STATE OF NEW YORK

1038

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

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

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

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

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

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

ARTICLE 14

CORPORATE ACCOUNTABILITY FOR TAX EXPENDITURES

Section 1401. Definitions.

1402. Unified economic development budget.

1403. Standardized applications for state development assistance.

1404. State development assistance disclosure.

1405. Recapture.

§ 1401. Definitions.

As used in this article:

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

(b) "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.

(c) "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.

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

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

(e) "Development assistance" means (1) tax credits and tax exemptions (other than given under tax increment financing) given as an incentive to a recipient business organization 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;

(2) 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.

(f) "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.

(g) "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.

(h) "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:

(1) 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.

(2) 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.

(i) "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.

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

(k) "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.

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

(m) "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.

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

(o) "Value of assistance" means the face value of any form of development assistance.

§ 1402. Unified economic development budget.

(a) For each state fiscal year ending on or after June thirtieth, two thousand twenty-two, 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:

(1) 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.

(2) All state development assistance.

(b) 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.

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

§ 1403. Standardized applications for state development assistance.

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

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

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

(3) 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.

(4) 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.

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

(6) 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.

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

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

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

(10) A certification by the chief officer of the applicant or his or her authorized designee that the information contained in the application submitted to the granting body contains no knowing misrepresentation of material facts upon which eligibility for development assistance is based.

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

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

§ 1404. State development assistance disclosure.

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

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

(1) The application tracking number.

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

(3) 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 the development assistance was approved by the state granting body.

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

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

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

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

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

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

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

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

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

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

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

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

§ 1405. Recapture.

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

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

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

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

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

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

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

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

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

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

ARTICLE 10-E

CORPORATE ACCOUNTABILITY FOR TAX EXPENDITURES

Section 3980. Definitions.

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 demon-

strable 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 twenty-two, 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.

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

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

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

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

(j) A certification by the chief officer of the applicant or his or her authorized designee that the information contained in the application submitted to the granting body contains no knowing misrepresentation of material facts upon which eligibility for development assistance is based.

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

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

§ 3983. State development assistance disclosure. 1. Beginning February first, two thousand twenty-three and each year thereafter, every state granting body shall submit to the department copies of all development assistance agreements that it approved in the prior calendar year.

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

(a) The application tracking number.

(b) The office mailing address, telephone number, and the name of the 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 the development assistance was approved by the state granting body.

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

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

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

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

(h) A detailed list of the occupation or job classifications and number of new employees or retained employees to be hired in full-time, permanent jobs, a schedule of anticipated starting dates of the new

hires and the actual average wage by occupation or job classification and total payroll to be created as a result of the development assistance.

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

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

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

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

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

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

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

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

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

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

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

law or an industrial development zone designation pursuant to article eighteen-A of the general municipal law and the recipient fails to create or retain the requisite number of jobs for the requisite time period, as provided in the development assistance agreement, the recipient shall be required to repay to the state a pro rata amount of the grant; that amount shall reflect the percentage of the deficiency between the requisite number of jobs to be created or retained by the recipient and the actual number of such jobs in existence as of the date the department determines the recipient is in breach of the job creation or retention covenants contained in the development assistance agreement. If the recipient of development assistance under such designations ceases operations at the specific project site during a five year period commencing on the date of assistance, the recipient shall be required to repay the entire amount of the grant or to accelerate repayment of the loan back to the state.

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

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

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

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