

2972

2011-2012 Regular Sessions

I N S E N A T E

February 4, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the recoupment of economic incentives to businesses

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

- 1 Section 1. The executive law is amended by adding a new section 163-b  
2 to read as follows:  
3 S 163-B. RECOUPMENT OF ECONOMIC INCENTIVES. 1. NOTWITHSTANDING ANY  
4 INCONSISTENT PROVISION OF LAW, EACH CONTRACT, AGREEMENT OR UNDERSTANDING  
5 BY WHICH A PERSON, FIRM, PARTNERSHIP, COMPANY, ASSOCIATION OR CORPO-  
6 RATION RECEIVES AN AWARD, GRANT, LOAN, TAX ABATEMENT OR OTHER BUSINESS  
7 INCENTIVE FROM THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS, OR ANY  
8 DEPARTMENT, BUREAU, BOARD, COMMISSION, AUTHORITY, OR ANY OTHER AGENCY OR  
9 INSTRUMENTALITY OF THE STATE OR ITS POLITICAL SUBDIVISIONS, OR ANY  
10 PUBLIC BENEFIT CORPORATION AS DEFINED IN SUBDIVISION FOUR OF SECTION  
11 SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, OR ANY MUNICIPAL CORPORATION  
12 AS DEFINED IN SUBDIVISION THREE OF SECTION THREE-A OF THE GENERAL MUNIC-  
13 IPAL LAW FOR THE PURPOSES OF JOB TRAINING, JOB CREATION OR RETENTION, OR  
14 THE DEVELOPMENT OF ITS OPERATION WITHIN THE STATE, SHALL CONTAIN THE  
15 FOLLOWING PROVISIONS:  
16 (A) A STATED PERIOD OF TIME WITHIN WHICH THE TERMS OF THE CONTRACT,  
17 AGREEMENT OR UNDERSTANDING ARE TO BE FULLY EXECUTED AND COMPLETED;  
18 (B) A STATED PURPOSE AND THE AMOUNT OF THE AWARD, GRANT OR OTHER BUSI-  
19 NESS INCENTIVE;  
20 (C) WHERE APPLICABLE, THE NUMBER OF PERSONS TO BE TRAINED PURSUANT TO  
21 THE TERMS OF THE CONTRACT, AGREEMENT OR UNDERSTANDING;  
22 (D) WHERE APPLICABLE, THE NUMBER OF JOBS TO BE CREATED OR RETAINED  
23 PURSUANT TO THE TERMS OF THE CONTRACT, AGREEMENT OR UNDERSTANDING;

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

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1 (E) WHERE APPLICABLE, THE EXTENT OF THE OPERATIONS OR FACILITIES TO BE  
2 DEVELOPED PURSUANT TO THE TERMS OF THE CONTRACT, AGREEMENT OR UNDER-  
3 STANDING; AND

4 (F) NOTICE TO THE RECIPIENT THAT THE AWARD, GRANT OR OTHER BUSINESS  
5 INCENTIVE SHALL BE SUBJECT TO RECOUPMENT PURSUANT TO THIS SECTION.

6 2. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, EVERY  
7 AWARD, GRANT OR OTHER BUSINESS INCENTIVE AWARDED PURSUANT TO THIS CHAP-  
8 TER SHALL BE SUBJECT TO REPAYMENT WITH INTEREST, BY THE RECIPIENT UPON A  
9 FINDING BY THE AWARDING ENTITY THAT THE PERSON, FIRM, PARTNERSHIP,  
10 COMPANY, ASSOCIATION, OR CORPORATION HAS NOT FULLY EXECUTED AND  
11 COMPLETED THE STATED PURPOSES OR OBJECTIVES OF THE AWARD, GRANT OR OTHER  
12 BUSINESS INCENTIVE WITHIN THE STATED PERIOD OF TIME AS SET FORTH IN THE  
13 CONTRACT, AGREEMENT OR UNDERSTANDING.

14 3. IF THE AWARDING ENTITY DETERMINES THAT THE RECIPIENT WHO HAS  
15 RECEIVED AN AWARD, GRANT OR OTHER BUSINESS INCENTIVE UNDER THIS CHAPTER  
16 IS NOT COMPLYING WITH THE CONTRACT, AGREEMENT OR UNDERSTANDING ENTERED  
17 INTO WITH THE AWARDING ENTITY, IT SHALL NOTIFY THE RECIPIENT OF SUCH  
18 NONCOMPLIANCE. SUCH NOTICE SHALL STATE THAT THE RECIPIENT IS ENTITLED  
19 TO A HEARING AND AN OPPORTUNITY TO EXPLAIN THE NONCOMPLIANCE. IF THE  
20 ENTITY FINDS THAT THE RECIPIENT HAS NOT COMPLIED WITH THE CONTRACT,  
21 AGREEMENT OR UNDERSTANDING, THE RECIPIENT SHALL BE REQUIRED TO REFUND  
22 THE FULL AMOUNT OF THE INCENTIVE PROVIDED, HOWEVER, THAT:

