

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1217 Session of
2011

INTRODUCED BY SOLOBAY, BOSCOLA, BROWNE, FERLO, FONTANA,
RAFFERTY, TARTAGLIONE AND SCHWANK, AUGUST 3, 2011

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
AUGUST 3, 2011

AN ACT

1 Requiring the Department of Community and Economic Development
2 to submit a unified economic development budget report;
3 providing for unified reporting of property tax reductions
4 and abatements, for application for economic development
5 subsidies, for reports, for subsidy limit and job quality
6 standards and for recapture; establishing a private
7 enforcement action; and providing for public record
8 disclosure.

9 The General Assembly finds and declares as follows:

10 (1) Although the Commonwealth and its local government
11 units have granted numerous economic development subsidies in
12 the last 25 years, the real wage levels and health care
13 coverage of working families have declined.

14 (2) When workers receive low wages and poor benefits,
15 there are often hidden taxpayer costs imposed on citizens, in
16 the form of Medicaid, food stamps, earned income tax credits
17 and other forms of public assistance to the working poor and
18 their families.

19 (3) Citizen participation in economic development has
20 been impeded by a lack of readily accessible information

1 regarding expenditures and outcomes.

2 (4) When employers promise job creation and fail to
3 deliver, the consequences of their broken promises are borne
4 by local workers. When employers receive tax benefits in
5 anticipation of creating jobs, they should be answerable for
6 their failures.

7 (5) Therefore, in order to improve the effectiveness of
8 expenditures for economic development and to ensure that they
9 achieve the goal of raising living standards for working
10 families, it is necessary to collect, analyze and make
11 publicly available information regarding those expenditures
12 and to enact certain safeguards for their use.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Short title.

16 This act shall be known and may be cited as the Economic
17 Development and Fiscal Accountability Act.

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Affiliate" or "affiliated company." A person who directly
23 or indirectly, through one or more intermediaries, controls, is
24 controlled by or is under common control with a specified
25 person.

26 "Association." A corporation, partnership, limited liability
27 company, business trust or two or more persons associated in a
28 common enterprise or undertaking. The term does not include a
29 testamentary trust or an inter vivos trust as defined in 20
30 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction

1 through orphans' court division in general).

2 "Banking institution." A federally chartered or State-
3 chartered banking institution.

4 "Corporate parent." A person, association, corporation,
5 joint venture, partnership or other entity that owns or controls
6 at least 50% of a recipient corporation.

7 "Corporation." A corporation for profit as defined in 15
8 Pa.C.S. § 102 (relating to definitions).

9 "Credit union." A credit union as defined in 17 Pa.C.S. §
10 102 (relating to application of title).

11 "Date of subsidy." Any of the following:

12 (1) Except as otherwise provided in paragraph (2) or
13 (3), the date that a granting body provides the initial
14 monetary value of a development subsidy to a recipient
15 corporation.

16 (2) Where a development subsidy is for the installation
17 of new equipment, the date a recipient corporation puts the
18 equipment into service.

19 (3) Where a development subsidy is for improvements to
20 property, the date the improvements are finished or, if the
21 improvements consist of new construction, the date the
22 recipient corporation or other business entity occupies the
23 property.

24 "Department." The Department of Community and Economic
25 Development of the Commonwealth.

26 "Development subsidy." An expenditure of public funds with a
27 value of at least \$25,000 for the purpose of stimulating
28 economic development within this Commonwealth, including, but
29 not limited to a bond, grant, loan, loan guarantee, enterprise
30 zone, empowerment zone, Keystone Opportunity Zone, tax increment

1 financing, fee waiver, land price subsidy, matching fund, tax
2 abatement, tax exemption and tax credits.

3 "Full-time job." A job in which an individual is employed by
4 a recipient corporation for at least 35 hours per week.

5 "Granting body." An agency, board, commission, office,
6 public benefit corporation or authority of the Commonwealth or a
7 local government unit that provides a developmental subsidy.

