

PROGRAM BILL # 11

GOVERNOR'S PROGRAM BILL 2013

MEMORANDUM

AN ACT to amend the economic development law, the tax law, the real property tax law, the administrative code of the city of New York, and the education law, in relation to establishing the tax-free NY program

Purpose:

This legislation will promote entrepreneurialism and job creation by transforming public higher education as "Tax-Free Communities" across the state, particularly upstate. The State University of New York campus system will serve as the framework for entrepreneurial Tax-Free Communities. Tax-Free communities will attract start-ups, venture capital, new business and investments from across the world. The Tax-Free NY program will enable campuses to serve as economic engines for their communities by harnessing the world-class research and innovation power of New York State's higher education sector while providing transformative financial incentives to spur business creation and expansion. Tax-Free NY communities will be 100 percent tax free. The program will entice companies to bring their ventures to these communities by offering new businesses and expanding businesses that create net new jobs the opportunity to operate completely tax-free – including no income tax for employees, no sales, property or business tax – while partnering with higher education institutions.

This program builds on the State's rich tradition of positioning colleges and universities as centerpieces for upstate economic development. As Governor Rockefeller said in 1973, reflecting on the dramatic expansion of upstate SUNY campuses during his tenure: "There's been a tremendous effect in terms of impact on the communities in which they live, because all of a sudden these communities had large student bodies, professors, faculty coming from all over the country and around the world. It was a whole new force, a whole new sense of optimism. And it has, I think, been an important force in self-renewal."

The Tax-Free NY program will serve a similar catalytic function in the 21st century: creating new businesses and new jobs for upstate New York and other designated locations, and benefiting the campus communities as well as their entire regions.

Summary of Provisions:

This bill would create the Tax-Free NY Program. Section 1 of the bill adds a new Article 21 to the Economic Development Law to create this program. Under this program, public and private colleges and universities in New York will be able to apply to have vacant space or land designated as Tax-Free NY Areas. Generally (but with some specified exceptions), the space or land of a State university or community college must be located outside of New York City and must either be on the campus or be property owned or leased by the school not to exceed 200,000 square feet located within one mile of the campus. Five city university campuses, one in each borough, will also qualify; the campuses designated in each borough must be located in the area with the highest poverty rate of city university campuses in that borough. Space or land on a designated city university campus and up to 200,000 square feet of space or land adjacent to the campus also qualifies. The Tax-Free NY Areas sponsored by public universities and colleges must be approved by the Commissioner of Economic Development in consultation with the Chancellor of the applicable university system.

The program also provides 3 million square feet of Tax-Free NY Areas primarily dedicated to private colleges and universities on land north of Westchester County, which will be allocated by the Tax-Free NY program approval board (consisting of three members with significant experience in academic-based entrepreneurship appointed by the Governor, the Speaker of the Assembly and the Temporary President of the Senate).

Of these 3 million square feet, 30,000 square feet will be allocated for each of the following: Nassau County, Suffolk County, Westchester County, Brooklyn, the Bronx, Queens and Staten Island. The Tax-Free NY Area must be located in parts of these counties and boroughs that are in the top 10 percent of census poverty rates for that county or borough. Private colleges and universities in New York City and Westchester, Suffolk and Nassau Counties, as well as SUNY and CUNY campuses that are excluded from the general provisions described above, may apply to sponsor these Tax-Free Areas.

In addition, up to 20 strategic state assets on vacant State-owned land, in closed State-owned buildings or on State-owned property slated for closure, located around the state but outside of New York City, may be designated by the Tax-Free NY approval board as Tax-Free NY Areas in affiliation with a college or university.

For all properties designated as Tax-Free NY Areas under this program, the sponsoring universities and colleges must present a plan that specifies the land or space that they want designated as a Tax-Free NY Area and demonstrates how the businesses that would locate in the Tax-Free NY Area would be aligned with or will further the academic mission of the university or college, and how the businesses' participation in the program would have positive community and economic effects, including whether the businesses would compete with businesses in the same community but located outside of the Tax-Free NY areas, as well as sets performance metrics including the creation of net new jobs.

Any capital project undertaken by a business in a Tax-Free NY Area affiliated with a State university campus, community college or strategic state asset will be subject to prevailing wage requirements under the Labor Law and comply with MWBE objectives.

In order to locate in a Tax-Free NY Area, a business will be required to be a new business to the State or an expanding business that creates net new jobs. The mission and activities of the business must align with, or further the academic mission of the university or college sponsoring the Tax-Free NY Area in which the business seeks to locate and the business's participation in the program must have positive community and economic effects. Businesses that locate within a Tax-Free NY Area will be entitled to a tax elimination credit to eliminate their taxes.

In addition, businesses would be exempted from other taxes such as the organization tax, the Metropolitan Commuter Transportation District (MCTD) mobility tax for those businesses located within the MCTD, and businesses would receive refunds of the sales taxes paid on the businesses' purchases of tangible personal property and services at their locations within the Tax-Free NY Areas. The tax benefits would extend for 10 years provided the businesses continue to maintain net new jobs and the employment numbers of the business and its related companies throughout the state do not decrease and its activities continue to be consistent with the program. A business that does not meet its net new job creation performance metrics will face sanctions subject to the contract established between the business and the college or university, including proportionate reduction of benefits, suspension and/or termination. Certain types of businesses are prohibited from participating in this program, including retail, real estate, and professional services type businesses.

