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jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-
SOON
(4/19/01
4:45pm)

gen cut

1 AN ACT ^s; relating to: requiring state agencies, political subdivisions, and
2 housing, redevelopment, and community development authorities to report on
3 subsidies provided to businesses and providing a penalty

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 16.27[✓] of the statutes is created to read:
5 16.27 Definitions for business subsidy reports. In s. 16.28:
6 (1) "Agency"[✓] means a state agency or a local government agency.
7 (2) "Business"[✓] means:
8 (a) Any person engaged in a business enterprise for profit in this state.
9 (b) Any organization or enterprise operating not for profit in this state that has
10 at least 100[✓] full-time positions with a ratio of highest-paid to lowest-paid employee
11 that exceeds 10[✓] to one, determined on the basis of full-time[✓] equivalent positions.

1 (3) (a) Except as provided in par. (b), "business subsidy" means:

2 1. Public improvements of at least \$25,000 in value that are made to buildings
3 or lands owned by the state or a political subdivision and that serve a public purpose
4 but that principally benefit a single business or a defined group of businesses at the
5 time the improvements are made.

6 2. Any of the following that has a value of at least \$25,000 and that is given to
7 a business by an agency:

8 a. A grant.

9 b. A contribution of personal or real property or infrastructure.

10 c. A loan at an interest rate that is below the rate commercially available to the
11 business receiving the loan.

12 d. A reduction or deferral of any tax or fee.

13 e. A guarantee of any payment under a loan, lease, or other obligation.

14 f. Any preferential use of government facilities.

15 (b) "Business subsidy" does not include any of the following:

16 1. Assistance that is generally available to all businesses or to a general class
17 of similar businesses.

18 2. Assistance for the sole purpose of providing job readiness and training
19 services.

20 3. Housing assistance.

21 4. Energy conservation assistance.

22 5. Tax reductions resulting from conformity with federal law.

23 6. General changes in the tax incremental financing laws and other general tax
24 law changes of a principally technical nature.

25 7. Worker's compensation and unemployment compensation.

- 1 8. Benefits derived from regulation.
- 2 9. Indirect benefits derived from assistance to educational institutions.
- 3 10. Funds from bonds issued for the benefit of any institution, facility, or
- 4 organization described in section 501 (c) (3) of the Internal Revenue Code that is
- 5 exempt from federal taxation under section 501 (a) of the Internal Revenue Code.
- 6 11. Assistance for a consortium, as defined in s. 560.60 (3).
- 7 12. Redevelopment in cases in which the recipient's investment in the purchase
- 8 of the site and in site preparation is 70% or more of the current year's assessed value.

****NOTE: I'm not sure what this means. Is this referring to assistance for redevelopment? This may relate to some specific to Minnesota law.

- 9 13. Federal assistance until the assistance has been repaid to, and reinvested
- 10 by, the agency.

****NOTE: I don't know what this means. It doesn't seem to make sense.

- 11 14. Loans to businesses of \$75,000 or less, and loan guarantees to businesses
- 12 if the amount guaranteed is \$75,000 or less.

- 13 15. Federal loan funds provided through the ~~United States~~ economic
- 14 development administration.

****NOTE: You will notice that not all of the types of subsidies excluded in the Minnesota law are excluded above. Some were not relevant to Wisconsin law and some were excluded in Minnesota only for purposes of the public hearing requirements but still subject to the reporting requirements.

- 15 (4) "Grantor" means a state agency or a local government agency that provides
- 16 a business subsidy.

- 17 (5) "Local government agency" means any political subdivision, housing
- 18 authority created under ss. 66.1201 to 66.1211, redevelopment authority created
- 19 under s. 66.1333, or community development authority created under s. 66.1335, or
- 20 any entity created or authorized by any of them, that is authorized to award or
- 21 provide a business subsidy.

1 (6) "Political subdivision" means a city, village, town, or county. ✓

2 (7) "Recipient" means a business that is benefited by a business subsidy under

3
 (3) sub. ~~(2)~~³ (a) 1. or that receives a business subsidy under sub. ~~(2)~~³ (a) 2.

4 (8) "State agency" means any office, department, agency, institution of higher

5 education, association, society, or other body in state government that is created or

6 authorized to be created by the constitution or any law and that is authorized to

7 award or provide a business subsidy, including any authority created under ch. 231,

8 233, or 234 ✓ but not including the legislature or the courts.

9 SECTION 2. 16.28 ✓ of the statutes is created to read:

10 16.28 Business subsidies; reporting requirements. (1) DEVELOPING

11 CRITERIA. ✓ (a) Every agency shall develop criteria for awarding business subsidies.

12 The criteria shall set minimum requirements that a business must meet to be eligible

13 for a business subsidy and shall include a wage floor, which may be a specific dollar

14 amount or a formula for arriving at a specific dollar amount, for jobs created as a

15 result of a business subsidy.

****NOTE: This seems a bit vague. Will every business subsidy create jobs? Are these jobs that are both directly and indirectly created as a result of the subsidy?

16 (b) No agency may award a business subsidy until the agency has developed

17 the criteria required under par. (a). ✓

18 (c) A copy of the criteria developed under par. (a) ✓ shall be submitted along with

19 the first annual report filed by the agency under sub. (4). ✓ A copy of any changes to

20 the original set of criteria developed under par. (a) shall be submitted along with the

21 first annual report filed by the agency after the changes are made. If in awarding

22 a business subsidy an agency deviates from the criteria it has developed under par.

23 (a), the agency shall document the reason for the deviation in writing and submit a

1 copy of that documentation along with the first annual report filed by the agency
2 after the deviation occurs.

****NOTE: It appears that the Minnesota law requires only one set of criteria by an agency for all types of business subsidies provided by the agency. If so, the criteria must be very general. It might make more sense to develop a set of criteria for each type of subsidy. In any case, since the criteria may change over time with experience, I added that any changes to the original set of criteria must be filed along with the next annual report.

3 (2) SUBSIDY AGREEMENT. (a) Whenever an agency provides a business subsidy,
4 the recipient shall enter into a subsidy agreement with the grantor. The subsidy
5 agreement shall include all of the following:

****NOTE: See my drafter's note on this issue. You may want the agency *awarding* the subsidy to enter into the agreement.

- 6 1. A description of the subsidy, including the amount, or fair market value, and
7 type of subsidy.
- 8 2. A statement of the public purpose for the subsidy.
- 9 3. A statement of why the subsidy is needed.
- 10 4. Specific measurable goals for the subsidy, including goals for the number of
11 part-time and full-time jobs to be created or retained and wage goals for the jobs to
12 be created or retained.
- 13 5. The time within which the goals specified in subd. 4. are to be achieved.
- 14 6. A commitment to continue operations at the location where the subsidy is
15 to be used for at least 5 years from the date of receiving the full amount of the subsidy.
- 16 7. A description of any financial obligation of the recipient if the goals under
17 subd. 4. are not met or if the recipient ceases operations at the location before the
18 time specified in subd. 6.
- 19 8. The name and address of the recipient's parent corporation, if any.

1 9. A list, by amount and provider, of all other financial assistance for the
2 project.

 ***NOTE: Would all of these requirements be relevant for every type of subsidy?
If not, it would probably be better for the introduction to read something like "all of the
following that are relevant:". If you are concerned that with that language an agency will
provide only what it wants to in an agreement, I could add a separate provision that
specifies which of the requirements must be in *every* agreement, such as the public
purpose for the subsidy.

3 (b) A subsidy agreement under par. (a) shall be in writing and signed by both
4 the recipient and the grantor. If the grantor is a local government agency that is not
5 a political subdivision, the governing body of the political subdivision within which
6 the local government agency operates must approve the agreement.

7 (3) REPORTS OF RECIPIENTS. (a) A grantor shall monitor the progress of each of
8 its recipients in meeting the goals specified in the subsidy agreement. Annually, no
9 later than March 1, each recipient shall submit to its grantor a report developed by
10 the grantor that provides the following information for the previous calendar year:

11 1. The type, public purpose, and amount of the subsidy.
12 2. The hourly wage of each job created or retained as a result of the subsidy,
13 shown in separate wage bands.

14 3. The sum of the hourly wages and cost of health insurance provided by the
15 employer, shown in separate wage bands.

16 4. A statement of the goals identified in the subsidy agreement under sub. (2)
17 (a) 4. and an update on the progress toward meeting the job and wage goals or the
18 date on which the job and wage goals were or will be achieved.

