hereunder. Such guidelines shall authorize the use of funds for the promotion of year round tourist travel, resort, vacation, culture and convention activities;

(c) Accept or reject applications for matching funds for recognized advertising programs by tourist promotion agencies on the basis of annually published guidelines;

(d) Authorize the payment of funds in accordance with this act and the rules and regulations of the comptroller out of the appropriation made pursuant hereto; and

(e) Do all things necessary, desirable and convenient to carry out its powers, functions and duties hereunder.

§ 162. Definitions. As used in this act, unless the context requires otherwise:

(a) "tourist promotion agency" means any not-for-profit corporation, or other nonprofit organization, association or agency which shall be designated by resolution of the county legislature or other governing body of any county, or upon designation of the mayor of the city of New York, as the agency authorized to make application for and receive grants for the purposes specified in this act; and

(b) "recognized advertising" means media advertising and promotional materials to be distributed in accordance with a plan approved by the commissioner.

(c) "Regional advertising program" means the use of media advertising and promotion materials for purposes of promoting tourism to be distributed in accordance with a plan approved by the commissioner and developed by either:

(1) more than one county within a single department tourism region; or

(2) one or more counties and their contiguous states and/or Canadian provinces, provided that such county or counties must also participate, to the extent required by guidelines established pursuant to subdivision (e) of section one hundred sixty-four of this article, in an approved program under paragraph one or three of this subdivision; or

(3) one or more counties in each of at least two department tourism regions for the purposes of promoting interregional tourism stemming from specific themes or characteristics shared by the department tourism regions.

§ 163. Recognition of tourist promotion agencies. The commissioner, upon investigation and receipt of certified copies of such resolutions as may be necessary to satisfy him that a tourist promotion agency has been duly designated to represent a particular county or counties or the city of New York, as set forth in section one hundred sixty-four of this article, shall recognize such tourist promotion agency as the sole such agency within such county or counties or the city of New York. Any two or more counties may, by the procedures herein provided, designate a single tourist promotion agency to represent them for the promotion of tourism in their region and for the purposes of this act.

§ 164. Applications for and approval of matching funds to tourist promotion agencies. (a) The commissioner is hereby authorized to match funds expended by recognized tourist promotion agencies and to set reasonable deadlines for the submission of applications for each fiscal year covered by appropriations in order to assist such agencies in the financing of their recognized advertising programs. Before any such funds may be expended, the tourist promotion agency shall have made application to the department for such funds, and shall have therein set forth the schedule, budget, scope, and theme of the proposed advertising program to be undertaken for the purpose of encouraging and stimulating tourist travel, resort, vacation, culture and convention activities in the county or counties within its area. Said application shall further state, under oath or affirmation, with evidence thereof satisfactory to the department, the amount of funds held by, or committed or subscribed to, the tourist promotion agency for the purposes herein described and the amount of matching funds for which application is made, and provided that all advertising purchased with funds appropriated under this act shall follow central conceptual themes used by the department in its advertising for state tourism promotion including using any logotype or similar advertising construct in use by the department.

(b) In reviewing such applications, the commissioner may select from among competing or overlapping applications the application or applications that the commissioner considers to be of greater benefit to a given area and the welfare of the people of the state. Further, the commissioner shall select from among filed applications those applications which the commissioner considers to be most in accord with the guidelines established for the fiscal year in which the funds are to be expended. If the commissioner determines that an application does not meet the guidelines, the tourist promotion agency submitting such shall be notified of its rejection and the reasons therefor by certified mail. A tourist promotion agency whose application has been rejected may resubmit the application to meet the guidelines determined by the commissioner. The resubmitted application shall be postmarked within two weeks of the date of receipt of notice of failure of its initial application. After review of a submitted or resubmitted application, if satisfied that the program of the tourist promotion agency appears to be in accord with the purposes of this act, the commissioner shall authorize in writing the payment of matching funds appropriated pursuant to this act to such tourist promotion agency equal to funds allocated by such agency to the program described in its application, provided, however, that such matching grant shall not exceed an amount equal to five per centum of the matching grant appropriation for each county represented by such agency for the purposes set forth in this act. Provided that sufficient funds are appropriated, no such grant shall be less than either twenty thousand dollars per county represented by such tourist promotion agency or the amount of funds held by, or committed or subscribed to such tourist promotion agency for the purposes described in its application, whichever sum is less. No such minimum grant shall allow the awarding of matching funds for applications other than those meeting the guidelines established by the department.

(c) No application submitted by a tourist promotion agency shall be approved unless the funds of such agency allocated to the program described in its application are both:

(1) equal to or greater than eight thousand dollars for each county represented by such agency, and

(2) equal to or less than five per centum of the total matching funds appropriation for each county represented by such tourist promotion agency.

(d) No state funds granted to a tourist promotion agency pursuant to this act may be used for travel, food, lodging, entertainment, transportation or expenses unrelated to the approved advertising program. A regional advertising program as described in paragraph one of subdivision (c) of section one hundred sixty-two of this article may include those personal service administrative expenses actually attributable to such program, provided, however, that such expenses shall not exceed twenty percent of the total budget of such regional advertising program and provided further that such expenses shall be approved by no less than one-half of the counties within such region.

(e) Applications required by this section shall be submitted only upon forms provided by the department. Such forms shall contain a statement of the guidelines which the commissioner shall use to establish priorities among applications. Such guidelines shall be established by the commissioner on an annual basis and, once established, shall not be changed until the following year.

(f) The department shall set aside no more than thirty percent of the total local assistance appropriation for tourism matching funds to create regional advertising program bonuses payable to tourist promotion agencies. Such bonus shall be based on a formula to be developed by the department, which shall take into account the number of counties participating in a regional advertising program with respect to the number of counties within the department tourism region in which that tourist promotion agency is located and the percentage of which qualify for a match pursuant to this section to be expended by the tourist promotion agency for the purposes of the regional advertising program. Bonuses paid for regional advertising shall be subject to the same restrictions described in this article for matching funds, and shall further be dedicated to the sole purposes of the regional advertising program. The bonus paid to each tourist promotion agency shall not exceed twenty percent of the amount budgeted by such agency for each regional advertising program. Nothing in this article shall prohibit a tourist promotion agency from receiving regional bonus funding for participation in regional advertising programs as described in paragraph two of subdivision (c) of section one hundred sixty-two of this article in addition to funding for participation in a regional advertising program as described in paragraph one of subdivision (c) of section one hundred sixty-two of this article.

(g) If the matching funds requested in the applications exceed the appropriation, the commissioner shall allocate available funds on a prorated basis. Such proration shall apply to originally approved as well as resubmitted and subsequently approved applications.

§ 165. Payment of funds to tourist promotion agencies. (a) Upon submission and approval of each application and the authorization of funds by the commissioner in accordance therewith, the commissioner shall give notice to the particular tourist promotion agency of such approval and authorization, and shall direct such agency to proceed with its proposed advertising program as described in its application. Upon the furnishing of satisfactory evidence to the department that the particular tourist promotion agency has encumbered funds in the amount committed and approved by the commissioner, the state matching funds allocated to such agency shall be paid from the funds appropriated for such purpose pursuant to this act. Any state funds so paid may be expended only on a matching basis and only within twelve months of such payment unless an extension of time has been applied for and, upon showing of good cause, granted by the commissioner.

(b) No advertising or promotion funded for the purposes of this act shall contain reference to or the name of any public official of the state of New York, or its political subdivisions. Reference shall include but not be limited to photographs, drawings, caricatures, quotations, invitations, signatures, endorsements or sound recordings.

(c) Any logotype, special printing characters, slogan or like device developed by any advertising agency hired by the department and used in advertising and promotion with funds appropriated for the purposes of this act shall become the property of the state of New York and shall be provided without fee to any tourist promotion agency for use in advertising purchased with funds appropriated for the purposes of this act. This section shall not be construed as license for tourist promotion agencies to use in toto advertising developed by the agency or agencies under contract to the department. It shall be the responsibility of the commissioner to determine those constructs which must be present to maintain necessary continuity in central conceptual themes in advertising purchased with funds provided for the purposes of this act.

§ 166. Reporting requirements. (a) In accordance with generally accepted accounting principles each tourism promotion agency shall furnish an annual financial statement to the commissioner. Such reports shall be submitted on or before January first of each year.

(b) The department shall annually, on or before March first, submit to the governor, the temporary president of the senate and the speaker of the assembly, a report on the activities of the matching funds program. Such report shall include a statement of the guidelines promulgated by the department pursuant to section one hundred sixty-one of this article, a summary of the financial statements received by the department from tourist promotion agencies, a summary of activities conducted by the tourist promotion agencies and analyses of the effectiveness of the matching funds program in stimulating tourist promotion and recommendations concerning the future organization, implementation and improvement of the matching funds program.

§ 168. Inter-agency tourism task force. (a) There is hereby established an inter-agency tourism task force consisting of the following members:

(1) the commissioner or his or her designated representative from the department and the departments of transportation, parks, recreation and historic preservation, environmental conservation, agriculture and markets, and health;

(2) the chairman or his or her designated representative of the New York state thruway authority, the New York power authority, and the tourism advisory council, the New York state council on the arts, the canal corporation, the canal recreationway commission, the Olympic regional development authority, and the Hudson River park trust;

(3) the chairpersons or their designated representatives of the senate standing committee on tourism, recreation and sports development, and the assembly standing committee on tourism, arts and sports development, who shall serve as ex-officio, non-voting members; and

(4) upon designation by the governor, the chief executive officer or his or her designated representative of any department, board, bureau, commission, office, agency, or other instrumentality of the state providing services or programs for travelers, travel-related businesses or other public bodies which operate a travel-related program.

(b) The chairman of the task force shall be the commissioner. The members of the task force may elect such other officers as they may deem necessary.

(c) The task force shall meet at least four times each year at the call of the chairman.

(d) Members of the task force shall receive no compensation for their services as members, but shall be compensated for their actual and necessary expenses by warrant of the comptroller and voucher of their department, agency, authority or council.

(e) The task force shall:

(1) receive the report of each member on programs and services provided to the traveling public, travel-related businesses and other public bodies providing services or programs for travelers, and evaluate such reports to determine opportunities for coordination of efforts, prevention of duplication of services, and sharing of resources;

(2) evaluate and recommend to the governor and the legislature initiatives to enhance or facilitate the effectiveness of current or planned state traveler services or tourism marketing programs;

(3) evaluate and make recommendations to prevent overlapping of

promotion efforts and programs;

(4) submit not more than two weeks after each meeting copies of the meeting minutes to each member of the inter-agency tourism task force including ex-officio, non-voting members; and

(5) report on or before January first of each year to the governor, the temporary president of the senate, the speaker of the assembly, and the chairman of the appropriate legislative committees on the activities of the task force with respect to its functions, powers and duties.

ARTICLE 5-B
NEW YORK STATE TOURISM ADVISORY COUNCIL

§ 170. New York state tourism advisory council established. 1. There is hereby established in the department the New York state tourism advisory council which shall comprise eighteen members appointed by the governor, three on the recommendation of the temporary president of the senate; one on the recommendation of the minority leader of the senate; three on the recommendation of the speaker of the assembly; and one on the recommendation of the minority leader of the assembly. The members of the council shall serve for terms of two years, provided, however, that of the members first appointed, nine shall serve for terms of two years and nine shall serve for terms of three years. The governor shall designate the chairman from among the members of the council. The vice chairman shall be elected from among the members of the council by the members of such council, and shall represent the council in the absence of the chairman at all official council functions. The chair of the senate committee on tourism, recreation and sports development and the chair of the assembly committee on tourism, arts and sports development or their designated representatives, shall be non-voting, ex-officio members of the council and shall receive no additional compensation for their services on the advisory council.

2. In appointing the members of the council, the governor shall ensure that such members include representatives of organizations of tourism-related industries in the state including, but not limited to, travel and vacation businesses, convention bureaus, cultural institutions, theme parks and attractions, hotels and motels, restaurants, water-based recreation businesses, campgrounds, ski facilities, wineries, halls of fame, travel agents and transportation companies.

3. The members of the council shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties as council members.

4. The council shall meet at least five times a year including no less than three times between January first and May thirty-first, at the call of the commissioner or the chairman of the council.

5. Unless a member has been excused from attendance at such meetings by the chairman or vice-chairman upon good cause being shown, any member who fails to attend three consecutive meetings shall be deemed to have resigned. Any vacancy on the council shall be filled for the remaining term of the individual replaced. The appointment to fill such vacancy shall be made in the same manner as the original appointment was made.

6. The department shall provide necessary technical and staff assistance to the council. Any department, division, board, bureau, commission, authority or agency of the state, as such shall determine appropriate, is authorized to provide such information, cooperation, or assistance as may be requested by the council to carry out the purposes of this article.

§ 171. Purpose of the council. The purposes of the council shall be to advise the commissioner concerning tourism and to serve as liaison between the state's tourism-related industries and the commissioner with respect to the design and implementation of the state's tourism policies and programs.

§ 172. Powers of the council. The council shall have the following powers:

1. To identify and review tourism-related issues and current state policies and programs which directly or indirectly affect tourism and travel in the state and, as appropriate, recommend the adoption of new, or the modification of existing, policies and programs;

2. To advise the department in its promotion and development of tourism and travel facilities and services in the state;

3. To advise the department in the development and implementation of the state's tourism marketing and business development program, including long-range strategies for attracting tourists to the state;

4. To advise the department, the governor and the legislature concerning recommended legislation necessary to foster and promote the prosperity, expansion and development of tourism and travel concerns within the state;

5. To advise the department, the governor and the legislature concerning existing laws, rules, regulations and practices of state agencies which are counter-productive or inimical to the prosperity, expansion and development of tourism and travel concerns within the state;

6. To advise the department, the governor and the legislature concerning the development of inter-governmental cooperation among agencies of the federal, state and local governments and cooperation between private industry and government so as to assure the optimum development of tourism and travel concerns;

7. To assist the department in obtaining information necessary for the development and improvement of state policies and programs affecting tourism and travel industries in the state; and

8. To recommend ways of ensuring consumer protection for visitors to the state.

ARTICLE 5-C

ERIE/BARGE CANAL DEVELOPMENT PROGRAM

§ 173. Legislative findings and objectives. The legislature hereby finds and declares that the promotion, stimulation, development and expansion of tourism and tourism-related recreational and cultural activities involving the Erie/Barge canal are important to the economic revitalization and development of counties and communities adjacent to the canal. The legislature further finds that a greater public awareness of the canal would encourage its increased use for multiple purposes thereby maximizing the state's investment in the canal and its operation and maintenance. The legislature therefore determines that a program of state assistance to municipalities for the planning, implementation and promotion of canal-related tourism activities will benefit local economies by increasing employment and tax revenues and thereby enhance the well-being of counties and communities adjacent to the canal and of the people of the state.

§ 174. Definitions. As used in this article, unless the context otherwise requires: 1. "Erie/Barge canal" means the system of canals comprised of the Erie canal, the Champlain canal, the Oswego canal and the Cayuga-Seneca canal as defined in section two of the canal law.

2. "Canal-related tourism activities" means any activity, program or project that is primarily designed and intended to further, encourage or

promote tourism or tourism-related recreational or cultural activities which feature the Erie/Barge canal. Such activities may include, but not be limited to, marketing of the canal for tourism purposes; beautification and physical improvement projects to accommodate or attract tourists; tourism-related programs and events such as canal festivals, regattas, boat shows, fishing derbies, and planning for tourism development of the canal; and business development and infrastructure projects which have direct impact on tourism potential of the Erie/Barge canal.

3. "Municipality" means any village, town or city that is adjacent to the Erie/Barge canal.

4. "Department" means the New York state department of economic development.

5. "Commissioner" means the commissioner of the New York state department of economic development.

6. "Board" means the Barge canal planning and development board as established in article thirteen-A of the canal law.

§ 175. General functions, powers and duties of the commissioner. The commissioner is hereby directed: 1. To establish and administer an Erie/Barge canal challenge grant program in coordination with the department of transportation, pursuant to section one hundred seventy-six of this article, within amounts appropriated therefor;

2. To assist municipalities, in coordination with the board, on the Erie/Barge canal plan canal-related activities for tourism development purposes;

3. To collect, coordinate, and disseminate information, in coordination with the board, on canal-related activities along the entire canal that promote and encourage tourism development; and

4. To do all things necessary, desirable and convenient to carry out its powers, functions and duties.

§ 176. Erie/Barge canal challenge grant program. 1. There is hereby established within the department an Erie/Barge canal challenge grant program to be administered in coordination with the department of transportation for the purpose of providing municipalities adjacent to the Erie/Barge canal with matching funds to plan and carry out canal-related tourism activities; provided, however, that:

(a) no grant to any municipality shall exceed the sum of twenty thousand dollars or forty percent of the total project cost, whichever is less;

(b) each applicant, whether a single municipality or two or more municipalities acting jointly, shall be eligible to receive only one such grant in any twelve-month period;

(c) no part of any such grant shall be used for salaries or for services regularly provided by the municipality or for administrative costs in connection with this grant;

(d) the municipality or a designated nonprofit entity has committed sufficient funds to fulfill the local match requirements of this program;

(e) in-kind services shall not be considered part of the local match requirement; and

(f) no grant shall be used for the direct benefit of a for-profit business unless (i) the funded activity shall further a public purpose and have a clear, long-term benefit to the applicant and (ii) such funded activity is not available to the business from other public or private sources.

2. Applicants for grants may be a municipality or two or more municipalities acting jointly. A municipality, or two or more municipalities acting jointly, may designate by resolution a county or a nonprofit entity to act on its behalf.

3. The commissioner shall establish and publish, on an annual basis, guidelines and a standard application form relative to the use of funds

to be granted hereunder. In addition to such other information as shall be requested by the commissioner, applicants shall provide a description of:

(a) the activity or project for which a grant is requested and how it relates to the canal;

(b) how the proposed activity or project will contribute to or enhance tourism development along the canal;

(c) project impact including, where appropriate, an estimate of the number of people to be served by the project, the length of time visitors may be expected to spend in the area, the ratio between local residents and visitors to be served by the project, the duration of the project; and

(d) whether it is part of an overall tourism marketing or development plan.

4. In reviewing and selecting applicants to receive grants under this program, the commissioner shall consider, in coordination with the department of transportation, the following:

(a) the nature and extent of economic distress within the applicant community and the need for assistance. Preference will be given to municipalities which meet the criteria for economic distress as established by the department;

(b) the potential of the proposed canal-related activity to make a significant and permanent contribution to tourism development within the applicant municipality and along the canal as a whole;

(c) the existence of a local tourism marketing or development plan to enhance tourism activity, and the extent to which the proposed activity is consistent with the plan;

(d) the nature and extent of local support for the proposed canal-related activity including the commitment of additional financial resources;

(e) the degree of support within the municipality for tourism development, in general, and the nature and extent of other canal related activities, in particular, engaged in by the municipality or its designated nonprofit entity, business community and community organizations;

(f) preference shall be given to those applications submitted by two or more municipalities; and

(g) preference shall be given to applications creating new tourism activities.

5. Grants shall be awarded by September fifteenth of each year.

§ 177. Reporting requirements. 1. On or before October first of each year, grant recipients shall report to the department on the use of grant funds. The report shall include, where appropriate, total project or activity cost, or description of the activity or project, the number of persons served, an outline of plans to continue the activity or project, whether such grants shall be required in future years, and any other information that the commissioner may deem necessary.

2. On or before November first of each year, the department shall report to the governor and the temporary president of the senate and the minority leader of the senate and the speaker of the assembly and the minority leader of the assembly of its findings, conclusions and recommendations on the implementation of the provisions of this article.

ARTICLE 5-D

AGRICULTURE ECONOMIC DEVELOPMENT PROGRAM

§ 178. Legislative findings and intent. The legislature finds and determines:

1. that the state's vast agricultural resources and significant

agricultural products industries play a key role in the continuing economic growth and vitality of all regions of the state;

2. that significant untapped agricultural resources present economic development opportunities that could promote growth thereby enhancing the well being of employers and employees in food processing, animal and plant fiber processing and other related agricultural businesses, as well as promoting the economic well being of farm families throughout the state through job creation and job retention; and

3. that the state's agricultural interests will be enhanced in the event opportunities to expand the market for agricultural crops and processed foods, and animal and plant fiber textile products can be developed in the state, nation and internationally.

§ 179. Definitions. For the purposes of this article:

1. "Program" shall mean the agricultural economic development program established pursuant to this article.

2. "Agricultural resources industry" shall mean those businesses involved in the harvesting, marketing, research, processing, storage and/or manufacturing of agricultural products or provide essential inputs for or services to such businesses and shall include job training and public information programs associated with such products.

§ 180-a. General functions. There is hereby created an agricultural economic development program, the purpose of which shall be to target and promote:

1. agricultural resources industry development in ways which are economically sustainable and environmentally sound;

2. public awareness and understanding of the economic, cultural and environmental importance of New York agriculture;

3. the development, retention, diversification and expansion of the agricultural resources industry in ways that will enhance related efforts of federal, state and local agencies, commissions, committees, associations, trade groups and manufacturers;

4. electronic and other information shared related to the agriculture resources industry;

5. the development of financing mechanisms for the establishment, retention, diversification and expansion of new and existing value added agricultural products for sale in local, national and international markets;

6. demonstration projects which would improve business profitability in the marketing, processing, storage or manufacture of agricultural products;

7. the review of any regulatory barriers which may impede the development, retention, diversification or expansion of the agricultural resources industry;

8. geographically balanced public input and advice from individuals and agencies directly involved with the production, processing, manufacturing and storage of agricultural products; and such other individuals and agencies as may be engaged in state and local activities in support of economic development in the agriculture resource industry;

9. the establishment and purposes of the New York state council on food policy established pursuant to subdivision six-a of section sixteen of the agriculture and markets law; and

10. all things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article.

§ 180-b. Reports. The commissioner shall make an annual report on or before March thirty-first of each year to the governor and the legislature setting forth the activities undertaken by the program.

§ 181-a. Assistance of other state agencies. To effectuate the purposes of this article, the commissioner may request and shall be entitled to receive from any state agency, and the same are authorized to provide such assistance, service, facilities and data as will enable the program to carry out the functions, powers and duties provided by this article and such temporary or permanently assigned personnel as the director of the budget may approve.

§ 181-b. Functions, powers and duties of other departments and state agencies. Nothing contained in this article shall be deemed to detract in any way from the functions, powers or duties prescribed by law of any department of the state or to interrupt or preclude the direct relationship of any such department or agency with other agencies, individuals or corporations for the carrying out of its functions, powers and duties.

* ARTICLE 5-E

EMPIRE STATE GOLF TRAILS PROGRAM

* NB There are 2 Article 5-E's

*** § 181-c. Legislative intent.** The legislature recognizes the importance of the sport of golf as an economic engine in New York. As the sport of golf continues to become more popular, golf vacation experiences will grow commensurately as tourist destinations. A recent study by the National Golf Foundation found that in neighboring Pennsylvania, the golf industry generates 1.1 billion dollars in direct economic benefit and 2.3 billion dollars in direct and indirect benefits, making it one of the largest industries in Pennsylvania. Golf enthusiasts typically enjoy flexible incomes and spend at above average levels on golf vacations. New York state must act to capitalize on this visitor spending. As home to many premiere golf courses, as well as affordable courses, New York is in an excellent position to attract travelers seeking a unique golf experience. The state must take on the responsibility of making New York an attractive and user-friendly destination for all travelers seeking a golf experience.

* NB There are 2 § 181-c's

*** § 181-d. Definitions.** As used in this article the following definitions shall apply:

1. "golf trail" shall mean a series of golf courses identified by the commissioner, which may be linked by geography, quality, price range, design and/or professional rating.

2. "golf passport" shall mean a booklet or other publication, which is specific to the golf courses or surrounding attractions on a golf trail, and may include discounts and other incentives related to visiting the golf courses and attractions on the golf trail.

* NB There are 2 § 181-d's

*** § 181-e. General functions, powers and duties of the commissioner.** 1. The commissioner shall develop and implement an "I love NY golf" promotion program. The commissioner, in conjunction with the commissioner of parks, recreation and historic preservation and any local government official or entity, shall identify a series of golf courses to be part of a golf trail. No fewer than two golf trails should be identified for the purposes of the program, and the commissioner shall work to ensure an adequate representation of golf courses throughout New York state. In identifying specific courses to be included on a golf trail, special consideration shall be given to those trails, which can be thematically linked by surrounding arts, cultural, historical, entertainment or other tourism destinations or exhibits of interest to travelers.

2. The commissioner shall cause to be developed golf vacation itineraries based on specific golf trails, which shall identify for visitors surrounding attractions, restaurants, golf supply shops, lodging and other exhibits or places of entertainment as may be a part of the theme linking the golf courses on the golf trail.

3. The commissioner shall work to develop discount packages for such golf trails, which may include the development of a golf passport.

4. Nothing shall preclude the commissioner from contracting with an independent vacation or travel package company to help develop golf vacation packages along a golf trail.

* NB There are 2 § 181-e's

* ARTICLE 5-E

EMPIRE STATE BREWERY TRAILS PROGRAM

* NB There are 2 Article 5-E's

*** § 181-c. Legislative intent.** The legislature recognizes the importance of the beer brewery industry's economic impact in New York. The history of breweries in New York, especially rich in Buffalo, as well as the re-emergence of breweries and the recent popularity of micro-breweries throughout the state has the potential to add to the state's tourism trade and encourage such small businesses to flourish. It is calculated that breweries directly employ two thousand four hundred seventy-six people, and support sixteen thousand related positions. The industry is responsible for nearly one hundred sixty million dollars in wages, and through direct and support industries supplies New York with six hundred fifteen million dollars in state and local tax revenue. The legislature finds that breweries and micro-breweries currently lack, but would sustain a tourism component. Having a tourism function, the breweries and micro-breweries might expand their business to support increased tours and demand, likely enhancing their already significant economic contribution. It is therefore the intent of this legislature to have created a program which will systematically identify breweries for the inclusion into a brewery trail. It is further the intent of the legislature that these trails be linked thematically, and be construed so as to be easily traveled by tourists and enthusiasts. The legislature seeks the creation of itineraries to aid travelers along brewery trails, which also link together other attractions and venues along such trails in order to entice visitors with a simple and efficient travel plan. Further it is the intent of this legislature to see that these trails are adequately signed so that travelers may independently follow the trail with ease.

* NB There are 2 § 181-c's

*** § 181-d. Definitions.** As used in this article the following definitions shall apply:

1. "brewery trail" shall mean a series of breweries or micro-breweries identified by the commissioner, which may be linked by geographic proximity and alignment, thematic consistency, historical consistency, brewing process and/or resulting product.

2. "brewery passport" shall mean a booklet or other publication, which is specific to the beer breweries or surrounding attractions on a brewery trail, and may include discounts and other incentives related to visiting the breweries and attractions on the brewery trail.

* NB There are 2 § 181-d's

*** § 181-e. General functions, powers and duties of the commissioner.**
1. The commissioner shall develop and implement an "I love NY beer" promotion program. The commissioner, in conjunction with the commissioner of the department of transportation and any local

government official or entity, shall identify a series of breweries to be part of a brewery trail. No fewer than two brewery trails should be identified for the purposes of the program, and the commissioner shall work to ensure an adequate representation of breweries throughout New York state. In identifying specific breweries to be included on a brewery trail, special consideration shall be given to those trails, which can be geographically or thematically linked by surrounding arts, cultural, historical, entertainment or other tourism destinations or exhibits of interest to tourists. Criteria for developing and approving such trails shall include:

(a) that the trail contain a sufficient number of breweries and micro-breweries to cost-effectively attract patrons to such trail's participating members,

(b) that the trail incorporate considerations that maximize patronage of such trail,

(c) that proposed trail routes do not conflict with or significantly overlap with existing wine trails designated pursuant to section three hundred forty-three-k of the highway law,

(d) that the trail designations are neither redundant nor cover themes or subjects or have names that have already been used by trails designated in statute,

(e) that the trail route is designed and laid out so that it is relatively simple and easy to follow for patrons.

2. The commissioner shall cause to be developed vacation itineraries based on specific brewery trails, which shall identify for visitors surrounding attractions, restaurants, farms, lodging and other exhibits or places of entertainment as may be a part of the theme linking the breweries on the brewery trail.

3. The commissioner shall work to develop discount packages for such brewery trails, which may include the development of a brewery passport.

4. Nothing shall preclude the commissioner from contracting with an independent vacation or travel package company to help develop vacation packages along a brewery trail. The commissioner of the department of transportation shall cooperate with the department in carrying out the

provisions of this section. The commissioner of the department of transportation is authorized to permit the installation and maintenance of signs on the state highway system for trails designated pursuant to this section. However, to avoid confusion and to limit any possible disruption of commerce, the trail designations called for pursuant to this section shall be of a ceremonial nature and the official names of such highways shall not be changed as a result of such designations.

* NB There are 2 § 181-e's

ARTICLE 5-F

SENIOR TOURISM ATTRACTIONS PROGRAM

§ 181-f. Definitions. For the purposes of this article the following terms shall have the following meanings:

1. "Senior" shall mean persons of at least sixty years or older;

2. "Senior tourism attraction" shall mean a tourism attraction as identified by a participatory organization that specifies opportunities for seniors.

§ 181-g. Senior tourism attractions program. 1. The commissioner, in conjunction with all relevant departments and agencies, tourism promotion agencies, and the director of the office for the aging and in consultation with applicable local government officials, shall develop and implement a senior tourism attractions program. Such program shall include the opportunity to incorporate information for visitors and senior attractions in each of the state's vacation regions. In identifying specific attractions to be included in the program, consideration shall be given to attractions that can be linked to surrounding artistic, cultural, historical, and entertainment attractions or other tourism attractions.

2. The senior tourism attractions program shall identify for visitors of senior friendly attractions the surrounding attractions, restaurants, lodging and other exhibits or places of entertainment.

3. Information about the senior tourism attractions shall be publicly available and posted on the websites of the department, the office of parks, recreation and historic preservation, and the office for the aging.

ARTICLE 6

NEW YORK STATE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD

§ 182. The New York state economic development power allocation board. There is hereby created a New York state economic development power allocation board, which shall possess the powers and duties herein specified and all the powers necessary or proper to carry out the purposes of this article. The board shall consist of four members, two of whom shall be appointed by the governor and one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the president pro tempore of the senate. Each member shall be appointed for terms of three years or until a successor shall have been named and qualified. The chairman shall be designated by the governor from amongst the members. Three members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof; and no actions of the board may be taken except upon the affirmative vote of at least three members. Videoconferencing may be used for attendance and participation by members of the board. If videoconferencing is used the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall inform the public that vidioconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations. Members of the board, except those who are employees or officers of the state, its authorities or agencies shall not receive a salary or other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

§ 183. General powers and duties of the board. In furtherance of the purposes set forth in this article, the board shall have the following powers:

(a) To adopt, within one hundred twenty days after appointment, eligibility criteria and rules and regulations relating to the activities of the board.

(b) To evaluate applications for allocations of economic development power and to make recommendations with respect to such proposed allocations.

(c) To evaluate economic development plans for the use of industrial incentive awards submitted by the power authority of the state of New York pursuant to this article.

(d) To provide advice and assistance when appropriate to applicants on state economic development programs and services in addition to the economic development power and industrial incentive awards specifically provided for in this section.

The department, the power authority of the state of New York, the urban development corporation, and all other state officers, departments, boards, divisions and commissions shall render such services to the board within their respective functions as may be requested by the board.

The board shall solicit applications for economic development power by public notice. Such notice shall be in the form of newspaper advertisements, press releases, and by such other means as the board finds appropriate.

§ 184. Criteria for eligibility for economic development power. Each application for an allocation of economic development power shall be evaluated under criteria adopted by the board. Such criteria shall address, but need not be limited to:

(a) the number of new jobs created as a result of an economic development power allocation;

(b) the applicant's long-term commitment to New York state, as evidenced by the applicant's current and/or planned capital investment in business facilities in New York state;

(c) the ratio of the number of jobs to be created to the amount of economic development power requested by the applicant;

(d) the types of jobs created, as measured by wage and benefit levels, security and stability of employment;

(e) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed;

(f) the extent to which economic development power will affect the overall productivity or competitiveness of the applicant's business and its existing employment within the state;

(g) the extent to which an allocation of economic development power may result in a competitive disadvantage for other businesses in the state;

(h) the general economic conditions and economic distress in the area in which the applicant's business facility would be located and the extent to which economic development power could contribute to the alleviation of such distress;

(i) the growth potential of the business facility and the contribution of economic strength to the area in which the business facility is or would be located;

(j) the extent of the applicant's willingness to make jobs available to persons defined as eligible for services under the federal job training partnership act of nineteen hundred eighty-two and the extent of the applicant's willingness to satisfy affirmative action goals;

(k) the extent to which an allocation of economic development power is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located; and

(l) the impact of the allocation on the operation of any other facilities of the applicant, on other businesses within the state, and upon other electric ratepayers.