8 "Limited liability company." A domestic or foreign limited
9 liability company as defined in 15 Pa.C.S. § 102 (relating to
10 definitions).

11 "Local government unit." An agency, board, commission,
12 office, public benefit corporation or public authority of a
13 political subdivision of the Commonwealth.

14 "Other business entity." A banking institution, credit
15 union, insurance corporation, savings association, person, sole
16 proprietorship, association, joint venture, partnership, limited
17 liability company, public utility corporation or similar
18 business entity.

19 "Part-time job." A job in which an individual is employed by
20 a recipient corporation for fewer than 35 hours per week.

21 "Project site." The site of a project for which a
22 development subsidy is provided.

23 "Property-taxing entity." An entity that levies taxes on
24 real or personal property.

25 "Public utility corporation." A domestic or foreign
26 corporation for profit that is subject to regulation as a public
27 utility by the Pennsylvania Public Utility Commission or an
28 office or agency of the United States.

29 "Recipient corporation." A person, association, corporation,
30 joint venture, partnership or other business entity that

1 receives a development subsidy.

2 "Savings association." A domestic corporation for profit
3 that is an association as defined in the act of December 14,
4 1967 (P.L.746, No.345), known as the Savings Association Code of
5 1967.

6 "Small business." A corporation or other business entity
7 that employs fewer than 20 full-time employees or has total
8 gross receipts of less than \$1,000,000 during a calendar year.
9 For the purposes of determining full-time employees and total
10 gross receipts, if a business is a corporation, the full-time
11 employees and gross receipts of the corporate parent and all
12 subsidiaries thereof shall be included.

13 "State agency." An agency, board, commission, office, public
14 corporation or public authority of the Commonwealth.

15 "Subsidy value." The face value of any and all development
16 subsidies provided to a recipient corporation.

17 "Temporary job." A job in which an individual is hired for a
18 season or for a limited period of time.

19 Section 3. Unified economic development budget report.

20 The department shall submit an annual unified economic
21 development budget report to the General Assembly no later than
22 three months after the end of the Commonwealth's fiscal year.
23 The report shall present all types of expenditures for economic
24 development during the prior fiscal year, including, but not
25 limited to:

26 (1) The amount of uncollected State tax revenues
27 resulting from every tax credit, abatement, exemption and
28 reduction provided by the State government or a local
29 governmental unit, including, but not limited to, gross
30 receipts, corporate net income, personal income, sales, use,

1 excise, property, utility, public utility realty, insurance
2 premium, bank shares, mutual thrift institution, and capital
3 stock and franchise taxes.

4 (2) The name of each taxpayer that claimed any tax
5 credit, abatement, exemption or reduction under paragraph (1)
6 of any value equal to or greater than \$5,000, together with
7 the dollar amount received by each taxpayer.

8 (3) Any tax credit, abatement, exemption or reduction
9 received by a business entity of less than \$5,000, which
10 shall not be itemized. The Department of Revenue shall report
11 an aggregate dollar amount of such expenditures and the
12 number of business entities so aggregated for each tax
13 expenditure.

14 (4) All State-related expenditures for economic
15 development, including line-item budgets for every State-
16 funded entity concerned with economic development, including,
17 but not limited to, the Department of Community and Economic
18 Development, the Department of Labor and Industry, vocational
19 education programs, State university research programs,
20 manufacturing extension service, work force investment
21 boards, industrial development authorities, regional
22 development authorities and finance authorities.

23 Section 4. Unified reporting of property tax reductions and
24 abatements.

25 (a) Property report.--A local government unit shall annually
26 submit a report to the department regarding any real property in
27 the local government unit's jurisdiction that has received a
28 property tax abatement, reduction or exemption during the fiscal
29 year. The report shall contain information, including, but not
30 limited to:

