Taking Back the Giveaways: Minnesota's Corporate Welfare Legislation and the Search for Accountability

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Mayors and governors routinely spend economic resources, time, and effort on projects that in the end produce little in the way of new jobs or new dollars for the community. They do so because they lack analytical tools... to help them target their efforts. If these efforts involve tax abatements, then the results are not simply neutral but potentially negative. The tax revenue lost presumably must be made up from the general tax base. This drains wealth from the community, which is the opposite of what economic development programs are supposed to do.1

In December 1991, the state of Minnesota offered Northwest Airlines a financial package worth nearly $838 million as an incentive to build two new aircraft maintenance facilities in northern Minnesota.2 The architects of the deal maintained it would create 1500 new jobs in the state and solidify thousands of others.3 Although Northwest, which is hubbed in Minnesota and employs over 17,000 state residents,4 plays an indisputably important role in the state’s economy, not everyone agreed the

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1. EDWARD V. REGAN, GOVERNMENT, INC.: CREATING ACCOUNTABILITY FOR ECONOMIC DEVELOPMENT PROGRAMS 45 (1988).
2. David Phelps, Northwest Deal Approved, STAR TRIB. (Minneapolis), Dec. 17, 1991, at 1A. The package included a controversial $320 million low interest loan to help meet operating costs, $350 million in state bonds to finance the construction of the new maintenance bases, tax exemptions on construction materials, and a $5000 tax credit for each new employee. Donald Barlett, NWA Case Showed How Corporations Can Lean on Taxpayers for Bailout Help, STAR TRIB. (Minneapolis), Apr. 1, 1994, at 14A.
3. Phelps, supra note 2, at 1A.
4. Barlett, supra note 2, at 14A.
deal was in the state's best interest. Many, in fact, argued the state was irresponsibly generous. Such concerns increasingly became credible as Northwest, which aggressively lobbied for the package, failed to deliver on its part of the deal. By Spring 1996, the maintenance facilities, which were originally scheduled for completion in early 1993, were still not operational and commentators throughout the country began to herald the deal as a classic example of "corporate welfare."

The term "corporate welfare" connotes an image of an undeserving recipient of public assistance and reflects increasing dissatisfaction with the way public officials spend public money. Critics, in particular, have drawn attention to high profile deals in which large sums of public money have been used to subsidize financially stable private corporations for projects that frequently yield very little tangible public benefit.

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5. Many criticized the state for giving away far too much without getting any concrete commitments from Northwest. See, e.g., Dennis J. McGrath, NWA's Letter Renews Fight on State Deal, STAR TRIB. (Minneapolis), May 29, 1992, at 1B (describing controversy surrounding the cost and nature of the package). Others suggested that the cost of the deal grossly exceeded its potential benefits. Id.

6. See, e.g., Melvin L. Burstein & Arthur J. Rolnick, A Costly War Between the States, ST. LOUIS POST-DISPATCH, Apr. 2, 1995, at 3B (citing Minnesota's deal with Northwest as an example of an agreement in which a corporation accepted a large amount of state aid without fulfilling its end of the bargain); Charles Mahtesian, Romancing the Smokestack, GOVERNING, Nov. 1994, at 40 (citing Minnesota's agreement with Northwest as an example of a bad deal). But see Jill Hodges, Northwest's Break from Turbulence; Employees' Stock Deal Is Paying Off for Everyone, STAR TRIB. (Minneapolis), Apr. 17, 1995, at 4D (quoting officials that believe the deal "was worth it").

Northwest downgraded its commitment considerably in April, 1994. Neal St. Anthony & Larry Oakes, Fighting for Jobs, STAR TRIB. (Minneapolis), Apr. 7, 1994, at 1D. Instead of two maintenance facilities employing well over 1000 people, Northwest agreed to build one maintenance facility in Duluth that would employ 270 by the fall of 1996 and up to 350 by the year 2000. Id. The facility is expected to open in September, 1996. 1996 Has a Crowded Agenda, STAR TRIB. (Minneapolis), Jan. 1, 1996, at 3B.

7. The term "corporate welfare" feeds off recent negative rhetoric about public assistance to low-income individuals. See Kary L. Moss, The Privatizing of Public Wealth, 23 FORDHAM URB. L.J. 101, 153 n.21 (1995) (suggesting that the term "corporate welfare" stems from general misconceptions about the term "welfare"). The term was born from the perception that private corporations are undeserving recipients of public money. Id.

8. Commentators in the media and academia alike recently have expressed outrage over wasteful and ill-advised public expenditures on undeserving corporations. See, e.g., Mike Meyers, Government Subsidies for Private Businesses Ought to Be Stopped, STAR TRIB. (Minneapolis), Dec. 1, 1995, at 2D (posing that "[p]ublic subsidies to private enterprises are a bust"). One
Amid such concern, many states have begun to rethink the mechanisms and processes under which they dole out public money. In April 1995, Minnesota joined a growing group of states that are demanding accountability from private recipients of public money by passing "corporate welfare" legislation. Minnesota's legislation demands that recipients of public aid add new jobs to the state within two years of receiving aid, and requires those recipients who do not do so to reimburse the state in full.

It increasingly has become clear that if state and local governments continue to grant business incentives, they will need to include accountability measures in those deals. This commentator noted, "in Baton Rouge, Louisiana, Exxon Corporation received 27 tax abatements totaling $14,372,600, while the company expected to create just one new permanent job." Moss, supra note 7, at 108. Another pollster, after completing a study on the public's response to various words and phrases, commented that "corporate welfare" is third on the list of "things the public flips out on." David E. Rosenbaum, Battle Over the Budget, N.Y. TIMES, May 18, 1995, at B13.

9. See GREG LEROY, NO MORE CANDY STORE: STATES AND CITIES MAKING JOB SUBSIDIES ACCOUNTABLE 25-119 (documenting accountability initiatives in various states and cities); William H. Carlile, States Are Closing Firms' "Candy Store"; Laws Tighten Incentives, Seek Accountability for Subsidies, ARIZ. REPUB., July 24, 1994, at E1 (discussing recent efforts to introduce accountability measures into incentive agreements).

10. Act of May 24, 1995, ch. 224, § 58, 1995 Minn. Laws 1686, 1721 (codified at MINN. STAT. ANN. § 116J.991 (West Supp. 1996)) (public assistance to business; wage and job requirements). The statute reads:

A business that receives state or local government assistance for economic development or job growth purposes must create a net increase in jobs in Minnesota within two years of receiving the assistance.

The government agency providing the assistance must establish wage level and job creation goals to be met by the business receiving the assistance. A business that fails to meet the goals must repay the assistance to the government agency.

Each government agency must report the wage and job goals and the results for each project in achieving those goals to the department of trade and economic development. The department shall compile and publish the results of the reports for the previous calendar year by June 1 of each year. The reports of the agencies to the department and the compilation report of the department shall be made available to the public.

For the purpose of this section, "assistance" means a grant or loan in excess of $25,000 or tax increment financing.

