No More Candy Store

States and Cities Making Job Subsidies Accountable

by Greg LeRoy

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Dedication

for

Tom Stillman of Duluth, Minnesota

and Connie Malloy of Elkhart, Indiana

Union Leaders and Citizen Pioneers

for Subsidy Accountability

Contents

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And we urge all readers who are involved in the enactment of new legislation on subsidy accountability to send us all the vital details: the laws themselves, news clips, position papers and related materials.

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Preface

Lurking within the records of almost every city and county and state in America there lies a scandal. A tax scandal. A jobs scandal. A political-accountability scandal.

Look up the names and applications of the companies that have received development subsidies -- tax abatements, low-interest loans, training grants, infrastructure aid -- and then check their performance.

Chances are, you will find companies -- many companies -- that have failed to create or retain as many jobs as they said they would. Companies that are polluting the environment. Companies that are discriminating against women or minorities. Companies with low-quality jobs and few benefits.

Dig a little deeper and you'll likely find some companies that didn't create any jobs at all, even some that *lost* jobs after getting the aid. Keep digging, and you'll probably find companies that used subsidies to just transfer jobs from other locations. Companies that have used subsidies to help bust unions.

If you think the Pentagon's $600 toilet seats are outrageous, wait until you find out how much money has been wasted on corporations that are abusing your local and state development subsidies.

It's the dirty *big* secret kept by most mayors and county executives and governors. They aren't watching the store. They don't know the value of what they have given away and they don't know what they have gotten for it.

This is an issue whose time has come, because the subsidy giveaway game is hurting too many taxpayers. It is a root cause of many states' and cities' persistent budget crises. Teachers, police, and firemen are being laid off. And homeowners and small businesses are getting stuck with ever-higher taxes to make up the difference.

Cleaning up the subsidy abuse mess is a "must" first step for groups seeking to retain and create good, family-wage jobs and stabilize their communities. It's an issue of broadest public appeal.

Because once the public knows how bad things are, and starts to fix them, there will be no going back. There will be No More Candy Store.

Greg LeRoy
June, 1994

Chapter One:
It's Time to End America's Civil War Over Jobs

A. Companies are Exploiting the Soft Economy; Incentives are Proliferating

"Most studies show that incentives have little influence on location decisions... It is not surprising... Governments have little or no control over the fundamental determinants of a firm's demand and costs. ...Recent evidence...suggests that incentive bidding tends to feed on itself, with more expensive items often added at the last minute in an attempt to keep ahead of the competition. These hastily-assembled packages act like economic steroids..."
-- Larry Ledebur and Douglas Woodward, Economists
Economic Development Quarterly
August, 1990

"We frequently sat around a table at the National Association of State Development Agencies and compared notes, after the fact, on how a company had played us off against each other. The trouble is, you can't do that while the negotiating is going on. You are not going to share your offer with a competitor in hopes that you ultimately can hold costs down."
-- Andrew P. Grose, former director of economic development, Nevada
Spectrum, Summer 1992

Since the first edition of this book in 1989, several trends have converged to make the issue of subsidies -- and their accountability -- more urgent than ever.

First, the U.S. job market has remained remarkably soft, with more than two million Americans being permanently dislocated annually, even in recovery years, twice previous rates. Durations of unemployment are more like those during recessions.

The number of Americans working part-time who would rather work full-time and the number moonlighting are also near recorded highs. Almost a tenth of Americans rely on Food Stamps, almost a fifth of full-time workers earn less than poverty wages, and the Welfare rolls now number 14.1 million, a near-record high.

Second, the number of major new-job creating projects has plummeted. Indeed, the Fortune 500 continue to eliminate about 2,300 family-wage jobs every working day. The impact has been uneven among regions, but California and many Southern states are now suffering the capital flight that formerly typified the "Rust Bowl."

Third, voters have begun taking out their frustrations about the economy on elected officials, as shown by unusually high rates of incumbent defeats and referendums for term limits. Members of Congress are retiring in droves, and governors and mayors find themselves desperate to demonstrate that they are acting to create jobs.

Fourth, the federal government has continued de facto to sanction the state-vs.-state status quo by failing to develop a national industrial policy that would encourage states to cooperate. Washington has not only taken a hands-off attitude about interstate capital flight; the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) will heighten capital flight off-shore.

As a result, despite recurring predictions that the states have finally grown tired of their ruinous "economic development civil war," the size of incentive packages continues to skyrocket. Whereas a package worth $50,000 per job provoked debate in the mid-1980s, by the early 1990s, there were several deals worth $100,000 to $150,000 per job and one worth *$350,000!*

For example:

> South Carolina granted German auto maker BMW a $150 million package worth an estimated $79,000 per job, then the most costly auto plant deal.
>
> Indianapolis and Indiana agreed to a deal worth $294 million for United Airlines' new maintenance hub, or about $47,000 per job. But United's proposed restructuring could change the outcome.
>
> Alabama gave German auto maker Mercedes-Benz aid worth $253 million, or an estimated $170,000 per job.
>
> Illinois gave Sears a huge suburban land package near Chicago and bonuses worth $240 million *just for staying put;* in fact, Sears announced large Illinois layoffs as part of a restructuring plan shortly thereafter.
>
> McDonnell Douglas played nine states against each other for its proposed new MD-12 jumbo jet project, reportedly seeking $1 billion for perhaps 3,000 to 5,000 jobs. But the project stalled for lack of orders and a partner.
>
> Kentucky gave Canadian steelmakers Dofasco, Inc. and Co-Steel, Inc. $140 million in aid for a 400-employee mini-mill -- or $350,000 per job!
>
> Minnesota approved a package worth $828 million for Northwest Airlines, or $558,000 for each of 1,500 jobs at two new repair facilities. The airline accepted part of the deal -- an immediate loan of $270 million -- and promptly announced that the repair facilities, and all the new jobs, were "on hold."

State incentives are proliferating rapidly as governors and mayors seek to compete. According to the Council of State Governments, many incentives that were not very common fifteen years ago are now offered by 40 or more states; and the number of states that now authorize cities and counties to lend for job creation or retention is also sharply up. As a result, there are more state and local officials than ever doling out incentives with which they have little history or expertise. The quality of state and local staffing is notoriously uneven; and all too often, short-term political ambitions actively block close scrutiny of a deal's fiscal wisdom.

The Proliferation of State Development Incentives

	1977	1988	1993
Property Tax Abatements, Land & Improvements	23	35	36
Property Tax Abatements, Machinery & Equipment	28	39	41
Corporate Income Tax Exemptions	21	31	36
State Loans for Machinery & Equipment	13	37	42
State Loans for Building Construction	19	38	40
State Revenue Bond Financing	20	44	44
Research & Development Tax Exemptions	9	25	34
State Sales Tax Exemptions on Equipment	33	44	47
States Enabling Cities and Counties to Lend for Machinery & Equipment	7	32	45
States Enabling Cities and Counties to Lend for Building Construction	8	34	45
Accelerated Depreciation, Industrial Eqpt.	25	35	40

(Keon Chi, Council of State Governments. "The States and Business Incentives: An Inventory of Tax and Financial Incentives," 1989. and "State Business Incentives," in *State Trends Forecasts,* June, 1994.)

B. Most States and Cities Still Don't Know What They Are Paying or Getting

"...[E]conomic development practitioners... see their work as complex and undefined...they feel their jobs are not understood and they must report to people who lack knowledge about their field. In response, they seek out the appearance of some certainty in their task by adopting a philosophy of 'shoot anything that flies; claim anything that falls.'"

-- Herbert J. Rubin, Sociologist
Northern Illinois University
Economic Development Quarterly 1988, p. 237

"Welcome to Kentucky, the Free Lunch State. ...Are the tax breaks working? Are they worth the cost? State Officials don't know. The Revenue Cabinet has no idea how much the state has given up in potential taxes. Neither does the Cabinet for Finance and Administration. In fact, there is no single listing of the tax breaks Kentucky has offered companies..."

-- Bill Bishop, Columnist
Lexington Herald-Leader
March 28, 1993

Despite the increasing use of so many incentives, there is evidence from many sources that most states and cities still are not performing meaningful cost-benefit analysis or even requiring performance reports, and therefore cannot say with any certainty that the deals are paying off for their economies. Specifically:

Only nine of 34 states responding to the National Governors Association (NGA) report having any sort of reporting requirements for companies that receive incentives; only six report having penalties to insure accountability! Only eight of 36 states told the NGA that job *quality* is even one of several criteria used to determine which companies get aid.

Only 27 states require annual or bi-annual reports on "tax expenditures," that is, government spending in the form of tax exemptions, and only about half of those 27 state reports provide much detail.

Only 13 states *target* their Industrial Development Bonds (for example, to small companies or to distressed areas) even though IDBs are the most common non-tax form of incentive. And only a few of those 13 states' rules are highly specific. So most states have no idea if the companies even *need* the loans.

Twenty-five states reported to the Council of State Governments in late 1993 that they do not even have any *written guidelines* -- much less binding rules or set criteria -- to help them determine whether to give a company incentives, or which types of incentives to give. Only 19 states said they have any guidelines.

> Two thirds of the 36 states responding to the National Association of State Development Agencies could not even say what percentage of their incentive dollars were going to various types of businesses, reflecting their lack of overall development objectives.
>
> The Calumet Project for Industrial Jobs found that in 1988, the city of Hammond had granted tax abatements valued at more than $15 million to 16 companies. The companies had promised to create 804 new jobs, but only 74 jobs actually resulted. The Project had similar findings in other Indiana cities.
>
> The Louisiana Coalition for Tax Justice studied ten years of industrial property tax exemptions and found that almost three-fourths of the projects created no new jobs, only six percent resulted in new building construction, and 87 percent went to high-polluting industries such as chemicals, oil, and paper. Average lost taxes per new job: $41,508. The $2.5 billion in lost taxes between 1980 and 1989 cost the state's desperately-poor school system $941 million.
>
> In Minnesota, a 1985 study by the Federal Reserve Bank of Minneapolis concluded that IRBs “probably create little or no statewide employment gains.” The following year a St. Paul review commission concluded that the city’s bonding and financing practices had not had any effect on employment.

Given the growing popularity of incentive programs, perhaps it is not surprising that the quality of oversight varies so greatly. But this situation cannot continue indefinitely, because too many tax bases will be eroded. Eventually, too many public services will suffer, and too many homeowners and small businesses will get stuck with escalating tax bills to make up the difference.

Most states claim they do cost-benefit analysis before agreeing to an incentive package. But when investigators scrutinize the "analyses," they usually find formulas driven by unrealistic, rosy assumptions, especially concerning "ripple effect" jobs.

If spendthrift governments refuse to discipline themselves, eventually the credit markets will do it for them. Indeed, in late 1993, the credit-rating firm Standard & Poors announced that "[b]idding wars by state and local governments to attract large companies...raise questions about costs and long-term economic factors that may affect long-term debt ratings." (S & P's *Creditweek Municipal* 10/18/93)

C. There is a Growing Taxpayer Backlash Against Subsidy Abuse

"For the past six years, [General Motors] has been suing Michigan cities and townships...demanding dramatic cuts in property taxes. GM is issuing tax challenges in 20 Michigan communities, protesting the taxes on 36 of the 65 manufacturing and warehouse facilities...it's unprecedented for a company like GM...to dispute the values of so many properties...The City of Pontiac could get hit with a bill of more than $50 million"
-- Roger Kerson, Journalist
Washington Monthly
September, 1988

"There are real casualties created as tax dollars are used to lure companies from one state to another. Those casualties include workers who are left behind, the communities that have their tax bases devastated and, gradually, the standard of living ...All too often the tax dollars set aside to encourage such growth are used to entice business movement."
-- Doug Williams, Business Agent
International Brotherhood of Electrical Workers Local 1140
St. Paul Pioneer Press
September 6, 1992

For the last ten years, coincident with the boom in handouts, there has been a steady rise in public resentment of subsidy abuse. In addition to all of the legislative activity chronicled in this book (nearly all of it provoked by subsidy disputes of various sorts), there has been an increasing number of lawsuits and other protests against specific offenders. For example:

> Under massive public pressure, the City of Chicago sued Playskool and its parent company Hasbro in 1985 for violating an Industrial Revenue Bond (IRB) agreement. The City's IRB had enabled Playskool to buy $1 million of new equipment, which the company soon moved to Rhode Island in a consolidation. The dispute was settled out of court for extra aid to the 700 Retail, Wholesale Union workers.
>
> After he granted Mazda a 14-year tax abatement, the mayor of Flat Rock, Michigan, was voted out of office in 1985.
>
> Norwood, Ohio sued General Motors in 1987 for alleged breach of contract after the company announced the shutdown of its 4,000-worker plant there. The City cited numerous subsidies the city had provided GM over many years. Unfortunately, none of the incentives had any legally-binding "handles."
>
> Under public pressure organized by Directly Affiliated Local Union AFL-CIO #18650, the City of Duluth sued Triangle Corporation in 1988 for violating a $10 million Industrial Development Bond contract. Triangle had begun to

dismantle the city's largest manufacturer and move it to South Carolina, despite its reliance on IRB financing to acquire the company, Diamond Tool. The City won, blocking more equipment transfers, and the verdict was upheld by the Minnesota Supreme Court.

In 1988, the State of West Virginia sued Newell Corporation for $614.6 million after Newell acquired Anchor Hocking Corporation and announced it would move 942 jobs from Clarksburg, WV to Ohio. But West Virginia had given the Clarksburg plant $3.5 million in loans; the Governor threatened to use eminent domain, and the mayor and state legislators rallied with workers, even threatening a bulldozer blockade. The suit was settled after Newell provided more aid to the dislocated workers and helped the state market the vacant plant.

After Chrysler welched on pledges made to the State of Wisconsin (in return for training grants and pollution allowances) by announcing the shutdown of its 5,500-worker assembly plant in Kenosha in 1988, the State very nearly sued the company, and United Auto Workers Local 72 did sue, alleging abuse of development subsidies in Detroit, where the jobs were bound. Chrysler eventually settled, for what was then the best effects package (assistance for the dislocated workers) in auto industry history.

The Oil, Chemical and Atomic Workers (OCAW) sued American Home Products Corporation in 1991 under the Racketeer-Influenced and Corrupt Organizations (RICO) Act for violating U.S. and Puerto Rico laws after American Home closed its 775-worker plant in Elkhart, Indiana and relocated most of it to Puerto Rico, where profits would be federally-tax-free. The suit alleged violations of anti-relocation rules in Puerto Rico, Department of Labor and Department of Commerce programs. The parties settled on the eve of trial in 1992 for $24 million.

The Township of Ypsilanti, Michigan sued General Motors in 1992, alleging that 17 years of tax abatements worth $1.3 *billion* had included pledges by GM to keep operating its 4,500-worker plant in Willow Run. Although the Township won a nationally-acclaimed ruling and injunction at the trial-court level, the decision was overturned in 1993 by the Michigan Court of Appeals. (Ironically, GM had signed an agreement with Arlington, Texas -- where the Willow Run jobs went -- that enables the city to claw back tax abatements if GM runs away! See section on Clawbacks and Job Guarantees.)

As readers will note, almost every case of accountability legislation in this book also has an episode of abuse at its root. The sad truth, however, is that few city councils or state legislatures are willing to withstand "business climate" criticisms against accountability rules -- unless there is a fresh horror story causing them to act.

D. Small and Medium-Sized Businesses are Demanding Fairness

"The handout game, whether it involves steel mills or baseball teams or high-tech R&D, stops when politicians fathom or are made to learn that it doesn't pay off in most cases... They ought to attend to competitiveness by maximizing the appeal of their jurisdiction to every kind of enterprise, not just those with a big snout."
-- Wall Street Journal Editorial
February 3, 1994

"Business leaders should be prepared to stand by state officials when it is clear that one company is seeking unreasonable incentives at the expense of other businesses or the state in general. Business leaders must also be prepared to publicly voice their disapproval when corporations engage in counterproductive interstate competition."
-- National Governors Association
August, 1993

In all of the disputes around development subsidies with which we are familiar, business equity is a recurring theme.

Most often, the company in question -- seeking a massive package or abandoning a community after receiving aid -- is an absentee, multi-plant corporation with few roots in the community and little concern for the local impact of its behavior.

Just as often, some of the most outspoken critics are small and medium-sized business leaders, people who do have community roots. They represent businesses that *want* incentives to work accountably and fairly. And they resent big businesses "elbowing others at the trough" or running away with sorely-needed public resources.

Many of these local businesses also benefit from the same programs as those in dispute, and they resent large outside firms acting in ways that create public resentment of otherwise useful programs.

The issue has also played out against large *foreign* companies. Small and medium-sized domestic companies have protested when they feel state governments are lavishing more aid on foreign multinationals than on home-grown employers. For example, one auto parts company with hundreds of Illinois employees, Gates Rubber, protested when the State of Illinois offered a major package to a Japanese competitor, Mitsuboshi.

E. Some Public Officials Have Started Addressing the Issue

"...[S]tates' basic investment strategies ought to concentrate on enhancements in education, a qualified labor pool, and the development of a quality of life that would encourage investment without giving away the public treasury. Credit is enhanced more by such long-term structural development than by costly and risky bidding wars.
-- *Standard & Poor's Creditweek Municipal*, October 25, 1993

"The Governors believe that the public and private sectors should undertake efforts that result in improvements to the general economic climate rather than focus on subsidies for individual projects or companies. ...[This] will require a behavioral change by both government and business, balancing short-term self-interest with the long-term common good."
--National Governors Association August, 1993 Resolution

As *No More Candy Store* goes to press, there is an enormous amount of debate on the issue of subsidy accountability. For example:

The National Governors Association convened an extensive internal debate on the issue in 1992 and 1993, by issuing two research reports, sponsoring a retreat/forum for governors and CEOs, and holding a public debate that culminated in a statement of principles in August, 1993. The text of the statement is reprinted as Appendix A.

The Council of State Governments updated its 1988 survey of state economic development programs and practices with a June, 1994 paper. The study predicts that state-vs.-state bidding wars will continue, but urges the states to consider five policy options, including de-escalating the use of company-specific incentives, the use of clawbacks and other accountability safeguards, cooperation among states (including a "winning" state paying for the dislocation costs when it raids jobs from another), and greater emphasis on infrastructure and education.

The National Council for Urban Economic Development, a professional association of city development officials, has convened an incentives task force to review the issue and recommend policy to its national body in 1994. Its executive director has publicly questioned big-ticket packages such as Kentucky's $350,000 per-job deal.

The Center for Enterprise Development, a public-interest group that has published extensively on business climate issues, is readying a report on how incentives are best applied generally, not to specific companies.

AFL-CIO Public Employees Department President Al Billick has spoken out on the issue, and union newspapers ranging from the Auto Workers to the Paperworkers have published pro-accountability columns.

The motives for these actions vary. Some governors and state legislators are speaking out because they have inherited weakened tax bases and want to restore a fairer tax system; others have been stung by "corporate blackmail" such as ConAgra's threat to leave Nebraska if the state didn't immediately enact lucrative tax incentives.

With so many states and cities facing recurring budget crises, many leaders are beginning to realize that the lucrative deals they cut in the past are root causes of stagnant revenues today.

There remain regional splits in this debate, with Southern and Southwestern leaders more often advocating continued open competition. But accountability is not simply a "Sunbelt" vs. "Rustbelt" issue any longer. Indeed, some former boom areas such as southern California are now actively speaking out against job raiding by other states.

F. FIRR's Proposed Solution: Federal "Sticks" and a Multi-State Commission

In addition to the kinds of reforms detailed in this book, FIRR advocates a two-tier solution to the subsidy sweepstakes problem: federal "sticks" and a multi-state commission. Both solutions involve using the power of subsidies to promote job stability.

Federal "Sticks"

Whether or not the federal government ought to practice industrial policy is a much-debated issue. Industrial policy critics often characterize the debate as whether or not government can or should "pick winners and losers."

The fact is, however, the federal government's laissez-faire attitude towards the ruinous civil war over jobs is actively contributing to the problem of capital mobility and thereby producing lots of "losers."

The biggest job-subsidy programs, such as Industrial Revenue Bonds (enabled under the federal tax code) and Community Development Block Grants (Department of Housing and Urban Development) and other Department of Commerce titles, have no anti-relocation rules at all.

Only two current federal job subsidy programs have anti-relocation regulations: the Job Training Partnership Act (JTPA, Department of Labor) and the Public Works title of the Economic Development Administration (EDA, Department of Commerce). (Until it was ended, the Urban Development Action Grant program of the Department of Housing and Urban Development also had anti-relocation rules.)

In any case, states routinely evade the JTPA and EDA anti-relocation rules by simply substituting *state* funds for the training and infrastructure purposes served by the federal funds.

But it's all a shell game, because state budgets rely heavily upon federal grants. The money is "fungible" or interchangeable, and many of the non-regulated state programs could not really exist but for big annual federal grants.

By allowing companies to play states against each other with federal money, the U.S. government is aiding and abetting the jobs civil war. Little regulation plus the shell game mean that federal subsidies in effect subsidize runaway shops all the time. Therefore, only strict, broad federal rules plus aggressive state punishments can stop runaway subsidies.

FIRR proposes new regulations from both the Department of Labor and the Department of Commerce, mandating that any state which engages in interstate job-raiding will lose all of its funding from those agencies for the next fiscal year. Few states would risk losing such large budget items over a raiding charge; DOL and DOC each provides the states with funding for *many* programs. Such rules would curtail the raiding immediately.

The idea is hardly radical; the federal government convinced all 50 states to raise their legal driving ages to 21 by threatening to withhold federal highway funds. Senator Howard Metzenbaum proposed withholding federal Department of Education funds from states that allow massive tax abatements to cripple their school systems.

From a national perspective, this idea is extremely logical, because the federal government gains nothing when one state steals jobs from another. If anything it often loses revenues if wages are driven down and health insurance is eliminated. And if federal subsidies are spent on the "winning" plant -- and federal retraining and community adjustment funds are spent to assist the "losing" community -- Uncle Sam loses twice more.

Federal anti-relocation rules would not cost the government a penny, but they would save Uncle Sam from bankrolling so many "losers."

The Proposed Multi-State Industrial Retention Commission

At the 1991 Labor Issues meeting of the National Conference of State Legislatures, many legislators asked for model state legislation that would enable states to cooperate against shutdowns. One method the legislators wanted to explore was how to leverage the power of job subsidies to deter runaway shops.

After considerable staff research, drafting, and comments, a formal proposal was returned to the 1993 meeting for a Multi-State Industrial Retention Commission (MIRC) that would use incentives, state purchasing power, and state pension fund investment power against runaway shops. Staffers believe that MIRC complies with the U.S. Constitution. They also report interest in MIRC from at least 13 states. Here is how the proposal works:

Once a total of five states enact it, the law would create a MIRC. This commission would investigate companies in MIRC-member states that allegedly relocate jobs and thereby undermine labor, health, human rights, civil rights, environmental or other standards.

If the commission found the company guilty of such acts, it would recommend that each harmed state take up to three actions against the company, including: ordering divestment of the company's stock by the state's pensions, denial of future state economic development incentives, and denial of the right to bid on state purchasing contracts.

Each participating MIRC state would have a corresponding board that would weigh these MIRC recommendations and determine the actual punishment. As an informed "market participant," each state would be free to act for the welfare of its citizens. Each state's board would have a majority of members drawn from workers and communities adversely affected by closings and layoffs.

These sanctions -- especially the ban on state purchasing and the denial of incentives-- could have dramatic effects on corporate behavior. Take for example General Motors' shutdown in Ypsilanti/Willow Run. If Michigan had threatened to ban GM from fleet auto sales, and threatened to deny GM future aid for research and development and worker training, the company might have kept the plant open. The same could be said about General Motors' closure of its Van Nuys, California plant.

The effectiveness of using pension power to change corporate behavior is a well-established trend, dating to the South Africa divestment movement. Today, several activist state pension boards regularly lead shareholder movements on other corporate-accountability issues.

Each state's MIRC board would include: eight public members representing workers and communities affected by layoffs and closings; three members from appropriate state agencies (commerce, labor, etc.), and two representing workers covered by the public employee pensions. The board would also appoint one of its members as the state's national MIRC member.

This board would review shutdowns -- both actual *and anticipated* -- and decide which deserve to be investigated by the MIRC. MIRC would have investigative authority, including subpoenas, enabling it to examine company records going back ten years to seek out even the most insidious kinds of job relocation, such as "hollowing" (the practice of massively outsourcing core functions such as components, leaving the company a virtual marketing shell with far fewer jobs).

Once the MIRC investigation is complete, the state board would decide what punishment to administer. For pension divestment (the publicly-announced sale of the company's stock by the pension fund), additional approval would have to come from a majority of the public employee members on the State Investment Council (a safeguard requested by the AFL-CIO Public Employees Department).
The state MIRC boards would also work with appropriate agencies to develop early warning networks to seek out likely future closings. If a company withdrew its plans to relocate jobs, the state board could withdraw its punishment.

The AFL-CIO's Public Employees Department and the Department of Employee Benefits both support MIRC. The AFL-CIO's *State Ties* newsletter, from the Office of State Government Liaison, gave the MIRC proposal front-page coverage in 1993.

FIRR and GPP recommend that every union and community group fighting for jobs should immediately consider putting MIRC on its agenda. FIRR and GPP believe that MIRC will empower abandoned communities to strike back, and empower states to use their leverage proactively to defend their economies.

For copies of the MIRC model legislation and analysis, contact FIRR.

G. GATT May Force the Issue

(This section is derived from a paper by Dr. Charles S. Colgan, Professor of Public Policy and Management, University of Southern Maine. See Bibliography for full citation.)

As *No More Candy Store* goes to press, GATT appears certain of passage by the U.S. Congress, and adoption by the 117 other nations that participated in the Uruguay Round. Oddly enough, although FIRR and GPP believe that GATT will only worsen rising inequality in the U.S. labor economy by accelerating capital mobility, it may also have the effect of forcing the states to alter their economic development programs in very positive ways.

Simply put, GATT may force an end to the "candy store" approach to development, and force states to direct resources to broader areas, such as education, infrastructure and regional development strategies for depressed areas. Ironically, this may occur in part because of the history of U.S. trade protests against foreign governments' export subsidies, and the way that history shaped the new GATT rules.

GATT basically defines subsidies based on U.S. practice: grants, loans, equity, loan guarantees, tax credits or abatements, government purchase of goods, and other goods and services besides infrastructure. And it generally sets the value of the subsidies as the difference between the subsidy cost and the private-market cost of the same loan or service.

To be actionable under GATT, subsidies must be specific to a firm, an industry *or* a specific geographic region. However, regional development strategies (including enterprise zones) will be exempt if the boundaries are determined by certain per capita income or unemployment rate criteria. Also to be exempted are some research and development subsidies and certain levels of subsidies for environmental compliance.

GATT designates four categories for subsidies: red, deep yellow, yellow, and green. "Red" subsidies are those that encourage exports or favor domestic goods over imports, and are therefore prohibited by GATT. "Yellow" or actionable subsidies include those that subsidize imports which injure a domestic industry, or that hurt imports from another country or that hurt another country's exports in a third country market. Such subsidies are "deep yellow" if they cover losses, forgive debts, or equal in value 5% or more of the industry or company's output. "Green" subsidies include the aforementioned exempt areas such as R & D and environmental compliance.

