



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*D-note
(by Thurs on Fri
back to PJK, if possible)*

requiring certain disclosures by business subsidy applicants;

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, as well as subsidy recipients, to report on
4 subsidies provided to businesses, prohibiting business subsidies under certain
5 circumstances, granting rule-making authority, requiring the exercise of
6 rule-making authority 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:

7 SECTION 1. 16.27 of the statutes is created to read:
8 16.27 Definitions for business subsidy awards and reports. In s. 16.28:
9 (1) "Agency" means a state agency or a local government agency.
10 (2) "Business" means:

Insert 1-9

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

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

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

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

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

12 a. A grant.

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

14 ~~c. A 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 ✓ ~~c~~ Any preferential use of government facilities.

18 ✓ ~~5~~ A transaction between a business and an agency, regardless of how
19 structured, with the potential to result in a benefit described under subd. 1. ✓ ~~2~~, 3., or 4.

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

21 1. Assistance that is generally available to all businesses or to a general class
22 of similar businesses, ~~including~~

23 2. Assistance for the sole purpose of providing job readiness and training
24 services.

25 3. Housing assistance.

Insert 2-17

Insert 3-2 ✓

- 1 4. Energy conservation assistance.
- 2 ~~5.~~ reductions resulting from conformity with federal law.
- 3 6. General changes in the tax incremental financing laws and other general tax
- 4 law changes.
- 5 7. Worker's compensation and unemployment compensation.
- 6 8. Payment to a person providing goods or services to this state under subch.
- 7 IV or V or under ch. 84.
- 8 9. Funds from bonds issued for the benefit of any institution, facility, or
- 9 organization described in section 501 (c) (3) of the Internal Revenue Code that is
- 10 exempt from federal taxation under section 501 (a) of the Internal Revenue Code.
- 11 10. Assistance for a consortium, as defined in s. 560.60 (3).

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

14 ~~11.~~ Federal loan funds provided through the U.S. economic development
 15 administration.

16 (4) "Grantor" means ^{an} ~~any~~ agency ~~of a local government~~ that ~~awards~~
 17 a business subsidy. *provides or certifies eligibility for*

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

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

24 (7) "Recipient" means a business that is benefited by a business subsidy under
 25 sub. (3) (a) 1. or that receives a business subsidy under sub. (3) (a) 2. ~~3.~~ *3., 4., or 5.*

1 (8) "State agency" means any office, department, agency, institution of higher
 2 education, association, society, or other body in state government that is created or
 3 authorized to be created by the constitution or any law ~~which is authorized to~~
 4 ~~award or provide a business subsidy~~ including any authority created under ch. 231,
 5 233, or 234 but not including the legislature or the courts.

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

7 **16.28 Business subsidies; awarding and reporting requirements. (1)**

8 DEVELOPING CRITERIA; PUBLIC HEARINGS; PROHIBITIONS. (a) Every agency shall develop
 9 criteria for awarding business subsidies. The criteria shall set minimum
 10 requirements that a business must meet to be eligible for a business subsidy. The
 11 criteria shall provide that, if the public purpose ~~of~~ ^{for} the subsidy is job creation, all jobs
 12 created as a result of the subsidy must provide the equivalent of all of the following:

- 13 1. An annual income that is equal to at least 185% of the federal poverty line,
 14 as defined under 42 USC 9902 (2), for a family of 2 persons.
- 15 2. Comprehensive health care benefits for which the employee pays no more
 16 than 20% of the premium and a deductible of no more than \$500 per year.

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

19 (c) ^{1.} A copy of the criteria developed under par. (a) shall be submitted along with
 20 the first annual report filed by the agency under sub. (4). A copy of any changes to
 21 the original set of criteria developed under par. (a) shall be submitted along with the
 22 first annual report ^{that is} filed by the agency after the changes are made. If in awarding
 23 a business subsidy an agency deviates from the criteria it has developed under par.

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

APPLICATION REQUIREMENTS;

that is authorized to award a business subsidy

Insert 5-2

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

that is

1. Except as provided in subd. 2.,

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(d) Before awarding a business subsidy to a subsidy applicant, an agency shall conduct 2 public hearings in the political subdivision in which the applicant proposes to conduct the project for which the subsidy will be used. The 2nd public hearing must be held at least 30 days after the first public hearing and at least 30 days before the final decision is made on whether to award the business subsidy to the applicant.

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Notice of each hearing shall be given by publication of a class 1 notice under ch. 985 in a newspaper that is likely to give notice in the political subdivision in which the applicant proposes to conduct the project for which the subsidy will be used.

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

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1. The business subsidy will be used to subsidize any portion of the cost of moving the applicant's business operations from one political subdivision in this state to another political subdivision in this state. This subdivision does not apply if the governing body of the political subdivision from which the applicant intends

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to move consents in writing ~~to the agency~~ to the move, which may be by resolution

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

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(f) A recipient may not apply for another business subsidy, and an agency may

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not award another business subsidy to a recipient, if the recipient ~~is subject~~ to

1. Except as provided in subd. 2.,

fails

412.

1 submit a report required under sub. (3) (a) within 6 months of the time required for
2 submitting such report under sub. (3) (b). A recipient that submits a report more
3 than 6 months after the time required under sub. (3) (b) ~~may not be eligible for~~ another
4 business subsidy only upon the approval of the department.

may apply for, and may be awarded,

5 (2) SUBSIDY AGREEMENT. (a) Whenever an agency provides ^{or certifies eligibility for} a business subsidy,
6 the recipient shall enter into a subsidy agreement with the grantor. The subsidy
7 agreement shall include all of the following:

8 1. A description of the subsidy, including the amount, or fair market value, and
9 type of subsidy.

10 2. A statement of the public purpose for the subsidy.

11 3. A statement of why the subsidy is needed.

period ✓

insert 6-12

12 4. Specific measurable goals for the subsidy, ~~including~~ goals for the number of
13 jobs to be created or retained and wage goals for the jobs to be created or retained.

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

17 6. The time within which the goals specified in subd. 4. ^{and, if applicable,} are to be achieved.

18 7. A commitment to continue operations at the location where the subsidy is
19 to be used for at least 5 years from the date of receiving the full amount of the subsidy.

20 8. A description of any financial obligation of the recipient if the goals under
21 subd. 4. are not met or if the recipient ceases operations at the location before the
22 time specified in subd. 7. ^{or, if applicable, under subd. 4m.}

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

24 10. A list, by amount and provider, of all other public financial assistance for
25 the project for which the subsidy will be used.

✓
in subd. 4m.

