



Leaving Taxpayers in the Dark

**The Urgent Need to Improve Transparency and Accountability
in Wisconsin's Economic Development Subsidy Programs**

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WISPIRG
Foundation

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Executive Summary

Despite legislative efforts at improvement since 2007, Wisconsin's economic development subsidies lack transparency and accountability. According to the most recent data on the state website, over \$414 million in business subsidies were dispensed in calendar years 2009 and 2010: a mixture of grants, loans, tax credits, and revenue bonds. But very little information is available about the goals of these subsidy programs, the outcomes at companies who receive them, or the benefit to the Wisconsin taxpayers who pay for them.

In 2006 an audit found a lack of public disclosure and other problems with Wisconsin's economic development programs. State leaders responded in 2007 by passing Act 125, a law to improve transparency and accountability. Since then, we've seen minor improvements, including the creation of a searchable website with limited information and commitments to reclaim some subsidies when companies fail to deliver promised benefits. But, another audit this year found many of the same problems persist. Some shortcomings seem to be getting worse. Taxpayers deserve much better.

The problems are particularly concerning given that the state functions of dispensing economic development were transferred to a semi-private entity, which is subject to less of the normal checks and balances of government and the civil service. At just the time that Wisconsin needs greater accountability for its subsidy programs, it appears to be getting less.

Reporting requirements for the companies who receive economic development subsidies are inconsistent, unclear and inadequate. There is little evidence that state agencies enforce whatever reporting requirements do exist. As a result, state leaders and taxpayers can glean very little from the minimal reporting that is provided. What's worse, few companies are held accountable for fulfilling the goals outlined

in their subsidy contracts. When asked how much subsidy money has been recaptured from companies who did not fulfill their contractual goals since 2007, the staff of the Wisconsin Economic Development Corporation (WEDC), the newly formed agency responsible for economic development in Wisconsin, responded that it would take tremendous staff resources to compile this information. If they aren't compiling this information, it seems unlikely they are acting on it.

This lack of transparency and accountability in Wisconsin's economic development subsidy programs means that taxpayers are left with little to no information about what they are getting for the hundreds of millions of state and federal tax dollars in these subsidy programs administered by the state. There is little guarantee that those tax dollars are getting taxpayers any "bang for the buck."

The shortcomings are evident even by examining the projects that are included in WEDC's searchable database of economic development subsidies. Among the 251 companies identified as receiving subsidies in 2009 and 2010 and which report that they have completed their contracts, quantifiable information about the economic development outcomes delivered is available for only 2 recipients.¹ The 249 completed subsidy projects for which performance information remains unavailable received roughly \$8 million in taxpayer-funded economic development subsidies. This lack of transparency is even worse than during 2007 and 2008, when quantifiable online performance information was publicly available for 8 percent of the 248 subsidy awards that were completed.

The state's past performance in administering these programs suggests that public subsidy dollars may in some cases be squandered or wasted. The Legislative Audit Bureau, in a June 2012 report, examined the extent to which recipients of a sample of 89 completed

Transparency appears to be getting worse, and taxpayers have access to almost no online information to judge the outcomes of subsidies from the past four years.

subsidy contracts fulfilled the public benefits specified in their contracts. The Audit Bureau found that even among the best available information in a sample that had been reported as completed, 20 of the recipients under-performed or completely failed to deliver the public benefits specified in their contracts². We formally requested more complete information from the WEDC, but they failed to fulfill our requests, making it impossible to know whether the lack of information might be even worse outside this sample³.

With the creation of the WEDC, a public-private partnership, state leaders promised to enhance transparency and accountability along with streamlining these programs. But, transparency appears to be getting worse, and taxpayers have access to almost no online information to judge the outcomes of subsidies from the past four years. The semi-privatization of these functions by creating a public-private partnership risks further diluting transparency and accountability. While public officials are ultimately democratically accountable to voters, the same is not true of private WEDC directors. And, while information is at least in theory public under the old Department of Commerce arrangement, it is not clear whether the public has any legal right to obtain this information under WEDC. If our efforts at accessing information for this report are any indication, taxpayers are being left in the dark. Recent federal findings criticizing the lack of openness in Wisconsin's distribution of federal economic development funds highlights the need for a serious effort by state leaders to ensure these subsidy programs are transparent and accountable.

The following recommendations would enable strong public scrutiny and ensure recipient accountability for Wisconsin's economic development programs.

Recommendations For Transparency:

- Clarify which programs meet the statutory definition of “economic development programs,” and must be included in future economic development reports. The current lack of clarity means that agencies claim to be unaware of the need to report on performance outcomes.
- Standardize and statutorily define the information which economic development subsidy recipients must include in every progress report, which must be submitted at least annually. Benchmarking is not possible unless consistent information is collected in ways that are comparable.
- Make all economic development subsidy contracts and related progress reports available online. In the 21st century, information is not truly publicly accessible unless it is searchable online.
- Make the current online website one-stop, user-friendly and easily accessible for taxpayers. Taxpayers and budget watchdogs should be able to scrutinize subsidy expenditures without knowing beforehand what they are looking to find. The state of Illinois with their online subsidy website has demonstrated that making this information easily accessible online is not asking for the moon.
- Include a “Top Performers” section on the online disclosure site. The public has a right to know which recipients underperformed on goals, but also which recipients best benefitted the public.

