

SENATE, No. 1294

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JANUARY 30, 2012

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerning development subsidies and certain employment practices.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning development subsidies and certain employment
2 practices.

3
4 BE IT ENACTED *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. For the purposes of this act:

8 "Commissioner" means the Commissioner of Labor and
9 Workforce Development.

10 "Development subsidy" means the providing to a recipient
11 enterprise of an amount of funds from a public body for the purpose
12 of stimulating economic development in New Jersey, including, but
13 not limited to, any bond, grant, loan, loan guarantee, tax increment
14 financing, fee waiver, land price subsidy, matching fund or any tax
15 expenditure. "Development subsidy" does not refer to any contract
16 under which a public body purchases or otherwise procures goods,
17 services or construction on an unsubsidized basis, including any
18 contract solely for the construction or renovation of a facility owned
19 by a public body.

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

23 "Public body" means any agency, department, board or
24 commission of this State or any political subdivision of this State.

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

28 "State" means the State of New Jersey and any agency,
29 instrumentality or authority of the State, but not any political
30 subdivision of the State.

31 "State wage, benefit and tax laws" means:

32 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

33 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
34 (C.34:11-56.25 et seq.);

35 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
36 c.113 (C.34:11-56a et seq.);

37 (4) The workers' compensation law, R.S.34:15-1 et seq.;

38 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;

39 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
40 (C.43:21-25 et al.);

41 (7) P.L.2008, c.17 (C.43:21-39.1 et al); and

42 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
43 seq.

44 "Tax expenditure" means the amount of uncollected tax revenues
45 from any abatement, reduction, exemption or credit against any
46 State or local tax, including, but not limited to, taxes on real
47 property, raw materials, inventories or other assets, taxes on gross
48 receipts, income or sales, and any use, excise or utility tax. "Tax

1 expenditure” does not refer to any credit against any tax liability of
2 an employee or any personal exemption, homestead rebate, credit or
3 deduction for the expenses of a household or individual, or other
4 reduction of the tax liability of an individual or household.

5
6 2. a. If the Commissioner of Labor and Workforce
7 Development determines that a recipient enterprise has failed, for
8 one or more of its employees, to maintain and report every record
9 regarding wages, benefits and taxes which the recipient enterprise is
10 required to maintain and report pursuant to State wage, benefit and
11 tax laws, as defined in section 1 of this act, and has, in connection
12 with that failure to maintain or report the records, failed to pay
13 wages, benefits, taxes or other contributions or assessments as
14 required by those laws, the commissioner, as an alternative to, or in
15 addition to, any other actions taken in the enforcement of those
16 laws, shall notify the recipient enterprise of the determination and
17 have an audit of the recipient enterprise and any successor firm of
18 the recipient enterprise conducted not more than 12 months after the
19 determination.

20 b. If, in an audit conducted pursuant to subsection a. of this
21 section, the commissioner determines that the recipient enterprise or
22 any successor firm to the recipient enterprise has continued in its
23 failure to maintain or report records as required by those State
24 wage, benefit and tax laws and continued in its failure to pay wages,
25 benefits, taxes or other contributions or assessments as required by
26 those laws, the commissioner shall issue a written determination
27 directing the State Treasurer and any other granting body which
28 provided a development subsidy to require the recipient enterprise
29 to repay the value of any development subsidy awarded during the
30 five year period prior to the violation of the provisions of this
31 section. Upon receipt of any written determination of the
32 commissioner directing a granting body to require the recipient
33 enterprise to repay the value of a development subsidy, the granting
34 body shall, notwithstanding any other law, immediately provide
35 notice to the recipient enterprise of the amount to be repaid, and the
36 recipient enterprise shall, during a period determined by the
37 commissioner of not more than 12 months after the date of the
38 notice, remit to the governing body that amount, to be paid in
39 installments as determined by the commissioner, with the first
40 installment paid not more than 60 calendar days after the date of the
41 notice.