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

5 (3) REPORTS OF RECIPIENTS. (a) A grantor shall monitor the progress of each of
6 its recipients in meeting the goals specified in the subsidy agreement. Each recipient
7 shall submit to its grantor, by the time required under par. (b), a report developed
8 by the grantor that provides the following information:

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

- 12 3. The sum of the hourly wages and cost of health care benefits provided by the
- 13 ~~recipient~~ shown in separate wage bands. → recipient

- 14 4. A statement of the goals identified in the subsidy agreement under sub. (2)
- 15 (a) 4. and an update on the progress toward meeting the job and wage goals or the
- 16 date on which the job and wage goals were or ~~will~~ be achieved. → are expected to

- 17 5. If the public purpose for the subsidy is the retention of jobs, the total number
- 18 of jobs currently provided by the recipient and the status of the jobs identified under
- 19 sub. (2) (a) 5.

- 20 6. A statement of any financial obligation of the recipient under sub. (2) (a) 8.
- 21 and an update on the progress toward meeting the financial obligation or the date
- 22 on which the financial obligation was or will be met.

- 23 7. The location of the recipient before receiving the business subsidy.

Insert 7-19

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✓ this state
Michigan

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8. If the recipient was previously located at another site in ~~Michigan~~ why the recipient was unable to complete the project for which the business subsidy was awarded at the recipient's previous location.

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

10. A list, by amount and provider, of all other ^{public} financial assistance for the project.

11. Any other information requested by the grantor.

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

2. If a subsidy is provided over a period that exceeds one year, the recipient shall submit a report, as ^{required under} ~~provided in~~ par. (a), within 24 months after the subsidy is first provided. Annually thereafter, until the conclusion of the ~~subsidy~~ ^{required under} period, the recipient shall submit a report, as ~~provided in~~ ^{required under} par. (a), for the period since the previous report was submitted.

(c) If a recipient fails to submit a report by the time the report is due, the grantor shall within 30 days after the due date notify the recipient that the report is overdue.

~~The grantor shall notify the department~~ if the report remains delinquent for 6 months after the due date ^{Insert 8-19} and the recipient shall be ineligible for any other business subsidies, as provided in sub. (1) (f). In addition, a recipient that fails to submit a report by the time required under par. (b) may be required to forfeit not less than \$100 nor more than \$1,000.

(d) For each recipient, a grantor shall keep a centrally located and easily ~~accessible~~ file containing the recipient's application, all documents related to the

accessible

Over which the subsidy is provided

1 application, the subsidy agreement entered into under sub. (2), and all reports ✓
2 submitted under this subsection.

Insert 9-3

3 (4) REPORTS OF AGENCIES. (a) Annually, no later than April 1, each of the
4 following shall manually or electronically file with the department ~~the report under~~

5 par. (b): *that provides or certifies eligibility for*

6 1. Every state agency, ~~whether or not the state agency has ever provided~~
7 a business subsidy.

8 2. Every local government agency that is a political subdivision with a
9 population greater than 2,500, and every local government agency that is not a
10 political subdivision but that operates in a political subdivision with a population
11 greater than 2,500, regardless of whether the local government agency has ever
12 provided a business subsidy.

13 3. Every local government agency that is a political subdivision with a
14 population of 2,500 or less, and every local government agency that is not a political
15 subdivision but that operates in a political subdivision with a population of 2,500 or
16 less, if the local government agency has provided a business subsidy at any time in
17 the previous 5 calendar years.

to report on the form described in

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

*during the previous
calendar year*

20 1. Summarizes the information submitted to the agency *in the reports under*
21 sub. (3).

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

1 3. Enables the department to produce the compilation and summary report
2 required under sub. (5).

3 (5) COMPILATION AND SUMMARY REPORT. (a) Annually, by August 1, the
4 department shall publish for the previous calendar year a compilation and summary
5 report of the reports received from agencies under sub. (4). The compilation and
6 summary report under this subsection shall include at least all of the following
7 information:

8 1. The total amount of business subsidies awarded in each county of the state.

9 2. Distribution of business subsidies, categorized by subsidy amounts.

10 3. Distribution of business subsidy amounts, categorized by the length of time
11 over which the subsidy is provided.

12 4. Distribution of business subsidies, categorized by type of subsidy, amount of
13 subsidy, and public purpose.

14 5. The percentage of ~~the~~ recipients that reached their ultimate goals. *and number ✓*

15 6. The percentage of recipients that reached their interim goals, if any. *and number*

16 7. The percentage of recipients that did not reach their ultimate goals by 2 years
17 from the date of receiving the business subsidy. *and number*

18 8. The total dollar amount of business subsidies provided to recipients that did
19 not reach their ultimate goals within one year of the time set for reaching the
20 ultimate goals.

21 9. The number of jobs created as a result of business subsidies, shown by wage
22 bands.

23 10. Fringe benefits paid or otherwise provided as a result of business subsidies,
24 shown by wage bands.

Insert 11-6

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

7 (6) PUBLIC RECORD REQUIREMENT. Business subsidy applications, all documents
8 related to business subsidy applications, recipient reports under sub. (3), agency
9 reports under sub. (4), and the compilation and summary report under sub. (5) are
10 public records for the purposes of subch. II of ch. 19.

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) (a) 1. and 2. The
14 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.

Insert 11-17

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

19 **560.055 Requirements for awarding or providing business subsidies.**

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

21 (2) The department and any board with the authority to award or provide a
22 business subsidy under this chapter shall comply with s. 16.28 in the awarding or
23 providing of the business subsidy, consistent with s. 560.04 (2) (j). Criteria developed
24 by the department or a board under s. 16.28 (1) for awarding a business subsidy are
25 in addition to any criteria, determinations, or considerations required under this

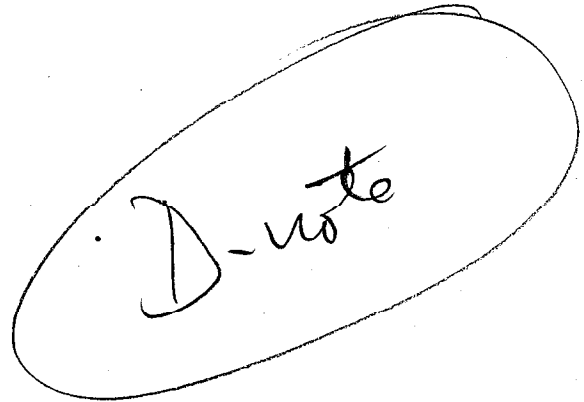
Insert 11-14

1 chapter for awarding the business subsidy. The subsidy agreement required under
2 s. 16.28 (2) is in addition to any agreement required under this chapter with respect
3 to a business subsidy.

4 **SECTION 4. Initial applicability.**

5 (1) This act first applies to business subsidies, as defined in section 16.27 (3)
6 of the statutes, as created by this act, that are awarded on the effective date of this
7 subsection.

8 (END)



D-note

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/Pins³
PJK:jld:jf

INSERT 1-9

1 ~~C~~ (1m) With respect to a business subsidy, "awarding" includes certifying
2 eligibility for a business subsidy.

(END OF INSERT 1-9)

INSERT 2-17

3 ~~C~~ 3. Any of the following that has a value of at least \$75,000 and that is given to
4 a business by an agency:

5 ~~C~~ a. A loan.

