

STATE OF NEW YORK

S. 2

A. 2

Extraordinary Session

SENATE - ASSEMBLY

December 7, 2011

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

AN ACT to amend the tax law, in relation to personal income tax rates and benefit recapture and repealing certain provisions of such law relating thereto (Part A); to amend the tax law, in relation to the tax rates and exclusions under the metropolitan commuter transportation mobility tax (Part B); to amend the tax law, in relation to tax rates imposed on New York manufacturers (Part C); to amend the labor law and the tax law, in relation to establishing the New York youth works tax credit program (Part D); to amend the economic development law and the tax law, in relation to creating the empire state jobs retention program (Part E); to permit authorized state entities to utilize the design-build method for infrastructure projects; and providing for the repeal of such provisions upon expiration thereof (Part F); to establish the Hurricane Irene and Tropical Storm Lee assessment relief act (Part G); to create the Hurricane Irene-Tropical Storm Lee Flood Recovery Grant Program (Part H); to amend the real property tax law, in relation to authorizing school districts to permit installment payments of real property taxes in certain school districts affected by floods or natural disasters; and providing for the repeal of certain provisions upon the expiration thereof (Part I); to amend the executive law, in relation to a prohibition on diversion of funds dedicated to the metropolitan transportation authority or the New York city transit authority and any of their subsidiaries (Part J); and to amend chapter 260 of the laws of 2011, relating to establishing components of the NY-SUNY 2020 challenge grant program, in relation to requiring compliance with project labor agreements (Part K)

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD12105-01-1

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

1 Section 1. This act enacts into law major components of legislation
2 relating to issues deemed necessary for the state. Each component of
3 this act is wholly contained within a Part identified as Parts A through
4 K. The effective date for each particular provision contained within
5 such Part is set forth in the last section of such Part. Any provision
6 in any section contained within a Part, including the effective date of
7 the Part, which makes reference to a section "of this act", when used in
8 connection with that particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.
10 Section three of this act sets forth the general effective date of this
11 act.

12 PART A

13 Section 1. Paragraph 1 of subsection (a) of section 601 of the tax law
14 is renumbered to be paragraph 1-a and a new paragraph 1 is added to read
15 as follows:

16 (1) (A) For taxable years beginning after two thousand eleven and
17 before two thousand fifteen:

18 <u>If the New York taxable income is:</u>	<u>The tax is:</u>
19 <u>Not over \$16,000</u>	<u>4% of taxable income</u>
20 <u>Over \$16,000 but not over \$22,000</u>	<u>\$640 plus 4.5% of excess over</u>
21	<u>\$16,000</u>
22 <u>Over \$22,000 but not over \$26,000</u>	<u>\$910 plus 5.25% of excess over</u>
23	<u>\$22,000</u>
24 <u>Over \$26,000 but not over \$40,000</u>	<u>\$1,120 plus 5.90% of excess over</u>
25	<u>\$26,000</u>
26 <u>Over \$40,000 but not over \$150,000</u>	<u>\$1,946 plus 6.45% of excess over</u>
27	<u>\$40,000</u>
28 <u>Over \$150,000 but not over \$300,000</u>	<u>\$9,041 plus 6.65% of excess over</u>
29	<u>\$150,000</u>
30 <u>Over \$300,000 but not over \$2,000,000</u>	<u>\$19,016 plus 6.85% of excess over</u>
31	<u>\$300,000</u>
32 <u>Over \$2,000,000</u>	<u>\$135,466 plus 8.82% of excess over</u>
33	<u>\$2,000,000</u>

34 (B) For taxable years beginning after two thousand fourteen, the
35 following brackets and dollar amounts shall apply, as adjusted by the
36 cost of living adjustment prescribed in section six hundred one-a of
37 this part for tax years two thousand thirteen and two thousand fourteen:

38 <u>If the New York taxable income is:</u>	<u>The tax is:</u>
39 <u>Not over \$16,000</u>	<u>4% of taxable income</u>
40 <u>Over \$16,000 but not over \$22,000</u>	<u>\$640 plus 4.5% of excess over</u>
41	<u>\$16,000</u>
42 <u>Over \$22,000 but not over \$26,000</u>	<u>\$910 plus 5.25% of excess over</u>
43	<u>\$22,000</u>
44 <u>Over \$26,000 but not over \$40,000</u>	<u>\$1,120 plus 5.90% of excess over</u>
45	<u>\$26,000</u>
46 <u>Over \$40,000</u>	<u>\$1,946 plus 6.85% of excess over</u>
47	<u>\$40,000</u>

1 § 2. The opening paragraph of paragraph 2 of subsection (a) of section
 2 601 of the tax law, as amended by section 1 of part Z-1 of chapter 57 of
 3 the laws of 2009, is amended to read as follows:

4 For taxable years beginning after two thousand five and before two
 5 thousand nine [and after two thousand eleven]:

6 § 3. Paragraph 1 of subsection (b) of section 601 of the tax law is
 7 renumbered to be paragraph 1-a and a new paragraph 1 is added to read as
 8 follows:

9 (1) (A) For taxable years beginning after two thousand eleven and
 10 before two thousand fifteen:

11 <u>If the New York taxable income is:</u>	<u>The tax is:</u>
12 <u>Not over \$12,000</u>	<u>4% of taxable income</u>
13 <u>Over \$12,000 but not over \$16,500</u>	<u>\$480 plus 4.5% of excess over</u>
14 <u>Over \$16,500 but not over \$19,500</u>	<u>\$12,000</u>
15 <u>Over \$19,500 but not over \$30,000</u>	<u>\$683 plus 5.25% of excess over</u>
16 <u>Over \$30,000 but not over \$100,000</u>	<u>\$16,500</u>
17 <u>Over \$100,000 but not over \$250,000</u>	<u>\$840 plus 5.90% of excess over</u>
18 <u>Over \$250,000 but not over \$1,500,000</u>	<u>\$19,500</u>
19 <u>Over \$1,500,000</u>	<u>\$1,460 plus 6.45% of excess over</u>
20 <u>Over \$1,500,000</u>	<u>\$30,000</u>
21 <u>Over \$1,500,000</u>	<u>\$5,975 plus 6.65% of excess over</u>
22 <u>Over \$1,500,000</u>	<u>\$100,000</u>
23 <u>Over \$1,500,000</u>	<u>\$15,950 plus 6.85% of excess over</u>
24 <u>Over \$1,500,000</u>	<u>\$250,000</u>
25 <u>Over \$1,500,000</u>	<u>\$101,575 plus 8.82% of excess over</u>
26 <u>Over \$1,500,000</u>	<u>\$1,500,000</u>

27 (B) For taxable years beginning after two thousand fourteen, the
 28 following brackets and dollars amounts shall apply, as adjusted by the
 29 cost of living adjustment prescribed in section six hundred one-a of
 30 this part for tax years two thousand thirteen and two thousand fourteen:

31 <u>If the New York taxable income is:</u>	<u>The tax is:</u>
32 <u>Not over \$12,000</u>	<u>4% of taxable income</u>
33 <u>Over \$12,000 but not over \$16,500</u>	<u>\$480 plus 4.5% of excess over</u>
34 <u>Over \$16,500 but not over \$19,500</u>	<u>\$12,000</u>
35 <u>Over \$19,500 but not over \$30,000</u>	<u>\$683 plus 5.25% of excess over</u>
36 <u>Over \$30,000 but not over \$100,000</u>	<u>\$16,500</u>
37 <u>Over \$100,000 but not over \$250,000</u>	<u>\$840 plus 5.90% of excess over</u>
38 <u>Over \$250,000 but not over \$1,500,000</u>	<u>\$19,500</u>
39 <u>Over \$1,500,000</u>	<u>\$1,460 plus 6.85% of excess over</u>
40 <u>Over \$1,500,000</u>	<u>\$30,000</u>

41 § 4. The opening paragraph of paragraph 2 of subsection (b) of section
 42 601 of the tax law, as amended by section 1 of part Z-1 of chapter 57 of
 43 the laws of 2009, is amended to read as follows:

44 For taxable years beginning after two thousand five and before two
 45 thousand nine [and after two thousand eleven]:

46 § 5. Paragraph 1 of subsection (c) of section 601 of the tax law is
 47 renumbered to be paragraph 1-a and a new paragraph 1 is added to read as
 48 follows:

49 (1) (A) For taxable years beginning after two thousand eleven and
 50 before two thousand fifteen:

1	<u>If the New York taxable income is:</u>	<u>The tax is:</u>
2	<u>Not over \$8,000</u>	<u>4% of taxable income</u>
3	<u>Over \$8,000 but not over \$11,000</u>	<u>\$320 plus 4.5% of excess over</u>
4		<u>\$8,000</u>
5	<u>Over \$11,000 but not over \$13,000</u>	<u>\$455 plus 5.25% of excess over</u>
6		<u>\$11,000</u>
7	<u>Over \$13,000 but not over \$20,000</u>	<u>\$560 plus 5.90% of excess over</u>
8		<u>\$13,000</u>
9	<u>Over \$20,000 but not over \$75,000</u>	<u>\$973 plus 6.45% of excess over</u>
10		<u>\$20,000</u>
11	<u>Over \$75,000 but not over \$200,000</u>	<u>\$4,521 plus 6.65% of excess over</u>
12		<u>\$75,000</u>
13	<u>Over \$200,000 but not over \$1,000,000</u>	<u>\$12,833 plus 6.85% of excess over</u>
14		<u>\$200,000</u>
15	<u>Over \$1,000,000</u>	<u>\$67,633 plus 8.82% of excess over</u>
16		<u>\$1,000,000</u>

17 (B) For taxable years beginning after two thousand fourteen, the
 18 following brackets and dollars amounts shall apply, as adjusted by the
 19 cost of living adjustment prescribed in section six hundred one-a of
 20 this part for tax years two thousand thirteen and two thousand fourteen:

21	<u>If the New York taxable income is:</u>	<u>The tax is:</u>
22	<u>Not over \$8,000</u>	<u>4% of taxable income</u>
23	<u>Over \$8,000 but not over \$11,000</u>	<u>\$320 plus 4.5% of excess over</u>
24		<u>\$8,000</u>
25	<u>Over \$11,000 but not over \$13,000</u>	<u>\$455 plus 5.25% of excess over</u>
26		<u>\$11,000</u>
27	<u>Over \$13,000 but not over \$20,000</u>	<u>\$560 plus 5.90% of excess over</u>
28		<u>\$13,000</u>
29	<u>Over \$20,000</u>	<u>\$973 plus 6.85% of excess over</u>
30		<u>\$20,000</u>

31 § 6. The opening paragraph of paragraph 2 of subsection (c) of section
 32 601 of the tax law, as amended by section 1 of part Z-1 of chapter 57 of
 33 the laws of 2009, is amended to read as follows:

34 For taxable years beginning after two thousand five and before two
 35 thousand nine [and after two thousand eleven]:

36 § 7. Section 601 of the tax law is amended by adding a new subsection
 37 (d-1) to read as follows:

38 (d-1) Alternative tax table benefit recapture. Notwithstanding the
 39 provisions of subsection (d) of this section, for taxable years begin-
 40 ning after two thousand eleven and before two thousand fifteen, there is
 41 hereby imposed a supplemental tax in addition to the tax imposed under
 42 subsections (a), (b) and (c) of this section for the purpose of recap-
 43 turing the benefit of the tax tables contained in such subsections.
 44 During these taxable years, any reference in this chapter to subsection
 45 (d) of this section shall be read as a reference to this subsection.

46 (1) For resident married individuals filing joint returns and resident
 47 surviving spouses, the supplemental tax shall be an amount equal to the
 48 sum of the tax table benefits described in subparagraphs (A), (B), (C)
 49 and (D) of this paragraph multiplied by their respective fractions in
 50 such subparagraphs.

51 (A) The tax table benefit is the difference between (i) the amount of
 52 taxable income set forth in the tax table in paragraph one of subsection
 53 (a) of this section not subject to the 6.45 percent rate of tax for the

1 taxable year multiplied by such rate and (ii) the dollar denominated tax
2 for such amount of taxable income set forth in the tax table applicable
3 to the taxable year in paragraph one of subsection (a) of this section.
4 The fraction for this subparagraph is computed as follows: the numerator
5 is the lesser of fifty thousand dollars or the excess of New York
6 adjusted gross income for the taxable year over one hundred thousand
7 dollars and the denominator is fifty thousand dollars.