19 5. A statement of any financial obligation of the recipient under sub. (2) (a) 7.
20 and an update on the progress toward meeting the financial obligation or the date
21 on which the financial obligation was or will be met.

22 6. The location of the recipient before receiving the business subsidy.

1 7. If the recipient was previously located at another site in Wisconsin, why the
2 recipient did not complete the project for which the business subsidy was awarded
3 at the recipient's previous location.

4 8. The name and address of the recipient's parent corporation, if any.

5 9. A list, by amount and provider, of all other financial assistance for the
6 project.

7 10. Any other information requested by the grantor.

 ****NOTE: Under the Minnesota law, the information provided in the report of a
subsidy recipient tracks what is in the agreement with the recipient. You may not want
to require all of this information in the report since a lot of it is redundant. If the agency
knows which recipient is submitting the report, the agency can look at the subsidy
agreement for much of this information. Also, the Minnesota law requires that this
information be submitted for the previous year, but this makes sense probably only for
the job and wage information.

8 (b) A recipient that fails to submit its report by the time required under par.
9 (a) may be required to forfeit not less than \$100 nor more than \$1,000.

10 (c) A recipient is not required to submit a report under this subsection after the
11 year in which the recipient submits a report showing that the goals identified under
12 sub. (2) (a) 4. have been met or that the recipient has fulfilled any financial obligation
13 specified under sub. (2) (a) 7.

14 (4) REPORTS OF AGENCIES. (a) Annually, no later than April 1, each of the
15 following, subject to par. (c), shall file with the department the report under par. (b):

16 1. Every state agency, regardless of whether the state agency has ever provided
17 a business subsidy.

18 2. Every local government agency that is a political subdivision with a
19 population greater than 2,500, and every local government agency that is not a
20 political subdivision but that operates in a political subdivision with a population

1 greater than 2,500,[✓] regardless of whether the local government agency has ever
2 provided a business subsidy.

3 3. Every local government agency that is a political subdivision with a
4 population of 2,500[✓] or less, and every local government agency that is not a political
5 subdivision but that operates in a political subdivision with a population of 2,500 or
6 less, if the local government agency has provided a business subsidy at any time in
7 the previous 5[✓] calendar years.

8 (b) The department shall develop a report form to be completed by an agency
9 specified in par. (a)[✓] that does all of the following:

10 1. Summarizes the information submitted to the agency in the reports under
11 sub. (3).[✓]

12 2. Enables the department to produce the compilation and summary report
13 required under sub. (5).[✓]

14 (c) If a business subsidy is awarded by one agency but provided by a different
15 agency, the 2 agencies shall submit one report together with respect to that business
16 subsidy.

17 (5) COMPILATION AND SUMMARY REPORT.[✓] (a) Annually, by August 1, the
18 department shall publish for the previous calendar year a compilation and summary
19 report of the reports received from agencies under sub. (4).[✓]

20 (b) The information in the report shall be presented in a manner that allows
21 for comparisons across time periods and among grantors, and shall include at least
22 all of the following:

23 1. The total amount of business subsidies awarded in each region of the state.

****NOTE: The Minnesota law required that the total amount of subsidies awarded
in each "development region" of the state be shown. We don't have "development regions,"

and I don't know how the state would be divided into regions. Perhaps you would like to change "regions" to counties or something else.

1 2. Distribution of business subsidies by subsidy amounts.

2 3. Distribution of business subsidy amounts by time category.

****NOTE: I don't know what "time category" refers to.

3 4. Distribution of business subsidies by type of subsidy and by public purpose.

****NOTE: This is language from the Minnesota law. It might be more meaningful to know the subsidy *amounts* by type and public purpose rather than the absolute numbers of subsidies.

4 5. The percentage of all recipients that reached their [✓]goals.

****NOTE: This may need some refining since the information is supposed to be for the previous calendar year and the goals would not necessarily be achievable in the year's time. In other words, there will be recipients that achieved their goals in the previous calendar year, but that bears no relation to when they received their subsidies and how long it was expected to take them to achieve their goals. But perhaps the amount of time it took them is not an issue for you.

5 6. The percentage of recipients that did not reach their goals by [✓]2 years from
6 the date of receiving the business subsidy.

****NOTE: This assumes, I guess, that we are only looking at the recipients that received their subsidies 2 years ago. I don't know if you want to require that all goals be reached in 2 years.

7 7. The total dollar amount of business subsidies provided to recipients that did
8 not reach their goals by 2 years from the date of receiving the business subsidy.

****NOTE: Once again, this assumes that we are only looking at the recipients that received their subsidies 2 years ago, and I don't know if you want to require that all goals be reached in 2 years.

9 8. The percentage of recipients that did not meet their goals and that did not
10 receive repayment.

****NOTE: I'm not really sure what this is intended to do. It seems redundant of subd. 6., and I don't know what "repayment" refers to.

11 9. A list of recipients that have failed to meet the terms of a business subsidy
12 agreement within the past 5 years and that have not satisfied a repayment
13 obligation, if any.

14 10. The number of part-time and full-time [✓]jobs within separate wage bands.

****NOTE: Perhaps this is intended to mean the number of such jobs created or retained in the previous year.

1 11. The benefits paid within separate wage bands.

****NOTE: Does this mean benefits paid along with the jobs under subd. 10[✓] or benefits paid in the previous calendar year for all jobs created or retained as a result of business subsidies?

2 (c) Both the agency reports under sub. (4)[✓] and the compilation and summary
3 report under this subsection[✓] are public records subject to s. 19.21[✓].

****NOTE: As you can see from my questions, I'm not sure that you would want to use the Minnesota language exactly. It is not always obvious what it means. You should decide what you want the report to show. We can then make that required information in the report.

4 SECTION 3. 560.055[✓] of the statutes is created to read:

5 **560.055 Requirements for awarding or providing business subsidies.**

6 (1) In this section[✓], "business subsidy" has the meaning given in s. 16.27 (3)[✓].

7 (2) The department[✓] and any board with the authority to award or provide a
8 business subsidy under this chapter shall comply with s. 16.28[✓] in the awarding or
9 providing of the business subsidy, consistent with s. 560.04 (2) (j)[✓]. Criteria developed
10 by the department or a board under s. 16.28 (1)[✓] for awarding a business subsidy are
11 in addition to any criteria, determinations, or considerations required under this
12 chapter for awarding the business subsidy. The subsidy agreement required under
13 s. 16.28 (2)[✓] is in addition to any agreement required under this chapter with respect
14 to a business subsidy.

15 **SECTION 4. Initial applicability.**

16 (1) This act first applies to business subsidies, as defined in section 16.27[✓] (3)
17 of the statutes, as created by this act, that are awarded on the effective date of this
18 subsection.

19 (END)

D. note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/7dn P1
PJK&MES.....

JLD

Representative Miller:

1. This draft contains the first version of the reporting requirement language. Chapter 560 was not changed except for the addition of s. 560.055. ✓

2. I patterned most of the definitions and the report contents on the Minnesota law. I'm sure you will want to make specific changes to the language to suit your purposes. Some of the Minnesota law does not really make sense for our statutes. Some of it I used even though I wasn't sure of the meaning.

* 3. In this draft, I required each business subsidy recipient to report to the granting agency and then required each agency to submit a report to DOA that summarizes the information the agency receives from its subsidy recipients. I'm not sure if this is how you want the information to get to DOA for its compiled report and summary. Let me know if you want anything changed.

4. In some situations in ch. 560, financial assistance is awarded by a board but paid (provided) by the department of commerce. ✓ This creates a bit of a problem because, I assume, you want only one entity to enter into the subsidy agreement, only one entity to receive a recipient's report, and only one entity to report on the subsidy to DOA. I think it makes the most sense to require the awarding, rather than the providing, entity to have criteria in place before awarding a business subsidy. I required the recipient to report to the providing agency and required both agencies to submit one report to DOA. Let me know if you want anything different. Note that I defined "grantor" as a *providing* agency.

