

Revisions to LC 1835
2015 Regular Session
Coalition Revisions Feb. 1 2015
D R A F T

SUMMARY

Establishes employment and compensation standards for recipient employers that receive economic development subsidies.

Requires recipient employers to submit annual reports to granting bodies. Permits granting bodies access to recipient employers’ records and project sites at all reasonable times without notice.

Directs Secretary of State to conduct audits of recipient employers every three years.

Requires granting bodies to publish reports on granting bodies’ websites annually. Directs granting body or the Department of Revenue to reduce or recapture subsidy for noncompliance.

Requires property taxing entities to report annually to Department of Revenue regarding property tax abatements, exemptions and credits.

Provides that data and summarized reports required by Act are collected into a single unified, sortable and downloadable database subject to disclosure to the general public on the transparency website.

Provides that an administration fee of 4% of the value of each economic development subsidy be paid by the recipient employer for the implementation, administration, audits, oversight, and evaluation of records required by Act.

Authorizes taxpayer to bring civil action for enforcement, injunctive relief, damages and attorney fees when granting body fails to enforce Act.

A BILL FOR AN ACT

Relating to economic development subsidies.

Whereas public trust in government and a level playing field for business development statewide are enhanced whenever financial accountability and transparency are included in legislation; and

Whereas the State of Oregon and its other public bodies have an interest in stimulating the economy and creating family wage jobs through judicious use of economic development subsidies; and

WHEREAS it is good business practice for the State of Oregon and its other public bodies to expect reasonable returns on its economic development investments

WHEREAS the State of Oregon and its public bodies should practice financial due diligence and maintain a consolidated and accessible database providing full transparency and accountability regarding expenditures of taxpayer monies; now, therefore

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 8 of this 2015 Act:

(1) "Administration fee" means four percent of the value of an economic development subsidy that is used pay the Department of Administrative Services or to the Department of Revenue to implement, administer and evaluate all reports required in Act, including the performance of audits by the Secretary of State in7 accordance with section 7 of this 2015 Act.

(2) "Base employment" means the number of full-time equivalent employees of the recipient employer on the date that the recipient employer makes application to a governing body for an economic development subsidy.

(3) "Compensation" means the total amount of gross wages, employment taxes, insurance benefits and other benefits not required by law including, but not limited to, vacation, sick leave, retirement and transportation passes that an employee receives from an employer.

(4) "Economic development subsidy" means any expenditure of public funds with a value of at least \$25,000 for the purpose of stimulating economic development in Oregon, including but not limited to bonds, grants, loans, loan guarantees, enterprise zone incentives, tax increment financing, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions and tax credits.

(5) "Employer" means:

(a) Any person or entity, including a public body as defined in ORS 174.109, that employs an individual;

(b) Any person acting directly or indirectly in the interests of an employer in relation to an employee; or

(c) To the extent that an employer has not paid employees in full, any successor to the business of an employer or a purchaser of the employer's property for the continuance of the same business.

(6) "Employs" means to hire to work in exchange for compensation. "Employs" does not mean to obtain:

(a) Voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation, for:

(A) A public body as defined in ORS 174.109; or

(B) A religious charitable, educational, public service or similar nonprofit corporation, organization or institution for community service, religious or humanitarian reasons; or

(b) Services performed by general or public assistance recipients as

part of a work training program administered under state or federal assistance laws.

(7) "Full-time employment" means a job or position in which an individual is employed by a recipient employer for at least 40 hours per week (2080 hours per year).

(8) "Granting body" means any agency, board, office, public or private partnership, public benefit corporation, local governmental body or state governmental body that provides an economic development subsidy to a recipient employer.

(9) "Local governmental body" means a city, county, administrative subdivision of a city or county, agency, board, commission, office, public benefit corporation or other public authority of a local government as defined in ORS 174.116.

(10) "New employee" means an employee or equivalent employees hired to work in full-time employment who represents an increase to the base employment of a recipient employer in this state. "New employee" does not mean:

(a) An employee who fills a particular position that was previously performed by another employee of the recipient employer if that position existed for at least six months before hiring the employee;

(b) An employee who is hired to work in a position that previously existed in a different facility controlled by the recipient employer in this state; or

(c) An employee who is hired to work in a position that previously existed in a different facility controlled by the recipient employer in a different state when that state has laws substantially similar to sections 1 to 8 of this 2015 Act.

(11) "Parent of the recipient employer" means any person, association, company, corporation, joint venture, partnership, nonprofit or other entity that owns or controls 50 percent or more of a recipient employer.

