

# STATE OF NEW YORK

3364

2019-2020 Regular Sessions

## IN SENATE

February 6, 2019

Introduced by Sens. KRUEGER, LIU, SERRANO -- 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, in relation to enacting the unified economic development budget act

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "unified economic development budget act".

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

### ARTICLE 14

#### UNIFIED ECONOMIC DEVELOPMENT BUDGET

##### 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.

##### § 1401. Definitions.

13 As used in this article:

14 (a) "Annual tax expenditure report" is as defined by section one  
15 hundred eighty-one of the executive law.

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

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

22 (d) "Development assistance" means: (1) tax expenditures given as an  
23 incentive to recipient businesses, not-for-profit organizations and  
24 government entities for economic development purposes;

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

LBD06536-01-9

1 (2) grants or loans awarded by all state granting bodies and indus-  
2 trial development agencies to businesses, not-for-profit organizations  
3 and government entities for economic development purposes; and

4 (3) all successor and subsequent development assistance programs and  
5 tax expenditures designed to promote large business relocations and  
6 expansions.

7 (e) "Development assistance agreement" means any agreement executed by  
8 the state granting body or industrial development agency and the recipi-  
9 ent setting forth the terms and conditions of development assistance to  
10 be provided to the recipient consistent with the final application for  
11 development assistance, including but not limited to the date of assist-  
12 ance, submitted to and approved by the state granting body or industrial  
13 development agency.

14 (f) "Division" means, unless otherwise noted, the New York state divi-  
15 sion of the budget or any successor agency.

16 (g) "Economic development" means any economic activity to increase tax  
17 revenue, tax base, or employment or improve general economic health,  
18 when the activity involves:

19 (1) the planning, design, development, construction, rehabilitation,  
20 business relocation, or any combination of these, within a community;  
21 and

22 (2) the provision of office, industrial, manufacturing, warehousing,  
23 distribution, parking, public, or other facilities, or other improve-  
24 ments that benefit the state or a community;  
25 but does not result in the transfer of land to public ownership or the  
26 transfer of property to a private entity that is a public utility, the  
27 lease of property to private entities that occupy an incidental area  
28 within a public project or the remedy of blight.

29 (h) "Full-time, permanent job" means a job in which the new employee  
30 works for the recipient at a rate of at least thirty-five hours per  
31 week.

32 (i) "Industrial development agency" means an agency as defined by  
33 section eight hundred fifty-four of the general municipal law.

34 (j) "New employee" means a full-time, permanent employee who repres-  
35 ents a net increase in the number of the recipient's employees state-  
36 wide. "New employee" includes an employee who previously filled a new  
37 employee position with the recipient who was rehired or called back from  
38 a layoff that occurs during or following the base years. The term "new  
39 employee" does not include any of the following:

40 (1) an employee of the recipient who performs a job that was previous-  
41 ly performed by another employee in this state, if that job existed in  
42 this state for at least six months before hiring the employee; or

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

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

49 (l) "Recipient" means any business that receives economic development  
50 assistance. A business is any corporation, limited liability company,  
51 partnership, joint venture, association, sole proprietorship, or other  
52 legally recognized entity.

53 (m) "Retained employee" means any employee defined as having a full-  
54 time or full-time equivalent job preserved at a specific facility or  
55 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 (n) "Specific project site" means that distinct operational unit to  
4 which any development assistance is applied.

5 (o) "State granting body" means the division and/or any other state  
6 department, agency, bureau, office, commission, public authority, public  
7 corporation and any other state entity that provides and/or administers  
8 development assistance that has reporting requirements under this arti-  
9 cle, and any successor agencies to any of the preceding entities.

10 (p) "Tax expenditure" is as defined by section one hundred eighty-one  
11 of the executive law.

12 (q) "Temporary job" means a job in which the new employee is hired for  
13 a specific duration of time or season.

14 (r) "Value of assistance" means the face value of any form of develop-  
15 ment assistance.

16 § 1402. Unified economic development budget.

17 (a) For each state fiscal year ending on or after June thirtieth, two  
18 thousand twenty-two, the division, in collaboration with the department  
19 of taxation and finance, shall submit an annual unified economic devel-  
20 opment budget to the governor, senate and assembly. The unified economic  
21 development budget shall be due within three months after the end of the  
22 fiscal year, and shall present all types of development assistance  
23 granted during the prior fiscal year, including:

24 (1) the aggregate amount, prepared by the department of taxation and  
25 finance and presented as state totals, of actual uncollected or diverted  
26 state tax revenues resulting from each type of development assistance  
27 provided pursuant to law, as reported in the annual tax expenditure  
28 report;

29 (2) the aggregate amount, prepared by the division and presented as  
30 state totals, of development assistance grants and loans awarded by all  
31 state and industrial development agencies to businesses, not-for-profit  
32 organizations and government entities; and a list of the top five recip-  
33 ients by dollar value of each type of development assistance grant or  
34 loan;

35 (3) the aggregate amounts required by subparagraphs one and two of  
36 this paragraph shall correspond to the most recent fiscal year for which  
37 reliable data are available, and the preceding five fiscal years;

38 (4) a list of all state development assistance with a description and  
39 aggregate amount of uncollected or diverted state tax revenues resulting  
40 from or awarded for each type of development assistance for the most  
41 recent fiscal year and its preceding fiscal year; and

42 (5) the aggregate amount, prepared by the division and presented as  
43 state totals, of jobs created and/or retained with the support of devel-  
44 opment assistance.