5. I provided a general statement (s. 560.055) ✓ for the department of commerce and all boards involved with awarding grants and loans under ch. 560. I did not amend any statutory language in ch. 560 because I am not sure how you would like to handle the possible conflicts. I have identified a number of statutory sections for which there may be conflicts for various reasons, such as criteria for awarding subsidies that may conflict with criteria that the department develops under s. 16.28, ✓ requirements to make grants to particular entities that may not meet the criteria developed under s. 16.28, etc. Because the Minnesota law (and, thus, this draft) appears to allow an agency to deviate from its criteria in awarding a subsidy as long as the deviation is documented and included with the annual report, perhaps we don't need to worry about changing conflicting provisions in current law. On the other hand, you could

amend potentially conflicting provisions, such as by getting rid of awarding criteria altogether. In any case, s. 560.055 should address whether s. 16.28 or ch. 560 controls if there is a conflict. These are the sections I have identified as potentially conflicting: ss. 560.031 (4), 560.037, 560.13 (3), (5), (6), and (6m), 560.135 (5) and (7), 560.138 (2) (b), 560.14 (3) (c), 560.26, 560.605, 560.765 (3), 560.77 (1), 560.797 (2) and (6), 560.795 (3) and (4), and 560.84.

6. With regard to created s. 16.27 (3) (b) 6., I have a number of questions. The phrase "and other general tax law changes of a principally technical nature" seems vague. Many tax law changes of a "technical nature" may have a profound effect on a taxpayer's tax liability, so the effect of this phrase may be to exclude from the definition of "business subsidy" various tax changes that you may not want to exclude from the definition. Also, I'm not sure what "general changes in the tax incremental financing (TIF) laws" means. The implication of that phrase is that there are, or may be, *some* changes to the TIF program that *would* be a subsidy. If that is the implication of the TIF language, I'm not sure how and to what extent the creation of a TIF district could be a business subsidy. Part of the difficulty with this phrase could be that the TIF program in Minnesota may function differently than the TIF program in this state.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P1dn
PJK&MES:jld:km

April 23, 2001

Representative Miller:

1. This draft contains the first version of the reporting requirement language. Chapter 560 was not changed except for the addition of s. 560.055.

2. I patterned most of the definitions and the report contents on the Minnesota law. I'm sure you will want to make specific changes to the language to suit your purposes. Some of the Minnesota law does not really make sense for our statutes. Some of it I used even though I wasn't sure of the meaning.

3. In this draft, I required each business subsidy recipient to report to the granting agency and then required each agency to submit a report to DOA that summarizes the information the agency receives from its subsidy recipients. I'm not sure if this is how you want the information to get to DOA for its compiled report and summary. Let me know if you want anything changed.

4. In some situations in ch. 560, financial assistance is awarded by a board but paid (provided) by the department of commerce. This creates a bit of a problem because, I assume, you want only one entity to enter into the subsidy agreement, only one entity to receive a recipient's report, and only one entity to report on the subsidy to DOA. I think it makes the most sense to require the awarding, rather than the providing, entity to have criteria in place before awarding a business subsidy. I required the recipient to report to the providing agency and required both agencies to submit one report to DOA. Let me know if you want anything different. Note that I defined "grantor" as a *providing* agency.

5. I provided a general statement (s. 560.055) for the department of commerce and all boards involved with awarding grants and loans under ch. 560. I did not amend any statutory language in ch. 560 because I am not sure how you would like to handle the possible conflicts. I have identified a number of statutory sections for which there may be conflicts for various reasons, such as criteria for awarding subsidies that may conflict with criteria that the department develops under s. 16.28, requirements to make grants to particular entities that may not meet the criteria developed under s. 16.28, etc. Because the Minnesota law (and, thus, this draft) appears to allow an agency to deviate from its criteria in awarding a subsidy as long as the deviation is documented and included with the annual report, perhaps we don't need to worry about changing conflicting provisions in current law. On the other hand, you could

amend potentially conflicting provisions, such as by getting rid of awarding criteria altogether. In any case, s. 560.055 should address whether s. 16.28 or ch. 560 controls if there is a conflict. These are the sections I have identified as potentially conflicting: ss. 560.031 (4), 560.037, 560.13 (3), (5), (6), and (6m), 560.135 (5) and (7), 560.138 (2) (b), 560.14 (3) (c), 560.26, 560.605, 560.765 (3), 560.77 (1), 560.795 (3) and (4), 560.797 (2) and (6), and 560.84.

6. With regard to created s. 16.27 (3) (b) 6., I have a number of questions. The phrase "and other general tax law changes of a principally technical nature" seems vague. Many tax law changes of a "technical nature" may have a profound effect on a taxpayer's tax liability, so the effect of this phrase may be to exclude from the definition of "business subsidy" various tax changes that you may not want to exclude from the definition. Also, I'm not sure what "general changes in the tax incremental financing (TIF) laws" means. The implication of that phrase is that there are, or may be, *some* changes to the TIF program that *would* be a subsidy. If that is the implication of the TIF language, I'm not sure how and to what extent the creation of a TIF district could be a business subsidy. Part of the difficulty with this phrase could be that the TIF program in Minnesota may function differently than the TIF program in this state.

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Kahler, Pam

From: Miller, Mark
Sent: Friday, July 27, 2001 3:37 PM
To: Kahler, Pam
Cc: Kuhn, Jamie; Ellinger, Lisa; Micheal Jacob (E-mail); Brian Gumm (E-mail); David Wood (E-mail)
Subject: Business Subsidy Instructions LRB 2658/P1

Ms Kahler,

Attached are the revised instructions for the business subsidy bill. I will be out of town for the next two weeks but can be reached by e-mail at the above email address.

Mark Miller



Instructions to drafter
7.27.0...



REPRESENTATIVE MARK MILLER

Pam Kahler
Legislative Reference Bureau

July 27, 2001

Dear Ms Kahler,

Re: LRB /P1

Your draft of the business subsidy bill was very useful in helping to guide development of the legislation. I have conferred with interested parties as well as the authors of the Minnesota legislation to resolve a number of the issues raised by the first draft. Upon completion of the revised draft, I will meet with the affected state agencies as well as other interested parties to settle on a bill for final drafting.

The goal of the legislation is to develop a mechanism for gathering information to help assess the benefits derived from public investment in economic development. My preferred mechanism is to put overall responsibility for administering the program in the department of administration in order to assure uniformity and compatibility of information gathered among all the agencies engaged in granting business subsidies.

→ (The bulk of business subsidies are provided by local jurisdictions, primarily through the creation of TIF districts. I want the department of revenue to administer the collection of data from local jurisdictions which create TIF districts or which provide economic incentives that are reportable under this bill but are not under the purview of a state granting agency.

✓ (Subsidies fall into two major time categories: one-year programs and multi-year programs. One-year programs must submit one report within 24 months. Multiyear programs submit progress reports annually with the first report being within 24 months and a final report at the conclusion of the subsidy period.

✓ (Minnesota encountered some initial problems with reporting by recipients who received multiple subsidies. I want to direct DOA to use a unique identifier, such as the federal EIN to reduce the chances for duplicated reporting.

✓ Make clear that all reports submitted by recipients are public records, including application documents. Granting agencies must keep a centrally located, easily accessible file containing the business subsidy agreement and the recipient's report(s).

✓ For subsidies where the public purpose is identified as job creation, I want to include a definition of a job. Unless there is an existing appropriate definition, a job consists of work with a reimbursement rate that results in an annual income from wages at or above 185% of the Federal Poverty Level for a family of two together with health insurance for which the employee pays no more than 20% of the premium and has a deductible of no more than \$500 per year. This definition is purposefully designed to exclude part-time or seasonal jobs unless the annual reimbursement exceeds 185% FPL. DOA may make rules to further refine the definition of job for reporting purposes. For example, DOA may determine that a wage of 225% FPL is equivalent to 185% FPL plus health insurance or that an employer-provided benefit plan valued at \$5,000 per employee is equivalent to the health insurance provision. A local jurisdiction may determine its own definition of job as part of a community-based public-participation economic development plan for which the local jurisdiction is the granting agency.

? For job creation, the baseline is the monthly average number of jobs over the prior 12 months. Baseline jobs must meet the same definition of jobs as new jobs.

For job retention, the recipient shall identify jobs to be retained that would be lost without the subsidy and report annually on the status of those retained jobs for five successive annual reports. The grantee shall also report annually the total number of jobs by wage category prior to receiving the grant and the total number of jobs for the 12 month period covered by each successive annual report. DOA shall make rules to assure uniformity of reporting standards for job retention purposes. A local jurisdiction may determine its own criteria for job retention as part of a community-based public-participation economic development plan for which the local jurisdiction is the granting agency.

