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Tools for Taking On the Corporate Subsidy Machine

A Guide for State Lawmakers

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ABOUT THE AUTHOR

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INTRODUCTION

Every year, states and localities across the U.S. spend more than \$90 billion on so-called “economic development” programs, which direct money to specific corporations in return for those corporations taking specific actions, such as opening a new facility in a particular place, moving an existing facility, or claiming to create a certain number of jobs.

All of that money, though, is buying very little. Research consistently shows that these economic development programs, which we will refer to as corporate subsidies, fail to achieve their stated purpose of increasing economic prosperity for local communities. Across myriad studies and ample real-world experience, in fact, the conclusion is very clear: Corporate subsidies have a negligible effect on any metric of economic well-being.¹ Instead, they siphon resources away from investments in things like infrastructure, health care, education, and child care, which can truly build local, sustainable economies.

Corporate subsidies also foster corruption, necessitating too-cozy relationships between public officials and private actors.² For example, a 2021 study found that more corporate subsidy spending in a state results in higher campaign contributions for incumbent politicians.³ Another found that corporations that make state-level campaign contributions are nearly four times more likely to receive subsidies as those that don’t, and those subsidies are 63 percent larger.⁴ Finally, a 2017 study found “that a greater number of lobbyists and campaign contributions from businesses leads to more subsidy spending, all else equal.”⁵ And these subsidies favor large, politically connected corporations over the local businesses that help communities thrive.

1 See: Garofalo, Pat, *The Billionaire Boondoggle: How Our Politicians Let Corporations and Bigwigs Steal Our Money and Jobs*, Thomas Dunne Books, March 2019; LeRoy, Greg, *The Great American Jobs Scam: Corporate Tax Dodging and the Myth of Job Creation*, Berrett-Koehler Publishers, July 2005; Florida, Richard, “The Uselessness of Economic Development Incentives,” *CityLab*, Dec. 7, 2012, <https://www.bloomberg.com/news/articles/2012-12-07/the-uselessness-of-economic-development-incentives>; and Slattery, Cailin and Owen Zidar, “Evaluating State and Local Business Tax Incentives,” *Journal of Economic Perspectives* 34.2, Spring 2020, <https://scholar.princeton.edu/zidar/publications/evaluating-state-and-local-business-tax-incentives>, among many works.

2 Felix, Alison and James R. Hines Jr., “Who Offers Tax-Based Business Development Incentives?,” *The Federal Reserve Bank of Kansas City Economic Research Department*, Nov. 2011, <https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp11-05.pdf>.

3 Sobel, Russell S., Gary A. Wagner, and Peter Calcagno, “The Political Economy of State Economic Development Incentives: A Case of Rent Extraction,” Dec. 23, 2021. Available at SSRN: <https://ssrn.com/abstract=3992116> or <http://dx.doi.org/10.2139/ssrn.3992116>.

4 Aobdia, Daniel, Allison Koester, and Reining Petacchi, “The politics of government resource allocation: Evidence from U.S. state government awarded economic incentives,” January 21, 2021. Available at SSRN: <https://ssrn.com/abstract=3127038> or <http://dx.doi.org/10.2139/ssrn.3127038>.

5 Jansa, Joshua M. and Virginia Gray, “Captured Development: Industry Influence and State Economic Development Subsidies in the Great Recession Era,” *Economic Development Quarterly*, 2017, 31 (1): 50-64.

There is a clear nexus between money in politics and public money flowing back to corporations in the form of state and local subsidies. In fact, one of the surest ways to determine if a state will increase its subsidy spending in a given year is not to look at any economic indicator, but merely to see if the incumbent governor is up for reelection.⁶ Incumbents who want to stay in office will look to corporate subsidies to both garner campaign contributions and gain publicity from corporate projects.

