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

3446--A

2013-2014 Regular Sessions

I N S E N A T E

February 1, 2013

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the business corporation law, in relation to enacting the unified economic development budget 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 "unified economic development budget act."

S 2. The business corporation law is amended by adding a new article 14 to read as follows:

ARTICLE 14

UNIFIED ECONOMIC DEVELOPMENT BUDGET

SECTION 1401. DEFINITIONS.

1402. UNIFIED ECONOMIC DEVELOPMENT BUDGET.

1403. STANDARDIZED APPLICATIONS FOR STATE DEVELOPMENT ASSISTANCE.

1404. STATE DEVELOPMENT ASSISTANCE DISCLOSURE.

S 1401. DEFINITIONS.

AS USED IN THIS ARTICLE:

(A) "ANNUAL TAX EXPENDITURE REPORT" IS AS DEFINED BY SECTION ONE HUNDRED EIGHTY-ONE OF THE EXECUTIVE LAW.

(B) "BASE YEARS" MEANS THE FIRST TWO COMPLETE CALENDAR YEARS FOLLOWING THE EFFECTIVE DATE OF A RECIPIENT RECEIVING DEVELOPMENT ASSISTANCE.

(C) "DATE OF ASSISTANCE" MEANS THE COMMENCEMENT DATE OF THE ASSISTANCE AGREEMENT, WHICH DATE TRIGGERS THE PERIOD DURING WHICH THE RECIPIENT IS OBLIGATED TO CREATE OR RETAIN JOBS AND CONTINUE OPERATIONS AT THE SPECIFIC PROJECT SITE.

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

LBD00916-02-4

(D) "DEVELOPMENT ASSISTANCE" MEANS: (1) TAX EXPENDITURES GIVEN AS AN INCENTIVE TO RECIPIENT BUSINESSES, NOT-FOR-PROFIT ORGANIZATIONS AND GOVERNMENT ENTITIES FOR ECONOMIC DEVELOPMENT PURPOSES;

(2) GRANTS OR LOANS AWARDED BY ALL STATE GRANTING BODIES AND INDUSTRIAL DEVELOPMENT AGENCIES TO BUSINESSES, NOT-FOR-PROFIT ORGANIZATIONS AND GOVERNMENT ENTITIES FOR ECONOMIC DEVELOPMENT PURPOSES; AND

(3) ALL SUCCESSOR AND SUBSEQUENT DEVELOPMENT ASSISTANCE PROGRAMS AND TAX EXPENDITURES DESIGNED TO PROMOTE LARGE BUSINESS RELOCATIONS AND EXPANSIONS.

(E) "DEVELOPMENT ASSISTANCE AGREEMENT" MEANS ANY AGREEMENT EXECUTED BY THE STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY AND THE RECIPIENT SETTING FORTH THE TERMS AND CONDITIONS OF DEVELOPMENT ASSISTANCE TO BE PROVIDED TO THE RECIPIENT CONSISTENT WITH THE FINAL APPLICATION FOR DEVELOPMENT ASSISTANCE, INCLUDING BUT NOT LIMITED TO THE DATE OF ASSISTANCE, SUBMITTED TO AND APPROVED BY THE STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY.

(F) "DIVISION" MEANS, UNLESS OTHERWISE NOTED, THE NEW YORK STATE DIVISION OF THE BUDGET OR ANY SUCCESSOR AGENCY.

(G) "ECONOMIC DEVELOPMENT" MEANS ANY ECONOMIC ACTIVITY TO INCREASE TAX REVENUE, TAX BASE, OR EMPLOYMENT OR IMPROVE GENERAL ECONOMIC HEALTH, WHEN THE ACTIVITY INVOLVES:

(1) THE PLANNING, DESIGN, DEVELOPMENT, CONSTRUCTION, REHABILITATION, BUSINESS RELOCATION, OR ANY COMBINATION OF THESE, WITHIN A COMMUNITY; AND

(2) THE PROVISION OF OFFICE, INDUSTRIAL, MANUFACTURING, WAREHOUSING, DISTRIBUTION, PARKING, PUBLIC, OR OTHER FACILITIES, OR OTHER IMPROVEMENTS THAT BENEFIT THE STATE OR A COMMUNITY;

BUT DOES NOT RESULT IN THE TRANSFER OF LAND TO PUBLIC OWNERSHIP OR THE TRANSFER OF PROPERTY TO A PRIVATE ENTITY THAT IS A PUBLIC UTILITY, THE LEASE OF PROPERTY TO PRIVATE ENTITIES THAT OCCUPY AN INCIDENTAL AREA WITHIN A PUBLIC PROJECT OR THE REMEDY OF BLIGHT.

