

GOVERNOR'S PROGRAM BILL
2013

MEMORANDUM

AN ACT to amend the economic development law, the tax law, the administrative code of the city of New York, the real property tax law and the education law, in relation to establishing the START-UP NY program (Part A); to amend the executive law, in relation to the mandate and regulatory relief council (Part B); and to amend the economic development law and the tax law, in relation to enhancing the excelsior jobs program act (Part C)

Purpose:

This makes technical corrections to Governor's Program Bill No. 32 (submitted June 18, 2013) which would enact the SUNY Tax-free Areas to Revitalize and Transform UPstate NY (START-UP NY) legislation. This will promote entrepreneurialism and job creation by transforming public higher education through tax-free communities across the state, particularly upstate. The State University of New York (SUNY) campus system will serve as the framework of the START-UP NY program to attract high-tech and other start-ups, venture capital, new business and investments from across the world. As important, the START-UP NY program will help existing companies, especially high-tech and start-ups, stay in New York and grow.

The START-UP 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. Higher ed communities under START-UP NY will be 100 % tax free (e.g. including no income tax for employees, no sales, property or business tax) as a way to entice companies to bring their ventures to these communities by offering new businesses and expanding businesses that create net new jobs.

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

Summary of Provisions:

Part A

This bill would create the START-UP NY Program. Section 1 of the bill would add 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 areas. Generally (but with some limited exceptions), the space or land of a State university or community college must be located outside of New York City. SUNY campuses and community colleges can designate vacant land and vacant space on their campus and any business incubator with a bona fide affiliation to the campus, university or college to be part of a Tax-Free NY Area, and SUNY campuses and community colleges located north of Westchester can also designate property not to exceed 200,000 square feet located within one mile of the campus.

Five City University of New York (CUNY) campuses, one in each borough, will also qualify. Each designated campus must be located in an economically distressed community in that borough, and the tax-free area can include vacant land and vacant space on the CUNY campus and any business incubator with a bona fide affiliation to the campus, university or college.

The tax-free 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 areas primarily dedicated to private colleges and universities on land north of Westchester County, which will be allocated by the START-UP NY program 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) in a manner that ensures regional balance and balance among eligible rural, urban and suburban areas in the State. For private colleges and universities north of Westchester County, the tax-free areas can include vacant land and vacant space on- or off-campus, as well as any business incubator with a bona fide affiliation to the campus, university or college.

Of these 3 million square feet, 75,000 square feet will be allocated for each of the following: Nassau County, Suffolk County, Westchester County, Brooklyn, the Bronx, Manhattan, Queens and Staten Island. 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 on college campuses. Once the 75,000 square foot cap is reached in these counties and boroughs, the board may designate up to an additional 75,000 square feet in each. Therefore, a potential of 150,000 square feet of space will be available in these counties and boroughs.

In addition, up to 20 strategic state assets on vacant State-owned land, in closed State-owned buildings or on state-owned strategically-located property slated for closure may be designated by the START-UP NY program board as tax-free areas in affiliation with a college or university. Each strategic state asset may include up to 200,000 square feet of vacant land or vacant building space.

For all properties designated as tax-free 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 area

and demonstrates how the businesses that would locate in the tax-free 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 areas, as well as set performance metrics including the creation of net new jobs.

Any capital project undertaken by a business in a tax-free area on property owned or leased by the State, a State university campus, community college, or city university campus will be subject to prevailing wage requirements under the Labor Law. In addition, any capital project on property owned or leased by the state, a state university campus or city university campus will be required to comply with MWBE objectives.

In order to locate in a tax-free area, a business will be required to be a new business in the State or an expanding business that would create net new jobs. In New York City and Nassau, Suffolk and Westchester Counties, the business must also be a high-tech company or a company in the formative stage of development. The mission and activities of the business must align with, or further the academic mission of the university or college sponsoring the tax-free area in which the business seeks to locate and the business's participation in the program must have positive community and economic effects. In order to be eligible for the benefits under the START-UP NY Program, business must apply by December 31, 2020, by which time the Commissioner of Economic Development will prepare an evaluation of the program's effectiveness in order to determine continued eligibility for application submissions. Businesses that locate within a tax-free 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 for their locations within the tax-free areas. The tax benefits would extend for 10 years provided a business continues 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.

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 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. The aggregate number of net new jobs designated each year as eligible for personal income tax benefits will not exceed 10,000 new jobs.

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.

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

Section 3 includes tough 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 (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 START-UP 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 would take effect immediately and the tax benefits would 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.

Part B

Part B amends the Mandate Relief Council to expand and rename it the Council to the Mandate Relief and Regulatory Relief Council to allow businesses to request the Council review regulations.

Part C

Part C makes changes that enhance the Excelsior Jobs Program. Section 1 would Economic Development L. § 353 to reduce generally by half the job creation requirements for participants in the Excelsior Program. Thus, for example, instead of being required to create 10 manufacturing jobs, a participant would only be required to create 5 manufacturing jobs.

Section 2 and 4 provide that a taxpayer that doesn't create all the required jobs but creates at least 75 % of those jobs will be required to proportionally reduce its tax credits. Section 3 would amend the cap of the excelsior program to allow the Commissioner to carry over one half of the amount of unallocated credits to the next year as a way to expand job growth in the State of New York.

Existing Law:

Part A 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.

Part B continues the effort to reduce burdensome and unnecessary regulations in the state.

Part C builds upon the 2011 effort to enhance the Excelsior Jobs Program to create additional job growth opportunities.

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 jobs given the perception and reality of New York as a high-tax state. The START-UP NY program will transform New York into a magnet for new jobs and businesses using its world class system of higher education. The START-UP 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: they can advance innovation with new technologies, new processes, new products, and new ideas that all fuel knowledge creation; and they can provide knowledge transfer, an innovation-based culture for employers and entrepreneurs, and access to a skilled workforce.

Since their establishment, SUNY's 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 needed ingredients and even some noteworthy success stories, the "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).

As important, the START-UP NY program will help keep existing New York start-ups and other high-tech companies in the state. The state spends billions on public higher education but we do not get

an adequate return on investment. For example, New York is second in the nation in number high tech start-ups, but 75 % of these small firms leave the state before five years. That is, they are either wooed away by other states' incentives or they leave of their own accord to take advantage of lower operating costs in lower taxed environments. So we pay for their development, but other states reap the economic rewards.

We must create the jobs to keep college graduates in the state. The latest data show only a little more than three-fourths of college grads in NY stay following graduation (76.4 %). This places New York 10th nationally-- well below places like California, Texas and Washington, but also places like New Mexico, New Jersey, Nevada, South Carolina and Mississippi.

Thirty-five Upstate counties lost population between 2010 and 2012. In just those two years: every county that lost population is upstate. In Central NY, Finger Lakes, Mid-Hudson, Mohawk Valley, the Southern Tier and Western NY, thousands more people chose to move out than moved in.

START-UP NY, along with the expansion of the Mandate and Regulatory Relief Council and the enhanced Excelsior Jobs Program, will create business climate of job creation for New Yorkers, as well as the innovators from around the country and the works we are trying to have join us in New York.

Legislative History:

This is a new proposal.

Budget Implications:

The bill will not have a fiscal impact in SFY13-14. Beginning in SFY14-15, 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:

Part A 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. Part B takes effect immediately. Part C takes effect in 60 days.