

SENATE No. 1938

Text of amendment (176) (offered by Senator Eldridge) to the Ways and Means amendment (Senate, No. 3) to the House Bill making appropriations for the fiscal year 2016 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court

(-)

1 Messrs. Eldridge, Montigny and Lewis, Ms. O'Connor Ives and Mr. Ross move to amend
2 the bill by inserting after section ____, the following new section:-

3 "SECTION _____. The General Laws are hereby amended after Chapter 30B by inserting
4 the following chapter:-

5 Chapter 30C. Economic Development, Transparency and Fiscal Accountability

6 Section 1. As used in Chapter 30C, the following words shall, unless the context clearly
7 requires otherwise, have the following meanings:-

8 "Corporate parent" means any person, association, corporation, joint venture, partnership,
9 or other entity, that owns or controls 50 percent or more of a recipient corporation.

10 "Date of subsidy" means the date that a granting body provides the initial monetary value
11 of a development subsidy to a recipient corporation provided, however, that where the subsidy is
12 for the installation of new equipment, such date shall be the date the corporation puts the
13 equipment into service and provided, further, that where the subsidy is for improvements to

14 property, such date shall be the date the improvements are finished, or the date the corporation
15 occupies the property, whichever is earlier.

16 "Development subsidy" means any expenditure of public funds with a value of at least
17 \$25,000.00 for the purpose of stimulating economic development within the Commonwealth,
18 including but not limited to bonds, grants, loans, loan guarantees, enterprise zones,
19 empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching
20 funds, tax abatements, tax exemptions, and tax credits.

21 "Discretionary tax credit program" means: (i) the historic rehabilitation tax credit in
22 section 38R of said chapter 63 and section 6J of said chapter 62; (ii) the life sciences investment
23 tax credit in section 38U of said chapter 63 and subsection (m) of said section 6 of said chapter
24 62; (iii) the low-income housing tax credit in section 31H of said chapter 63 and section 6I of
25 said chapter 62; (iv) the refundable research credit in subsection (J) of section 38M of said
26 chapter 63; (v) the economic development incentive program in subsection (g) of said section 6
27 of said chapter 62 and section 38N of said chapter 63; (vi) certified housing development credits
28 of subsection (q) of Section 6 of said Chapter 62; (vii) donated land (conservation) credits of
29 subsection (p) of Section 6 of said Chapter 62; (viii) community investment tax credit of section
30 6M of said chapter 62 and section 38EE of said chapter 63; and (ix) any discretionarily awarded
31 tax credits under chapter 62 and 63 established after January 1, 2013.

32 "Full-time job" means a job in which an individual is employed by a recipient
33 corporation for at least 35 hours per week.

34 "Granting body" means any agency, board, office, public benefit corporation or authority
35 of the Commonwealth or a local government unit that provides a development subsidy.

36 “Local government unit” means an agency, board, commission, office, public benefit
37 corporation, or public authority of a political subdivision of the Commonwealth.

38 “New Employee” means a full-time employee who represents a net increase in the
39 number of individuals employed by the recipient corporation in the Commonwealth. “New
40 employee” does not include an employee who performs a job that was previously performed by
41 another employee of the recipient corporation if that job existed for at least 6 months before
42 hiring the employee.

43 “Part-time job” means a job in which an individual is employed by a recipient
44 corporation for less than 35 hours per week.

45 “Permanent Job” means a job that is not scheduled to terminate at the completion of a
46 discrete project.

47 "Project site" means the site of a project for which any development subsidy is provided.

48 "Property-taxing entity" means any entity that levies taxes upon real or personal property.

49 “Recipient corporation” means any person, association, corporation, joint venture,
50 partnership or other entity that receives a development subsidy.

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

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

58 "State" means an agency, board, commission, office, public benefit corporation or public
59 benefit authority of the Commonwealth.

60 "Subsidy value" means the face value of any and all development subsidies provided to a
61 recipient corporation.

62 "Temporary job" means a job in which an individual is hired for a season or for a limited
63 period of time.

64 Section 2. Application for Economic Development Subsidies

65 (a) Notwithstanding any general or special laws to the contrary, an applicant for an
66 economic development subsidy, shall complete an application for the subsidy on a form prepared
67 by the Executive Office of Housing and Economic Development. The information required on
68 the application shall include but not be limited to the following:

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

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

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

- 74 (iv) The name, street and mailing address, and phone number of the chief officer of the
75 applicant;
- 76 (v) The street address of the project site;
- 77 (vi) The three-digit North American Industry Classification System number of the project
78 site;
- 79 (vii) The total number of individuals employed by the applicant at the project site on the
80 date of the application, broken down by full-time, part-time, and temporary positions;
- 81 (viii) The total number of individuals employed in the Commonwealth by the applicant's
82 corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken
83 down by full-time, part-time and temporary positions;
- 84 (ix) The development subsidy or subsidies being applied for with the granting body, and
85 the value of such subsidy or subsidies;
- 86 (x) An estimate of the number of new jobs to be created by the applicant, broken down by
87 construction, full-time, part-time and temporary positions, where applicable;
- 88 (xi) The average hourly wage to be paid to all current and new employees at the project
89 site, where applicable;
- 90 (xii) For project sites located in a Metropolitan Statistical Area, as defined by the federal
91 Office of Management and Budget, the average hourly wage paid to non-managerial employees
92 in the Commonwealth for the industries involved at the project, as established by the United
93 States Bureau of Labor Statistics;

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

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

100 (xv) A description of the project to be developed or undertaken, where applicable;

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

102 (xvii) A statement as to whether the development subsidy may reduce employment at any
103 other site controlled by the applicant or its corporate parent, within or without of the
104 Commonwealth, resulting from automation, merger, acquisition, corporate restructuring or other
105 business activity;

106 (1) If the granting body shall approve the application, it shall send a copy to the
107 Executive Office of Housing and Economic Development within fifteen days of such approval,
108 which shall be a public record.