Making matters worse, administration of these programs is often secretive, undermining local democracy and preventing local businesses from having a say over whether public resources should aid their dominant competitors, usually national or multinational giants.⁷

Voters, though, would prefer that state and local resources be aimed at smaller, local businesses and entrepreneurs, and they very much disapprove of the use of public dollars to entice out-of-state corporations to open new facilities in their state.⁸

Abolishing corporate subsidy programs in their entirety and redirecting their funding to better uses is the optimal policy choice. Short of abolition, this toolkit suggests other practical steps lawmakers at the state and local level can take to reform and rework corporate subsidy programs so that they are more transparent, better serve local communities, and don't entrench dominant corporations in local economies. Where applicable, model legislation has been noted.

⁶ Slattery and Zidar, "Evaluating State and Local Business Tax Incentives."

⁷ Garofalo, Pat, "None of Our Business: How Corporations Corrupt Local Economies and Democracies," American Economic Liberties Project, June 2021, http://www.economicliberties.us/wp-content/uploads/2021/06/Working-Paper-Series-on-Corporate-Power_9_6.28.pdf.

⁸ Davis, Pete, Nourel-Hoda Eidy, and Grace Adcox, "The High Road on Wealth and Job Creation: Americans Want Less Smokestack Chasing, More Local Entrepreneurial Ecosystem Support," Data for Progress, June 29, 2022, <https://www.dataforprogress.org/blog/2022/6/29/the-high-road-on-wealth-and-job-creation-americans-want-less-smokestack-chasing-more-local-entrepreneurial-ecosystem-support>.

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Cap the Size of Eligible Firms to Support Only Small Local Businesses

THE PROBLEM

Corporate subsidies disproportionately flow to large, politically connected corporations. A 2015 study of incentives in 14 states by Good Jobs First found that 90 percent of the money went to large corporations.⁹ This gives them an unfair advantage over smaller, more local or regional businesses. Meanwhile, those local or regional businesses are forced to subsidize the entrenchment of their own dominant competitors through their own tax dollars, even as local businesses keep more money in the economy, hire more local workers, and are more civically engaged.¹⁰

For example, Amazon has collected more than \$4 billion in state and local subsidies, most of which has gone to build out its warehousing and logistics network.¹¹ It then uses that network to undermine local retail and extract fees from third-party sellers on its own platform.

THE POLICY

Policymakers should cap the size of firms eligible for economic development programs, as well as the overall money that can be expended under the program or the cost per job created, in order to focus resources on small local businesses. For example, size could be limited to firms with fewer than 25 employees, and costs limited to \$5,000 per new job created.

Model bill: New York, A3077, 2022

⁹ LeRoy, Greg, Carolyn Fryberger, Kasia Tarczynska, Thomas Cafcas, Elizabeth Bird, and Philip Mattera, "Shortchanging Small Business: How Big Businesses Dominate State Economic Development Incentives," Good Jobs First, Oct. 2015, <https://www.goodjobsfirst.org/sites/default/files/docs/pdf/shortchanging.pdf>.

¹⁰ Institute for Local Self-Reliance, "Key Studies: Why Independent Matters," <https://ilsr.org/key-studies-why-local-matters>.

¹¹ Good Jobs First, Amazon Tracker, <https://goodjobsfirst.org/amazon-tracker>.



N.D.A.

Ban Nondisclosure Agreements in Economic Development

THE PROBLEM

Large corporations have increasingly employed nondisclosure agreements (NDAs) in economic development deals, preventing officials from divulging a host of relevant details to the public, including the very identity of the corporation in line to receive subsidies.

These agreements have been signed by mayors, city council members, governors, and officials at economic development boards all across the country.¹² As one local Illinois official said regarding Amazon's use of NDAs in and around Chicago: "It's customary now, when mega-Fortune 500 companies come, that they prefer that you not divulge what they're doing. ... It happens all the time."¹³

Nondisclosure agreements in subsidy deals cause concrete harms to local businesses and workers.¹⁴ They also undermine local democracy, preventing voters from having a say over how public resources are spent or from holding elected officials accountable for crafting too-generous deals with corporate leaders.¹⁵

According to a June 2022 poll conducted by GBAO on behalf of Fight Corporate Monopolies, 71 percent of respondents said that they were more likely to support a candidate who favors banning backroom subsidy deals negotiated without public input; 42 percent said it made them much more likely. The results were similar across party identification, race, age, education, and region.