23 (A) UPON A FINDING THAT THE RECIPIENT HAS CREATED OR RETAINED SOME OF  
24 THE JOBS PROMISED UNDER THE CONTRACT, AGREEMENT, OR UNDERSTANDING, THE  
25 RECIPIENT SHALL ONLY BE REQUIRED TO REFUND THE AMOUNT WHICH REPRESENTS  
26 THE JOBS WHICH IT FAILED TO CREATE OR RETAIN, OR

27 (B) UPON A FINDING THAT THE RECIPIENT HAS FAILED TO DEVELOP CERTAIN  
28 FACILITIES OR OPERATIONS AS PROMISED UNDER THE CONTRACT, AGREEMENT, OR  
29 UNDERSTANDING, THE RECIPIENT SHALL REFUND THE AMOUNT OF THE AWARD, GRANT  
30 OR BUSINESS INCENTIVE AS FOLLOWS:

31 (I) WHERE THE RECIPIENT HAS DEVELOPED ONE-THIRD OR LESS OF THE FACILI-  
32 TIES OR OPERATIONS, THE RECIPIENT SHALL REFUND AT LEAST TWO-THIRDS OF  
33 THE AWARD, GRANT OR BUSINESS INCENTIVE;

34 (II) WHERE THE RECIPIENT HAS DEVELOPED TWO-THIRDS OR LESS OF THE  
35 FACILITIES OR OPERATIONS, THE RECIPIENT SHALL REFUND AT LEAST ONE-THIRD  
36 OF THE AWARD, GRANT OR BUSINESS INCENTIVE;

37 (III) WHERE THE RECIPIENT HAS DEVELOPED MORE THAN TWO-THIRDS BUT LESS  
38 THAN ALL OF THE FACILITIES OR OPERATIONS AS PROMISED UNDER THE CONTRACT,  
39 AGREEMENT OR UNDERSTANDING, THE RECIPIENT SHALL REFUND AN AMOUNT WHICH  
40 THE ENTITY DETERMINES TO BE A REASONABLE PROPORTION OF THE AWARD, GRANT  
41 OR BUSINESS INCENTIVE NOT FULFILLED.

42 4. UPON A FINDING THAT THE RECIPIENT OF THE AWARD, GRANT, OR OTHER  
43 BUSINESS INCENTIVE HAS NOT FULLY EXECUTED AND COMPLETED THE PURPOSES OR  
44 OBJECTIVES OF THE AWARD, GRANT OR BUSINESS INCENTIVE, THE AWARDING ENTI-  
45 TY MAY WAIVE REPAYMENT OF SUCH AWARD, GRANT OR BUSINESS INCENTIVE AS  
46 REQUIRED PURSUANT TO THIS SECTION, UPON A FINDING THAT THE FAILURE WAS  
47 CAUSED BY UNFORESEEN CIRCUMSTANCES BEYOND THE DIRECT OR INDIRECT CONTROL  
48 OF THE RECIPIENT PERSON, FIRM, PARTNERSHIP, COMPANY, ASSOCIATION OR  
49 CORPORATION, AND WAS NOT ATTRIBUTABLE TO BAD FAITH OR FRAUD. UNFORESEEN  
50 CIRCUMSTANCES SHALL INCLUDE, BUT NOT BE LIMITED TO, MARKET CONDITIONS  
51 WHICH ADVERSELY IMPACT UPON A RECIPIENT AND WHICH ARE OF SUCH MAGNITUDE  
52 THAT A WAIVER OF REPAYMENT IS ABSOLUTELY NECESSARY TO ENSURE THE CONTIN-  
53 UED OPERATIONS OF THE RECIPIENT AT THE LOCATION FOR WHICH THE INCENTIVE  
54 WAS GRANTED OR TO ENSURE CONTINUED EMPLOYMENT OF ITS EMPLOYEES AT SUCH  
55 LOCATION. NO WAIVER OF FULL REPAYMENT MAY BE PROVIDED, HOWEVER, UPON THE  
56 RELOCATION OUTSIDE OF NEW YORK STATE, OR FROM THE LOCATION SUCH RECIPI-

1 ENT OCCUPIED AT THE TIME THE RECIPIENT RECEIVED THE AWARD, GRANT OR  
2 BUSINESS INCENTIVE TO ANOTHER LOCATION IN THE STATE. UPON THE DETERMI-  
3 NATION OF UNFORESEEN CIRCUMSTANCES APPROPRIATE TO GRANT A WAIVER, THE  
4 REPAYMENT OF THE OUTSTANDING BALANCE OF ANY AWARD, GRANT OR BUSINESS  
5 INCENTIVE, OR OF ANY TAX CREDITS, INCLUDING INTEREST THEREON, MAY BE  
6 DEFERRED FOR A PERIOD NOT TO EXCEED FIVE YEARS FROM THE DATE OF SUCH  
7 WAIVER, PROVIDED THAT IF AT THE END OF FIVE YEARS THE CONDITIONS FOR  
8 WHICH THE WAIVER WAS GRANTED CONTINUE, THE AWARDING ENTITY MAY GRANT AN  
9 ADDITIONAL WAIVER.

