

House Bill 860

By: Representatives Orrock of the 51st, Smyre of the 111th, Stanley-Turner of the 43rd, Post
2, Porter of the 119th, Warren of the 99th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to enact the "Georgia Economic Development and Fiscal Accountability Act";
3 to provide for legislative findings; to ensure that the award of economic development
4 subsidies generates improvements in wage levels and access to health care insurance
5 coverage for working families; to provide for definitions; to provide for an annual economic
6 development expenditure report; to provide for application for and award of subsidies; to
7 provide for recapture of funds; to provide for a private right of action and public record
8 disclosure; to provide an effective date and applicability; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
13 amended by adding a new Chapter 19 to read as follows:

14 "CHAPTER 19

15 48-19-1.

16 (a) This chapter shall be known and may be cited as the 'Georgia Economic Development
17 and Fiscal Accountability Act.'

18 (b) The General Assembly finds that the Georgia Constitution permits development
19 subsidies only if the government or citizens of the state receive a substantial benefit in
20 exchange for such development subsidies and that a development subsidy may be an
21 unconstitutional gratuity if a promised benefit does not become real. The General
22 Assembly further finds that although Georgia has granted numerous economic
23 development subsidies, real wage levels and access to affordable, quality health care
24 insurance coverage for working families in the state have stagnated and, in many cases,

1 declined. The General Assembly further finds that when workers receive low wages and
 2 poor benefits, such jobs often impose hidden costs upon Georgia taxpayers, in the form of
 3 Medicaid, food stamps, earned income tax credits and other forms of public assistance
 4 available to the working poor and their families. The General Assembly further finds that
 5 citizen participation in economic development has been impeded by a lack of readily
 6 accessible information regarding expenditures and outcomes. The General Assembly
 7 therefore concludes that in order to improve the effectiveness of expenditures for economic
 8 development and to ensure that these expenditures achieve the goal of raising living
 9 standards for working families, steps must be taken to collect, analyze, and make publicly
 10 available information regarding those expenditures and to enact certain safeguards for their
 11 use.

12 48-19-2.

13 As used in this chapter, the term:

14 (1) 'Corporate parent' means any person, association, corporation, joint venture,
 15 partnership, or other entity that owns or controls 50 percent or more of a recipient
 16 business enterprise.

17 (2) 'Date of subsidy' means the date the granting body provides the initial monetary value
 18 of a development subsidy to a recipient business enterprise; provided, however, that
 19 where the subsidy is for the installation of new equipment, such date shall be the date the
 20 business enterprise puts the equipment into service; and provided, further, that where the
 21 subsidy is for improvements to real property, such date shall be the date the
 22 improvements are finished, or the date the business enterprise occupies the real property,
 23 whichever is earlier.

24 (3) 'Development subsidy' means any expenditure of public funds or exemption from,
 25 abatement in, or reduction in taxes or fees which expenditure, exemption, abatement, or
 26 reduction has a value of at least \$25,000.00 for the purpose of stimulating economic
 27 development within the state, including, but not limited to, bonds, grants, loans, loan
 28 guarantees, enterprise zones, empowerment zones, tax increment financing, fee waivers,
 29 land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.
 30 Without limiting the generality of the foregoing, the term development subsidy shall
 31 include but not be limited to the following: any tax credit, abatement, exemption, or
 32 reduction as a result of an agreement establishing the allocation and apportionment of a
 33 taxpayer's income in accordance with Code Section 48-7-31.1; any tax credit granted in
 34 accordance with Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4,
 35 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.13, 48-7-40.15, 48-7-40.17, 48-7-40.18,
 36 48-7-40.20, or 48-7-40.21; any bonds, loans, credit, credit enhancement, grants, financial

1 assistance, tax credits, bond financing, guarantees, or insurance provided by the
2 OneGeorgia Authority or its subsidiary corporations in accordance with Chapter 34 of
3 Title 50; any grants, loans, bonds, bond financing, credit, or credit enhancement provided
4 by a downtown development authority in accordance with Chapter 42 of Title 36, or by
5 a development authority in accordance with Chapter 62 of Title 36; and job tax credits
6 awarded under the Employment Incentive Program or the Georgia Job Tax Credit
7 Program.

8 (4) 'Full-time job' means a job in which an individual is employed by a recipient business
9 enterprise for at least 35 hours per week.

10 (5) 'Granting body' means any agency, board, office, authority, or other instrumentality
11 of the state or of a political subdivision of the state that provides a development subsidy.

12 (6) 'Part-time job' means a job in which an individual is employed by a recipient
13 corporation for less than 35 hours per week.

