

STATE OF NEW YORK

3364

2017-2018 Regular Sessions

IN SENATE

January 23, 2017

Introduced by Sens. KRUEGER, BAILEY, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law and the public authorities law, in relation to enacting the "corporate accountability for tax expenditures act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "corporate accountability for tax expenditures act".

3 § 2. The business corporation law is amended by adding a new article
4 14 to read as follows:

ARTICLE 14

CORPORATE ACCOUNTABILITY FOR TAX EXPENDITURES

Section 1401. Definitions.

8 1402. Unified economic development budget.

9 1403. Standardized applications for state development assist-
10 ance.

11 1404. State development assistance disclosure.

12 1405. Recapture.

§ 1401. Definitions.

14 As used in this article:

15 (a) "Base years" means the first two complete calendar years following
16 the effective date of a recipient receiving development assistance.

17 (b) "Date of assistance" means the commencement date of the assistance
18 agreement, which date triggers the period during which the recipient is
19 obligated to create or retain jobs and continue operations at the
20 specific project site.

21 (c) "Default" means that a recipient has not achieved its job
22 creation, job retention, or wage or benefit goals, as applicable, during
23 the prescribed period therefor.

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

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1 (d) "Department" means, unless otherwise noted, the department of
2 taxation and finance or any successor agency.

3 (e) "Development assistance" means (1) tax credits and tax exemptions
4 (other than given under tax increment financing) given as an incentive
5 to a recipient business organization pursuant to an initial certifi-
6 cation or an initial designation made by the department under article
7 eighteen-A or eighteen-B of the general municipal law;

8 (2) all successor and subsequent programs and tax credits designed to
9 promote large business relocations and expansions. "Development assist-
10 ance" does not include tax increment financing, assistance provided
11 under article eighteen-A or eighteen-B of the general municipal law
12 pursuant to local ordinance, participation loans, or financial trans-
13 actions through statutorily authorized financial intermediaries in
14 support of small business loans and investments or given in connection
15 with the development of affordable housing.

16 (f) "Development assistance agreement" means any agreement executed by
17 the state granting body and the recipient setting forth the terms and
18 conditions of development assistance to be provided to the recipient
19 consistent with the final application for development assistance,
20 including but not limited to the date of assistance, submitted to and
21 approved by the state granting body.

22 (g) "Full-time, permanent job" means a job in which the new employee
23 works for the recipient at a rate of at least thirty-five hours per
24 week.

25 (h) "New employee" means a full-time, permanent employee who repres-
26 ents a net increase in the number of the recipient's employees state-
27 wide. "New employee" includes an employee who previously filled a new
28 employee position with the recipient who was rehired or called back from
29 a layoff that occurs during or following the base years.

30 The term "new employee" does not include any of the following:

31 (1) An employee of the recipient who performs a job that was previous-
32 ly performed by another employee in this state, if that job existed in
33 this state for at least six months before hiring the employee.

34 (2) A child, grandchild, parent, or spouse, other than a spouse who is
35 legally separated from the individual, of any individual who has a
36 direct or indirect ownership interest of at least five percent in the
37 profits, capital, or value of any member of the recipient.

38 (i) "Part-time job" means a job in which the new employee works for
39 the recipient at a rate of less than thirty-five hours per week.

40 (j) "Recipient" means any business that receives economic development
41 assistance. A business is any corporation, limited liability company,
42 partnership, joint venture, association, sole proprietorship, or other
43 legally recognized entity.

44 (k) "Retained employee" means any employee defined as having a full-
45 time or full-time equivalent job preserved at a specific facility or
46 site, the continuance of which is threatened by a specific and demon-
47 strable threat, which shall be specified in the application for develop-
48 ment assistance.

49 (l) "Specific project site" means that distinct operational unit to
50 which any development assistance is applied.

51 (m) "State granting body" means the department, any other state
52 department or state agency that provides development assistance that has
53 reporting requirements under this article, and any successor agencies to
54 any of the preceding.

55 (n) "Temporary job" means a job in which the new employee is hired for
56 a specific duration of time or season.

1 (o) "Value of assistance" means the face value of any form of develop-
2 ment assistance.

3 § 1402. Unified economic development budget.

