

Model Legislation for Accountability in Economic Development

Good Jobs First

www.goodjobsfirst.org

BACKGROUND

Disclosure. The purpose of economic development disclosure is to allow taxpayers to see the costs and benefits of every deal, every year. That means company-specific reporting on the subsidy deal as originally granted, and then annual reporting on each deal's actual outcomes in terms of jobs created, wages and benefits paid, capital invested, and/or other public benefits.

Such sunshine is good for many reasons. Competing companies can scrutinize each other's deals, and small businesses can look at deals given to big businesses. Taxpayers can decide for themselves if the benefits of a deal match its costs. Journalists can match up subsidized companies with campaign finance and lobbying data. Local governments can examine the geographic distribution of deals and consider them for regional fairness. Advocates can see if subsidies are helping create middle-class jobs for working families and communities.

The Model Disclosure Act shines a light on companies that receive taxpayer-funded economic development subsidies and/or tax breaks, and highlights whether taxpayers received a good return on their investment. It requires the state to release a publicly-available report detailing each deal's actual outcomes on jobs created, wages and benefits paid, and other public benefits.

Job Creation and Job Quality. Increasingly, states and cities have moved away from the idea that "any job is a good job"—particularly when taxpayer-funded subsidies are involved—and are working to structure subsidies to create family-sustaining jobs for local residents. *Job quality standards* are requirements that subsidized companies create jobs that meet certain criteria, including wage levels, availability of health insurance, and full-time hours.

Job creation and job quality standards are critical because without them, taxpayers have no guarantee that they are getting any "bang for their buck." That is, without specific rules governing how many jobs must be created, at what cost, and at what wage and benefit levels, past experience has shown that many subsidized companies will actually

lay workers off or pay poverty wages. It is also important to prevent companies from getting subsidies when they merely relocate existing jobs from another location, either within the state or from another state.

When subsidized companies fail to create jobs or create fewer jobs than expected, taxpayers can incur enormous costs per job, raising issues of waste and fairness to competing businesses. When companies pay poverty wages or fail to provide health insurance, taxpayers are likely to incur hidden costs in the form of social safety-net spending such as Medicaid, State Children's Health Insurance, food stamps, the Earned Income Tax Credit, and housing and heating assistance.

Standards can be used in all types of subsidy programs: training grants, tax abatements, industrial revenue bonds, enterprise zones, tax increment financing (TIF) and tax-free loans. Most of the standards are statutory, the result of initiatives of community activists, elected officials, or both. Some are agency policies, while others are a combination of statute and policy, with standards defined by development agencies in accordance with guidelines set out by legislation.

The Model "Job Creation and Job Quality Standards Act" requires companies that receive state economic development subsidies and tax breaks to create new full-time jobs that provide decent wages and benefits.

Clawbacks and Rescissions. 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.

Unified Reporting of Property Tax Abatements and Reductions. Property taxes are sometimes the largest tax a company pays, which means property tax abatements can be the most lucrative subsidy they receive. In order to fully understand the costs and

benefits of economic development, it is critical to have access to this data. Yet, very few cities, counties, or states aggregate this data or make it available online.

The “Unified Reporting of Property Tax Abatements and Reductions Act,” requires the State Department of Revenue to issue annual reports on which companies are receiving property, the total amount of that tax abatement, and the total amount of property tax revenue lost during the tax year as a result. The reports must also be made available online.

Unified Economic Development Budget. The purpose of a Unified Economic Development Budget (UEDB) is to provide policymakers and taxpayers with a comprehensive accounting of all economic development spending—all in one place.

This is critical for two reasons. First, because different agencies handle different programs, the records are not combined, and they may be reported in non-uniform ways that make comparisons difficult. Second, some forms of tax expenditures—especially corporate income tax credits—have historically been far less transparent in some states than other kinds of tax breaks (such as property tax abatements available at county tax assessors’ offices).