6 ~~C~~ b. A guarantee of any payment under a loan, lease, or other obligation.

7 ~~C~~ 4. Tax credits for which a person is certified under a development zone program
8 under subch. VI of ch. 560 or under the technology zone program under s. 560.98, if
9 the total amount that the person may claim under the program is at least \$5,000.

(END OF INSERT 2-17)

INSERT 3-2

10 ~~C~~ 5. Except as provided in par. (a) 4., a reduction or deferral of any tax or fee,
11 including tax credits under ch. 71, general tax reductions, and tax ~~NO~~

(END OF INSERT 3-2)

INSERT 5-2

12 ~~C~~ 2. Notwithstanding subd. 1., if the agency that awards a business subsidy is
13 different from the grantor of the business subsidy, the criteria for awarding the
14 business subsidy, changes to the original set of criteria, and documentation of the
15 reason for deviation from the criteria shall be submitted along with the first

1 applicable annual report under sub. (4) that is filed with respect to the business
2 subsidy by the grantor of the business subsidy.

3 ~~Q~~ (cm) 1. Every applicant for a business subsidy shall reveal in the application
4 whether, in the preceding 5 years, the applicant has been found to have violated any
5 federal or state environmental or labor law as determined by an administrative
6 proceeding, civil action, criminal action, or other legal proceeding. For purposes of
7 this paragraph, issuance of an order or acceptance of an agreement requiring
8 corrective action or a stipulated fine, forfeiture, or other penalty is considered a
9 determination of a violation, regardless of whether there is a finding or admission
10 of liability.

11 ~~Q~~ 2. For a violation that resulted in a finding, the applicant shall describe the
12 finding and the penalty assessed and shall specify the entity that made the finding
13 and the location of the public records relating to the matter.

14 ~~Q~~ 3. For a violation that resulted in an agreement for corrective action or a
15 stipulated fine, forfeiture, or other penalty, the applicant shall provide a summary
16 description of the violation that led to the agreement or stipulation and, if the
17 agreement or stipulation is a public record, a summary description of the agreement
18 or stipulation and the location of the agreement or stipulation as a public record.

(END OF INSERT 5-2)

INSERT 5-10



insert 5-10

1 *CX* 2. The requirement under subd. 1. *✓* does not apply if, under another process that
2 is separate and distinct from the process under this section, at least one public
3 hearing has been held with respect to the project for which the subsidy will be used.

(END OF INSERT 5-10)

INSERT 6-12

4 *CX* 4m. If the public purpose for the subsidy is the creation or retention of jobs,
5 specific measurable *NS*

(END OF INSERT 6-12)

INSERT 7-15

6 *CX* 4m. If the public purpose for the subsidy is the creation or retention jobs, a
7 statement of the goals identified in the subsidy agreement under sub. *✓* (2) (a) 4m.

(END OF INSERT 7-15)

INSERT 7-19

8 *CX* 5m. If the public purpose for the subsidy is the creation of jobs, the total number
9 of jobs currently provided by the recipient that satisfy the requirements under sub.
10 (1) (a) 1. and 2. *✓* compared to the average number of jobs provided by the recipient in
11 the 12 months preceding the period covered by this report that satisfied those
12 requirements.

(END OF INSERT 7-19)

INSERT 8-19

13 *WDFI*, the grantor shall notify the department *✓* and commence any action or
14 proceedings to recover the subsidy that are specified in the subsidy agreement, *NS*

(END OF INSERT 8-19)

INSERT 9-3



Insert 9-3

1 *w/ft* every agency that provides or certifies eligibility for a business subsidy shall
2 manually or electronically file with the department a report on the form described
3 in par. (b).

(END OF INSERT 9-3)

INSERT 11-6

4 *ft* (c) In each year after the year in which the department receives the report
5 under s. 66.1105 (13),[✓] the department shall include a summary of that report in the
6 report under this subsection.

(END OF INSERT 11-6)

INSERT 11-14

7 *w/ft* , including standards for the disclosures required under sub. [✓](1) (cm), ~~(4)~~

(END OF INSERT 11-14)

INSERT 11-17

8 *ft* SECTION 1. 66.1105 (13)[✓] of the statutes is amended to read:
9 *ft* 66.1105 (13) The department of commerce, in cooperation with other state
10 agencies and local governments, shall make a comprehensive report to the governor
11 and the chief clerk of each house of the legislature, for distribution to the legislature
12 under s. 13.172 (2), at the beginning of each biennium, beginning with the 1977
13 biennium, as to the effects and impact of tax incremental financing projects socially,
14 economically, and financially. Beginning with the 2003[✓] biennium, the department
15 of commerce shall also provide a copy of the report to the department of
16 administration for purposes of the report requirement under s. 16.28[✓](5) (c).

History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5.

(END OF INSERT 11-17)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P2dn
PJK/ld:ff

1. I did not add any language about delegating the responsibility for preparing and submitting the report under s. 16.28 (4). An agency head may delegate responsibilities under s. 15.02 (4). Unless you want to limit the authority to delegate to a particular person or entity, no language should be needed.

2. I did the best I could with the reporting requirements for job creation and retention. You may want something different. It was my understanding that the requirements related to income and health care benefits apply only to job creation. I tried to be consistent with that understanding throughout the draft. Also, it was unclear to me which 12 months to specify when comparing the number of current jobs with the average number in the preceding 12 months. I used the 12 months preceding the period covered by the report. You may want to use a different time frame, such as the 12 months preceding the date of the report, or something else.

3. Although I thought we had managed to resolve the dichotomy, in some instances, between the awarding and providing agencies, there was still a problem in s. 16.28 (1) (c), since the awarding agency is to submit its criteria for awarding subsidies along with its first report under s. 16.28 (4). If the awarding and providing agencies are not the same, the awarding agency would not file a report under s. 16.28 (4). See how I resolved this in s. 16.28 (1) (c) 2. Okay?

