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 Development

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

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

Section 1. The economic development law is amended by adding a new 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.

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

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

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

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

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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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the name of the property owner;

(b) the address of the property;

(c) the start and end dates of the property tax abatement, credit, reduction or exemption; and

(d) for each tax year, the effective amount of the tax abatement, credit, reduction or exemption by both percentage rate and by dollar value, including, as applicable, payments in lieu of taxes.

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

(a) the name of the property owner;

(b) the address of the property;

(c) the start and end dates of the property tax exemption; and

(d) for each tax year, the effective amount of the tax exemption by both percentage rate and by dollar value, including, as applicable, payments in lieu of taxes.

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

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

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

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

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

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

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

3. The job creation requirements provided in this section shall be used to determine whether a recipient corporation is liable for a development subsidy recapture or rescission.

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

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

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

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

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

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

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

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

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

(a) homelessness;

(b) are a custodial single parent;

(c) receive public assistance;

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

(e) have a criminal record;

(f) suffer from chronic unemployment;

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

(h) are a veteran; and

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

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

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

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

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

(c) the corporate parent of the recipient corporation fails to maintain, for the duration of the development subsidy, or for five years, whichever is longer, at least ninety percent of its employment in the state.

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

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

(b) If a recipient corporation does not meet its job creation requirements pursuant to section four hundred fifty-six of this article by twenty-five percent or more for three consecutive years the development subsidy shall be recaptured on a prorated basis by the same share of jobs that were not created for the third year in default and the development subsidy shall be rescinded effective January first of the following year.

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

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

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

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

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

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

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

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

§ 462. Severability. If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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