SENATE DOCKET, NO. 1804 FILED ON: 1/21/2011

SENATE . . . . . No. 153

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 adoption of the accompanying bill:

An Act promoting efficiency and transparency in economic development .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	
Carl M. Sciortino, Jr.	*34th Middlesex*
Patricia D. Jehlen	
Susan C. Fargo	
Martha M. Walz	*8th Suffolk*
George T. Ross	*2nd Bristol*
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Geraldine M. Creedon	*11th Plymouth*
Katherine M. Clark	*Middlesex and Essex*
Jennifer E. Benson	*37th Middlesex*
William N. Brownsberger	
Robert M. Koczera	*11th Bristol*
James Arciero	*2nd Middlesex*
Sonia Chang-Diaz	
Denise Andrews	*2nd Franklin*
Cory Atkins	*14th Middlesex*
Christine E. Canavan	*10th Plymouth*
Cynthia S. Creem	

Carolyn C. Dykema	*8th Middlesex*
Lori A. Ehrlich	*8th Essex*
Sheila C. Harrington	*1st Middlesex*
Kevin J. Murphy	*18th Middlesex*
Marc R. Pacheco	
Angelo M. Scaccia	*14th Suffolk*
Ellen Story	*3rd Hampshire*
Walter F. Timilty	*7th Norfolk*
Daniel A. Wolf	
Mark C. Montigny	

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SENATE . . . . . No. 153

By Mr. Eldridge, petition (accompanied by bill, Senate, No. 153) of Wolf, Timilty, Story and other members of the General Court for legislation to promote efficiency and transparency in economic development [Joint Committee on Economic Development and Emerging Technologies].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 by inserting after Chapter 30b:-

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

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

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

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

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

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

50 Section 2. Unified Economic Development Budget

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

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

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

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

66 (iv) All state appropriated expenditures for economic development, including line-
67 item budgets for every state-funded entity concerned with economic development, including but
68 not limited to, Executive Office of Housing and Economic Development, Massachusetts
69 Marketing Partnership, Massachusetts Growth Capital Corporation, Massachusetts Office of
70 Business Development, Massachusetts Office of International Trade and Investment, Office of
71 Small Business & Entrepreneurship, Seaport Advisory Council, Department of Housing and
72 Community Development, Office of Indian Affairs, Department of Consumer Affairs and

73 Business Regulation, Division of Insurance, Division of Banks, State Racing Commission,
74 Division of Professional Licensure, Division of Standards, Department of Revenue, Department
75 of Telecommunications and Cable, Executive Office of Labor and Workforce Development,
76 Department of Workforce Development, Commonwealth Corporation, Division of Apprentice
77 Training, Division of Career Services, Division of Unemployment Assistance, Department of
78 Labor, Division of Occupational Safety, Labor Relations Council, Division of Labor Relations,
79 Joint Labor Management Committee, Division of Industrial Accidents, Workers Compensation
80 Advisory Council, Massachusetts Aeronautics Commission, Affirmative Market Program,
81 Massachusetts Dept. of Agricultural Resources, BDC Capital, Community Economic
82 Development Assistance Corporation, Massachusetts Office of International Trade and
83 Investment, Massachusetts Development Finance Agency, Massachusetts Export Center,
84 Massachusetts Small Business Development Center Network, State Office of Minority and
85 Women Business Assistance, Office of Technical Assistance and Technology, Massachusetts
86 Technology Collaborative, Massachusetts Life Science Center.

87 (v) The Department of Revenue shall annually compile and publish all of the data
88 contained in the reports required under paragraph (a) in both written and electronic form. The
89 information in the report shall be included as part of the Searchable Website administered by the
90 Secretary of Administration and Finance.

91 Section 3. Unified Reporting of Property Tax Reductions and Abatements

92 (a) Each property-taxing entity shall annually submit a report to the Massachusetts
93 Department of Revenue regarding any real property in the entity's jurisdiction that has received a
94 development subsidy of at least $5,000 in the form of a property tax abatement or reduction

95 during the fiscal year. The report shall contain information including but not limited to: the name
96 of the property owner; the address of the property; the start and end dates of the property tax
97 reduction or abatement; the schedule of the tax reduction; each tax abatement, reduction and
98 exemption for the property; and the amount of property tax revenue not paid to the taxing entity
99 as a result of the reduction or abatement.

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

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

106 (d) The Department of Revenue shall annually compile and publish all of the data
107 contained in the reports required under paragraphs (a) and (b) in both written and electronic
108 form. The information in the report shall be included as part of the Searchable Website
109 administered by the Secretary of Administration and Finance.

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

114 Section 4. Application for Economic Development Subsidies

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

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

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

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

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

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

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

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

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

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

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

138 (xi) The average hourly wage to be paid to all current and new employees at the
139 project site, broken down by full-time, part-time and temporary positions, and further broken
140 down by wage groups as follows: $8.00 or less an hour, $8.01 to $9.00 an hour, $9.01 to $10.00
141 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
142 $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
143 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
144 $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,
145 $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
146 more per hour;

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

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

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

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

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

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

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

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

170 Section. 5 Reports

171 (a) Annual reports

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

175 (1) The application tracking number;

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

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

180 (4) The value and source of each subsidy, including TIF, annually and cumulative;

181 (5) A list of all other development subsidies which the applicant has been granted by state
182 or local agencies within the Commonwealth.

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

186 (6) The value of committed private investment and the value of the actual private
187 investment;

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

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

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

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

199 (11) A signed certification by the chief officer of the recipient corporation as to the
200 accuracy of the progress report;

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

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

207 (b) Two-Year Report

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

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

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

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

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

229 Section. 6 Subsidy Limit and Job Quality Standards

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

234 (b) A granting body shall not grant a subsidy to an applicant unless the wages paid to
235 employees at the project site are equal to or exceed 85% of the average wage as established
236 under paragraphs (xii) and (xiii) of section 4, provided, however, that for small businesses, the

237 average wage must equal or exceed 75% of the wages established hereunder. The computation
238 of wages under this section shall only apply to a recipient corporation that provides the health
239 care coverage as approved in its application by the granting body.

240 Section 7. Recapture

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

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

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

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

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

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

261 (e) If a recipient corporation fails to create at least 90% of the required number of
262 jobs or to pay the required wages or benefits for three consecutive calendar years, the granting
263 body shall declare the subsidy null and void, and shall so notify the Executive Office of Housing
264 and Economic Development and the recipient corporation. The recipient corporation shall pay
265 back to the granting body all remaining value of the development subsidy it has not previously
266 repaid within 180 calendar days of the date of the notice of such default.

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

270 Section 8. Private Enforcement Action

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

276 Section 9. Transparency & Public Record Disclosure

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

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

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

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

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

292 Section 10. Pre-emption

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

296 Section 11. Separability

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

299 Section 12. Waivers

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