

# STATE OF NEW YORK

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## SENATE - ASSEMBLY

April 12, 2005

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

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### PART W

8 Section 1. Subdivision (d) of section 957 of the general municipal  
9 law, as added by chapter 686 of the laws of 1986, and as further amended  
10 pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is  
11 amended to read as follows:

12 (d) "Empire zone" shall mean an area within the state that has been  
13 designated as an empire zone pursuant to this article[-] and:

14 (i) all empire zones designated under paragraph (i) of subdivision (a)  
15 and subdivision (d) of section nine hundred fifty-eight of this article  
16 shall be referred to as "investment zones" and shall be wholly contained  
17 within three distinct and separate contiguous areas; provided, however,  
18 that empire zones designated prior to the enactment of this paragraph  
19 shall identify the three distinct and separate contiguous areas, which  
20 shall equal their total allotted acreage at the time of designation by  
21 January first, two thousand six. Provided however, the existing zone  
22 must include as much designated acreage into the distinct and separate  
23 contiguous areas as possible. Provided, however, a regionally signif-  
24 icant project may be located outside of the investment zone's distinct  
25 and separate contiguous areas. For the purpose of this article a  
26 "regionally significant project" shall mean: a manufacturer projecting  
27 the creation of fifty or more jobs; or an agri-business or high tech or  
28 biotech business making a capital investment of ten million dollars and  
29 creating twenty or more jobs; or a financial or insurance services or  
30 distribution center creating three hundred or more jobs shall be eliqi-  
31 ble as a regionally significant project as determined by the local zone  
32 administrative board and the commissioner. Other projects may be consid-  
33 ered by the zone designation board;

34 (ii) all empire zones designated under subdivisions (b) and (c) of  
35 section nine hundred fifty-eight of this article shall be referred to as  
36 "development zones" and shall be wholly contained within six distinct  
37 and separate contiguous areas. However, an empire zone located in more

38 than one county at the time of designation shall be wholly contained in  
39 twelve distinct and separate contiguous areas. Provided, however, that  
40 empire zones designated prior to the enactment of this paragraph shall  
41 identify the six distinct and separate contiguous areas, which shall  
42 equal their total allotted acreage at the time of designation, by Janu-  
43 ary first, two thousand six or in the case of an empire zone located in  
44 more than one county, at the time of designation shall identify twelve  
45 distinct and separate contiguous areas. Provided however, the existing  
46 zone must include as much designated acreage into the distinct and sepa-  
47 rate contiguous areas as possible. Provided, however, a regionally  
48 significant project may be located outside of the development zone's  
49 distinct and separate contiguous areas. For the purpose of this article  
50 a "regionally significant project" shall mean: a manufacturer project-  
51 ing the creation of fifty or more jobs; or an agri-business or high tech  
52 or biotech business making a capital investment of ten million dollars  
53 and creating twenty or more jobs; or a financial or insurance services  
54 or distribution center creating three hundred or more jobs shall be

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1 eligible as a regionally significant project as determined by the local  
2 zone administrative board and the commissioner. Other projects may be  
3 considered by the zone designation board;

4 (iii) provided, however, a zone may apply to add one additional  
5 distinct and separate contiguous area, pursuant to paragraphs (i) and  
6 (ii) of this subdivision, to such zone upon the demonstration of need,  
7 provided, however, such additional distinct and separate contiguous area  
8 shall not result in an empire zone that exceeds the maximum allotted  
9 acreage;

10 (iv) a "development zone", pursuant to paragraph (ii) of this subdivi-  
11 sion, shall apply, pursuant to subdivisions (a) and (d) of section nine  
12 hundred fifty-eight of this article, to have up to three distinct and  
13 separate contiguous areas defined as "investment zones", pursuant to  
14 this subdivision;

15 (v) any certified businesses located outside of the empire zone's  
16 distinct and separate contiguous areas, pursuant to this section, shall  
17 be allowed the empire zone benefits until they are decertified; and

18 (vi) the boundaries that comprise the distinct and separate contiguous  
19 areas in this subdivision must include at least the real property on one  
20 side of a public thoroughfare when such street is used as a boundary. No  
21 boundary shall be constructed as to connect one tax parcel to another  
22 tax parcel by using a thoroughfare's center line, sidewalk or other  
23 similar means of connecting a non-contiguous area to the zone's distinct  
24 and separate contiguous areas.

25 §§ 2. Subdivisions (q) and (r) of section 957 of the general municipal  
26 law are REPEALED and a new subdivision (q) is added to read as follows:

27 (q) "Cost benefit analysis" shall mean a method of determining whether  
28 to certify a business pursuant to section nine hundred sixty-three of  
29 this article based on the business' projected job creation and/or  
30 investment in the zone versus the amount of empire zone benefits the  
31 business will potentially be allowed to claim pursuant to sections four-  
32 teen, fifteen, and sixteen of the tax law.

33 Such cost benefit formula shall include, but not be limited to, an  
34 estimate for the first five years commencing in the year in which the  
35 business is certified, of: (i) the amount of all the state tax credits  
36 under the empire zones program which may be claimed by the entity or its  
37 members, partners, or shareholders each year, (ii) the value of the

38 sales tax exemption on an annual basis, (iii) the estimated number of  
39 jobs created, (iv) the total annual remuneration and benefits for the  
40 employees within the zone location, (v) the cost of construction, reno-  
41 vation or expansion of the business's location within the zone, and (vi)  
42 the investment being made with respect to tangible personal property or  
43 other tangible property which is depreciable pursuant to section 179(d)  
44 of the Internal Revenue Code. Non-quantifiable factors may include a  
45 business enterprise's positive impact on an area that has high commer-  
46 cial vacancy rates, and/or is characterized by blight and disinvestment  
47 or the business enterprise is part of a strategic industry cluster or  
48 supply chain; or is anticipated to access zone capital credits.

49 §§ 3. Paragraph (iii) of subdivision (a) of section 958 of the general  
50 municipal law, as amended by section 2 of part Q of chapter 84 of the  
51 laws of 2002, is amended to read as follows:

52 (iii) the area proposed as an empire zone shall not exceed:  
53 two square miles for any zone, such area shall be defined by one or  
54 more borders, which borders shall be determined by the applicant and  
55 need not be entirely coterminous with the borders of census tracts or  
56 block numbering areas provided, however, that such zone shall be located

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1 entirely within traditional neighborhood or community boundaries, and  
2 where appropriate, be bounded by major natural or man-made physical  
3 boundaries, such as bodies of water, railroad lines, or limited access  
4 highways, [provided, however, that not less than seventy-five percent of  
5 the area proposed as an empire zone created pursuant to paragraphs (vii)  
6 and (viii) of subdivision (b) of section nine hundred sixty of this  
7 article shall be located in not more than three non-contiguous areas,]  
8 and the zones created pursuant to paragraph (viii) of subdivision (b) of  
9 section nine hundred sixty of this article should be limited to one  
10 square mile; provided however, empire zones designated under subdivision  
11 (b) of section nine hundred sixty of this article may apply to increase  
12 their distinct and separate contiguous areas to two square miles;  
13 provided further, regionally significant projects are not included with-  
14 in such two square mile limitation;

15 §§ 4. Section 958 of the general municipal law is amended by adding a  
16 new subdivision (f) to read as follows:

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

27 §§ 4-a. Section 958 of the general municipal law is amended by adding a  
28 new subdivision (g) to read as follows:

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

34 §§ 5. Section 959 of the general municipal law, as added by chapter 686  
35 of the laws of 1986, subdivision (a) as amended and subdivisions (aa)

36 and (bb) as added by chapter 170 of the laws of 1994, subdivision (e) as  
37 amended by chapter 385 of the laws of 1994, subdivisions (f), (h), and  
38 (j) as amended and subdivisions (l), (m), (n), (o), (q), (r), (s), (t),  
39 (u), (v), (w), (x), (y), and (z) as added by chapter 708 of the laws of  
40 1993, subdivision (i) as amended by chapter 624 of the laws of 1990,  
41 subdivision (p) as amended by chapter 301 of the laws of 1996, and  
42 subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and  
43 (aa) as further amended pursuant to section 15 of part GG of chapter 63  
44 of the laws of 2000, is amended to read as follows:

45 §§ 959. Responsibilities of the commissioner. The commissioner shall:

46 (a) After consultation with the director of the budget, the commis-  
47 sioner of labor, and the commissioner of taxation and finance, promul-  
48 gate regulations governing (i) criteria of eligibility for empire zone  
49 designation, provided, however, that such criteria be approved by the  
50 director of the budget; (ii) the application process; (iii) the joint  
51 certification by the commissioner, the commissioner of labor, and, in  
52 the case of an empire zone, the local empire zone certification officer,  
53 as to the eligibility of business enterprises for benefits referred to  
54 in section nine hundred sixty-six of this article, provided, however,  
55 that a business enterprise that has shifted its operations, or some  
56 portions thereof, from an area within New York state not designated as

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1 an empire zone or zone equivalent area to an area so designated shall  
2 not be certified to receive such benefits except where such shift is  
3 entirely within a municipality and has been approved by the local  
4 governing body of such municipality or in situations where it has been  
5 established, after a public hearing, that extraordinary circumstances  
6 exist which warrant the relocation of a business, in whole or part, into  
7 an empire zone or a zone equivalent area from another municipality and  
8 the municipality from which the business is relocating approves of such  
9 relocation; or where such shift in operations is from a business incuba-  
10 tor facility operated by a municipality or by a public or private not-  
11 for-profit entity which provides space and business support services to  
12 newly established firms; and (iv) the joint decertification by the  
13 commissioner, the commissioner of labor, and, in the case of an empire  
14 zone, the local empire zone certification officer so as to revoke the  
15 certification of business enterprises for benefits referred to in  
16 section nine hundred sixty-six of this article with respect to an empire  
17 zone or zone equivalent area upon a finding that (1) the business enter-  
18 prise made material misrepresentations of fact on its application for  
19 certification, or the business enterprise failed to disclose facts in  
20 its application for certification that would constitute grounds for not  
21 issuing a certification; (2) the business enterprise has failed to  
22 construct, expand, rehabilitate or operate its facility substantially in  
23 accordance with the representations contained in its application for  
24 certification; (3) the business enterprise has failed to create new  
25 employment or prevent a loss of employment in the empire zone or zone  
26 equivalent area provided, however, that such failure was not due to  
27 economic circumstances or conditions which such business could not  
28 anticipate or which were beyond its control; (4) where applicable, the  
29 business enterprise has failed to submit an annual report after it has  
30 applied for zone incentives or program assistance based on new hires or  
31 investments or failed to submit other information to the local empire  
32 zone certification officer when due; or (5) the business enterprise has  
33 committed substantial violations of laws for the protection of workers

34 including all federal, state and local labor laws, rules or regulations;  
35 said regulations shall provide that whenever any business enterprise is  
36 decertified with respect to an empire zone [~~or zone equivalent area~~]:  
37 (A) the date determined to be the earliest event constituting grounds  
38 for revoking certification shall be the effective date of decertifi-  
39 cation; (B) its certified single enterprise, if any, may also be decer-  
40 tified; and (C) the commissioner shall notify the commissioner of taxa-  
41 tion and finance that such decertification has occurred, and such  
42 notification should include the effective date of such decertification  
43 and the zone or zone equivalent area to which such decertification  
44 applies;

45 (b) Receive and review applications for designation of areas as empire  
46 zones;

47 (c) [~~Make recommendations~~] Analyze and make recommendations to the  
48 empire zones designation board for designation of areas as empire zones,  
49 provided, however, that all such areas recommended by the commissioner  
50 shall meet the requirements of this article;

51 (d) Review new applications to replace any previously designated  
52 empire zone the designation of which has been terminated or withdrawn;

53 (e) File notice of the designation or redesignation of an empire zone  
54 or of the revision or termination of such designation with the appli-  
55 cant, the department of taxation and finance, the secretary of state,  
56 with the county, city, town or village clerk of each county, city, town,

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1 or village, respectively, in which the empire zone is located, with the  
2 school district governing body in which the empire zone is located, with  
3 the state board of real property services and with other state and local  
4 entities; provided, however, that such notice shall specify the date  
5 such action was taken and shall contain a description sufficient to  
6 identify the empire zone, including the names of the abutting streets,  
7 roads, highways, bodies of water, or other identifying physical  
8 features;

9 (f) Request, and shall receive from any department, division, board,  
10 bureau, commission, agency or public authority of the state such assist-  
11 ance as may be necessary to establish a procedure whereby applications  
12 submitted by business entities, community-based organizations, not-for-  
13 profit organizations, human service agencies, labor unions and municipal  
14 agencies located within an empire zone requesting financial and other  
15 assistance provided by state programs, including, but not limited to,  
16 capital development, human resource development, business assistance,  
17 job training and job placement shall, consistent with federal law, be  
18 given priority over applications submitted by entities not located in  
19 empire zones;

20 (g) Establish a priority for the allocation of authority to issue  
21 private activity bonds for the benefit of municipalities and business  
22 enterprises located or to be located within empire zones;

23 (h) Coordinate, with the local empire zone administrative board and  
24 state agencies and authorities, the provision of business development  
25 programs and services for each empire zone in order to stimulate the  
26 creation and development of new small businesses, including new small  
27 minority-owned and women-owned business enterprises, and may request and  
28 shall receive from any department, division, board, bureau, commission,  
29 agency or public authority of the state such assistance as may be neces-  
30 sary;

31 (i) Coordinate with the comptroller and the commissioner of taxation

32 and finance a linked deposit program. The comptroller and the commis-  
33 sioner of taxation and finance are hereby authorized and empowered to  
34 enter into agreements with financial institutions located in or serving  
35 the empire zones, to provide for the deposit of funds administered  
36 jointly by them in such institutions, at reduced rates of return to the  
37 state, in return for commitments by such institutions to businesses of  
38 loans of comparable amounts, at reduced interest rates, for business  
39 development projects in the zones that will create or preserve jobs[-];

40 (j) Assist each local empire zone board in preparing a small business  
41 assistance plan as required by section nine hundred sixty-three of this  
42 article and coordinate with the local empire zone administrative board  
43 and state agencies and authorities the development of small business  
44 procurement, export and marketing programs for businesses within the  
45 empire zones[-];

46 ~~(k) [Review a plan submitted no later than December thirty-first,~~  
47 ~~nineteen hundred eighty-seven, by the urban development corporation and~~  
48 ~~the job development authority, for extending to minority or women-owned~~  
49 ~~contracting companies which are endeavoring to secure work on projects~~  
50 ~~in the zones, surety guarantees assistance and such other assistance as~~  
51 ~~may be required by such firms which currently is unavailable from other~~  
52 ~~sources.]~~

53 ~~[(+)]~~ Promulgate regulations, in consultation with the commissioner of  
54 labor, for program evaluation and coordinate implementation of an evalu-  
55 ation system, which is capable of compiling and analyzing accurate and

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1 consistent information necessary for an assessment of whether statutory  
2 objectives and criteria are being met;