§ 185. Revitalization programs. In addition to the criteria described in section one hundred eighty-four of this article and such other criteria as the board may by rule or regulation define, an economic development power allocation may be made to a business in serious, long-term distress that is not primarily caused by normal, short-term changes in the business cycle, when the applicant demonstrates to the satisfaction of the board:

(a) that the applicant has formulated and will implement a comprehensive business revitalization plan which is described in its application, and which:

(1) contains a detailed strategy for actions to be taken by the applicant to continue as a successful business, including, but not limited to, productivity and efficiency improvements, changes in operations, financing or management, measures to enhance labor and management cooperation and to improve the skills and performance of the work force at all levels, capital investment in new equipment and plant modernization, development of new markets and products, and such other actions as will enable the business to stabilize and sustain its operations;

(2) has been endorsed by the board of directors; and

(3) establishes a verifiable schedule for completion of proposed actions;

(b) that an allocation of economic development power will significantly contribute to the revitalization plan;

(c) that the business is likely to close, partially close or relocate out of state resulting in the loss of substantial numbers of jobs;

(d) that the business is an important employer in the community and efforts to revitalize the business are in the long-term interests of both employees and the community;

(e) that a reasonable prospect exists that the proposed revitalization plan will enable the business to remain competitive and become profitable and preserve jobs for a substantial period of time;

(f) that the applicant demonstrates cooperation with the local electricity distributor and other available sources of assistance to reduce energy costs to the maximum extent practicable, through conservation and load management; and

(g) that the allocation will not unduly affect the cost of electric service to customers of the local electricity distributor.

§ 186. Transfers of economic development power. The transfer of an economic development power allocation between facilities of a recipient shall be prohibited unless specifically approved by the board as consistent with the criteria and requirements in sections one hundred eighty-four, one hundred eighty-five and subdivision (g) of section one hundred eighty-seven of this article as may be applicable. Any transfer which occurs without the board's approval shall be invalid and such transfer may subject the recipient to revocation of its allocation and modification or revocation of its contract.

§ 187. Economic development power allocations. (a) Any municipality or municipal agency may, alone or jointly with others, file with the board an application for an economic development power allocation on behalf of a business. Such applications shall be in such form and contain such information, exhibits and supporting data as the board may prescribe. The board shall issue a determination as to the sufficiency of an application or reapplication within twenty days of the receipt thereof. The applicant shall be entitled to timely review and action on the application by the board.

(b) Any applicant authorized to file with the board an application for economic development power may also apply for, purchase and receive a bulk allocation of economic development power for the purpose of entering into contracts with eligible businesses. In making such an application, the applicant shall indicate the estimated number of jobs created or retained as a result of the allocation of economic development power. The board, in acting upon such an application, shall consider, and apply, as appropriate, the criteria and requirements provided for in sections one hundred eighty-four and one hundred eighty-five of this article. All such applications for economic development power shall include a specified period of time to be approved by the board in which the applicant shall execute contracts with businesses for the use of the power from its bulk allocation of economic development power. If the applicant fails to contract for the full amount of the bulk allocation within that specified period of time, the uncontracted for portion of the bulk allocation shall be withdrawn.

(c) The board shall review the applications received and shall determine the applications which best meet the criteria and it shall recommend such applications to the power authority of the state of New York with such terms and conditions as it deems appropriate. Except for allocations subject to subdivision (g) of this section and section one hundred eighty-five of this article, each allocation recommended by the board shall be to serve new electrical demand at facilities at which new jobs are created. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the economic development power in the event the recipient fails to maintain mutually agreed levels of employment and power utilization.

(d) Allocations shall be recommended only to or for the use of businesses which normally utilize a minimum peak electric demand of four hundred kilowatts. At least one half of all allocations shall be recommended for applicants within the geographic areas served by Long Island Lighting Company, Consolidated Edison Company of New York, Orange and Rockland Utilities, Incorporated, Central Hudson Gas and Electric Corporation and that part of Westchester, Putnam and Dutchess counties served by New York State Electric and Gas Corporation. No more than fifty percent of the available economic development power shall be recommended for allocation to applicants located within a single municipality except upon the unanimous recommendation of the board.

(e) Recommendation for an allocation of economic development power shall qualify an applicant to enter into a contract for purchase of such power from the power authority of the state of New York pursuant to the terms and conditions of the recommendation. Contracts between an applicant and a business receiving an allocation of economic development power shall be subject to the approval of the power authority of the state of New York. Such contracts and allocations shall provide that the local distributor of electric service will provide customer and billing services upon mutually agreed terms and conditions.

(f) Upon approval or denial of any application for economic development power, the board shall issue in writing a statement of its findings and conclusions with respect to such application and the reasons for its approval or denial.

(g) Within cities of a population of one million or more and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, an economic development power allocation may be recommended for the purpose of job retention by unanimous approval of the board applying the criteria developed pursuant to section one hundred eighty-four of this article and when an applicant on behalf of a business within such city or county demonstrates to the board (a) the business' plans to relocate out of state resulting in the loss of a substantial number of jobs and its commitment to new investments in real property of at least twelve and one-half percent of the effective market value or to relocate within such city or county to comparable facilities, upon receiving an economic development allocation, and (b) that the applicant or the business first has made the greatest practicable use of all other potential assistance and means, including but not limited to other low cost power and/or energy, tax and energy cost abatement measures and administrative steps to make possible the business' new investment or relocation. For the purposes of this subdivision, effective market value for special assessing units, as defined in article eighteen of the real property tax law, shall be determined by dividing the assessed value of the property on the latest completed assessment roll by the latest class ratio applicable to the class in which the property is classified, and for all other assessing units, effective market value shall be determined by dividing the assessed value of the property on the latest completed assessment roll by the final state equalization rate or special equalization rate as promulgated by the commissioner of taxation and finance pursuant to article twelve of the real property tax law.

§ 188. Industrial incentive awards. The power authority of the state of New York shall submit to the board its economic development plan for the use of industrial incentive awards for economic development purposes. The board shall review the proposed plan and shall approve such plan, in whole or in part, upon its determination that such plan and its implementation is consistent with the criteria and requirements provided for in sections one hundred eighty-four and one hundred eighty-five of this article and such other criteria as the board may, by rule and regulation, provide with respect to the plan and industrial incentive awards.

§ 188-a. Recharge New York power program. (a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) "Applicable criteria" shall mean the criteria specified in subdivision (c) of this section.

(2) "Authority" shall mean the power authority of the state of New York.

(3) "Recharge New York power allocation" or "allocation" shall mean an allocation of recharge New York power by the power authority of the state of New York pursuant to section one thousand five of the public authorities law to an eligible applicant recommended by the New York state economic development power allocation board in accordance with this section.

(4) "Eligible applicant" shall mean an eligible business, eligible small business, or eligible not-for-profit corporation as defined in this section, provided however, that an eligible applicant shall not include retail businesses as defined by the board, including, without limitation, sports venues, gaming or entertainment-related establishments or places of overnight accommodation.

(5) "Eligible business" shall mean a business other than a not-for-profit corporation which normally utilizes a minimum peak electric demand in excess of four hundred kilowatts.

(6) "Eligible not-for-profit corporation" shall mean a corporation

defined in subdivision five of paragraph (a) of section one hundred two of the not-for-profit corporation law.

(7) "Eligible small business" shall mean a business other than a not-for-profit corporation which normally utilizes a minimum peak electric demand equal to or less than four hundred kilowatts.

(8) "Recharge New York power" shall mean and consist of equal amounts of (i) four hundred fifty-five megawatts of firm hydroelectric power from the Niagara and Saint Lawrence hydroelectric projects to be withdrawn from utility corporations that, prior to the effective date of this section, purchased such power for the benefit of their domestic and rural consumers ("recharge New York hydropower"), and (ii) power procured by the authority through a competitive procurement process, authority sources (other than the Niagara and Saint Lawrence projects) or through an alternate method ("recharge New York market power"); provided, however, that if such recharge New York market power comes from authority sources, the use of that power shall not reduce the availability of, or cause an increase in the price of, power provided by the authority for any other program authorized in this article or pursuant to any other statute.

(b) Applications for recharge New York power allocations. (1) The board may solicit applications for recharge New York power allocations under the program created by this section by public notice beginning no later than February first, two thousand twelve. Such notice may include newspaper advertisements, press releases, website postings, paper or electronic mailing, and/or such other form of notice as the board finds appropriate in consultation with the authority.

(2) Applications for recharge New York power allocations shall be in the form and contain such information, exhibits and supporting data as the board prescribes in consultation with the authority. A copy of each application received shall be made available for review by each board member, and a copy shall be provided to the authority.

(3) An applicant who is a recipient of a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or part by the authority shall be eligible to apply for an allocation under the recharge New York power program only if it is in substantial compliance with its contractual commitments made in connection with such other program,

provided however that an applicant shall not receive a recharge New York power allocation and any other authority power program benefits with respect to the same quantity of electricity consumed at a facility.

(4) Subject to confidentiality requirements, upon receipt of each application from the board, the authority shall promptly notify by electronic means, including website postings and such other methods the board deems appropriate in consultation with the authority, the governor, the speaker of the assembly, the minority leader of the assembly, the temporary president of the senate, the minority leader of the senate, and each member of the state legislature in whose district any portion of the facility for which an allocation is requested is located. Such notice shall provide the name and a description of the applicant, and the address of the facility for which the allocation is requested. The authority shall also develop a listing which contains the name and a description of each applicant, the recharge New York power program allocation sought by each applicant, and the address of the facility for which the applicant requests the allocation, and shall make the listing available for public review on the authority's website.

(c) Review applicable criteria and recommendations. (1) The board shall review applications submitted under the recharge New York power program. The board shall make an initial determination of whether the applicant is an eligible applicant. In the case of an eligible applicant, the board may recommend to the authority that an allocation of recharge New York power be awarded to an applicant for a facility located in the state of New York based on consideration of the following criteria which shall be considered in the aggregate and no one of which shall be presumptively determinative:

(i) the significance of the cost of electricity to the applicant's overall cost of doing business, and the impact that a recharge New York power allocation will have on the applicant's operating costs;

(ii) the extent to which a recharge New York power allocation will result in new capital investment in the state by the applicant;

(iii) the extent to which a recharge New York power allocation is consistent with any regional economic development council strategies and priorities;

(iv) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the applicant were to receive an allocation;

(v) the applicant's payroll, salaries, benefits and number of jobs at the facility for which a recharge New York power allocation is requested;

(vi) the number of jobs that will be created or retained within the state in relation to the requested recharge New York power allocation, and the extent to which the applicant will agree to commit to creating or retaining such jobs as a condition to receiving a recharge New York power allocation;

(vii) whether the applicant, due to the cost of electricity, is at risk of closing or curtailing facilities or operations in the state, relocating facilities or operations out of the state, or losing a significant number of jobs in the state, in the absence of a recharge New York power allocation;

(viii) the significance of the applicant's facility that would receive the recharge New York power allocation to the economy of the area in which such facility is located;

(ix) the extent to which the applicant has invested in energy efficiency measures, will agree to participate in or perform energy audits of its facilities, will agree to participate in energy efficiency programs of the authority, or will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving a recharge New York power allocation;

(x) whether the applicant receives a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or in part by the authority;

(xi) the extent to which a recharge New York power allocation will result in an advantage for an applicant in relation to the applicant's competitors within the state; and

(xii) in addition to the foregoing criteria, in the case of a not-for-profit corporation, whether the applicant provides critical services or substantial benefits to the local community in which the facility for which the allocation is requested is located.

(2) A recommendation by the board that the authority provide a recharge New York power allocation to an eligible applicant shall include, but need not be limited to:

(i) the amount of the recharge New York power allocation the board has determined should be awarded to such eligible applicant, provided however, that the board may recommend a recharge New York power allocation in an amount that is less than the amount requested by such applicant;

(ii) an effective initial term of the allocation and contract between the eligible applicant and the authority which shall not exceed seven years, provided however that the term of any such allocation and contract shall not become effective before July first, two thousand twelve;

(iii) provisions for effective periodic audits of the recipient of an allocation for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of an allocation if the recipient fails to maintain mutually agreed upon commitments, relating to, among other things, employment levels, power utilization, capital investments, and/or energy efficiency measures;

(iv) a requirement for an agreement by the recipient of an allocation to (A) undertake at its own expense an energy audit of its facilities at which the allocation is consumed at least once during the term of the allocation but in any event not less than once every five years, provided, however, that such requirement may be waived or modified by the authority on a showing of good cause by the recipient, and (B) provide the authority with a copy of any such audit or, at the authority's option, a report describing the results of such audit, and provide documentation requested by the authority relating to the implementation of any efficiency measures at the facilities; and

(v) a requirement for an agreement by the recipient of an allocation to (A) make its facilities available at reasonable times and intervals for energy audits and related assessments that the authority desires to perform, if any, at the authority's own expense, and (B) provide information requested by the authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

(3) The board's recommendation shall require that if the actual metered load at the facility where the allocation is utilized is less than the allocation, such allocation will be reduced accordingly, provided that, under its contract with the authority, the recipient shall be afforded a reasonable period within which to fully utilize the

allocation, taking into account construction schedules and economic conditions. The authority shall reallocate any withdrawn or relinquished power for the recharge New York power program consistent with paragraph four of this subdivision.

(4) The board may base its recommendation on which eligible applicants it determines best meet the applicable criteria; provided, however, that the board shall dedicate recharge New York power as follows: (i) at least three hundred fifty megawatts for use at facilities located within the service territories of the utility corporations that, prior to the effective date of this section, purchased Niagara and Saint Lawrence hydroelectric power for the benefit of their domestic and rural consumers; (ii) at least two hundred megawatts for the purposes of attracting new business to the state, creating new business within the state, or encouraging the expansion of existing businesses within the state, that create new jobs or leverage new capital investment; and (iii) an amount not to exceed one hundred fifty megawatts for eligible small businesses and eligible not-for-profit corporations.

(5) The board shall issue a written statement of its findings and conclusions with respect to every application and the reasons for its recommendation to the authority.

(6) A recommendation for a recharge New York power allocation shall qualify an applicant to enter into a contract with the authority pursuant to the terms and conditions of the recommendation by the board and on such other terms as the authority determines to be appropriate.

(7) The board shall not recommend a total of recharge New York power allocations in excess of nine hundred ten megawatts.

(d) The authority shall work cooperatively with the department of public service to recommend to the public service commission reduced rates or an equivalent mechanism for the delivery by utility corporations of recharge New York power program allocations. Any such recommendation for reduced delivery rates shall be at such level as to allow the utility to (i) recover the incremental cost of providing delivery service to such customers, and (ii) contribute to the common delivery and related costs which otherwise would be borne by other customers.

(e) The authority shall, at a minimum, report quarterly to the board on the availability of recharge New York power for the subsequent twelve-month period, the amount of such power allocated and other relevant information.

(f) After an award of a recharge New York power allocation, the board shall accept requests from recipients who at the time of such request are eligible applicants who are in substantial compliance with contractual commitments made in connection with the recharge New York power program for an extension of an existing allocation (i) during the twenty-four month period immediately preceding the expiration of the term of the allocation, or (ii) at such earlier time with the consent of the authority in writing. Requests for extensions shall be reviewed using the criteria set forth in paragraph one of subdivision (c) of this section.

(g) Transfers of recharge New York power. Notwithstanding any other approval required by statute, regulation or contract, the transfer of a recharge New York power allocation to a different recipient, to a different owner or operator of a facility, or to a different facility is prohibited unless specifically approved by the board as consistent with the criteria and requirements of this section. Any transfer that occurs without the board's approval shall be invalid and such transfer may subject the transferor to revocation or modification of its allocation and contract.

(h) (1) The board, in consultation with the authority, shall submit to the governor, temporary president of the senate, speaker of the assembly, minority leader of the senate and minority leader of the assembly an evaluation of the effectiveness of the recharge New York power program. Such evaluation shall focus on how the program has aided recipients of power allocations, and may include recommendations for how the program can be made more effective, and shall be based, in part, on the relative costs of power for recipients in comparison to the cost of power for non-recipients. Such evaluation shall be submitted by December thirty-first, two thousand fifteen and by December thirty-first every five years thereafter.

(2) The board, with assistance from the authority, shall maintain the necessary records and data required to perform such evaluation and respond to requests for information pursuant to article six of the public officers law.

ARTICLE 6-A

WESTERN NEW YORK POWER PROCEEDS ALLOCATION ACT

§ 189-a. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Authority" is the power authority of the state of New York.

2. "Board" is the western New York power proceeds allocation board created by this article.

3. "Benefits" or "fund benefits" are payments to eligible applicants selected by the authority for the purpose of funding eligible projects with monies derived from net earnings that have been deposited into the western New York economic development fund.

4. "Eligible applicant" means a private business, including a not-for-profit corporation.

5. "Eligible projects" are economic development projects by eligible applicants that are physically located within the state of New York within a thirty mile radius of the Niagara power project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, "infrastructure") owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support

for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

6. "Energy-related projects, programs and services" shall have the same meaning as such term is defined in subparagraph two of paragraph (b) of subdivision seventeen of section one thousand five of the public authorities law.

7. "Expansion power" is the two hundred fifty megawatts of firm Niagara project hydroelectric power and "replacement power" is the four hundred forty-five megawatts of firm Niagara project hydroelectric power as such terms are defined in subdivision thirteen of section one thousand five of the public authorities law. For purposes of this article, "expansion and replacement power" means the energy associated with such power. Notwithstanding any law, rule, regulation, or policy to the contrary, as of the first day of July, two thousand twelve, the term replacement power as used in this article includes a certain seventy megawatts of power that is referred to in subdivision thirteen of section one thousand five of the public authorities law.

8. "Net earnings" is the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion or replacement power customer under the applicable tariff or contract.

9. "Western New York economic development fund" or "fund" is a fund of

the authority into which all net earnings are deposited by the authority in accordance with subdivision twenty of section one thousand five of the public authorities law and from which allocations of fund benefits to eligible projects may be made.

§ 189-b. The western New York power proceeds allocation board. 1. There is hereby created the western New York power proceeds allocation board, which shall possess the powers and duties herein specified. The board shall consist of five members who shall be appointed by the governor as follows: one of whom shall be appointed upon the recommendation of the temporary president of the senate and shall reside within the thirty mile radius of the Niagara power project, one of whom shall be appointed upon the recommendation of the speaker of the assembly and shall reside within the thirty mile radius of the Niagara power project, and at least one additional member who shall also reside within the thirty mile radius of the Niagara power project. The governor shall designate a chair from amongst the board's members.

2. Each member shall serve a term of five years or until a successor shall have been named and qualified. Members may be reappointed to successive terms.

3. Notwithstanding any other provision of law to the contrary, three members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof. No action of the board may be taken except upon an affirmative vote of at least three-fifths of the full board membership at any meeting at which at least three members are present or participating by videoconferencing. Videoconferencing may be used for attendance and participation by members of the board. If videoconferencing is used, the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall identify, if practicable, all locations where a member will participate in the meeting by videoconference and shall state that the public has the right to attend the meeting at any such location.

4. Members of the board, except those that are employees or officers of the state, its authorities or agencies, shall not receive a salary or other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

§ 189-c. General powers and duties of the board. 1. The board shall establish procedures and guidelines relating to the activities of the board.

2. The board shall establish procedures through written policies or standards for reviewing applications for an allocation of fund benefits that shall include a review of applications no less frequently than twice each year. The board, or a member designated by the board, shall receive all applications from, or on behalf of, eligible applicants for fund benefits. Applications shall be in a form and contain such information, data and exhibits as the board, in consultation with the authority, may prescribe.

3. The board may request from the authority an analysis of any application along with any recommendations. In addition, the authority shall supply any such additional information as is reasonably necessary for the board to perform its duties.

4. In reviewing applications for fund benefits, the board shall use the criteria for eligibility for expansion, replacement and preservation power and for revitalization of industry as provided in section one thousand five of the public authorities law. In addition, the board shall consider the extent to which an award of fund benefits is consistent with any regional economic development council strategies and priorities having responsibility for the region in which the eligible project is located. The board shall issue a written statement of its findings and recommendations for each application reviewed.

5. The board shall recommend to the authority the allocation of fund benefits to eligible projects that the board finds are consistent with the applicable criteria in subdivision four of this section. The board

may include within its recommendations such recommended terms and conditions as it deems appropriate, including, but not limited to, reasonable provision for the allocation of fund benefits over time as the eligible applicant achieves milestones towards project completion, the partial or complete withdrawal or return of fund benefits where the recipient has failed to achieve or maintain mutually agreed upon commitments, or such other terms and conditions as the board deems advisable. The board shall not recommend an allocation of fund benefits prior to establishing procedures for reviewing applications pursuant to subdivision two of this section.

6. A recommendation by the board that an eligible applicant receive an allocation of fund benefits shall be a prerequisite to an award of fund benefits by the authority. The authority shall award fund benefits to an applicant upon a recommendation of the board; provided, however, that upon a showing of good cause, the authority shall have discretion as to whether to adopt the board's recommendation, or to award benefits in a different amount or on different terms and conditions than those contained in the recommendation of the board. Allocations of fund benefits shall only be made on the basis of net earnings that have been deposited in the western New York economic development fund. No award of fund benefits shall encumber future net earnings or net earnings that have been received but not deposited in the western New York economic development fund.

7. Upon making an allocation of fund benefits, the authority shall include within the agreement providing for the terms and conditions applicable to such allocation all terms and conditions the authority deems appropriate, taking into account the recommendations made by the board.

§ 189-d. Rules and regulations. The authority is hereby authorized to promulgate such rules and regulations as it deems necessary to fulfill the purposes of this article.

ARTICLE 7

INDUSTRIAL EFFECTIVENESS PROGRAM

§ 190. Definitions. As used in this article, unless a different meaning appears from the context, the following words and terms shall have the following meanings:

1. "Feasibility study" shall mean an investigation and evaluation of the viability of an industrial firm or group of industrial firms, including those for which local buyout assistance has been requested. A feasibility study shall include, but not be limited to, an assessment of the potential profitability and prospects for job preservation and future job growth; the condition, stability and growth potential of the industry in domestic and international markets; the financial condition; essential changes and productivity improvements needed to remain viable; the quality of management and its ability to innovate and change; labor and management relations; workforce skills and training needs; whether adequate time exists to effectuate a local buyout or revitalize a firm; relations with suppliers and customers; and cooperation of the sellers.

2. "Industrial firm" shall mean a manufacturing firm involved with extracting, smelting, recovering, developing, preparing, compounding, converting, assembling or producing in any manner, minerals, raw materials, products or substances of any kind or nature, and shall include facilities related thereto for storage, warehousing or distribution, for research and development or for the discovery of new, and the refinement of known, substances, processes, and products.

3. "Local buyout" shall mean the transfer of the ownership and control

of a viable industrial firm to its employees, or managers, or to other investors resident in New York state, where such transfer will create or retain substantial numbers of private sector jobs by preventing the closing, partial closing, or the relocation out-of-state of an industrial firm.

4. "Medium-sized industrial firm" shall mean an industrial firm that employs less than five hundred persons within the state on a full-time basis.

5. "Productivity assessment" shall mean an evaluation of the existing and potential productivity and profitability of an industrial firm or group of industrial firms and recommendations for productivity improvements, including, but not limited to, analysis of products, market position, financial condition, ownership structure, production processes, labor/management relations, worker skills and training needs, plant and equipment, and business strategy.

6. "Small-sized industrial firm" shall mean an industrial firm that employs one hundred or less persons within the state on a full-time basis.

§ 191. Establishment and purposes. 1. The commissioner is hereby authorized and directed to establish an industrial effectiveness program within the department for the purposes specified in this section. The commissioner shall appoint such employees as are necessary to carry out the provisions of this article, including professional staff with demonstrated expertise in private industrial management and operations.

2. The purposes of the industrial effectiveness program shall be:
(a) to assist industrial firms with the introduction of improved management and labor practices and production processes in order to enhance their productivity and competitiveness;
(b) to aid in the development of new markets and ownership structures in order to improve the long-term viability of industrial firms;
(c) to identify and assist industrial firms that are, or are likely to

be, in severe financial difficulty;

(d) to develop strategies for mobilizing state and community resources to respond to the needs of distressed industrial firms and to manufacturing plant closings and partial closings; and

(e) to assist industrial firms in obtaining financing from publicly sponsored financing assistance programs and from private lending institutions.

§ 192. Administration. The department, in furtherance of the objectives of the industrial effectiveness program, is hereby authorized and directed to:

1. provide productivity assessments and feasibility studies to industrial firms that have requested such assistance directly or upon referral by the department's regional offices, the New York state science and technology foundation, the New York state urban development corporation, or by other state agencies, authorities, offices or commissions. Such productivity assessments and feasibility studies may be provided directly by the department or by experts retained or supervised by the department. Any expenditures for such assistance other than for preliminary productivity assessments or feasibility studies shall be based on a plan reviewed and approved by the commissioner. The following factors shall be considered in determining whether to provide a productivity assessment or feasibility study to an industrial firm: (a) the potential viability of the company; (b) the commitment of management and labor to jointly participate in a productivity-improvement program; and (c) whether interests of the employees of the firm would be served by such assistance. Industrial firms and potential purchasers of existing industrial firms shall share the cost of a productivity assessment or feasibility study provided by experts retained or supervised by the department. The level of contribution by a firm or by potential purchasers toward the cost of such an assessment or feasibility study shall not be less than fifty percent of the total cost;

2. identify public and private sources of expertise available to

assess productivity problems of industrial firms and to work under contract or in cooperation with the department in assisting such firms to undertake productivity-improvement activities;

3. identify individuals and firms with a distinctive competence in at least one area related to industrial productivity, such as industrial management, operations, production technology, marketing or labor relations and training, and a demonstrated ability to serve small and medium-sized industrial firms, for the purposes of referring small and medium-sized industrial firms with identified needs to consultants with relevant expertise;

4. design and conduct seminars and workshops to inform industrial managers, union leaders, trade associations, and other appropriate individuals and organizations, of industrial productivity-improvement methods and approaches and to demonstrate their successful adoption in similar firms;

5. publish a periodic newsletter to report on productivity research projects and case studies, market the program's services and provide such other information as the commissioner deems appropriate;

6. conduct educational programs to inform industrial firms, labor organizations, banking organizations and other financial institutions, and industrial or local development agencies of the benefits and risks associated with, and methods for effectuating, the transfer of ownership of industrial firms to employees, managers or other local investors;

7. promote the services and assistance available under this article for industrial firms, to such firms and to municipal officials and agencies, regional and local economic development entities, technology development organizations, trade associations, business and labor organizations and other appropriate entities;

8. provide short-term management consulting services to industrial firms, directly or through contracts, in order to assist such firms with assessing management, operations, market or financial problems;

9. provide information on state-sponsored programs offering financial or technical assistance to industrial firms and aid such firms in applying for assistance;

10. identify industrial firms in danger of closing or substantially reducing operations.

§ 193. Rules and regulations. The commissioner shall promulgate rules and regulations for the operation of the industrial effectiveness program, which shall include:

1. the criteria to be used in determining industrial firms eligible for assistance and the nature and extent of commitments required of owners or managers of assisted firms;

2. the procedures and criteria to be used in selecting and retaining experts to be used in diagnosing problems of specific industrial firms and in undertaking productivity assessments and feasibility studies; and

3. the fees to be charged for assistance provided to groups of industrial firms or individual firms.

§ 194. Exemption from disclosure requirements. To the fullest extent permitted under subdivision two of section eighty-seven of the public officers law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, productivity rates, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the department, which is submitted by such person or entity to the department in connection with an application for assistance or with a productivity assessment or feasibility study, shall be confidential and exempt from public disclosure.

§ 195. Reporting. The commissioner shall, on or before October first, nineteen hundred eighty-eight and on or before each October first thereafter, submit a report to the governor and the legislature on the operation and accomplishments of the industrial effectiveness program.

§ 196. Evaluation. 1. The commissioner shall submit to the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee an evaluation of the success of the industrial effectiveness program prepared by an entity independent of the department. Such evaluation shall determine whether the services provided have helped client firms to succeed, based on a comparison of the performance of client firms to the norms of their specific industry, and shall assess the effect, if any, of the program on the continued location and growth of industrial firms within the state. Such an evaluation shall be submitted by September first, two thousand five and by September first every four years thereafter.

2. Between evaluation due dates, the commissioner shall maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

ARTICLE 7-A

NORTHERN NEW YORK POWER PROCEEDS ALLOCATION ACT

§ 197-a. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Authority" is the power authority of the state of New York.

2. "Authority-TMED contract" refers to a certain contract between the authority and the town of Massena electric department, entitled "Agreement Governing the Sale of St. Lawrence-FDR Project Power and Energy to the Town of Massena Electric Department for Economic Development Purposes," executed and dated by the authority on October eighteenth, two thousand twelve, and the associated authority service tariff issued and effective August twenty-first, two thousand twelve.

3. "Board" is the northern New York power proceeds allocation board created by this article.

4. "Benefits" or "fund benefits" are payments to eligible applicants selected by the authority for the purpose of funding eligible projects with monies derived from net earnings that have been deposited into the northern New York economic development fund by the authority in accordance with subdivision twenty-four of section one thousand five of the public authorities law.

5. "Eligible applicant" means a private business, including a not-for-profit corporation.

6. "Eligible projects" are economic development projects that are or would be physically located within the state of New York in St. Lawrence county that will support the growth of business in St. Lawrence county and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, "infrastructure") owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support for tourism and marketing and advertising efforts for St. Lawrence county tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of

any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

7. "Energy-related projects, programs and services" shall have the same meaning as such term is defined in subparagraph two of paragraph (b) of subdivision seventeen of section one thousand five of the public authorities law.

8. "Net earnings" is the aggregate excess of revenues received by the authority from the sale of energy associated with St. Lawrence county economic development power sold by the authority in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis under the terms of the authority-TMED contract.

9. "Northern New York economic development fund" or "fund" is a fund of the authority into which net earnings are deposited by the authority in accordance with subdivision twenty-four of section one thousand five of the public authorities law and from which allocations of fund benefits to eligible projects may be made by the authority.

10. "St. Lawrence county economic development power" means firm hydroelectric energy produced by the authority's St. Lawrence power project that the authority has made available for allocation and sale to the town of Massena electric department for resale and sub-allocation to qualified end users pursuant to the authority-TMED contract.

§ 197-b. The northern New York power proceeds allocation board. 1. There is hereby created the northern New York power proceeds allocation board, which shall possess the powers and duties herein specified. The board shall consist of five members who shall be appointed by the governor as follows: one of whom shall be appointed upon the recommendation of the temporary president of the senate and reside within St. Lawrence county, one of whom shall be appointed upon the recommendation of the speaker of the assembly and reside within St. Lawrence county, and at least one additional member who shall reside within St. Lawrence county. The governor shall designate a chair from amongst the board's members.

2. Each member shall serve a term of five years or until a successor shall have been named and qualified. Members may be reappointed to successive terms.

3. Notwithstanding any other provision of law to the contrary, three members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof. No action of the board may be taken except upon an affirmative vote of at least three-fifths of the full board membership at any meeting at which at least three members are present or participating by videoconferencing. Videoconferencing may be used for attendance and participation by members of the board. If videoconferencing is used, the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall identify, if practicable, all locations where a member will participate in the meeting by videoconference and shall state that the public has the right to attend the meeting at any such location.

4. Members of the board, except those that are employees or officers of the state, its authorities, or agencies, shall not receive a salary or other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

§ 197-c. General powers and duties of the board. 1. The board shall establish written procedures relating to the activities of the board. The board shall also establish procedures through written policies or standards for reviewing applications for fund benefits and which shall provide for a review of applications for fund benefits no less frequently than twice each year. The board shall not make any recommendations for an allocation of fund benefits prior to establishing the procedures provided for in this subdivision.

2. The board, or a member designated by the board, shall receive all applications from, or on behalf of, eligible applicants for fund benefits. Applications shall be in a form and contain such information, data and exhibits as the board may prescribe and to which the authority has consented.

