S T A T E O F N E W Y O R K

4930

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. BRODSKY, NOLAN, BRADLEY, GALEF, JACOBS, DelMONTE, ORTIZ, FIELDS, HOYT -- Multi-Sponsored by -- M. of A. DESTITO, FARRELL, KOON, LATIMER, LIFTON, LUPARDO, MILLMAN, PERRY, REILLY, SCHROEDER, SEMINERIO, WEISENBERG -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to enacting the "corporate disclosure, responsibility, and taxpayer protection act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "corporate disclosure, responsibility, and taxpayer protection act".

S 2. Legislative findings and intent. The legislature finds that, despite an increase in spending for the purpose of corporate development, in both expenditures and other benefits, the real wage levels of the state's average working families have suffered years of decline and stagnation, while corporations and other business entities have reaped tremendous benefits at the working families' expense.

Therefore, in order to ensure that the state's resources are achieving their desired effect of raising living standards for the state's working families, the legislature finds that it is necessary to collect and analyze additional information and to enact certain safeguards in its provision of state assistance. In order to promote corporate accountability and responsibility to the citizens of this state, the legislature adopts the following principles:

Principle 1. Businesses that receive economic assistance on the basis of promises to create and retain jobs in this state shall deliver on those promises.

Principle 2. Businesses that receive economic assistance and then fail to live up to their promises to create and retain jobs shall refund their assistance to the taxpayers.

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

LBD07533-01-9

Principle 3. Recipients of economic assistance and the granting agencies shall report on their progress in meeting their job creation and job retention promises.

Principle 4. No economic assistance shall be provided for the creation of jobs that do not pay living wage.

S 3. The business corporation law is amended by adding a new article 17 to read as follows:

ARTICLE 17

CORPORATE DISCLOSURE, RESPONSIBILITY, AND TAXPAYER PROTECTION ACT

SECTION 1714. DEFINITIONS.
1715. DISCLOSURE OF REAL PROPERTY TAX REDUCTIONS AND ABATEMENTS.
1716. STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE.
1717. DISCLOSURE OF DEVELOPMENT ASSISTANCE.
1718. JOB CREATION AND JOB QUALITY STANDARDS.
1719. RECAPTURE.

S 1714. DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CORPORATE PARENT" SHALL MEAN ANY PERSON, LIMITED LIABILITY COMPANY, ORGANIZATION, BUSINESS, PARTNERSHIP, GROUP OR CORPORATE ENTITY RECOGNIZED BY LAW, OR ANY COMBINATION THEREOF, THAT POSSESSES, OWNS OR CONTROLS AN INTEREST GREATER THAN FIFTY PERCENT OF A RECIPIENT CORPORATION.

2. "DATE OF ASSISTANCE" SHALL MEAN THE DATE UPON WHICH A GRANTING BODY TRANSMITS THE FIRST DOLLAR VALUE OF DEVELOPMENT ASSISTANCE TO A RECIPIENT CORPORATION.

3. "DEVELOPMENT ASSISTANCE" (A) SHALL MEAN ANY FORM OF PUBLIC ASSISTANCE, INCLUDING TAX EXPENDITURES, MADE FOR THE PURPOSE OF STIMULATING ECONOMIC DEVELOPMENT OF A CORPORATION, INDUSTRY, GEOGRAPHIC JURISDICTION OR ANY OTHER SECTOR OF THE STATE'S ECONOMY, INCLUDING BUT NOT LIMITED TO INDUSTRIAL DEVELOPMENT BONDS, TRAINING GRANTS, LOANS, LOAN GUARANTEES, ENTERPRISE ZONES, EMPOWERMENT ZONES, TAX INCREMENT FINANCING, FEE WAIVERS, LAND PRICE SUBSIDIES, INFRASTRUCTURE WHOSE PRINCIPAL BENEFICIARY IS A SINGLE BUSINESS OR DEFINED GROUP OF BUSINESSES AT THE TIME IT IS BUILT OR IMPROVED, MATCHING FUNDS, TAX ABATEMENTS, TAX CREDITS AND TAX DISCOUNTS OF EVERY KIND, INCLUDING CORPORATE INCOME, PERSONAL INCOME, SALES AND COMPENSATING USE, RAW MATERIALS, REAL PROPERTY, JOB CREATION, INDUSTRIAL INVESTMENT, EXCISE, UTILITY, INVENTORY, ACCELERATED DEPRECIATION AND RESEARCH AND DEVELOPMENT TAX CREDITS AND DISCOUNTS.

(B) SUCH TERM SHALL NOT INCLUDE:

(I) ASSISTANCE GENERALLY AVAILABLE TO ALL BUSINESSES OR TO A GENERAL CLASS OF SIMILAR BUSINESSES, SUCH AS A LINE OF BUSINESS, SIZE, LOCATION OR SIMILAR GENERAL CRITERIA;

(II) REDEVELOPMENT PROPERTY POLLUTED AS DEFINED IN THE ENVIRONMENTAL CONSERVATION LAW OR PURSUANT TO FEDERAL LAW, RULES OR REGULATIONS;

(III) ASSISTANCE PROVIDED FOR THE SOLE PURPOSE OF RENOVATING OLD OR DECAYING BUILDING STOCK OR BRINGING SUCH STOCK INTO COMPLIANCE WITH THE RELEVANT BUILDING AND FIRE CODES, AND ASSISTANCE PROVIDED FOR DESIGNATED HISTORIC PRESERVATION DISTRICTS, PROVIDED THAT SUCH ASSISTANCE IS EQUAL TO OR LESS THAN FIFTY PERCENT OF THE TOTAL COST;

(IV) ASSISTANCE FOR HOUSING;

(V) ASSISTANCE FOR POLLUTION CONTROL OR ABATEMENT;

(VI) ASSISTANCE FOR ENERGY CONSERVATION;

(VII) TAX REDUCTIONS RESULTING FROM CONFORMITY WITH FEDERAL TAX LAW;

(VIII) WORKERS COMPENSATION AND UNEMPLOYMENT COMPENSATION;

