REMAPPING DEBATE
Asking "Why" and "Why Not"

Officials defend secrecy on business subsidies

Original Reporting | By Mike Alberti | Corporate influence, Open government

Oct. 10, 2012 — This past January, Brian Cronin, Democratic caucus chair in the Republican-controlled Idaho state legislature, introduced the Idaho Corporate Tax Incentive Accountability Act, which would have required every company hereafter receiving tax incentives worth at least $40,000 in a year to report the total value of the incentives for that year, along with detailed information about the number and quality of jobs created by the company.

NONE OF OUR BUSINESS?

This is the third in a series of articles examining the widespread phenomenon of states and localities providing incentives — that is, subsidizing — to private businesses in the United States. The first article, available here, examined the economic impacts of these incentives.

The second article, available here, described the staggering lack of transparency associated with business subsidies. In this article, we scrutinize the justifications given by state and local politicians who favor incentives but who defend keeping them secret.

— Editor

Idaho, which gives hundreds of millions of dollars a year to businesses through a variety of economic development incentive programs, is among the states with the fewest and least restrictive transparency requirements. For example, according to the advocacy group Good Jobs First, which tracks publicly available data on state subsidies, Idaho spent more than $130 million last year on a sales tax exemption for manufacturers, miners, and farmers — a sum representing nearly 6 percent of the state's entire budget — but did not disclose any information on the recipients.

"We want to ensure that every dollar we spend on economic development and job creation truly puts people back to work, and that taxpayers are getting a good return on their economic development investment," Cronin said in support of his accountability bill.

But when the bill arrived in the House Committee on Revenue and Taxation, which is chaired by Republican State Representative Dennis M. Lake, it did not even receive a hearing.

"I didn't think it needed one," Lake said in a recent interview. "Corporations have a right to privacy, and it's really nobody's business whether they are getting tax incentives or not."

A right to privacy?

Lake was making one of two basic arguments that came up repeatedly in interviews with more than a dozen officials in several states and localities who were supportive of incentives and have resisted transparency. Several lawmakers, like Lake, insisted that disclosing information about private companies, particularly tax-related information, would violate that company's assumed right to privacy. The second argument, sometimes made in tandem with the first, was that revealing such information could undermine the competitiveness of the companies receiving incentives by giving their competitors access to hither-to unknown facts about their business practices.

Remapping Debate asked Kansas state representative Anthony Brown, a Republican and chair of the House Commerce and Economic Development Committee, how it was possible for Kansans to make informed decisions about the state's tax and spending policy without having access to information on where their tax dollars are going.

"What you're asking for is confidential information about companies' taxes," Brown said. "One thing we always have to consider is the balance between the public's right to information and the business-owners' right to run their business how they want."

When asked the same question, Lake was more direct: "That's what they elected us for," he said. "That's the beauty of a representative democracy: people elect us to make those decisions for them."

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— Idaho State Rep. Dennis M. Lake

And how can they make informed decisions about who to elect if they are not able judge the policies their representatives have supported and put in place?

"I hate to be cynical, but you have a lot more faith in John Q. Public than I do," he said. "Most of the people in my district don't vote. They don't even know who their elected representative is, and you expect them to make informed decisions about tax incentive policy?"

Bad for business?

The second argument — that requiring disclosure of information on incentives hurts the competitiveness of the businesses receiving them — was put forward by Alabama State Representative Barry Mask, a Republican who chairs the House Economic Development and Tourism Committee. Mask has introduced numerous bills over his tenure creating new incentives or expanding existing programs. "If you look around our state, you see how successful we have been," Mask said.

Alabama now relies on incentives more than nearly any other state, but does not disclose the names of the recipients of the vast majority of its programs, except in special circumstances. “Anybody can walk into the Commerce Department and look that information up,” Mask said, “but you just can’t copy it, transcribe it, photograph it, or take it with you.”

If he is so confident that the incentive programs have been successful, why not share that information with the public?

“There are a lot of businesses that don’t want that information out there,” he said, “so it would be counterproductive if they said, ‘Maybe Alabama isn’t so business-friendly after all.’”

South Carolina State Representative William E. Sandifer III, a Republican who chairs the House Labor, Commerce and Industry Committee, agreed. “As a businessman, I understand that businesses want their competitors to have as little information as possible.”

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> — Richard D. Pomp, University of Connecticut

Many legal scholars and economists do not give credence to the argument that disclosure of incentives at a firm-specific level would affect a state’s competitiveness. Robert Lynch, a professor of economics at Washington College in Maryland, argued that several states do disclose the recipients of tax credits and other subsidy programs, and there is no evidence that those disclosures have affected the propensity of businesses to take those subsidies.

Richard D. Pomp, a law professor at the University of Connecticut who specializes in state tax policy, said that, regarding publicly traded corporations, so much information about a company’s financial position is already available that state-level information on incentives would make little difference. “The claim that corporations have a right to privacy or that it would hurt their competitiveness is very much called into question by the amount of information we already require them to disclose,” he said.

Regarding companies that are not publicly traded, Pomp added that it was possible to craft disclosure requirements so that companies would not have to reveal potentially sensitive information about their finances. “A lot of states have already done it,” he said. “There has never been a case that I know of where a competing business found something that gave them a real edge from disclosures on incentives.”

"I just want to know what I'm voting on"

Even in Alabama, there have been some efforts to improve transparency. In 2010, Democratic State Representative Patricia Todd introduced a bill that would have required the Department of Revenue to report the recipients of all of the state's many incentives. The proposed bill died in a now-defunct House committee. Todd said that she is now planning to introduce a bill that would require the state to submit detailed information on proposed incentive legislation, including a cost-benefit analysis, before lawmakers would be allowed to vote on it.

"I just want to know what I'm voting on," Todd said. "I'm not opposed to incentives, necessarily, but I can think of a lot of other ways to use that money in my district if it turns out they aren't working."

During this year's legislative session, the first 10 bills that came up for a vote in Alabama were related to economic development and tax incentives, and most of them passed. "Some of those bills were so vague that we didn't know what we were passing," she said.

But she has seen little interest from her fellow legislators. "I feel like the lone voice in the wilderness, the only person saying, 'You all are supposed to be Republicans, complaining about fiscal responsibility, so stop asking me to write blank checks.'"

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A one sided deal?

Another argument against disclosure that is made by some lawmakers is that tax credits and incentives are not limited to businesses, but also exist for individuals as well. "We would never ask governments to disclose the names of individuals getting credits," Lake said, "so why would we do it for businesses?"

Philip Mattera, the research director of Good Jobs First, responded that there is a crucial difference between the two: "These incentives are being offered to businesses with the expectation that they're going to do something specific with them," he said. "When a company takes a credit, they are entering into an explicit or implicit agreement with the government to create or retain jobs or increase their investment."

If companies do not want the amount of their subsidies disclosed, Mattera said, then they have the option of not entering into that agreement. “If they don’t want that information out there, then obviously the answer is for them not to take the subsidies, not just to keep the whole thing secret.”

Phineas Baxandall, a senior tax and budget policy analyst for the United States Public Interest Research Group (U.S. PIRG) who has studied state and local incentive disclosure, agreed. “If we don’t have that information, then there’s no way of knowing whether companies are holding up their end of the bargain,” he said. If the claim is that there is no “bargain” for companies to stick to, Baxandall went on, “then that means we’re just giving out money for nothing.”

“I don’t think there are many people that think that’s a good way to make policy,” Baxandall said.

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