- 1 (1) The name of the property owner.
- 2 (2) The address of the property.
- 3 (3) The start and end dates of the property tax
- 4 abatement, reduction or exemption.
- 5 (4) The schedule of the tax reduction.
- 6 (5) Each tax abatement, reduction or exemption for the
- 7 property.
- 8 (6) The amount of property tax revenue not paid to the
- 9 local government unit as a result of the abatement, reduction
- 10 or exemption.
- 11 (b) Unpaid tax revenue report.--A local government unit
- 12 shall submit a report to the department stating the total
- 13 property tax revenue not paid to the local government unit
- 14 during the fiscal year as a result of all property tax
- 15 abatements, reductions and exemptions in the local government
- 16 unit's jurisdiction.
- 17 (c) Time period for filing.--The reports required under
- 18 subsections (a) and (b) shall be prepared on two forms prepared
- 19 by the Department of Revenue and shall be submitted to the
- 20 department by the local government unit no later than three
- 21 months after the end of the fiscal year.
- 22 (d) Publication.--The department shall annually compile and
- 23 publish all of the data contained in the reports required under
- 24 subsections (a) and (b) in both written and electronic form,
- 25 including the department's Internet website.
- 26 (e) Penalty for failure to report.--If a local government
- 27 unit fails to submit its reports to the department within the
- 28 prescribed time, the department shall notify the State
- 29 Treasurer, and the State Treasurer shall withhold further
- 30 payments of any development subsidy to the delinquent local

1 government unit until the local government unit files its
2 reports with the department and the department informs the State
3 Treasurer of compliance by the local government unit.

4 Section 5. Application for economic development subsidies.

5 (a) Contents of application.--A granting body, together with
6 the applicant for a development subsidy, shall complete an
7 application for the subsidy on a form prepared by the
8 department. The information required on the application shall
9 include the following:

10 (1) An application tracking number for the granting
11 agency and the project.

12 (2) The name, street and mailing address and telephone
13 number of the chief officer of the granting body.

14 (3) The name, street and mailing address and telephone
15 number of the chief officer of the applicant's corporate
16 parent, if any.

17 (4) The name, street and mailing address and telephone
18 number of the owner or chief officer of the applicant.

19 (5) The street address of the project site.

20 (6) The three-digit North American Industry
21 Classification System number of the project site.

22 (7) The total number of individuals employed by the
23 applicant at the project site on the date of the application,
24 itemized by full-time, part-time and temporary positions.

25 (8) The total number of individuals employed in this
26 Commonwealth by the applicant's corporate parent, if any, and
27 all subsidiaries thereof as of December 31 of the prior
28 fiscal year, itemized by full-time, part-time and temporary
29 positions.

30 (9) The development subsidy being applied for with the

granting body and the value of such subsidy.

(10) The number of new jobs to be created by the applicant at the project site, itemized by full-time, part-time and temporary positions.

(11) The average hourly wage to be paid to all current and new employees at the project site, itemized by the full-time, part-time and temporary positions, and further itemized by wage groups as follows: \$6 or less per hour, \$6.01 to \$7 per hour, \$7.01 to \$8 per hour, \$8.01 to \$9 per hour, \$9.01 to \$10 per hour, \$10.01 to \$11 per hour, \$11.01 to \$12 per hour, \$12.01 to \$13 per hour, \$13.01 to \$14 per hour and \$14.01 or more per hour.

(12) For project sites located in a Metropolitan Statistical Area, as defined by the Federal Office of Management and Budget, the average hourly wage paid to nonmanagerial employees in this Commonwealth for the industries involved at the project, as established by the United States Bureau of Labor Statistics.

(13) For project sites located outside of Metropolitan Statistical Areas, the average weekly wage paid to nonmanagerial employees in the county for industries involved at the project, as established by the Department of Commerce.

(14) The type or amount of health care coverage to be provided by the applicant within 90 days of commencement of employment at the project site, including any costs to be borne by the employees.

(15) A list of all development subsidies that the applicant is requesting and the name of any other granting body from which subsidies are sought.

(16) A statement as to whether the development subsidy

1 may reduce employment at any other site controlled by the
2 applicant or its corporate parent, if any, within or without
3 this Commonwealth, resulting from automation, merger,
4 acquisition, corporate restructuring or other business
5 activity.