No public funds, in the form of grants or low-interest loans, or transfer of real or personal property (see item 8 relating to page 2, line 12 of draft) may be used to subsidize the move of a business from one Wisconsin municipality to another without written agreement from the municipality from which the business is moving all or part of its operations. (Municipality includes townships)

No public funds, in the form of grants or low-interest loans, or transfer of real or personal property (see item 8 relating to page 2, line 12 of draft) may be used to subsidize the move of a business from a state with which Wisconsin has entered into a compact against job piracy and poaching except as allowed under the terms of that agreement.

Subsidy applicants shall reveal, as part of any application, the applicant's record during the prior five years with respect to failure to comply with state or federal environmental or labor laws, including consent agreements. In determining timeliness, the date when the finding of violation was rendered or the date of a consent agreement shall be the determining date for the purposes of whether disclosure is required. Disclosure shall include, as a minimum, a description of the finding, the agency or jurisdiction rendering the finding, the penalty assessed, and the location of the public record. For consent agreements that are public record disclosure shall include a summary description of the complaint that led to the agreement, a summary description of

← to include application →

← rules →

What is purpose of this?

agreement and the location of the agreement as a public record. For non-public consent agreements disclosure shall include a summary description the complaint that led to the agreement. DOA may make rules to assure that disclosure requirements meet uniform minimum standards. *Rules*

Subsidies subject to reporting shall require two public hearings separated by at least thirty days with the last hearing occurring not less than thirty days prior to final decision. The hearings shall be in the jurisdiction where the recipient will conduct the activity being supported by the subsidy. If a jurisdiction has developed, through public participation, a development plan that identifies the criteria for granting subsidies and the appropriate authority, in accordance with that plan, certifies that the subsidy meets these criteria, then only one public hearing is required. DOA shall establish, by rule, the criteria for a qualifying development plan.

?
new stuff →

MES ↑
? public participation
economic development plan?

**Instructions and comments regarding initial draft document
(LRB-2658/P1)**

Language suggestions are meant to be illustrative, not definitive.

- one
ME S*
- 1. Include in Definition:
- a. Public Participation Economic Development Plan. I want this to parallel or reference the requirement in smart growth.
 - b. Good Neighbor Agreement (see above). An enforceable contract which requires a grantee to adhere to negotiated environmental, economic, labor or other social and community standards. *he doesn't mention this again so there doesn't appear to be any need to define it*
- will these be used in the draft? - worth ch?*
- ✓ 2. Drafters note 2. I made some changes as noted where appropriate.
 - ✓ 3. Drafters note 3. I concur.
 - ✓ 4. Relating clause: include requirement that recipients of subsidies are also required to report.
 - ✓ 5. P2, L12, add language to assure that transactions which may result in a reportable subsidy are also covered. For example, a jurisdiction or agency may acquire real or personal property then lease it to the recipient with an option to purchase. If exercising the option would have been a reportable subsidy, then the transaction should be subject to the reporting requirement. Something like: "Transactions which appear to meet this criteria, or which may, at some future date meet this criteria, regardless of how they are structured, shall be considered as subject to reporting."
 - ✓ 6. P2, L13, change to any loan [given to a business by an agency per (3)(a)2c]. The public subsidy could involve consideration other than a lower interest rate, e.g. forgiveness for fulfilling certain outcomes. Note that later we require reporting only on loans that exceed \$75,000 (P3, L14-15).
 - ✓ 7. P2, L15, a business subsidy does not include general tax reductions enacted in state statute, but does include tax reductions applicable to a single business or development granted by a local jurisdiction or a state or local agency. (Can state or local agencies even grant tax exemptions? Are there fees that exceed \$25,000, the threshold amount for a subsidy?)
 - ✓ 8. P3, L1-2, business subsidies should not include tax law changes enacted by the legislature or other general changes in the statutes, regardless if they are technical in nature. There would be no "awarding" agency responsible for administering the reporting requirement.
 - ✓ 9. P3 L4, delete
 - ✓ 10. P3 L5, delete
 - ✓ 11. P3, L10-13, delete
 - ✓ 12. P3, after L17, exclude normal vendor contracts.

✓13. P4, L16, change wording to read: "...and shall, where job creation is the public purpose, include a wage floor not less than the amount specified in [insert reference to relevant section relating to definition of a "job."]

✓14. P4, L18, drafter's note. I see the wage requirement language as applying only when job creation or retention is identified as the public purpose for the subsidy. I think the vagueness is addressed by the language change in item 13, above.

✓15. P5, L5, drafters note. OK

→ 16. P5, L8 drafter's note, concur with awarding agency, except I'd like to allow providing agencies the option of administering the reporting program for all awarding agencies in their purview. ← bad

what exactly → what responsibilities - "agency" vs "grantor"

✓17. P5, L14, delete "part-time and full-time"

✓18. P5, L 14 & L15, delete "or retained".

19. P5, L15, Add: For job retention, the grantee shall identify jobs to be retained that would be lost without the subsidy and report annually on the status of those retained jobs for five successive annual reports. The grantee shall also report annually the total number of jobs prior to receiving the grant and the total number of jobs for the 12-month period covered by each successive annual report. DOA shall make rules to assure uniformity of reporting standards for job retention purposes.

is this be in application agreement, or report?

✓20. P6 L5, this disclosure only applies to public financial assistance.

✓21. Drafter's note. I think all these are relevant declarations for every subsidy. Job goals only apply if job creation is a purpose for the subsidy.

✓22. P6 L13, a grantor-developed report is supplemental to the DOA reporting requirements (see #18, below). → # 25

✓23. P6 L16-20. Note there is a distinction between jobs where "job creation" is the public purpose and wage reporting when "job creation" is not the public purpose. *not really a difference*

✓24. P7 L6, change "did" to "could"

✓25. P7 L11, drafter's note Grantors may require additional information, but such information is supplemental to the DOA requirements and need not be reported to DOA. DOA may require grantors to report supplemental information if it determines that such additional information enhances general accountability for business subsidies and is consistent with the purposes of this act.

→ 26. P7 L12-13, penalties. Add: awarding agencies shall establish procedures to assure prompt submission of recipient reports to include prompt legal notice within 30 days of a report becoming delinquent and initiate action to recover the public investment in a business subsidy when a report is more than 6 months delinquent. Awarding agencies shall promptly notify DOA of recipients whose reports are six months delinquent. Recipients who have

no requirement to recover public investment in delinquent report

not yet in draft

failed to submit a required report within 6 months of the report's due date may not apply for nor be awarded a business subsidy until the delinquent report is filed and the recipient is determined by DOA to be eligible for business subsidies.

- ✓ 27. P8 L11, I assume "forms" includes any kind of electronic filing.
- ✓ 28. P8 L17-19, I want to specify that DOA will determine how to administer this situation.
- ✓ 29. P9 L1, replace "region" with "county"
- ✓ 30. P9 L3, "time category" refers to whether the subsidy is one year or longer than one year. For the purposes of this bill the time categories should be: less than 2 years, 2 to 5 years, 6 to 10 years, 11 to 20 years, longer than 20 years.
- ✓ 31. P9 L4, After "type of subsidy," insert "amount of subsidy,"
- ✓ 32. P9 L5, ...for projects completed during the reporting period. ? *annual reporting period ?*
- ✓ 33. P9, add, after L5, "The percentage of recipients achieving their annual target goals during the reporting period." This anticipates that multi-year subsidies may have interim goals.
- ✓ 34. P9 L8, "The total dollar amount of business subsidies that did not achieve their goals within one year of the time period for the subsidy goals to be accomplished."
- ✓ 35. P9 L10-11, delete
- ✓ 36. P10 L1-3, delete
- ✓ 37. P10 L4, Only need to report jobs created as a result of the subsidy, by wage band.
- ✓ 38. P10 L5, same as above, but with respect to benefits provided. Recipients can describe their benefits. It may be child-care assistance, IRA contributions, employee benefit account, pension, etc. If the recipient provides a benefit in addition to wages, he can report it. The absence of any benefit description assumes that no benefits are provided. Note that I have required a health benefit or a DOA-determined equivalent in the definition for job where "job creation" is the public purpose. My intent is to allow DOA the flexibility to determine how to report benefits for all categories of public purpose so that information provided to DOA is consistent.
- ✓ 39. P10 after L5, insert directions to DOA to develop guidelines to permit comparison of wages and benefits for new jobs created compared with comparable jobs in the area where the new jobs were created.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON

as well as subsidy recipients,

D-Note

Regen

prohibiting business subsidies under certain circumstances, granting rule-making authority, requiring the exercise of

1 AN ACT to create 16.27, 16.28 and 560.055 of the statutes; relating to: requiring
2 state agencies, political subdivisions, and housing, redevelopment, and
3 community development authorities to report on subsidies provided to
4 businesses and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 16.27 of the statutes is created to read: awards and

6 16.27 Definitions for business subsidy reports. In s. 16.28:

7 (1) "Agency" means a state agency or a local government agency.