42 c. In instances where an employee leasing company has
43 entered into an employee leasing agreement with a client company
44 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
45 determination by the commissioner directing any granting body
46 which provided a development subsidy to require the recipient
47 enterprise to repay the value of a development subsidy, for a failure
48 or continued failure to keep records regarding, and to pay, wages,

1 benefits and taxes pursuant to State wage, benefit and tax laws,
2 shall be for repayment of the development subsidy by the client
3 company and not by the employee leasing company if the
4 commissioner determines that the failure or continued failure was
5 caused by incomplete, inaccurate, misleading, or false information
6 provided to the employee leasing company by the client company.
7 Nothing in this subsection shall be construed as diminishing or
8 limiting the authority or obligation of the commissioner to rescind
9 the registration of an employee leasing company pursuant to the
10 provisions of section 10 of P.L.2001, c.260 (C.34:8-76).

11

12 3. Any development subsidy which a recipient enterprise is
13 required to repay pursuant to section 2 of this act shall be regarded
14 as a tax liability of the recipient enterprise to the granting body. If
15 the recipient enterprise fails to pay that tax liability when it
16 becomes due, the recipient enterprise shall be subject to the
17 penalties and interest provisions of the State Uniform Tax
18 Procedure Law, R.S.54:48-1 et seq. Any recipient enterprise which
19 considers any decision or declaration of a granting body to
20 recapture any part of a development subsidy to be inconsistent with
21 the provisions of this act, excessive or otherwise unjust, may appeal
22 to the tax court in accordance with the provisions of the State
23 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

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25 4. A recipient enterprise that knowingly makes a false material
26 misrepresentation in any disclosure that the recipient enterprise is
27 required to make pursuant to this act shall be deemed to have
28 knowingly made a false material representation in connection with
29 the negotiation, award or performance of a government contract for
30 the purposes of subsection b. of section 97 of P.L.1999, c.440
31 (C.2C:21-34) and shall be guilty of a crime as specified in that
32 section.

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34 5. The Commissioner of Labor and Workforce Development, in
35 consultation with the State Treasurer, shall, pursuant to the
36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
37 seq.), adopt any regulations necessary to implement the provisions
38 of this act, which shall include regulations necessary to establish a
39 system for the State Treasurer to identify and monitor all
40 development subsidies, granting bodies, and recipient enterprises
41 subject to the provisions of this act and provide the Commissioner
42 of Labor and Workforce Development with the information needed
43 by the commissioner to make the determinations required by this act
44 and issue those determinations to all appropriate granting bodies.

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46 6. This act shall take effect on the 180th day after the date of
47 enactment, except that the Commissioner of Labor and Workforce
48 Development shall take any anticipatory administrative action in

1 advance of the effective date as is necessary for the implementation
2 of this act, and the provisions of this act shall only apply to
3 subsidies received after the effective date of this act.

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6 STATEMENT
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8 This bill sets standards and procedures regarding repayment of
9 State or local government development subsidies by employers who
10 receive the subsidies, but fail to maintain and report records
11 required by certain wage, benefit and tax laws and, in connection
12 with that failure to maintain or report the records, fail to pay wages,
13 benefits, taxes or other contributions or assessments required by
14 those laws.

15 The bill provides that if the Commissioner of Labor and
16 Workforce Development finds that an employer receiving a State or
17 local government development subsidy has failed for one or more of
18 its employees, to maintain and report every record required by laws
19 specified by the bill regarding wages, benefits and taxes and has, in
20 connection with that failure, failed to pay wages, benefits, taxes or
21 other contributions or assessments required by those laws, the
22 commissioner is required to notify the employer of those failures
23 and conduct a subsequent audit.

24 If the commissioner determines in that audit that the employer or
25 any successor firm to the employer has continued in its failure to
26 maintain or report the records and continued its failure to pay the
27 wages, benefits, taxes or other contributions or assessments, the
28 commissioner is required to issue a written determination directing
29 the State Treasurer and any other granting body to require the
30 employer to repay any development subsidy awarded during the
31 five years before the violation, during a period determined by the
32 commissioner of not more than 12 months after the date of the
33 notice, paid in installments as determined by the commissioner,
34 with the first installment paid within 60 days after the notice.

35 Subsidies subject to the provisions of the bill include, but are not
36 limited to, bonds, grants, loans, loan guarantees, tax increment
37 financing, fee waivers, land price subsidies, matching funds or tax
38 expenditures, but not procurement or construction contracts.