11. Id.

12. The purpose of this Note is not to reanalyze the efficacy or wisdom of incentives per se, or to chronicle the phenomenon of corporate welfare—other
Note analyzes the strengths and shortcomings of Minnesota's new legislation as a model for the rest of the country. Part I discusses the history of incentive packages, the accountability problems associated with incentive agreements, various measures other states have used to ensure accountability, and the accountability provisions in the Minnesota legislation. Part II analyzes Minnesota's corporate welfare law. Although the statute's intent is commendable, the law is flawed as an accountability mechanism because it lacks clarity and omits important provisions. Finally, Part III sets forth the Improved Incentive Accountability Law, a model statute that would clarify the law's application and mandate that governmental agencies perform detailed cost/benefit analysis before granting incentives.

I. PUBLIC MONEY IN PRIVATE POCKETS

A. THE HISTORY, GROWTH AND PURPOSE OF FINANCIAL INCENTIVES

The idea that the government can or should nurture private business interests is not new or radical. Scholars widely acknowledge the important role economic incentives played in the United State's economic development. The use of financial incentives in the past twenty years, however, has exploded.

commentators already have examined that question thoroughly. See generally Moss, supra note 7 (discussing subsidy abuse, its implications, and policy options). The purpose of this Note, rather, is to explore accountability legislation from the perspective that, good or bad, states and cities already grant these incentives.

13. Massachusetts granted what many believe to be the first business incentive in the country's history in the seventeenth century. Regan, supra note 1, at 25.


15. See LeRoy, supra note 9, at 3 (providing a table noting, for example, that between 1977 and 1993, the number of states using corporate income tax exemptions increased from 21 to 36; the number of states enabling cities and counties to lend dollars for building construction increased from 8 to 45; and the number of states providing research and development tax exemptions increased from 9 to 34, all in an effort to spur economic development).
The American economy has deindustrialized, and while a select few have prospered, many Americans have seen their standard of living decrease as opportunity and income have polarized. In the wake of these changes, increasing numbers of public officials have resorted to incentives as mechanisms to spur local development. By 1981, every state in the country was using some type of tax or financial incentive to inspire economic growth. Recent years have seen not only an explosion in the use and number of incentives, but also drastic

16. See generally Deindustrialization and Regional Economic Transformation: The Experience of the United States (Lloyd Rodwin & Hidehiko Sazanami eds., 1989) (discussing structural shifts in the economy that have been characterized by job loss in the industrial sector and job growth in the service sector).

17. See, e.g., Robert B. Reich, The Work of Nations 196-207 (1991) (discussing the increasing polarization in income that has resulted from structural changes in the economy). National Labor Secretary Robert Reich writes that “nearly everyone agrees that the trend, at least since the mid-1970s, has been toward inequality.” Id. at 197. He explains that while the rich become richer, the poor become poorer, and more Americans have begun to descend from middle-class status. Id. at 199. See generally William W. Goldsmith & Edward J. Blakely, Separate Societies: Poverty and Inequality in U.S. Cities (1992) (describing a growing trend toward inequality in the United States).

This trend has been particularly acute in American cities, where the structural changes in the economy have precipitated a mass exodus of jobs, capital, and people. See, e.g., Peter Dreier, America's Urban Crisis: Symptoms, Causes, Solutions, 71 N.C. L. REV. 1351, 1372-75 (1993) (explaining that the “flight of previously high-wage . . . industries from U.S. cities” has left these urban areas fighting to stem a “growing tide of poverty”). These conditions, in large part, have driven public officials to use financial incentives as mechanisms to inspire revitalization. Id. at 1374.

18. Roger Wilson, policy analyst for the Council of State Governments, writes, “[t]he real explosion of business incentives, however, came as an aftermath of the employment crisis of the 1970s and the recession of the early 1980s.” Wilson, supra note 14, at 3. As states tried to relieve unemployment and bolster revenues that eroded during the recession, their use of business incentives to attract industrial prospects accelerated. Id. Other analysts note that a particularly soft economy, a decrease in new job-creating projects by Fortune 500 companies, voter frustration and dissatisfaction, and the federal government’s failure to develop a national policy have governors and mayors “desperate to demonstrate that they are acting to create jobs.” LeRoy, supra note 9, at 1-2; see also Regan, supra note 1, at 25 (attributing the explosion of tax-incentive packages to a period of stagflation in the late 1970s); Dreier, supra note 17, at 1374 (positing that deteriorating economic conditions in American cities have spawned a proliferation in incentives as a means of curbing the trend).

19. Wilson, supra note 14, at 3. In sum, the states put nearly $20 billion toward such purposes in 1981 alone. Id.
escalation in their financial cost. As the 1990s dawned, financial incentive packages worth over $150,000 for each proposed job were not uncommon.

Public officials view these extraordinary price tags as the cost of providing a favorable business climate, and, inspired by the notion that a healthy and happy business community will spread prosperity throughout the state or region in general, they remain willing to pay it. Policy makers hope state-sponsored business incentives will create employment opportunities, expand the state's tax base, and stimulate a healthier economy.

Governments grant incentives in many different forms, most of which are derivations of development bonds, low interest loans, or tax incentives. Incentive proponents reject arguments that incentives inappropriately transfer public money to private businesses. They argue incentives, by stimulating economic opportunity and creating jobs, are solid public invest-

20. See LeROY, supra note 9, at 2.
21. In 1993, Alabama dangled a financial package worth over $253 million in front of Mercedes-Benz to entice the German-based automobile manufacturer to build a 1500-worker plant in its state. Id. Similarly, Kentucky, at a price of $350,000 per job, gave Dofasco, Inc., a Canadian steel manufacturing company, over $140 million in financial aid in exchange for a 400-employee mini-mill. Id.
22. See REGAN, supra note 1, at 1 (commenting that state and local governments hope incentives ultimately will result in a stronger economy and increased revenues).
24. See WILLIAM W. HAMILTON, INDUSTRIAL INCENTIVES: PUBLIC PROMOTION OF PRIVATE ENTERPRISE 1-5 (1985) (describing the nature of most business incentives). Tax-exempt bonds provide recipient businesses with advantageous debt financing. Id. at 71. By exempting any income applied to state and local debts from taxation, they potentially make debt profitable: "Because the tax-exempt nature of these bonds increases the effective rate of return to lenders, that is, bond purchasers, they can be sold at lower nominal rates of interests, thereby providing an interest subsidy to the borrower." Id. Similarly, low-interest loans provide recipient businesses with below-market rates and flexible terms. Id. at 29. Favorable loan rates, otherwise unavailable on the private market, facilitate investment and increase returns. Id.
25. WILSON, supra note 14, at 1.
ments that "yield profitable rates of return." The courts, for the most part, agree. The courts have rejected almost all claims that business incentives violate the public purpose requirement most states have in their constitutions.