8 (B) The tax table benefit is the difference between (i) the amount of
9 taxable income set forth in the tax table in paragraph one of subsection
10 (a) of this section not subject to the 6.65 percent rate of tax for the
11 taxable year multiplied by such rate and (ii) the dollar denominated tax
12 for such amount of taxable income set forth in the tax table applicable
13 to the taxable year in paragraph one of subsection (a) of this section
14 less the tax table benefit in subparagraph (A) of this paragraph. The
15 fraction for this subparagraph is computed as follows: the numerator is
16 the lesser of fifty thousand dollars or the excess of New York adjusted
17 gross income for the taxable year over one hundred fifty thousand
18 dollars and the denominator is fifty thousand dollars. Provided, howev-
19 er, this subparagraph shall not apply to taxpayers who are not subject
20 to the 6.65 percent tax rate.

21 (C) The tax table benefit is the difference between (i) the amount of
22 taxable income set forth in the tax table in paragraph one of subsection
23 (a) of this section not subject to the 6.85 percent rate of tax for the
24 taxable year multiplied by such rate and (ii) the dollar denominated tax
25 for such amount of taxable income set forth in the tax table applicable
26 to the taxable year in paragraph one of subsection (a) of this section
27 less the sum of the tax table benefit in subparagraphs (A) and (B) of
28 this paragraph. The fraction for this subparagraph is computed as
29 follows: the numerator is the lesser of fifty thousand dollars or the
30 excess of New York adjusted gross income for the taxable year over three
31 hundred thousand dollars and the denominator is fifty thousand dollars.
32 Provided, however, this subparagraph shall not apply to taxpayers who
33 are not subject to the 6.85 percent tax rate.

34 (D) The tax table benefit is the difference between (i) the amount of
35 taxable income set forth in the tax table in paragraph one of subsection
36 (a) of this section not subject to the 8.82 percent rate of tax for the
37 taxable year multiplied by such rate and (ii) the dollar denominated tax
38 for such amount of taxable income set forth in the tax table applicable
39 to the taxable year in paragraph one of subsection (a) of this section
40 less the sum of the tax table benefits in subparagraphs (A), (B) and (C)
41 of this paragraph. The fraction for this subparagraph is computed as
42 follows: the numerator is the lesser of fifty thousand dollars or the
43 excess of New York adjusted gross income for the taxable year over two
44 million dollars and the denominator is fifty thousand dollars. This
45 subparagraph shall apply only to taxable years beginning on or after
46 January first, two thousand twelve and before January first, two thou-
47 sand fifteen.

48 (E) Provided, however, the total tax prior to the application of any
49 tax credits shall not exceed the highest rate of tax set forth in the
50 tax tables in subsection (a) of this section multiplied by the taxpay-
51 er's taxable income.

52 (2) For resident heads of households, the supplemental tax shall be an
53 amount equal to the sum of the tax table benefits described in subpara-
54 graphs (A), (B) and (C) of this paragraph multiplied by their respective
55 fractions in such subparagraphs.

1 (A) The tax table benefit is the difference between (i) the amount of
2 taxable income set forth in the tax table in paragraph one of subsection
3 (b) of this section not subject to the 6.65 percent rate of tax for the
4 taxable year multiplied by such rate and (ii) the dollar denominated tax
5 for such amount of taxable income set forth in the tax table applicable
6 to the taxable year in paragraph one of subsection (b) of this section.
7 The fraction for this subparagraph is computed as follows: the numerator
8 is the lesser of fifty thousand dollars or the excess of New York
9 adjusted gross income for the taxable year over one hundred thousand
10 dollars and the denominator is fifty thousand dollars.

11 (B) The tax table benefit is the difference between (i) the amount of
12 taxable income set forth in the tax table in paragraph one of subsection
13 (b) of this section not subject to the 6.85 percent rate of tax for the
14 taxable year multiplied by such rate and (ii) the dollar denominated tax
15 for such amount of taxable income set forth in the tax table applicable
16 to the taxable year in paragraph one of subsection (b) of this section
17 less the tax table benefit in subparagraph (A) of this paragraph. The
18 fraction for this subparagraph is computed as follows: the numerator is
19 the lesser of fifty thousand dollars or the excess of New York adjusted
20 gross income for the taxable year over two hundred fifty thousand
21 dollars and the denominator is fifty thousand dollars. Provided, howev-
22 er, this subparagraph shall not apply to taxpayers who are not subject
23 to the 6.85 percent tax rate.

24 (C) The tax table benefit is the difference between (i) the amount of
25 taxable income set forth in the tax table in paragraph one of subsection
26 (b) of this section not subject to the 8.82 percent rate of tax for the
27 taxable year multiplied by such rate and (ii) the dollar denominated tax
28 for such amount of taxable income set forth in the tax table applicable
29 to the taxable year in paragraph one of subsection (b) of this section
30 less the sum of the tax table benefits in subparagraphs (A) and (B) of
31 this paragraph. The fraction for this subparagraph is computed as
32 follows: the numerator is the lesser of fifty thousand dollars or the
33 excess of New York adjusted gross income for the taxable year over one
34 million five hundred thousand dollars and the denominator is fifty thou-
35 sand dollars. This subparagraph shall apply only to taxable years begin-
36 ning on or after January first, two thousand twelve and before January
37 first, two thousand fifteen.

38 (D) Provided, however, the total tax prior to the application of any
39 tax credits shall not exceed the highest rate of tax set forth in the
40 tax tables in subsection (b) of this section multiplied by the taxpay-
41 er's taxable income.

42 (3) For resident unmarried individuals, resident married individuals
43 filing separate returns and resident estates and trusts, the supple-
44 mental tax shall be an amount equal to the sum of the tax table benefits
45 described in subparagraphs (A), (B) and (C) of this paragraph multiplied
46 by their respective fractions in such subparagraphs.

47 (A) The tax table benefit is the difference between (i) the amount of
48 taxable income set forth in the tax table in paragraph one of subsection
49 (c) of this section not subject to the 6.65 percent rate of tax for the
50 taxable year multiplied by such rate and (ii) the dollar denominated tax
51 for such amount of taxable income set forth in the tax table applicable
52 to the taxable year in paragraph one of subsection (c) of this section.
53 The fraction is computed as follows: the numerator is the lesser of
54 fifty thousand dollars or the excess of New York adjusted gross income
55 for the taxable year over one hundred thousand dollars and the denomina-
56 tor is fifty thousand dollars.

1 (B) The tax table benefit is the difference between (i) the amount of
2 taxable income set forth in the tax table in paragraph one of subsection
3 (c) of this section not subject to the 6.85 percent rate of tax for the
4 taxable year multiplied by such rate and (ii) the dollar denominated tax
5 for such amount of taxable income set forth in the tax table applicable
6 to the taxable year in paragraph one of subsection (c) of this section
7 less the tax table benefit in subparagraph (A) of this paragraph. The
8 fraction for this subparagraph is computed as follows: the numerator is
9 the lesser of fifty thousand dollars or the excess of New York adjusted
10 gross income for the taxable year over two hundred thousand dollars and
11 the denominator is fifty thousand dollars. Provided, however, this
12 subparagraph shall not apply to taxpayers who are not subject to the
13 6.85 percent tax rate.

14 (C) The tax table benefit is the difference between (i) the amount of
15 taxable income set forth in the tax table in paragraph one of subsection
16 (c) of this section not subject to the 8.82 percent rate of tax for the
17 taxable year multiplied by such rate and (ii) the dollar denominated tax
18 for such amount of taxable income set forth in the tax table applicable
19 to the taxable year in paragraph one of subsection (c) of this section
20 less the sum of the tax table benefits in subparagraphs (A) and (B) of
21 this paragraph. The fraction for this subparagraph is computed as
22 follows: the numerator is the lesser of fifty thousand dollars or the
23 excess of New York adjusted gross income for the taxable year over one
24 million dollars and the denominator is fifty thousand dollars. This
25 subparagraph shall apply only to taxable years beginning on or after
26 January first, two thousand twelve and before January first, two thou-
27 sand fifteen.

28 (D) Provided, however, the total tax prior to the application of any
29 tax credits shall not exceed the highest rate of tax set forth in the
30 tax tables in subsection (c) of this section multiplied by the taxpay-
31 er's taxable income.

32 § 8. Section 601 of the tax law is amended by adding a new subsection
33 (d-2) to read as follows:

34 (d-2) Tax table benefit recapture for tax years after two thousand
35 fourteen. For taxable years beginning after two thousand fourteen, there
36 is hereby imposed a supplemental tax in addition to the tax imposed
37 under subsections (a), (b) and (c) of this section for the purpose of
38 recapturing the benefit of the tax tables contained in such subsections.
39 The supplemental tax shall be an amount equal to the table benefit in
40 paragraph one of this subsection multiplied by the fraction in such
41 paragraph. Any reference in this chapter to subsection (d) of this
42 section shall be read as a reference to this subsection.

43 (1) Resident married individuals filing joint returns, resident
44 surviving spouses, resident heads of households, resident unmarried
45 individuals, resident married individuals filing separate returns and
46 resident estates and trusts.

47 (A) The tax table benefit is the difference between (i) the amount of
48 taxable income set forth in the tax table in subsection (a), (b) or (c),
49 of this section, not subject to the 6.85 percent rate of tax for the
50 taxable year multiplied by such rate and (ii) the dollar denominated tax
51 for such amount of taxable income set forth in the tax table applicable
52 to the taxable year in subsection (a), (b) or (c) of this section.

53 (B) The fraction is computed as follows: the numerator is the lesser
54 of fifty thousand dollars or the excess of New York adjusted gross
55 income for the taxable year over one hundred thousand dollars (as such
56 amount is adjusted by the cost of living adjustment prescribed in

1 section six hundred one-a of this part for tax years two thousand thir-
2 teen and two thousand fourteen) and the denominator is fifty thousand
3 dollars.

4 § 9. The tax law is amended by adding a new section 601-a to read as
5 follows:

6 § 601-a. Cost of living adjustment. (a) For tax year two thousand
7 thirteen, the commissioner, not later than September first, two thousand
8 twelve, shall multiply the amounts specified in subsection (b) of this
9 section for tax year two thousand twelve by one plus the cost of living
10 adjustment described in subsection (c) of this section. For tax year two
11 thousand fourteen, the commissioner, not later than September first, two
12 thousand thirteen, shall multiply the amounts specified in subsection
13 (b) of this section for tax year two thousand thirteen by one plus the
14 cost of living adjustment.

15 (b) The following amounts shall be indexed by the cost of living
16 adjustment.

17 (1) The dollar amounts in the tax tables set forth in paragraph one of
18 subsection (a), paragraph one of subsection (b) and paragraph one of
19 subsection (c) of section six hundred one of this part.

20 (2) The dollar amount in the numerator of the fractions in subsection
21 (d) of section six hundred one of this part that is not fifty thousand
22 dollars.

23 (3) The New York standard deduction of a resident individual in
24 section six hundred fourteen of this article.

25 (c) The cost of living adjustment for a tax year is the percentage if
26 any, by which the average monthly value of the consumer price index for
27 the twelve month period ending on June thirtieth of the year immediately
28 preceding the tax year for which the adjustment is being made (referred
29 to as the adjustment year) exceeds the average monthly value of the
30 consumer price index for the twelve month period ending on June thirti-
31 eth of the year immediately preceding the adjustment year. For purposes
32 of this section, the consumer price index means the consumer price index
33 for all urban consumers published by the United States department of
34 labor.

35 (d) If the product of the amounts in subsection (b) and subsection (c)
36 of this section is not a multiple of fifty dollars, such increase shall
37 be rounded to the next lowest multiple of fifty dollars.

