

SENATE, No. 1352

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires repayment of development subsidies in certain cases of failure to meet job creation or retention requirements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the repayment of development subsidies under
2 certain circumstances and supplementing P.L.2007, c.200
3 (C.52:39-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. If the requirements of any State law, regulation or policy
9 regarding minimum levels of job creation, job retention, wages or
10 benefits in connection with a development subsidy awarded by a
11 granting body to a recipient corporation, including the requirements
12 of sections 1 and 2 of P.L.2007, c.200 (C.52:39-1 and 52:39-2), or
13 any level agreed upon by a granting body and a recipient
14 corporation which exceeds the required minimum levels, are not
15 fulfilled, the granting body shall recapture the development subsidy
16 from the recipient corporation as provided in this subsection a.,
17 except as provided in subsection b. of this section. Upon a
18 determination by the granting body, after affording the recipient
19 corporation notice and an opportunity for a hearing in accordance
20 with the provisions of the "Administrative Procedure Act,"
21 P.L.1968, c.410 (C.52:14B-1 et seq.), that the recipient corporation
22 has failed to create or maintain the required or agreed upon number
23 of jobs at the project site or to pay the required or agreed upon
24 wages and benefits at the project site, the recipient corporation
25 shall, except as provided by subsection b. of this section, remit to
26 the governing body, not more than 60 calendar days after the
27 granting body issues its determination, a percentage of the total
28 value of the development subsidy which equals the percentage that
29 the underpayment of wages and benefits represents of the total
30 required or agreed upon wages and benefits. The total required or
31 agreed upon wages and benefits for a year shall be calculated by
32 multiplying the required or agreed upon amount of permanent
33 employment at the project site times the required or agreed upon
34 combined rate of wages and benefits paid to the permanent
35 employees. The underpayment of wages and benefits shall be
36 calculated by multiplying any shortfall in the combined average
37 wage and benefit rate times any shortfall in the amount of
38 employment.

39 b. The granting body may elect to reduce the portion of the
40 development subsidy which is recaptured if the body determines
41 that the reduction is necessary to avert an imminent hardship which
42 the recipient corporation documents will result in its insolvency or
43 compel it to discharge employees at the project site. If the
44 reduction is granted, the terms and conditions of the reduction, any
45 associated change in the agreement for the development subsidy
46 and the documentation of the necessity of the reduction shall be
47 made public.

1 c. Upon a determination by a granting body, after the granting
2 body affords a recipient corporation notice and an opportunity for a
3 hearing in accordance with the provisions of the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), that the
5 recipient corporation closed the facility for which the subsidy was
6 provided or relocated the facility from the project site or relocated
7 or outsourced all of the jobs from the facility at any time during the
8 period that the subsidy is in effect or during the five year period
9 after the development subsidy is granted, whichever period is
10 longer, the granting body shall declare the development subsidy
11 null and void, and shall notify the State Treasurer and the recipient
12 corporation of the declaration, and the recipient corporation and any
13 corporate parent of the recipient corporation shall be disqualified
14 from receiving any development subsidy for a period of five years
15 and shall be included on a list of disqualified entities made
16 available to the public and public bodies by the Treasurer. The
17 recipient corporation shall, not more than 60 calendar days after the
18 date of the notice of the declaration, repay to the granting body any
19 part of the cost to the granting body of the development subsidy it
20 did not previously repay pursuant to subsections a. or b. of this
21 section.

22
23 2. Each agreement to provide a development subsidy shall
24 provide that a portion of the development subsidy may, pursuant to
25 section 1 of this act, be recaptured upon a failure by the recipient
26 corporation to create or maintain the required or agreed upon
27 number of jobs at the project site or to pay the required or agreed
28 upon wages and benefits at the site. Each agreement for a loan to a
29 recipient corporation in connection with a development subsidy
30 which is a guarantee for the loan or a tax exemption for interest
31 payments received by the lender, including an exemption from
32 federal taxation authorized by a granting body, shall include a
33 notification to the lender that the guarantee or tax exemption shall,
34 pursuant to section 1 of this act, be declared null and void by the
35 granting body upon the closure of the facility or relocation of the
36 facility from the project site or the relocation or outsourcing of all
37 of the jobs from the facility during the time that the subsidy is in
38 effect or during the five years after the development subsidy is
39 granted, whichever is longer.