3 ~~[(+)]~~ (l) Review performance objectives and progress in meeting objec-  
4 tives with zone boards and zone administrative entities as part of the  
5 annual administrative contract process;

6 ~~[(+)]~~ (m) Assist zone boards and zone administrative entities to  
7 effect and implement job training and social services agreements and  
8 programs provided for in paragraphs (v), (vi) and (vii) of subdivision  
9 (b) of section nine hundred sixty-three of this article and request and  
10 receive from any agency or authority of the state such assistance as may  
11 be necessary to improve the delivery and coordination of human resource  
12 development programs to the zones;

13 ~~[(+)]~~ (n) Assist zones in increasing their child care capacity and in  
14 planning special care activities, including the provision of technical  
15 assistance by the department in planning for the provision of child care  
16 services in the zones;

17 ~~[(+)]~~ (o) Coordinate with the department of labor, the state education  
18 department, the job training partnership council and agencies of the  
19 state the inclusion in annual and biennial plans of such entities strat-  
20 egies for increasing and improving human resource development services  
21 on a priority basis, consistent with federal statutory and regulatory  
22 requirements, to residents of the zones and employees of zone busi-  
23 nesses, including, but not limited to, the governor's plan for coordi-  
24 nation and special services of the job training partnership council, the  
25 jobs plan and Wagner-Peyser annual plan for services of the department  
26 of labor, and the career education state plan of the state education  
27 department;

28 ~~[(+)]~~ (p) Arrange with the job training partnership council the  
29 provision of ~~[job training partnership]~~ the workforce investment act  
30 funds for use within the zones with the cooperation of the service

31 delivery areas in the governor's plan for coordination and special  
32 services;

33 [~~(r)~~] (g) Subject to the availability of funds, arrange for the allo-  
34 cation and reservation of funds from the infrastructure improvement  
35 programs of state agencies and authorities to assist the zones to make  
36 public improvements necessary for community, commercial, industrial and  
37 tourism development projects in support of zone revitalization;

38 [~~(s)~~] (r) Systematically enlist other state agencies and authorities  
39 to participate in zone programs and projects and in cooperative planning  
40 of interagency zone activities in support of zone revitalization  
41 efforts;

42 [~~(t)~~] (s) Recommend for economic development loan and grant programs  
43 of the department of economic development, urban development corpo-  
44 ration, job development authority, and science and technology foundation  
45 special terms and conditions for viable zone projects and programs;

46 [~~(u)~~] (t) Award preference to be given to applications submitted by or  
47 on behalf of zones for entrepreneurial assistance programs under article  
48 nine of the omnibus economic development act of nineteen hundred eight-  
49 y-seven to support the creation of new entrepreneurial development and  
50 entrepreneurial support centers;

51 [~~(v)~~] ~~Review a program plan and guidelines submitted by the division of~~  
52 ~~minority and women's business development of the department of economic~~  
53 ~~development no later than March thirty-first, nineteen hundred ninety-~~  
54 ~~four for expedited review of applications by zone businesses for certif-~~  
55 ~~ication as minority or women-owned businesses;]~~

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/s>]

1 [~~(w)~~] ~~Review a program plan and guidelines submitted no later than March~~  
2 ~~thirty-first, nineteen hundred ninety-four by the job development~~  
3 ~~authority for extending to small businesses within the zones, subject to~~  
4 ~~funds availability, guarantees of performance bonds or bid bonds for~~  
5 ~~construction, service and manufacturing contracts with federal, state~~  
6 ~~and local government agencies and authorities, as well as the private~~  
7 ~~sector;]~~

8 [~~(x)~~] ~~Review a program plan submitted by the department of labor no~~  
9 ~~later than March thirty-first, nineteen hundred ninety-four for the~~  
10 ~~establishment by the department of a community service center, to the~~  
11 ~~extent practicable, in or immediately adjacent to each zone;]~~

12 [~~(y)~~] (u) Coordinate with the urban development corporation the  
13 creation of a special category of assistance for zones within the  
14 regional economic development partnership program, which will make  
15 available economic development assistance grants for zone programs and  
16 activities, including, but not limited to, planning, service coordi-  
17 nation, and local institutional capacity building for human resource  
18 development necessary for economic revitalization; planning and develop-  
19 ment of small business incubators; job placement and preparedness  
20 programs for zones residents; education and training programs for zone  
21 businesses; child care programs and projects supportive of business  
22 development; technical assistance for minority and women-owned business  
23 development; training for zone officials; business and tourism develop-  
24 ment and marketing programs; and other innovative programs and activ-  
25 ities in support of economic and community development within the zones;  
26 and

27 [~~(z)~~] (v) Assist in the development of a plan, in coordination with  
28 the health and insurance departments, to assist zones in obtaining  
29 affordable employee health insurance for small business enterprises

30 located within the zone.

31 [~~(aa) Jointly certify, pursuant to regulations promulgated pursuant to  
32 this article, together with the commissioner of labor, those business  
33 enterprises, located in a zone equivalent area, which are eligible to  
34 receive the benefits described in subdivision (e) of section nine  
35 hundred sixty-six of this article. Such certification shall be consist-  
36 ent with the principles set forth in section nine hundred sixty-three of  
37 this article with respect to empire zones.]~~

38 [~~(bb) Designate as zone equivalent areas those census tracts and block  
39 numbering areas which, as of the nineteen hundred ninety census, satisfy  
40 the criteria set forth in subparagraphs (A) and (B) of paragraph (i) of  
41 subdivision (a) of section nine hundred fifty-eight of this article.  
42 Such designation shall be made, and a list of all such zone equivalent  
43 areas shall be promulgated, not later than June thirtieth, nineteen  
44 hundred ninety-four.]~~

45 §§ 5-a. Section 960 of the general municipal law is amended by adding  
46 three new subdivisions (a-1), (a-2) and (a-3) to read as follows:

47 (a-1) The empire zones designation board may consider designating  
48 empire zone acreage for the following categories of regionally signif-  
49 icant projects as set forth in section nine hundred fifty-seven of this  
50 article: agri-business or high tech or biotech business making a capital  
51 investment of ten million dollars and creating twenty or more jobs; or a  
52 financial or insurance services or distribution center creating three  
53 hundred or more jobs. Such consideration shall be upon application by  
54 the local zone administrative board and/or the commissioner. Such appli-  
55 cation shall be made after a public hearing in accordance with section  
56 nine hundred sixty-nine of this article and in accordance with findings

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1 which shall consider factors including but not limited to: the creation  
2 and retention of a regionally significant number of skilled or otherwise  
3 quality jobs; substantial capital investment; or the export of a  
4 substantial amount of goods or services beyond the immediate region; and  
5 further findings as to why such project cannot be accommodated within  
6 the distinct and separate contiguous areas pursuant to section nine  
7 hundred fifty-seven of this article. Such findings shall be published  
8 once a week for four successive weeks, in two newspapers of the county  
9 of which the project is to be located or if no newspaper is published  
10 therein, in the newspaper nearest thereto. Proof of such publication  
11 shall be submitted to the board. The board shall not act on such project  
12 or projects until thirty days of the final publication of such findings.

13 (a-2) The empire zones designation board may consider designating  
14 empire zone acreage for other regionally significant projects in accord-  
15 ance with section nine hundred fifty-seven of this article, upon appli-  
16 cation by the local zone administrative board and/or the commissioner.  
17 Such application shall be made after a public hearing in accordance with  
18 section nine hundred sixty-nine of this article and in accordance with  
19 findings which shall consider factors including, but not limited to: the  
20 creation and retention of a regionally significant number of skilled or  
21 otherwise quality jobs; substantial capital investment; or the export of  
22 a substantial amount of goods or services beyond the immediate region;  
23 and further findings as to why such project cannot be accommodated with-  
24 in the distinct and separate contiguous areas pursuant to section nine  
25 hundred fifty-seven of this article. Such findings shall be published  
26 once a week for four successive weeks, in two newspapers of the county  
27 of which the project is to be located or if no newspaper is published

28 therein, in the newspaper nearest thereto. Proof of such publication  
29 shall be submitted to the board. The board shall not act on such project  
30 or projects until thirty days of the final publication of such findings.  
31 Provided, however, that the commissioner shall promulgate rules and  
32 regulations for the implementation of this subdivision after approval by  
33 the empire zones designation board. Provided further, approval of such  
34 projects and related regulations requires an affirmative vote by at  
35 least five voting members of such board.

36 (a-3) The empire zones designation board shall approve the initial  
37 distinct and separate contiguous areas as required by section nine  
38 hundred fifty-seven of this article. Provided, however, such approval  
39 shall be by unanimous vote.

40 §§ 6. Subdivision (b) of section 960 of the general municipal law is  
41 amended by adding five new paragraphs (ix), (x), (xi), (xii) and (xiii)  
42 to read as follows:

43 (ix) In the period commencing nineteen years after the effective date  
44 of this article, not more than three additional empire zones, as deter-  
45 mined pursuant to a memorandum of understanding to be executed by the  
46 governor, the temporary president of the senate and the speaker of the  
47 assembly, each of which shall be designated from among the counties  
48 identified in subdivision (f) of section nine hundred fifty-eight of  
49 this article.

50 (x) In the period commencing twenty years after the effective date of  
51 this article, not more than three additional empire zones, as determined  
52 pursuant to a memorandum of understanding to be executed by the gover-  
53 nor, the temporary president of the senate and the speaker of the assem-  
54 ply, all of which shall be designated from among the counties identified  
55 in subdivision (f) of section nine hundred fifty-eight of this article.

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1 Provided, however, said designation does not include counties designated  
2 pursuant to paragraph (ix) of this subdivision.

3 (xi) In the period commencing twenty-one years after the effective  
4 date of this article, not more than three additional empire zones, as  
5 determined pursuant to a memorandum of understanding to be executed by  
6 the governor, the temporary president of the senate and the speaker of  
7 the assembly, all of which shall be designated from among the counties  
8 identified in subdivision (f) of section nine hundred fifty-eight of  
9 this article. Provided, however, said designation does not include  
10 counties designated pursuant to paragraphs (ix) and (x) of this subdivi-  
11 sion.

12 (xii) In the period commencing twenty-two years after the effective  
13 date of this article, not more than three additional empire zones, as  
14 determined pursuant to a memorandum of understanding to be executed by  
15 the governor, the temporary president of the senate and the speaker of  
16 the assembly, all of which shall be designated from among the counties  
17 identified in subdivision (f) of section nine hundred fifty-eight of  
18 this article. Provided, however, said designation does not include  
19 counties designated pursuant to paragraphs (ix), (x) and (xi) of this  
20 subdivision.

21 (xiii) Within six months after the effective date of this paragraph,  
22 the Oneida-Herkimer empire zone may be designated as two separate square  
23 mile empire zones as designated pursuant to a memorandum of understand-  
24 ing to be executed by the governor, the temporary president of the  
25 senate and the speaker of the assembly.

26 §§ 7. Subdivisions (d) and (e) of section 960 of the general municipal

27 law, subdivision (d) as added by chapter 686 of the laws of 1986, subdivi-  
28 vision (e) as amended by chapter 624 of the laws of 1990, paragraph (iv)  
29 of subdivision (e) as added by chapter 708 of the laws of 1993, the  
30 opening paragraph of paragraph (iv) of subdivision (e) as amended by  
31 chapter 537 of the laws of 1996 and paragraphs (i), (ii), (iii) and the  
32 opening paragraph of paragraph (iv) of subdivision (e) as further  
33 amended pursuant to section 15 of part GG of chapter 63 of the laws of  
34 2000, are amended to read as follows:

35 (d) Notwithstanding any other provision of this article, such zones  
36 designated, shall be, as far as practicable, equally distributed between  
37 urban, suburban and rural areas. In addition, zone designation, as far  
38 as practicable, shall be based upon a priority system of economic need.

39 (e) (i) The department of audit and control, the department of taxa-  
40 tion and finance[7] and the department of economic development [~~and the~~  
41 ~~legislative commission on expenditure review~~] shall prepare reports on  
42 the management and the economic and fiscal impact of empire zones. The  
43 analysis of the fiscal and economic impact of the empire zones shall  
44 include, but not be limited to, a review of the cost of providing the  
45 tax benefits referred to in section nine hundred sixty-six of this  
46 [~~chapter~~] article and the amount of real property tax increments segre-  
47 gated for infrastructure improvements as authorized by section nine  
48 hundred sixty-seven of this [~~chapter~~] article. Such reports shall be  
49 transmitted to the governor[7] and the legislature [~~and the commission~~]  
50 by September first, [~~nineteen hundred ninety~~] two thousand six and every  
51 year thereafter.

52 (ii) [~~A commission, whose maximum duration shall be six months, shall~~  
53 ~~be created to evaluate and recommend whether the program should continue~~  
54 ~~in operation, or whether it should be changed in some manner, or whether~~  
55 ~~the powers of the empire zone designation board to designate zones~~  
56 ~~should be discontinued. The commission shall be composed of seven]~~

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1 ~~members, with the chairperson and four other members appointed by the~~  
2 ~~governor, one member appointed by the temporary president of the senate~~  
3 ~~and one member appointed by the speaker of the assembly.]~~

4 [~~(iii) The commission shall report its findings by March first, nine-~~  
5 ~~teen hundred ninety-one, to the governor and the legislature with recom-~~  
6 ~~mendations of changes necessary. Notwithstanding any other provision of~~  
7 ~~law, no further applications for empire zone designation shall be~~  
8 ~~approved by the empire zone designation board created pursuant to this~~  
9 ~~section if the commission report shall have recommended the discontinua-~~  
10 ~~tion of the program.]~~

11 [~~(iv)] An entity independent of the department shall conduct and submit~~  
12 ~~to the governor and the legislature by no later than December thirty-~~  
13 ~~first, [nineteen hundred ninety-six] two thousand nine, a comprehensive~~  
14 ~~evaluation of the performance of the zones program and of individual~~  
15 ~~zones on meeting criteria established pursuant to this section. The~~  
16 ~~criteria by which the empire zones program and individual zones are to~~  
17 ~~be evaluated shall include, but not be limited to, the following:~~

18 (1) whether quantifiable benefits attributable to the program justify  
19 its direct costs to the state and participating localities;

20 (2) whether the program has contributed to the economic revitalization  
21 of the zones by stimulating (A) the creation and retention of permanent,  
22 full-time, quality private sector jobs; (B) the creation, location and  
23 expansion of businesses in the zones; (C) capital and human resource  
24 investments by zone businesses and new business development; and (D)

25 public and private investments in zone businesses and economic and  
26 community development activities important for economic revitalization;

27 (3) whether the program has created employment and business develop-  
28 ment opportunities for residents of the zones and job training opportu-  
29 nities for residents and employees of zone businesses;

30 (4) whether the program has (A) resulted in new and improved local  
31 administrative capacity within the zones to plan for and capture econom-  
32 ic opportunities and deliver and coordinate economic, community and  
33 human resource development services, and (B) increased commitments of  
34 local resources to zone revitalization, including support from the busi-  
35 ness community;

36 (5) whether the program has stimulated assistance from state, federal  
37 and other economic, community and human resource development programs  
38 relative to other areas and improved the delivery and coordination of  
39 state services to the zones; and

40 (6) whether the program is being managed and evaluated effectively at  
41 state and local levels.

