Money Back Guarantees for Taxpayers:

Clawbacks and Other Enforcement Safeguards in State Economic Development Subsidy Programs

By Philip Mattera,

Thomas Cafcas, Leigh McIlvaine,

Andrew Seifter and Kasia Tarczynska

Good Jobs First

1616 P Street NW Suite 210
Washington, DC 20036
202-232-1616
www.goodjobsfirst.org

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Executive Summary

States and localities in the United States spend an estimated $70 billion per year on economic development subsidies, also known as incentives. Yet the companies receiving that assistance do not always deliver as many jobs or other public benefits as promised; many deals, such as the heavily subsidized computer plant in North Carolina shut down by Dell, fall short. As states and cities enter their fourth consecutive year of severe fiscal stress, they must confront the issue of underperformance by economic development subsidy recipients.

Every state engages in at least some minimal enforcement of its subsidy performance standards. But 10 percent of major state programs still do not require companies to report to state agencies on job creation and other outcomes, and many more programs are seriously deficient in how they monitor recipients. Even states that monitor adequately often fail to act decisively in dealing with cases of non-compliance. No state has sound, consistent procedures in all of its major programs.

These are the broad findings of *Money-Back Guarantees for Taxpayers*, a follow-up to the December 2011 Good Jobs First report *Money for Something*, which looked at the extent to which states have adopted provisions in their key economic development subsidy programs requiring recipients to meet job-creation or other quantifiable performance standards, including rules relating to minimum pay and benefit levels for their workers. We again look at the most significant subsidy programs in all 50 states and the District of Columbia—238 programs in all, which together cost taxpayers more than $11 billion a year.

The programs include corporate income tax credits (for job creation, capital investment, film production, and/or research & development), cash grants, low-cost or forgivable loans, enterprise zones, reimbursement for worker training expenses and other types of company-specific state assistance. (Subsidies that are enabled by state law but whose costs are borne by local governments, such as property tax abatements, are not among the programs examined unless they are combined with state subsidies.)

We rate each of the 238 programs on the scope and rigor of its procedures for monitoring the performance of subsidy recipients and for dealing with cases of non-compliance on job creation, job quality and other standards.

Using these criteria, we rate each program on a scale of 0 to 100. We average the scores of each state's programs and rank the states and the District of Columbia by their averages. To avoid rewarding states for strong enforcement of weak requirements, we take into account the assessments of our *Money for Something* report. Each program's final score is derived half from our enforcement score and half from its *Money for Something* performance standards score. In other words, for a state to receive a high score it has to have strong performance standards and a strong system for enforcing those standards.

Enforcement is the third essential element of subsidy accountability. It is inseparable from recipient disclosure (which we examined in our December 2010 report *Show Us the Subsidies*) and job creation/job quality (the focus of *Money for Something*, issued in December 2011).

Extensive Reporting But More Limited Verification

- Ninety percent (215 of 238) of the programs we examined require companies receiving subsidies to report to state government agencies on job creation or other outcomes. Yet in 67 (or 31 percent) of those 215 programs, an agency does not independently verify the reported data.

- The 67 programs that require reporting but not verification are concentrated in 35 states, of which 19 have more than one program with that shortcoming. Remarkably, both the District of Columbia and South Carolina have no performance verification in any of their five major programs in our sample.

Insufficient Penalty Provisions and Too Many Loopholes

- About three-quarters (178) of the programs we examined contain a penalty provision of some kind, including recapture of benefits already provided and the recalibration or termination of future subsidies. An additional 41 programs are "performance-based," meaning that the company does not receive benefits until it has satisfied program requirements. This leaves 19 programs (or 8 percent) with little or no recourse against companies that fail to deliver on their job creation and other promises.

- The penalty provisions in 84 of the 178 programs with penalties are weakened by the fact that their implementation is discretionary rather than mandatory or by the presence of various exceptions. Appendix 4 of the report has summaries of the penalty provisions used by the programs we examined.

