§ 958. Criteria for empire zone designation. (a) To be eligible for designation as an empire zone, an area must be characterized by pervasive poverty, high unemployment and general economic distress, must correspond to traditional neighborhood or community boundaries, and where appropriate, be bounded by major natural or man-made physical boundaries, such as bodies of water, railroad lines, or limited access highways; and must meet the following requirements:

(i) the area shall include a United States census tract or tracts or block numbering area or areas, or portions thereof, each full census tract or portion of a block numbering area of which, according to the most recent census data available, has:

(A) a poverty rate of at least twenty percent for the year to which the data relate;

(B) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate; and

(C) a population of at least two thousand.

(ii) lands nearby or contiguous to census tracts or block numbering areas described in paragraph (i) of this subdivision may be eligible to be included within an empire zone if, upon the request of the applicant, the commissioner finds, in accordance with regulations promulgated pursuant to this article, that such additional lands have significant potential for business development and job creation, which will enhance economic revitalization of the zone and benefit zone residents; provided, however, that lands nearby shall not be included in a zone until the commissioner, in consultation with the director of the budget, promulgates regulations governing the inclusion of such lands;

(iii) the area proposed as an empire zone shall not exceed:

two square miles for any zone, such area shall be defined by one or more borders, which borders shall be determined by the applicant and need not be entirely coterminous with the borders of census tracts or block numbering areas provided, however, that such zone shall be located entirely within traditional neighborhood or community boundaries, and where appropriate, be bounded by major natural or man-made physical boundaries, such as bodies of water, railroad lines, or limited access highways, and the zones created pursuant to paragraph (viii) of subdivision (b) of section nine hundred sixty of this article should be

limited to one square mile; provided however, empire zones designated under subdivision (b) of section nine hundred sixty of this article may apply to increase their distinct and separate contiguous areas to two square miles; provided further, regionally significant projects are not included within such two square mile limitation;

(iv) if such area is governed by zoning laws or other laws or regulations governing land use, such laws or regulations must allow at least twenty-five percent of such area to be used for commercial or industrial activity;

(v) at least twenty-five percent of the total land within such area must be vacant, abandoned or otherwise available for industrial or commercial development or redevelopment; and

(vi) such other requirements as may be established in regulations promulgated by the commissioner with the approval of the director of the budget and after consultation with the commissioner of labor, including but not limited to:

(A) a comprehensive demonstration of chronic and severe economic distress and the reasons therefor as evidenced by population and employment decline, increase in unemployment and public assistance recipients, decline in real property values, relative decline in per capita income, the extent of abandoned property and deteriorated industrial, commercial and residential properties, a decline in the number of business establishments, obsolescence in plant capacity, loss of markets to foreign competition, the unavailability of expansion financing, poor access to markets, the retirement of local owners of companies;

(B) a demonstration of the potential of the area to attract private investment that will provide employment to persons in the area who are unemployed or economically disadvantaged;

(C) a demonstration of substantial public and private commitments to a long-term economic revitalization program for the area and the local capacity to manage such a program;

(D) a demonstration of the manner in which the overall economic development plan enunciates the needs of the area and sets forth proposals to solve them; and

(E) a demonstration of the manner in which progress in implementing the zone development plan will be routinely evaluated on the local level

and how information essential for periodic evaluations will be compiled.

Such regulations may require a demonstration of a decline in population, a decline in employment, an increase in unemployment, a decline in real property values, a relative decline in per capita income, the extent of abandoned property and deteriorated industrial, commercial and residential property, a decline in the number of business establishments, and other indicators of severe economic distress.

(b) Notwithstanding the provisions of paragraph (i) of subdivision (a) of this section, any county in which the average rate of unemployment in the two most recent calendar years was at least one and one-quarter times the state average for those years and in which the rate of poverty for individuals was at least thirteen percent according to the most recent census data available, and which does not contain a census tract or tracts, portion of a block numbering area or a city, town or village which meets the criteria specified in such paragraph (i) of subdivision (a), may apply for designation of an area within a municipality as an empire zone. The area proposed for designation shall be characterized by pervasive poverty, high unemployment and general economic distress.

