

CHAPTER 200

AN ACT concerning disclosure of information related to development subsidies and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.52:39-1 Short title.

1. This act shall be known and may be cited as “The Development Subsidy Job Goals Accountability Act.”

C.52:39-2 Findings, declarations relative to development subsidies.

2. The Legislature finds and declares that:

a. Although the State has granted numerous tax incentives, grants and other economic development subsidies during the last 25 years, the inflation-adjusted wage level for a large portion of New Jersey workers has declined, as has the percentage of working families in New Jersey with health care coverage;

b. Some programs providing economic development subsidies lack measurable job creation goals, and in some cases, businesses have closed, relocated or outsourced facilities or jobs for which subsidies were provided to sites outside of the State;

c. Citizen participation in economic development has been impeded by a lack of readily accessible information regarding expenditures and outcomes; and

d. It is therefore appropriate, in order to improve the effectiveness of expenditures for economic development and to ensure that they achieve the goal of raising living standards for working families, that the State collect, analyze and make public information regarding those expenditures.

C.52:39-3 Definitions relative to development subsidies.

3. For the purposes of this act:

“Corporate parent” means either: a person, association, corporation, joint venture, partnership, or other business entity, that owns or controls 50% or more of a recipient corporation; or the recipient corporation itself, if no other person, association, corporation, joint venture, partnership, or other entity, owns or controls 50% or more of the recipient corporation.

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

“Development subsidy” means the authorizing of the provision or providing to a recipient corporation of an amount of funds by or from a public body with a value of not less than \$25,000 for the purpose of stimulating economic development in New Jersey, including, but not limited to, any bond, grant, loan, loan guarantee, matching fund or any tax expenditure. “Development subsidy” does not refer to any contract under which a public body purchases or otherwise procures goods, services or construction on an unsubsidized basis, including any contract solely for the construction or renovation of a facility owned by a public body. “Development subsidy” does not mean any authorizing or providing of funds by or from a public body to a recipient corporation, including by means of a tax expenditure, for the exclusive purpose of the development or production of affordable housing, for the exclusive purpose of subsidizing site remediation, recycling, commuter transportation assistance, pollution reduction, energy conservation or other programs to improve the environment, or for the exclusive purpose of providing benefits to employees of the recipient corporation. “Development subsidy” does not mean any authorizing or providing of funds by or from a public body to a non-profit organization, including by means of a tax expenditure, for the exclusive purpose of subsidizing the development of facilities used to provide recreational, educational, arts or cultural programs or childcare or healthcare services.

“Employee benefits” means the average rate of benefit costs paid by a recipient corporation to or for its employees, including, but not limited to, the cost to the recipient

corporation of health care benefits, pension benefits and apprenticeship or other training and education benefits, but excluding any costs to the recipient corporation of unemployment compensation, workers' compensation or temporary disability benefits, Social Security benefits, or any other employee benefits which the recipient corporation is required by State or federal law to pay. "Employee benefits" do not include any payroll deductions or other costs paid by employees for the benefits.

"Full-time job" means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

"Granting body" means a public body that provides or authorizes a development subsidy and, in the case of a tax expenditure related to any tax paid to the State, means the State Treasurer.

"Health benefits" means health benefits provided under a group health plan as defined in section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Title 17B of the New Jersey Statutes.

"Part-time job" means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

"Project site" means the site of a project inside New Jersey for which any development subsidy is provided.

"Public body" or "State" means the State of New Jersey or any agency, instrumentality or authority of the State, but not a political subdivision of the State.

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

"Tax expenditure" means the amount of foregone tax collections due to any abatement, reduction, exemption or credit against any State tax, including, but not limited to, taxes on raw materials, inventories or other assets, taxes on gross receipts, income or sales, and any use, excise or utility tax. "Tax expenditure" does not refer to any credit against any tax liability of an employee or any personal exemption, homestead rebate, credit or deduction for the expenses of a household or individual, or other reduction of the tax liability of an individual or household.

"Temporary job" means a job for which an individual is hired for a limited period of time, which shall include all jobs for construction at the project site.

"Value of a development subsidy" means the dollar value of the development subsidy provided to the recipient corporation. In the case of a loan or loan guarantee provided by a public body to a recipient corporation or tax-exempt financing authorized by a public body, the "value of a development subsidy" means the amount loaned.

C.52:39-4 Application for development subsidy, required information.

4. a. Each applicant for a development subsidy shall submit to the granting body an application for the development subsidy on a form prepared by the State Treasurer. The information required on the application, or in supplements accompanying the application, shall include the following:

- (1) An application tracking number provided by the granting body;
- (2) The names, street and mailing addresses and phone numbers of the chief officer of the granting body, the chief officer of the applicant's corporate parent and the applicant and the street address and three-digit North American Industry Classification System number of the project site;
- (3) The start date and the end date, if any, of the development subsidy;
- (4) A list of all development subsidies that the applicant is requesting or receiving, the name of any other granting body from which development subsidies are sought or obtained, the value of each development subsidy and the aggregate value of all development subsidies requested or received from all sources;
- (5) A signed certification by the chief officer of the recipient corporation that the application is accurate and meets the requirements of this act;
- (6) The total number of individuals employed by the applicant at the project site on the date of the application, the anticipated number of jobs that will be retained as a result of the development subsidy and the number of new jobs to be created by the applicant at the project site if the development subsidy is granted, broken down by full-time, part-time and

temporary jobs;