(IX) BENEFITS DERIVED FROM REGULATION;
(X) ASSISTANCE FOR A COLLABORATION BETWEEN AN INSTITUTION OF HIGHER EDUCATION WITHIN THE STATE AND A BUSINESS;
(XI) GENERAL CHANGES IN TAX INCREMENT FINANCING LAW AND OTHER GENERAL TAX LAW CHANGES OF A PRINCIPALLY TECHNICAL NATURE;
(XII) FEDERAL ASSISTANCE UNTIL SUCH ASSISTANCE HAS BEEN REPAID TO AND REINVESTED BY THE STATE OR A MUNICIPAL AGENCY; AND
(XIII) FEDERAL LOAN FUNDS PROVIDED THROUGH THE UNITED STATES DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION.
4. "FULL-TIME JOB" SHALL MEAN A JOB IN WHICH A NEW EMPLOYEE WORKS FOR A RECIPIENT CORPORATION AT A RATE OF AT LEAST THIRTY-FIVE HOURS PER WEEK.
5. "GRANTING BODY" SHALL MEAN ANY PUBLIC ENTITY WITHIN THE STATE, INCLUDING MUNICIPALITIES, REGIONAL DEVELOPMENT ORGANIZATIONS, STATE AND LOCAL PUBLIC CORPORATIONS, AND ANY STATE AGENCY WHICH PROVIDES DEVELOPMENT ASSISTANCE. SUCH TERM SHALL ALSO INCLUDE ANY NOT-FOR-PROFIT ENTITY CREATED BY A MUNICIPAL AGENCY, OR ANY OTHER ENTITY CREATED BY OR AUTHORIZED BY A MUNICIPALITY WITH AUTHORITY TO PROVIDE DEVELOPMENT ASSISTANCE.
6. "IN EFFECT" SHALL MEAN AND REFER TO ANY CALENDAR YEAR WITHIN THE DURATION OF DEVELOPMENT ASSISTANCE, INCLUDING BUT NOT LIMITED TO THE DURATION OF ANY LOAN, LOAN GUARANTEE, TAX CREDIT, TAX CREDIT CARRY FORWARD, REAL PROPERTY TAX REDUCTION OR ABATEMENT, OR TAX INCREMENT FINANCING. FOR ONE-TIME FORMS OF DEVELOPMENT ASSISTANCE SUCH AS GRANTS AND LAND PRICE SUBSIDIES, SUCH TERM SHALL REFER TO A PERIOD OF NOT LESS THAN FIVE YEARS FROM THE DATE OF ASSISTANCE.
7. "PART-TIME JOB" SHALL MEAN A JOB IN WHICH A NEW EMPLOYEE WORKS FOR A RECIPIENT CORPORATION AT A RATE OF LESS THAN THIRTY-FIVE HOURS PER WEEK.
8. "PROPERTY TAXING ENTITY" SHALL MEAN EVERY MUNICIPAL CORPORATION, AS DEFINED IN THE REAL PROPERTY TAX LAW, WHICH LEVIES TAXES OR ASSESSMENTS UPON REAL PROPERTY PURSUANT TO THE REAL PROPERTY TAX LAW.
9. "OFFICE" SHALL MEAN THE OFFICE OF REAL PROPERTY SERVICES.
10. "RECIPIENT CORPORATION" SHALL MEAN ANY FOR-PROFIT OR NOT-FOR-PROFIT CORPORATION THAT RECEIVES DEVELOPMENT ASSISTANCE.
11. "SMALL BUSINESS" SHALL MEAN A CORPORATION HAVING A CORPORATE PARENT, AND ALL SUBSIDIARIES THEREOF, EMPLOYING FEWER THAN AN AVERAGE OF TWENTY FULL-TIME EQUIVALENT EMPLOYEES OR WHICH HAS GROSS RECEIPTS OF LESS THAN ONE MILLION DOLLARS IN ALL UNITED STATES JURISDICTIONS DURING THE CALENDAR YEAR FOR WHICH DISCLOSURE IS REQUIRED.
12. "SPECIFIC PROJECT SITE" SHALL MEAN THAT DISTINCT OPERATIONAL UNIT TO WHICH ANY DEVELOPMENT ASSISTANCE IS APPLIED.
13. "TEMPORARY JOB" SHALL MEAN A JOB IN WHICH A NEW EMPLOYEE IS HIRED FOR A SPECIFIC DURATION OF TIME OR SEASON.
14. "INTERNET" SHALL MEAN THE WORLD WIDE WEB, OR SIMILAR PROPRIETARY OF COMMON CARRIER ELECTRONIC SYSTEMS.
15. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF TAXATION AND FINANCE.
16. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF THE DEPARTMENT OF TAXATION AND FINANCE.

S 1715. DISCLOSURE OF REAL PROPERTY TAX REDUCTIONS AND ABATEMENTS.

1. THE OFFICE SHALL ESTABLISH AND DISTRIBUTE A STANDARDIZED DISCLOSURE FORM FOR USE BY ALL PROPERTY TAXING ENTITIES. FORMS SHALL BE PUBLISHED ON THE DEPARTMENT'S INTERNET HOMEPAGE. SUCH FORM SHALL INCLUDE, BUT NOT BE LIMITED TO:
(A) THE NAME OF THE RECIPIENT CORPORATION;
(B) THE ADDRESS AND DESCRIPTION OF THE REAL PROPERTY OWNED BY THE RECIPIENT CORPORATION;

(C) THE DATE UPON WHICH ANY INDIVIDUAL REAL PROPERTY TAX REDUCTION OR ABATEMENT FIRST TOOK EFFECT;

(D) THE DATE UPON WHICH ANY INDIVIDUAL PROPERTY TAX REDUCTION OR ABATEMENT IS SCHEDULED TO EXPIRE;

(E) THE RATE OR SCHEDULE OF EACH INDIVIDUAL REAL PROPERTY TAX REDUCTION OR ABATEMENT FOR THE PERIOD BETWEEN THE DATE IT TOOK EFFECT AND THE DATE IT IS SCHEDULED TO EXPIRE;

(F) THE RECIPIENT CORPORATION'S AGGREGATE FOREGONE REVENUE FOR THE CALENDAR YEAR AS A RESULT OF EACH REAL PROPERTY TAX REDUCTION OR ABATEMENT;

(G) A COMPILATION AND SUMMARY OF THE RECIPIENT CORPORATION'S TOTAL FOREGONE REVENUE AS A RESULT OF ALL REAL PROPERTY TAX REDUCTIONS OR ABATEMENTS, INCLUDING A SUMMARY OF FOREGONE REVENUE FOR EACH KIND OF REDUCTION OR ABATEMENT; AND

(H) THE RESPECTIVE SHARES OF THE RECIPIENT CORPORATION'S REAL PROPERTY TAX REVENUES IN THE REPORTED YEAR WHICH WENT TO EACH PROPERTY TAXING ENTITY.

2. ANNUALLY, ON OR BEFORE THE FIRST DAY OF FEBRUARY, EVERY PROPERTY TAXING ENTITY SHALL COMPLETE THE FORM ESTABLISHED PURSUANT TO PARAGRAPH ONE OF THIS SECTION FOR EACH RECIPIENT CORPORATION OWNING REAL PROPERTY OR DOING BUSINESS WITHIN THE JURISDICTION OF SUCH ENTITY.

3. ANNUALLY, ON OR BEFORE THE FIRST DAY OF APRIL, EVERY PROPERTY TAXING ENTITY SHALL COMPILE AND REPORT TO THE OFFICE ALL INFORMATION INCLUDED IN THE FORMS COMPLETED PURSUANT TO PARAGRAPH TWO OF THIS SECTION.

4. THE OFFICE SHALL ANNUALLY, ON OR BEFORE THE FIRST DAY OF JUNE, COMPILE ALL DATA RECEIVED FROM PROPERTY TAXING ENTITIES PURSUANT TO THIS SECTION AND PUBLISH, IN BOTH WRITTEN AND ELECTRONIC FORMS, SUCH DATA IN THE FORM OF A DISCLOSURE REGISTRY. ALL DATA SHALL ADDITIONALLY BE PUBLISHED ON THE INTERNET HOMEPAGE OF THE OFFICE.

5. UPON THE FAILURE OF ANY PROPERTY TAXING ENTITY TO COMPLY WITH THE PROVISIONS OF PARAGRAPH THREE OF THIS SECTION, THE OFFICE SHALL, WITHIN TEN BUSINESS DAYS OF THE FIRST DAY OF APRIL, NOTIFY THE DEPARTMENT OF SUCH FAILURE. UPON RECEIPT OF SUCH NOTICE, THE DEPARTMENT SHALL SUSPEND, WITHIN THREE BUSINESS DAYS, ALL DEVELOPMENT ASSISTANCE UNDER ITS CONTROL TO SUCH PROPERTY TAXING ENTITY, AND SHALL BE PROHIBITED FROM PROVIDING ANY DEVELOPMENT ASSISTANCE TO SUCH ENTITY UNTIL THE DEPARTMENT RECEIVES NOTICE FROM THE OFFICE THAT THE PROPERTY TAXING ENTITY IS IN COMPLIANCE WITH PARAGRAPH THREE OF THIS SECTION.

