

STATE OF NEW YORK

3364--A

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 -- 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (m) "State granting body" means the department, any other state
55 department or state agency that provides development assistance that has

1 reporting requirements under this article, and any successor agencies to
2 any of the preceding.

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

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

7 § 1402. Unified economic development budget.

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

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

18 (2) All state development assistance.

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

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

26 § 1403. Standardized applications for state development assistance.

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

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

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

34 (3) 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 development assistance is requested.

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

41 (5) The type of development assistance and value of assistance being
42 requested.

43 (6) The number of jobs to be created and retained or both created and
44 retained by the applicant as a result of the development assistance,
45 including the number of full-time, permanent jobs, the number of part-
46 time jobs, and the number of temporary jobs.

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

53 (8) A list of all other forms of development assistance that the
54 applicant is requesting for the specific project site and the name of
55 each state granting body from which that development assistance is being
56 requested.

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

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

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

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

17 § 1404. State development assistance disclosure.

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

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

26 (1) The application tracking number.

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

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

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

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

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

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

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

54 (9) A narrative, if necessary, describing how the recipient's use of
55 the development assistance during the reporting year has reduced employ-
56 ment 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 in the progress report
3 contains no knowing misrepresentation of material facts upon which
4 eligibility for development assistance is based.

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

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

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

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

26 § 1405. Recapture.

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

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

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

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

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

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

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

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

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

50 § 3. The public authorities law is amended by adding a new article
51 10-E to read as follows:

52 ARTICLE 10-E

53 CORPORATE ACCOUNTABILITY FOR TAX EXPENDITURES

54 Section 3980. Definitions.

55 3981. Unified economic development budget.

3982. Standardized applications for state development assistance.

3983. State development assistance disclosure.

3984. Recapture.

§ 3980. Definitions. As used in this article:

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

2. "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.

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

4. "Department" means, unless otherwise noted, the department of taxation and finance or any successor agency.

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

(b) all successor and subsequent programs and tax credits designed to promote large business relocations and expansions. "Development assistance" does not include tax increment financing, assistance provided by industrial development agencies under article eighteen-A or eighteen-B of the general municipal law pursuant to local ordinance, participation loans, or financial transactions through statutorily authorized financial intermediaries in support of small business loans and investments or given in connection with the development of affordable housing.

6. "Development assistance agreement" means any agreement executed by the state granting body 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.

7. "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.

8. "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:

(a) 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.

(b) 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.

9. "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.

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

11. "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.

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

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

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

15. "Value of assistance" means the face value of any form of development assistance.

§ 3981. Unified economic development budget. 1. For each state fiscal year ending on or after June thirtieth, two thousand eighteen, the department 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:

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

(b) All state development assistance.

2. 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.

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

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

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

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

(c) 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.

(d) 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, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs.

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

(f) 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.

1 (g) A detailed list of the occupation or job classifications and
2 number of new employees or retained employees to be hired in full-time,
3 permanent jobs, a schedule of anticipated starting dates of the new
4 hires and the anticipated average wage by occupation or job classifica-
5 tion and total payroll to be created as a result of the development
6 assistance.

7 (h) A list of all other forms of development assistance that the
8 applicant is requesting for the specific project site and the name of
9 each state granting body from which that development assistance is being
10 requested.

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

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

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

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

27 § 3983. State development assistance disclosure. 1. Beginning Febru-
28 ary first, two thousand nineteen and each year thereafter, every state
29 granting body shall submit to the department copies of all development
30 assistance agreements that it approved in the prior calendar year.

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

35 (a) The application tracking number.

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

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

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

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

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

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

1 (h) A detailed list of the occupation or job classifications and
2 number of new employees or retained employees to be hired in full-time,
3 permanent jobs, a schedule of anticipated starting dates of the new
4 hires and the actual average wage by occupation or job classification
5 and total payroll to be created as a result of the development assist-
6 ance.

7 (i) A narrative, if necessary, describing how the recipient's use of
8 the development assistance during the reporting year has reduced employ-
9 ment 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 in the progress report
12 contains no knowing misrepresentation of material facts upon which
13 eligibility for development assistance is based.

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

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

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

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

36 § 3984. Recapture. 1. All development assistance agreements shall
37 contain, at a minimum, the following recapture provisions:

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

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

49 (c) If the recipient receives state economic assistance in the form of
50 an empire zone designation pursuant to article eighteen-B of the general
51 municipal law or an industrial development zone designation pursuant to
52 article eighteen-A of the general municipal law and the recipient fails
53 to create or retain the requisite number of jobs, as determined by the
54 development assistance agreement within the requisite period of time,
55 the recipient shall be required to pay to the state the full amount of

1 the state tax exemption that it received as a result of such designation.
2

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

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

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

50 3. Beginning June first, two thousand eighteen, the department shall
51 annually compile a report on the outcomes and effectiveness of recapture
52 provisions by program, including but not limited to: (a) the total
53 number of authorities that receive development assistance as defined in
54 this article; (b) the total number of recipients in violation of devel-
55 opment agreements with the department; (c) the total number of completed
56 recapture efforts; (d) the total number of recapture efforts initiated;

1 and (e) the number of waivers granted. Such report shall be disclosed
2 consistent with the provisions of section thirty-nine hundred eighty-
3 three of this article.

4 § 4. This act shall take effect on the one hundred twentieth day after
5 it shall have become a law and shall apply to contracts and agreements
6 entered into on or after such effective date. Effective immediately,
7 the addition, amendment and/or repeal of any rule or regulation neces-
8 sary for the implementation of this act on its effective date are
9 authorized to be made on or before such effective date.