- Companies failing to meet performance goals should be required to report on executive bonuses and compensation, dividends or stock/debt buyback expenditures. If recipients of public subsidies fail to deliver on promised public goals, taxpayers have a right to know whether money has been invested or used for private enrichment.

For Accountability:

- Impose automatic penalties on recipients who fail to submit progress reports as required. The public should not need to chase down recipients of taxpayer subsidies to find out what was done with public largesse.
- Impose mandatory “clawback” provisions, requiring recipients to repay subsidies if they fail in part or whole to deliver on their promises.

Such taxpayer guarantees will ensure that subsidy recipients take seriously the responsibility to deliver on promised results.

- Agencies should be required to report on their enforcement activity online including the names of recipients found to be non-compliant and the penalties levied on recipients for non-performance.

Incorporating these recommendations into state statute will enhance the effectiveness of state economic development programs by holding recipients accountable for achieving agreed upon goals. Taxpayers will be able to readily determine who receives subsidies and how effective recipients have delivered on agreed upon public goals. Noncompliant and underperforming subsidy recipients will be exposed, and top performing recipients will receive due recognition.

Introduction

The need for Wisconsin to enact strict transparency and accountability reforms was again highlighted when an August 2012 U.S. Department of Housing and Urban Development (HUD) letter to state officials sharply criticized the state for mishandling federal economic development subsidy dollars. The letter from HUD noted that state leaders violated federal and state law in the disbursement of subsidy money by failing to check the financial soundness of subsidy recipients, inefficiently providing subsidy dollars for job creation in ways that violate the state’s own policies, and dispersing “forgivable” loans even though companies have not demonstrated the “unusual circumstances” that might justify forgiving the loan. These violations raise broader concerns that state economic development activities lack public scrutiny and accountability to taxpayers.

Taxpayer-financed economic development programs can help grow a state’s economy, so long as funds are well-targeted, and monitored to ensure effective job creation or other economic benefits. The ability to access information about subsidy recipient performance is crucial for making informed choices about allocating funds, and to hold subsidy recipients accountable for fulfilling their obligations.

According to data available on the WEDC’s searchable online database, \$414,698,162 was awarded in total state and federal economic development subsidies during 2009 and 2010⁴. Of this sum, \$356,447,847 was awarded in state subsidies, an amount representing more than the state spent during the current bien-

Table 1: Economic Development Subsidies Awarded in 2009 and 2010

Type of Subsidy Award	2009	2010	Total 2009-2010
State Grant	\$26,824,906	\$21,674,111	\$48,499,017
State Loan (state loan, state forgivable loan, loan guarantee)	\$16,124,725	\$8,954,794	\$25,079,519
Loan Guarantee and Subsidy	\$1,073,073	\$136,800	\$1,209,873
State Loan and Grant	\$90,000	\$0	\$90,000
Tax credit (tax credit and investor tax credit)	\$32,040,774	\$72,742,062	\$104,782,836
Industrial Revenue Bond	\$48,436,548	\$105,265,000	\$153,701,548
ARRA Energy Program Loan	\$0	\$23,085,054	\$23,085,054
Federal Award (federal forgivable loan, federal loan, federal grant)	\$17,469,645	\$40,780,670	\$58,250,315
Total economic development subsidy awards	\$142,059,671	\$272,638,491	\$414,698,162

Note: subsidy figures reported on interactive project date page, <http://www.commerce.wi.gov/php/awards/awardList.php>.

State economic development subsidy spending during 2009 and 2010 exceeded the combined total spent on tourism, aging & long term care, agriculture, trade and consumer protection, and environmental improvement.

nium on tourism, aging & long term care, agriculture, trade and consumer protection, and environmental improvement combined.⁵

In recent years, these significant expenditures of taxpayer money have begun to receive more scrutiny, as they should. In 2006, a Legislative Audit Bureau report highlighted concerns with the administration of state economic development programs. In response, the Wisconsin legislature in 2007 passed Act 125. The law was intended to shed light on the effectiveness of Wisconsin's economic development programs by improving the accuracy, completeness and usefulness of

information tracked and reported by state agencies.⁶ While lawmakers should be commended for their desire to advance transparency and accountability objectives, the most recent legislative audit report suggests that more must be done to better meet the goals of 2007 Wisconsin Act 125. The online website launched in response to the disclosure requirements of Act 125 is a start, but any citizen attempting to use the site would likely be frustrated. The site identifies subsidy recipients, but offers very little information to assess performance, much less to provide a basis for holding recipients accountable for meeting agreed-upon public goals.

In March 2011, the creation of a new entity to administer state economic development subsidies provided another important opportunity to strengthen transparency and accountability provisions. It was particularly important to do so since the newly-created Wisconsin Economic Development Corporation (WEDC) is a public-private partnership, which does not inherently provide the same accountability to taxpayers. As Good Jobs First noted in their report, *Public-Private Power-Grab: The Risks in Privatizing State Economic Development Agencies*, these entities “inhabit a gray area between public and private sector entities,” and they can “end up lacking both the taxpayer accountability that is necessary in public agencies and the adherence to strict financial controls that is supposed to characterize well-functioning private-sector enterprises.”⁷ Comprehensive disclosure of the WEDC’s activities is vital for public scrutiny and taxpayer protections against any misuse or inefficient expenditure of taxpayer money.