Very Limited Disclosure of Enforcement Activity

- We treat the disclosure of enforcement data as a prime indicator of whether an agency is serious about dealing with non-compliance. We find that: only 21 programs in a dozen states publish aggregate enforcement data (i.e., without company names or other deal specifics); only 38 programs disclose the names of companies deemed to be out of compliance; and only 14 disclose the names of companies which have been penalized (and the dollar amounts).

Grading the States and their Programs: Much Room for Improvement

Weighting the states' raw enforcement scores with their scores for job creation and job quality generates our final *Money-Back Guarantees for Taxpayers* scores.

- The states with the highest program scores are: Vermont (79), North Carolina (76), Nevada (74), Maryland (70), Iowa (69), Virginia (69), and Oklahoma (64). The states with the lowest averages are: the District of Columbia (4), Alaska (19), North Dakota (30), and South Dakota (34). Twenty-two states score above 49, which is the average for all the states. Below is a table with each state's score and rank.

- By ranking last, the District of Columbia has now rated worst in all three of our "report card" studies. It shared last place with 13 states for having no online disclosure in our *Show Us the Subsidies* report and ranked 51st in our *Money for Something* report for lacking job creation and job quality standards.

- The states that benefit the most from our weighted scoring system—i.e., those whose relatively weak enforcement practices are buoyed by stronger underlying standards—are Florida (up 23 places from its enforcement-only ranking), Rhode Island (up 20), Georgia (up 19), Mississippi (up 17), and Nevada (up 17). Conversely, the states that suffer most from the weighting—i.e., those whose relatively strong enforcement practices mean less because they apply to weaker underlying standards—are Oregon (down 29 places), Massachusetts (down 21),

Wyoming (down 20), California (down 15), and Illinois (down 15). See Appendix 3 for the enforcement-only averages for each state.

- While every state engages in at least minimal enforcement, there are great variations among the weighted program scores within many states. Fifteen states have divergences of more than 50 points between their highest and lowest-scoring programs. The biggest state divergences are: Iowa (78), Maine (75), Maryland (73), Louisiana (69), and Nebraska (64). At the other end is New York, with a divergence of only 8 points among its programs, which all score poorly in the 30s.

- Clearly, states know very well how to apply rigorous enforcement techniques but often fail to do so consistently across their entire portfolio of subsidy programs.

- State economic development policies typically evolve over many years, so current administrations do not deserve all the credit or blame.

Policy Recommendations

To assist economic development policymakers and practitioners in improving their subsidy enforcement practices, we offer the following policy recommendations:

- All recipients in all programs should be required to report to agencies on job creation, wages, benefits and other performance benchmarks. Recipient reporting data should be disclosed online at least annually as part of a state's disclosure system.

- All reported information should be verified by agencies using techniques such as auditing and cross-checking of company claims against separate reliable data sources such as unemployment insurance records.

- Agencies should penalize recipients found to be out of compliance, employing techniques such as recapture (clawbacks), recalibration of future benefits and rescission/termination of subsidy agreements. Programs that are performance-based should operate without penalties only if recipients are required to fulfill all programs requirements before receiving any subsidies.

- Penalty systems should be straightforward and consistent and not weakened by various exceptions or by giving agency officials discretion on whether to implement them.

- Agencies should publish detailed data on their enforcement activities, including the names of the recipients found to be non-compliant and those penalized (including the penalty amounts).

As we cautioned in *Money for Something* with regard to performance requirements, the fact that a state adopts strong enforcement procedures does not guarantee that any given subsidy program or deal is a good use of taxpayer funds. Some programs may simply offer too much assistance to companies, so that benefits will never outweigh costs. Others may have become so deregulated that they are windfalls rather than incentives. For such programs, abolition rather than accountability is the correct policy, especially in times of severe budgetary stress.

Yet as long as a program is in operation, taxpayers have a right to demand both strong performance requirements (including job creation and job quality standards) and aggressive enforcement of those requirements. When a company is given subsidies without strings, that is a handout rather than economic development.

A summary of state scores and ranks is on the following page.