4 (a) For each state fiscal year ending on or after June thirtieth, two
5 thousand eighteen, the department shall submit an annual unified econom-
6 ic development budget to the governor, senate and assembly. The unified
7 economic development budget shall be due within three months after the
8 end of the fiscal year, and shall present all types of development
9 assistance granted during the prior fiscal year, including:

10 (1) The aggregate amount of uncollected or diverted state tax revenues
11 resulting from each type of development assistance provided pursuant to
12 law, as reported to the department on tax returns filed during the
13 fiscal year.

14 (2) All state development assistance.

15 (b) All data contained in the unified economic development budget
16 presented to the governor, senate and assembly shall be fully subject to
17 the freedom of information act.

18 (c) The department shall submit a report of the amounts in subpara-
19 graph one of paragraph (a) of this section to the department, which may
20 append such report to the unified economic development budget rather
21 than separately reporting such amounts.

22 § 1403. Standardized applications for state development assistance.

23 (a) All final applications submitted to the department or any other
24 state granting body requesting development assistance shall contain, at
25 a minimum:

26 (1) An application tracking number that is specific to both the state
27 granting agency and to each application.

28 (2) The office mailing address, office telephone number, and chief
29 officer of the granting body.

30 (3) The office mailing address, telephone number, and the name of the
31 chief officer of the applicant or authorized designee for the specific
32 project site for which development assistance is requested.

33 (4) The applicant's total number of employees at the specific project
34 site on the date that the application is submitted to the state granting
35 body, including the number of full-time, permanent jobs, the number of
36 part-time jobs, and the number of temporary jobs.

37 (5) The type of development assistance and value of assistance being
38 requested.

39 (6) The number of jobs to be created and retained or both created and
40 retained by the applicant as a result of the development assistance,
41 including the number of full-time, permanent jobs, the number of part-
42 time jobs, and the number of temporary jobs.

43 (7) A detailed list of the occupation or job classifications and
44 number of new employees or retained employees to be hired in full-time,
45 permanent jobs, a schedule of anticipated starting dates of the new
46 hires and the anticipated average wage by occupation or job classifica-
47 tion and total payroll to be created as a result of the development
48 assistance.

49 (8) A list of all other forms of development assistance that the
50 applicant is requesting for the specific project site and the name of
51 each state granting body from which that development assistance is being
52 requested.

53 (9) A narrative, if necessary, describing why the development assist-
54 ance is needed and how the applicant's use of the development assistance
55 may reduce employment at any site in New York.

1 (10) A certification by the chief officer of the applicant or his or
2 her authorized designee that the information contained in the applica-
3 tion submitted to the granting body contains no knowing misrepresen-
4 tation of material facts upon which eligibility for development assist-
5 ance is based.

6 (b) Every state granting body either shall complete, or shall require
7 the applicant to complete, an application form that meets the minimum
8 requirements as prescribed in this section each time an applicant
9 applies for development assistance covered by this article.

10 (c) The department shall have the discretion to modify any standard-
11 ized application for state development assistance required under para-
12 graph (a) of this section for any grants that are not given as an incen-
13 tive to a recipient business organization.

14 § 1404. State development assistance disclosure.

15 (a) Beginning February first, two thousand nineteen and each year
16 thereafter, every state granting body shall submit to the department
17 copies of all development assistance agreements that it approved in the
18 prior calendar year.

19 (b) For each development assistance agreement for which the date of
20 assistance has occurred in the prior calendar year, each recipient shall
21 submit to the department a progress report that shall include, but not
22 be limited to, the following:

23 (1) The application tracking number.

24 (2) The office mailing address, telephone number, and the name of the
25 chief officer of the granting body.

26 (3) The office mailing address, telephone number, and the name of the
27 chief officer of the applicant or authorized designee for the specific
28 project site for which the development assistance was approved by the
29 state granting body.

30 (4) The type of development assistance program and value of assistance
31 that was approved by the state granting body.

32 (5) The applicant's total number of employees at the specific project
33 site on the date that the application was submitted to the state grant-
34 ing body and the applicant's total number of employees at the specific
35 project site on the date of the report, including the number of full-
36 time, permanent jobs, the number of part-time jobs, and the number of
37 temporary jobs, and a computation of the gain or loss of jobs in each
38 category.