Once again, state leaders took steps towards taxpayer accountability, but fell short. At the time, WISPIRG

advocated for strong disclosure and accountability provisions, including strict reporting requirements, public disclosure and recapture provisions that penalized subsidy recipients for not fulfilling the goals of any economic development contract.

The ability to see how government uses tax dollars is fundamental to democracy. Ultimately, transparency and accountability in the state’s economic development programs will promote fiscal responsibility, check corruption and bolster public confidence. In an age where people can download their personal checkbooks, pay bills electronically, and purchase products on their smart phones it is hardly unreasonable to expect that information regarding a state’s use of its tax dollars be just as readily accessible. A large majority of states have made great strides in providing online checkbooks to the public, giving citizens and government officials the ability to monitor many aspects of state spending—saving money, preventing corruption, and encouraging the achievement of a wide variety of public policy goals.⁸

2007 Wisconsin Act 125

2007 Wisconsin Act 125 was created to increase transparency and accountability in the administration of Wisconsin’s Economic Development Programs.⁹ The Act required agencies to take a number of specific actions:

- Establish clear and measurable goals for each economic development program that they administer, with at least one quantifiable benchmark for each goal;
- Specify a method for evaluating a program’s goals based on actual outcomes;
- Specify in their contracts with grant and loan recipients the performance measures on which the recipients must report and the frequency and format of the reported information; and
- Provide the following information on a publicly accessible website: The number of jobs created or retained as a result of each program; a comparison of each program’s expected and actual outcomes; the number, amount, and recipients of each grant or loan awarded through a program; and the amount and recipients of tax benefits allocated through each program.¹⁰

Problems

Efforts to achieve transparency and accountability in Wisconsin's economic development programs have fallen short. While Act 125 marks a significant step on the path to transparency and accountability, more must be done to equip Wisconsin citizens with the information necessary to determine the use and effect of their tax dollars.

According to the June 2012 legislative audit report, information tracked and reported by agencies administering state economic development programs was incomplete; with only 4 of the 8 agencies reporting on all programs they administered. The audit committee was able to obtain results from just 101 of the 123 programs active during FY 2009-2010 and 2010-2011.

By law, all recipients of economic development subsidies contractually must specify how often they will submit progress reports. However, from a sample of 113 awards taken by the Legislative Audit Bureau, only

66.9% of the 489 contractually required progress reports were actually submitted.¹² There was no report that any non-complying recipients were penalized.

A look at the "interactive project data page" illustrates further shortcomings with the usefulness of the state's current online disclosure system. The only information available for all recipients of economic development subsidies included in the database is the name of the recipient and the amount of state funds awarded. There is no basis to determine how effective all subsidy recipients are in fulfilling the contractual obligations that tax dollars went to fund.¹³

The only performance metric tracked online is job creation and retention. However, according to the June 2012 Audit, just 32% of the economic development programs reviewed contractually required recipients to create or retain jobs. For the remaining 68% of programs reviewed, other economic develop-

Table 2: Required reporting on subsidies and actual reporting 2009-2011¹¹

Required Reporting	Actual Reporting
All agencies must report on all economic development programs they administer	4 of 8 agencies reported on all economic development programs, reflecting 101 of the 123 active economic development programs
From a sample of 113 subsidy awards in legislative audit, award recipients were contractually required to have submitted 489 progress reports.	Just 66.9 percent of the 489 required progress reports were submitted
Online tracking of performance metrics; including a comparison of each program's expected and actual outcomes.	Only 16 of the 95 programs included in the 2010 Economic Development Report(16.8 percent) reported both actual and expected quantified outcomes.

Based on our own analysis of the online data provided for the 251 completed projects listed on the state database for 2009 and 2010, planned and actual performance results were provided for just 2 recipients, 0.8% of the total.

Table 3: Online performance data provided for completed economic subsidy awards

	2007-2008	2009-2010	Total 2007-2010
Total number of completed economic subsidy awards	248	251	\$48,499,017
Number of awards which provided quantified planned and actual performance data	20	2	\$25,079,519
Percent	8.1%	0.8%	\$1,209,873

Note: Completed economic subsidy awards refers to awards in the interactive project data table which have a funding, reporting and final status of “complete”

Table 4: Dollar amount of economic development subsidies given to recipients which did not provide performance information

	2007-2008	2009-2010	Total 2007-2010
Total dollar amount of subsidies for completed awards	\$14,398,936	\$8,330,178	\$48,499,017
Dollar amount of subsidy awards which did not provide quantified planned and actual performance data.	\$10,072,400	\$8,244,678	\$25,079,519
Percent	70%	99%	\$1,209,873

ment goals were required, including providing business assistance, leveraging investment dollars, providing capital investment, and training employees.¹⁴ These other goals are not tracked online.

Moreover, projects for which the contractual period for completion has not yet passed are allowed to simply report “in progress” rather than actual jobs retained/created numbers. The absence of interim reporting requirements further diminishes the information available to the public.