6 (17) A statement as to whether the project involves the
7 relocation of work from another address and, if so, the
8 number of jobs to be relocated and the address from which
9 they are to be relocated.

10 (18) A certification by the owner or chief officer of
11 the applicant as to the accuracy of the application.

12 (b) Copy of approved application to the department.--

13 (1) If the granting body approves the application, the
14 granting body shall send a copy of the application to the
15 department within 15 days of approval.

16 (2) If the application is not approved, the granting
17 body shall retain the application in its records.

18 Section 6. Reports.

19 (a) Annual reports.--

20 (1) A granting body shall file a progress report with
21 the department for each project for which a development
22 subsidy has been granted no later than February 1 each year
23 and shall file annual progress reports for the duration of
24 the subsidy or not less than five years, whichever period is
25 greater. The report shall include the following information:

26 (i) The application tracking number.

27 (ii) The name, street and mailing address, telephone
28 number and chief officer of the granting body.

29 (iii) The name, street and mailing address,
30 telephone number and the owner or chief officer of the

1 recipient corporation or other business entity.

2 (iv) A summary of the number of jobs required,
3 created and lost, itemized by full-time, part-time and
4 temporary positions and by wage groups.

5 (v) The type and amount of health care coverage
6 provided to the employees at the project site, including
7 any costs borne by the employees.

8 (vi) A comparison of the total employment in this
9 Commonwealth by the recipient's corporate parent, if any,
10 on the date of the application and the date of the
11 report, itemized by full-time, part-time and temporary
12 positions.

13 (vii) A statement as to whether the use of the
14 development subsidy during the previous fiscal year has
15 reduced employment at any other site controlled by the
16 recipient corporation or other business entity or its
17 corporate parent, if any, within or without this
18 Commonwealth as a result of automation, merger,
19 acquisition, relocation, corporate restructuring or other
20 business activity.

21 (viii) A signed certification by the owner or chief
22 officer of the recipient corporation or other business
23 entity as to the accuracy of the progress report.

24 (2) On all subsequent annual progress reports, the
25 granting body shall indicate whether the recipient
26 corporation is still in compliance with its job creation,
27 wage and benefit goals and whether the corporate parent, if
28 any, is still in compliance with its Commonwealth employment
29 requirement.

30 (b) Biennial report.--

1 (1) No later than 15 days after the second anniversary
2 of the date of subsidy, the granting body shall file with the
3 department a two-year progress report including the same
4 information as required under subsection (a). The recipient
5 corporation or other business entity shall certify the
6 accuracy of the report.

7 (2) The granting body shall state in the two-year report
8 whether the recipient corporation or other business entity
9 has achieved its job creation, wage and benefit goals and
10 whether the corporate parent, if any, has maintained its
11 level of employment in this Commonwealth at no less than 90%
12 of its level of employment in this Commonwealth on the date
13 of the subsidy.

14 (c) Compilation and publication of data.--The department
15 shall compile and publish all data from the progress reports in
16 both written and electronic form, including the department's
17 Internet website.

18 (d) Access to project site and records.--The granting body
19 and the department shall have access at all reasonable times to
20 the project site and the records of the recipient corporation or
21 other business entity in order to monitor the project and to
22 prepare progress reports.

23 (e) Effect of noncompliance.--A recipient corporation or
24 other business entity that fails to provide the granting body
25 with the information or access required under this section shall
26 be subject to a fine of not less than \$500 per day to commence
27 within ten working days after the February 1 deadline and of not
28 less than \$1,000 per day to commence 20 days after such
29 deadline.

30 Section 7. Subsidy limit and job quality standards.

1 A granting body may not award:

2 (1) (i) A development subsidy if the cost per job is
3 greater than \$35,000.

4 (ii) The cost shall be determined by dividing the
5 amount of the subsidy by the number of full-time jobs
6 required under the application approved by the granting
7 body.

8 (2) (i) A subsidy to an applicant unless the wages paid
9 to employees at the project site are equal to or exceed
10 85% of the average wage as established under section 5(a)
11 (12) and (13), provided, however, that for small
12 businesses, the average wage must equal or exceed 75% of
13 the wages established thereunder.