6. UPON THE FAILURE OF THE OFFICE, THE DEPARTMENT OR ANY STATE AGENCY TO COMPLY WITH THE PROVISIONS OF PARAGRAPH FOUR OR FIVE OF THIS SECTION, ANY TAXPAYER, WHO PAID TAXES DURING THE PREVIOUS CALENDAR YEAR, SHALL HAVE STANDING TO BRING A CAUSE OF ACTION TO COMPEL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

7. ALL INFORMATION DERIVED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

8. PROPERTY TAXING ENTITIES WHO FAIL TO COMPLY WITH THIS SECTION THREE TIMES WILL BE PROHIBITED FROM RECEIVING ANY FURTHER DEVELOPMENT ASSISTANCE.

S 1716. STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE.

1. THE DEPARTMENT SHALL ESTABLISH AND DISTRIBUTE A STANDARDIZED APPLICATION FORM FOR DEVELOPMENT ASSISTANCE TO BE USED BY ALL GRANTING BODIES. UPON APPROVAL OF ANY APPLICATION, THE RECIPIENT AND GRANTING BODY SHALL BE BOUND BY THE TERMS AND INFORMATION INCLUDED IN SUCH APPLI-

CATION. SUCH APPLICATION FORM SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:

(A) AN APPLICATION TRACKING NUMBER WHICH IS SPECIFIC TO BOTH THE GRANTING AGENCY AND TO EACH APPLICATION;

(B) THE NAME, STREET, MAILING ADDRESSES, PHONE NUMBER AND CHIEF OFFICER OF THE GRANTING BODY;

(C) THE NAME, STREET, MAILING ADDRESSES, PHONE NUMBER AND CHIEF OFFICER OF THE CORPORATE PARENT OF THE APPLICANT CORPORATION;

(D) THE NAME, STREET, MAILING ADDRESSES, PHONE NUMBER, FOUR-DIGIT SIC NUMBER AND CHIEF OFFICER OF THE APPLICANT CORPORATION AT THE SPECIFIC PROJECT SITE FOR WHICH DEVELOPMENT ASSISTANCE IS SOUGHT;

(E) A STATEMENT OF THE PUBLIC PURPOSE FOR THE DEVELOPMENT ASSISTANCE, INCLUDING BUT NOT LIMITED TO, ENHANCING ECONOMIC DIVERSITY, CREATING HIGH-QUALITY JOB GROWTH, JOB RETENTION, STABILIZING THE COMMUNITY, INCREASING THE TAX BASE OR OTHER PUBLIC PURPOSE;

(F) A STATEMENT OF THE APPLICANT'S RECORD OF PERFORMANCE IN CONTRIBUTING TO JOB RETENTION AND CREATION, ECONOMIC STABILITY AND COMMUNITY REVITALIZATION, CHILD CARE, AND ANY CRIMINAL CONVICTIONS, VIOLATIONS OR PENDING INVESTIGATIONS REGARDING OCCUPATIONAL SAFETY AND HEALTH STANDARDS, EQUAL EMPLOYMENT OPPORTUNITY CREDITS AND ENVIRONMENTAL STANDARDS;

(G) A STATEMENT OF WHY THE DEVELOPMENT ASSISTANCE IS NEEDED;

(H) A COMMITMENT TO CONTINUE OPERATIONS IN THE JURISDICTION WHERE THE DEVELOPMENT ASSISTANCE IS USED FOR NOT LESS THAN FIVE YEARS AFTER THE DATE OF ASSISTANCE;

(I) THE APPLICANT CORPORATION'S TOTAL NUMBER OF EMPLOYEES AT THE SPECIFIC PROJECT SITE ON THE DATE OF THE APPLICATION, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT;

(J) THE TOTAL NUMBER OF EMPLOYEES IN THE STATE OF THE APPLICANT CORPORATION'S CORPORATE PARENT, AND ALL SUBSIDIARIES THEREOF, AS OF DECEMBER THIRTY-FIRST OF THE YEAR PRECEDING THE DATE OF APPLICATION, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT;

(K) THE KIND OR KINDS OF DEVELOPMENT ASSISTANCE AND VALUE OR VALUES OF ASSISTANCE BEING APPLIED FOR;

(L) THE NUMBER OF NEW JOBS TO BE CREATED BY THE DEVELOPMENT ASSISTANCE, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT;

(M) A SPECIFIC MINIMUM LEVEL OF WAGES TO BE PAID FOR THE JOBS CREATED. SUCH MINIMUM LEVEL MAY BE STATED AS A SPECIFIC DOLLAR AMOUNT OR MAY BE STATED AS A FORMULA THAT WILL GENERATE A SPECIFIC DOLLAR AMOUNT;

(N) THE AVERAGE HOURLY WAGE TO BE PAID WITHIN ONE YEAR OF THE HIRING TO THE NEW EMPLOYEES, BROKEN DOWN BY NUMBER OF FULL-TIME, PART-TIME AND TEMPORARY EMPLOYEES, AND BROKEN DOWN BY WAGE LEVELS AS FOLLOWS:

(I) $6.00 AN HOUR,

(II) $6.01 TO $7.00 AN HOUR,

(III) $7.01 TO $8.00 AN HOUR,

(IV) $8.01 TO $9.00 AN HOUR,

(V) $9.01 TO $10.00 AN HOUR,

(VI) $10.01 TO $11.00 AN HOUR,

(VII) $11.01 TO $12.00 AN HOUR,

(VIII) $12.01 TO $13.00 AN HOUR,

(IX) $13.01 TO $14.00 AN HOUR, AND

(X) $14.01 OR MORE AN HOUR;

(O) FOR APPLICANT PROJECT SITES LOCATED IN A METROPOLITAN STATISTICAL AREA, AS DEFINED BY THE UNITED STATES CENSUS BUREAU, THE AVERAGE HOURLY WAGE PAID NON-MANAGERIAL EMPLOYEES IN THE APPLICANT'S INDUSTRY IN THE STATE, AS MOST RECENTLY PROVIDED BY THE UNITED STATES BUREAU OF LABOR

STATISTICS TO THE TWO OR THREE-DIGIT SIC NUMBER SPECIFICATION, AS AVAILABLE;

(P) FOR APPLICANT PROJECT SITES LOCATED OUTSIDE OF METROPOLITAN STATISTICAL AREAS, THE AVERAGE WEEKLY WAGE PAID IN THE COUNTY, AS MOST RECENTLY REPORTED BY THE UNITED STATES DEPARTMENT OF COMMERCE IN ITS COUNTY BUSINESS PATTERNS REPORTS;

(Q) THE NATURE OF EMPLOYER-PAID HEALTH CARE COVERAGE TO BE PROVIDED WITHIN NINETY DAYS OF THE HIRING TO THE EMPLOYEES FILLING THE NEW JOBS, INCLUDING ANY COSTS TO BE BORNE BY THE NEW EMPLOYEES;

