

STATE OF NEW YORK

7096

2019-2020 Regular Sessions

IN ASSEMBLY

April 5, 2019

Introduced by M. of A. KIM, SOLAGES, EPSTEIN, MONTESANO, D'URSO, HEVESI,
BURKE -- read once and referred to the Committee on Economic Develop-
ment

AN ACT to amend the economic development law, in relation to the econom-
ic transparency and accountability act

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

1 Section 1. The economic development law is amended by adding a new
2 article 23 to read as follows:

ARTICLE 23

ECONOMIC TRANSPARENCY AND ACCOUNTABILITY ACT

Section 450. Short title.

451. Definitions.

452. Development subsidy cap.

453. Annual corporate performance reports.

454. Annual report compilations.

455. Unified reporting of tax reductions and abatements.

456. Job creation standards.

457. Job quality standards.

458. Taxpayer protection.

459. Public records.

460. Private enforcement action.

461. Unified economic development budget.

462. Severability.

18 § 450. Short title. This act shall be known as and may be cited as the
19 "economic transparency and accountability act".

20 § 451. Definitions. As used in this article, the following terms shall
21 have the following meanings:

22 1. "Corporate parent" means any person, association, corporation,
23 joint venture, partnership, or other entity that owns or controls fifty
24 percent or more of a recipient corporation.

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

LBD10412-03-9

2. "Date of subsidy" means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation provided, however, that where the subsidy is for the installation of new equipment, such date shall be the date the corporation puts the equipment into service and provided, further, that where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

3. "Development subsidy" means any expenditure of public funds with a value of at least twenty-five thousand dollars for the purpose of stimulating economic development within the state including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

4. "Full-time job" means a job in which an individual is employed by a recipient corporation for at least thirty-five hours per week.

5. "Granting body" means any agency, board, office, public-private partnership, public benefit corporation or authority of the state or a local government unit that provides a development subsidy.

6. "Local government unit" means an agency, board, commission, office, public benefit corporation, or public authority of a political subdivision of the state.

7. "Part-time job" means a job in which an individual is employed by a recipient corporation for less than thirty-five hours per week.

8. "Project site" means the site of a project for which any development subsidy is provided, as specified by the street address, name of locality, and zip code.

9. "Property-taxing entity" means any entity which levies taxes upon real or personal property.

10. "Recipient corporation" means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

11. "State agency" means any state board, body, bureau commission, council, department, public authority, public corporation, division, office, or other governmental entity performing a governmental or proprietary function for the state.

12. "Temporary job" means a job in which an individual is hired for a season or for a limited period of time.

§ 452. Development subsidy cap. Notwithstanding any other law, no granting body shall provide a development subsidy to a recipient corporation in excess of six thousand dollars for each new full-time job created by the recipient corporation. Such new full-time jobs shall meet the requirements set forth in section four hundred fifty-seven of this article.

§ 453. Annual corporate performance reports. 1. Each recipient corporation shall file a disclosure report with the department and granting body no later than February first of each year. The reporting form shall be in a form and manner as prescribed by the commissioner and shall include the following information:

(a) the name, street and mailing addresses, phone number, chief officer of the recipient corporation, such recipient corporation's North American Industry Classification System (NAICS) code and its dun & bradstreet number;

(b) the project street address where the subsidized activity is taking place if it is different than the address specified in paragraph (a) of this subdivision;

1 (c) a summary of the number of jobs required to be created by the
2 recipient corporation by the terms of the development subsidy deal, and
3 the number of actual jobs created or lost at such recipient corporation
4 as of December thirty-first of the previous year;

5 (d) whether health care insurance coverage is provided to the employ-
6 ees at the project site, and if so, the share of the policy premiums
7 paid by the recipient corporation;

8 (e) the total employment in the state of the recipient corporation's
9 corporate parent on December thirty-first of the two previous years
10 broken down by full-time, part-time and temporary jobs;

11 (f) a summary of capital investment required by the terms of the
12 development subsidy deal, if any, and actual capital investment made as
13 of December thirty-first of the previous year;

14 (g) a statement as to whether the subsidized project has, during the
15 previous calendar year, resulted in reduced employment at any other site
16 controlled by the recipient corporation or its corporate parent, inside
17 or outside the state as a result of automation, merger, acquisition,
18 corporate restructuring, relocation, or other business activity;

19 (h) a statement summarizing any instance, during the previous calendar
20 year, in which the recipient corporation, or a corporate parent or
21 subsidiary entity, was determined by a state agency to have violated any
22 federal, state or local law or regulation relating to environmental
23 protection, taxation, labor standards, or employment discrimination, or
24 was notified that an investigation of a possible violation had been
25 initiated; and

26 (i) a signed certification by the chief officer of the recipient
27 corporation as to the accuracy of the progress report.