3. The board may request from the authority an analysis of any application for fund benefits along with any recommendations, and any such additional information and assistance as is reasonably necessary for the board to perform its duties.

4. The board shall review applications submitted for fund benefits. The board shall make an initial determination of whether the application is made by an eligible applicant and proposes an eligible project. In the case of an application by an eligible applicant that proposes an eligible project, the board shall review the application using the following criteria:

(i) whether the eligible project would occur in the absence of an award of fund benefits;

(ii) the extent to which an award of fund benefits will result in new capital investment in the state by the eligible applicant and the extent of such investment;

(iii) other assistance the eligible applicant may receive to support the eligible project;

(iv) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the eligible applicant were to receive an award of fund benefits;

(v) the eligible applicant's payroll, salaries, benefits and number of jobs at the eligible project for which an award of fund benefits is requested;

(vi) the number of jobs that will be created or retained within St. Lawrence county and any other parts of the state in relation to the requested award of fund benefits, and the extent to which the eligible applicant will agree to commit to creating or retaining such jobs as a condition to receiving an award of fund benefits;

(vii) whether the eligible applicant is at risk of closing or curtailing facilities or operations in St. Lawrence county and other parts of the state, relocating facilities or operations out of St. Lawrence county and other parts of the state, or losing a significant number of jobs in St. Lawrence county and other parts of the state, in the absence of an award of fund benefits;

(viii) the significance of the eligible project that would receive an award of fund benefits to the economy of the area in which such eligible project is located; and

(ix) for new, expanded and/or rehabilitated facilities, the extent to which the eligible applicant will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving an award of fund benefits.

In addition, the board shall consider the extent to which an award of fund benefits would be consistent with the strategies and priorities of any regional economic development council having responsibility for the region in which the eligible project would be located. The board is also authorized to solicit the views of organizations that have an interest in economic development in St. Lawrence county regarding such matters as proposed funding strategies and priorities, and applications for fund benefits.

5. The board shall issue a written statement of its findings and recommendations for each application reviewed.

6. The board may recommend to the authority the allocation of fund benefits to eligible applicants for eligible projects which the board finds are consistent with the applicable criteria in subdivision four of this section. The board may include within its recommendations recommended terms and conditions, including, but not limited to, reasonable provision for the allocation of fund benefits over time as the eligible applicant achieves milestones towards project completion, the partial or complete withdrawal or return of fund benefits where the recipient has failed to achieve or maintain mutually agreed upon commitments, or such other terms and conditions as the board deems advisable.

7. A recommendation by the board that an eligible applicant receive an award of fund benefits shall be a prerequisite to an award of fund benefits by the authority. The authority shall award fund benefits to an applicant upon a recommendation of the board; provided, however, that upon a showing of good cause, the authority shall have discretion as to whether to adopt the board's recommendation, or to award benefits in a different amount than recommended by the board. In addition, the authority shall be authorized to establish the terms and conditions that will apply to any award of fund benefits.

8. Allocations of fund benefits shall only be made on the basis of net earnings that have been deposited in the northern New York economic development fund. No award of fund benefits shall encumber future net earnings or net earnings that have been received but not deposited in the northern New York economic development fund.

9. Upon making an allocation of fund benefits, the authority shall be authorized to enter into an agreement with the eligible applicant which provides the terms and conditions that the authority determines will be applicable to the award of fund benefits taking into account the recommendations made by the board.

ARTICLE 8

ECONOMIC DEVELOPMENT SKILLS TRAINING PROGRAM

§ 200. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Dislocated worker" shall mean an individual who:
(a) has been terminated or laid-off or who has received a notice of termination or lay-off from employment, and is eligible for, currently

receiving, or has exhausted any entitlement to unemployment compensation, and who is unlikely to return to a previous industry or occupation;

(b) has been terminated or who has received a notice of termination of employment, as a result of any permanent closure of a plant or facility;

(c) is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individual resides, including any older individual who has substantial barriers to employment by reason of age; or

(d) was self-employed (including a farmer) and is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters as defined by the United States secretary of labor.

2. "Economically disadvantaged" shall mean an individual who receives, or is a member of a family who receives, cash public assistance payments, or is a member of a family which has a total family income for the six-month period prior to enrollment in programs funded pursuant to the provisions of this article, which, in relation to family size, was not in excess of the higher of the poverty level or seventy percent of the lower living standard income level, or is receiving food stamps.

3. "Educational agency" shall mean a school district, board of cooperative educational services, community college, agricultural and technical college, or degree-granting institution of higher education, or an independent not-for-profit organization which meets the standards of instructional quality established in regulation by the commissioner of education. These standards shall include, but not be limited to, qualifications of administrative and instructional personnel, quality of established curricula, facilities and equipment, recordkeeping, admission, grading, attendance, and record of placement of completers which meets standards of acceptability as established by the commissioner of education.

4. "Equipment" shall mean tangible personal property which will further the objectives of the supported program and for which a definite value and evidence in support thereof have been provided.

5. "Financial support" shall mean anything of value contributed by an applicant which is reasonably calculated to support directly the development and expansion of a particular program as defined in this article and which represents an addition to any financial support previously or customarily provided to such education agencies by the donor, including, but not limited to, funds, equipment as defined in subdivision four of this section, facilities, faculty and scholarships for matriculating students and trainees.

6. "Interagency review committee" shall mean a committee chaired by the commissioner and consisting of representatives from the state education department, the department of labor, the department of social services, the state university, the city university and the state job training partnership council. Such other state agencies, authorities, boards or commissions shall be consulted as the commissioner shall deem appropriate.

7. "Targeted individuals" shall mean residents of the state who are defined as dislocated workers pursuant to subdivision one of this section, as economically disadvantaged pursuant to subdivision two of this section or as displaced homemakers.

8. "Technical assistance" shall mean professional and any other assistance provided by an applicant which is reasonably calculated to support directly the development and expansion of a particular program as defined in this article and which represents an addition to any technical assistance previously or customarily provided.

§ 201. Administration. 1. There is hereby established within the department an economic development skills training program to provide and leverage skills development training for economic development purposes. The department shall provide assistance to applicants for the purpose of assisting individual businesses and industries in providing skills training services.

2. The department shall:

(a) coordinate with the department of education, the department of labor, the state university of New York, the city university and service delivery areas as established pursuant to the federal job training partnership act (P.L. 97-300) in order to carry out the purposes of this article and to complement and leverage related training resources consistent with the purposes described herein;

(b) upon the recommendation of the interagency review committee, execute and monitor grants and contracts to carry out the purposes of this article or authorize grants and contracts to be executed and monitored by the department of labor for projects which provide on-the-job training reimbursements to businesses as described in this article and for such labor exchange and other related services as are agreed upon by the agencies, by the state education department for projects which provide classroom based training which will be delivered by school districts, boards of cooperative educational services and private degree-granting institutions of higher education and by the state university or the city university for projects which provide classroom based training which will be delivered by community colleges, agricultural and technical colleges, and public degree-granting institutions of higher education or authorize such other arrangements as, upon the recommendation of the interagency review committee, the commissioner determines will advance the purposes of this program;

(c) promote awareness of the economic development skills training program among businesses, business organizations, and regional and local economic development agencies with the assistance of the appropriate state agencies;

(d) notify the appropriate private industry council established pursuant to the federal job training partnership act (P.L. 97-300) of any assistance provided pursuant to this article;

(e) ensure that at least fifty percent of the moneys available for the purposes of this program shall be used to assist businesses employing two hundred or fewer workers; and

(f) ensure that at least fifty percent of the moneys made available shall be expended for the purpose of assisting targeted individuals as defined in section two hundred of this article or to provide skills upgrading for currently employed individuals which results in new jobs created which are filled with targeted individuals.

3. The interagency review committee shall meet regularly to review program progress and recommend measures to improve program coordination of training policy and program delivery, to increase the potential for leveraging of funds, to develop an evaluation program to be conducted on a periodic basis and, within thirty days from receipt of a proposal, make recommendations to the commissioner on all such projects which exceed twenty-five thousand dollars in funds provided pursuant to this article. Any project not acted upon by the committee within such time period may be acted upon by the commissioner.

§ 202. Skills development assistance. 1. The department shall provide assistance to approved applicants for the purpose of offering skills training services that will foster economic development by creating or preserving jobs. For the purposes of this section, "applicant" shall mean an educational agency, business, or industry group or association, an employee union or organizations, a community based organization, grant recipient or administrative entity of the service delivery area and private industry council as defined by the federal job training partnership act (P.L. 97-300), provided that such groups have demonstrated effectiveness in the delivery of training services. Any assistance provided shall be matched at least equally by financing or contribution from other sources. Such skills training services shall include:

(a) training for entry-level employment and worker skills upgrading; or

(b) payment of on-the-job training costs for a period not to exceed twelve weeks or classroom instruction, or a combination thereof.

2. In approving requests for assistance, the commissioner shall consider, among other criteria, the following:

(a) the demonstrated need for state assistance;

(b) the number and types of employees to be affected, including the potential for increased productivity and wages;

(c) the employer's contribution to the actual cost of the training;

(d) the potential for entry-level opportunities resulting from promotions created by skills upgrading;

(e) the willingness of assisted businesses to fill such positions with job-ready clients referred from programs conducted under the job training partnership act or the state job service;

(f) whether the assisted business is located in a distressed area; and

(g) the degree to which assistance requested is matched by financing or contributions from other sources.

3. Assistance provided under this section shall not be used in any way that impairs the provisions of any existing collective bargaining agreement and, where possible, consultation with the appropriate labor organization or organizations shall be undertaken.

4. Applications for assistance under this section shall provide:

(a) a description of the project including the type of skills training or education to be provided;

(b) an estimate of the total cost of the program and an itemization of estimated costs associated with equipment, personnel, facilities and materials;

(c) a description of the economic development benefits expected to be achieved by the program;

(d) a description of the employment needs expected to be filled, including the number and types of jobs to be created;

(e) the technical assistance and financial support to be provided by the applicant and the business or businesses for which a program is designed and from other sources;

(f) a demonstration of the extent to which assistance will be used to complement and leverage services available to businesses under other state, or local or federally funded training programs; and

(g) such other information as the department may request.

5. For any positions opened as a result of assistance provided under this section businesses so assisted shall first consider persons eligible to participate in federal job training partnership act (P.L. 97-300) programs who shall be referred to the business by administrative entities of service delivery areas created pursuant to such act or by

the job service division of the department of labor.

6. The department shall require the applicant to specify anticipated outcomes including, as appropriate, job placement rates, number of jobs opened to targeted populations as a result of skills upgrading activities, promotions or wage increases for individuals participating in skills upgrading programs and provide a commitment from individual businesses to hire individuals who have successfully completed training. The full amount of assistance shall be paid to the applicant only if such anticipated outcomes have been achieved.

7. (a) On or before October first, nineteen hundred eighty-eight and on or before October first of each year thereafter, the department, in cooperation with other appropriate state departments and agencies, shall submit to the governor and the legislature a report regarding the current status of the skills development assistance program.

Such report shall include, but not be limited to:

(i) the number of individuals enrolled in the program by sex, age, race, income and employment status;

(ii) the number and type of businesses participating in the program;

(iii) the nature of the match required pursuant to this article;

(iv) the number and type of educational agencies participating in the program;

(v) the number and type of skills training programs supported by the program; and

(vi) the programs overall job placement rate and the placement rate of each project.

(b) The department shall submit to the director of the division of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee an evaluation of this program prepared by an entity independent of the department. Such evaluation shall be submitted by September first, two thousand five and by September first every four years thereafter.

(c) Between evaluation due dates, the commissioner shall maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

ARTICLE 9
ENTREPRENEURSHIP ASSISTANCE CENTERS

§ 210. Definitions. As used in this article the following terms, unless the context indicates otherwise, shall have the following meanings:

1. "Entrepreneurship assistance centers" shall mean the business development centers which provide assistance to primarily minority group members, women, individuals with a disability, dislocated workers and veterans as established by the department pursuant to section two hundred eleven of this article.

2. "Disability" shall mean, with respect to an individual:
(a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
(b) a record of such an impairment; or
(c) being regarded as having an impairment.

3. "Minority business enterprise" shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business at least fifty-one per centum of the stock of which is owned by, citizens or permanent resident noncitizens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan Native where such ownership interest is real, substantial and continuing and where such persons have the authority to independently control the day-to-day business decisions of the entity.

4. "Minority group member" shall mean a United States citizen or permanent resident noncitizen who is and can demonstrate membership in one of the following groups:

(a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;

(c) Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

(d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America.

5. "Women-owned business enterprise" shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business at least fifty-one per centum of the stock of which is owned by, citizens or permanent resident noncitizens who are women where such ownership interest is real, substantial and continuing and where such persons have the authority to independently control the day-to-day business decisions of the entity.

6. "Veteran" shall mean a person who served in the United States army, navy, air force, space force, marines, coast guard, the commissioned corps of the national oceanic and atmospheric administration, the commissioned corps of the public health service, and/or reserves thereof, and/or in the army national guard, air national guard, New York guard and/or the New York naval militia and who (a) has received an honorable or general discharge from such service, or (b) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (c) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service.

§ 211. Entrepreneurship assistance centers. 1. The department shall establish and support, within available appropriations, entrepreneurship assistance centers at career education agencies and not-for-profit corporations including, but not limited to, local development corporations, chambers of commerce, community-based business outreach centers and other community-based organizations. The purpose of such centers shall be to train minority group members, women, individuals with a disability, dislocated workers and veterans in the principles and practice of entrepreneurship in order to prepare such persons to pursue self-employment opportunities and to pursue a minority business enterprise or a women-owned business enterprise. Such centers shall provide for training in all aspects of business development and small business management as defined by the commissioner. For purposes of this section, "career education agency" shall mean a community college or board of cooperative educational services operating within the state.

2. The department shall establish criteria for selection and designation of such centers which shall include, but not be limited to:

(a) require that each support center program provide at least sixty hours of instruction for each participant and that each program be supplemented by ongoing technical assistance for business development for those who have completed the program;

(b) the level of support for the center from local post-secondary education institutions, businesses, and government;

(c) the level of financial assistance provided at the local and federal level to support the operations of the center;

(d) the applicant's understanding of program goals and objectives articulated by the department;

(e) the plans of the center to supplement state and local funding through fees for services which may be based on a sliding scale based on ability to pay;

(f) the need for and anticipated impact of the center on the community in which it will function;

(g) the quality of the proposed work plan and staff of the center; and

(h) the extent of economic distress in the area to be served.

3. Application for grants made pursuant to this section shall be made in the manner and on forms prescribed by the commissioner. Such application shall include, but shall not be limited to:

(a) a description of the training programs available within the geographic area to be served by the center to which eligible clients may be referred;

(b) designation of a program director;

(c) plans for providing ongoing technical assistance to program graduates, including linkages with providers of other entrepreneurial assistance programs and with providers of small business technical assistance and services;

(d) a program budget, including matching funds, in-kind and otherwise, to be provided by the applicant;

(e) permit a joint application from a consortium of career education agencies and not-for-profit corporations, or any combination thereof, for establishing a cooperative program; and

(f) such other requirements as deemed necessary by the department.

4. Each center shall:

(a) be operated by a board of directors representing community leaders in business, education, finance and government;

(b) be incorporated as a not-for-profit corporation;

(c) be located in an area accessible to eligible clients;

(d) establish an advisory group of community business experts, at least one-half of whom shall be representative of the clientele to be served by the center, which shall constitute a support network to provide counseling and mentoring services to minority group members, women, individuals with a disability, dislocated workers and veterans from the concept stage of development through the first one to two years of existence on a regular basis and as needed thereafter; and

(e) establish a referral system and linkages to existing area small business assistance programs and financing sources.

5. Each entrepreneurship assistance center shall provide needed services to eligible clients, including, but not limited to:

(a) orientation and screening of prospective entrepreneurs;

(b) analysis of business concepts and technical feasibility;

(c) market analysis;

(d) management analysis and counseling;

(e) business planning and financial planning assistance;

(f) referrals to financial resources;
(g) referral to existing educational programs for training in such areas as marketing, accounting and other such training programs as may be necessary and available; and
(h) referral to business incubator facilities, where appropriate, for the purpose of entering into agreements to access shared support services.

6. Grants made pursuant to this section shall be subject to the following limitations:
(a) no grant shall be made to any one or any consortium of career education agencies and not-for-profit corporations in excess of two hundred fifty thousand dollars; and
(b) each grant shall be disbursed for payment of the cost of services and expenses of the program director, the instructors of the participating career education agency or not-for-profit corporation, the faculty and support personnel thereof and any other person in the service of providing instruction and counseling in furtherance of the program.

§ 212. Reporting. The department shall:

1. Monitor the performance of each entrepreneurial assistance center and require quarterly and annual reports from each entrepreneurial assistance center at such time and in such a manner as prescribed by the commissioner.

2. Evaluate the entrepreneurial assistance centers established under this article and report annually, on or before January first, two thousand twenty, and on or before each January first thereafter, and submit the results of such evaluation to the governor and the legislature. Such report shall discuss the extent to which the centers serve minority group members, women, individuals with a disability, dislocated workers and veterans; the extent to which the training program is coordinated with other assistance programs targeted to small and new businesses; the ability of such program to leverage other

sources of funding and support; and the success of the program in aiding entrepreneurs to start up new businesses, including the number of new business start-ups resulting from the program. Such report shall recommend changes and improvements in the training program and in the quality of supplemental technical assistance offered to graduates of the training programs. The report shall be made available to the public on the department's website.

3. Submit to the director of the division of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee an evaluation of the effectiveness of the programs established under this article prepared by an entity independent of the department. Such evaluation shall be submitted by January first, two thousand twenty-one and by January first every two years thereafter.

4. Between evaluation due dates, maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

ARTICLE 9-A
COME HOME TO NEW YORK PROGRAM

§ 215. Come home to New York program. 1. There is hereby established in the department a "come home to New York" program to encourage the return of native New Yorkers to the state by establishing a local network of outlets designed to assist native New Yorkers in returning, relocating or starting a small business in New York state.

2. The department shall:

(a) develop and enter into agreements with not-for-profit organizations in geographic areas throughout New York state which will serve as local coordinators for the program;

(b) develop a "come home to New York" website and promotional materials that can be tailored to particular jurisdictions;

(c) encourage not-for-profit organizations in every part of the state to participate in the come home to New York network;

(d) create a statewide public awareness campaign for the program;

(e) maintain a data base of investment-opportunities profiles submitted by relocating entrepreneurs and investment-interest profiles submitted by investors; and

(f) distribute investor and relocating entrepreneur applications in paper form and through electronic resources.

3. The department, through its regional offices, shall work with local coordinators to:

(a) originate a local name for the program and integrate it into the template website and related promotional materials to highlight regional quality of life, economic and cultural opportunities and include links to related websites;

(b) recruit volunteers in various occupational areas to provide the necessary networking opportunities that returning New Yorkers need, in fields such as law, finance, microbusiness start-up, high technology, construction, health care, manufacturing and retail operations;

(c) conduct outreach to local schools, colleges, universities and other organizations to develop a manner of contacting former residents who have left the state;

(d) develop a local public awareness campaign for the program;

(e) compile and report program statistics to the coordinator's office;

(f) serve as a screening mechanism through which introductions may be made between returning or newly established businesses and potential investors;

(g) aid prospective returning and newly established small businesses in presenting their ventures to investors; and

(h) encourage the formation of a venture capital funding network at the local level with the assistance of the department.

* ARTICLE 10

INTERNATIONAL TRADE

* NB Amendments to §§'s 220--223 effective insofar as they pertain to the Port Authority of New York and New Jersey upon passage of same as legislation by New Jersey

* NB Sections 224--225 effective insofar as they pertain to the Port Authority of New York and New Jersey upon passage of same as legislation by New Jersey

*** § 220. Powers and duties of the commissioner.** The commissioner acting by and through the department shall have the power and it shall be his or her duty:

1. To coordinate the international economic activities of the state including any international economic activities of the department of agriculture and markets, the department of financial services, the department of financial services, the education department, the state university of New York, the city university of New York, the New York state science and technology foundation, the New York state urban development corporation, the New York state job development authority, the port authority of New York and New Jersey, and other New York state agencies.

2. To advise and make recommendations on matters affecting the exports of New York products and services and the investment of foreign capital in New York.

3. To assist New York businesses which may engage or wish to engage in exporting or entering into agreements with foreign persons or firms that will result in expansion of business activity in New York.

4. To identify foreign buyers, investors or investor groups which may be interested in entering into agreements for the purchase of New York goods or services or in investing in New York business, and to advocate and promote New York products and services and capital investment opportunities to buyers and investors in other nations and to those intermediary parties able to locate and negotiate sales or agreements with such buyers and investors, that will assist the export sale of New York products or services or the investment of foreign capital in New York.

5. To identify business firms which produce a product or provide a service deemed to be exportable and assist such firms in identifying foreign markets and buyers in order to effect the sale of such product or service to foreign buyers.

6. To conduct investigations, research, studies and analyses of matters affecting New York exporters and potential exporters.

7. To provide services to New York firms in identifying foreign markets, buyers, distributors, licensees and investors; in identifying export financing options and mechanisms that may assist such firms in making sales to foreign buyers; and in preparing documentation and other paperwork necessary to sell abroad.

8. To provide export trade and foreign investment services, particularly in regions of the state where such services are not otherwise available, and to promote the development of a statewide network of international trade organizations to assist the department in its efforts to provide export promotion services through its regional offices.

9. To encourage activities by business or industry associations in the area of international trade, to seek comments from such associations on international trade legislation, policy, and negotiations at the international, federal and state levels and to provide technical and financial assistance to such associations in the areas of export trade development and promotion.

10. To perform such other functions as deemed necessary and proper to increase the amount of exports of New York products and services or to increase the amount of investment of foreign capital in New York.

* NB Amendments effective insofar as they pertain to the Port Authority of New York and New Jersey upon passage of same as legislation by New Jersey

*** § 221. Export trade development projects.** 1. The commissioner is hereby authorized to provide assistance to export trade development projects designed to encourage and assist businesses, industrial firms or industry groups to engage in export trade and to coordinate other state economic development programs with such projects.

2. The commissioner shall give preference to export trade development projects which benefit those businesses which are resident in the state, independently owned and operated, not dominant in their fields, employ five hundred employees or less and which are located in a geographic area demonstrating a need for such services.

3. An export trade committee is hereby established to make recommendations to the commissioner for his or her approval of proposed export trade development projects. Members of the committee shall include, among others, the commissioner, who shall chair the committee, a representative of the port authority of New York and New Jersey, and at least two representatives of the private sector experienced in export trade selected by the commissioner, at least one of whom shall be from a small business.

4. The department shall actively seek to identify and disseminate information to entities which may be eligible to receive assistance pursuant to this section and shall make awards for export trade development projects on a competitive basis.

(a) Entities eligible to apply for funding for an export trade development project shall include public benefit corporations, not-for-profit corporations, local development corporations, industrial development authorities, trade associations, educational institutions and other not-for-profit organizations which promote economic development.

(b) Applicants shall be required to demonstrate their ability to provide the services proposed; the potential for the initiation or expansion of export trade from the area to be served; the availability or non-availability of export credit and export technical assistance from other sources in the area to be served; the methods to be used to coordinate the delivery of state and local export promotion resources; the possibility that the services to be funded would become self-sustaining; the potential to duplicate the project elsewhere in the state; the participation of local and regional economic development organizations; and to provide a program budget, including matching funds, in-kind and otherwise, to be provided by the applicant.

(c) A project eligible to be an export trade development project may include, but not be limited to, any project to provide one or more of the following services: export market analysis; foreign direct investment leads; export trade promotion; export trade education; export trade finance technical assistance; or export trade finance.

5. No single grant for export trade development projects providing technical assistance shall exceed one hundred thousand dollars; no single grant for export trade development projects providing financial assistance shall exceed two hundred thousand dollars.

* NB Amendments effective insofar as they pertain to the Port Authority of New York and New Jersey upon passage of same as legislation by New Jersey

*** § 222. International marketing and trade leads.** The department shall market products and services from New York sources and provide information as to how foreign importers may obtain such products and services. Through the program, the department shall seek to develop or cause to be developed, export trade leads for New York exporters and potential exporters, and shall offer such leads to New York exporters and potential exporters. The commissioner shall by regulation establish a schedule of fees for the provision of such service.

* NB Amendments effective insofar as they pertain to the Port Authority of New York and New Jersey upon passage of same as legislation by New Jersey

*** § 223. Reporting.** The department shall:

1. Monitor the performance of each export trade development project and require periodic and annual reports from each such project at such time and in such manner as prescribed by the commissioner;

2. Evaluate the effectiveness of the export trade development projects and other technical assistance programs authorized under this article and shall report, on or before October first, nineteen hundred eighty-eight and on or before October first of each year thereafter, the results of such evaluation to the governor and the legislature. In the case of export assistance programs involving the direct delivery of assistance and services by the department, such report shall detail the number of business firms served by the department, the number of trade and investment inquiries referred by the department to business firms and other interested parties, the approximate dollar amount of export sales and investment of foreign capital in New York generated by the activities of the department, and any other information the commissioner deems pertinent to evaluating the effectiveness of such programs. In the case of export trade development projects, such report shall include a description of each project, its potential application to other areas of the state, the success of each project in meeting its stated goals and objectives, the economic impact of each project on the area served, the degree of local and regional participation, financial and otherwise, in each project, the coordination of each project with state and local export promotion programs and resources and such other information the commissioner deems pertinent to evaluating the effectiveness of the export assistance development project program; and

3. (a) Submit to the director of the division of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee an evaluation of program effectiveness

prepared by an entity independent of the department. Such an evaluation shall be submitted on or before September first, two thousand five and on or before September first every four years thereafter.

(b) Between evaluation due dates, the department shall maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

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*** § 224. Export diagnostic and market development program.** 1. Definitions. As used in this section, the following terms shall have the following meanings, unless a different meaning appears from the context:

(a) "Eligible applicant" shall mean (i) a small or medium sized business having no more than five hundred employees, or business or industry group or association, or (ii) any commercial merchant, dealer, distributor, broker, grower, producer, processor, handler, packer, industry group or association or cooperative offering for sale or trade eligible agricultural products.

(b) "Export diagnostic assessment" shall mean an assessment of the potential of an eligible applicant to commence or increase exporting. An export diagnostic assessment may include, but shall not be limited to, an evaluation of the export potential for an eligible applicant's goods or services in international markets and an eligible applicant's management, organization and distribution in relation to its ability to commence or increase exporting.

(c) "Export market development plan" shall mean an analysis of specific actions an eligible applicant should undertake to commence or increase exporting. An export market development plan may include, but shall not be limited to, recommendations for an eligible applicant: (1) to adapt its products to international technical specifications and standards; (2) to pursue exporting in specific regional and/or industrial markets; or (3) to contract with agents, distributors or others.

(d) "Eligible agricultural products" shall mean agricultural products grown, produced, or primarily processed in New York; agricultural equipment primarily processed in New York; agricultural equipment primarily produced in New York; or aquatic products cultured, cultivated or harvested from the waters in and around New York or cultured or landed in New York, which are likely to be in demand in international markets.

2. Establishment. The commissioner is hereby authorized to establish an export diagnostic and market development program within the department in conjunction with the industrial effectiveness program set forth in article seven of this chapter, for the purpose specified in this section.

3. Purpose. The purpose of the export diagnostic and market development program shall be to improve the competitive position in international markets of businesses and industries, including agricultural businesses, whose principal place of business is located in New York by assisting them to commence or increase exporting.

4. Administration. In furtherance of the purpose of the export diagnostic and market development program, the department is authorized to:

(a) identify and retain individuals and firms with special competence in at least one area related to export development or promotion, and provide eligible applicants with a list of such individuals and firms. The department shall promulgate by rules the procedures and criteria to be used in selecting and retaining such individuals and firms;

(b) provide export diagnostic assessments and export market development plans to eligible applicants that have requested such assistance directly or upon referral by the department's regional offices, the New York state science and technology foundation, the New York state urban development corporation, the department of agriculture and markets, the port authority of New York and New Jersey, or federal, state, regional and local trade and economic development organizations. Such export diagnostic assessments and export market development plans may be provided either directly or by experts retained and supervised by the department. Any expenditure for such assistance shall be based on a plan approved by the commissioner, and in no case shall the level of contribution by the eligible applicant be less than fifty percent of the total cost of such export diagnostic assessment;

(c) provide information on other government-sponsored programs offering technical and financial assistance to exporters or potential exporters;

(d) promote awareness of the export diagnostic and market development program among businesses, business or industry organizations, and federal, state, regional and local trade and economic development agencies with the assistance of appropriate state agencies;

(e) identify eligible applicants offering for sale or trade eligible agricultural products;

(f) undertake activities to assist eligible applicants to commence or increase exporting eligible agricultural products; and

(g) provide information to eligible applicants on other government-sponsored programs offering technical and financial assistance to promote exports of agricultural products, agricultural equipment or aquatic products.

5. Applications. Eligible applicants shall submit to the department an application to participate in the export diagnostic and market development program in such a form and manner as the commissioner shall deem appropriate.

6. Selection. The department shall select eligible applicants to participate in the export diagnostic and market development program based on:

(a) the initial assessment of the department of the degree to which the applicant would benefit from participation;

(b) evidence of a serious commitment by the applicant to participate in the program;

(c) the capability of the applicant to carry out recommendations resulting from participation in the program; and

(d) the likely benefit derived from participation in the program to the economy of the region in which the applicant is located in relation to the cost to the state of providing the assistance.

7. Reports by participants. (a) Every eligible applicant participating in the export diagnostic and market development program shall provide the department with such reports relating to such participants as the department shall deem to be necessary.

(b) The information contained in such reports shall be exempt from disclosure to the fullest extent permitted under subdivision two of section eighty-seven of the public officers law.

8. Job listings. For any positions opened as a result of assistance provided under this section businesses so assisted shall first consider persons eligible to participate in federal job training partnership act (P.L. 97-300) programs who shall be referred to the business by administrative entities of service delivery areas created pursuant to such act or by the job service division of the department of labor.

9. Reporting. On or before October first, nineteen hundred ninety-one and on or before October first of each year thereafter, the commissioner shall report to the governor and the legislature on the operation and accomplishments of the export diagnostic and market development program, including but not limited to the number of firms assisted, the number of export diagnostic assessments and export market development plans completed, the degree to which productivity and export activity of participants were increased, the total costs per project and the number of jobs created due to state assistance.

10. Evaluation. The commissioner shall submit to the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee an evaluation of the export diagnostic and market development program prepared by an entity independent of the department. Such an evaluation shall be submitted on or before September first, nineteen hundred ninety-two and on or before September first every two years thereafter.

11. Rules and regulations. The commissioner shall promulgate rules and regulations to accomplish the purpose of this section.

* NB Section effective insofar as it pertains to the Port Authority of New York and New Jersey upon passage of same as legislation by New Jersey

*** § 225. Export finance service.** 1. Definitions. As used in this section, the following terms shall have the following meanings, unless a different meaning appears from the context:

(a) "Export finance" shall mean pre-order financing to support market development activities prior to an export sale, working capital to support the acquisition of inventory and other expenditures to finance the production of goods for export, accounts receivable financing to cover the costs between shipping goods and receiving payment from an export sale, customer financing to provide medium and long term financing to foreign buyers, and export insurance to insure sellers and buyers for risks associated with export transactions.

(b) "Public and private organizations" shall mean commercial banks, insurance companies, the small business administration, the export-import bank of the United States, the New York job development authority, the port authority of New York and New Jersey, the New York business development corporation, other international, federal, state, regional and local economic development organizations and other organizations identified by the commissioner as potential providers of export finance.

2. Establishment. The commissioner is hereby authorized to establish an export finance service within the department for the purposes specified in this section.

3. Purposes. The purposes of the export finance service shall be:

(a) to promote and increase the provision of export finance in New York by public and private organizations;

(b) to assist New York exporters and potential exporters in obtaining export finance from public and private organizations;

(c) to develop a directory of export finance programs in the state available from public and private organizations;

(d) to provide intermediary services to match New York exporters and potential exporters with export finance available from public and private organizations;

(e) to encourage public and private organizations to provide export finance to New York exporters and potential exporters; and

(f) to identify sources of expertise in the public and private sectors to assist New York exporters or potential exporters in obtaining export finance, and provide such exporters or potential exporters with a list of such sources of expertise.

4. Reporting. On or before October first, nineteen hundred ninety-one and on or before October first of each year thereafter, the commissioner shall report to the governor and the legislature on the operation and accomplishments of the export finance service.