(7) The average annual wage and benefit rates of current employees and the anticipated average annual wage and benefit rates of new employees;

(8) The number of current employees provided health benefits, and the number of new employees anticipated to be provided health benefits;

(9) How many of the current employees and how many of the anticipated new employees are represented by a collective bargaining unit;

(10) The average total number of individuals employed in New Jersey during the calendar year preceding the submission of the application by the applicant's corporate parent and all subsidiaries thereof, broken down by full-time, part-time and temporary jobs;

(11) A statement as to whether the development subsidy may reduce employment at any other site controlled by the applicant or its corporate parent, inside the State, resulting from automation, merger, acquisition, corporate restructuring or other business activity;

(12) A statement as to whether or not the project involves the relocation of work from another address and if so, the number of jobs to be relocated and the address from which they are to be relocated; and

(13) Any other information deemed useful or necessary by the State Treasurer for the implementation of this act.

b. Any granting body, other than the State Treasurer approving the application, shall send a copy to the State Treasurer not more than 15 business days after approval. If the application is not approved, the granting body shall retain the application.

C.52:39-5 Progress report filed by recipient of development subsidy; violations, fines.

5. a. Each recipient corporation of a development subsidy shall file with the granting body, on a form prepared by the State Treasurer, a progress report no later than 30 business days after the end of each State fiscal year, beginning with the end of the first full State fiscal year after the date of the development subsidy, for the duration of the development subsidy or for five years, whichever period is longer. The report shall include the following information for the State fiscal year just ended:

(1) The application tracking number, except in the case of a development subsidy which has no application tracking number because the development subsidy was in effect prior to the 180th day after the effective date of this act;

(2) The name, street and mailing addresses, phone number and chief officers of the granting body and the recipient corporation;

(3) A summary of the number of jobs created, retained or lost inside New Jersey, broken down by full-time, part-time and temporary jobs, and the average annual rates of pay and benefits;

(4) The number of current employees provided health benefits, and the number of new employees anticipated to be provided health benefits;

(5) The comparison of the total employment in New Jersey by the corporate parent of the recipient corporation on the date of the application and the date of the report, broken down by full-time, part-time and temporary jobs;

(6) A statement as to whether the use of the development subsidy during the previous fiscal year has reduced employment at any New Jersey site controlled by the recipient corporation or its corporate parent; and

(7) A signed certification by the chief officer of the recipient corporation that the progress report is accurate.

b. Not later than 30 days after the end of the second full State fiscal year after the date of the development subsidy, the recipient corporation shall file with the granting body a two-year progress report, certified by the chief officer of the recipient corporation, which shall include:

(1) The same information as required to be included in reports filed pursuant to subsection a. of this section;

(2) A statement of whether the recipient corporation has achieved the job creation and retention and wage and benefit rate goals projected in the recipient corporation's application; and

(3) If the goals are not met, a full disclosure of the amount of any shortfall in job creation and retention rates at the project site inside New Jersey and wage and benefit rates compared

to the goals and compared to job creation and retention goals and wage and benefit rates projected in the recipient corporation's application.

c. The granting body shall review each report filed by the recipient corporation and conduct such further investigations as may be required to verify or correct the information in the report and submit the verified or corrected report to the State Treasurer not later than 30 business days after the report is filed by the recipient corporation.

d. The recipient corporation shall provide the granting body and the State Treasurer access to the project site and records at reasonable times as needed to monitor the project and verify the accuracy of the information provided in reports made by the recipient corporation. If a recipient corporation fails to file a report by the required due date, the granting body may impose an administrative fine of not more than \$500 per day to commence upon the tenth working day after the due date, and not more than \$1,000 per day to commence on the twentieth working day after the due date. If a recipient corporation fails to provide the required access, the granting body may impose an administrative fine of not more than \$500 per day to commence upon the fifth working day that access is denied, and of not more than \$1,000 per day to commence upon the tenth working day that access is denied.

e. A granting body may assess from recipient corporations whatever fees it determines to be necessary, but in no case fees greater than 0.25% of the value of a development subsidy if the development subsidy is a loan provided by the granting body, 0.1% of the value of the development subsidy if the development subsidy is a loan guarantee provided by the granting body or tax-exempt financing authorized by the granting body, or greater than 1.0% of the value if the development subsidy is not a loan, tax-exempt financing or loan guarantee, to pay for the costs of the granting body to carry out its responsibilities under this act, including the processing of applications for development subsidies, reviewing and verifying reports of recipient corporations and monitoring the compliance of recipient corporations with the requirements of this act, maintaining and making available records and, in the case of the State Treasurer, producing the annual Unified Economic Development Budget Report as provided in section 6 of this act and providing, as part of the annual budget request of the Governor, a comprehensive presentation of the costs of all development subsidies to the State.

C.52:39-6 Annual Unified Economic Development Budget Report.