B. FINANCIAL INCENTIVES: WORTH THE COST?

Despite their proliferation in use, many critics argue that financial incentives are an ineffective means of encouraging meaningful economic development, and that such incentives take valuable money away from investments in education, infrastructure improvements, and job-training programs. In

26. Id.
27. See, e.g., City of Yonkers v. Otis Elevator Co., 649 F. Supp. 716, 728 (S.D.N.Y. 1986) (holding there was no explicit commitment by the company to the city of Yonkers in its incentive package); see also infra notes 44-45 (discussing the legal theories and outcomes of cases involving business incentives).
28. Most state constitutions require the state to make all expenditures for a public purpose. See, e.g., MINN. CONST. art. X, § 1 (requiring that taxes "be levied and collected for public purposes"). Hence, many taxpayers have challenged the constitutionality of financial incentives for private businesses. See, e.g., Common Cause v. State, 455 A.2d 1, 10 (Me. 1983) (challenging a city and state's costly subsidy agreement with a shipping company). Most courts, however, are reluctant to second guess the determinations of legislative bodies. E.g., id. at 18. A legislature's "arrangements must be upheld as being for a public purpose unless it is clearly demonstrated that they are not." Id. The court may only require that a legislative body have a "rational basis" for its actions. Id. In at least one case, the court was more concerned with the purpose of the activity than the effect. Id. In Minnesota, the courts have determined that where the primary purpose of business incentives is to promote public benefit, any benefits that accrue to private businesses are "incidental." City of Pipestone v. Madsen, 178 N.W.2d 594, 603 (Minn. 1970). An Iowa statute actually codifies the notion that incentives serve a public purpose; it proclaims, "Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives, and other financial assistance to or for the benefit of private persons." IOWA CODE ANN. § 15A.1 (1994).
29. See Matthew T. Furton, Note, The Use of Penalty Clauses in Location Incentive Agreements, 70 IND. L.J. 1009, 1015 (1995) (asserting that "[t]he majority of academic studies condemn the practice of providing corporations with direct financial assistance, and argue that this type of government subsidy only encourages economic behavior that would have occurred anyway"). But see Mary Jo Waits & Rick Heffernon, Business Incentives: How to Get What the Public Pays for, SPECTRUM, June 22, 1994, at 34-35 (arguing that while many incentives are irresponsible and poorly designed, properly structured business incentives can be an effective economic development tool).
30. See WILSON, supra note 14, at 6-7; Moss, supra note 7, at 110. Such critics borrow from commentary that posits education and training are the real keys to economic development. See, e.g., STUART A. ROSENFIELD, COMPETITIVE
fact, most studies conclude business incentives are not an effective way to promote employment growth.\textsuperscript{31} Others have argued further that incentives are actually detrimental because they distort free-market competition and misallocate resources.\textsuperscript{32}

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\textbf{MANUFACTURING} 207 (1992) (noting that education and training "lie at the heart of competitiveness"). Furthermore, recent studies suggest education, as it pertains to producing quality workers, and an area's infrastructure are among the most important factors that businesses look for when locating a new plant. \textsc{Wilson, supra} note 14, at 15.

Quality education, however, is not only important as a means to lure businesses. Education is an exceptionally worthy candidate for public money because it tends to define opportunity in today's economy. \textsc{See Anthony Downs, New Visions for Metropolitan America} 86-87 (1994) (suggesting that educational attainment plays an important role in determining economic opportunity). Education has become a very telling indicator as income and unemployment statistics increasingly have become linked with educational attainment. \textit{Id.}

Again, this is particularly relevant for urban communities, where public schools tend to be grossly underfunded. \textsc{See generally Jonathan Kozol, Savage Inequalities} (1991) (documenting the decrepit conditions in many inner-city schools and noting the discrepancies in funding between suburban and urban public schools). Students from urban public schools, for the most part, will be at a competitive disadvantage in an education-oriented labor market. Furthermore, low-quality central-city schools can negatively impact the economic viability of an entire metropolitan area. \textsc{See Downs, supra} at 83 (commenting that the quality of central-city schools has "direct implications" for the "economic welfare" of suburbanites).

Unfortunately, most state and city governments do not have additional money to spend on education or infrastructure. \textsc{See Dreier, supra} note 17, at 1371 (discussing financial problems confronting most city governments). Most state and local governments already are overspent. Peter Dreier, for example, explains that "[c]ities, trapped by rising costs, shrinking resources, and inexpandable borders, are now confronting fiscal calamity." \textit{Id.; see also Downs, supra,} at 50 (plotting expenditures against revenues for American cities). Ideally, policy makers will distribute these limited resources to promote the most public benefit—incentives and education are competing but related addends in this equation.

\textsc{31.} One analyst concluded that the majority of studies about the effectiveness of incentives suggest they "do not have a significant or primary effect on state employment growth." \textsc{Wilson, supra} note 14, at 22. Many analysts further note that states typically grant incentives through a process that is filled with uncertainty, and that these states often have no idea what, if anything, they are getting in return. \textit{Id. at 27; see also Aulde, supra} note 23, at 3 (commenting that "the only thing that is certain is that potentially massive windfalls accrue to industry"); \textsc{Michael Kieschnick, Taxes and Growth} 21-22, 87 (Michael Barker ed., 1981).

\textsc{32.} \textsc{See Taylor, supra} note 14, at 679-83 (noting that by interfering with the competitive market, governments risk allocating resources to inefficient producers and therefore prevent markets from reaching their most efficient levels of production).
Businesses nonetheless have succeeded in pitting the states against each other in unrelenting "incentive competitions." Even though public officials generally acknowledge that incentives are not in their collective best interest, most are reluctant to discontinue their use. Efforts among the states to cooperate have failed, and individual states are now hesitant to be the only player to refrain from the incentive game. Most officials fear they will find themselves at a competitive disadvantage if their communities unilaterally discontinue using incentives.

33. Businesses have capitalized on this overall climate of insecurity, and, in many instances, sought and obtained sweetheart deals merely by threatening to locate elsewhere. WILSON, supra note 14, at 23; see LEROY, supra note 9, at 2 ("McDonnell Douglas played nine states against each other for its proposed new MD-12 jumbo jet project, reportedly seeking $1 billion for perhaps 3,000 to 5,000 jobs."). Businesses thus have emerged as the incentive game's biggest winners and have tremendous financial reason to prolong its run. See, e.g., AULDE, supra note 23, at 3 (commenting that "the only thing that is certain [about incentives] is that potentially massive windfalls accrue to industry").

One critic explained: "To a great extent, the business community has been able to influence legislative policy by playing one state against the other and convincing neighboring states of the need to keep their tax structures competitive with each other." WILSON, supra note 14, at 23 (citing Sandra Kanter, A History of State Business Subsidies, in PROCEEDINGS OF THE 70TH ANNUAL MEETING OF THE NATIONAL GOVERNORS 424 (1977)). Another article likened the competition among states for development projects to a "civil war" and commented that "the competition to attract new jobs or just maintain the status quo has taken on a ferocity that makes the economic development wars of the past look like incidental firefights." Robert Guskind, The New Civil War, 25 NAT'L J. 817, 817 (1993); see also Mahtesian, supra note 6, at 36 (noting that there is no end in sight to the incentive competition among the states).

34. In 1993, the National Governors' Association (NGA) voted to accept a policy statement condoning the use of incentives to attract industry. Gary Enos, Where's the Teeth?, CITY & STATE, Sept. 26, 1993, at 3. The agreement, however, lacked any meaningful enforcement mechanism and hence did not induce significant changes in behavior. See id. (expressing doubt that the agreement, with its absence of enforcement mechanisms, would induce any real changes). One article, dubious of the agreement's significance, ironically noted that Illinois Governor Jim Edgar, one of the architects of the agreement, authorized an incentive deal for Tootsie Roll Industries worth over $20 million before he left for the NGA conference and a tax incentive package worth nearly $30 million for Nabisco when he returned from the conference. Mahtesian, supra note 6, at 36.

