

1 HB514
2 116392-2
3 By Representative Todd
4 RFD: Government Operations
5 First Read: 09-FEB-10

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8 SYNOPSIS: This bill would require the Department of
9 Revenue to submit annual reports to the Legislature
10 outlining yearly expenditures for economic
11 development. This bill would also require each
12 property-taxing entity to report annually to the
13 Department of Revenue any real property in the
14 entity that received a property tax abatement or
15 reduction provided by the state, including the
16 amount of state property tax revenue not paid to
17 the taxing entity as a result of the reduction or
18 abatement.

19 This bill would allow an entity to apply for
20 economic development subsidies through the
21 Department of Economic and Community Affairs and
22 would require entities that receive grants to file
23 progress reports with the Department of Economic
24 and Community Affairs. This bill would provide
25 punishment for entities that default on a
26 development subsidy and would allow citizens to
27 bring civil actions.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
5

6 To establish the Alabama Economic Development and
7 Fiscal Accountability Act, relating to expenditures for
8 economic development; providing for public access to reports
9 and recordings relating to economic development subsidies;
10 providing punishment for default on a development subsidy; and
11 allowing citizens to bring civil acts concerning the same.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known and cited as the
14 "Alabama Economic Development and Fiscal Accountability Act."

15 Section 2. The Legislature of Alabama finds and
16 declares the following:

17 (1) That, although the state and its local
18 governmental units have granted numerous economic development
19 subsidies in the last 25 years, the real wage levels and
20 health care coverage of working families have declined.

21 (2) That when workers receive low wages and poor
22 benefits, such jobs often impose hidden taxpayer costs upon
23 its citizens in the form of Medicaid, food stamps, earned
24 income credits, and other forms of public assistance to the
25 working poor and their families.

1 (3) That citizen participation in economic
2 development has been impeded by a lack of readily accessible
3 information regarding expenditures and outcomes.

4 Section 3. As used in this act, the following terms
5 shall have the following meanings:

6 (1) CORPORATE PARENT. Any person, association,
7 corporation, joint venture, partnership, or other entity that
8 owns or controls 50 percent or more of a recipient
9 corporation.

10 (2) DATE OF SUBSIDY. The date that a granting body
11 provides the initial monetary value of a development subsidy
12 to a recipient corporation. When the subsidy is for the
13 installation of new equipment, the date shall be the date the
14 corporation puts the equipment into service. When the subsidy
15 is for improvements to property, the date shall be the date
16 the improvements are finished or the date the corporation
17 occupies the property, whichever is earlier.

18 (3) DEVELOPMENT SUBSIDY. Any expenditure of public
19 funds of at least twenty-five thousand dollars (\$25,000) for
20 the purpose of stimulating economic development within the
21 state, including, but not limited to, bonds, grants, loans,
22 loan guarantees, tax-increment financing, grants, fee waivers,
23 land price subsidies, matching funds, tax abatements, tax
24 exemptions, and tax credits.

25 (4) FULL-TIME JOB. A job in which an individual is
26 employed by a recipient corporation for at least 35 hours per
27 week.

1 (5) GRANTING BODY. Any agency, board, office, public
2 benefit corporation, or public benefit authority of the state
3 that provides a development subsidy.

4 (6) NEW EMPLOYEE. A full-time employee who
5 represents a net increase in the number of individuals
6 employed by the recipient corporation in the state. New
7 employee does not include an employee who performs a job that
8 was previously performed by another employee of the recipient
9 corporation if that job existed for at least 6 months before
10 hiring the employee.

11 (7) PART-TIME JOB. A job in which an individual is
12 employed by a recipient corporation for less than 35 hours per
13 week.

14 (8) PROJECT SITE. The site of a project for which
15 any development subsidy is provided.

16 (9) PROPERTY-TAXING ENTITY. Any entity which levies
17 taxes upon real or personal property.

18 (10) RECIPIENT CORPORATION. Any person, association,
19 corporation, joint venture, partnership, or other entity that
20 receives a development subsidy.

21 (11) SMALL BUSINESS. A corporation whose corporate
22 parent, and all subsidiaries thereof, employed fewer than 20
23 full-time employees or had a total gross receipts of less than
24 one million dollars (\$1,000,000) during the calendar year.