Based on our own analysis of the online data provided for the 251 completed projects listed on the state database for 2009 and 2010, planned and actual performance results were provided for just 2 recipients, 0.8% of the total.¹⁵ (See Appendix A) In dollar terms, the remaining 249 completed awards which did not provide information needed to evaluate performance represent an awarded amount of \$8,244,678; roughly 99% of the \$8,330,178 total awarded funds for completed projects during this period.¹⁶

Further evidence suggests that even if a persistent citizen hoping to compare actual performance to goals filed open records requests with the state to obtain recipient contracts and progress reports, and even if the state faithfully and promptly responded to those requests as best they could, the citizen would still have limited success. The Legislative Audit Bureau was unable to assess the performance of 11 recipients from a sample of just 89 completed contracts.¹⁷

The sample of 89 completed contracts reviewed in the June 2012 legislative audit report suggests that the current penalty provisions are not being fully enforced. While it is unclear how much money overall has been recovered by the state from underperforming recipients, from a sample of 89 completed subsidy contracts, 31 recipients did not completely fulfill their contractual goals, or their performance was unknown; total-

ing \$5,976,170 in grant/loan awards.¹⁸ It was determined by the legislative audit bureau that just \$79,000 was recouped by the state for the one recipient whose contractual obligations were completely unfulfilled, on an \$856,000 loan from the state. No money was reported to have been recovered from recipients who only partially completed their contractual obligations, or whose level of performance was unknown.¹⁹ If accurate, this suggests a very low level of accountability. It suggests that so long as subsidy recipients report any progress toward goals or avoid reporting, they will not be held accountable for their use of tax dollars.

To make matters worse, absolutely no information about the state’s enforcement activities is disclosed online. Subsidy recipients who fail to fulfill their contractual obligations are not publicly exposed and taxpayers are left in the dark about what their money actually went to achieve, and if noncompliant recipients were penalized.

Taxpayers have a right to expect that subsidy recipients will use their tax dollars to fulfill their contractual obligations in a way that is beneficial to the public. Regardless of whether subsidies are provided as direct grants or as tax credits or preferences, the programs have the same bottom-line effect on Wisconsin’s budget. Whether implemented through the tax code or paid as grants, each dollar must be offset by other taxes or program cuts. Taxpayers should expect aggressive enforcement of penalty provisions, so they can be confident that economic development subsidies truly create quality jobs or advance other clear public goals, rather than serve as government handouts.

The following recommendations build upon Act 125’s goal of improving transparency and accountability by clarifying annual disclosure requirements for each recipient of an economic development subsidy in order to ensure that the most complete and accurate information is accessible to the public.

Recommendations

In the wake of the Legislative Audit Bureau's most recent economic development program audit, Wisconsin now has the opportunity to objectively face the shortcomings and improve its current level of transparency and accountability. The state should incorporate the following nine recommendations into state statute.

Transparency

1 Clarify which programs meet the statutory definition of “economic development programs,” requiring inclusion in future economic development reports.

While the definition of an “economic development program” was established by Act 125²⁰ agencies are failing to track required information for all the programs they administer. According to the recent Legislative Audit Report, of the 8 government agencies administering economic development programs only 4 tracked and were able to report the results for all of the programs they administered. The Department of Commerce tracked the results for less than 75% of the programs it administers.²¹ Agencies failing to report on programs they administered noted that they did not believe those programs fit the definition of an economic development program.

As recommended by the Legislative Audit Bureau, the Wisconsin Economic Development Corporation, as the State's lead economic development organization should offer assistance to the other seven agencies in determining the programs which must be included in future economic development reports.

2 Clarify and standardize information which economic development subsidy recipients must include in annual progress reports.

Some economic development subsidies may be intended to generate jobs while other subsidies seek to advance other economic development goals. For example, the Business Employee Skills Training program provides grants to small businesses for the purpose of employee education or skills training. In either case, it should be clear what information should be reported and how this information should be calculated. All subsidy recipients should have clear and quantifiable goals.

All recipients of economic development subsidies expected to create or retain jobs should provide the following information in each progress report, at least annually: the total number of employees at the date of application and on the date of the progress report, the number of new employees and retained employees the recipient stated in its contractual agreement, and the number of new and retained employees expected to be hired and their anticipated starting dates. The job information must be broken down by full-time, permanent, part-time, and temporary positions.

The Illinois Corporate Accountability website²² illustrates how incorporating required progress report information into a standard format can be accomplished in a way that is user friendly. Each report can be accessed by simply clicking a link corresponding to a particular program and recipient. The information is provided in tables and is easily interpreted. An example of one recipient progress report is included in Appendix C.

Job impacts must be presented in a way that makes it possible to compare and aggregate information despite the fact that employees may be hired for very different time periods. Merely counting the number of people who received a paycheck can result in misleading conclusions. An employer who hires six people to work during the mornings for one week would appear to have created three times more job

benefits than an employer who hired two full-time workers for the entire year. Worse still, the reporting requirement would have encouraged this itinerant employment. One way to solve this problem is for Wisconsin to specify that job information must be broken down by full-time, permanent, part time and temporary positions. An alternative method is for employees to report the paid “job hours” for each employee. This yields the most comparable data that can be easily aggregated. Whichever method the state chooses, it is important that it designate a single method for counting jobs across all subsidy programs with job-creation goals.

