

HOUSE No. 333

The Commonwealth of Massachusetts

PRESENTED BY:
Steven J. D'Amico

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act related to economic development and fiscal accountability.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven J. D'Amico	4th Bristol
James B. Eldridge	
Patricia D. Jehlen	Second Middlesex
Denise Provost	27th Middlesex
Matthew C. Patrick	3rd Barnstable
Geraldine Creedon	11th Plymouth
Carl M. Sciortino, Jr.	34th Middlesex
Elizabeth A. Malia	11th Suffolk
William N. Brownsberger	24th Middlesex
John F. Quinn	9th Bristol
Alice K. Wolf	25th Middlesex
Byron Rushing	9th Suffolk
Antonio F.D. Cabral	13th Bristol
Angelo M. Scaccia	14th Suffolk
Paul McMurtry	11th Norfolk
Jennifer M. Callahan	18th Worcester
Timothy Madden	Barnstable, Dukes and Nantucket
James J. O'Day	14th Worcester District
Cleon H. Turner	1st Barnstable
Ellen Story	3rd Hampshire
Michael F. Rush	10th Suffolk
David B. Sullivan	6th Bristol

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT RELATED TO ECONOMIC DEVELOPMENT AND FISCAL ACCOUNTABILITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General laws are hereby amended by inserting after Chapter 30b:-

Chapter 30C. Economic Development and Fiscal Accountability

SECTION 1. As used in Chapter 30C, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Corporate parent” means any person, association, corporation, joint venture, partnership, or other entity, that owns or controls 50 percent or more of a recipient corporation.

"Date of subsidy” means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation provided, however, that where the subsidy is for the installation of new equipment, such date shall be the date the corporation puts the equipment into service and provided, further, that where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

"Development subsidy” means any expenditure of public funds with a value of at least \$25,000.00 for the purpose of stimulating economic development within the Commonwealth, including but not limited to bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

“Full-time job” means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

"Granting body" means any agency, board, office, public benefit corporation or authority of the Commonwealth or a local government unit that provides a development subsidy.

“Local government unit” means an agency, board, commission, office, public benefit corporation, or public authority of a political subdivision of the Commonwealth.

“New Employee” means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the Commonwealth. “New employee” does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least 6 months before hiring the employee.

“Part-time job” means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

“Permanent Job” means a job that is not scheduled to terminate at the completion of a discrete project

"Project site" means the site of a project for which any development subsidy is provided.

"Property-taxing entity" means any entity that levies taxes upon real or personal property.

“Recipient corporation” means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

"Small business" means a corporation whose corporate parent, and all subsidiaries thereof, that employed fewer than twenty full-time employees or had total gross receipts of less than one million dollars during the calendar year.

“State” means an agency, board, commission, office, public benefit corporation or public benefit authority of the Commonwealth.

"Subsidy value” means the face value of any and all development subsidies provided to a recipient corporation.

“Temporary job” means a job in which an individual is hired for a season or for a limited period of time.

SECTION 2. Unified Economic Development Budget

(a) The Massachusetts Department of Revenue shall submit an annual Unified Economic Development Budget to the Legislature no later than three months after the end of the Commonwealth’s fiscal year. The report shall present all types of expenditures for economic development during the prior fiscal year, including but not limited to:

(i) The amount of uncollected state tax revenues resulting from every corporate tax credit, abatement, exemption and reduction provided by the Commonwealth's or a local governmental unit including but not limited to gross receipts, income, sales, use, raw materials, excise, property, utility, and inventory taxes.

(ii) The name of each corporate taxpayer which claimed any tax credit, abatement, exemption or reduction under subdivision (1) of any value equal to or greater than \$5,000, together with the dollar amount received by each such corporation.

(iii) Any tax credit, abatement, exemption or reduction received by a corporation of less than \$5,000 each shall not be itemized. The Department of Revenue shall report an aggregate dollar amount of such expenditures and the number of companies so aggregated for each tax expenditure.