38 § 10. Section 614 of the tax law is amended by adding a new subsection
39 (f) to read as follows:

40 (f) Adjusted standard deduction. For taxable years beginning after two
41 thousand fourteen, the standard deductions set forth in this section
42 shall be adjusted by the cost of living adjustment prescribed in section
43 six hundred one-a of this part for tax years two thousand thirteen and
44 two thousand fourteen.

45 § 11. Notwithstanding any provision of law to the contrary, the method
46 of determining the amount to be deducted and withheld from wages on
47 account of taxes imposed by or pursuant to the authority of article 22
48 of the tax law in connection with the implementation of the provisions
49 of this act shall be prescribed by regulations of the commissioner of
50 taxation and finance with due consideration to the effect such withhold-
51 ing tables and methods would have on the receipt and amount of revenue.
52 The commissioner of taxation and finance shall adjust such withholding
53 tables and methods in regard to taxable years beginning in 2012 and
54 after in such manner as to result, so far as practicable, in withholding
55 from an employee's wages an amount substantially equivalent to the tax
56 reasonably estimated to be due for such taxable years as a result of the

1 provisions of this act. Any such regulations to implement a change in
2 withholding tables and methods for tax year 2012 shall be adopted and
3 effective as soon as practicable and the commissioner of taxation and
4 finance may adopt such regulations on an emergency basis notwithstanding
5 anything to the contrary in section 202 of the state administrative
6 procedure act. The commissioner of taxation and finance, in carrying out
7 the duties and responsibilities under this section, may accompany such a
8 rule making procedure with a similar procedure with respect to the taxes
9 required to be deducted and withheld by local laws imposing taxes pursu-
10 ant to the authority of articles 30, 30-A and 30-B of the tax law, the
11 provisions of any other law in relation to such a procedure to the
12 contrary notwithstanding. The withholding tables and methods for tax
13 years 2013 and 2014 shall not be prescribed by regulation, notwithstand-
14 ing any provision of the state administrative procedure act to the
15 contrary.

16 § 12. This act shall take effect immediately.

17

PART B

18 Section 1. Subsection (b) of section 800 of the tax law, as added by
19 section 1 of part C of chapter 25 of the laws of 2009, is amended to
20 read as follows:

21 (b) Employer. Employer means an employer required by section six
22 hundred seventy-one of this chapter to deduct and withhold tax from
23 wages, that has a payroll expense in excess of [two] three hundred
24 twelve thousand five hundred dollars in any calendar quarter; other than

25 (1) any agency or instrumentality of the United States;

26 (2) the United Nations; [or]

27 (3) an interstate agency or public corporation created pursuant to an
28 agreement or compact with another state or the Dominion of Canada[.]; or

29 (4) Any eligible educational institution. An "eligible educational
30 institution" shall mean any public school district, a board of cooper-
31 ative educational services, a public elementary or secondary school, a
32 school approved pursuant to article eighty-five or eighty-nine of the
33 education law to serve students with disabilities of school age, or a
34 nonpublic elementary or secondary school that provides instruction in
35 grade one or above.

36 § 2. Subsection (a) of section 801 of the tax law, as added by section
37 1 of part C of chapter 25 of the laws of 2009, is amended to read as
38 follows:

39 (a) For the sole purpose of providing an additional stable and reli-
40 able dedicated funding source for the metropolitan transportation
41 authority and its subsidiaries and affiliates to preserve, operate and
42 improve essential transit and transportation services in the metropol-
43 itan commuter transportation district, a tax is hereby imposed [at a
44 rate of thirty-four hundredths (.34) percent of (1) the payroll expense
45 of every employer who engages] on employers who engage in business with-
46 in the MCTD (1) at a rate of (A) eleven hundredths (.11) percent for
47 employers with payroll expense no greater than three hundred seventy-
48 five thousand dollars in any calendar quarter, (B) twenty-three
49 hundredths (.23) percent for employers with payroll expense greater than
50 three hundred seventy-five thousand dollars and no greater than four
51 hundred thirty-seven thousand five hundred dollars in any calendar quar-
52 ter, and (C) thirty-four hundredths (.34) percent for employers with
53 payroll expense in excess of four hundred thirty-seven thousand five
54 hundred dollars in any calendar quarter, and (2) at a rate of thirty-

1 four hundredths (.34) percent of the net earnings from self-employment
2 of individuals that are attributable to the MCTD if such earnings
3 attributable to the MCTD exceed [ten] fifty thousand dollars for the tax
4 year.

5 § 3. Any reductions in transit aid attributable to reductions in the
6 metropolitan commuter transportation mobility tax authorized under arti-
7 cle 23 of the tax law shall be offset through alternative sources that
8 will be included in the state budget.

9 § 4. This act shall take effect immediately; provided however, that
10 section one of this act and the amendments in section two of this act
11 that concern employers shall take effect for the quarter beginning on
12 April 1, 2012.

13

PART C

14 Section 1. Subparagraph (vi) of paragraph (a) of subdivision 1 of
15 section 210 of the tax law, as added by section 2 of part N of chapter
16 60 of the laws of 2007, is amended to read as follows:

17 (vi) for taxable years beginning on or after January thirty-first, two
18 thousand seven, the amount prescribed by this paragraph for a taxpayer
19 which is a qualified New York manufacturer, shall be computed at the
20 rate of six and one-half (6.5) percent of the taxpayer's entire net
21 income base. For taxable years beginning on or after January first, two
22 thousand twelve and before January first, two thousand fifteen, the
23 amount prescribed by this paragraph for a taxpayer which is an eligible
24 qualified New York manufacturer shall be computed at the rate of three
25 and one-quarter (3.25) percent of the taxpayer's entire net income base.
26 The term "manufacturer" shall mean a taxpayer which during the taxable
27 year is principally engaged in the production of goods by manufacturing,
28 processing, assembling, refining, mining, extracting, farming, agricul-
29 ture, horticulture, floriculture, viticulture or commercial fishing.
30 However, the generation and distribution of electricity, the distrib-
31 ution of natural gas, and the production of steam associated with the
32 generation of electricity shall not be qualifying activities for a
33 manufacturer under this subparagraph. Moreover, the combined group
34 shall be considered a "manufacturer" for purposes of this subparagraph
35 only if the combined group during the taxable year is principally
36 engaged in the activities set forth in this paragraph, or any combina-
37 tion thereof. A taxpayer or a combined group shall be "principally
38 engaged" in activities described above if, during the taxable year, more
39 than fifty percent of the gross receipts of the taxpayer or combined
40 group, respectively, are derived from receipts from the sale of goods
41 produced by such activities. In computing a combined group's gross
42 receipts, intercorporate receipts shall be eliminated. A "qualified New
43 York manufacturer" is a manufacturer which has property in New York
44 which is described in clause (A) of subparagraph (i) of paragraph (b) of
45 subdivision twelve of this section and either (I) the adjusted basis of
46 such property for federal income tax purposes at the close of the taxa-
47 ble year is at least one million dollars or (II) all of its real and
48 personal property is located in New York. In addition, a "qualified New
49 York manufacturer" means a taxpayer which is defined as a qualified
50 emerging technology company under paragraph (c) of subdivision one of
51 section thirty-one hundred two-e of the public authorities law regard-
52 less of the ten million dollar limitation expressed in subparagraph one
53 of such paragraph (c). The commissioner shall establish guidelines and
54 criteria that specify requirements by which a manufacturer may be clas-



1 sified as an eligible qualified New York manufacturer. Criteria may
2 include but not be limited to factors such as regional unemployment, the
3 economic impact that manufacturing has on the surrounding community,
4 population decline within the region and median income within the region
5 in which the manufacturer is located. In establishing these guidelines
6 and criteria, the commissioner shall endeavor that the total annual cost
7 of the lower rates shall not exceed twenty-five million dollars.

8 § 2. Subparagraph (ii) of paragraph (c) of subdivision 1 of section
9 210 of the tax law, as amended by section 5 of part N of chapter 60 of
10 the laws of 2007, is amended to read as follows:

11 (ii) [For taxable years beginning in nineteen hundred ninety, nineteen
12 hundred ninety-one, nineteen hundred ninety-two, nineteen hundred nine-
13 ty-three and nineteen hundred ninety-four the amount prescribed by this
14 paragraph shall be computed at the rate of five percent of the taxpay-
15 er's minimum taxable income base. For taxable years beginning after
16 nineteen hundred ninety-four and before July first, nineteen hundred
17 ninety-eight, the amount prescribed by this paragraph shall be computed
18 at the rate of three and one-half percent of the taxpayer's minimum
19 taxable income base. For taxable years beginning after June thirtieth,
20 nineteen hundred ninety-eight and before July first, nineteen hundred
21 ninety-nine, the amount prescribed by this paragraph shall be computed
22 at the rate of three and one-quarter percent of the taxpayer's minimum
23 taxable income base. For taxable years beginning after June thirtieth,
24 nineteen hundred ninety-nine and before July first, two thousand, the
25 amount prescribed by this paragraph shall be computed at the rate of
26 three percent of the taxpayer's minimum taxable income base. For taxa-
27 ble years beginning after June thirtieth, two thousand, the amount
28 prescribed by this paragraph shall be computed at the rate of two and
29 one-half percent of the taxpayer's minimum taxable income base.] (A) For
30 taxable years beginning on or after January first, two thousand seven,
31 the amount prescribed by this paragraph shall be computed at the rate of
32 one and one-half percent of the taxpayer's minimum taxable income base.
33 The "taxpayer's minimum taxable income base" shall mean the portion of
34 the taxpayer's minimum taxable income allocated within the state as
35 hereinafter provided, subject to any modifications required by para-
36 graphs (d) and (e) of subdivision three of this section.

37 (B) For taxable years beginning on or after January first, two thou-
38 sand twelve and before January first, two thousand fifteen, the amount
39 prescribed by this paragraph for an eligible qualified New York manufac-
40 turer shall be computed at the rate of seventy-five hundredths (.75)
41 percent of the taxpayer's minimum taxable income base. For purposes of
42 this clause, the term "eligible qualified New York manufacturer" shall
43 have the same meaning as in subparagraph (vi) of paragraph (a) of this
44 subdivision.

45 § 3. Paragraph (d) of subdivision 1 of section 210 of the tax law is
46 amended by adding a new subparagraph 5 to read as follows:

47 (5) For taxable years beginning on or after January first, two thou-
48 sand twelve and before January first, two thousand fifteen, the amounts
49 prescribed in subparagraphs one and four of this paragraph as the fixed
50 dollar minimum tax for an eligible qualified New York manufacturer shall
51 be one-half of the amounts stated in those subparagraphs. For purposes
52 of this subparagraph, the term "eligible qualified New York manufactur-
53 er" shall have the same meaning as in subparagraph (vi) of paragraph (a)
54 of this subdivision.

55 § 4. This act shall take effect immediately.

1

PART D

2 Section 1. The labor law is amended by adding a new section 25-a to
3 read as follows:

4 § 25-a. Power to administer the New York youth works tax credit
5 program. (a) The commissioner is authorized to establish and administer
6 the New York youth works tax credit program to provide tax incentives to
7 employers for employing at risk youth in part-time and full-time posi-
8 tions in two thousand twelve and two thousand thirteen. The commissioner
9 is authorized to allocate up to twenty-five million dollars of tax cred-
10 its under this program.

11 (b) Definitions. (1) The term "qualified employer" means an employer
12 that has been certified by the commissioner to participate in the New
13 York youth works tax credit program and that employs one or more quali-
14 fied employees.

15 (2) The term "qualified employee" means an individual:

16 (i) who is between the age of sixteen and twenty-four;

17 (ii) who resides in a city with a population of sixty-two thousand or
18 more or a town with a population of four hundred eighty thousand or
19 more;

20 (iii) who is low-income or at-risk, as those terms are defined by the
21 commissioner;

22 (iv) who is unemployed prior to being hired by the qualified employer;
23 and

24 (v) who will be working for the qualified employer in a full-time or
25 part-time position that pays wages that are equivalent to the wages paid
26 for similar jobs, with appropriate adjustments for experience and train-
27 ing, and for which no other employee has been terminated, or where the
28 employer has not otherwise reduced its workforce by involuntary termi-
29 nations with the intention of filling the vacancy by creating a new
30 hire.