Economic development programs designed to provide economic benefits other than job creation/retention should be just as easy to evaluate as those programs designed to create or retain jobs. Recipients of these economic development subsidies should provide the following information in each progress report, at least annually: each measurable goal and related quantifiable benchmark specified in the initial contract, and the actual performance achieved on each goal at the date of the progress report. The actual

performance data must be consistent with the standard methodology as described by the recipient in the initial contract. Agencies should seek to develop similar methodology for measuring the benefits of subsidies with similar types of non-job related goals.

3 Make the current online website one-stop, user-friendly and easily accessible for taxpayers.

We applaud the state’s initial efforts to create a format that is easy for taxpayers to use. The existing economic development subsidy transparency website, the WEDC’s searchable database (<http://www.commerce.wi.gov/php/awards/awardList.php?yr=2011&ayr=2011>), offers a good starting point for disclosure of state subsidy program information. However, more complete information needs to be incorporated. In addition to providing the data outlined in the first recommendation, the searchable chart now available could be updated to provide taxpayers with comprehensive information about subsidy programs that is one-stop, user-friendly and easily accessible in accordance with the Transparency 2.0 criteria outlined in the chart.²³

Table 5: Transparency 2.0 is One-Stop, Easily Searchable and Downloadable and Comprehensive

Transparency 1.0	Transparency 2.0
Scattered: Determined residents who visit numerous agency websites or make public record requests may be able to gather information on economic development subsidies.	One-Stop: Residents can search all economic development expenditures on a single website, including subsidies administered by all eight state agencies that grant economic development subsidies.
Tool for Informed Insiders: Researchers who know what they are looking for and already understand the bureaucratic structure of government programs can dig through reports for data buried beneath layers of subcategories and jurisdictions.	One-Click Searchable and Downloadable: Residents can search data with a single query or browse common-sense categories. Residents can sort data on subsidy spending by recipient, amount, legislative district, granting agency, purpose or keyword. Residents can also download data to conduct detailed off-line analyses.
Incomplete: Residents have access to only limited information about subsidies.	Comprehensive: A user-friendly Web portal provides residents the ability to search detailed information about subsidies.

4 Make all economic development subsidy contracts and related progress reports available on the online disclosure site.

In order to enable citizens to see the contractual goals of each subsidy recipient and their actual performance, agencies should post all economic development subsidy contracts and annual progress reports online, and link them to the respective subsidy recipient.

5 Include a “Top Performers” section on the online disclosure site.

Highlighting subsidy recipients who fulfill their contractual performance and reporting requirements most completely will provide positive reinforcement and public recognition for the exemplary achievement of top-performing recipients.

6 Companies failing to meet performance goals should be required to report on executive bonuses and compensation, dividends or stock/debt buyback expenditures.

When recipients of public subsidies fail to deliver on agreed-upon goals for providing economic development benefits, taxpayers deserve to know whether the failure is due to a company prioritizing other narrower business goals. Companies will inevitably need to make choices between rewarding their own investors and top executives and investing in other goals. When companies fail to achieve contractual goals, taxpayers should know whether those goals were favored over the contractual goals with the public.

Accountability

7 Impose penalties on recipients who fail to submit progress reports as required.

Regular progress reports are necessary to hold recipients accountable for fulfilling their contractual obligations. A sample of 113 awards taken by the Legislative

Audit Bureau found that just 66.9% of the 489 contractually required progress reports were submitted.

To prevent the present unacceptable level of non-compliance with reporting requirements, recipients that fail to submit progress reports as required must be subject to automatic fines and disqualification from future subsidies. In addition, penalized recipients should be disclosed online. Such automatic consequences are standard business practice, for companies that automatically add interest or service charges for late payment, for instance. In some rare instances, such as if a company has suffered a fire, it may be justified to temporarily waive these requirements. Agencies should have the ability to temporarily suspend consequences in individual cases that are explained on public websites. The onus, however, should be on subsidy recipients to petition for an extension, rather than requiring the public to chase down subsidy recipients to see why they have not complied with rules.

8 All agencies administering economic development programs should impose mandatory “clawback” provisions, requiring recipients to repay subsidies if they fail to deliver on their promises.

While penalty provisions are included, in most contracts their implementation is made discretionary rather than mandatory upon the administering agency. As noted in “Money-Back Guarantees for Taxpayers,” a January 2012 report from Good Jobs First, discretionary penalties enable officials to forgo enforcement for some recipients, suggesting favoritism and weakening the penalty system.²⁴ While 20 of the 89 recipients reviewed in the June 2012 audit sample underperformed according to their contracts and the performance of another 11 recipients was unknown, funds from just 1 recipient were recouped.

Taxpayers have a right to expect aggressive and consistent enforcement of performance requirements. Procedures need to be well-specified for reclaiming taxpayer subsidies in the event of partial fulfillment

of contractual goals. It is not good enough to reclaim funds only in cases of 100 percent nonfulfillment.

Clear rules must be established for partial compliance of contractually agreed-upon goals. The basic principle should be the same as any homeowner would have with a contractor: the contractor should not be paid in full for a job that is not fully finished. A home contractor who agreed to tile your two bathrooms and kitchen would not be fully paid if they ignored one of the bathrooms. Similarly, if a company accepts a state subsidy for generating 500 full time jobs, they should not keep the entire subsidy if they only produce 400 jobs.

