Model Legislation for Accountability in Economic Development: Clawbacks and Rescissions

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BACKGROUND

Clawbacks and rescissions are the true test of whether a state or local government is serious about accountability. If taxpayers subsidize a company to create 100 jobs, but the company creates only 50, shouldn't the cost of the deal shrink to match the benefits? And in these times of fiscal austerity, shouldn't governments closely shepherd their economic development dollars to make sure every investment either pays off, or the money is redeployed to other deals that are beneficial to taxpayers?

The Model "Clawbacks and Rescissions Act" provides taxpayers with a "money-back guarantee" if a company that receives economic development subsidies fails to create new jobs or maintain its current employment level. The bill also requires the state to recapture all or a portion of the subsidy from corporations that do not fulfill the requirements needed to obtain the subsidy.

Taxpayer Protection Act (Clawbacks and Rescissions)

I. Definitions

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

- ***"Date of subsidy"*** means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation provided, however, that where the subsidy is for the installation of new equipment, such date shall be the date the corporation puts the equipment into service and provided, further, that where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

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

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

- ***"Granting body"*** means any agency, board, office, public-private partnership, public benefit corporation or authority of the State or a local government unit that provides a development subsidy.

- ***"Local government unit"*** means an agency, board, commission, office, public benefit corporation, or public authority of a political subdivision of the State.

- ***"New Employee"*** means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the state. "New employee" does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least 6 months before hiring the employee.

- ***"Part-time job"*** means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

- ***"Project site"*** means the site of a project for which any development subsidy is provided, as specified by street address, name of locality and ZIP code.

- ***"Property-taxing entity"*** means any entity which levies taxes upon real or personal property.

- ***"Recipient corporation"*** means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

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

- ***"State"*** means an agency, board, commission, office, public benefit corporation or public benefit authority of the State.

- ***"Subsidy value"*** means the face value of any and all development subsidies provided to a recipient corporation. The face value of a loan means the amount of the loan.

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

- ***"Duration of subsidy"*** means as many years as a subsidy benefits a recipient corporation, such as the number of years a tax credit may be claimed and/or carried forward, the number of years a loan is for, or the number of years a property tax reduction applies.

II. Subsidy Recapture or Rescission

1. Public agencies awarding subsidies shall cross-check job-creation and other performance data submitted by recipients against information sources such as unemployment insurance records or shall conduct period audits of company submissions using outside auditors.

2. A recipient corporation shall be subject to subsidy recapture or rescission if:

   a. It fails to achieve its job creation, wage, and health care requirements for the project site within two years of the date of subsidy; or

   b. It fails to maintain its wage and benefit achievements as long as the subsidy is in effect, or five years, whichever is longer; or

   c. The corporate parent of the recipient corporation fails to maintain, for the duration of the subsidy or for five years, whichever is longest, at least 90 percent of its employment in the state, with the basis of December 31 of the year the subsidy was granted.

III. Subsidy Recapture or Rescission shall take place as follows:

a. For each year the recipient corporation falls short of its obligations for job creation, wages, and health care insurance, the value of the subsidy shall be reduced on a prorated basis by the same share of jobs that were not created and/or that failed to meet wage and health care insurance obligations. If the subsidy has already accrued to the recipient corporation, the state shall recapture the subsidy reduction.

b. If a recipient corporation falls short on its job creation obligations by 25 percent or more for three consecutive years, the pro rata recapture shall apply for the third year in default and the subsidy shall be rescinded effective January 1 of the following year.

c. For each year the corporate parent fails to maintain at least 90 percent of its base employment level in the state, the subsidy shall be reduced at twice the rate of the corporate parent's job loss from 100 percent of its basis of December 31 of the year the subsidy was granted. If the subsidy has already accrued to the recipient corporation, the state shall recapture the subsidy reduction.

d. If the corporate parent fails to maintain at least 90 percent of its base employment level in the state for three years in a row, the pro rata recapture shall apply for the third year in default and the subsidy shall be rescinded effective January 1 of the following year.

IV. Private Enforcement Action

If a granting body fails to enforce any provision of this Act, any individual who paid personal income taxes to the state in the calendar year prior to the year in dispute, or any organization representing such taxpayers, shall be entitled to bring a civil action in state court to compel enforcement under this statute. The court shall award reasonable attorney's fees and costs to such prevailing taxpayer or organization.

V. Enforcement Records are Public Records

Agencies shall publish on their website summary statistics about their enforcement activities as well as lists of recipient companies involved in those activities.
All records required to be prepared or maintained under this Act, including but not

limited to applications, performance reports, recapture proceedings, and any other records relating thereto, shall be subject to disclosure under the state's Open Records Act.

VI. Severability

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