35. See Mahtesian, supra note 6, at 36 (noting that agreements have not changed the behavior of most public officials).

36. One commentator noted:

[S]tate and local governments are trapped in a prisoner's dilemma. Although competing governmental units would enjoy the greatest economic benefit if no incentives were offered and, unlike the prisoner in the classic prisoner's dilemma, states and localities can at least communicate their desires to one another, they still have no means to
Reluctant participation, however, has not translated into caution. Many state and local officials give incentive packages away without carefully measuring the costs of those packages against their potential benefits. Almost all of the studies on the effectiveness of business incentives stress that governments providing such incentives need to do a much better job of performing cost/benefit analysis before giving their money away. Failure to perform such analysis results in failure to recognize bad investments and often leaves governments with little or nothing to show for monumental expenditures.

Startling cases of subsidy abuse are common. In Hammond, Indiana, for example, the Calumet Project for Industrial Jobs, a community and labor supported group, surveyed sixteen businesses that had received tax breaks under an economic development program in 1988. The businesses, which saved more than fifteen million dollars in taxes, had promised to create over 800 jobs. None of the businesses, however, followed through on their pledges, and five of the businesses actually eliminated a total of 101 jobs. Furthermore, Hammond had no recourse to its fruitless investment because it did not condition its investment or include any kind of accountability enforce an agreement not to grant subsidies. Faced with the likelihood that some governments will cheat and enact incentives, other governments will follow suit to ensure they are not placed at a competitive disadvantage.

Taylor, supra note 14, at 693.

37. Of 34 states responding to a survey by the National Governors Association, only nine had any reporting requirements for businesses that receive public money, and only six reported having penalty provisions to insure accountability. LeROY, supra note 9, at 5. The survey also revealed that only eight of 34 responding states use job quality as a criteria to determine which companies get aid. Id. Greg LeRoy concludes, "most states and cities still are not performing meaningful cost-benefit analysis." Id.

38. See AULDE, supra note 23, at 67-69 (calling for a "holistic cost/benefit approach" to incentive policy analysis); HAMILTON, supra note 24, at 148 (noting that cost/benefit analysis "is critically important to policy makers and development officials who must allocate limited financial resources among competing projects"); RSGAN, supra note 1, at 46 (calling for every state and municipality to establish accounting standards to help facilitate the recording of the costs and benefits associated with incentive programs); WILSON, supra note 14, at 28 (posing that "future guidelines must incorporate quantifiable cost/benefit measures").

39. LeROY, supra note 9, at 6.

40. Id.

41. Id.
provision in the agreement. Such examples of waste have inspired many states to experiment with provisions that would ensure a degree of accountability in the incentive packages they grant.

C. ACCOUNTABILITY PROVISIONS IN SUBSIDY AGREEMENTS

After seeing little or no return on their costly investments in economic development projects, a number of state and local governments brought their grievances to court. In the absence of explicit terms, however, the courts repeatedly have refused to recognize subsidy agreements as contracts, and

42. Id. For another example, Pennsylvania, after winning a bidding battle with Ohio, granted Volkswagen a financial package worth $71 million, in anticipation that the automaker would build a plant employing as many as 20,000 workers. Mahtesian, supra note 6, at 39. The plant, however, never employed more than 6000 workers, 3000 of which were laid off just five years after the plant opened. Id. The plant closed for good within ten years of the original agreement, leaving Pennsylvania with little to show for its considerable expenditure. Id. at 40.

43. See Ernest Swiger, Avoiding “Sticky” Business Relocations, CORP. BOARD, July 1993, at 16 (noting that a number of states have begun to “formalize aspects of the incentive process,” and condoning a more “business-like” approach to government incentives); see also Waits & Heffernon, supra note 29, at 37 (arguing that while incentives are potentially useful economic development tools, they should be made legally binding to ensure accountability). This sentiment represents a move away from the days of unconditional and often irresponsible handouts. One recent newspaper article commented that “the ‘candy store’ approach to economic development in the United States is becoming a thing of the past.” Carlile, supra note 9, at E1.

44. Many victimized state and local governments have alleged that the incentive agreement was a contract that bound the recipient business to perform. They have attempted to recoup their losses by claiming that the business’s failure to perform constituted a breach. See, e.g., City of Yonkers v. Otis Elevator Co., 649 F. Supp. 716, 728 (S.D.N.Y. 1986) (ruling recipient of financial assistance made no explicit commitment to city and therefore the financial package did not constitute a contract); Ypsilanti v. General Motors Corp., 506 N.W.2d 556, 562 (Mich Ct. App. 1993) (ruling a tax abatement did not create a contract between the city and its recipient); In re Indenture of Trust, 437 N.W.2d 430, 436 (Minn. Ct. App. 1989) (denying that an incentive agreement created a contract prohibiting the transfer of equipment and employment out of the state).

45. Most courts generally have held that subsidy agreements, in and of themselves, do not create binding contracts. E.g., Ypsilanti, 506 N.W.2d at 562. The Minnesota city of Duluth, for example, brought suit against the owner of a handtool manufacturing plant who, after seeking and ultimately receiving significant public assistance to modernize and expand its plant in Duluth, transferred equipment to another plant in South Carolina and drastically lowered production and employment at the Duluth plant. Indenture of Trust, 437 N.W.2d at 430. Although the district court determined the defendant’s
have continued to deny claims that the pledges made by businesses to entice lucrative subsidy agreements amount to promissory estoppel.\textsuperscript{46} Despite the efforts of victimized local governments, unions, and community groups, the courts have made it clear they will not take responsibility for demanding post facto accountability from the recipients of irresponsible public handouts. Quite to the contrary, the cases demonstrate that state and local governments wanting to place limits on businesses receiving public incentive-aid need to make those expectations clear \textit{before} they give their money away.\textsuperscript{47} Incentive-agreement accountability became a hot topic in state legislatures only after it proved to be largely unattainable in the courtroom.

1. Accountability Options

Many state and local governments have begun to take proactive steps to ensure public investments in private companies yield tangible public benefits. Although potential accountability mechanisms are diverse in their magnitude and impact,\textsuperscript{48} job quality provisions and European-born\textsuperscript{49} clawback actions were in bad faith, the court of appeals ruled that the parties made no explicit agreements about employment levels or equipment transfers. \textit{Id.} at 436. The appellate court, therefore, overruled the district court's decision and denied the city's breach of contract claim. \textit{Id.}; see also \textit{City of Yonkers}, 649 F. Supp. at 728 (concluding that the defendant corporation made no explicit commitments to the city when it accepted financial assistance and therefore the financial package did not constitute a contract).

\textsuperscript{46} Although businesses and corporations, when lobbying for incentive packages, frequently boast of the many things that they will bring to a community, including jobs and a stable tax base, the courts generally have held that such posturing does not create legally enforceable promises. \textit{See, e.g.}, \textit{Ypsilanti}, 506 N.W.2d at 559 (noting that promissory estoppel requires "a clear and definite promise").

\textsuperscript{47} The court in \textit{City of Yonkers}, for example, commented that the city was essentially asking the court to enforce a contract for which it itself had not bargained. 649 F. Supp. at 722.