There will be interpretation problems over the definition of "industry" (the level of specificity), and there will be disputes over the value of subsidies if they include conditions that create compliance costs (as do some European subsidies).

Because U.S. federal industrial policy has been so minimal, these new rules present few problems to Washington, but they clearly leave state and local subsidies vulnerable to trade attacks. The first such dispute -- between Canada and Wisconsin over beer -- indicates trouble ahead for the states.

Beer I and Beer II: GATT Brews Trouble for State Subsidies

Two Wisconsin-based brewers, Heileman's and Stroh's, complained against Canadian provincial laws (The Beer I case) that require beer sold in a province to be brewed there. The Canadians retaliated (in Beer II), citing various state and local liquor laws, including rules that beer be imported into Wisconsin in common carrier trucks, and incentives such as tax exemptions for micro-breweries and brew-pubs. Even though the Canadian rules were much more nationalistic, the GATT panel ruled against both the provincial and the Wisconsin laws, and states are now changing liquor rules to comply.

How common such retaliations will become is anyone's guess. But the message is clear: any U.S. trading partner seeking to blunt an American trade complaint should look beyond federal programs and carefully scrutinize state and local subsidies for counterattack material. States seeking to avoid GATT compliance problems will quit the "candy store" approach and spread their subsidies more evenly for education, training, infrastructure, and aid to low-income or high-unemployment areas.

Chapter Two:
States and Cities Making Job Subsidies Accountable

A. Right to Know, Public Participation, and Reporting "Hidden" Costs

> "If tax abatements granted for economic development were reported... ...once the high cost is known and matched against ...modest benefits, there would be far less revenue so diverted. (Many public officials may instinctively understand this; and, perhaps, that is why they do not actively encourage precise record-keeping.) ...state economic development would improve when the number
> of ribbon-cutting events declines."
> -- Edward V. "Ned" Regan,
> Then-Comptroller of New York
> Government, Inc., p. 30

When a business receives a development subsidy, taxpayers become investors. The return expected on the investment is jobs, and eventually higher net tax revenues. The purpose of right-to-know laws is to enable government agencies to scrutinize investments before making them, and to watch those investments -- to monitor outcomes and compliance.

Some jurisdictions have gone a step further, providing additional public participation mechanisms targeted to people who could be adversely affected by an incentive. These mechanisms insure that the potentially-affected parties are informed about the proposal and that they have a mechanism through which to comment on and possibly modify the project.

However, most states still require little or no such information beyond the job estimates made in the subsidy application. And they provide for only minimal public participation. Typically, subsidy hearings are held in downtown locations far from the project sites, during business hours when working people cannot attend, and the only public notices provided are board minutes and newspaper legal notices in tiny print.

But as some have found, disclosure of overall job creation *and destruction* and a company's ongoing performance -- combined with greater public participation -- can help states and cities better judge deals and avoid wasting precious resources.

Right to Know

Information provided by right-to-know laws falls into two categories. First, there is the *application* information that will help the government agency determine how much benefit a project is likely to produce. How many jobs and what quality of jobs will it create? How many jobs will the project destroy? What is the applicant's record at reaching previous job creation projections?

Second is *performance* information in the years after a subsidy is granted. Has a business lived up to its job creation promises? Is money being spent on the projects for which it was intended? This information makes it possible to monitor the effectiveness of both individual packages and whole incentive programs. It may also form the basis of a clawback or cancellation of a subsidy.

The State of Wisconsin and the City of St. Paul are among the right-to-know pioneers. Wisconsin legislation, passed in 1986, applies to IRBs and to loans and bonds issued by the State's Housing and Economic Development Authority. It requires the applicant to estimate the jobs that will be created *and* destroyed throughout the state. It then requires that recipients report how many jobs have actually been retained or created throughout the state after the project is completed.

The St. Paul ordinance, passed in 1989, covers virtually all incentives. In addition to information on how many jobs will be created and destroyed, the ordinance requires data on the wage and skill level of all affected jobs. It also requires demographic information on those workers who will likely be hired and fired. Public officials are thus better able to determine a project's impact on St. Paul's labor force. The ordinance also requires applicants to report their "record ... in meeting job creations in the past," to help the city weed out companies unlikely to fulfill their promises.

Of course, right-to-know disclosure can be useful to workers and unions as well. The Wisconsin, St. Paul, Hammond and Gary laws, for example, require that an employer inform its workers and/or their collective bargaining agents when the employer is applying for an incentive. In Wisconsin, this information has enabled unions to block applications in which companies were seeking subsidies simply to move a plant to a new site in the state, often as part of a union-avoidance plan.

The cities of Hammond and Gary in Indiana have more recently passed tax abatement ordinances that require extensive "before" and "after" information relating to proposed projects. The Gary ordinance is the most comprehensive tax abatement disclosure ordinance known in the nation. It requires detailed financial disclosure of each applicant company, including unfunded pension liabilities and unfunded environmental liabilities.

Like St. Paul, Gary also requires that an applicant list all public subsidies it or its parent company has received in Indiana in the last ten years, including the type of incentives, their value, their term, and current job levels vs. those projected.

Gary applicants must also provide extensive job-quality disclosure, breaking jobs into four categories: temporary construction jobs, permanent new jobs, destroyed existing jobs, and restructured existing jobs. Construction jobs must be broken down by how many will go to Gary and non-Gary residents, and restructured and destroyed jobs must be broken down by skills, pay and benefits. (See Gary ordinance below.)

Hammond's tax abatement disclosure ordinance requires notification to all union representatives at the project site, as well as a conspicuous posting of a notice announcing the application at every workplace the company operates in Lake, Porter and LaPorte counties, although Hammond is located only within Lake County. Each application must be considered at a public hearing, and notice of the application and hearing must be sent to any union representatives at the project site.

All companies receiving the Hammond benefits must report back annually to the City Council and the mayor on how well they have delivered on the "Statement of Benefits" they projected in the application. If a company fails to achieve at least 80% of the job creation or job retention and wage projections put forth in the application, the company must appear at a public hearing to explain the lack of compliance.

Finally, the Hammond ordinance has perhaps the nation's most specific "but for" language. While numerous states and cities have broad requirements that a company prove the need for the benefit, the Hammond ordinance specifically prohibits the consideration of an application if a company has already sought a building permit, started construction, or begun to install equipment for which it seeks an abatement.

The proposed Washington State Compact contains provisions similar to the Wisconsin law (see Chapter Three Case Study on Washington).

Public Participation

Connecticut has recently enacted what is perhaps the nation's most comprehensive law for ensuring worker participation in state-subsidized projects. Generally, the law explicitly encourages companies to jointly involve their workers' unions in developing the project proposal and in planning how the monies will further the program's public policy goals.

A company must include in its subsidy application either: a joint statement developed with its workers' union(s) which indicates whether the workers support the proposal, whether the company or the workers have made any commitments to each other concerning the proposed project, and whether there is a labor-management cooperation structure in place to promote the policy objectives; *or* a statement that the company has not consulted with the union(s) and a statement as to why it has not and a statement as to whether the company intends to consult.

The Connecticut model is significant because is strongly promotes jointness and the involvement of workers in developing subsidy-project proposals ahead of time, so that publicly-funded investments happen *with* the workforce, not *to* it. It goes beyond the St. Paul model (see below), which is primarily a damage-prevention law, to an affirmative, proactive model. It implies that workers have a *right* to be involved in the process of planning how to spend public dollars in their workplace.

Another Connecticut program seeks public participation in a different manner. Businesses applying for assistance from the Community Economic Development Fund must have "documentation that the board of directors of the applicant includes residents of the target area, including low income residents and representatives for the financial community, area businesses, and labor organizations." (Public Act 93-404)

Wisconsin gives voters the opportunity to actually vote on revenue bonds. Once a local government has approved an application for an IRB, citizens of that jurisdiction may file a petition to have the decision reconsidered at a general or special election. This provision has especially empowered those unions that believed IRBs were being used for union avoidance or to gain concessions from union members.

The St. Paul law does not allow for public voting, but does require a public hearing on the Jobs Impact Statement. While that is not exceptional, the law also requires that the Statement be submitted for review to "workers who may be displaced, any labor union or other representative body of the workers, the local district planning council and any other affected or interested community organization or association."

The St. Paul ordinance also provides safeguards for any workers dislocated by a subsidized project. The law mandates that the company provide such workers with retraining and child care assistance to attend retraining, health insurance for a year, relocation assistance, and supplemental unemployment benefits.

More recently, the cities of Gary and Hammond, Indiana have passed tax abatement ordinances with public participation provisions. The Hammond law requires the applicant to notify any collective bargaining representative of the employees at the proposed site; the Gary law requires notice either to a Union or the employees by a conspicuous posting.

Reporting "Hidden" Costs

Edward Regan, former Comptroller of New York State, was a crusader for subsidy accountability. In his 1988 booklet *Government, Inc.*, he argued that politicians were remiss in their duty to watch the public till because they would rather cut ribbons than scrutinize the total impact of their giveaways. (*Government, Inc.* was published by the 14,000-member Government Finance Officers Association.)

State economists generally agree that it is in the hidden "tax expenditures" of abatements and credits that corporations often get the largest subsidies. Because they are not paid in the form of outright government checks, and because they fade from public attention over many years' duration, they attract little attention. However, the cost to taxpayers is the same as if the government wrote a check.

Gut governors and mayors do know about these hidden values, and they are often quite touchy about the subject. Indeed, one governor summarily fired a state economist because he had dared to make a conference talk that questioned whether the state would ever break even on a lavish auto-plant deal.

The New York State Senate Bill (text below) simply requires that each program resulting in foregone tax revenue be reported on annually, as any other government expenditure would be, at the state, city, town, village, and county levels. Besides actual dollar costs, the bill would require an evaluation of the expenditure's effectiveness, and whether or not the program has caused jobs to shift from one part of the state to another, resulting in dislocation.

West Virginia has enacted similar but more thorough legislation for state reporting. It requires an annual report from the Governor to the House and Senate identifying all "tax expenditures," broken down among ten different tax-credit/tax exemption programs, so that the State can assess the costs and benefits of the programs. It also requires that each company receiving such exemptions be disclosed publicly. To preserve tax privacy, the amounts for each company are not listed specifically, but rather in six broad dollar brackets. Still, this is an excellent disclosure model, because it enables legislators and taxpayers to see which programs are costing the State the most, and which companies are gaining the most from each program.

The philosophy of such legislation is simple: tax credits and abatements should compete fairly for tax dollars against other programs that are already "on budget." Massive tax incentives shouldn't be allowed to hide "off budget," where they are overlooked.

Without knowing the whole picture of how and where economic development dollars are being spent, it is impossible to judge the relative effectiveness of one program compared to another. Disclosure of "tax expenditures" makes fair comparisons possible.

Statutes

Wisconsin statutes, Section 66.521 (4m) [Right to Know]

Job Projection Estimates:

(a) A municipality may not enter into a revenue agreement with any person unless:

1. The person, at least 30 days prior to entering into the revenue agreement, has given a notice of intent to enter into the agreement, on a for prescribed under s. 560.034 (1) to the department of development and to any collective bargaining agent in this state with whom the person has a collective bargaining agreement; and

2. The municipality has received an estimate issued under s. 560.034 (5) (a) and the department of development has estimated whether the project which the municipality would finance under the agreement is expected to eliminate, create or maintain jobs on the project site and elsewhere in this state and the net number of jobs expected to be eliminated, created, or maintained as a result of the project.

(b) Any revenue agreement which an eligible participant enters into with a municipality to finance a project shall require the eligible participant to submit to the department of development within 12 months after the project is completed or 2 years after a revenue bond is used to finance the project, whichever is sooner, on a form prescribed under s 560.034 (1), the net number of jobs eliminated, created, or maintained on the project site and elsewhere in this state as a result of the project.

(c) Nothing in this subsection may be deemed to require a person with whom a municipality has enter into a revenue agreement to satisfy an estimate under par. (a) 2.

Wisconsin statues, Section 234.65 (3) (a)

[This section contains the same language as Section 66.521 (4m), above, but the requirements are applied to projects financed by the Wisconsin Housing and Economic Development Authority.]

Wisconsin Statutes, Section 560.034

Employment Impact Estimates:

(1) The department [of development] shall prescribe the notice forms to be used [to provide employment impact estimates.] The department shall include on the forms a requirement for information on the number of jobs the person submitting the notice expects to be eliminated, created, or maintained on the project site and elsewhere in this state by the project which is the subject of the notice...

(2) If the department receives a notice [applying to a revenue agreement issued by a municipality] the department shall estimate, no later than 20 days after receipt of the notice, whether the project which is the subject of the notice is expected to eliminate, create, or maintain jobs on the project site and elsewhere in this state and the net number of jobs expected to be eliminated, created, or maintained as a result of the project.

(3) If the department receives a notice [applying to a loan or revenue agreement issued by the Wisconsin Housing and Economic Development Authority] the department shall estimate, no later than 20 days after receipt of the notice, whether the project which is the subject of the notice is expected to eliminate, create, or maintain jobs on the project site and elsewhere in this state and the net number of jobs expected to be eliminated, created, or maintained as a result of the project.

Wisconsin Statutes, Section 66.521.10 [public participation]

(d) The governing body may issue bonds under this section without submitting the proposition to the electors of the municipality for approval unless within 30 days from the date of publication of notice of adoption of the initial resolution for such bonds, a petition, signed by not less than 5% of the registered electors of the municipality, or, if there is no registration of electors in the municipality, by 10% of the municipality voting for the office of governor at the last general election... is filed with the clerk of the municipality requesting a referendum upon the question of the issuance of the bonds. If such a petition is filed, the bonds shall not be issued until approved by a majority of the electors of the municipality voting thereon at a general or special election.

* * * * *

Connecticut, An Act Concerning Economic Development Program Accountability

Section 1.(2) "Economic development financial assistance" means any grant, loan or loan guarantee, or combination thereof, provided to a business for the purpose of economic development.
(3) "Employee representatives" means representatives of any certified or recognized bargaining agents for employees of a business.

Section 3.(3) If there are employee representatives of the business and (A) the business has not consulted with such employee representatives concerning the request for financial assistance and the public policy objectives which the request is intended to serve, a statement to that effect that also indicates (i) the reasons for not consulting with the employee representatives and (ii) whether the business intends to so consult, or (B) the business has consulted with the employee representatives concerning the request and such objectives, a statement prepared jointly by the business and the employee representatives or separate statements by the business and the employee representatives indicating (i) whether the employee representatives support the application, (ii) whether the employees have made any commitments ot the business and, if so, the nature of such commitments and a description of the manner in which the commitments relate to the business's plan for using the economic development financial assistance to further the public policy objectives of the awarding authority, (iii) whether the business had made any commitments to the employee representatives which relate to the request and, if so, a description of the relationship between the assistance sought and such commitments, and (iv) whether the business has developed a plan for on-going cooperation between the business and its employees through a labor-management committee or any other mechanism, for the purpose of promoting such public policy objectives.

(b) If there are no employee representatives of a business seeking economic development financial assistance..., the business and its employees may submit either a joint statement or separate statements to the awarding authority...

* * * *

Ordinance, City of St. Paul

... The City of St. Paul will henceforth require that a Jobs Statement be attached to any proposed development receiving City financial or technical support, including any federal grant program administered by the City, revenue bond financing, planning assistance, tax increment financing, tax levies, or any other form of direct or indirect assistance.

The Jobs Impact Statement will identify, for both the property to be acquired and the proposed development, the following:

1. The number and types of jobs that will be lost or created;

2. The wages rates and benefits for those jobs;

3. Any indirect job loss sustained as a result of redevelopment, including jobs lost to suppliers, transportation companies, etc.;

4. Total projected public cost for redevelopment assistance;

5. Character and demographic characteristics of the affected workforce;

6. Skill levels required for both jobs being lost and jobs which will be created;

7. The likelihood of displaced workers being able to obtain jobs with comparable pay and benefits in this area;

8. The record, if any, of the developers or the employers who are part of the proposed development, in meeting job creation projections in the past;

9. A public monitoring process for establishing the above and insuring compliance with job creation projections in the proposed development.

The Jobs Impact Statement must be submitted for review and comment by workers who may be displaced, any labor union or other representative body of the workers, the local district planning council and any other affected or interested community organization or association.

The Jobs Impact Statement must be subject to a public hearing by the City Council prior to approval of any development project receiving City assistance.

In the event that workers are displaced as a result of redevelopment activities supported by City financial or technical assistance, the displaced workers will be provided benefits which must include, but not be limited to, the following:

1. Reasonable education or retraining expenses which will enable them to secure employment at a level commensurate with or above wages paid them by the displaced industry;

2. Preferential treatment in hiring for positions within the City of Saint Paul for which the displaced workers have the requisite skills;

3. Inclusion in the City's first source and affirmative action program;

4. Payment of any relocation expenses incurred by a dislocated worker;

5. Provision of health insurance benefits for up to one year;

6. Supplemental unemployment insurance payments equal to the difference between the workers unemployment insurance payments and 70% of their previous salary for up to one year;

7. Payment of child care expenses while a displaced worker is in a retraining or education program; and

8. Establishment of an emergency fund to be managed by a workers organization to meet emergency financial needs of displaced workers.

* * * * *

Gary, Indiana Ordinance No. 89-45

Section 2: Entitled “Advance Notice of Intent to Apply for Tax Abatement” shall be amended as follows:

Company must notify union or employees when it applies for abatement. Notification shall be in writing and posted in a conspicuous place. This section applies only to companies already doing business in Gary, and does not apply to a construction site for a new facility or expansion project.

Section 3: Entitled “Application” shall be amended as follows:

Any company applying for designation of an economic revitalization area or approval of a statement of benefits pursuant to I.C 6-1.1-12-1 et seq. shall provide to the Council and Mayor’s Office of Economic Development the following supplemental information of forms which shall be prescribed by the Council: ...

4. The name of each person who holds at least five per cent of the outstanding shares of stock of the applicant and any parent company. ...

6. A financial statement for both the applicant and any parent company for each of the preceding three (3) years prepared by a Certified Public Accountant in accordance with sound accounting practices, including the applicant’s and parent’s company:

(a) volume of sales;
(b) operating profits;
(c) book value of plant, land and equipment;
(d) net capital investments;
(e) net assets; (f) capacity utilization;
(g) debts, itemized by the following categories:
  (1) loans;
  (2) mortgages;
  (3) unfunded pension liabilities;
  (4) unfunded environmental liabilities;
  (5) other unfunded liabilities.

7. A list of all public subsidies received by the applicant or the applicant’s parent company during the preceding ten (10) years on the facility for which a deduction is sought or for any other facility that is owned by the applicant or the applicant’s parent company and is located in Indiana. The list must include the following:

(a) the type of subsidy received (such as property tax deduction, industrial revenue bonds, urban action grants, and job training funds);
(b) the amount of the subsidy;
(c) the term of the subsidy;
(d) the public benefit that was promised when the subsidy was applied for, such as infrastructure or the creation or retention of jobs;
(e) the current number of jobs including wages and fringe benefits created or retained as a result of the subsidy.

8. A description of the construction jobs resulting from the proposed development, rehabilitation or installment of new manufacturing equipment, including the following:
(a) the estimated number and length of tenure of the jobs;
(b) the estimated total number of the jobs that will be held by Gary residents; (c) the name, address, and telephone of each contractor, sub-contractor, and the construction manager;
(d) the estimated wages and cost of fringe benefits to be provided;
(e) the estimated total number of the jobs that will be held by residents of other cities.

9. A description of the permanent jobs resulting from the proposed development, rehabilitation, or installation of new manufacturing equipment, including the following:
(a) the number and category of full-time and part-time employees currently employed by the facility;
(b) anticipated date for hiring to begin;
(c) quarterly hiring projections from project completion date until hiring completion date.

10. A description of the jobs that will be lost as a result of the proposed redevelopment, rehabilitation, or installation of new manufacturing equipment, including the following:
(a) the estimated number of jobs that will be lost;
(b) the title and occupations skill levels of those jobs;
(c) the wages and fringe benefits of those jobs.

11. A description of jobs that will be temporarily or permanently restructured, re-classified, or reassigned as a result of the proposed redevelopment, rehabilitation, or installation of new manufacturing equipment including the following:
(a)The length of tenure and estimated number of jobs that will be restructured, re-classified or reassigned;
(b) the titles and occupational skill levels of those jobs;

(c) the wages and fringe benefits of those jobs.

Succinctly, the company must show financial need for the abatement by providing specific plant and corporate data. Company must outline the number and type of temporary and permanent jobs which will be created as a result of the investment period. Company must outline the number of temporary and permanent jobs which will be lost as a result of the investment.

* * * * *

Hammond, Indiana Ordinance Number 90-33-C

...WHEREAS, there is currently no procedure for the Council to monitor the performance of companies receiving property tax benefits deductions in compliance with their Statement of Benefits. ...

Section 3. Notification of employees: Notification of application for Economic Revitalization Area and/or approval of Statement of Benefits must be provided by the applicant to any and all collective bargaining representative(s) at site(s) of the proposed project. Notification of application for Economic Revitalization Area and/or approval of Statement of Benefits must be posted in a conspicuous place at the current site(s) of the applicant's employees, where said sites are located within Lake, Porter, and LaPorte counties in the state of Indiana. A copy of the notice(s) provided and affidavits of notice and posting must be included with all applications for Economic Revitalization Area or approval of Statement of Benefits.

Section 5. The Council shall schedule a public hearing before final passage of any applications for Economic revitalization Area designation or approval of Statement of benefits. ...Notification of the hearing shall be sent by the Applicant to any collective bargaining representative(s) of employees who are employed by the Applicant at the location of the proposed Economic Revitalization Area, or are employed at the location at the project referred to in the Statement of Benefits. Further, a copy of said notice must be posted in a conspicuous place at the location of the proposed Economic Revitalization Area or of the project referred to in the Statement of Benefits for ten (10) calendar days prior to the hearing.

Section 7. As a condition of approval of Statement of Benefits, the Applicant shall provide the Council and the Mayor's Office of Economic Development on an annual basis for each year a deduction application is filed, a copy of all deduction applications for projects approved by the Council, including a brief written report on the compliance with Statement of Benefits... within thirty (30) days of filing with the Lake County Auditor.

Section 8. Any Applicant who has received approval of a Statement of Benefits and who upon filing of a copy of the deduction application and report on compliance with Statement of Benefits pursuant to Section 7 of this Ordinance, has not reached eighty percent (80%) of the job creation or job creation and wage projections stated in the Statement of Benefits application, shall be required to appear at a hearing before the Council to explain the reasons for non-compliance.

Section 9. Failure... to comply with sections seven (7) or eight (8) of this Ordinance shall be subject to a civil penalty of not more than two thousand five [hundred] ($2,500.00) for each occurrence, plus any reasonable legal cost...

Section 10. The Council shall not consider a Statement of Benefits application if prior to the filing with the Council and the Mayor's Office of Economic Development any of the following actions have occurred:

1. a Building Permit for the subject development for which a deduction is being sought has been issued by the City of Hammond or construction of the subject development has commenced: or

2. manufacturing equipment for which a deduction is being sought has been or is being installed.

* * * * *

New York State, Senate Bill 6943 (1988)

Introduced by Sens. Goodman, Spano, Marchi, Padavan (at request of the State Comptroller)

Section 1. The state finance law is amended by adding a new section twenty-two b to read as follows:

22-B. Tax expenditure reports. Definitions

(a) "Tax expenditures" shall mean any tax incentive authorized by any provision of law, which, by exemption, exclusion, deduction, allowance, credit, preferential tax rate or other device, reduces the amount of tax revenues that would otherwise accrue to the state and which is for the purpose of promoting, attracting, encouraging, or developing commerce and industry, including tourism, in the state;

(b) "Cost of tax expenditure" shall mean that amount by which tax revenue is reduced or eliminated as the result of any tax expenditure.

Report Content Requirements ...[T]he budget submitted annually by the governor to the legislature shall include a tax expenditure report. The report shall detail for each tax expenditure item the following:

(a) a citation of the legal authority for the tax expenditure, the year it was enacted and the fiscal year it became effective;

(b) a description of how the tax expenditure promotes, attracts, encourages, and develops commerce and industry, including tourism, in the state;

(c) a statement indicating the number and types of entities or individuals benefiting from the tax expenditure and the types of activities and program which these entities or individuals are providing as a result thereof;

(d) the total cost of the tax expenditure for the preceding fiscal year, together with an estimate of the projected cost for the current and ensuing fiscal years;

(e) an evaluation of the effectiveness of the tax expenditure, in furthering the economic development of the state, including, but not limited to, an analysis of the number of employers and jobs estimated to have been created or retained and a description of the methodology used to prepare such estimates, the specific geographic areas of the state which are experiencing economic revitalization and any other benefits inuring to the people of this state as a result of the tax expenditure. The report shall also identify the extent to which, if any, the tax expenditure has resulted in employers and jobs being relocated form one part of the state to another part of the state or has caused existing facilities in this state to be abandoned. Such evaluation shall also consider the fairness and equity of the tax expenditure on the distribution of the tax burden.

Such report shall also set forth in the sixth fiscal year next succeeding the effective date of this section and every fifth year thereafter, a statement summarizing the actual cost of, and the benefits achieved, by each tax expenditure for the preceding five- year period.

[Section two of the bill, using the same language as Section one above, amends the general municipal law to require annual tax expenditure reports to be included in annual municipal budgets.]
[Section three requires tax expenditure reports to be filed in annual town budgets.]
[Section four requires reports to be filed in annual village budgets.]
[Section five requires reports to be filed in annual city budgets.]
[Section six requires reports to be filed in annual county budgets.]

* * * * *

West Virginia Section 11-10-5(s) Disclosure of certain taxpayer information.

(a) purpose. -- The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. ...

(b) Exceptions to confidentiality.

(1) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-e, thirteen-f, thirteen-g, and thirteen-h...of this chapter and article one..., chapter five-e of this code for any tax year beginning on or after the first day of July, one thousand nine hundred ninety-one. The categories by dollar amount of credit shall be as follows:

(A) More than $1.00, but not more than $50,000;
(B) More than $50,000, but not more than $100,000;
(C) More than $100,000, but not more than $250,000;
(D) More than $250,000, but not more than $500,000;
(E) More than $500,000, but not more than $1,000,000;
(F) More than $1,000,000.

...(c) Tax expenditure reports. -- Beginning on the fifteenth day of January, one thousand nine hundred and ninety-two and every fifteenth day of January thereafter, the governor shall submit to the president of the Senate and the speaker of the House of Delegates a tax expenditure report. Such report shall expressly identify all tax expenditures. Within three-year cycles, such reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information available to the tax commissioner. For purposes of this section, the term "tax expenditure" shall mean a provision in the tax laws administered under this article, including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in certain circumstances. ...