(iv) All State appropriated expenditures for economic development, including line-item budgets for every State-funded entity concerned with economic development, including but not limited to, Executive Office of Housing and Economic Development, Department of Business Development, Massachusetts Office of Travel & Tourism, Massachusetts Office of Business Development, Massachusetts Office of International Trade and Investment, Office of Small Business & Entrepreneurship, Seaport Advisory Council, Department of Housing and Community Development, Office of Indian Affairs, Department of Consumer Affairs and Business Regulation, Division of Insurance, Division of Banks, State Racing Commission, Division of Professional Licensure, Division of Standards, Department of Revenue, Department of Telecommunications and Cable, Executive Office of Labor and Workforce Development, Department of Workforce Development, Commonwealth Corporation, Division of Apprentice Training, Division of Career Services, Division of Unemployment Assistance, Department of Labor, Division of Occupational Safety, Labor Relations Council, Division of Labor Relations, Joint Labor Management Committee, Division of Industrial Accidents, Workers Compensation Advisory Council, Massachusetts Aeronautics Commission, Affirmative Market Program,

Massachusetts Dept. of Agricultural Resources, BDC Capital, Massachusetts Office of Business Development, Community Economic Development Assistance Corporation, Massachusetts Office of International Trade and Investment, Massachusetts Development Finance Agency, Massachusetts Export Center, Massachusetts Small Business Development Center Network, State Office of Minority and Women Business Assistance, Office of Technical Assistance and Technology, Massachusetts Technology Collaborative, Massachusetts Life Science Center.

SECTION 3. Unified Reporting of Property Tax Reductions and Abatements

(a) Each property-taxing entity shall annually submit a report to the Massachusetts Department of Revenue regarding any real property in the entity's jurisdiction that has received a property tax abatement or reduction during the fiscal year. The report shall contain information including but not limited to: the name of the property owner; the address of the property; the start and end dates of the property tax reduction or abatement; the schedule of the tax reduction; each tax abatement, reduction and exemption for the property; and the amount of property tax revenue not paid to the taxing entity as a result of the reduction or abatement.

(b) Each property-taxing entity shall also submit a report to the Department of Revenue setting forth the total property tax revenue not paid to such entity during the fiscal year as a result of all property tax reductions and abatements in the entity's jurisdiction.

(c) The reports required under paragraphs (a) and (b) of this section shall be prepared on two forms prepared by the Department, and shall be submitted to the Department of Revenue by the property-taxing entity no later than three months after the end of the fiscal year.

(d) The Department of Revenue shall annually compile and publish all of the data contained in the reports required under paragraphs (a) and (b) in both written and electronic form, including the Department's World Wide Web site.

(e) If a property-taxing entity fails to submit its reports to the Department or Revenue within the prescribed time, the Department shall notify the Comptroller of the Commonwealth, whereupon the Comptroller shall withhold further payments of any development subsidy to the delinquent entity until the entity files its reports with the Department.

SECTION 4. Application for Economic Development Subsidies

(a) Each granting body, together with the applicant for a development subsidy, shall complete an application for the subsidy on a form prepared by the Executive Office of Housing and Economic Development. The information required on the application shall include the following:

- (i) An application tracking number for the granting agency and the project;
- (ii) The name, street and mailing address, and phone number of the chief officer of the granting body;
- (iii) The name, street and mailing address, and phone number of the chief officer of the applicant's corporate parent;
- (iv) The name, street and mailing address, and phone number of the chief officer of the applicant;
- (v) The street address of the project site;
- (vi) The three-digit North American Industry Classification System number of the project site;
- (vii) The total number of individuals employed by the applicant at the project site on the date of the application, broken down by full-time, part-time, and temporary positions;

(viii) The total number of individuals employed in the State by the applicant's corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken down by full-time, part-time and temporary positions;

(ix) The development subsidy or subsidies being applied for with the granting body, and the value of such subsidy or subsidies;

(x) The number of new jobs to be created by the applicant at the project site, broken down by full-time, part-time and temporary positions;