28 2. Recipient corporations shall file such annual performance reports
29 for the duration of the development subsidy, or for not less than five
30 years, whichever period is greater.

31 3. The granting body shall have access at all reasonable times to the
32 project site and the records of the recipient corporation to monitor the
33 project and verify the annual corporate performance reports.

34 4. A recipient corporation that fails to provide the department and
35 the granting body with a completed annual corporate performance report
36 on time shall be subject to a fine of not less than five hundred dollars
37 per day to commence within ten business days after the February first
38 deadline, and of not less than one thousand dollars per day to commence
39 twenty days after such deadline.

40 5. A recipient corporation that fails to provide the granting body
41 access to the project site at a reasonable time shall be subject to a
42 fine of one thousand dollars per day commencing with the day access is
43 first denied.

44 § 454. Annual report compilations. 1. The granting body shall publish
45 conspicuously on their respective websites a compilation of the annual
46 corporate performance reports no later than April first of each year.
47 The granting body shall also post Portable Document Formats (PDF) of key
48 documents relating to the development subsidy award on their respective
49 websites.

50 2. Such report shall contain all of the data from the annual corporate
51 performance reports both in a searchable database and as a spreadsheet
52 that can be downloaded in its entirety. When a new report is posted,
53 earlier versions of the report shall remain available on the website.

54 3. Such report shall contain the granting body's determination of
55 whether the corporate recipient has met its obligations for job
56 creation, wages, and benefits as required by the terms of the develop-

1 ment subsidy. If the granting body has previously determined that the
2 corporate recipient has achieved its obligations, the report shall
3 contain the granting body's determination of whether the corporate
4 recipient has maintained its achieved obligations.

5 4. If the granting body determines that the corporate recipient has
6 failed to achieve its obligations for job creation, wages and benefits
7 as required by the terms of the development subsidy, or if the granting
8 body determines that the recipient corporation has failed to maintain
9 its achieved obligations, the report shall also state what penalty or
10 penalties the granting body has imposed upon the corporate recipient.

11 5. The report shall also include the granting body's verification that
12 the recipient corporation's corporate parent has maintained at least
13 ninety percent of its employment in the state since December thirty-
14 first of the year the development subsidy was granted. If the granting
15 body determines that the corporate recipient's corporate parent has
16 failed to maintain such a level of employment, the report shall include
17 whatever penalty or penalties the granting body has imposed upon the
18 corporate recipient.

19 § 455. Unified reporting of tax reductions and abatements. 1. Each
20 property-taxing entity shall annually submit a report to the state
21 department of taxation and finance regarding any real property in the
22 entity's jurisdiction that has received a property tax abatement, cred-
23 it, reduction or exemption during the state fiscal year, including
24 payments in lieu of taxes. Such report shall contain information includ-
25 ing, but not limited to:

26 (a) the name of the property owner;
27 (b) the address of the property;
28 (c) the start and end dates of the property tax abatement, credit,
29 reduction or exemption; and
30 (d) for each tax year, the effective amount of the tax abatement,
31 credit, reduction or exemption by both percentage rate and by dollar
32 value, including, as applicable, payments in lieu of taxes.

33 2. Each property-taxing entity shall also submit a report to the
34 department of taxation and finance regarding any real property that is
35 publicly owned and leased to a private entity, where such private entity
36 is exempt from real property taxes. Such report shall contain informa-
37 tion including, but not limited to:

38 (a) the name of the property owner;
39 (b) the address of the property;
40 (c) the start and end dates of the property tax exemption; and
41 (d) for each tax year, the effective amount of the tax exemption by
42 both percentage rate and by dollar value, including, as applicable,
43 payments in lieu of taxes.