[The West Virginia disclosure reports cover the following ten programs:

1. Business Investment & Jobs Expansion Credit (Super Credits)
2. Industrial Expansion or Revitalization Credit
3. Research and Development Projects Credit
4. Residential Housing Development Projects Credit
5. Management Information Services Facility Credit
6. Coal Loading Facilities Credit
7. Credit For Reducing Electric and Natural Gas Utility Rates For Low- Income Residenti
8. Credit For Reducing Telephone Utility Rates Fir Certain Low-Income Residential Custo
9. Credit For Increased Generation of Electricity
10. Capital Company Credit]

* * * * *

B. Clawbacks and Job-Creation Guarantees

"All private business transactions work within the framework of legally binding contracts. The time has come for public-private bargaining with some form of reasonable, guaranteed quid pro quo."
-- Larry C. Ledebur and
Douglas Woodward, Economists
Economic Development Quarterly
August, 1990

"...[T]he smart government has to tell industries: No special breaks unless your commitment to our community is real and enduring. Public officials have to learn to negotiate like the cold-blooded businesses they face on the other side of the bargaining table."
-- Neal Peirce
Nationally-syndicated columnist
May 20, 1988

While disclosure and public participation may reduce the odds of abuse, ultimately the greatest tool states and cities have is deterrence. That means raising the cost of failing to deliver on job promises with specific, legally-enforceable regulations and contract language. The most powerful way to raise the corporate cost of non-performance is by a clawback provision: if the recipient company fails to deliver, the incentive must be refunded, back to day one, preferably with an interest penalty.

The concept is hardly novel; as Larry C. Ledebur and Douglas Woodward write, "clawbacks are used with almost every form of industrial subsidy in ...European nations," including Italy, the Netherlands, Northern Ireland, Great Britain, France, Germany, Denmark, Luxembourg, and Belgium.

The idea of strict accountability has been slow to take root in the United States, however, reflecting America's more laissez-faire history and the federal industrial policy vacuum that has been filled with "state-eat-state," no strings attached.

The City of New Haven has what is believed to be the nation's first permanent local clawback rule. Eloquently brief yet comprehensive, the ordinance calls for the cancellation of any subsidy if a company moves all or part of a subsidized operation from the City, and a clawback of the subsidies already granted the company, with an interest penalty from the date the subsidy began, payable in 30 days.

Vermont was the first state to enact a clawback rule for non-performance. The legislation applies to companies which receive loans from the Vermont Industrial Development Authority (VIDA). It covers both companies that leave the state entirely, as well as any company that transfers more than 50% of its workforce to an out-of-state location. In those circumstances, a company may be required to immediately pay back in full the loan it has received from VIDA, at the discretion of the Authority. All VIDA loan contracts include language which spells out the payback requirement (see below).

In 1991, Illinois enacted a broad clawback law covering any assistance provided by any State agency or unit of local government to build, improve or modify real property for projects that attract or retain jobs. The law requires that if a company terminates operations at the site within 24 months of starting (or 24 months after receiving the subsidy at an ongoing site), the company must pay back the State the full value of the assistance.

Illinois also considered a tax abatement clawback law in 1993 that would have required a recipient company that relocated its facilities "in whole or in part, from the taxing district during the term of the abatement," to pay back the full value of the abatement received to date, plus an 18% interest penalty "from the date the benefits accrued." The balance of the abatement would also have been canceled. The law also would have required recipient companies to give the taxing district at least 12 months' advance notice before relocating.

Austin, Texas has a powerful clawback rule for companies receiving tax abatements. If a recipient company leaves Austin within a period *twice the length of the abatement*, the City may "recapture" all or part of the value of the abatement.

Ohio, in an effort to combat job raids by other states, especially Kentucky, has instituted one of the strongest tax credit rules in the nation. An Ohio tax credit law (§122.17) for job creation stipulates that the tax credit agreement must include "a requirement that the taxpayer shall maintain operations at the project location for at least *twice* the number of years as the term of the tax credit."

The Ohio law also requires that the recipient company report annually on jobs created and taxes withheld. And if the company is found to have violated the rule requiring that it stay for twice the length of the credit, the tax commissioner, after investigating, may claw back as much as the full value of the credit.

Iowa's Community Betterment Program has a complex set of administrative rules that require the repayment of loans, grants, and loan subsidies if a company relocates or fails to meet its job targets. For forgivable loans and loan subsidies, if a company fails to produce half the expected jobs, the loan becomes partly payable. If it achieves more than half but less than 100%, then that share of the loan equal to the shortfall becomes payable (e.g., if a company produces 75% of the jobs, 25% of the loan amount would become payable) with interest. For outright loans, if the currently-prevailing interest rate is higher than the loan's rate, then a portion of the balance equal to the percentage of the shortfall will be assigned the new interest rate.

These Iowa reforms (and others that rule out subsidies for low-paying employers, see Job

Quality section) were the direct result of controversies surrounding loans made within the meatpacking industry which resulted in the displacement of better-paid union workers at other Iowa plants.

Connecticut passed a similar law in 1993 to deter subsidized runaways. The law states that any company receiving financial aid from the state's department of economic development, development authority or Connecticut Innovations, Inc. may not relocate outside the state for ten years after receiving the aid or during the term of the aid, whichever is longer. Companies that break the rule must pay back the full value of the assistance plus a 5% penalty. Recipient companies that relocate within the state must offer the new jobs first to those dislocated at the subsidized site. The law also requires that the development agencies report back to the legislature every year on enforcement of the rules.

New York State enacted a recision (cancellation) rule for its economic development zones in 1990. If a company has been certified to benefit from zone designation, but fails to "operate its facility substantially in accordance" with pledges made in its application, the certification must be revoked and tax benefits canceled.

Colorado's customized training program, FIRST, has explicit clawback language in both its program guidelines and in its grant application contract. Applying companies must certify how many jobs they will create and how much the jobs will pay, and they must acknowledge their possible contractual liability to reimburse the State if they fail to achieve their application goals.

Texas adopted a 1993 amendment to its training program that provides for a partial clawback if a trainee is not retained for at least 90 days after the training is completed. This anti-churning rule would be achieved by the state holding back 25% of the training grant for 90 days, pending verification that all of the trainees are still employed.

Nebraska enacted in 1993 an Employment and Investment Growth Act that includes a clear clawback provision to protect credits for personal property taxes, corporate income taxes, and other taxes. It gives recipient companies six years to achieve their projected investment and job creation levels. If at the end of those six years they have fallen short of the projections, the State shall recapture one seventh of the value of the tax credits for each year the company did not maintain the projected jobs or investment.

General Motors, the company sued by Ypsilanti Township in Michigan for the closure of its Willow Run plant in alleged violation of job-security pledges made in return for massive tax abatements, ironically had agreed in 1989 to a tax abatement contract including a clawback and job-guarantee with the city where the Ypsilanti jobs went -- Arlington, Texas! The agreement calls for a 100% tax abatement recapture if GM fails to maintain at least 2,000 jobs during the first five years, and a recapture of any single year's abatement in which GM doesn't deliver in years six through ten.

Georgia has an accountability law for tax incentives granted in depressed counties (a format permitted by GATT). In exchange for tax credits of up to $2,000 per job per year, the State requires at least ten new jobs, and it verifies the job creation by the number of full-time employees subject to withholding of state income tax. Louisiana and North Carolina also condition some of their tax credits to end-of-year job certifications. In other words, businesses are not rewarded for promising new jobs, but for actually creating them.

Pennsylvania grants its Industrial Development Authority (PIDA) the ability to impose interest rate penalties on companies that don't deliver on jobs. As originally enacted, the law imposed an interest rate hike of up to 8% for a company that created less than a fourth of its projected jobs; however, the penalties were subsequently halved. The law imposes a 1% penalty on all companies that perform below 75%. And for those that also fail PIDA's cost-per-job ceiling, it also imposes an additional 1% penalty for performance between 50% and 75%, a 2% penalty on those between 25% and 50%, and a 3% penalty for those performing below 25%. PIDA may also refuse to approve future loan applications from a company that failed to deliver. As well, each PIDA contract may include a 4% interest rate penalty for companies that fail to maintain the wage levels they promise in job-retention projects.

West Virginia's Economic Development Authority has boilerplate language in its loan agreements stating that: "The WVEDA loan shall be callable at the option of WVEDA should the company cease operations at the Facility."

Indiana considered a strong labor rights bill in 1992 that would deny incentives to companies that hire replacement workers during a labor dispute. The proposed law would deny grants, loans, loan guarantees, and promotional activities to any company that hired replacement workers, and declare any such company ineligible to receive those benefits for five years. And if a company that already had received such benefits hired replacements, the State would immediately revoke and call for repayment of the subsidies. The bill extends the same rules to enterprise zone benefits, including the five-year ban, but does not seek to recapture past zone benefits.

Several other states have considered job-guarantee laws; four are noteworthy: New York, West Virginia, Georgia, and Pennsylvania. At least three of the states' proposed laws had a take-the-money-and-run "horror story" propelling it.

New York Senate Assembly Bill A. 6068-A in the 1993-1994 session seeks to add strict clawback language to contracts let by every single State development program. The contracts would specify how many people were to be trained or how many jobs were to be created or retained or which physical developments were to occur. They would also specify the timetable for achieving the numbers, and if a company failed to deliver, the value of the subsidy would be payable with interest back to the relevant State agency.

The West Virginia bill would have applied to all companies "receiving any grants, loans, special tax credits or deferments, or other incentives as consideration for doing business or continuing to do business in this state." It called for companies receiving such aid to give 12 months advance notice of any decision to close, relocate or reduce their operations. The notice would be given to certain public officials, but not to affected workers or the general public; in fact, the law provides that advance notice will be "received and maintained in strictest confidence." If an employer receiving state aid failed to give the required notice, the West Virginia bill would have allowed the Governor to call in any outstanding loans, and cancel any tax credits that the employer was receiving at the time. In addition, the employer would have been required to give severance pay and extended health benefits to affected workers.

The intent of the West Virginia bill was apparently to enhance the State's ability to avert business closures; it coincided with the State's frustrating episode with the Newell Corporation (see Chapter One). The bill cannot really be considered an advance notice rule, given the confidentiality clause. It is essentially a job-accountability proposal, because it compels recipient companies to disclose shutdown intent in such a way that the State may challenge the decision, and it gives the Governor power to claw back subsidies for companies that fail to give notice.

The proposed Georgia statute applied to the government-borne costs of acquiring, building or improving real property to enable a company to stay or relocate. If a recipient company relocated within two years, it would have been liable for damages equal to the government costs.

A recent Pennsylvania bill lacked many accountability specifics but contained strong intent language intended to cover all forms of state assistance; it also sought labor protections for dislocated workers. The bill declared that "applicants will be held to promises" on job creation and wage levels in legally-enforceable contracts. It would also require that recipient companies offer new jobs and relocation assistance to workers it may have laid off at other sites in the state within the last ten years. Finally, it sought to ban hiring discrimination based on previous union membership.

Incentives and Defense Conversion

Connecticut became the first state in the nation to tie the receipt of State incentives to best practice in defense conversion. Legislation passed in 1994 requires every Connecticut firm that receives financial assistance from the State and over $1 million per year in defense contracts to establish an Alternative Use Committee (AUC).

The AUC must include representatives of the employer and employees. Workers who are unionized are to be represented by union leaders; non-union employees must choose their representatives to the AUC. The Committee may also invite community representatives onto the AUC. The AUC's task is to develop a plan to reduce or eliminate the plant's dependence on defense contracts, specifically by identifying new products and determining retraining needs to minimize dislocation.

The Connecticut legislation is significant because it is the first time the receipt of incentives has been tied to defense conversion efforts. Alternative Use Committees are needed because many unions and community groups have been frustrated in their efforts to promote conversion when companies have excluded them from the process. This issue of jointness is increasingly important because federal spending on conversion has risen sharply, while results have been modest. Many argue that the lack of jointness has been a major reason for such modest outcomes.

High-Impact Projects

As a result of widespread criticisms of many larger incentive packages, clawbacks and other accountability clauses are increasingly common in high-impact projects. They are included either in project-specific contracts or in laws written for specific deals.

After winning a multi-state competition for a United Airlines maintenance terminal with a financing and tax abatement package worth an estimated $294 million, the City of Indianapolis executed an agreement with United that provides the City with various protections. The City may claim tax penalties from United if the project fails to invest $800 million by the year 2002 or create 6300 jobs by the year 2005. The penalty for job-creation failure is twice as steep as for investment failure, based on a complex set of calculations.

While the Indianapolis-United contract received many favorable editorial comments, a close reading of the contract reveals that United has enormous leeway in defining the jobs that are created. United is allowed to count anyone it employs *in the state*, and it also is allowed to count "new employees brought in for businesses working generally in the aircraft or aeronautical industries..." That is, United may claim credit for any new airline/aircraft-related employment in Indiana, an extremely loose construction. The agreement does not even limit the ripple-effect job-creation definition to United-specific supplier firms, or to the Indianapolis region.

Connecticut enacted high-impact language for its $32 million Pratt & Whitney deal, specifically for enhanced research and development tax credits. If Pratt & Whitney spends more than $200 million annually, it can receive a credit of up to 6% on R & D, but it must also meet job security requirements against its "historical Connecticut wage base." On an unusually steep five-step penalty scale, a decline in employment of 2% to 3% would cost the company 10% of the credit; a decline of more than 6% would cost Pratt & Whitney *100%* of the special credit.

Illinois' “High Impact Businesses” program, which grants certain incentives to large-scale employers, has relatively standard job creation/retention provisions. In order to receive the designation of High Impact Business a company must invest $12 million and create 500 new jobs, or invest $30 million and retain 1,500 jobs. The statute also insists that the business “prove” that the incentives are crucial to its location decision. This proof entails providing the state with a prospective plan of action to eliminate Illinois 1,500 jobs in case the business does not receive the High Impact Businesses designation.

Illinois also requires a company applying for high-impact status to prove that other sites outside of Illinois will receive the investment and jobs if it does not receive the Illinois designation. While such a requirement sounds reasonable, it wouldn't be hard for a company to create a plausible runaway scenario with aid from another state, given how eager most states are to raid each other. This requirement provides a measure of political cover for costly packages, however.

Finally, the Illinois law requires that if it is subsequently learned that the company would have made the investments and created or retained the jobs without the High Impact assistance, the designation must be revoked, all wrongfully gained tax credits must be recovered, and the company will become ineligible to receive any other Illinois development assistance for ten years. While this is apparently a strong sanction, it seems highly unlikely that any such violation could ever be discovered.

Statutes

New Haven, Connecticut City Ordinances -- Article VII: Benefit Recapture

Sec. 21-39 Tax Benefits

If the city directly grants a tax abatement, tax assessment deferral or other benefit to an industrial or commercial entity for the purpose of locating, maintaining, rehabilitating or expanding its manufacturing facilities in New Haven, and the entity relocates its manufacturing facilities from New Haven in whole or in part during the term of any such benefit, the tax benefits for the remainder of the term shall automatically be cancelled, and the tax benefits effected shall be repaid within thirty (30) days to the City of New Haven together with interest from the date the benefits accrued, such interest to be at the prime rate on the date of cancellation, and such industrial or commercial entity must notify the city six (6) months prior to its relocation.

Sec. 21-40. Community Development Block Grant Float Loan

If an industrial or commercial entity relocates its facilities in whole or in part from New Haven during the term of any Community Development Block Grant Float Loan directly granted to it by the City of New Haven, the outstanding principal balance of the loan shall be immediately due and payable at the prevailing prime rate, and such industrial or commercial entity must notify the City of New Haven 6 months prior to its relocation.

Sec. 21-41. Implementation

The requirements of Section 21-39 and Section 21-40 shall be implemented by appropriate provisions in tax benefit agreements and Community Development Block Grant Float Loans, as the case may be.

* * * * *

Vermont statutes, Sec. 4 10 V.S.A. 264:

Any direct mortgage loan made on or after July 1, 1988 under this subchapter shall be conditioned upon the maintenance of a reasonable level of employment at the facility or facilities owned by the mortgagor and pledged as a security for the loan. For the purposes of this section, a reasonable level of employment shall be deemed not to have been maintained whenever a mortgagor employing 50 or more employees at such facility or facilities permanently transfers, within any three-year period, 50 percent or more of those employees or employment positions to any out-of-state facility. Upon breach of this condition, the authority may declare all principal and interest of the mortgage loan immediately due and payable and may commence foreclosure on any property held as security for the mortgage loan or take any other lawful steps to obtain payment.

Sample language from VIDA loan documents:

"Borrower shall maintain a reasonable level of employment as required by 10 V.S.A., 264 at the industrial facility owned by Borrower upon which the Lender is taking a mortgage as security for the Note. For the purposes of this section, a reasonable level of employment shall be deemed not to have been maintained whenever the Borrower, employing fifty (50) or more employees at such industrial facility, permanently transfers, within any three (3) year period, fifty (50%) or more of those employees or employment positions to any out of state facility."

"RRLP/RI shall maintain a reasonable level of employment at the industrial facility owned by RRLP upon which the authority is taking a mortgage as security for its loan. A reasonable level of employment shall be deemed not to have been maintained whenever RRLP/PI, employing fifty (50) or more employees at such industrial facility, permanently transfer, within any three (3) year period, fifty (50%) or more of those employees or employment positions to any out-of-state facility."

* * * * *

Illinois P. A. 87-212, Act 30, Community Investment Recovery Act

30/5. Liability. If, at the written request of a business, a State agency or unit of local government acquires, constructs, improves or modifies any real property that results in a business locating or remaining on real property within the State or the unit of local government, that business shall be liable for damages to the State or unit of local government if the business closes down or terminates its operations on the real property within 24 months after commencing operations, or in the case of a business that remains in the State or unit of local government after real property is acquired or modified for its benefit, 24 months after the new or modified real property is first utilized by the business. The amount of damages shall equal the costs of acquiring, constructing, improving, or modifying the real property.

Illinois House Bill 0264 (1993)

An Act to amend the Revenue Act of 1939 by adding Section 162j. ...

Sec. 162j. Cancellation and repayment of tax benefits. If any taxing district grants a tax abatement or other tax benefit under Section 162 or Section 162e of this Act, under the Tax Increment Allocation Redevelopment Act, or under any other statutory or constitutional authority to a private individual or entity for the purpose of locating, maintaining, rehabilitating, or expanding a business facility within the taxing district and the individual or entity relocates its facilities, in whole or part, from the taxing district during the term of the abatement or other tax benefit, the abatement or other tax benefit for the remainder of the term is cancelled and the amount of the abatements or other tax benefits granted before cancellation shall be repaid to the taxing district within 30 days, together with interest at the rate of 18% per year from the date the benefits accrued. The individual or entity must notify the taxing district at least 12 months before its relocation.

* * * * *

City of Austin Ordinance 91 1121-C, Attachment A, Guidelines and Criteria for Tax Abatement

Section 9. Recapture.

(a) In the event that a targeted enterprise, during the period of time equal to twice the duration of the tax abatement time period, relocates to a location outside the City of Austin taxing jurisdiction, the City shall have the right to recapture all or a portion of the abated taxes, depending upon when the relocation occurs. ...

(d) In the event that the company or individual... (2) violates any of the terms and conditions of the abatement agreement and fails to cure during the "Cure Period," the agreement then may be terminated and all taxes previously abated by virtue of the agreement will become a debt to the City and shall become due and payable no later than sixty (60) days of termination.

* * * * *

Ohio Statute 122.17 Tax Credit Authority

> (C)...After receipt of an application, the authority may enter into an agreement with the taxpayer for a credit under this section if it determines all the following:
>
> (1) The taxpayer's project will create new jobs in this state;...
>
> (D) An agreement under this section shall include all of the following: ...
>
> (3) A requirement that the taxpayer shall maintain operations at the project location for at least twice the number of years as the term of the tax credit;
>
> (6) A requirement that the taxpayer annually shall report to the director of development the number of new employees, the new tax income tax revenue withheld in connection with the new employees...
>
> (H) If the director of development determines that a taxpayer who has received a credit under this section has not complied with the requirement under Division (D)(3) of this section, he shall notify the tax commissioner of the noncompliance. After receiving such notice, and after giving the taxpayer an opportunity to explain the noncompliance, the tax commissioner may make an assessment against the taxpayer under Chapter 5733, or 5747, of the Revised Code for an amount not exceeding the sum of any previously allowed credits under this section.

* * * * *

Administrative Rules of Iowa Community Betterment Program, 261-22.1(15)

> 22.12(4) Performance reports and reviews.
>
> a. Recipients will be required to submit semiannual performance reports to the department. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with certifications made in the agreement with the department. Each report must

be accompanied by the business' most recent quarterly "Employer's Contribution and Payroll Report," and the business may be required to submit actual payroll records as part of that report.

261-22.13(15) Default.

22.13(1) ...The department may determine that the recipient is in default if any of the following occur: ...

c. There is a relocation or abandonment of the business or jobs created or retained through the project. ...

f. Failure of the recipient to fulfill its job attainment obligation.

22.13(3) Penalties for failure to meet job attainment goals.

a. Forgivable loans, grants, buy-downs and interest subsidy awards. If the recipient receives this type of award and at the project expiration date does not provide 100 percent of the pledged FTE jobs, the department may require repayment of program funds using the following criteria:
(1) If the recipient fails to achieve at least 50 percent of the job attainment goal, 100 percent of the award will be due as a loan at an annual interest rate as determined periodically by the board. Interest due will be calculated from the date CEBA funds were disbursed to the recipient.

(2) If the recipient achieves more than 50 percent of the job attainment goal, the award will be prorated between the percentage of jobs attained and the percentage of shortfall. The pro rata amount of the award associated with the percentage of shortfall will be amortized over the remaining term of the forgivable loan, or in the case of a grant, buydown or interest rate subsidy, three years (beginning at the agreement expiration date) at an annual interest rate as determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately.

b. Loan awards. If the recipient receives a loan at a rate that is below the annual interest rate for noncompliance as set periodically by the board, the remaining principal amount of the loan will be prorated between the percentage of jobs attained and the percentage of shortfall. [Payment of the "shortfall principal" is scheduled the same as section 2 above. Payment of the "compliance principal" remains at original terms.]

* * * * *

Connecticut Public Act No. 93-218

> Sec. 1. ...The Board of Directors of the Connecticut Development Authority and Connecticut Innovations, Incorporated shall require, as a condition of any financial assistance provided... under any program administered by the department of economic development or such authority or corporation to any business organization, that such business organization:
>
> (1) Shall not relocate outside of the state for ten years after receiving such assistance or during the term of a loan or loan guarantee, whichever is longer, unless the full amount of the assistance is repaid to the state and a penalty equal to five percent of the total assistance received is paid to the state and
>
> (2) shall, if the business organization relocates within the state during such period, offer employment at the new location to its employees from the original location if such employment is available.
>
> Sec. 2. The department of economic development, Connecticut development authority and Connecticut Innovations, Incorporated shall each submit a report to the joint standing committee of the general assembly... concerning provisions in financial assistance agreements... which impose penalties on recipients of financial assistance for moving out of state after receiving the assistance. The reports shall specify:
>
> (1) The percentage of such agreements containing such penalty provisions, [reflecting the fact that the requirements dates to 1993]
> (2) the range of penalties in the agreements,
>
> (3) the extent to which such penalty provisions have been enforced and
>
> (4) if penalty provisions have not been included in any agreements, the reason why.

* * * * *

New York Economic Development Zone Law, L. 1990, c. 264

Section 959: Responsibilities of the commissioner.

The commissioner shall:

(a) ...promulgate regulations governing (i) criteria of eligibility for economic development zone designation... (iv)... so as to revoke the certification of business enterprises for benefits ...upon a finding that... (2) the business enterprise has failed to construct, expand, rehabilitate or operate its facility substantially in accordance with representations with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the economic development zone provided, however, that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control;... (A) the date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification;... (C) the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred...

* * * * *

Colorado FIRST Customized Training Program Guidelines [draft, to be finalized in August, 1994]

8. Companies may be required to return all or a portion of a Colorado FIRST grant if they fail to create the jobs for which the grant was made.

10. Colorado FIRST grants will not be made to Colorado companies relocating within Colorado, if the relocation has a negative impact on the community of origin.

13. A final report is required of the company. A percentage of funding will be withheld if the company does not meet its job creation guidelines. The final report shall include information confirming the completion of the goals and objectives sought in the grant. Final payment will not be made until final report is received and approved by the state.

Colorado FIRST Customized Training Program - Company Training Agreement

Beneficiary Responsibility - Please Read Carefully:

I understand that, in accepting training assistance from the State of Colorado, my company is accepting responsibilities as outlined in the attached training grant application; that is, the creation of ______ (#) permanent, full-time jobs with _______________________________ (company name), at an average wage of $_________ per hour or salary of $__________ per annum, plus benefits. I understand that _______ ____________________________ (company name) is subject to forfeiture and/or reimbursement of Colorado FIRST Customized Training Program monies if my company does not meet the job creation goals stated above and in the attached grant application...

* * * * *

Texas S.B. No. 130 (1993)

Article II: Smart Jobs Fund Program.
Sec. 481.156(2)(c) ...Twenty-five percent of the grant award shall be withheld by the department for 90 days after the date of completion of the project. If all of the trainees in the project have been retained in employment for that 90-day period, the amount of the grant award withheld shall be remitted to the employer. For each trainee who is not retained in employment for that 90-day period, the amount withheld shall be reduced by the amount of the training costs for that trainee that is derived from grant money, and any balance shall be remitted to the employer.

* * * * *

1993 Nebraska Statutes, Employment and Investment Growth Act 77-4101

77-4107. (1) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the sixth year after the end of the year the application was submitted for such project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Employment and Investment Growth Act shall be recaptured or disallowed.
(2) The recapture or disallowance shall be as follows:

(a) In the case of a taxpayer who failed to meet the required levels within the required time period, all reduction in the personal property tax because of the Employment and Investment Growth Act shall be recaptured and any reduction in the corporate income tax arising solely because of an election under subsection (1) of section 77-4105 shall be deemed an underpayment of the income tax for the year in which the election was exercised and shall be immediately due and payable; and

(b) In the case of a taxpayer who has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subdivision (3)(a) of section 77-4105, and any refunds or reduction in tax allowed because of the use of a credit allowed under subsection (4) of section 77-4105 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds, one-seventh of the reduction in personal property tax, and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers and the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable.

* * * * *

General Motors-Arlington Texas
The State of Texas, County of Tarrant Tax Abatement Agreement

II: Project Requirements

...Owner agrees: ...D. to maintain a minimum average annual employment level within the reinvestment zone of two thousand (2000) employees throughout the term of the Agreement. Those months when the Facility is undergoing model, product or process changeovers shall be excluded from the calculation to determine the average annual employment level. ...

V. Breach and Recapture

A. A breach of this Agreement may result in recapture by the CITY and TAXING UNITS of all taxes which otherwise would have been paid since the execution of this Agreement to the CITY and TAXING UNITS without the benefit of Abatement. Penalty and interest will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax

Code of the State of Texas, and shall begin to accrue sixty (60) days following notice of breach to OWNER. The following shall constitute a breach of this agreement:

1. OWNER fails to complete the modernization, as provided by this Agreement, or terminates the use of the Facility for automobile assembly, painting and related activities; or ...

3. OWNER breaches any of the project requirements, or other terms or conditions of this Agreement.

B. ...During the first five years of this Agreement, should OWNER default in its performance of items 1, 2, or 3 above... all taxes abated since the time this Agreement was executed may be recaptured and may be required to be paid to the CITY and TAXING UNITS within sixty (60) days after this Agreement is terminated in accordance with this paragraph V.B. During years six (6) through ten (10), should OWNER default... CITY and/or TAXING UNITS may recapture the taxes abated only for the calendar year during which the default occurs...