(12) "Part-time employment" means a job or position in which an individual is employed by a recipient employer for less than 40 hours per week.

(13) "Project site" means the site of a project for which an economic development subsidy is provided, as specified by street address, name of locality and zip code.

(14) "Property taxing entity" means any entity that levies taxes upon real or personal property.

(15) "Recipient employer" means an employer located in Oregon

that receives an economic development subsidy.

(16) "Social benefits" means benefits to society that contribute to the public's general well-being beyond an economic benefit, such as educational, environmental, cultural, or community-oriented benefits.

(17) "State governmental body" means an agency, board, commission, office, public benefit corporation or other institution of state government.

(18) "Subsidy value" means the value of all economic development subsidies received by a recipient employer and, if the economic development subsidy is a loan, the amount of the loan and the savings to the recipient employer over the cost of obtaining a conventional loan.

(19) "Temporary employment" means a job or position for which the established period of employment is one year or less.

(20) "Wages" means the amount paid for performance of services by an employee for an employer.

SECTION 2. (1) No later than February 1 of each year, a recipient employer shall file a disclosure report with the granting body that granted the economic development subsidy. The reporting form shall be issued by the granting body on a form prepared by the Oregon Department of Administrative Services. The form shall contain, at a minimum, the following information:

- (a) The recipient employer's:
 - (A) Legal name and business name, if any;
 - (B) Street and mailing addresses;
 - (C) Telephone numbers;
 - (D) North American Industry Classification System industry code; and
 - (E) Dun & Bradstreet identifier number;
- (b) The name and signature of the chief officer of the recipient employer;
- (c) The name of and contact information, including electronic mail address, for the recipient employer's designated financial data contact person;
- (d) The street address of the project site where the subsidized activity takes place if the project site address is different from the addresses provided in paragraph (a) of this subsection;
- (e) A summary of the number of jobs required by the terms of the subsidy agreement and the actual number of jobs created or lost as of December 31 of the previous year, broken down by full-time, part-time and temporary employment, and by wage groups as delineated in reports to the Employment Department or as reported to the Department of Revenue;
- (f) A statement as to whether health care insurance coverage is provided to the employees of the recipient employer at the project site, the share of the policy premiums paid by the recipient employer and the percentage of employees receiving health care insurance coverage;
- (g) If applicable, the total number of employees who were employed by the parent of the recipient employer in this state on December 31 of the two previous years, broken down by full-time, part-time and temporary employment;
- (h) A summary of capital investment or other activity, if any, required by the terms of the subsidy agreement, the actual capital investment made or other activity performed in the previous year as of December 31 and the accumulative total amount actually made since the subsidy began, including the investment above any caps or requirements;
- (i) A statement as to whether any site controlled by the recipient

employer or parent of the recipient employer, inside or outside this state, reduced its number of employees during the previous calendar year as a result of automation, merger, acquisition, corporate restructuring, relocation or other business activity and, if so, the number and percentage of employees affected;

(j) A statement summarizing any instances during the previous calendar year in which the recipient employer or a parent of the recipient employer was determined to have violated any federal, state or local law or regulation in Oregon relating to environmental protection, taxation, labor standards or employment discrimination, or was notified that an investigation of a possible violation had been initiated;

(k) A statement of the percentage of employees on H-1B visas; and

(L) A signed certification by the chief officer of the recipient employer verifying the accuracy of the disclosure report.

(2) Recipient employers shall file the disclosure report required under subsection (1) of this section for the duration of the subsidy or for not less than five years, whichever period is greater.

(3) A recipient employer that fails to provide the granting body with a completed disclosure report within 30 days of the February 1 due date shall lose the economic development subsidy and void the subsidy agreement. Late fees at a minimum rate of \$1000 per day per violation shall be collected and retained by the granting body.

(4) The granting body, or the designated agent or representative of the granting body, shall have access at all reasonable times to the project site and the records of the recipient employer without prior notice in order to monitor the project site and verify the content of the disclosure reports provided under subsection (1) of this section.

(5) A recipient employer that fails to provide the granting body access to the project site at a reasonable time shall be assessed a fine of \$1,000 per day starting with the day access is first not provided.

(6) Any recipient employer that fails to provide access within 90 days shall lose the economic development subsidy and void the subsidy agreement from the beginning of the reporting period.

(7) The recipient employer shall certify that all subcontractors and contracting entities are abiding by Oregon's minimum wage standards.

(8) Each economic development subsidy agreement shall provide that a four percent portion of the value of the subsidy for an administration fee that shall be paid by the recipient employer to the Secretary of State for performance of the audits conducted pursuant to section 7 of this 2015 Act. The administration fee shall be due and payable upon receipt of the subsidy.