5. Evaluation. The commissioner shall submit to the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee an evaluation of the export finance service prepared by an entity independent of the department. Such an evaluation shall be submitted on or before September first, nineteen hundred ninety-two and on or before September first every two years thereafter.

6. Rules and regulations. The commissioner shall promulgate rules and regulations to accomplish the purposes of this section.

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ARTICLE 11

REGIONAL ECONOMIC DEVELOPMENT

§ 230. Economic development regions. 1. The department shall establish economic development regions of the state and shall establish within each region at least one regional office.

2. The boundaries of regions shall be based on factors including, but not limited to: (a) interdependence and commonality of economic and social interests; (b) previous cooperation in economic development related matters; (c) intraregional commuting and transportation patterns; (d) geographic proximity to and dependence on centers of employment and economic opportunity, population concentration and markets; (e) unifying topographic characteristics; (f) labor markets; and (g) geographic size.

§ 231. Regional offices. 1. The department, through its regional offices, is authorized: (a) to serve as a center for information regarding economic development resources available from state, federal and local agencies; (b) to provide outreach to businesses, with attention to small and medium-sized businesses, including minority and women-owned business enterprises, for financial and technical assistance offered by state economic development agencies, authorities, or other economic entities; (c) to serve as a regional center to accept applications for state economic development programs; (d) to coordinate the economic development programs and activities of state agencies and authorities within each region including, but not limited to, outreach to businesses, technical assistance services, skills training assistance, sharing of information, strategic economic development plans and programs, to provide or arrange for assistance in compliance with federal, state, and local rules, regulations, permits, and licenses, and other measures to enhance regional economic development and eliminate duplication of services; (e) to provide or arrange for assistance to persons, firms, agencies, partnerships or corporations, either public or private, in applying for assistance from state economic development programs or for necessary licenses and permits or seeking to comply with federal, state and local rules and regulations; (f) to review and comment, within their knowledge and expertise, with respect to applications for state assistance in a timely manner and form prescribed by the commissioner; (g) to distribute literature and marketing material describing the facilities, advantages and attractions of the region for business; (h) to provide economic development information, planning services and technical assistance to counties and municipalities within the region; (i) to provide information and assistance in the certification of minority and women-owned business enterprises; (j) to provide or arrange for assistance to private sector employers, whether operating for profit or not for profit, and to organizations and associations of such employers in developing and implementing innovative and flexible employee compensation, assistance and benefit programs to enhance competitiveness and meet emerging demographic and market conditions; and (k) to provide information and assistance to small businesses on environmental compliance requirements of federal and state law and pollution prevention opportunities in furtherance of policies and programs established in article twenty-eight of the environmental conservation law and in coordination with the pollution prevention and environmental compliance coordinating council established in article twenty-eight of the environmental conservation law, including programs operated by the department, the department of environmental conservation or other state or local agencies from which technical assistance, or loans, grants or other financial assistance for compliance and pollution prevention may be obtained; and in providing such information and assistance, to promote pollution prevention approaches.

2. As used in this section, "Pollution prevention" shall mean pollution prevention as such term is defined by article twenty-eight of the environmental conservation law.

§ 232. Assistance of other agencies. To effectuate the purposes of this article, the commissioner may request from any department, division, board, bureau, commission or other agency of the state or from any public benefit corporation or public authority, and the same are authorized to provide, such assistance, services and data as will enable the department to properly carry out its functions, powers and duties hereunder.

ARTICLE 11-A

BUSINESS MARKETING PROGRAM

§ 235. Definitions. As used in this article, the following words and terms shall have the following meanings:

1. "Eligible applicants" include nonprofit organizations, associations or agencies. Eligible projects must focus on a specific sector or industry cluster with a high potential for job creation in New York state. Eligible projects may include, but are not limited to, print, broadcast or electronic media campaigns, conferences, publications, documentary productions, instructional materials, and public exhibitions.

2. "Business marketing program" shall mean a program that promotes the state's strengths and assets in one or more industry sectors, geographic regions or academic research institutions collaborating with such industrial sectors on a state, national and international level.

3. "Eligible projects" include, but are not limited to, participation at key international and domestic trade shows and industry conferences, marketing to corporate, site location consultants, and other key decision makers for targeted technology sectors, and advertising in influential trade and other publications.

§ 236. Application. 1. The commissioner shall, within three months of the effective date of this article, issue a request for proposals for the business marketing program that shall include, but not be limited to: the objectives of the program; the scoring that shall be applied for selection; and the proportion or total amount of funds that may be dedicated to certain expenditures such as media buys.

2. (a) Applications shall include the schedule, budget, scope, uses of funds and theme of the proposed marketing program and contractual service providers. Examples of proposed marketing and thematic materials, written, print, video or radio, should be provided where practical.

(b) Marketing plans shall utilize the state's "New York Loves Biz" logotypes. Licensing of this logotype according to the accepted plan shall be available to the selected applicants free of charge for the duration of the marketing program. No advertising or marketing shall contain references to or the name of any public official of the state of New York or its political subdivisions.

(c) Applications shall identify the specific targets and audiences for the marketing programs geographic reach of program and shall identify appropriate and practical ways to measure the impact of the program on the targeted audience.

(d) Applicants shall provide evidence that they have secured or have available matching funds in equal amount to funds requested from the program.

§ 237. Matching funds for eligible applicants. 1. No matching funds shall exceed the sum of two hundred fifty thousand dollars or fifty percent of the total cost of implementation of the marketing plan, whichever is less.

2. No more than ten percent of funds awarded shall be used for administrative purposes, including salaries associated with implementing a marketing program.

3. No matching funds shall be used for the direct benefit of a for-profit business.

§ 238. Payments of funds to eligible applicants. Upon submission and approval of each application and the authorization of funds by the commissioner in accordance therewith, the commissioner shall give notice to the eligible applicant of such approval and authorization, and shall direct such eligible applicant to proceed with its proposed business marketing program as described in its application. Funds shall be awarded on a reimbursement basis.

§ 239. Reporting requirements. 1. Each funding recipient shall provide an annual financial statement prepared according to generally accepted accounting principles to the commissioner, the speaker of the assembly and the temporary president of the senate.

2. The department shall annually, on or before February first, submit to the governor, the temporary president of the senate and the speaker of the assembly, a report on the activities of the business marketing matching funds program. Such report shall include a summary of the financial statements received by the department from funded entities, a summary of activities conducted and analyses of the effectiveness of the program in stimulating economic growth and job creation.

ARTICLE 12

ECONOMIC INFORMATION AND RESEARCH

§ 240. Powers and duties of the commissioner. The commissioner acting by and through the department shall have the power and it shall be his duty:

1. To assure that comprehensive, reliable and timely information and research is available for effective economic development efforts at the local and state levels; such information and research on the economic conditions and trends of the state, its regions and localities should be adequate to meet the needs of sound policy development, economic

research, economic development and private investment.

2. To investigate issues concerning state economic information and research including the quality, timeliness and detail of certain information; the unavailability of information on certain important topics; the need to update information collection and indices to reflect structural changes in the state's economy; the need to adapt information collection and dissemination to meet new and emerging needs of users; cutbacks in federal economic information systems and in federal support for state information gathering and dissemination; uncertainty about the most economic and effective way of supporting the collection and dissemination of information; the need for standard formats and computer compatibility among information systems maintained by different levels of government, and by different state agencies; and the need for a comprehensive policy or strategy to guide the state's economic information system and its development.

3. The commissioner shall establish and maintain, within available appropriations, a statewide economic information system accessible to state, regional and local government and academic information users and producers. Such information system shall be maintained by the department. The commissioner may subcontract for related services to a college, university or other non-profit institution. After the economic information system is established, the commissioner shall submit a report to the director of the budget and the chairmen of the senate finance and assembly ways and means committees, evaluating the adequacy of such economic information system and setting forth the reasons for selecting such system.

§ 241. Advisory council on economic information and research. 1. The commissioner is authorized and directed to appoint the advisory council on economic information and research, to advise and assist him in an ongoing review of the state's economic information and research needs.

2. The advisory council on economic information and research shall advise the commissioner and make recommendations concerning information

available on the economy of the state, its regions and localities, and the information and research needs of state and local government, business planners, academic researchers, and others concerned with economic development in the state. Specifically, the council shall review and submit recommendations on:

(a) currently available data concerning the economy of New York state and the demand for such data from both public and private users at the state and local levels with respect to their scope, quality, detail, timeliness and accessibility;

(b) state policies and procedures concerning the collection, maintenance and dissemination of economic data and economic development data and the assignment of responsibility for such tasks;

(c) the cooperation and collaboration among different agencies and offices of state government in the collection, analysis and dissemination of economic data and economic information including, but not limited to, the nature of consultation about the information to be collected and the extent to which standardized data and compatible information systems have been and should be introduced;

(d) the relationship between the state's economic information collection and maintenance and other public and private information sources within the state, including especially the capacity of the state to incorporate data and information provided by other systems;

(e) the capabilities of the state's existing economic information system in light of the objectives of economic development, changing federal policies and support for economic information, and changes in the state's economic structure;

(f) the design, location and maintenance of the statewide economic information system established pursuant to this article, including the content and organization of the data, the means for incorporating data from and providing access to academic, municipal and private sector data producers within the state, and the means for providing access to data users within the state;

(g) critical areas of unmet economic research needs and how such needs can be met, including the need for an economic early-warning system and of timely and accurate forecasts of occupational supply and demand, analysis of sub-state regional economies, and analysis of important industrial sectors in the state;

(h) the need for a state clearinghouse for economic research to maintain and disseminate research on the economy of the state, its regions and localities and on economic development programs; and

(i) state policy on charges for economic data and information provided to the public.

3. (a) The advisory council shall submit an annual report on its findings and recommendations on or before October first, nineteen hundred eighty-eight and on or before each October first thereafter to the governor, the president pro tem and minority leader of the senate, and the speaker and minority leader of the assembly.

(b) (i) The department shall submit to the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee an evaluation of this program prepared by an entity independent of the department. Such evaluation shall be submitted on or before September first, two thousand five and on or before September first every four years thereafter.

(ii) Between evaluation due dates, the department shall maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

4. The advisory council shall consist of the commissioner, who shall serve as chair, the commissioner of labor, and the commissioner of education, or their designees, one representative designated by the temporary president of the senate and one representative designated by the speaker of the assembly and eight members appointed by the commissioner, who shall have an expertise in economic analysis, planning or data collection, maintenance and distribution, one representing the state university of New York, one representing the city university of New York, one representing independent universities, one representing the state association of regional planning and development organizations, one representative of local government interests, one representative of business and industry interests, one representative of labor interests, and one representative of private economic research and

forecasting entities. The members shall receive no compensation for their services but shall be allowed actual and necessary expenses incurred in the performance of their duties.

5. The council shall coordinate its activities with research being undertaken by the New York state occupational information coordinating committee and the legislative commission on skills development and career education.

6. The commissioner and the commissioner of labor may each appoint professional staff to assist the council with its duties.

7. The commissioner may request and shall receive from any public authority, public benefit corporation, department, division, board, bureau, commission or agency of the state or any political subdivision thereof, such assistance as will enable the council to properly carry out its duties hereunder.

§ 242. Reports on the digital gaming industries in New York. 1. The department of economic development shall file a report on a biannual basis with the director of the division of the budget and the chairpersons of the assembly ways and means committee and senate finance committee. The report shall be filed no later than thirty days before the mid-point and the end of the state fiscal year. The first report shall cover the calendar half year that begins on January first, two thousand twenty-four. Each report must contain the following information for the covered calendar half year:

(a) the total dollar amount of credits allocated pursuant to section forty-five of the tax law during the half year, broken down by month;

(b) the number of digital gaming projects, which have been allocated tax credits of less than one million dollars per project, and the total dollar amount of credits allocated to those projects;

(c) the number of digital gaming projects, which have been allocated tax credits of more than one million dollars, and the total dollar amount of credits allocated to those projects;

(d) a list of each eligible digital gaming project and for each of those projects, (i) the estimated number of employees associated with the project, (ii) the estimated qualifying costs for the project, (iii) the estimated total costs of the project, (iv) the credit eligible employee hours for each project, and (v) total wages for such credit eligible employee hours for each project; and

(e) (i) the name of each taxpayer allocated a tax credit for each project and the county of residence or incorporation of such taxpayer or, if the taxpayer does not reside or is not incorporated in New York, the state of residence or incorporation; however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those tax credits must be included in the report instead of information about the taxpayer claiming the tax credit, (ii) the amount of tax credit allocated to each taxpayer; provided however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the amount of tax credit earned by each entity must be included in the report instead of information about the taxpayer claiming the tax credit, and (iii) information identifying the project associated with each taxpayer for which a tax credit was claimed under section forty-five of the tax law.

2. The department of economic development shall file a report on a triennial basis with the director of the division of the budget and the chairpersons of the assembly ways and means committee and senate finance committee. The first report shall be filed no later than March first, two thousand twenty-five. The report must be prepared by an independent third party auditor and include: (a) information regarding the empire state digital gaming production credit program including the efficiency of operations, reliability of financial reporting, compliance with laws and regulations and distribution of assets and funds; (b) an economic impact study prepared by an independent third party of the program; and (c) any other information or statistical information that the commissioner of economic development deems to be useful in analyzing the effects of the programs.

3. In the event that this tax credit program is no longer legally in effect, the department shall not be required to produce the reports referenced in subdivisions one and two of this section.

ARTICLE 13

INDUSTRIAL INFRASTRUCTURE DEVELOPMENT PROGRAM

Section 250. Industrial infrastructure development program.

§ 250. Industrial infrastructure development program. 1. Definitions. As used in this article, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(a) "Eligible applicant". Eligible applicants may submit proposals to the appropriate regional office of the department and such applicant shall be any state agency involved in promoting the economic development of the state including, but not limited to, the departments of economic development, agriculture and markets, transportation, the urban development corporation and the job development authority, or a municipality, an industrial development agency or local development corporation.

(b) "Industrial infrastructure development project" shall mean a project for the design, acquisition of property, construction and/or reconstruction in connection with storm and sanitary sewers, electric and gas service distribution lines, water supply systems, drainage systems and site clearance, preparation, improvements, and demolition.

(c) "Industrial facility" shall mean any type of facility to be used or occupied by any person in an enterprise deemed to offer a reasonable likelihood for promoting the creation or retention of job opportunities in the state and includes, but is not limited to, industrial or manufacturing plants, facilities for research and development purposes, facilities for conducting wholesale, receiving and distributing operations, facilities for conducting office operations, warehousing operations, agricultural operations, or any other operation dealing in the exchange of goods, wares, services or other types of property of any type or description. Facilities supporting primarily retail commercial operations are not defined as industrial facilities.

(d) "State agency" shall mean an office, department, board, commission, bureau, division, public corporation, agency or instrumentality of the state.

2. Project eligibility. Eligible projects shall include industrial infrastructure projects which are an integral part of an economic development effort which will retain, attract, expand or revitalize an industrial facility. Projects on which construction has been initiated are ineligible for funding under this program.

3. Eligible costs. The following costs are eligible for funding through this program:

(a) industrial infrastructure development project design costs;

(b) costs for completing and updating plans, specifications and estimates where preliminary engineering or related planning has already been undertaken, and where additional engineering work or related planning is required to permit construction of the industrial infrastructure development project;

(c) costs associated with standard construction activities which are reasonable costs of construction work performed under contract; and

(d) acquisition of real property.

4. Ineligible costs. The following costs are not eligible for funding under this program:

(a) expenses or other engineering costs incurred prior to the industrial infrastructure development project initiation, related to administration, planning or estimates;

(b) any expense required to carry out the overall responsibilities of the eligible applicant, such as administrative costs; and

(c) municipal personal services costs of a regular and recurring nature.

5. Project costs. For any single industrial infrastructure development project, costs shall not exceed two hundred fifty thousand dollars of state funds.

6. Application process. Proposals shall include the following: (a) a description of the industrial infrastructure development project, including provisions for public use and maintenance for the useful life of the facility to be provided by the project, if appropriate; (b) a description of how the economic development project related to the industrial infrastructure development project is consistent with the regional economic development strategy and the state's economic development goals; (c) an estimation of the number of jobs to be created or retained by the economic development project; (d) a description of the financing and implementation schedule for the economic development project demonstrating the need for state participation in the industrial infrastructure development project component; (e) an affirmation by the responsible public or corporate official to the effect that existing funding programs are not available or appropriate for the industrial infrastructure development project due to funding availability; and (f) a description of the method or plans for repayment to the state of at least fifty percent of the industrial infrastructure development project costs.

7. Evaluation criteria. Applications shall be evaluated in accordance with the following criteria:

(a) the total number of jobs created or retained per dollar invested in the industrial infrastructure development project;

(b) consistency with the appropriate regional development strategy;

(c) the impact on existing and proposed economic development projects and programs and appropriateness of the proposed project concept;

(d) the impact on existing infrastructure facilities and services, if any;

(e) the availability of alternate funding sources;

(f) the repayment ability of the party who is designated to make such repayment; and

(g) demonstration by the industrial facility of its commitment and ability to carry out the economic development project related to the industrial infrastructure development project.

8. On or before October first, nineteen hundred eighty-eight and on or before October first of each year thereafter, the department shall

submit to the governor and the legislature a report regarding the current status of the industrial infrastructure development program. Such report shall include, but not be limited to:

(a) the number of applications received;

(b) the number of applications approved;

(c) project descriptions including a description of the related economic development project, type of business assisted, location, amounts awarded, amounts expended, repayments to date, and projected completion date;

(d) jobs created and/or retained per project; and

(e) description of factors which demonstrate each project's consistency with regional economic development strategies and state economic development goals.

9. (a) The department shall submit to the director of the division of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee, an evaluation of program effectiveness prepared by an entity independent of the department. Such an evaluation shall be submitted on or before September first, two thousand five, and on or before September first every four years thereafter.

(b) Between evaluation due dates, the department shall maintain the necessary records and data required to satisfy such evaluation requirements and to satisfy information requests received from the director of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee between such evaluation due dates.

ARTICLE 14
OFFICE OF WASTE PREVENTION SERVICES

§ 260. Legislative findings and objectives; waste prevention. The legislature hereby finds and declares that there are ever increasing opportunities to promote economic development and enhance the environment through waste prevention. Whether through better environmental management practices that prevent or reduce the generation of wastes, the adoption of innovative environmental technologies, the substitution of less toxic materials or substances, or through recycling and reuse of secondary materials, waste prevention can often improve competitiveness and environmental quality.

By partnering with New York companies to promote waste prevention, New York residents will be investing in a healthy environment and a healthy economy. Strategic planning and investment in sustainable development will spark business growth and competitiveness and create jobs, while protecting and enhancing the quality of the environment.

§ 261. New York state waste prevention program. 1. As used in this section, unless a different meaning clearly appears from the context, the term:

a. "Financing institution" shall mean and include all banks, trust companies, savings banks, savings and loan associations and credit unions, whether incorporated, chartered, organized or licensed under the laws of this state, any other state of the United States or the federal government. This term may also include public authorities, public benefit corporations, units of local government, domestic insurance companies and not-for-profit corporations, which make loans for improvements for the benefit of eligible applicants.

b. "Eligible applicant" or "applicant" shall mean: a small to medium size business or nonprofit organization which employs less than five hundred workers or has gross annual sales of less than ten million dollars.

c. "Waste" shall have the same meaning as is found in the following sections of the environmental conservation law: subdivision one of section 27-0701, subdivision two of section 19-0107 and subdivision five of section 17-0105 of the environmental conservation law. Such term shall also include hazardous waste that appears on the list or satisfies the characteristics of hazardous waste promulgated pursuant to section 27-0903 of the environmental conservation law. Such term shall not include source, special nuclear or by-product material as defined in the atomic energy act of 1954, as amended.

d. "Secondary materials" shall mean material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the commissioner in consultation with the commissioner of environmental conservation but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

e. "Feasibility study" shall mean a technical or economic analysis of the feasibility of specific applications of waste prevention technologies or practices or both.

f. "Waste prevention technologies" shall mean any technology employed to prevent wastes or to process secondary materials for use or reuse but shall not include technology employed for incineration of waste nor the processing of waste for use as refuse derived fuel.

g. "Region" shall mean one or more of the economic development regions created pursuant to section 5-127 of the energy law.

h. "Eligible project" shall mean actions taken by or on behalf of a New York business involving the acquisition, construction, alteration, repair or improvement of a building, fixtures, machinery or equipment, provided that such project results in:

(i) source reduction or material substitution, provided that the substitution of one hazardous substance, product or nonproduct output for another does not result in the creation of a new risk,

(ii) in-process recycling,

(iii) recycling or reuse of non-hazardous solid wastes,

(iv) increased energy efficiency,

(v) conservation of the use of water or other natural resources improvements in process economics,

(vi) elimination of the purchase of materials, the production of which for the use of said firm would result in more waste or resource consumption, or

(vii) other practices or technologies that reduce the use of hazardous materials or otherwise improve air or water quality.

The term "eligible project" shall also include actions taken by or on behalf of a business to support costs of equipment, and/or the acquisition and/or rehabilitation of real property or structures located or to be located in the state related to the collecting, sorting, and packaging of empty beverage containers as such terms are defined in title ten of article twenty-seven of the environmental conservation law. Such actions shall be eligible for state assistance payments under the beverage container assistance program pursuant to section 27-1018 of the environmental conservation law.

The term "eligible project" shall not include end of pipe pollution control technologies or practices where such controls or practices are designed primarily to achieve compliance with the environmental conservation law or regulations promulgated pursuant thereto, or energy recovery or incineration, or out-of-process recycling or reuse of hazardous waste or hazardous substances.

2. The department shall design and implement a waste prevention program, which shall promote economic development through environmental improvement. A high priority for services and assistance provided by or available to the department shall be to improve the economic and environmental performance of business through waste prevention.

3. The department shall consult with other agencies as appropriate on

these projects.

4. In carrying out the activities to implement the waste prevention program, the department shall, to the extent practicable, within amounts appropriated therefor:

a. collect and maintain information identifying existing manufacturers within New York state that utilize secondary materials as raw materials in their manufacturing process;

b. collect, maintain, and provide information to potential users identifying existing processors of secondary materials within and outside New York state and items within the waste stream having the capability for utilization as inputs in processing activities;

c. maintain, provide and market a compilation of existing programs providing incentives for new or expanded business enterprises which could be utilized by the secondary materials processing industry;

d. promote the utilization of such incentives for new or expanded business enterprises which process or utilize secondary materials to locate in New York state;

e. promote incentives for existing businesses to expand their utilization of secondary materials and their adoption of waste prevention technologies and practices;

f. identify special needs and problems facing the secondary materials processing industry and implementation of waste prevention within New York state;

g. contact institutions, organizations and commercial enterprises that are potential consumers of secondary materials and products manufactured with secondary materials; urging their expanded consumption of secondary materials and products and establishing markets for such secondary materials and products through the use of letters of intent and such other techniques as the commissioner may deem appropriate;

h. conduct market surveys of the potential consumers of secondary materials and products manufactured with secondary materials;

i. conduct surveys to determine the potential supply of secondary materials in the state;

j. evaluate the relationship between estimated supply and likely demand for recovered materials in order to target the department's efforts to bring about utilization of (i) materials for which supply exceeds demand to the greatest degree; (ii) materials which would have the greatest impact on the waste stream if recovered or recycled; and (iii) materials for which a market can most readily be obtained;

k. develop and facilitate the establishment of markets necessary for implementation of solid waste management programs;

l. provide information concerning local and regional markets for secondary materials;

m. assist manufacturers interested in expansion or location of their facilities or processes within the state with such governmental liaison matters as siting, zoning, licensing, permitting, funding and other expansion or location tasks through coordination with the relevant state and local agencies;

n. identify federal incentives and policies designed to promote such manufacturing industries;

o. provide other technical assistance to assist businesses in reducing the amount of waste generated by their processes and productively use or provide for the productive use of others of wastes which are generated;

p. assist vehicle dismantlers interested in maximizing the utilization of secondary materials as raw materials in the manufacturing process; and

q. conduct such other activities as may be appropriate to the intent and purpose of this section.

5. The department shall fund feasibility studies for testing of waste prevention technologies or practices or both to reduce the amount of waste and to promote energy and resource conservation by the adoption of such technologies or practices by small and medium sized firms in New York state.

6. Applications. a. The department shall receive applications for feasibility studies on a competitive basis. Funding shall be provided in not less than two rounds annually.

b. Applications shall be evaluated based on criteria including but not limited to the following:

(i) preliminary technical and economic feasibility of the project;

(ii) management ability and commitment to the project;

(iii) financial need;

(iv) the potential for applying the results of the project to other business enterprises; and

(v) potential cost savings to the business and environmental benefits to the state.

c. Technical feasibility. The department may consult with other state agencies, concerning the technical feasibility of the process.

d. Total cost of studies. The state's share of the cost of individual studies conducted through the program shall not exceed eighty percent of the total cost or two hundred thousand dollars, whichever is less.

7. Waste prevention financing. The department is hereby authorized to utilize monies appropriated to the program for the purpose of providing loans, principal reductions, loan guarantees and interest subsidies for waste prevention projects for eligible applicants.

8. a. Interest subsidies. The department may enter into cooperative agreements with one or more cooperating financial institutions within

the state to offer loans for the purposes of this section to eligible applicants at a rate that is no more than seventy-five percent of the prime interest rate. Such interest rate shall initially be five percent.

b. Principal reductions and loan guarantees. The department shall be authorized to utilize monies appropriated to this program for the purpose of providing principal reductions and loan guarantees for eligible applicants. Such principal reduction shall be limited to not more than fifty percent of the amount eligible for a loan through the program as is provided in subdivision nine of this section.

9. Loan agreements and agreements in connection with loans. Loan agreements and agreements in connection with loans made pursuant to subdivision seven of this section shall require that: (a) the maximum loan per applicant shall be five hundred thousand dollars or no more than fifty percent of the total project cost, whichever is less; (b) loans or agreements in connection with loans shall be made only after an application has been made to the department, the department has approved the technical merits of the proposed improvement and the department has notified the cooperating financial institutions of its approval and the amount of interest or principal reduction or of the approval of a loan guarantee upon the loan to be funded pursuant to such agreement; and (c) loan agreements or agreements in connection with loans with program applicants shall provide for a post installation inspection, as deemed necessary by the department.

10. Technical feasibility study. The department shall require the applicant to submit a technical feasibility study which identifies and analyzes in detail the waste prevention projects which the applicant wishes to implement. All feasibility studies must include the cost of implementation, a construction schedule and, a description of how the project will minimize, reduce or eliminate the generation of wastes, use or reuse wastes, increase energy efficiency or water conservation, improve air or water quality and/or improve process economics.

11. Apportionment of monies. The commissioner shall apportion the monies appropriated for this program for the purpose of providing loans,

interest subsidies, loan guarantees and principal reductions to applicants within each of the regions of the state identified in paragraph h of subdivision one of this section.

12. Reapportionment of funds. The department may reapportion the funds available for loans, interest subsidies, loan guarantees or principal reductions for applicants within any region for use in one or more of the other regions upon finding that participation in the program within the former region would not be adversely affected, and that there exists in the latter region or regions inadequate funds to satisfy the demand for program participation. In any fiscal year of the state the amount of funds available to applicants within any region may be reduced by not more than twenty-five percent of the total amount apportioned for such region. A copy of the department's finding shall be given to the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

13. Implementation. In implementing this program, the department shall promulgate rules and regulations. Such rules and regulations may include, but not be limited to, requirements for applications and supporting materials and criteria for the selection of cooperating financial institutions. Such rules and regulations shall also provide in all agreements for financial assistance for immediate repayment of all such financial assistance plus interest and penalties if any portion of a project as defined by paragraph i of subdivision one of this section is transferred out of New York state.

14. Reports. Beginning on January first, nineteen hundred eighty-nine, the commissioner shall make an annual report to the governor and the legislature which shall include, at a minimum, the status of the activities undertaken pursuant to paragraphs a, c, d, e, f, i, j and k of subdivision four of this section, the status of any other activities undertaken pursuant to this article, and recommendations for programs or policies that will further the objectives of expanding the utilization of secondary materials recovered for reuse within the state. The provisions of this subdivision shall not be deemed to require or authorize the disclosure of confidential information or trade secrets.

This report may be consolidated with the report required by subdivision four of section two hundred sixty-three of this article.

15. Evaluation. The department shall submit to the director of the division of the budget, the chairman and ranking minority member of the senate finance committee and the chairman and ranking minority member of the assembly ways and means committee an evaluation of this program prepared by an entity independent of the department. Such evaluation shall be submitted by September first, nineteen hundred ninety and by September first, every two years thereafter.

§ 262. New York state agricultural wastewater energy conservation loan program. 1. Definitions. As used in this section, unless a different meaning clearly appears from the context, the term:

a. "Financing institution" shall mean and include all banks, trust companies, savings banks, savings and loan associations and credit unions, whether incorporated, chartered, organized or licensed under the laws of this state, any other state of the United States or the federal government. This term may also include public authorities, public benefit corporations, units of local government, domestic insurance companies and not-for-profit corporations, which make loans for improvements for the benefit of eligible applicants.

b. "Eligible applicant" or "applicant" shall mean: a business involved in food processing which employs less than five hundred workers or has gross annual sales of less than ten million dollars and which owns the building to be improved with the proceeds of a program loan or which has a lease or management agreement for the building.

c. "Food processors" shall mean businesses engaged in the processing of vegetables, fruits, meats, dairy products or other food products.

d. "Loan" or "program loan" shall mean a loan from the department or a cooperating financing institution pursuant to an agreement with the department as part of the New York state agricultural wastewater energy conservation loan program.

e. "Program" shall mean the New York state agricultural wastewater energy conservation loan program.

f. "Region" shall mean one or more of the economic development regions created pursuant to section 5-127 of the energy law.

g. "Wastewater treatment project" shall mean the acquisition, construction, alteration, repair or improvement of a building, fixtures, machinery or equipment constituting a facility which provides treatment of wastewater to improve its quality and which reduces energy consumption provided that: (i) the cost of such improvement will be returned in savings in energy costs within a period of not less than one year nor more than ten years as identified in an energy audit; (ii) work on such improvement commenced after submittal of an application under the program; and (iii) such construction, alteration, repair or improvement is permissible under federal requirements and court decisions applicable to overcharge funds appropriated to this program.

2. Agricultural wastewater treatment energy conservation loans. The department is hereby authorized to utilize monies appropriated to this program for the purpose of providing loans, principal reductions, loan guarantees and interest subsidies for wastewater treatment for businesses engaged in food processing.

3. a. Interest subsidies. The department may enter into cooperative agreements with one or more cooperating financial institutions within the state to offer loans for the purposes of this section by eligible applicants at a rate that is no more than seventy-five percent of the prime interest rate. Such interest rate shall initially be five percent.

b. Principal reductions and loan guarantees. The department shall be authorized to utilize monies appropriated to this program for the purpose of providing principal reductions and loan guarantees for eligible applicants, if such uses are permissible under the conditions applicable to the appropriated overcharge funds. Such principal reduction shall be limited to not more than fifty percent of the amount eligible for a loan through the program as is provided in this section.

4. Loan agreements and agreements in connection with loans. Loan agreements and agreements in connection with loans made pursuant to this section shall provide that: (a) the maximum loan per applicant shall be two hundred fifty thousand dollars; (b) loans or agreements in connection with loans shall be made only after an application has been made to the department, the department has approved the technical merits of the proposed improvement and the department has notified the cooperating financial institutions of its approval and the amount of interest or principal reduction or of the approval of a loan guarantee upon the loan to be funded pursuant to such agreement; and (c) loan agreements with program applicants shall provide for a post installation inspection, as deemed necessary by the department.

5. Technical feasibility study. The department shall require the applicant to submit a technical feasibility study. All technical feasibility studies must include the cost of implementation, a construction schedule and expected energy savings.

6. Apportionment of monies. The commissioner shall apportion the monies appropriated for this program for the purpose of providing loans, interest subsidies, loan guarantees and principal reductions to applicants within each of the regions of the state identified in paragraph f of subdivision one of this section.

7. Reapportionment of funds. The department may reapportion the funds available for loans, interest subsidies, loan guarantees or principal reductions for applicants within any region for use in one or more of the other regions upon finding that participation in the program within the former region would not be adversely affected, and that there exists in the latter region or regions inadequate funds to satisfy the demand for program participation. In any fiscal year of the state the amount of funds available to applicants within any region may be reduced by not more than twenty-five percent of the total amount apportioned for such region. A copy of the department's finding shall be given to the

chairman of the senate finance committee and the chairman of the assembly ways and means committee.