44 3. Each property-taxing entity shall also submit a report to the
45 department of taxation and finance that sets forth the total property
46 tax revenue lost during the tax year as a result of all property tax
47 abatements and reductions in the entity's jurisdiction.

48 4. The reports required under subdivisions one, two, and three of this
49 section shall be submitted electronically to the department of taxation
50 and finance in such form and manner as prescribed by the commissioner of
51 taxation and finance, and shall be submitted no later than three months
52 after the end of the tax year.

53 5. The department of taxation and finance shall annually compile and
54 publish on its website all of the data contained in the reports required
55 by subdivisions one, two, and three of this section, both in a searcha-

1 ble database and as a spreadsheet that can be downloaded in its entire-
2 ty, no later than six months after the end of the tax year.

3 6. If a property-taxing entity fails to submit its reports to the
4 department of taxation and finance within the prescribed time pursuant
5 to subdivision four of this section, such department shall notify the
6 state comptroller, whereupon the comptroller shall withhold payments of
7 all state monies due to such delinquent property-taxing entity until the
8 entity files its reports with such department.

9 § 456. Job creation standards. 1. The recipient corporation shall
10 create at least one new full-time job in the state for every six thou-
11 sand dollars of assistance such recipient corporation receives for a
12 project pursuant to section four hundred fifty-two of this article.

13 2. The recipient corporation's obligation to maintain such newly
14 created jobs in the state shall remain in effect for the duration of the
15 development subsidy, or for five years, whichever is longer.

16 3. The job creation requirements provided in this section shall be
17 used to determine whether a recipient corporation is liable for a devel-
18 opment subsidy recapture or rescission.

19 4. A job shall not qualify as a new job where the same job previously
20 existed in another facility controlled by the recipient corporation in
21 the United States.

22 § 457. Job quality standards. In order for a job to qualify as a new
23 full-time job it shall include the following:

24 1. for wages for project sites located in a metropolitan statistical
25 area, as defined by the United States office of management and budget,
26 the average hourly wage paid to non-managerial employees at such project
27 site shall be no less than one hundred percent of the state rate for the
28 applicable industry, as most recently established by the United States
29 bureau of labor statistics;

30 2. for wages for project sites located outside of the metropolitan
31 statistical area, as defined by the United States office of management
32 and budget, the average weekly wage paid to non-managerial employees at
33 such project site shall be no less than one hundred percent of the
34 applicable industry rate in the county such project site is located, as
35 most recently established by the United States department of commerce;

36 3. health insurance coverage to all employees working at the project
37 site and at least half of the cost of the insurance premium shall be
38 paid by the recipient corporation;

39 4. at least one thousand eight hundred twenty hours of work per year;

40 5. at least twelve days of paid leave for vacation, family care, or
41 other personal time off per year;

42 6. at least thirty percent of all work hours are performed by individ-
43 uals whose primary place of residence is within a zip code that includes
44 a census tract or portion thereof in which the median annual household
45 income is less than forty thousand dollars per year, as measured and
46 reported by the United States census bureau;

47 7. at least ten percent of all work hours are performed by individuals
48 who, prior to commencing work, have an annual household income of less
49 than forty thousand dollars and face at least two of the following
50 barriers to employment:

51 (a) homelessness;

52 (b) are a custodial single parent;

53 (c) receive public assistance;

54 (d) do not have a high school diploma or a general equivalency diploma
55 (GED);

56 (e) have a criminal record;

1 (f) suffer from chronic unemployment;

2 (g) have been emancipated from the foster care system; or

3 (h) are a veteran; and

4 8. for jobs in the construction industry, the recipient corporation
5 shall participate in an apprenticeship program that is registered with
6 the state or federal government.

7 § 458. Taxpayer protection. 1. The granting body awarding development
8 subsidies shall cross-check job-creation and other performance data
9 submitted by recipient corporations against unemployment insurance
10 records and shall conduct periodic audits of such recipient corporations
11 using a third-party auditor.