SECTION 3 (1) Subject to the requirements of subsection (3) of this section, each recipient employer, as a condition of receiving an economic development subsidy, must hire at least one new employee for full-time employment, or two or more employees for part-time employment provided the total amount of compensation received by the part-time employees is at least equal to the amount of compensation received by a new employee hired for full-time employment. A recipient employer may not receive economic development subsidies that total more than the aggregate of seven years of estimated income taxes and property taxes paid by the new employees.

(2) The position created by the hiring of a new employee by a recipient employer must:

(a) Be retained by the recipient employer for a period of time equaling twice the duration of subsidies received by the recipient employer; and

(b) Provide at least 2,080 hours of paid wages per year.

(3) The hiring of a new employee by a recipient employer does not comply with the requirements to avoid subsidy recapture or rescission under subsection (5) of this section unless:

(a) For recipient employers with project sites located within a metropolitan statistical area, as defined by the most recent federal decennial census, new employees are paid compensation so that the total amount of the average hourly wage for non-managerial positions and other compensation paid is at least 150 percent of the average state or SMSA wage for that industry, whichever is greater, as most recently established by the Bureau of Labor Statistics of the United States Department of Labor.

(b) For recipient employers with project sites located outside a metropolitan statistical area, as defined by the most recent federal decennial census, new employees are paid compensation so that the total amount of the average hourly wage for non-managerial positions and other compensation paid is at least 130 percent of the average county wage for that industry as most recently established by the Bureau of Labor Statistics of the United States Department of Labor.

(4) A granting body shall verify that a recipient employer has complied with subsections (1) to (3) of this section and shall conduct periodic, unannounced visits to project sites.

(5) A recipient employer that does not comply with subsections (1) to (3) of this section shall be subject to subsidy recapture or rescission as follows:

(a) For each year that a recipient employer is in noncompliance, the subsidy value must be reduced by 150 percent of the compensation of positions that were not hired or that failed to meet compensation requirements. If the subsidy has already been paid to the recipient employer, the granting body shall recapture the amount of the subsidy reduction.

(b) If a recipient employer is noncompliant by 25 percent or more of the compensation of positions that were not hired or that failed to meet compensation requirements for three consecutive years, the full subsidy value must be recaptured and the subsidy will be considered rescinded on December 31 of the third year that the recipient employer is in noncompliance.

(c) For each year that the parent of a recipient employer fails to maintain at least 90 percent of its base employment in the state as of December 31 of the year in which the subsidy was granted, the subsidy to the recipient employer must be reduced by twice the percentage of the rate at which the parent of the recipient employer's has lost employment positions in this state. If the subsidy has already been paid to the recipient employer, the granting body shall recapture the amount of the subsidy reduction.

(d) If the parent of a recipient employer fails to maintain at least 90 percent of its base employment in the state as of December 31 of the year in which the subsidy was granted for three consecutive years, the full subsidy value must be recaptured and the subsidy will be considered rescinded on December 31 of the third year that the parent of the recipient employer is in noncompliance.

SECTION 4 (1) A granting body that provides an economic devel-

opment subsidy to a recipient employer shall publish prominently on its website a compilation of the disclosure reports required and received under section 2 of this 2015 Act no later than August 1 of each year. The granting body shall submit a report on a form provided by or with guidance from the Department of Administrative Services consistent with the unified reporting database, to be posted on the Oregon Transparency Website by November 29 of that year.

(2) The granting body website must contain all of the data from the disclosure reports required under section 2 of this 2015 Act as a searchable database and as a spreadsheet that can be downloaded in its entirety. When a new disclosure report is posted, earlier versions of the report shall remain available on the website.

(3) The granting body's website must also contain its determination of whether the recipient employer has met its obligations for job creation, wages and benefits as required by the economic development subsidy agreement. If the granting body has previously determined that the recipient employer has met the recipient employer's obligations, the website must contain the granting body's determination of whether the recipient employer has continued to meet its obligations.

(4) The granting body shall post, in addition to disclosure reports, copies of key documents relating to economic development subsidies on its website.

(5) If the granting body determines that the recipient employer has failed to meet its obligations for job creation, wages and benefits as required by the economic development subsidy agreement in the required period of time, or if the granting body determines that the recipient employer has failed to continue to meet its obligations, the website shall also state the penalty or penalties the granting body has imposed upon the recipient employer.

