

Revealing Tax Subsidies and CT Open Data: Gov. Malloy's Executive Orders 38 and 39

Introduction

Governor Dannel Malloy signed two executive orders advancing state government transparency last winter. Executive Order 38 concerns economic development grants, loans, and tax breaks, while Executive Order 39 creates an “Open Data Portal”, promising to provide the public with direct access to state government data in real time.

This paper reviews what each executive order does, provides an initial review of their implementation and makes recommendations for future action.

The ability to see how government uses the public purse is fundamental to democracy. Budget transparency checks corruption, bolsters public confidence in government, and promotes fiscal responsibility. In current times, people primarily seek government information over the Internet. Transparency therefore means public access to information online.

Transparency is particularly important for economic development subsidies for several reasons. Whenever public resources or special privileges are granted to private individuals, there is the potential for corruption or favoritism. Moreover, the fact that spending on these subsidies happens outside the normal legislative process means that it is not subject to public scrutiny or the checks and balances on legislative debate. Once a subsidy program is created, it can operate without requiring further approval without consideration of the burden such a program places on the budget or what benefits it yields the public. Transparency mechanisms are necessary to shine a light on such programs and enable consideration of their merits.

Executive Orders 38 and 39

Executive Order 38

Signed December 3rd, 2013, [Executive Order 38](#) directs the Department of Economic and Community Development (DECD) to make information regarding Economic Development loans, grants, and tax credits available to the public in an online, searchable format by March 31st 2014. All of the information included in the Executive Order had already been legally public information, though it had not been provided in a publicly accessible and user-friendly format.

A similar effort to make this information publicly accessible online had failed in the state legislature last year when the Senate did not call [House Bill 6566](#) to a vote. Governor Malloy's Executive Order is nearly identical to the House bill, which [passed unanimously in the House](#). An [earlier draft of HB 6566](#), however, would have required even greater detailed reporting of economic development tax credits than that required by the bill that passed or the executive order.

The executive order directs DECD to make the following information available for the economic development loans, grants and tax credits it administers:

- Name / principle location of recipient of assistance
- Type of assistance given
- Amount of assistance given
- Statutory authority under which assistance is given
- If applicable: Job creation or retention agreements
- If applicable: the number of jobs at time of assistance
- If applicable: the number jobs created or retained
- Statement of compliance with job commitments

The order further directs the Department of Revenue Services (DRS) to provide to DECD an annual report of the aggregate amount claimed for each tax credit, as well as, to the extent possible, the aggregate amount “carried forward” For deduction in future years. Finally, the order directs DRS to provide additional information requested by DECD to the extent permissible under state and federal law and without disclosing “confidential tax information.”

The order directs DECD to make the new online searchable database, as well as DECD’s triennial analysis of the economic and employment impact of each tax credit program¹, available on it’s website by March 31st 2014. The most recent triennial analysis was available online, though posting it was previously not required by statute or executive order.

Executive Order 39

Through [Executive Order 39](#), signed February 20th, 2014, Connecticut joins the small but growing number of cities and states with an Open Data Portal, where the public can access a wealth of real time data sets from government agencies with the presumption that data will be publicly accessible unless there is good reason it should not be. The portal is available at data.ct.gov.

In order to create the portal, the order creates a “Chief Data Officer” position within the Office of Policy and Management (OPM) to coordinate implementation, compliance and expansion of the portal. The order directs each executive branch agency to appoint an “Agency Data Officer” (ADO) responsible for that agency’s compliance.

ADO’s are responsible for proposing initial sets of data to be made available on the portal by May 21st, 2104 (90 days from order), reviewing each data set before publication to ensure it does not include protected data, and identifying additional data sets to publish on an ongoing basis.

The order outlines criteria for publishing data sets:

- The data is reliable and accurate
- The data is accessible by the agency in a form easy to share with the portal,

¹ http://www.cga.ct.gov/current/pub/chap_578.htm#sec_32-1r

- The data is frequently the subject of public records requests
- The data does not include protected information, such personal identifiable information or protected health records
- Disclosure of the data will improve agency transparency and accountability

Finally, the order encourages other state agencies not covered by the order (the legislative and judicial branches, for example) to participate in the portal as well, and creates an Advisory Panel to the Chief Data Officer. The Advisory Panel's number and composition are not outlined by the order, and all members are to be appointed by and serve at the pleasure of the Governor.

Implementation of the Executive Orders

Economic Development Transparency

The online searchable database required by Executive Order 38 is currently available through data.ct.gov. Links to various data sets are posted on the DECD [website's "Publications" page](#).

There are 17 different "views" of DECD data associated with Executive Order 38 available at data.ct.gov, including datasets and maps for all of the economic assistance and tax credits administered by DECD. Each "view" is either a database, or a different way of looking at a database, such as a map or chart. A quick review of the data sets reveals significant data available for public examination and analysis.

There are 10 different views of DRS data associated with Executive Order 38 available at data.ct.gov but significantly less data. There are only three datasets available: aggregate tax credits claimed by year (for years 2007 through FY13), aggregate tax credits carried forward in FY13, and tax credits claimed in FY13 broken down by industry sector. This is a clear illustration of how the lower standards for reporting for tax credits administered by DRS leads to less transparency.

The DECD triennial report analyzing the economic and employment impact of tax credits is not easily accessible online and was not posted until the end of September, 2014. The executive order directed it to be by March 31st, 2014.

Open Data Portal

The Open Data Portal is available at data.ct.gov. As of September 1st, there are 303 different "views" available: 151 databases, 19 charts, 68 maps, 0 calendars 58 filtered databases, 2 external databases, 3 files and documents, 3 forms, and 2 APIs (application programming interface).

A link to data sets related to Executive order 38 is prominently placed on the home page of data.ct.gov.

At the time of publication, the Chief Data Officer or Agency Data Officers are not identified on the open data website nor any other state website, nor is there information on how to contact them. There is also no information posted about the Advisory Panel.

Conclusion and recommendations

Executive Orders 38 and 39 are unquestionably positive steps forward for government transparency in Connecticut. With one exception, the timely and accessible publication of the triennial DECD tax credit analysis, implementation of the orders is off to a strong start.

In order to further build upon this progress we make the following recommendations:

- DECD should post its triennial tax credit analysis on-time and make it easily accessible on CT Open Data.
- DECD should make data sets from the triennial report available on the Open Data Portal.
- DECD should highlight the new transparency data more clearly on the front page of its website. It is not clear that the “Open for Biz” button will lead to transparency data.
- OPM should make public the identities of the Chief Data Officer and Agency Data Officers as well as contact information so the public can notify them when people identify opportunities for enhanced transparency.
- The Open Data Advisory Panel should be appointed as soon as possible, and the public given information on their meetings. Minutes of those meeting should then also be promptly posted online.
- More publicly accessible information regarding economic development tax credits administered by the Department of Revenue Service is needed. The legislature should advance policies that enable this to happen, such as requiring companies that utilize these tax credits to file an annual report to the DECD.
- The “if applicable” standard for reporting on job creation or retention should be strengthened. There should be a presumption that any economic development subsidy has clear deliverables, a benchmark, and information about results. Thus, the only instance when it would be permissible not to list the jobs data is if there were other kinds of concrete deliverables which were reported, such as number of people trained, or the dollars invested. If a company then fails to provide the applicable information, there should be clear indication of its failure and a description of the automatic fine that was issued to the company, ideally with a description of how the subsidy was recaptured and future eligibility for the company was restricted.