Sponsored by:
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SYNOPSIS
Enhances the reporting and disclosure requirements concerning State tax expenditures and limits the duration of new State tax expenditure enactments.

CURRENT VERSION OF TEXT
As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on September 18, 2014, with amendments.
AN ACT enhancing the reporting and disclosure requirements concerning State tax expenditures and limiting the duration of State tax expenditure enactments, amending P.L.2009, c.189 ¹, amending ² and supplementing ³ P.L.2007, c.200 ⁴ ¹ and supplementing Title 1 of the Revised Statutes.

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

1. Section 1 of P.L.2009, c.189 (C.52:27B-20a) is amended to read as follows:
   1. a. In addition to the requirements of section 11 of article 3 of P.L.1944, c.112 (C.52:27B-20), and any other provisions of law, the Governor’s budget message transmitted annually to the Legislature shall include a State tax expenditure report setting forth estimates of the tax expenditures under existing State law for the last completed fiscal year, the current fiscal year and the fiscal year to which the budget message applies. The tax expenditures report shall take into account projected economic factors, and any changes in State tax expenditures as may be enacted or reasonably expected to be enacted for any fiscal year.
   b. The State tax expenditures report shall:
      (1) list each State tax expenditure,
      (2) identify the statutory authority for each State tax expenditure, and the year in which it was enacted or the tax year or tax period in which it became effective,
      (3) describe the specific goals, purposes, and objectives that each State tax expenditure will achieve based upon the stated intent of the Legislature. In the absence of a stated intent of the Legislature, the Governor, at the Governor’s discretion, shall determine the goals, purposes, and objectives of the State tax expenditure ¹,
      (4) detail in columnar enumeration for each State tax expenditure an estimate of the amount of State revenue loss for the last completed fiscal year, the current fiscal year and the fiscal year to which the budget message applies,
      (5) determine through detailed performance indicators whether each State tax expenditure has been effective in achieving the specific goals, purposes and objectives ¹ as set forth in statute, administrative regulation, or other public document ¹ for which the tax expenditure was enacted and currently serves, including an analysis of the persons, including corporations, individuals or other entities, benefited by the expenditure,

EXPLANATION – Matter enclosed in bold-faced brackets  [thus]  in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined  thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
⁵Senate SSG committee amendments adopted September 18, 2014.
(6) evaluate, based on publicly available measurement data, the effect of each State tax expenditure on the fairness and equity of the distribution of the tax burden.

(7) describe the data collection and reporting requirements imposed upon the persons, including corporations, individuals or other entities benefited by the expenditure to assist in making the determination required by paragraph (5) of this subsection, which shall include the specific data and baseline measurements to be collected and remitted in each year the State tax expenditure is in effect, necessary to measure any change in performance indicators, and the specific taxpayers, State departments, agencies, independent authorities, or other entities required to collect and remit data, and

(8) the public and private costs of administering the State tax expenditures.

c. As used in this section:

"State tax expenditure" means those revenue losses attributable to provisions of State tax law which establish special tax treatment, including but not limited to tax law definition, deduction, exclusion, exemption, deferral, credit or transfer certificate, preferential tax rate or other special tax provision resulting in a reduced tax liability for certain persons, individuals, types of income, transactions or property from the liability which would be presumed to exist without the State tax expenditure.

d. The Division of Taxation in the Department of the Treasury shall advise and assist the Governor in the preparation of the State tax expenditure report.

(cf: P.L.2009, c.189, s.1)

2. Section 3 of P.L.2007, c.200 (C.52:39-3) is amended to read as follows:

For the purposes of this act:

1"["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] entity provided, however, that if the development subsidy is for the installation of new equipment, the date shall be the date the recipient ["corporation] entity 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] entity occupies the property, whichever is earlier.
"Development subsidy" means the authorizing of the provision or providing to a recipient\(^1\) of an amount of funds by or from a public body with a value of not less than \[$25,000\] \(\leq \$100,000\)\(^4\) 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\(^1\), 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\(^1\). "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\(^1\) to or for its employees, including, but not limited to, the cost to the recipient\(^1\) of health care benefits, pension benefits and apprenticeship or other training and education benefits, but excluding any costs to the recipient\(^1\) of unemployment compensation, workers' compensation or temporary disability benefits, Social Security benefits, or any other employee benefits which the recipient\(^1\) 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\(^1\) 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.
"Parent entity" means either: a person, association, corporation, joint venture, partnership, or other business entity, that owns or controls 50% or more of a recipient entity; or the recipient entity itself, if no other person, association, corporation, joint venture, partnership, or other entity, owns or controls 50% or more of the recipient entity.

"Part-time job" means a job in which an individual is employed by a recipient entity 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 entity" 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 or transfer certificate 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 entity. In the case of a loan or loan guarantee provided by a public body to a recipient entity or tax-exempt financing authorized by a public body, the "value of a development subsidy" means the amount loaned.