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Kahler, Pam

From: Miller, Mark
Sent: Friday, October 05, 2001 12:24 PM
To: Kahler, Pam
Cc: Kuhn, Jamie
Subject: Business Subsidy Bill, LRB2648

Ma Kahler,

*dev zone tax
credits are in
ch. 71*

Thank you for directing me to Chapter 560, Section VI, regarding development zone tax credits. After reading Section VI and the related Comm 112, I want to deal with reporting for development zones and enterprise zones as follows:

- ✓ 1. Specifically exclude tax credits arising from development zones and enterprise zones from the definition of a business subsidy. It is clear that these credits are a business subsidy, but I do not want to mess with the existing standards for of these zones. Many of the standards parallel the standards in the bill we are drafting.
- ✓ 2. Require Commerce to compile a report to DOA for inclusion with the annual DOA report. The report will include:
 - ✓ A. Listing every person in an existing development zone or an enterprise zone who has claimed more than \$25,000 (cumulatively) in tax credits for investments in the zone.
 - ✓ B. The public purpose for which each certification was provided (reporting is required only for persons who claimed more than \$25,000 in credits).
 - ✓ C. Progress in achieving the public purpose for each certification (only for persons who claimed more than \$25,000 in credits).
 - ✓ D. Total number of jobs created in each zone annually and cumulatively.
 - ✓ E. Total number of jobs retained in each zone, annually and cumulatively.
 - ✓ F. The criteria used to measure progress toward achieving the public purpose.
 - ✓ G. Total tax credits claimed for each zone, annually and cumulatively.
 - ✓ H. Identify every development zone and enterprise zone and the total tax credits assigned to each.
- ✓ 3. Raise the minimum standard for full-time job from 150%FPL to 200%FPL in the bill and change the job wage scale in Chapter 560 to the same (from 150%FPL). Employer contribution to health insurance can be included for purposes of determining whether wages meet the 200%FPL level. This change eliminates all the health insurance equivalency language currently in the draft.
- ✓ 4. DOA will include Comm data in their report.

Please contact me to clarify questions as they occur.

Mark Miller

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P3dn
PJK:jld:kjf

September 27, 2001 } new date

1. I did not add any language about delegating the responsibility for preparing and submitting the report under s. 16.28 (4). ✓ An agency head may delegate responsibilities under s. 15.02 (4). ✓ Unless you want to limit the authority to delegate to a particular person or entity, no language should be needed.
2. I did the best I could with the reporting requirements for job creation and retention. You may want something different. It was my understanding that the requirements related to income and health care benefits apply only to job creation. I tried to be consistent with that understanding throughout the draft. Also, it was unclear to me which 12 months to specify when comparing the number of current jobs with the average number in the preceding 12 months. I used the 12 months preceding the period covered by the report. You may want to use a different time frame, such as the 12 months preceding the date of the report, or something else.
3. Although I thought we had managed to resolve the dichotomy, in some instances, between the awarding and providing agencies, there was still a problem in s. 16.28 (1) (c), since the awarding agency is to submit its criteria for awarding subsidies along with its first report under s. 16.28 (4). ✓ If the awarding and providing agencies are not the same, the awarding agency would not file a report under s. 16.28 (4). See how I resolved this in s. 16.28 (1) (c) 2. ✓ Okay?

D-note
insert
(from next page) ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P3dn
PJK:jld:kjf

D - note insert

4. I can see an argument that, under the exception under s. 16.28⁷ (3) (b) 1., almost no grants that the department of commerce provides are business subsidies because, under the language of the programs, the grants are in most cases available to a general class of similar businesses. For example, under the gaming economic development grant and loan program under s. 560.137, the department of commerce may make a grant or loan to an existing or start-up business that has been negatively impacted by the existence of a casino and that has a legitimate need for the grant or loan to improve its profitability. Is that a general class of similar businesses? I think in many cases it may be difficult to determine whether a grant or loan is a business subsidy or comes under an exception. *

5. Note that I added s. 16.28 (8) (and removed s. 560.055, which was created in the previous versions of this draft) to eliminate the necessity of including language similar to s. 560.055 for every state agency.

6. As you requested, I amended the definitions of "full-time job" in ch. 560 so that the wage equaled 200% of the federal poverty line. Are they okay as amended, or was your intention to make those definitions and the requirement in s. 16.28 (1) (a) the same?

If your intention was to make them the same, which one do you want to use as the model?

(and of D-note insert)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Defining a full-time job for purposes of development zone tax credits;

SOON
(10-17)

regenerate ↓

- 1
- 2
- 3
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- 7

AN ACT to amend 66.1105 (13); and to create 16.27, 16.28 and 560.055 of the statutes; relating to: requiring state agencies, political subdivisions, and housing, redevelopment, and community development authorities, as well as subsidy recipients, to report on subsidies provided to businesses; requiring certain disclosures by business subsidy applicants; prohibiting business subsidies under certain circumstances; granting rule-making authority; requiring the exercise of rule-making authority; 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:

- 8
- 9
- 10

SECTION 1. 16.27 of the statutes is created to read:
16.27 Definitions for business subsidy awards and reports. In s. 16.28:
 (1) "Agency" means a state agency or a local government agency.

1 (1m) With respect to a business subsidy, "awarding" includes certifying
2 eligibility for a business subsidy.

3 (2) "Business" means:

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

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

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

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

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

15 a. A grant.

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

17 c. Any preferential use of government facilities.

18 3. Any of the following that has a value of at least \$75,000 and that is given to
19 a business by an agency:

20 a. A loan.

21 b. A guarantee of any payment under a loan, lease, or other obligation.

22 4. Tax credits for which a person is certified under a development zone program
23 under subch. VI of ch. 560 or under the technology zone program under s. 560.98, if
24 the total amount that the person may claim under the program is at least \$5,000.

1 *✓* 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., 2., 3. *or*

3 *✓*

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

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

7 2. Assistance for the sole purpose of providing job readiness and training
8 services.

9 3. Housing assistance.

10 4. Energy conservation assistance.

11 5. ~~As provided in part (b)~~ *✓* a reduction or deferral of any tax or fee,
12 including tax credits under ch. 71, general tax reductions, and tax reductions
13 resulting from conformity with federal law.

14 6. General changes in the tax incremental financing laws and other general tax
15 law changes.

16 7. Worker's compensation and unemployment compensation.

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

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

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

23 11. Federal loan funds provided through the U.S. economic development
24 administration. *✓*

Insert 3-24 →

keep

1

(4) "Grantor" means an agency that provides ~~or certifies eligibility for~~ a business subsidy.

3

(5) "Local government agency" means any political subdivision, housing authority created under ss. 66.1201 to 66.1211, redevelopment authority created under s. 66.1333, or community development authority created under s. 66.1335, or any entity created or authorized by any of them.

7

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

8

(7) "Recipient" means a business that is benefited by a business subsidy under sub. (3) (a) 1. or that receives a business subsidy under sub. (3) (a) 2., 3., ~~4.~~ or ~~5.~~ → 4

9

Insert 4-13

10

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

14

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

15

16.28 Business subsidies; awarding and reporting requirements. (1)

16

DEVELOPING CRITERIA; APPLICATION REQUIREMENTS; PUBLIC HEARINGS; PROHIBITIONS. (a)

17

Every agency that is authorized to award a business subsidy shall develop criteria for awarding business subsidies. The criteria shall set minimum requirements that a business must meet to be eligible for a business subsidy. The criteria shall provide that, if the public purpose for the subsidy is job creation, all jobs created as a result

21

of the subsidy must provide ~~the following:~~ ^{compensation} → 200%

22

that is equal to at least ~~100%~~ of the federal poverty line,

23

as defined under 42 USC 9902 (2), for a family of 2 persons. → insert 4-23

24

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

25

1 (b) No agency may award a business subsidy until the agency has developed
2 the criteria required under par. (a). ✓

3 (c) 1. A copy of the criteria developed under par. (a) shall be submitted along
4 with the first annual report filed by the agency under sub. (4). ✓ A copy of any changes
5 to the original set of criteria developed under par. (a) shall be submitted along with
6 the first annual report that is filed by the agency after the changes are made. If in
7 awarding a business subsidy an agency deviates from the criteria it has developed
8 under par. (a), the agency shall document the reason for the deviation in writing and
9 submit a copy of that documentation along with the first annual report that is filed
10 by the agency after the deviation occurs.

