

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure the Effectiveness of Tax Expenditures**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §13070-P** is enacted to read:

### **§ 13070-P. Accountability in economic development**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Corporate parent" means a person that owns or controls at least 50% of a recipient company.
- B. "Date of subsidy" means the date that a granting body provides the initial monetary value of a development subsidy to a recipient company, except that:
  - (1) If the subsidy is for the installation of new equipment, "date of subsidy" means the date the recipient company puts the equipment into service; and
  - (2) If the subsidy is for improvements to property, "date of subsidy" means the date the improvements are finished or the date the recipient company occupies the property, whichever is earlier.
- C. "Development subsidy" or "subsidy" means an expenditure of at least \$25,000 in public funds for the purpose of stimulating economic development within the State, including, without limitation, through bonds, grants, loans, loan guarantees, so-called enterprise zones and empowerment zones, pine tree development zones under Title 30-A, section 5250-J, tax increment financing, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions and tax credits.
- D. "Duration of the development subsidy" means as many years as a subsidy benefits a recipient company, including the number of years a tax credit may be claimed or carried forward, the number of years a loan is for or the number of years a property tax reduction applies.
- E. "Employment basis" means the total number of full-time and part-time employees employed by a corporate parent in this State on December 31st of the year the development subsidy is first granted.
- F. "Full-time job" means a job in which an individual is employed by a recipient company for at least 35 hours per week.
- G. "Granting body" means the State or a local government unit that provides a development subsidy.

H. "Local government unit" means a municipality, county, plantation, unorganized territory or Indian tribe.

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

J. "Project site" means the site of a project for which any development subsidy is provided, as specified by street address, name of locality and zip code.

K. "Recipient company" means a person that receives a development subsidy.

L. "State" means an agency, board, commission, department, office, public benefit corporation or public benefit authority of the State.

**2. Determination of development subsidy subject to recapture or rescission.** A granting body shall compare the number of full-time jobs and part-time jobs created, the wages and benefits paid for those jobs and any other relevant performance data submitted by a recipient company against independent information sources such as unemployment insurance records or shall conduct periodic audits of recipient company submissions using outside auditors to ensure that the recipient company is meeting the objectives of the development subsidy. Based on the comparison of pertinent information or independent audits, if the granting body determines that the recipient company is not meeting the objectives of the development subsidy, the development subsidy is subject to recapture or rescission. A development subsidy is subject to recapture or rescission if the granting body determines that:

A. The recipient company has failed to achieve its job creation, wage and health care requirements for the project site within 2 years of the date of subsidy;

B. The recipient company has failed to maintain its wage and benefit achievements for as long as the development subsidy is in effect or 5 years, whichever is longer; or

C. The corporate parent has failed to maintain in this State for the duration of the development subsidy or 5 years, whichever is longer, at least 90% of its employment basis.

**3. Procedure for recapture or rescission.** A development subsidy provided to a recipient company that is determined to have failed to meet the requirements of the development subsidy pursuant to subsection 2 is subject to the following:

A. For each year the recipient company fails to meet the obligations for job creation, wages and health care insurance, the value of the subsidy must be reduced on a prorated basis by the same share of jobs that were not created or that failed to meet wage and health care insurance obligations. If the subsidy has already accrued to the recipient company, the State shall recapture the value of the subsidy reduction;

B. If a recipient company fails to meet its job creation obligations by 25% or more for 3 consecutive years, the pro rata recapture pursuant to paragraph A applies to the 3rd year in default, and the State shall rescind the development subsidy effective January 1st of the following year;

C. For each year the corporate parent fails to maintain in this State at least 90% of its employment basis, the subsidy must be reduced at twice the rate of the corporate parent's job loss from 100% of its employment basis. If the subsidy has already accrued to the recipient company, the State shall recapture the value of the subsidy reduction; and

D. If the corporate parent fails to maintain in this State at least 90% of its employment basis for 3 consecutive years, the pro rata recapture pursuant to paragraph C applies to the 3rd year in default, and the development subsidy must be rescinded effective January 1st of the following year.

**4. Private enforcement.** If a granting body fails to enforce any provision of this section, an individual who paid personal income taxes to the State in the calendar year prior to the year in dispute, or any organization representing a group of such individuals, is considered to have standing and may bring a civil action in the Superior Court to compel enforcement under this section. The court shall award reasonable attorney's fees and costs to an individual or organization who prevails in an action brought pursuant to this subsection.

**5. Public access to subsidy information.** The State or a local government unit that provides a development subsidy shall publish on a publicly accessible website summary statistics regarding the name of the recipient company, the amount of the development subsidy, the date the development subsidy was first provided and the term of the development subsidy, as well as any enforcement activities undertaken by the granting body.

**6. Public records.** All records required to be prepared or maintained under this section, including but not limited to applications, performance reports, recapture proceedings and any records relating to those documents, are public records for purposes of the Freedom of Access Act and subject to disclosure to the public.

## SUMMARY

This bill, based on model legislation for accountability in economic development, makes any subsidy provided by the State or a unit of local government to a company for purposes of encouraging economic development subject to rescission or recapture if the company fails to meet the goals for which the subsidy was provided, such as new jobs, high wages, benefits such as health insurance and maintenance of employment levels for the duration of the subsidy or incentive period. The bill requires the entity providing the development subsidy to monitor the company receiving the subsidy to ensure the company is meeting the goals for the subsidy and to recapture all or a portion of the subsidy from a company that does not meet those goals.

This bill requires the entity providing the subsidy to maintain a publicly accessible website containing information about the subsidy and the company receiving the subsidy and any enforcement actions taken against a company receiving a subsidy. Finally, this bill provides so-called taxpayer standing to a taxpayer or organization of taxpayers to allow suit to be brought by that taxpayer or organization to enforce the rescission or recapture requirements.