45 (b) All data contained in the unified economic development budget  
46 presented to the governor, senate and assembly shall be fully subject to  
47 the Freedom of Information Act, notwithstanding instances when the  
48 disclosure of information violates confidentiality agreements between  
49 the department of taxation and finance and recipients of state develop-  
50 ment assistance.

51 (c) The department of taxation and finance shall submit a report of  
52 the amounts in subparagraph one of paragraph (a) of this section to the  
53 division, which shall append such report to the unified economic devel-  
54 opment budget rather than separately reporting such amounts.

55 § 1403. Standardized applications for state development assistance.

1 (a) All final applications submitted to the division, industrial  
2 development agencies or any other state granting body requesting devel-  
3 opment assistance shall contain, at a minimum:

4 (1) an application tracking number that is specific to both the state  
5 granting agency or industrial development agency and to each applica-  
6 tion;

7 (2) the office mailing address, office telephone number, and chief  
8 officer of the granting body or industrial development agency;

9 (3) the office mailing address, telephone number, and the name of the  
10 chief officer of the applicant or authorized designee for the specific  
11 project site for which development assistance is requested;

12 (4) the applicant's total number of employees at the specific project  
13 site on the date that the application is submitted to the state granting  
14 body or industrial development agency, including the number of full-  
15 time, permanent jobs, the number of part-time jobs, and the number of  
16 temporary jobs;

17 (5) the type of development assistance and value of assistance being  
18 requested;

19 (6) the number of jobs to be created and retained or both created and  
20 retained by the applicant as a result of the development assistance,  
21 including the number of full-time, permanent jobs, the number of part-  
22 time jobs, and the number of temporary jobs;

23 (7) a detailed list of the occupation or job classifications and  
24 number of new employees or retained employees to be hired in full-time,  
25 permanent jobs, a schedule of anticipated starting dates of the new  
26 hires and the anticipated average wage by occupation or job classifica-  
27 tion and total payroll to be created as a result of the development  
28 assistance;

29 (8) a list of all other forms of development assistance that the  
30 applicant is requesting for the specific project site and the name of  
31 each state granting body or industrial development agency from which  
32 that development assistance is being requested;

33 (9) a narrative, if necessary, describing why the development assist-  
34 ance is needed and how the applicant's use of the development assistance  
35 may reduce employment at any site in New York;

36 (10) a certification by the chief officer of the applicant or his or  
37 her authorized designee that the information contained in the applica-  
38 tion submitted to the granting body or industrial development agency  
39 contains no knowing misrepresentation of material facts upon which  
40 eligibility for development assistance is based.

41 (b) Every state granting body or industrial development agency either  
42 shall complete, or shall require the applicant to complete, an applica-  
43 tion form that meets the minimum requirements as prescribed in this  
44 section each time an applicant applies for development assistance  
45 covered by this article.

46 (c) The division shall have the discretion to modify any standardized  
47 application for state development assistance required under paragraph  
48 (a) of this section for any grants that are not given as an incentive to  
49 a recipient business organization.

50 § 1404. State development assistance disclosure.

51 (a) Beginning February first, two thousand twenty-one and each year  
52 thereafter, every state granting body and industrial development agency  
53 shall submit to the division copies of all development assistance agree-  
54 ments that it approved in the prior calendar year.

55 (b) For each development assistance agreement for which the date of  
56 assistance has occurred in the prior calendar year, each recipient shall

1 submit to the division a progress report that shall include, but not be  
2 limited to, the following:

3 (1) the application tracking number;

4 (2) the office mailing address, telephone number, and the name of the  
5 chief officer of the granting body or industrial development agency;

6 (3) the office mailing address, telephone number, and the name of the  
7 chief officer of the applicant or authorized designee for the specific  
8 project site for which the development assistance was approved by the  
9 state granting body or industrial development agency;

10 (4) the type of development assistance program and value of assistance  
11 that was approved by the state granting body or industrial development  
12 agency;

13 (5) the applicant's total number of employees at the specific project  
14 site on the date that the application was submitted to the state grant-  
15 ing body or industrial development agency and the applicant's total  
16 number of employees at the specific project site on the date of the  
17 report, including the number of full-time, permanent jobs, the number of  
18 part-time jobs, and the number of temporary jobs, and a computation of  
19 the gain or loss of jobs in each category;

20 (6) the number of new employees and retained employees that the appli-  
21 cant stated in its development assistance agreement, if any, and if not,  
22 then in its application, would be created by the development assistance,  
23 broken down by full-time, permanent, part-time, and temporary;

24 (7) a sworn declaration of whether the recipient is in compliance with  
25 the development assistance agreement;

26 (8) a detailed list of the occupation or job classifications and  
27 number of new employees or retained employees to be hired in full-time,  
28 permanent jobs, a schedule of anticipated starting dates of the new  
29 hires and the actual average wage by occupation or job classification  
30 and total payroll to be created as a result of the development assist-  
31 ance;

32 (9) a narrative, if necessary, describing how the recipient's use of  
33 the development assistance during the reporting year has reduced employ-  
34 ment at any site in New York; and

35 (10) a certification by the chief officer of the applicant or his or  
36 her authorized designee that the information in the progress report  
37 contains no knowing misrepresentation of material facts upon which  
38 eligibility for development assistance is based.

39 (c) The state granting body, industrial development agency or a  
40 successor agency, shall have full authority to verify information  
41 contained in the recipient's progress report, including the authority to  
42 inspect the specific project site and inspect the records of the recipi-  
43 ent that are subject to the development assistance agreement.

44 (d) By June first, two thousand twenty-three and by June first of each  
45 year thereafter, the division shall compile and publish all data in all  
46 of the progress reports in both written and electronic form.

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