11 2. Notwithstanding subd. 1., if the agency that awards a business subsidy is
12 different from the grantor of the business subsidy, the criteria for awarding the
13 business subsidy, changes to the original set of criteria, and documentation of the
14 reason for deviation from the criteria shall be submitted along with the first
15 applicable annual report under sub. (4) that is filed with respect to the business
16 subsidy by the grantor of the business subsidy.

17 (cm) 1. Every applicant for a business subsidy shall reveal in the application
18 whether, in the preceding 5 years, the applicant has been found to have violated any
19 federal or state environmental or labor law as determined by an administrative
20 proceeding, civil action, criminal action, or other legal proceeding. For purposes of
21 this paragraph, issuance of an order or acceptance of an agreement requiring
22 corrective action or a stipulated fine, forfeiture, or other penalty is considered a
23 determination of a violation, regardless of whether there is a finding or admission
24 of liability.

described in subd. 1. ✓

1 2. For a violation that resulted in a finding, the applicant shall describe the
2 finding and the penalty assessed and shall specify the entity that made the finding
3 and the location of the public records relating to the matter.

4 3. For a violation that resulted in an agreement for corrective action or a
5 stipulated fine, forfeiture, or other penalty, the applicant shall provide a summary
6 description of the violation that led to the agreement or stipulation and, if the
7 agreement or stipulation is a public record, a summary description of the agreement
8 or stipulation and the location of the agreement or stipulation as a public record.

9 (d) 1. Except as provided in subd. 2., before awarding a business subsidy to a
10 subsidy applicant, an agency shall conduct 2 public hearings in the political
11 subdivision in which the applicant proposes to conduct the project for which the
12 subsidy will be used. The 2nd public hearing must be held at least 30 days after the
13 first public hearing and at least 30 days before the final decision is made on whether
14 to award the business subsidy to the applicant. Notice of each hearing shall be given
15 by publication of a class 1 notice under ch. 985 in a newspaper that is likely to give
16 notice in the political subdivision in which the applicant proposes to conduct the
17 project for which the subsidy will be used.

18 2. The requirement under subd. 1. does not apply if, under another process that
19 is separate and distinct from the process under this section, at least one public
20 hearing has been held with respect to the project for which the subsidy will be used.

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

1 1. The business subsidy will be used to subsidize any portion of the cost of
2 moving the applicant's business operations from one political subdivision in this
3 state to another political subdivision in this state. This subdivision does not apply
4 if the governing body of the political subdivision from which the applicant intends
5 to move consents to the move in writing, which may be by resolution.

6 2. The business subsidy will be used to subsidize any portion of the cost of
7 moving the applicant's business operations from this state to a state with which this
8 state has entered into an agreement or compact related to businesses moving from
9 one state to another, except as allowed under the terms of the agreement or compact.

10 (f) 1. Except as provided in subd. 2., a recipient may not apply for another
11 business subsidy, and an agency may not award another business subsidy to a
12 recipient, if the recipient fails to submit a report required under sub. (3) (a) within
13 6 months of the time required for submitting such report under sub. (3) (b). ✓

14 2. A recipient that submits a report more than 6 months after the time required
15 under sub. (3) (b) may apply for, and may be awarded, another business subsidy only
16 upon the approval of the department.

17 (2) SUBSIDY AGREEMENT. (a) Whenever an agency provides ~~any~~
18 ~~///~~ a business subsidy, the recipient shall enter into a subsidy agreement with the
19 grantor. The subsidy agreement shall include all of the following:

- 20 1. A description of the subsidy, including the amount, or fair market value, and
21 type of subsidy.
- 22 2. A statement of the public purpose for the subsidy.
- 23 3. A statement of why the subsidy is needed.
- 24 4. Specific measurable goals for the subsidy.

1 4m. If the public purpose for the subsidy is the creation or retention of jobs,
2 specific measurable goals for the number of jobs to be created or retained and wage
3 goals for the jobs to be created or retained.

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

7 6. The time within which the goals specified in subd. 4. and, if applicable, in
8 subd. 4m. are to be achieved.

9 7. A commitment to continue operations at the location where the subsidy is
10 to be used for at least 5 years from the date of receiving the full amount of the subsidy.

11 8. A description of any financial obligation of the recipient if the goals under
12 subd. 4. or, if applicable, under subd. 4m. are not met or if the recipient ceases
13 operations at the location before the time specified in subd. 7.

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

15 10. A list, by amount and provider, of all other public financial assistance for
16 the project for which the subsidy will be used.

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

21 **(3) REPORTS OF RECIPIENTS.** (a) A grantor shall monitor the progress of each of
22 its recipients in meeting the goals specified in the subsidy agreement. Each recipient
23 shall submit to its grantor, by the time required under par. (b), a report developed
24 by the grantor that provides the following information:

25 1. The type, public purpose, and amount of the subsidy.

1 2. The hourly wage of each job created or retained as a result of the subsidy,
2 shown in separate wage bands.

3 3. The sum of the hourly wages and cost of health care benefits provided by the
4 recipient, shown in separate wage bands.

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

7 4m. If the public purpose for the subsidy is the creation or retention jobs, a
8 statement of the goals identified in the subsidy agreement under sub. (2) (a) 4m. and
9 an update on the progress toward meeting the job and wage goals or the date on
10 which the job and wage goals were or are expected to be achieved.

11 5. If the public purpose for the subsidy is the retention of jobs, the total number
12 of jobs currently provided by the recipient and the status of the jobs identified under
13 sub. (2) (a) 5. ✓

14 5m. If the public purpose for the subsidy is the creation of jobs, the total number
15 of jobs currently provided by the recipient that satisfy the ✓ requirements under sub.
16 (1) (a) (1. and 2.)^e compared to the average number of jobs provided by the recipient in
17 the 12 months preceding the period covered by this report that satisfied those
18 requirements.

19 6. A statement of any financial obligation of the recipient under sub. (2) (a) 8. ✓
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 7. The location of the recipient before receiving the business subsidy.

23 8. If the recipient was previously located at another site in this state, why the
24 recipient was unable to complete the project for which the business subsidy was
25 awarded at the recipient's previous location.

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

2 10. A list, by amount and provider, of all other public financial assistance for
3 the project.

4 11. Any other information requested by the grantor.