39 (6) The number of new employees and retained employees the applicant
40 stated in its development assistance agreement, if any, if not, then in
41 its application, would be created by the development assistance broken
42 down by full-time, permanent, part-time, and temporary.

43 (7) A sworn declaration of whether the recipient is in compliance with
44 the development assistance agreement.

45 (8) A detailed list of the occupation or job classifications and
46 number of new employees or retained employees to be hired in full-time,
47 permanent jobs, a schedule of anticipated starting dates of the new
48 hires and the actual average wage by occupation or job classification
49 and total payroll to be created as a result of the development assist-
50 ance.

51 (9) A narrative, if necessary, describing how the recipient's use of
52 the development assistance during the reporting year has reduced employ-
53 ment at any site in New York.

54 (10) A certification by the chief officer of the applicant or his or
55 her authorized designee that the information in the progress report

1 contains no knowing misrepresentation of material facts upon which
2 eligibility for development assistance is based.

3 (c) The state granting body, or a successor agency, shall have full
4 authority to verify information contained in the recipient's progress
5 report, including the authority to inspect the specific project site and
6 inspect the records of the recipient that are subject to the development
7 assistance agreement.

8 (d) By June first, two thousand nineteen and by June first of each
9 year thereafter, the department shall compile and publish all data in
10 all of the progress reports in both written and electronic form.

11 (e) If a recipient of development assistance fails to comply with
12 paragraph (b) of this section, the department shall, within twenty work-
13 ing days after the reporting submittal deadlines set forth in such para-
14 graph (b), suspend within thirty-three working days any current develop-
15 ment assistance to such recipient under its control, and shall be
16 prohibited from completing any current or providing any future develop-
17 ment assistance until it receives proof that such recipient has come
18 into compliance with the requirements of paragraph (b) of this section.

19 (f) The department shall have the discretion to modify the information
20 required in the progress report required under paragraph (b) of this
21 section consistent with the disclosure purpose of this section for any
22 grants that are not given as an incentive to a recipient business organ-
23 ization.

24 § 1405. Recapture.

25 (a) All development assistance agreements shall contain, at a minimum,
26 the following recapture provisions:

27 (1) The recipient must (i) make the level of capital investment in the
28 economic development project specified in the development assistance
29 agreement; (ii) create or retain, or both, the requisite number of jobs,
30 paying not less than specified wages for the created and retained jobs,
31 within and for the duration of the time period specified in the develop-
32 ment assistance programs and the development assistance agreement.

33 (2) If the recipient fails to create or retain the requisite number of
34 jobs within and for the time period specified, in the development
35 assistance programs and the development assistance agreement, the recip-
36 ient shall be deemed to no longer qualify for the state economic assist-
37 ance and the applicable recapture provisions shall take effect.

38 (3) If the recipient receives state economic assistance in the form of
39 an empire zone designation pursuant to article eighteen-B of the general
40 municipal law or an industrial development zone designation pursuant to
41 article eighteen-A of the general municipal law and the recipient fails
42 to create or retain the requisite number of jobs, as determined by the
43 development assistance agreement within the requisite period of time,
44 the recipient shall be required to pay to the state the full amount of
45 the state tax exemption that it received as a result of such desig-
46 nation.

47 (4) If the recipient receives a grant or loan pursuant to an empire
48 zone designation pursuant to article eighteen-B of the general municipal
49 law or an industrial development zone designation pursuant to article
50 eighteen-A of the general municipal law and the recipient fails to
51 create or retain the requisite number of jobs for the requisite time
52 period, as provided in the development assistance agreement, the recipi-
53 ent shall be required to repay to the state a pro rata amount of the
54 grant; that amount shall reflect the percentage of the deficiency
55 between the requisite number of jobs to be created or retained by the
56 recipient and the actual number of such jobs in existence as of the date

1 the department determines the recipient is in breach of the job creation
2 or retention covenants contained in the development assistance agree-
3 ment. If the recipient of development assistance under such designations
4 ceases operations at the specific project site during a five year period
5 commencing on the date of assistance, the recipient shall be required to
6 repay the entire amount of the grant or to accelerate repayment of the
7 loan back to the state.