(R) A LIST OF ALL OTHER FORMS OF DEVELOPMENT ASSISTANCE THE APPLICANT CORPORATION IS SEEKING FOR THE SPECIFIC PROJECT SITE, AND THE NAME OR NAMES OF THE GRANTING BODY OR BODIES FROM WHICH SUCH DEVELOPMENT ASSISTANCE IS BEING SOUGHT;

(S) A NARRATIVE, IF NECESSARY, DESCRIBING HOW THE APPLICANT'S USE OF THE DEVELOPMENT ASSISTANCE MAY REDUCE EMPLOYMENT AT ANY SITE IN ANY UNITED STATES JURISDICTION CONTROLLED BY THE APPLICANT CORPORATION OR ITS CORPORATE PARENT, INCLUDING BUT NOT LIMITED TO EVENTS SUCH AS AUTOMATION, CONSOLIDATION, MERGER, ACQUISITION, PRODUCT LINE MOVEMENT, BUSINESS ACTIVITY MOVEMENT OR RESTRUCTURING BY EITHER THE APPLICANT CORPORATION OR ITS CORPORATE PARENT; AND

(T) INDIVIDUAL CERTIFICATIONS BY THE CHIEF OFFICERS OF BOTH THE APPLICANT CORPORATION AND THE GRANTING BODY AS TO THE ACCURACY OF THE APPLICATION, UNDER THE PENALTY OF PERJURY.

2. ON AND AFTER THE FIRST DAY OF APRIL, TWO THOUSAND TEN, EVERY GRANTING BODY AND APPLICANT CORPORATION SHALL JOINTLY COMPLETE A STANDARDIZED APPLICATION FORM EACH TIME DEVELOPMENT ASSISTANCE IS APPLIED FOR. PROVIDED, THAT PRIOR TO THE AWARDING OF DEVELOPMENT ASSISTANCE IN EXCESS OF FIVE HUNDRED THOUSAND DOLLARS BY A GRANTING BODY WHICH IS ESTABLISHED BY THE STATE OR IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS BY A MUNICIPAL GRANTING BODY, SUCH GRANTING BODY SHALL HOLD A PUBLIC HEARING ON SUCH APPLICATION AND SHALL PROVIDE PUBLIC NOTICE OF SUCH PUBLIC HEARING.

(A) PUBLIC NOTICE SHALL BE GIVEN IN A MANNER DESIGNED TO INFORM INTERESTED AND POTENTIALLY INTERESTED PERSONS OF THE LOCATION, CHARACTER AND AMOUNT OF THE PROPOSED DEVELOPMENT ASSISTANCE BY THE GRANTING BODY. SUCH NOTICE SHALL BE GIVEN BY THE GRANTING BODY. THE GRANTING BODY SHALL:

(I) PUBLISH NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE GEOGRAPHICAL AREA OF THE PROPOSED DEVELOPMENT ASSISTANCE, SUCH NEWSPAPER TO BE SPECIFIED BY THE DEPARTMENT;

(II) POST NOTICE IN THE POST OFFICE AND PUBLIC PLACES OF THE MUNICIPALITY NEAREST THE PREMISES OF THE APPLICANT IN WHICH THE EFFLUENT SOURCE IS LOCATED;

(III) POST NOTICE NEAR THE ENTRANCE TO THE GRANTING BODY'S PREMISES AND IN NEARBY PLACES;

(IV) MAIL, BY THE DEPARTMENT, TO ANY PERSON OR GROUP UPON REQUEST, AND THE DEPARTMENT SHALL UPON REQUEST ADD THE NAME OF ANY PERSON OR GROUP TO A MAILING LIST TO RECEIVE COPIES OF NOTICES FOR ALL ECONOMIC DEVELOPMENT ISSUES WITHIN THE STATE OR WITHIN A CERTAIN GEOGRAPHICAL AREA; AND

(V) POST NOTICE ON THE INTERNET HOMEPAGE OF THE DEPARTMENT AS WELL AS THE GRANTING BODY.

(B) ALL COSTS OF PUBLIC NOTICES SHALL BE BORNE BY THE GRANTING BODY AND PROOF THEREOF SHALL BE GIVEN TO THE DEPARTMENT BY THE APPLICANT IN THE FORM SPECIFIED BY THE DEPARTMENT.

(C) THE NOTICE SHALL BE IN THE FORM AND CONTAIN THE INFORMATION SPECIFIED BY THE DEPARTMENT, AS MORE SPECIFICALLY DENOTED IN SUBPARAGRAPH (D) OF THIS PARAGRAPH, AND SHALL BE PUBLISHED AT THE TIMES AND FOR THE NUMBER OF DAYS SPECIFIED BY THE DEPARTMENT.

(D) THE CONTENTS OF PUBLIC NOTICE SHALL INCLUDE AT LEAST THE FOLLOWING:
(I) DATE OF APPLICATION AND END OF PUBLIC COMMENT PERIOD; THE PUBLIC COMMENT PERIOD SHALL BE SPECIFIED BY THE DEPARTMENT, BUT IN NO EVENT SHALL BE LESS THAN THIRTY DAYS FROM THE DATE OF PUBLICATION;
(II) NAME, ADDRESS AND TELEPHONE NUMBER OF THE RELEVANT OFFICES OF THE DEPARTMENT AT WHICH INTERESTED PERSONS MAY OBTAIN FURTHER INFORMATION, REQUEST A COPY OF THE APPLICATION AND INSPECT AND COPY THE APPLICATION AND ITS SUPPORTING DOCUMENTS;
(III) NAME AND ADDRESS OF APPLICANT OR APPLICANTS;
(IV) A BRIEF DESCRIPTION OF THE PROCEDURES FOR PUBLIC COMMENT AND HEARING REQUEST APPLICABLE PURSUANT TO THIS SECTION.
(E) WITHIN THE PUBLIC COMMENT PERIOD SPECIFIED IN THE PUBLIC NOTICE, INTERESTED PERSONS MAY SUBMIT THEIR WRITTEN VIEWS WITH RESPECT TO THE APPLICATION. ALL WRITTEN COMMENTS SUBMITTED DURING THE COMMENT PERIOD SHALL BE RETAINED BY THE COMMISSIONER AND CONSIDERED IN THE FORMULATION OF HIS FINAL DETERMINATION WITH RESPECT TO THE APPLICATION. THE PERIOD FOR WRITTEN COMMENT MAY BE EXTENDED AT THE DISCRETION OF THE COMMISSIONER. A REQUEST OR PETITION FOR A PUBLIC HEARING PURSUANT TO THIS PARAGRAPH SHALL BE MADE WITHIN THIS PUBLIC COMMENT PERIOD.
(F) THE FOLLOWING INFORMATION WILL BE AVAILABLE TO THE PUBLIC FOR INSPECTION AND COPYING:
(I) ANY APPLICATION;
(II) ANY PUBLIC COMMENTS AND TESTIMONY CONCERNING AN APPLICATION WITH REGARD TO THAT APPLICATION; AND
(III) ANY INFORMATION OBTAINED PURSUANT TO ANY MONITORING, RECORDS, REPORTING OR INVESTIGATORY ACTIVITIES OF THE DEPARTMENT.
(G) THE APPLICANT, ANY PERSON OR GROUP OF PERSONS, ANY AFFECTED STATE, OR AGENCY OR POLITICAL SUBDIVISION THEREOF, ANY AFFECTED INTERSTATE AGENCY, ANY AFFECTED COUNTRY, OR PROVINCE, OR AGENCY, OR POLITICAL SUBDIVISION THEREOF, MAY PETITION IN WRITING FOR ADDITIONAL PUBLIC HEARINGS WITH RESPECT TO ANY APPLICATION. ANY SUCH REQUEST OR PETITION SHALL BE FILED WITHIN THE PERIOD PRESCRIBED IN SUBPARAGRAPH (H) OF THIS PARAGRAPH AND SHALL INDICATE THE INTEREST OF THE PERSON FILING SUCH REQUEST AND THE REASONS WHY A HEARING IS WARRANTED. THE FOLLOWING COSTS OF THE HEARING ON AN APPLICATION SHALL BE PAID DIRECTLY BY THE GRANTING BODY TO THE PROVIDER OF SUCH SERVICES, MATERIAL, OR FACILITIES:
(I) STENOGRAPHIC AND OTHER COSTS OF PRODUCING THE RECORD;
(II) NEWSPAPER PUBLICATION AND OTHER COSTS OF GIVING NOTICE; AND
(III) COSTS OF RENTING ANY NECESSARY FACILITIES AND EQUIPMENT FOR HOLDING THE HEARING.
(H) NOTICE SHALL BE GIVEN AT LEAST THIRTY DAYS IN ADVANCE OF THE HEARING. THE CONTENTS OF SUCH PUBLIC NOTICE SHALL INCLUDE AT LEAST THE FOLLOWING:
(I) DATE OF ISSUANCE OF NOTICE AND DATE, TIME, LOCATION, AND PURPOSE OF HEARING;
(II) NAME, ADDRESS AND TELEPHONE NUMBER OF THE RELEVANT OFFICES OF THE DEPARTMENT AT WHICH INTERESTED PERSONS MAY OBTAIN FURTHER INFORMATION, AND REQUEST A COPY OF THE PERMIT;
(III) NAME AND ADDRESS OF THE APPLICANT OR APPLICANTS WHOSE APPLICATION WILL BE CONSIDERED AT THE HEARING;
(IV) A CONCISE STATEMENT OF THE ISSUES RAISED BY THE PERSONS REQUESTING THE HEARING; AND
(V) A BRIEF DESCRIPTION OF THE NATURE OF THE HEARING, INCLUDING THE RULES AND PROCEDURES TO BE FOLLOWED.