THE POLICY

States should ban public officials from signing nondisclosure agreements when negotiating economic development deals. Such a ban passed the New York State Senate with a bipartisan vote of 61-0 in 2022.

Model bills: S1196/A9092, New York, 2021-2022

¹² Ban Secret Deals, "Secret Deals Database," <https://bansecretdeals.org/the-secret-deals-database>.

¹³ Lippert, John and Natalie Moore, "Amazon's Massive Chicago-Area Expansion Was Fueled By \$741 Million From Taxpayers," WBEZ, Oct. 26, 2020, <https://www.wbez.org/stories/amazons-massive-chicago-area-expansion-was-fueled-by-741-million-from-taxpayers/300fa829-1b71-4d9e-a2f4-1776e88d4cb3>.

¹⁴ Garofalo, Pat and Katelyn Coghlan, "Ban Secret Deals: How Secret Corporate Subsidy Deals Harm Communities, and What to Do About It," American Economic Liberties Project, July 2022 <http://www.economicliberties.us/wp-content/uploads/2022/07/2022-July-BanSecretDealsBrief-FINAL.pdf>

¹⁵ Garofalo, Pat, "None of Our Business? How Corporate Power Corrupts Local Economies and Democracies," American Economic Liberties Project, June 2021, https://www.economicliberties.us/wp-content/uploads/2021/06/Working-Paper-Series-on-Corporate-Power_9_6.28.pdf.



Ban Subsidies for Data Centers and Warehousing

THE PROBLEM

At least 27 states provide some sort of monetary incentive to corporations that set up data centers within their borders.¹⁶ These incentives have been employed by the largest tech corporations — Apple, Google, Amazon, Microsoft, and Facebook — as well as large banks and grocery chains to expand their data center footprints.¹⁷ These subsidies are very expensive in terms of cost per job. Likewise, they subsidize corporate behavior that would have happened anyway, because data centers are necessary corporate infrastructure. They also advantage large national and multinational corporations over smaller competitors.¹⁸

The same critique can be made of subsidies for warehouse and distribution networks: They help national or multinational retailers undermine local retail by subsidizing the buildout of those dominant retailers' necessary infrastructure. For example, Amazon alone has received billions of dollars in state and local subsidies for its warehouse network, even as the opening of a warehouse in a new community causes local retailers to close or lay off or cut hours for workers, and drives down the rate of new business openings.¹⁹ They also disadvantage local logistics businesses that see Amazon's monopolization efforts as a key threat to their survival.²⁰

THE POLICY

States and localities should make data centers and warehousing/logistics facilities ineligible for any subsidy program.

Model bill: S8418, New York, 2022

¹⁶ "H5 Takes a Look at State-by-State Incentives for Data Centers Nationwide," <https://h5datacenters.com/tax-incentives.html>. (As of July 18, 2022, the reference link does not include Connecticut's newly enacted incentive for data centers to locate in Opportunity Zones, created in March 2021.)

¹⁷ Garofalo, Pat, "Your Tax Dollars Built Big Tech," Boondoggle, July 28, 2020, <https://boondoggle.substack.com/p/your-tax-dollars-built-big-tech> and "Ghosts in Kroger's Kitchen," Oct. 27, 2020, <https://boondoggle.substack.com/p/ghosts-in-krogers-kitchen>.

¹⁸ Garofalo, Pat, "Facebook's Data Center Fluff," Boondoggle, Sept. 23, 2021, <https://boondoggle.substack.com/p/facebooks-data-center-fluff>.