8 (2) "Business" means:

9 (a) Any person engaged in a business enterprise for profit in this state.

rule-making authority

1 (b) Any organization or enterprise operating not for profit in this state that has
2 at least 100 full-time positions with a ratio of highest-paid to lowest-paid employee
3 that exceeds 10 to one, determined on the basis of full-time equivalent positions.

4 (3) (a) Except as provided in par. (b), "business subsidy" means:

5 1. Public improvements of at least \$25,000 in value that are made to buildings
6 or lands owned by the state or a political subdivision and that serve a public purpose
7 but that principally benefit a single business or a defined group of businesses at the
8 time the improvements are made.

9 2. Any of the following that has a value of at least \$25,000 and that is given to
10 a business by an agency:

11 a. A grant.

12 b. A contribution of personal or real property or infrastructure.

13 c. A loan [✓] ~~that~~ ^{with an interest rate that is below the rate commercially available to the}

14 ~~business receiving the loan.~~

15 d. A reduction or deferral of any tax or fee.

16 e. A guarantee of any payment under a loan, lease, or other obligation.

17 f. Any preferential use of government facilities.

Insert 2-17 ✓

18 (b) "Business subsidy" does not include any of the following:

19 1. Assistance that is generally available to all businesses or to a general class
20 of similar businesses, ^{→ including general tax reductions}

21 2. Assistance for the sole purpose of providing job readiness and training
22 services.

23 3. Housing assistance.

24 4. Energy conservation assistance.

25 5. Tax reductions resulting from conformity with federal law.

Insert 3-3

1 6. General changes in the tax incremental financing laws and other general tax

2 law changes ~~XX~~

3 7. Worker's compensation and unemployment compensation.

4 8. Benefits derived from regulation.

5 9. Indirect benefits derived from assistance to educational institutions.

6 9 . Funds from bonds issued for the benefit of any institution, facility, or
7 organization described in section 501 (c) (3) of the Internal Revenue Code that is
8 exempt from federal taxation under section 501 (a) of the Internal Revenue Code.

9 10 . Assistance for a consortium, as defined in s. 560.60 (3). ✓

10 12. Redevelopment in cases in which the recipient's investment in the purchase
11 of the site and in site preparation is 70% or more of the current year's assessed value.

***NOTE: I'm not sure what this means. Is this referring to assistance for redevelopers? This may relate to some specific to Minnesota law.

12 13. Federal assistance until the assistance has been repaid to, and reinvested
13 by, the agency.

***NOTE: I don't know what this means. It doesn't seem to make sense.

14 11 . Loans to businesses of \$75,000 or less, and loan guarantees to businesses
15 if the amount guaranteed is \$75,000 or less.

16 12 . Federal loan funds provided through the U.S. economic development
17 administration.

***NOTE: You will notice that not all of the types of subsidies excluded in the Minnesota law are excluded above. Some were not relevant to Wisconsin law and some were excluded in Minnesota only for purposes of the public hearing requirements but still subject to the reporting requirements.

18 (4) "Grantor" means a state agency or a local government agency that provides
19 a business subsidy.

20 (5) "Local government agency" means any political subdivision, housing
21 authority created under ss. 66.1201 to 66.1211, redevelopment authority created

awards

1 under s. 66.1333, or community development authority created under s. 66.1335, or
2 any entity created or authorized by any of them, that is authorized to award or
3 provide a business subsidy.

4 (6) "Political subdivision" means a city, village, town, or county.

5 (7) "Recipient" means a business that is benefited by a business subsidy under
6 sub. (3) (a) 1. or that receives a business subsidy under sub. (3) (a) 2. or 3.

7 (8) "State agency" means any office, department, agency, institution of higher
8 education, association, society, or other body in state government that is created or
9 authorized to be created by the constitution or any law and that is authorized to
10 award or provide a business subsidy, including any authority created under ch. 231,
11 233, or 234 but not including the legislature or the courts.

12 SECTION 2. 16.28 of the statutes is created to read:

13 16.28 Business subsidies; reporting requirements. (1) DEVELOPING

14 CRITERIA (a) Every agency shall develop criteria for awarding business subsidies.

15 The criteria shall set minimum requirements that a business must meet to be eligible

16 for a business subsidy and shall include a wage floor, which may be a specific dollar

17 amount or a formula for arriving at a specific dollar amount, for jobs created as a

18 result of a business subsidy.

****NOTE: This seems a bit vague. Will every business subsidy create jobs? Are these jobs that are both directly and indirectly created as a result of the subsidy?

19 (b) No agency may award a business subsidy until the agency has developed
20 the criteria required under par. (a).

21 (c) A copy of the criteria developed under par. (a) shall be submitted along with
22 the first annual report filed by the agency under sub. (4). A copy of any changes to

23 the original set of criteria developed under par. (a) shall be submitted along with the

CS
; public hearings; prohibitions

awarding and

insert 4-18

1 first annual report filed by the agency after the changes are made. If in awarding
2 a business subsidy an agency deviates from the criteria it has developed under par.
3 (a), the agency shall document the reason for the deviation in writing and submit a
4 copy of that documentation along with the first annual report filed by the agency
5 after the deviation occurs.

Insert 5-5

***NOTE: It appears that the Minnesota law requires only one set of criteria by an agency for all types of business subsidies provided by the agency. If so, the criteria must be very general. It might make more sense to develop a set of criteria for each type of subsidy. In any case, since the criteria may change over time with experience, I added that any changes to the original set of criteria must be filed along with the next annual report.

6 (2) SUBSIDY AGREEMENT. (a) Whenever an agency provides a business subsidy,
7 the recipient shall enter into a subsidy agreement with the grantor. The subsidy
8 agreement shall include all of the following:

***NOTE: See my drafter's note on this issue. You may want the agency awarding the subsidy to enter into the agreement.

- 9 1. A description of the subsidy, including the amount, or fair market value, and
- 10 type of subsidy.
- 11 2. A statement of the public purpose for the subsidy.
- 12 3. A statement of why the subsidy is needed.
- 13 4. Specific measurable goals for the subsidy, including goals for the number of
- 14 ~~business~~ jobs to be created or retained and wage goals for the jobs to
- 15 be created or retained.

- 16 6 ← §. The time within which the goals specified in subd. 4. are to be achieved. ✓
- 17 7 ← §. A commitment to continue operations at the location where the subsidy is
- 18 to be used for at least 5 years from the date of receiving the full amount of the subsidy.

Insert 5-15 ✓

1 ~~8~~ 8. A description of any financial obligation of the recipient if the goals under
2 subd. 4. are not met or if the recipient ceases operations at the location before the
3 time specified in subd. ~~6~~ ⁷.

4 ~~9~~ 9. The name and address of the recipient's parent corporation, if any.

5 ~~10~~ 10. A list, by amount and provider, of all other ^{public} financial assistance for the
6 project ^{for which the subsidy will be used}.

****NOTE: Would all of these requirements be relevant for every type of subsidy?
If not, it would probably be better for the introduction to read something like "all of the
following that are relevant." If you are concerned that with that language an agency will
provide only what it wants to in an agreement, I could add a separate provision that
specifies which of the requirements must be in every agreement, such as the public
purpose for the subsidy.

7 (b) A subsidy agreement under par. (a) shall be in writing and signed by both
8 the recipient and the grantor. If the grantor is a local government agency that is not
9 a political subdivision, the governing body of the political subdivision within which
10 the local government agency operates must approve the agreement.

11 (3) REPORTS OF RECIPIENTS. (a) A grantor shall monitor the progress of each of
12 its recipients in meeting the goals specified in the subsidy agreement. ~~by the time~~

13 ~~by the time~~ each recipient shall submit to its grantor a report developed by
14 the grantor that provides the following information ~~the previous calendar year~~.