42 §§ 8. Paragraph (xi) of subdivision (b) of section 961 of the general  
43 municipal law, as added by chapter 708 of the laws of 1993, is amended  
44 and two new paragraphs (xii) and (xiii) are added to read as follows:

45 (xi) identify publicly controlled and other developable lands and  
46 buildings within the proposed zone which are or could be made available  
47 for industrial and commercial development[-];

48 (xii) include a statement from the applicant and local economic devel-  
49 opment entities, including but not limited to the local development  
50 corporation, local development councils, authorities, agencies and all  
51 other such entities concerned with the economic development of the muni-  
52 cipality; ensuring the complete integration and cooperation of resources  
53 and services for the purposes of providing essential support for the  
54 zone administrator in order for the zone to realize such goals;

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1 (xiii) include demonstration that there is no viable alternative area  
2 available that has existing public sewer or water infrastructure other  
3 than the proposed empire zone.

4 §§ 9. The opening paragraph of section 962 of the general municipal  
5 law, as added by chapter 686 of the laws of 1986, and as further amended  
6 by section 15 of part GG of chapter 63 of the laws of 2000, is amended  
7 to read as follows:

8 An empire zone development plan shall be [filed] submitted for  
9 approval with the commissioner and with the local empire zone adminis-  
10 trative board, and shall demonstrate the methods by which the applicant  
11 intends to promote the development of new business and the expansion of  
12 existing business within the empire zone and shall include, but shall  
13 not be limited to:

14 §§ 10. Subdivisions (w) and (x) of section 962 of the general municipal  
15 law, as added by chapter 708 of the laws of 1993 and subdivision (w) as  
16 amended pursuant to section 15 of part GG of chapter 63 of the laws of  
17 2000, are amended and five new subdivisions (y), (z), (aa), (bb) and  
18 (cc) are added to read as follows:

19 (w) a description of the organizational actions to be taken by the  
20 local empire zone administrative board and zone administrative entities  
21 to implement specified business, community and human resource develop-  
22 ment goals and strategies; [and]

23 (x) a description of the financial commitments which the applicant is  
24 prepared to make to the zone, including, but not limited to, specific

25 commitments for infrastructure improvements[-];

26 (y) a description of how the local economic development entities, as  
27 described in paragraph (xii) of subdivision (b) of section nine hundred  
28 sixty-one of this article will integrate its services to allow for the  
29 best possible economic development support for the zone;

30 (z) any zone designated prior to the enactment of this paragraph shall  
31 submit a new development plan, as defined pursuant to this section, in  
32 conjunction with the requirements set forth in subdivision (d) of  
33 section nine hundred fifty-seven of this article which the commissioner  
34 shall approve or disapprove such plan within ninety days of submission;

35 (aa) the development plan established pursuant to this section shall  
36 be resubmitted by the local zone administrative board as economic condi-  
37 tions change within the zone, or when other factors trigger a need for a  
38 change in the development plan as determined by the local zone adminis-  
39 trative board;

40 (bb) a description of specific strategies and actions taken by the  
41 local empire zone administration board and zone administrative entities  
42 to integrate economic goals with the objectives of community well-being  
43 and environmental protection, such as open space protection, that will  
44 promote new development patterns in order to take advantage of resources  
45 and opportunities, such as existing public sewer and water infrastruc-  
46 ture, without compromising the needs of future generations; and

47 (cc) a cost benefit analysis which must be used by the local empire  
48 zone certification officer when determining whether to certify a busi-  
49 ness pursuant to subdivision (a) of section nine hundred sixty-three of  
50 this article.

51 §§ 11. Subdivision (a) of section 963 of the general municipal law, as  
52 amended by chapter 708 of the laws of 1993, and as further amended  
53 pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is  
54 amended to read as follows:

55 (a) The local empire zone certification officer shall not serve on the  
56 local empire zone administrative board and shall, pursuant to regu-

1 lations promulgated pursuant to this article, [jointly] certify [togeth-  
2 er] in conjunction with the commissioner and the commissioner of labor,  
3 those business enterprises which have been approved for certification by  
4 the zone administrative board as eligible to receive benefits referred  
5 to in section nine hundred sixty-six of this article; provided, however,  
6 that such certification shall be governed by criteria including, but not  
7 limited to, (i) whether the business enterprise, if certified, is  
8 reasonably likely to create new employment or prevent a loss of employ-  
9 ment in the zone, (ii) whether such new employment opportunities will be  
10 for individuals who will perform a substantial part of their employment  
11 activities in the zone, (iii) whether certification will have the unde-  
12 sired effect of causing individuals to transfer from existing employment  
13 with another business enterprise to similar employment with the business  
14 enterprise so certified, and transferring existing employment from one  
15 or more other municipalities, towns or villages in the state, or trans-  
16 ferring existing employment from one or more other businesses in the  
17 zone, (iv) whether such enterprise is likely to enhance the economic  
18 climate of the zone, [and] (v) whether such business enterprise, during  
19 the three years preceding the submission of an application for certifi-  
20 cation, has engaged in a substantial violation or a pattern of  
21 violations of laws regulating environmental protection, unemployment  
22 insurance, workers compensation, public work, child labor, employment of

23 minorities and women, safety and health, or other laws for the  
24 protection of workers as determined by final judgment of a judicial or  
25 administrative proceeding; and provided further, however, that any busi-  
26 ness enterprise that applies for any tax, utility rate, or management  
27 assistance benefits provided by this article shall provide ninety days  
28 written notice to the commissioner, the local empire zone certification  
29 officer, the local empire zone administrative board and the employees of  
30 such business enterprise of any intent to close or partially close a  
31 facility within the empire zone. For the purposes of this subdivision,  
32 "closing" shall mean the permanent termination of employment at a busi-  
33 ness facility, and "partial closing" shall mean the permanent termi-  
34 nation of a portion of the employment at a business facility that will  
35 either immediately reduce the work force by at least fifty employees or  
36 will reduce the work force by at least fifty percent over a one-year  
37 period, (vi) whether such business will meet the requirements of the  
38 cost benefit formula as established in this article, and (vii) if the  
39 certification officer, the commissioner, and the commissioners of taxa-  
40 tion and finance and of labor establish that the business enterprise has  
41 been found in a criminal proceeding to have violated, in the previous  
42 three years, any of the laws referred to in paragraph (v) of this subdivi-  
43 vision or regulations promulgated pursuant to such laws, the conditions  
44 of any permit issued thereunder, or similar statute, regulation, order  
45 or permit condition of any other government agency, foreign or domestic,  
46 the certification officer in conjunction with the commissioners of taxa-  
47 tion and finance and of labor, such business shall not be certified.

48 §§ 12. Paragraph (xi) of subdivision (b) of section 963 of the general  
49 municipal law, as amended by chapter 708 of the laws of 1993, is amended  
50 to read as follows:

51 (xi) in conjunction with zone administrative entities, develop and  
52 implement a system for continuous monitoring and evaluation of zone  
53 performance at the local level consistent with the guidelines set forth  
54 in subdivisions [~~(l)~~] (k) through [~~(p)~~] (o) of section nine hundred  
55 fifty-nine of this article;

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1 §§ 13. Section 963 of the general municipal law is amended by adding  
2 three new subdivisions (e), (f) and (g) to read as follows:

3 (e) The department of economic development shall provide to the tempo-  
4 rary president of the senate, the speaker of the assembly and the  
5 commissioner of the department of taxation and finance a consolidated  
6 statewide report of the information required pursuant to paragraph (ii)  
7 of subdivision (b) and subdivision (c) of this section. Such report by  
8 the department shall contain an analysis of the performance of each zone  
9 using the information obtained pursuant to paragraph (ii) of subdivision  
10 (b) and subdivision (c) of this section. Such report shall include, but  
11 not be limited to, the number of jobs created, as derived from paragraph  
12 one of subdivision (b) of section fourteen of the tax law, for all busi-  
13 nesses in each zone, and the number of new businesses in each zone.

14 (f) No designated empire zone shall require or solicit funds from  
15 businesses, whether certified or not, for use in the empire zones  
16 program as created by this article. No business shall be required to pay  
17 any funds to participate in the empire zones program.

18 (g) All certified businesses are required to provide a certified annu-  
19 al report to the local zone administration board which report shall  
20 include but not be limited to the following:

21 (i) Business certification information to include: organization name,

22 organization address in the zone, contact information, federal employ-  
23 ment ID number, New York state unemployment insurance number, state of  
24 formation or incorporation, verification that the business is authorized  
25 to conduct business in the state of New York;

26 (ii) Employment numbers calculated in the same manner in which the  
27 employment number is required to be calculated by section fourteen of  
28 the tax law including: total existing full-time equivalent jobs in the  
29 zone as of the date of certification within that zone, total existing  
30 jobs in the zone for the year for which the report is being provided,  
31 total remuneration paid to employees in the zone each quarter of the  
32 reported year, total number of employees in all zones, total annual  
33 remuneration in all zones, total annual remuneration paid in New York  
34 state for the reported year, total employment number in New York state  
35 for the reported year as shown on each business' NYS-45 wage reporting  
36 form filed with the department of labor;

37 (iii) Capital investment to include: total investment made in the zone  
38 for the reported year, with such investment being made with respect to  
39 tangible personal property or other tangible property which is deprecia-  
40 ble pursuant to section one hundred seventy-nine (d) of the internal  
41 revenue code;

42 (iv) Tax credits claimed: provide an estimation of the amount of the  
43 following credits claimed for the reported year by the certified busi-  
44 ness, or by the taxpayers within the certified business including its  
45 shareholders, members, partners or the owner of a sole proprietorship:  
46 wage tax credits, investment tax credits, employment incentive tax cred-  
47 its, real property tax credit, and tax reduction credit; and

48 (v) Other benefits: estimated value to the certified business of the  
49 sales tax exemption for the reported year.

50 §§ 14. Section 969 of the general municipal law, as amended by chapter  
51 606 of the laws of 1988 and as further amended by section 15 of part GG  
52 of chapter 63 of the laws of 2000, subdivision (a) as amended by section  
53 1 of part O of chapter 60 of the laws of 2004, subdivision (b) as  
54 amended by chapter 708 of the laws of 1993, the opening paragraph of  
55 subdivision (c) as amended by chapter 624 of the laws of 1990, paragraph  
56 2 of subdivision (c) as amended by section 5 of part Q of chapter 84 of

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1 the laws of 2002, and paragraphs 6, 7 and 8 of subdivision (c) as added  
2 by section 6 of part Q of chapter 84 of the laws of 2002, is amended to  
3 read as follows:

4 §§ 969. Termination or revision of an empire zone. (a) Except as  
5 provided in this section, any designation of an area as an empire zone  
6 shall remain in effect during the period beginning on the date of desig-  
7 nation and ending [~~March thirty-first~~] June thirtieth, two thousand  
8 [~~five~~] eleven.

9 (b) After consultation with the director of the budget and the commis-  
10 sioner of labor, the commissioner may terminate the designation of an  
11 area as an empire zone upon a finding that (1) the applicant has failed  
12 substantially to implement the empire zone development plan within the  
13 time stated therein; (2) there has been no substantial business develop-  
14 ment or job creation within the area designated as an empire zone within  
15 five years after such designation; (3) there has been inadequate manage-  
16 ment and evaluation of the zone at the local level; or (4) the applicant  
17 has repeatedly failed to comply with program reporting requirements,  
18 provided, however, that no termination shall occur unless and until  
19 written notice has been given to the applicant and a public hearing has

20 been held thirty days prior to the effective date of such termination.

21 (c) The governing body of a city, county, town or village may, by  
22 resolution, submit to the commissioner a request to revise the bounda-  
23 ries of an existing empire zone. The commissioner may, after consulta-  
24 tion with the commissioner of labor, approve such revision subject to  
25 the following provisions:

26 (1) Any revision of the borders of an empire zone shall be based upon  
27 a determination by the commissioner that a change in circumstances has  
28 occurred since the establishment of the existing borders which makes  
29 revision of such borders necessary or desirable.

30 (2) The commissioner shall affirm that such revision would not have  
31 the effect of producing an empire zone which does not satisfy the crite-  
32 ria for empire zone designation established by or pursuant to section  
33 nine hundred fifty-eight of this article.

34 (3) The commissioner may grant approval of revision of the borders of  
35 an empire zone ~~[without]~~ after prior public notice and ~~[without]~~ a  
36 ~~[prior]~~ public hearing at least thirty days prior to the effective date  
37 of such revision, if such revision adds territory to an existing empire  
38 zone ~~[, but does not remove territory from such zone]~~.

39 (4) The commissioner may grant approval of a revision of the borders  
40 of an empire zone after public notice of such proposed revision and a  
41 public hearing at least thirty days prior to the effective date of such  
42 revision, if such revision removes territory from an existing empire  
43 zone.

44 (5) The revision of the borders of an empire zone shall have no effect  
45 on the duration of the designation of such empire zone as provided by  
46 subdivision (a) of this section.

47 ~~(6) [Any request to revise the boundaries of an existing empire zone~~  
48 ~~submitted to the commissioner on or after January fifteenth, two thou-~~  
49 ~~sand three shall not result in the final designation of less than seven-~~  
50 ~~ty-five percent of the existing zone's undesignated acreage on or after~~  
51 ~~January fifteenth, two thousand three in more than three noncontiguous~~  
52 ~~areas. Any request by an existing zone to the commissioner for the~~  
53 ~~designation of up to twenty-five percent of the existing zone's remain-~~  
54 ~~ing undesignated acreage on or after January fifteenth, two thousand~~  
55 ~~three shall demonstrate that: the proposed acreage offers a significant~~  
56 ~~contribution to the economic revitalization of the zone and surrounding]~~

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1 ~~area, to include the creation or retention of private sector jobs, or a~~  
2 ~~plan to demonstrate that the capital, human resource, or other invest-~~  
3 ~~ment by businesses located within the proposed acreage will approximate~~  
4 ~~fifty percent of the projected aggregate amount of zone benefits to be~~  
5 ~~received by the certified businesses located within the proposed acreage~~  
6 ~~during the first twelve months following such designation; and that the~~  
7 ~~proposed acreage is serviced, or will be serviced, by public transporta-~~  
8 ~~tion available to zone or community residents, or other prospective~~  
9 ~~employees, in those zones where a public transportation system already~~  
10 ~~exists and where such service is economically feasible; but only after~~  
11 ~~public notice of such proposed revision and a public hearing at least~~  
12 ~~thirty days prior to the effective date of such revision. Provided,~~  
13 ~~however, if an existing zone demonstrates that a project which will~~  
14 ~~enhance the economic revitalization of the zone and benefit zone resi-~~  
15 ~~dents cannot be included within one of the three noncontiguous areas,~~  
16 ~~and upon the commissioner's determination that inclusion of such addi-~~  
17 ~~tional noncontiguous lands poses significant potential for economic~~

18 development, to include job creation of no less than three hundred new  
19 jobs, more than twenty-five percent of the existing zone's undesignated  
20 acreage on or after January fifteenth, two thousand three can be used in  
21 more than three noncontiguous areas, but only after public notice of  
22 such proposed revision and a public hearing at least thirty days prior  
23 to the effective date of such revision.]