14 (ii) The computation of wages under this paragraph
15 shall only apply to a recipient corporation or other
16 business entity that provides the health care coverage as
17 approved in its application by the granting body.

18 (iii) A recipient corporation or other business
19 entity not providing such health care coverage shall pay
20 wages to employees at the project site equal to or in
21 excess of 100% of average wage as established under this
22 act.

23 Section 8. Recapture.

24 (a) Recipient corporation duties.--A recipient corporation
25 or other business entity shall:

26 (1) Fulfill its job creation, wage, health care and
27 other benefit requirements for the project site within two
28 years of the date of subsidy.

29 (2) Maintain its wage and benefit goals as long as the
30 subsidy is in effect or five years, whichever is longer.

1 (b) Corporate parent duties.--The parent of a recipient
2 corporation or other business entity may lose no more than 10%
3 of its employment in this Commonwealth as long as the
4 development subsidy is in effect or is not less than five years,
5 whichever is longer.

6 (c) Procedure.--If the requirements under subsection (a) or
7 (b) are not fulfilled, the granting body shall recapture the
8 development subsidy from the recipient corporation or other
9 business entity, or corporate parent, if any, as follows:

10 (1) Upon a failure by the recipient corporation or other
11 business entity to create the required number of jobs or to
12 pay the required wages or benefits, the amount recaptured
13 shall be based on the pro rata amount by which the unfilled
14 jobs, wages or benefits bear to the total amount of the
15 development subsidy.

16 (2) Upon the loss by the recipient corporation or other
17 business entity or corporate parent of more than 10% of its
18 employment in this Commonwealth.

19 (d) Notice of intent to recapture.--

20 (1) The granting body shall provide notice to the
21 recipient corporation or other business entity, and corporate
22 parent, if any, as well as any affiliate or subsidiary, of
23 its intent to recapture the development subsidy and state the
24 reasons and amount to be recaptured.

25 (2) The recipient corporation or other business entity
26 shall remit to the governing body such amount within 60
27 calendar days of the date of the notice.

28 (e) Declaration of subsidy as null and void.--

29 (1) If a recipient corporation or other business entity
30 defaults on a development subsidy in three consecutive

1 calendar years, or in a shorter period if provided in the
2 development subsidy agreement, the granting body shall
3 declare the subsidy null and void, and shall so notify the
4 department and the recipient corporation or other business
5 entity.

6 (2) The recipient corporation or corporate parent, if
7 any, as well as any affiliate or subsidiary, shall pay back
8 to the granting body all remaining value of the development
9 subsidy it has not previously repaid within 180 calendar days
10 of the date of the notice of the default.

11 (f) Joint and severable liability.--For the purposes of this
12 section, the recipient corporation or other business entity,
13 corporate parent, if any, or any affiliate or affiliated company
14 shall be jointly and severally liable for the recapture required
15 under subsection (c).

16 Section 9. Private enforcement action.

17 If a granting body fails to enforce any provision of this
18 act, any individual who paid personal income taxes to the
19 Commonwealth in the calendar year prior to the year in dispute,
20 or any organization representing such taxpayers, may bring a
21 civil action in an appropriate court to compel enforcement under
22 this act. The court shall award reasonable attorney fees and
23 costs to a prevailing taxpayer or organization in the civil
24 action.

25 Section 10. Public record disclosure.

26 All records required to be prepared or maintained under this
27 act, including, but not limited to, applications, progress
28 reports, recapture notices and any other records or proceedings
29 relating thereto, shall be subject to disclosure under the act
30 of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know

1 Law.

2 Section 11. Severability.

3 The provisions of this act are severable. If any provision of
4 this act or its application to any person or circumstance is
5 held invalid, the invalidity shall not affect other provisions
6 or applications of this act which can be given effect without
7 the invalid provision or application.

8 Section 12. Effective date.

9 This act shall take effect in 90 days.