- 15 1. The type, public purpose, and amount of the subsidy.
- 16 2. The hourly wage of each job created or retained as a result of the subsidy,
17 shown in separate wage bands.
- 18 3. The sum of the hourly wages and cost of health ^{care benefits} ~~insurance~~ provided by the
19 employer, shown in separate wage bands.

20 4. A statement of the goals identified in the subsidy agreement under sub. (2)

21 (a) 4. and an update on the progress toward meeting the job and wage goals or the
22 date on which the job and wage goals were or will be achieved.

Insert 6-22 →

by the time required under par. (b)

- 1 ~~6~~ A statement of any financial obligation of the recipient under sub. (2) (a) 8
- 2 and an update on the progress toward meeting the financial obligation or the date
- 3 on which the financial obligation was or will be met.
- 4 ~~7~~ The location of the recipient before receiving the business subsidy.
- 5 ~~8~~ If the recipient was previously located at another site in Wisconsin, why the
- 6 recipient ~~was unable to~~ complete the project for which the business subsidy was awarded
- 7 at the recipient's previous location.
- 8 ~~9~~ The name and address of the recipient's parent corporation, if any.
- 9 ~~10~~ A list, by amount and provider, of all other financial assistance for the
- 10 project.
- 11 ~~11~~ Any other information requested by the grantor.

Insert 7-11

****NOTE: Under the Minnesota law, the information provided in the report of a subsidy recipient tracks what is in the agreement with the recipient. You may not want to require all of this information in the report since a lot of it is redundant. If the agency knows which recipient is submitting the report, the agency can look at the subsidy agreement for much of this information. Also, the Minnesota law requires that this information be submitted for the previous year, but this makes sense probably only for the job and wage information.

- 12 ~~(b)~~ recipient that fails to submit ~~its~~ report by the time required under par.
- 13 ~~(a)~~ may be required to forfeit not less than \$100 nor more than \$1,000.

Insert 7-17

(c) A recipient is not required to submit a report under this subsection after the year in which the recipient submits a report showing that the goals identified under sub. (2) (a) 4. have been met or that the recipient has fulfilled any financial obligation specified under sub. (2) (a) 7.

- 18 (4) REPORTS OF AGENCIES. (a) Annually, no later than April 1, each of the
- 19 following, subject to par. (c), shall file with the department the report under par. (b):
- 20 1. Every state agency, regardless of whether the state agency has ever provided
- 21 a business subsidy.

manually or electronically

1 2. Every local government agency that is a political subdivision with a
2 population greater than 2,500, and every local government agency that is not a
3 political subdivision but that operates in a political subdivision with a population
4 greater than 2,500, regardless of whether the local government agency has ever
5 provided a business subsidy.

6 3. Every local government agency that is a political subdivision with a
7 population of 2,500 or less, and every local government agency that is not a political
8 subdivision but that operates in a political subdivision with a population of 2,500 or
9 less, if the local government agency has provided a business subsidy at any time in
10 the previous 5 calendar years.

11 (b) The department shall develop a report form to be completed by an agency
12 specified in par. (a) that does all of the following:

13 1. Summarizes the information submitted to the agency in the reports under
14 sub. (3).

15 3 ← 20 Enables the department to produce the compilation and summary report
16 required under sub. (5).

17 (c) If a business subsidy is awarded by one agency but provided by a different
18 agency, the 2 agencies shall submit one report together with respect to that business
19 subsidy.

20 (5) COMPILATION AND SUMMARY REPORT. (a) Annually, by August 1, the
21 department shall publish for the previous calendar year a compilation and summary
22 report of the reports received from agencies under sub. (4).

23 (b) The information in the report shall be presented in a manner that allows
24 for comparisons across time periods and among grantors, and shall include at least
25 all of the following: information

Insert 8-14

22
23
24
25

~~The information in the report shall be presented in a manner that allows for comparisons across time periods and among grantors, and shall include at least~~

The compilation of reports
under this subsection
had summary report

county
↑

1

1. The total amount of business subsidies awarded in each ~~region~~ of the state.

***NOTE: The Minnesota law required that the total amount of subsidies awarded in each "development region" of the state be shown. We don't have "development regions," and I don't know how the state would be divided into regions. Perhaps you would like to change "regions" to counties or something else.

2

2. Distribution of business subsidies by subsidy amounts.

3

3. Distribution of business subsidy amounts by ~~type of subsidy~~

***NOTE: I don't know what "time category" refers to, amount of subsidy,

4

4. Distribution of business subsidies by type of subsidy and ~~the~~ public purpose.

***NOTE: This is language from the Minnesota law. It might be more meaningful to know the subsidy amounts by type and public purpose rather than the absolute numbers of subsidies.

5

5. The percentage of all recipients that reached their ^{ultimate} goals.

***NOTE: This may need some refining since the information is supposed to be for the previous calendar year and the goals would not necessarily be achievable in the year's time. In other words, there will be recipients that achieved their goals in the previous calendar year, but that bears no relation to when they received their subsidies and how long it was expected to take them to achieve their goals. But perhaps the amount of time it took them is not an issue for you.

6

6. The percentage of recipients that did not reach their ^{ultimate} goals by 2 years from

7

the date of receiving the business subsidy.

***NOTE: This assumes, I guess, that we are only looking at the recipients that received their subsidies 2 years ago. I don't know if you want to require that all goals be reached in 2 years.

8

8. The total dollar amount of business subsidies provided to recipients that did

9

not reach their goals ^{ultimate} ~~by 2 years from~~ the date of receiving the business subsidy.

***NOTE: Once again, this assumes that we are only looking at the recipients that received their subsidies 2 years ago, and I don't know if you want to require that all goals be reached in 2 years.

10

8. The percentage of recipients that did not meet their goals and that did not

11

receive repayment.

***NOTE: I'm not really sure what this is intended to do. It seems redundant of subd. 6., and I don't know what "repayment" refers to.

categorized

Insert 9-5

Insert 9-3

Insert 9-9

1 9. A list of recipients that have failed to meet the terms of a business subsidy
2 agreement within the past 5 years and that have not satisfied a repayment
3 obligation, if any.

4 9 ~~9~~. The number of ~~jobs~~ jobs ~~created~~ wage bands.

****NOTE: Perhaps this is intended to mean the number of such jobs created or retained in the previous year

5 10 ~~10~~. ~~The~~ benefits paid ~~in~~ wage bands.

****NOTE: Does this mean benefits paid along with the jobs under subd. 10. or benefits paid in the previous calendar year for all jobs created or retained as a result of business subsidies?

6 ~~agency~~ agency reports under sub. (4) and the compilation and summary
7 report under ~~sub. (5)~~ Sub. (5) are public records ~~under sub. (5)~~.

****NOTE: As you can see from my questions, I'm not sure that you would want to use the Minnesota language exactly. It is not always obvious what it means. You should decide what you want the report to show. We can then make that required information in the report.

8 SECTION 3. 560.055 of the statutes is created to read:

9 **560.055 Requirements for awarding or providing business subsidies.**

10 (1) In this section, "business subsidy" has the meaning given in s. 16.27 (3).

11 (2) The department and any board with the authority to award or provide a
12 business subsidy under this chapter shall comply with s. 16.28 in the awarding or
13 providing of the business subsidy, consistent with s. 560.04 (2) (j). Criteria developed
14 by the department or a board under s. 16.28 (1) for awarding a business subsidy are
15 in addition to any criteria, determinations, or considerations required under this
16 chapter for awarding the business subsidy. The subsidy agreement required under
17 s. 16.28 (2) is in addition to any agreement required under this chapter with respect
18 to a business subsidy.

19 **SECTION 4. Initial applicability.**

created as a result of business

subsidies, shown by

for the purposes of subd. 1 of ch. 19

Fringe

Insert 10-6

Insert 10-7

Insert 10-5

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P2ins
PJK:jld:km

INSERT 2-17

1 3. A transaction between a business and an agency, regardless of how
2 structured, with the potential to result in a benefit described under subd. 1. or 2.

(END OF INSERT 2-17)

INSERT 3-3

3 8. Payment to a person providing goods or services to this state under subch.
4 IV or V or under ch. 84.