(I) AT A PUBLIC HEARING HELD WITH REGARD TO AN APPLICATION, ANY PERSON SHALL BE AFFORDED THE OPPORTUNITY TO PRESENT ORAL OR WRITTEN STATEMENTS, ARGUMENTS OR DATA; PROVIDED, HOWEVER, THAT THE DEPARTMENT SHALL HAVE THE DISCRETION TO FIX REASONABLE TIME LIMITS ON THE PRESENTATION OF ORAL STATEMENTS AND WHEN TIME AND SCHEDULING CONSIDERATIONS NECESSITATE, MAY REQUIRE THE SUBMISSION OF STATEMENTS IN WRITING. (I) THE HEARING SHALL BE CONDUCTED BY A HEARING OFFICER DESIGNATED BY THE COMMISSIONER. THE HEARING OFFICER SHALL CAUSE A RECORD OF THE HEARING TO BE MADE, WHICH SHALL INCLUDE ANY PUBLIC COMMENTS OR STATEMENTS RECEIVED, AND SHALL RENDER A REPORT TO THE COMMISSIONER SETTING FORTH THE APPEARANCES AND RELEVANT FACTS AND ARGUMENTS PRESENTED AT THE HEARING. THE HEARING OFFICER IS EMPOWERED TO:

(1) PROVIDE FOR THE TAKING OF WRITTEN AND ORAL STATEMENTS, TESTIMONY UNDER OATH, AND DOCUMENTARY EVIDENCE; AND

(2) REGULATE THE COURSE OF THE HEARING, FIX THE TIME FOR THE FILING OF WRITTEN STATEMENTS AND DATA, PROVIDE FOR THE SCHEDULING AND PRESERVATION OF ORAL STATEMENTS, TESTIMONY UNDER OATH AND DOCUMENTARY EVIDENCE, AND SET THE TIME AND PLACE FOR CONTINUED HEARINGS.

(II) ANY MATERIALS, INCLUDING RECORDS AND DOCUMENTS, IN THE POSSESSION OF THE DEPARTMENT OF WHICH IT DESIRES TO AVAIL ITSELF, MAY BE OFFERED BY THE DEPARTMENT AND MADE PART OF THE RECORD. SUCH MATERIALS MAY BE RELIED UPON BY THE COMMISSIONER IN MAKING A FINAL DECISION OR OTHER DISPOSITION.

(III) CROSS-EXAMINATION OF WITNESSES SHALL BE PERMITTED AND THE STRICT PROCEDURAL RULES OF EVIDENCE MAY BE MODIFIED AT THE DISCRETION OF THE HEARING OFFICER. THE DETERMINATION OF THE HEARING OFFICER SHALL BE FOUNDED UPON THE RECORD OF THE HEARING AND UPON COMPETENT, RELEVANT, MATERIAL EVIDENCE WHICH IS SUBSTANTIAL IN VIEW OF THE ENTIRE RECORD.

S 1717. DISCLOSURE OF DEVELOPMENT ASSISTANCE.

1. ON OR BEFORE THE FIRST DAY OF FEBRUARY EACH YEAR, EVERY GRANTING BODY SHALL SUBMIT TO THE DEPARTMENT A COPY OF EVERY DEVELOPMENT ASSISTANCE APPLICATION FORM COMPLETED PURSUANT TO SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE) DURING THE PREVIOUS CALENDAR YEAR. UPON EACH SUCH APPLICATION, THE GRANTING BODY SHALL DESIGNATE WHETHER THE DEVELOPMENT ASSISTANCE IS PENDING, WAS APPROVED OR WAS DENIED, AND FOR THOSE APPLICATIONS THAT WERE APPROVED, THE DATE OF ASSISTANCE IF THE DATE OF ASSISTANCE OCCURRED IN THE PREVIOUS CALENDAR YEAR.

2. FOR THOSE APPLICATIONS THAT WERE APPROVED BUT FOR WHICH THE DATE OF ASSISTANCE DID NOT OCCUR IN THE SAME CALENDAR YEAR, EACH GRANTING BODY SHALL REPORT IN ITS NEXT SUBSEQUENT ANNUAL REPORT TO THE DEPARTMENT THE RELEVANT DATES OF ASSISTANCE.