(c) Notwithstanding the provisions of paragraph (i) of subdivision (a) of this section, any county may apply for designation of an area within a municipality as an empire zone provided that the following requirements are met:

(i) at the time of application, the unemployment rate of the metropolitan statistical area must exceed the national average of unemployment and the metropolitan statistical area must have experienced or is likely to experience within three years the lesser of a loss of four thousand direct jobs or a dislocation of workers equal to one-half percent of the employed population of the metropolitan statistical area and at least fifty percent of the job loss or dislocation of workers must result from the action of a single employer, or eighty percent of such job loss or dislocation must occur in a single standard industry classification (two digit code); or

(ii) at the time of application, the unemployment rate of the metropolitan statistical area must be equal to or less than the national average of unemployment and the metropolitan statistical area must have experienced or is likely to experience within three years the lesser of

a loss of eight thousand direct jobs or a dislocation of workers equal to one percent of the employed population of the metropolitan statistical area and at least fifty percent of the job loss or dislocation of workers must result from the action of a single employer, or eighty percent of such job loss or dislocation must occur in a single standard industry classification (two digit code); or

(iii) at the time of application, the unemployment rate of the labor market area must exceed the national average of unemployment and the labor market area must have experienced or is likely to experience within three years the lesser of a loss of five hundred direct jobs or a dislocation of workers equal to two percent of the employed population of the labor market area; or

(iv) at the time of application, the unemployment rate of the labor market area must be equal to or less than the national average of unemployment and the labor market area must have experienced or is likely to experience within three years the lesser of a loss of one thousand direct jobs or a dislocation of workers equal to four percent of the employed population of the labor market area; or

(v) at the time of application, the municipality is declared a natural disaster area by the president of the United States; or

(vi) at the time of application, the municipality contains:

(A) a defense or military base or facility which has been designated for closure or realignment; or

(B) a state-operated hospital or facility listed in section 7.17 or 13.17 of the mental hygiene law, or a facility operated by the office for people with developmental disabilities, that has been designated by either the commissioner of mental health or the commissioner of developmental disabilities for contraction or discontinuance. Provided however, that not more than one-third of the zones designated pursuant to paragraph (iii) or (iv) of subdivision (b) of section nine hundred sixty of this article, shall be based on applications filed pursuant to this paragraph.

(d) Notwithstanding the provisions of paragraph (i) of subdivision (a) of this section, any municipality may apply for designation as an empire zone for an area which shall include a United States census tract or tracts or block numbering area or areas or portions thereof, each full census tract or portion of a block numbering area of which according to

the most recent census data available has:

(i) at the time of application, an unemployment rate equal to or exceeding the unemployment rate of the state of New York;

(ii) a rate of poverty for individuals of at least twenty percent;

(iii) a number of households receiving public assistance of fourteen percent or more;

(iv) the municipality is considered a non-metropolitan area; and

(v) there is no other empire zone in the county in which designation is sought.

(e) The empire zones designation board may accept from an applicant seeking designation any data in lieu of census data supporting such application as the commissioner deems to be reliable.

(f) Notwithstanding subdivisions (a), (b), (c) and (d) of this section or any other provision of this article, the following counties are deemed eligible to receive empire zone designation pursuant to subdivisions (b) and (c) of this section: Delaware; Greene; Hamilton; Livingston; Nassau; Putnam; Rockland; Schoharie; Tompkins; Wyoming; and Yates. New York county in the vicinity south of East Houston Street, east of Broadway, west of the East River, and north of Chambers Street and the Brooklyn Bridge, in an area commonly known as Chinatown, shall be deemed eligible to receive empire zone designation pursuant to subdivisions (a) and (d) of this section.

(g) Notwithstanding any other provision of this section, after March thirty-first, two thousand five, a municipality shall demonstrate in an application for designation as an empire zone, that there is no viable alternative area or areas that has or have existing public sewer or water infrastructure available other than the proposed zone.