(H) "FULL-TIME, PERMANENT JOB" MEANS A JOB IN WHICH THE NEW EMPLOYEE WORKS FOR THE RECIPIENT AT A RATE OF AT LEAST THIRTY-FIVE HOURS PER WEEK.

(I) "INDUSTRIAL DEVELOPMENT AGENCY" MEANS AN AGENCY AS DEFINED BY SECTION EIGHT HUNDRED FIFTY-FOUR OF THE GENERAL MUNICIPAL LAW.

(J) "NEW EMPLOYEE" MEANS A FULL-TIME, PERMANENT EMPLOYEE WHO REPRESENTS A NET INCREASE IN THE NUMBER OF THE RECIPIENT'S EMPLOYEES STATEWIDE. "NEW EMPLOYEE" INCLUDES AN EMPLOYEE WHO PREVIOUSLY FILLED A NEW EMPLOYEE POSITION WITH THE RECIPIENT WHO WAS REHIRED OR CALLED BACK FROM A LAYOFF THAT OCCURS DURING OR FOLLOWING THE BASE YEARS. THE TERM "NEW EMPLOYEE" DOES NOT INCLUDE ANY OF THE FOLLOWING:

(1) AN EMPLOYEE OF THE RECIPIENT WHO PERFORMS A JOB THAT WAS PREVIOUSLY PERFORMED BY ANOTHER EMPLOYEE IN THIS STATE, IF THAT JOB EXISTED IN THIS STATE FOR AT LEAST SIX MONTHS BEFORE HIRING THE EMPLOYEE; OR

(2) A CHILD, GRANDCHILD, PARENT, OR SPOUSE, OTHER THAN A SPOUSE WHO IS LEGALLY SEPARATED FROM THE INDIVIDUAL, OF ANY INDIVIDUAL WHO HAS A DIRECT OR INDIRECT OWNERSHIP INTEREST OF AT LEAST FIVE PERCENT IN THE PROFITS, CAPITAL, OR VALUE OF ANY MEMBER OF THE RECIPIENT.

(K) "PART-TIME JOB" MEANS A JOB IN WHICH THE NEW EMPLOYEE WORKS FOR THE RECIPIENT AT A RATE OF LESS THAN THIRTY-FIVE HOURS PER WEEK.

(L) "RECIPIENT" MEANS ANY BUSINESS THAT RECEIVES ECONOMIC DEVELOPMENT ASSISTANCE. A BUSINESS IS ANY CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, SOLE PROPRIETORSHIP, OR OTHER LEGALLY RECOGNIZED ENTITY.

(M) "RETAINED EMPLOYEE" MEANS ANY EMPLOYEE DEFINED AS HAVING A FULL-TIME OR FULL-TIME EQUIVALENT JOB PRESERVED AT A SPECIFIC FACILITY OR SITE, THE CONTINUANCE OF WHICH IS THREATENED BY A SPECIFIC AND DEMONSTRABLE THREAT, WHICH SHALL BE SPECIFIED IN THE APPLICATION FOR DEVELOPMENT ASSISTANCE.

(N) "SPECIFIC PROJECT SITE" MEANS THAT DISTINCT OPERATIONAL UNIT TO WHICH ANY DEVELOPMENT ASSISTANCE IS APPLIED.

(O) "STATE GRANTING BODY" MEANS THE DIVISION AND/OR ANY OTHER STATE DEPARTMENT, AGENCY, BUREAU, OFFICE, COMMISSION, PUBLIC AUTHORITY, PUBLIC CORPORATION AND ANY OTHER STATE ENTITY THAT PROVIDES AND/OR ADMINISTERS DEVELOPMENT ASSISTANCE THAT HAS REPORTING REQUIREMENTS UNDER THIS ARTICLE, AND ANY SUCCESSOR AGENCIES TO ANY OF THE PRECEDING ENTITIES.

(P) "TAX EXPENDITURE" IS AS DEFINED BY SECTION ONE HUNDRED EIGHTY-ONE OF THE EXECUTIVE LAW.

(Q) "TEMPORARY JOB" MEANS A JOB IN WHICH THE NEW EMPLOYEE IS HIRED FOR A SPECIFIC DURATION OF TIME OR SEASON.

(R) "VALUE OF ASSISTANCE" MEANS THE FACE VALUE OF ANY FORM OF DEVELOPMENT ASSISTANCE.

S 1402. UNIFIED ECONOMIC DEVELOPMENT BUDGET.