25 (12) STATE. An agency, board, commission, office,
26 public benefit corporation, or public benefit authority of the
27 state.

1 (13) SUBSIDY VALUE. The face value of any and all
2 development subsidies provided to a recipient corporation.

3 (14) TEMPORARY JOB. A job in which an individual is
4 hired for a season or for a limited period of time.

5 Section 4. (a) The Department of Revenue shall
6 submit an annual Unified Economic Development Report to the
7 Legislature no later than three months after the end of the
8 state's fiscal year. The report shall present expenditures for
9 economic development during the prior fiscal year, including,
10 but not limited to, the following:

11 (1) The amount of uncollected state tax revenues
12 resulting from every corporate tax credit, abatement,
13 exemption, and reduction provided by the state, including, but
14 not limited to, gross receipts, income, sales, use, raw
15 materials, excise, property, utility, and inventory taxes.

16 (2) The name of each corporate taxpayer that claimed
17 any tax credit, abatement, exemption, or reduction under
18 subdivision (1) of Section 3 of any value equal to or greater
19 than five thousand dollars (\$5,000) together with the dollar
20 amount received by each such corporation.

21 (3) Any tax credit, abatement, exemption, or
22 reduction received by a corporation of less than five thousand
23 dollars (\$5,000) each shall not be itemized. The Department of
24 Revenue shall report an aggregate dollar amount of such
25 expenditures and the number of companies so aggregated for
26 each tax expenditure.

1 (4) All state appropriated expenditures for economic
2 development, including line-item budgets for every
3 state-funded entity concerned with economic development,
4 including, but not limited to, the Department of Revenue, the
5 Department of Economic and Community Affairs, vocational
6 education programs, state university research programs,
7 manufacturing extension service, workforce investment boards,
8 economic development commissions, industrial development
9 authorities, regional development authorities, and finance
10 authorities.

11 Section 5. (a) Each property-taxing entity shall
12 annually submit a report to the Department of Revenue
13 regarding any real property in the entity's jurisdiction that
14 has received a property tax abatement or reduction during the
15 fiscal year. The report shall contain information, including,
16 but not limited to, the name of the property owner; the
17 address of the property; the start and end dates of the
18 property tax reduction or abatement; the schedule of the tax
19 reduction; each tax abatement, reduction, and exemption for
20 the property; and the amount of property tax revenue not paid
21 to the taxing entity as a result of the reduction or
22 abatement.

23 (b) Each property-taxing entity shall submit a
24 report to the Department of Revenue setting forth the total
25 property tax revenue not paid to such entity during the fiscal
26 year as a result of all property tax reductions and abatements
27 in the entity's jurisdiction.

1 (c) The reports required under subsections (a) and
2 (b) shall be prepared on two forms prepared by the Department
3 of Revenue and shall be submitted to the department by the
4 property-taxing entity no later than three months after the
5 end of the fiscal year.

6 (d) The Department of Revenue shall annually compile
7 and publish all of the data contained in the reports required
8 under subsections (a) and (b) in both written and electronic
9 form, including on the department's web site.

10 (e) If a property-taxing entity fails to submit its
11 reports to the Department of Revenue within the prescribed
12 time, the department shall notify the state Comptroller,
13 whereupon the state Comptroller shall withhold further
14 payments of any development subsidy to the delinquent entity
15 until the entity files its reports with the department.

16 Section 6. (a) Each granting body, together with the
17 applicant for a development subsidy, shall complete an
18 application for the subsidy on a form prepared by the
19 Department of Economic and Community Affairs. The information
20 required on the application shall include the following:

21 (1) An application tracking number for the granting
22 agency and the project.

23 (2) The name, street and mailing address, and phone
24 number of the chief officer of the granting body.

25 (3) The name, street and mailing address, and phone
26 number of the chief officer of the applicant's corporate
27 parent.

1 (4) The name, street and mailing address, and phone
2 number of the chief officer of the applicant.

3 (5) The street address of the project site.

4 (6) The three-digit North American Industry
5 Classification System number of the project site.

6 (7) The total number of individuals employed by the
7 applicant at the project site on the date of the application,
8 broken down by full-time, part-time, and temporary positions.

9 (8) The total number of individuals employed in the
10 state by the applicant's corporate parent and all subsidiaries
11 thereof, as of December 31 of the prior fiscal year, broken
12 down by full-time, part-time, and temporary positions.