14 (7) 'Project site' means the site of a project for which any development subsidy is
15 provided.

16 (8) 'Property-taxing entity' means any entity that levies taxes upon real or personal
17 property.

18 (9) 'Qualifying job' means a new permanent full-time job that:

19 (A) Requires at least 1,600 hours of work per year;

20 (B) Pays at least 110 percent of the county average weekly wage for the county where
21 the job is located;

22 (C) Is covered by a group health benefit plan for which the recipient business
23 enterprise pays at least 80 percent of the premiums or other charges assessed under the
24 plan for the employee;

25 (D) Is not transferred from one area in this state to another area in this state; and

26 (E) Is not created to replace a previous employee.

27 (10) 'Recipient business enterprise' means any person, association, corporation, joint
28 venture, partnership, or other entity that receives a development subsidy.

29 (11) 'Subsidy value' means the face value of all development subsidies provided to a
30 recipient business enterprise.

31 (12) 'Temporary job' means a job in which an individual is hired for a season or for a
32 limited period of time.

33 48-19-3.

34 (a) The department shall submit an annual Unified Economic Development Expenditure
35 Report to the General Assembly no later than December 15 of each year. The report shall

1 present all types of expenditures for economic development during the prior fiscal year,
2 including, but not limited to:

3 (1) The amount of uncollected state tax revenues resulting from every tax credit,
4 abatement, exemption, and reduction provided to a recipient business enterprise by any
5 agency, board, commission, office, authority, or other instrumentality of the state or of
6 a political subdivision of the state including, but not limited to, gross receipts, income,
7 sales, use, raw materials, excise, property, utility, and inventory taxes;

8 (2) The name of each business enterprise that claimed any tax credit, abatement,
9 exemption, or reduction of any value equal to or greater than \$5,000.00, together with the
10 dollar amount of any tax credit, abatement, exemption, or reduction received by each
11 such business enterprise;

12 (3) Any tax credit, abatement, exemption, or reduction received by a business enterprise
13 of less than \$5,000.00 each shall not be itemized. The department shall report an
14 aggregate dollar amount of such expenditures and the number of companies so
15 aggregated for each category of tax credit, abatement, exemption, or reduction; and

16 (4) All state appropriated expenditures for economic development, including line-item
17 budgets for every state funded entity concerned with economic development.

18 (b) The department shall annually compile and publish all of the data contained in the
19 annual Unified Economic Development Expenditure Report in both written and electronic
20 form, including the department's website, no later than December 31 for the prior fiscal
21 year.

22 48-19-4.

23 (a) Except as otherwise provided in subsection (f) of this Code section, each
24 property-taxing entity shall annually submit a report to the department regarding any real
25 property in the entity's jurisdiction that has received a property tax abatement, exemption,
26 or reduction during the fiscal year. The report shall contain information including, but not
27 limited to: the name of the property owner; the address of the property; the start and end
28 dates of the property tax abatement, exemption, or reduction; the schedule of tax reduction;
29 each tax abatement, exemption, or reduction for the property; and the amount of property
30 tax revenue not paid to the taxing entity as a result of the abatement, exemption, or
31 reduction.

32 (b) Each property-taxing entity shall also submit a report to the department setting forth
33 the total property tax revenue not paid to such entity during the fiscal year as a result of
34 property tax exemptions, reductions, and abatements in the entity's jurisdiction.

1 (c) The reports required under subsections (a) and (b) of this Code section shall be
2 prepared on two forms provided by the department and shall be submitted to the
3 department by the property-taxing entity no later than September 30 of each year.

4 (d) The department annually shall compile and publish all of the data contained in the
5 reports required under subsections (a) and (b) of this Code section in both written and
6 electronic form, including the department's website, no later than December 31 for the
7 previous fiscal year.

8 (e) If a property-taxing entity fails to submit its reports to the department within the
9 prescribed time, the department shall notify the Department of Community Affairs
10 whereupon the Department of Community Affairs shall withhold further payment of any
11 state funds for development subsidies to the delinquent entity until said entity files the
12 required report with the Department of Revenue.

13 (f) This Code section shall not apply to homestead exemptions.

14 48-19-5.