(A) FOR EACH STATE FISCAL YEAR ENDING ON OR AFTER JUNE THIRTIETH, TWO THOUSAND SIXTEEN, THE DIVISION, IN COLLABORATION WITH THE DEPARTMENT OF TAXATION AND FINANCE, SHALL SUBMIT AN ANNUAL UNIFIED ECONOMIC DEVELOPMENT BUDGET TO THE GOVERNOR, SENATE AND ASSEMBLY. THE UNIFIED ECONOMIC DEVELOPMENT BUDGET SHALL BE DUE WITHIN THREE MONTHS AFTER THE END OF THE FISCAL YEAR, AND SHALL PRESENT ALL TYPES OF DEVELOPMENT ASSISTANCE GRANTED DURING THE PRIOR FISCAL YEAR, INCLUDING:

(1) THE AGGREGATE AMOUNT, PREPARED BY THE DEPARTMENT OF TAXATION AND FINANCE AND PRESENTED AS STATE TOTALS, OF ACTUAL UNCOLLECTED OR DIVERTED STATE TAX REVENUES RESULTING FROM EACH TYPE OF DEVELOPMENT ASSISTANCE PROVIDED PURSUANT TO LAW, AS REPORTED IN THE ANNUAL TAX EXPENDITURE REPORT;

(2) THE AGGREGATE AMOUNT, PREPARED BY THE DIVISION AND PRESENTED AS STATE TOTALS, OF DEVELOPMENT ASSISTANCE GRANTS AND LOANS AWARDED BY ALL STATE AND INDUSTRIAL DEVELOPMENT AGENCIES TO BUSINESSES, NOT-FOR-PROFIT ORGANIZATIONS AND GOVERNMENT ENTITIES; AND A LIST OF THE TOP FIVE RECIPIENTS BY DOLLAR VALUE OF EACH TYPE OF DEVELOPMENT ASSISTANCE GRANT OR LOAN;

(3) THE AGGREGATE AMOUNTS REQUIRED BY SUBPARAGRAPHS ONE AND TWO OF THIS PARAGRAPH SHALL CORRESPOND TO THE MOST RECENT FISCAL YEAR FOR WHICH RELIABLE DATA ARE AVAILABLE, AND THE PRECEDING FIVE FISCAL YEARS;

(4) A LIST OF ALL STATE DEVELOPMENT ASSISTANCE WITH A DESCRIPTION AND AGGREGATE AMOUNT OF UNCOLLECTED OR DIVERTED STATE TAX REVENUES RESULTING FROM OR AWARDED FOR EACH TYPE OF DEVELOPMENT ASSISTANCE FOR THE MOST RECENT FISCAL YEAR AND ITS PRECEDING FISCAL YEAR; AND

(5) THE AGGREGATE AMOUNT, PREPARED BY THE DIVISION AND PRESENTED AS STATE TOTALS, OF JOBS CREATED AND/OR RETAINED WITH THE SUPPORT OF DEVELOPMENT ASSISTANCE.

(B) ALL DATA CONTAINED IN THE UNIFIED ECONOMIC DEVELOPMENT BUDGET PRESENTED TO THE GOVERNOR, SENATE AND ASSEMBLY SHALL BE FULLY SUBJECT TO THE FREEDOM OF INFORMATION ACT, NOTWITHSTANDING INSTANCES WHEN THE DISCLOSURE OF INFORMATION VIOLATES CONFIDENTIALITY AGREEMENTS BETWEEN THE DEPARTMENT OF TAXATION AND FINANCE AND RECIPIENTS OF STATE DEVELOPMENT ASSISTANCE.

(C) THE DEPARTMENT OF TAXATION AND FINANCE SHALL SUBMIT A REPORT OF THE AMOUNTS IN SUBPARAGRAPH ONE OF PARAGRAPH (A) OF THIS SECTION TO THE

DIVISION, WHICH SHALL APPEND SUCH REPORT TO THE UNIFIED ECONOMIC DEVELOPMENT BUDGET RATHER THAN SEPARATELY REPORTING SUCH AMOUNTS.

S 1403. STANDARDIZED APPLICATIONS FOR STATE DEVELOPMENT ASSISTANCE.