13 (9) The development subsidy or subsidies being
14 applied for with the granting body and the value of such
15 subsidy or subsidies.

16 (10) The number of new jobs to be created by the
17 applicant at the project site, broken down by full-time,
18 part-time, and temporary positions.

19 (11) The average hourly wage to be paid to all
20 current and new employees at the project site, broken down by
21 full-time, part-time, and temporary positions, and further
22 broken down by wage groups as follows:

23 a. \$6.00 or less an hour.

24 b. \$6.01 to \$7.00 an hour.

25 c. \$7.01 to \$8.00 an hour.

26 d. \$8.01 to \$9.00 an hour.

27 e. \$9.01 to \$10.00 an hour.

1 f. \$10.01 to \$11.00 an hour.

2 g. \$11.01 to \$12.00 an hour.

3 h. \$12.01 to \$13.00 an hour.

4 i. \$13.01 to \$14.00 an hour.

5 j. \$14.01 or more per hour.

6 (12) For project sites located in a Metropolitan
7 Statistical Area, as defined by the federal Office of
8 Management and Budget, the average hourly wage paid to
9 non-managerial employees in the state for the industries
10 involved at the project site, as established by the United
11 States Bureau of Labor Statistics.

12 (13) For project sites located outside of a
13 Metropolitan Statistical Area, the average weekly wage paid to
14 non-managerial employees in the county for industries involved
15 at the project, as established by the United States Department
16 of Revenue.

17 (14) The type and amount of health care coverage to
18 be provided by the applicant within 90 days of commencement of
19 employment at the project site, including any costs to be
20 borne by the employees.

21 (15) A list of all development subsidies which the
22 applicant is requesting, and the name of any other granting
23 body from which such subsidies are sought.

24 (16) A statement as to whether the development
25 subsidy may reduce employment at any other site controlled by
26 the applicant or its corporate parent, within or without the

1 state, resulting from automation, merger, acquisition,
2 corporate restructuring, or other business activity.

3 (17) A certification by the chief officer of the
4 applicant as to the accuracy of the application.

5 (b) If the granting body approves the application,
6 it shall send a copy to the Department of Economic and
7 Community Affairs within 15 days of such approval. If the
8 application is not approved, the granting body shall retain
9 the application in its records.

10 Section 7. (a) (1) Each granting body shall file a
11 progress report with the Department of Economic and Community
12 Affairs for each project for which a development subsidy has
13 been granted, no later than February 1 each year. The report
14 shall include the following information:

15 a. The application tracking number.

16 b. The name, street and mailing address, and phone
17 number of the chief officer of the granting body.

18 c. The name, street and mailing address, and phone
19 number of the chief officer of the recipient corporation.

20 d. A summary of the number of jobs required,
21 created, and lost, broken down by full-time, part-time, and
22 temporary positions, and by wage groups.

23 e. The type and amount of health care coverage
24 provided to the employees at the project site, including any
25 costs borne by the employees.

26 f. The comparison of the total employment in the
27 state by the recipient's corporate parent on the date of the

1 application and the date of the report, broken down by
2 full-time, part-time, and temporary positions.

3 g. A statement as to whether the use of the
4 development subsidy during the previous fiscal year has
5 reduced employment at any other site controlled by the
6 recipient corporation or its corporate parent, within or
7 without the state, as a result of automation, merger,
8 acquisition, corporate restructuring, or other business
9 activity.

10 h. A signed certification by the chief officer of
11 the recipient corporation to the accuracy of the progress
12 report.

13 (2) On all subsequent annual progress reports, the
14 granting body shall indicate whether the recipient corporation
15 is still in compliance with its job creation, wage, and
16 benefit goals, and whether the corporate parent is still in
17 compliance with its state employment requirement.

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

21 (b) (1) No later than 15 days after the second
22 anniversary of the date of subsidy, the granting body shall
23 file with the Department of Economic and Community Affairs a
24 two-year progress report including the same information as
25 required under subsection (a). The recipient corporation shall
26 certify as to the accuracy of such report.

1 (2) The granting body shall state in the two-year
2 report whether the recipient corporation has achieved its job
3 creation, wage, and benefit goals, and whether the corporate
4 parent has maintained 90 percent of its employment in the
5 state.