¹⁹ Chava, Sudheer, Alexander Oettl, Manpreet Singh, and Linghang Zeng, "Creative Destruction? Impact of E-Commerce on the Retail Sector," NBER Working Paper Series, Working Paper 30077, May 2022, https://www.nber.org/system/files/working_papers/w30077/w30077.pdf?utm_campaign=PANTHEON_STRIPPED&utm_medium=PANTHEON_STRIPPED&utm_source=PANTHEON_STRIPPED.

²⁰ Rajamanickam, Vishnu, "Why Amazon's supply chain ambitions should have logistics companies worried," Freight Waves, July 26, 2018, <https://www.freightwaves.com/news/why-amazons-supply-chain-ambitions-should-have-logistics-companies-worried-about-their-future>.



Create an Interstate Compact Against Corporate Tax Giveaways

THE PROBLEM

A chief problem for corporate subsidy reform efforts is that they're very good for individual politicians, as those who engage in more dealmaking receive more votes in subsequent elections.²¹ For this reason, governors' use of incentives has been found to increase during years in which they are up for reelection.²² Corporations know this, and they play different jurisdictions off against each other, such as when Kansas and Oklahoma both passed large incentive packages for Panasonic, fearing that their loss would be the other state's economic and political gain.

It can therefore be challenging for a single state or municipality to unilaterally abolish these programs, particularly if there's a perceived political price paid by incumbents.

THE POLICY

States can form an interstate compact to stop corporate subsidies, which removes the potential political penalty for any one state ending its programs unilaterally. Under such an arrangement, states sign a mutual cease-fire, agreeing not to use incentives to poach businesses from any other state that joins the compact. Thus, no single elected leader has to sit idly by while other states engage in dealmaking to lure business away.

Kansas and Missouri implemented a version of this in 2019 to prevent corporations from moving across the greater Kansas City metro area — which straddles both states — in order to claim tax incentives.²³ State-level compacts are very common. States belong to an average of 25 apiece, and they cover a range of topics, from water and flood management to crime control to common licensing regimes for lawyers and doctors.²⁴ State legislators can choose to do this nationally, or make smaller regional pacts.

Model bill: HB0145, Illinois, 2021

²¹ Jensen, Nathan M., Edmund Malesky, Mariana Medina, and Ugur Ozdemir, "Pass the Bucks: Credit, Blame, and the Global Competition for Investment," *International Studies Quarterly* (2013) 1–15, <https://sites.duke.edu/malesky/files/2014/07/Pass-the-Bucks.pdf>.

²² Slattery and Zidar, "Evaluating State and Local Business Tax Incentives."

²³ Garofalo, Pat, "What's the Matter With Kansas City?," *Boondoggle*, Aug. 15, 2019, <https://boondoggle.substack.com/p/whats-the-matter-with-kansas-city>.

²⁴ "10 Frequently Asked Questions," National Center for Interstate Compacts, <https://www.csg.org/knowledgecenter/docs/ncic/CompactFAQ.pdf>.



Ban Intrastate Job Piracy

THE PROBLEM

While states expend resources attempting to poach businesses from one another, municipalities within states often do the same thing. For example, Panasonic received more than \$100 million to move its headquarters nine miles from Secaucus, New Jersey, to Newark, New Jersey.²⁵ Billtrust received \$12 million to move five miles from Hamilton, New Jersey, to Lawrence, New Jersey.²⁶ Fidelity Security Life Insurance received \$7.5 million to move about a mile within Kansas City, Missouri.²⁷ These moves simply shuffle economic resources around within a state, producing no new economic activity. They merely increase the opportunity for corporate rent-seeking and political corruption, as corporations play city councils and state economic development officials against each other.

THE POLICY

About 40 states already ban intrastate piracy in at least one of their corporate incentive programs.²⁸ Those bans should be adopted across the board.

Model bills: HB0211, Illinois, 2021

²⁵ Bagli, Charles V., "Christie Leaning on Tax Subsidies in Hunt for Jobs," *The New York Times*, April 4, 2012, <https://www.nytimes.com/2012/04/05/nyregion/christie-gives-new-jersey-firms-tax-breaks-for-short-moves.html>.