(A) ALL FINAL APPLICATIONS SUBMITTED TO THE DIVISION, INDUSTRIAL DEVELOPMENT AGENCIES OR ANY OTHER STATE GRANTING BODY REQUESTING DEVELOPMENT ASSISTANCE SHALL CONTAIN, AT A MINIMUM:

(1) AN APPLICATION TRACKING NUMBER THAT IS SPECIFIC TO BOTH THE STATE GRANTING AGENCY OR INDUSTRIAL DEVELOPMENT AGENCY AND TO EACH APPLICATION;

(2) THE OFFICE MAILING ADDRESS, OFFICE TELEPHONE NUMBER, AND CHIEF OFFICER OF THE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY;

(3) THE OFFICE MAILING ADDRESS, TELEPHONE NUMBER, AND THE NAME OF THE CHIEF OFFICER OF THE APPLICANT OR AUTHORIZED DESIGNEE FOR THE SPECIFIC PROJECT SITE FOR WHICH DEVELOPMENT ASSISTANCE IS REQUESTED;

(4) THE APPLICANT'S TOTAL NUMBER OF EMPLOYEES AT THE SPECIFIC PROJECT SITE ON THE DATE THAT THE APPLICATION IS SUBMITTED TO THE STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY, INCLUDING THE NUMBER OF FULL-TIME, PERMANENT JOBS, THE NUMBER OF PART-TIME JOBS, AND THE NUMBER OF TEMPORARY JOBS;

(5) THE TYPE OF DEVELOPMENT ASSISTANCE AND VALUE OF ASSISTANCE BEING REQUESTED;

(6) THE NUMBER OF JOBS TO BE CREATED AND RETAINED OR BOTH CREATED AND RETAINED BY THE APPLICANT AS A RESULT OF THE DEVELOPMENT ASSISTANCE, INCLUDING THE NUMBER OF FULL-TIME, PERMANENT JOBS, THE NUMBER OF PART-TIME JOBS, AND THE NUMBER OF TEMPORARY JOBS;

(7) A DETAILED LIST OF THE OCCUPATION OR JOB CLASSIFICATIONS AND NUMBER OF NEW EMPLOYEES OR RETAINED EMPLOYEES TO BE HIRED IN FULL-TIME, PERMANENT JOBS, A SCHEDULE OF ANTICIPATED STARTING DATES OF THE NEW HIRES AND THE ANTICIPATED AVERAGE WAGE BY OCCUPATION OR JOB CLASSIFICATION AND TOTAL PAYROLL TO BE CREATED AS A RESULT OF THE DEVELOPMENT ASSISTANCE;

(8) A LIST OF ALL OTHER FORMS OF DEVELOPMENT ASSISTANCE THAT THE APPLICANT IS REQUESTING FOR THE SPECIFIC PROJECT SITE AND THE NAME OF EACH STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY FROM WHICH THAT DEVELOPMENT ASSISTANCE IS BEING REQUESTED;

(9) A NARRATIVE, IF NECESSARY, DESCRIBING WHY THE DEVELOPMENT ASSISTANCE IS NEEDED AND HOW THE APPLICANT'S USE OF THE DEVELOPMENT ASSISTANCE MAY REDUCE EMPLOYMENT AT ANY SITE IN NEW YORK;

(10) A CERTIFICATION BY THE CHIEF OFFICER OF THE APPLICANT OR HIS OR HER AUTHORIZED DESIGNEE THAT THE INFORMATION CONTAINED IN THE APPLICATION SUBMITTED TO THE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY CONTAINS NO KNOWING MISREPRESENTATION OF MATERIAL FACTS UPON WHICH ELIGIBILITY FOR DEVELOPMENT ASSISTANCE IS BASED.

(B) EVERY STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY EITHER SHALL COMPLETE, OR SHALL REQUIRE THE APPLICANT TO COMPLETE, AN APPLICATION FORM THAT MEETS THE MINIMUM REQUIREMENTS AS PRESCRIBED IN THIS SECTION EACH TIME AN APPLICANT APPLIES FOR DEVELOPMENT ASSISTANCE COVERED BY THIS ARTICLE.

(C) THE DIVISION SHALL HAVE THE DISCRETION TO MODIFY ANY STANDARDIZED APPLICATION FOR STATE DEVELOPMENT ASSISTANCE REQUIRED UNDER PARAGRAPH (A) OF THIS SECTION FOR ANY GRANTS THAT ARE NOT GIVEN AS AN INCENTIVE TO A RECIPIENT BUSINESS ORGANIZATION.

S 1404. STATE DEVELOPMENT ASSISTANCE DISCLOSURE.

(A) BEGINNING FEBRUARY FIRST, TWO THOUSAND SEVENTEEN AND EACH YEAR THEREAFTER, EVERY STATE GRANTING BODY AND INDUSTRIAL DEVELOPMENT AGENCY

SHALL SUBMIT TO THE DIVISION COPIES OF ALL DEVELOPMENT ASSISTANCE AGREEMENTS THAT IT APPROVED IN THE PRIOR CALENDAR YEAR.

