SENATE DOCKET, NO. 1119 FILED ON: 1/18/2013

SENATE . . . . . No. 173

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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:

An Act promoting efficiency and transparency in economic development .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	*Middlesex and Worcester*
Sheila C. Harrington	*1st Middlesex*
Denise Andrews	*2nd Franklin*
Patricia D. Jehlen	*Second Middlesex*
Sonia Chang-Diaz	*Second Suffolk*
Carolyn C. Dykema	*8th Middlesex*
Mark C. Montigny	*Second Bristol and Plymouth*
Carl M. Sciortino, Jr.	*34th Middlesex*
Robert L. Hedlund	*Plymouth and Norfolk*
Tom Sannicandro	*7th Middlesex*
James Arciero	*2nd Middlesex*
Kay Khan	*11th Middlesex*

SENATE DOCKET, NO. 1119 FILED ON: 1/18/2013

SENATE . . . . . No. 173

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 173) of James B. Eldridge, Sheila C. Harrington, Denise Andrews, Patricia D. Jehlen and other members of the General Court for legislation to promote efficiency and transparency in economic development . Economic Development and Emerging Technologies.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *153* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act promoting efficiency and transparency in economic development .

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

SECTION 1. The General Laws are hereby amended after Chapter 30B by inserting the following chapter:-

Chapter 30C. Economic Development, Transparency 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,

16 including but not limited to bonds, grants, loans, loan guarantees, enterprise zones,
17 empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching
18 funds, tax abatements, tax exemptions, and tax credits.

19 “Discretionary tax credit program” means: (i) the historic rehabilitation tax credit in
20 section 38R of sad chapter 63 and section 6J of said chapter 62; (ii) the life sciences investment
21 tax credit in section 38U of said chapter 63 and subsection (m) of said section 6 of said chapter
22 62; (iii) the low-income housing tax credit in section 31H of said chapter 63 and section 6I of
23 said chapter 62; (iv) the refundable research credit in subsection (J) of section 38M of said
24 chapter 63; (v) the economic development incentive program in subsection (g) of said section 6
25 of said chapter 62 and section 38N of said chapter 63; (vi) certified housing development credits
26 of subsection (q) of Section 6 of said Chapter 62; (vii) donated land (conservation) credits of
27 subsection (p) of Section 6 of said Chapter 62; (viii) community investment tax credit of section
28 6M of said chapter 62 and section 38EE of said chapter 63; and (ix) any discretionarily awarded
29 tax credits under chapter 62 and 63 established after January 1, 2013.

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

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

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

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

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

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

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

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

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

49 “Searchable Website” means the website defined in Section 14C (a) of Chapter 7 of the
50 Massachusetts General Laws and administered by the Secretary of Administration and Finance
51 that allows the public at no cost to search for, obtain and aggregate state spending and revenue
52 information.

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

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

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

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

62 Section 2. Application for Economic Development Subsidies

63 (a) Notwithstanding any general or special laws to the contrary, an applicant for an
64 economic development subsidy, shall complete an application for the subsidy on a form prepared
65 by the Executive Office of Housing and Economic Development. The information required on
66 the application shall include but not be limited to the following:

67 (i) An application tracking number for the granting agency and the project;

68 (ii) The name, street and mailing address, and phone number of the chief officer of the
69 granting body;

70 (iii) The name, street and mailing address, and phone number of the chief officer of the
71 applicant’s corporate parent;

72 (iv) The name, street and mailing address, and phone number of the chief officer of the
73 applicant;

74 (v) The street address of the project site;

75 (vi) The three-digit North American Industry Classification System number of the project
76 site;

77 (vii) The total number of individuals employed by the applicant at the project site on the
78 date of the application, broken down by full-time, part-time, and temporary positions;

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

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

84 (x) An estimate of the number of new jobs to be created by the applicant, broken down by
85 full-time, part-time and temporary positions, where applicable;

86 (xi) The average hourly wage to be paid to all current and new employees at the project
87 site, where applicable;

88 (xii) For project sites located in a Metropolitan Statistical Area, as defined by the federal
89 Office of Management and Budget, the average hourly wage paid to non-managerial employees
90 in the Commonwealth for the industries involved at the project, as established by the United
91 States Bureau of Labor Statistics;

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

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

98 (xv) A description of the project to be developed or undertaken, where applicable;

99 (xvi) The value of any additional private investment to be committed to this project;

100 (xvii) A statement as to whether the development subsidy may reduce employment at any
101 other site controlled by the applicant or its corporate parent, within or without of the
102 Commonwealth, resulting from automation, merger, acquisition, corporate restructuring or other
103 business activity;

104 (1) If the granting body shall approve the application, it shall send a copy to the
105 Executive Office of Housing and Economic Development within fifteen days of such approval,
106 which shall be a public record.

107 Section 3. Reports

108 (a) Annual reports

109 (i) Notwithstanding any general or special laws to the contrary, each granting body shall
110 file a progress report with the Executive Office of Housing and Economic Development for each

111 project for which a development subsidy has been granted, no later than May 15 each year. The
112 report shall include the following information:-

113 (1) The application tracking number;

114 (2) The identity of each taxpayer received an economic development subsidy and from
115 which program the credit was received;

116 (3) The amount of the tax credit awarded and issued for each taxpayer and each project, if
117 applicable;

118 (4) A list of all other development subsidies which the applicant has been granted by state
119 or local agencies within the Commonwealth.