6. a. The State Treasurer shall, not more than four months after the end of each State fiscal year, compile and publish, in printed and electronic form, including on the Internet, an annual Unified Economic Development Budget Report with regard to the fiscal year just concluded. The report shall provide the following comprehensive information regarding the costs and benefits of all development subsidies of the State:

(1) Information regarding tax expenditures resulting from any development subsidy, including the name of each recipient corporation receiving one or more tax expenditures with a combined total value equal to or greater than \$100,000, the value of all tax expenditures received by each recipient corporation and summaries of the number of full-time and part-time jobs created or retained, employee benefits provided and the degree to which job creation and retention, wage and benefit goals and requirements of recipient corporations and parent corporations have been met. Any tax expenditure received by a corporation receiving tax expenditures with a total value of less than \$100,000 shall not be itemized. The report shall include aggregate dollar amounts for each category of tax expenditure, each geographical area, the number of companies for each category of tax expenditure, the number of full-time and part-time jobs created or retained, the employee benefits provided, and the degree to which job creation and retention, wage and benefit rate goals and requirements have been met for each category of tax expenditure; and

(2) The costs of all expenditures of development subsidies appropriated by any granting body, including, but not limited to, the Department of Labor and Workforce Development, the Department of Education, the New Jersey Economic Development Authority, the New Jersey Commerce, Economic Growth and Tourism Commission, the New Jersey Commission on Higher Education, the New Jersey Commission on Science and Technology, and research and business assistance programs of public institutions of higher education, together with the cost to the granting bodies and the value of the development subsidies received by each recipient corporation, and summaries of the number of full-time and part-time jobs created or

retained, employee benefits provided, and the degree to which job creation and retention, wage and benefit rate goals and requirements of recipient corporations and parent corporations have been met.

b. The State Treasurer shall provide to the Legislature, as part of the annual budget request of the Governor, a comprehensive presentation of the costs of all development subsidies to the State during the prior fiscal year, an estimate of the anticipated costs of development subsidies for the then current fiscal year and an estimate of the costs of all development subsidies for the fiscal year of the requested budget, including, but not limited to:

(1) The total cost to the State of tax expenditures resulting from the development subsidies, the costs for each category of tax expenditure, and the amounts of tax expenditures by geographical area; and

(2) The cost to the State of all appropriated expenditures for development subsidies, including line-item budgets for every State-funded entity concerned with economic development, including, but not limited to, the Department of Labor and Workforce Development, the Department of Education, the New Jersey Economic Development Authority, the New Jersey Commerce, Economic Growth and Tourism Commission, the New Jersey Commission on Higher Education, the New Jersey Commission on Science and Technology, and research and business assistance programs of public institutions of higher education.

C.52:39-7 Availability of documents, records.

7. All documents or records submitted to or maintained by the State Treasurer or any granting body pursuant to this act, including, but not limited to, applications, progress reports, recapture notices and any other related records or proceedings, shall be available in a manner consistent with the provisions of P.L.2001, c.404 (C.47:1A-5 et al.) for review by any member of the public, and copies of the records shall be provided upon request.

C.52:39-8 Information required from recipient corporation.

8. Each granting body shall, not later than 60 days after the effective date of this act, provide, to every recipient corporation receiving a development subsidy from the granting body which was awarded during the three years prior to the effective date of this act, written notification that the recipient corporation is required to submit to the granting body, not less than 120 days after receiving the notification, the information required of applicants pursuant to section 4 of this act and that the recipient corporation is required to comply with the reporting requirements of section 5 of this act.

C.52:39-9 Withholding of payments to granting body.

9. If a granting body fails to submit any report required by this act to the State Treasurer within the time prescribed by this act, the State Treasurer may, to the extent possible, withhold payments of any State-funded development subsidy to the granting body or any recipient corporation which has a project site located in the jurisdiction of the granting body until the public body submits the report with the State Treasurer.

C.52:39-10 False material misrepresentation by recipient, refund to granting body.

10. Any recipient corporation that knowingly makes a false material misrepresentation in any application, report or other disclosure that the recipient corporation is required to make pursuant to this act shall refund any development subsidy to the granting body. The granting body may include provisions for the refund as part of an agreement to provide a development subsidy and may pursue an action to collect the amount of the refund plus any attorney fees and other costs of the action.

C.52:39-11 Construction of act.

11. Nothing in this act shall be construed as requiring a recipient corporation to reduce wage or benefit rates of any employee or be construed as permitting a recipient corporation:

a. To reduce wage or benefit rates established by a collective bargaining agreement or required by any law or regulation; or

b. To provide, in return for a development subsidy, jobs with lower wage or benefit

rates, a smaller number of jobs, or jobs for a shorter period of time, than is required with respect to the development subsidy by any other law or regulation.

C.52:39-12 Rules, regulations.

12. The State Treasurer shall, in consultation with the Commissioner of Labor and Workforce Development, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate any rules and regulations necessary to implement the provisions of this act.

13. This act shall take effect immediately, but the provisions of sections 3 through 10 of this act shall remain inoperative until the 180th day after its enactment.

Approved November 2, 2007.