10 5. EACH ENTITY OF THE STATE WHICH ENTERS INTO AGREEMENTS PURSUANT TO  
11 THIS CHAPTER SHALL ESTABLISH RULES AND REGULATIONS RELATING TO THE  
12 CONDUCT OF A HEARING AND THE TERMS AND CONDITIONS OF REPAYMENT.

13 6. ANY RECIPIENT AGGRIEVED BY A DETERMINATION OF THE AWARDING ENTITY  
14 MAY SEEK REVIEW OF SUCH DETERMINATION PURSUANT TO ARTICLE SEVENTY-EIGHT  
15 OF THE CIVIL PRACTICE LAW AND RULES.

16 7. UNLESS THE AGREEMENT BETWEEN THE ENTITY AND THE RECIPIENT OTHERWISE  
17 PROVIDES FOR A PENALTY OF INTEREST IN THE EVENT OF NON-COMPLIANCE, FOR  
18 PURPOSES OF THIS SECTION, INTEREST CHARGED IN THE REPAYMENT OF AN AWARD,  
19 GRANT OR BUSINESS INCENTIVE SHALL BE CALCULATED AT A RATE EQUAL TO THE  
20 UNDERPAYMENT RATE SET BY THE COMMISSIONER OF TAXATION AND FINANCE PURSU-  
21 ANT TO THE PROVISIONS OF SUBSECTION (E) OF SECTION ONE THOUSAND NINETY-  
22 SIX OF THE TAX LAW; AND SHALL BE CALCULATED FROM THE DATE OF DISBURSE-  
23 MENT OF SUCH AWARD, GRANT OR BUSINESS INCENTIVE.

24 8. THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO ALTER OR  
25 ABRIDGE ANY RIGHT OR REMEDY EXISTING AT LAW OR EQUITY OTHERWISE AVAIL-  
26 ABLE TO THE AWARDING ENTITY.

27 9. ON OR BEFORE SEPTEMBER FIRST, TWO THOUSAND ELEVEN, AND ANNUALLY  
28 THEREAFTER, THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS, OR ANY DEPART-  
29 MENT, BUREAU, BOARD, COMMISSION, AUTHORITY, OR ANY OTHER AGENCY OR  
30 INSTRUMENTALITY OF THE STATE OR ITS POLITICAL SUBDIVISIONS, OR ANY  
31 PUBLIC BENEFIT CORPORATION AS DEFINED IN SUBDIVISION FOUR OF SECTION  
32 SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, OR ANY MUNICIPAL CORPORATION  
33 AS DEFINED IN SUBDIVISION THREE OF SECTION THREE-A OF THE GENERAL MUNIC-  
34 IPAL LAW FOR THE PURPOSES OF JOB TRAINING, JOB CREATION OR RETENTION, OR  
35 THE DEVELOPMENT OF ITS OPERATION WITHIN THE STATE, SHALL SUBMIT A REPORT  
36 TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF  
37 THE ASSEMBLY, THE SENATE MINORITY LEADER, THE ASSEMBLY MINORITY LEADER  
38 AND THE STATE COMPTROLLER ON THE RECOUPMENT OF FINANCIAL INCENTIVES  
39 PURSUANT TO THIS SECTION. SUCH REPORT SHALL INCLUDE: A LISTING OF RECIP-  
40 IENTS OF AN AWARD, GRANT OR BUSINESS INCENTIVE WHO HAVE FAILED TO  
41 EXECUTE AND COMPLETE THE TERMS OF A CONTRACT, AGREEMENT OR UNDERSTAND-  
42 ING; THE AMOUNT AND TYPE OF AWARD, GRANT OR BUSINESS INCENTIVE; THE  
43 DETERMINATION OF THE AWARDING ENTITY WITH RESPECT TO SUCH FAILURE,  
44 INCLUDING THE REASONS THEREFOR; THE STATUS OF REPAYMENT OF THE AWARD,  
45 GRANT OR BUSINESS INCENTIVE BY THE RECIPIENT; ANY WAIVER PROVIDED FOR  
46 THE REPAYMENT OF AN AWARD, GRANT OR BUSINESS INCENTIVE AND THE REASONS  
47 THEREFOR; AND ANY RECOMMENDATIONS OF THE ENTITY WITH RESPECT TO THE  
48 RECOUPMENT OF FINANCIAL INCENTIVES PURSUANT TO THIS SECTION.

49 S 2. This act shall take effect immediately and shall apply only to  
50 contracts, agreements and understandings entered into on or after such  
51 date.