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H.P. 1065

House of Representatives, April 11, 2011

An Act To Create Transparency and Accountability in Economic Development Subsidies

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative RUSSELL of Portland.
Cosponsored by Representatives: BERRY of Bowdoinham, FLEMINGS of Bar Harbor,
GOODE of Bangor, STUCKEY of Portland.

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

2 **Sec. 1. 10 MRSA c. 104-A** is enacted to read:

3 **CHAPTER 104-A**

4 **MAINE ECONOMIC DEVELOPMENT AND FISCAL ACCOUNTABILITY ACT**

5 **§881. Establishment; short title; purpose**

6 The Maine Economic Development and Fiscal Accountability Act, which may be
7 referred to and cited as "the Maine Economic Development and Accountability Act," is
8 created to require accounting by recipients of development subsidies and the government
9 entities that make those development subsidies available.

10 **§882. Definitions**

11 As used in this chapter, unless the context otherwise indicates, the following terms
12 have the following meanings.

13 **1. Corporate parent.** "Corporate parent" means a person, association, corporation,
14 joint venture, partnership or other entity that owns or controls at least 50% of a recipient
15 corporation.

16 **2. Date of subsidy.** "Date of subsidy" means:

17 A. The date that a granting body provides the initial monetary value of a
18 development subsidy to a recipient corporation;

19 B. If the development subsidy is for the installation of new equipment, the date the
20 recipient corporation puts the equipment into service; and

21 C. If the development subsidy is for improvements to property, the date the
22 improvement is finished or the date the corporation occupies the property, whichever
23 is earlier.

24 **3. Development subsidy.** "Development subsidy" means an expenditure of public
25 funds with a value of at least \$25,000 for the purpose of stimulating economic
26 development within the State, including, but not limited to, bonds, grants, loans, loan
27 guarantees, tax increment financing, grants, fee waivers, land price subsidies, matching
28 funds, tax abatements, tax exemptions and tax credits.

29 **4. Full-time position.** "Full-time position" means employment of an individual by a
30 recipient corporation for at least 35 hours per week.

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

1 **6. Local government unit.** "Local government unit" means an agency, board,
2 commission, office, public benefit corporation or public authority of a political
3 subdivision of the State.

4 **7. New employee.** "New employee" means a full-time employee who represents a
5 net increase in the number of individuals employed by the recipient corporation in the
6 State. "New employee" does not include an employee who performs a job that was
7 previously performed by another employee of the recipient corporation if that job existed
8 for at least 6 months before hiring the employee.

9 **8. Part-time position.** "Part-time position" means employment of an individual by a
10 recipient corporation for less than 35 hours per week.

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

13 **10. Property-taxing entity.** "Property-taxing entity" means any entity that levies
14 taxes, with the exception of sales or use taxes, upon real or personal property.

15 **11. Recipient corporation.** "Recipient corporation" means any person, association,
16 corporation, joint venture, partnership or other entity that receives a development subsidy.

17 **12. Small business.** "Small business" means a corporation whose corporate parent
18 and all its subsidiaries employ fewer than 20 full-time employees or have total gross
19 receipts of less than \$1,000,000 during a calendar year.

20 **13. State.** "State" means an agency, board, commission, office, public benefit
21 corporation or public benefit authority of the State.

22 **14. Subsidy value.** "Subsidy value" means the face value of any development
23 subsidy provided to a recipient corporation.

24 **15. Temporary position.** "Temporary position" means employment of an individual
25 by a recipient corporation on a temporary basis, such as for a season or other similar
26 limited period of time.

27 **§883. Unified economic development budget**

28 **1. Submission of budget report.** The Department of Administrative and Financial
29 Services, Bureau of Revenue Services shall submit an annual unified economic
30 development budget report to the Legislature no later than October 1st. The report must
31 present all types of expenditures made by the State and local government units for
32 economic development during the prior fiscal year, including but not limited to:

33 **A.** The amount of state tax revenues not collected as a result of all corporate tax
34 credits, abatements, exemptions and reductions provided by the State or a local
35 governmental unit against a tax imposed by the State or a local municipal unit,
36 including, but not limited to, income, sales, use, excise, property, utility and
37 inventory taxes;

1 B. The name of each corporation that claimed a tax credit, abatement, exemption or
2 reduction under paragraph A equal to or greater than \$5,000, together with the dollar
3 amount received by each of those corporations;

4 C. If the tax credit, abatement, exemption or reduction received by a corporation that
5 does not meet the \$5,000 threshold specified in paragraph B, an aggregate dollar
6 amount of those expenditures and the number of companies so aggregated for each
7 tax expenditure; and

8 D. All state-appropriated expenditures for economic development, including line-
9 item budgets for every state-funded entity concerned with economic development.