\textsuperscript{48} Greg LeRoy identifies eight types of provisions which different states have utilized to encourage accountability: right-to-know laws, clawback and job-creation guarantees, anti-poaching protections, advance notice requirements, job quality requirements, target hiring and affirmative action requirements, environmental protection requirements, and eminent domain power. \textit{LEROY, supra} note 9, at 25-120.

\textsuperscript{49} Western European nations historically have implemented more generous incentive programs than the United States. \textit{See} Larry C. Ledebur & Douglas Woodward, \textit{Adding a Stick to the Carrot: Location Incentives with Clawbacks, Rescissions, and Recalibrations}, 4 ECON. DEV. Q. 221, 226-27 (1990) (discussing the use of clawbacks in European business incentives). These
provisions are the most talked about and perhaps most contro-
versial because of the burden they place on businesses.  

Job-quality provisions require companies receiving public aid to provide "good" jobs. Such requirements are based on the notion that low-wage, low-benefit jobs do not provide meaningful benefits to the public—they typically evaluate job quality in terms of wages and benefits. Some business advocates adamantly oppose these efforts as conditions on financial incentives, arguing such requirements place an undue burden on business.

Clawback provisions face much of the same criticism. Clawbacks, which function in a variety of ways, legally enable governments to recapture public subsidies to private businesses when those businesses fail to deliver promised benefits to the public. The intent of such provisions is to make incentives quid

nations, however, are much more likely than is the United States to approach subsidy agreements as contractual relationships. Id. Most European nations, in fact, use clawback provisions with every form of industrial subsidy they grant. Id. Tax concessions, employment creation subsidies, capital grants, loans, and interest subsidies are all structured in a way that ensures recipients of public aid are accountable to the public. Id.; see generally DOUGLAS YULILL & KEVIN ALLEN, EUROPEAN REGIONAL INCENTIVES (1980) (discussing European incentive programs and accountability measures).

50. See Swiger, supra note 43, at 17 (noting that clawback provisions may cause a business to believe a state or community is anti-business, and thus may actually discourage investment).

51. Job-quality requirements stem from the notion that most communities suffer, not from a lack of jobs, but from a lack of good jobs. Robert Reich explains:

[T]he important issue over the longer term is the quality of jobs, not the number. By the 1990s, many jobs failed to provide a living wage. More than half of the 32.5 million Americans whose incomes fell under the official poverty line—and nearly two-thirds of all poor children—lived in households with at least one worker. This is a higher rate of working poor than at any other time in the postwar era.

REICH, supra note 17, at 203.

52. See LEROY, supra note 9, at 84-91 (describing job-quality provisions that various states and cities have implemented).

53. See infra note 59 (describing recent opposition to job-quality require-
ments).

54. Ledebur & Woodward, supra note 49, at 227. Ledebur and Woodward write that governments have three options when implementing clawbacks: they can attempt to recapture the amount of the subsidy equal to the unrealized benefits; they can attempt to recover the amount of the subsidy in excess of realized benefits; or they can attempt to recapture the entire value of the subsidy. Id. at 228-29. Ledebur and Woodward describe three related types of provisions which potentially could work in conjunction with clawbacks: rescissions, penalties, and recalibrations. Id. at 227.
pro quo agreements.\textsuperscript{55} Clawbacks help ensure the public gets what it pays for, or that at least it has some mechanism of redress if it does not.

Other significant accountability measures legally guarantee the public's right to know about the quantity and cost of business incentives.\textsuperscript{56} "Right-to-know" laws are less controversial, but no less important. Right-to-know laws typically require recipients of public money to make public projections, at the time they apply for the money, about the benefits they will provide the public. The laws also require recipients to report periodically on their performance after they begin receiving funds.\textsuperscript{57} Their purpose is to keep the distribution of public money in the public's eye.\textsuperscript{58}

2. Accountability in Practice

A number of states and municipalities either have recently passed or are in the process of considering legislation with accountability provisions designed to protect public investments.\textsuperscript{59} Most of this legislation, however, applies only to

Recission provisions give the government the right to cancel the subsidy agreement in the event of nonperformance. \textit{Id.} at 228. Penalties tend to be employed in addition to clawback provisions and enable the government to penalize nonperforming businesses beyond the cost of the subsidy. \textit{Id.} at 229. Recalibrations, in the alternative, are provisions that let the government readjust the subsidy in accordance with the business's changed ability to provide benefits to the community. Recalibrations, in their various manifestations, enable governments to change the amount they are giving to better reflect what they are getting in return. \textit{Id.}

\textsuperscript{55} In the absence of clawback provisions, the courts fail to construe incentives as quid pro quo agreements. \textit{See supra} note 45 (discussing cases in which the courts have ruled that incentives, in and of themselves, do not constitute contracts).

\textsuperscript{56} \textit{See} \textit{LeROY, supra} note 9, at 25-42 (discussing right-to-know laws).

\textsuperscript{57} \textit{Id.} at 25-26. Wisconsin, for example, requires businesses applying for loans and bonds from the state Economic Development Authority to estimate the number of jobs the project will create and destroy. \textit{Wis. Stat.} \textsection 66.521 (1995). The law also demands that recipients publicly report on the accuracy of their estimates after the project is completed. \textit{Id.}

\textsuperscript{58} \textit{See} \textit{LeROY, supra} note 9, at 25 (noting that incentive deals are typically made with little or no public input).

\textsuperscript{59} Connecticut recently passed legislation demanding repayment from recipients of state-sponsored financial assistance who relocate out of the state within ten years of receiving the assistance. \textit{Conn. Gen. Stat. Ann.} \textsection 32-5a (1993). The city of St. Paul, Minnesota, in contrast, voted on November 7, 1995, to reject a city ordinance that would require corporate recipients of city money to create at least one new job that pays no less than a poverty-level wage as defined by the federal poverty standards for a family of four. This amounts to
recipients of public money whose actions actually worsen economic conditions in the state, and not those that fail to improve them. In addition, most codified clawback provisions only require businesses that relocate out of the state or reduce employment levels in the community to repay their public money.60

Clawback provisions that actually recapture funds from businesses which fail to create new jobs are more rare. Iowa and Nebraska are among the few states that have these limited job creation clawbacks.61 These provisions apply to state funding allocated through specific economic development

$7.21 per hour. The ordinance had both vocal critics and adamant supporters. Compare Mel Duncan, St. Paul Jobs Ordinance Will Promote Decent-Wage Jobs, ST. PAUL PIONEER PRESS, Oct. 31, 1995, at 9A (arguing that the ordinance, by promoting the creation of good jobs, would have a positive effect on the city) with William Given, No: It Would Hinder Job Development, ST. PAUL PIONEER PRESS, Oct. 10, 1995, at 7A (suggesting that a poverty-level wage requirement would impose an oppressive burden on start-up businesses and stifle job creation).

60. Although Connecticut's law does not require recipients of public money to create jobs, it only requires that the state Department of Economic Development, when reviewing applications for financial assistance, consider "the extent to which the project will likely result in the retention and creation of jobs." CONN. GEN. STAT. ANN. § 32-223(b)(A) (1993).