24 [~~(7)~~ Any request to revise the boundaries of a new empire zone submit-  
25 ted to the commissioner shall not result in the final designation of  
26 less than seventy-five percent of the new zone's undesignated acreage in  
27 more than three noncontiguous areas. Any request by a new zone to the  
28 commissioner for the designation of up to twenty-five percent of the new  
29 zone's remaining undesignated acreage shall demonstrate that: the  
30 proposed acreage offers a significant contribution to the economic revit-  
31 alization of the zone and surrounding area, to include the creation or  
32 retention of private sector jobs, or a plan to demonstrate that the  
33 capital, human resource, or other investment by businesses located with-  
34 in the proposed acreage will approximate fifty percent of the projected  
35 aggregate amount of zone benefits to be received by the certified busi-  
36 nesses located within the proposed acreage during the first twelve  
37 months following such designation; and that the proposed acreage is  
38 serviced, or will be serviced, by public transportation available to  
39 zone or community residents, or other prospective employees, in those  
40 zones where a public transportation system already exists and where such  
41 service is economically feasible; but only after public notice of such  
42 proposed revision and a public hearing at least thirty days prior to the  
43 effective date of such revision. Provided, however, if a new zone demon-  
44 strates that a project which will enhance the economic revitalization of  
45 the zone and benefit zone residents cannot be included within one of the  
46 three noncontiguous areas, and upon the commissioner's determination  
47 that inclusion of such additional noncontiguous lands poses significant  
48 potential for economic development, to include job creation of no less  
49 than three hundred new jobs, more than twenty-five percent of the new  
50 zone's undesignated acreage can be used in more than three noncontiguous  
51 areas, but only after public notice of such proposed revision and a  
52 public hearing at least thirty days prior to the effective date of such  
53 revision.]

54 [~~(8)~~] It is the policy to allow each zone no more than one boundary  
55 amendment within a twelve month period. If, however, there is a change  
56 in circumstances involving extenuating factors within the year (such as

1 the attraction/retention of a [major potential/area employer] regionally  
2 significant project, which is consistent with the zone's development  
3 [goals] plan), the request will be considered. Any request to revise  
4 the boundaries of an existing empire zone that would add or remove acre-  
5 age from a zone shall not be submitted until the provisions of this  
6 subdivision are satisfied and the designation of the distinct and sepa-  
7 rate contiguous areas are submitted as required by section nine hundred  
8 fifty-seven of this article, unless the zone administrative board demon-  
9 strates that prior to the effective date of the amendments to this  
10 subdivision made by a chapter of the laws of two thousand five it has  
11 been working in conjunction with a business for the purpose of submit-  
12 ting such boundary revision that would result in the creation of jobs  
13 within the zone. For purposes of section one hundred eighty-seven-j and  
14 articles nine-A, twenty-two, thirty-two, and thirty-three of the tax  
15 law, such business shall be deemed to have been certified prior to April

16 first, two thousand five.

17 (d) Upon the termination or revision of the borders of an empire zone  
18 as provided in this section, the commissioner shall file notice of such  
19 action as required by section nine hundred fifty-nine of this article.

20 (e) Notwithstanding the provisions of this section, for any empire  
21 zone acreage designated as a result of a revision of the borders of an  
22 empire zone prior to the effective date of this subdivision that is  
23 outside of the distinct and separate contiguous areas that has not  
24 demonstrated any appreciable commercial activity and/or any appreciable  
25 capital improvement over a two year period from the time of designation,  
26 such acreage shall be identified by the local empire zone administrative  
27 board, which shall determine whether such acreage has been proposed for  
28 development in a manner consistent with the empire zone development  
29 plan. If such acreage has not been proposed for development in such  
30 manner the local empire zone administrative board shall remove such  
31 acreage from the zone. Any affected business or businesses shall be  
32 immediately decertified.

33 §§ 15. Subdivisions (a), (b), (c), (g), (i), (j) and (j) of section 14  
34 of the tax law, subdivisions (a), (b), (c), (g) and (i) as amended and  
35 subdivision (j) as added by section 10 of part CC of chapter 85 of the  
36 laws of 2002 and subdivision (j) as amended by section 1 of part C of  
37 chapter 209 of the laws of 2004, are amended and two new subdivisions  
38 (l) and (m) are added to read as follows:

39 (a) Qualified empire zone enterprise. A business enterprise which is  
40 certified under article eighteen-B of the general municipal law [~~prior~~  
41 ~~to July first, two thousand five~~] and meets the employment test shall be  
42 a "qualified empire zone enterprise":

43 (1) for purposes of ~~section one hundred eighty-seven-j and~~ articles  
44 nine-A, twenty-two, thirty-two and thirty-three of this chapter, for  
45 each of the taxable years within the "business tax benefit period,"  
46 which period shall consist of (A) in the case of a business enterprise  
47 with a test date occurring on or before December thirty-first, two thou-  
48 sand one, the first fifteen taxable years beginning on or after January  
49 first, two thousand one, [~~and~~] (B) in the case of a business enterprise  
50 with a test date occurring on or after January first, two thousand two,  
51 but prior to April first, two thousand five, the fifteen taxable years  
52 next following the business enterprise's test year, and (C) in the case  
53 of a business enterprise which is first certified under article eigh-  
54 teen-B of the general municipal law on or after April first, two thou-  
55 sand five, the ten taxable years starting with the taxable year in which  
56 the business enterprise's first date of certification under article

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1 eighteen-B of the general municipal law occurs, but only with respect to  
2 each of such [~~fifteen~~] business tax benefit period years for which the  
3 employment test is met, [~~and~~]

4 (2) for purposes of articles twenty-eight and twenty-nine of this  
5 chapter, during the "sales and use tax benefit period." Such period  
6 shall consist of one hundred twenty consecutive months beginning on the  
7 later of (A) March first, two thousand one, or (B) the first day of the  
8 month next following the date of issuance of a qualified empire zone  
9 enterprise certification by the commissioner under subdivision (h) of  
10 this section. Provided however, such period shall not include any month  
11 falling within a taxable year immediately preceded by a taxable year  
12 with respect to which the business enterprise did not meet the employ-  
13 ment test.



12 before April first, two thousand five, the term "base period" means the  
13 five taxable years immediately preceding the test year. If the business  
14 enterprise has fewer than five such years, then the term "base period"  
15 means such smaller set of years.

16 (2) In the case of a business enterprise which is first certified  
17 under article eighteen-B of the general municipal law on or after April  
18 first, two thousand five, the term "base period" means the four taxable  
19 years immediately preceding the taxable year in which the business  
20 enterprise was first certified under article eighteen-B of the general  
21 municipal law. If the business enterprise has fewer than four such  
22 years, then the term "base period" means such smaller set of years.

23 (3) For purposes of the sales and use tax benefit period, in the case  
24 of a business enterprise which is first certified under article eigh-  
25 teen-B of the general municipal law on or after April first, two thou-  
26 sand five, the term "base period" means the three taxable years imme-  
27 diately preceding the business enterprise's test year. For this purpose,  
28 the definitions set forth in subdivisions (d) and (e) of this section  
29 shall apply. However, the definition of the term "test date" in subdivi-  
30 sion (e) shall be read as if the words "prior to July first, two thou-  
31 sand five" were omitted from such definition.

32 (g) Employment number. The term "employment number" shall mean the  
33 average number of individuals, excluding general executive officers (in  
34 the case of a corporation), employed full-time by the enterprise for at  
35 least one-half of the taxable year. Such number shall be computed by  
36 determining the number of such individuals employed by the taxpayer on  
37 the thirty-first day of March, the thirtieth day of June, the thirtieth  
38 day of September and the thirty-first day of December during the appli-  
39 cable taxable year, adding together the number of such individuals  
40 determined to be so employed on each of such dates and dividing the sum  
41 so obtained by the number of such dates occurring within such applicable  
42 taxable year. Such number shall not include individuals employed within  
43 the state within the immediately preceding sixty months by a related  
44 person to the QEZE, as such term "related person" is defined in subpara-  
45 graph (c) of paragraph three of subsection (b) of section four hundred  
46 sixty-five of the internal revenue code. For this purpose, a "related  
47 person" shall include an entity which would have qualified as a "related  
48 person" to the QEZE if it had not been dissolved, liquidated, merged  
49 with another entity or otherwise ceased to exist or operate.

50 (i) Cessation of status. A business enterprise shall cease to be a  
51 qualified empire zone enterprise:

52 (1) for purposes of section one hundred eighty-seven-j of article  
53 nine, and articles nine-A, twenty-two, thirty-two and thirty-three of  
54 this chapter, on the first day of the taxable year during which revoca-  
55 tion of its certification under article eighteen-B of the general munic-  
56 ipal law occurs, and

1 (2) for purposes of articles twenty-eight and twenty-nine of this  
2 chapter, on the day such revocation occurs.

3 (j) New business. (1) A new business shall include any corporation,  
4 except a corporation which is substantially similar in operation and in  
5 ownership to a business entity (or entities) taxable, or previously  
6 taxable, under section one hundred eighty-three, one hundred eighty-  
7 four, one hundred eighty-five or one hundred eighty-six of article nine;  
8 article nine-A, article thirty-two or thirty-three of this chapter;  
9 article twenty-three of this chapter or which would have been subject to

10 tax under such article twenty-three (as such article was in effect on  
11 January first, nineteen hundred eighty) or the income (or losses) of  
12 which is (or was) includable under article twenty-two of this chapter.

13 (2) For purposes of article twenty-two of this chapter, an individual  
14 who is either a sole proprietor or a member of a partnership shall qual-  
15 ify as an owner of a new business unless the business of which the indi-  
16 vidual is an owner is substantially similar in operation and in owner-  
17 ship to a business entity taxable, or previously taxable, under section  
18 one hundred eighty-three, one hundred eighty-four, one hundred eighty-  
19 five or one hundred eighty-six of article nine; article nine-A, thirty-  
20 two or thirty-three of this chapter; article twenty-three of this chap-  
21 ter or which would have been subject to tax under such article  
22 twenty-three (as such article was in effect on January first, nineteen  
23 hundred eighty) or the income (or losses) of which is (or was) includa-  
24 ble under article twenty-two.

25 (3) For purposes of article twenty-two of this chapter, a shareholder  
26 of a New York S corporation shall be treated as the owner of a new busi-  
27 ness with respect to such share if the corporation qualifies as a new  
28 business pursuant to paragraph one of this subdivision.

29 (4) (A) (i) Notwithstanding paragraphs one and two of this subdivision,  
30 a new business shall include any corporation which is identical in oper-  
31 ation and ownership to a business entity (or entities) taxable under  
32 section one hundred eighty-three, one hundred eighty-four or one hundred  
33 eighty-five of article nine; article nine-A, article thirty-two or thir-  
34 ty-three of this chapter or the income (or losses) of which is includa-  
35 ble under article twenty-two of this chapter, provided such corporation  
36 and such business entity or entities are operating in different counties  
37 in the state.

38 (ii) Notwithstanding paragraphs one and two of this subdivision, an  
39 individual who is either a sole proprietor or a member of a partnership  
40 shall qualify as an owner of a new business if the business of which the  
41 individual is an owner is identical in operation and in ownership to a  
42 business entity (or entities) taxable under section one hundred eighty-  
43 three, one hundred eighty-four or one hundred eighty-five of article  
44 nine; article nine-A, article thirty-two or thirty-three of this chapter  
45 or the income (or losses) of which is includable under article twenty-  
46 two of this chapter, provided such business and such business entity or  
47 entities are operating in different counties in the state.

48 (iii) Any corporation qualifying as a new business or any individual  
49 qualifying as an owner of a new business as a result of the provisions  
50 of this subparagraph shall have the same business tax benefit period and  
51 sales and use tax benefit period as the business entity to which it is  
52 identical in operation and in ownership.

53 (B) Notwithstanding any provisions of this subdivision to the contra-  
54 ry, a corporation or partnership, which was first certified under arti-  
55 cle eighteen-B of the general municipal law before August first, two  
56 thousand two, has a base period of zero years or zero employment for its

1 base period, and is similar in operation and in ownership to a business  
2 entity or entities taxable, or previously taxable, under sections speci-  
3 fied in paragraph one or two of this subdivision or which would have  
4 been subject to tax under article twenty-three of this chapter (as such  
5 article was in effect on January first, nineteen hundred eighty) or the  
6 income or losses of which is or was includable under article twenty-two  
7 of this chapter shall not be deemed a new business if it was not formed

8 for a valid business purpose, as such term is defined in clause (D) of  
9 subparagraph one of paragraph (o) of subdivision nine of section two  
10 hundred eight of this chapter and was formed solely to gain empire zone  
11 benefits.

12 [~~(j)~~] (k) If the designation of an area as an empire zone is no longer  
13 in effect because section nine hundred sixty-nine of the general municipi-  
14 pal law was not amended to extend the effective date of such designation  
15 so that the designations of all empire zones pursuant to article eigh-  
16 teen-B of the general municipal law have expired, a business enterprise  
17 that was certified pursuant to article eighteen-B of the general municipi-  
18 pal law on the day immediately preceding the day on which such desig-  
19 nation expired shall be deemed to continue to be certified under such  
20 article eighteen-B for purposes of this section, and sections fifteen,  
21 sixteen, section one hundred eighty-seven-j, subdivisions twenty-seven  
22 and twenty-eight of section two hundred ten, subsections (bb) and (cc)  
23 of section six hundred six, subdivision (z) of section eleven hundred  
24 fifteen, subsections (o) and (p) of section fourteen hundred fifty-six,  
25 and subdivisions (r) and (s) of section fifteen hundred eleven of this  
26 chapter. In addition, if the designation of an area as an empire zone is  
27 no longer in effect because section nine hundred sixty-nine of the  
28 general municipal law was not amended to extend the effective date of  
29 such designation so that the designations of all empire zones pursuant  
30 to article eighteen-B of the general municipal law have expired, all  
31 references to empire zones in the provisions of this chapter listed in  
32 the previous sentence shall be read as meaning areas designated as  
33 empire zones on the day immediately preceding the day on which such  
34 designation expired.

35 (l) Manufacturer. For the purposes of sections fifteen and sixteen of  
36 this article, the term "manufacturer" shall mean a taxpayer which during  
37 the taxable year is principally engaged in the production of goods by  
38 manufacturing, processing, assembling, refining, mining, extracting,  
39 farming, agriculture, horticulture, floriculture, viticulture, or  
40 commercial fishing, or a business engaged in emerging technologies  
41 pursuant to section thirty-one hundred two-e of the public authorities  
42 law.