10 **§884. Unified reporting of property tax reductions and abatements**

11 **1. Property-taxing entity report.** A property-taxing entity shall submit a report
12 annually to the Department of Administrative and Financial Services, Bureau of Revenue
13 Services, referred to in this section as "the bureau," regarding any real or personal
14 property in the property-taxing entity's jurisdiction that received a property tax abatement
15 or reduction during the immediately preceding year corresponding to the state fiscal year.
16 The report must contain information including, but not limited to:

17 A. The name of the property owner;

18 B. The address of the property;

19 C. The start and end dates of the property tax reduction or abatement;

20 D. The schedule of the tax reduction;

21 E. Each tax abatement, reduction and exemption for the property; and

22 F. The amount of property tax revenue not paid to the taxing entity as a result of the
23 reduction or abatement.

24 **2. Aggregate data.** A property-taxing entity shall submit a report annually to the
25 bureau detailing the total property tax revenue not paid to that property-taxing entity
26 during the fiscal year as a result of all property tax reductions and abatements in that
27 property-taxing entity's jurisdiction.

28 **3. Filing of reports.** The reports required under subsections 1 and 2 must be
29 prepared on 2 separate forms, provided by the bureau, and submitted to the bureau by the
30 property-taxing entity no later than September 15th annually.

31 **4. Publication.** The bureau annually shall compile and publish all of the data
32 contained in the reports required under subsections 1 and 2 in both written and electronic
33 form, including on the bureau's publicly accessible website.

34 **5. Penalty for failure to file.** If a property-taxing entity fails to submit the reports to
35 the bureau as required by this section within the required time, the bureau shall notify the
36 Treasurer of State, who shall withhold further payments of any development subsidy to
37 that delinquent property-taxing entity until that property-taxing entity files its reports with
38 the bureau.

1 **§885. Application for development subsidies**

2 **1. Application.** A granting body and an applicant for a development subsidy from
3 that granting body jointly shall complete an application for the development subsidy on a
4 form provided by the Department of Economic and Community Development. The
5 granting body and applicant shall provide at least the following information on the
6 application:

7 A. A unique application tracking number for the granting body and the project,
8 determined by the granting body;

9 B. The name, street and mailing addresses and telephone number of the chief officer
10 of the granting body;

11 C. The name, street and mailing addresses and telephone number of the chief officer
12 of the applicant's corporate parent, if any;

13 D. The name, street and mailing addresses and telephone number of the chief officer
14 of the applicant;

15 E. The street address of the project site;

16 F. The 3-digit number of the project site under the North American Industry
17 Classification System of the United States Department of Commerce, United States
18 Census Bureau;

19 G. The total number of individuals employed by the applicant at the project site on
20 the date of the application, separated by full-time, part-time and temporary positions;

21 H. The total number of individuals employed in the State by the applicant's corporate
22 parent, and all subsidiaries thereof, as of December 31st of the prior fiscal year,
23 separated by full-time, part-time and temporary positions;

24 I. The development subsidy being applied for with the granting body and the subsidy
25 value;

26 J. The number of new jobs to be created by the applicant at the project site, separated
27 by full-time, part-time and temporary positions;

28 K. The average hourly wage to be paid to all current and new employees at the
29 project site, separated by full-time, part-time and temporary positions and further
30 separated by wage groups as follows: \$7.01 to \$8.00 per hour; \$8.01 to \$9.00 per
31 hour; \$9.01 to \$10.00 per hour; \$10.01 to \$11.00 per hour; \$11.01 to \$12.00 per hour;
32 \$12.01 to \$13.00 per hour; \$13.01 to \$14.00 per hour; and \$14.01 or more per hour;

33 L. For project sites located in a metropolitan statistical area, as defined by the federal
34 Office of Management and Budget, the average hourly wage paid to nonmanagerial
35 employees in the State for the industries involved at the project site, as established by
36 the United States Department of Labor, Bureau of Labor Statistics;