Similarly, a recent Ohio statute orders that the state's Tax Credit Authority only provide tax credits to corporate taxpayers if it determines that the taxpayer's project will create new jobs in the state. OHIO ADMIN. CODE § 122:7-1-05 (1994). Like Connecticut, Ohio does not require recipients who fail to create new jobs to repay the value of the credit. The Ohio law does, however, stipulate that "the authority may prospectively reduce the percentage and term of the tax credit set forth in the tax agreement" for businesses failing to meet required levels of employment. Id. § 122:7-1-08.

61. Nebraska, as part of its Employment and Investment Growth Act, requires businesses that receive incentives to pay back all or a portion of those incentives if they fail to meet required levels of employment. The statute states: "If the taxpayer fails either to meet the required levels of employment or investments for the applicable project . . . all or a portion of the incentives set forth in the Employment and Investment Growth Act shall be recaptured or disallowed." NEB. REV. STAT. § 77-4101 (1993).

Iowa requires similar performance from businesses that receive funds from its Community Betterment Program. IOWA CODE ANN. § 15.330 (1994). Furthermore, Iowa's law thoroughly defines what happens in the event of default. The clawback provision in the law is significant because it is not an all-or-nothing clawback. Iowa's law recognizes partial achievement and allows partially achieving businesses to keep the amount of the subsidy that is proportional to the benefit it has provided to the state. Id.
and they require businesses that benefit from the programs to meet job creation goals. If they do not, the clawback provisions require that the businesses repay all or part of the benefit they have received through subsidies, tax abatements, or low interest loans.

These clawback provisions, however, typically apply only to money doled out through the specific programs or acts of which they are a part.\(^6^3\) In other words, they are not comprehensive and do not apply to all state money distributed to private businesses to promote economic growth. Before 1995, in fact, no state had addressed comprehensively the problem of holding businesses accountable for the jobs they promised to create before they received state-sponsored subsidies.

The lack of thorough legislative attention, however, stood in the face of growing public concern over corporate accountability.\(^6^4\) Subsidy abuse and corporate welfare had become attention-grabbing issues, and the public was interested.\(^6^5\) Critics began calling for accountability and one scholar even produced a model corporate welfare statute that demanded legislators tighten their grip on the public’s money.\(^6^6\) The stage was set, and in April 1995, the state of Minnesota passed

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62. Neither the Iowa law nor the Nebraska law applies to all of the money that the state allocates to private businesses for economic development. Both laws apply only to programs of which they are a part. See IOWA CODE ANN. § 15.330 (applying to aid distributed through the Community Economic Betterment Program); NEB. REV. STAT. § 77-4101 (applying to aid distributed through the Employment and Investment Growth Act).

63. In Nebraska, for example, the job creation clawbacks only apply to subsidies and abatements issued through the Employment and Investment Growth Act, NEB. REV. STAT. § 77-4101, and in Iowa the job creation clawback applies only to funds distributed through the Community Economic Betterment Program. IOWA CODE ANN. § 15.330.

64. See supra note 38 and accompanying text (describing increasing calls for cost/benefit analysis and accountability).

65. See supra note 8 (describing increasing public outrage over irresponsible incentive deals).

66. ROBERT W. BENSON, GETTING BUSINESSES OFF THE PUBLIC DOLE 7-8 (1995). The statute begins with the rebuttable presumption that incentive packages are illegal gifts of public property that may only be justified by a “cost-benefit analysis showing a net return to the people of the state.” Id. § 3, at 7. The statute requires any private business seeking financial aid from the state to subject its proposal to such cost-benefit analysis. Id. § 3(a). It further stipulates that a governmental body may terminate funding and assess the recipient business for repayment of all benefits received, plus interest, plus a penalty of five percent if it determines, after notice and hearing, that the business has failed to comply with its commitments. Id. § 3(c), at 8.
legislation that pushed accountability to the forefront of state-sponsored economic development initiatives.

D. ACCOUNTABILITY IN MINNESOTA

In 1994, the state of Minnesota extended over $973 million worth of tax abatements, tax cuts, financing breaks, and subsidies to private corporations. At the same time, the state directed only twenty million dollars toward work readiness programs and $123 million toward the federal Aid to Families with Dependent Children program. Alarmed by the amount of public money lining private pockets and still wary from recent publicly-financed fiascos, citizens' groups began to push for legislation that would insure some returns on the public's $973 million investment.

A group of receptive legislators responded to these concerns.

67. See MINNESOTA ALLIANCE FOR PROGRESSIVE ACTION, REPORT ON CORPORATE WELFARE 3 (1995) (summarizing Minnesota corporate welfare costs). The Minnesota Alliance for Progressive Action (MAPA) reports that in 1994, the state imparted $548.4 million to private businesses through corporate tax expenditures, $159 million through changes in property tax classification rates, $257.8 million through tax increment financing, and $8.1 million through grants and loans by the state's Department of Trade and Economic Development. Id.

In arriving at its figures, MAPA used the state's definition of a tax expenditure: "an exemption, deduction, credit, reduced rate, or other mechanism which lowers the amount of tax revenue that would otherwise be collected." Id. at 4. MAPA added the 1990 to 1994 reductions in the commercial and industrial property tax classification rate from 5.06% to 4.6% because such reductions cost the state an estimated $159 million that could have gone toward local governments and schools. Id. at 7. Similarly, MAPA commented that tax increment financing "allows a percentage of the property taxes due on a development project to be 'captured' to pay for a portion of the developer's costs. A significant portion of the taxes the developer pays, thus do not contribute to the general local services they would otherwise go toward." Id. at 8. In 1994, the Department of Trade and Economic Development issued grants and loans through four specific programs: the Economic Development Program, the Challenge Grant Program, the Tourism Loan Program, and the Capital Access Program. Id. at 10.

68. Id. at 3-4.
69. Id.
70. See supra notes 2-6 and accompanying text (describing the financial package Minnesota extended to Northwest Airlines and Northwest's subsequent failure to deliver on its commitments).
71. For example, MAPA demanded: "If we are going to offer public assistance to corporations we have a right to expect certain commitments back just as we do from all aid recipients. This commitment might be one to create jobs and pay a livable wage for instance." MINNESOTA ALLIANCE FOR PROGRESSIVE ACTION, supra note 67, at 2.
They introduced a bill in the Minnesota House of Representatives that became known as the "corporate welfare bill." The bill as passed in the state House required business recipients of public money for economic development projects to create new jobs and pay at least a poverty-level wage. The bill's authors described the bill as a reasonable accountability requirement. Adamant critics in the state's gubernatorial administration, however, believed a minimum wage requirement made bad economic sense. Hence, although the bill's emergence from the Senate and eventual ratification was significant, the bill itself was considerably scaled down.

1. Minnesota's Corporate Welfare Law

Under Minnesota's corporate welfare statute, a business

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73. H.R. 869, § 1(1)(b), 79th Sess. (Minn. 1995). The bill exempted small businesses and nonprofits. See id. (stating the bill "applies to any for-profit corporation . . . that does not meet the definition of a small business . . ."). It also provided for a number of circumstantial exemptions. See id. (exempting, for example, state assistance for hazardous waste removal).

74. Karen Clark, the bill's chief sponsor, wrote:

[T]he bill simply requires that certain businesses that apply for a significant amount of public assistance saying they want to create new jobs must actually do so by creating at least one new job within two years and must pay at least poverty-level wages for the job(s). Isn't this just basic and minimal accountability for businesses that want a significant amount of public assistance from taxpayers? How can anyone object to that . . .?