8 (5) If the recipient receives a tax credit under article eighteen-A or
9 eighteen-B of the general municipal law, the development assistance
10 agreement shall provide that (i) if the number of new or retained
11 employees falls below the requisite number set forth in the development
12 assistance agreement, the allowance of the credit shall be automatically
13 suspended until the number of new and retained employees equals or
14 exceeds the requisite number in the development assistance agreement;
15 (ii) if the recipient discontinues operations at the specific project
16 site during the first five years of the term of the development assist-
17 ance agreement, the recipient shall forfeit all credits taken by the
18 recipient during such five year period; and (iii) in the event of a
19 revocation or suspension of the credit, the department shall initiate
20 proceedings against the recipient to recover wrongfully exempted state
21 income taxes and the recipient shall promptly repay to the department
22 any wrongfully exempted state income taxes. The forfeited amount of
23 credits shall be deemed assessed on the date the department initiates
24 proceedings against such recipient and the recipient shall promptly
25 repay to the department any wrongfully exempted state income taxes.

26 (b) The commissioner of taxation and finance may elect to waive
27 enforcement of any contractual provision arising out of the development
28 assistance agreement required by this article based on a finding that
29 the waiver is necessary to avert an imminent and demonstrable hardship
30 to the recipient that may result in such recipient's insolvency or
31 discharge of workers. If a waiver is granted, the recipient shall agree
32 to a contractual modification, including recapture provisions, to the
33 development assistance agreement. The existence of any waiver granted
34 pursuant to paragraph (c) of this section, the date of the granting of
35 such waiver, and a brief summary of the reasons supporting the granting
36 of such waiver shall be disclosed consistent with the provisions of this
37 section.

38 (c) Beginning June first, two thousand eighteen, the department shall
39 annually compile a report on the outcomes and effectiveness of recapture
40 provisions by program, including but not limited to: (i) the total
41 number of companies that receive development assistance as defined in
42 this article; (ii) the total number of recipients in violation of devel-
43 opment agreements with the department; (iii) the total number of
44 completed recapture efforts; (iv) the total number of recapture efforts
45 initiated; and (v) the number of waivers granted. Such report shall be
46 disclosed consistent with the provisions of section fourteen hundred
47 four of this article.

48 § 3. The public authorities law is amended by adding a new article
49 10-E to read as follows:

ARTICLE 10-E

CORPORATE ACCOUNTABILITY FOR TAX EXPENDITURES

Section 3980. Definitions.

53 3981. Unified economic development budget.

54 3982. Standardized applications for state development assist-
55 ance.

56 3983. State development assistance disclosure.

1 3984. Recapture.

2 § 3980. Definitions. As used in this article:

3 1. "Base years" means the first two complete calendar years following
4 the effective date of a recipient receiving development assistance.

5 2. "Date of assistance" means the commencement date of the assistance
6 agreement, which date triggers the period during which the recipient is
7 obligated to create or retain jobs and continue operations at the
8 specific project site.

9 3. "Default" means that a recipient has not achieved its job creation,
10 job retention, or wage or benefit goals, as applicable, during the
11 prescribed period therefor.

12 4. "Department" means, unless otherwise noted, the department of taxa-
13 tion and finance or any successor agency.

14 5. "Development assistance" means (a) tax credits and tax exemptions
15 (other than given under tax increment financing) given as an incentive
16 to a recipient public authority pursuant to an initial certification or
17 an initial designation made by the department under article eighteen-A
18 or eighteen-B of the general municipal law;

19 (b) all successor and subsequent programs and tax credits designed to
20 promote large business relocations and expansions. "Development assist-
21 ance" does not include tax increment financing, assistance provided
22 under article eighteen-A or eighteen-B of the general municipal law
23 pursuant to local ordinance, participation loans, or financial trans-
24 actions through statutorily authorized financial intermediaries in
25 support of small business loans and investments or given in connection
26 with the development of affordable housing.

27 6. "Development assistance agreement" means any agreement executed by
28 the state granting body and the recipient setting forth the terms and
29 conditions of development assistance to be provided to the recipient
30 consistent with the final application for development assistance,
31 including but not limited to the date of assistance, submitted to and
32 approved by the state granting body.

33 7. "Full-time, permanent job" means a job in which the new employee
34 works for the recipient at a rate of at least thirty-five hours per
35 week.