(6) The website must include the granting body's verification that the parent of the recipient employer, if one exists, has maintained at least 90 percent of its employment in the state since December 31 of the year in which the economic development subsidy was granted. If the granting body determines that the parent of the recipient employer has failed to maintain such a level of employment, the website must include the penalty or penalties the governing body has imposed upon the recipient employer.

(7) The granting body shall supply all references and links to the documents required under this section to the Department of Administrative Services for posting on the Oregon transparency website under ORS 184.483.

SECTION 5. (1) A state or local property taxing entity shall submit a report annually to the Department of Revenue regarding any real property in the property taxing entity's jurisdiction that has received a property tax abatement, exemption or credit during the tax year. The report shall contain, at a minimum, the following information:

(a) The legal name and business name, if any, of the property owner of the real property that received a property tax abatement, exemption or credit during the tax year;

(b) The address of the real property that received a property tax abatement, exemption or credit during the tax year;

(c) The starting and ending dates of the property tax abatement, exemption or credit;

(d) For each tax year, the effective amount of the property tax abatement, exemption or credit, by both percentage rate and dollar value; and

(e) A statement of the social benefits provided by the property to the public.

(2) A state or local property taxing entity shall also submit a report annually to the Department of Revenue regarding any real property that is publicly owned and leased to a private entity for the purpose of economic development and is exempt from property taxes. The report shall contain the same information specified in subsection (1) of this section.

(3) A state or local property taxing entity shall also submit a report annually to the Department of Revenue that sets forth the total property tax revenue lost during the tax year as a result of all property tax abatements, exemptions and credits in the entity's jurisdiction.

(4) The reports required under this section must be submitted in electronic spreadsheet form to the Department of Revenue and may use the form created by the Oregon Department of Administrative Services or the Department of Revenue. Each report must be submitted no more than two months after the end of the tax year.

(5) If a property taxing entity fails to submit its reports to the Department of Revenue within the prescribed time, the department shall withhold payments of all state moneys due to the delinquent property taxing entity until the entity files its reports with the department and pays any related penalties.

(6) No more than five months after the end of each tax year, the Department of Revenue shall compile, publish on the Department of Revenue website the data required in the reports under this section in electronic spreadsheet form and submit this data to the Department of Administrative services for posting on the Oregon Transparency Website under ORS 184.483.

SECTION 6. Notwithstanding any provisions of ORS chapter 192 providing for exemption from disclosure, all records required to be prepared, maintained or placed upon a granting body's website, the Department of Revenue's website or data required to be submitted by Act on the Oregon Transparency Website under ORS 184.483 by sections 1 to 8 of this 2015 Act are public records and subject to disclosure to the general public.

Data from all reports required by Act shall be compiled into a single searchable and downloadable Unified Reporting database by the Department of Administrative Services. The submitting agencies and departments may use a form created by the Oregon Department of Administrative Services or the Department of Revenue for ease in uniform data collection.

Aggregated subsidy, tax and employment data in the unified report shall be sortable by recipient employer and parent employer, by project or program, by granting body and by taxing entity. This Unified Report shall be posted no later than November 29 on the transparency website by the Department of Administrative Services. The cost for initial setup, implementation and administration of the Unified Reporting database shall be paid for by a portion of the aggregated Administration Fees required by Act. The Unified Report assures greater transparency and accountability to the public for all economic development investment and tax credits granted by the state.

SECTION 7. The Secretary of State shall conduct an audit of each recipient employer and issue an audit report at least once every three years. The administration fee described in section 2 (8) shall be applied to the cost of the audits and reports. Audit reports shall be posted on the Oregon transparency website under ORS 184.483.

SECTION 8. If a granting body fails to enforce any provision of sections 1 to 8 of this 2015 Act, any individual who paid personal income taxes in this state in the calendar year prior to the year in dispute, or any organization representing such individuals, may bring a civil action in any court of competent jurisdiction to require the granting body to enforce the provisions of sections 1 to 8 of this 2015 Act. In addition to other relief, the court may grant injunctive relief, award punitive damages and award payment of reasonable attorney fees and costs to the prevailing party.

SECTION 9. If any provision of sections 1 to 8 of this 2015 Act, or the application of sections 1 to 8 of this 2015 Act to any person or circumstance, is held invalid or unenforceable, the invalidity or unenforceability does not affect other provisions or applications of sections 1 to 8 of this 2015 Act that can be given effect without the invalid or unenforceable provision or application, and to this end the provisions of sections 1 to 8 are severable.

SECTION 10. Sections 1 to 8 of this 2015 Act apply to economic development subsidies received on or after the effective date of this 2015 Act.