43 (m) Annual report. The commissioner shall prepare a written report  
44 annually by December thirtieth. Such report shall contain statistical  
45 information regarding the credits within an empire zone with respect to  
46 the first prior taxable year and prior taxable years, to the extent  
47 practicable, for which such information is available for, allowed to any  
48 qualified empire zone enterprise, whether or not such enterprise was  
49 certified for the entire taxable year. Copies of these reports shall be  
50 submitted by the commissioner to the governor, the temporary president  
51 of the senate, the speaker of the assembly, the chairman of the senate  
52 finance committee, and the chairman of the assembly ways and means  
53 committee immediately upon completion. Such reports shall contain, but  
54 not be limited to, the number of taxpayers earning credits within an  
55 empire zone and other tax benefits, and the average amount of such cred-  
56 its allowed in each empire zone and for each qualified empire zone

1 enterprise by name the amount of such credits within each such zone; and  
2 for each zone, the number of credits, the amount of such credits, and  
3 the average amount of such credits allowed to qualified empire zone  
4 enterprises whose employment and entire net income falls within ranges  
5 determined by the commissioner. Such reports shall also contain both the

6 base year and taxable year employment levels, as reported for purposes  
7 of calculating such credits, in each empire zone and for each qualified  
8 empire zone enterprise.

9 §§ 16. Section 15 of the tax law, as added by section 2 of part GG of  
10 chapter 63 of the laws of 2000, subdivision (b) as amended by section  
11 11, subdivisions (d) and (e) as amended by section 12, subdivisions (f)  
12 and (g) as added and subdivision (h) as relettered by section 13 of part  
13 CC of chapter 85 of the laws of 2002, is amended to read as follows:

14 §§ 15. QEZE credit for real property taxes. (a) Allowance of credit. A  
15 taxpayer which is a qualified empire zone enterprise (QEZE), or which is  
16 a sole proprietor of a QEZE or a member of a partnership which is a  
17 QEZE, and which is subject to tax under article nine-A, twenty-two,  
18 thirty-two or thirty-three of this chapter, shall be allowed a credit  
19 against such tax, pursuant to the provisions referenced in subdivision  
20 [~~f~~] (h) of this section, for eligible real property taxes.

21 (b) Amount of credit. [~~The~~] (1) In the case of a business enterprise  
22 which is first certified under article eighteen-B of the general municipi-  
23 pal law before April first, two thousand five, the amount of the credit  
24 shall be equal to the product (or pro rata share of the product, in the  
25 case of a member of a partnership) of (i) the benefit period factor,  
26 (ii) the employment increase factor and (iii) the eligible real property  
27 taxes paid or incurred by the QEZE during the taxable year. However the  
28 amount of the credit may not exceed the credit limitation set forth in  
29 subdivision (f) of this section.

30 (2) (A) For a business enterprise which is first certified under arti-  
31 cle eighteen-B of the general municipal law on or after April first, two  
32 thousand five, the amount of the credit shall be equal to the product  
33 (or pro rata share of the product, in the case of a member of a partner-  
34 ship) of twenty-five percent of the total wages, health benefits and  
35 retirement benefits paid to or on behalf of net new employees during the  
36 taxable year, provided however, that the total amount of the credit  
37 shall not exceed ten thousand dollars for each such employee. For  
38 purposes of computing total wages, health benefits and retirement bene-  
39 fits, wages, health benefits and retirement benefits for each employee  
40 in excess of forty thousand dollars shall be excluded from such computa-  
41 tion. Provided however, the amount of the credit for a QEZE certified in  
42 an empire zone designated under subdivision (b) or (c) of section nine  
43 hundred fifty-eight of the general municipal law, except a manufacturer  
44 certified in an empire zone designated under section nine hundred  
45 fifty-eight of the general municipal law, shall be further adjusted by  
46 the product of the amount determined above and the development zone  
47 employment increase factor under subparagraph (B) of this paragraph.  
48 Provided further, in addition, the amount of the credit may not exceed  
49 the credit limitation set forth in subdivision (f-1) of this section.

50 (B) Development zone employment increase factor. The development zone  
51 employment increase factors are set forth in the following table:

<u>Net New Employees:</u>	<u>DZ Employment Increase Factor:</u>
<u>1 to 10</u>	<u>0.25</u>
<u>11 to 49</u>	<u>0.5</u>
<u>50 to 75</u>	<u>0.75</u>
<u>76 and above</u>	<u>the amount, not to exceed 1.0,</u>

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1 of new employees divided by 100

2 Net new employees. The number of net new employees for a QEZE is equal

3 to the excess of the QEZE's employment number in the empire zones with  
4 respect to which the QEZE is certified pursuant to article eighteen-B of  
5 the general municipal law for the taxable year, over the QEZE's employ-  
6 ment number in such zones for the base period.

7 (c) Benefit period factor. The benefit period factors are set forth  
8 in the following table:

9	Taxable year of the benefit period:	Benefit period factor:
10	1 - 10	1.0
11	11	.8
12	12	.6
13	13	.4
14	14	.2
15	15	0

16 (d) Employment increase factor. The employment increase factor is the  
17 amount, not to exceed 1.0, which is the greater of:

18 (1) the excess of the QEZE's employment number in the empire zones  
19 with respect to which the QEZE is certified pursuant to article eigh-  
20 teen-B of the general municipal law for the taxable year, over the  
21 QEZE's test year employment number in such zones, divided by such test  
22 year employment number in such zones; or

23 (2) the excess of the QEZE's employment number in such zones for the  
24 taxable year over the QEZE's test year employment number in such zones,  
25 divided by 100.

26 (3) For purposes of paragraph one of this subdivision, where there is  
27 an excess as described in such paragraph, and where the test year  
28 employment number is zero, then the employment increase factor shall be  
29 1.0.

30 (e) Eligible real property taxes. The term "eligible real property  
31 taxes" means taxes imposed on real property which is owned by the QEZE  
32 and located in an empire zone with respect to which the QEZE is certi-  
33 fied pursuant to article eighteen-B of the general municipal law,  
34 provided such taxes are paid by the QEZE which is the owner of the real  
35 property and such taxes become a lien on the real property during a  
36 taxable year in which the owner of the real property is both certified  
37 pursuant to article eighteen-B of the general municipal law and a quali-  
38 fied empire zone enterprise. In addition, "eligible real property taxes"  
39 shall include taxes paid by a QEZE which is a lessee of real property if  
40 the following conditions are satisfied: (1) the taxes must be paid by  
41 the lessee pursuant to explicit requirements in a written lease executed  
42 or amended on or after June first, two thousand five, (2) such taxes  
43 become a lien on the real property during a taxable year in which the  
44 lessee of the real property is both certified pursuant to article eigh-  
45 teen-B of the general municipal law and a qualified empire zone enter-  
46 prise, and (3) the lessee has made direct payment of such taxes to the  
47 taxing authority and has received a receipt for such payment of taxes  
48 from the taxing authority. In addition, the term "eligible real property  
49 taxes" includes payments in lieu of taxes made by the QEZE to the state,  
50 a municipal corporation or a public benefit corporation pursuant to a  
51 written agreement entered into between the QEZE and the state, municipal  
52 corporation, or public benefit corporation. Provided, however, a payment  
53 in lieu of taxes made by the QEZE pursuant to a written agreement

1 executed or amended on or after January first, two thousand one, shall

2 not constitute eligible real property taxes [~~unless such written agree-~~  
3 ~~ment is approved by both the department of economic development and the~~  
4 ~~office of real property services as satisfying generally accepted and~~  
5 ~~recognized norms and standards of real property tax appraisals] in any  
6 taxable year to the extent that such payment exceeds the product of (A)  
7 the greater of (i) the basis for federal income tax purposes, determined  
8 on the later of January first, two thousand one or the effective date of  
9 the QEZE's certification pursuant to article eighteen-B of the general  
10 municipal law of real property, including buildings and structural  
11 components of buildings, owned by the QEZE and located in empire zones  
12 with respect to which the QEZE is certified pursuant to such article  
13 eighteen-B of the general municipal law, or (ii) the basis for federal  
14 income tax purposes of such real property described in clause (i) of  
15 this subparagraph on the last day of the taxable year, and (B) the esti-  
16 imated effective full value tax rate within the county in which such  
17 property is located, as most recently reported to the commissioner by  
18 the secretary of the state board of real property services, or his or  
19 her designee. The state board shall annually calculate estimated effec-  
20 tive full value tax rates within each county for this purpose based upon  
21 the most current information available to it in relation to county,  
22 city, town, village and school district taxes.~~

23 (f) ~~The~~ In the case of a business enterprise which is first certi-  
24 fied under article eighteen-B of the general municipal law on or after  
25 August first, two thousand two and before April first, two thousand  
26 five, the credit limitation shall be the greater of the employment  
27 increase limitation or the capital investment limitation.

28 (1) The employment increase limitation shall be the product of (A) ten  
29 thousand dollars and (B) the excess of the QEZE's employment number in  
30 the empire zones with respect to which the QEZE is certified pursuant to  
31 article eighteen-B of the general municipal law for the taxable year,  
32 over the QEZE's test year employment number in such zones.

33 (2) The capital investment limitation shall be the product of (A) ten  
34 percent of the greater of (i) the cost or other basis for federal income  
35 tax purposes, determined on the later of January first, two thousand one  
36 or the effective date of the QEZE's certification pursuant to article  
37 eighteen-B of the general municipal law, of real property, including  
38 buildings and structural components of buildings, owned by the QEZE and  
39 located in empire zones with respect to which the QEZE is certified  
40 pursuant to such article eighteen-B of the general municipal law, or  
41 (ii) the cost or other basis for federal income tax purposes of such  
42 real property described in clause (i) of this subparagraph on the last  
43 day of the taxable year, and (B) the greater of (i) the percentage of  
44 such real property described in clause (i) of subparagraph (A) of this  
45 paragraph which is physically occupied and used by the QEZE or by a  
46 related person to the QEZE, as the term "related person" is defined in  
47 subparagraph (c) of paragraph three of subsection (b) of section four  
48 hundred sixty-five of the internal revenue code, or (ii) the percentage  
49 of such cost or other basis which is attributable to the construction,  
50 expansion or rehabilitation of such property, rather than the acquisi-  
51 tion of such real property, by the QEZE. Provided, however, if the  
52 percentage of such cost or other basis, which is attributable to the  
53 construction, expansion or rehabilitation of such real property equals  
54 or exceeds fifty percent, then the percentage described in clause (ii)  
55 of subparagraph (B) of this paragraph shall be deemed to be one hundred  
56 percent.

1 (f-1) In the case of a business enterprise which is first certified  
2 under article eighteen-B of the general municipal law on or after April  
3 first, two thousand five, the credit shall be the greater of the credit  
4 amount as determined pursuant to paragraph two of subdivision (b) of  
5 this section, or the capital investment amount determined under this  
6 subdivision. Provided however, that in no case shall the amount of the  
7 credit exceed the amount of the taxpayer's eligible real property taxes  
8 for the taxable year.

9 (1) For a QEZE certified in an empire zone designated under subdivi-  
10 sion (a) or (d) of section nine hundred fifty-eight of the general  
11 municipal law and a manufacturer certified in an empire zone designated  
12 under section nine hundred fifty-eight of the general municipal law, the  
13 capital investment amount shall be the product of (A) ten percent of the  
14 greater of (i) the cost or other basis for federal income tax purposes,  
15 determined on the later of January first, two thousand one or the effec-  
16 tive date of the QEZE's certification pursuant to article eighteen-B of  
17 the general municipal law, of real property, including buildings and  
18 structural components of buildings, owned by the QEZE and located in  
19 empire zones with respect to which the QEZE is certified pursuant to  
20 such article eighteen-B of the general municipal law, or (ii) the cost  
21 or other basis for federal income tax purposes of such real property  
22 described in clause (i) of this subparagraph on the last day of the  
23 taxable year, and (B) the greater of (i) the percentage of such real  
24 property described in clause (i) of subparagraph (A) of this paragraph  
25 which is physically occupied and used by the QEZE or by a related person  
26 to the QEZE, as the term "related person" is defined in subparagraph (c)  
27 of paragraph three of subsection (b) of section four hundred sixty-five  
28 of the internal revenue code, or (ii) the percentage of such cost or  
29 other basis which is attributable to the construction, expansion or  
30 rehabilitation of such property, rather than the acquisition of such  
31 real property, by the QEZE. Provided, however, if the percentage of such  
32 cost or other basis, which is attributable to the construction, expan-  
33 sion or rehabilitation of such real property equals or exceeds fifty  
34 percent, then the percentage described in clause (ii) of subparagraph  
35 (B) of this paragraph shall be deemed to be one hundred percent.

36 (2) For a QEZE certified in an empire zone designated under subdivi-  
37 sion (b) or (c) of section nine hundred fifty-eight of the general  
38 municipal law, which is not a manufacturer, the capital investment  
39 amount shall be the product of ten percent and the percentage of such  
40 cost or other basis which is attributable to the construction, expansion  
41 or rehabilitation of such property, rather than the acquisition of such  
42 real property, and the percentage of such real property described in  
43 clause (i) of subparagraph (A) of paragraph (1) of this subdivision  
44 which is physically occupied and used by the QEZE or by a related person  
45 to the QEZE, as the term "related person" is defined in subparagraph (c)  
46 of paragraph three of subsection (b) of section four hundred sixty-five  
47 of the internal revenue code. Provided, however, if the percentage of  
48 such cost or other basis, which is attributable to the construction,  
49 expansion or rehabilitation of such real property equals or exceeds  
50 fifty percent, then the percentage of physical occupation and use  
51 described in the preceding sentence shall be deemed to be one hundred  
52 percent.

53 (g) Credit recapture. Where a QEZE's eligible real property taxes  
54 which were the basis for the allowance of the credit provided for under  
55 this section are subsequently reduced as a result of a final order in  
56 any proceeding under article seven of the real property tax law or other

1 provision of law, the taxpayer shall add back, in the taxable year in  
2 which such final order is issued, the excess of (1) the amount of credit  
3 originally allowed for a taxable year over (2) the amount of credit  
4 determined based upon the reduced eligible real property taxes. If such  
5 final order reduces real property taxes for more than one year, the  
6 taxpayer must determine how much of such reduction is attributable to  
7 each year covered by such final order and calculate the amount of credit  
8 which is required by this ~~[subsection]~~ subdivision to be recaptured for  
9 each year based on such reduction.

10 (h) Definitions and cross-references. For definitions of terms used in  
11 this section see section fourteen of this article. For application of  
12 the credit provided for in this section, see the following provisions of  
13 this chapter:

14 (1) Article 9: Section 187-j.

15 (2) Article 9-A: Section 210: subdivision 27.

16 ~~[(2)]~~ (3) Article 22: Section 606: subsections (i) and (bb).

17 ~~[(3)]~~ (4) Article 32: Section 1456: subsection (o).

18 ~~[(4)]~~ (5) Article 33: Section 1511: subdivision (r).

19 §§ 17. Section 187-j of the tax law, as added by chapter 39 of the laws  
20 of 2004, is amended to read as follows:

21 §§ 187-j. QEZE credit for real property taxes for agricultural cooper-  
22 atives. 1. Allowance of credit. A taxpayer, subject to the tax imposed  
23 by section one hundred eighty-five of this article, which is a qualified  
24 empire zone enterprise shall be allowed a credit for eligible real prop-  
25 erty taxes, to be computed as provided in section fifteen of this chap-  
26 ter, against the tax imposed by such section.