That’s a big problem, because for many states, tax spending for economic development dwarfs appropriated spending, by ratios of 4-to-1, 6-to-1 or even higher. In times of fiscal stress, that causes some states to make distorted decisions. For example, they may cut appropriations (such as worker retraining programs) while not touching tax breaks (such as enterprise zone credits).

When public officials have to make tough budget decisions, they should be able to see all forms of spending for economic development so they can make fully informed and balanced decisions based on a complete picture of the whole development budget.

Although several states have enacted something called a Unified Economic Development Budget (UEDBs), some are too incomplete to be considered as models (such as Texas and Illinois) and others are still falling short of their potential as enacted. The language here draws upon the best UEDBs enacted so far. It also reflects several “do it yourself” UEDBs published by state tax and budget watchdog groups.

Good Jobs First Model Legislation for Economic Development Accountability

I. Definitions for all portions of the model legislation

- **“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. Taxpayer Right to Know on Jobs Act (Reporting and Disclosure)

Section 1. Annual Corporate Performance Reports

1. Each corporation subsidized by **[SPECIFY PROGRAMS]** shall file a disclosure report with the respective agency that granted the subsidy no later than February 1 each year. The reporting form shall be issued by the agency and include the following information:
 - a. The name, street and mailing addresses, phone number, and chief officer of the recipient corporation along with its NAICS industry code and its Dun's identifier number;
 - b. The project street address where the subsidized activity takes place if it is different from the address in (a).
 - c. A summary of the number of jobs required by the terms of the subsidy deal, and actual jobs created or lost as of December 31 of the previous year. Broken down by full-time, part-time and temporary positions, and by wage groups.
 - d. Whether health care insurance coverage is provided to the employees at the project site, and if so, the share of the policy premiums paid by the company;
 - e. The total employment in the state of the recipient's corporate parent on the two previous dates of December 31, broken down by full-time, part-time and temporary positions;

[AS NEEDED] A summary of capital investment **[OR OTHER ACTIVITY]** required by the terms of the subsidy deal, and actual capital investment made as of December 31 of the previous year.

- f. A statement as to whether the subsidized project has, during the previous calendar year, resulted in reduced employment at any other site controlled by the recipient corporation or its corporate parent, inside or outside the state as a result of automation, merger, acquisition, corporate restructuring, relocation, or other business activity.
 - g. A statement summarizing any instance, during the previous calendar year, in which the recipient company, or a parent or subsidiary entity, was determined by a government agency to have violated any federal, state or local law or regulation relating to environmental protection, taxation, labor standards, or employment discrimination; or was notified that an investigation of a possible violation had been initiated.
 - h. A signed certification by the chief officer of the recipient corporation as to the accuracy of the progress report.
2. Recipient companies shall file such annual performance reports for the duration of the subsidy, or not less than five years, whichever period is greater.
 3. The granting body and its designated agent's department shall have access at all reasonable times to the project site and the records of the recipient corporation in order to monitor the project and verify the Corporate Performance Reports.
 4. A recipient corporation that fails to provide the granting body with a completed Corporate Performance Report on time shall be subject to a fine of not less than \$500 per day to commence within ten working days after the February 1 deadline, and of not less than \$1,000 per day to commence twenty days after such deadline.
 5. A recipient corporation that fails to provide the granting body access to the project site at a reasonable time shall be subject to a fine of \$1,000 per day starting with the day access is first not provided.

Section 2. Annual Agency Report Compilations

1. The [**SPECIFY AGENCIES**] shall publish prominently on their respective websites a compilation of the Annual Corporate Performance Reports no later

than April 1 of each year.