It is not advisable to simply establish a non-performance threshold below which consequences are triggered. If the state of Wisconsin's policy is that no clawback will be initiated unless a subsidy recipient delivers less than 74 percent of stipulated benefits, then recipients will regard their obligation as meeting only three-quarters of what contracts stipulate.

Instead, we suggest three possible approaches to deal with partial compliance. The first is to treat anything less than full compliance as reason to fully rescind a subsidy. It is a tax-payer financed bonus based on agreement to meet a specific goal; and it would be rescinded if the goal is not met. This is administratively simple and would send the message that these goals are serious and should not be agreed upon lightly. An alternative approach is to pro-rate benefits based on compliance with goals: a subsidy recipient that falls 27 percent short of the contractual goal would return 27 percent of the dollar value of the subsidy, perhaps with interest. A third approach is to pre-establish a buffer threshold of underperformance at which point subsidies will be reclaimed—either in whole or on a pro-rated basis, by policy—but establish that any subsidy recipient

who does not wholly meet their goals will be ineligible for future subsidies. Thus, if the threshold was set at 80 percent and a company received a subsidy to create 100 jobs but only created 83, then Wisconsin would not reclaim the subsidy but the company would not be eligible for future subsidies.

Wisconsin can look to mandatory clawback provisions modeled by states such as Maryland, North Carolina and Vermont for guidance. Most important is that these accountability measures be clearly stipulated beforehand and that they be established for all agencies administering economic development programs. Appendix B illustrates a clawback provision for North Carolina's Job Development Investment Grant program. The language holds recipients to high standards for achievement of their obligations, and reduces ambiguity in the event of underperformance.

9 Agencies should be required to report their enforcement activity online.

Agencies should disclose enforcement data online; including the names of recipients found to be non-compliant, those recipients penalized, and the amount of each penalty.

As mentioned above, because information about enforcement activity is not publicly disclosed, we were unable to determine the overall amount of money which has been recovered by the state from underperforming recipients.

Twelve states currently post enforcement activity online. Vermont and North Carolina offer online enforcement data websites which are especially detailed and user friendly. An example is provided in Appendix D.

Conclusion

Incorporating these recommendations into state statute will shine a brighter light on the public resources allocated by economic development subsidy programs; and will enhance their effectiveness by holding recipients accountable for achieving agreed-upon goals. Enhanced transparency and accountability must go hand in hand. Tracking subsidy information and making it

publicly accessible will be most successful if the data has real consequences for recipients. At a time when Wisconsin's severely constrained budget is forcing state leaders to make difficult decisions about where to allocate funds, the need for public disclosure of comprehensive subsidy information and public guarantees of performance is even more essential.

Appendix A

Act 125 Report Interactive Project Data Page

State of Wisconsin Annual Economic Development Programs

You can filter the award listing by Report Year: (2010) and any combination of the following columns:

Award Year: (2009) Agency: (All Agencies) Recipient: (All Recipients) Award Type: (All Awards) Municipality: (All Municipalities) Industry: (All Industries) County: (All Counties) Program: (All Programs)

Sort By: (Asc) (Desc) (Go) (Reset)

Recipient	Also Known As	Award Date	Municipality	County	Award Amount	Program	Award Type	Industry	Deliverables	Funding Status	Reporting Status	Final Status	Planned Jobs Created	Actual Jobs Created	Planned Jobs Retained	Actual Jobs Retained	Tax Credits Verified	Report Year
Commerce																		
S Corp		12/10/2008	Green Bay	Brown	\$2,124	Diesel Truck Idling Reduction	State Grant	Transportation	Emissions Reduction	Complete	Complete	Complete	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
4imprint Inc.		08/05/2008	Oshkosh	Winnebago	\$460,000	Enterprise Development Zone	Tax Credit	Manufacturing - Miscellaneous	Jobs	Active	Complete	Active	107	0	Indirect Deliverable	Indirect Deliverable	30,093	2010
A&H Inc.		10/10/2008	Footville	Rock	\$4,328	Diesel Truck Idling Reduction	State Grant	Transportation	Emissions Reduction	Complete	Complete	Complete	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
AASM, LLC		10/10/2008	Cumberland	Barron	\$6,956	Diesel Truck Idling Reduction	State Grant	Transportation	Emissions Reduction	Complete	Complete	Complete	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
ADVOCAP, Inc		06/12/2009	Fond Du Lac	Fond Du Lac	\$40,000	CBED Regional	State Grant	Services - Business	Hiring, training assistance to major firm	Pending	Complete	Active	Indirect Deliverable	Indirect Deliverable	Indirect Deliverable	Indirect Deliverable	Not Applicable	2010
Abbyland Meat Processing		11/12/2008	Abbotsford	Clark	\$345,500	Public Facilities for Economic Development	Federal Grant	Manufacturing - Food and Kindred Products	Cap	Pending	Active	Active	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
Actuant Corporation	formerly Applied Power Inc.	04/20/2009	Butler	Waukesha	\$1,750,000	Enterprise Development Zone	Tax Credit	Manufacturing - Electronic Equipment	Jobs	Pending	Complete	Active	140	0	650	0	0	2010
Actuant Corporation	formerly Applied Power Inc.	04/27/2009	Butler	Waukesha	\$1,500,000	Major Economic Development	State Forgivable Loan	Manufacturing - Metal Products	Jobs;Cap	Complete	Active	Active	140	51	650	650	Not Applicable	2010
Addiction Therapeutix, Inc.		08/01/2008	Wauwatosa	Milwaukee	\$15,000	Urban Early Planning Grant	State Grant	Technology - Health	Plan	Active	Complete	Active	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
Addiction Therapeutix, Inc.		08/01/2008	Wauwatosa	Milwaukee	\$15,000	Technology Assistance Grant	State Grant	Technology - Biotechnology	Com;RT	Active	Complete	Active	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
Addiction Therapeutix, Inc.		08/01/2008	Wauwatosa	Milwaukee	\$250,000	Technology Venture Fund Loan	State Loan	Technology - Health	Com;RT	Complete	Active	Active	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	2010
African American																		