3. EACH RECIPIENT CORPORATION SHALL SUBMIT AN ANNUAL PROGRESS REPORT TO THE DEVELOPMENT ASSISTANCE GRANTOR. FOR EACH DEVELOPMENT ASSISTANCE APPLICATION THAT WAS APPROVED, EACH GRANTING AGENCY SHALL SUBMIT TO THE DEPARTMENT THE RECIPIENT CORPORATION'S PROGRESS REPORT WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING DATA:

(A) THE APPLICATION TRACKING NUMBER;

(B) THE NAME, STREET, MAILING ADDRESS, PHONE NUMBER AND CHIEF OFFICER OF THE GRANTING BODY;

(C) THE NAME, STREET, MAILING ADDRESS, PHONE NUMBER, FOUR-DIGIT SIC NUMBER AND CHIEF OFFICER OF THE CORPORATION AT THE SPECIFIC PROJECT SITE FOR WHICH THE DEVELOPMENT ASSISTANCE WAS APPROVED;

(D) THE KIND OF DEVELOPMENT ASSISTANCE AND VALUE OF ASSISTANCE THAT WAS APPROVED;

(E) THE APPLICANT'S TOTAL LEVEL OF EMPLOYMENT AT THE SPECIFIC PROJECT SITE ON THE DATE OF THE APPLICATION AND THE APPLICANT'S TOTAL LEVEL OF EMPLOYMENT AT THE SPECIFIC PROJECT SITE ON THE DATE OF THE REPORT, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT, AND A COMPUTATION OF THE GAIN OR LOSS IN EACH CATEGORY;

(F) THE NUMBER OF NEW JOBS THE APPLICANT CORPORATION STATED IN ITS APPLICATION WOULD BE CREATED BY THE DEVELOPMENT ASSISTANCE, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT;

(G) THE TOTAL LEVEL OF EMPLOYMENT IN THE STATE OF THE APPLICANT'S CORPORATE PARENT, AND ALL SUBSIDIARIES THEREOF, AS OF THE THIRTY-FIRST DAY OF DECEMBER OF THE YEAR PRECEDING THE DATE OF APPLICATION AND THE TOTAL LEVEL OF EMPLOYMENT IN THE STATE OF THE APPLICANT'S CORPORATE PARENT, AND ALL SUBSIDIARIES THEREOF, AS OF THE THIRTY-FIRST DAY OF DECEMBER OF EACH YEAR UP THROUGH THE REPORTING YEAR, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT, AND A STATEMENT OF THE GAIN OR LOSS IN EACH CATEGORY FROM THE EARLIEST REPORTED YEAR TO THE MOST RECENT;

(H) THE AVERAGE HOURLY WAGE PAID AS OF DECEMBER THIRTY-FIRST OF THE REPORTING YEAR TO EMPLOYEES FILLING THE NEW JOBS AT THE SPECIFIC PROJECT SITE, BROKEN DOWN BY FULL-TIME, PART-TIME AND TEMPORARY EMPLOYMENT;

(I) THE NATURE OF EMPLOYER-PAID HEALTH CARE COVERAGE BEING PROVIDED WITHIN NINETY DAYS OF THE HIRING TO THE EMPLOYEES FILLING THE NEW JOBS, INCLUDING ANY COSTS BEING BORNE BY THE NEW EMPLOYEES;

(J) A NARRATIVE, IF NECESSARY, DESCRIBING HOW THE RECIPIENT CORPORATION'S USE OF THE DEVELOPMENT ASSISTANCE DURING THE REPORTING YEAR HAS REDUCED EMPLOYMENT AT ANY SITE IN ANY UNITED STATES JURISDICTION CONTROLLED BY THE APPLICANT OR ITS CORPORATE PARENT, INCLUDING BUT NOT LIMITED TO EVENTS SUCH AS AUTOMATION, CONSOLIDATION, MERGER, ACQUISITION, PRODUCT LINE MOVEMENT, BUSINESS ACTIVITY MOVEMENT, OR RESTRUCTURING BY EITHER THE APPLICANT OR ITS CORPORATE PARENT; AND

(K) SIGNED INDIVIDUAL CERTIFICATIONS BY THE CHIEF OFFICERS OF BOTH THE APPLICANT CORPORATION AND THE GRANTING BODY AS TO THE ACCURACY OF THE PROGRESS REPORT, UNDER THE PENALTY OF PERJURY.

4. THE GRANTING BODY AND THE DEPARTMENT SHALL HAVE FULL INVESTIGATIVE AUTHORITY TO VERIFY ALL APPLICANTS' PROGRESS REPORT DATA, INCLUDING BUT NOT LIMITED TO INSPECTION OF THE SPECIFIC PROJECT SITE AND ANALYSIS OF TAX AND PAYROLL RECORDS.

5. ANNUALLY, ON OR BEFORE THE FIRST DAY OF JUNE, THE DEPARTMENT SHALL COMPILE, SUMMARIZE AND PUBLISH ALL DATA IN ALL OF THE DEVELOPMENT ASSISTANCE PROGRESS REPORTS IN BOTH WRITTEN AND ELECTRONIC FORMS. FORMS SHALL BE PUBLISHED ON THE DEPARTMENT'S INTERNET HOMEPAGE. AMONG THE INFORMATION IN THE COMPILATION AND SUMMARY REPORT, THE DEPARTMENT SHALL INCLUDE:

(A) THE TOTAL AMOUNT OF DEVELOPMENT ASSISTANCE AWARDED IN EACH DEVELOPMENT REGION OF THE STATE;

(B) THE DISTRIBUTION OF DEVELOPMENT ASSISTANCE AMOUNTS BY SIZE OF THE BUSINESS SUBSIDY;

(C) THE DISTRIBUTION OF DEVELOPMENT ASSISTANCE AMOUNTS BY TIME CATEGORY;

(D) THE DISTRIBUTION OF DEVELOPMENT ASSISTANCE BY TYPE AND BY PUBLIC PURPOSE;

(E) THE PERCENTAGE OF ALL DEVELOPMENT ASSISTANCE RECIPIENTS THAT REACHED THEIR GOALS;

(F) THE PERCENTAGE OF DEVELOPMENT ASSISTANCE RECIPIENTS THAT DID NOT REACH THEIR GOALS WITHIN TWO YEARS OF THE BENEFIT DATE;

(G) THE TOTAL DOLLAR AMOUNT OF DEVELOPMENT ASSISTANCE TO RECIPIENTS THAT DID NOT MEET THEIR GOALS AFTER TWO YEARS OF THE BENEFIT DATE;

(H) THE PERCENTAGE OF DEVELOPMENT ASSISTANCE RECIPIENTS THAT DID NOT MEET THEIR GOALS AND THAT DID NOT RECEIVE REPAYMENT;

(I) THE LIST OF RECIPIENTS THAT HAVE FAILED TO MEET THE TERMS OF A SUBSIDY AGREEMENT IN THE PAST FIVE YEARS AND HAVE NOT SATISFIED THEIR REPAYMENT OBLIGATIONS;

(J) THE NUMBER OF PART-TIME AND FULL-TIME JOBS WITHIN SEPARATE LEVELS OF WAGES; AND

(K) THE BENEFITS PAID WITHIN SEPARATE LEVELS OF WAGES.

6. EVERY ASPECT OF DEVELOPMENT ASSISTANCE APPLICATIONS, PROGRESS REPORTS AND THE DEPARTMENT COMPILATION OF APPLICATIONS AND PROGRESS REPORTS SHALL BE FULLY SUBJECT TO THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

7. IF A GRANTING BODY FAILS TO COMPLY WITH PARAGRAPH ONE, TWO OR THREE OF THIS SECTION, OR IF A RECIPIENT CORPORATION FAILS TO COMPLY WITH SUBPARAGRAPH (K) OF PARAGRAPH THREE OF THIS SECTION, THE DEPARTMENT SHALL, WITHIN TEN BUSINESS DAYS OF THE FILING DEADLINE PURSUANT TO PARAGRAPH ONE OF THIS SECTION, SUSPEND ANY DEVELOPMENT ASSISTANCE ACTIVITIES UNDER ITS CONTROL IN THE GRANTING BODY'S JURISDICTION, AND SHALL BE PROHIBITED FROM PROCEEDING WITH ANY DEVELOPMENT ASSISTANCE ACTIVITIES UNDER ITS CONTROL IN THE GRANTING BODY'S JURISDICTION, UNLESS AND UNTIL IT RECEIVES PROOF THAT THE NEGLIGENT GRANTING BODY OR RECIPIENT CORPORATION HAS COMPLIED WITH SUCH PROVISIONS.