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

8 2. If a subsidy is provided over a period that exceeds one year, the recipient shall
9 submit a report, as required under par. (a), within 24 months after the subsidy is first
10 provided. Annually thereafter, until the conclusion of the period over which the
11 subsidy is provided, the recipient shall submit a report, as required under par. (a),
12 for the period since the previous report was submitted.

13 (c) If a recipient fails to submit a report by the time the report is due, the grantor
14 shall within 30 days after the due date notify the recipient that the report is overdue.
15 If the report remains delinquent for 6 months after the due date, the grantor shall
16 notify the department and commence any action or proceedings to recover the
17 subsidy that are specified in the subsidy agreement, and the recipient shall be
18 ineligible for any other business subsidies, as provided in sub. (1) (f). ✓

19 (d) For each recipient, a grantor shall keep a centrally located and easily
20 accessible file containing the recipient's application, all documents related to the
21 application, the subsidy agreement entered into under sub. (2), ✓ and all reports
22 submitted under this subsection.

23 (4) REPORTS OF AGENCIES. (a) Annually, no later than April 1, every agency that
24 provides ~~any business subsidy~~ ✓ a business subsidy shall manually or electronically
25 file with the department a report on the form described in par. (b).

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

3 1. Summarizes the information submitted to the agency during the previous
4 calendar year in the reports under sub. (3). ✓

5 2. Minimizes confusion and duplication in the reporting process through the
6 use, for each recipient, of a consistent, unique identifier, such as the recipient's
7 federal employer identification number. *of the reports under par. (a), as*

8 3. Enables the department to produce ^a compilation and summary ~~report~~
9 required under sub. (5). *a report that includes the*

10 (5) *Department report;* ⁽⁵⁾ COMPILATION AND SUMMARY ~~REPORT~~ (a) Annually, by August 1, the

11 department shall publish for the previous calendar year a compilation and summary

12 ~~of the reports~~ of the reports received from agencies under sub. (4). *(a) ✓* The compilation and

13 summary ~~of the reports~~ shall include at least all of the following
14 information:

15 1. The total amount of business subsidies awarded in each county of the state.

16 2. Distribution of business subsidies, categorized by subsidy amounts.

17 3. Distribution of business subsidy amounts, categorized by the length of time
18 over which the subsidy is provided.

19 4. Distribution of business subsidies, categorized by type of subsidy, amount of
20 subsidy, and public purpose.

21 5. The percentage and number of recipients that reached their ultimate goals.

22 6. The percentage and number of recipients that reached their interim goals,
23 if any.

24 7. The percentage and number of recipients that did not reach their ultimate
25 goals by 2 years from the date of receiving the business subsidy.

of the reports under sub. (4)(a) ✓

insert 11-9

report filed under sub. (4)(c) and

portion of the report under this subsection that is the

*insert 11-11-12
page*

1 8. The total dollar amount of business subsidies provided to recipients that did
2 not reach their ultimate goals within one year of the time set for reaching the
3 ultimate goals.

4 9. The number of jobs created as a result of business subsidies, shown by wage
5 bands.

6 10. Fringe benefits paid or otherwise provided as a result of business subsidies,
7 shown by wage bands.

8 (8) The ~~information~~ ^{compilation and summary of the reports under sub. (4)(a)} shall be presented in
9 a manner that allows for comparisons across time periods and among grantors ^{and, in}
10 addition, ~~the report~~ shall include sufficient information to enable comparisons
11 between wages paid and fringe benefits provided by new jobs created as a result of
12 business subsidies and wages paid and fringe benefits provided by comparable jobs
13 in each area in which the new jobs are created.

Insert 11-12

14 ^{no H} In each year after the year in which the department receives the report
15 under s. 66.1105 (13), the department shall include a summary of that report in the
16 report under this subsection. ^{H (b)}

↑ move to p. 11

employer-provided

17 (6) PUBLIC RECORD REQUIREMENT. Business subsidy applications, all documents
18 related to business subsidy applications, recipient reports under sub. (3),
19 reports under sub. (4), and the ~~information~~ report under sub. (5) are
20 ~~public records for the purposes of sub. 11.01(2)(a)~~ ^{open to public inspection}

21 (7) RULES. The department shall promulgate rules for the administration of
22 this section. The rules may specify other compensation and ~~health~~ benefits that

23 ~~are equivalent to those specified in sub. (1) (a) and~~ The rules shall provide
24 reporting standards, including standards for the disclosures required under sub. (1)

→ may be considered for satisfying the requirement under

Insert 13-2

1 (cm), to ensure that information is reported by recipients and agencies in a uniform
2 manner.

3 SECTION 3. 66.1105 (13) of the statutes is amended to read:

4 66.1105 (13) The department of commerce, in cooperation with other state
5 agencies and local governments, shall make a comprehensive report to the governor
6 and the chief clerk of each house of the legislature, for distribution to the legislature
7 under s. 13.172 (2), at the beginning of each biennium, beginning with the 1977
8 biennium, as to the effects and impact of tax incremental financing projects socially,
9 economically, and financially. Beginning with the 2003 biennium, the department
10 of commerce shall also provide a copy of the report to the department of
11 administration for purposes of the report requirement under s. 16.28 (5) (c).

12 SECTION 4. 560.055 of the statutes is created to read:

13 **560.055 Requirements for awarding or providing business subsidies.**

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

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

23 SECTION 5. Initial applicability.

Insert 13-22

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P3ins
PJK:jld:kjf

INSERT 3-24

1 (3m) "Development zone" means a development zone under ss. 560.71 to
2 560.78, ✓ a development opportunity zone under s. 560.795, ✓ or an enterprise
3 development zone under s. 560.797. ✓

(END OF INSERT 3-24)

INSERT 4-13

4 (9) "Technology zone" means a technology zone under s. 560.9~~9~~⁶ period

(END OF INSERT 4-13)

INSERT 4-23

5 ^{50 ft} Compensation may include fringe benefits, such as health care coverage, for
6 purposes of determining whether this requirement is met.

(END OF INSERT 4-23)

INSERT 11-9 1062

7 (c) In addition to filing any report that is required under par. ✓(a), the
8 department of commerce shall annually, no later than June 1, file with the
9 department of administration ✓ a report on the development zone programs under
10 subch. VI of ch. 560 and the technology zone program under s. 560.9~~9~~⁶ that includes
11 all of the following information:

12 1. Identification of all development zones and technology zones in effect and the
13 total amount of tax credits that may be claimed in each of those zones.

14 2. A listing of every person in each development zone or technology zone in
15 effect that has claimed a total of \$25,000 or more in tax credits.

↓ continued

Ins 11-19 contd 282

1 3. The total tax credits claimed, both in the previous calendar year and since
2 the zone was designated, in each development zone or technology zone in effect.

3 4. The public purpose for which each person listed in subd. 2. ✓ was certified for
4 tax credits.

5 5. The progress each person listed in subd. 2. has made in achieving the public
6 purpose specified in subd. 4. ✓

7 6. The criteria used to measure ^{the} progress made in achieving the public purposes
8 specified in subd. 4.