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

19 (1) An application tracking number for the granting agency and the project;

20 (2) The name, street and mailing address, and phone number of the chief officer of the
21 granting body;

22 (3) The name, street and mailing address, and phone number of the chief officer of the
23 applicant's corporate parent;

24 (4) The name, street and mailing address, and phone number of the chief officer of the
25 applicant;

26 (5) The street address of the project site;

27 (6) The three-digit North American Industry Classification System number of the project
28 site;

29 (7) The total number of individuals employed by the applicant at the project site on the
30 date of the application, itemized by full-time, part-time, and temporary jobs;

31 (8) The total number of individuals employed in the state by the applicant's corporate
32 parent, and all subsidiaries thereof, as of June 30 of the prior fiscal year, itemized by
33 full-time, part-time, and temporary jobs;

34 (9) The development subsidy or subsidies being applied for with the granting body and
35 the value of such subsidy or subsidies;

- 1 (10) The number of new jobs to be created by the applicant at the project site, itemized
2 by full-time, part-time, and temporary jobs;
- 3 (11) The average hourly wage to be paid to all current and new employees at the project
4 site, broken down by full-time, part-time, and temporary jobs, and further broken down
5 by wage groups as follows:
- 6 (A) \$6.00 or less an hour;
 - 7 (B) \$6.01 to \$7.00 an hour;
 - 8 (C) \$7.01 to \$8.00 an hour;
 - 9 (D) \$8.01 to \$9.00 an hour;
 - 10 (E) \$9.01 to \$10.00 an hour;
 - 11 (F) \$10.01 to \$11.00 an hour;
 - 12 (G) \$11.01 to \$12.00 an hour;
 - 13 (H) \$12.01 to \$13.00 an hour;
 - 14 (I) \$13.01 to \$14.00 an hour;
 - 15 (J) \$14.01 to \$15.00 an hour;
 - 16 (K) \$15.01 to \$ 16.00 an hour;
 - 17 (L) \$16.01 to \$17.00 an hour;
 - 18 (M) \$17.01 to \$18.00 an hour;
 - 19 (N) \$18.01 to \$19.00 an hour;
 - 20 (O) \$19.01 to \$20.00 an hour; and
 - 21 (P) \$20.01 or more an hour;
- 22 (12) For project sites located in a Metropolitan Statistical Area, as defined by the federal
23 Office of Management and Budget, the average hourly wage paid to nonmanagerial
24 employees in the state for the industries involved at the project, as established by the
25 United States Bureau of Labor Statistics;
- 26 (13) For project sites located outside of Metropolitan Statistical Areas, the average
27 weekly wage paid to nonmanagerial employees in the county for industries involved at
28 the project, as established by the United States Department of Commerce;
- 29 (14) The type and amount of health care coverage to be provided by the applicant within
30 90 days of commencement of employment at the project site, including any costs to be
31 borne by the employees;
- 32 (15) The percent of current full-time employees in the state employed by the applicant,
33 its parent company, and any subsidiary companies that have health coverage through the
34 company's health plan;
- 35 (16) A list of all development subsidies that the applicant is requesting, and the name of
36 any other granting body from which such subsidies are sought;

1 (17) A statement as to whether the development subsidy may reduce employment at any
2 other site controlled by the applicant or its corporate parent, within or outside the state,
3 resulting from automation, merger, acquisition, corporate restructuring, or other business
4 activity;

5 (18) A statement as to whether the project involves the relocation of work from another
6 address and if so, the number of jobs to be relocated and the address from which they are
7 to be relocated; and

8 (19) A certification by the chief officer of the applicant as to the accuracy of the
9 application.

10 (b) If the granting body approves the application, it shall send a copy to the department
11 within 15 days of such approval. If the application is not approved, the granting body shall
12 retain the application in its records.

13 48-19-6.

14 Neither the Department of Community Affairs nor the Department of Revenue shall grant
15 an application for any type of development subsidy or job tax credit, including, but not
16 limited to, the Employment Incentive Program and the Georgia Job Tax Credit Program
17 unless the credit shall lead to the creation of at least ten qualifying jobs. This Code section
18 shall not be construed to reduce the number of jobs required to be created as a condition
19 of eligibility for any development subsidy.

20 48-19-7.

21 (a) Each granting body shall file a progress report with the Department of Community
22 Affairs for each project for which a development subsidy has been granted, no later than
23 September 1 of each year. The report shall include the following information:

24 (1) The application tracking number;

25 (2) The name, street and mailing addresses, phone number, and chief officer of the
26 granting body;

27 (3) The name, street and mailing addresses, phone number, and chief officer of the
28 recipient business enterprise;

29 (4) A summary of the number of jobs required, created, and lost, itemized by full-time,
30 part-time, and temporary jobs, and by wage groups as specified in Code Section 48-19-5;

31 (5) The type and amount of health care insurance coverage provided to the employees
32 at the project site, including the type and amount of costs borne by the employees;

33 (6) The comparison of the total employment in the state by the recipient's corporate
34 parent on the date of the application and the date of the annual report, itemized by
35 full-time, part-time, and temporary jobs;

1 (7) A statement as to whether the use of the development subsidy during the prior fiscal
2 year has reduced employment at any other site controlled by the recipient business
3 enterprise or its corporate parent, within or outside the state as a result of automation,
4 merger, acquisition, corporate restructuring, or other business activity; and

5 (8) A signed certification by the chief officer of the recipient business enterprise as to the
6 accuracy of the progress report.