S 1718. JOB CREATION AND JOB QUALITY STANDARDS.

1. IN CONSIDERING DEVELOPMENT ASSISTANCE APPLICATIONS, EVERY GRANTING BODY SHALL PERFORM THE FOLLOWING TWO ANALYSES CONCERNING THE PROJECTED WAGES AND BENEFITS:

(A) COMPARE THE AGGREGATE PROJECTED WAGE, AS SPECIFIED UNDER SUBPARAGRAPH (N) OF PARAGRAPH ONE OF SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE), WITH EXISTING WAGES, AS SPECIFIED AND DEFINED UNDER SUBPARAGRAPHS (O) AND (P) OF SUCH PARAGRAPH. TO DERIVE THE AGGREGATE PROJECTED WAGE, THE GRANTING BODY SHALL COMPUTE THE WEIGHTED HOURLY AVERAGE WAGE FOR ALL NEW EMPLOYEES, INCLUDING FULL-TIME, PART-TIME AND TEMPORARY EMPLOYEES. IF THE AGGREGATE PROJECTED WAGE IS LESS THAN EIGHTY-FIVE PERCENT OF EXISTING WAGES, THE APPLICATION SHALL BE DENIED. FOR SMALL BUSINESSES, IF THE AGGREGATE PROJECTED WAGE IS LESS THAN SEVENTY-FIVE PERCENT OF EXISTING WAGES, THE APPLICATION SHALL BE DENIED;

(B) PERFORM A SECOND WAGE COMPUTATION TO CONSIDER THE VALUE OF HEALTHCARE COVERAGE PROVIDED TO FULL-TIME EMPLOYEES, AS SPECIFIED IN SUBPARAGRAPH (Q) OF PARAGRAPH ONE OF SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE). IF THE APPLICANT CORPORATION IS NOT PROVIDING HEALTH CARE COVERAGE TO FULL-TIME EMPLOYEES, THE GRANTING BODY SHALL SUBTRACT ONE DOLLAR AND FIFTY CENTS AN HOUR FROM THE AGGREGATE PROJECTED WAGE. IF THE RECIPIENT CORPORATION PROJECTS SOME HEALTH CARE COSTS TO BE BORNE BY THE NEW FULL-TIME EMPLOYEES, THE GRANTING BODY SHALL, BASED ON DATA FROM THE APPLICANT CORPORATION, ESTIMATE THE HOURLY COST TO THE NEW FULL-TIME EMPLOYEE OF SUCH COSTS AND SUBTRACT THAT AMOUNT FROM THE AGGREGATE PROJECTED WAGE. IF THE AMOUNT RESULTING FROM SUCH SUBTRACTION IS LESS THAN EIGHTY PERCENT OF EXISTING WAGES AS SPECIFIED AND DEFINED UNDER SUBPARAGRAPHS (O) AND (P) OF PARAGRAPH ONE OF SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE), THE APPLICATION SHALL BE DENIED. FOR SMALL BUSINESSES, IF THE AMOUNT RESULTING FROM SUCH SUBTRACTION IS LESS THAN SEVENTY PERCENT OF EXISTING WAGES, THE APPLICATION SHALL BE DENIED.

2. GRANTING BODIES SHALL PERFORM A THIRD ELIGIBILITY ANALYSIS. IN CONSIDERING DEVELOPMENT ASSISTANCE APPLICATIONS, ALL GRANTING BODIES SHALL DIVIDE THE VALUE OF ASSISTANCE SPECIFIED IN SUBPARAGRAPH (K) OF PARAGRAPH ONE OF SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE), BY THE NUMBER OF PROJECTED FULL-TIME JOBS, AS PROVIDED IN SUBPARAGRAPH (L) OF PARAGRAPH ONE OF SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE). IF THE RESULTING SUM EXCEEDS THIRTY-FIVE THOUSAND DOLLARS, THE APPLICATION SHALL BE DENIED.

3. THE PROVISIONS OF PARAGRAPH ONE OF THIS SECTION MAY BE WAIVED IN A BONA FIDE COLLECTIVE BARGAINING AGREEMENT THAT COVERS EMPLOYEES AT THE SPECIFIC PROJECT SITE OF THE APPLICANT CORPORATION, BUT ONLY IF SUCH WAIVER IS EXPLICITLY SET FORTH IN SUCH COLLECTIVE BARGAINING AGREEMENT IN CLEAR AND UNAMBIGUOUS TERMS. UNILATERAL IMPLEMENTATION OF TERMS AND CONDITIONS OF EMPLOYMENT BY EITHER PARTY TO A COLLECTIVE BARGAINING AGREEMENT SHALL NOT CONSTITUTE NOR BE PERMITTED AS A WAIVER OF PARAGRAPHS ONE AND TWO OF THIS SECTION.

S 1719. RECAPTURE.

1. RECIPIENT CORPORATIONS SHALL ACHIEVE THEIR JOB CREATION, AND WAGE AND BENEFIT GOALS WITHIN TWO YEARS OF THE DATE OF ASSISTANCE. SUCH CORPORATIONS SHALL ALSO MAINTAIN THEIR WAGE AND BENEFIT GOALS AS LONG AS THE BENEFIT IS IN EFFECT. CORPORATE PARENTS OF RECIPIENT CORPORATIONS MAINTAIN AT LEAST NINETY PERCENT OF THEIR ORIGINAL STATE EMPLOYMENT, AS SPECIFIED IN SUBPARAGRAPH (I) OF PARAGRAPH ONE OF SECTION 1716 (STANDARDIZED APPLICATIONS FOR DEVELOPMENT ASSISTANCE) AND SUBPARAGRAPH (G) OF PARAGRAPH THREE OF SECTION 1717 (DISCLOSURE OF DEVELOPMENT ASSISTANCE).

2. GRANTING BODIES SHALL, WITHIN TEN BUSINESS DAYS AFTER THE SECOND ANNIVERSARY OF THE DATE OF ASSISTANCE, FILL OUT A STANDARDIZED PROGRESS REPORT AND THE RECIPIENT CORPORATION SHALL SIGN IT AND CERTIFY ITS ACCURACY UNDER THE PENALTY OF PERJURY. THIS SECOND ANNIVERSARY PROGRESS REPORT SHALL BE FILED BY THE GRANTING BODY WITH THE DEPARTMENT ALONG WITH THE GRANTING BODY'S NEXT ANNUAL FILING OF PROGRESS REPORTS. PROGRESS REPORTS SHALL BE PUBLISHED ON THE DEPARTMENT'S INTERNET HOMEPAGE.

3. THE GRANTING BODY SHALL INDICATE ON THIS SECOND ANNIVERSARY PROGRESS REPORT WHETHER THE RECIPIENT CORPORATION HAS ACHIEVED ITS JOB CREATION AND WAGE AND BENEFIT GOALS, AND WHETHER THE CORPORATE PARENT HAS MAINTAINED NINETY PERCENT OF ITS STATE EMPLOYMENT.