6 (c) The Department of Economic and Community Affairs
7 shall compile and publish all data from the progress reports
8 in both written and electronic form, including the
9 department's world wide web site.

10 (d) The granting body and the Department of Economic
11 and Community Affairs shall have access at all reasonable
12 times to the project site and the records of the recipient
13 corporation in order to monitor the project and to prepare
14 progress reports.

15 (e) A recipient corporation that fails to provide
16 the granting body with the information or access required
17 under subdivisions (1) and (2) of subsections (a) and (b)
18 shall be subject to a fine of not less than five hundred
19 dollars (\$500) per day to commence within 10 working days
20 after the February 1 deadline, and of not less than one
21 thousand dollars (\$1,000) per day to commence 20 days after
22 such deadline.

23 Section 8. (a) A granting body may not grant a
24 development subsidy if the cost per job is greater than
25 thirty-five thousand dollars (\$35,000). The cost shall be
26 determined by dividing the amount of the subsidy by the number

1 of full-time jobs required under the application approved by
2 the granting body.

3 (b) A granting body may not grant a subsidy to an
4 applicant other than a small business unless the wages paid to
5 employees at the project site are equal to or exceed 85
6 percent of the average wage as established under Section
7 6(a)(12) and (13); provided, however, that for small
8 businesses, the average wage must equal or exceed 75 percent
9 of the wages established under Section 6(a)(12) and (13). The
10 computation of wages under this section shall only apply to a
11 recipient corporation that provides the health care coverage
12 as approved in its application by the granting body.

13 Section 9. (a) A recipient corporation shall fulfill
14 its job creation, wage, health care, and other benefit
15 requirements for the project site within two years of the date
16 of subsidy. The recipient shall maintain its wage and benefit
17 goals as long as the subsidy is in effect or five years,
18 whichever is longer.

19 (b) The corporate parent of a recipient corporation
20 shall maintain at least 90 percent of its employment in the
21 state as long as the development subsidy is in effect or not
22 less than five years, whichever is longer.

23 (c) If the requirements under subsections (a) and
24 (b) are not fulfilled, the granting body shall recapture the
25 development subsidy from the recipient corporation as follows:

26 (1) Upon a failure by the recipient corporation to
27 create the required number of jobs or to pay the required

1 wages or benefits, the amount recaptured shall be based on the
2 pro rata amount by which the unfulfilled jobs, wages, or
3 benefits bear to the total amount of the development subsidy.

4 (2) Upon a failure of the corporate parent to
5 maintain 90 percent of its employment in the state, the rate
6 of recapture shall equal twice the percentage by which such
7 employment is less than 90 percent.

8 (d) The granting body shall provide notice to the
9 recipient corporation of its intent to recapture the
10 development subsidy and state the reasons and amount to be
11 recaptured. The recipient corporation shall remit to the
12 governing body the amount within 60 calendar days of the date
13 of the notice.

14 (e) If a recipient corporation defaults on a
15 development subsidy in three consecutive calendar years, the
16 granting body shall declare the subsidy null and void and
17 shall so notify the Department of Economic and Community
18 Affairs and the recipient corporation. The recipient
19 corporation shall pay back to the granting body all remaining
20 value of the development subsidy it has not previously repaid
21 within 180 calendar days of the date of the notice of the
22 default.

23 Section 10. If a granting body fails to enforce any
24 provisions of this act, any individual who paid personal
25 income taxes to the state in the calendar year prior to the
26 year in dispute, or any organization representing such
27 taxpayers, may bring a civil action in state court to compel

1 enforcement under this act. The court shall award reasonable
2 attorney's fees and costs to such prevailing taxpayer or
3 organization.

4 Section 11. All records required to be prepared or
5 maintained under this act, including, but not limited to,
6 applications, progress reports, recapture notices, and any
7 other records or proceedings relating thereto, shall be
8 subject to disclosure under the Alabama open records law.

9 Section 12. Nothing in this act shall be read to
10 require or authorize any recipient corporation to reduce wages
11 or benefits established under any collective bargaining
12 agreement or state or federal prevailing wage law.

13 Section 13. If any provision of this act is
14 determined to be unenforceable in a court of law, the
15 determination shall not affect the validity or enforceability
16 of any other provision of this act.

17 Section 14. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.