C. In the event that in any given year OWNER is unable to meet the employment levels required under Section II.D. hereof then CITY or TAXING UNITS may recapture only the taxes abated for the calendar year during which the default occurs and this Agreement shall otherwise continue. If OWNER is able to obtain such required levels in subsequent years and is not otherwise in default under the terms of this Agreement then the Abatement shall be reinstated for each year OWNER maintains the required employment levels and is not otherwise in default...

* * * * *

Official Code of Georgia Annotated Section 48-7-40

(e) Business enterprises in counties designated by the commissioner of community affairs as tier 1 less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to $2,000 annually and business enterprises in counties designated by the commissioner of community affairs as tier 2 less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to $1,000 annually for each new full time employee job for five years beginning with years two through six after the creation of the job. The number of new full-time jobs shall be determined by comparing the monthly average number of full time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those business enterprises that increase employment by ten or more in a less developed area shall be eligible for the credit. Credit shall not be allowed during a year if the net employment increase falls below ten. Any credit received for years prior to the year in which the net employment increase falls below ten shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of ten.

* * * * *

Pennsylvania Industrial Development Authority, Statement of Policy

Penalties
Section 303.61 General

The purpose of the interest rate penalty is to insure that the Authority's funds are being properly utilized for employment creation purposes. If a project is not creating jobs, the Authority's funds would be better directed to those businesses which would comply with the objectives of the Authority's program...

Section 303.62 Criteria.

The following four criteria will be evaluated to determine if a valid explanation exists for failure to meet employment projections...

(1) Natural Disaster...
(2) Industry Trends... (iii)... An evaluation of the major SIC and industry trends must be made...
(3) Labor Force... the lack of an available labor pool...
(4) Loss of major supplier/market...

Section 303.63. Levying of penalties.

If the Authority determines that the failure to meet employment projections is warranted by one of the explanatory criteria in Section 303.62 (relating to criteria), no penalty will be levied. If the failure is not warranted, the following criteria will be applied to determine the level of penalty to be imposed:

(1) If a company meets at least 75% of its projected employment, no penalty will be levied;

(2) If a company attains less than 75% of its projected employment but still meets the current Pennsylvania Industrial Development Authority (PIDA) costs per job requirement set by the authority, the annual interest rate on the loan will be increased by one percentage point, beginning on the date on which the penalty is assessed by the Authority.

(3) If a company has reached between 50% and 75% of its projected employment and does not meet the PIDA cost per job requirement set by the Authority, the annual interest rate on the loan will be increased by two percentage points, beginning on the date on which the penalty is assessed by the Authority.

(4) If a company has reached between 25% and 50% of its projected employment and does not meet the PIDA cost per job requirement set by the Authority, the annual interest rate on the loan will be increased by three percentage points, beginning on the date on which the penalty is assessed by the Authority.

(5) If a company has reached less than 25% of its projected employment and does not meet the PIDA cost per job requirement set by the Authority, the annual interest rate on the loan will be increased by four percentage points, beginning on the date on which the penalty is assessed by the Authority.

[Note: the interest rate penalties were originally twice as high in each case.]

(8) Penalties will only be assessed until the company's projected employment is reached; therefore, if a company reaches the projected level, the interest rate penalty will be dropped. The Authority may modify the interest rate penalty in accordance with this section as the company provides evidence of its growing employment.

(9) In addition to an interest rate penalty which may be imposed, the Authority, at its sole discretion, may refuse to approve new loans for a company which fails to meet its employment projections if the failure is not warranted by one of the criteria listed in this section.

(10) Several options remain available to the Authority. For example, the Authority may choose to delay a penalty, conduct periodic reviews to remove an imposed penalty, or waive a penalty after it is imposed, depending on extenuating circumstances. The levying of interest rate penalties is at the sole discretion of the Authority.

Section 303.65. Penalties for failure to maintain the wage category established for job retention projects.

(a) At the time the application is approved, the Authority may require the inclusion in the loan documents of a provision requiring a 4% increase in the interest rate of the loan, if the manufacturing enterprise, as qualified in section 303.112 (relating to funding limitations), 3 years from the date of occupancy, has not maintained the wage category for job retention projects established in section 303.112(2).

(b) Three years from the commencement of operations at the project site, in order to regulate the provision in subsection (a), the Authority may compare the wages the manufacturing enterprise, as qualified by section 303.112, is paying its employees who are working at the project site in year 3, to that of the average manufacturing wage in the county in which the project is located.

* * * * *

Indiana House Bill No. 1118 (1992)

Section 1. IC 4-4-3-22 is added to the Indiana Code...
Sec. 22.(a)..."replacement worker means a person who temporarily or permanently replaces in employment an employee who is involved in a labor dispute.

(b) After June 30, 1992, the department may not provide the following to or for an employer that is employing a replacement worker:
(1) Grants
(2) Loans
(3) Loan Guarantees
(4) Promotional activities.

(c) The department shall include the following conditions with all grants,

loans, loan guarantees, and contracts for promotional activities first provided to an employer after June 30, 1992:
(1) That the employer must immediately repay the grant if the employer employs a replacement worker.
(2) That the employer must immediately repay the loan if the employer employs a replacement worker while the loan is outstanding.
(3) That the department must terminate the loan guarantee or promotional activity if the employer hires a replacement worker.
(4) That the employer will be ineligible to receive any grants, loans, loan guarantees, or contracts from or with the department for at least five (5) years after the replacement worker was hired.

Section 2. IC 4-4-6.1-3 as amended by P.L.2-1990, Section 8, is amended to read as follows:

...(g) For an area designated as an enterprise zone after June 30, 1992, the board shall require the following:
(1) That an employer in an enterprise zone may not employ a replacement worker.
(2) That an employer that violates subdivision (1):
(A) immediately ceases to be a part of the enterprise zone;
(B) is not entitled to any benefits of the enterprise zone under this chapter; and
(C) may not participate in an enterprise zone for at least five (5) years after the replacement worker was hired.

* * * * *

New York Senate Assembly Bill A. 6068-A, 1993-1994 Session

S 163-B. Recoupment of Financial Incentives to Certain Businesses.

1. ...each contract, agreement or understanding by which a person, firm, partnership, company, association or corporation within the State receives an award, grant, loan, tax abatement or other business incentive from the state, any of its political subdivisions, or any department, bureau, board, commission, authority, or other agency or instrumentality of the State or its political subdivisions...shall contain the following provisions:

(a) A stated period of time within which the terms of the contract, agreement or understanding are to be fully executed and completed;

(b) a stated purpose and the amount of the award, grant, loan, tax abatement or other business incentive;

(c) where applicable the number of persons to be trained pursuant to the terms of the contract, agreement or understanding;

(d) where applicable the number of jobs to be created or retained pursuant to the terms of the contract, agreement or understanding;

(e) where applicable, the extent of the operations or facilities to be developed pursuant to the terms of the contract, agreement or understanding;

(f) notice to the recipient that the full amount of the award, grant, loan, tax abatement or other business incentive awarded shall be payable, with interest, to the awarding entity...upon a finding that the recipient...has not fully executed and completed the stated purpose or objective of the [project] within the stated period provided, however that failure to fully execute or complete such stated purpose or objective may be excused by the awarding entity upon a finding that the failure was caused by unforeseen circumstances beyond the direct or indirect control of the recipient...

* * * * *

West Virginia Senate Bill #269, 1988

Article 10. Economic Support Act

Subsection 21-10-1 Notification of closing, relocation or reduction of operations by employer receiving state grants, loans, tax credits or deferments, and other concessions or incentives from state; responsibilities of employer.

(a) Any employer.. who has received or is receiving any grants, loans, special tax credits or deferments, or other incentives as consideration for doing business or continuing to do business in this state, shall, twelve months prior to any closing, relocation, or reduction of operations, notify in writing by special delivery letter, the president of the Senate, speaker of the House of Delegates, the director of the governor's office of community and industrial development, the president of the county commission of the county or counties, and the mayor or other chief officer of any municipality where the employer's establishment or establishments are located within this state, or such closing, relocation, or reduction in operations...

(b) the notice required by this section shall be received and maintained in the strictest confidence by those parties enumerated in subsection (a) to receive such notification....

Subsection 21-10-14. Failure to give notice, penalties and severance pay. Whenever an employer makes an affirmative decision to effect a closing, relocation, or reduction in operations, and fails to give the notice required by this article:

(a) Then at the election of the governor, all rights to any grants, special tax credits, or deferments and any other incentives provided or extended to such employer, by the state, its agencies, corporations or political subdivisions either by written agreement or otherwise, may be voided, withdrawn, canceled or terminated, in whole or in part, and any outstanding loans, indebtedness and grants made by the state, its agencies, corporations or political subdivisions, may at the election of the governor, be called or accelerated, and in that event, shall become fully due and payable, all by notice in writing to the employer; and

(b) The employer shall make a lump sum payment at the time of separation to each employee who loses his employment as a result of the closing, relocation, or reduction in operations. The payment shall be equal to the average weekly wage of the employee times the number of years the employee has been employed by the employer....

...(3) The employer shall continue coverage of any health insurance benefits for each employee who loses his job as a result of the closing, relocation or reduction in operations, for a period of six months after such loss of employment or until the employee finds other full-time employment, whichever comes first.
(4) If an employer operates or owns more than fifty percent of another factory, plant, office or other facility and is taking applications for employment at the facility, the employer shall offer suitable reemployment to as many employees as possible who lost their jobs as a result of the closing, relocation, or reduction in operations of an establishment of the employer.

Whenever an employee accepts an offer of reemployment, the employer shall pay to that employee reasonable relocation expenses incurred by the employee in moving his family and possessions to the location of the new employment. Acceptance by the employee, at his option, of reemployment shall be in lieu of severance benefits.

* * * * *

Georgia, SB 525 (1988): Community Investment Recovery Bill

...If, at the written request of a business, a governmental entity acquires, constructs, improves, or modifies any real property which results in the business's locating or remaining on the affected real property in the political subdivision of the governmental entity, such business shall be liable for damages to the governmental entity if the business closes down or terminates its operations on such real property within 24 months after commencing operations or, in the case of a business which remains in the political subdivision after real property is acquired or modified for its benefit, 24 months after such new or modified real property is first utilized by the business. The amount of damages shall equal the costs of acquiring, constructing, improving, or modifying such real property.

* * * * *

Pennsylvania House Bill No. 1953, Session of 1993

Section 1. Standards for financial aid.

Persons, firms and corporations seeking to construct or expand commercial or industrial facilities within this Commonwealth and who are applying for financial assistance from the Commonwealth or any of its development agencies or authorities are subject to the following standards:

(1) Applicants are required to prove a need for financial aid.

(2) Applicants will be held to promises made relating to the type and nature of facilities; the type and nature of products produced; the type, nature, number and wages of any jobs promised to be created; and whether or not such jobs are truly new jobs or merely transfers of jobs from other in-State locations. Any such promise shall be legally enforceable as provisions of contracts are enforceable.

(3) If an applicant has had operations within this Commonwealth within the

past ten years, it shall be required to prepare a preferential hiring list and offer new jobs to former employees wishing to relocate and to assist financially in their relocation within a radius of 500 miles.

(5)(ii) There shall be no discrimination in hiring based on previous union membership.

(6) Wage rates and minimum job levels shall be negotiated in advance and shall be enforced.

* * * * *

Connecticut: An Act Concerning Defense Diversification

(b) Each defense contractor which (1) performs one or more defense contracts in this state, the combined value of which exceeds one million dollars in any one year, and (2) is the recipient of state assistance provided pursuant to section 32-222a of the general statutes or other funds from the department of economic development shall establish an alternative use committee. The committee shall consist of representatives of employees and employers. The employees of such contractor who are represented by a collective bargaining organization shall be represented on such committee by a representative of such organization. The employees of such contractor who are not represented by a collective bargaining organization shall designate a person to serve as their representative. The committee may invite representatives of the community in committee meetings. The committee shall prepare a plan to reduce or eliminate the dependence of the contractor on defense contracts. The plan shall include: (A) Alternative products that are feasible to produce and marketable; and (B) retraining resources needed to produce such products in order to avoid dislocation of the current workforce. The labor department shall monitor compliance with this section.

* * * * *

United Airlines - Indianapolis [Excerpted below are passages of a summary of the agreement, by the law firm of Locke Reynolds Boyd & Weissel:]

Section 6.01... United agrees to locate, construct and equip the facility at the Airport and utilize it as a major aircraft maintenance facility. It agrees that the cost will exceed $800,000,000 by December 31, 2001, and it will employ at least an aggregate of 6,300 full-time employees at the facility on or before December 31, 2004. ...United commits itself to assist the Governments in their economic development efforts by using its best efforts to cooperate to induce other private entities to locate "significant new economic development projects" related to the facility in the City, the County and the State.

Section 6.02 ... provides the sole and exclusive remedy to the Governments in certain events (subject however to the terms of Article XI regarding termination). If United does not meet the $800,000 Project cost commitment, it will pay to the Governments the shortfall amount as a percentage of the $800,000 times one third of $297,700,000. In other words, if United only spends $600,000,000 the reimbursement would be one fourth of one third of $297,700,000 or $24,808,333. In the event United does not have 6,300 facility employees during the calendar year ending December 31, 2004, or any other earlier calendar year [that year to be "selected by United at its sole discretion" per the contract itself], United will pay to the Governments the shortfall in number of employees as a percentage of 6,300 times two thirds of $297,700,000.

However, United may also consider net new United employees employed other than at the facility [specifically "Net New United Employees" defined as full-time employees and full-time equivalents "employed in the State in any year in excess of the average number...employed in the State during the year ending December 31, 1991..."] or new employees brought in for businesses working generally in the aircraft or aeronautical industries whose jobs have been created since the date of the Agreement to meet the 6,300 jobs condition.

United must submit certificates of compliance which then must be challenged [within 45 days] in the event the Governments disagree with what is stated in any certificate. The Article also covers the mechanics of the payment of any reimbursement. It contains a clause which, in effect, seeks to label this reimbursement as the functional equivalent of a liquidated damages provision.

* * * * *

Connecticut Public Act No. 93-433

Section 1(f) The tentative credit allowable to the taxpayer, or in the case of a combined return, the combined group, that pays or incurs research and development expenses in excess of two hundred million dollars for the income year shall be reduced for any income year in which the workforce reductions, if any, exceed the percentages set forth below. For purposes of this subsection, workforce reductions shall be reductions if the historical Connecticut wage base of the taxpayer, or in the case of a combined return, the combined group, as a result of the transfer outside of this state, other than to a location outside of the United States, of work done by employees of the taxpayer, or in the case of a combined return, the combined group. Such reduction in the tentative credit shall be as follows: (1) If the historical Connecticut Wage base for the income year is so reduced by not more than two per cent, the tentative credit allowable for the income year shall not be reduced; (2) if the historical Connecticut Wage base for the income year is so reduced by more than two per cent but not more than three per cent, the tentative credit allowable for the income year shall be reduced by ten per cent; (3) if the historical Connecticut Wage base for the income year is so reduced by more than three per cent but not more than four per cent, the tentative credit allowable for the income year shall be reduced by twenty per cent; (4) if the historical Connecticut Wage base for the income year is so reduced by more than four per cent but not more than five per cent, the tentative credit allowable for the income year shall be reduced by forty per cent; (5) if the historical Connecticut Wage base for the income year is so reduced by more than five per cent but not more than six per cent, the tentative credit allowable for the income year shall be reduced by seventy per cent; (6) if the historical Connecticut Wage base for the income year is so reduced by more than six per cent, no credit for the income year shall be allowed.

* * * * *

Illinois statutes, Chapter 20, section 655/5.5
Requirements for designation as High Impact Business:

(a)(3) the business intends to make a minimum investment of $12,000,000 which will be placed in service in qualified property and intends to create 500 full-time equivalent jobs at a designated location in Illinois or intends to make a minimum investment of $30,000,000 which will be placed in service in qualified property and intends to retain 1,500 full-time equivalent jobs at a designated location in Illinois. The business must certify in writing that the investments would not be placed in service in qualified property and the job creation or job retention would not occur without the tax credits and exemptions set forth in subsection (b) of this Section.

(d) Existing Illinois businesses which apply for designation as a High Impact

Business must provide the Department with the prospective plan for which 1,500 full-time jobs would be eliminated in the event that the business is not designated.

(e) New Proposed facilities which apply for designation as High Impact Business must provide the Department with proof of alternative non-Illinois sites which would receive the proposed investment and job creation in the event that the business is not designated as a High Impact Business.

(f) In the event that a business is designated a High Impact Business and it is later determined after reasonable notice and an opportunity for a hearing as provided under the Illinois Administrative Procedure Act, that the business would have placed in service in qualified property the investments and created or retained the requisite number of jobs without the benefits of the High Impact Business designation, the Department shall be required to immediately revoke the designation and notify the director or revenue who shall begin proceedings to recover all wrongfully exempted State taxes with interest. The business shall also be ineligible for all State funded Department programs for a period of 10 years.

* * * * *

C. Anti-Poaching Protections (Intrastate and Interstate)

"If you are in Dayton, you're recruiting people who work in eastern Indiana. If you happen to be part of the International Harvester plant, you know that 35% of the people who lost their jobs when the Fort Wayne [Indiana] plant closed collected their unemployment compensation from the state of Ohio."
-- Richard Celeste, then Governor of Ohio, some time after he had engaged in a costly incentive fight to land the Harvester plant in Springfield, Ohio

Ralston Purina's Bremner Biscuit factory was displaced by a Louisville airport expansion in 1992. The City compensated the company $5 million and tried hard to keep the jobs in town. Instead, Ralston Purina accepted a $20 million package from the State of Kentucky to relocate in Princeton, two and a half hours away, where it denied transfer rights to hourly workers, cut wages in half, and de-unionized.
-- From FIRR's 1994 Plant Closing Dirty Dozen

While states and cities can't legally challenge "job pirating" by other states, they can prohibit "robbing Peter to pay Paul" within their own borders, and they can refuse to subsidize jobs pirated from other states or cities. Indeed, the recent surge of anti-poaching legislation is proof that many leaders are anxious to stop ruinous job competition and that they are doing everything they can legally to deter it.

Usually, there is a dispute behind such legislation. Wisconsin, the pioneer state in this area, is typical, with recurring disputes over companies seeking state aid to simply relocate within the state. The same is true of Vacaville, California, a city pioneer.

The protections either prohibit intrastate poaching projects outright, or they build in disclosure and notification provisions that make it easier for people who would be injured by such a move to protest the subsidy application. One city, Austin, Texas, prohibits tax abatements to companies which merely move jobs within the city limits unless the project will result in increased future investment and jobs. (However, a shift within the Austin City Limits would presumably not dislocate any workers.)

Gary, Indiana has the only ordinance known in the nation which explicitly denies tax abatements to any project that will relocate jobs from outside the city limits; the same ordinance denies tax abatements to any company moving within the city unless all employees are granted transfer rights. The ordinance was passed after an investigation revealed myriad abuses (see Northwest Indiana case study in Chapter Three).

In Wisconsin, a bill was enacted in 1993 designed to discourage city-vs.-city poaching. The law is known popularly as the "Dumore Bill," because the Dumore Corporation received Industrial Revenue Bonds from Mauston, Wisconsin to transfer 70 jobs from Racine, dislocating 70 members of the United Auto Workers. In the process, the company deunionized the workforce and drastically cut wages and benefits -- with the aid of low-interest state-sponsored IRBs.

Wisconsin's disclosure and public participation laws, dating back to 1986 (see Section A), are also intended against poaching, and were enacted as a result of intrastate job flight by companies which sought tax-free financing.

Colorado's customized training program guidelines prohibit grants to a company which is relocating within the state "if the relocation has a negative impact on the community of origin." (See text of guidelines in Clawbacks section.)

New Mexico enacted legislation in 1993 that denies enterprise zone benefits for "intrastate business relocations." The law specifies that the zone-designated branch or subsidiary must not cause a shutdown of an existing facility or an increase in unemployment elsewhere in the State.

Similarly, a 1990 New York law prohibits enterprise zone benefits for intrastate movements. However, it does exempt movements within the same city as long as the local government has approved the move, or "where extraordinary circumstances exist" that warrant a move from another city and that job-losing city approves. The law also exempts flight from business incubators.

Likewise, Alabama denies enterprise zone benefits to companies which have closed or reduced operations elsewhere in the state.

The City of Vacaville, California passed an ordinance which imposed a series of requirements on companies receiving tax-exempt financing from the city. The requirements included advance notice of business shutdowns, affirmative action rules, and a requirement that a company applying for tax-exempt financing give its workers and/or their collective bargaining agent advance notice of the application.

The Vacaville ordinance was passed under unusual circumstances, after the City was sued by the United Electrical Workers Local 1412. The Union charged that Vacaville had violated California law by luring a company away from another California city with an offer of public financing, and that members of UE 1412 were going to lose their jobs as a result. To settle the lawsuit, the City passed the 1984 ordinance, which provided various protections for workers if employers took advantage of tax-exempt financing in order to relocate to Vacaville.

The Vacaville ordinance was the first of its kind in the nation, and served as a model for similar laws. It is, however, no longer in effect. The ordinance had a sunset provision, and it was not renewed when it expired in January of 1987, due to business opposition. The city did not offer tax-exempt financing to any companies during the intervening years, so the provisions of the law were never applied.

In Maryland, Senate Bill 120 was introduced after Prince Georges County tried to use state funds to poach federal agency jobs from neighboring Montgomery County. Although the bill was ultimately withdrawn, its introduction achieved the desired result: Montgomery County withdrew its offer. Rep. Dana Dembrow, who introduced the bill, reports that Maryland municipalities now understand that they should not use state funds -- *or even local funds* -- to poach jobs within the State.

The Iowa Community Betterment Program considers an application to be ineligible if it involves a transfer of jobs within the state, "unless unusual circumstances exist which make the relocation necessary for the business's viability."

The only jurisdiction besides Gary known to have a rule prohibiting job piracy from other locations is the Commonwealth of Puerto Rico. Reflecting Puerto Rico's political status as a U.S. possession and mainland governors' complaints going back to the 1950s that the island was raiding jobs from various states, the Puerto Rico Tax Incentives Act of 1987 (and predecessor laws) empowers the Governor to deny the Act's massive exemptions if he or she finds that the exempted plant would "substantially and adversely affect" workers at any mainland worksite controlled by the same corporation.

As implemented, the Act requires applicant companies to either certify that their proposed project will not harm any mainland workers, or disclose that it will indeed harm some workers, and then let the Governor decide if the project is still in the Commonwealth's "public interest."

This clause has been at the heart of two recent runaway-plant disputes. In 1991, the Oil, Chemical and Atomic Workers sued American Home Products Corporation under the federal Racketeer-Influenced Corrupt Organizations (RICO) Act, alleging violation of the Puerto Rico Tax Incentives Act of 1987 and other laws in a 775-worker shutdown in Elkhart, Indiana; many of the jobs and much equipment had been moved to Guayama, PR. The case settled for $24 million in 1992.

In 1993, the United Rubber Workers alleged that Acme Boot, a subsidiary of Farley Industries, was violating the Act by seeking the Puerto Rico exemptions for a plant in Toa Alta, PR that was opening as Acme Boot was shutting down manufacturing operations in Clarksville, Tennessee, dislocating almost 500 workers. With massive evidence of equipment and materials transfers, the Union demanded a hearing before Puerto Rico's tax exemption board to present its evidence that the plant was indeed a runaway. Acme responded on the eve of the hearing by withdrawing its application for the exemption.

The Puerto Rico Tax Incentives Act is usually paired with an extremely lucrative U.S. corporate income tax loophole known as Section 936, which until 1994 granted corporations a 0% federal corporate income tax rate on profits made in Puerto Rico. The American Home Products and Acme Boot scandals figured prominently in the 1993 Congressional debate that substantially reduced the value of Section 936, especially for pharmaceutical companies. Drug makers had historically enjoyed half of the 936 tax credits while creating less than a fifth of total 936 jobs.

Statutes

City of Austin Ordinance 91 1121-C, Attachment A, Guidelines and Criteria for Tax Abatements

> Section 2. Abatement for Targeted Enterprises.
>
> ...(h) Economic Qualification. In order to be eligible to receive tax abatement the planned improvement:
>
> ...(2) should not be expected to solely or primarily have the effect of merely transferring employment from one part of the City of Austin to another without demonstration of increased future investment and jobs...

* * * * *

Gary, Indiana Ordinance No. 89-45

> Section 7: Entitled “Relocation of Existing Jobs Prohibited” shall be amended to read as follows:
>
> No abatement shall be granted for the relocation of existing employment opportunities within the corporate limits of the City of Gary unless all existing employees are given the right to transfer. No abatement shall be granted for the relocation of existing jobs from outside the corporate limits of the City of Gary.

* * * * *

Wisconsin Revenue Bonding Jobs Protection Act, 66.521 (6m) (amended) and 66.521

(4s) and 108.04 (8) (g)

SECTION 1. 66.521 (4s)

4. (b) A municipality may not enter into a revenue agreement with any employer that employs individuals in this state other than a project site unless the employer certifies that the project is not expected to result in any lost jobs or the employer agrees to all of the following:

1. Notwithstanding sub. (6m), the employer shall offer employment at any new job first to persons who were formerly employed at lost jobs.

2. The offer of employment for the new job shall have compensation and benefit terms at least as favorable as those of the lost job.

3. The employer shall certify compliance with subsection to the department, to the governing body of each municipality within which a lost job exists and to any collective bargaining agent in this state with which the employer has a collective bargaining agreement at the project site or at a site where a lost job exists.

4. The employer shall submit a report to the department every 3 months during the first year after the construction of the project is completed. The reports shall provide information about new jobs, lost jobs and offers of employment made to persons who were formerly employed at lost jobs. The 4th report shall be the final report. The form and content of the reports shall be prescribed by the department under par. (d).

* * * * *

New Mexico House Bill 223 (1993 Laws, Chapter 33)

... G. The business assistance and incentives provided under the provisions of the Enterprise Zone Act are prohibited to intrastate business relocations. This limitation does not apply to the expansion of an in-state business entity through the establishment of a new branch, affiliate or subsidiary if:

(1) the establishment of the new branch, affiliate or subsidiary will not result in an increase in unemployment in the area of original location or any other area in New Mexico where the existing business entity conducts business operations; and

(2) there will not be a closing down of operations of the existing business entity in the area of its original in-state location or in any other in-state areas where the existing business entity conducts business operations.

* * * * *

New York Economic Development Zone Law, L. 1990, c. 264

Section 959: Responsibilities of the commissioner.

The commissioner shall:

(a) ...promulgate regulations governing (i) criteria of eligibility for economic development zone designation...

however, a business enterprise that has shifted its operations, or some portions thereof, from an area within New York state not designated as an economic development zone to an area so designated pursuant to this article shall not be certified to receive such benefits except where such shift is entirely within a municipality and has been approved by the local governing body of such municipality or in situations where it has been established, after a public hearing, that extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an economic development zone from another municipality and the municipality from which the business is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms;...

* * * * *

Alabama Enterprise Zone Act: 41-23-26 Additional Requirements for business, etc. to receive benefits

...(2) A business may not have closed or reduced employment elsewhere in Alabama in order to expand into the zone. (Acts 1987, No. 87-573, p. 897, section 7.)