In the first five years of a business's 10-year tax benefit period, the wages of the employees of a business located in a Tax-Free NY Area that are employed in the new jobs created by the business within these areas will be exempt from all personal income taxes. In years 6-10, \$200,000 of the wages of single individuals, \$250,000 of the wages of individuals who are heads of household and \$300,000 of the wages of individuals who file as married are exempt.

Sections 2 through 16 would amend the Tax Law and the New York City Administrative Code to detail these tax benefits.

Section 3 addresses penalties for fraud. In the case of a business that acted fraudulently, the business would: (1) be immediately terminated from such program; (2) be subject to applicable criminal penalties, including the felony crime of offering a false instrument for filing in the first degree and falsifying business records in the second degree, which shall constitute a felony for purposes of this program; and (3) be required to pay back all tax benefits that the company and its employees have received (the "claw-back").

Section 17 would amend the Real Property Tax Law to allow private universities and colleges to maintain tax-exempt status on property that is currently tax-exempt and that they subsequently lease to businesses participating in the tax-free NY program.

Sections 18 through 20 would amend the Education Law to allow SUNY campuses to participate in this program.

Section 21 would establish the terms for SUNY, CUNY and community college leases to participating businesses, which include provisions to ensure that revenue from any lease or contract benefits the students and faculty of the college or university.

Section 22 provides that the bill takes effect immediately and the tax benefits apply to taxable years beginning on or after January 1, 2014, calendar quarters beginning on or after January 1, 2014, sales tax quarters beginning on or after March 1, 2014, or transactions occurring on or after January 1, 2014, whichever is applicable.

Existing Law:

This is a new proposal, but builds on and brings together on scale the Governor's regional-based higher education driven public/private sector partnerships including the Regional Economic Development Councils, NYSUNY 2020, Innovation Hot Spots, Venture Capital Fund and Next Generation Job Linkage program.

Justification:

The New Economy is growing in higher education and there is a positive synergy between academia and entrepreneurial activity. New York has a great asset in the public and private education system and while generating jobs, the State cannot keep the jobs here given the perception and reality of New York as a high-tax state. By creating 100 percent Tax-Free Communities we will transform New York as a magnet for new jobs and businesses. The Tax-Free NY program complements and builds on the State's current economic development agenda, which includes:

- A paradigm shift in higher education that builds closer linkages between colleges and employers in order to prepare students for next-generation jobs;

- A focus on entrepreneurial academics through tech transfer, including R&D clusters, incubators and the newly enacted Innovation Hot Spots and Venture Capital Fund; and
- A business-friendly environment through lower taxes, entrepreneurial government and active partnerships with key industries.

Research shows that colleges and universities can strategically fill two critical needs for employers: advancing innovation with new technologies, new processes, new products, and new ideas that all fuel knowledge creation; and providing knowledge transfer, an innovation-based culture for employers and entrepreneurs, and access to a skilled workforce.

Since their establishment, SUNY's upstate campuses have improved the economic vitality of their communities and entire regions – fostering new jobs on- and off-campus and leading to the development of new businesses and ideas. SUNY's history of invention has spanned the decades, from introducing the first implantable heart pacemaker at SUNY Buffalo, to the groundbreaking research and job creation occurring right now at SUNY's NanoCollege. In addition, SUNY campuses across the state offer world-class programs in fields ranging from business to viticulture to computer science to electrical engineering which translate into a highly skilled workforce that can help companies and communities thrive upstate.

Although New York has all of the ingredients needed and even some noteworthy success stories, a 2010 Report by the Task Force on Diversifying the New York State Economy through Industry-Higher Education Partnerships identified significant opportunities for growth. The task force found that while New York was near the top nationally in total research expenditures, it lagged significantly behind other states in successfully commercializing those research ideas. For example:

- New York universities rank *second* nationally in total research spending with nearly \$4 billion spent annually (California ranks first with \$6.5 billion), but only 4.6% of that total is sponsored by industry, ranking New York 22nd among states (North Carolina ranks first with 13.6%, the national average is 5.4%).
- New York attracts only 4% of the nation's venture capital investment (California attracts 47%).
- New York's colleges incubate fewer new companies, with 35 start-ups launched in 2007 (California schools had 58 and Massachusetts schools, 60).

Tax-Free Communities will serve as the 21st Century economic engine for New York State.

Legislative History:

This is a new proposal.

Budget Implications:

The bill will not have a fiscal impact in FY13-14. Beginning in FY14-15, there is a potential "loss" resulting from forecasted future revenue growth. The bill does not include any direct costs to the State. For example, unlike other tax benefit programs, there are no State reimbursements to local governments to account for local property tax revenue loss.

Effective Date:

The bill takes effect immediately and the tax benefits apply to taxable years beginning on or after January 1, 2014, calendar quarters beginning on or after January 1, 2014, sales tax quarters beginning on or after March 1, 2014, or transactions occurring on or after January 1, 2014, whichever is applicable.