Appendix B

North Carolina's Job Development Investment Grant Clawback Provision

If a company fails to meet on average 90% of job creation/retention, investment, and wage requirements, the subsidy may be reduced or terminated. Under some circumstances, a company may be granted additional time to comply with the re-

quirements. However, the company is no longer eligible for the subsidy if it does not comply in 3 consecutive years. If a company does not stay at the project location for at least 150% of the grant term, recapture applies.

Appendix C

Illinois Corporate Accountability Website

Program Type	Employee Training Investment Program
Agreement Number	10 171002
Assistance Amount	25,000.00

Report Header Definitions	
Wages	Average Annual Salary by Classifications
Full-Time	Permanent Full-Time
+/-	Gain or (Loss)

Number of Employees At the Time of Application

Job Classification	Avg Annual Salary	Positions	Full-Time	Part-Time	Temporary
Assembly	30000.00	7	7	0	0
Fabrication	30000.00	3	3	0	0
Machine Shop	30000.00	0	0	0	0
Maintenance	30000.00	3	3	0	0
Non-Union	50000.00	91	91	0	0
Paint Shop	30000.00	1	1	0	0
Quality Assurance	30000.00	3	3	0	0
Traffic	30000.00	4	4	0	0
Totals:		112	112	0	0

Appendix D

Online Enforcement Information—North Carolina

NORTH CAROLINA DEPARTMENT OF COMMERCE



As of: October 1, 2011
This report is made to the Revenue
Laws Study Committee, pursuant to
N.C. Gen. Stat. § 143B-435.1(d).

The following provides information on clawbacks in various programs administered by the Dept. of Commerce.

PROGRAM	COMPANY	TOTAL AMT TO BE REPAID	AMT REPAID	Date Recovered	AMT TO BE REPAID	TRIGGERING EVENT
One NC ⁱ	AmeriKart (NC) Corp	\$11,616.00	\$11,616.06	7/27/2010	\$0.00	Local match not completed.
One NC	IWCO	\$93,750.00	\$93,749.94	Final payment 5/21/11	\$0.00 (.06 forgiven)	Facility closed.
One NC	Menlo Logistics	\$15,000.00	\$15,000.00	5/27/2010	\$0.00	Facility closed.
One NC	Philip Morris USA	\$750,000.00	\$750,000.00	7/5/2007	\$0.00	Facility closed.
One NC	Pulte Mortgage	\$55,000.00	\$55,000.00	10/6/2008	\$0.00	Facility closed.
JDIG ⁱⁱ	Brunswick Corporation	\$83,524.00	\$83,524.00	4/23/2009	\$0.00	Facility closed.
JDIG	Chris-Craft Corporation	\$54,212.00	\$31,623.70	Next Qtrly pymt due 12/1/11	\$22,588.30	Termination of project activities
JDIG	Dell Products LP	\$1,512,000.00	\$1,512,000.00	11/16/09	\$0.00	Termination of project activities
JDIG	General Electric Company II	\$411,692.00	\$411,692.00	5/30/2010	\$0.00	Termination of grant.
JDIG	Headway Corporation	\$50,175.00	\$50,175.00	Final payment 10/29/2010	\$0.00	Termination of project activities
JDIG	ITG Automotive Safety Textiles, LLC (Narricot Industries)	\$13,780.00	\$13,780.00	9/1/2010	\$0.00	Termination of project activities.
JDIG	Novo Nordisk	\$129,750.00	\$129,750.00	8/12/10	\$0.00	Reduced hiring need.
JDIG	Volvo Construction Equipment	\$69,247.00	\$69,247.00	1/4/2010	\$0.00	Termination of project activities.
Green Business Fund ⁱⁱⁱ	Evans Environmental Energies, Inc.	\$15,540.42	\$15,540.42	10/28/09	\$0.00	Project terminated due to industrial accident & declining economy.

ⁱ The One North Carolina Fund statute requires that grant agreements include, and grant agreements do include, the ability to recapture funds for a grantee's failure to comply with the agreement. See *N.C. Gen. Stat. §143B-437.72(b)(7)*. Section 2.7 of The Guidelines for One North Carolina, promulgated under the One NC Statute also requires that agreements contain recapture provisions for nonperformance.