36 8. "New employee" means a full-time, permanent employee who repres-
37 ents a net increase in the number of the recipient's employees state-
38 wide. "New employee" includes an employee who previously filled a new
39 employee position with the recipient who was rehired or called back from
40 a layoff that occurs during or following the base years.

41 The term "new employee" does not include any of the following:

42 (a) An employee of the recipient who performs a job that was previous-
43 ly performed by another employee in this state, if that job existed in
44 this state for at least six months before hiring the employee.

45 (b) A child, grandchild, parent, or spouse, other than a spouse who is
46 legally separated from the individual, of any individual who has a
47 direct or indirect ownership interest of at least five percent in the
48 profits, capital, or value of any member of the recipient.

49 9. "Part-time job" means a job in which the new employee works for the
50 recipient at a rate of less than thirty-five hours per week.

51 10. "Recipient" means any public authority created pursuant to this
52 chapter that receives economic development assistance or other legally
53 recognized entity of such a public authority.

54 11. "Retained employee" means any employee defined as having a full-
55 time or full-time equivalent job preserved at a specific facility or
56 site, the continuance of which is threatened by a specific and demon-

1 strable threat, which shall be specified in the application for develop-
2 ment assistance.

3 12. "Specific project site" means that distinct operational unit to
4 which any development assistance is applied.

5 13. "State granting body" means the department, any other state
6 department or state agency that provides development assistance that has
7 reporting requirements under this article, and any successor agencies to
8 any of the preceding.

9 14. "Temporary job" means a job in which the new employee is hired for
10 a specific duration of time or season.

11 15. "Value of assistance" means the face value of any form of develop-
12 ment assistance.

13 § 3981. Unified economic development budget. 1. For each state fiscal
14 year ending on or after June thirtieth, two thousand eighteen, the
15 department shall submit an annual unified economic development budget to
16 the governor, senate and assembly. The unified economic development
17 budget shall be due within three months after the end of the fiscal
18 year, and shall present all types of development assistance granted
19 during the prior fiscal year, including:

20 (a) The aggregate amount of uncollected or diverted state tax revenues
21 resulting from each type of development assistance provided pursuant to
22 law, as reported to the department on tax returns filed during the
23 fiscal year.

24 (b) All state development assistance.

25 2. All data contained in the unified economic development budget
26 presented to the governor, senate and assembly shall be fully subject to
27 the freedom of information act.

28 3. The department shall submit a report of the amounts in paragraph
29 (a) of subdivision one of this section to the department, which may
30 append such report to the unified economic development budget rather
31 than separately reporting such amounts.

32 § 3982. Standardized applications for state development assistance.
33 1. All final applications submitted to the department or any other state
34 granting body requesting development assistance shall contain, at a
35 minimum:

36 (a) An application tracking number that is specific to both the state
37 granting agency and to each application.

38 (b) The office mailing address, office telephone number, and chief
39 officer of the granting body.

40 (c) The office mailing address, telephone number, and the name of the
41 chief officer of the applicant or authorized designee for the specific
42 project site for which development assistance is requested.

43 (d) The applicant's total number of employees at the specific project
44 site on the date that the application is submitted to the state granting
45 body, including the number of full-time, permanent jobs, the number of
46 part-time jobs, and the number of temporary jobs.

47 (e) The type of development assistance and value of assistance being
48 requested.

49 (f) The number of jobs to be created and retained or both created and
50 retained by the applicant as a result of the development assistance,
51 including the number of full-time, permanent jobs, the number of part-
52 time jobs, and the number of temporary jobs.

53 (g) A detailed list of the occupation or job classifications and
54 number of new employees or retained employees to be hired in full-time,
55 permanent jobs, a schedule of anticipated starting dates of the new
56 hires and the anticipated average wage by occupation or job classifica-

1 tion and total payroll to be created as a result of the development
2 assistance.

3 (h) A list of all other forms of development assistance that the
4 applicant is requesting for the specific project site and the name of
5 each state granting body from which that development assistance is being
6 requested.

7 (i) A narrative, if necessary, describing why the development assist-
8 ance is needed and how the applicant's use of the development assistance
9 may reduce employment at any site in New York.