4. ON ALL SUBSEQUENT ANNUAL PROGRESS REPORTS, THE GRANTING BODY SHALL INDICATE WHETHER OR NOT THE RECIPIENT CORPORATION IS STILL IN COMPLIANCE WITH ITS JOB CREATION, AND WAGE AND BENEFIT GOALS, AND WHETHER THE CORPORATE PARENT IS STILL IN COMPLIANCE WITH ITS STATE EMPLOYMENT MAINTENANCE REQUIREMENT.

5. IF UPON THE OCCASION ANY PROGRESS REPORT, BEGINNING WITH THE SECOND ANNIVERSARY PROGRESS REPORT, A GRANTING BODY FINDS THAT A RECIPIENT CORPORATION HAS NOT ACHIEVED ITS JOB CREATION, OR WAGE OR BENEFIT GOALS, OR THE CORPORATE PARENT HAS NOT MAINTAINED NINETY PERCENT OF ITS STATE EMPLOYMENT, THE GRANTING BODY SHALL, WITHIN TEN BUSINESS DAYS, FILE A FINDING OF DEVELOPMENT ASSISTANCE DEFAULT WITH THE DEPARTMENT AND WITH THE RECIPIENT CORPORATION.

6. IF A RECIPIENT CORPORATION DEFAULTS ON DEVELOPMENT ASSISTANCE, PURSUANT TO PARAGRAPH FIVE OF THIS SECTION, IT SHALL PAY BACK TO THE GRANTING BODY THAT FRACTION OF THE DEVELOPMENT ASSISTANCE THAT ACCRUED TO ITS BENEFIT FOR THE CALENDAR YEAR IN WHICH THE DEFAULT OCCURRED, PLUS INTEREST AT A RATE DETERMINED BY THE GRANTING AGENCY. FOR ONE-TIME FORMS OF DEVELOPMENT ASSISTANCE SUCH AS GRANTS OR LAND PRICE DISCOUNTS, A DEFAULTING RECIPIENT CORPORATION SHALL PAY BACK TO THE GRANTING BODY

ONE-FIFTH OF THE VALUE OF ASSISTANCE. REMITTANCE OF THE PAYBACK BY A RECIPIENT CORPORATION TO A GRANTING BODY SHALL TAKE PLACE WITHIN SIXTY CALENDAR DAYS OF THE DELIVERY OF THE DEFAULT NOTICE TO THE RECIPIENT CORPORATION.

7. IF A RECIPIENT CORPORATION DEFAULTS ON DEVELOPMENT ASSISTANCE, PURSUANT TO PARAGRAPH FIVE OF THIS SECTION, IN THREE CONSECUTIVE CALENDAR YEARS, THE GRANTING BODY SHALL DECLARE THE DEVELOPMENT ASSISTANCE NULL AND VOID, AND SHALL SO NOTIFY THE DEPARTMENT AND THE RECIPIENT CORPORATION. UPON SUCH DECLARATION, THE RECIPIENT CORPORATION SHALL PAY BACK TO THE GRANTING BODY ALL REMAINING VALUE OF THE DEVELOPMENT ASSISTANCE IT HAS NOT ALREADY PAID BACK. REMITTANCE OF THE NULL AND VOID PAYBACK BY A RECIPIENT CORPORATION TO A GRANTING BODY SHALL TAKE PLACE WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS OF THE DELIVERY OF SUCH NOTICE TO THE RECIPIENT CORPORATION. A RECIPIENT CORPORATION THAT FAILS TO MEET THE TERMS OF A DEVELOPMENT ASSISTANCE AGREEMENT SHALL NOT RECEIVE DEVELOPMENT ASSISTANCE FROM ANY GRANTING BODY FOR A PERIOD OF FIVE YEARS FROM THE DATE OF FAILURE OR UNTIL THE RECIPIENT CORPORATION SATISFIES ITS REPAYMENT OBLIGATION PURSUANT TO THIS PARAGRAPH, WHICHEVER OCCURS FIRST.

8. A GRANTING BODY SHALL REQUIRE AS A CONDITION OF ANY DEVELOPMENT ASSISTANCE TO A RECIPIENT CORPORATION THAT:

(A) SUCH RECIPIENT CORPORATION SHALL NOT RELOCATE OUTSIDE THE STATE DURING THE TERM OF SUCH DEVELOPMENT ASSISTANCE OR FOR A PERIOD OF TEN YEARS AFTER THE AWARD OF SUCH ASSISTANCE, WHICHEVER IS LATER, UNLESS THE FULL AMOUNT OF SUCH ASSISTANCE IS REPAID TO THE GRANTING BODY AND A PENALTY EQUAL TO FIVE PERCENT OF THE TOTAL ASSISTANCE RECEIVED IS PAID TO THE GRANTING BODY; AND

(B) IF THE RECIPIENT CORPORATION RELOCATES WITHIN THE STATE DURING THE TERM OF SUCH DEVELOPMENT ASSISTANCE IN THE CASE OF A LOAN OR LOAN GUARANTEE OR WITHIN TWO YEARS OF RECEIVING AN AWARD, GRANT OR OTHER ASSISTANCE, SUCH CORPORATION SHALL OFFER EMPLOYMENT AT THE NEW LOCATION TO ITS EMPLOYEES FROM THE ORIGINAL LOCATION IF SUCH EMPLOYMENT IS AVAILABLE.

9. UPON A FINDING THAT A RECIPIENT CORPORATION HAS RELOCATED OUTSIDE OF THE STATE WITHIN TWO YEARS OF RECEIVING DEVELOPMENT ASSISTANCE, SUCH CORPORATION SHALL BE DEEMED INELIGIBLE TO RECEIVE ANY ADDITIONAL DEVELOPMENT ASSISTANCE.

10. A WAIVER OF THE PROVISIONS OF PARAGRAPH EIGHT OR NINE OF THIS SECTION MAY BE GRANTED TO A RECIPIENT CORPORATION UPON A DETERMINATION OF LEGITIMATE HARDSHIP. A LEGITIMATE HARDSHIP PURSUANT TO THIS PARAGRAPH SHALL BE A CIRCUMSTANCE UNDER WHICH A RECIPIENT CORPORATION IS COMPELLED TO RELOCATE DUE TO UNFORESEEN CIRCUMSTANCES BEYOND THE DIRECT OR INDIRECT CONTROL OF SUCH RECIPIENT CORPORATION.

11. EVERY ASPECT OF ALL DEVELOPMENT ASSISTANCE DEFAULT NOTICES, RECAPTURE REMITTANCES, ASSOCIATED CORRESPONDENCE AND RELATED PROCEEDINGS SHALL BE FULLY SUBJECT TO THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

12. IF A GRANTING BODY FAILS TO ENFORCE THE PROVISIONS OF THIS ARTICLE, ANY TAXPAYER WHO PAID TAXES IN THE CALENDAR YEAR PRIOR TO THE YEAR IN DISPUTE, OR ANY ORGANIZATION REPRESENTING SUCH TAXPAYERS, SHALL BE ENTITLED TO BRING A CAUSE OF ACTION TO COMPEL ENFORCEMENT OF THIS ARTICLE. THE COURT SHALL AWARD TO ANY PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AND ACTUAL INCURRED COSTS IN PURSUING SUCH ACTION.

S 4. If any item, clause, sentence, subparagraph, subdivision, section, or any other part of this act, or the application thereof to any person or circumstances, is held to be invalid, such holding shall not affect, impair, or invalidate the remainder of this act, of the

application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision, section, or other part of this act directly involved in such holding, or to the person and circumstances therein involved.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.