(B) FOR EACH DEVELOPMENT ASSISTANCE AGREEMENT FOR WHICH THE DATE OF ASSISTANCE HAS OCCURRED IN THE PRIOR CALENDAR YEAR, EACH RECIPIENT SHALL SUBMIT TO THE DIVISION A PROGRESS REPORT THAT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(1) THE APPLICATION TRACKING NUMBER;

(2) THE OFFICE MAILING ADDRESS, TELEPHONE NUMBER, AND THE NAME OF THE CHIEF OFFICER OF THE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY;

(3) THE OFFICE MAILING ADDRESS, TELEPHONE NUMBER, AND THE NAME OF THE CHIEF OFFICER OF THE APPLICANT OR AUTHORIZED DESIGNEE FOR THE SPECIFIC PROJECT SITE FOR WHICH THE DEVELOPMENT ASSISTANCE WAS APPROVED BY THE STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY;

(4) THE TYPE OF DEVELOPMENT ASSISTANCE PROGRAM AND VALUE OF ASSISTANCE THAT WAS APPROVED BY THE STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY;

(5) THE APPLICANT'S TOTAL NUMBER OF EMPLOYEES AT THE SPECIFIC PROJECT SITE ON THE DATE THAT THE APPLICATION WAS SUBMITTED TO THE STATE GRANTING BODY OR INDUSTRIAL DEVELOPMENT AGENCY AND THE APPLICANT'S TOTAL NUMBER OF EMPLOYEES AT THE SPECIFIC PROJECT SITE ON THE DATE OF THE REPORT, INCLUDING THE NUMBER OF FULL-TIME, PERMANENT JOBS, THE NUMBER OF PART-TIME JOBS, AND THE NUMBER OF TEMPORARY JOBS, AND A COMPUTATION OF THE GAIN OR LOSS OF JOBS IN EACH CATEGORY;

(6) THE NUMBER OF NEW EMPLOYEES AND RETAINED EMPLOYEES THAT THE APPLICANT STATED IN ITS DEVELOPMENT ASSISTANCE AGREEMENT, IF ANY, AND IF NOT, THEN IN ITS APPLICATION, WOULD BE CREATED BY THE DEVELOPMENT ASSISTANCE, BROKEN DOWN BY FULL-TIME, PERMANENT, PART-TIME, AND TEMPORARY;

(7) A SWORN DECLARATION OF WHETHER THE RECIPIENT IS IN COMPLIANCE WITH THE DEVELOPMENT ASSISTANCE AGREEMENT;

(8) A DETAILED LIST OF THE OCCUPATION OR JOB CLASSIFICATIONS AND NUMBER OF NEW EMPLOYEES OR RETAINED EMPLOYEES TO BE HIRED IN FULL-TIME, PERMANENT JOBS, A SCHEDULE OF ANTICIPATED STARTING DATES OF THE NEW HIRES AND THE ACTUAL AVERAGE WAGE BY OCCUPATION OR JOB CLASSIFICATION AND TOTAL PAYROLL TO BE CREATED AS A RESULT OF THE DEVELOPMENT ASSISTANCE;

(9) A NARRATIVE, IF NECESSARY, DESCRIBING HOW THE RECIPIENT'S USE OF THE DEVELOPMENT ASSISTANCE DURING THE REPORTING YEAR HAS REDUCED EMPLOYMENT AT ANY SITE IN NEW YORK; AND

(10) A CERTIFICATION BY THE CHIEF OFFICER OF THE APPLICANT OR HIS OR HER AUTHORIZED DESIGNEE THAT THE INFORMATION IN THE PROGRESS REPORT CONTAINS NO KNOWING MISREPRESENTATION OF MATERIAL FACTS UPON WHICH ELIGIBILITY FOR DEVELOPMENT ASSISTANCE IS BASED.

(C) THE STATE GRANTING BODY, INDUSTRIAL DEVELOPMENT AGENCY OR A SUCCESSOR AGENCY, SHALL HAVE FULL AUTHORITY TO VERIFY INFORMATION CONTAINED IN THE RECIPIENT'S PROGRESS REPORT, INCLUDING THE AUTHORITY TO INSPECT THE SPECIFIC PROJECT SITE AND INSPECT THE RECORDS OF THE RECIPIENT THAT ARE SUBJECT TO THE DEVELOPMENT ASSISTANCE AGREEMENT.

(D) BY JUNE FIRST, TWO THOUSAND SEVENTEEN AND BY JUNE FIRST OF EACH YEAR THEREAFTER, THE DIVISION SHALL COMPILE AND PUBLISH ALL DATA IN ALL OF THE PROGRESS REPORTS IN BOTH WRITTEN AND ELECTRONIC FORM.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.