Sponsored by:
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

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 introduced.
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, amending and supplementing P.L.2007, c.200, 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:
   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,
      (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 as set forth in statute, administrative regulation, or other public document 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,
      (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,

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.
(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:

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] 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 [corporation] entity of an amount of funds by or from a public body with a value of not less than $25,000 to $100,000 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] entity, 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] entity. "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] entity to or for its employees, including, but not limited to, the cost to the recipient [corporation] entity of health care benefits, pension benefits and apprenticeship or other training and education benefits, but excluding any costs to the recipient [corporation] entity of unemployment compensation, workers' compensation or temporary disability benefits, Social Security benefits, or any other employee benefits which the recipient [corporation] entity 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] entity 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 [corporation] 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 [corporation] 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 [corporation] entity. In the case of a loan or loan guarantee provided by a public body to a recipient [corporation] entity or tax-exempt financing authorized by a public body, the "value of a development subsidy" means the amount loaned.

(cf: P.L.2007, c.200, s.3)

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 [corporate] 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 [corporation] entity 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 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 [corporate] 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 entity 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
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[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.

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 nor 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.

(cf: P.L.2007, c.200, s.5)

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

6. a. The State Treasurer shall, [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), 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] 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 [corporation] entity 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] entities and parent [corporations] entities have been met. Any tax expenditure received by a [corporation] recipient entity 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 [corporation] entity, 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] entities and parent [corporations] entities 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.

(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.

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.

(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 entity that knowingly makes a false material misrepresentation in any application, report or other disclosure that the recipient 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.

(cf: P.L.2007, c.200, s.10)
10. 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 [corporation] entity to reduce wage or benefit rates of any employee or be construed as permitting a recipient [corporation] 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.

(cf: P.L.2007, c.200, s.11)

11. (New section) Notwithstanding any other law to the contrary, any bill introduced on or after the date of enactment of P.L., c. (pending before the Legislature as this bill) 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 tenth anniversary of its effective date.

12. This act shall take effect immediately.

STATEMENT

This bill enhances certain reporting and disclosure requirements regarding State development subsidies, including tax expenditures, and imposes a ten-year limitation on the duration of new State tax expenditure enactments.

Under current law, the Executive branch of State government is required to review and evaluate certain State development subsidies, including tax expenditures, to determine if the tax incentives have met expectations. State tax expenditures and preferences are special or selective tax relief or benefits authorized by law that are designed to accomplish certain public goals by forgoing State tax dollars to the direct benefit of certain taxpayers. The relief or benefit provided through tax expenditures typically is intended to encourage investment, create jobs, and facilitate economic development or to relieve the tax on certain favored or important products, services, or financial decisions.

This bill enhances the current review and evaluation required of the specific goals, purposes, and objectives each State tax expenditure is intended to achieve. The bill requires an enhanced annual evaluation of specific data collection and improved reporting requirements imposed upon the recipient of tax expenditures, the
comprehensive presentation of the State costs of development subsidies, including tax expenditures, and review of the specific data and baseline measurements to be collected and remitted in each year that a tax expenditure is in effect, necessary to measure any change in performance indicators for evaluation of the overall benefit of tax expenditures.

The bill requires any bill authorizing a tax expenditure that is introduced after its effective date and that is enacted thereafter to expire on the first day of January next following the tenth anniversary of its effective date.

The bill takes effect immediately upon enactment.