27 2. Application of credit. The credit allowed under this section for  
28 any taxable year shall not reduce the tax due for such year to less than  
29 the minimum tax prescribed in subdivision two of section one hundred  
30 eighty-five of this article. If the amount of credit allowed under this  
31 section for any taxable year ~~shall exceed~~ reduces the taxpayer's tax  
32 for such year to such amount, ~~[the excess]~~ any amount of credit thus not  
33 deductible shall be treated as an overpayment of tax to be credited or  
34 refunded in accordance with the provisions of section one thousand  
35 eighty-six of this chapter. Provided, however, the provisions of  
36 subsection (c) of section one thousand eighty-eight of this chapter  
37 notwithstanding, no interest shall be paid thereon.

38 §§ 18. The tax law is amended by adding three new sections 187-k, 187-l  
39 and 187-m to read as follows:

40 §§ 187-k. Empire zone investment tax credit for agricultural cooper-  
41 atives. 1. A taxpayer subject to the tax imposed by section one hundred  
42 eighty-five of this article shall be allowed a credit, to be computed as  
43 herein provided, against the tax imposed by this article if the taxpayer  
44 has been certified pursuant to article eighteen-B of the general municip-  
45 al law. The amount of the credit shall be ten percent of the cost or  
46 other basis for federal income tax purposes of tangible personal proper-  
47 ty and other tangible property, including buildings and structural  
48 components of buildings, described in subdivision two of this section,  
49 which is located within an empire zone designated as such pursuant to  
50 article eighteen-B of such law, but only if the acquisition,  
51 construction, reconstruction or erection of such property occurred or  
52 was commenced on or after the date of such designation and prior to the  
53 expiration thereof. Provided, however, that in the case of an acquisi-  
54 tion, construction, reconstruction or erection which was commenced  
55 during such period and continued or completed subsequently, such credit  
56 shall be ten percent of the portion of the cost or other basis for

1 federal income tax purposes attributable to such period, which portion  
2 shall be ascertained by multiplying such cost or basis by a fraction the  
3 numerator of which shall be the expenditures paid or incurred during  
4 such period for such purposes and the denominator of which shall be the  
5 total of all expenditures paid or incurred for such acquisition,  
6 construction, reconstruction or erection.

7 2. A credit shall be allowed under this section with respect to tangi-  
8 ble personal property and other tangible property, including buildings  
9 and structural components of buildings, which (i) are depreciable pursu-  
10 ant to section one hundred sixty-seven of the internal revenue code or  
11 recovery property with respect to which a deduction is allowable under  
12 section one hundred sixty-eight of the internal revenue code, (ii) have  
13 a useful life of four years or more, (iii) are acquired by purchase as  
14 defined in section one hundred seventy-nine (d) of the internal revenue  
15 code, (iv) have a situs in an empire zone designated as such pursuant to  
16 article eighteen-B of the general municipal law, and (v) are principally  
17 used by the taxpayer in the production of goods by processing, assembl-  
18 ing, refining, farming, agriculture, horticulture, floriculture or viti-  
19 culture. Property used in the production of goods shall include machin-  
20 ery, equipment or other tangible property which is principally used in  
21 the repair and service of other machinery, equipment or other tangible  
22 property used principally in the production of goods and shall include  
23 all facilities used in the production operation, including storage of  
24 material to be used in production and of the products that are produced.  
25 For purposes of this section, the term "goods" shall not include elec-  
26 tricity.

27 3. A taxpayer shall not be allowed a credit under this section with  
28 respect to any tangible personal property and other tangible property,  
29 including buildings and structural components of buildings, which it  
30 leases to any other person or corporation. For purposes of the preceding  
31 sentence, any contract or agreement to lease or rent or for a license to  
32 use such property shall be considered a lease. Provided, however, in  
33 determining whether a taxpayer shall be allowed a credit under this  
34 section with respect to such property, any election made with respect to  
35 such property pursuant to the provisions of paragraph eight of  
36 subsection (f) of section one hundred sixty-eight of the internal reven-  
37 ue code, as such paragraph was in effect for agreements entered into  
38 prior to January first, nineteen hundred eighty-four, shall be disre-  
39 garded.

40 4. (i) The credit allowed under this section for any taxable year  
41 shall not reduce the tax due for such year to less than the minimum tax  
42 prescribed in subdivision two of section one hundred eighty-five of this  
43 article. Provided, however, that if the amount of credit allowable under  
44 this section for any taxable year reduces the tax to such minimum tax,  
45 any amount of credit not deductible in such taxable year may be carried  
46 over to the following year or years and may be deducted from the taxpay-  
47 er's tax for such year or years. In lieu of such carryover, any such  
48 taxpayer which qualifies as a new business under paragraph (ii) of this  
49 subdivision may elect, on its report for its taxable year with respect  
50 to which such credit is allowed, to treat fifty percent of the amount of  
51 such carryover as an overpayment of tax to be credited or refunded in  
52 accordance with the provisions of section one thousand eighty-six of  
53 this chapter. Provided, however, the provisions of subsection (c) of  
54 section one thousand eighty-eight of this chapter notwithstanding, no

55 interest shall be paid thereon.

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1 (ii) For purposes of this subdivision, a new business shall include  
2 any corporation subject to tax under section one hundred eighty-five of  
3 this article, except a corporation which:

4 (I) over fifty percent of the number of shares or amount of the  
5 membership capital entitling the holders thereof to vote for the  
6 election of directors is owned or controlled, either directly or indi-  
7 rectly, by a taxpayer subject to tax under section one hundred eighty-  
8 three, one hundred eighty-four or one hundred eighty-five of this arti-  
9 cle; article nine-A, article thirty-two or article thirty-three of this  
10 chapter; or

11 (II) is substantially similar in operation and in ownership to a busi-  
12 ness entity (or entities) taxable, or previously taxable, under section  
13 one hundred eighty-three, one hundred eighty-four, one hundred eighty-  
14 five or one hundred eighty-six of this article; article nine-A, thirty-  
15 two or thirty-three of this chapter; article twenty-three of this chap-  
16 ter or would have been subject to tax under such article twenty-three  
17 (as such article was in effect on January first, nineteen hundred  
18 eighty) or the income (or losses) of which is (or was) includable under  
19 article twenty-two of this chapter whereby the intent and purpose of  
20 this subdivision with respect to refunding a credit to new business  
21 would be evaded; or

22 (III) has been subject to tax under section one hundred eighty-five of  
23 this article for more than five taxable years (excluding short taxable  
24 years).

25 5. (a) With respect to property which is depreciable pursuant to  
26 section one hundred sixty-seven of the internal revenue code and which  
27 is disposed of or ceases to be in qualified use prior to the end of the  
28 taxable year in which the credit is to be taken, the amount of the cred-  
29 it shall be that portion of the credit provided for in this section  
30 which represents the ratio which the months of qualified use bear to the  
31 months of useful life. If property on which credit has been taken is  
32 disposed of or ceases to be in qualified use prior to the end of its  
33 useful life, the difference between the credit taken and the credit  
34 allowed for actual use must be added back in the year of disposition.  
35 Provided, however, if such property is disposed of or ceases to be in  
36 qualified use after it has been in qualified use for more than twelve  
37 consecutive years, it shall not be necessary to add back the credit as  
38 provided in this subparagraph. The amount of credit allowed for actual  
39 use shall be determined by multiplying the original credit by the ratio  
40 which the months of qualified use bear to the months of useful life. For  
41 purposes of this subdivision, useful life of property shall be the same  
42 as the taxpayer uses for depreciation purposes when computing his feder-  
43 al income tax liability.

44 (b) Except with respect to that property to which paragraph (d) of  
45 this subdivision applies, with respect to three-year property, as  
46 defined in paragraph two of subsection (c) of section one hundred  
47 sixty-eight of the internal revenue code, which is disposed of or ceases  
48 to be in qualified use prior to the end of the taxable year in which the  
49 credit is to be taken, the amount of the credit shall be that portion of  
50 the credit provided for in this section which represents the ratio which  
51 the months of qualified use bear to thirty-six. If property on which  
52 credit has been taken is disposed of or ceases to be in qualified use  
53 prior to the end of thirty-six months, the difference between the credit

54 taken and the credit allowed for actual use must be added back in the  
55 year of disposition. The amount of credit allowed for actual use shall

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1 be determined by multiplying the original credit by the ratio which the  
2 months of qualified use bear to thirty-six.

3 (c) Except with respect to that property to which paragraph (d) of  
4 this subdivision applies, with respect to five-year property and ten-  
5 year property, as defined in paragraph two of subsection (c) of section  
6 one hundred sixty-eight of the internal revenue code, fifteen-year real  
7 property, as defined in such paragraph as it was in effect for property  
8 placed in service after December thirty-first, nineteen hundred eighty  
9 in taxable years ending after such date, eighteen-year real property, as  
10 defined in such paragraph as it was in effect for property placed in  
11 service after March fifteenth, nineteen hundred eighty-four, and nine-  
12 teen-year real property, as defined in such paragraph, which is disposed  
13 of or ceases to be in qualified use prior to the end of the taxable year  
14 in which the credit is to be taken, the amount of the credit shall be  
15 that portion of the credit provided for in this section which represents  
16 the ratio which the months of qualified use bear to sixty. If property  
17 on which credit has been taken is disposed of or ceases to be in quali-  
18 fied use prior to the end of sixty months, the difference between the  
19 credit taken and the credit allowed for actual use must be added back in  
20 the year of disposition. The amount of credit allowed for actual use  
21 shall be determined by multiplying the original credit by the ratio  
22 which the months of qualified use bear to sixty.

23 (d) With respect to any recovery property to which section one hundred  
24 sixty-eight of the internal revenue code applies, which is a building or  
25 a structural component of a building and which is disposed of or ceases  
26 to be in qualified use prior to the end of the taxable year in which the  
27 credit is to be taken, the amount of the credit shall be that portion of  
28 the credit provided for in this section which represents the ratio which  
29 the months of qualified use bear to the total number of months over  
30 which the taxpayer chooses to deduct the property under section one  
31 hundred sixty-eight of the internal revenue code. If property on which  
32 credit has been taken is disposed of or ceases to be in qualified use  
33 prior to the end of the period over which the taxpayer chooses to deduct  
34 the property under section one hundred sixty-eight of the internal  
35 revenue code, the difference between the credit taken and the credit  
36 allowed for actual use must be added back in the year of disposition.  
37 Provided, however, if such property is disposed of or ceases to be in  
38 qualified use after it has been in qualified use for more than twelve  
39 consecutive years, it shall not be necessary to add back the credit as  
40 provided in this paragraph. The amount of credit allowed for actual use  
41 shall be determined by multiplying the original credit by the ratio  
42 which the months of qualified use bear to the total number of months  
43 over which the taxpayer chooses to deduct the property under section one  
44 hundred sixty-eight of the internal revenue code.

45 (e) For purposes of this subdivision, disposal or cessation of quali-  
46 fied use shall not be deemed to have occurred solely by reason of the  
47 termination or expiration of an empire zone's designation as such.

48 (f)(I) For purposes of this subdivision, the decertification of a  
49 business enterprise with respect to an empire zone shall constitute a  
50 disposal or cessation of qualified use of the property on which the  
51 credit was taken which is located in the zone to which the decertif-  
52 ication applies, on the effective date of such decertification.

53 (II) Where a business enterprise has been decertified based on a find-  
54 ing pursuant to clause one, two, or five of subdivision (a) of section  
55 nine hundred fifty-nine of the general municipal law, the amount  
56 required to be added back by reason of this subdivision shall be

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1 augmented by an amount equal to the product of the amount of credit,  
2 with respect to property which is disposed of or ceases to be in quali-  
3 fied use, which was deducted from the taxpayer's tax otherwise due under  
4 this article for all prior taxable years (subject to the limit set forth  
5 in this subparagraph) and the underpayment rate of interest (without  
6 regard to compounding) set by the commissioner of taxation and finance  
7 pursuant to subdivision (e) of section one thousand ninety-six of this  
8 chapter, in effect on the last day of the taxable year. The limit shall  
9 be (i) the amount of credit, with respect to the property which is  
10 disposed of or ceases to be in qualified use, which was deducted from  
11 the taxpayer's tax otherwise due under this article for all prior taxa-  
12 ble years, reduced (but not below zero) by (ii) the credit allowed for  
13 actual use. For purposes of this subparagraph, the attribution to  
14 specific property of credit amounts deducted from tax shall be estab-  
15 lished in accordance with the date of placement in service of such prop-  
16 erty in the empire zone.

17 (III) Notwithstanding any other provision of this section, in the case  
18 of a business enterprise which has been decertified, any amount of cred-  
19 it allowed with respect to the property of such business enterprise  
20 located in the zone to which the decertification applies which is  
21 carried over pursuant to subdivision four of this section shall not be  
22 carried over beyond the seventh taxable year next following the taxable  
23 year with respect to which the credit provided for in this section was  
24 allowed.

25 §§ 187-1. Empire zone employment incentive credit for agricultural  
26 cooperatives. 1. Where a taxpayer is allowed a credit under section one  
27 hundred eighty-seven-k of this article, the taxpayer shall be allowed a  
28 credit for each of the three years next succeeding the taxable year for  
29 which the credit under such section one hundred eighty-seven-k is  
30 allowed, with respect to such property, whether or not deductible in  
31 such taxable year or in subsequent taxable years pursuant to subdivision  
32 four of such section one hundred eighty-seven-k, of thirty percent of  
33 the credit allowable under such section one hundred eighty-seven-k;  
34 provided, however, that the credit allowable under this section for any  
35 taxable year shall only be allowed if the average number of employees  
36 employed by the taxpayer in the empire zone, designated pursuant to  
37 article eighteen-B of the general municipal law, in which such property  
38 is located during such taxable year is at least one hundred one percent  
39 of the average number of employees employed by the taxpayer in such  
40 empire zone or, where applicable, in the geographic area subsequently  
41 constituting such zone, during the taxable year immediately preceding  
42 the taxable year for which the credit under such section one hundred  
43 eighty-seven-k is allowed and provided, further, that if the taxpayer  
44 was not subject to tax and did not have a taxable year immediately  
45 preceding the taxable year for which the credit under section one  
46 hundred eighty-seven-k is allowed, the credit allowable under this  
47 section for any taxable year shall be allowed if the average number of  
48 employees employed in such empire zone in such taxable year is at least  
49 one hundred one percent of the average number of such employees during  
50 the taxable year in which the credit under such section one hundred

51 eighty-seven-k is allowed.