10 (j) A certification by the chief officer of the applicant or his or
11 her authorized designee that the information contained in the applica-
12 tion submitted to the granting body contains no knowing misrepresen-
13 tation of material facts upon which eligibility for development assist-
14 ance is based.

15 2. Every state granting body either shall complete, or shall require
16 the applicant to complete, an application form that meets the minimum
17 requirements as prescribed in this section each time an applicant
18 applies for development assistance covered by this article.

19 3. The department shall have the discretion to modify any standardized
20 application for state development assistance required under subdivision
21 one of this section for any grants that are not given as an incentive to
22 a recipient public authority.

23 § 3983. State development assistance disclosure. 1. Beginning Febru-
24 ary first, two thousand nineteen and each year thereafter, every state
25 granting body shall submit to the department copies of all development
26 assistance agreements that it approved in the prior calendar year.

27 2. For each development assistance agreement for which the date of
28 assistance has occurred in the prior calendar year, each recipient shall
29 submit to the department a progress report that shall include, but not
30 be limited to, the following:

31 (a) The application tracking number.

32 (b) The office mailing address, telephone number, and the name of the
33 chief officer of the granting body.

34 (c) The office mailing address, telephone number, and the name of the
35 chief officer of the applicant or authorized designee for the specific
36 project site for which the development assistance was approved by the
37 state granting body.

38 (d) The type of development assistance program and value of assistance
39 that was approved by the state granting body.

40 (e) The applicant's total number of employees at the specific project
41 site on the date that the application was submitted to the state grant-
42 ing body and the applicant's total number of employees at the specific
43 project site on the date of the report, including the number of full-
44 time, permanent jobs, the number of part-time jobs, and the number of
45 temporary jobs, and a computation of the gain or loss of jobs in each
46 category.

47 (f) The number of new employees and retained employees the applicant
48 stated in its development assistance agreement, if any, if not, then in
49 its application, would be created by the development assistance broken
50 down by full-time, permanent, part-time, and temporary.

51 (g) A sworn declaration of whether the recipient is in compliance with
52 the development assistance agreement.

53 (h) A detailed list of the occupation or job classifications and
54 number of new employees or retained employees to be hired in full-time,
55 permanent jobs, a schedule of anticipated starting dates of the new
56 hires and the actual average wage by occupation or job classification

1 and total payroll to be created as a result of the development assist-
2 ance.

3 (i) A narrative, if necessary, describing how the recipient's use of
4 the development assistance during the reporting year has reduced employ-
5 ment at any site in New York.

6 (j) A certification by the chief officer of the applicant or his or
7 her authorized designee that the information in the progress report
8 contains no knowing misrepresentation of material facts upon which
9 eligibility for development assistance is based.

10 3. The state granting body, or a successor agency, shall have full
11 authority to verify information contained in the recipient's progress
12 report, including the authority to inspect the specific project site and
13 inspect the records of the recipient that are subject to the development
14 assistance agreement.

15 4. By June first, two thousand nineteen and by June first of each year
16 thereafter, the department shall compile and publish all data in all of
17 the progress reports in both written and electronic form.

18 5. If a recipient of development assistance fails to comply with
19 subdivision two of this section, the department shall, within twenty
20 working days after the reporting submittal deadlines set forth in such
21 subdivision two, suspend within thirty-three working days any current
22 development assistance to such recipient under its control, and shall be
23 prohibited from completing any current or providing any future develop-
24 ment assistance until it receives proof that such recipient has come
25 into compliance with the requirements of subdivision two of this
26 section.

27 6. The department shall have the discretion to modify the information
28 required in the progress report required under subdivision two of this
29 section consistent with the disclosure purpose of this section for any
30 grants that are not given as an incentive to a recipient public authori-
31 ty.

32 § 3984. Recapture. 1. All development assistance agreements shall
33 contain, at a minimum, the following recapture provisions:

34 (a) The recipient must (i) make the level of capital investment in the
35 economic development project specified in the development assistance
36 agreement; (ii) create or retain, or both, the requisite number of jobs,
37 paying not less than specified wages for the created and retained jobs,
38 within and for the duration of the time period specified in the develop-
39 ment assistance programs and the development assistance agreement.