Karen Clark, Letters from Readers, STAR TRIB. (Minneapolis), Apr. 29, 1995, at A16.

75. Peter Gillette, Commissioner of the Minnesota Department of Trade and Economic Development, for example, wrote that the bill imposed unnecessarily heavy burdens on recipient businesses, thereby making Minnesota less attractive to businesses looking to expand. E. Peter Gillette Jr., Letters from Readers, STAR TRIB. (Minneapolis), Apr. 26, 1995, at A18.

76. It is significant that any legislation passed at all. No state previously had passed accountability legislation that applied to all money that the state issued to private businesses for economic development. See supra notes 65-71 and accompanying text (detailing the absence of, and building sentiment for, accountability legislation).

77. The law the Senate ultimately passed not only omitted the wage requirements from the original bill, but it also left out provisions defining the bill's various exemptions. Compare H.R. 869, 79th Sess. (Minn. 1995) (including more and stronger accountability provisions, and clearly defining the exemptions within the bill) with Act of May 24, 1995, ch. 224, § 58, 1995 Minn. Laws 1686 (codified at MINN. STAT. ANN. § 116J.991 (West Supp. 1996)) (the enacted Senate bill was S. 1670, 79th Sess. (Minn. 1995)).
receiving state financial aid for economic or job-growth purposes "must create a net increase in jobs in Minnesota within two years of receiving the assistance." This requirement is the law's essence.

The law's teeth, however, lie in the second paragraph's enforcement mechanism. This requirement expresses the legislation's controversial accountability, or "clawback," provision. According to this provision, businesses that fail to meet wage and job-creation goals set by a government agency must "repay the assistance to the government agency." Ostensibly, this paragraph enables the government to recapture public money that has been allocated poorly to projects that do not provide meaningful benefits to the public.

The law's third paragraph guarantees the public's right to know about economic development projects upon which the state is spending public money. It requires governmental agencies distributing economic development money to businesses to report the goals and subsequent results of those projects to Minnesota's Department of Trade and Economic Development.

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78. MINN. STAT. ANN. § 116J.991 (West Supp. 1996). The use of the word "must" in statutory language typically creates a condition precedent. REED DICKERSON, THE FUNDAMENTALS OF LEGAL DRAFTING 214 (2d ed. 1986). In this paragraph and in those that follow, however, the law uses "must" not to establish a condition precedent, but to impart a duty, in the same sense that the term "shall" imparts duty. Id. Black's Law Dictionary notes that "[the word 'must'], like the word 'shall,' is primarily of mandatory effect... and in that sense is used in antithesis to 'may.'" BLACK'S LAW DICTIONARY 1019 (6th ed. 1990) (citation omitted). Hence, the first paragraph functions as a command: businesses that receive financial aid from the state have the duty to create new jobs in the state.

79. The law is fundamentally an accountability law, and the law's first paragraph defines it as such.

80. See supra notes 54-55 and accompanying text (explaining the purpose and function of clawback provisions).

81. The second paragraph, in full, states: "The government agency providing the assistance must establish wage level and job creation goals to be met by the business receiving the assistance. A business that fails to meet the goals must repay the assistance to the government agency." MINN. STAT. ANN. § 116J.991, para. 2 (West Supp. 1996). This paragraph, in effect, modifies the duty established by the first paragraph, and defines the consequence of failing to comply with this duty. The second paragraph does not establish a time frame in which the recipient business must meet these goals. Presumably, the recipient business must meet its goals within two years, as the first paragraph requires. This time limitation, however, is not entirely clear from the law's text.

82. Id.

83. The third paragraph requires every state government agency granting economic development aid to record the goals and results of each project, and
Department must then publish the results of these reports. The point of this provision is to shine some light on the deals politicians and business leaders have been notorious for making in the dark.

The fourth paragraph contains definitions of the law's terms and is perhaps more significant for what it excludes than for what it includes. The paragraph states that "'assistance' means a grant or loan in excess of $25,000 or tax increment financing," but it defines no other terms. The law does not thoroughly explain how or to whom it applies.

II. MINNESOTA'S CORPORATE WELFARE LAW: STRONG ON SUBSTANCE, WEAK ON FORM

It is questionable whether business incentives, in any of their various manifestations, effectively promote economic growth. In fact, much analysis suggests they do not. A number of scholars and critics firmly believe the proliferation of

“compile and publish the results of the reports for the previous calendar year by June 1 of each year.” Id. § 116J.991, para. 3. The use of the word "shall" mandates that the Department of Trade and Economic Development compile that information and make it available to the public. See BLACK'S LAW DICTIONARY, supra note 78, at 1375 (noting that “shall” is mandatory in effect).

84. MINN. STAT. ANN. § 116J.991, para. 3.
85. See supra notes 56-58 and accompanying text (explaining the purpose of and need for "right-to-know" provisions).
86. MINN. STAT. ANN. § 116J.991, para. 4. This paragraph does not define, nor does any other part of the law, terms and phrases such as "business," "economic development," "to be met," "fails to meet," or "repay." In the absence of any definition, limitation, or modification of these terms and phrases, they must assume their plain meaning. MINN. STAT. § 645.16 (1994) (proclaiming, "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit"); Minneapolis-St. Paul Sanitary Dist. v. St. Paul, 61 N.W.2d 533, 535 (Minn. 1953) ("It is elementary that where the language of a statute is clear and unambiguous the statute is not open to construction.").
87. Most studies on effectiveness of business incentives as tools to promote economic development note that the process is filled with uncertainty, and that incentives do not appear to affect employment levels significantly. See supra note 31 and accompanying text (discussing the results of various studies on business incentives). Many scholars and critics thus believe that given the budget constraints under which state and local governments operate, the public's money could be put to more effective and state-wide beneficial uses. See supra note 30 (discussing the financial pressures on state and local governments).
88. See supra notes 29-32 and accompanying text (describing conclusions from empirical tests on the efficacy of business incentives).
incentives has had negative repercussions in the economy.\textsuperscript{89} State governments, however, have steadfastly refused to discontinue their use.\textsuperscript{90} Minnesota's law functions within this context, attempting to grapple with an issue that begs attention. Accountability, although a worthy proposition, is a difficult one. Minnesota's corporate welfare statute is significant because it attempts to ensure real and meaningful returns on state-funded economic development projects, but ultimately fails to provide adequate means to achieve this goal.

A. STRONG ON SUBSTANCE

Minnesota's corporate welfare legislation is significant for what it seeks to do: The law attempts to ensure public money furthers a public, and not merely a private, good.\textsuperscript{91} Polarized economic opportunities have left many neighborhoods and cities in need,\textsuperscript{92} and tremendous pressure on the limited public resources make it difficult for governments to address those needs.\textsuperscript{93} The problems confronting most local governments continue to swell, but available resources seldom keep pace.\textsuperscript{94} Overextending those resources is an increasingly unpopular and unfeasible option.\textsuperscript{95} State and local governments face the challenge of putting their limited resources to the most productive and efficient use.\textsuperscript{96} Minnesota's corporate welfare statute

\textsuperscript{89} See supra note 32 and accompanying text (discussing business incentives' interference with market competition and optimal economic efficiency).