37 M. For project sites located outside of a metropolitan statistical area, as defined by
38 the federal Office of Management and Budget, the average weekly wage paid to
39 nonmanagerial employees in the county for industries involved at the project site, as
40 established by the United States Department of Commerce;

1 N. The type and amount of health care coverage to be provided by the applicant to its
2 employees within 90 days of commencement of employment at the project site,
3 including any costs to be borne by the employees;

4 O. A list of all development subsidies that the applicant is requesting and the name
5 of any other granting body from which the applicant is requesting such development
6 subsidies;

7 P. A statement as to whether the development subsidy may reduce employment at
8 any other project site controlled by the applicant or its corporate parent, within or
9 outside of the State, resulting from automation, merger, acquisition, corporate
10 restructuring or other business activity; and

11 Q. A signed certification by the chief officer of the applicant as to the accuracy of
12 the application.

13 **2. Report of approval.** If the granting body approves the application, the granting
14 body shall send a copy to the Department of Economic and Community Development
15 within 15 days of such approval. If the application is not approved, the granting body
16 shall retain the application in its records for at least 6 years.

17 **§886. Reports of granting body; publication; access by department**

18 **1. Annual reports.** A granting body shall file an annual progress report with the
19 Department of Economic and Community Development for each project for which a
20 development subsidy has been granted. A granting body and a recipient corporation
21 jointly shall file an annual progress report for the duration of the development subsidy or
22 not less than 5 years, whichever period is greater.

23 The report must be filed by February 1st and must contain the following information:

24 A. The application tracking number;

25 B. The name, street and mailing addresses, telephone number and chief officer of the
26 granting body;

27 C. The name, street and mailing addresses, telephone number and chief officer of the
28 recipient corporation;

29 D. A summary of the number of jobs required, created and lost, separated by full-
30 time, part-time and temporary positions and by the wage groups specified in section
31 885, subsection 1, paragraph K;

32 E. The type and amount of health care coverage provided to the employees at the
33 project site, including any costs borne by the employees;

34 F. The comparison of the total employment in the State by the recipient's corporate
35 parent on the date of the application and the date of the report, separated by full-time,
36 part-time and temporary positions;

37 G. A statement as to whether the use of the development subsidy during the previous
38 fiscal year has reduced employment at any other site controlled by the recipient
39 corporation or its corporate parent, within or outside of the State, as a result of

1 automation, merger, acquisition, corporate restructuring or other business activity;
2 and

3 H. A signed certification by the chief officer of the recipient corporation as to the
4 accuracy of the progress report.

5 After the first report filed pursuant to this subsection, the granting body shall indicate in
6 all subsequent annual progress reports whether the recipient corporation is still in
7 compliance with its job creation, wage, health care and other benefit goals as specified in
8 the application completed pursuant to section 885, subsection 1 and whether the corporate
9 parent has maintained 90% of its employment in the State pursuant to the requirements of
10 section 888, subsection 2.

11 **2. Two-year report.** No later than 15 days after the 2nd anniversary of the date of
12 subsidy, the granting body shall file with the Department of Economic and Community
13 Development a 2-year progress report including the same information as required under
14 subsection 1. The recipient corporation shall certify as to the accuracy of the report. The
15 granting body shall state in the 2-year report whether the recipient corporation has
16 achieved its job creation, wage, health care and other benefit goals as specified in the
17 application completed pursuant to section 885, subsection 1 and whether the corporate
18 parent has maintained 90% of its employment in the State pursuant to the requirements of
19 section 888, subsection 2.

20 **3. Publication.** The Department of Economic and Community Development
21 annually shall compile and publish all data from the progress reports obtained pursuant to
22 subsections 1 and 2 in both written and electronic form, including on the department's
23 publicly accessible website.

24 **4. Access to project site by granting body and department.** A recipient
25 corporation shall allow the granting body and the Department of Economic and
26 Community Development access at all reasonable times to the project site and the records
27 of the recipient corporation in order to monitor the project site and to prepare progress
28 reports.