* * * * *

Vacaville, California, City Ordinances -- Notice of tax-exempt financing requirements for new industries:

> Any California employer (including but not limited to manufacturing, warehousing, distribution and office centers where a single business has more than twenty-five (25) employees but excluding retail facilities) intending to relocate within the I-505/80 Redevelopment Area by utilizing tax-exempt financing or any other form of government development financing for private building/grounds/equipment must comply with the following requirements:
>
> ...C. Any company relocating from another California community must provide its collective bargaining representative (if any) with notice of its application for tax exempt financing or financial assistance and must follow the Application guidelines of the California Industrial Development Advisory Commission (specifically with respect to abandonment of any existing facilities).

* * * * *

Maryland House of Delegates, 1992, Bill No. 120

> Article 83A... (I) (2) The Department [of Economic and Employment Development] may not approve or continue to participate in any grant or loan under its authority to a political subdivision of the State if the Secretary determines that the political subdivision will use or is using funds from the grant or loan to advance a local economic development plant, project, policy, or program primarily at the expense of another political subdivision of the State.

* * * * *

Administrative Rules of Iowa Community Betterment Program, 261-22.1(15)

> 22.6(2) Ineligible applications. ...An application may be ruled ineligible if:
> (b) The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability...

* * * * *

Puerto Rico Tax Incentives Act of 1987

Section 8. Refusal, Revocation and Limitation of Tax Exemption

(b) Refusal on Grounds of Conflict with the Public Interest or Due to Substitution or Competition with Established Businesses

The Governor may refuse any application when he determines from the facts submitted for his consideration and after the applicant has been afforded the opportunity to make a thorough presentation of the issues in dispute, that the application is in conflict with the public interest of the Commonwealth of Puerto Rico on any of the following grounds:

(1) That the establishment of the unit for which the exemption is sought would substantially and adversely affect the employees of an enterprise under related control operating in any state of the United States of America; ...

(c) Procedures for Permissive and Mandatory Revocations

(2) Mandatory revocation. The Governor shall revoke any exemption granted under this Act if it was obtained by false or fraudulent representations concerning the nature of the eligible business, or the nature or extent of the manufacturing process or of the production performed or to be performed in Puerto Rico...

In the event of such a revocation, all the net income previously reported as industrial development income...shall be subject to the normal tax and the surtax; in addition, the taxpayer shall be deemed to have filed a false or fraudulent tax return with intent to avoid the payment of taxes, and will, therefore, be subject to the penal provisions of the Income Tax Act in force in Puerto Rico.

* * * * *

D. Advance Notice

In addition to promoting good jobs and a cleaner environment, subsidies can be used to encourage more responsible corporate behavior when a business closes. Since the federal Worker Adjustment and Retraining Notification (WARN) Act took effect in early 1989, requiring companies with 100 or more employees to provide 60 days' notice before shutdowns or mass layoffs, there has been much less state activity on the issue of advance notice. One notable exception is Wisconsin, which lowered the threshold on its own advance notice law to companies with 50 or more employees.

However, as numerous studies have indicated, corporate evasion of the WARN Act is rampant. Although WARN theoretically covers 65% of the U.S. workforce, only about 14% of dislocated workers are getting 30 days or more advance notice before permanent dislocation. Both pre- and post-WARN, some states and cities have moved to tie subsidies to advance notice.

Sixty days of advance notice is merely enough time to begin delivering services to affected workers, not to save the jobs. One unusual type of notice requirement is the one-year confidential advance notice required by companies that get aid from West Virginia. The length of notice and its confidentiality are intended to enable the state to try to avert the closure (see statue in Clawbacks and Job Guarantees section).

St. Paul's Jobs Impact Statement requirement (see Right to Know section for text) seeks to provide advance notice, via a hearing and comment process, to workers who may be dislocated by a subsidized project. It also guarantees such workers retraining, preferential pay, a year of health insurance and supplemental unemployment benefits.

The proposed Washington State Compact simply tries to strengthen the federal law. It penalizes companies that fail to give 60 days' notice with a clawback of the subsidy, interest, and a 10% penalty. This applies to all subsidy recipients, whether or not the business or the layoff would normally be covered by the WARN Act. (See Washington Case Study in Chapter Three.)

The City of New Haven has a law that, in addition to establishing a clawback for relocation to outside of the city, requires incentive recipients to notify the City of a company's plans to relocate six months in advance of the relocation (see New Haven ordinance in Clawbacks and Job Guarantees section).

The Vacaville ordinance requiring three months' notice, as previously mentioned, was in effect between 1984 and 1987 but subsequently sunsetted.

Massachusetts' compact-style law requests a "good faith effort" to provide 90 days' notice for dislocated workers from companies that have received state assistance from numerous agencies. But the law is not binding upon recipient companies; not does it have any "teeth" for compliance.

Statutes

Vacaville, California, City Ordinances -- Notice of tax-exempt financing requirements for new industries:

> Any California employer (including but not limited to manufacturing, warehousing, distribution and office centers where a single business has more than twenty-five (25) employees but excluding retail facilities) intending to relocate within the I-505/80 Redevelopment Area by utilizing tax-exempt financing or any other form of government development financing for private building/grounds/equipment must comply with the following requirements:
>
> ...D. Any company obtaining one thousand dollars ($1,000.00) or more of City/Agency financial aid including tax-exempt financing or other forms of governmental financing for private building/land/equipment (but excluding governmental/tax-exempt financing for public improvement-- streets, sewer/water lines, lighting, utilities, etc.) must make reasonable efforts to provide one year's advance notice and must provide at least three months advance notice or sooner if known or reasonably foreseeable, of plans to reduce, relocate or cease operations which will affect thirty-five (35) or more jobs of the company's full-time permanent employees at the Vacaville location. This section shall not apply to retail sales, seasonal, construction, temporary or part-time (20 hours/week or less) employees or to reductions caused by business failures. In the case of business failures, notice should be given to affected employees as soon as the closing or sale of the facility is anticipated or known. The notification of closure or reduction in force must be given to any collective bargaining representative or, if none, to any affected employees, and upon request of the City, the representative, or any affected employees, the employer will enter into discussions with such employees or bargaining representative and with the City concerning their proposed reduction or cessation of operations and its potential impact upon the employees and the local community.

* * * * *

Massachusetts Statutes, Chapter 149, Section 182:

Any person utilizing financing issued, insured, or subsidized by a quasi-public agency of the commonwealth shall agree to accept the following voluntary standards of corporate behavior, without limiting the independent powers and findings required to be made by any such quasi-public agency:

In the event of a plant closing or partial plant closing...the company agrees to make a good-faith effort to provide every employee affected with the maximum practicable combination of the following: the longest practicable advance notices in cases where notice is possible and appropriate; and maintenance of income and health insurance benefits.
The company shall also, if possible, help to reemploy affected employees.

While no minimum standard is prescribed for these company responses, the commonwealth expects firms to provide at least ninety days notice or equivalent benefits where possible.

The precise form of said agreement shall be determined by the respective quasi-public agency.

For the purposes of this section, "quasi-public agency" shall mean, the Massachusetts Industrial Finance Agency... the Community Development Finance Corporation... the Massachusetts Technology Development Corporation... the Government Land Bank... and the Massachusetts Product Development Corporation.

* * * * *

E. Job Quality

Should states and cities subsidize just any job?

> In Gary, Indiana and in West Virginia, it was discovered that tax abatements were being granted to fast food restaurants.
>
> In 1986, Iowa awarded $738,000 to Iowa Beef Processors, Inc. (IBP) for a pork slaughtering plant in Council Bluffs to "increase employment opportunities for Iowans by increasing the level of economic activity and development within the state." But IBP imposed a very low wage scale, and this new plant actually displaced higher-paying and unionized jobs elsewhere in Iowa and the Midwest. IBP established a shark-like reputation in the meat industry, and its ability to attract state subsidies for plants that would drive out competitors became part of its unusually aggressive business plan.

Deals such as these raise the most basic cost-benefit questions about job subsidies. How can government ever break even with the meager tax revenues resulting from low-wage jobs? And if jobs don't offer decent wages and health insurance coverage, won't taxpayers end up subsidizing the company even further through the payment of food stamps and Medicaid to underpaid workers?

Wages

To ensure that subsidies promote better jobs, a number of states have instituted wage requirements for subsidy recipients. Three methods of promoting good wages have emerged. First, a wage minimum can be tied to the local or industry average. Second, a wage minimum can be tied to some multiple of the federal or state minimum wage. Third, the value of the incentive can be linked to the wage levels paid.

Iowa responded to the criticisms raised by the IBP episode by creating a scoring system that links wages to the prevailing local wages. Wages must be at least 75% of the county average for a business to be considered, and the higher the wages, the greater the likelihood that the subsidy will be granted. This is not as tough a policy as some might hope for, but clearly it is an improvement over the old system.

More recently there was an attempt in Iowa to place much stronger wage requirements on subsidy recipients. A 1992 bill sought to require recipients of grants and forgivable loans to pay their employees at least twice the federal minimum wage. The proposal included an exception for small businesses. Unfortunately, the bill died in committee.

Gary, Indiana enacted tax abatement reform legislation requiring companies to pay prevailing wages, as defined by the U.S. Bureau of Labor Statistics' Area Wage Survey. Compliance extensions are extended for one or two years for start-up companies with fewer than 50 employees.

Kansas adopted legislation in 1993 that encourages manufacturing firms to invest in workforce training. If a company pays better than average wages (for the county) *and* either spends 2% or more of the value of its payroll on training or is certified as participating in one of three state-sponsored training programs, then the company becomes eligible for a sales tax exemption for building, rehabilitation, machinery and equipment. It also becomes eligible for a business facility investment tax credit worth 10% of the value of such investments that exceed $50,000. Eligible companies also receive a further tax credit of up to $50,000 per year for the value of training expenses above 2% of payroll. Meeting the training goals will also qualify the company for a 50% state match for private consulting services to improve management, production processes or quality.

Mississippi, Delaware and North Carolina also have policies that encourage high wages through their economic incentive programs. The Mississippi Business Investment Act Program ties the interest rate a business must pay to the wages it pays its workers. The program provides subsidized loans to finance property improvements. In addition to requiring certain job creation levels from a loan recipient, the interest rate is lowered 0.5% for each dollar per hour that the recipient pays its employees above the state's average hourly manufacturing wage. So a company that pays its employees $3.00 more per hour than the state’s average manufacturing wage would, if approved for a loan, pay an interest rate 1.5% less than the standard state rate.

Delaware seeks to subsidize only high-wage jobs by doing a cost-benefit analysis on all incentives it considers. The rule, according to the Delaware Development Office, is that the state must recoup its investment within two years. In determining profits from the investment the office considers *only* direct taxes from the recipient business and its employees. This includes state corporate income taxes, state personal income taxes, and state gross receipt taxes. Thus, if the office determines that the subsidy will not result in a net increase in the state coffers within two years, the incentive will not be granted. This form of cost-benefit analysis is conservative but defensible, because it does not venture into the often-manipulated subject of "ripple effect" jobs.

Colorado's customized training program targets jobs with pay above minimum wage; specifically, it "seeks to work with" companies that pay at least $5.25 an hour in rural areas and $7.00 an hour in urban areas. The Colorado program also requires that the subsidized jobs include health care benefits. The guidelines specifically justify these because the state wants to get people off of public assistance programs.

North Carolina is one of a handful of states that places requirements on its IRB recipients, beyond the broad federal eligibility rules. An applicant must agree to pay above the county average manufacturing wage or 10% above the state average manufacturing wage, unless the jobs are located in an area that suffers from "especially severe unemployment."

Benefits

State governments have an especially strong interest in promoting jobs with good benefits, because benefits provide many services that states otherwise have to pay for. Among the places that have introduced or adopted legislation promoting benefits are Arizona, South Dakota, Washington, Austin, Texas and Gary, Indiana. In each of these cases the legislation also includes provisions on wage levels.

The City of Austin passed a tax abatement ordinance in 1991 that requires abatement recipients to provide their employees with a health insurance plan. The law then allows for a 10% increase in an approved abatement if a company provides a contribution to child care for economically disadvantaged workers or if it provides job training to those same workers. If a company meets both of these requests it can receive a 20% increase in its abatement. The law was renewed in 1993.

An Arizona bill (1994 H.B. 2202) would expand the criteria for awarding subsidies. If enacted as expected, agencies would have to factor in whether or not a business "will provide its employees with benefits such as health care, retirement, child care, educational reimbursements and training."

A South Dakota bill, introduced but defeated in 1992, didn't cover as many benefits but went beyond setting subsidy criteria. The bill would have mandated that recipients of economic development loans provide health insurance to their employees.

The Washington State Compact, likely to be re-introduced in 1995, also mandates health care benefits, and it would apply to recipients of loans, grants, bonds, tax deferrals and tax abatements. (See Washington Case Study in Chapter Three.)

The Gary ordinance requires tax abatement recipients to provide “a complete health care package to all employees working an average of twenty-five (25) or more hours per week.” The law includes a two year waiver for employers with less than ten employees.

Statutes and rules

Administrative rules of Iowa Community Economic Betterment Program

[The following section is one of three sections that mandates the criteria to be used in ranking applications for funding.]

261-22.7(2)

(a) The total number of jobs to be created or retained;

(b) The quality of jobs to be created. In rating the quality of the jobs, the department shall award more points to those jobs that have a higher wage scale, a lower turnover rate, are full-time, career-type positions, or have other related factors. Those applications that have wage scales which are 25 percent or more below that of existing Iowa businesses in their county shall be given an overall score of zero. To calculate the average county wage scales, the department intends to use the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa department of employment services, audit and analysis section. Agricultural/mining and governmental employment categories will be deleted in compiling the wage information.

1992 Iowa House Bill 2331

Section 1. Section 15A.1, Code 1991, is amended by adding the following new subsection:

New Subsection 4. In addition to the requirements of subsection 2 and 3, a state agency shall not provide a grant or forgivable loan to a private person for the purpose of job creation or job retention unless the business for whose benefit the grant or forgivable loan is to be provided pays an hourly wage to employees other than supervisory and management personnel of at least twice the hourly wage established in section 91D.1, subsection 1, paragraph "a". [the federal minimum wage] However, this subsection does not apply to a small business or targeted small business as defined in section 15.102.

* * * * *

Kansas Summary of 1993 Legislation, Sub. for S.B. 73

Firm Eligibility. ...a firm must be a for-profit, manufacturing business establishment, subject to state income, sales or, property taxes. Such firm must employ no more than 500 full-time equivalent employees [and must pay wages above the county average for firms under 500 employees in the same two-digit SIC code, unless the company is the only firm in the county in that two-digit SIC code].

Tax Incentives and Business Assistance. If a qualified firm meets certain training requirements, summarized below, it will be entitled to the sales tax exemption for construction, reconstruction, machinery and equipment pursuant to K.S.A. 1992 Supp. 79-3606a (ee) and a business facility investment tax credit, pursuant to K.S.A. Supp. 79-32,160a, in an amount equal to 10 percent of an investment in the facility exceeding $50,000, without regard to employment requirements otherwise governing those incentives in existing laws. Moreover, such firm will be eligible for matching funds of up to 50 percent for its portion of costs associated with procuring consulting services from the Mid-America Manufacturing Technology Center (MAMTC) or private consulting services, approved by the Kansas Department of Commerce and Housing, for improvement in the firm's management, production processes, or product or service quality. Matching funds for MAMTC will come from the High Performance Incentive Fund, established in this bill. ...such firm will receive priority consideration for other business assistance programs provided by the Kansas Department of Housing, the Kansas Technology Enterprise Corporation (KTEC), and MAMTC.

Worker Training Commitments and Associated Benefit. The tax incentives and business assistance services, addressed above, will be triggered by a worker training commitment made by a qualified firm. This commitment could take the form of participation in the training programs administered by the Kansas Department of Commerce and Housing (Kansas Industrial Training program, Kansas Industrial Retraining program, and the State of Kansas Investments in Lifelong Learning or SKILL program). Alternatively, this commitment could manifest itself in a qualified firm's cash investment in the training and education of the firm's employees in excess of 2 percent of total payroll costs. ...if a firm decides to make such an investment, it will be eligible for a tax investment, not to exceed $50,000 in any given tax year, for that portion of the investment exceeding the amount equal to 2 percent.

* * * * *

Mississippi Business Investment Act Program

For each one dollar ($1.00) over the State's current average hourly manufacturing wage as determined by the Mississippi Employment Security Commission, the interest rate will be reduced one-half percent (1/2%).

Private Company's Wage Rate	Interest Rate
Average wage + $.99	State Rate less 0.0%
Average wage + $1.00 - $1.99	State Rate less 0.5%
Average wage + $2.00 - $2.99	State Rate less 1.0%
Average wage + $3.00 - $3.99	State Rate less 1.5%
Average wage + $4.00 - $4.99	State Rate less 2.0%
Average wage + $5.00 - $5.99	State Rate less 2.5%
Average wage + $6.00 - $6.99	State Rate less 3.0%
Average wage + $7.00 - $7.99	State Rate less 3.5%
Average wage + $8.00 - $8.99	State Rate less 4.0%

The minimum interest rate allowable on loans for Projects on privately owned property is three percent (3%) per annum.

* * * * *

Colorado FIRST Customized Training Program Guidelines [Draft, to be finalized in August, 1994]

2. Training is provided only for jobs that pay above the minimum wage and for which health benefits are provided. Colorado FIRST administrators seek to work with companies paying a minimum of $5.25 in rural areas of the state, and $7.00 in large urban areas along the Front Range. Such jobs generate the needed return on tax dollars invested and help to reduce the ranks of Coloradans on public assistance programs. Colorado FIRST grants shall not be used to pay wages or stipends to trainees. [The program covers direct training costs such as instructor wages, instructional materials, and training space and equipment.]

* * * * *

Austin Ordinance No. 91-1121-C

"Guidelines and Criteria Governing Tax Abatement Agreements"

Section 2(k)
(1) A company must create and follow an Affirmative Action Plan (AAP) with respect to company employment, and with respect to the company use of local and minority vendor and contractor opportunities. The company must agree to purchase goods and services for the business in the Greater Austin area when accessibility, cost, quality and service are comparable. The AAP will be filed with the City Human Resources Department and be updated on an annual basis.

(2) A Company may receive up to an additional 10% abatement benefit for providing or sponsoring on-site or off-site job training for qualified employees and qualified employee applicants upon approval by the city.

(3) Within the City of Austin and its Extraterritorial Jurisdiction a company shall not violate any federal, state, or local legislation which prohibits or regulates deleterious effects on the environment.

(4) A company must have a health plan for its employees which also has some access to the plan available to the employees dependents.

(5) A company may receive up to an additional 10% abatement benefit for providing for an on-site or off-site contribution for qualified employees' child care. A child care plan must be approved by the City of Austin's Child Care Coordinator prior to receiving the benefit.

* * * * *

South Dakota Senate Bill 118 (1992)

Section 1. No loan may be made from the revolving economic development and initiative fund unless:
(1) The wage scale for the recipient's employees begins at not less than six dollars and ten cents per hour;
(2) At least eighty percent of the recipient's jobs are full-time; and
(3) The recipient provides a benefit program that includes employee health insurance.

* * * * *

Gary, Indiana Ordinance No. 89-45

Section 5: Entitled "Prevailing Wage Required For New Employment" shall be amended to read as follows:

Tax abatements shall be granted for the purpose of, and to those applicants, creating full-time and/or part-time jobs at/or above the prevailing wage for those job classifications as determined by the current U.S. Dept. of Labor Bureau Statistics Area Wage Survey. For new business start-ups with fewer than fifty employees, the prevailing wage standard may be waived by the Council for a one year period. After the first year, the prevailing wage provision is required unless financial records documenting the employer's inability to comply are submitted to the Council. After two years, the prevailing wage provision is required. But under no circumstances must the wage go below minimum wage.

Section 6: Entitled "Employee Health-Medical Insurance Availability Required" shall be amended to read as follows:

No tax abatement shall be granted to applicants who do not provide a complete healthcare package to all employees working at an average of twenty-five (25) or more hours per week. The above stated paragraph is waivered for an employer with less than 10 employees for a period of two (2) years.

F. Targeted Hiring/Affirmative Action

> The Office of the State Comptroller looked at a State Authority...[which issues] tax-exempt financings for commercial purposes, tapping into local property tax abatement. The authority did not record the tax abatements associated with its financings, nor did it record, except on the initial application, how many jobs were added or retained. It did no follow-up studies. ...For a 12-year period, 25% of its tax-exempt financings were in one county on Long Island -- a boom area with rock bottom unemployment rates. In contrast, only 4% of the authority's deals were in a depressed area of roughly the same population size -- Buffalo and Erie County -- with some of the highest unemployment rates in the country. The result shows what is instinctively thought: tax abatement activity follows rather than leads economic development. Tax breaks apparently were being given where jobs are already being created.
>
> -- Edward V. Regan, then Comptroller of New York
> Government, Inc. pp. 27-28

States and local governments often use business incentives to target jobs at specific populations. The goals are common in enterprise zone programs, which generally target high unemployment communities, and other incentive programs targeted to distressed regions.

Enterprise zones declare specific jurisdictions with high unemployment to be in special need of development, granting businesses in these areas certain tax exemptions (see the Economic Development Glossary, Appendix C). A typical enterprise zone program requires that about 35% of the employees of a qualifying business either live in an enterprise zone, be receiving some form of public assistance prior to being hired, or be considered unemployable by traditional standards. The goal of such requirements, obviously, is to ensure that economic development in an enterprise zone benefits those who are in the greatest need. Louisiana's statute, which is typical, is excerpted below.

Enterprise zone laws in Nevada and Austin, Texas target additional populations. Nevada law (NRS 274.270) includes "Persons with a physical or mental handicap who have resided at least 6 months in the state." The Austin law extends to even more groups: persons with disabilities, inmates and recently released convicts, and persons whose family income is less than 80% of the city's median family income.

Laws linking the receipt of incentives to the adoption of affirmative action policies have been adopted in Connecticut, Vacaville, CA, and Austin and have been proposed in Washington. The Connecticut law (Public Act 93-404) states that in granting assistance from the Community Economic Development Fund the State shall consider, among other factors, "vigorous affirmative action in employment policies of the applicant." The Austin ordinance requires a company to file an affirmative action plan with the city and update it each year. If the company does not adhere to the plan, there is a clawback. (Ordinance at end of section on Job Quality.)

The proposed Washington Compact included a provision requiring subsidy recipients to comply with all federal and state affirmative action laws. As with the Compact's plant closing provisions, the affirmative action requirements would have applied to all businesses, whether or not a firm would otherwise be covered by affirmative action laws. The proposal included a clawback with interest and a ten percent penalty. (See Washington Case Study in Chapter three.)

New York State is considering a bill to link job creation programs to job training. The proposal would require certain recipient companies to first consider local trainees when hiring on a subsidized project. The bill applies to those creating six or more jobs with the financial assistance of the state urban development corporation, the power authority of the state, the job development authority, the state dormitory authority or the industrial development authority.

Statutes

Louisiana Revised Statutes 51:1787

> Hiring requirements:
> Section B(4) The business located in an urban enterprise zone and receiving the benefits of this Chapter certifies that at least thirty-five percent of its employees:
> (a) Are residents of the same or a contiguous enterprise zone as the location of the business; or
> (b) Were receiving some form of public assistance prior to employment; or
> (c) Were considered unemployable by traditional standards, or lacking in basic skills; or
> (d) Any combination of the above. Such certification must be updated annually if the business is to continue receiving the benefits of this Chapter.

* * * * *

Austin Ordinance No. 91-1121-C

"Guidelines and Criteria Governing Tax Abatement Agreements"

Section 1(l) "Qualified Employee" means generally a full-time employee (30 hours or more per week) who:

1. is a resident within the City Enterprise Zone area or
2. has been unemployed for the preceding 3 months and is a member of a family whose family income, prior to employment, was less than or equal to 150% of median family income for the Austin MSA, or
3. receives public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty, or
4. is eligible for participation in the Job Training Partnership Act (JTPA) program, or
5. is a person with a disability, or
6. is an inmate, as defined by Section 498.001, Government Code, or who is entering the workplace after being confined in a unit of the institutional division of the Texas Department of Criminal Justice or in a correctional facility authorized by Chapter 495, Government Code, or
7. is a member of a family whose family income is less than or equal to eighty percent (80%) of the median family income for the Austin MSA.

* * * * *

New York State Assembly Bill 3029 of the 1993-94 session.

[The following section applies to the state urban development corporation. Other sections of the bill modify additional business incentive programs, but since they use the same language, we will not include them.]

Section 2. Section 4 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new subdivision 12 to read as follows:

(12) (a) The corporation and its subsidiaries shall further require any firm, contractor, subcontractor, participant or lessee that creates six or more new jobs as a result of participation in a project aided by a financial investment by the corporation or its subsidiaries, or receipt of a loan, loan guarantee or grant by the corporation and its subsidiaries, to
immediately enter into a first source hiring agreement with the corporation

according to the terms of which such firm, contractor, subcontractor, participant or lessee, shall, for a period to run until one year after the completion of the project begun as a result of the receipt of such loan, loan guarantee or grant, agree to first consider for all the new jobs created as a result of the project job applicants referred from the community service division of the state department of labor and persons eligible to participate in federal job training partnership act (P.L. 97-300) programs referred from administrative entities of service delivery areas created pursuant to such act.

(b) In considering whether to contract with or guarantee a loan for a firm, contractor, subcontractor, participant or lessee, the corporation and its subsidiaries shall take into consideration the past compliance of such firm, contractor, subcontractor, participant or lessee with the requirements of this subdivision on a project or projects financed by the corporation and its subsidiaries or which involved loans or loan guarantees pursuant to this chapter after the effective date of this subdivision.

(c) Nothing contained in this subdivision shall operate to impair any existing contract or collective bargaining agreement.

* * * * *

Vacaville, California, City Ordinances -- Notice of tax-exempt financing requirements for new industries:

Any California employer (including but not limited to manufacturing, warehousing, distribution and office centers where a single business has more than twenty-five (25) employees but excluding retail facilities) intending to relocate within the I-505/80 Redevelopment Area by utilizing tax-exempt financing or any other form of government development financing for private building/grounds/equipment must comply with the following requirements:

...B. The company shall present an Affirmative Action Plan for the hiring, training, and upgrading of minority workers. This Plan should address ways and means to provide for an employee minority mix equal to or greater than the percentage of minorities in the local population. This goal is to be met to the extent possible through active recruitment from the available local labor market.

* * * * *

G. Environmental Protection

"In 1990 the [Washington] Department of Community Development made the largest ...loan in its history -- $5 million -- to McCain Foods in Othello. ...interest rate subsidies worth around $300,000 annually...[and $2 million in tax abatements] to expand its french fry production. ...the loan was called when the Canadian corporation was sued for violations of the Clean Water Act... ...ground waters have been contaminated with ammonia to a depth of 150 feet ...the wild fish population may be gone forever." *

-- Columbia Basin Institute testimony for Washington Compact, 1993

"Highly-capital-intensive firms will receive the bulk of the tax relief. ...chemical, petroleum, and paper, these capital-intensive industries are the biggest emitters of toxic substances and the biggest generators of hazardous waste. ...The [Louisiana] tax relief program has resulted in the subsidization of the largest emitters. ...it may also have indirectly provided the necessary funds for firms to cover environmental noncompliance costs and penalties, making environmental enforcement more difficult."