31 (c) A qualified employer shall be entitled to a tax credit equal to
32 (1) five hundred dollars per month for up to six months for each quali-
33 fied employee the employer employs in a full-time job or two hundred
34 fifty dollars per month for up to six months for each qualified employee
35 the employer employs in a part-time job of at least twenty hours per
36 week, and (2) one thousand dollars for each qualified employee who is
37 employed for at least an additional six months by the qualified employer
38 in a full-time job or five hundred dollars for each qualified employee
39 who is employed for at least an additional six months by the qualified
40 employer in a part-time job of at least twenty hours per week. The tax
41 credits shall be claimed by the qualified employer as specified in
42 subdivision forty-four of section two hundred ten and subsection (tt) of
43 section six hundred six of the tax law.

44 (d) To participate in the New York youth works tax credit program, an
45 employer must submit an application (in a form prescribed by the commis-
46 sioner) to the commissioner after January first, two thousand twelve but
47 no later than June first, two thousand twelve. The qualified employees
48 must start their employment on or after January first, two thousand
49 twelve but no later than July first, two thousand twelve. The commis-
50 sioner shall establish guidelines and criteria that specify requirements
51 for employers to participate in the program including criteria for
52 certifying qualified employees. Any regulations that the commissioner
53 determines are necessary may be adopted on an emergency basis notwith-
54 standing anything to the contrary in section two hundred two of the
55 state administrative procedure act. Such requirements may include the

1 types of industries that the employers are engaged in. The commissioner
2 may give preference to employers that are engaged in demand occupations
3 or industries, or in regional growth sectors, including those identified
4 by the regional economic development councils, such as clean energy,
5 healthcare, advanced manufacturing and conservation. In addition, the
6 commissioner shall give preference to employers who offer advancement
7 and employee benefit packages to the qualified individuals.

8 (e) If, after reviewing the application submitted by an employer, the
9 commissioner determines that such employer is eligible to participate in
10 the New York youth works tax credit program, the commissioner shall
11 issue the employer a certificate of eligibility that establishes the
12 employer as a qualified employer. The certificate of eligibility shall
13 specify the maximum amount of New York youth works tax credit that the
14 employer will be allowed to claim.

15 § 2. Section 210 of the tax law is amended by adding a new subdivision
16 44 to read as follows:

17 44. New York youth works tax credit. (a) A taxpayer that has been
18 certified by the commissioner of labor as a qualified employer pursuant
19 to section twenty-five-a of the labor law shall be allowed a credit
20 against the tax imposed by this article equal to (i) five hundred
21 dollars per month for up to six months for each qualified employee the
22 employer employs in a full-time job or two hundred fifty dollars per
23 month for up to six months for each qualified employee the employer
24 employs in a part-time job of at least twenty hours per week, and (ii)
25 one thousand dollars for each qualified employee who is employed for at
26 least an additional six months by the qualified employer in a full-time
27 job or five hundred dollars for each qualified employee who is employed
28 for at least an additional six months by the qualified employer in a
29 part-time job of at least twenty hours per week. For purposes of this
30 subdivision, the term "qualified employee" shall have the same meaning
31 as set forth in subdivision (b) of section twenty-five-a of the labor
32 law. The portion of the credit described in subparagraph (i) of this
33 paragraph shall be allowed for the taxable year beginning on or after
34 January first, two thousand twelve and before January first, two thou-
35 sand thirteen, and the portion of the credit described in subparagraph
36 (ii) of this paragraph shall be allowed for taxable years beginning on
37 or after January first, two thousand twelve and before January first,
38 two thousand fourteen.

39 (b) The credit allowed under this subdivision for any taxable year may
40 not reduce the tax due for that year to less than the amount prescribed
41 in paragraph (d) of subdivision one of this section. However, if the
42 amount of the credit allowed under this subdivision for any taxable year
43 reduces the tax to that amount, any amount of credit not deductible in
44 that taxable year will be treated as an overpayment of tax to be credit-
45 ed or refunded in accordance with the provisions of section one thousand
46 eighty-six of this chapter. Provided, however, no interest will be paid
47 thereon.

48 (c) The taxpayer may be required to attach to its tax return its
49 certificate of eligibility issued by the commissioner of labor pursuant
50 to section twenty-five-a of the labor law. In no event shall the
51 taxpayer be allowed a credit greater than the amount of the credit list-
52 ed on the certificate of eligibility. Notwithstanding any provision of
53 this chapter to the contrary, the commissioner and the commissioner's
54 designees may release the names and addresses of any taxpayer claiming
55 this credit and the amount of the credit earned by the taxpayer.
56 Provided, however, if a taxpayer claims this credit because it is a

1 member of a limited liability company or a partner in a partnership,
 2 only the amount of credit earned by the entity and not the amount of
 3 credit claimed by the taxpayer may be released.

4 § 3. Section 606 of the tax law is amended by adding a new subsection
 5 (tt) to read as follows:

6 (tt) New York youth works tax credit. (1) A taxpayer that has been
 7 certified by the commissioner of labor as a qualified employer pursuant
 8 to section twenty-five-a of the labor law shall be allowed a credit
 9 against the tax imposed by this article equal to (A) five hundred
 10 dollars per month for up to six months for each qualified employee the
 11 employer employs in a full-time job or two hundred fifty dollars per
 12 month for up to six months for each qualified employee the employer
 13 employs in a part-time job of at least twenty hours per week, and (B)
 14 one thousand dollars for each qualified employee who is employed for at
 15 least an additional six months by the qualified employer in a full-time
 16 job or five hundred dollars for each qualified employee who is employed
 17 for at least an additional six months by the qualified employer in a
 18 part-time job of at least twenty hours per week. A taxpayer that is a
 19 partner in a partnership, member of a limited liability company or
 20 shareholder in an S corporation that has been certified by the commis-
 21 sioner of labor as a qualified employer pursuant to section
 22 twenty-five-a of the labor law shall be allowed its pro rata share of
 23 the credit earned by the partnership, limited liability company or S
 24 corporation. For purposes of this subsection, the term "qualified
 25 employee" shall have the same meaning as set forth in subdivision (b) of
 26 section twenty-five-a of the labor law. The portion of the credit
 27 described in subparagraph (A) of this paragraph shall be allowed for the
 28 taxable year beginning on or after January first, two thousand twelve
 29 and before January first, two thousand thirteen, and the portion of the
 30 credit described in subparagraph (B) of this paragraph shall be allowed
 31 for taxable years beginning on or after January first, two thousand
 32 twelve and before January first, two thousand fourteen.

33 (2) If the amount of the credit allowed under this subsection exceeds
 34 the taxpayer's tax for the taxable year, any amount of credit not deduc-
 35 tible in that taxable year will be treated as an overpayment of tax to
 36 be credited or refunded in accordance with the provisions of section six
 37 hundred eighty-six of this article. Provided, however, no interest will
 38 be paid thereon.

39 (3) The taxpayer may be required to attach to its tax return its
 40 certificate of eligibility issued by the commissioner of labor pursuant
 41 to section twenty-five-a of the labor law. In no event shall the
 42 taxpayer be allowed a credit greater than the amount of the credit list-
 43 ed on the certificate of eligibility. Notwithstanding any provision of
 44 this chapter to the contrary, the commissioner and the commissioner's
 45 designees may release the names and addresses of any taxpayer claiming
 46 this credit and the amount of the credit earned by the taxpayer.
 47 Provided, however, if a taxpayer claims this credit because it is a
 48 member of a limited liability company, a partner in a partnership, or a
 49 shareholder in a subchapter S corporation, only the amount of credit
 50 earned by the entity and not the amount of credit claimed by the taxpay-
 51 er may be released.

52 § 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 53 of the tax law is amended by adding a new clause (xxxiii) to read as
 54 follows:

55 <u>(xxxiii) New York youth works</u>	<u>Amount of credit under</u>
56 <u>tax credit</u>	<u>subdivision forty-four of</u>

1 section two hundred ten
2 § 5. This act shall take effect immediately.

3 PART E

4 Section 1. The economic development law is amended by adding a new
5 article 20 to read as follows:

6 ARTICLE 20
7 EMPIRE STATE JOBS RETENTION PROGRAM

8 Section 420. Short title.

9 421. Statement of legislative findings and declaration.

10 422. Definitions.

11 423. Eligibility criteria.

12 424. Application and approval process.

13 425. Empire state jobs retention program credit.

14 426. Powers and duties of the commissioner.

15 427. Maintenance of records.

16 428. Reporting.

17 429. Cap on tax credit.

18 § 420. Short title. This article shall be known and may be cited as
19 the "empire state jobs retention program."

20 § 421. Statement of legislative findings and declaration. It is hereby
21 found and declared that New York state needs, as a matter of public
22 policy, to create competitive financial incentives to retain strategic
23 businesses and jobs that are at risk of leaving the state due to the
24 impact on its business operations of an event leading to an emergency
25 declaration by the governor. The empire state jobs retention program is
26 created to support the retention of the state's most strategic busi-
27 nesses in the event of an emergency.

28 This legislation creates a jobs tax credit for each job of a strategic
29 business directly impacted by an emergency and protects state taxpayers'
30 dollars by ensuring that New York provides tax benefits only to busi-
31 nesses that can demonstrate substantial physical damage and economic
32 harm resulting from an event leading to an emergency declaration by the
33 governor.

34 § 422. Definitions. For the purposes of this article:

35 1. "Agriculture" means both agricultural production (establishments
36 performing the complete farm or ranch operation, such as farm owner-op-
37 erators, tenant farm operators, and sharecroppers) and agricultural
38 support (establishments that perform one or more activities associated
39 with farm operation, such as soil preparation, planting, harvesting, and
40 management, on a contract or fee basis).

41 2. "Back office operations" means a business function that may include
42 one or more of the following activities: customer service, information
43 technology and data processing, human resources, accounting and related
44 administrative functions.

45 3. "Certificate of eligibility" means the document issued by the
46 department to an applicant that has completed an application to be
47 admitted into the empire state jobs retention program and has been
48 accepted into the program by the department. Possession of a certificate
49 of eligibility does not by itself guarantee the eligibility to claim the
50 tax credit.

51 4. "Certificate of tax credit" means the document issued to a partic-
52 ipant by the department, after the department has verified that the

1 participant has met all applicable eligibility criteria in this article.
2 The certificate shall be issued annually if such criteria are satisfied
3 and shall specify the exact amount of each tax credit under this article
4 that a participant may claim, pursuant to section four hundred twenty-
5 five of this article, and shall specify the taxable year in which such
6 credit may be claimed.

7 5. "Distribution center" means a large scale facility involving proc-
8 essing, repackaging and/or movement of finished or semi-finished goods
9 to retail locations across a multi-state area.

10 6. "Financial services data centers" or "financial services customer
11 back office operations" means operations that manage the data or
12 accounts of existing customers or provide product or service information
13 and support to customers of financial services companies, including
14 banks, other lenders, securities and commodities brokers and dealers,
15 investment banks, portfolio managers, trust offices, and insurance
16 companies.

17 7. "Impacted jobs" means jobs existing at a business enterprise at a
18 location or locations within the county declared an emergency by the
19 governor on the day immediately preceding the day on which the event
20 leading to the emergency declaration by the governor occurred.

21 8. "Manufacturing" means the process of working raw materials into
22 products suitable for use or which gives new shapes, new quality or new
23 combinations to matter which has already gone through some artificial
24 process by the use of machinery, tools, appliances, or other similar
25 equipment. "Manufacturing" does not include an operation that involves
26 only the assembly of components, provided, however, the assembly of
27 motor vehicles or other high value-added products shall be considered
28 manufacturing.

29 9. "Participant" means a business entity that:

30 (a) has completed an application prescribed by the department to be
31 admitted into the program;

32 (b) has been issued a certificate of eligibility by the department;

33 (c) has demonstrated that it meets the eligibility criteria in section
34 four hundred twenty-three and subdivision two of section four hundred
35 twenty-four of this article; and

36 (d) has been certified as a participant by the commissioner.