29 **5. Penalty.** A recipient corporation that fails to provide the granting body with the
30 information or access required under subsections 1, 2 and 4 is subject to a fine of not less
31 than \$500 per day to commence within 10 working days after the February 1st deadline
32 for the filing of the one-year report required by subsection 1 and of not less than \$1,000
33 per day to commence 20 days after the February 1st deadline.

34 **§887. Subsidy limit and job quality standards**

35 **1. Cost per job limit.** A granting body may not grant a development subsidy if the
36 cost per job is greater than \$35,000. As used in this subsection, "cost per job" means the
37 amount of the development subsidy divided by the number of full-time jobs required
38 under the application approved by the granting body.

39 **2. Average wages limit; health care coverage.** A granting body may not grant a
40 subsidy to an applicant unless the wages paid to employees at the project site are equal to
41 or exceed 85% of the average wage specified in section 885, subsection 1, paragraphs L

1 and M except that for a small business the average wage must equal or exceed 75% of the
2 average wage specified in section 885, subsection 1, paragraphs L and M. The
3 computation of wages under this subsection applies only to a recipient corporation that
4 provides the health care coverage as approved in the recipient corporation's application to
5 the granting body.

6 **§888. Recapture**

7 **1. Maintenance of application requirements by recipient corporation.** A
8 recipient corporation shall fulfill job creation, wage, health care and other benefit
9 requirements as stated in its application filed pursuant to section 885, subsection 1 for the
10 project site within 2 years of the date of subsidy. The recipient corporation shall maintain
11 its wage and benefit goals for as long as the subsidy is in effect or 5 years, whichever
12 period is longer.

13 **2. Maintenance of application requirements by corporate parent.** The corporate
14 parent shall maintain at least 90% of its employment in the State for as long as the
15 development subsidy is in effect or 5 years, whichever period is longer.

16 **3. Recapture.** If the requirements under subsection 1 or 2 are not met, the granting
17 body shall recapture the development subsidy from the recipient corporation as follows.

18 **A.** Upon a failure by the recipient corporation to create the required number of jobs
19 or to pay the required wages or benefits, the amount recaptured must be based on the
20 pro rata amount that the unfulfilled jobs, wages or benefits bear to the total amount of
21 the development subsidy.

22 **B.** Upon a failure of the corporate parent to maintain 90% of its employment in the
23 State, the rate of recapture is equal to twice the percentage by which such
24 employment is less than 90%.

25 **4. Notice; repayment.** The granting body shall provide notice to the recipient
26 corporation of the granting body's intent to recapture the development subsidy and shall
27 state the reasons and amount to be recaptured. The recipient corporation shall remit to the
28 governing body such amount within 60 calendar days of the date of that notice.

29 **5. Repeated failure.** If a recipient corporation fails to maintain the application
30 requirements of a development subsidy in 3 consecutive calendar years, the granting body
31 shall rescind the development subsidy and shall provide notification of the rescission to
32 the Department of Economic and Community Development and the recipient corporation.
33 The recipient corporation shall pay back to the granting body all remaining subsidy value
34 it has not previously repaid within 180 calendar days of the date of the notice of such
35 failure.

36 **§889. Private enforcement action**

37 **If a granting body fails to enforce any provision of this chapter, any individual who**
38 **paid personal income taxes to the State in the calendar year prior to the year in dispute,**
39 **or, in the case of a municipally granted development subsidy, a property tax payer in that**
40 **municipality or any organization representing such taxpayers may bring a civil action in**

1 Superior Court to compel enforcement under this chapter. The court shall award
2 reasonable attorney's fees and costs to a prevailing taxpayer or organization.

3 **§890. Public record disclosure**

4 All records required to be prepared or maintained under this chapter, including, but
5 not limited to, applications, progress reports, recapture notices and any other records or
6 proceedings related to those records, are subject to disclosure under Title 1, chapter 13.

7 **§891. Preemption**

8 This chapter does not require or authorize a recipient corporation to reduce wages or
9 benefits established under any collective bargaining agreement or state or federal
10 prevailing wage law.

11 **SUMMARY**

12 This bill enacts certain safeguards for state and local government expenditures for
13 economic development and job creation by creating a procedure to collect, analyze and
14 make publicly available information regarding those expenditures. It allows the
15 governmental entity making a subsidy to recapture the subsidy if the recipient defaults on
16 the employment, wages, health care or other benefits promised by the recipient in its
17 application for the subsidy.