52 2. The average number of employees employed in an empire zone, or,  
53 where applicable, in the geographic area subsequently constituting such  
54 zone, in a taxable year shall be computed by ascertaining the number of  
55 such employees within such zone, or, where applicable, in the geographic  
56 area subsequently constituting such zone, except general executive offi-

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1 cers, employed by the taxpayer on the thirty-first day of March, the  
2 thirtieth day of June, the thirtieth day of September and the thirty-  
3 first day of December in the taxable year, by adding together the number  
4 of employees ascertained on each of such dates and dividing the sum so  
5 obtained by the number of such above-mentioned dates occurring within  
6 the taxable year. For the purposes of this section, the term "employees"  
7 and the term "general executive officers" shall mean the same as in  
8 subparagraph three of paragraph (a) of subdivision three of section two  
9 hundred ten of this chapter.

10 3. In no event shall the credit herein provided for be allowed in an  
11 amount which will reduce the tax payable to less than the minimum tax  
12 prescribed in subdivision two of section one hundred eighty-five of this  
13 article. Provided, however, that if the amount of credit allowable under  
14 this section for any taxable year reduces the tax to such amount, any  
15 amount of credit not deductible in such taxable year may be carried over  
16 to the following year or years and may be deducted from the taxpayer's  
17 tax for such year or years.

18 §§ 187-m. Empire zone wage tax credit for agricultural cooperatives. 1.  
19 A taxpayer subject to the tax imposed by section one hundred eighty-five  
20 of this article shall be allowed a credit, to be computed as hereinafter  
21 provided, against the tax imposed by this article where the taxpayer has  
22 been certified pursuant to article eighteen-B of the general municipal  
23 law. The amount of such credit shall be as prescribed by subdivision  
24 four hereof.

25 2. For the purposes of this section, the following terms shall have  
26 the following meanings:

27 (a) "Empire zone wages" means wages paid by the taxpayer for full-time  
28 employment, other than to general executive officers, during the taxable  
29 year in an area designated or previously designated as an empire zone  
30 pursuant to article eighteen-B of the general municipal law, where such  
31 employment is in a job created in the area (i) during the period of its  
32 designation as an empire zone or (ii) within four years of the expira-  
33 tion of such designation, provided, however, that if the taxpayer's  
34 certification under article eighteen-B of the general municipal law is  
35 revoked with respect to an empire zone, any wages paid by the taxpayer,  
36 on or after the effective date of such decertification, for employment  
37 in such zone shall not constitute empire zone wages.

38 (b) "Targeted employee" means a New York resident who receives empire  
39 zone wages and who is (I) an eligible individual under the provisions of  
40 the targeted jobs tax credit (section fifty-one of the internal revenue  
41 code), (II) eligible for benefits under the provisions of the workforce  
42 investment act (P.L. 105-220, as amended), (III) a recipient of public  
43 assistance benefits, (IV) an individual whose income is below the most  
44 recently established poverty rate promulgated by the United States  
45 department of commerce, or a member of a family whose family income is  
46 below the most recently established poverty rate promulgated by the  
47 appropriate federal agency or (V) an honorably discharged member of any  
48 branch of the armed forces of the United States.

49 An individual who satisfies the criteria set forth in subparagraph  
50 (I), (II), (IV) or (V) at the time of initial employment in the job with  
51 respect to which the credit is claimed, or who satisfies the criterion  
52 set forth in subparagraph (III) at such time or at any time within the  
53 previous two years, shall be a targeted employee so long as such indi-  
54 vidual continues to receive empire zone wages.

55 (c) "Average number of individuals, excluding general executive offi-  
56 cers, employed full-time" shall be computed by ascertaining the number

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1 of such individuals employed by the taxpayer on the thirty-first day of  
2 March, the thirtieth day of June, the thirtieth day of September and the  
3 thirty-first day of December during each taxable year or other applica-  
4 ble period, by adding together the number of such individuals ascer-  
5 tained on each of such dates and dividing the sum so obtained by the  
6 number of such dates occurring within such taxable year or other appli-  
7 cable period.

8 3. The credit provided for herein shall be allowed only where the  
9 average number of individuals, excluding general executive officers,  
10 employed full-time by the taxpayer in (A) the state and (B) the empire  
11 zone or the area previously constituting such zone, during the taxable  
12 year exceeds the average number of such individuals employed full-time  
13 by the taxpayer in (A) the state and (B) such zone or area subsequently  
14 or previously constituting such zone, respectively, during the four  
15 years immediately preceding the first taxable year in which the credit  
16 is claimed with respect to such zone. Where the taxpayer provided full-  
17 time employment within (A) the state or (B) such zone during only a  
18 portion of such four-year period, then for purposes of this paragraph  
19 the term "four years" shall be deemed to refer instead to such portion,  
20 if any.

21 The credit shall be allowed only with respect to the first taxable  
22 year during which payments of empire zone wages are made and the condi-  
23 tions set forth in this subdivision are satisfied, and with respect to  
24 each of the four taxable years next following (but only, with respect to  
25 each of such years, if such conditions are satisfied), in accordance  
26 with subdivision four of this section. Subsequent certifications of the  
27 taxpayer pursuant to article eighteen-B of the general municipal law, at  
28 the same or a different location in the same empire zone or at a  
29 location in a different empire zone, shall not extend the five taxable  
30 year time limitation on the allowance of the credit set forth in the  
31 preceding sentence. Provided, further, however, that no credit shall be  
32 allowed with respect to any taxable year beginning more than four years  
33 following the taxable year in which designation as an empire zone  
34 expired.

35 4. The amount of the credit shall equal the sum of (a) the product of  
36 three thousand dollars and the average number of individuals (excluding  
37 general executive officers) employed full-time by the taxpayer, computed  
38 pursuant to the provisions of paragraph (c) of subdivision two of this  
39 section, who

40 (I) received empire zone wages for more than half of the taxable year,  
41 (II) received, with respect to more than half of the period of employ-  
42 ment by the taxpayer during the taxable year, an hourly wage which was  
43 at least one hundred thirty-five percent of the minimum wage specified  
44 in section six hundred fifty-two of the labor law, and

45 (III) are targeted employees; and

46 (b) the product of fifteen hundred dollars and the average number of

47 individuals (excluding general executive officers and individuals  
48 described in paragraph (a) of this subdivision) employed full-time by  
49 the taxpayer, computed pursuant to the provisions of paragraph (c) of  
50 subdivision two of this section, who received empire zone wages for more  
51 than half of the taxable year.

52 Provided, further, however, that the credit provided for herein with  
53 respect to the taxable year, and carryovers of such credit to the taxa-  
54 ble year, deducted from the tax otherwise due, may not, in the aggre-  
55 gate, exceed fifty percent of the tax imposed under section one hundred

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1 eighty-five of this article computed without regard to any credit  
2 provided for by this article.

3 (c) For purposes of calculating the amount of the credit, individuals  
4 employed within an empire zone within the immediately preceding sixty  
5 months by a related person, as such term is defined in subparagraph (c)  
6 of paragraph three of subsection (b) of section four hundred sixty-five  
7 of the internal revenue code, shall not be included in the average  
8 number of individuals described in paragraph (a) or paragraph (b) of  
9 this subdivision, unless such related person was never allowed a credit  
10 under this section with respect to such employees. For the purposes of  
11 this paragraph, a "related person" shall include an entity which would  
12 have qualified as a "related person" to the taxpayer if it had not been  
13 dissolved, liquidated, merged with another entity or otherwise ceased to  
14 exist or operate.

15 (d) If a taxpayer is certified in an empire zone designated under  
16 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-  
17 al municipal law, the amounts specified in paragraphs (a) and (b) of  
18 this subdivision shall be increased by five hundred dollars for each  
19 qualifying individual under such paragraphs who received, during the  
20 taxable year, wages in excess of forty thousand dollars.

21 5. The credit and carryovers of such credit allowed under this section  
22 for any taxable year shall not, in the aggregate, reduce the tax due for  
23 such year to less than the minimum tax prescribed in subdivision two of  
24 section one hundred eighty-five of this article. However, if the amount  
25 of credit or carryovers of such credit, or both, allowable under this  
26 section for any taxable year reduces the tax to such minimum tax, or if  
27 any part of the credit or carryovers of such credit is disallowed by  
28 reason of the final sentence of paragraph (b) of subdivision four here-  
29 of, any amount of credit or carryovers of such credit thus not deduct-  
30 ible in such taxable year may be carried over to the following year or  
31 years and may be deducted from the tax for such year or years. In lieu  
32 of such carryover, any such taxpayer which qualifies as a new business  
33 under paragraph (ii) of subdivision four of section one hundred eighty-  
34 seven-k of this article may elect, on its report for its taxable year  
35 with respect to which such credit is allowed, to treat fifty percent of  
36 the amount of such carryover as an overpayment of tax to be credited or  
37 refunded in accordance with the provisions of section one thousand  
38 eighty-six of this chapter. Provided, however, the provisions of  
39 subsection (c) of section one thousand eighty-eight of this chapter  
40 notwithstanding, no interest shall be paid thereon.

41 §§ 19. Subparagraph 2 of paragraph (b) of subdivision 19 of section 210  
42 of the tax law, as amended by chapter 624 of the laws of 1990 and as  
43 further amended pursuant to section 15 of part GG of chapter 63 of the  
44 laws of 2000, is amended to read as follows:

45 (2) "Targeted employee" means a New York resident who receives empire

46 zone wages and who is (A) an eligible individual under the provisions of  
47 the targeted jobs tax credit (section fifty-one of the internal revenue  
48 code), (B) eligible for benefits under the provisions of the [~~job train-~~  
49 ~~ing partnership~~] workforce investment act as a dislocated worker or  
50 low-income individual (P.L. [~~97-300~~] 105-220, as amended), (C) a recipi-  
51 ent of public assistance benefits [~~or~~], (D) an individual whose income  
52 is below [~~the~~] the most recently established poverty rate promulgated by  
53 the United States department of commerce, or a member of a family whose  
54 family income is below the most recently established poverty rate  
55 promulgated by the appropriate federal agency or (E) an honorably

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1 discharged member of any branch of the armed forces of the United  
2 States.

3 §§ 20. Subparagraph 3 of paragraph (d) of subdivision 19 of section 210  
4 of the tax law, as added by section 15 of part CC of chapter 85 of the  
5 laws of 2002, is amended to read as follows:

6 (3) For purposes of calculating the amount of the credit, individuals  
7 employed within an empire zone or zone equivalent area within the imme-  
8 diately preceding sixty months by a related person, as such term is  
9 defined in subparagraph (c) of paragraph three of subsection (b) of  
10 section four hundred sixty-five of the internal revenue code, shall not  
11 be included in the average number of individuals described in subpara-  
12 graph one or subparagraph two of this paragraph, unless such related  
13 person was never allowed a credit under this subdivision with respect to  
14 such employees. For the purposes of this subparagraph, a "related  
15 person" shall include an entity which would have qualified as a "related  
16 person" to the taxpayer if it had not been dissolved, liquidated, merged  
17 with another entity or otherwise ceased to exist or operate.

18 §§ 21. Paragraph (d) of subdivision 19 of section 210 of the tax law is  
19 amended by adding a new subparagraph 4 to read as follows:

20 (4) If a taxpayer is certified in an empire zone designated under  
21 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-  
22 al municipal law, the dollar amounts specified under subparagraph one or  
23 two of this paragraph shall be increased by five hundred dollars for  
24 each qualifying individual under such subparagraph who received, during  
25 the taxable year, wages in excess of forty thousand dollars.

26 §§ 22. Paragraph (a) of subdivision 20 of section 210 of the tax law,  
27 as amended by chapter 708 of the laws of 1993 and as further amended  
28 pursuant to section 15 of part GG of chapter 63 of the laws of 2000, is  
29 amended to read as follows:

30 (a) A taxpayer shall be allowed a credit against the tax imposed by  
31 this article. The amount of the credit shall be equal to twenty-five  
32 percent of the sum of the following investments and contributions made  
33 during the taxable year and certified by the commissioner of economic  
34 development: (1) for taxable years beginning before January first, two  
35 thousand five, qualified investments made in, or contributions in the  
36 form of donations made to, one or more empire zone capital [~~corpo-~~  
37 ~~rations~~] credits established pursuant to section nine hundred sixty-four  
38 of the general municipal law prior to January first, two-thousand five,  
39 (2) qualified investments in certified zone businesses which during the  
40 twelve month period immediately preceding the month in which such  
41 investment is made employed full-time within the state an average number  
42 of individuals, excluding general executive officers, of two hundred  
43 fifty or fewer, computed pursuant to the provisions of subparagraph  
44 three of paragraph (b) of subdivision nineteen of this section, except

45 for investments made by or on behalf of an owner of the business,  
46 including, but not limited to, a stockholder, partner or sole proprie-  
47 tor, or any related person, as defined in subparagraph (C) of paragraph  
48 three of subsection (b) of section four hundred sixty-five of the inter-  
49 nal revenue code, and (3) contributions of money to community develop-  
50 ment projects as defined in regulations promulgated by the commissioner  
51 of economic development. "Qualified investments" means the contribution  
52 of property to a corporation in exchange for original issue capital  
53 stock or other ownership interest, the contribution of property to a  
54 partnership in exchange for an interest in the partnership, and similar  
55 contributions in the case of a business entity not in corporate or part-  
56 nership form in exchange for an ownership interest in such entity. The

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1 total amount of credit allowable to a taxpayer under this provision for  
2 all years, taken in the aggregate, shall not exceed three hundred thou-  
3 sand dollars, and shall not exceed one hundred thousand dollars with  
4 respect to the investments and contributions described in each of  
5 subparagraphs one, two and three of this paragraph.

6 §§ 23. Subparagraph (B) of paragraph 2 of subsection (k) of section 606  
7 of the tax law, as amended by chapter 170 of the laws of 1994, and as  
8 further amended pursuant to section 15 of part GG of chapter 63 of the  
9 laws of 2000, is amended to read as follows:

10 (B) "Targeted employee" means a New York resident who receives empire  
11 zone wages and who is (i) an eligible individual under the provisions of  
12 the targeted jobs tax credit (section fifty-one of the internal revenue  
13 code), (ii) eligible for benefits under the provisions of the ~~job~~  
14 ~~training partnership~~ workforce investment act as a dislocated worker or  
15 low-income individual (P.L. ~~[97-300]~~ 105-220, as amended), (iii) a  
16 recipient of public assistance benefits ~~or~~ (iv) an individual whose  
17 income is below the most recently established poverty rate promulgated  
18 by the United States department of commerce, or a member of a family  
19 whose family income is below the most recently established poverty rate  
20 promulgated by the appropriate federal agency or (v) an honorably  
21 discharged member of any branch of the armed forces of the United  
22 States.

23 An individual who satisfies the criteria set forth in clause (i), (ii)  
24 ~~or~~ (iv) or (v) at the time of initial employment in the job with  
25 respect to which the credit is claimed, or who satisfies the criterion  
26 set forth in clause (iii) at such time or at any time within the previ-  
27 ous two years, shall be a targeted employee so long as such individual  
28 continues to receive empire zone wages.