37 10. "Preliminary schedule of benefits" means the maximum aggregate
38 amount of the tax credit that a participant in the empire state jobs
39 retention program is eligible to receive pursuant to this article. The
40 schedule shall indicate the annual amount of the credit a participant
41 may claim in each of its ten years of eligibility. The preliminary sche-
42 dule of benefits shall be issued by the department when the department
43 approves the application for admission into the program. The commission-
44 er may amend that schedule, provided that the commissioner complies with
45 the credit caps in section three hundred fifty-nine of this chapter.

46 11. "Related person" means a related person pursuant to subparagraph
47 (c) of paragraph three of subsection (b) of section four hundred sixty-
48 five of the internal revenue code.

49 12. "Scientific research and development" means conducting research
50 and experimental development in the physical, engineering, and life
51 sciences, including but not limited to agriculture, electronics, envi-
52 ronmental, biology, botany, biotechnology, computers, chemistry, food,
53 fisheries, forests, geology, health, mathematics, medicine, oceanogra-
54 phy, pharmacy, physics, veterinary, and other allied subjects. For the
55 purposes of this article, scientific research and development does not
56 include medical or veterinary laboratory testing facilities.

1 13. "Software development" means the creation of coded computer
2 instructions and includes new media as defined by the commissioner in
3 regulations.

4 § 423. Eligibility criteria. 1. To be a participant in the empire
5 state jobs retention program, a business entity shall operate in New
6 York state predominantly:

7 (a) as a financial services data center or a financial services back
8 office operation;

9 (b) in manufacturing;

10 (c) in software development and new media;

11 (d) in scientific research and development;

12 (e) in agriculture;

13 (f) in the creation or expansion of back office operations in the
14 state; or

15 (g) in a distribution center.

16 2. When determining whether an applicant is operating predominantly in
17 one of the industries listed in subdivision one of this section, the
18 commissioner will examine the nature of the business activity at the
19 location for the proposed project and will make eligibility determi-
20 nations based on such activity.

21 3. For the purposes of this article, in order to participate in the
22 empire state jobs retention program, a business entity operating in one
23 of the strategic industries listed in subdivision one of this section

24 (a) must be located in a county in which an emergency has been declared
25 by the governor on or after January first, two thousand eleven, (b) must
26 demonstrate substantial physical damage and economic harm resulting from
27 the event leading to the emergency declaration by the governor, and (c)
28 must have had at least one hundred full-time equivalent jobs in the
29 county in which an emergency has been declared by the governor on the
30 day immediately preceding the day on which the event leading to the
31 emergency declaration by the governor occurred, and must retain or
32 exceed that number of jobs in New York state.

33 4. A not-for-profit business entity, a business entity whose primary
34 function is the provision of services including personal services, busi-
35 ness services, or the provision of utilities, a business entity engaged
36 predominantly in the retail or entertainment industry, or a company
37 engaged in the generation or distribution of electricity, the distrib-
38 ution of natural gas, or the production of steam associated with the
39 generation of electricity are not eligible to receive the tax credit
40 described in this article.

41 5. A business entity must be in compliance with all worker protection
42 and environmental laws and regulations. In addition, a business entity
43 may not owe past due state taxes. In addition, a business entity must
44 not owe local property taxes for any year prior to the year in which it
45 applies to participate in the empire state jobs retention program.

46 § 424. Application and approval process. 1. A business enterprise must
47 submit a completed application as prescribed by the commissioner. Such
48 completed application must be submitted to the commissioner within (a)
49 one hundred eighty days of the declaration of an emergency by the gover-
50 nor in the county in which the business enterprise is located or (b) one
51 hundred eighty days of the enactment of this article, if such date is
52 later than the date specified in paragraph (a) of this subdivision.

53 2. As part of such application, each business enterprise must:

54 (a) agree to allow the department of taxation and finance to share its
55 tax information with the department. However, any information shared as

1 a result of this agreement shall not be available for disclosure or
2 inspection under the state freedom of information law.

3 (b) agree to allow the department of labor to share its tax and
4 employer information with the department. However, any information
5 shared as a result of this agreement shall not be available for disclo-
6 sure or inspection under the state freedom of information law.

7 (c) allow the department and its agents access to any and all books
8 and records the department may require to monitor compliance.

9 (d) agree to be permanently disqualified for empire zone tax benefits
10 at any location or locations that qualify for empire state jobs
11 retention program benefits if admitted into the empire state jobs
12 retention program.

13 (e) provide the following information to the department upon request:

14 (i) a plan outlining the schedule for meeting the jobs retention
15 requirements as set forth in subdivision three of section four hundred
16 twenty-three of this article. Such plan must include details on jobs
17 titles and expected salaries;

18 (ii) the prior three years of federal and state income or franchise
19 tax returns, unemployment insurance quarterly returns, real property tax
20 bills and audited financial statements; and

21 (iii) the employer identification or social security numbers for all
22 related persons to the applicant, including those of any members of a
23 limited liability company or partners in a partnership.

24 (f) provide a clear and detailed presentation of all related persons
25 to the applicant to assure the department that jobs are not being shift-
26 ed within the state.

27 (g) certify, under penalty of perjury, that it is in substantial
28 compliance with all environmental, worker protection, and local, state,
29 and federal tax laws.

30 3. After reviewing a business enterprise's completed application and
31 determining that the business enterprise will meet the conditions set
32 forth in subdivision three of section four hundred twenty-three of this
33 article, the department may admit the applicant into the program and
34 provide the applicant with a certificate of eligibility and a prelimi-
35 nary schedule of benefits by year based on the applicant's projections
36 as set forth in its application. This preliminary schedule of benefits
37 delineates the maximum possible benefits an applicant may receive.

38 4. In order to become a participant in the program, an applicant must
39 submit evidence that it satisfies the eligibility criteria specified in
40 section four hundred twenty-three of this article and subdivision two of
41 this section in such form as the commissioner may prescribe. After
42 reviewing such evidence and finding it sufficient, the department shall
43 certify the applicant as a participant and issue to that participant a
44 certificate of tax credit for one taxable year. To receive a certificate
45 of tax credit for subsequent taxable years, the participant must submit
46 to the department a performance report demonstrating that the partic-
47 ipant continues to satisfy the eligibility criteria specified in section
48 four hundred twenty-three of this article and subdivision two of this
49 section.

50 5. A participant may claim tax benefits commencing in the first taxa-
51 ble year that the business enterprise receives a certificate of tax
52 credit or the first taxable year listed on its preliminary schedule of
53 benefits, whichever is later. A participant may claim such benefits for
54 the next nine consecutive taxable years, provided that the participant
55 demonstrates to the department that it continues to satisfy the eligi-
56 bility criteria specified in section four hundred twenty-three of this



1 article and subdivision two of this section in each of those taxable
2 years.

3 § 425. Empire state jobs retention program credit. 1. A participant in
4 the empire state jobs retention program shall be eligible to claim a
5 credit for the impacted jobs. The amount of such credit shall be equal
6 to the product of the gross wages paid for the impacted jobs and 6.85
7 percent.

8 2. The tax credit established in this section shall be refundable as
9 provided in the tax law. If a participant fails to satisfy the eligibil-
10 ity criteria in any one year, it will lose the ability to claim credit
11 for that year. The event of such failure shall not extend the original
12 ten-year eligibility period.

13 3. The business enterprise shall be allowed to claim the credit as
14 prescribed in section thirty-six of the tax law; provided, however, a
15 business enterprise shall not be allowed to claim the credit prior to
16 tax year two thousand twelve.

17 4. A participant may be eligible for benefits under this article as
18 well as article seventeen of this chapter, provided the participant can
19 only receive benefits pursuant to subdivision two of section three
20 hundred fifty-five of this chapter for costs in excess of costs recov-
21 ered by insurance.

22 § 426. Powers and duties of the commissioner. 1. The commissioner
23 shall promulgate regulations establishing an application process and
24 eligibility criteria, that will be applied consistent with the purposes
25 of this article, so as not to exceed the annual cap on tax credits set
26 forth in section three hundred fifty-nine of this chapter which,
27 notwithstanding any provisions to the contrary in the state administra-
28 tive procedure act, may be adopted on an emergency basis. Such regu-
29 lations shall include, but not be limited to, criteria for determining
30 whether a business entity demonstrates substantial physical damage and
31 economic harm from the event leading to an emergency declaration by the
32 governor.

33 2. The commissioner shall, in consultation with the department of
34 taxation and finance, develop a certificate of tax credit that shall be
35 issued by the commissioner to participants. Participants may be required
36 by the commissioner of taxation and finance to include the certificate
37 of tax credit with their tax return to receive any tax benefits under
38 this article.

39 3. The commissioner shall solely determine the eligibility of any
40 applicant applying for entry into the program and shall remove any
41 participant from the program for failing to meet any of the requirements
42 set forth in subdivision two of section four hundred twenty-four of this
43 article, or for failing to meet the job retention requirements set forth
44 in subdivision three of section four hundred twenty-three of this arti-
45 cle, or for failing to meet the requirements of subdivision five of
46 section four hundred twenty-three of this article.

47 § 427. Maintenance of records. Each participant shall keep all rele-
48 vant records for the duration of its program participation plus three
49 years.

50 § 428. Reporting. 1. Each participant must submit a performance report
51 annually, in such form as the commissioner may require, within thirty
52 days of the end of their taxable year.

53 2. The commissioner shall prepare on a quarterly basis a program
54 report for posting on the department's website. The first report will be
55 due June thirtieth, two thousand thirteen, and every three months there-
56 after. Such report shall include, but not be limited to, the following:

1 number of applicants; number of participants approved; names of partic-
2 ipants; total amount of benefits certified; benefits received per
3 participant; total number of retained jobs; and such other information
4 as the commissioner determines.

5 § 429. Cap on tax credit. The total amount of tax credits listed on
6 certificates of tax credit issued by the commissioner for any taxable
7 year may not exceed the limitations set forth in section three hundred
8 fifty-nine of this chapter, and shall be allotted from the funds avail-
9 able for tax credits under the excelsior jobs program act.

10 § 2. The tax law is amended by adding a new section 36 to read as
11 follows:

12 § 36. Empire state jobs retention program credit. (a) Allowance of
13 credit. A taxpayer subject to tax under article nine-A, twenty-two,
14 thirty-two or thirty-three of this chapter shall be allowed a credit
15 against such tax, pursuant to the provisions referenced in subdivision
16 (e) of this section. The amount of the credit, allowable for ten consec-
17 utive tax years, is equal to the amount determined pursuant to section
18 four hundred twenty-five of the economic development law.

19 (b) Eligibility. To be eligible for the empire state jobs retention
20 credit, the taxpayer shall have been issued a certificate of tax credit
21 by the department of economic development pursuant to subdivision four
22 of section four hundred twenty-four of the economic development law,
23 which certificate shall set forth the amount of the credit that may be
24 claimed for the taxable year. A taxpayer may claim such credit for up to
25 ten consecutive taxable years commencing in the first taxable year that
26 the taxpayer receives a certificate of tax credit or the first taxable
27 year listed on its preliminary schedule of benefits, whichever is later.
28 However, a taxpayer shall not be allowed to claim the credit prior to
29 the tax year commencing on or after January first, two thousand twelve
30 and before January first, two thousand thirteen. The taxpayer shall be
31 allowed to claim only the amount listed on the certificate of tax credit
32 for that taxable year. Such certificate, if required by the commission-
33 er, shall be attached to the taxpayer's return. No cost or expense paid
34 or incurred by the taxpayer which is included as part of the calculation
35 of this credit shall be the basis of any other tax credit.

36 (c) Information sharing. (1) Notwithstanding any provision of this
37 chapter, employees and officers of the department of economic develop-
38 ment and the department shall be allowed and are directed to share and
39 exchange:

40 (A) information derived from tax returns or reports that is relevant
41 to a taxpayer's eligibility to participate in the empire state jobs
42 retention program;

43 (B) information regarding the credit applied for, allowed or claimed
44 pursuant to this section and taxpayers who are applying for the credit
45 or who are claiming the credit; and

46 (C) information contained in or derived from credit claim forms
47 submitted to the department and applications for admission into the
48 empire state jobs retention program.