-- Paul H. Templet et al
Environmental Finance, Autumn, 1992

Subsidies present a powerful but little-appreciated handle for environmental protection. Why? Because the same industries that pollute the most -- automotive, chemicals, oil, steel, paper, food processing -- are also the nation's most capital-intensive industries and are therefore among the biggest users of development subsidies, especially tax incentives and tax-free industrial development bonds.

Subsidies also present a powerful tool for environmentalists because they offer a way to solve a recurring problem: the low cost of polluting. Fines for environmental violations are rarely commensurate with the true costs to society. *But*, if the same industries were threatened with the loss of massive tax breaks and low-interest financing, the cost would force them to notice, and many would change their ways.

Subsidy programs can be modified in several different ways for environmental protection. Up-front disclosure and ongoing audits can be required, antiquated technology can be discouraged, companies can be motivated to reduce emissions and resolve violations more quickly, "Bad Boys" can be banned, and companies can be encouraged to involve their employees in toxics use reduction. The idea is not to create new environmental regulations, but rather to use incentives to encourage full compliance and environmentally sophisticated technologies and practices.

___

* Not only had McCain Foods created terrible water contamination, but it had only created

14 of the 200 jobs it had projected when it applied for the subsidies.

Louisiana, Massachusetts, Connecticut, Washington, and Gary, Indiana have each passed or proposed legislation which connects development subsidies to environmental performance. In addition, some states and communities have developed innovative agreements with specific companies. Highlighted below are some models that exemplify the most promising current trends.

Compliance with Existing Environmental Regulations

A Connecticut law, adopted in 1992, creates state-funded regional corporations which provide loan guarantees for projects that create jobs, foster high-tech growth or revitalize struggling municipalities. The statute establishing this program states that as a "condition for financial assistance... [a project] must comply with any environmental rules or regulations." (Chapter 588n, Sec. 32-277). Another Connecticut law requires that a project's "contribution to or enhancement of the Connecticut environment" be one of the criteria considered when financial assistance is granted from the community economic development fund.

The proposed Washington State Compact states that "The [recipient] business shall comply with all applicable federal and state environmental laws and regulations." Unlike the similar Connecticut law, though, the Compact has a very strong clawback with interest, a penalty and a ten-year ban from receiving state development subsidies. The Compact also states that all funds collected for environmental violations shall be used for environmental cleanup and restoration in the communities where the violations occurred. Thus the Compact not only gives teeth to pre-existing laws, but it also provides a means for remedying problems created when the laws are still violated. (See Washington Case Study in Chapter Three.)

While none of these laws creates any new paperwork or regulatory burdens for the recipient companies, they do up the ante for breaking environmental laws. By giving the state the ability to revoke subsidies for polluting companies, the laws grant the states much more power to achieve compliance than they had before.

Disclosure and Employee Involvement

Many states require study and disclosure of environmental impacts of subsidized projects. Typically, these laws require an initial review of a project, to enable state officials to determine whether the impact is large enough to require a full environmental impact assessment. If the answer is yes, an in-depth study is then conducted which looks at environmental impacts, ways to mitigate harm, and alternatives to harmful actions, including "no go." The laws usually provide for public participation during the initial review, as well as for public comment on the environmental impact report before it is finalized. (See, for example, the Massachusetts law excerpted at the end of this section.)

Massachusetts requires that any project receiving state financial assistance be subject to review by the Massachusetts Environmental Protection Act (MEPA). That law requires an Environmental Notification Form (ENF) for private projects involving construction or demolition that cost more than $1 million. An ENF triggers the screening process outlined above. So while the issuance of the ENF is not specifically tied to every subsidized project, it covers most larger projects. The State also requires an ENF for large projects involving roads, housing, schools, railroads and runways, most of which, presumably also involve public monies.

The City of Gary considers past environmental performance, namely a company's record in responsibly dealing with past environmental mistakes, when granting tax abatements. The financial statement that an applicant and any parent company file must include all unfunded environmental liabilities. Disclosure of this information enables the city to better judge both the economic stability and environmental reliability of an applicant. (See Northwest Indiana Case Study in Chapter Three.)

Subsidies can also be used to incent companies to involve their employees in toxics reduction. Note the language on employee and community involvement in reducing the use of toxics in the discussion of audits, see below.

Incentives vs. Dirty, Old Technology

With the information available from disclosure, interested parties can determine whether a subsidized project will use dirty or obsolete technology, and oppose the use of taxpayer funds for a manufacturing process that is not sustainable. For example, subsidy agencies might choose to deny a subsidy for a paper mill that will use chlorine bleaching of pulp, since that process is targeted for eventual elimination by environmental policies and there are cleaner alternatives.

The Environmental Impact Review should consider the sustainability of the proposed activity. If the project is likely to lack longevity because the technology is slated to become obsolete, then it is a poor investment both for the environment and the taxpayers.

Similarly, if a loan or tax abatement is sought over 10 or 20 years, and the company could install toxics use reduction measures which would pay for themselves over five years, the recipient should be required to apply those measures. An energy and materials efficient operation may cost a little more to construct but may also offer a strong payback in cost savings over the expected life of the subsidized activity. An efficient operation makes for less pollution *and* a safer, long-term investment by the taxpayers. (Model language at end of section.)

Incentives as "Carrots" to Reduce Pollution

An outstanding set of Louisiana regulations has pioneered the concept of using incentives as "carrots" to improve companies environmental performance. The Louisiana Scorecard system made 50% of a company's tax abatements conditional on environmental performance, providing strong financial incentives for improvement.

The system was especially effective in Louisiana because the state has historically granted such large tax abatements and because it has perhaps the nation's worst toxics emissions record. The size of the tax abatements made the Scorecard a powerful lever, and the high emissions meant Louisiana plants had a lot of room to improve.

Basically, the Scorecard conditioned 25 points (or 25% of the abatement) on a plant's compliance history, with point deductions scaled to the size of each fine or for a felony, and fewer points deducted if a company settled a violation prior to a hearing. Another 25 points were conditioned on an emissions-per-job scale, with zero points awarded for more than 10,000 pounds per year per job, and 25 points for 500 pounds or less. Companies could offset bad scores on compliance or emissions by reducing emissions (one point per 2% annual reduction, with a minimum 5% reduction to qualify), by installing recycling systems (up to five points), by recycling or producing consumer products with recycled materials (up to ten points), by creating jobs in areas of high unemployment (up to 15 points), or by providing industrial diversification (up to ten points for low or non-polluting industries which are not common in Louisiana and which provide high-pay, high-skill jobs).

According to Dr. Paul Templet, who oversaw the Scorecard as director of the State's environmental agency and now is an associate professor at Louisiana State University's Institute for Environmental Studies, the Scorecard, which was in effect only for the year 1991, achieved pledges of a 40-million pound reduction in toxic pollutants (or 8%), and a 140-million pound reduction in air pollutants. It also improved revenues to local governments by $6 to $7 million.

The Scorecard, together with other actions of the Gov. Buddy Roemer administration, also boosted the State's economy. It helped create thousands of new jobs in the Louisiana chemical industry -- an estimated 23 jobs per $1 million in capital spent for pollution controls. Whereas employment in the industry had been declining before 1988, between 1988 and 1991, the industry created 3,500 new jobs, a 15% increase. That was due to a 1988-1991 surge in pollution control spending, from $90 million per year to $291 million. The chemical industry claims a job-multiplier effect of 4.6 additional jobs; for the first time in recent history, Louisiana's unemployment rate dropped below the U.S. average, and poorer areas in the southern part of the state especially benefitted.

The Scorecard proved to be a popular success and made the complex subject of environmental compliance accessible to the public and the media. All the companies' scores were published, and some plant managers began competing with each other for better scores. Workers and neighbors could translate the scores into report card grades and actively learn from the scores why one plant was better or worse than others.

The Scorecard had the greatest impact on Louisiana's chemical industry, source of 90% of the state's toxic pollution. The industry averaged 14,000 pounds of emissions per job (100 times that of New Jersey), and the Scorecard had a 10,000-pound cutoff for the emissions rating which determined 25% of the tax abatement. So, many chemical companies had to try to make up the loss of 25% of their abatement by reducing emissions or increasing recycling. That was where the Scorecard achieved its largest emission reductions.

However, the chemical interests disliked the precedent of accountability, especially the subsidy penalties for past violations. At the industry's behest, newly-elected Gov. Edwin Edwards eliminated the Scorecard as his first official act in office just two days after his inauguration in January, 1992. Louisiana's environmental enforcement, as measured by fines assessed, dropped 70% in Edwards' first year in office.

Nonetheless, the potential for using incentives for environmental improvement was clearly proven, and the Louisiana Scorecard stands as an excellent model for other states.

Banning "Bad Boys"

As a way to fend off trash hauling and waste management companies with histories of bribery or environmental violations, some cities and counties have enacted "Bad Boy" laws that prohibit the awarding of government contracts to companies or individuals with criminal records.

An example of such a law in Palmer, Massachusetts is excerpted at the end of this section. "Bad Boy" rules can also be applied to subsidies, and not just government procurement transactions.

Arguably, this law is an extreme version of the Scorecard, since it penalizes companies for past violations of environmental laws. The denial of incentives does not amount to the denial of business altogether, but the idea is the same: when taxpayers invest -- in economic development or waste disposal -- they have the right to expect that the recipient is not breaking the law.

The specific crimes for which a company may be denied work under a "Bad Boy" law include bribery, price-fixing, restraint of trade, fraud, intimidation, or environmental crimes. The ban may last for a few years or be permanent. The law may also require full application disclosure of the company's ten-year legal history, performance history and technical expertise, background checks on company officers and owners, and fees to cover the costs of the background investigations.

Environmental Audits at Tax-Abated Plants

There is a strong need for periodic independent review of many plants to ensure continuous compliance and involvement. One approach that has been particularly effective for conducting such reviews has been the use of independent audits where the experts involved are selected and supervised by community groups and/or labor unions. Subsidies can be conditioned to a company's willingness to cooperate with such audits and to negotiate with community groups and labor over the audit's findings.

An excellent precedent for such auditing and cooperation is the agreement reached between the Rhone Poulenc Corporation and the Texans United Education Fund (see end of this section for contract excerpts). Under Texas law, the Texas Water Commission adopted regulations on hazardous waste permits mandating that:

> "[A]t a minimum, a requirement that a waste facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to evaluate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that such facility provide for fenceline and ambient air quality monitoring."
> Texas Health and Safety Code 361.114 (1993)

Rhone Poulenc and Texans United agreed to form a Community Advisory Council made up of as many as 25 residents of the neighborhood. The Council will comment on the scope of the audit and will accompany the auditors as they inspect the plant, as they interview workers and managers, and as they review safety and environmental records, accidents reports, waste reduction records and disposal documents.

The Council and the company also get to name a worker and a manager, respectively, to participate in the audit inspections. When samples are taken, the company agrees to split them so that the Council may have its own independent analyses performed.
A copy of the records disclosed to the Council will be deposited at the public library. The Council may choose its own experts, but Rhone Poulenc will pay the Council's administrative costs.

Statutes

Toxics Use Reduction Plans

Massachusetts General Laws Chapter 21I section 11(2)

> The plan shall include:
>
> (a) a statement of facility-wide management policy regarding toxics use reduction; and
>
> (b) a statement of the scope and objectives of the plan, including the planned reductions in facility-wide use and byproduct generation from the relevant base year for each covered toxic or hazardous substance during the next two years and during the next five years...
> [and] for each production unit in which a covered toxic or hazardous substance is manufactured, processed or otherwise used:
>
>> (a) a comprehensive economic and technical evaluation of appropriate technologies, procedures and training programs for potentially achieving toxics use reduction for each covered toxic or hazardous substance;
>>
>> (b) an analysis of current and projected toxics use, byproduct generation, and emissions;
>>
>> (c) an evaluation of the types and amounts of covered toxic or hazardous substances used;
>>
>> (d) an identification of the economic impacts of the use of each covered toxic or hazardous substance in the production unit, including, but not

limited to, raw material and byproduct storage and handling costs, potential liability costs and costs associated with regulation;

(e) an identification of each technology, procedure or training program to be implemented for the purposes of achieving toxics use reduction. The anticipated cost of implementation of each, and the anticipated savings expected due to each;

(f) a schedule for implementation of such technologies, procedures and training programs...

* * * * *

Model Language for Banning Subsidies to Old or Dirty Technologies

All manufacturing projects receiving state financial assistance and which also require an Environmental Impact Statement (EIS) shall have included in that EIS an assessment of the sustainability of the project's proposed technology.

This sustainability assessment shall determine the longevity of the proposed technology, whether the proposed technology has been targeted by any state, federal or international agency for eventual elimination, whether there are less-polluting technologies available, and whether there are competing technologies which would enable the project to consume fewer natural resources, pose fewer public health risks, or result in less pollution or waste.

If possible, the sustainability assessment shall estimate the cost of employing such alternative technologies in the project.

The sustainability assessment shall also determine if the proposed project has an effective toxics use reduction plan, and whether or not the project for which the subsidy is requested is integrated or compatible with that toxics use reduction plan.

In determining whether to provide state financial assistance to the proposed project, the relevant state agency shall seek public comment on the sustainability assessment and actively consider those alternative technologies that are available.

If the project's proposed technology is one that has been slated for elimination by any state, federal or international agency, and if there is an alternative technology available which has greater projected longevity because it causes less pollution and/or uses fewer natural resources, the relevant state agency shall deny state financial assistance for the proposed project.

If the proposed project is not found to have an effective toxic use reduction plan, or if the proposed project is found to be incompatible with or counterproductive to an effective toxics use reduction plan at the project site, the relevant state agency shall deny state financial assistance for the proposed project .

* * * * *

The Louisiana Scorecard

Louisiana Department of Economic Development, Title 13, Part 1. Office of Commerce and Industry [Administrative Rules]

Subpart 1. Finance
Chapter 21 Environmental Criteria For Rating Tax Exemptions

2101. Introduction
A. The following rules will be used as the formula to evaluate the environmental compliance of applicants for tax exemptions. The information required to apply the formula will be provided by the applicant as apart of the application. ...These rules, when applying to a renewal of a five year Industrial Tax Exemption contract, will use data gathered prior to the beginning date of a renewal contract. This new data will be used to compute a new score which will determine the percentage of tax exemption to be considered for the renewal contract.

B. The formula starts at 50 points and adds the number of points from the environmental compliance (maximum 25 points) and emissions-per-job categories (maximum 25 points). Bonus points are available and maybe used to offset any scores totaling less than 100 points. The total [percent of] tax relief will be the same as the total score...
2103. Compliance Records:

A. The environmental compliance record considered (25 points maximum) will be facility specific federal and state penalties, except when the Board of Commerce and Industry and the Governor, in their unfettered discretion, consider it to be in the state's best interest to use a company's complete environmental record.

B. An environmental compliance history, starting January 1, 1990, will be used. After January 1, 1995 a five year compliance history will be utilized on all applications.

C. Point deductions for first year environmental violations which go through adjudication will be as follows:

1. One point deduction for violations with fines under $3,000;

2. Five point deduction for violations with fines between $3,000 to $10,000.

3. Ten point deduction for violations with fines between $10,000 to $25,000.

4. Fifteen point deduction for violations with fines in excess of $25,000

5. Twenty point deduction for criminal felony violations.

6. The age of a violation will be calculated from the date of the application. The older the violation the lower the deduction. Deductions will be weighted as follows:

   a. Year 1: 100%
   b. Year 2: 80%
   c. Year 3: 60%
   d. Year 4: 40%
   e. Year 5: 20%
   f. Year 6: 0%

D. Equivalent violations, voluntarily settled with the DEQ and/or EPA, prior to an adjudicatory hearing, will incur one-half of the point deductions in 2103,C.

F. Compliance history and record is associated with a facility at a given site. Transfer of ownership does not sever that relationship nor does it obviate responsibility of the new owner.

2105. Emissions-per-job:

A. This is a category using total credited emissions divided by the total job equivalents supported by the facility. The job equivalents will consist of the on site facility workforce (permanent full time jobs, full time construction equivalents, and full time contract equivalents), adjusted in terms of payroll equivalent. The adjusted jobs number is computed by dividing the annual average facility payroll by a derived average earnings per job for Louisiana workers, equal to $25,000. A ratio (emissions-per-job) is created between the total number of job equivalents existing at a facility and a composite emissions number which combines the total TRI data, criteria air pollutants (added in at 10 percent of the total except for lead which is added in at 100 percent), and accidental toxic releases. Criteria air emissions from cogeneration facilities will not be added to the emissions total used in this calculation. The following point schedule will apply:

1.

Pounds of Emissions per job	Points Received
0 - 500	25
501 - 1,000	20
1,001 - 2,500	15
2,501 - 5,000	10
5,001 - 10,000	5
Over 10,001	0

2107. Bonus Point Categories

There are five bonus categories, which have a combined total of 55 points, that can be applied to final scores of less than 100. Bonus points are used as an incentive to reduce emissions, develop recycling systems and/or use recycled materials, diversify the state's economic base and locate facilities in parishes with high unemployment rates.

1. Emissions Reductions. (15 points maximum) ... if the applying facility has a DEQ approved emissions reduction plan. To be eligible for emission reduction points, a facility must reduce its overall emissions by an average of five percent per year for each year the contract is in effect. One bonus point will be given for each acceptable two percent per year reduction in the composite TRI and criteria air emissions over the contract period, as compared to the year preceding the application. ...

One bonus point will be given for each five percent annualized reductions in DEQ approved hazardous and industrial waste generated, excluding office trash, occurring in the five-year contract period. To be eligible for the waste reduction bonus points a facility must reduce its overall hazardous and industrial solid waste by an average of five percent per year. ...

2. Recycling: (5 points maximum) Bonus points will be available to facilities which install a closed loop recycling system or use recycled materials. One bonus point will be given for every one percent of recycled hazardous waste material substituted in the input throughput by a closed loop recycling system, or one bonus point will be given for each five percent of recycled total throughput material, purchased outside of the facility and used by the facility, or any combination thereof.

3. Recycling Companies or Manufactured Consumer Products Bonus: (10 points maximum) Ten bonus points will be available to companies whose predominant activity is recycling, or using bulk materials produced in Louisiana for manufacturing "end use" products such as plastic bags. For those facilities whose recycling represents 50 percent or more of their income, one bonus point will be given for each ten percent of gross income generated by recycled materials. For those facilities that derive 50 percent or more of their income by using Louisiana produced bulk materials to make "end use" products one bonus point will be given for each ten percent of gross income generated from such activity.

4. New Jobs for High Unemployment Areas: (15 points maximum) Up to fifteen bonus points will be given to projects which create at least one new full time equivalent job per $30,000 in tax relief in parishes that have an unemployment rate one or more percent above the state's average, as indicated in the current January issue of the Louisiana Labor Market Information publication, prior to receipt of the Advance Notification form. Two bonus points will be given for each one percent above the state's revised unemployment rate. ...

5. Diversification: (10 points maximum) Bonus points will be available to industries which diversify the state's economy. In this category the Department of Economic Development may recommend bonus points be given to industries not heavily represented in Louisiana which are low or non-polluting (produce emissions-per-job under 500) and create high quality job opportunities (high paying, high skilled jobs). ...

2109 Restrictions:

A. Tax exemptions will be reduced to 50 percent for any facility whose total product includes more than 20 percent banned materials or materials designated to be banned, by the United States Environmental Protection Agency. No tax exemption will be granted for any project which will produce a banned product.

B. No tax exemptions will be given to a facility whose net import of hazardous waste, from out of state, is more than fifteen percent of the hazardous waste which it disposes or incinerates in Louisiana.

2111. Exceptions:

A. The Governor and the Board of Commerce and Industry shall have an unfettered discretion to grant, deny or modify any tax exemption application. Certain environmental concerns may trigger an in-depth environmental study by the [DEQ]...

1. Any facility with compliance deductions of greater than 25 points or a history of multiple violations.

2. Any facility with proven groundwater or habitat contamination.

3. Companies which do not follow nationally accepted environmental standards.

4. Facilities which have had major catastrophes where they were found negligent (such as explosions, fires, large spills, etc).

5. Facilities where environmental problems have resulted in fatalities.

* * * * *

Ordinance, Town of Palmer, Massachusetts ["Bad Boy" Ban]

The Town of Palmer ordains:

Section 1. No person or business shall be awarded a contract or subcontract by the Town of Palmer if that person or business entity:

(a) has been convicted of bribery or attempting to bribe a public officer or employee of the Town of Palmer, the State of Massachusetts, or any other public entity, including, but not limited to the Government of the United

States, any state, any local government authority in the United States in that officer's or employee's capacity; or

(b) Has been convicted of an agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or

(c) Has made an admission of guilt of such conduct described in paragraphs (a) or (b) above, which is a matter of record, but has been prosecuted for such conduct, has made an admission of guilt of such conduct which term shall be construed to include a plea of nolo contendere.

Section 2. A person, business entity, officer or employee of such a business entity, convicted of one or more of the crimes set forth in Section 1, shall be ineligible for the awarding of a contract or subcontract by the Town of Palmer for a period of three years, following such conviction or admission in the case of admission of guilt of such conduct, which is a matter of record, but which has not been prosecuted.
...Section (5) The Town of Palmer shall not execute a contract with any person or business entity until such person or business entity has executed and filed with the Town Clerk an affidavit executed under the pains and penalties of perjury that such person or business entity has not been convicted of any violation described in Section 1 paragraphs (a) and (b), and has not made an admission of guilt or nolo contendere as described in Section 1, paragraph (c). In the case of a business entity such affidavit shall be executed by, in the case of a partnership, the general partner(s), and in the case of a corporation, the president.

* * * * *

Additional "Bad Boy" Application Disclosure Language

[The following language is excerpted from Attorney Gary Poliakoff of Poliakoff, Poole & Associates, Spartanburg, SC; see Bibliography for full citation.]

...[T]he applicant must submit to the Department a disclosure statement which includes the following information:

(a) Full, names, business addresses and Social Security numbers of all responsible parties of the applicant.

(b) A complete listing of all responsible parties of the applicant and a full description of their relationship to the applicant.

(e) A full and complete description of the applicant and responsible parties' experience in managing the type of activity that will be managed under permit.

(f) A description of all civil and administrative complaints against the applicant and responsible parties for the violation of any state of federal environmental law.

(g) A description of all civil and administrative complaints against the applicant and responsible parties that allege an act or omission that represented a substantial endangerment to the public health or the environment.

(h) A description of all pending criminal complaints alleging the violation of any state or federal environmental protection law that have been filed against the applicant and responsible parties within ten (10) years before the date of submission of the application.

(i) A description of all criminal convictions entered against the applicant and responsible parties within ten (10) years before the date of submission of the application for the violation of any state or federal environmental protection law.

(j) A description of all criminal convictions of a felony constituting a crime of moral turpitude under the laws of any state or the United States that are entered against the applicant and responsible parties within ten (10) years before the date of submission of the application.

(k) A description of all criminal convictions, an element of which involves restraint of trade, price-fixing, intimidation of the customers of any person, engaging in any other acts which may have the effect of restraining or limiting competition, or any fraudulent practices entered against the applicant and responsible parties within ten (10) years before the date of submission of the application

(l) A description of all administrative notices of violations, notices of deficiencies, and enforcement actions against the applicant and responsible parties alleging any violation of state or federal environmental law.

(m) A complete statement of all prior locations of facilities of the applicant and responsible parties.

(2) The disclosure statement must be executed under oath or affirmation and be subject to the penalty of perjury.

Section 3. Background investigation.

(1) The Department shall conduct a background investigation of the applicant and responsible parties in regard to all items referred to in the disclosure statement. The Department shall request that the State Law Enforcement Division perform a criminal record search and a search for other information on each applicant and responsible party from any state and the United States, and may receive such information from the Federal Bureau of Investigation. ...

(2) The Department shall charge and collect such fees from applicants and permittees as are necessary to fully cover the costs of administering the investigative procedures established herein, including all costs of the State Law Enforcement Division. ...

* * * * *

The Rhone Poulenc Agreement with Texans United Education Fund, Manchester Texas

Community Advisory Council: RP agrees to recognize and work with a Community Advisory Committee ("CAC"). The CAC shall be geographically representative of the local community surrounding the Rhone-Poulenc facility and consist of no more than 25 members, all of whom shall be residents of the local community. Additional members or replacement, will be nominated and voted on by existing CAC members... RP agrees to the list of persons attached as Exhibit B as the original members of the CAC.

Audit Scope: The Audit Scope shall include, at a minimum, regulatory compliance, safety training, accident prevention, Emergency response and preparedness, waste analysis and information systems, monitoring programs, and waste minimization and reduction practices. RP will consider comments from the CAC concerning details of the Audit Scope. Texans United

Education Fund shall communicate any comments it has concerning the Audit Scope through the CAC.

Citizen Participation: Consistent with applicable safety standards, designated CAC members and a representative of Texans United Education Fund will participate with the auditor in the physical inspection of the plant, interview with plant personnel and the review of documents, including: safety and emergency response manuals and training materials; existing safety and environmental agency inspections and nonconfidential safety and environmental records; documents associated with waste minimization and reduction plans or practices; documents associated with waste generation and disposal; hazard assessments and risk analysis; and lists of accidents, upsets, near misses and corrective actions.

RP will allow a RP worker representative of the CAC's choice to participate in the inspection. The CAC will allow a representative of RP's choice to be present during all phases of on-site audit.

Consistent with applicable safety standards, RP will continue to allow citizen inspections of its Manchester plant operations by appointment at all reasonable times.

All documents provided to the CAC by RP pursuant to this Settlement Agreement shall also be provided to the public library and be considered public information; however, RP reserves the right to consider certain materials provided to the CAC company confidential and proprietary and request that those documents not enter the public domain.

The CAC will control its own agenda and can make use of resource persons it chooses. RP will have representatives available to answer questions and concerns of the CAC as required. It is understood that the CAC and the Texans United Education Fund are independent of RP, and RP shall in no way be responsible for acts or omissions of the CAC or the Texans United Education Fund, their members, agents or other representatives. It is also understood that the CAC and the Texans United Education Fund are in no way responsible for the acts or omissions of RP which negatively impact the workers, community, or environment.
RP agrees to provide financial assistance to the CAC in an amount agreeable to both the CAC and RP to cover administrative costs of the CAC, if said financial assistance is requested by the CAC.

The CAC will designate a member to receive communications from RP and to chair CAC meetings. Should an occasion arise where both the CAC and RP desire the services of a facilitator, said facilitator must be agreeable to both parties.

Audit Findings: The auditor will present a copy of the audit findings to RP, the GAO, and other affected persons as identified by the TWC. Additionally, Texans United Education Fund will be provided with a copy of the audit findings for the first annual audit conducted under this agreement. RP further agrees to consider recommendations, if any are forthcoming, from citizen participants in the audit and negotiate in good faith the implementation of these recommendations.

RP agrees to discuss and negotiate improvement of local emergency notification procedures agreeable to the CAC and City of Houston officials. RP agrees to allow the CAC to have input into the design of this system. This would include the use of the plant siren and a localized radio broadcast system.

RP ... agrees to split samples with the CAC or with representatives of the CAC when requested, allowing representatives, consistent with applicable safety standards and regulations, to be present during sampling procedures to receive split samples for independent analysis.