(xi) The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time and temporary positions, and further broken down by wage groups as follows: \$8.00 or less an hour, \$8.01 to \$9.00 an hour, \$9.01 to \$10.00 an hour, \$10.01 to \$11.00 an hour, \$11.01 to \$12.00 an hour, \$12.01 to \$13.00 an hour, \$13.01 to \$14.00 an hour, and \$14.01 to \$15.00 an hour, \$15.01 to \$16.00 an hour, \$17.01 to \$18.00 an hour, \$18.01 to \$19.00 an hour, \$19.01 to \$20.00 an hour, \$20.01 to \$21.00 and hour, \$21.01 to \$22.00 and hour, \$22.01 to \$23.00 an hour, \$23.01 to \$24.00 an hour, \$24.01 to \$25.00 and hour, \$25.01 to \$30.00 an hour, \$30.01 to \$40.00 an hour, \$40.01 to \$50.00 an hour and \$50.01 or more per hour;

(xii) 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 non-managerial employees in the State for the industries involved at the project, as established by the United States Bureau of Labor Statistics.

(xiii) For project sites located outside of Metropolitan Statistical Areas, the average weekly wage paid to non-managerial employees in the county for industries involved at the project, as established by the United States Department of Commerce.

(xiv) The type and amount of health care coverage to be provided by the applicant within ninety days of commencement of employment at the project site, including any costs to be borne by the employees;

(xv) A list of all development subsidies, which the applicant is requesting and the name of any other granting body from which such subsidies are sought;

(xvi) A statement as to whether the development subsidy may reduce employment at any other site controlled by the applicant or its corporate parent, within or without of the State, resulting from automation, merger, acquisition, corporate restructuring or other business activity.

(xvii) A certification by the chief officer of the applicant as to the accuracy of the application.

(1) If the granting body shall approve the application, it shall send a copy to the Executive Office of Housing and Economic Development within fifteen days of such approval. If the application is not approved, the granting body shall retain the application in its records.

SECTION. 5 Reports

(a) Annual reports

(i) Each granting body shall file a progress report with the Executive Office of Housing and Economic Development for each project for which a development subsidy has been granted, no later than February 1 each year. The report shall include the following information:-

(1) The application tracking number;

(2) The name, street and mailing addresses, phone number and chief officer of the granting body;

(3) The name, street and mailing addresses, phone number, and chief officer of the recipient corporation;

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

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

(6) The comparison of the total employment in the State by the recipient's corporate parent on the date of the application and the date of the report, broken down by full-time, part-time and temporary positions;

(7) A statement as to whether the use of the development subsidy during the previous fiscal year has reduced employment at any other site controlled by the recipient corporation or its corporate parent, within or without of the State as a result of automation, merger, acquisition, corporate restructuring or other business activity.

(8) A signed certification by the chief officer of the recipient corporation as to the accuracy of the progress report.

(ii) On all subsequent annual progress reports, the granting body shall indicate whether the recipient corporation is still in compliance with its job creation, wage and benefit goals, and whether the corporate parent is still in compliance with its State employment requirement.

(iii) Granting bodies and recipient corporations shall file annual progress reports for the duration of the subsidy, or not less than five years, whichever period is greater.

(b) Two-Year Report

(i) No later than fifteen days after the second anniversary of the date of subsidy, the granting body shall file with the Executive Office of Housing and Economic Development a two-year progress report including the same information as required under section 5(a). The recipient corporation shall certify as to the accuracy of such report.

(ii) The granting body shall state in the two-year report whether the recipient corporation has achieved its job creation, wage and benefit goals, and whether the corporate parent has maintained 90% of its employment in the State.

(c) The Executive Office of Housing and Economic Development (EOHED) shall compile and publish all data from the progress reports in both written and electronic form, including to a reporting web site maintained by the Executive Office of Housing and Economic Development.

(d) The granting body and the Executive Office of Housing and Economic Development shall have access at all reasonable times to the project site and the records of the recipient corporation in order to monitor the project and to prepare progress reports. The Executive Office of Housing and Economic Development shall commit the resources necessary to audit compliance and verify the accuracy of progress reports.