8. Implementation. In implementing the program, the department shall promulgate rules and regulations formulated after consultation with the department of environmental conservation, the energy office and the superintendent of financial services. Such rules and regulations may include, but not be limited to, requirements for applications and supporting materials and criteria for the selection of cooperating financial institutions.

§ 263. Waste reduction and recycling program. 1. When used in this section, "solid waste" or "waste" shall have the same meaning as is found in subdivision one of section 27-0701 of the environmental conservation law, but shall not include source, special nuclear or by-product material as defined in the atomic energy act of 1954, as amended, or hazardous waste which appears on the list or satisfies the characteristics of hazardous waste promulgated pursuant to section 27-0903 of the environmental conservation law, or low level radioactive waste as defined in section 29-0101 of the environmental conservation law.

2. The department shall serve as a clearinghouse for information pertaining to the reduction and recycling of solid waste generated by commercial and industrial enterprises, including the potential for such enterprises to coordinate their activities with existing and potential local recycling programs, and on methods and strategies which commercial and industrial enterprises within the state can undertake to reduce waste generation.

3. The commissioner, in consultation with the commissioner of environmental conservation, is hereby authorized and directed to confer and cooperate with authorities of other states and of the United States with respect to the development of regional markets for secondary materials and the reduction of waste from residential, commercial and industrial activities.

4. The department shall provide to the governor, the legislature, and local governments on or before January first, nineteen hundred ninety and annually thereafter, a report assessing the status of commercial and industrial waste reduction and the development of markets for secondary materials, and all other aspects of solid waste management for which the department is responsible. Such report shall include evaluations prepared in consultation with the department of environmental conservation and the environmental facilities corporation of the expected levels of waste reduction from present and future utilization of such practices, the anticipated effectiveness of such practices in meeting waste reduction goals, and associated savings due to avoided handling and disposal costs and program implementation costs. This report may be consolidated with the report required by subdivision fourteen of section two hundred sixty-one of this article.

§ 264. Waste prevention assistance. 1. Definitions. As used in this section, unless a different meaning clearly appears from the context, the term:

a. "Applicant" shall mean a municipality or two or more municipalities or a non-profit organization.

b. "Cost" shall mean the capital cost of an eligible project including engineering and architectural services, surveys, plans and specifications; transportation facilities at the site or sites of the project; lands acquired pursuant to conditions set forth in subdivision six of this section; and other direct capital expenses incident to such a project, less any federal assistance and other assistance received or to be received. For purposes of this section, "cost" shall include directly related costs for technical assistance; "cost" shall exclude any costs incurred prior to the effective date of this section.

c. "Municipality" shall mean a local public authority or public benefit corporation, a county, city, town, village, or Indian tribe residing within New York state, or any combination thereof.

d. "Secondary materials" shall have the definition set forth in subdivision one of section two hundred sixty-one of this article.

e. "Eligible project" shall mean actions taken by or on behalf of a New York business involving the acquisition, construction, alteration, repair or improvement of a building, fixtures, machinery or equipment, provided that such project results in:

(i) source reduction or material substitution, provided that the substitution of one hazardous substance, product or nonproduct output for another does not result in the creation of a new risk,

(ii) in-process recycling,

(iii) recycling or reuse of non-hazardous solid wastes,

(iv) increased energy efficiency,

(v) conservation of the use of water or other natural resources improvements in process economics,

(vi) elimination of the purchase of materials, the production of which for the use of said firm would result in more waste or resource consumption, or

(vii) other practices or technologies that reduce the use of hazardous materials or otherwise improve air or water quality.

The term "eligible project" shall not include end of pipe pollution control technologies or practices where such controls or practices are designed primarily to achieve compliance with the environmental conservation law or regulations promulgated pursuant thereto, or energy recovery or incineration, or out-of-process recycling or reuse of hazardous waste or hazardous substances.

f. "State assistance payment" means the payment of monies by the state to municipalities, other governmental entities or non-profit organizations for undertaking, pursuant to contract, projects authorized by the environmental protection act which added this section to preserve, enhance, restore and improve the quality of the state's environment.

g. "Waste" shall have the meaning provided in paragraph c of subdivision one of section two hundred sixty-one of this article.

2. Purpose. The department is authorized, within amounts appropriated, to design and implement a waste prevention program which shall promote economic development and environmental improvement.

3. Designation. The department shall be the agency responsible for providing assistance to applicants for the waste prevention program.

4. Technical assistance. The department is authorized to undertake the following activities including:

a. identifying secondary material markets;

b. serving as a clearinghouse of market information, market conditions and marketing strategies for such materials; and

c. providing assistance to applicants for facilitating secondary materials market contracting arrangements.

5. Waste prevention state assistance payments.

a. The department is authorized to provide, on a competitive basis, within amounts appropriated, state assistance payments to assist applicants in undertaking secondary materials market development or waste prevention activities.

b. The department shall consider the following criteria in evaluating project applications:
(i) the ability of the applicant to achieve the goals of the project, including the ability to minimize, reduce, or eliminate the generation of wastes, use or reuse waste, increase energy efficiency and/or water conservation, improve air or water quality and/or improve process economics;
(ii) the appropriateness of the proposed project in fulfilling regional economic development and environmental improvement needs;
(iii) (iii) the economic and technical feasibility of the proposed

project;

(iv) the commitment of the applicant to implement the short and long term goals of the proposed project; and

(v) the extent to which selection of the project would ensure, to the extent practicable, a regional distribution of projects across the state.

c. State assistance payments shall not exceed fifty percent of the project cost; provided, however, that costs funded through other state waste prevention programs shall not be eligible for funding under this section.

6. Contracts for state assistance payments. The commissioner, in consultation with the commissioner of environmental conservation, may enter into contracts with applicants to provide state assistance payments toward the cost of secondary materials utilization or waste prevention projects. Such contracts shall include the following provisions:

(i) An estimate of the costs of the project as determined by the commissioner.

(ii) An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the applicant during the progress of project development or following completion of the project as may be agreed upon by the parties.

(iii) An agreement by the applicant:

(1) to proceed expeditiously with and complete the project as approved by the commissioner;

(2) to continue operation of the project and not to dispose of the project or any portion thereof or change its use without the approval of the commissioner; and to not sell, lease or otherwise dispose of or use lands acquired under this section for any purpose inconsistent with the project under which such land is acquired;

(3) to operate and maintain the project in accordance with applicable law, rules and regulations;

(4) to provide for the payment of the applicant's share of the cost of the project;

(5) to repay, within one year of notification by the commissioner, any

state assistance payment made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the applicant:

(A) fails to complete the project as approved,

(B) disposes of the project, or any portion thereof, without the prior written approval of the commissioner, or

(C) changes the use of the project, or any portion thereof, without the prior written approval of the commissioner.

No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety; and

(6) The department shall monitor the performance of each project and shall require periodic and annual reports, as applicable, regarding each secondary material utilization or waste prevention project at such time and in such manner as prescribed by the commissioner. The commissioner shall furnish a copy of such reports to the governor, the commissioner of environmental conservation, the majority leader of the senate and the speaker of the assembly.

7. Consultation. The commissioner may consult with other state agencies as appropriate in furthering the purpose of this section.

8. Implementation. In implementing this program, the department shall promulgate rules and regulations. Such rules and regulations may include, but not be limited to, requirements for applications and supporting materials. Such rules and regulations shall also provide in all agreements for financial assistance for immediate repayment of all such financial assistance plus interest and penalties if any portion of a project as defined by paragraph i of subdivision one of section two hundred sixty-one of this article is transferred out of New York state.

ARTICLE 16

OLYMPIC GAMES FACILITATION ACT

§ 340. Short title. This article shall be known, and may be cited, as the "olympic games facilitation act".

§ 341. Statement of legislative intent. It is the intent of the legislature to provide the necessary assurances and commitments required by the United States olympic committee and the international olympic committee in selecting a host city or municipality for the two thousand twelve olympic games. The selection of locations in New York state to host the olympic games will confer significant benefits to the state as a whole and the host municipality through increased tourism, economic growth, job creation and capital improvements. In addition, it is projected that the hosting city and state will receive substantially increased sales and other tax revenues as a direct consequence of hosting the games. Such additional revenues are expected to significantly exceed any potential liability of the municipality and the state associated with this act. Contracts entered into by the state and funds appropriated in accordance with this act shall be used for the sole purpose of fulfilling the joint obligation of the endorsing municipality and the state required by the United States olympic committee or the international olympic committee under a games support contract or any other agreement to indemnify and insure against any net financial deficit resulting from the conduct of the games. In no event shall the combined liability of a host municipality and state exceed two hundred fifty million dollars. It is also the intent of the legislature to support future summer and winter olympics bids by municipalities and the state.

§ 342. Definitions. As used in this article, the following words and terms shall have the following meanings:

(a) "Comptroller" shall mean the state comptroller.

(b) "Division of budget" shall mean the state of New York division of budget.

(c) "Endorsing municipality" shall mean a municipality or municipalities within the state of New York that authorizes a bid by a local organizing committee for selection of such municipality or municipalities as the site of an olympic games.

(d) "Games support contract" shall mean a joinder undertaking, a joinder agreement, and/or a similar contract executed by the state, an endorsing municipality and a site selection organization in connection with the selection of a municipality to host the games, and containing terms authorized or required by this section.

(e) "Guaranty fund" shall mean the olympic games guaranty fund established in section eighty-four-a of the state finance law.

(f) "Joinder agreement" shall mean an agreement entered into by the state, an endorsing municipality and a site selection organization setting out representations and assurances by the state and endorsing municipality in connection with the selection of a site in the endorsing municipality for the location of the olympic games.

(g) "Joinder undertaking" shall mean an agreement entered into by the state, an endorsing municipality and a site selection organization that the state and endorsing municipality will execute a joinder agreement in the event that the site selection organization selects a site in the endorsing municipality for an olympic games.

(h) "Local organizing committee" shall mean a not-for-profit corporation or its successor in interest that: (1) has been authorized by an endorsing municipality to pursue an application and bid on the endorsing municipality's behalf to a site selection organization for selection as the site of an olympic games; or (2) with the authorization of an endorsing municipality, has executed an agreement with a site selection organization regarding a bid to host the olympic games.

(i) "Net financial deficit" shall mean those losses resulting from the conduct of the games which the endorsing municipality and state are obligated to indemnify and insure against pursuant to a games support contract. Expenses or liabilities arising from cancellation of the games or any part thereof due to any cause beyond the local organizing committee's reasonable control, including, but not limited to acts of war, riots and other civil disturbances, acts of God, including, but not limited to flood, fire, weather, and earthquakes, shall not be included in calculating the net financial deficit.

(j) "State" shall mean the state of New York.

(k) "Olympic games" shall mean the two thousand twelve olympic games.

(l) "Site selection organization" shall mean the United States olympic committee or the international olympic committee.

(m) "United States olympic committee" shall mean the official national olympic committee of the United States of America which has been authorized by law to govern all matters relating to national participation in the olympic games.

§ 343. Use and amount of funds. Any monies deposited, transferred or otherwise contained in the olympic games guaranty fund established in section eighty-four-a of the state finance law shall be used for the sole purpose of obtaining adequate security, acceptable to the United States olympic committee and the international olympic committee, to demonstrate the endorsing municipality and state's ability to fulfill its obligations under a games support contract to indemnify and insure up to two hundred fifty million dollars of any net financial deficit resulting from the conduct of the olympic games. Such security may be provided by funds contained in the guaranty fund as provided in this act, or by insurance coverage, letters of credit, or other acceptable secured instruments purchased or secured by such funds, or by any combination thereof. In no event may the combined liability of the endorsing municipality and the state under all games support contracts, or any other agreement related to the conduct of the games, exceed two hundred fifty million dollars in the aggregate.

§ 344. Payor of last resort. The state and endorsing municipality shall be payors of last resort with regard to any net financial deficit as defined in this act. The security provided pursuant to this act may not be accessed to cover any net financial deficit indemnified by the

state and endorsing municipality under the games support contract until:
(a) The security provided by the local organizing committee pursuant to this act is fully expended and exhausted;
(b) Any security provided by any other person or entity is fully expended and exhausted;
(c) The limits of available insurance policies covering the net financial deficit or any expense or liability used in determining the net financial deficit, have been fully expended and exhausted; and
(d) Payment has been sought by the local organizing committee from all third parties owing monies or otherwise liable to the local organizing committee.

§ 345. Execution of contracts. (a) The secretary of state, or his designee, on behalf of the state, and the endorsing municipality may execute a games support contract that is required by a site selection organization in connection with the committee's bid to host an olympic games.
(b) The local organizing committee shall provide any information reasonably requested by the state, with copies to the leaders of both houses of the legislature, and/or the endorsing municipality to assist in reviewing the games support contract.
(c) The secretary of state, or his designee, on behalf of the state, and the endorsing municipality, may agree in a games support contract, that the state and endorsing municipality will fulfill their obligations under a games support contract to indemnify and insure against any net financial deficit resulting from the conduct of the games.
(d) With respect to the olympic games, (1) any liability, any potential liability and financial commitments or liability of the state and endorsing municipality will not exceed two hundred fifty million dollars in the aggregate;
(2) any financial commitments of the state will be satisfied exclusively by recourse of the olympic games guaranty fund in accordance with section eighty-four-a of the state finance law;
(3) notwithstanding any other provision of this act, no agreement entered into pursuant to this act may obligate the state to pay any part of the cost of acquiring any interest in real or personal property, or

the cost of planning, designing, or constructing any improvement to real or personal property, or otherwise financially obligate the state, other than the guaranty specifically provided for in this act.

§ 346. Additional insureds. The local organizing committee shall list the state and the endorsing municipality as additional insureds on any policy of insurance purchased by the local organizing committee to be in effect in connection with the preparation for and conduct of the olympic games.

§ 347. Authority of state agencies. All agencies of the state are authorized, but are not required, to make and enter into agreements with the local organizing committee to provide the local organizing committee with:

(a) such public services as are customarily performed or available from the agency as may be needed by the local organizing committee to host the games; and

(b) such access to and use of any real and personal property owned or controlled by the agency as may be needed by the local organizing committee to host the games.

§ 348. Local organizing committee; responsibilities. (a) The local organizing committee may not engage in any conduct that reflects unfavorably upon this state, the endorsing municipality, or the olympic games, or that is contrary to law or to the rules and regulations of the United States olympic committee and the international olympic committee.

(b) By December first, two thousand five the local organizing committee shall use its reasonable best efforts to provide adequate security, acceptable to the state to demonstrate the local organizing committee's ability to indemnify and insure the first twenty-five million dollars of any net financial deficit resulting from the conduct of the games for which the endorsing municipality and state would be liable under a games support contract. Such security may be provided through the establishment of an internal guaranty fund, insurance coverage, letters of credit, or other acceptable security instruments, or by any combination thereof. Any such security shall identify the endorsing municipality and the state as additional insureds.

ARTICLE 17

EXCELSIOR JOBS PROGRAM ACT

§ 350. Short title. This article shall be known and may be cited as the "excelsior jobs program act".

§ 351. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The excelsior jobs program act is created to support the growth of the state's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

This legislation creates the excelsior jobs program, which has four components: the excelsior jobs tax credit, the excelsior investment tax credit, the excelsior research and development tax credit and the excelsior real property tax credit. These credits are designed to promote business expansion in New York state and increase jobs in the new economy. At the same time, the program protects state taxpayers' dollars by ensuring that New York provides tax benefits only to businesses that have created the promised jobs and made the promised investments.

§ 352. Definitions. For the purposes of this article:

1. "Agriculture" means both agricultural production (establishments performing the complete farm or ranch operation, such as farm owner-operators, tenant farm operators, and sharecroppers) and agricultural support (establishments that perform one or more activities associated with farm operation, such as soil preparation, planting, harvesting, shearing, animal and plant fiber processing, and management, on a contract or fee basis).

1-a. "Animal and plant fiber textile manufacturing" means the processes of harvesting, cleaning, spinning, knitting, weaving, dyeing and finishing textiles containing animal and plant fiber grown or produced predominantly in New York state.

2. "Back office operations" means a business function that may include one or more of the following activities: customer service, information technology and data processing, human resources, accounting and related administrative functions.

3. "Benefit-cost ratio" means the following calculation: the numerator is the sum of (i) the value of all remuneration projected to be paid for all net new jobs during the period of participation in the program, and (ii) the value of capital investments to be made by the business enterprise 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.

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.

4. "Certificate of eligibility" means the document issued by the department to an applicant that has completed an application to be admitted into the excelsior jobs program and has been accepted into the program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility to claim the tax credit.

5. "Certificate of tax credit" means the document issued to a participant by the department, after the department has verified that the participant has met all applicable eligibility criteria in this article. The certificate shall be issued annually if such criteria are satisfied and shall specify the exact amount of each of the tax credit components under this article that a participant may claim, pursuant to section three hundred fifty-five of this article, and shall specify the taxable year in which such credit may be claimed.

5-a. "Child care services" means those services undertaken or sponsored by a participant in this program meeting the requirements of "child day care" as defined in paragraph (a) of subdivision one of section three hundred ninety of the social services law or any child care services in the city of New York whereby a permit to operate such child care services is required pursuant to the health code of the city of New York.

6. "Distribution center" means a large scale facility involving processing, repackaging and/or movement of finished or semi-finished goods to retail locations across a multi-state area.

7. "Entertainment company" means a corporation, partnership, limited partnership, or other entity principally engaged in the production or post production of (i) motion pictures, which shall include feature-length films and television films, (ii) instructional videos, (iii) televised commercial advertisements, (iv) animated films or cartoons, (v) music videos, (vi) television programs, which shall include, but not be limited to, television series, television pilots, and single television episodes, or (vii) programs primarily intended for radio broadcast. "Entertainment company" shall not include an entity (i) principally engaged in the live performance of events, including, but not limited to, theatrical productions, concerts, circuses, and sporting events, (ii) principally engaged in the production of content intended primarily for industrial, corporate or institutional end-users, (iii) principally engaged in the production of fundraising films or programs, or (iv) engaged in the production of content for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production.

8. "Financial services data centers or financial services customer back office operations" means operations that manage the data or accounts of existing customers or provide product or service information and support to customers of financial services companies, including banks, other lenders, securities and commodities brokers and dealers, investment banks, portfolio managers, trust offices, and insurance companies.

8-a. "Green project" means a project deemed by the commissioner to make products or develop technologies that are primarily aimed at reducing greenhouse gas emissions or supporting the use of clean energy in accordance with goals described in chapter one hundred six of the laws of two thousand nineteen. "Green project" shall include, but not be limited to, the manufacture or development of products or technologies or supply chain components primarily for renewable energy systems as defined in section sixty-six-p of the public service law, vehicles that use non-hydrocarbon fuels and produce zero or near zero emissions, heat pumps, energy efficiency, clean energy storage and other products that significantly reduce greenhouse gas emissions by minimizing the utilization of depletable resources or by improving industrial or agricultural efficiency. "Green project" shall not include a project primarily composed of (i) necessarily local activities such as retail, building construction, or the installation, deployment or adoption of a clean energy product or technology at an end user's site, or (ii) the production of products or development of technologies that would produce only marginal and incremental energy savings or environmental benefits ancillary to the core function of the product or technology.

9. "Investment zone" shall mean an area within the state that had been designated under paragraph (i) of subdivision (a) and subdivision (d) of section nine hundred fifty-eight of the general municipal law that was wholly contained within up to four distinct and separate contiguous areas as of the date immediately preceding the date the designation of such area expired pursuant to section nine hundred sixty-nine of the general municipal law.

10. "Life sciences" means agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, academic medical centers, biotechnology, chemical synthesis, chemistry technology, medical diagnostics, genomics, medical image analysis, marine biology, medical devices, medical nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research, medical and neurological clinical trials, health robotics and veterinary science.

11. "Life sciences company" means a business entity or an organization or institution that devotes the majority of its efforts in the various stages of research, development, technology transfer and commercialization related to any life sciences field.

12. "Manufacturing" means the process of working raw materials into products suitable for use or which gives new shapes, new quality or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances, or other similar equipment. "Manufacturing" does not include an operation that involves

only the assembly of components, provided, however, the assembly of motor vehicles or other high value-added products shall be considered manufacturing.

13. "Music production" means the process of creating sound recordings of at least eight minutes, recorded in professional sound studios, intended for commercial release. "Music production" does not include recording of live concerts, or recordings that are primarily spoken word or wildlife or nature sounds, or produced for instructional use or advertising or promotional purposes.

13-a. "Net new child care services expenditures" means the calculation of new, annual participant expenditures on child care services whether internal or provided by a third party (including coverage for full or partial discount of employee rates), minus any revenues received by the participant through a third-party operator (i.e. rent paid to the participant by the child care provider) or employees and may be further defined by the commissioner in regulations. For the purposes of this definition, expenditures for child care services that a participant has incurred prior to admission to this program shall not be eligible for the credit.

14. "Net new jobs" means:

(a) jobs created in this state that (i) are new to the state,

(ii) have not been transferred from employment with another business located in this state including from a related person in this state,

(iii) are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week, and

(iv) are filled for more than six months; or

(b) jobs obtained by an entertainment company in this state (i) as a result of the termination of a licensing agreement with another entertainment company, (ii) that the commissioner determines to be at risk of leaving the state as a direct result of the termination, (iii) that are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week, and (iv) that are filled for more than six months.

15. "Participant" means a business entity that:

(a) has completed an application prescribed by the department to be admitted into the program;

(b) has been issued a certificate of eligibility by the department;

(c) has demonstrated that it meets the eligibility criteria in section three hundred fifty-three and subdivision two of section three hundred fifty-four of this article; and

(d) has been certified as a participant by the commissioner.

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.

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.

18. "Regionally significant project" means (a) a manufacturer creating at least ten net new jobs in the state and making significant capital investment in the state; (b) a business creating at least ten net new jobs in agriculture in the state and making significant capital

investment in the state, (c) a financial services firm, distribution center, or back office operation creating at least one hundred net new jobs in the state and making significant capital investment in the state, (d) a scientific research and development firm creating at least ten net new jobs in the state, and making significant capital investment in the state, (e) a life sciences company creating at least twenty net new jobs in the state and making significant capital investment in the state or (f) an entertainment company creating or obtaining at least two hundred net new jobs in the state and making significant capital investment in the state. Other businesses creating one hundred fifty or more net new jobs in the state and making significant capital investment in the state may be considered eligible as a regionally significant project by the commissioner as well. 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 regionally significant project, including, but not limited to, whether a business exports a substantial portion of its products or services outside of the state or outside of a metropolitan statistical area or county within the state.

19. "Related person" means a "related person" pursuant to subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

20. "Remuneration" means wages and benefits paid to an employee by a participant in the excelsior jobs program.

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.

21. "Research and development expenditures" mean the expenses of the business enterprise that are qualified research expenses under the federal research and development credit under section forty-one of the internal revenue code and are attributable to activities conducted in the state. If the federal research and development credit has expired, then the research and development expenditures shall be calculated as if the federal research and development credit structure and definition in effect in federal tax year two thousand nine were still in effect.

22. "Scientific research and development" means conducting research and experimental development in the physical, engineering, and life sciences, including but not limited to agriculture, animal fiber, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, plant fiber, veterinary, and other allied subjects. For the purposes of this article, scientific research and development does not include medical or veterinary laboratory testing facilities.

23. "Software development" means the creation of coded computer instructions or production or post-production of video games, as defined in subdivision one-a of section six hundred eleven of the general business law, other than those embedded and used exclusively in advertising, promotional websites or microsites, and also includes new media as defined by the commissioner in regulations.

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

25. "Semiconductor supply chain project" means a project deemed by the commissioner to make products or develop technologies that are primarily aimed at supporting the growth of the semiconductor manufacturing and related equipment and material supplier sector. "Semiconductor supply chain project" shall include, but need not be limited to, semiconductor device manufacturing, producers of component parts, direct input materials and equipment necessary for the manufacture of semiconductor chips, machinery, equipment, and materials necessary for the operational efficiency of semiconductor manufacturing facilities, other such inputs directly supportive of the domestic production of semiconductor chips, and companies engaged in the assembly, testing, packaging and advanced packaging semiconductor value chain. "Semiconductor supply chain project" shall not include a project primarily composed of: (i) machinery, equipment, or materials that are inputs to manufacturing generally, but are not direct inputs to semiconductor manufacturing in specific; (ii) the production of products or development of technologies that would produce only marginal and incremental benefits to the

semiconductor manufacturing sector; (iii) projects that would otherwise qualify as a Green CHIPS project as defined in section twenty-four of this section.

§ 353. Eligibility criteria. 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, including in animal and plant fiber textile 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;

(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;

(n) as a Green CHIPS project; or

(o) as a company operating in one of the industries listed in paragraphs (a) through (k) of this subdivision and engaging in a semiconductor supply chain project as defined in section three hundred fifty-two of this article.

2. When determining whether an applicant is operating predominately in one of the industries listed in subdivision one of this section, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

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

4. A business entity operating predominantly in one of the industries referenced in paragraphs (a) through (h) or in paragraph (k) 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.

5. A not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, other than a business operating as an entertainment company as defined in this article and other than a business entity engaged in music production, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity are not eligible to receive the tax credit described in this article.

6. A business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, a business entity may not owe past due state taxes or local property taxes.

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.

§ 354. Application and approval process. 1. A business enterprise must submit a completed application as prescribed by the commissioner. An application made by an entertainment company must be submitted by June first, two thousand fifteen, except for an application made by an entertainment company that is eligible to participate in the excelsior jobs program based upon creating net new jobs pursuant to paragraph (a) of subdivision twelve of section three hundred fifty-two of this article. An application may be recommended by entities, including but not limited to, those created pursuant to subdivision (e) of section nine hundred fifty-seven of the general municipal law.

2. As part of such application, each business enterprise must:

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

(b) Agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

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

(d) Agree to be permanently disqualified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the excelsior jobs program.

(e) Provide the following information to the department upon request:

(i) a plan outlining the schedule for meeting the job and investment requirements as set forth in subdivisions three and four of section three hundred fifty-three of this article. Such plan must include details on job titles and expected salaries;

(ii) the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements;

(iii) the amount and description of projected qualified investments for which it plans to claim the excelsior investment tax credit;

(iv) an estimate of the portion of any federal research and development tax credits, attributable to research and development activities conducted in New York state, that it anticipates claiming for the years it expects to claim the excelsior research and development credit; and

(v) the employer identification or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership.

(f) Provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state.

(g) Certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. (a) After reviewing a business enterprise's completed application and determining that the business enterprise will meet the conditions set forth in subdivisions three and four of section three hundred fifty-three of this article, the department may admit the applicant into the program and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application. This preliminary schedule of benefits delineates the maximum possible benefits an applicant may receive.

(b) Notwithstanding the requirements of this subdivision, an existing participant in the excelsior jobs program may be eligible for an enhanced investment tax credit on projects for child care services and the excelsior child care services tax credit component, provided:

(i) the participant is in compliance with the requirements of this article;

(ii) the participant is not, at the time of application to the department for either the enhanced investment tax credit on projects for child care services or the excelsior child care tax credit component, either operating a child care facility or sponsoring child care services for its employees; and

(iii) the participant is seeking to provide such services on condition of receipt of additional tax credits attributable to child care services. Such existing participant may apply to the department for the benefit as defined in section three hundred fifty-five of this article. In no circumstances shall the benefit term for child care services exceed the existing participant's existing benefit term in its preliminary schedule of benefits.

4. In order to become a participant in the program, an applicant must submit evidence that it satisfies the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section in such form as the commissioner may prescribe. After reviewing such evidence and finding it sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit for one taxable year. To receive a certificate of tax credit for subsequent taxable years, the participant must submit to the department a performance report demonstrating that the participant continues to satisfy the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section. If such eligibility criteria is met, a participant can receive tax credits based on interim job, investment or research and development milestones. A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

5. A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later. A participant may claim such benefits for the next nine consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section in each of those taxable years, and provided that no tax credits may be allowed for taxable years beginning on or after January first, two thousand forty. If, in any given year, a participant who has satisfied the eligibility criteria specified in section three hundred fifty-three of this article realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated

amount, provided the proportion is at least seventy-five percent of the jobs estimated.

§ 355. Excelsior jobs program credit. 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. In a semiconductor supply chain project, the amount of such credit per job shall be equal to the product of the gross wages paid and up to seven 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, 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. In a semiconductor supply chain project, the credit shall be up to three 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 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.

2-a. Excelsior child care services tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on its net new child care services expenditures for its operation, sponsorship or direct financial support of a child care services program. The credit shall be up to six percent of the net new child care services expenditures as defined in this chapter.

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, or if a semiconductor supply chain project, the excelsior research and development tax credit shall not exceed seven percent of the qualified 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 qualified emerging technology company facilities, operations and training credit under the tax law.

4. Excelsior real property tax credit component. (a) A participant in the excelsior jobs program who either qualified as a regionally significant project or is located in an investment zone shall be eligible to claim a credit for a period of ten years.

(b) The credit in year one shall be equal to fifty percent of the eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone. In the remaining years the credit shall be computed according to the following schedule:

Year two: forty-five percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year three: forty percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year four: thirty-five percent of eligible real property taxes on real property comprising the regionally significant project or located in the investment zone;

Year five: thirty percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year six: twenty-five percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year seven: twenty percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year eight: fifteen percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year nine: ten percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone; and

Year ten: five percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone.

(c) For purposes of this credit, the term "eligible real property taxes" shall have the same meaning as in subdivision (e) of section fifteen of the tax law, provided that such subdivision (e) shall be read as if it specifically referenced the excelsior jobs program and participants in that program.

(d) In calculating the excelsior real property tax credit and determining the maximum aggregate amount of such credit component in the preliminary schedule of benefits, the commissioner shall include any improvements projected to be made by the taxpayer to the property comprising the regionally significant project or located in the investment zone as listed in its application for participation in the excelsior jobs program.

5. Refundability of credits. The tax credit components established in this section shall be refundable as provided in the tax law. If a participant fails to satisfy the eligibility criteria in any one year, it will lose the ability to claim credit for that year. The event of such failure shall not extend the original ten-year eligibility period.

6. Claim of tax credit. The business enterprise shall be allowed to claim the credit as prescribed in section thirty-one of the tax law. No costs used by an entertainment company as the basis for the allowance of a tax credit described in this section shall be used by such entertainment company to claim any other credit allowed pursuant to the tax law. No costs or expenditures for child care services used by a participant to claim the credit as prescribed in section forty-four of the tax law shall be used for the allowance of a tax credit described in this section.

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.

§ 356. Powers and duties of the commissioner. 1. The commissioner shall promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section three hundred fifty-nine of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participants. Participants must include the certificate of tax credit with their tax return to receive any tax benefits under this article.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision two of section three hundred fifty-four of this article, or for failing to meet the minimum job or investment requirements set forth in subdivisions three and four of section three hundred fifty-three of this article.

§ 357. Maintenance of records. Each participant shall keep all relevant records for their duration of program participation plus three years.

§ 358. Reporting. 1. Each participant must submit a performance report annually, in such form as the commissioner may require, within thirty days of the end of their taxable year.

2. The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June thirtieth, two thousand eleven, and every three months thereafter. Such report shall include, but not be limited to, the following: number of applicants; number of participants approved; names of participants; total amount of benefits certified; benefits received per participant; total number of net new jobs created; number of net new

jobs created per participant; aggregate new investment in the state; new investment per participant; and such other information as the commissioner determines.

3. The commissioner shall prepare on a quarterly basis information related to the utilization of the excelsior child care services tax credit component for inclusion in the quarterly excelsior jobs program tax credit reports required pursuant to subdivision two of this section. Such information shall include, but need not be limited to the following: number of applicants; number of participants approved; total net new child care services expenditures certified; total amount of benefits certified; benefits received per participant. On an annual basis, businesses participating in the excelsior child care services credit shall report to the department on the number of employees participating in child care services supported by the credit.

§ 359. Cap on tax credit. 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 subdivision. 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
$ 200 million	2030
$ 200 million	2031
$ 200 million	2032
$ 200 million	2033
$ 200 million	2034

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

fifty.

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.

ARTICLE 17-A

SEMICONDUCTOR RESEARCH AND DEVELOPMENT PROJECT PROGRAM

§ 359-a. Short title. This article shall be known and may be cited as the "semiconductor research and development project act".