120 (i) Subsidies granted over a period of time, including but not limited to tax increment
121 financing agreements, shall include both the value of the annual subsidy and the estimated
122 cumulative total for each subsequent year.

123 (5) The benefit to the Commonwealth actually provided, including but not limited to:

124 (i) The number of jobs created and lost, broken down by full-time, part-time and
125 temporary positions, where applicable;

126 (ii) The average wage of the jobs created, where applicable;

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

129 (iv) The status of the development project, where applicable;

130 (v) The amount of private investment committed to this project, where applicable.

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

134 (7) A statement, as reported by the taxpayer applicant, as to whether the use of the
135 development subsidy during the previous fiscal year has reduced employment at any other site
136 controlled by the recipient corporation or its corporate parent, within or without of the
137 Commonwealth as a result of automation, merger, acquisition, corporate restructuring or other
138 business activity;

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

141 (i) On all subsequent annual progress reports, the granting body shall indicate whether the
142 recipient corporation is still in compliance with its job creation, wage and benefit goals, and
143 whether the corporate parent is still in compliance with its state employment requirement;

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

146 (b) Two-Year Report

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

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

154 (c) The Executive Office of Housing and Economic Development (EOHED) shall
155 compile and publish all data from the progress reports in both written and electronic form,
156 including to a reporting web site maintained by the Executive Office of Housing and Economic
157 Development. The information in the reports shall be included as part of the Searchable Website
158 administered by the Secretary of Administration and Finance

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

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

168 Section 4. Review

169 Notwithstanding any general or special laws to the contrary, all discretionary tax credit
170 programs shall expire after a period of 5 years unless reauthorized by an act of the legislature.
171 All other economic development subsidies shall be reviewed every 5 years by the legislature
172 with assistance from the Executive Office of Housing and Economic Development, based on the
173 reports required under Section 3, and may take action to renew, modify, or repeal them
174 accordingly.

175 Section 5. Subsidy Limit and Job Quality Standards

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

180 (b) A granting body shall not grant a subsidy to an applicant unless the wages paid to
181 employees at the project site are equal to or exceed 85% of the average wage as established
182 under paragraphs (xii) and (xiii) of section 4, provided, however, that for small businesses, the
183 average wage must equal or exceed 75% of the wages established hereunder. The computation of
184 wages under this section shall only apply to a recipient corporation that provides the health care
185 coverage as approved in its application by the granting body.

186 Section 6. Revocation/Recapture

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

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

194 (c) If the requirements under paragraphs (a) or (b) are not fulfilled, this shall be deemed a
195 material variance and the granting body shall revoke and recapture the development subsidy
196 from the recipient corporation as follows:

197 (i) For projects certified before January 1, 2013, if the granting body revokes a subsidy
198 because of a material variance, the value of the economic benefit that shall be recaptured or
199 otherwise recouped by the commonwealth or municipality shall be the amount the corporate
200 parent would have been allowed to receive after the effective date of revocation. Revocation
201 shall take effect on the first day of the tax year in which a material variance occurred as
202 determined by the granting body. If the granting body revokes a subsidy because of a material
203 misrepresentation or fraud, the value of the economic benefit that shall be recaptured or
204 otherwise recouped by the commonwealth or the municipality shall be the total amount of
205 economic benefit approved by the state for the corporate parent.

206 (ii) For projects certified after January 1, 2013, if the granting body revokes a subsidy,
207 the value of the economic benefit that shall be recaptured or otherwise recouped by the state or
208 municipality shall be the total amount of economic benefit approved by the state or municipality
209 for the corporate parent.

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

214 (e) If a recipient corporation fails to create at least 90% of the required number of jobs or
215 to pay the required wages or benefits for three consecutive calendar years, the granting body
216 shall revoke, and shall so notify the Executive Office of Housing and Economic Development
217 and the recipient corporation. The recipient corporation shall pay back to the granting body all
218 remaining value of the development subsidy it has not previously repaid within 180 calendar
219 days of the date of the notice of such default.

220 (i) Recipient corporations that have defaulted on their agreement and had their full
221 subsidy recaptured shall be barred from applying for any other economic development subsidy in
222 the Commonwealth for a period not less than 5 years.

223 Section 7. Private Enforcement Action

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

229 Section 8. Transparency & Public Record Disclosure

230 (a) All records required to be prepared or maintained under this Act, including but not
231 limited to applications, progress reports, audits, recapture notices and any other records or
232 proceedings relating thereto, shall be subject to disclosure under the Commonwealth's Open
233 Records Law and be made available as part of the Searchable Website administered by the
234 Secretary of Administration and Finance.

235 (b) Granting bodies administering discretionary economic development incentive
236 programs, including but not limited to the Economic Assistance Coordinating Council and the
237 Massachusetts Life Sciences Center, shall be required to:

238 (i) Post meeting dates 30 days in advance on the website of the Executive Office of
239 Housing and Economic Development.

240 (ii) Make meeting agendas and supporting materials, including but not limited to the full
241 text of the applications to be considered, publicly available on the website of the Executive
242 Office of Housing and Economic Development at least 2 weeks prior to the meeting.

243 (iii) Make meeting members, votes, and minutes publicly available on the website of the
244 Executive Office of Housing and Economic Development within 24 hours of the meeting.

245 Section 9. Pre-emption

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

249 Section 10. Separability

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

252 Section 11. Waivers

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