12 2. A recipient corporation shall be subject to their development
13 subsidy recapture or rescission if:

14 (a) it fails to achieve its job creation, wage, and health care
15 requirements pursuant to sections four hundred fifty-six and four
16 hundred fifty-seven of this article for the project site within two
17 years of the date of subsidy;

18 (b) it fails to maintain its wage and benefit requirements pursuant to
19 section four hundred fifty-seven of this article as long as the develop-
20 ment subsidy is in effect, or for five years, whichever is longer; or

21 (c) the corporate parent of the recipient corporation fails to main-
22 tain, for the duration of the development subsidy, or for five years,
23 whichever is longer, at least ninety percent of its employment in the
24 state.

25 3. A recapture or rescission of the development subsidy shall take
26 place as follows:

27 (a) For each year the recipient corporation does not meet the job
28 creation, wages, and health care insurance requirements pursuant to
29 sections four hundred fifty-six and four hundred fifty-seven of this
30 article, the value of the development subsidy shall be reduced on a
31 prorated basis by the same share of jobs that were not created, that
32 failed to meet the wage requirements, or that failed to meet the health
33 care insurance requirements. If the development subsidy has already
34 been paid to the recipient corporation, the state shall recapture the
35 subsidy reduction pursuant to this paragraph.

36 (b) If a recipient corporation does not meet its job creation require-
37 ments pursuant to section four hundred fifty-six of this article by
38 twenty-five percent or more for three consecutive years the development
39 subsidy shall be recaptured on a prorated basis by the same share of
40 jobs that were not created for the third year in default and the devel-
41 opment subsidy shall be rescinded effective January first of the follow-
42 ing year.

43 (c) For each year the corporate parent fails to maintain at least
44 ninety percent of its employment in the state, the development subsidy
45 shall be reduced at twice the rate of the corporate parent's job loss
46 percentage from December thirty-first of the year the development subsi-
47 dy was granted. If the subsidy has already been paid to the recipient
48 corporation, the state shall recapture the subsidy reduction pursuant to
49 this paragraph.

50 (d) If the corporate parent fails to maintain at least ninety percent
51 of its employment in the state for three consecutive years, the develop-
52 ment subsidy shall be rescinded effective January first of the following
53 year.

54 4. The state shall publish on its website updated summary statistics
55 regarding its recapture and rescission enforcement activities as well as
56 lists of recipient corporations subject to such penalties.

1 § 459. Public records. All records required to be prepared or main-
2 tained under this article including, but not limited to, performance
3 reports, recapture proceedings, and any other records relating thereto,
4 shall be subject to disclosure under the state freedom of information
5 law.

6 § 460. Private enforcement action. If a granting body fails to enforce
7 any provision of this article, any individual who paid personal income
8 taxes to the state in the calendar year prior to the year such granting
9 body failed to enforce such provisions, or any organization representing
10 such taxpayers, shall be entitled to bring a civil action in a court of
11 competent jurisdiction to compel compliance with this article. The court
12 shall award reasonable attorney's fees and costs to a prevailing taxpay-
13 er or organization.

14 § 461. Unified economic development budget. The department of taxation
15 and finance shall submit an annual unified economic development budget
16 to the legislature no later than three months after the end of the
17 state's fiscal year. Such report shall be posted on the department's
18 website. Such report shall include expenditures for economic development
19 during the prior fiscal year, including but not limited to:

20 1. the amount of uncollected, forgiven, credited or rebated state tax
21 revenue resulting from every corporate tax credit, abatement, exemption,
22 and reduction provided by the state or local government for the purpose
23 of job creation and/or retention including, but not limited to gross
24 receipts, income, sales, use, raw materials, excise, property, utility,
25 and inventory taxes; and

26 2. the name of each corporate taxpayer which claimed any tax credit,
27 abatement, exemption or reduction pursuant to subdivision one of this
28 section of any value equal to or greater than five thousand dollars, and
29 the dollar amount of such tax credit, abatement, exemption or reduction.

30 § 462. Severability. If any clause, sentence, paragraph, subdivision,
31 section or part of this article shall be adjudged by any court of compe-
32 tent jurisdiction to be invalid, such judgment shall not affect, impair
33 or invalidate the remainder thereof, but shall be confined in its opera-
34 tion to the clause, sentence, paragraph, subdivision, section or part
35 thereof directly involved in the controversy in which such judgment
36 shall have been rendered.

37 § 2. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law and shall apply to all development subsidy
39 agreements entered into, renewed, modified or amended on and after such
40 date.