(e) A recipient corporation that fails to provide the granting body with the information or access required under paragraphs (1) and (2) of this section shall be subject to a fine of not less than \$500 per day to commence within ten working days after the February 1 deadline, and of not less than \$1,000 per day to commence twenty days after such deadline.

SECTION. 6 Subsidy Limit and Job Quality Standards

(a) A granting body shall not grant award a development subsidy if the cost per permanent, full-time job is greater than \$35,000.00. Such cost shall be determined by dividing the amount of the subsidy by the number of permanent, full-time jobs required under the application approved by the granting body.

(b) A granting body shall not grant a subsidy to an applicant unless the wages paid to employees at the project site are equal to or exceed 85% of the average wage as established

under paragraphs (12) and (13) of section 4, provided, however, that for small businesses, the average wage must equal or exceed 75% of the wages established hereunder. The computation of wages under this section shall only apply to a recipient corporation that provides the health care coverage as approved in its application by the granting body.

SECTION 7. Recapture

(a) A recipient corporation shall fulfill its job creation, wage, health care and other benefit requirements for the project site within two years of the date of subsidy. Such recipient shall maintain its wage and benefit goals as long as the subsidy is in effect, or five years, whichever is longer.

(b) The corporate parent of a recipient corporation must maintain at least 90% of its employment in the State as long as the development subsidy is in effect, or not less than five years, whichever is longer.

(c) If the requirements under paragraphs (a) or (b) are not fulfilled, the granting body shall recapture the development subsidy from the recipient corporation as follows:

(i) Upon a failure by the recipient corporation to create the required number of jobs or to pay the required wages or benefits, the amount recaptured shall be based on the pro rata amount by which the unfulfilled jobs, wages or benefits bear to the total amount of the development subsidy.

(ii) Upon a failure of the corporate parent to maintain 90% of its employment in the State, the rate of recapture shall equal twice the percentage by which such employment is less than 90%.

(d) The granting body shall provide notice to the recipient corporation of its intent to recapture the development subsidy and state the reasons and amount to be recaptured. The recipient corporation shall remit to the governing body such amount within 60 calendar days of the date of such notice.

(e) If a recipient corporation defaults on a development subsidy in three consecutive calendar years, the granting body shall declare the subsidy null and void, and shall so notify the Executive Office of Housing and Economic Development and the recipient corporation. The recipient corporation shall pay back to the granting body all remaining value of the development subsidy it has not previously repaid within 180 calendar days of the date of the notice of such default.

SECTION 8. Private Enforcement Action

If a granting body fails to enforce any provision of this Act, any individual who paid personal income taxes to the State in the calendar year prior to the year in dispute, or any organization representing such taxpayers, shall be entitled to bring a civil action in state court to compel enforcement under this statute. The court shall award reasonable attorney's fees and costs to such prevailing taxpayer or organization.

SECTION 9. Public Record Disclosure

All records required to be prepared or maintained under this Act, including but not limited to applications, progress reports, audits, recapture notices and any other records or proceedings relating thereto, shall be subject to disclosure under the State's Open Records Act and be made available on the Executive Office of Housing and Economic Development's reporting website in a way that is concise and easy to access by the public.

SECTION 10. Pre-emption

Nothing in this chapter shall be read to require or authorize any recipient corporation to reduce wages or benefits established under any collective bargaining agreement or state or federal prevailing wage law.

SECTION 11. Separability

If any provision of this Act is determined to be unenforceable in a court of law, such determination shall not affect the validity or enforceability of any other provision of this Act.

SECTION 12. Waivers

The Executive Office of Economic Development may waive the subsidy limit and job quality standards described in section 6 upon a finding that there exists significant public policy goals apart from job creation. Thirty days prior to waiving requirements, the Executive Office of Economic Development shall publish its intent to do so on its reporting website with an explanation of the specific public policy goals, why the waiver is necessary to meet the public policy goals and define objective standards by which the public policy goals will be measured. The one and two year progress reports described in section 5 will use these standards to determine whether these public policy goals were met.