State Enforcement Scoring by Rank and Alphabetically (Weighted by Performance Standards Score)

Rank	State	Average	Grade
1	Vermont	79	B-
2	North Carolina	76	B-
3	Nevada	74	B-
4	Maryland	70	B-
5 (tie)	Iowa	69	C+
5 (tie)	Virginia	69	C+
7	Oklahoma	64	C+
8 (tie)	Colorado	60	C+
8 (tie)	Kansas	60	C+
8 (tie)	Missouri	60	C+
8 (tie)	Wisconsin	60	C+
12	Arizona	59	C
13	Rhode Island	57	C
14 (tie)	Florida	56	C
14 (tie)	Nebraska	56	C
16	Texas	54	C
17	New Jersey	53	C
18 (tie)	Delaware	52	C
18 (tie)	Illinois	52	C
18 tie)	Michigan	52	C
21	Georgia	51	C
22	Connecticut	50	C
23 (tie)	Indiana	49	C-
23 (tie)	Minnesota	49	C-
23 (tie)	Mississippi	49	C-
23 (tie)	Ohio	49	C-
23 (tie)	Utah	49	C-
28	Arkansas	48	C-
29 (tie)	Tennessee	47	C-
29 (tie)	West Virginia	47	C-
31	Louisiana	46	C-
32 (tie)	Kentucky	45	C-
32 (tie)	New Hampshire	45	C-
34 (tie)	Alabama	44	C-
34 (tie)	Massachusetts	44	C-
36 (tie)	California	43	C-
36 (tie)	Pennsylvania	43	C-
38 (tie)	Idaho	42	C-
38 (tie)	South Carolina	42	C-
40	Oregon	41	C-
41	Maine	40	C-
42	Montana	38	D+
43 (tie)	Hawaii	37	D+
43 (tie)	Washington	37	D+
45 (tie)	New Mexico	35	D+
45 (tie)	New York	35	D+
45 (tie)	Wyoming	35	D+
48	South Dakota	34	D+
49	North Dakota	30	D+
50	Alaska	19	D-
51	District of Columbia	4	D-

State	Average	Grade	Rank
Alabama	44	C-	34 (tie)
Alaska	19	D-	50
Arizona	59	C	12
Arkansas	48	C-	28
California	43	C-	36 (tie)
Colorado	60	C+	8 (tie)
Connecticut	50	C	22
Delaware	52	C	18 (tie)
District of Columbia	4	D-	51
Florida	56	C	14 (tie)
Georgia	51	C	21
Hawaii	37	D+	43 (tie)
Idaho	42	C-	38 (tie)
Illinois	52	C	18 (tie)
Indiana	49	C-	23 (tie)
Iowa	69	C+	5 (tie)
Kansas	60	C+	8 (tie)
Kentucky	45	C-	32 (tie)
Louisiana	46	C-	31
Maine	40	C-	41
Maryland	70	B-	4
Massachusetts	44	C-	34 (tie)
Michigan	52	C	18 (tie)
Minnesota	49	C-	23 (tie)
Mississippi	49	C-	23 (tie)
Missouri	60	C+	8 (tie)
Montana	38	D+	42
Nebraska	56	C	14 (tie)
Nevada	74	B-	3
New Hampshire	45	C-	32 (tie)
New Jersey	53	C	17
New Mexico	35	D+	45 (tie)
New York	35	D+	45 (tie)
North Carolina	76	B-	2
North Dakota	30	D+	49
Ohio	49	C-	23 (tie)
Oklahoma	64	C+	7
Oregon	41	C-	40
Pennsylvania	43	C-	36 (tie)
Rhode Island	57	C	13
South Carolina	42	C-	38 (tie)
South Dakota	34	D+	48
Tennessee	47	C-	29 (tie)
Texas	54	C	16
Utah	49	C-	23 (tie)
Vermont	79	B-	1
Virginia	69	C+	5 (tie)
Washington	37	D+	43 (tie)
West Virginia	47	C-	29 (tie)
Wisconsin	60	C+	8 (tie)
Wyoming	35	D+	45 (tie)

Letter grading system: A+ (97 and above); A (93-96); A- (89-92); B+ (83-86); B (80-83); B- (70-79); C+ (60-69); C (50-59); C- (40-49); D+ (30-39); D (20-29); D- (1-19); F (0)