RP agrees to provide to the CAC a copy of its own employee health study prepared in January of 1992. RP agrees to work in conjunction with the CAC to review the feasibility of a citizens health survey. If pursued, RP agrees to help the CAC develop the survey design and form. If RP and the CAC agree upon a citizens' health survey design and form, RP agrees to cover the administrative expense incurred by the CAC in performing a citizens' health survey in the local community using the agreed upon design and form in an amount not to exceed $4,000. Agreement as to the health survey form and design, payment of any funds and submission of comments by RP to the CAC shall not be construed as an endorsement or acceptance of the citizens' health survey by RP, and RP reserves the right to disagree with the survey's manner of performance and results. Following completion of the citizens' survey, RP further agrees to cooperate with the CAC to consider, and negotiate in good faith, the need for, and feasibility of, a scientifically valid local off-plant health survey or study of the neighborhood within the local community. Nothing in this Settlement Agreement shall be construed to require medical testing of individuals.

H. Eminent Domain

When all else fails, a few cities and one state have considered using eminent domain to save jobs. Eminent domain is the legal power held by governments to seize private property for public good, and it is commonly used for the benefit of developers, factories seeking to expand, and public works projects such as highways and dams (not to mention sports franchises and casinos).

For the purpose of job retention, a government entity seeks to buy a workplace for fair market value and immediately pass it through to a qualified third party. Mayors and governors don't consider such a remedy without having exhausted other possibilities, and they are often seeking to hold an employer accountable for past subsidies. Also, it must be clear the entity could be viable under different ownership.

In most situations, city, county or state officials or regional industrial development agencies already have the power of eminent domain; it is simply a matter of convincing them to use it. In some cases, that is not very hard. When the Newell Corporation announced in 1988 that it would close the 942-employee Anchor Hocking Plant in Clarksburg, WV, Gov. Arch Moore responded angrily, threatening the use of eminent domain to seize the plant, before he sued Newell.

While eminent domain is a strong measure that will only arise in cases where other solutions have failed, it is clearly a viable economic development tool for job retention. The lopsided pro-corporate history of eminent domain -- such as the dislocation of the entire Poletown neighborhood in Detroit by a General Motors plant -- is the most extreme evidence of how large employers and developers dominate the tools of development. Using those same tools for the benefit of workers and communities is a matter of fairness and balance.

Summarized below are the previous instances of eminent domain being employed for the purpose of job retention.

Oakland Raiders, 1980

The City of Oakland tried to use eminent domain to retain its professional football franchise after the team announced its intention to move to Los Angeles, the first such attempted use for job-retention. The City argued the Raiders were both an economic asset and a source of civic pride. After the Raiders won a summary judgement in trial court, the California Supreme Court upheld Oakland's right to seize the franchise, an intangible property, and remanded the case for trial on the issue of "public use."

The trial court ruled against the City on three issues: that the seizure did not constitute a public use, and that it would violate antitrust and interstate commerce rules. The State's court of appeals upheld the trial court only on the interstate commerce argument, which, ironically, had not even been part of the Raiders' original counter-argument. The gist of the court decision was that such a seizure was "the precise brand of parochial meddling with the national economy that the commerce clause [of the U.S. Constitution] was designed to prohibit." Oakland responded that the City was acting as a participant, rather than as a regulator, but to no avail.

Nabisco, Pittsburgh, 1982

Bakery, Confectionery and Tobacco Workers Local 12 organized the Save Nabisco Action Coalition (SNAC) to save 650 jobs. The Union had strong support from Pittsburgh Mayor Richard Caliguiri and the city's Urban Redevelopment Authority. The effort to save the plant took many forms, including city offers of cheap land and financing, shareholder resolutions, the threat of eminent domain and a threatened boycott by the Coalition against not only Nabisco but against Equibank, Inc. which had a board interlock with Nabisco.

The eminent domain threat, according to contemporary accounts, was the decisive element; the company's announcement canceling the closure came only after the City Council and the board of the Urban Redevelopment Authority began in mid-December to earnestly consider eminent domain. Today, the plant is still operating at employment levels almost as high as when the campaign took place.

Morse Cutting Tool, New Bedford (MA), 1984

This plant still employed 450 workers and was owned by the conglomerate Gulf + Western when United Electrical Workers Local 277 raised a job-retention campaign. G + W had been steadily disinvesting the facility's equipment and management, and sought large concessions, provoking a long strike.

Mayor Brian Lawler, supported by the City Council, the local Congressman and the City's labor movement, threatened in June 1984 to use eminent domain to transfer the plant to a buyer who would stay in New Bedford. G + W offered two allegedly viable buyers, whom the Union determined to be unqualified. The Union's eminent domain argument was supported by research from the Institute for Public Representation at Georgetown University.

Acting on the threat proved unnecessary when G + W sold the plant to James Lambert, a businessman with two related facilities who committed himself to reinvestment and union recognition. Lambert ran the plant successfully and preserved 375 jobs until encountering financial problems in 1987; he was forced to declare bankruptcy. Two bidders emerged for the plant: one a domestic competitor which would have probably dismantled the facility, the other a Scottish company, International Twist Drill, who wanted North American capacity.

The union rallied with a bagpipe-led march to the courthouse and stressed the social costs of a shutdown if the domestic bid were successful. The judge was persuaded; even though the Scottish bid was slightly lower, he deemed it a better deal overall for New Bedford and awarded Morse to International. Unfortunately, the plant closed in 1989, due to a lack of sufficient reinvestment and poor management.

Colonial Meatpacking, Boston, 1986

United Food & Commercial Workers Local 616 sought to save this 600-worker plant. After concessions in 1984 designed to stabilize the plant, Colonial was purchased in late 1985 by Thorn Apple Valley, perhaps for its brand name; Thorn Apple had duplicate capacity. The Union organized the Coalition to Save Colonial Jobs and launched a regional boycott threat and a push to convince the City of Boston to employ eminent domain.

The Coalition argued that the City had used eminent domain 5,516 times in the ten previous years, mostly for developers. The City Council passed a resolution 12 to 1 to commence the eminent domain process, with Mayor Raymond Flynn's endorsement. The City's corporation counsel Joseph Mulligan issued an ambivalent but negative opinion, however. On the one hand, he recognized the expansive uses of eminent domain, and noted that "[t]he proposed taking of Colonial's property is one ripe with possibilities because of the evolution of the concept of public purpose." But he concluded that brokering a private asset to a private third party amounted to a private good, not public, and therefore the City lacked the power. Other scholars disagreed, but the corporation counsel's opinion derailed the Coalition's momentum only two weeks before the closure. The plant permanently closed in March, 1986.

Union Switch & Signal, Swissvale, PA, 1987

In its first attempted use of eminent domain to save jobs, the Steel Valley Authority (SVA), a nine-city Authority incorporated under Pennsylvania's Industrial Authority Act, sought to block the movement of this plant to South Carolina. This was part of a broader fight by United Electrical Workers Local 610 against American Standard Corporation to save two Pittsburgh-area plants: Westinghouse Air Brake Company in Wilmerding and Union Switch & Signal in Swissvale. The latter community had joined the SVA. The Coalition to

Save Brake & Switch won broad public support, obtained funding from Allegheny County for a job retention study, and gained many union allies via the Tri-State Conference on Manufacturing.

American Standard appealed the SVA's motion for a state injunction, winning a federal motion to set it aside. SVA then appealed to the 3rd Circuit on the issue of whether removal was proper or not; the 3rd Circuit ruled removal was not proper, and remanded the case back to state court. However, the issue was moot by then, since the equipment and jobs were gone.

Braun Bakery/ITT, Pittsburgh, 1989

This plant employed more than 200 workers, represented by the Bakery, Confectionery and Tobacco Workers Local 12. The Steel Valley Authority sought a state injunction, but the company removed to federal court. Diversity of citizenship was clear in this case; the federal court denied the injunction and SVA did not appeal. But out of this campaign grew the City Pride worker startup effort, which succeeded in resurrecting a new bakery with 175 employees in 1992.

However, because of management difficulties, the employee buyout did not succeed, and in 1993 City Pride was taken over by local entrepreneur Michael Carlow, who also owns Pittsburgh Brewing (however, Carlow never actually closed on the transaction). The company survived under his management until early 1994, when Carlow's attempt to buy a large competitor failed. As *No More Candy Store* goes to press, the City Pride workers are again seeking to resurrect the bakery

Ringier America, New Berlin, WI, 1993

Ringier America, a Swiss-owned printing company, surprised its workforce and local officials in early 1993 when it abruptly announced that in 60 days, its modern and profitable book-printing plant in the Milwaukee suburb of New Berlin would close, dislocating 480 workers, including 177 members of Graphic Communications Local 577-M. After the company refused all offers of assistance from local and state officials, the Union responded with a vigorous public campaign for eminent domain.

Due to peculiarities of Wisconsin law and established local powers, there was no local entity to use eminent domain, so it was necessary for new state legislation to be enacted that would empower the Governor to seize the plant and broker it to a third party. In April, the Wisconsin Assembly passed the necessary legislation, after a remarkably heated and partisan debate; Speaker Walter Kunicki spearheaded the Union's cause. The Union turned its heat turned to the Senate, and about 200 workers occupied the Senate chambers, festooning it with banners and camping out with their families. However the Senate, which had just come under one-vote Republican control three weeks earlier, voted on straight party lines, 17 to 16, to defeat the bill and enable Gov. Tommy Thompson to avoid a veto decision.

The Union then sought an employee buyout of the plant and equipment, but Ringier thwarted that effort by selling key pieces of the equipment to a competitor at a fraction of its market value and quoting a very high price for the building.

Conclusion

Although eminent domain has not actually been used yet to hold a company accountable for subsidies, the cases of Nabisco, Braun Bakery and Morse Tool all show that the threat of eminent domain has great symbolic power which can impel companies to act in ways that enable coalitions and public officials to save jobs. The abuse of past subsidies can strengthen the case for such a remedy.

Chapter Three: Case Studies

A. Labor-Community Coalition Succeeds in Indiana

As development subsidies proliferated in the 1980s, property tax abatements became a major economic development tool in Indiana, and Republican Governor Robert Orr used tax incentives aggressively to lure jobs from other states. Despite repeated efforts among Midwestern governors to construct a no-raiding agreement, Orr would not cooperate.

In 1989, the Calumet Project for Industrial Jobs, a coalition of unions, churches, and community groups, began investigating the effectiveness of tax abatements. They first examined the city of Hammond. In 1988, Hammond had granted tax abatements to 16 companies were valued at more than $15 million over their durations. The companies had promised 804 jobs, but only 74 were delivered. In addition, there was no public participation in the granting of the abatements and no public oversight once they were approved.

In addition to the Project's outrageous findings, specific abuses fueled the issue. In early 1990, workers at LaSalle Steel Corporation went on strike over pension and wage issues. The strike lasted 32 days and neither side claimed victory. Soon after, the company announced that it was planning to relocate the grinding department, the heart of the plant, to Frankfort, Indiana, only 110 miles away. In February 1991, as part of its effort to stop the move, the Calumet Project revealed that LaSalle had received a $97,500 tax abatement from Hammond in 1989 for equipment that it was now threatening to move. The mayor of Hammond, responding to pressure from the union, the Calumet Project, and community groups, won a commitment from the mayor of Frankfort to not offer any incentives to LaSalle. In the end, LaSalle did not move. The episode made people in northwest Indiana aware of the need to link subsidies to performance and of the potentially destructive results of competition between localities.

The Calumet Project launched an accountability campaign. An ordinance was drafted to require more disclosure from applicants, public hearings on applications, annual reports on job creation, and hearings on companies that failed to keep their promises. Hammond's Chamber of Commerce opposed the measure, although many small businesses supported it because they felt the tax-abatement program was dominated by a few large businesses which received almost all of the abatements. In the summer of 1990, a compromise ordinance with reduced disclosure was passed over the Mayor’s veto.

The Hammond ordinance, however, had no retroactive sanction because Indiana state law did not permit clawbacks on abatements, so state reform was also needed. Largely through the Calumet Project's efforts, a progressive bill passed in the Democratically-controlled House. It would have required extensive disclosure and annual reports on job-creation performance. It would also have allowed local governments to terminate abatements for non-performing companies and reclaim lost tax revenues from companies that shut down operations or remove abated equipment.

Unfortunately, the House bill didn't even get a hearing in the Republican-controlled Senate. In the end, a compromise was reached as an amendment to an enterprise zone bill. The amendment mandates that municipalities *must* cancel the remaining years of a tax abatement if a company does not deliver the jobs it promised. The bill passed and became law in early 1991. The mandatory aspect of this law makes it one of the strongest in the country. Indiana state law still does not allow local laws to include recapture penalties (clawbacks).

The Calumet Project next examined tax-abatement programs in other Northwest Indiana cities. They found that in many places, applying for tax abatements was essentially a standard operating procedure for most businesses. The situation was so bad that the City of Gary had granted tax abatements to fast-food restaurants. Given the part-time, low-wage, minimal-benefits nature of fast-food jobs, the Calumet Project and the people of Gary questioned their local "industrial policy."

When the Calumet Project began to push for abatement reform in Gary, it was joined by many allies: labor leaders, community activists, local academics, retirees and church leaders. There was no opposition from the two dominant corporate players in Gary (USX and Northern Indiana Public Service Company) and, as is often the case, the movement was supported by many small businesses. Gary's small businesspeople were infuriated by incidents such as an apartment developer who received an abatement, promising he would hire local minority contractors. He got the abatement and then fired the local minority contractors and brought in white contractors from out of state. Without reform, Gary was powerless against such abuses. Even though many local businesses benefited from abatements themselves, they saw how abatements that did not deliver were harmful in the long run to their city and shifted the tax burden to businesses loyal to Gary.

Gary's abatement-reform ordinance emphasizes three issues: it requires proof of need of public subsidy, it demands a public return for the public investment, and it includes measures to stem the loss if the public return did not materialize. Specifically, it covers wages (must be at or above prevailing wages for industry, with minor exemptions), health care coverage (for employees working more than 25 hours per week, some exemptions), public disclosure of certain information (including how many jobs the applicant plans to create and/or destroy, and its past track record in fulfilling subsidy-related promises) and facility relocation (the law includes a strong anti-raiding provision to prevent destructive competition between local governments). It also requires the termination of an abatement if a company fails to live up to its promises. With essentially no opposition, the proposal was enacted unscathed. On September 16, 1991, Gary Ordinance 6560 became law. It is perhaps the most comprehensive subsidy reform package in the nation.

The reform laws in Gary, Hammond, and by the state of Indiana, though, do not necessarily guarantee an end of the abuses. Bruce Nissen of Indiana University Northwest did much of the supporting research for the campaign. He writes: “It remains to be seen how well the ordinance will be enforced. Preliminary indications are that the Gary Office of Economic Development is unlikely to implement the full provisions unless pressured to do so by the labor-community coalition which won passage in the first place.” Nissen's analysis is true for all three laws. Labor and community activists will have to remain vigilant.

Some positive changes are already evident, though. The City of Gary has stopped granting abatements to fast-food restaurants and other low-wage businesses. And at the state level, the 1991 United Airlines incentive package from both the State and Indianapolis has the best protections ever included in a high-impact project in Indiana (see Clawbacks Section for contract excerpts). If the airline terminal project does not meet the promised job creation and investment goals, it will have to rebate some of the subsidies.

Besides these improvements, the more important impact of the Calumet Project's campaign has been to alter the business climate, to empower city and state officials to negotiate harder and watch the store. Companies know they can no longer provide inflated job claims, and government officials aren't so afraid to hold companies accountable if they don't deliver.

That's the real message from the Calumet Project's success: when the public is educated and aroused, reform is winnable. And while legal reforms are great, it is the shift in public mood and the political climate on the issue that makes vigilance and enforcement really possible.

B. The Washington State Compact

The idea of a "compact" between businesses that accept subsidies and the governments that grant them has been advocated in several states over the past dozen years, including Rhode Island, New York, and Connecticut. In some cases, watered-down or voluntary versions of such compacts have been enacted; in others, state development staff informally enforce compact-like relationships.

One of the most recent and sweeping compact campaigns has been in the State of Washington. The Compact was first conceived as a new labor relations law, in light of increased capital mobility and Reagan-era corporate disregard for workers' rights. Spearheading the effort for the Compact was the Washington State Labor Council, AFL-CIO, which has included an economic development committee for several years, with support from the Seattle Worker Center, a FIRR affiliate, and environmental groups such as the Columbia Basin Institute.

The Compact was viewed as a way to protect workers without dramatically changing the law. It would simply require all development subsidy recipients to agree to respect specific worker rights, as listed below. The Compact was also a reaction to a string of subsidy abuses at companies like Vanalco, Seattle Steel, WI Forest and JR Simplot, all of which closed after receiving large state incentives. Three of these were big shutdowns in rural areas, where the impact of the layoffs was very harmful to local living standards.

Environmentalists were drawn to the Compact by cases like McCain Foods, a company that received the largest subsidy in the State's history but violated the Federal Clean Water Act the following year (see section on Environmental Protection). Activists saw the potential for linking subsidies to environmental performance. Frustrated by the low penalties for non-compliance, environmentalists sought to link subsidies to environmental violations to make the violations more expensive and thereby make anti-pollution laws more effective.

The Compact's specific "rules of conduct" cover wages (must match state average), health care (must provide basic coverage), the right to strike (cannot hire permanent replacements), the right to organize (employer must be neutral), plant closing notification (must comply with federal and state laws, even if recipient would not normally be covered by them), affirmative action (again, recipient must comply even if not normally covered), recognition of existing unions and existing collective bargaining agreements (if purchasing an existing facility), worker and community right of first refusal to buy (in case of sale), and the environment (must comply with all applicable regulations).

The penalty for violating each of these provisions is a progressive clawback of the subsidy, plus interest, a ten percent penalty, and a 10-year ban on future state subsidies. Any money collected for environmental violations would be used for environmental clean-up in the community in which the penalized violator is based. There are also requirements for “before” and “after” job impact statements that are subject to scrutiny by workers, unions and community groups.

Business groups strongly opposed the Compact, claiming that it entailed unjust government interference. A watered-down "study" version of the Compact passed both houses of the Washington legislature in early 1994, but was vetoed by Gov. Mike Lowry. Although Gov. Lowry wrote at length in his veto message in support of the Compact's call for accountability, he argued that the compliance data gathered could not remain confidential because of Washington's extensive disclosure laws. He also stated that the departments of revenue and economic development were "not the proper agencies to conduct the study."

As the Washington State Labor Council pointed out, the Governor's argument about the two agencies being inappropriate was nonsensical, since they are the departments (as in most states) that determine which projects are eligible for the subsidies. As for the disclosure issue, the Labor Council reported: "They don't have to accept the state's assistance, Governor!" Indeed, many kinds of companies routinely disclose all kinds of business information to government agencies in return for other forms of assistance or government purchasing.

Washington House Bill 1565 (1993)

> ...Sec. 1. The legislature finds that public assistance in the form of loans, grants, bonds, tax deferrals, or tax abatements allowed to private business is a public service. Therefore, the state and its political subdivisions should offer this assistance only to those private businesses that are willing to be subject to minimal rules of conduct.
>
> Sec. 2. [Definitions]...
> (2) “Business assistance” includes any loan, grant, bond, tax deferral, or tax abatement program administered by the state or its political subdivisions.
>
> (3) “Certified date or reduction in operations” means the actual or anticipated date of any reduction in operations at a business facility as determined by the director. ...
>
> (5) “Reduction in operations” means the total closure of a business facility, any partial closure of a business facility, or any other reduction in operations or

relocation of a business facility that results in the layoff of at least twenty-five employees at the facility in operations. “Reduction in operations” does not include reductions:

(a) Resulting solely from labor disputes...
(b) Occurring at construction sites;
(c) Resulting from seasonal factors...
(d) Resulting from the lack of availability of natural resources...
(e) Resulting from fire, flood, war, or other acts of God.

Sec. 3. Each business that has received twenty-five thousand dollars or more in business assistance shall agree to accept the following rules of conduct prior to receiving further assistance:

(1) A business reducing operations at a facility or relocating a facility shall comply with the requirements of all federal and state plant closure laws, regardless of whether the business is included within the coverage of the plant closure law.

(2) A business purchasing or relocating a facility within the state shall continue to recognize any employee organization, whether international or local, that is a signatory to a collective bargaining agreement in effect at the predecessor facility or at the relocating facility at the time of relocation.

(3) A business selling or otherwise transferring a business shall include in the contract of sale or similar instrument of conveyance a statement that the successor business is bound by any collective bargaining agreement to which the predecessor business is a signatory at the time of transferring the business, until the expiration of the agreement.

(4) The business shall not permanently replace employees who legally exercise the right to strike.

(5) The business shall maintain a neutral position with respect to their employees’ determination of collective bargaining representation.

(6) The business shall comply with all federal and state requirements for affirmative action in hiring and promotion of its employees, regardless of whether the business is included within the coverage of civil rights law.

(7) A business totally closing or relocating a facility shall first make good faith

offers of sale at fair market values for the plant, equipment, and inventory to the community in which the facility is located and to agents who represent a majority of the employees of the employer, who singly or in combination are seeking to form a community-owned, employee-owned, or jointly-owned business at the facility being closed.

(8) The business shall employ no employees at wages less than the state average annual wage, as calculated under RCW 50.04.355.

(9) The business shall provide basic health coverage for its employees.

(10) The business shall comply with all applicable federal and state environmental laws and regulations.

Sec. 4. Businesses receiving business assistance under the terms of section 3 of this act who fail to comply with the rules of conduct specified in section 3 of this act are subject to the following:

(1) The business assistance is rescinded and the entire amount of the monetary assistance is immediately due and payable, together with a ten percent penalty on the amount due and interest at twelve percent per annum. Interest accrues from the date notice of the recision is received by the business.

(2) If the failure to comply occurs within ten years of receiving authorization for industrial revenue bonds, the business that has received industrial revenue bonds shall be penalized an amount equal to the federal tax exemption received plus ten percent of the federal tax exemption together with interest at twelve percent per annum. Interest accrues from the date notice of the failure to comply is received by the business.

Sec. 5. Any business that receives the benefits of a state business program who violates any provision of this chapter is not eligible for any business assistance program for a period of ten years following the date of violation as determined by the director.

Sec. 6. (1) Businesses applying for business assistance shall submit employment impact estimates to the office of financial management specifying the number and types of jobs, with wage rates and benefits for those jobs, that the business submitting the application expects to be eliminated, created, or retained on the project site and on other employment sites of the business in Washington as a result of the project that is the subject of the application. The business applying for business assistance shall submit the employment impact statement for review and comment to employees who may be displaced, employee organizations or state-wide organizations representing employees, the local economic planning council, and other affected or interested community organizations or associations.

(2) A business assistance contract entered into by a business shall require the business to submit to the office of financial management a post-employment impact statement stating the net number and types of jobs eliminated, created, or retained, with the wage rates and benefits for those jobs, on the project site and on other employment sites of the business in Washington as a result of the project that is the subject of the contract. The statement must be submitted within six months after the project is completed or the business assistance for the project has ceased, whichever occurs first.

(3) Agencies providing business assistance shall notify the office of financial management of the amount of assistance received by a business and other information necessary to implement this chapter. The office shall review all participating businesses for compliance with this chapter, shall make any necessary administration determinations, and shall assess and collect any penalties for violations under the hearing and review requirements of chapter 34.05 RCW. Except as otherwise provided under subsection (4) of this section, penalties collected shall be paid into the state general fund. The office shall report annually to the governor and the appropriate legislative committees on these activities.

(4) Penalties imposed for violations of section 3(10) of this act shall be paid into the natural resource restoration account created in section 7 of this act. ...

Sec. 7. The natural resource restoration account is created in the custody of the state treasurer. The office of financial management shall deposit in the account all moneys collected under this chapter for violations of section 3(10) of this act. Expenditures from the account may be used only for natural resource restoration or environmental enhancement in the communities in which a business that has paid a penalty under section 3(10) of this act is located, for specific purposes and programs determined in consultation with representatives of the affected communities, employee organizations or state-wide organizations representing employees, the local economic planning council, and other affected or interested community organizations. Only the director of the department of ecology or the director’s designee may authorize expenditures from the account. ...

* * * * *

Appendix A:
National Governors Association Resolution

EDC-3. Economic Growth and Development Incentives

3.1 Preamble

The accelerated use of direct development incentives by states to attract economic investment is symptomatic of the continuing slow rate of growth of the nation's economy. State government finds itself pressured to take whatever steps are necessary to support job creation that otherwise might occur unaided under more healthy economic conditions.

The current economic climate also affects the way the business community behaves when making investment decisions. To minimize new investment in a plant and equipment, businesses readily take advantage of available subsidies in the form of development incentives.

Both the public and private sectors are responding to legitimate objectives. The issue is whether current practices by states that utilize development incentives and by businesses that take advantage of these incentives provide a rational, long-term strategy for either party.

The governors believe that the public and private sectors should undertake cooperative efforts that result in improvements to the general economic climate rather than focus on subsidies for individual projects or companies. We acknowledge that this will not be easy. It will require behavioral change by both government and business, balancing short-term self-interest with the long-term common good.

Finally, we do not believe this change should result from the threat of punitive measures or federal intervention. Governors and business leaders should operate in accordance with the following principles because they represent good public policy; in the long run, adherence to these principles will achieve the desired outcomes in terms of new jobs and higher income in all states and sustained profitability for businesses that invest and operate in these jurisdictions.

3.2 Principles of Mutual Cooperation

The governors offer the following principles for cooperation between state government and the business community. These principles support out mutual development objectives through the creation of a business climate in all states that will result in economic growth and the ability to compete in international markets.

3.2.1 Partnership Between State Government and Business. The relationship between state government and business should be a true partnership. Both state government and business have certain responsibilities and anticipated benefits. States and the business community within states should maintain an ongoing dialogue for the purpose of developing sound public policy and programs. States should implement policy processes that are nonthreatening to the business community and the public.

3.2.2 State Competition. States will always be in competition with one another for business investments. However, this competition should not be characterized by how much direct assistance a state can provide to individual companies. It should focus on how each state attempts to provide a business climate in which existing businesses can operate profitably and expand and new businesses can be established and survive. The competition should be judged on factors such as improvements in education, transportation, telecommunications, stable fiscal conditions, tax policies, business regulation, and the provision of quality public services.

3.2.3 Subsidies. States will continue to provide subsidies to businesses. However, they should adhere to the following criteria:

- Public resources should be used to encourage and foster development that otherwise would not occur, not merely to influence the location of private investment.

- Public subsidies should benefit and be available to all businesses -- large and small, new and existing, of domestic or foreign ownership -- based on individual state development objectives, identified criteria, and a calculated rate of return.

- Public subsidies should be in the form of investments in people, resulting in a better educated and skilled workforce, and in communities, by developing the physical and social infrastructures that are prerequisites of healthy economic development. Although such investments may be tied to the location or expansion of an individual company, the improvements in the workforce and community should not be wholly dependent on the fortunes of one business and should be viewed as assets for other businesses that locate in the community.

■ States and the business community need to identify and address specific tax and regulatory barriers that slow the rate of new investment in economic activity. When appropriate, the parties should jointly petition the federal government for regulatory relief.

■ To the extent possible programs (e.g., workforce training and research and technology transfer) that support mutual development objectives should be joint ventures between government and business.

■ The business community has an obligation to deliver the promised benefits (e.g., investment, jobs and payroll) in return for state development subsidies. The state owes to its citizens to ensure that all development agreements include provisions for recouping subsidies when businesses fail to meet this obligation.