29 §§ 24. Subparagraph (iii) of paragraph 4 of subsection (k) of section  
30 606 of the tax law, as added by section 16 of part CC of chapter 85 of  
31 the laws of 2002, is amended to read as follows:

32 (iii) For purposes of calculating the amount of the credit, individ-  
33 uals employed within an empire zone or zone equivalent area within the  
34 immediately preceding sixty months by a related person, as such term is  
35 defined in subparagraph (c) of paragraph three of subsection (b) of  
36 section four hundred sixty-five of the internal revenue code, shall not  
37 be included in the average number of individuals described in subpara-  
38 graph (i) or subparagraph (ii) of this paragraph, unless such related  
39 person was never allowed a credit under this subsection with respect to  
40 such employees. For purposes of this subparagraph, a "related person"  
41 shall include an entity which would have qualified as a "related person"  
42 to the taxpayer if it had not been dissolved, liquidated, merged with

43 another entity or otherwise ceased to exist or operate.

44 §§ 25. Paragraph 4 of subsection (k) of section 606 of the tax law is  
45 amended by adding a new subparagraph (iv) to read as follows:

46 (iv) If a taxpayer is certified in an empire zone designated under  
47 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-  
48 al municipal law, the dollar amounts specified under subparagraph (i) or  
49 (ii) of this paragraph shall be increased by five hundred dollars for  
50 each qualifying individual under such subparagraph who received, during  
51 the taxable year, wages in excess of forty thousand dollars.

52 §§ 26. Paragraph 1 of subsection (l) of section 606 of the tax law, as  
53 amended by chapter 708 of the laws of 1993 and subparagraph (A) as  
54 further amended pursuant to section 15 of part GG of chapter 63 of the  
55 laws of 2000, is amended to read as follows:

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1 (1) A taxpayer shall be allowed a credit against the tax imposed by  
2 this article. The amount of the credit shall be equal to twenty-five  
3 percent of the sum of the following investments and contributions made  
4 during the taxable year and certified by the commissioner of economic  
5 development: (A) for taxable years beginning before January first, two  
6 thousand five, qualified investments made in, or contributions in the  
7 form of donations made to, one or more empire zone capital [~~corpo-~~  
8 ~~rations~~] credits established pursuant to section nine hundred sixty-four  
9 of the general municipal law prior to January first, two thousand five,  
10 (B) qualified investments in certified zone businesses which during the  
11 twelve month period immediately preceding the month in which such  
12 investment is made employed full-time within the state an average number  
13 of individuals of two hundred fifty or fewer, computed pursuant to the  
14 provisions of subparagraph (C) of paragraph two of subsection (k) of  
15 this section, except for investments made by or on behalf of an owner of  
16 the business including, but not limited to, a stockholder, partner or  
17 sole proprietor, or any related person, as defined in subparagraph (C)  
18 of paragraph three of subsection (b) of section four hundred sixty-five  
19 of the internal revenue code, and (C) contributions of money to communi-  
20 ty development projects as defined in regulations promulgated by the  
21 commissioner of economic development. "Qualified investments" means the  
22 contribution of property to a corporation in exchange for original issue  
23 capital stock or other ownership interest, the contribution of property  
24 to a partnership in exchange for an interest in the partnership, and  
25 similar contributions in the case of a business entity not in corporate  
26 or partnership form in exchange for an ownership interest in such enti-  
27 ty. The total amount of credit allowable to a taxpayer under this  
28 provision for all years, taken in the aggregate, shall not exceed three  
29 hundred thousand dollars, and shall not exceed one hundred thousand  
30 dollars with respect to the investments and contributions described in  
31 each of subparagraphs (A), (B) and (C) of this paragraph.

32 §§ 27. Paragraph 1 of subsection (d) of section 1456 of the tax law, as  
33 amended by chapter 708 of the laws of 1993 and as further amended pursu-  
34 ant to section 15 of part GG of chapter 63 of the laws of 2000, is  
35 amended to read as follows:

36 (1) A taxpayer shall be allowed a credit against the tax imposed by  
37 this article. The amount of the credit shall be equal to twenty-five  
38 percent of the sum of the following investments and contributions made  
39 during the taxable year and certified by the commissioner of economic  
40 development: (A) for taxable years beginning before January first, two  
41 thousand five, qualified investments made in, or contributions in the

42 form of donations made to, one or more empire zone capital [~~corpo-~~  
43 ~~rations~~] credits established pursuant to section nine hundred sixty-four  
44 of the general municipal law prior to January first, two thousand five,  
45 (B) qualified investments in certified zone businesses which during the  
46 twelve month period immediately preceding the month in which such  
47 investment is made employed full-time within the state an average number  
48 of individuals, excluding general executive officers, of two hundred  
49 fifty or fewer, computed pursuant to the provisions of subparagraph (C)  
50 of paragraph two of subsection (e) of this section, except for invest-  
51 ments made by or on behalf of an owner of the business, including, but  
52 not limited to, a stockholder, partner or sole proprietor, or any  
53 related person, as defined in subparagraph (C) of paragraph three of  
54 subsection (b) of section four hundred sixty-five of the internal reven-  
55 ue code, and (C) contributions of money to community development  
56 projects as defined in regulations promulgated by the commissioner of

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1 economic development. "Qualified investments" means the contribution of  
2 property to a corporation in exchange for original issue capital stock  
3 or other ownership interest, the contribution of property to a partner-  
4 ship in exchange for an interest in the partnership, and similar  
5 contributions in the case of a business entity not in corporate or part-  
6 nership form in exchange for an ownership interest in such entity. The  
7 total amount of credit allowable to a taxpayer under this provision for  
8 all years, taken in the aggregate, shall not exceed three hundred thou-  
9 sand dollars, and shall not exceed one hundred thousand dollars with  
10 respect to the investments and contributions described in each of  
11 subparagraphs (A), (B) and (C) of this paragraph.

12 §§ 28. Subparagraph (B) of paragraph 2 of subsection (e) of section  
13 1456 of the tax law, as amended by chapter 170 of the laws of 1994 and  
14 as further amended pursuant to section 15 of part GG of chapter 63 of  
15 the laws of 2000, is amended to read as follows:

16 (B) "Targeted employee" means a New York resident who receives empire  
17 zone wages and who is (i) an eligible individual under the provisions of  
18 the targeted jobs tax credit (section fifty-one of the internal revenue  
19 code), (ii) eligible for benefits under the provisions of the [~~job~~  
20 ~~training partnership~~] workforce investment act as a dislocated worker or  
21 low-income individual (P.L. [~~97-300~~] 105-220, as amended), (iii) a  
22 recipient of public assistance benefits [~~or~~], (iv) an individual whose  
23 income is below the most recently established poverty rate promulgated  
24 by the United States department of commerce, or a member of a family  
25 whose family income is below the most recently established poverty rate  
26 promulgated by the appropriate federal agency or (v) an honorably  
27 discharged member of any branch of the armed forces of the United  
28 States.

29 An individual who satisfies the criteria set forth in clause (i), (ii)  
30 [~~or~~], (iv) or (v) at the time of initial employment in the job with  
31 respect to which the credit is claimed, or who satisfies the criterion  
32 set forth in clause (iii) at such time or at any time within the previ-  
33 ous two years, shall be a targeted employee so long as such individual  
34 continues to receive empire zone wages.

35 §§ 29. Subparagraph (C) of paragraph 4 of subsection (e) of section  
36 1456 of the tax law, as added by section 16-b of part CC of chapter 85  
37 of the laws of 2002, is amended to read as follows:

38 (C) For purposes of calculating the amount of the credit, individuals  
39 employed within an empire zone or zone equivalent area within the imme-

40 diately preceding sixty months by a related person, as such term is  
41 defined in subparagraph (c) of paragraph three of subsection (b) of  
42 section four hundred sixty-five of the internal revenue code, shall not  
43 be included in the average number of individuals described in subpara-  
44 graph (A) or subparagraph (B) of this paragraph, unless such related  
45 person was never allowed a credit under this subsection with respect to  
46 such employees. For the purposes of this subparagraph, a "related  
47 person" shall include an entity which would have qualified as a "related  
48 person" to the taxpayer if it had not been dissolved, liquidated, merged  
49 with another entity or otherwise ceased to exist or operate.

50 §§ 30. Paragraph 4 of subsection (e) of section 1456 of the tax law is  
51 amended by adding a new subparagraph (D) to read as follows:

52 (D) If a taxpayer is certified in an empire zone designated under  
53 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-  
54 al municipal law, the dollar amounts specified under subparagraph (A) or  
55 (B) of this paragraph shall be increased by five hundred dollars for

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1 each qualifying individual under such subparagraph who received, during  
2 the taxable year, wages in excess of forty thousand dollars.

3 §§ 31. Subparagraph (B) of paragraph 2 of subdivision (g) of section  
4 1511 of the tax law, as amended by chapter 170 of the laws of 1994 and  
5 as further amended pursuant to section 15 of part GG of chapter 63 of  
6 the laws of 2000, is amended to read as follows:

7 (B) "Targeted employee" means a New York resident who receives empire  
8 zone wages and who is (i) an eligible individual under the provision of  
9 the targeted jobs tax credit (section fifty-one of the internal revenue  
10 code), (ii) eligible for benefits under the provisions of the [~~job~~  
11 ~~training partnership~~] workforce investment act as a dislocated worker or  
12 a low-income individual (P.L. [~~97-300~~] 105-220, as amended), (iii) a  
13 recipient of public assistance benefits [~~or~~], (iv) an individual whose  
14 income is below the most recently established poverty rate promulgated  
15 by the United States department of commerce, or a member of a family  
16 whose family income is below the most recently established poverty rate  
17 promulgated by the appropriate federal agency or (v) an honorably  
18 discharged member of any branch of the armed forces of the United  
19 States.

20 An individual who satisfies the criteria set forth in clause (i), (ii)  
21 [~~or~~], (iv) or (v) at the time of initial employment in the job with  
22 respect to which the credit is claimed, or who satisfies the criterion  
23 set forth in clause (iii) at such time or at any time within the previ-  
24 ous two years, shall be a targeted employee so long as such individual  
25 continues to receive empire zone wages.

26 §§ 32. Subparagraph (C) of paragraph 4 of subdivision (g) of section  
27 1511 of the tax law, as added by section 16-d of part CC of chapter 85  
28 of the laws of 2002, is amended to read as follows:

29 (C) For purposes of calculating the amount of the credit, individuals  
30 employed within an empire zone or zone equivalent area within the imme-  
31 diately preceding sixty months by a related person, as such term is  
32 defined in subparagraph (c) of paragraph three of subsection (b) of  
33 section four hundred sixty-five of the internal revenue code, shall not  
34 be included in the average number of individuals described in subpara-  
35 graph (A) or subparagraph (B) of this paragraph, unless such related  
36 person was never allowed a credit under this subdivision with respect to  
37 such employees. For the purposes of this subparagraph, a "related  
38 person" shall include an entity which would have qualified as a "related

39 person" to the taxpayer if it had not been dissolved, liquidated, merged  
40 with another entity or otherwise ceased to exist or operate.

41 §§ 33. Paragraph 4 of subsection (g) of section 1511 of the tax law is  
42 amended by adding a new subparagraph (D) to read as follows:

43 (D) If a taxpayer is certified in an empire zone designated under  
44 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-  
45 al municipal law, the dollar amounts specified under subparagraph (A) or  
46 (B) of this paragraph shall be increased by five hundred dollars for  
47 each qualifying individual under such subparagraph who received, during  
48 the taxable year, wages in excess of forty thousand dollars.

49 §§ 34. Paragraph 1 of subdivision (h) of section 1511 of the tax law,  
50 as amended by chapter 708 of the laws of 1993 and subparagraph (A) as  
51 further amended pursuant to section 15 of part GG of chapter 63 of the  
52 laws of 2000, is amended to read as follows:

53 (1) A taxpayer shall be allowed a credit against the tax imposed by  
54 this article. The amount of the credit shall be equal to twenty-five  
55 percent of the sum of the following investments and contributions made  
56 during the taxable year and certified by the commissioner of economic

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1 development: (A) for taxable years beginning before January first, two  
2 thousand five, qualified investments made in, or contributions in the  
3 form of donations made to, one or more empire zone capital [~~corpo-~~  
4 ~~rations~~] credits established pursuant to section nine hundred sixty-four  
5 of the general municipal law prior to January first, two thousand five,  
6 (B) qualified investments in certified zone businesses which during the  
7 twelve month period immediately preceding the month in which such  
8 investment is made employed full-time within the state an average number  
9 of individuals, excluding general executive officers, of two hundred  
10 fifty or fewer, computed pursuant to the provisions of subparagraph (C)  
11 of paragraph two of subsection (g) of this section, except for invest-  
12 ments made by or on behalf of an owner of the business, including, but  
13 not limited to, a stockholder, partner or sole proprietor, or any  
14 related person, as defined in subparagraph (C) of paragraph three of  
15 subsection (b) of section four hundred sixty-five of the internal reven-  
16 ue code, and (C) contributions of money to community development  
17 projects as defined in regulations promulgated by the commissioner of  
18 economic development. "Qualified investments" means the contribution of  
19 property to a corporation in exchange for original issue capital stock  
20 or other ownership interest, the contribution of property to a partner-  
21 ship in exchange for an interest in the partnership, and similar  
22 contributions in the case of a business entity not in corporate or part-  
23 nership form in exchange for an ownership interest in such entity. The  
24 total amount of credit allowable to a taxpayer under this provision for  
25 all years, taken in the aggregate, shall not exceed three hundred thou-  
26 sand dollars, and shall not exceed one hundred thousand dollars with  
27 respect to the investments and contributions described in each of  
28 subparagraphs (A), (B) and (C) of this paragraph.

29 §§ 35. This act shall take effect immediately; provided, however, that:

30 (i) sections fifteen, sixteen, nineteen, twenty, twenty-three, twen-  
31 ty-five, twenty-eight, thirty, thirty-one and thirty-three of this act  
32 shall apply to taxable years beginning on or after January 1, 2005;

33 (ii) the amendments to subdivision (g) of section 14 of the tax law  
34 made by section fifteen of this act concerning "related person", other  
35 than the addition of the words "the state within", by section sixteen of  
36 this act, and sections twenty, twenty-four, twenty-nine, and thirty-two

37 of this act shall apply to taxable years beginning on or after January  
38 1, 2002;

39 (iii) the amendments made to subdivision (i) of section 14 of the tax  
40 law by section fifteen of this act, and sections seventeen and eighteen  
41 of this act shall apply to taxable years beginning on or after January  
42 1, 2004; provided however the provisions of section eighteen of this act  
43 which concern an honorably discharged member of the armed forces of the  
44 United States and which adds paragraph (d) to subdivision four of  
45 section 187-m of the tax law shall apply to taxable years beginning on  
46 or after January 1, 2005; and

47 (iv) the amendments to section 14 of the tax law made by section  
48 fifteen of this act for sales and use tax purposes shall apply to  
49 employment tests to determine eligibility for QEZE benefits which are  
50 measured by taxable years beginning on or after January 1, 2005 and to  
51 sales made, uses occurring and services rendered on or after January 1,  
52 2005, in accordance with applicable transition provisions in sections  
53 1106 and 1217 of the tax law.