²⁶ Rojas, Cristina, "Company gets \$12M in tax credits to move 5 miles away," *NJ.com*, Aug. 23, 2017, https://www.nj.com/mercer/2017/08/company_gets_12m_in_tax_credits_to_move_headquarte.html.

²⁷ Davis, Miranda, "Kansas City gives \$7.5 million tax break to Fidelity Security Life for new offices on prime real estate," *KCUR*, Dec. 10, 2021, <https://www.kcur.org/news/2022-01-04/kansas-city-gives-7-5-million-tax-break-to-fidelity-security-life-for-new-offices-on-prime-real-estate>.

²⁸ LeRoy, Greg, Kasia Tarczynska, Leigh McIlvaine, Thomas Cafcas, and Philip Mattera, "The Job Creation, Shell Game: Ending the Wasteful Practice of Subsidizing Companies that Move Jobs From One State to Another," *Good Jobs First*, Jan. 2013, <https://www.goodjobsfirst.org/sites/default/files/docs/pdf/shellgame.pdf>.



Make the Application and Approval Process Transparent

THE PROBLEM

One of the most prominent issues plaguing corporate incentive programs is lack of transparency. Whether by design or incompetence, local residents and businesses are prevented from providing input into corporate incentive deals because the process is opaque, there is inadequate notice when meetings and votes are public, and as noted above, restrictive contracts prevent public officials from disclosing details, including restrictions on which materials are subject to public records law. This lack of transparency aids dominant corporations, which have the most resources for navigating complicated application processes and can exclude opposition from local businesses that might oppose their subsidies.

Compounding this problem, as Economic Liberties noted in a previous report, public records law often specifically exempts key corporate subsidy information from disclosure until it is too late for community members or local businesses to act on the information they receive.²⁹

THE POLICY

As an example of how increased transparency can be beneficial, the California Competes program requires applications to be publicly posted before they are approved in a public meeting. Such measures allowed concerned workers and labor unions to protest tax credits that would have gone to Grubhub, causing the delivery app corporation to withdraw its application. All corporate incentive programs should require applicants to be publicly listed for a set amount of time ahead of public approval, and all records — except for truly proprietary information — should be made immediately available. Corporate subsidy programs should also not be exempt from public records or freedom of information laws.

²⁹ Garofalo, Pat, “None of Our Business? How Corporate Power Corrupts Local Economies and Democracies,” American Economic Liberties Project, June 2021, http://www.economicliberties.us/wp-content/uploads/2021/06/Working-Paper-Series-on-Corporate-Power_9_6.28.pdf.



Give Schools Veto Power

THE PROBLEM

Property taxes are one of the most popular vessels for corporate tax incentives, which means those incentives often come directly out of school budgets, as property taxes are also the primary way in which U.S. schools are funded. This either results in lower school budgets, or school boards being forced to negotiate with individual corporations for what are known as PILOTS — payments in lieu of taxes — which opens the door to corrupt dealings. In fiscal year 2019, schools lost a collective \$2.37 billion due to corporate tax breaks.³⁰ Usually, school boards are powerless to stop corporate incentives that would affect their budgets, as they have no influence over their authorization, although some teachers unions have effectively made corporate incentives a local political issue.

THE POLICY

The state of Louisiana and the city of Philadelphia both give local entities like school boards the ability to reject the portion of corporate tax subsidies that would come out of local school budgets. In Louisiana, early data showed that the policy had a measurable, positive effect on reducing the amount of money given to big corporations, saving the state \$116 million after two years, and saving millions of dollars for local school districts as well, including \$10.4 million for Baton Rouge.³¹ All 50 states should advance a similar policy, whether through executive action or legislation, depending on the state. Or they can simply ban any incentive that would result in a loss of revenue for a school district.