49 Except as provided in paragraph two of this subdivision, all informa-
50 tion exchanged between the department of economic development and the
51 department shall not be subject to disclosure or inspection under the
52 state's freedom of information law.

53 (2) Notwithstanding any provision of this chapter, the commissioner or
54 the commissioner's designee is authorized to release the name of each
55 taxpayer claiming the credit and the amount of the credit earned by each
56 taxpayer. However, if the taxpayer claims a credit because the taxpayer

1 is a member of a limited liability company, a partner in a partnership
 2 or a shareholder in a subchapter S corporation, only the name of a
 3 limited liability company, partnership or subchapter S corporation
 4 participating in the empire state jobs retention program and the amount
 5 of credit earned by that entity may be released.

6 (d) Credit recapture. If a certificate of eligibility or a certificate
 7 of tax credit issued by the department of economic development under
 8 article twenty of the economic development law is revoked by such
 9 department, the amount of credit described in this section and claimed
 10 by the taxpayer prior to that revocation shall be added back to tax in
 11 the taxable year in which any such revocation becomes final.

12 (e) Cross-references. For application of the credit provided for in
 13 this section, see the following provisions of this chapter:

- 14 (1) article 9-A: section 210, subdivision 44;
 15 (2) article 22: section 606, subsection (tt);
 16 (3) article 32: section 1456, subsection (y);
 17 (4) article 33, section 1511, subdivision (bb).

18 § 3. Section 210 of the tax law is amended by adding a new subdivision
 19 44 to read as follows:

20 44. Empire state jobs retention program credit. (a) Allowance of cred-
 21 it. A taxpayer will be allowed a credit, to be computed as provided in
 22 section thirty-six of this chapter, against the taxes imposed by this
 23 article.

24 (b) Application of credit. The credit allowed under this subdivision
 25 for any taxable year will not reduce the tax due for such year to less
 26 than the minimum tax fixed by this article. However, if the amount of
 27 credit allowed under this subdivision for any taxable year reduces the
 28 tax to such amount, any amount of credit thus not deductible in such
 29 taxable year will be treated as an overpayment of tax to be credited or
 30 refunded in accordance with the provisions of section one thousand
 31 eighty-six of this chapter. Provided, however, the provisions of
 32 subsection (c) of section one thousand eighty-eight of this chapter
 33 notwithstanding, no interest will be paid thereon.

34 § 4. Section 606 of the tax law is amended by adding a new subsection
 35 (tt) to read as follows:

36 (tt) Empire state jobs program retention credit. (1) Allowance of
 37 credit. A taxpayer shall be allowed a credit, to be computed as provided
 38 in section thirty-six of this chapter, against the tax imposed by this
 39 article.

40 (2) Application of credit. If the amount of the credit allowed under
 41 this subsection for any taxable year exceeds the taxpayer's tax for such
 42 year, the excess will be treated as an overpayment of tax to be credited
 43 or refunded in accordance with the provisions of section six hundred
 44 eighty-six of this article, provided, however, that no interest will be
 45 paid thereon.

46 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 47 of the tax law is amended by adding a new clause (xxxiii) to read as
 48 follows:

<p>49 <u>(xxxiii) Empire state jobs</u> 50 <u>retention program credit</u> 51 52 53</p>	<p><u>Amount of credit under</u> <u>subdivision forty-four</u> <u>of section two hundred ten</u> <u>or under subsection (y) of section</u> <u>fourteen hundred fifty-six</u></p>
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54 § 6. Section 1456 of the tax law is amended by adding a new subsection
 55 (y) to read as follows:

1 (y) Empire state jobs retention program credit. (1) Allowance of cred-
2 it. A taxpayer shall be allowed a credit, to be computed as provided in
3 section thirty-six of this chapter, against the taxes imposed by this
4 article.

5 (2) Application of credit. The credit allowed under this subsection
6 for any taxable year will not reduce the tax due for such year to less
7 than the minimum tax fixed by this article. However, if the amount of
8 credit allowed under this subsection for any taxable year reduces the
9 tax to such amount, any amount of credit thus not deductible in such
10 taxable year will be treated as an overpayment of tax to be credited or
11 refunded in accordance with the provisions of section one thousand
12 eighty-six of this chapter. Provided, however, the provisions of
13 subsection (c) of section one thousand eighty-eight of this chapter
14 notwithstanding, no interest will be paid thereon.

15 § 7. Section 1511 of the tax law is amended by adding a new subdivi-
16 sion (bb) to read as follows:

17 (bb) Empire state jobs retention program credit. (1) Allowance of
18 credit. A taxpayer shall be allowed a credit, to be computed as provided
19 in section thirty-six of this chapter, against the taxes imposed by this
20 article.

21 (2) Application of credit. The credit allowed under this subdivision
22 for any taxable year will not reduce the tax due for such year to less
23 than the minimum tax fixed by this article. However, if the amount of
24 credit allowed under this subdivision for any taxable year reduces the
25 tax to such amount, any amount of credit thus not deductible in such
26 taxable year will be treated as an overpayment of tax to be credited or
27 refunded in accordance with the provisions of section one thousand
28 eighty-six of this chapter. Provided, however, the provisions of
29 subsection (c) of section one thousand eighty-eight of this chapter
30 notwithstanding, no interest will be paid thereon.

31 § 8. This act shall take effect immediately; provided however that
32 sections two, three, four, five, six and seven of this act shall apply
33 to taxable years beginning on and after January 1, 2012.

34

PART F

35 Section 1. This act shall be known and may be cited as the "Infras-
36 tructure investment act".

37 § 2. The legislature hereby finds and declares as follows:

38 (1) Our state's aging infrastructure, the on-going economic crisis and
39 the resulting increase in unemployment in the state have all contributed
40 to a decline in our state's competitiveness and in a significant
41 decrease in New York state tax revenues.

42 (2) Sufficient modern infrastructure is of paramount importance not
43 only as a catalyst for job creation but also as a key driver for the
44 state's economic performance and competitiveness and the health, safety,
45 education and quality of life of our citizens and as the means to ensure
46 the efficient movement of people and goods.

47 (3) Expediting the delivery of projects in New York state would lead
48 directly to job creation and increases in the state's competitiveness.

49 (4) Businesses in New York state have extensive and diverse experience
50 in alternative project delivery methods for the study, planning, design,
51 development, financing, acquisition, installation, construction, recon-
52 struction, improvement, maintenance and management of public infrastruc-
53 ture facilities. These alternative project delivery methods provide
54 significant benefits to the public by:



1 (a) Reducing the public cost of delivering and obtaining services for
2 infrastructure assets;

3 (b) Expediting project delivery;

4 (c) Encouraging life cycle efficiencies;

5 (d) Providing better use and leverage of public human and capital
6 resources, and enhancing capital formation for large projects;

7 (e) Creating jobs;

8 (f) Promoting performance efficiencies; and

9 (g) Bringing additional innovative best practice contracting by the
10 private sector to bear on public infrastructure needs within the state.

11 (5) For certain projects, the design-build project delivery method has
12 the potential to achieve projects delivered on guaranteed or accelerated
13 schedules, lower costs and risk shifting to the private sector generally
14 retained in conventional design-bid-build projects as well as to accel-
15 erate capital investments throughout the state.

16 (6) Recognizing the need to repair the state's aging infrastructure
17 and maximize job creation in New York, the Governor and Legislature seek
18 to:

19 (a) accelerate capital investment in New York state's infrastructure;

20 (b) coordinate among New York state's agencies and authorities on
21 capital investment;

22 (c) encourage private sector capital investment in New York;

23 (d) ensure that job creation benefits New York workers; and

24 (e) assist the use of the most efficient and effective procurement and
25 project management for infrastructure projects in the transportation,
26 energy, environment, public facilities, and economic development
27 sectors.

28 § 3. For the purposes of this act:

29 (a) "authorized state entity" shall mean the New York state thruway
30 authority, the department of transportation, the office of parks, recre-
31 ation and historic preservation, the department of environmental conser-
32 vation and the New York state bridge authority.

33 (b) "best value" shall mean the basis for awarding contracts for
34 services to the offerer that optimize quality, cost and efficiency,
35 price and performance criteria, which may include, but is not limited
36 to:

37 1. The quality of the contractor's performance on previous projects;

38 2. The timeliness of the contractor's performance on previous
39 projects;

40 3. The level of customer satisfaction with the contractor's perform-
41 ance on previous projects;

42 4. The contractor's record of performing previous projects on budget
43 and ability to minimize cost overruns;

44 5. The contractor's ability to limit change orders;

45 6. The contractor's ability to prepare appropriate project plans;

46 7. The contractor's technical capacities;

47 8. The individual qualifications of the contractor's key personnel;

48 9. The contractor's ability to assess and manage risk and minimize
49 risk impact; and

50 10. The contractor's past record of compliance with article 15-A of
51 the executive law.

52 Such basis shall reflect, wherever possible, objective and quantifi-
53 able analysis.

54 (c) "capital project" shall have the same meaning as such term is
55 defined by subdivision 2-a of section 2 of the state finance law.

1 (d) "cost plus" shall mean compensating a contractor for the cost to
2 complete a contract by reimbursing actual costs for labor, equipment and
3 materials plus an additional amount for overhead and profit.

4 (e) "design-build contract" shall mean a contract for the design and
5 construction of a capital project with a single entity, which may be a
6 team comprised of separate entities.

7 (f) "procurement record" means documentation of the decisions made and
8 the approach taken in the procurement process.

9 § 4. Notwithstanding the provisions of section 38 of the highway law,
10 section 136-a of the state finance law, section 359 of the public
11 authorities law, section 7210 of the education law, and the provisions
12 of any other law to the contrary, and in conformity with the require-
13 ments of this act, an authorized state entity may utilize the alterna-
14 tive delivery method referred to as design-build contracts for capital
15 projects related to the state's physical infrastructure, including, but
16 not limited to, the state's highways, bridges, dams, flood control
17 projects, canals, and parks, including, but not limited to, to repair
18 damage caused by natural disaster, to correct health and safety defects,
19 to comply with federal and state laws, standards, and regulations, to
20 extend the useful life of or replace the state's highways, bridges,
21 dams, flood control projects, canals, and parks or to improve or add to
22 the state's highways, bridges, dams, flood control projects, canals, and
23 parks; provided that for the contracts executed by the department of
24 transportation, the office of parks, recreation and historic preserva-
25 tion, or the department of environmental conservation, the total cost of
26 each such project shall not be less than one million two hundred thou-
27 sand dollars (\$1,200,000).

28 § 5. An entity selected by an authorized state entity to enter into a
29 design-build contract shall be selected through a two-step method, as
30 follows:

31 (a) Step one. Generation of a list of entities that have demonstrated
32 the general capability to perform the design-build contract. Such list
33 shall consist of a specified number of entities, as determined by an
34 authorized state entity, and shall be generated based upon the author-
35 ized state entity's review of responses to a publicly advertised request
36 for qualifications. The authorized state entity's request for qualifica-
37 tions shall include a general description of the project, the maximum
38 number of entities to be included on the list, and the selection crite-
39 ria to be used in generating the list. Such selection criteria shall
40 include the qualifications and experience of the design and construction
41 team, organization, demonstrated responsibility, ability of the team or
42 of a member or members of the team to comply with applicable require-
43 ments, including the provisions of articles 145, 147 and 148 of the
44 education law, past record of compliance with the labor law, and such
45 other qualifications the authorized state entity deems appropriate which
46 may include but are not limited to project understanding, financial
47 capability and record of past performance. The authorized state entity
48 shall evaluate and rate all entities responding to the request for qual-
49 ifications. Based upon such ratings, the authorized state entity shall
50 list the entities that shall receive a request for proposals in accord-
51 ance with subdivision (b) of this section. To the extent consistent
52 with applicable federal law, the authorized state entity shall consider,
53 when awarding any contract pursuant to this section, the participation
54 of: (i) firms certified pursuant to article 15-A of the executive law as
55 minority or women-owned businesses and the ability of other businesses
56 under consideration to work with minority and women-owned businesses so

1 as to promote and assist participation by such businesses; and (ii)
2 small business concerns identified pursuant to subdivision (b) of
3 section 139-g of the state finance law.

