

HOUSE No. 333

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

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

2 Chapter 30C. Economic Development and Fiscal Accountability

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

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

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

13 "Development subsidy" means any expenditure of public funds with a value of at least
14 \$25,000.00 for the purpose of stimulating economic development within the Commonwealth,
15 including but not limited to bonds, grants, loans, loan guarantees, enterprise zones,
16 empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching
17 funds, tax abatements, tax exemptions, and tax credits.

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

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

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

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

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

31 "Permanent Job" means a job that is not scheduled to terminate at the completion of a
32 discrete project

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

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

35 "Recipient corporation" means any person, association, corporation, joint venture,
36 partnership or other entity that receives a development subsidy.

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

40 "State" means an agency, board, commission, office, public benefit corporation or public
41 benefit authority of the Commonwealth.

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

44 "Temporary job" means a job in which an individual is hired for a season or for a limited
45 period of time.

46 SECTION 2. Unified Economic Development Budget

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

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

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

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

62 (iv) All State appropriated expenditures for economic development, including line-item
63 budgets for every State-funded entity concerned with economic development, including but not
64 limited to, Executive Office of Housing and Economic Development, Department of Business
65 Development, Massachusetts Office of Travel & Tourism, Massachusetts Office of Business
66 Development, Massachusetts Office of International Trade and Investment, Office of Small
67 Business & Entrepreneurship, Seaport Advisory Council, Department of Housing and
68 Community Development, Office of Indian Affairs, Department of Consumer Affairs and
69 Business Regulation, Division of Insurance, Division of Banks, State Racing Commission,
70 Division of Professional Licensure, Division of Standards, Department of Revenue, Department
71 of Telecommunications and Cable, Executive Office of Labor and Workforce Development,
72 Department of Workforce Development, Commonwealth Corporation, Division of Apprentice
73 Training, Division of Career Services, Division of Unemployment Assistance, Department of
74 Labor, Division of Occupational Safety, Labor Relations Council, Division of Labor Relations,
75 Joint Labor Management Committee, Division of Industrial Accidents, Workers Compensation
76 Advisory Council, Massachusetts Aeronautics Commission, Affirmative Market Program,
77 Massachusetts Dept. of Agricultural Resources, BDC Capital, Massachusetts Office of Business

78 Development, Community Economic Development Assistance Corporation, Massachusetts
79 Office of International Trade and Investment, Massachusetts Development Finance Agency,
80 Massachusetts Export Center, Massachusetts Small Business Development Center Network,
81 State Office of Minority and Women Business Assistance, Office of Technical Assistance and
82 Technology, Massachusetts Technology Collaborative, Massachusetts Life Science Center.

83 SECTION 3. Unified Reporting of Property Tax Reductions and Abatements

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

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

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

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

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

104 SECTION 4. Application for Economic Development Subsidies

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

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

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

112 (iii) The name, street and mailing address, and phone number of the chief officer of the
113 applicant's corporate parent;

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

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

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

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

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

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

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

128 (xi) The average hourly wage to be paid to all current and new employees at the project
129 site, broken down by full-time, part-time and temporary positions, and further broken down by
130 wage groups as follows: \$8.00 or less an hour, \$8.01 to \$9.00 an hour, \$9.01 to \$10.00 an hour,
131 \$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
132 an hour, and \$14.01 to \$15.00 an hour, \$15.01 to \$16.00 an hour, \$17.01 to \$18.00 an hour,
133 \$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
134 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
135 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
136 hour;

137 (xii) For project sites located in a Metropolitan Statistical Area, as defined by the federal
138 Office of Management and Budget, the average hourly wage paid to non-managerial employees
139 in the State for the industries involved at the project, as established by the United States Bureau
140 of Labor Statistics.

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

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

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

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

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

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

157 SECTION. 5 Reports

158 Annual reports

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

162 (1) The application tracking number;

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

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

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

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

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

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

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

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

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

185 (b) Two-Year Report

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

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

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

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

202 (e) A recipient corporation that fails to provide the granting body with the information or
203 access required under paragraphs (1) and (2) of this section shall be subject to a fine of not less

204 than \$500 per day to commence within ten working days after the February 1 deadline, and of
205 not less than \$1,000 per day to commence twenty days after such deadline.

206 SECTION. 6 Subsidy Limit and Job Quality Standards

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

211 (b)A granting body shall not grant a subsidy to an applicant unless the wages paid to
212 employees at the project site are equal to or exceed 85% of the average wage as established
213 under paragraphs (12) and (13) of section 4, provided, however, that for small businesses, the
214 average wage must equal or exceed 75% of the wages established hereunder. The computation
215 of wages under this section shall only apply to a recipient corporation that provides the health
216 care coverage as approved in its application by the granting body.

217 SECTION 7. Recapture

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

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

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

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

231 (ii) Upon a failure of the corporate parent to maintain 90% of its employment in the State,
232 the rate of recapture shall equal twice the percentage by which such employment is less than
233 90%.

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

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

244 SECTION 8. Private Enforcement Action

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

250 SECTION 9. Public Record Disclosure

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

256 SECTION 10. Pre-emption

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

260 SECTION 11. Separability

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

263 SECTION 12. Waivers

264 The Executive Office of Economic Development may waive the subsidy limit and job
265 quality standards described in section 6 upon a finding that there exists significant public policy

266 goals apart from job creation. Thirty days prior to waiving requirements, the Executive Office of
267 Economic Development shall publish its intent to do so on its reporting website with an
268 explanation of the specific public policy goals, why the waiver is necessary to meet the public
269 policy goals and define objective standards by which the public policy goals will be measured.
270 The one and two year progress reports described in section 5 will use these standards to
271 determine whether these public policy goals were met.