9 7. The total number of jobs that satisfy the compensation criteria under sub.
10 (1) (a) ✓ that have been created, both in the previous calendar year and since the zone
11 was designated, in each development zone or technology zone in effect.

12 8. The total number of jobs that satisfy the compensation criteria under sub.
13 (1) (a) that have been retained, both in the previous calendar year and since the zone
14 was designated, in each development zone or technology zone in effect.

(END OF INSERT 11-9)

INSERT 13-2

15 (8) RELATION TO OTHER REQUIREMENTS FOR AWARDING OR PROVIDING SUBSIDIES. ✓
16 Except as provided in sub. (1) (d) 2., ✓ the requirements under this section related to
17 awarding or providing a business subsidy, including the awarding criteria developed
18 under sub. (1) (a), ✓ the subsidy agreement under sub. (2), ✓ and the recipient reporting
19 requirements under sub. (3), are in addition to ~~any other~~ any other requirements
20 with which an agency or recipient must comply with respect to the business subsidy.

(END OF INSERT 13-2)

If a conflict exists between a requirement under this section and any other requirement with respect to a business subsidy, the requirement under this section controls.

Insert 13-22

1002

Section #. 560.70 (2m) of the statutes is amended to read:

200%

560.70 (2m) "Full-time job" means a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least ~~150%~~ of the federal minimum wage and benefits that are not required by federal or state law. "Full-time job" does not include initial training before an employment position begins.

History: 1987 a. 328, 411; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9.



Insert 13-22

2072

Section #. 560.785 (2) (b) ^x of the statutes is amended to read:

560.785 (2) (b) The requirement under ss. 560.70 (2m) and 560.797 (1) (am) that an individual's pay must equal at least ~~150%~~ of the federal minimum wage. → 200% ✓

History: 1997 a. 27, 41; 1999 a. 9.

(end of ins. 13-22)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2658/P3dn
PJK:jld:jf

October 25, 2001

1. I did not add any language about delegating the responsibility for preparing and submitting the report under s. 16.28 (4). An agency head may delegate responsibilities under s. 15.02 (4). Unless you want to limit the authority to delegate to a particular person or entity, no language should be needed.
2. I did the best I could with the reporting requirements for job creation and retention. You may want something different. It was my understanding that the requirements related to income and health care benefits apply only to job creation. I tried to be consistent with that understanding throughout the draft. Also, it was unclear to me which 12 months to specify when comparing the number of current jobs with the average number in the preceding 12 months. I used the 12 months preceding the period covered by the report. You may want to use a different time frame, such as the 12 months preceding the date of the report, or something else.
3. Although I thought we had managed to resolve the dichotomy, in some instances, between the awarding and providing agencies, there was still a problem in s. 16.28 (1) (c), since the awarding agency is to submit its criteria for awarding subsidies along with its first report under s. 16.28 (4). If the awarding and providing agencies are not the same, the awarding agency would not file a report under s. 16.28 (4). See how I resolved this in s. 16.28 (1) (c) 2. Okay?
4. I can see an argument that, under the exception under s. 16.27 (3) (b) 1., almost no grants that the department of commerce provides are business subsidies because, under the language of the programs, the grants are in most cases available to a general class of similar businesses. For example, under the gaming economic development grant and loan program under s. 560.137, the department of commerce may make a grant or loan to an existing or start-up business that has been negatively impacted by the existence of a casino and that has a legitimate need for the grant or loan to improve its profitability. Is that a general class of similar businesses? I think in many cases it may be difficult to determine whether a grant or loan is a business subsidy or comes under an exception.
5. Note that I added s. 16.28 (8) (and removed s. 560.055, which was created in the previous versions of this draft) to eliminate the necessity of including language similar to s. 560.055 for every state agency.
6. As you requested, I amended the definitions of "full-time job" in ch. 560 so that the wage equaled 200% of the federal poverty line. Are they okay as amended, or was your intention to make those definitions and the requirement in s. 16.28 (1) (a) the same?

If your intention was to make them the same, which one do you want to use as the model?

Pamela J. Kahler
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Kahler, Pam

From: Miller, Mark
Sent: Tuesday, November 13, 2001 4:29 PM
To: Kahler, Pam
Subject: LRB2658/P3

Pam,
Except for the development zone language, draft P3 is very close.

There are just a few clarifications that remain to be made in this section.

- ✓ 1. Pg 4 ln 22-23. It was my intent to allow only the cost of health benefits to be counted toward the wage requirement. This sentence could be modified to delete the words "...fringe benefits, such as..." The comma after "coverage would also need to be deleted.
- ✓ 2. pg 6 ln 20-21. I want to be more restrictive. Change to read, "...a loan, a loan guarantee, at an interest rate that is below the rate that is commercially available to the applicant,..." The phrase will then read: "... in the form of a grant, a loan, a loan guarantee, or a contribution of..."

The next 3 changes incorporate the possibility that obligations other than financial obligations may be the consequence if the agreement between the grantor and the recipient so stipulates.

- ✓ 3. pg 8 ln 8, insert "or other" before "obligation"
- ✓ 4. pg 9 ln 17, insert "or other" before "obligation"
- ✓ 5. pg 9 ln 18 & 19, delete "financial" from both lines.
- ✓ 6. pg 13, ln 22-23, delete sentence that begins with "The rules may..."

The language on page 5, lines 19-14 is confusing. Can you explain it?

I sent the development zone instructions separately. Please include these changes with the development zone changes.

Thank you.

Mark Miller

Mark Miller

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Kahler, Pam

From: Miller, Mark
Sent: Tuesday, November 13, 2001 7:51 PM
To: Kahler, Pam
Cc: Ellinger, Lisa
Subject: LRB-2658/P3 Business subsidy

Pam,
In the correspondence over the missed page eleven, I neglected to respond to the comments in your October 25 drafter's note.

I concur with your choices in items 1 & 2 of your notes.

Item #3 of the notes relates to the paragraph I had difficulty understanding. Within the text of the bill the distinction is not clear between a grantor and an agency that awards a business subsidy when they are different. In the discussion that follows, I use the term "granting" agency to refer to the agency that makes the determination of who gets the subsidy. It would seem to me that the awarding agency will establish criteria as required by law that governs the awarding of business subsidies under it's management. Granting agencies that are different than the awarding agencies may, in accordance with the bill, create additional or modified criteria. All of the criteria are to be reported to DOA. I intend for awarding agencies to have discretion in the format of reporting these criteria for the granting agencies. The point for the provision is for business subsidies to be subject to written criteria, however determined, and for deviations from that criteria to be identified at the time the subsidy is granted and when the annual subsidy report is made. The language on page 5, ss 16.28(1)(c) is confusing and unclear, at least to me. **Lets talk on this item.** I will be in the capitol Wednesday afternoon.