4 (b) Step two. Selection of the proposal which is the best value to the
5 state. The authorized state entity shall issue a request for proposals
6 to the entities listed pursuant to subdivision (a) of this section. If
7 such an entity consists of a team of separate entities, the entities
8 that comprise such a team must remain unchanged from the entity as list-
9 ed pursuant to subdivision (a) of this section unless otherwise approved
10 by the authorized state entity. The request for proposals shall set
11 forth the project's scope of work, and other requirements, as determined
12 by the authorized state entity. The request for proposals shall specify
13 the criteria to be used to evaluate the responses and the relative
14 weight of each such criteria. Such criteria shall include the
15 proposal's cost, the quality of the proposal's solution, the qualifica-
16 tions and experience of the design-build entity, and other factors
17 deemed pertinent by the authorized state entity, which may include, but
18 shall not be limited to, the proposal's project implementation, ability
19 to complete the work in a timely and satisfactory manner, maintenance
20 costs of the completed project, maintenance of traffic approach, and
21 community impact. Any contract awarded pursuant to this act shall be
22 awarded to a responsive and responsible entity that submits the
23 proposal, which, in consideration of these and other specified criteria
24 deemed pertinent to the project, offers the best value to the state, as
25 determined by the authorized state entity. Nothing herein shall be
26 construed to prohibit the authorized entity from negotiating final
27 contract terms and conditions including cost.

28 § 6. Any contract entered into pursuant to this act shall include a
29 clause requiring that any professional services regulated by articles
30 145, 147 and 148 of the education law shall be performed and stamped and
31 sealed, where appropriate, by a professional licensed in accordance with
32 such articles.

33 § 7. Construction for each capital project undertaken by the author-
34 ized state entity pursuant to this act shall be deemed a "public work"
35 to be performed in accordance with the provisions of article 8 of the
36 labor law, as well as subject to sections 200, 240, 241 and 242 of the
37 labor law and enforcement of prevailing wage requirements by the New
38 York state department of labor.

39 § 8. If otherwise applicable, capital projects undertaken by the
40 authorized state entity pursuant to this act shall be subject to section
41 135 of the state finance law and section 222 of the labor law.

42 § 9. Each contract entered into by the authorized state entity pursu-
43 ant to this section shall comply with the objectives and goals of minor-
44 ity and women-owned business enterprises pursuant to article 15-A of the
45 executive law or, for projects receiving federal aid, shall comply with
46 applicable federal requirements for disadvantaged business enterprises.

47 § 10. Capital projects undertaken by the authorized state entity
48 pursuant to this act shall be subject to the requirements of article
49 eight of the environmental conservation law, and, where applicable, the
50 requirements of the national environmental policy act.

51 § 11. If otherwise applicable, capital projects undertaken by the
52 authorized state entity pursuant to this act shall be governed by
53 sections 139-d, 139-j, 139-k, paragraph f of subdivision 1 and paragraph
54 g of subdivision 9 of section 163 of the state finance law.

1 § 12. The submission of a proposal or responses or the execution of a
2 design-build contract pursuant to this act shall not be construed to be
3 a violation of section 6512 of the education law.

4 § 13. Nothing contained in this act shall limit the right or obli-
5 gation of the authorized state entity to comply with the provisions of
6 any existing contract, including any existing contract with or for the
7 benefit of the holders of the obligations of the authorized state enti-
8 ty, or to award contracts as otherwise provided by law.

9 § 14. Alternative construction awarding processes. (i) Notwithstand-
10 ing the provisions of any other law to the contrary, the authorized
11 state entity may award a construction contract:

12 1. To the contractor offering the best value; or

13 2. Utilizing a cost-plus not to exceed guaranteed maximum price form
14 of contract in which the authorized state entity shall be entitled to
15 monitor and audit all project costs. In establishing the schedule and
16 process for determining a guaranteed maximum price, the contract between
17 the authorized state entity and the contractor shall:

18 (a) describe the scope of the work and the cost of performing such
19 work;

20 (b) include a detailed line item cost breakdown;

21 (c) include a list of all drawings, specifications and other informa-
22 tion on which the guaranteed maximum price is based;

23 (d) include the dates for substantial and final completion on which
24 the guaranteed maximum price is based; and

25 (e) include a schedule of unit prices; or

26 3. Utilizing a lump sum contract in which the contractor agrees to
27 accept a set dollar amount for a contract which comprises a single bid
28 without providing a cost breakdown for all costs such as for equipment,
29 labor, materials, as well as such contractor's profit for completing all
30 items of work comprising the project.

31 (ii) Capital projects undertaken by an authorized state entity may
32 include an incentive clause in the contract for various performance
33 objectives, but the incentive clause shall not include an incentive that
34 exceeds the quantifiable value of the benefit received by the state. The
35 authorized state entity shall establish such performance and payment
36 bonds as it deems necessary.

37 § 15. Prequalified contractors. (a) Notwithstanding any other
38 provision of law, the authorized state entity may maintain a list of
39 prequalified contractors who are eligible to submit a proposal pursuant
40 to this act and entry into such list shall be continuously available.
41 Prospective contractors may be prequalified as contractors to provide
42 particular types of construction, in accordance with general criteria
43 established by the authorized state entity which may include, but shall
44 not be limited to, the experience, past performance, ability to under-
45 take the type and complexity of work, financial capability, responsibil-
46 ity, compliance with equal employment opportunity requirements and anti-
47 discrimination laws, and reliability. Such prequalification may be by
48 categories designed by size and other factors.

49 (b) A contractor who is denied prequalification or whose prequalifica-
50 tion is revoked or suspended by the authorized state entity may appeal
51 such decision to the authorized state entity. If such a suspension
52 extends for more than three months, it shall be deemed a revocation of
53 the prequalification. The authorized state entity may proceed with the
54 contract award during any appeal.

55 § 16. Nothing in this act shall affect existing powers of New York
56 state public entities to use alternative project delivery methods.

1 § 17. This act shall take effect immediately and shall expire and be
2 deemed repealed 3 years after such date, provided that, projects with
3 requests for qualifications issued prior to such repeal shall be permit-
4 ted to continue under this act notwithstanding such repeal.

5

PART G

6 Section 1. Short title. This act shall be known and may be cited as
7 the "Hurricane Irene and Tropical Storm Lee assessment relief act".

8 § 2. Definitions. For the purposes of this act, the following terms
9 shall have the following meanings:

10 1. "Eligible county" shall mean those counties which have been
11 included in the federal disaster declarations for either Hurricane Irene
12 or Tropical Storm Lee or both.

13 2. "Catastrophically impacted property" shall mean a property which is
14 located in an eligible municipality and which lost fifty percent or more
15 of its value as a result of either Hurricane Irene or Tropical Storm Lee
16 or both.

17 3. "Eligible municipality" shall mean a municipal corporation, as
18 defined by subdivision ten of section one hundred two of the real prop-
19 erty tax law, which is either (a) an eligible county, or (b) a city,
20 town, village or school district that is wholly or partly contained
21 within an eligible county.

22 4. "Impacted assessment roll" shall mean a final assessment roll which
23 satisfies both of the following conditions: (a) the roll is based upon a
24 taxable status date occurring prior to August twenty-seventh, two thou-
25 sand eleven, and (b) taxes levied upon that roll by or on behalf of a
26 participating municipality are payable without interest on or after
27 August twenty-seventh, two thousand eleven.

28 5. "Participating municipality" shall mean an eligible municipal
29 corporation that has chosen to provide assessment relief to owners of
30 catastrophically impacted properties pursuant to section three of this
31 act.

32 § 3. Local option. An eligible municipality may exercise the
33 provisions of this act if its governing body shall, by the forty-fifth
34 day following the date upon which this act is approved by the governor,
35 pass a resolution adopting the provisions of this act.

36 § 4. Assessment relief for flood victims. (a) Notwithstanding any
37 provision of law to the contrary, where property was catastrophically
38 impacted by either Hurricane Irene or Tropical Storm Lee or both and is
39 located within a participating municipality, assessment relief shall be
40 granted as follows:

41 i. If the property lost at least fifty but less than sixty percent of
42 its value due to either Hurricane Irene or Tropical Storm Lee or both,
43 the taxable assessed value of the property shall be reduced by fifty-
44 five percent for purposes of the participating municipality on the
45 impacted assessment roll.

46 ii. If the property lost at least sixty but less than seventy percent
47 of its value due to either Hurricane Irene or Tropical Storm Lee or
48 both, the taxable assessed value of the property shall be reduced by
49 sixty-five percent for purposes of the participating municipality on the
50 impacted assessment roll.

51 iii. If the property lost at least seventy but less than eighty
52 percent of its value due to either Hurricane Irene or Tropical Storm Lee
53 or both, the taxable assessed value of the property shall be reduced by

1 seventy-five percent for purposes of the participating municipality on
2 the impacted assessment roll.

3 iv. If the property lost at least eighty but less than ninety percent
4 of its value due to either Hurricane Irene or Tropical Storm Lee or
5 both, the taxable assessed value of the property shall be reduced by
6 eighty-five percent for purposes of the participating municipality on
7 the impacted assessment roll.

8 v. If the property lost at least ninety but less than one hundred
9 percent of its value due to either Hurricane Irene or Tropical Storm Lee
10 or both, the taxable assessed value of the property shall be reduced by
11 ninety-five percent for purposes of the participating municipality on
12 the impacted assessment roll.

13 vi. If the property lost all of its value due to either Hurricane
14 Irene or Tropical Storm Lee or both, the taxable assessed value of the
15 property shall be reduced to zero for purposes of the participating
16 municipality on the impacted assessment roll.

17 vii. The percentage loss in value for this purpose shall be determined
18 by the assessor in the manner provided by this act, subject to review by
19 the board of assessment review.

20 viii. No reduction in taxable assessed value shall be granted pursuant
21 to this act except as specified above. No reduction in taxable assessed
22 value shall be granted pursuant to this section for purposes of any
23 county, city, town, village or school district which has not adopted the
24 provisions of this act.

25 (b) To receive such relief pursuant to this act, the property owner
26 shall submit a written request to the assessor within ninety days
27 following the date upon which this act is approved by the governor.
28 Such request need not be in a particular format but shall describe in
29 reasonable detail the damage caused to the property by either Hurricane
30 Irene or Tropical Storm Lee or both and the condition of the property
31 following the hurricane or storm or both, and shall be accompanied by
32 supporting documentation if available.

33 (c) Upon receiving such a request, the assessor shall make a finding
34 as to whether the property lost at least half of its value as a result
35 of the hurricane or storm or both, and if so, shall classify the
36 percentage loss of value within one of the following ranges:

- 37 i. At least fifty percent but less than sixty percent,
38 ii. At least sixty percent but less than seventy percent,
39 iii. At least seventy percent but less than eighty percent,
40 iv. At least eighty percent but less than ninety percent,
41 v. At least ninety percent but less than one hundred percent, or
42 vi. one hundred percent.

43 (d) The assessor shall mail written notice of such finding to the
44 property owner and the participating municipality. Where the assessor
45 finds that the loss in value is less than fifty percent, or classifies
46 the loss within a lower range than the property owner believes is
47 warranted, the property owner may file a complaint with the board of
48 assessment review. Such board shall reconvene upon ten days written
49 notice to the property owner and assessor to hear the appeal and deter-
50 mine the matter, and shall mail written notice of its determination to
51 the assessor and property owner. The provisions of article five of the
52 real property tax law shall govern the review process to the extent
53 practicable.

54 (e) Where property has lost at least fifty percent of its value due to
55 either Hurricane Irene or Tropical Storm Lee or both, the taxable
56 assessed value of the property on the impacted assessment roll shall be

1 reduced by the appropriate percentage specified in paragraph (a) of this
2 section, provided that any exemptions which the property may be receiv-
3 ing shall be adjusted as necessary to account for such reduction in the
4 taxable assessed value. To the extent the taxable assessed value of the
5 property originally appearing on such roll exceeds the amount to which
6 it should be reduced pursuant to this act, the excess shall be consid-
7 ered an error in essential fact as defined by section five hundred fifty
8 of the real property tax law. If the error appears on a tax roll, the
9 tax roll shall be corrected in the manner provided by section five
10 hundred fifty-four of the real property tax law or a refund or credit of
11 taxes shall be granted in the manner provided by section five hundred
12 fifty-six or five hundred fifty-six-b of the real property tax law. If
13 the error appears on a final assessment roll but not on a tax roll, such
14 final assessment roll shall be corrected in the manner provided by
15 section five hundred fifty-three of the real property tax law.

