

# SENATE, No. 1840

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

**Sponsored by:**

**Senator JOSEPH P. CRYAN**

**District 20 (Union)**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**SYNOPSIS**

Requires certain economic incentive recipients to pay penalty for nonperformance.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/5/2020)

1 AN ACT requiring certain economic incentive recipients to pay a  
2 penalty for nonperformance and supplementing P.L.1974, c.80  
3 (C.34:1B-1 et seq.).  
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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. As used in P.L. , c. (C. ) (pending before the  
9 Legislature as this bill):

10 "Benefit or incentive" means a financial incentive awarded by  
11 the authority to a person or agreed between the authority and a  
12 person under an economic incentive program administered by the  
13 authority for the purpose of stimulating economic development or  
14 redevelopment in New Jersey, including but not limited to a bond,  
15 grant, loan, loan guarantee, matching fund, tax credit, or other tax  
16 expenditure.

17 "Economic incentive program" means any program administered  
18 by the authority that offers a benefit or incentive.

19 "Incentive agreement" means an agreement entered into by the  
20 authority and a person to establish rights and duties of both parties  
21 through which the person is entitled to receive a benefit or incentive  
22 under an economic incentive program.

23 "Project" means any acquisition, construction, reconstruction,  
24 repair, alteration, improvement or extension of any building,  
25 structure, facility, or other improvement completed pursuant to a  
26 capital investment requirement of an incentive agreement.  
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28 2. a. The New Jersey Economic Development Authority,  
29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
30 (C.52:14B-1 et seq.), shall, in consultation with the Department of  
31 Labor and Workforce Development, the Office of the State  
32 Comptroller, and the Division of Taxation in the Department of the  
33 Treasury, adopt rules and regulations to establish minimum  
34 standards for the administration of economic incentive programs to  
35 verify whether each benefit or incentive recipient has performed to  
36 all requirements under any applicable economic incentive program  
37 or incentive agreement.

38 b. For an award of a benefit or incentive made after the  
39 effective date of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill), the authority shall annually determine  
41 whether each benefit or incentive recipient has performed to all  
42 requirements under any applicable economic incentive program or  
43 incentive agreement. The authority shall notify the Director of the  
44 Division of Taxation in the Department of the Treasury of each  
45 benefit or incentive recipient that has not performed to a  
46 requirement under an applicable economic incentive program or  
47 incentive agreement, as determined by the authority.

1 c. A benefit or incentive recipient that has not performed to a  
2 requirement under an applicable economic incentive program or  
3 incentive agreement shall, as a penalty for nonperformance, pay to  
4 the Treasurer of the State of New Jersey, for deposit in the General  
5 Fund, an amount equal to the product of: (1) the applicable tax rate  
6 for the recipient in the privilege period or taxable year in which the  
7 authority has made a determination of nonperformance; multiplied  
8 by (2) the total value of the respective benefit or incentive received  
9 up to that privilege period or taxable year.

10 d. The value of a benefit or incentive included in a previous  
11 calculation of a penalty shall not be included in the calculation of a  
12 penalty for a subsequent determination of nonperformance.

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14 3. a. The rules and regulations adopted by the authority  
15 pursuant to section 2 of P.L. , c. (C. ) (pending before the  
16 Legislature as this bill), shall not diminish the existing contractual  
17 rights of a benefit or incentive recipient under an incentive  
18 agreement that is in effect as of the effective date of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill).

20 b. The authority shall not apply the rules and regulations  
21 adopted by the authority pursuant to section 2 P.L. , c. (C. )  
22 (pending before the Legislature as this bill), in a manner that  
23 diminishes the existing contractual rights of a benefit or incentive  
24 recipient under an incentive agreement that is in effect as of the  
25 effective date of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill).

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28 4. This act shall take effect 90 days after enactment but the  
29 authority may take administrative actions in advance to effectuate  
30 the purposes of this act.

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#### STATEMENT

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35 This bill requires that a recipient of a New Jersey Economic  
36 Development Authority (EDA) economic incentive, as defined in  
37 the bill, that does not perform to program and incentive agreement  
38 requirements pay a penalty for nonperformance in an amount equal  
39 to the product of: (1) the applicable tax rate for the recipient in the  
40 privilege period or taxable year in which the EDA has made a  
41 determination of nonperformance; multiplied by (2) the total value  
42 of the respective benefit or incentive received up to that privilege  
43 period or taxable year. The penalty is to be paid to the Treasurer of  
44 the State of New Jersey for deposit in the General Fund. The bill  
45 further specifies that the value of a benefit or incentive properly  
46 included in the formulation of a penalty is not to be aggregated with  
47 the value of any additional benefit or incentive received in the event  
48 of any subsequent determination of nonperformance.

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1       The bill requires the EDA, in consultation with the Department  
2 of Labor and Workforce Development, the Office of the State  
3 Comptroller, and the Division of Taxation, to adopt rules and  
4 regulations to establish minimum standards for the administration  
5 of economic incentive programs to verify whether each benefit or  
6 incentive recipient has performed to all requirements under any  
7 applicable economic incentive program or incentive agreement.

8       The bill specifies that for an award of a benefit or incentive made  
9 after the effective date of the bill, the EDA is required to annually  
10 determine whether each such benefit or incentive recipient has  
11 performed to all requirements under any applicable economic  
12 incentive program or incentive agreement. The EDA is required to  
13 notify the Director of the Division of Taxation of each benefit or  
14 incentive recipient that has not performed to a requirement under  
15 any applicable economic incentive program or incentive agreement.