ASSEMBLY, No. 3195

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman ROBERT J. KARABINCHAK
District 18 (Middlesex)
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SYNOPSIS

Requires certain economic incentive recipients to pay penalty for nonperformance.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 1/27/2021)

AN ACT requiring certain economic incentive recipients to pay a penalty for nonperformance and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

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

"Economic incentive program" means any program administered by the authority that offers a benefit or incentive.

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

"Project" means any acquisition, construction, reconstruction, repair, alteration, improvement or extension of any building, structure, facility, or other improvement completed pursuant to a capital investment requirement of an incentive agreement.

2. a. The New Jersey Economic Development Authority, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall, in consultation with the Department of Labor and Workforce Development, the Office of the State Comptroller, and the Division of Taxation in the Department of the Treasury, adopt rules and regulations to establish minimum standards for the administration of economic incentive programs to verify whether each benefit or incentive recipient has performed to all requirements under any applicable economic incentive program or incentive agreement.

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

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

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

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

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

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

STATEMENT

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

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

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