40
41 3. Any portion of the development subsidy recaptured by a
42 granting body pursuant to section 1 of this act shall be regarded as a
43 tax liability of the recipient corporation to the granting body. If the
44 recipient corporation fails to pay that tax liability when it becomes
45 due, the recipient corporation shall be subject to the penalties and
46 interest provisions of the State Uniform Tax Procedure Law,
47 R.S.54:48-1 et seq. Any recipient corporation which considers any
48 decision or declaration of a granting body to recapture any part of a

1 development subsidy to be inconsistent with the provisions of this
2 act, excessive or otherwise unjust, may appeal to the tax court in
3 accordance with the provisions of the State Uniform Tax Procedure
4 Law, R.S.54:48-1 et seq.

5
6 4. No public body shall provide or authorize a development
7 subsidy to any applicant who is included in the list of disqualified
8 entities made available to the public body by the State Treasurer
9 pursuant to subsection c. of section 1 of this act or is barred from
10 conducting business or entering into contracts with public bodies
11 under the provisions of any other law of the State. No public body
12 shall provide or authorize a development subsidy to any applicant
13 without first reviewing the list of disqualified entities made
14 available to the public body by the State Treasurer pursuant to
15 subsection c. of section 1 of this act and any other list available
16 from the Treasurer of entities barred from conducting business or
17 entering into contracts with public bodies under the provisions of
18 any other law of the State.

19
20 5. If a granting body or the State Treasurer fails to enforce any
21 provision of this act, of P.L.2007, c.200 (C.52:39-1 et seq.), or of
22 P.L. , c. (pending before the Legislature as Senate Bill,
23 No.1263), any individual who paid taxes to the State during the
24 State fiscal year in dispute or the preceding year, or any
25 organization representing any of those taxpayers, shall be entitled to
26 bring a civil action in a court of competent jurisdiction to compel
27 enforcement of those acts. The court shall award reasonable
28 attorneys' fees and costs to the prevailing taxpayer or organization.

29
30 6. The State Treasurer shall, in consultation with the
31 Commissioner of Labor and Workforce Development, and pursuant
32 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
33 1 et seq.), promulgate any rules and regulations necessary to
34 implement the provisions of this act.

35
36 7. This act shall take effect immediately, but the provisions of
37 sections 1 through 5 of this act shall remain inoperative until the
38 180th day after the enactment of this act.

39 40 41 STATEMENT

42
43 The bill requires a business which receives a development
44 subsidy, including a tax incentive, from a State agency, to repay the
45 subsidy to the degree that the recipient fails to fulfill the
46 requirements of any State law, regulation or policy regarding
47 minimum levels of job creation, job retention, wages or benefits in
48 connection with the subsidy, or any level agreed upon by the

1 granting agency and a recipient which exceeds the required levels.

2 Upon a determination by the granting agency that the recipient
3 failed to create or maintain the required or agreed upon number of
4 jobs or pay the required or agreed upon wages and benefits, the
5 recipient is required to remit to the granting agency a percentage of
6 the total value of the development subsidy which equals the
7 percentage that the underpayment of wages and benefits represents
8 of the total required or agreed upon wages and benefits. The total
9 required or agreed upon wages and benefits is calculated by
10 multiplying the required or agreed upon amount of permanent
11 employment times the required or agreed upon combined rate of
12 wages and benefits paid to the permanent employees. The
13 underpayment of wages and benefits is calculated by multiplying
14 any shortfall in the combined average wage and benefit rate times
15 any shortfall in the amount of employment.

16 The bill also requires the granting agency to declare a
17 development subsidy null and void if the subsidized facility is
18 closed or relocated or all of the jobs are relocated or outsourced
19 during the term of the subsidy or within five years after the subsidy
20 is granted, and bar the subsidy recipient and any corporate parent of
21 the recipient from receiving any development subsidy for a period
22 of five years.

23 The bill prohibits public bodies from providing or authorizing
24 development subsidies to applicants who are barred from receiving
25 the subsidies or barred from conducting business or entering into
26 contracts with public bodies under the provisions of any other State
27 law.

28 Taxpayers and taxpayer organizations are permitted to bring a
29 civil action to enforce the requirements of the bill, if a granting
30 agency or the State Treasurer fails to do so.