40 (b) If the recipient fails to create or retain the requisite number of
41 jobs within and for the time period specified, in the development
42 assistance programs and the development assistance agreement, the recip-
43 ient shall be deemed to no longer qualify for the state economic assist-
44 ance and the applicable recapture provisions shall take effect.

45 (c) If the recipient receives state economic assistance in the form of
46 an empire zone designation pursuant to article eighteen-B of the general
47 municipal law or an industrial development zone designation pursuant to
48 article eighteen-A of the general municipal law and the recipient fails
49 to create or retain the requisite number of jobs, as determined by the
50 development assistance agreement within the requisite period of time,
51 the recipient shall be required to pay to the state the full amount of
52 the state tax exemption that it received as a result of such desig-
53 nation.

54 (d) If the recipient receives a grant or loan pursuant to an empire
55 zone designation pursuant to article eighteen-B of the general municipal
56 law or an industrial development zone designation pursuant to article

1 eighteen-A of the general municipal law and the recipient fails to
2 create or retain the requisite number of jobs for the requisite time
3 period, as provided in the development assistance agreement, the recipi-
4 ent shall be required to repay to the state a pro rata amount of the
5 grant; that amount shall reflect the percentage of the deficiency
6 between the requisite number of jobs to be created or retained by the
7 recipient and the actual number of such jobs in existence as of the date
8 the department determines the recipient is in breach of the job creation
9 or retention covenants contained in the development assistance agree-
10 ment. If the recipient of development assistance under such designations
11 ceases operations at the specific project site during a five year period
12 commencing on the date of assistance, the recipient shall be required to
13 repay the entire amount of the grant or to accelerate repayment of the
14 loan back to the state.

15 (e) If the recipient receives a tax credit under article eighteen-A or
16 eighteen-B of the general municipal law, the development assistance
17 agreement shall provide that (i) if the number of new or retained
18 employees falls below the requisite number set forth in the development
19 assistance agreement, the allowance of the credit shall be automatically
20 suspended until the number of new and retained employees equals or
21 exceeds the requisite number in the development assistance agreement;
22 (ii) if the recipient discontinues operations at the specific project
23 site during the first five years of the term of the development assist-
24 ance agreement, the recipient shall forfeit all credits taken by the
25 recipient during such five year period; and (iii) in the event of a
26 revocation or suspension of the credit, the department shall initiate
27 proceedings against the recipient to recover wrongfully exempted state
28 income taxes and the recipient shall promptly repay to the department
29 any wrongfully exempted state income taxes. The forfeited amount of
30 credits shall be deemed assessed on the date the department initiates
31 proceedings against such recipient and the recipient shall promptly
32 repay to the department any wrongfully exempted state income taxes.

33 2. The commissioner of taxation and finance may elect to waive
34 enforcement of any contractual provision arising out of the development
35 assistance agreement required by this article based on a finding that
36 the waiver is necessary to avert an imminent and demonstrable hardship
37 to the recipient that may result in such recipient's insolvency or
38 discharge of workers. If a waiver is granted, the recipient shall agree
39 to a contractual modification, including recapture provisions, to the
40 development assistance agreement. The existence of any waiver granted
41 pursuant to subdivision three of this section, the date of the granting
42 of such waiver, and a brief summary of the reasons supporting the grant-
43 ing of such waiver shall be disclosed consistent with the provisions of
44 this section.

45 3. Beginning June first, two thousand eighteen, the department shall
46 annually compile a report on the outcomes and effectiveness of recapture
47 provisions by program, including but not limited to: (a) the total
48 number of authorities that receive development assistance as defined in
49 this article; (b) the total number of recipients in violation of devel-
50 opment agreements with the department; (c) the total number of completed
51 recapture efforts; (d) the total number of recapture efforts initiated;
52 and (e) the number of waivers granted. Such report shall be disclosed
53 consistent with the provisions of section thirty-nine hundred eighty-
54 three of this article.

55 § 4. This act shall take effect on the one hundred twentieth day after
56 it shall have become a law and shall apply to contracts and agreements

1 entered into on or after such effective date. Effective immediately,
2 the addition, amendment and/or repeal of any rule or regulation neces-
3 sary for the implementation of this act on its effective date are
4 authorized to be made on or before such effective date.