Model bill: New York, S8395, 2021-2022

³⁰ Wen, Christine, Katie Furtado, and Greg LeRoy, "Abating Our Future: How Students Pay for Corporate Tax Breaks," Good Jobs First, March 2021, <https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/Abating%20Our%20Future.pdf>.

³¹ Riegel, Stephanie, "Report: ITEP changes net \$10.4M for Baton Rouge, \$116M for state," Greater Baton Rouge Business Report, March 10, 2020, <https://www.businessreport.com/article/report-itep-changes-net-10-4m-for-baton-rouge-116m-for-state>.



Require Site Selection Consultants to Register as Lobbyists

THE PROBLEM

There are about 500 individuals in the U.S. who work as “site selection consultants.”³² Corporations employ these consultants to find and negotiate subsidy deals with state and local governments. They have been involved in high-profile site location decisions, such as Amazon’s “HQ2” search and Foxconn’s 2016 deal with Wisconsin. They often work on commission, receiving a percentage of the subsidies received by the corporation, giving them an incentive to drive the cost of subsidy deals even higher.³³ Though they actively lobby state and municipal legislators, regulatory bodies, and executive agencies, these consultants often do not have to register as lobbyists, as their activity is not explicitly covered by state lobbying or ethics laws.

THE POLICY

States and municipalities should explicitly add economic development negotiations to their definitions of lobbying, and also explicitly add state and local economic development agencies to those public bodies covered by lobbying and ethics law. Connecticut, for example, includes the state economic development agencies under its definitions for executive agencies and “quasi-public agencies.”³⁴ This would allow local communities to identify which corporations are lobbying for subsidies and which firms and individuals are engaged in that work.

Model bill: SB867, Missouri, 2012

³² Podkul, Cezary, “Meet the Fixers Pitting States Against Each Other to Win Tax Breaks for New Factories,” *The Wall Street Journal*, May 18, 2019, <https://www.wsj.com/articles/meet-the-fixers-pitting-states-against-each-other-to-win-tax-breaks-for-new-factories-11558152005>.

³³ *Ibid.*

³⁴ Connecticut Code, Chapter 10, Code of Ethics, https://www.cga.ct.gov/current/pub/chap_010.htm#sec_1-91.



Eliminate the 'Dark Store Theory' Loophole

THE PROBLEM

Big box stores such as Walmart, Target, and Lowe's have used a legal loophole known as "dark store theory" to lower their property tax bill by hundreds of millions of dollars across the country, with potentially billions more at stake.³⁵ The retail corporations argue that their properties should be valued not as open, thriving stores, but as empty shells. They also place restrictive contracts into their deeds — such as clauses stipulating that the site can't be sold to another big box store — and then use those very restrictions to argue for lower property taxes. In 2019, the Maine Center for Economic Policy surveyed the 25 Maine towns with the highest³⁶ retail sales, as well as every town with a Walmart, and found big box stores in these areas were requesting that their property taxes be lowered by about a third, on average.³⁷

THE POLICY

States can ban the use of dark store theory in property tax assessment, as Maine did in 2022. Maine's law stipulates that assessors must take into account all characteristics of a big box store, including its current income, when assessing the property, and that restrictive sales terms can't be used to artificially hold down the value of a property.

Model bill: LD 1129, Maine, 2021-2022

³⁵ Connecticut Code, Chapter 10, Code of Ethics, https://www.cga.ct.gov/current/pub/chap_010.htm#sec_1-91.

³⁶ Grabar, Henry, "How Big-Box Stores Bilk Local Governments," Slate, Feb. 7, 2019, <https://slate.com/business/2019/02/dark-store-theory-big-box-stores-property-taxes.html>.

³⁷ Austin, Sarah and Mario Moretto, "Big-box stores rolling out new effort to get out of Maine property taxes," Maine Center for Economic Policy, Oct. 31, 2019, <https://www.mecp.org/wp-content/uploads/2019/10/Dark-Stores-Report-Final-for-Distribution-103119.pdf>.

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