(END OF INSERT 3-3)

INSERT 4-18

5 ~~NO~~ The criteria shall provide that, if the public purpose of the subsidy is job creation, all
6 jobs created as a result of the subsidy must provide the equivalent of all of the
7 following:

8 1. An annual income that is equal to at least 185% of the federal poverty line,
9 as defined under 42 USC 9902 (2), for a family of 2 persons.

10 2. Comprehensive health care benefits for which the employee pays no more
11 than 20% of the premium and a deductible of no more than \$500 per year.

(END OF INSERT 4-18)

INSERT 5-5

12 (d) Before awarding a business subsidy to a subsidy applicant, an agency shall
13 conduct 2 public hearings in the political subdivision in which the applicant proposes
14 to conduct the project for which the subsidy will be used. The 2nd public hearing
15 must be held at least 30 days after the first public hearing and at least 30 days before



INS 5-5 cont

1 the final decision is made on whether to award the business subsidy to the applicant.
2 Notice of each hearing shall be given by publication of a class 1 notice under ch. 985
3 in a newspaper that is likely to give notice in the political subdivision in which the
4 applicant proposes to conduct the project for which the subsidy will be used.

5 (e) An agency may not award to a business subsidy applicant a business subsidy
6 in the form of a grant, a loan at an interest rate that is below the rate commercially
7 available to the applicant, or a contribution of personal or real property if any of the
8 following applies:

9 1. The business subsidy will be used to subsidize any portion of the cost of
10 moving the applicant's business ^{operations} from one political subdivision in this state to another
11 political subdivision in this state. This subdivision does not apply if the governing
12 body of the political subdivision from which the applicant intends to move consents
13 in writing to the move.

14 2. The business subsidy will be used to subsidize any portion of the cost of
15 moving the applicant's business ^{operations} from this state to a state with which this state has
16 entered into an agreement or compact related to businesses moving from one state
17 to another, except as allowed under the terms of the agreement or compact.

18 (f) A recipient may not apply for another business subsidy, and an agency may
19 not award another business subsidy to a recipient, if the recipient has failed to
20 submit a report required under sub. (3) (a) within 6 months of the time required for
21 submitting such report under sub. (3) (b). A recipient that submits a report more



approval

INS 5-5
cont

to apply

1 than 6 months after the time required under sub. (3) (b) is eligible for another
2 business subsidy only upon the ~~determination~~ of the department.

(END OF INSERT 5-5)

INSERT 5-15

currently

3 5. If the public purpose for the subsidy is the retention of jobs, the total number
4 of jobs provided by the recipient and identification of the jobs that would be lost
5 without the subsidy.

(END OF INSERT 5-15)

INSERT 6-22

6 5. If the public purpose for the subsidy is the retention of jobs, the total number
7 of jobs provided by the recipient and the status of the jobs identified under sub. (2)
8 (a) 5.

(END OF INSERT 6-22)

INSERT 7-11

9 (b) 1. If a subsidy is provided in a lump sum or over a period that does not exceed
10 one year, the recipient shall submit a report, as required under par. (a), within 24
11 months after the subsidy is last provided.

12 2. If a subsidy is provided over a period that exceeds one year, the recipient shall
13 submit a report, as provided in par. (a), within 24 months after the subsidy is first
14 provided. Annually thereafter, until the conclusion of the subsidy period, the
15 recipient shall submit a report, as provided in par. (a), for the period since the
16 previous report was submitted.

(END OF INSERT 7-11)

INSERT 7-12

Insert 7-12

1 ^{wof} If a recipient fails to submit a report by the time the report is due, the grantor shall
2 within 30 days after the due date notify the recipient that the report is overdue. The
3 grantor shall notify the department if the report remains delinquent for 6 months
4 after the due date and the recipient shall be ineligible for any other business
5 subsidies, as provided in sub. (1) (f).[✓] In addition, a NO
4

(END OF INSERT 7-12)

INSERT 7-17

6 (d) For each ~~recipient~~ recipient, a grantor shall keep a centrally located and
7 easily assessable file containing the recipient's application, all documents related to
8 the application, the subsidy agreement entered into under sub. (2),[✓] and all reports
9 submitted under this subsection.[✓]

(END OF INSERT 7-17)

INSERT 8-14

10 2. Minimizes confusion and duplication in the reporting process through the
11 use, for each recipient, of a consistent, unique identifier, such as the recipient's
12 federal employer identification number.

(END OF INSERT 8-14)

INSERT 9-3

13 ^{wof} the length of time over which the subsidy is provided

(END OF INSERT 9-3)

INSERT 9-5

14 6. The percentage of recipients that reached their interim goals.

(END OF INSERT 9-5)

INSERT 9-9

[✓] if any
↑



INS 9-9

1 ^{WOT} within one year of the time set for reaching the ultimate goals

(END OF INSERT 9-9)

INSERT 10-5

2 ^{WOT} or otherwise provided as a result of business subsidies, shown by

(END OF INSERT 10-5)

INSERT 10-6

3 (b) The information in the report under this subsection shall be presented in
4 a manner that allows for comparisons across time periods and among grantors. In
5 addition, the report shall include sufficient information to enable comparisons
6 between wages paid and ^{fringe} ~~fringe~~ benefits provided by new jobs created as a result of
7 business subsidies and wages paid and ^{fringe} ~~fringe~~ benefits provided by comparable jobs
8 in each area in which the new jobs are created. Business

9 (6) ^{business} PUBLIC RECORD REQUIREMENT. Subsidy applications, all documents related
10 to ^{business} ~~subsidy~~ applications, ~~subsidy~~ recipient reports under sub. (3), NO FT

(END OF INSERT 10-6)

INSERT 10-7

11 (7) [✓] RULES. The department shall promulgate rules for the administration of
12 this section. The rules may specify, among other things, other compensation and
13 health care benefits that are equivalent to those specified in ~~sub. (1)~~ ^{sub.} (1) (a) 1. and 2.
14 The rules shall, among other things, provide reporting standards to ensure that
15 information is reported by recipients and agencies in a uniform manner and specify
16 agency reporting requirements under sub. (4) [✓] for business subsidies that are
17 awarded by one agency but provided by a different agency.

(END OF INSERT 10-7)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P2dn

PJK:jld:km

Representative Miller:

This next version of the ~~draft~~^{bill} accomplishes much of what you requested in your redraft instructions, but I have a number of questions related to those instructions and did not attempt to draft various provisions. Perhaps it would be useful to meet again and go through the ~~draft~~^{bill} in detail after you have had a chance to review this version and the following questions and comments:

1. Your instructions referred to "business subsidies that are subject to the reporting requirement." Unlike the Minnesota law, this draft defines "business subsidy" in such a way that all business subsidies, as defined, are subject to the reporting requirement. Do you want any changes?

2. There is a conflict in the ~~draft~~^{bill} related to loans and loan guarantees that are "business subsidies." Section 16.27 (3) (a) 2. c. defines any loan of at least \$25,000 as a business subsidy and s. 16.27 (3) (a) 2. e. defines any guarantee of at least \$25,000 (including of a loan) as a business subsidy. Section 16.27 (3) (b) 11. provides that any loan or loan guarantee of \$75,000 or less is *not* a business subsidy. How do you want to resolve this conflict?

3. "Grantor" was defined in the previous version of the draft as the agency that provides, rather than awards, the subsidy. That way, the executive agency, rather than a board attached to the agency, does everything that a "grantor" must do. You indicated that you want the awarding agency to be the "grantor" but you want the executive agency to be able to elect to "administer" the subsidy reporting program. I think it would be better to leave the definition of "grantor" as the agency that provides the subsidy. Administering a program might be rather cumbersome for a board made up of a variety of people, often including laypersons, who have expertise in the subject area of the grants that they award but no expertise in administration, and the executive agencies perform the administrative services for the boards that are attached to them, anyway. However, if you still want the awarding entity, rather than the providing entity, to be the "grantor," you will have to specify which functions you want the providing entity to be able to elect to do. As the ~~bill~~^{bill} is currently drafted, the functions of "grantors" include entering into subsidy agreements with recipients, monitoring the progress of each recipient, and receiving and maintaining in a centrally located file the reports of the recipients.

4. Note the broad definition of "state agency" and the requirement that every state agency, even if it has never provided a business subsidy, must submit the report under s. 16.28 (4) to DOA. Do you want any modifications?