7 (b) Each granting body shall indicate whether the recipient business enterprise is in
8 compliance with the job creation and wage and benefit goals required of qualifying jobs,
9 and whether the corporate parent is in compliance with the employment requirement as
10 specified in Code Section 48-19-6.

11 (c) Granting bodies shall file annual progress reports for at least five years or for the
12 duration of the subsidy if longer than five years.

13 (d) No later than 15 days after the second anniversary of the date of subsidy, the granting
14 body shall file with the department a two-year progress report including the same
15 information as required under subsection (a) of this Code section. The granting body shall
16 state in the progress report whether the recipient business enterprise has achieved its job
17 creation and wage and benefit goals and whether the corporate parent has maintained 90
18 percent of its employment in the state. The recipient business enterprise shall certify as to
19 the accuracy of such report.

20 (e) The department shall compile and publish all data from the progress reports in both
21 written and electronic form, including on the department's website.

22 (f) The granting body and the department shall have access at all reasonable times to the
23 project site and the records of the recipient business enterprise in order to monitor the
24 project. Each recipient business enterprise shall provide the information needed for reports
25 required by this Code section.

26 (g) A recipient business enterprise that fails to provide the granting body with the
27 information or access required under this Code section shall be subject to a fine of not less
28 than \$500.00 per day, commencing ten working days after the September 1 deadline, and
29 of not less than \$1,000.00 per day commencing 20 days after such deadline.

30 48-19-8.

31 (a) A recipient business enterprise shall fulfill its job creation, wage, health care insurance
32 coverage, and other benefit requirements for the project site within two years of the date
33 of subsidy. Such recipient shall maintain its wage and benefit goals as long as the subsidy
34 is in effect or five years, whichever is longer.

1 (b) The corporate parent of a recipient business enterprise shall maintain at least 90 percent
2 of its employment in the state for as long as the development subsidy is in effect or not less
3 than five years, whichever is longer.

4 (c) If the requirements under subsections (a) and (b) of this Code section are not fulfilled,
5 the granting body shall recapture the development subsidy from the recipient business
6 enterprise as follows:

7 (1) Upon a failure by the recipient business enterprise to create the required number of
8 jobs or to pay the required wages or benefits the amount recaptured shall be based on the
9 pro rata amount by which the unfulfilled jobs, wages, or benefits bear to the total amount
10 of the development subsidy; and

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

14 (d) The granting body shall provide notice to the recipient business enterprise of its intent
15 to recapture the development subsidy and shall state the reasons and amount to be
16 recaptured. The recipient business enterprise shall remit to the governing body such
17 amount within 60 calendar days of the date of such notice.

18 (e) If a recipient business enterprise defaults on a development subsidy in three
19 consecutive calendar years, the granting body shall declare the subsidy null and void, and
20 shall so notify the Department of Community Affairs and the recipient business enterprise.
21 The recipient business enterprise shall pay back to the granting body all remaining value
22 of the development subsidy it has not previously repaid. Such payment shall be made
23 within 180 calendar days of the date of the notice of such default. The granting body shall
24 return any state funds to the Department of Community Affairs, which shall remit such
25 moneys to the general fund of the state treasury.

26 48-19-9.

27 If a granting body fails to enforce any provision of this chapter, any individual who paid
28 income taxes in this state in the calendar year prior to the year in dispute, or any
29 organization representing such taxpayers, shall be entitled to bring a civil action in superior
30 court to compel enforcement under this chapter. The court shall award reasonable
31 attorneys' fees and costs to such prevailing taxpayer or organization.

32 48-19-10.

33 All records required to be prepared or maintained under this chapter, including, but not
34 limited to, applications, progress reports, recapture notices, and any other records or

1 proceedings relating thereto, shall be subject to disclosure under Article 4 of Chapter 18
2 of Title 50."

3 **SECTION 2.**

4 This Act shall become effective upon its approval by the Governor or upon its becoming law
5 without such approval. This Act shall apply only to development subsidies granted on or
6 after the effective date of this Act.

7 **SECTION 3.**

8 All laws and parts of laws in conflict with this Act are repealed.