Item #4, regarding exceptions. The distinction I want to make is that if a granting agency makes a decision to award a business subsidy, then the subsidy is reportable, provided the other criteria are met. If the "subsidy" is the result of a provision for which there is no decision to be made by the granting agency, then it is not a reportable subsidy. Fro example, tax credits are not a reportable subsidy if they are available to all businesses, or to a general class of businesses that undertake the expenditure that qualifies them for the tax credit. However if a granting agency has to make a decision or allocation of available tax credits to a specific business, then it becomes a subsidy provided it meets the other criteria. In the case you cite, the business that is negatively affected by the existence of a casino, must demonstrate that it is so affected before it can be granted a grant or loan. Because there is an affirmative decision on the part of the granting agency to assign the applicant to the category of eligible, then the award to the business becomes reportable under the bill. This is the line I want to draw between reportable subsidies and not-reportable subsidies with respect to "general class of business" This might be addressed by appending to pg 3 ln 2 words like "and where no state or local granting agency or a grantor acting on behalf of a state or local agency has made an affirmative decision to award the subsidy." What do you think?

Item #6. My instructions on the wage standard were to make the standards similar, but not the same. I did not want to mess with development zone administration, except to raise the wage standard and require modified reporting. **However**, since the draft is being revised at this time anyway, please use the 200% FPL for a family of 2 standard with the proviso that employer expenses toward health insurance can be counted in determining whether the wage qualifies in both cases. Note that this is an item that I wanted changed in P3 because it (P3) included all fringe benefits as offsets to the wage standard [pg 4 ln 22-23]. I only want health care expenses to be available as an offset.

Thanks.

note → fed pov line vs fed min wage

Mark Miller

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Kahler, Pam

From: Miller, Mark
Sent: Friday, November 16, 2001 11:33 AM
To: Kahler, Pam; Matthias, Mary
Cc: Kuhn, Jamie
Subject: Business Subsidy LRB 2658

Ms Mathias,
Re: Business Subsidy bill 2658/P3 per voice mail message

Attached is version P3 of the business subsidy reporting bill we discussed months ago in the Leg Council briefing room. The bill is based on current Minnesota law and it is very close to the version I want. Two drafting problems remain. I hope you will look at the bill and help me arrive at a solution to these problems.

1. The bill requires DOA to administer a reporting program covering all the business subsidies granted by state and local agencies. The definition of business subsidy includes a list of exceptions. One of the exceptions is on pg 3 in 1-2 of draft P3 "Assistance that is generally available to all businesses or to a general class of businesses." The purpose of this language is to exempt those activities for which there is no decision to be made by the granting agency. Pam Kahler, the LRB drafter, points out that some legislatively determined subsidies are very narrow in scope and agencies could play fast and loose with the exemption above. My current thinking is to give DOA rule making authority to clarify the exemption and authority to rule on a case by case basis if a particular program is subject to the requirements of the bill.

2. Under the bill, agencies that grant business subsidies are required to establish criteria for the granting of the subsidy, enter a written agreement with recipients, and submit an annual report to DOA. Most business subsidies are awarded by the agency that administers the subsidy. Some subsidies are awarded by a board that makes the decision on behalf of the agency that provides the money. Commerce and DNR are prime examples. The issue is who should be responsible for establishing criteria and submitting the reports. My goal is to establish the criteria, create an easily accessible public record and generate the reports. As you can see from the draft document, this requirement is very convoluted. (e.g. pg 5 in 9-14). I asked that the bill specify that the providing agency is responsible for creating the criteria and submitting the report to DOA, but that the administration of how those criteria are developed and how the data is obtained be left to the administrative discretion of the providing agency. This issue is complicated by trying to be consistent with the use of terms such as "grantor," "agency," "awarding agency," "award," and "providing agency."

My hope is that your familiarity with the business programs might provide some different insights into resolving these drafting issues cleanly. If, in your review of the draft, you come across any other problems, please let me and Ms Kahler know. I hope you can help with this request.

I authorize LRB to discuss all portions of this bill with you.



01-2658P3.pdf

Thank you.

Mark Miller

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Business Subsidy Bill
11-19-01

Mark Miller, Jamie Kuhn
Pam Kahler, LRB
Mary Matthias, Leg Council

Pg 3 ln 1-2, delete

Resolve via drafting the issue of grantor to allow "provider" agencies to administer the responsibilities under the act without specifying how they do it. Include the caveat that if an agency that awards a subsidy is different than the agency that provides the subsidy, the providing agency determines how best to comply with the requirements of the bill (entering into an agreement and providing the reportable data). We did not decide on the exact way to accomplish this, but it seemed as though Pat and Mary shared an understanding of how this could be accomplished

pg 6 ln 8, insert "at least" after "conduct"

pg 8 ln 18, delete first sentence after "(a)"

pg 9 ln 7, replace "an update" with "a statement"

pg 9 ln 21-23, delete

pg 10 ln 4-11, revise to read that the first report is due within 24 months after the subsidy is first provided and annually thereafter for the duration of the agreement during which the goals of the subsidy are to be realized.

Pg 12 ln 24, delete "ultimate"

Pg 13, ln 3-4, delete "ultimate," replace the last part of the sentence, beginning with "2 years..." with "the date set in the [subsidy] agreement." or comparable language.

Pg 13, ln 5-7, same result as above.

Pg 15 ln 9-10, delay effective date for 9 months.

Kahler, Pam

From: Miller, Mark
Sent: Tuesday, November 20, 2001 3:22 PM
To: Kahler, Pam
Subject: RE: Business Subsidy Bill, memo of meeting 11-20-01

Pam,
I concur. Thanks for checking.
Mark

-----Original Message-----

From: Kahler, Pam
Sent: Tuesday, November 20, 2001 3:13 PM
To: Miller, Mark
Cc: Matthias, Mary; Kuhn, Jamie
Subject: RE: Business Subsidy Bill, memo of meeting 11-20-01

Your itemization looks right to me. I have two additions that are consistent with your list:

On p. 9, line 18, the same change as on line 7.

On p. 12, line 24, the same language as noted for p. 13, lines 3 and 4 and 5 to 7.

Happy Thanksgiving to you all, also!

-----Original Message-----

From: Miller, Mark
Sent: Tuesday, November 20, 2001 2:22 PM
To: Kahler, Pam
Cc: Matthias, Mary; Kuhn, Jamie
Subject: Business Subsidy Bill, memo of meeting 11-20-01

Ms Kahler and Ms Matthias,

I thought it would be useful to reconstruct our discussion from this morning in the form of a drafting instruction memo. I think this memo captures all the changes we discussed. Please let me know if you find that I left something out or I describe it differently than indicated in your notes or differently than you remember.

For Pam, this supplements and modifies the conversation and resulting instructions from last week. I did not attempt to include those instructions in this memo, except as they were modified by the decisions we made today.

<< File: Instructions to drafter 11.19.01, MM, PK, MM.doc >>
Have a happy Thanksgiving .

Mark Miller

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