■ When two or more governors believe that a company is engaged in counterproductive interstate competition in order to increase the value of a subsidy package, governors should feel free to exchange information related to the types of assistance being offered. In cases where a company informs one state of the specifics of another state's incentive package, governors should have the right to verify the accuracy of this information.

■ Using subsidies to encourage investment in distressed areas of the state or to increase employment opportunities that bring the underclass into the economic mainstream are viewed as legitimate development objectives.

Governors and representatives of the business community must support each other's efforts to adhere to these principles. State governments, businesses and citizens need to understand the relationship among tax bases, tax rates, and quality public services. Both government and businesses should engage in a continuing process to educate each other and the public on this issue. Business leaders should be prepared to stand by public officials when it is clear that one company is seeking unreasonable incentives at the expense of other businesses or the state in general. Business leaders must also be prepared to publicly voice their disapproval when corporations engage in counterproductive interstate competition. Conversely, governors must be prepared to withstand the political pressure that may result when they announce that their state will not engage in a bidding war for a high-visibility, high-impact project.

Time limited (effective August 1993-August 1995).

Appendix B:
Government Finance Officers Association Resolution

Policy Statement

Economic Development Incentives

Economic development incentives are tools used by government to retain or attract jobs and/or tax base. There are expenditures and/or opportunity costs as well as potential or actual benefits associated with these benefits. These costs and benefits often do not clearly appear in a budget or financial statement, and if they do, the overall impact of these incentive costs and benefits often take place over many years.

A number of major issues have been identified that are important to local governments' ability to evaluate and report economic development incentives which warrant additional research and action by GFOA through its committees. We support continuation of these efforts.

The Government Finance Officers Association recommends that any jurisdictions's economic development incentives have specific goals and criteria which serve to define (1) the economic benefit both the government and the entity expect to gain from the incentive; (2) the conditions under which the incentives are to be granted; and (3) the actions to be taken should the actual benefits differ from the planned benefits.

For any specific economic development incentive, it is recommended that the economic benefit to the government as well as the cost of the incentive be measured and compared against the goals and criteria that have been previously established.

Adopted: May 1, 1990

Appendix C: Economic Development Glossary

Described below are the most common forms of incentives used by cities, counties and states to promote economic development, particularly manufacturing.

Industrial Development Bonds

IDBs (also known as Industrial Revenue Bonds, or IRBs) are the single most common financing tool used to assist manufacturing companies in building, expanding, pollution-controlling or modernizing a factory. Although there are many legitimate criticisms of IDBs, for many smaller and medium-sized companies, IDBs are an important source of lower-cost capital; that is their main benefit.

IDBs work much like school bonds or sewer bonds. They are government-sponsored bonds mostly bought by rich people because the interest paid on them is federally-tax free and state tax-free. Although the proceeds of an IDB go to a specific company for its investment uses, IDBs get their tax-free status because the use of the money is (ostensibly, at least) serving a public purpose: economic development. IDB defenders argue that by making the proposed investment, companies may create or secure jobs, reduce pollution, improve tax revenues, reduce unemployment, or help distressed areas.

The problem is that only 13 states -- California, Colorado, Georgia, Maine, Minnesota, Massachusetts, Missouri, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington -- place any targeting requirements on their IDBs above and beyond the very broad federal eligibility rules (see below), and only a few of those 13 states' rules are highly specific. The other 37 states basically dole out IDBs on a first-come, first-served basis, without targeting, so that many projects that don't need the help or serve any particular economic development goal get the cheap financing. Any targeting or safeguards on IDBs must come through state or local legislation.

It is these public purposes -- ostensible and sometimes explicit -- that make IDBs useful as organizing targets, and have led some groups to advocate and win local or state IDB reforms. For instance, did the company create as many jobs as it promised? If not, should it pay back some of the money? In the case of Diamond Tool in Duluth, MN, the company actually started to run away to another state with IDB-financed machinery and was successfully sued by the City and the union. Playskool did the same thing in Chicago but dodged a trial with an out of-court settlement.

IDBs are federally enabled under Section 144(a) the Internal Revenue Code. The Code requires that 95 percent of the proceeds of the bonds be used for manufacturing facilities or equipment. The Code also limits any single bond to $10 million and limits any one firm to no more than a total of $10 million in bonds in any given municipality over a six-year period. IDBs usually range from 10 to 30 years in length.

States are capped in the total amount of IDBs that can be let annually in each state, to the greater of either $150 million or $50 per capita. Some states employ IDBs aggressively; others fall well short of their caps. States are allowed to monopolize or share their bonding rights with sub-units of government (cities and counties) as they wish; control and monitoring of the cap is usually retained by the governor or commerce department.

As of 1990, IDBs represented 23% of the value of all tax-exempt bonds issued. They cost the U.S. Treasury over $2 billion annually in lost revenue. Between $1 billion and $2 billion in new bonds are let annually. As part of tax reform in 1984 and 1986, Congress reduced the IDB cap (in order to help reduce the federal deficit), and restricted their use to manufacturers, because of complaints that IDBs had benefitted ventures such as liquor stores, casinos, and health clubs.

Whether a state, county or city lets an IDB, there must be a public process, just as there is for any public bond issue. There must be a written application available for scrutiny and a public hearing of the agency at which the application is discussed, and there must be an opportunity for debate on the project as well as a record of its handling by the agency. State laws govern disclosure and participation, but generally, IDBs get handled like other public expenditures.

Most of the energy spent processing IDB applications has to do with the financial safety of the deal: is the company credit-worthy and is the deal a good risk for the bond buyers? Bond counsel advises on whether the deal meets IDB regulations, investment syndicates often buy the bonds and then re-sell them to investors. Banks often provide repayment guarantees and control the disbursement of bond proceeds.

Citizens have every right to assert themselves and look into IDB projects. After all, it is taxpayers' money going into those projects (in the form of lost state and federal tax revenue); if a particular project did not perform well and the money could have been used at another, better project, then taxpayers certainly have the right to advocate for that. IDBs are a public investment, just like taxes going for any other public purpose, so taxpayers should be able to know what they are getting for their investment.

Most IDB-writing agencies do a poor job monitoring the results they get with their IDB investments. Few of them, for example, do annual compliance reviews to actually verify that companies have created or retained X number of jobs.

As well, given the fact that some new investment is for automation, IDBs can actually result in job loss. Companies should be required to be explicit about such outcomes in their original application, so that the public can judge the merits of the proposed project.

IDBs have been criticized because they are seldom targeted to companies that lack access to the private capital markets or that hire disadvantaged workers or locate in distressed areas. Indeed, a 1993 GAO survey of companies benefitting from IDBs found that 60 percent of the projects would have occurred anyway, without IDB financing.

Nowhere in the federal IDB regulations (and only in a very few states' IDB regulations) is it prohibited to use IDBs to help one city or state "raid" jobs from another. Indeed, IDBs were first used by Southern states to raid jobs from the North. FIRR advocates for a national IDB anti-relocation rule, like those that govern the Jobs Training Partnership Act and the Economic Development Administration (see below).

It is the experience of FIRR and GPP that IDBs work best when:

1. there is a high degree of citizen involvement and oversight in the application process.

2. the bonds are targeted to small and medium-sized, locally-based companies (including employee, minority or female-owned firms) that are more likely to remain loyal to the community and continue to reinvest locally.

3. IDB-letting agencies have a formal monitoring process to hold companies accountable to their application promises.

The same general principles apply to other development programs as well. Incentives work best when they are overseen by citizens, when they are needs-based and locally-targeted, and when they are monitored for performance.

Community Development Block Grants

CDBG monies are issued every year to cities; they are an entitlement program from the U.S. Dept of Housing and Urban Development (HUD). Cities use CDBG funds for a wide range of both "hard" (bricks and mortar) and "soft" (administration and consulting) activities. Often, cities "package" CDBG-funded improvements together with other incentives like IDBs and training grants.

For industrial development, CDBG monies can be used to pay for infrastructure improvements leading up to the factory property. So CDBG dollars can fund new sewer lines, water mains, rail spurs, highway access ramps -- all sorts of public improvements around the property to make the factory more functional or enable it to handle more production or more traffic. They can also be used to make loans for machinery and equipment, but are used more often for infrastructure.

HUD regulations state that cities must use the CDBG monies to "primarily benefit" low- and moderate-income residents. That has been interpreted to mean that 51% of the monies must be used in low- and moderate-income neighborhoods or in projects that save or create low- and moderate-income jobs.

CDBG budgets are public documents, and they must be openly debated by each city council that receives and disburses them. Records must be kept and disclosed of how CDBG dollars are used, and regional HUD offices oversee cities' CDBG performance. CDBG funds are also used for housing, retail, recreational, and general infrastructure projects, and because CDBG grants shrank in the Reagan-Bush era, cities usually have many more needs than they can meet with their CDBG budgets.

Citizens groups that have organized on CDBG have found several common problems:

1. too many funds go to upper-income, politically-favored neighborhoods that are not low- and moderate-income.

2. too many funds go to fancy downtown projects at the expense of neighborhoods that have greater needs for rehabilitation and infrastructure.

3. too many projects aid politically-favored developers, or gentrification projects.

Unfortunately, CDBG regulations are silent on the issue of relocation; it is legal for cities to use CDBG monies to help steal jobs from other cities. Indeed, it is often done.

FIRR and GPP are not aware of much organizing around CDBG and its use or abuse in manufacturing projects. Although CDBG monies have been included in some controversial factory incentive packages, usually they are a small part, and therefore get less attention.

FIRR and GPP also advocate federal anti-relocation regulations for CDBG. Until such rules are adopted, however, CDBG can sometimes provide a tool for organizing. Because of the low- and moderate-income rule, CDBG often presents a good coalition "handle" for unions to work together with community groups fighting for a fair share of Block Grant funds.

Especially in older urban areas, where infrastructure and land availability are big issues driving manufacturing jobs away, job advocates could argue for CDBG funds to build industrial parks in blighted areas and to rebuild infrastructure to help businesses stay (overpasses that are too low, better lighting for safety, etc.).

Urban Development Action Grants

UDAGs were discontinued by Congress in 1989, but between 1978 and 1989, they were one of the biggest and most controversial federal development programs. UDAGs were a HUD program, run as a quarterly competition among cities. Projects were awarded UDAGs based supposedly on merit, but there was always a lot of politics involved in them; politically-connected developers often got the most lobbying help from cities to win UDAGs.

UDAGs provide what is called "gap" financing. That is, UDAG monies (which are usually structured as low-interest loans) are intended to fill the "gap" between the financing needs of the project and what the developer is able to get financed in the private capital market. Indeed, in the UDAG application, the developer must sign a "but for" certification, that is, he or she must certify that the project would not go forward "but for" the UDAG financing.

UDAGs are for specific, one-time, site-specific projects; they are not a broad entitlement program like CDBG. In the UDAG application, the applying city must state how many temporary construction jobs and permanent project jobs will be created, and how much private investment will be "leveraged" by the UDAG.

If a UDAG project will cause jobs to be moved from one city to another, the Secretary of HUD must certify that the project will not "significantly and adversely" harm the labor market losing the jobs. As it evolved, this rule generally came to mean that the mayor of the city losing the jobs had to sign off on the proposal. This handle has been used on at least one occasion (vs. J.1. Case in Wisconsin, by the UAW) to block a UDAG and deter a runaway shop. The specific language is contained in HUD regulation 570.455:

> (c) except as specified herein, no assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary [of HUD] finds that such relocation does not significantly and adversely affect the level of unemployment or the economic base of the area from which such industrial or commercial plant or facility is to be relocated. However, moves within a metropolitan area shall not be subject to this provision.

Under an odd exemption to the Industrial Development Bond cap, UDAGs could be tagged onto a project simply to make the project eligible for more than IDB-cap amounts. Therefore, some large IDB deals were called "UDAG Specials" because they had a small UDAG attached to them to exempt them from the IDB cap.

Most UDAGs went for commercial projects like malls or hotel complexes, or for housing projects. Manufacturing projects were only about one-fifth of all UDAGs.

As an organizing handle today, UDAGs remain as "timebombs." It is inevitable that some of the plants that got UDAGs in the 1980s will try to close and run away in the loans, even though they may still be paying off their low-cost loans. In that way, UDAGs will in some cases present a useful handle: citizens will be able to argue that a company should stay for the life of the UDAG (even though the UDAG may not contain a specific legal requirement to that effect), since the company signed for the money in order to promote economic development in the community and should not run away with the money.

Final note: UDAG monies are paid back to the *city*, not to HUD. Therefore, most cities have "UDAG recapture" funds made up of those loan paybacks. Some community groups have won good agreements with cities dedicating those UDAG recapture funds for specific purposes, like affordable housing. For manufacturing, the UDAG funds could go for the creation of industrial parks, for industrial training, for more low-cost loans to help companies save energy or upgrade their quality, etc.

Job Training Partnership Act

JTPA is the successor to CETA (Comprehensive Education & Training Act) of the 1960s and 1970s. It is a program of the U.S. Department of Labor. Titles II and III of JTPA are of concern to dislocated workers and plant closing advocates.

Title III was renamed the Economic Dislocation Worker Adjustment Assistance (EDWAA) Act as of July 1, 1989. It is the law that provides federal funds to the states (and through the states to the Service Delivery Areas or SDAs and the Private Industry Councils or PICs) for the provision of services to dislocated workers. These funds are used for job search help and, to the extent possible, some retraining.

SDAs and PICs are the regional and local groups, formed of business, community, labor and education representatives, who administer JTPA funds (usually at a county-wide level) for all JTPA projects.

Title II includes a provision for on-the-job (OJT) training grants to employers who are hiring new workers who need training. Title II includes a special provision to encourage companies to hire unemployed or dislocated workers; it will pay as much as 50% of the new workers' wages on the new job for up to 26 weeks.

Title II can provide a handle against runaway shops. The labor standards section of the JTPA regulations explicitly prohibits the funds from being used to subsidize the transfer of work from one work site to another, or even from one worker to another (by layoff, reduced overtime, etc.) Section 141(c)(1) of JTPA regulations as amended in 1992 states:

> No funds provided under this Act shall be used or proposed for use to encourage or induce the relocation, of an establishment or part thereof, that results in a loss of employment for any employee of such establishment at the original location.

The regulations go on to state that JTPA funds may not be used at a relocating worksite until 120 days after the new site has started operating. If a violation is alleged, the Secretary of Labor must investigate. If a violation is found to have occurred, the Secretary must require the state or the SDA to pay back the misused money to the federal government, unless it is found that the state or the SDA "neither knew nor reasonably could have known (after an inquiry undertaken with due diligence)" about the relocation.

Because of these federal anti-relocation rules, many states have created their own *state*-funded training programs; it is often these state training programs that are associated with big job-raiding packages. FIRR is not aware of any such state-funded programs with anti-relocation rules; indeed, we believe that many of them were created to avoid the federal rules.

EDWAA (Title III) funds are used 40% at the state level and 60% at the SDA level or PlC level to assist dislocated workers. All dislocated workers are eligible for EDWAA services, whether or not they come from a business that gave a Worker Adjustment Retraining Notification (WARN, the federally-mandated 60-day notice).

EDWAA is designed to work closely in tandem with WARN. EDWAA regulations basically require the state's Dislocated Worker Unit's Rapid Response Team to be on site at a WARNing company within 48 hours of the notice to be sure services are being provided affected workers.

EDWAA includes some very positive regulatory language. For the first time, the DWUs are required to do Early Warning: to actively monitor companies, unions and labor relations, seeking out potential dislocation and trying to be pro-active both to get workers even better service and to intervene against job loss.

EDWAA also enables the states, from their 40% set-asides, to fund pre-feasibility studies for worker buyouts if a buyout might save jobs. This is the first time Department of Labor funds have been authorized for such uses and a few FIRR groups already have experience performing pre-feasibility analyses with EDWAA funding.

Enterprise Zones

Enterprise zones (also known as "Empowerment Zones") are an idea originated in England that have been embraced by conservative politicians and business groups in the U. S. Basically, the argument is that blighted urban or rural areas can be revitalized if zones are designated in them which have exceptionally low tax rates. The zones, it is argued, will then attract new plants which will create jobs and promote development.

Enterprise zones, until early 1994, were authorized only at the state level. As of 1991, thirty-seven states and the District of Columbia had passed enterprise zones laws; there are about 500 such zones nationwide.

Typically, a zone will include several acres of urban land gerrymandered in an irregular shape to include both blighted areas and, often, properties owned by politically-connected companies. For companies located in the zone or who move into it, several kinds of tax breaks are offered. Usually, local property and real estate taxes are abated for a set number of years, then phased back in. The company may be given a state corporate income tax credit for each person it hires. The company may also get excused from state inventory taxes on its working stock, on state sales tax for its new equipment and/or its raw materials, and from local income taxes, if there are any.

Originally, supporters of enterprise zones wanted far more sweeping concessions. They wanted zone companies to be exempt from supervision by the Occupational Safety and Health Administration and the Environmental Protection Agency. They also wanted exemptions from the National Labor Relations Act and the Fair Labor Standards Act (so that, for example, zone companies could legally fire union organizers and not have to pay overtime). These proposals, though never enacted, caused some critics to charge that zone supporters wanted to import Third World conditions to the U.S. (or bring 19th century conditions to the 20th).

Enterprise zones are controversial, and it is the position of FIRR and GPP that they are poor public policy. There are numerous studies on whether the zones actually work as they are intended, and the findings tend to be highly partisan.

Critics of enterprise zones (including FIRR and GPP) make the following arguments against them:

1) the zones are expensive: they cost state and local treasuries a lot of money that other businesses and homeowners have to make up;

2) the zones don't create new jobs; they only cause existing jobs to be reshuffled from one site to another, "robbing Peter to pay Paul;"

3) the kind of companies that seek zone benefits are likely to stay only for the duration of the abatements -- they are seldom rooted in the community;

4) the designation of the zone's shape often involve political favoritism and windfall tax cuts for some companies that were already there and don't need breaks to stay;

5) because so many of the zone benefits are tied to property and inventory rather than jobs, the zones attract a lot of warehousing, with few jobs at low wages.

State enterprise zone regulations vary widely, but generally they call for a public comment process at the time they are created, and a local zone association to administer and monitor each existing zone. For those interested in zone reforms, FIRR and GPP recommend reviewing the state zone regulations, interviewing the local zone association director and obtaining the zone association's annual reports, and seeking out academics, state agencies (such as the state auditor) or others who may have studied the zones already. It would also be helpful to contact those state legislators who originally supported and opposed the zone legislation.

Final note: The new federal Empowerment Zone program took effect shortly before *No More Candy Store* went to press. FIRR and GPP do not yet have a published analysis of the new federal program.

Economic Development Administration

The EDA is an agency of the U.S. Department of Commerce. It provides both annual formula grants to cities and counties, as well as targeted grants and loans. EDA currently funds in four categories: Technical Assistance, Public Works (Infrastructure), Planning Grants, and Title IX.

As a deterrent to runaway shops, the Public Works program offers a handle. EDA regulations prohibit of their funds use to subsidize the transfer of work from one labor market to another. However, the ban lasts only four years. The mayor (or county executive) must sign a pledge to abide by the non-raiding regulations. If a company is caught violating the regulations, the EDA forces the company to pay back funds associated with the stolen jobs. Industrial parks (which often benefit from EDA infrastructure assistance) create the most compliance problems. EDA would prorate, based on a company's square footage share of the park, the amount given to the whole park that a company would have to pay back.

Here is the specific language from Section 309.3 of the EDA regulations:

> Nonrelocation. EDA financial assistance will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. A commuting area is that area defined by the distance people travel to work in the locality of the project receiving EDA assistance. This restriction will apply to financial assistance in the forms of grants and loans...for a period of forty-eight (48) months from the date of approval by EDA of financial assistance. In the case of loans guaranteed by EDA, the restriction will apply from the date on which EDA authorized a lender to apply for an EDA guarantee until one year after the date of the final disbursement by the lender of the guaranteed loan. This restriction applies to the transfer of jobs, not personnel. Every recipient of financial assistance has an affirmative duty to comply with the requirements of this regulation and a

duty to inform EDA of every instance in which an employer transfers jobs from one area to another in connection with the EDA financial assistance during the periods defined herein. In the case of loans guaranteed by EDA, the lender, as well as the borrower, must inform EDA of such instances of job transfers.

...(b) Employers prohibited from transferring jobs will include:
(1) Grantees;
(2) Businesses within the project boundaries of grants as described in the grant agreement; in the case of grants to fund area-wide utility systems, businesses which use greater than ten percent (10%) of the total capacity of the utility system as improved by the EDA grant;
(3) Borrowers;
(4) Lessees or borrowers or grantees; or
(5) Affiliates subsidiaries, or other entities under direct, indirect, or common control of the foregoing.

...(k) Each applicant for financial assistance will submit its certification of compliance with these nonrelocation requirements as part of its application....

...(m) When EDA determines that these requirements have been violated, EDA will terminate for cause the financial assistance made available by EDA. The recipient will be obligated to repay to EDA the full amount of that financial assistance, plus interest from the date determined by EDA upon which the violation occurred, at the U.S. Treasury Current Value of Funds Rate. [The regulation defines relocation in detail.]

Title IX is divided into two programs:

1) Sudden and Severe -- for large plant closings and military base closures, etc.; it has two parts: strategy grant and public works grant.

2) Revolving Loan Fund -- the city proposes a management plan, which EDA must approve, then the local development office sets up a portfolio of loans. Most of the loans are for only a small part of the whole project to leverage private investment. The EDA loans may not exceed $500,000, and EDA recommends keeping them under $100,000. Typical local loans include small business start-ups or expansions.

Tax Increment Financing (TIF) Districts

TIF Districts are state-enabled, locally-administered devices to promote economic development in small, geographically-targeted areas. As of 1992, only eight states had TIF programs.

Typically, a state law will permit a municipality to designate a TIF district in an area that is designated as disinvested, such as an aging downtown, a neglected industrial area, or a neighborhood with older housing. Boundaries are designated and the "base" rate of tax assessment is set. Base taxes continue to flow to local bodies of government.

The "increment," or the amount those assessments in that area will go up over time, is the basis for the TIF. The incremental increases in tax revenues are retained for the district and are dedicated to improvements for the area. Those improvements may include infrastructure, wholesale land clearance and redevelopment, loans for rehabilitation or improvements, or even planning costs for redevelopment. The anticipated revenue from the tax increment can also form the fiscal basis for bonds to be let for even greater amounts so that redevelopment can occur more quickly. Of course, as redevelopment begins, the tax increment normally grows since the property is becoming more intensively developed.

TIFs, like enterprise zones and tax abatements, raise issues of equity and political favoritism. Property owners within the TIF district gain the benefit of additional public investments around their properties during the life of the TIF, and these public investments could be going to other areas instead. Cities face issues of fairness and balance as they plan the durations and the scopes of TIF projects. FIRR is not aware of anti-relocation aspects within TIF legislation, and it is our impression that most TIF activity is directed to revitalizing retail districts.

Tax Abatements/Tax Credits

Tax abatements and credits are, with IDBs, the most common form of industrial incentive used by states and cities. They are also probably the least understood, most poorly-documented, and most varied kind of incentive program. And despite (perhaps because of) how poorly they are understood and documented, they are the most controversial.

As the chart on page 3 indicates, tax credit programs have proliferated so that states and cities now abate or credit almost every kind of corporate tax they collect: property and real estate, inventory, sales, corporate income, and utility taxes. They may also grant accelerated depreciation or tax credits for special activities such as research and development. Abatements and credits are also major enterprise zone benefits.

Abatements usually apply only to the increase in property values caused by new investment or rehabilitation; credits . They may be 100% or partial; they may last for set durations (usually 5 to 20 years) at fixed rates; or they may phase out over years.
At least 32 of the 50 states now grant at least one type of abatement, another 12 grant at least one form of tax credit, and the number of states and cities offering abatements or credits has increased substantially in the last fifteen years. Twenty-one of the 32 abating states shelter school districts' funding; 11 do not.

FIRR and GPP's experience with tax abatements and credits indicate the following:

1. Few states or cities keep track of how much abatements or credits *cost* government in foregone revenue; therefore they have no real cost-benefit analysis of such transactions. Abatements are one of the most "invisible" forms of incentive.

2. Even fewer states or cities monitor the *performance* of companies which are granted tax abatements or credits. Even if a deal sounds good up front, most governments don't even know what they are getting for these large, multi-year investments.

3. Large companies tend to benefit most from abatements, because they are best able to hire tax-cut consultants and pay for political lobbyists, and because they are most willing to move or threaten to move.

4. In some areas, tax abatements cost government enormous sums, hurting education and other public services such as infrastructure, sanitation, fire protection, public safety and other economic development activities. In Louisiana, for example, 18% of the state's entire taxable property base is abated.

For all of these reasons, tax abatements and credits are fertile ground for organizing and reform. And they present an excellent coalition issue, because unions (both private and public sector), citizens' groups, small businesses, and homeowners all have common ground in minimizing the loss of tax revenues and in maximizing the economic development performance of those companies that do benefit.

Like Block Grants or Development Bonds, tax abatements are the subjects of public hearings, in this case usually the board of tax commissioners. Usually, records must be kept of the application and promises made at the time the abatement is sought.

Tax abatements have figured prominently in a few lawsuits against runaway shops, most notably in Ypsilanti Township vs. General Motors and Norwood, Ohio vs. General Motors. However, in both cases, courts eventually found that GM had not made a binding commitment despite massive tax abatements. These agreements, which lacked accountability, are, sadly, quite typical.

FIRR and GPP believe that tax abatements and credits are an underlying cause of many states' fiscal crises. FIRR and GPP also believe that abatements and credits are a primary cause of the shrinking corporate share of total tax payments, making the tax load heavier on working families and small businesses.

A Few Basics About Organizing Against Abuse of Incentives

Although there have been many disputes involving industrial incentives, only a few of them have resulted in clear-cut "legal" victories. Because of the embryonic state of incentive regulation in the United States today, anyone approaching this issue should always consider the extra-legal aspects of a dispute and think long-term about reform.
For example, if a company is using JTPA funds to subsidize a runaway shop, it may or may not be possible to win a payback of the abused funds; in any case, that wouldn't stop the shutdown. But the fact that federal monies are being abused should enable concerned workers to seek the involvement of their Member of Congress and their Senators, and the two states' governors.

Similarly, if a company runs away from an abatement that saved it millions of dollars, there may not be a specific legal handle to stop it, but there is a big organizing opportunity to involve everyone who cares about public services and fair tax burdens. Broadening the fight in such ways will always improve the chance of winning other tangible benefits, such as a better effects package, more retraining assistance, and/or community severance benefits. As they say: "The squeaky wheel gets the grease."

Before launching a public campaign involving abuse of an incentive, be sure to lay the groundwork. Know the history of the program. Know who its main critics and supporters have been. Find out about past disputes and how they were resolved. Be sure all potential reform allies are informed of the dispute (e.g., state representatives, city counselors, state labor council, etc.) Be clear that total legal victory may not be possible because of technicalities, but that there are many other forms of victory. Be sure to have other tangible goals in mind.

This is especially important for a long-term reform agenda. For behind nearly every state or city law to deter abuse of incentives there lurks a small, local dispute that was organized, broadened, and exposed for the bigger issue it really is.

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