§ 359-b. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to create competitive financial incentives to attract large scale semiconductor research and development projects to New York state, and to position New York state to be at the center of cutting edge innovations in the semiconductor industry.

§ 359-c. Definitions. For the purposes of this article:

1. "Certificate of eligibility" means the document issued by the department to an applicant that has completed an application to be admitted into the semiconductor research and development project program and has been accepted into the program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility to claim the tax credit.

2. "Certificate of tax credit" means the document issued to a participant by the department, after the department has verified that the participant has met all applicable eligibility criteria in this article. The certificate shall be issued annually if such criteria are satisfied and shall specify the exact amount of the tax credit under this article that a participant may claim and shall specify the taxable year in which such credit may be claimed.

3. "Participant" means a business entity that:

(a) has completed an application prescribed by the department to be admitted into the program;

(b) has been issued a certificate of eligibility by the department;

(c) has demonstrated that it meets the eligibility criteria in section three hundred fifty-nine-d and subdivision two of section three hundred fifty-nine-e of this article; and

(d) has been certified as a participant by the commissioner.

4. "Preliminary schedule of benefits" means the aggregate amount of the tax credit that a participant in the semiconductor research and development project program may be eligible to receive pursuant to this article. The schedule shall indicate the annual amount 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.

5. "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.

6. "Semiconductor research and development project" means a project for a physical research and development facility, deemed by the commissioner as being primarily aimed at supporting research and development within the semiconductor manufacturing and related equipment and material supplier sector. Such project shall incur at least one hundred million dollars in qualified investment in New York state. Such project must lead to the establishment and operation of a research and development facility separate and apart from new or existing semiconductor or semiconductor supply chain manufacturing facilities.

§ 359-d. Eligibility criteria. 1. To be a participant in the semiconductor research and development project program, a business entity shall operate in New York state and be undertaking a semiconductor research and development project as defined in section three hundred fifty-nine-c of this article.

2. A business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, a business entity may not owe past due state taxes or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

§ 359-e. Application and approval process. 1. A business enterprise must submit a completed application as prescribed by the commissioner.

2. As part of such application, each business enterprise must:

(a) Agree to allow the department of taxation and finance to share the business enterprise's tax information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;

(b) Agree to allow the department of labor to share its employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;

(c) Allow the department and its agents access to any and all books and records the department may require to monitor compliance;

(d) Provide to the department, upon request, a plan outlining the schedule for meeting the investment requirements as set forth in subdivision six of section three hundred fifty-nine-c of this article. Such plan must include the amount and description of projected qualified investments for which it plans to claim the semiconductor research and development tax credit;

(e) Agree to allow the department and the department of taxation and finance to share and exchange information contained in or derived from the applications for admission into the semiconductor research and development project program and the credit claim forms submitted to the department of taxation and finance. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(f) Certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. After reviewing a business enterprise's completed application and determining that the business enterprise will meet the condition set forth in subdivision six of section three hundred fifty-nine-c of this article, the department may admit the applicant into the program and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application. This preliminary schedule of benefits delineates the maximum possible benefits an applicant may receive.

4. In order to become a participant in the program, an applicant must

submit evidence that it satisfies the eligibility criteria specified in section three hundred fifty-nine-d of this article and subdivision two of this section in such form as the commissioner may prescribe. After reviewing such evidence and finding it sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit for one taxable year. To receive a certificate of tax credit for subsequent taxable years, the participant must submit to the department a performance report demonstrating that the participant continues to satisfy the eligibility criteria specified in this article.

5. A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit. A participant may claim such benefits for the next nine consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in section three hundred fifty-nine-d of this article and subdivision two of this section in each of those taxable years.

§ 359-f. Powers and duties of the commissioner. 1. The commissioner may promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section three hundred fifty-nine-g of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participants. Participants must include the certificate of tax credit with their tax return to receive any tax benefits under this article.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements

set forth in subdivision six of section three hundred fifty-nine-c of this article and section three hundred fifty-nine-d of this article.

§ 359-g. Semiconductor research and development tax credit. 1. A participant in the semiconductor research and development project program shall be eligible to claim a credit on qualified investments in semiconductor research and development projects in New York state. The amount of such credit shall be equal to fifteen percent of the cost or other basis for federal income tax purposes of the qualified investment.

2. The total amount of tax credits listed on certificates of tax credit issued by the commissioner shall be allotted from the funds available for Green CHIPS tax credits as provided under subdivision four of section three hundred fifty-nine of this chapter.

§ 359-h. Reporting. The corporation, beginning February first, two thousand twenty-seven, and annually thereafter provided program funds remain, shall submit a report to the governor, the temporary president of the senate, and the speaker of the assembly. Such annual report shall include, but need not be limited to: the number of participants approved for the program; names of business entities admitted to the program; regional economic development council region wherein the project resides; the total amount of benefits approved per business and in total for the program; total private sector co-investment provided by each approved business and in total for the program; total jobs created at the project location for all years in which the recipient is receiving benefits under the program, including the median wage paid to employees at the project location and types of jobs created; and such other information as the commissioner determines is necessary and appropriate. Additionally, in all years in which the program is fully operational, such report shall include noteworthy projects which serve to highlight the developments occurring in New York state as a result of the program. Such report shall be included on the corporation's website and all program participants shall also be included in the database of economic incentives as defined in section fifty-eight of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight constituting the urban development corporation act.

* ARTICLE 18

DIVISION OF SCIENCE, TECHNOLOGY AND INNOVATION

* NB There are 2 Art. 18's

§ 360. Division of science, technology and innovation. 1. Economic development efficiency. In order to promote economic development efficiency in the state of New York, the transfer of powers, functions and affairs of the New York state foundation for science, technology and innovation is hereby authorized and there is hereby created within the department the division of science, technology and innovation. Notwithstanding the foregoing, the small business technology investment fund and cash assets of the New York state foundation for science, technology and innovation shall be transferred to the urban development corporation pursuant to subdivision twelve of this section.

2. Transfer of powers of the New York state foundation for science, technology and innovation. The functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation, as established pursuant to article ten-A of the public authorities law and article ten-B of the executive law, with the exception of the small business technology investment fund and cash assets of the New York state foundation for science, technology and innovation shall be transferred and assigned to, and assumed by and devolved upon, the department. Notwithstanding the foregoing, any programs specified in law to be administered by the New York state foundation for science, technology and innovation shall be administered by the department only to the extent of available appropriations.

3. Abolition of the New York state foundation for science, technology

and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation, as established pursuant to article ten-A of the public authorities law and article ten-B of the executive law, the New York state foundation for science, technology and innovation shall be abolished.

3-a. Notwithstanding any other provision of law, rule, or regulation to the contrary, upon the transfer of functions from the New York state foundation for science, technology and innovation pursuant to this section, employees of the New York state foundation for science, technology and innovation, as determined by the commissioner in his or her discretion, who are necessary to the continuation of the transferred functions and substantially engaged in the performance of the transferred functions shall be transferred to the department. Employees transferred pursuant to this section shall be transferred without further examination or qualification and shall retain their respective civil service classifications or the equivalent thereof.

4. Continuity of authority of the New York state foundation for science, technology and innovation. Except as herein otherwise provided, upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section for the purpose of succession of all functions, powers, duties and obligations of the New York state foundation for science, technology and innovation, the department and the urban development corporation, as appropriate shall be deemed to and be held to constitute the continuation of such functions, powers, duties and obligations and not a different agency or authority.

5. Transfer of records of the New York state foundation for science,

technology and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section, all books, papers, records and property pertaining to the New York state foundation for science, technology and innovation shall be transferred to and maintained by the department and the urban development corporation, as appropriate.

6. Completion of unfinished business of the New York state foundation for science, technology and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section, any business or other matter undertaken or commenced by the New York state foundation for science, technology and innovation pertaining to or connected with the functions, powers, obligations and duties so transferred and assigned to the department may be conducted or completed by the department and the urban development corporation, as appropriate.

7. Terms occurring in laws, contracts or other documents of or pertaining to the New York state foundation for science, technology and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law, whenever the New York state foundation for science, technology and innovation and the executive director thereof, the functions, powers, obligations and duties of which are transferred to the department and the urban

development corporation are referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties transferred and assigned pursuant to this section, such reference or designation shall be deemed to refer to the department and its commissioner or the urban development corporation and its president and chief executive officer, as appropriate, or his or her designee.

8. Existing rights and remedies of or pertaining to the New York state foundation for science, technology and innovation preserved. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to the executive law and the public authorities law to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section, no existing right or remedy of the state, including the New York state foundation for science, technology and innovation, shall be lost, impaired or affected by reason of this section.

9. Pending actions and proceedings of or pertaining to the New York state foundation for science, technology and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law transfer to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section, no action or proceeding pending on the effective date of this section, brought by or against the New York state foundation for science, technology and innovation or executive director thereof shall be affected by any provision of this section, but the same may be prosecuted or defended in the name of the department or the urban development corporation, as appropriate. In all such actions and proceedings, the department and the urban development corporation, as appropriate, upon application to the court, shall be substituted as a party.

10. Continuation of rules and regulations of or pertaining to the New York state foundation for science, technology and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law transfer to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section, all rules, regulations, acts, determinations and decisions of the New York state foundation for science, technology and innovation, pertaining to the functions transferred and assigned by this section to the department and the urban development corporation, as appropriate, in force at the time of such transfer, assignment, assumption and devolution shall continue in force and effect as rules, regulations, acts, determinations and decisions of the department and the urban development corporation, as appropriate, until duly modified or repealed.

11. Transfer of appropriations heretofore made to the New York state foundation for science, technology and innovation. Upon the transfer pursuant to subdivisions two and twelve of this section of the functions and powers possessed by and all of the obligations and duties of the New York state foundation for science, technology and innovation as established pursuant to such provisions of the executive law and the public authorities law to the department as prescribed by subdivision two of this section and to the urban development corporation pursuant to subdivision twelve of this section, all appropriations and reappropriations which shall have been made available as of the date of such transfer to the New York state foundation for science, technology and innovation or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, shall be transferred to and made available for use and expenditure by the department or the urban development corporation as deemed appropriate by the commissioner and shall be payable on vouchers certified or approved by the commissioner of taxation and finance, on audit and warrant of the comptroller. Payments of liabilities for expenses of personal services,

maintenance and operation which shall have been incurred as of the date of such transfer by the New York state foundation for science, technology and innovation, and for liabilities incurred and to be incurred in completing its affairs shall also be made on vouchers certified or approved by the commissioner, on audit and warrant of the comptroller.

12. Transfer of certain assets and liabilities. Upon the transfer pursuant to subdivision two of this section of the functions and powers possessed by and all the obligations and duties of the New York state foundation for science, technology and innovation, as established pursuant to article ten-A of the public authorities law and article ten-B of the executive law as prescribed by subdivision two of this section, all cash assets of the New York state foundation for science, technology and innovation, and all assets, records, and liabilities of the small business technology investment fund (SBTIF) established pursuant to appropriations made by various chapters of the law including, but not limited to chapter fifty-three of the laws of nineteen hundred eighty-one, chapter fifty-three of the laws of nineteen hundred eighty-five, chapter fifty-three of the laws of nineteen hundred eighty-six, chapter fifty-three of the laws of nineteen hundred eighty-seven, chapter fifty-three of the laws of nineteen hundred eighty-eight, chapter fifty-three of the laws of nineteen hundred eighty-nine, chapter fifty-three of the laws of nineteen hundred ninety, chapter fifty-three of the laws of nineteen hundred ninety-one, chapter fifty-three of the laws of nineteen hundred ninety-two, chapter fifty-three of the laws of nineteen hundred ninety-three, chapter fifty-three of the laws of nineteen hundred ninety-four, and chapter fifty-three of the laws of nineteen hundred ninety-five shall be transferred to the urban development corporation.

13. Severability. If any clause, sentence, paragraph or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 361. New York state empire artificial intelligence research program. 1. Definitions. Whenever used in this section:

(a) "Division" shall mean the division of science, technology, and innovation within the department.

(b) "Empire AI consortium" or "the consortium" shall be the not-for-profit corporation created to construct and manage the institute.

(c) "Institute" shall mean the empire AI research institute at the university of Buffalo established pursuant to subdivision two of this section.

2. Empire AI research institute at the university of Buffalo. A state-owned research and computing facility at the state university of New York at Buffalo shall be established, to be known as the empire AI research institute, to promote responsible research and development to advance the ethical and public interest uses of artificial intelligence technology in the state. The institute shall be operated and managed by the consortium. Construction of the institute shall be completed by the university at Buffalo, its affiliates or related entities at the direction of the consortium, or the consortium.

3. Labor standards. Any construction project done pursuant to this section or using the moneys appropriated by New York state for the purposes of this section, shall require the use of a project labor agreement, as defined in subdivision one of section two hundred twenty-two of the labor law, for all contractors and subcontractors on the project, consistent with paragraph (a) of subdivision two of section two hundred twenty-two of the labor law.

4. Energy efficiency. The division, in cooperation with the urban development corporation and the empire AI consortium, shall work with the power authority of New York, the New York state energy research and development authority, and the department of environmental conservation to ensure a reliable and sufficient clean energy supply for the institute, to maximize the energy efficiency of the facility or

facilities and equipment of the institute, and minimize emissions and negative environmental impacts, including from the use of freshwater resources, from constructing, operating, and of maintaining the institute.

* ARTICLE 18

ECONOMIC TRANSFORMATION AND FACILITY REDEVELOPMENT PROGRAM

* NB Repealed December 31, 2026

* NB There are 2 Art. 18's

*** § 400. Definitions.** For the purposes of this article:

1. "Benefit-cost ratio" means the following calculation: the numerator is the sum of (i) the value of all remuneration projected to be paid for all net new jobs during the period of participation in the program, and (ii) the cost of qualified investments to be made by the business entity during the period of participation in the program, and the denominator is the amount of total tax benefits under this article that is projected to be used and refunded.

2. "Certificate of eligibility" means the document issued by the department to an applicant that demonstrates that the applicant has been admitted as a participant into the economic transformation and facility redevelopment program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility of the participant to claim the tax credits allowed pursuant to section thirty-five of the tax law.

3. "Net new jobs" means jobs created in the economic transformation area that:

(a) are new to the area;

(b) have not been transferred from employment in this state with the participant or with a related person in this state, and are not replacing jobs with similar titles or job responsibilities;

(c) are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week;

(d) are filled for more than six months in a taxable year;

(e) are not general executive officers of the participant; and

(f) may not be filled with individuals having the familial relationship defined in section 267(c)(4) of the internal revenue code with any owner of the participant.

4. "Participant" means a business entity that:

(a) is a new business as defined in subdivision nine of this section.

(b) has completed an application prescribed by the department to be admitted into the program;

(c) has demonstrated how it plans to meet the eligibility criteria in section four hundred one of this article; and

(d) has been issued a certificate of eligibility by the department.

(e) provided, however that the requirement in paragraph (a) of this subdivision that the participant be a new business shall not apply to a closed facility as defined in paragraph (d) of subdivision eleven of this section.

5. "Preliminary schedule of benefits" means the estimated aggregate amount of the tax credits that a participant in the economic transformation and facility redevelopment program is eligible to receive pursuant to section thirty-five of the tax law. The schedule shall indicate the annual amount of each credit a participant expects to claim in each of its five years of eligibility.

6. "Qualified investment" means an investment in tangible property (including a building or a structural component of a building) owned by a business entity 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 an economic transformation area in this state in which it is certified; and

(e) is placed in service in an economic transformation area in the state on or after the date the certificate of eligibility is issued to the business entity.

7. "Related person" means a "related person" pursuant to subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

8. "Remuneration" means wages paid to and benefits received by an employee by a participant in the economic transformation and facility redevelopment program.

9. "New business" means a business entity that satisfies all of the following tests:

(a) the business entity must not be currently operating or located within the economic transformation area in which it is applying for certification;

(b) the business entity must not be moving existing jobs into the economic transformation area in which it is applying for certification from another area of the state;

(c) the business entity must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under section one hundred eighty-three or one hundred eighty-four or former section one hundred eighty-five of article nine, former section one hundred eighty-six or article nine-A, twenty-two, thirty-two or thirty-three of the tax law or the income or losses of which is or was includable under article twenty-two of the tax law;

(d) the business entity must not have caused individuals to transfer from existing employment with a related person and located in New York state to similar employment with the business entity;

(e) the business entity must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is applying for certification if that real property was previously owned by an entity with similar ownership, regardless of form of incorporation or organization; and

(f) the business entity must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification.

10. "Economic transformation area" means:

(a) In the region of the state outside of the metropolitan commuter transportation district (as defined in section twelve hundred sixty-two of the public authorities law) and the port authority district (as defined by article two of chapter one hundred fifty-four of the laws of nineteen hundred twenty-one), an area within a five mile radius in this state of a closed facility. If more than sixty persons were employed in full-time positions at a closed facility on April first, two thousand eleven, then it is the area within a ten mile radius in this state of that closed facility. The commissioner may increase the radius of the area from ten miles to up to fifteen miles in this state based on factors including but not limited to population density, the poverty rate, the unemployment rate and the loss of jobs in the region. However, the increased radius may not extend into the metropolitan commuter transportation district. The commissioner may also decrease the radius of the ten mile area but to no less than a five mile radius based on factors including but not limited to population density, the poverty rate, the unemployment rate and the loss of jobs in the region. Upon notification of the commissioner, pursuant to subdivision eleven of this section, the commissioner shall establish the size of the transformation area prior to the acceptance of any applications into the program.

(b) In the metropolitan commuter transportation district outside the port authority district, an area within a one mile radius in this state of a closed facility. If more than sixty persons were employed in full-time positions at a closed facility on April first, two thousand eleven, then it is the area within a five mile radius in this state of that closed facility, provided that the commissioner may decrease the radius of the expanded area but to no less than a one mile radius based on factors including but not limited to population density, the poverty rate, the unemployment rate, and the loss of jobs in the area and whether the radius would extend outside of the metropolitan commuter transportation district. Upon notification of the commissioner pursuant to subdivision eleven of this section, the commissioner shall establish the size of the transformation area prior to the acceptance of any applications into the program.

(c) In the port authority district, an area limited to the site of the closed facility.

(d) Notwithstanding paragraph (b) of this subdivision, with respect to a closed facility described in paragraph (d) of subdivision eleven of this section, the economic transformation area shall consist only of the acreage of the closed facility.

11. "Closed facility" means:

(a) a correctional facility, as defined in paragraph (a) of subdivision four of section two of the correction law, that has been selected by the governor of the state of New York for closure after April first, two thousand eleven but no later than March thirty-first, two thousand twenty-six; or

(b) a facility operated by the office of children and family services under article nineteen-G of the executive law that is closed pursuant to authority granted to such office in a chapter of the laws of two thousand eleven; or

(c) which has been closed provided that the commissioner of correctional services or the commissioner of the office of children and family services has notified the commissioner of such closure; or

(d) a facility previously owned by the state, and when operated, was operated as a psychiatric facility pursuant to section 7.17 of the mental hygiene law, and located within the metropolitan commuter transportation district but outside New York city.

* NB Repealed December 31, 2026

*** § 401. Eligibility criteria.** 1. In order to be eligible for benefits in the economic transformation and facility redevelopment program, a participant must satisfy the following criteria:

(a) must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; and

(b) must be in compliance with all worker protection and environmental laws and regulations; and

(c) must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and

(d) the location of the participant's operations for which it seeks tax benefits must be wholly located within the economic transformation area.

2. A business entity that is primarily operated as a retail business is not eligible to participate in the economic transformation and facility redevelopment program if their application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the economic transformation and facility redevelopment program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state shall not be eligible to participate in the economic transformation and facility redevelopment program. Provided however that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility.

3. Additional eligibility criteria may be developed pursuant to regulations promulgated by the commissioner. The additional eligibility criteria may include, but not be limited to, alignment with any adaptive reuse plan for a closed facility developed by the department.

4. A business entity must continue to satisfy the employment requirements in subdivision one of this section in each year in which it claims the economic transformation and facility redevelopment tax credits. Prior to claiming the economic transformation and facility

redevelopment tax credits in the final year of its five year benefit period, a business entity must demonstrate to the commissioner that it has created the jobs and made the qualified investments necessary to meet a benefit-cost ratio of at least ten to one.

* NB Repealed December 31, 2026

*** § 402. Application and approval process.** 1. A business entity must submit a completed application as prescribed by the commissioner by the later of (a) the date that is three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (b) January first, two thousand fifteen. Provided however, in the case of a closed facility described in paragraph (d) of subdivision eleven of section four hundred of this article, a business entity must submit a completed application as prescribed by the commissioner by September first, two thousand sixteen.

2. As part of such application, each business entity must:

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

(b) Agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(c) Agree to not participate in the excelsior jobs program, the New York state empire zones program, or claim any tax credits under the brownfield cleanup program if admitted into the economic transformation and facility redevelopment program with regard to the facility (or facilities) located in the economic transformation area.

(d) Provide the following information to the department upon request:

(i) a plan outlining the schedule for meeting the job and investment requirements set forth in section four hundred one of this article, including details on job titles and expected salaries;

(ii) the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements;

(iii) the amount and description of projected qualified investments for which it plans to claim the economic transformation and facility redevelopment investment tax credit;

(iv) the employer identification numbers or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership.

(e) Provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state.

(f) Certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

(g) Agree, to the extent practicable, to consider for employment persons displaced by a facility closure.

3. After reviewing a business entity's completed application and determining that the business entity satisfies the requirements in subdivision four of section four hundred of this article and will meet eligibility requirements set forth in section four hundred one of this article, the department may, at the discretion of the commissioner, admit the applicant into the program and provide the applicant with a certificate of eligibility. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the economic transformation and facility redevelopment program tax credits.

4. A participant may claim tax credits pursuant to section thirty-five of the tax law commencing in the first taxable year in which the participant creates five net new jobs. A participant may claim such benefits for the next four consecutive taxable years, provided that the participant demonstrates to the commissioner of taxation and finance that it continues to maintain five net new jobs. However, in no event may that benefit period start later than two years after the certificate of eligibility is issued. The participant may also be eligible for the

economic transformation and facility redevelopment sales tax refund.
* NB Repealed December 31, 2026

*** § 403. Powers and duties of the commissioner.** 1. The commissioner shall promulgate regulations establishing an application process and eligibility criteria set forth in section four hundred one of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. When considering an application, the commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the program.

3. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of eligibility that shall be issued by the commissioner to participants. Participants must include a copy of the certificate of eligibility with their tax return to receive any tax benefits under section thirty-five of the tax law. Participants must also include a copy of the certificate of eligibility with their application for the real property tax exemption authorized by section four hundred eighty-five-p of the real property tax law, if such exemption is available where the property is located.
* NB Repealed December 31, 2026

*** § 404. Reporting.** The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June thirtieth, two thousand twelve, and every three months thereafter. Such report shall include, but not be limited to, the following: number of applicants; number of participants approved; names of participants; total amount of projected benefits certified by type of benefit; total number of projected new jobs to be created; number of projected net new jobs created per participant; aggregate projected new investment in the state; projected new investment per participant; and such other information as the commissioner determines.

* NB Repealed December 31, 2026

ARTICLE 19

CENTERS OF EXCELLENCE PROGRAM

§ 410. Centers of excellence program. The centers of excellence program is hereby established for the purpose of fostering collaboration between the academic research community and the business sector to develop and commercialize new products and technologies, to promote critical private sector investment in emerging high technology fields in New York state, and to create and expand technology-related businesses and employment.

1. Such centers are designated to operate pursuant to section three of part T of chapter eighty-four of the laws of two thousand two in areas identified by the department as having significant potential for economic growth in New York, or in which the application of new technologies could significantly enhance the productivity and stability of New York businesses.

2. As a condition of receipt of support authorized pursuant to this section, each center shall annually submit to the department a plan for commercializing products or processes based on innovations developed at center facilities, and specifically such center's strategy for commercializing such products or processes within New York state.

3. (a) From such funds as may be appropriated for this purpose by the legislature, the department may provide financial support, through contracts or other means, in order to enhance and accelerate center operations in joint university/industry research and development, product commercialization, and workforce training. Funds received pursuant to this subdivision may be used for the employment of faculty

and staff, provision of graduate fellowships, or other operating expenses that are aligned with the center's commercialization strategy and approved by the department.

(b) Funds shall be matched on a one to one basis by the institution receiving the funds and collaborative partners in the form of cash or in-kind personnel, equipment, material donations, and other facility and operations expenditures.

4. (a) The commissioner shall, on or before February first, two thousand twelve and every year thereafter, submit to the governor, the temporary president of the senate and the speaker of the assembly a report on the operations and accomplishments of the centers of excellence.

(b) The annual report shall provide, but not be limited to, the following information for each calendar year:

(i) the purposes for which center facilities, equipment, and personnel were utilized;

(ii) a detailed operating budget, including the amount of state funds received, as well as identification of each source of federal, state, local or private funds, including in-kind contributions;

(iii) an accounting of capital expenditures, identifying the amount of state funds utilized, as well as each source of federal, state, local, or private funds, including in-kind contributions;

(iv) a description of the governance structure of the center including the respective roles of collaborating partners;

(v) the economic impact of the activities undertaken with state funds, including such factors as jobs created and maintained; the number of patents awarded to the college or university or any private entity and associated licensing revenues; and awards, designations and other tangible evidence of recognition; and the methodology utilized to determine such impact;

(vi) the actual or anticipated new products and processes with commercial application of importance to the industries in the state;

(vii) a description of any relationships with secondary schools and community colleges designed to foster student interest in scientific and technical careers; and

(viii) a description of each research sponsorship agreement, intellectual property ownership agreement, intellectual property license agreement, or any other agreements entered into between the state funded research institutions and each research partner.

5. The commissioner shall, on or before February first, two thousand twelve and every year thereafter, submit to the governor, the temporary president of the senate and the speaker of the assembly an overall strategic plan for the centers of excellence program.

(a) The plan shall include the broad focus and mission of the center and the strategies used to determine that focus including but not limited to collaboration with local and regional economic development entities to determine current and emerging high-tech industry clusters.

(b) Such plan shall also include the metrics that will be used to determine whether and to what degree each center is maintaining its focus and fulfilling its mission.

(c) The plan shall be assessed by the governing board of the center and revised annually as appropriate. Any revisions shall be submitted to the department for approval.

ARTICLE 20
EMPIRE STATE JOBS RETENTION PROGRAM

§ 420. Short title. This article shall be known and may be cited as the "empire state jobs retention program."

§ 421. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to create competitive financial incentives to retain businesses, including small businesses and jobs that are at risk of leaving the state or closing operations due to the impact on its business operations of an event leading to an emergency declaration by the governor. The empire state jobs retention program is created to support the retention of the state's businesses, including small businesses in the event of an emergency.

This legislation creates a jobs tax credit for each job of a business, including a small business directly impacted by an emergency and protects state taxpayers' dollars by ensuring that New York provides tax benefits only to businesses that can demonstrate substantial physical damage and economic harm resulting from an event leading to an emergency declaration by the governor.

§ 422. Definitions. For the purposes of this article:

1. "Certificate of eligibility" means the document issued by the department to an applicant that has completed an application to be admitted into the empire state jobs retention program and has been accepted into the program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility to claim the tax credit.

2. "Certificate of tax credit" means the document issued to a participant by the department, after the department has verified that the participant has met all applicable eligibility criteria in this article. The certificate shall be issued annually if such criteria are satisfied and shall specify the exact amount of each tax credit under this article that a participant may claim, pursuant to section four hundred twenty-five of this article, and shall specify the taxable year in which such credit may be claimed.

3. "Impacted jobs" means jobs at a business enterprise existing the day before an event leading to an emergency declaration by the governor at a location or locations which demonstrate substantial physical damage and economic harm caused by the event for which the emergency declaration was made.

4. "Participant" means a business entity that:

(a) has completed an application prescribed by the department to be admitted into the program;

(b) has been issued a certificate of eligibility by the department;

(c) has demonstrated that it meets the eligibility criteria in section four hundred twenty-three and subdivision two of section four hundred twenty-four of this article; and

(d) has been certified as a participant by the commissioner.

5. "Preliminary schedule of benefits" means the maximum aggregate amount of the tax credit that a participant in the empire state jobs retention program is eligible to receive pursuant to this article. The schedule shall indicate the annual amount of the credit a participant may claim in its six months 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 chapter.

6. "Related person" means a related person pursuant to subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

7. "Business entity" means a for profit business duly authorized to do business in and in good standing in the state of New York.

§ 423. Eligibility criteria. 1. For the purposes of this article, in order to participate in the empire state jobs retention program on or after June first, two thousand twenty-five, a business entity must demonstrate substantial physical damage and economic harm at a location or locations within an area for which the governor has issued an emergency declaration and resulting from the event leading to the emergency declaration by the governor. At the time of application, a business entity shall submit to the department a plan to retain, restore or increase staffing levels within one year from the date of application to at least the staffing levels that existed at the site the day prior to the date of the applicable declaration of the state of emergency. Any recipient that does not adhere to its jobs retention plan, shall have its program award rescinded unless the recipient can demonstrate economic hardship to the commissioner, in which case any such program award may be reduced proportionally by the number of employees not restored or retained.

2. A business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, a business entity may not owe past due state taxes. In addition, a business entity must not owe local property taxes for any year prior to the year in which it applies to participate in the empire state jobs retention program.

§ 424. Application and approval process. 1. A business entity must submit a completed application as prescribed by the commissioner. Such completed application must be submitted to the commissioner within one hundred eighty days of the declaration of an emergency by the governor in the county in which the business enterprise is located; provided, however, that the eligibility period for the credit shall begin upon the date of declaration of an emergency by the governor covering the county in which the business entity is located.

2. As part of such application, each business entity must:

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

(b) agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(c) allow the department and its agents access to any and all books and records the department may require to monitor compliance.

(d) agree to be permanently disqualified for empire zone tax benefits at any location or locations that qualify for empire state jobs retention program benefits if admitted into the empire state jobs retention program.

(e) provide the following information to the department upon request:

(i) a plan outlining the schedule for meeting the jobs retention requirements as set forth in subdivision one of section four hundred twenty-three of this article. Such plan must include details on jobs titles and expected salaries;

(ii) the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements; and

(iii) the employer identification or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership.

(f) provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state.

(g) certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. After reviewing a business enterprise's completed application and determining that the business enterprise will meet the conditions set forth in subdivision one of section four hundred twenty-three of this article, the department may admit the applicant into the program and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application. This preliminary schedule of benefits delineates the maximum possible benefits an applicant may receive.

4. In order to become a participant in the program, an applicant must submit evidence that it satisfies the eligibility criteria specified in

section four hundred twenty-three of this article and subdivision two of this section in such form as the commissioner may prescribe. After reviewing such evidence and finding it sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit.

5. A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later.

§ 425. Empire state jobs retention program credit. 1. A participant in the empire state jobs retention program shall be eligible to claim a credit for the impacted jobs. For a business entity that employes three to forty-nine employees, the amount of such credit shall be equal to the product of the gross wages paid for the impacted jobs and up to 15 percent. For a business entity that employs fifty to one hundred employees, the amount of such credit shall be equal to the product of the gross wages paid for the impacted jobs and up to 7.5 percent. For a business entity that employs greater than one hundred employees, the amount of such credit shall be equal to the product of the gross wages paid for the impacted jobs and up to 3.75 percent. An eligible business entity may only receive up to $500,000 in tax credits per event triggering an emergency declaration by the governor.

2. The tax credit established in this section shall be refundable as provided in the tax law. If a participant fails to satisfy the eligibility criteria, it will lose the ability to claim credit. The event of such failure shall not extend the original six-month eligibility period.

3. The business enterprise shall be allowed to claim the credit as prescribed in section thirty-six of the tax law.

4. A participant may be eligible for benefits under this article as well as article seventeen of this chapter, provided the participant can

only receive benefits pursuant to subdivision two of section three hundred fifty-five of this chapter for costs in excess of costs recovered by insurance.

§ 426. Powers and duties of the commissioner. 1. The commissioner shall promulgate regulations establishing the type of application process and the eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed thirty million dollars from the annual cap on tax credits set forth in section three hundred fifty-nine of this chapter which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis. Such regulations shall include, but not be limited to, criteria for determining whether a business entity demonstrates substantial physical damage and economic harm from the event leading to an emergency declaration by the governor.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participants. Participants may be required by the commissioner of taxation and finance to include the certificate of tax credit with their tax return to receive any tax benefits under this article.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision two of section four hundred twenty-four of this article, or for failing to meet the job retention requirements set forth in section four hundred twenty-three of this article.