16 (f) The rights contained in this act shall not otherwise diminish any
17 other legally available right of any property owner or party who may
18 otherwise lawfully challenge the valuation or assessment of any real
19 property or improvements thereon. All remaining rights hereby remain and
20 shall be available to the party to whom such rights would otherwise be
21 available notwithstanding this act.

22 § 5. School districts held harmless. Each school district that is
23 wholly or partially contained within an eligible county, as defined in
24 subdivision one of section two of this act, shall be held harmless by
25 the state for any reduction in state aid that would have been paid as
26 tax savings pursuant to section 1306-a of the real property tax law
27 incurred due to the provisions of this act.

28 § 6. The director of the office of real property tax services, or
29 other chief administrative official of that office within the department
30 of taxation and finance is authorized to develop a guidance memorandum
31 for use by assessing units. Such guidance memorandum shall assist with
32 the implementation of this act and shall be deemed to be binding on all
33 assessing units in counties which implement the provisions of this act.
34 The guidance memorandum shall have no force or effect or serve as
35 authority for any other act of assessing units or of the interpretation
36 or implementation of the laws of the state of New York except as they
37 relate to the specific implementation of this act.

38 § 7. This act shall take effect immediately and shall be deemed to
39 have been in full force and effect on and after August 26, 2011.

40

PART H

41 Section 1. There is hereby created the Hurricane Irene-Tropical Storm
42 Lee Flood Recovery Grant Program.

43 1. (a) Small businesses, farms, multiple dwellings and not-for-profit
44 organizations that sustained direct physical flood-related damage as a
45 result of Hurricane Irene or Tropical Storm Lee are eligible to apply
46 for a grant under this section. Such grant shall be in an amount no more
47 than \$20,000 and shall be used for storm-related repairs and restoration
48 to structures, and for other storm-related costs, which were not covered
49 by any other federal, state or local recovery program or any third-party
50 payors.

51 (b) Empire state development shall administer this grant program,
52 which shall not exceed \$21,000,000. Empire state development is hereby
53 empowered to establish grant guidelines and additional eligibility
54 criteria, based on available flood damage data provided by applicable

1 federal agencies, as it deems necessary to effectuate the administration
2 of this program. In providing assistance pursuant to this section,
3 empire state development shall give preference to applicants that demon-
4 strate the greatest need, based on available flood damage data provided
5 by applicable federal agencies.

6 2. (a) Empire state development, in consultation with the department
7 of environmental conservation, shall administer a grant program for
8 counties for flood mitigation or flood control projects in creeks,
9 streams, and brooks. Only counties that have been included in the
10 federal disaster declarations for Hurricane Irene or Tropical Storm Lee
11 are eligible to apply for a grant under this subdivision.

12 (b) This grant program shall not exceed \$9,000,000. Individual grants
13 shall be not less than \$300,000 and not more than \$500,000, provided
14 however, counties may jointly apply for such grants, and the amount for
15 such joint grants may equal the sum of the amounts that would have been
16 separately available to the individual counties making such joint appli-
17 cation. Empire state development, in consultation with the department of
18 environmental conservation, is hereby empowered to establish grant
19 guidelines and additional eligibility criteria, based on available flood
20 damage data provided by applicable federal agencies, as it deems neces-
21 sary to effectuate the administration of this program. In providing
22 assistance pursuant to this section, empire state development shall give
23 preference to applicants that demonstrate the greatest need, based on
24 available flood damage data provided by applicable federal agencies.
25 Priority also may be given to remediation which if not undertaken may
26 result in additional flooding.

27 3. The director of the budget, in consultation with the temporary
28 president of the senate and the speaker of the assembly, shall develop a
29 plan and criteria regarding distribution of funding to municipalities
30 located in an area which was included in a federal disaster declaration
31 for either Hurricane Irene or Tropical Storm Lee. Such program shall not
32 exceed \$20,000,000. The director of the budget may direct and authorize
33 any other state agency to assist in administration and distribution of
34 these funds.

35 § 2. This act shall take effect immediately.

36

PART I

37 Section 1. The real property tax law is amended by adding a new
38 section 1326-b to read as follows:

39 § 1326-b. Payment of taxes in installments in certain school districts
40 affected by floods or natural disasters. 1. Notwithstanding any
41 provisions of this chapter or any other general or special law to the
42 contrary, a school district which is wholly or partially contained with-
43 in a county which has been included in a federal disaster declaration
44 may, by resolution in any year during which a flood or other natural
45 disaster occurs in the six months preceding the due date for school
46 taxes, provide that every tax in excess of fifty dollars levied by the
47 board pursuant to law may be paid in installments in amounts and dates
48 specified in the resolution. Such resolution shall apply only for one
49 year; provided that nothing shall preclude the adoption of additional
50 such authorizations if subsequent disasters occur.

51 2. When such a resolution is in effect in a school district, the
52 collecting officer shall be authorized to receive such taxes until the
53 date specified in the resolution for the payment of taxes. The collect-
54 ing officer shall be in attendance to receive the installments of taxes



1 at the same places and hours specified for the receipt of the first
2 installment, at least three days in each week for the two weeks preced-
3 ing the final date for payment of the installments. In the event that
4 the first installment of any tax is not paid within the time specified,
5 the collecting officer may receive the same at any time until the expi-
6 ration of his warrant with interest as determined pursuant to section
7 nine hundred twenty-four-a of this chapter until paid. The collecting
8 officer's warrant and notice of receipt thereof shall be conformed in
9 accordance with this section.

10 3. At the expiration of his warrant, the collecting officer shall make
11 a return of unpaid taxes in the same manner as provided in section thir-
12 teen hundred thirty or section thirteen hundred thirty-two of this arti-
13 cle, as applicable.

14 4. For school aid payments for the two thousand eleven--two thousand
15 twelve school year, the state is authorized to advance to any school
16 district which adopts a resolution pursuant to this section any school
17 aid payment or portion thereof at any time authorized by the commission-
18 er of education, the comptroller, and the director of the division of
19 the budget.

20 5. A school district is authorized to refund to taxpayers any portions
21 previously paid by taxpayers if the school board adopts a resolution to
22 that effect, which establishes an installment payment schedule. If such
23 resolution is adopted, then any taxpayer having paid all or a portion of
24 their tax payment shall be entitled to such refund upon entering into an
25 agreement with the school district for the payment of their taxes
26 according to the schedule adopted by the school district. Any unpaid
27 taxes shall be timely paid if the payment otherwise comports with the
28 resolution schedule adopted by the school district.

29 § 2. This act shall take effect immediately; provided however that
30 subdivision 4 of section 1326-b of the real property tax law, as added
31 by section one of this act shall expire and be deemed repealed on June
32 30, 2012.

33

PART J

34 Section 1. Section 182 of the executive law, as added by a chapter of
35 the laws of 2011, amending the executive law, in relation to a prohibi-
36 tion on diversion of resources from dedicated funds derived from taxes
37 and fees that support the metropolitan transportation authority or the
38 New York city transit authority and their subsidiaries in certain
39 instances, as proposed in legislative bills numbers S. 4257-C and A.
40 6766-C, is amended to read as follows:

41 § 182. Diversion of funds dedicated to the metropolitan transportation
42 authority or the New York city transit authority and any of their
43 subsidiaries to the general fund of the state is prohibited. [1.] The
44 director shall be prohibited from diverting revenues derived from taxes
45 and fees paid by the public into any fund created by law including, but
46 not limited to sections eighty-eight-a and eighty-nine-c of the state
47 finance law and chapter twenty-five of the laws of two thousand nine for
48 the purpose of funding the metropolitan transportation authority or the
49 New York city transit authority and any of their subsidiaries into the
50 general fund of the state or into any other fund maintained for the
51 support of another governmental purpose. No diversion of funds can occur
52 contrary to this section by an administrative act of the director or any
53 other person in the executive branch [but can occur only upon] unless
54 the governor declares a fiscal emergency, and communicates such emergen-



1 cy to the temporary president of the senate and speaker of the assembly,
2 and a statute is enacted into law authorizing a diversion that would
3 otherwise be prohibited by this section.

4 [2. If any diversion of funds occurs by passage of legislation during
5 a regular or extraordinary session of the legislature, the budget or
6 legislation diverting funds shall include a diversion impact statement
7 which includes the following information:

8 (a) The amount of the diversion from dedicated mass transit funds;

9 (b) The amount diverted from each fund;

10 (c) The amount diverted expressed as current monthly transit fares;

11 (d) The cumulative amount of diversion from dedicated mass transit
12 funds during the preceding five years;

13 (e) The date or dates when the diversion is to occur; and

14 (f) A detailed estimate of the impact of diversion from dedicated mass
15 transit funds will have on the level of mass transit service, mainte-
16 nance, security, and the current capital program.]

17 § 2. This act shall take effect on the same date as a chapter of the
18 laws of 2011, amending the executive law, in relation to a prohibition
19 on diversion of resources from dedicated funds derived from taxes and
20 fees that support the metropolitan transportation authority or the New
21 York city transit authority and their subsidiaries in certain instances,
22 as proposed in legislative bills numbers S. 4257-C and A. 6766-C, takes
23 effect.

24

PART K

25 Section 1. Subdivision (b) of section 13 of chapter 260 of the laws of
26 2011, relating to establishing components of the NY-SUNY 2020 challenge
27 grant program, is amended to read as follows:

28 (b) [If any such university center campus related foundation, alumni
29 association or affiliate thereof, any not-for-profit corporation or
30 association organized by the president of a university center to further
31 its purposes, or any limited liability company whose sole member is any
32 of the foregoing entities, or by the State University of New York, the
33 State University Construction Fund, or the Dormitory Authority of the
34 State of New York, on behalf of a university center at Albany, Bingham-
35 ton, or Stony Brook does not require a project labor agreement, then any
36 contractor, subcontractor, lease, grant, bond, covenant or other agree-
37 ments for a project shall be awarded pursuant to section 135 of the
38 state finance law] Notwithstanding subdivision (a) of this section, any
39 contracts awarded or entered into pursuant to the SUNY 2020 challenge
40 grant program by any university center campus related foundation, alumni
41 association or affiliate thereof, any not-for-profit corporation or
42 association organized by the president of a university center to further
43 its purposes, or any limited liability company whose sole member is any
44 of the foregoing entities, or by the State University of New York, the
45 State University Construction Fund, or the Dormitory Authority of the
46 State of New York, on behalf of a university center at Albany, Bingham-
47 ton, or Stony Brook shall be undertaken pursuant to a project labor
48 agreement, as defined in subdivision 1 of section 222 of the labor law,
49 provided a study done by or for the contracting entity determines that a
50 project labor agreement will benefit such construction, reconstruction,
51 renovation, rehabilitation, improvement or expansion through reduced
52 risk of delay, potential cost savings or potential reduction in the risk
53 of labor unrest in light of any pertinent local history thereof.



1 § 2. This act shall take effect immediately; provided, however, that
2 the amendments to section 13 of chapter 260 of the laws of 2011 made by
3 section one of this act shall not affect the expiration of such section
4 and shall be deemed to expire therewith.

5 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
6 sion, section or part of this act shall be adjudged by any court of
7 competent jurisdiction to be invalid, such judgment shall not affect,
8 impair, or invalidate the remainder thereof, but shall be confined in
9 its operation to the clause, sentence, paragraph, subdivision, section
10 or part thereof directly involved in the controversy in which such judg-
11 ment shall have been rendered. It is hereby declared to be the intent of
12 the legislature that this act would have been enacted even if such
13 invalid provisions had not been included herein.

14 § 3. This act shall take effect immediately provided, however, that
15 the applicable effective date of Parts A through K of this act shall be
16 as specifically set forth in the last section of such Parts.