ⁱⁱ Job Development Investment Grant Program. The ability to recapture funds for failing to maintain operations at the project location for at least 150% of the grant term is statutorily required to be, and is in fact, reflected in JDIG Agreements. This requirement is also reflected in Section 11.3 of the Criteria for Operation and Implementation of the Job Development Investment Grant Program.

ⁱⁱⁱ The ability to recapture funds for performance failures is statutorily required to be, and is in fact, reflected in the N.C. Green Business Fund grant agreements and Program Guidelines. See §143B-437.6(5).

Endnotes

1. “Quantifiable performance information” refers to a subsidy award for which both quantifiable planned and actual results are disclosed online. While four of the awards in our analysis of all completed awards from FY 2009-2011 provided any quantifiable results, just two of those four provided both quantifiable planned and actual results.
2. Legislative Audit Bureau Report. *State Economic Development Programs*, June 2012. <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>.
3. Contacted WEDC by email on 6/19/2012 and 7/31/2012, and was told to file open records requests to locate performance information. Made an open records request on 8/03/2012 and was informed the information sought was not compiled by the WEDC and recipient contracts would need to be sorted through without any assurances information would be found.
4. The additional amount was calculated from the online interactive data page available at <http://www.commerce.wi.gov/php/awards/awardList.php?yr=2011&ayr=2011>. The amount of “tax credits awarded and verified” was found by adding the tax credits verified column for all subsidy awards during 2009 and 2010. The “total amount awarded figure” was found by adding all award amounts column for all subsidy awarded during 2009 and 2010.
5. State Budget found at: <http://legis.wisconsin.gov/lfb/publications/budget/2011-13-Budget/Pages/act32.aspx>
6. June 2012 Legislative Audit Report on State Economic Development Programs available at <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>. Page 11 of the report noted that Act 125 addressed “concerns raised in report 06-9 about accuracy, completeness and usefulness of the information that state agencies tracked and reported for economic development programs”
7. *Public-Private Power-Grab: The Risks in Privatizing State Economic Development Agencies*. Good Jobs First, January 2011. <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/powergrab.pdf>.
8. *Following the Money 2012*, WISPIRG Foundation, March 2012, <http://www.wispirg.org/reports/wip/following-money-2012>.
9. Full text of 2007 Wisconsin Act 125 is included in Appendix E
10. The 8 agencies administering economic development programs are: Department of Commerce, UW System, DATCP, DNR, DOT, WTCS, Tourism, WHEDA
11. Legislative Audit Bureau, State Economic Development Subsidy Programs, June 2012, Audit Table 34, page 79. <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>
12. Legislative Audit Bureau, State Economic Development Subsidy Programs, June 2012, Audit Table 31, page 73. <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>
13. Interactive Project Data Page available at <http://www.commerce.wi.gov/php/awards/awardList.php?yr=2011&ayr=2011>
14. Legislative Audit Bureau, State Economic Development Subsidy Programs, June 2012, Figure 4, page 67. <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>
15. <http://www.commerce.wi.gov/php/awards/awardList.php?yr=2011&ayr=2011>. This figure was determined by running a search on the interactive project data set for all projects with award years of 2009 and 2010, and a report year of 2011. We then counted the number of projects which provided both planned and actual performance data.
16. <http://www.commerce.wi.gov/php/awards/awardList.php?yr=2011&ayr=2011>. Total dollar amount of subsidies for completed awards determined by totaling all award amounts for completed projects from 2007-2009, and 2009-2011.
17. Legislative Audit Bureau, State Economic Development Subsidy Programs, June 2012, Table 32, page 74. <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>
18. Total funding information determined by totaling the subsidy award amounts of all contracts included in legislative audit report sample in table 32 for recipients who did not completely fulfill their contractual obligations and those whose performance was unknown. The information was found in state contracts located at the Legislative Audit Bureau on 22 East Mifflin Street, Madison, WI. The number is not cited in the actual audit report.
19. Based on a conversation with Legislative Audit Bureau Program Evaluation Director, Dean Swenson, on July 5, 2012 at the Legislative Audit Bureau.
20. Act 125 statutorily defined an “economic development program” as a program or activity that has the primary purpose of encouraging the establishment and growth of business in Wisconsin, including the creation and retention of jobs, and that: receives state or federal funding through ch. 20, Wis. Stats.; and provides financial assistance, tax benefits, or direct services to specific industries, businesses, local governments, or organizations.
21. Information taken from Table 28 on page 66 of 2012 legislative audit report. <http://legis.wisconsin.gov/lab/reports/12-11full.pdf>.
22. Link to the Illinois Corporate Accountability website: <http://www.ilcorpacct.com/corpacct/ProgressReport.aspx>
23. For a more detailed description of how to fulfill these criteria, see *Following the Money 2012: How the 50 States Rates in Providing Online Access to Government Spending Data* (March 2012). <http://www.wispirg.org/sites/pirg/files/reports/Following%20the%20Money%20vWI.pdf>.
24. *Money-Back Guarantees for Taxpayers*, Good Jobs First, January 2012, http://www.goodjobsfirst.org/sites/default/files/docs/pdf/moneyback_0.pdf