§ 427. Maintenance of records. Each participant shall keep all relevant records for the duration of its program participation plus three years.

§ 428. Reporting. 1. Each participant must submit a performance report annually, in such form as the commissioner may require, within thirty days of the end of their taxable year.

2. The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June thirtieth, two thousand thirteen, and every three months thereafter. Such report shall include, but not be limited to, the following: number of applicants; number of participants approved; names of participants; total amount of benefits certified; benefits received per participant; total number of retained jobs; and such other information as the commissioner determines.

§ 429. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed the limitations set forth in section three hundred fifty-nine of this chapter, and shall be allotted from the funds available for tax credits under the excelsior jobs program act.

ARTICLE 21

START-UP NY PROGRAM

§ 430. Short title. This article shall be known and may be cited as the "SUNY Tax-free Areas to Revitalize and Transform UPstate New York program," or the "START-UP NY program".

§ 431. Definitions. For purposes of this article:

1. "State university campus" shall mean any of the colleges and universities described in subdivision three of section three hundred fifty-two of the education law.

2. "Community college" means a college established and operated pursuant to the provisions of article one hundred twenty-six of the education law, and providing two-year or four-year post secondary programs in general and technical educational subjects and receiving financial assistance from the state, other than a community college of the city university of New York.

3. "City university campus" means a campus of the city university of New York, as defined in subdivision two of section sixty-two hundred two of the education law.

4. "Private college or university" means a not-for-profit two or four year university or college given the power to confer associate, baccalaureate or higher degrees in this state by the legislature or by the regents under article five of the education law.

5. "Net new job" means a job created in a tax-free NY area that satisfies all of the following criteria:

(a) is new to the state;

(b) has not been transferred from employment with another business located in this state, through an acquisition, merger, consolidation or other reorganization of businesses or the acquisition of assets of another business, or except as provided in paragraph (d) of subdivision six of this section has not been transferred from employment with a related person in this state;

(c) is not filled by an individual employed within the state within the immediately preceding sixty months by a related person;

(d) is either a full-time wage-paying job or equivalent to a full-time

wage-paying job requiring at least thirty-five hours per week; and
(e) is filled for more than six months.

6. "New business" means a business that satisfies all of the following tests:

(a) the business must not be operating or located within the state at the time it submits its application to participate in the START-UP NY program;

(b) the business must not be moving existing jobs into the tax-free NY area from another area in the state;

(c) the business is not substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable within the last five taxable years, under section one hundred eighty-three or one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of the tax law, article nine-A, thirty-two or thirty-three of the tax law, article twenty-three of the tax law or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty), or the income (or losses) of which is (or was) includable under article twenty-two of the tax law; and

(d) the business must not have caused individuals to transfer from existing employment with a related person located in the state to similar employment with the business, unless such business has received approval for such transfers from the commissioner after demonstrating that the related person has not eliminated those existing positions.

7. "Tax-free NY area" means the land or vacant space of a university or college that meets the eligibility criteria specified in section four hundred thirty-two of this article and that has been approved as a tax-free NY area pursuant to the provisions in section four hundred thirty-five of this article. It also means a strategic state asset that has been approved by the START-UP NY approval board pursuant to the provisions of subdivision four of section four hundred thirty-five of this article.

8. "Related person" means a "related person" pursuant to subparagraph

(c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

9. "Strategic state asset" means land or a building or group of buildings owned by the state of New York, that is: (a) closed; (b) vacant; or (c) for which notice of closure has been given pursuant to any statutory notice requirement or which is otherwise authorized to be closed pursuant to any chapter of the laws of New York.

10. "START-UP NY approval board" or "board" means a board consisting of three members, one each appointed by the governor, the speaker of the assembly and the temporary president of the senate. Each member of the START-UP NY approval board must have significant expertise and experience in academic based economic development and may not have a personal interest in any project that comes before the board.

11. "Underutilized property" means vacant or abandoned land or space in an existing industrial park, manufacturing facility, a brownfield site as defined in article twenty-seven of the environmental conservation law, or a distressed or abandoned property, which shall be determined by factors including poverty, identified by the county or the town, village or city that contains such distressed or abandoned property, as of the effective date of this article. A college or university shall work with local municipalities or local economic development entities to identify underutilized properties.

12. "Eligible land" means land eligible pursuant to section four hundred thirty-two of this article for approval as a tax-free NY area.

13. "Sponsoring campus, university or college" means a university or college that has received approval to sponsor a tax-free NY area pursuant to section four hundred thirty-five of this article.

14. "Correctional facility" means, beginning July twenty-sixth, two thousand fourteen, land or a building or group of buildings owned by the state of New York on the premises of (a) Butler Correctional Facility; (b) Chateaugay Correctional Facility; (c) Monterey Shock Incarceration

Correctional Facility; and (d) Mount McGregor Correctional Facility.

15. "START-UP NY airport facility" means vacant land or space owned by the state of New York on the premises of Stewart Airport or Republic Airport.

§ 432. Eligibility criteria for universities and colleges. 1. State university campuses, community colleges and city university campuses.
(a) Subject to the limitations in paragraph (c) of this subdivision, the following will constitute the eligible land of a state university campus, community college, or city university campus:

(i) any vacant space in any building located on a campus of a state university campus, community college or city university campus;

(ii) any vacant land on a campus of a state university campus, community college or city university campus;

(iii) for a state university campus or community college, a total of two hundred thousand square feet of vacant land or vacant building space that, except as provided under paragraph (b) of this subdivision, is located within one mile of a campus of the state university campus or community college; provided that this subparagraph shall not apply to a state university campus or community college located in Nassau county, Suffolk county or Westchester county; and

(iv) a New York state incubator as the term is used in subdivision four of section four hundred thirty-three of this article with a bona fide affiliation to the state university campus, community college or city university campus, with approval of the commissioner. In order for there to be a bona fide affiliation of a New York state incubator with a state university campus, community college or city university campus, the incubator and the state university campus, community college or city university campus must have a partnership to provide assistance and physical space to eligible businesses, as the term is used in section sixteen-v of the urban development corporation act; the incubator and the state university campus, community college or city university campus must directly work towards the goals of jointly creating jobs and incubating new startup businesses; and the mission and activities of the incubator must align with or further the academic mission of the state university campus, community college or city university campus.

(b) A state university campus or community college which qualifies under subparagraph (iii) of paragraph (a) of this subdivision may apply to the commissioner for a determination that identified vacant land or identified vacant space in a building that is located more than one mile from its campus, and is not located in Nassau county, Suffolk county, Westchester county or New York city, is eligible land for purposes of this program. The commissioner shall give consideration to factors including rural, suburban and urban geographic considerations and may qualify the identified land or space in a building as eligible land if the commissioner, in consultation with the chancellor or his or her designee, determines that the state university campus or community college has shown that the use of the land or space will be consistent with the requirements of this program and the plan submitted by the state university campus or community college pursuant to section four hundred thirty-five of this article. In addition, two hundred thousand square feet of vacant land or vacant building space affiliated with or in partnership with Maritime College shall be eligible under this paragraph. The aggregate amount of qualified land or space under this paragraph and subparagraph (iii) of paragraph (a) of this subdivision may not exceed two hundred thousand square feet for a state university campus or community college.

(c) The provisions of paragraphs (a) and (b) of this subdivision shall apply only to:

(i) a state university campus other than the following: (A) any empire state college campus except for the empire state college campus in Saratoga Springs, (B) any property of downstate medical center located in Nassau county, Suffolk county, Westchester county or New York city except for property affiliated with downstate medical center that constitutes a New York state incubator as the term is used in subdivision four of section four hundred thirty-three of this article, and (C) any property of the college of optometry or maritime college located in Nassau county, Suffolk county, Westchester county or New York city.

(ii) a community college, except that for a community college whose main campus is in New York city, paragraphs (a) and (b) of this subdivision shall not apply to property of such community college in

Nassau county, Suffolk county, Westchester county or New York city.
(iii) a total of five city university campuses, one each in the boroughs of Manhattan, Brooklyn, Bronx, Queens and Staten Island, which will be designated by the board of trustees of the city university of New York. The campus designated in each borough must be located in an economically distressed community. The commissioner shall establish a list of economically distressed communities for the purpose of this designation, based on criteria indicative of economic distress, including poverty rates, numbers of persons receiving public assistance, unemployment rates, and such other indicators as the commissioner deems appropriate to be in need of economic assistance. In addition, paragraphs (a) and (b) of this subdivision shall apply to property of the city university located outside of Nassau county, Suffolk county, Westchester county and New York city.
(d) The eligible land of a state university campus, community college, or city university campus will also include eligible land designated under paragraph (c) of subdivision two of this section.

2. Private colleges and universities and certain other campuses. (a) Subject to the limitations in paragraph (c) of this subdivision, the following will constitute the eligible land of a private college or university:
(i) any vacant space in any building located on a campus of a private university or college other than a campus which is located in Nassau county, Suffolk county, Westchester county or New York city;
(ii) any vacant land on a campus of a private university or college other than a campus which is located in Nassau county, Suffolk county, Westchester county or New York city;
(iii) any vacant land or vacant space in a building which is not located in Nassau county, Suffolk county, Westchester county or New York city; and
(iv) a New York state incubator as the term is used in subdivision four of section four hundred thirty-three of this article with a bona fide affiliation to the private university or college, with approval of the commissioner. In order for there to be a bona fide affiliation of a New York state incubator with a private university or college, the incubator and the private university or college must have a partnership

to provide assistance and physical space to eligible businesses as the term is used in section sixteen-v of the urban development corporation act; the incubator and the private university or college must directly work towards the goals of jointly creating jobs and incubating new startup businesses; and the mission and activities of the incubator must align with or further the academic mission of the private university or college.

(b) Subject to the limitations in paragraph (c) of this subdivision, three million square feet is the maximum aggregate amount of tax-free NY areas of private universities and colleges that may be utilized for this program, which shall be designated in a manner that ensures regional balance and balance among eligible rural, urban and suburban areas in the state. The commissioner shall maintain an accounting of the vacant land and space of private universities and colleges that have been approved as tax-free NY areas and shall stop accepting applications for approval of tax-free NY areas when that maximum amount has been reached.

(c) Of the maximum aggregate amount in paragraph (b) of this subdivision, an initial amount of seventy-five thousand square feet shall be designated as tax-free NY areas in each of the following: Nassau county, Suffolk county, Westchester county and the boroughs of Brooklyn, Bronx, Manhattan, Queens and Staten Island. The board may approve the designation of up to an additional seventy-five thousand square feet for any county or borough that reaches the initial seventy-five thousand square foot limit, provided that such additional seventy-five thousand square feet shall not count against the square footage limitations in paragraph (b) of this subdivision. Vacant land and vacant space in a building on the campus of the following shall be eligible for designation under this paragraph:

(i) a private university or college which campus is located in Nassau county, Suffolk county, Westchester county or New York city.

(ii) a state university campus that meets the criteria of clause (B) or (C) of subparagraph (i) of paragraph (c) of subdivision one of this section.

(iii) a community college whose main campus is in New York city.

(iv) a city university campus that is not designated under subparagraph (iii) of paragraph (c) of subdivision one of this section.

(d) In addition, the board may approve: (i) one application that includes eligible land owned or leased by a city university campus that is directly adjacent to such campus; (ii) one application that includes eligible land owned or leased by a state university campus, community college, or private university or college in Nassau county or Suffolk county that is directly adjacent to such campus, university or college; and (iii) one application that includes eligible land owned or leased by a state university campus, community college, or private university or college in Westchester county that is directly adjacent to such campus, university or college. The board may approve an additional application, for a state university campus, community college, or private university or college in the county not previously approved under subparagraph (ii) of this paragraph, in which case it shall also approve a second application under subparagraph (i) of this paragraph.

3. Prohibition. A state university campus, community college or city university campus is prohibited from relocating or eliminating any academic programs, any administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other facility, space or program that actively serves students, faculty or staff in order to create vacant land or space to be utilized for the program authorized by this article. In addition, nothing in this article shall be deemed to waive or impair any rights or benefits of employees of the state university of New York, a community college or the city university of New York that otherwise would be available to them pursuant to the terms of agreements between the certified representatives of such employees and their employers pursuant to article fourteen of the civil service law. No services or work currently performed by public employees of the state university of New York, a community college, or the city university of New York or future work that is similar in scope and nature to the work being currently performed by public employees shall be contracted out or privatized by the state university of New York, a community college or the city university of New York or by an affiliated entity or associated entity of the state university of New York, a community college or the city university of New York. For the purpose of this section, an affiliated entity or associated entity shall not include a business that is participating in the START-UP NY program.

§ 433. Eligibility criteria for businesses. 1. In order to participate in the START-UP NY program, a business must satisfy all of the following criteria.

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

(b) The business must demonstrate that it will, in its first year of operation, create net new jobs. After its first year of operation, the business must maintain net new jobs. In addition, the average number of employees of the business and its related persons in the state during the year must equal or exceed the sum of: (i) the average number of employees of the business and its related persons in the state during the year immediately preceding the year in which the business submits its application to locate in a tax-free NY area; and (ii) net new jobs of the business in the tax-free NY area during the year. The average number of employees of the business and its related persons in the state shall be determined by adding together the total number of employees of the business and its related persons in the state on March thirty-first, June thirtieth, September thirtieth and December thirty-first and dividing the total by the number of such dates occurring within such year.

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

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

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

(f) If a business does not satisfy the eligibility standard set forth in paragraph (c) or (e) of this subdivision, because at one point in time it operated in New York state but moved its operations out of New

York state on or before June first, two thousand thirteen, the commissioner shall grant that business permission to apply to participate in the START-UP NY program if the commissioner determines that the business has demonstrated that it will substantially restore the jobs in New York state that it previously had moved out of state.

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

2. The following types of businesses are prohibited from participating in the START-UP NY program.

(a) retail and wholesale businesses;

(b) restaurants;

(c) real estate brokers;

(d) law firms;

(e) medical or dental practices;

(f) real estate management companies;

(g) hospitality;

(h) finance and financial services;

(i) businesses providing personal services;

(j) businesses providing business administrative or support services, unless such business has received permission from the commissioner to apply to participate in the START-UP NY program upon demonstration that the business would create no fewer than one hundred net new jobs in the tax-free NY area;

(k) accounting firms;

(l) businesses providing utilities; and

(m) businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity.

2-a. Additional eligibility requirements in Nassau county, Suffolk county, Westchester county and New York city. In order to be eligible to participate in the START-UP NY program in Nassau county, Suffolk county, Westchester county or New York city, a business must be:

(a) in the formative stage of development; or

(b) engaged in the design, development, and introduction of new biotechnology, information technology, remanufacturing, advanced materials, processing, engineering or electronic technology products and/or innovative manufacturing processes, and meet such other requirements for a high-tech business as the commissioner shall develop.

3. A business must be in compliance with all worker protection and environmental laws and regulations. In addition, a business may not owe past due federal or state taxes or local property taxes.

4. Any business that has successfully completed residency in a New York state incubator pursuant to section sixteen-v of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight constituting the urban development corporation act, subject to approval of the commissioner, may apply to participate in the START-UP NY program provided that such business locates in a tax-free NY area, notwithstanding the fact that the business may not constitute a new business.

§ 434. Tax benefits. 1. A business that is accepted into the START-UP NY program and locates in a tax-free NY area or the owner of a business that is accepted into the START-UP NY program and locates in a tax-free NY area is eligible for the tax benefits specified in section thirty-nine of the tax law. Subject to the limitations of subdivision two of this section, employees of such business satisfying the eligibility requirements specified in section thirty-nine of the tax law shall be eligible for the personal income tax benefits described in such section in a manner to be determined by the department of taxation and finance.

2. The aggregate number of net new jobs approved for personal income tax benefits under this article shall not exceed ten thousand jobs per year during the period in which applications are accepted pursuant to section four hundred thirty-six of this article. The commissioner shall allocate to each business accepted to locate in a tax-free NY area a maximum number of net new jobs that shall be eligible for the personal income tax benefits described in subdivision (e) of section thirty-nine of the tax law based on the schedule of job creation included in the application of such business. At such time as the total number of net new jobs under such approved applications reaches the applicable allowable total of aggregate net new jobs for tax benefits for the year in which the application is accepted, the commissioner shall stop granting eligibility for personal income tax benefits for net new jobs until the next year. Any business not granted such personal income tax benefits for net new jobs for such reason shall be granted such benefits in the next year prior to the consideration of new applicants. In addition, if the total number of net new jobs approved for tax benefits in any given year is less than the maximum allowed under this subdivision, the difference shall be carried over to the next year. A business may amend its schedule of job creation in the same manner that it applied for participation in the START-UP NY program, and any increase in eligibility for personal income tax benefits on behalf of additional net new jobs shall be subject to the limitations of this subdivision. If the business accepted to locate in a tax-free NY area creates more net new jobs than for which it is allocated personal income tax benefits, the personal income tax benefits it is allocated shall be provided to those individuals employed in those net new jobs based on the employees' dates of hiring.

§ 435. Approval of tax-free NY areas. 1. The president or chief executive officer of any state university campus, community college or city university campus seeking to sponsor a tax-free NY area and have some of its eligible land specified under subdivision one of section four hundred thirty-two of this article be designated as a tax-free NY area must submit a plan to the commissioner that specifies the land or space the campus or college wants to include, describes the type of business or businesses that may locate on that land or in that space, explains how those types of businesses align with or further the academic mission of the campus or college and how participation by those types of businesses in the START-UP NY program would have positive community and economic benefits, and describes the process the campus or college will follow to select participating businesses. At least thirty days prior to submitting such plan, the campus or college must provide the municipality or municipalities in which the proposed tax-free NY area is located, local economic development entities, the applicable campus or college faculty senate, union representatives and the campus student government with a copy of the plan. In addition, if the plan of the campus or college includes land or space located outside of the campus boundaries, the campus or college must consult with the municipality or municipalities in which such land or space is located prior to including such space or land in its proposed tax-free NY area and shall give preference to underutilized properties. Before approving or rejecting the plan submitted by a state university campus, community college or city university campus, the commissioner shall consult with the chancellor of the applicable university system or his or her designee.

2. The president or chief executive officer of any private college or university or of any state university campus, community college or city university campus seeking to sponsor a tax-free NY area and have some of its eligible land specified under subdivision two of section four hundred thirty-two of this article be designated as a tax-free NY area must submit a plan to the commissioner that specifies the land or space the college or university wants to include, describes the type of business or businesses that may locate on that land or in that space, explains how those types of businesses align with or further the academic mission of the college or university and how participation by those types of businesses in the START-UP NY program would have positive community and economic benefits, and describes the process the campus or college will follow to select participating businesses. In addition, if the plan of the campus or college includes land or space located outside of the campus boundaries, the campus or college must consult with the

municipality or municipalities in which such land or space is located prior to including such space or land in its proposed tax-free NY area and shall notify local economic development entities. The commissioner shall forward the plan submitted under this subdivision to the START-UP NY approval board. In evaluating such plans, the board shall examine the merits of each proposal, including but not limited to, compliance with the provisions of this article, reasonableness of the economic and fiscal assumptions contained in the application and in any supporting documentation and potential of the proposed project to create new jobs, and, except for proposals for designation of eligible land under paragraph (c) of subdivision two of section four hundred thirty-two of this article, shall prioritize for acceptance and inclusion into the START-UP NY program plans for tax-free NY areas in counties that contain a city with a population of one hundred thousand or more without a university center as defined in subdivision seven of section three hundred fifty of the education law on the effective date of this article. No preference shall be given based on the time of submission of the plan, provided that any submission deadlines established by the board are met. In addition, the board shall give preference to private colleges or universities that include underutilized properties within their proposed tax-free NY areas. The board by a majority vote shall approve or reject each plan forwarded to it by the commissioner.

3. A campus, university or college may amend its approved plan, provided that the campus, university or college may not violate the terms of any lease with a business located in the approved tax-free NY area. In addition, if a business located in a tax-free NY area does not have a lease with a campus, university or college, and such business is terminated from the START-UP NY program pursuant to paragraph (b) of subdivision four of section four hundred thirty-six of this article, and subsequently does not relocate outside of the tax-free NY area, a campus, university or college may amend its approved plan to allocate an amount of vacant land or space equal to the amount of space occupied by the business that is terminated. The amendment must be approved pursuant to the procedures and requirements set forth in subdivision one or two of this section, whichever is applicable.

4. The START-UP NY approval board, by majority vote, shall designate correctional facilities described in subdivision fourteen of section four hundred thirty-one of this article, START-UP NY airport facilities described in subdivision fifteen of section four hundred thirty-one of this article and up to twenty strategic state assets as tax-free NY areas. Each shall be affiliated with a state university campus, city university campus, community college, or private college or university and such designation shall require the support of the affiliated campus, college or university. Each strategic state asset and START-UP NY airport facility, other than a correctional facility, may not exceed a maximum of two hundred thousand square feet of vacant land or vacant building space designated as a tax-free NY area. Designation of strategic state assets, correctional facilities described in subdivision fourteen of section four hundred thirty-one of this article, and START-UP NY airport facilities described in subdivision fifteen of section four hundred thirty-one of this article as tax-free NY areas shall not count against any square footage limitations in section four hundred thirty-two of this article.

5. The commissioner shall promulgate regulations to effectuate the purposes of this section, including, but not limited to, establishing the process for the plan submissions and approvals of tax-free NY areas and the eligibility criteria that will be applied in evaluating those plans.

§ 436. Businesses locating in tax-free NY areas. 1. A campus, university or college that has sponsored a tax-free NY area (including any strategic state asset affiliated with the campus, university or college) shall solicit and accept applications from businesses to locate in such area that are consistent with the plan of such campus, university or college or strategic state asset that has been approved pursuant to section four hundred thirty-five of this article. Any business that wants to locate in a tax-free NY area must submit an application to the campus, university or college which is sponsoring the tax-free NY area by December thirty-first, two thousand twenty-five. Prior to such date, the commissioner shall prepare an evaluation on the effectiveness of the START-UP NY program and deliver it to the governor and the legislature to determine continued eligibility for application submissions.

2. (a) The sponsoring campus, university or college shall provide the application and all supporting documentation of any business it decides to accept into its tax-free NY area to the commissioner for review. Such application shall be in a form prescribed by the commissioner and shall contain all information the commissioner determines is necessary to properly evaluate the business's application, including, but not limited to, the name, address, and employer identification number of the business; a description of the land or space the business will use, the terms of the lease agreement, if applicable, between the sponsoring campus, university or college and the business, and whether or not the land or space being used by the business is being transferred or sublet to the business from some other business. The application must include a certification by the business that it meets the eligibility criteria specified in section four hundred thirty-three of this article and will align with or further the academic mission of the sponsoring campus, college or university, and that the business's participation in the START-UP NY program will have positive community and economic benefits. The application must also describe whether or not the business competes with other businesses in the same community but outside the tax-free NY area. In addition, the application must include a description of how the business plans to recruit employees from the local workforce.

(b) The commissioner shall review such application and documentation within sixty days and may reject such application upon a determination that the business does not meet the eligibility criteria in section four hundred thirty-three of this article, has submitted an incomplete application, has failed to comply with subdivision three of this section, or has failed to demonstrate that the business's participation in the START-UP NY program will have positive community and economic benefits, which shall be evaluated based on factors including but not limited to whether or not the business competes with other businesses in the same community but outside the tax-free NY area as prohibited by section four hundred forty of this article. If the commissioner rejects such application, it shall provide notice of such rejection to the sponsoring campus, university or college and business. If the commissioner does not reject such application within sixty days, such business is accepted to locate in such tax-free NY area, and the application of such business shall constitute a contract between such business and the sponsoring campus, university or college. The sponsoring campus, university or college must provide accepted businesses with documentation of their acceptances in such form as prescribed by the commissioner of taxation and finance which will be used to demonstrate such business's eligibility for the tax benefits specified in section thirty-nine of the tax law.

(c) If a state university campus proposes to enter into a lease with a business for eligible land in a tax-free NY area with a term greater than forty years, including any options to renew, or for eligible land in a tax-free NY area of one million or more square feet, the state university campus, at the same time as the application is provided to the commissioner, also must submit the lease for review to the START-UP NY approval board. If the board does not disapprove of the lease terms within thirty days, the lease is deemed approved. If the board disapproves the lease terms, the state university campus must submit modified lease terms to the commissioner for review. The commissioner's sixty day review period is suspended while the board is reviewing the lease and during the time it takes for the state university campus to modify the lease terms.

(d) Except as otherwise provided in this article, proprietary information or supporting documentation submitted by a business to a sponsoring campus, university or college shall only be utilized for the purpose of evaluating such business's application or compliance with the provisions of this article and shall not be otherwise disclosed. Any person who willfully discloses such information to a third party for any other purpose whatsoever shall be guilty of a misdemeanor.

3. The business submitting the application, as part of the application, must:

(a) agree to allow the department of taxation and finance to share its tax information with the department and the sponsoring campus, university or college;

(b) agree to allow the department of labor to share its tax and employer information with the department and the sponsoring campus, university or college;

(c) allow the department and its agents and the sponsoring campus, university or college access to any and all books and records the department or sponsoring campus, university or college may require to monitor compliance;

(d) include performance benchmarks, including the number of net new jobs that must be created, the schedule for creating those jobs, and details on job titles and expected salaries. The application must specify the consequences for failure to meet such benchmarks, as determined by the business and the sponsoring campus, university or college: (i) suspension of such business's participation in the START-UP NY program for one or more tax years as specified in such application; (ii) termination of such business's participation in the START-UP NY program; and/or (iii) proportional recovery of tax benefits awarded under the START-UP NY program as specified in section thirty-nine of the tax law;

(e) provide the following information to the department and sponsoring campus, university or college upon request:

(i) the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements;

(ii) the employer identification or social security numbers for all related persons to the business, including those of any members of a limited liability company or partners in a partnership;

(f) provide a clear and detailed presentation of all related persons to the business to assure the department that jobs are not being shifted within the state; and

(g) certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws, and that it satisfies all the eligibility requirements to participate in the START-UP NY program.

4. (a) At the conclusion of the lease term of a lease by the sponsoring campus, university or college to a business of land or space in a tax-free NY area owned by the sponsoring campus, university or college, the leased land or space and any improvements thereon shall

revert to the sponsoring campus, university or college, unless the lease is renewed.

(b) If, at any time, the sponsoring campus, university or college or the commissioner determines that a business no longer satisfies any of the eligibility criteria specified in section four hundred thirty-three of this article, the sponsoring campus, university or college shall recommend to the commissioner that the commissioner terminate or the commissioner on his or her own initiative shall immediately terminate such business's participation in the START-UP NY program. Such business shall be notified of such termination by a method which allows for verification of receipt of such termination notice. A copy of such termination notice shall be sent to the commissioner of taxation and finance. Upon such termination, such business shall not be eligible for the tax benefits specified in section thirty-nine of the tax law for that or any future taxable year, calendar quarter or sales tax quarter, although employees of such business may continue to claim the tax benefit for their wages during the remainder of that taxable year. Further, such lease or contract between the sponsoring campus, university or college and such business shall be rescinded, effective on the thirtieth day after the commissioner mailed such termination notice to such business and the land or space and any improvements thereon shall revert to the sponsoring campus, university or college.

5. The commissioner shall promulgate regulations to effectuate the purposes of this section, including, but not limited to, establishing the process for the evaluation and possible rejection of applications, the eligibility criteria that will be applied in evaluating those applications, and the process for terminations from the START-UP NY program and administrative appeals of such terminations.

§ 437. MWBE and prevailing wage requirements. 1. For prevailing wage and minority and women-owned business enterprises requirements applicable to tax-free NY areas on state university campuses, city university campuses and community colleges, see section three hundred sixty-one of the education law.

2. Any contract to which a business on a strategic state asset in a tax-free NY area is a party, and any contract entered into by a third party acting in place of, on behalf of and for the benefit of the business pursuant to any lease, permit or other agreement between such third party and the business, for the construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement, of a project, shall be subject to all of the provisions of article eight of the labor law, including the enforcement of prevailing wage requirements by the fiscal officer as defined in paragraph e of subdivision five of section two hundred twenty of the labor law to the same extent as a contract of the state, and shall be deemed a public work for purposes of such article.

3. Any individual, public corporation or authority, private corporation, limited liability company or partnership or other entity entering into a contract, subcontract, lease, grant, bond, covenant or other agreement for a project undertaken on a strategic state asset in a tax-free NY area shall be deemed a state agency as that term is defined in article fifteen-A of the executive law and such contracts shall be deemed state contracts within the meaning of that term as set forth in such article.

4. A business on a strategic state asset in a tax-free NY area may require a contractor awarded a contract, subcontract, lease, grant, bond, covenant or other agreement for a project to enter into a project labor agreement pursuant to section two hundred twenty-two of the labor law during and for the work involved with such project when such requirement is part of the business's request for proposals for the project and when the business determines that the record supporting the decision to enter into such an agreement establishes that the interests underlying the competitive bidding laws are best met by requiring a project labor agreement including: obtaining the best work at the lowest possible price; preventing favoritism, fraud and corruption; the impact of delay; the possibility of cost savings; and any local history of labor unrest.

5. For the purposes of this section "project" shall mean capital

improvement work on a strategic state asset to be subject to any lease, transfer or conveyance, other than conveyance of title. Such capital improvement work shall include the design, construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration or improvement of a strategic state asset.

§ 439. Conflict of interest guidelines. 1. Each campus, university or college participating in the START-UP NY program shall adopt a conflict of interest policy. Such conflict of interest policy shall provide, as it relates to the START-UP NY program: (a) as a general principle, that service as an official of the campus, university or college shall not be used as a means for private benefit or inurement for the official, a relative thereof, or any entity in which the official, or relative thereof, has a business interest; (b) no official who is a vendor or employee of a vendor of goods or services to the campus, university or college, or who has a business interest in such vendor, or whose relative has a business interest in such vendor, shall vote on, or participate in the administration by the campus, university or college, as the case may be, of any transaction with such vendor; and (c) upon becoming aware of an actual or potential conflict of interest, an official shall advise the president or chief executive officer of the campus, university or college, as the case may be, of his or her or a relative's business interest in any such existing or proposed vendor with the campus, university or college. Each campus, university or college shall maintain a written record of all disclosures of actual or potential conflicts of interest made pursuant to paragraph (c) of this subdivision, and shall report such disclosures, on a calendar year basis, by January thirty-first of each year, to the auditor for such campus, university or college. The auditor shall forward such reports to the commissioner, who shall make public such reports.

2. For purposes of such conflict of interest policies: (a) an official of a campus, university or college has a "business interest" in an entity if the individual: (i) owns or controls ten percent or more of the stock of the entity (or one percent in the case of an entity the stock of which is regularly traded on an established securities

exchange); or (ii) serves as an officer, director or partner of the entity; (b) a "relative" of an official of a campus, university or college shall mean any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant; and (c) an "official" of a campus, university or college shall mean an employee at the level of dean and above as well as any other employee with decision-making authority over the START-UP NY program.

§ 440. Prohibition of anti-competitive behavior. A sponsoring campus, university or college shall not accept any application to locate in a tax-free NY area under subdivision one of section four hundred thirty-six of this article from a business that would compete with other businesses in the same community but outside the tax-free NY area, and the commissioner shall reject any application under subdivision two of section four hundred thirty-six of this article upon determining that the business would compete with other businesses in the same community but outside the tax-free NY area. The commissioner shall issue and promulgate such rules and regulations as are necessary to implement this section.

* ARTICLE 22

EMPLOYEE TRAINING INCENTIVE PROGRAM

* NB Repealed December 31, 2028

*** § 441. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Approved provider" means an entity meeting such criteria as shall be established by the commissioner in rules and regulations promulgated pursuant to this article, that may provide eligible training to employees of a business entity participating in the employee training incentive program; provided that, for internship programs, the business entity shall be an approved provider or an approved provider in contract with such business entity. Such criteria shall ensure that any approved provider possess adequate credentials to provide the training described in an application by a business entity to the commissioner to participate in the employee training incentive program.

2. "Commissioner" means the commissioner of economic development.