2. The report shall contain all of the data from the Annual Corporate Performance reports both in a searchable database and as a spreadsheet that can be downloaded in its entirety. When a new report is posted, earlier versions of the data shall remain available on the website.
3. The report shall also contain the granting body's determination of whether the company has yet met its obligations for job creation, wages, and benefits as required by the subsidy. If the granting body has previously determined that a company has achieved its obligations, the report shall contain the granting body's determination of whether the company has maintained its achieved obligations.
4. Along with the report, the granting body should also post PDF copies of key documents relating to the subsidy award.
5. If the granting body determines that the company has failed to achieve its obligations for job creation, wages and benefits as required by the subsidy in the required period of time, or if the granting body determines that the company has failed to maintain its achieved obligations, the report shall also state what penalty or penalties the granting body has imposed upon the company.
6. The report will also include the granting body's verification that the company's corporate parent has maintained at least 90 percent of its employment in the state since December 31 of the year the subsidy was granted. If the granting body determines that the company's corporate parent has failed to maintain such a level of employment, the report shall include whatever penalty or penalties the agency has imposed upon the company.
7. A link to the website with the annual compilations should be included in the state's general transparency website.

Section 3. Unified Reporting of Property Tax Reductions and Abatements

- A. Each state or local property-taxing entity shall annually submit a report to the state Department of Revenue regarding any real property in the entity's jurisdiction that has received a property tax abatement or reduction during the fiscal year, including Payments in Lieu of Taxes (PILOTs). The report shall contain information including but not limited to:

1. The name of the property owner;
 2. The address of the property;
 3. The start and end dates of the property tax reduction or abatement; and
 4. For each tax year, the effective amount of the tax reduction, by both percentage rate and by dollar value, including as applicable Payments in Lieu of Taxes.
- B.** Each property-taxing entity shall also submit a report to the state Department of Revenue regarding any real property that is publicly owned and leased to a private entity for the purpose of economic development, thereby exempting the private entity from property taxes. The report shall contain the same information as specified in A1, A2, A3 and A4.
- C.** Each property-taxing entity shall also submit a report to the State Department of Revenue that sets forth the total property tax revenue lost during the tax year as a result of all property tax abatements and reductions in the entity's jurisdiction.
- D.** The reports required under sub-sections (A), (B), and (C) shall be submitted in electronic spreadsheet form to the State Department of Revenue, in a format promulgated by the Department, and shall be submitted no more than three months after the end of the tax year.
- E.** The Department shall annually compile and publish on its website all of the data contained in the reports required under sections (A), (B), and (C) in both written and electronic spreadsheet form that can be downloaded no more than six months after the end of the tax year.
- F.** If a property-taxing entity fails to submit its reports to the State Revenue Department within the prescribed time, the Department shall notify the State Comptroller, whereupon the Comptroller shall withhold payments of all state monies due to the delinquent entity until the entity files its reports with the Department.

III. Creating Good Jobs First Act (Job Creation and Job Quality Standards)

Section 1. Job Creation Standards

- A.** The recipient corporation shall create at least one new full-time job in the state for each \$35,000 of assistance it receives for a project, cumulatively from **[LIST COVERED PROGRAMS]**.
- B.** The recipient corporation's obligation to maintain such newly created jobs in the state shall remain in effect for the duration of the subsidy, or for five years, whichever is longest.
- C.** The job creation requirements herein shall be used to determine whether a company is liable for subsidy recapture or rescission.
- D.** The recipient corporation may not count a job as new if the same job previously existed in another facility controlled by the recipient corporation in the United States.

Section 2. Job Quality Standards

- 1.** In order for a job to count as a new, full-time job under Section 1 (A), it shall have the following features:
 - a.** Wages for project sites located in a Metropolitan Statistical Area, as defined by the federal Office of Management and Budget: the average hourly wage paid to non-managerial workers at the project site must be no lower than 100 percent of the state rate for the industry, as most recently established by the United States Bureau of Labor Statistics.
 - b.** Wages for project sites located outside of Metropolitan Statistical Areas: the average weekly wage paid to non-managerial employees must be no lower than 100 percent of the rate in the county for the industry at the project site, as most recently established by the United States Department of Commerce.