3. Section 4 of P.L.2007, c.200 (C.52:39-4) is amended to read as follows:

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 parent entity 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
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 parent entity 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 parent entity, 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, including for tax
expenditures, specific data collection and reporting requirements
imposed upon the recipient that shall assist
the State Treasurer in providing, as part of the annual budget
request of the Governor, the comprehensive presentation of the
State costs of tax expenditure development subsidies required
pursuant to section 5 of P.L.2007, c.200 (C.52:39-5) and producing
the annual Unified Economic Development Budget Report pursuant
to section 6 of P.L.2007, c.200 (C.52:39-6), which information
shall include the specific data and baseline measurements to be
collected and remitted in each year the tax expenditure is in effect,
necessary to measure any change in performance indicators, and the
specific taxpayers, State departments, agencies, independent
authorities, or other entities required to collect and remit data.

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.
(cf: P.L.2007, c.200, s.4)

4. Section 5 of P.L.2007, c. 200 (C.52:39-5) is amended to read
as follows:
5. a. Each recipient corporation entity 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
entity;
(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 entity of the recipient corporation entity
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] entity or its [corporate] parent entity; and

(7) A signed certification by the chief officer of the recipient [corporation] entity 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] entity shall file with the granting body a two-year progress report, certified by the chief officer of the recipient [corporation] entity, 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] entity has achieved the job creation and retention and wage and benefit rate goals projected in the recipient [corporation’s] entity’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] entity’s application.

c. The granting body shall review each report filed by the recipient [corporation] entity 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] entity.

d. The recipient [corporation] entity 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] entity. If a recipient [corporation] entity 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] entity 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] entities 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] entities and monitoring
the compliance of recipient [corporations] entities 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.

f. Information obtained from the applications submitted to
granting bodies pursuant to section 4 of P.L.2007, c.200 (C.52:39-
4) and from the progress reports filed pursuant to this section shall
be considered confidential and privileged and neither the granting
body or the Treasurer nor any employee of the granting body or the
Treasurer engaged in the administration or charged with the custody
of any such records or files, nor any former officer or employee, nor
any person who may have secured information therefrom under any
other provision of State law, shall divulge, disclose, use for their
own personal advantage, or examine for any reason other than a
reason necessitated by the performance of official duties any
information obtained from those records or files, or from any
examination or inspection of the premises or property of any
person, trade secrets or commercial or financial information which
is privileged or confidential.¹

¹[4.] 5.¹ Section 6 of P.L.2007, c.200 (C.52:39-6) is amended
to read as follows:

6. a. The State Treasurer shall, ¹[not more than four months
after the end of each State fiscal year] as a part of the Governor’s
budget message transmitted annually to the Legislature pursuant to
section 11 of P.L.1944, c.112 (C.52:27B-20)¹, 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
¹[corporation] entity 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 ¹[corporation]
entity\(^1\) 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 \(\text{[corporations]}\) entities\(^1\) and parent \(\text{[corporations]}\) entities\(^1\) have been met. Any tax expenditure received by a \(\text{[corporation]}\) recipient entity\(^1\) 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 a determination made through detailed performance indicators whether each tax expenditure has been effective in achieving the specific goals, purposes and objectives for which the tax expenditure was enacted and currently serves; 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 \(\text{[corporation]}\) entity\(^1\), 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 \(\text{[corporations]}\) entities\(^1\) and parent \(\text{[corporations]}\) entities\(^1\) 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.

(cf: P.L.2007, c.200, s.6)

6. Section 8 of P.L.2007, c.200 (C.52:39-8) is amended to read as follows:

8. Each granting body shall, not later than 60 days after the effective date of this act, provide, to every recipient entity 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 entity 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 entity is required to comply with the reporting requirements of section 5 of this act.1

(cf: P.L.2007, c.200, s.8)

7. (New section) A recipient entity shall provide the granting body and the State Treasurer or the State Treasurer’s representative access to the project site and records at reasonable times as needed to monitor the project. If a recipient entity 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 required access is denied, and of not more than $1,000 per day to commence upon the 10th working day that required access is denied.1

8. Section 9 of P.L.2007, c.200 (C.52:39-9) is amended to read as follows:

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 entity which has a project site located in the jurisdiction of the granting body until the public body submits the report with the State Treasurer.1

(cf: P.L.2007, c.200, s.9)

9. Section 10 of P.L.2007, c.200 (C.52:39-10) is amended to read as follows:
10. Any recipient [corporation] entity that knowingly makes a false material misrepresentation in any application, report or other disclosure that the recipient [corporation] entity 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.¹

¹10. Section 11 of P.L.2007, c.200 (C.52:39-11) is amended to read as follows:

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

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.¹

¹5. ]11.¹ (New section) Notwithstanding any other law to the contrary, any bill introduced on or after January 14, 2014 the date of enactment of P.L. , c. (pending before the Legislature as this bill)¹ and enacted thereafter, that authorizes a State tax expenditure as defined in section 1 of P.L.2009, c.189 (C.52:27B-20a) or a tax expenditure as defined in section 3 of P.L.2007, c.200 (C.52:39-3), shall expire on the first day of January next following the seventh tenth anniversary of its effective date.

¹6. ]12.¹ This act shall take effect immediately.