109 Section 3. Reports

110 (a) Annual reports

111 (i) Notwithstanding any general or special laws to the contrary, each granting body shall
112 file a progress report with the Executive Office of Housing and Economic Development for each
113 project for which a development subsidy has been granted, no later than May 15 each year. The
114 report shall include the following information:-

115 (1) The application tracking number;

116 (2) The identity of each taxpayer received an economic development subsidy and from
117 which program the credit was received;

118 (3) The amount of the tax credit awarded and issued for each taxpayer and each project, if
119 applicable;

120 (4) A list of all other development subsidies which the applicant has been granted by state
121 or local agencies within the Commonwealth.

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

125 (5) The benefit to the Commonwealth actually provided, including but not limited to:

126 (i) The number of jobs created and lost, broken down by construction, full-time, part-time
127 and temporary positions, where applicable;

128 (ii) The average wage of the jobs created, where applicable;

129 (iii) The type and amount of health care coverage provided to the employees at the
130 project site, including any costs borne by the employees, where applicable;

131 (iv) The status of the development project, where applicable;

132 (v) The amount of private investment committed to this project, where applicable.

133 (6) The comparison of the total employment in the Commonwealth by the recipient's
134 corporate parent on the date of the application and the date of the report, broken down by full-
135 time, part-time and temporary positions;

136 (7) A statement, as reported by the taxpayer applicant, as to whether the use of the
137 development subsidy during the previous fiscal year has reduced employment at any other site
138 controlled by the recipient corporation or its corporate parent, within or without of the
139 Commonwealth as a result of automation, merger, acquisition, corporate restructuring or other
140 business activity;

141 (8) A signed certification by the chief officer of the recipient corporation as to the
142 accuracy of the progress report;

143 (i) On all subsequent annual progress reports, the granting body shall indicate whether the
144 recipient corporation is still in compliance with its job creation, wage and benefit goals, and
145 whether the corporate parent is still in compliance with its state employment requirement;

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

148 (b) Two-Year Report

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

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

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

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

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

170 Section 4. Revocation/Recapture

171 (a) A recipient corporation shall fulfill its job creation, construction, full-time, part-time
172 and temporary positions, wage, health care and other benefit requirements for the project site
173 within two years of the date of subsidy. Such recipient shall maintain its wage and benefit goals
174 as long as the subsidy is in effect, or five years, whichever is longer.

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

178 (c) If the requirements under paragraphs (a) or (b) are not fulfilled, this shall be deemed a
179 material variance and the granting body shall revoke and recapture the development subsidy
180 from the recipient corporation as follows:

181 (i) For projects certified before January 1, 2013, if the granting body revokes a subsidy
182 because of a material variance, the value of the economic benefit that shall be recaptured or
183 otherwise recouped by the commonwealth or municipality shall be the amount the corporate
184 parent would have been allowed to receive after the effective date of revocation. Revocation
185 shall take effect on the first day of the tax year in which a material variance occurred as
186 determined by the granting body. If the granting body revokes a subsidy because of a material
187 misrepresentation or fraud, the value of the economic benefit that shall be recaptured or
188 otherwise recouped by the commonwealth or the municipality shall be the total amount of
189 economic benefit approved by the state for the corporate parent.

190 (ii) For projects certified after January 1, 2013, if the granting body revokes a subsidy,
191 the value of the economic benefit that shall be recaptured or otherwise recouped by the state or
192 municipality shall be the total amount of economic benefit approved by the state or municipality
193 for the corporate parent.

194 (d) The granting body shall provide notice to the recipient corporation of its intent to
195 revoke and recapture the development subsidy and state the reasons and amount to be recaptured.

196 The recipient corporation shall remit to the governing body such amount within 60 calendar days
197 of the date of such notice.

198 (e) If a recipient corporation fails to create at least 90% of the required number of jobs or
199 to pay the required wages or benefits for three consecutive calendar years, the granting body
200 shall revoke, and shall so notify the Executive Office of Housing and Economic Development
201 and the recipient corporation. The recipient corporation shall pay back to the granting body all
202 remaining value of the development subsidy it has not previously repaid within 180 calendar
203 days of the date of the notice of such default.

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

207 Section 5. Transparency & Public Record Disclosure

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

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

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

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

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

223 Section 6. Pre-emption

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

227 Section 7. Separability

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

230 Section 8. Waivers

231 The Executive Office of Economic Development may waive the subsidy limit and job
232 quality standards described in section 6 upon a finding that there exists significant public policy
233 goals apart from job creation. Thirty days prior to waiving requirements, the Executive Office of
234 Economic Development shall publish its intent to do so on its reporting website with an
235 explanation of the specific public policy goals, why the waiver is necessary to meet the public
236 policy goals and define objective standards by which the public policy goals will be measured.

237 The one and two year progress reports described in section 5 will use these standards to
238 determine whether these public policy goals were met.