3. "Eligible training" means (a) training provided by the business entity or an approved provider that is:

(i) to upgrade, retrain or improve the productivity of employees;

(ii) provided to employees in connection with a significant capital investment by a participating business entity;

(iii) determined by the commissioner to satisfy a business need on the part of a participating business entity;

(iv) not designed to train or upgrade skills as required by a federal or state entity;

(v) not training the completion of which may result in the awarding of a license or certificate required by law in order to perform a job function; and

(vi) not culturally focused training; or

(b) an internship program in advanced technology, life sciences, software development or clean energy approved by the commissioner and provided by the business entity or an approved provider, on or after August first, two thousand fifteen, to provide employment and experience opportunities for current students, recent graduates, and recent members of the armed forces.

4. "Life sciences" means agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, academic medical centers, biotechnology, chemical synthesis, chemistry technology, medical diagnostics, genomics, medical image analysis,

marine biology, medical devices, medical nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research, medical and neurological clinical trials, health robotics and veterinary science. "Life sciences company" is a business entity or an organization or institution that devotes the majority of its efforts in the various stages of research, development, technology transfer and commercialization related to any life sciences field.

5. "Significant capital investment" means a capital investment in new business processes or equipment, the cost of which is equal to or exceeds ten dollars for every one dollar of tax credit allowed to an eligible business entity under this program pursuant to subdivision fifty of section two hundred ten-B or subsection (ddd) of section six hundred six of the tax law.

6. "Strategic industry" means an industry in this state, as established by the commissioner in regulations promulgated pursuant to this article, based upon the following criteria:

(a) shortages of workers trained to work within the industry;

(b) technological disruption in the industry, requiring significant capital investment for existing businesses to remain competitive;

(c) the ability of businesses in the industry to relocate outside of the state in order to attract talent;

(d) the potential to recruit minorities and women to be trained to work in the industry in which they are traditionally underrepresented;

(e) the potential to create jobs in economically distressed areas, which shall be based on criteria indicative of economic distress, including poverty rates, numbers of persons receiving public assistance, and unemployment rates; or

(f) such other criteria as shall be developed by the commissioner in consultation with the commissioner of labor.

* NB Repealed December 31, 2028

*** § 442. Eligibility criteria.** In order to participate in the employee training incentive program, a business entity must satisfy the following criteria:

1. (a) The business entity must operate in the state predominantly in a strategic industry;

(b) The business entity must demonstrate that it is conducting eligible training or obtaining eligible training from an approved provider;

(c) The business entity must make a significant capital investment in connection with the eligible training; and

(d) The business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity may not owe past due state taxes or local property taxes; or

2. (a) The business entity, or an approved provider in contract with such business entity, must be approved by the commissioner to provide eligible training in the form of an internship program in advanced technology or at a life sciences company pursuant to paragraph (b) of subdivision three of section four hundred forty-one of this article;

(b) The business entity must be located in the state;

(c) The business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity must not have past due state taxes or local property taxes;

(d) The internship program shall not displace regular employees;

(e) The business entity must have less than one hundred employees; and

(f) Participation of an individual in an internship program shall not last more than a total of twelve months.

* NB Repealed December 31, 2028

*** § 443. Application and approval process.** 1. A business entity must submit a completed application in such form and with such information as prescribed by the commissioner.

2. As part of such application, each business entity must:

(a) provide such documentation as the commissioner may require in order for the commissioner to determine that the business entity intends to conduct eligible training or procure eligible training for its employees from an approved provider;

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

(c) agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;

(d) allow the department and its agents access to any and all books and records the department may require to monitor compliance;

(e) provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state; and

(f) certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. The commissioner may approve an application from a business entity upon determining that such business entity meets the eligibility criteria established in section four hundred forty-two of this article. Following approval by the commissioner of an application by a business entity to participate in the employee training incentive program, the commissioner shall issue a certificate of tax credit to the business entity upon its demonstrating successful completion of such eligible training to the satisfaction of the commissioner. For eligible training as defined by paragraph (a) of subdivision three of section four hundred forty-one of this article the amount of the credit shall be equal to fifty percent of eligible training costs, up to a credit of ten thousand dollars per employee receiving eligible training. For eligible training as defined by paragraph (b) of subdivision three of section four hundred forty-one of this article, the amount of the credit shall be equal to fifty percent of the stipend paid to an intern, up to a credit of three thousand dollars per intern. The tax credits shall be claimed by the qualified employer as specified in subdivision fifty of section two hundred ten-B and subsection (ddd) of section six hundred six of the tax

law.
* NB Repealed December 31, 2028

*** § 444. Powers and duties of the commissioner.** 1. The commissioner shall, in consultation with the commissioner of labor, promulgate regulations consistent with the purposes of this article that, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis. Such regulations shall include, but not be limited to, eligibility criteria for business entities desiring to participate in the employee training incentive program, procedures for the receipt and evaluation of applications from business entities to participate in the program, and such other provisions as the commissioner deems to be appropriate in order to implement the provisions of this article.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participating business entities. Participants may be required by the commissioner of taxation and finance to include the certificate of tax credit with their tax return to receive any tax benefits under this article.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision one of section four hundred forty-two of this article or for making a material misrepresentation with respect to its participation in the employee training incentive program.
* NB Repealed December 31, 2028

*** § 445. Recordkeeping requirements.** Each business entity participating in the employee training incentive program shall maintain all relevant records for the duration of its program participation plus three years.
* NB Repealed December 31, 2028

*** § 446. Cap on tax credit.** The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed five million dollars, and shall be allotted from the funds available for tax credits under the excelsior jobs program act pursuant to section three hundred fifty-nine of this chapter, provided however, that the portion of this tax credit cap allocated to internship programs in advanced technology shall be not less than two hundred fifty thousand dollars nor more than one million dollars.

* NB Repealed December 31, 2028

ARTICLE 25

RESTAURANT RETURN-TO-WORK TAX CREDIT PROGRAM

§ 470. Short title. This article shall be known and may be cited as the "restaurant return-to-work tax credit program act".

§ 471. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to create financial incentives for restaurants that have suffered economic harm as a result of the COVID-19 pandemic to expeditiously rehire workers and increase total employment. The restaurant return-to-work tax credit program is created to provide financial incentives to economically harmed restaurants to offer relief, expedite their hiring efforts, and reduce the duration and severity of the current economic difficulties.

§ 472. Definitions. For the purposes of this article:

1. "Average full-time employment" shall mean the average number of full-time equivalent positions employed by a business entity in an eligible industry during a given period.

2. "Average starting full-time employment" shall be calculated as the average number of full-time equivalent positions employed by a business entity in an eligible industry between January first, two thousand twenty-one, and March thirty-first, two thousand twenty-one.

3. "Average ending full-time employment" shall be calculated as the average number of full-time equivalent positions employed by a business entity in an eligible industry between April first, two thousand twenty-one, and either August thirty-first, two thousand twenty-one, or December thirty-first, two thousand twenty-one, whichever date the business entity chooses to use.

4. "Certificate of tax credit" means the document issued to a business entity by the department after the department has verified that the business entity has met all applicable eligibility criteria in this article. The certificate shall specify the exact amount of the tax credit under this article that a business entity may claim, pursuant to section four hundred seventy-five of this article.

4-a. "Certificate of additional tax credit" means the document issued to a business entity by the department after the department has verified that the business entity has met all applicable eligibility criteria in this article. The certificate shall specify the exact amount of the tax credit under this article that a business entity may claim pursuant to section four hundred seventy-five-a of this article.

5. "Commissioner" shall mean commissioner of the department of economic development.

6. "Department" shall mean the department of economic development.

7. "Eligible industry" means a business entity operating predominantly in the COVID-19 impacted food services sector.

8. "Net employee increase" means an increase of at least one full-time equivalent employee between the average starting full-time employment and the average ending full-time employment of a business entity.

9. "COVID-19 impacted food services sector" means:

(a) independently owned establishments that are located inside the city of New York and have been subjected to a ban on indoor dining for over six months and are primarily organized to prepare and provide meals, and/or beverages to customers for consumption, including for immediate indoor on-premises consumption, as further defined in regulations pursuant to this article; and

(b) independently owned establishments that are located outside of the city of New York in an area which has been and/or remains designated by the department of health as either an orange zone or red zone pursuant to Executive Order 202.68 as amended, and for which such designation was or has been in effect and resulted in additional restrictions on indoor dining for at least thirty consecutive days, and are primarily organized to prepare and provide meals, and/or beverages to customers for consumption, including for immediate indoor on-premises consumption, as further defined in regulations pursuant to this article.

§ 473. Eligibility criteria. 1. To be eligible for a tax credit under the restaurant return-to-work tax credit program, a business entity must:

(a) be a small business as defined in section one hundred thirty-one of this chapter and have fewer than one hundred full-time job equivalents in New York state as of April first, two thousand

twenty-one;
(b) operate a business location in New York state that is primarily organized to accept payment for meals and/or beverages including from in-person customers;
(c) operate predominantly in the COVID-19 impacted food services sector; provided, however, that the department, in its regulations promulgated pursuant to this article, shall have the authority to list certain types of establishments as ineligible;
(d) have experienced economic harm as a result of the COVID-19 emergency as evidenced by a year-to-year decrease of at least forty percent in New York state between the second quarter of two thousand nineteen and the second quarter of two thousand twenty or the third quarter of two thousand nineteen and the third quarter of two thousand twenty for one or both of: (i) gross receipts or (ii) average full-time employment; and
(e) have demonstrated a net employee increase.

2. A business entity must be in substantial compliance with any public health or other emergency orders or regulations related to the entity's sector or other laws and regulations as determined by the commissioner. In addition, a business entity may not owe past due state taxes or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

§ 474. Application and approval process. 1. A business entity must submit a complete application as prescribed by the commissioner for the restaurant return-to-work credit and the additional restaurant return-to-work credit.

2. The commissioner shall establish procedures and a timeframe for business entities to submit applications. As part of the application, each business entity must:
(a) provide evidence in a form and manner prescribed by the commissioner of their business eligibility;
(b) agree to allow the department of taxation and finance to share the

business entity's tax information with the department. However, any information shared as a result of this program shall not be available for disclosure or inspection under the state freedom of information law;

(c) agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this program shall not be available for disclosure or inspection under the state freedom of information law;

(d) allow the department and its agents access to any and all books and records the department may require to monitor compliance;

(e) certify, under penalty of perjury, that it is in substantial compliance with all emergency orders or public health regulations currently required of such entity, and local, and state tax laws; and

(f) agree to provide any additional information required by the department relevant to this article.

3. The application for the tax credit allowed under section four hundred seventy-five of this article must be submitted by May first, two thousand twenty-two. After reviewing a business entity's completed final application for the restaurant return-to-work credit and determining that the business entity meets the eligibility criteria as set forth in this article, the department may issue to that business entity a certificate of tax credit. A business entity may claim the tax credit in the taxable year that includes December thirty-first, two thousand twenty-one.

4. The application for the tax credit allowed under section four hundred seventy-five-a of this article must be submitted by July first, two thousand twenty-two. After reviewing a business entity's completed final application for the additional restaurant return-to-work credit and determining that the business entity meets the eligibility criteria as set forth in this article, the department may issue to that business entity a certificate of additional tax credit. A business entity may claim the tax credit in the taxable year that includes December thirty-first, two thousand twenty-two.

§ 475. Restaurant return-to-work tax credit. 1. A business entity in the restaurant return-to-work tax credit program that meets the eligibility requirements of section four hundred seventy-three of this article may be eligible to claim a credit equal to five thousand dollars per each full-time equivalent net employee increase as defined in subdivision eight of section four hundred seventy-two of this article.

2. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of fifty thousand dollars in tax credits under this program.

3. The credit shall be allowed as provided in sections forty-six, subdivision fifty-six of section two hundred ten-B and subsection (lll) of section six hundred six of the tax law.

§ 475-a. Additional restaurant return-to-work tax credit. 1. A business entity in the restaurant return-to-work tax credit program that applies for the additional restaurant return-to-work credit pursuant to section four hundred seventy-four of this article may be eligible to claim a credit equal to five thousand dollars per each full-time equivalent net employee increase above ten, not to exceed twenty, as defined in subdivision eight of section four hundred seventy-two of this article. The amount of the business entity's additional restaurant return-to-work tax credit shall be calculated by using the date the business entity chose to calculate its average ending full-time employment as described in subdivision three of section four hundred seventy-two of this article. Provided, however, that in calculating the full-time equivalent net employee increase above ten, the jobs must continue to exist as of March thirty-first, two thousand twenty-two. A business entity in the restaurant return-to-work program that ceased operations on or before March thirty-first, two thousand twenty-two, is not eligible for the credit provided by this section.

2. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of fifty thousand dollars in tax credits under this program.

3. The credit shall be allowed as provided in section forty-six-a, subdivision fifty-six-a of section two hundred ten-B and subsection (nnn) of section six hundred six of the tax law.

§ 476. Powers and duties of the commissioner. 1. The commissioner may promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section four hundred seventy-nine of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to eligible businesses. Such certificate shall contain such information as required by the department of taxation and finance.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any business entity from the program for failing to meet any of the requirements set forth in section four hundred seventy-three of this article, or for failing to meet the requirements set forth in subdivision one of section four hundred seventy-four of this article.

§ 477. Maintenance of records. Each business entity participating in the program shall keep all relevant records for their duration of program participation for at least three years.

§ 478. Reporting. Each business entity participating in this program must submit a performance report to the department at a time prescribed in regulations by the commissioner. The commissioner shall on or before April first, two thousand twenty-two and every quarter thereafter, until program funds are fully expended, submit a report to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, and the chair of the assembly ways and means committee, setting forth the activities undertaken by the program. Such report shall include, but not necessarily be limited to, the following in each reporting period: total number of participants approved and the economic development region in which the business is located; total amount of advance payments disbursed and tax credits claimed, and average amount of advance payments disbursed and tax credit claimed; names of advance payment recipients and tax credits claimed; total number of rehired jobs created; and such other information as the commissioner determines necessary and appropriate to effectuate the purpose of the program. Such reports shall, at the same time, be included on the department's website and any other publicly accessible database that list economic development programs as determined by the department.

§ 479. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner pursuant to this article may not exceed thirty-five million dollars.

ARTICLE 26

COVID-19 CAPITAL COSTS TAX CREDIT PROGRAM

§ 480. Short title. This article shall be known and may be cited as the "COVID-19 capital costs tax credit program act".

§ 481. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to provide critical assistance to small businesses to comply with public health or other emergency orders or regulations, and to take infectious disease mitigation measures related to the COVID-19 pandemic. The COVID-19 capital costs tax credit program is created to provide financial assistance to economically harmed businesses to offer relief and reduce the duration and severity of the current economic difficulties.

§ 482. Definitions. For the purposes of this article:

1. "Certificate of tax credit" means the document issued to a business entity by the department after the department has verified that the business entity has met all applicable eligibility criteria in this article. The certificate shall specify the exact amount of the tax credit under this article that a business entity may claim, pursuant to section four hundred eighty-five of this article.

2. "Commissioner" shall mean commissioner of the department of economic development.

3. "Department" shall mean the department of economic development.

4. "Qualified COVID-19 capital costs" shall mean costs incurred from January first, two thousand twenty-one through December thirty-first, two thousand twenty-two at a business location in New York state to comply with public health or other emergency orders or regulations related to the COVID-19 pandemic, or to generally increase safety through infectious disease mitigation, including costs for: (i) supplies to disinfect and/or protect against COVID-19 transmission; (ii) restocking of perishable goods to replace those lost during the COVID-19 pandemic; (iii) physical barriers and sneeze guards; (iv) hand sanitizer

stations; (v) respiratory devices such as air purifier systems installed at the business entity's location; (vi) signage related to the COVID-19 pandemic including, but not limited to, signage detailing vaccine and masking requirements, and social distancing; (vii) materials required to define and/or protect space such as barriers; (viii) materials needed to block off certain seats to allow for social distancing; (ix) certain point of sale payment equipment to allow for contactless payment; (x) equipment and/or materials and supplies for new product lines in response to the COVID-19 pandemic; (xi) software for online payment platforms to enable delivery or contactless purchases; (xii) building construction and retrofits to accommodate social distancing and installation of air purifying equipment but not for costs for non-COVID-19 pandemic related capital renovations or general "closed for renovations" upgrades; (xiii) machinery and equipment to accommodate contactless sales; (xiv) materials to accommodate increased outdoor activity such as heat lamps, outdoor lighting, and materials related to outdoor space expansions; and (xv) other costs as determined by the department to be eligible under this section; provided, however, that "qualified COVID-19 capital costs" do not include any costs paid for with other COVID-19 grant funds as determined by the commissioner.

§ 483. Eligibility criteria. 1. To be eligible for a tax credit under the COVID-19 capital costs tax credit program, a business entity must:

(a) be a small business as defined in section one hundred thirty-one of this chapter and have two million five hundred thousand dollars or less of gross receipts in the taxable year that includes December thirty-first, two thousand twenty-one;

(b) operate a business location in New York state; and

(c) have at least two thousand dollars in qualifying COVID-19 capital costs.

2. A business entity must be in substantial compliance with any public health or other emergency orders or regulations related to the entity's business sector or other laws and regulations as determined by the commissioner. In addition, a business entity may not owe past due state taxes or local property taxes unless the business entity is making

payments and complying with an approved binding payment agreement entered into with the taxing authority.

§ 484. Application and approval process. 1. A business entity must submit a complete application as prescribed by the commissioner.

2. The commissioner shall establish procedures and a timeframe for business entities to submit applications. As part of the application, each business entity must:

(a) provide evidence in a form and manner prescribed by the commissioner of their business eligibility;

(b) agree to allow the department of taxation and finance to share the business entity's tax information with the department. However, any information shared as a result of this program shall not be available for disclosure or inspection under the state freedom of information law;

(c) allow the department and its agents access to any and all books and records the department may require to monitor compliance;

(d) certify, under penalty of perjury, that it is in substantial compliance with all emergency orders or public health regulations currently required of such entity, and local, and state tax laws;

(e) certify, under penalty of perjury, that it did not include any cost paid for with other COVID-19 grant funds as determined by the commissioner in its application for a tax credit under the COVID-19 capital costs tax credit program; and

(f) agree to provide any additional information required by the department relevant to this article.

3. After reviewing a business entity's completed final application and determining that the business entity meets the eligibility criteria as set forth in this article, the department may issue to that business entity a certificate of tax credit.

4. The business entity must submit its application by September thirtieth, two thousand twenty-three.

§ 485. COVID-19 capital costs tax credit. 1. A business entity in the COVID-19 capital costs tax credit program that meets the eligibility requirements of section four hundred eighty-three of this article may be eligible to claim a credit equal to fifty percent of its qualified COVID-19 capital costs as defined in subdivision four of section four hundred eighty-two of this article. Provided, however, that such credit shall not be less than one thousand dollars.

2. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of twenty-five thousand dollars under this program.

3. The credit shall be allowed as provided in section forty-seven, subdivision fifty-eight of section two hundred ten-B and subsection (nnn) of section six hundred six of the tax law.

4. A business entity may claim the tax credit in the taxable year that includes the date the certificate of tax credit was issued by the department pursuant to subdivision three of section four hundred eighty-four of this article.

§ 486. Powers and duties of the commissioner. 1. The commissioner may promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section four hundred eighty-nine of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to eligible businesses. Such certificate shall contain such information as required by the department of taxation and finance.

3. The commissioner shall solely determine the eligibility of any

applicant applying for entry into the program and shall remove any business entity from the program for failing to meet any of the requirements set forth in section four hundred eighty-three of this article, or for failing to meet the requirements set forth in subdivision one of section four hundred eighty-four of this article.

§ 487. Maintenance of records. Each business entity participating in the program shall keep all relevant records for their duration of program participation for at least three years.

§ 488. Reporting. Each business entity participating in this program shall submit a performance report to the department at a time prescribed in regulations by the commissioner. The commissioner shall on or before April first, two thousand twenty-three and every quarter thereafter until program funds are fully expended, submit a report to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, and the chair of the assembly ways and means committee, setting forth the activities undertaken by the program. Such report shall include, but not necessarily be limited to, the following in each reporting period to the extent such information is available: total number of participants approved and the economic development region in which the business is located; total amount of payments disbursed and tax credits claimed, and average amount of payments disbursed and tax credits claimed; names of payment recipients and tax credits claimed; and such other information as the commissioner determines necessary and appropriate to effectuate the purpose of the program. Such reports shall, at the same time, be included on the department's website and any other publicly accessible database that lists economic development programs as determined by the department.

§ 489. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner pursuant to this article may not exceed two hundred fifty million dollars.

ARTICLE 27

NEWSPAPER AND BROADCAST MEDIA JOBS PROGRAM

§ 490. Short title. This article shall be known and may be cited as the "newspaper and broadcast media jobs program".

§ 491. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs, as a matter of public policy, to provide financial support and incentives for businesses which operate as newspaper and broadcast media, to sustain a productive and effective industry.

§ 492. Definitions. For the purposes of this article:

1. "Average full-time employment" shall mean the average number of full-time positions employed by an eligible business in an eligible industry during a given period.

2. "Average starting full-time employment" shall be calculated as the average number of full-time positions employed by an eligible business in an eligible industry during a timeframe to be determined by the department of economic development.

3. "Average ending full-time employment" shall be calculated as the average number of full-time positions employed by an eligible business in an eligible industry during a timeframe to be determined by the

department of economic development.

4. "Certificate of tax credit" means the document issued to an eligible business by the department after the department has verified that the eligible business has met all applicable eligibility criteria in this article. The certificate shall specify the exact amount of the tax credit under this article that an eligible business may claim, pursuant to section four hundred ninety-five and section four hundred ninety-six of this article.

5. "Commissioner" shall mean commissioner of economic development.

6. "Department" shall mean the department of economic development.

7. "Eligible business" shall mean a print media or broadcast media business operating within an eligible industry, which also carries media liability insurance. For the purposes of this subdivision, each print media publication serving a separate market, as determined by the department, shall be treated as a separate print media business.

8. "Eligible employee" shall mean an employee working full-time at an eligible business, as determined by the department.

9. "Eligible industry" means an eligible business operating predominantly in the newspaper publishing sector or the broadcast media sector, as determined by the department.

10. "Net employee increase" means an increase of at least one full-time employee between the average starting full-time employment and the average ending full-time employment of an eligible business, as defined by the department.

11. "Newspaper and broadcast media jobs tax credit" shall mean a tax credit which shall provide a credit to eligible businesses operating within eligible industries. The newspaper and broadcast media jobs tax credit shall have two components. The newspaper and broadcast media new job creation component shall allow a credit of five-thousand dollars per

net new job created at eligible businesses operating within eligible industries. The newspaper and broadcast media existing jobs component shall allow a tax credit available to support the costs related to retention of existing jobs at eligible businesses operating within eligible industries.

12. (a)"Broadcast media business" means any broadcast station which:
(i) has been broadcasting for at least one year prior to the tax year for which it is applying for a credit;
(ii) owns or operates a broadcast station, as defined by section three of the federal communications act of 1934; and
(iii) discloses its ownership to the public at such times and in such manner as identified by the commissioner.
(b) For purposes of this paragraph each FCC licensed broadcast station serving a separate market shall be treated as a separate broadcast media business.

13. "Independently owned" shall mean a business entity that is not a publicly traded entity or no more than five percent of the beneficial ownership of which is owned, directly or indirectly by a publicly traded entity.

§ 493. Eligibility criteria. To be eligible for the tax credit established under this section, a business entity must:

1. be an eligible business operating within an eligible industry;

2. be independently owned or, in the case of a print media business, demonstrate a reduction in circulation or in the number of full-time equivalent employees of at least twenty percent over the previous five years; and

3. operate predominantly in an eligible industry, and be located within the state of New York. The department, in its regulations promulgated pursuant to this article, shall have the authority to list certain types of establishments as ineligible.

§ 494. Application and approval process. 1. A business entity must submit a complete application as prescribed by the commissioner.

2. The commissioner shall establish procedures and a timeframe for business entities to submit applications. As part of the application, each business entity must:

(a) provide evidence in a form and manner prescribed by the commissioner of their business eligibility;

(b) agree to allow the department of taxation and finance to share the business entity's tax information with the department;

(c) agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this program shall not be available for disclosure or inspection under the state freedom of information law;

(d) allow the department and its agents access to any and all books and records the department may require to monitor compliance; and

(e) agree to provide any additional information required by the department relevant to this article.

3. After reviewing a business entity's completed final application and determining that the business entity meets the eligibility criteria as set forth in this article, the department may issue a certificate of tax credit.

§ 495. Newspaper and broadcast media jobs tax credit. 1. A business entity that meets the eligibility requirements of section four hundred ninety-three of this article, and meets any additional eligibility criteria as articulated in regulations established pursuant to this section, and demonstrates a net employee increase, may be issued a certificate of tax credit equal to five thousand dollars per each full-time net employee increase as defined in section four hundred ninety-two of this article. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of twenty thousand dollars in tax credits for each print media business or broadcast media business under this program.

2. A business entity that meets the eligibility requirements of section four hundred ninety-three of this article, and meets any additional eligibility criteria as articulated in regulations established pursuant to this section, may be issued a certificate of tax credit equal to fifty percent of annual wages of an eligible employee. The calculation of such a credit shall only be applied to up to fifty thousand dollars in wages paid annually per eligible employee. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of three hundred thousand dollars in tax credits for each print media business or broadcast media business under this program.

3. The total amount of tax credits listed on certificates of tax credit issued by the commissioner pursuant to this article may not exceed thirty million dollars for each year the credit is available. Within this amount, the newspaper and broadcast media new job creation component of the credit may not exceed four million dollars per year and the newspaper and broadcast media existing jobs component of the credit may not exceed twenty-six million dollars per year. Fifty percent of the newspaper and broadcast media existing jobs component credits will be set-aside for eligible businesses with one hundred or fewer employees. Fifty percent of the newspaper and broadcast media existing jobs component credits will be set-aside for eligible businesses with over one hundred employees. In both instances the cap will be three hundred thousand dollars under this program.

4. The credit shall be allowed as provided in section forty-nine of the tax law.

§ 496. Powers and duties of the commissioner. 1. The commissioner shall promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section four hundred ninety-five of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to eligible businesses. Such certificate shall contain such information as required by the department of taxation and finance.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any business entity from the program for failing to meet any of the requirements set forth in section four hundred ninety-three of this article, or for failing to meet the requirements set forth in subdivision one of section four hundred ninety-four of this article.

ARTICLE 28

SEMICONDUCTOR MANUFACTURING WORKFORCE TRAINING INCENTIVE PROGRAM

§ 501. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Approved provider" means an entity approved by the commissioner that may provide eligible training to employees of a business entity participating in the semiconductor manufacturing workforce training incentive program. Such criteria shall ensure that any approved provider possesses adequate credentials to provide the training described in an application by a business entity to the commissioner to participate in

the semiconductor manufacturing workforce training incentive program.

2. "Eligible training" means training provided to an employee hired within twelve months of the business entity applying for this program by the business entity or an approved provider that is:

(a) to upgrade, retrain or improve the productivity of employees;

(b) determined by the commissioner to satisfy a business need on the part of a participating business entity;

(c) not designed to train or upgrade skills as required by a federal or state entity; and

(d) structured to result in measurable advancements in skills and competencies that will contribute to opportunities for advancement for employees who complete the training.

3. "Manufacturing business" means a business that is engaged in the process of working raw materials into products suitable for use or which gives new shapes, new quality or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances, or other similar equipment. "Manufacturing" does not include an operation that involves only the assembly of components, provided, however, that the assembly of motor vehicles or other high value-added products shall be considered manufacturing.

4. "Semiconductor manufacturing business" means a business deemed by the commissioner to make products or develop technologies that are primarily aimed at supporting the growth of the semiconductor manufacturing and related equipment and material supplier sector. This shall include, but need not be limited to, semiconductor device manufacturing, producers of component parts, direct input materials and equipment necessary for the manufacture of semiconductor chips, machinery, equipment, and materials necessary for the operational efficiency of semiconductor manufacturing facilities, other such inputs directly supportive of the domestic production of semiconductor chips, and companies engaged in the assembly, testing, packaging and advanced packaging semiconductor value chain. The "semiconductor and supply chain" tier shall not include a project primarily composed of: (a) machinery, equipment, or materials that are inputs to manufacturing

generally, but are not direct inputs to semiconductor manufacturing in specific; or (b) the production of products or development of technologies that would produce only marginal and incremental benefits to the semiconductor manufacturing sector.

5. "Wrap around services" means transportation, childcare, case management and other services designed to maximize the economic impact of workforce development training for participants, and to provide the support services necessary to ensure trainees can access training.

§ 502. Eligibility criteria. In order to participate in the manufacturing workforce training incentive program, a business entity must satisfy the following criteria:

1. The business entity must operate in the state as a semiconductor manufacturing business or a manufacturing business as defined in this article;

2. The business entity must demonstrate that it is conducting eligible training or obtaining eligible training from an approved provider; and

3. The business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity may not owe past due state taxes or local property taxes.

4. The business entity must submit a report upon completion of the eligible training that specifies the total amount of eligible training costs covered, including a breakdown between training expenses, wages, and wraparound services; the total number of employees that begin training; the total number of employees that finish training; the skills or type of training provided, including a list of applicable transferrable credentialing opportunities that were provided and information on whether or not the program is a registered apprenticeship program; information on any formalized agreements or partnerships with community or labor organizations to support the training program; the

name of the training provider; and whether the covered employee is retained one year after the completion of the funded training.

§ 503. Application and approval process. 1. A business entity must submit a completed application in such form and with such information as prescribed by the commissioner.

2. As part of such application, each business entity must:

(a) provide such documentation as the commissioner may require in order for the commissioner to determine that the business entity intends to conduct eligible training or procure eligible training for its employees from an approved provider;

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

(c) agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;

(d) allow the department and its agents access to any and all books and records the department may require to monitor compliance; and

(e) agree to allow the department and the department of taxation and finance to share and exchange information contained in or derived from the applications for admission into the semiconductor manufacturing workforce training incentive program and the credit claim forms submitted to the department of taxation and finance. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

3. The commissioner may approve an application from a business entity upon determining that such business entity meets the eligibility criteria established in section five hundred two of this article. Following approval by the commissioner of an application by a business entity to participate in the semiconductor manufacturing workforce training incentive program, the commissioner shall issue a certificate

of tax credit to the business entity upon its demonstrating successful completion of such eligible training to the satisfaction of the commissioner. For eligible training as defined by subdivision two of section five hundred one of this article the amount of the credit shall be equal to seventy-five percent of wages, salaries or other compensation, training costs, and wrap around services, up to a credit of twenty-five thousand dollars per employee receiving eligible training, up to one million dollars per eligible non-semiconductor manufacturing business and up to five million dollars per eligible semiconductor manufacturing business. The tax credits shall be claimed by the qualified employer as specified in subdivision sixty-two of section two hundred ten-B and subsection (rrr) of section six hundred six of the tax law.

§ 504. Powers and duties of the commissioner. 1. The commissioner shall promulgate regulations consistent with the purposes of this article that, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis. Such regulations shall include, but not be limited to, eligibility criteria for business entities desiring to participate in the semiconductor manufacturing workforce training incentive program, procedures for the receipt and evaluation of applications from business entities to participate in the program, and such other provisions as the commissioner deems to be appropriate in order to implement the provisions of this article.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participating business entities. Participants may be required by the commissioner of taxation and finance to include the certificate of tax credit with their tax return to receive any tax benefits under this article.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements

set forth in section five hundred two of this article or for making a material misrepresentation with respect to its participation in the program.

§ 505. Recordkeeping requirements. Each business entity participating in the program shall maintain all relevant records for the duration of its program participation plus three years.

§ 506. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed twenty million dollars, and shall be allotted from the funds available for tax credits under the excelsior jobs program act pursuant to section three hundred fifty-nine of this chapter.

§ 507. Reporting. The corporation, beginning October first, two thousand twenty-seven, and annually thereafter provided program funds remain, shall submit a report to the governor, the temporary president of the senate, and the speaker of the assembly. Such annual report shall include, but need not be limited to: the number of business participants in the program, the total number of workers trained under the program in total and per participating business including an articulation of the number of workers that begin training, complete training, and are still employed with the participating business one year after training is completed, the total program funding level allocated in total and per participating business, the regional economic development council region wherein each participating business resides, a breakdown between funding allocated to training, wages, and wraparound services, a summary of the skills or type of training provided per participating business, and such other information as the commissioner determines is necessary and appropriate. Additionally, in all years in which the program is fully operational, such report shall include noteworthy projects which serve to highlight the developments occurring in New York state as a result of the program. Such report shall be included on the corporation's website and all program participants shall also be included in the database of economic incentives as defined in section fifty-eight of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight constituting the urban development corporation act.