

ASSEMBLY, No. 2149

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

SYNOPSIS

Requires certain economic incentive recipients to pay penalty for nonperformance.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** requiring certain economic incentive recipients to pay a
2 penalty for nonperformance and supplementing P.L.1974, c.80
3 (C.34:1B-1 et seq.).
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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
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8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Benefit or incentive” means a financial incentive awarded by
11 the authority to a person or agreed between the authority and a
12 person under an economic incentive program administered by the
13 authority for the purpose of stimulating economic development or
14 redevelopment in New Jersey, including but not limited to a bond,
15 grant, loan, loan guarantee, matching fund, tax credit, or other tax
16 expenditure.

17 “Economic incentive program” means any program administered
18 by the authority that offers a benefit or incentive.

19 “Incentive agreement” means an agreement entered into by the
20 authority and a person to establish rights and duties of both parties
21 through which the person is entitled to receive a benefit or incentive
22 under an economic incentive program.

23 “Project” means any acquisition, construction, reconstruction,
24 repair, alteration, improvement or extension of any building,
25 structure, facility, or other improvement completed pursuant to a
26 capital investment requirement of an incentive agreement.
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28 2. a. The New Jersey Economic Development Authority,
29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
30 (C.52:14B-1 et seq.), shall, in consultation with the Department of
31 Labor and Workforce Development, the Office of the State
32 Comptroller, and the Division of Taxation in the Department of the
33 Treasury, adopt rules and regulations to establish minimum
34 standards for the administration of economic incentive programs to
35 verify whether each benefit or incentive recipient has performed to
36 all requirements under any applicable economic incentive program
37 or incentive agreement.

38 b. For an award of a benefit or incentive made after the
39 effective date of P.L. , c. (C.) (pending before the
40 Legislature as this bill), the authority shall annually determine
41 whether each benefit or incentive recipient has performed to all
42 requirements under any applicable economic incentive program or
43 incentive agreement. The authority shall notify the Director of the
44 Division of Taxation in the Department of the Treasury of each
45 benefit or incentive recipient that has not performed to a
46 requirement under an applicable economic incentive program or
47 incentive agreement, as determined by the authority.

1 c. A benefit or incentive recipient that has not performed to a
2 requirement under an applicable economic incentive program or
3 incentive agreement shall, as a penalty for nonperformance, pay to
4 the Treasurer of the State of New Jersey, for deposit in the General
5 Fund, an amount equal to the product of: 1) the applicable tax rate
6 for the recipient in the privilege period or taxable year in which the
7 authority has made a determination of nonperformance; multiplied
8 by 2) the total value of the respective benefit or incentive received
9 up to that privilege period or taxable year.

10 d. The value of a benefit or incentive included in a previous
11 calculation of a penalty shall not be included in the calculation of a
12 penalty for a subsequent determination of nonperformance.

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14 3. a. The rules and regulations adopted by the authority
15 pursuant to section 2 of P.L. , c. (C.) (pending before the
16 Legislature as this bill), shall not diminish the existing contractual
17 rights of a benefit or incentive recipient under an incentive
18 agreement that is in effect as of the effective date of P.L. ,
19 c. (C.) (pending before the Legislature as this bill).

20 b. The authority shall not apply the rules and regulations
21 adopted by the authority pursuant to section 2 P.L. , c. (C.)
22 (pending before the Legislature as this bill), in a manner that
23 diminishes the existing contractual rights of a benefit or incentive
24 recipient under an incentive agreement that is in effect as of the
25 effective date of P.L. , c. (C.) (pending before the
26 Legislature as this bill).

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28 4. This act shall take effect 90 days after enactment but the
29 authority may take administrative actions in advance to effectuate
30 the purposes of this act.

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STATEMENT

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35 This bill requires that a recipient of a New Jersey Economic
36 Development Authority (EDA) economic incentive, as defined in
37 the bill, that does not perform to program and incentive agreement
38 requirements pay a penalty for nonperformance in an amount equal
39 to the product of: (1) the applicable tax rate for the recipient in the
40 privilege period or taxable year in which the EDA has made a
41 determination of nonperformance; multiplied by (2) the total value
42 of the respective benefit or incentive received up to that privilege
43 period or taxable year. The penalty is to be paid to the Treasurer of
44 the State of New Jersey for deposit in the General Fund. The bill
45 further specifies that the value of a benefit or incentive properly
46 included in the formulation of a penalty is not to be aggregated with
47 the value of any additional benefit or incentive received in the event
48 of any subsequent determination of nonperformance.

1 The bill requires the EDA, in consultation with the Department
2 of Labor and Workforce Development, the Office of the State
3 Comptroller, and the Division of Taxation, to adopt rules and
4 regulations to establish minimum standards for the administration
5 of economic incentive programs to verify whether each benefit or
6 incentive recipient has performed to all requirements under any
7 applicable economic incentive program or incentive agreement.

8 The bill specifies that for an award of a benefit or incentive made
9 after the effective date of the bill, the EDA is required to annually
10 determine whether each such benefit or incentive recipient has
11 performed to all requirements under any applicable economic
12 incentive program or incentive agreement. The EDA is required to
13 notify the Director of the Division of Taxation of each benefit or
14 incentive recipient that has not performed to a requirement under
15 any applicable economic incentive program or incentive agreement.