- c. Health Insurance. The recipient corporation must offer health insurance coverage and at least half of the cost of the insurance premium must be paid by the recipient corporation.
- d. Hours. The job must provide at least 1,820 hours of work per year.
- e. Paid Leave. The job must provide a total of at least 12 days per year of paid leave for vacation, family care, or other personal time off.
- f. Targeted Hiring. The recipient corporation must ensure that at least thirty percent of all work hours are performed by individuals whose primary place of residence is within a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau. The recipient corporation must ensure that at least ten percent of all work hours are performed by individuals who, prior to commencing work, have an annual household income of less than \$40,000 and face at least two of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) lacking a GED or high school diploma; (5) having a criminal record or other involvement with the criminal justice system; (6) suffering from chronic unemployment; (7) having been emancipated from the foster care system; or (8) being a veteran.
- g. Apprenticeship Participation. For jobs in the construction industry, the recipient corporation must participate in an apprenticeship program that is registered with the state or federal government.

IV. Taxpayer Protection Act (Clawbacks and Rescissions)

Section 1. 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.

Section 2. 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.

Section 3. 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.

Section 4. 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.

V. Economic Development Full Accounting Act (Unified Economic Development Budget)

Section 1. Annual Performance Reports

- A.** The state Department of Revenue shall submit an annual Unified Economic Development Budget to the legislature no later than three months after the end of the state's fiscal year. The report shall be posted publicly on the Revenue Department's website, with specified portions available as spreadsheets that can be downloaded. The report shall include all types of expenditures for economic development during the prior fiscal year, including but not limited to:
 - 1. Company-Specific Tax Expenditures:** The amount of uncollected, forgiven, credited or rebated state tax revenue, line itemized by program, resulting from the following programs: [**SPECIFY HERE THE NAMES OF TAX-BASED ECONOMIC DEVELOPMENT PROGRAMS**] resulting from every corporate tax credit, abatement, exemption, and reduction provided by the state or a local governmental unit for the purpose of job creation and/or retention including

but not limited to: gross receipts, income, sales, use, raw materials, excise, property, utility, and inventory taxes.

2. **Program-Specific Appropriated Expenditures:** All State appropriated program expenditures for economic development, line itemized for the following programs: [**SPECIFY HERE NAMES OF STATE-FUNDED ECONOMIC DEVELOPMENT PROGRAMS**] for every State-funded entity with an economic development mission, including but not limited to: state Department of Commerce, state Department of Employment and Training, vocational education programs, state university research programs, Manufacturing Extension Program, Workforce Investment Boards, Economic Development Commissions, Industrial Development Authorities, Regional Development Authorities, and Finance Authorities.
3. **Agency-Specific Appropriated Expenditures:** All state-appropriated expenditures for the administration of economic development agencies, line itemized for the following agencies: [**SPECIFY HERE NAMES OF STATE-FUNDED ECONOMIC DEVELOPMENT AGENCIES**] for every state-funded agency with an economic development mission, including but not limited: to state Department of Commerce, state Department of Employment and Training, vocational education programs, state university research programs, Manufacturing Extension Program, Workforce Investment Boards, Economic Development Commissions, Industrial Development Authorities, Regional Development Authorities, and Finance Authorities.
4. A three-year cost-trend analysis for each reported program and agency, describing the rate of growth or decline in spending over time, and including the number of corporations assisted each year.
5. For each tax year, the name of each corporate taxpayer which claimed any tax credit, abatement, exemption or reduction under subdivision (1) of any value equal to or greater than \$5,000, together with the dollar amount received by each such corporate taxpayer.
6. All information in subdivision (1), (2), (3), (4), and 5 shall be posted in a spreadsheet form that can be downloaded from the Revenue Department website.
7. Any tax credit, abatement, exemption, or reduction received by a corporation of less than \$5,000 each shall not be itemized. For each tax year, the

Department of Revenue shall report an aggregate dollar amount of such expenditures and the number of companies so aggregated for each tax expenditure.

VI. Severability

If any provision of these Acts 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