5. In this ^{bill}~~draft~~, I did not provide the exception for the second public hearing. I'm not sure what you mean by the terms you use in the instructions. Is the development of a development plan intended to refer to something that already occurs, or do you mean to establish a process? I don't know who an appropriate authority would be for certifying that the subsidy meets the criteria of the development plan. Would these criteria overrule the criteria for awarding subsidies developed by the agency under s. 16.28 (1)?

6. I'm not sure what the purpose is for requiring a subsidy applicant to disclose information about failure to comply with state or federal environmental or labor laws (and I'm not sure that those references are specific enough). Such failure and its disclosure does not seem to play any role in whether the subsidy is awarded or not. I don't know what "consent agreements" are.

7. Since most of the business subsidies that I'm familiar with involve grants and loans, I'm not sure that it makes sense to divide the subsidies into the time categories of "one-year programs and multi-year programs." Perhaps multi-year programs are more common with subsidies awarded by other agencies. For purposes of how often reports must be submitted, I divided the subsidies into those provided in a lump sum or over a period of up to one year and those provided over a period exceeding one year. For DOA's compilation and summary report, I did not use the five time categories you suggested. I thought it would make more sense for DOA to determine the appropriate categories on the basis of the subsidies actually awarded. Okay?

8. Regarding the prohibition on using public funds to subsidize a move to another state: I'm not familiar with compacts against "job piracy and poaching." Has Wisconsin entered into such a compact?

9. I didn't completely understand the reporting requirements for the projects for which job creation or retention was the public purpose. You specified a baseline ("the monthly average number of jobs over the prior 12 months"), but not what the baseline was to be used for. Does it go on the application? Is it to be included in each report? I wasn't sure of the significance of a baseline number of jobs for either job-creating or job-retaining projects. It seems to me that the relevant information is how many new jobs are created each year or how many jobs are retained each year, whether the new jobs fulfill the wage and benefit requirements, if the business is reaching its goals with respect to job creation or retention, etc. Do you simply want a business to report the average number of employees it had in the previous year and compare that to the number of employees it currently has?

10. The ^{bill}~~draft~~ currently does not have any requirement for recovering the subsidy, although the ^{bill}~~draft~~ does provide that the agreement will include a description of any financial obligation of the recipient if the goals are not met or if the recipient ceases operations at the location before five years. Is it your intention to require recovery of the subsidy if the recipient is six months or more late in submitting a report? If so, what

exactly do you mean by "recover the public investment"? Is the recipient liable for returning the entire amount or value already received? Do you want the attorney general or appropriate district attorney to pursue the recovery upon the request of DOA?

11. This version of the ^{bill}~~draft~~ does not include the compliance language of new s. 560.055 for any agencies other than the department of commerce. That will be addressed in a later version.

12. This version of the ^{bill}~~draft~~ does not divide administration of the program between DOA and DOR because you've stated that you prefer "to put overall responsibility for administering the program in the department of administration in order to assure uniformity and compatibility of information gathered among all the agencies engaged in granting business subsidies." We agree that this approach makes the most sense, instead of creating a duplicative, and possibly cumbersome, system under which ^(two) state agencies are required to keep track of the same information. You should also be aware of s. 66.1105 (13) of the statutes, which deals with record keeping requirements under the tax incremental financing program. You may want to consider amending that statute to require DOC to send a copy of its report to DOA. That statute states:

INSERT DN-3

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Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

INSERT DN-3

--2658/2dn

66-1105

(13) The department of commerce, in cooperation with other state agencies and local governments, shall make a comprehensive report to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), at the beginning of each biennium, beginning with the 1977 biennium, as to the effects and impact of tax incremental financing projects socially, economically and financially.

(end ins DN-3) 1/0

LPS
From
folio

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P2dn
PJK&MES:jld:jf

September 4, 2001

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"66.1105 (13) The department of commerce, in cooperation with other state agencies and local governments, shall make a comprehensive report to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), at the beginning of each biennium, beginning with the 1977 biennium, as to the effects and impact of tax incremental financing projects socially, economically and financially."

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**Business Subsidy Bill
LRB2658/P2**

A. Clarifications in response to drafter's note September 4, 2001.

✓ 1. Business subsidy definition OK as is (see also 2, below)

✓ * 2. Modify the definition so that business subsidies do not include loans and loan guarantees in excess of \$75,000.

? 3. The agency that provides the grant is responsible for the report. It may delegate the reporting requirement as it deems appropriate.

see 8.15.02 (4) don't need more language?

✓ 4. Only "state agencies" which provide business subsidies are required to report.

← ✓ 5. I mean to refer to the "Smart Growth" plan. I want to change these instructions so that the requirement for two public hearings is reduced to one if the jurisdiction has adopted a "Smart Growth" plan and waived if

the subsidy was adopted as part of the creation of a TIF district. If the subsidy was created to assist the development of a TIF district, but was

created after the creation of the TIF district, then public hearings are required. The basic result I want to achieve is to require a public hearing.

Smart Growth and TIF district creation require public hearings. If the TIF

Smart Growth and TIF district creation require public hearings. If the TIF

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no public hearings required at all if one of the has already been done

hearings have not identified the subsidy to public comment, then new hearings are required. If the subsidy is consistent with the Smart Growth Development plan, the executive agency responsible for administering the plan can certify that the subsidy is consistent with the plan and hearing(s) were held.. Similarly, the executive official of the jurisdiction that created a TIF district certifies that the subsidy to a business or developer in a TIF district was subject to public hearings.

- ✓ 6. "Consent agreements" are the term I used to describe agreements by a business entity to adopt certain practices in response to a charge by a regulatory agency of breaking environmental or labor laws. I rely on your drafter's skill to find a way to describe this requirement appropriately.

~~DOA~~ DOA will have to do rules
later for State

- ✓ 7. I'm fine with your suggestion to divide the time categories into two categories rather than the multiple categories I suggested.

- ✓ 8. There are no compacts that I am aware of (yet), but they are being discussed by legislators and governors.

9. The purpose of a wage baseline is to create a standard for measuring job creation and retention. If a subsidy is for the purpose of creating jobs,

into
draft

then the standard for jobs created is compared to the baseline. Similarly for job retention. We created a definition for "job". The baseline is the average monthly average number of "jobs" over the prior 12 months.

New "jobs" are compared to this baseline.

- ✓ 10. The only requirement for recovering the subsidy is failure to report. The agreement should specify recovery consequences. I don't want to impose fines. Agencies may have other recovery consequences. The legislation does not require it.

get rid of fines provision

require agency to recover in accordance w/ the agreement

- 11. ?[need to talk with drafter]

- ✓ 12. DOA will reference (and summarize?) the TIF report prepared by DOC.

13. *DOA include that report in its summary of that report*

✓

B. New Requirement regarding development zones. Subsequent to my last set of instructions, I have learned more about development zone tax credits. I'd like DOR to publish a list of taxpayers who avail themselves of development zone tax credits in excess of \$5,000 in any one year, or \$10,000 cumulatively. Development zone tax credits that are not reported in this category can be reported in aggregate for each zone.

Due Thurs or Fri

LRB Number: 2658 / 193

Nonsubmittal Form

**WPOs: DO NOT FORWARD THIS DRAFT FOR SUBMITTAL,
UNLESS INSTRUCTED TO DO SO BY THE DRAFTING
ATTORNEY.**



Return everything to the primary drafting attorney.

After you have completed typing this draft, return the camera-ready copy to the primary drafting attorney, along with the drafting file. Also, forward the electronic file to the primary drafting attorney for the task of drafting.



Return only the camera-ready copy to the primary drafting attorney.

After you have completed typing this draft, clip this form to the camera-ready copy and return these materials to the primary drafting attorney. Place the drafting file in the HOLD basket in the WPO room. Forward the electronic file to Typing -- lrb_wpo, so that the electronic file can be viewed by all WPOs.

When the attorney finishes reviewing the draft, the attorney will bring the camera-ready copy back to the WPO room. If the attorney has found any typos or minor corrections, correct the draft as indicated and print out a new camera-ready copy. Take the final camera-ready copy, retrieve the drafting file from the HOLD basket in the WPO room, discard this form, place the camera-ready copy and the drafting file in the PA submit basket and forward the electronic file to the PAs for submitting. (If, after reviewing the draft, the attorney decides to redraft it, give the attorney the drafting file and forward the electronic file to the attorney for drafting.)