\textsuperscript{90} See supra notes 33-36 and accompanying text (noting that states have been reluctant to discontinue their use unilaterally for fear of being left at a competitive disadvantage).

\textsuperscript{91} Previously, the public had no effective means of redress when states spent public money ineffectively or inefficiently. See supra notes 39-43 and accompanying text (noting that public officials often grant incentives carelessly and leave the public without legal redress). Minnesota's law merely seeks to ensure that the public sees a return on its investment. See supra note 74 (quoting the original bill's chief sponsor).

\textsuperscript{92} See supra notes 16-17 and accompanying text (describing the ramifications that the national economic shifts have had for most Americans).

\textsuperscript{93} See supra note 30 (describing the financial pressure under which most state governments find themselves).

\textsuperscript{94} See supra notes 17, 30 (describing the difficulties confronting state and local governments).

\textsuperscript{95} See supra note 30 (discussing the financial crisis many cities already face).

\textsuperscript{96} It is extremely important that governments carefully consider and analyze how they spend their money. The challenge for public officials is to make sure that the limited resources are spent effectively. This Note analyzes
is a step in that direction. The law seeks to ensure that with so much pressing public need, the state does not needlessly donate its scarce resources to private corporations that will not transform those resources into a tangible public benefit. Minnesota's corporate welfare legislation is a move toward accountability in an environment that demands it.

1. Guaranteeing Businesses Create Jobs

The goal of most economic development initiatives is to spur economic growth, which analysts frequently define in terms of employment growth. Hence, when state governments grant incentives to new or expanding businesses, their intent is usually to create or maintain employment in the state. Granting incentives, however, does not guarantee that the recipient business will in turn create employment growth. Uncertainty enshrouds the process. The job-creation guarantee in Minnesota's legislation seeks to add a reasonable amount of certainty, and thus conceptually lies on a solid foundation.

Minnesota's law takes an important step toward accountability by requiring businesses receiving financial assistance for economic development to actually create new jobs in the state within two years. The provision transforms incentive and

Minnesota's corporate welfare law as a means of ensuring that if policy makers do decide to spend the public's money on economic development projects, they choose those projects that will yield some public benefit.

97. Cities and states that failed to take such precautions and lost much needed resources serve as stark reminders of the cost of carelessness. See supra notes 39-42 and accompanying text (describing examples of wasted public expenditures).

98. As it has become more conscious of the tremendous waste and inefficiency associated with governmental expenditures, the public has become more vocal in its cry for accountability. See, e.g., supra note 71 (quoting one citizens' group as saying "we have a right to expect certain commitments back").

99. See supra note 23 and accompanying text (describing what public officials mean by "economic development").

100. See supra notes 22-23 and accompanying text (noting the purpose of financial incentives).

101. See supra notes 39-42 and accompanying text (describing examples of costly incentives that did not result in significant employment growth).

102. See supra notes 29-32 and accompanying text (questioning efficacy of incentive agreements as tools to inspire economic development).

103. If the goal of economic development is to create jobs, then it is reasonable to require businesses receiving financial assistance for economic development projects actually to create jobs.

subsidy packages from unconditional handouts\textsuperscript{105} into quid pro quo agreements.\textsuperscript{106} It pushes these financial aid packages into the realm of contract and mutual responsibility, and effectively eliminates private incentive to take advantage of a state's generosity unscrupulously.\textsuperscript{107}

Furthermore, the law holds businesses responsible for the pledges they make and encourages them realistically to assess the job creation potential of their projects when they apply to the state for financial assistance.\textsuperscript{108} Governmental agencies that make more accurate projections will be better able to perform accurate cost/benefit analysis of the projects they consider for financial aid. Hence, the job requirement provision ultimately may serve to encourage and improve the kind of cost/benefit analysis historically absent from the process.\textsuperscript{109}

\textsuperscript{105} Businesses that receive financial incentives generally have no legal obligation to the governments that grant them because the courts have refused to acknowledge subsidy agreements as contracts in and of themselves, and typically refuse to infer obligations into subsidy agreements unless the parties agree to specific terms. See \textit{supra} notes 44-45 and accompanying text (describing litigation surrounding financial incentives).

\textsuperscript{106} In \textit{City of Yonkers}, the court held that when "clear language . . . [is] set forth as a goal and not a binding obligation," courts cannot enforce the agreement because "disappointed expectations are not synonymous with the breach of a contractual obligation." \textit{City of Yonkers v. Otis Elevator Co.}, 649 F. Supp. 716, 735 (S.D.N.Y. 1986). Minnesota's law, in effect, bargains for the public's expectations. The law makes it very clear that if the state issues money to a private business it expects that the business will, in turn, create new jobs in the state. See \textit{Minn. Stat. Ann. § 116J.991} (West Supp. 1996).

\textsuperscript{107} Recipient businesses clearly benefit from financial incentives. Many business leaders understand that they can raise the value of an incentive package, and increase the benefit to their companies, by playing states off of each other, or by opening themselves up to the "highest bidder." See \textit{supra} note 33 (noting that businesses, which potentially receive massive windfalls, are the only clear winners in the incentive game).

\textsuperscript{108} Businesses, in the absence of accountability provisions, do not have an incentive to refrain from inflating their job creation projections. To the contrary, they have an incentive to present proposals that will win them the largest subsidy or tax abatement.

\textsuperscript{109} Analysts agree that if governments continue to grant financial incentives, they need to do a better job of performing cost/benefit analysis. \textit{Supra} note 38 and accompanying text. While the clawback provision in Minnesota's law does not require that parties perform cost/benefit analysis, by imposing penalties on business which fail to meet their goals, it will encourage more realistic projections. More accurate projections, in turn, will enable the governmental agency to weigh more completely the costs against potential benefits.
2. The Public's Right-to-Know

The "right-to-know" provision similarly serves two important functions. First, and most importantly, the provision removes the element of secrecy from the incentive process; it requires each state agency that grants financial assistance packages to submit annual reports to the Department of Trade and Economic Development and requires the department to compile and publish those reports. 110 This requirement will make the process publicly visible, and while this does not necessarily guarantee the process will be more efficient, 111 it does increase the likelihood that elected officials will be more careful about the number and quality of incentive packages they authorize. 112 In doing so, the provision encourages the architects of incentive packages to perform cost/benefit analysis which, otherwise, they typically fail to do. 113

The right-to-know provision in Minnesota's law also is noteworthy because it fosters a degree of centralization in the economic development process. By requiring all agencies that financially encourage economic development to submit reports to a single, centralized agency, the provision enables comprehensive analysis of the state's various economic development programs, and eliminates much of the inefficiency and duplication that results in the absence of such a centralizing force. 114

110. See LEROY, supra note 9, at 25 (commenting that politicians and business leaders often make incentive deals with little public awareness or input).

111. Making subsidy agreements more visible to the public does not guarantee that projects will produce better results. Minnesota's deal with Northwest Airlines, for example, was made amid much publicity. That project, however, failed to yield the benefits which the airline originally promised. See supra notes 2-6 and accompanying text (describing Minnesota's 1991 deal with Northwest Airlines).

112. Ostensibly, right-to-know provisions, by putting incentives under the public's eye, more tangibly ties the incentive to the politicians who design them. Hence, the politicians will be accountable for their failures. See supra notes 56-58 and accompanying text (discussing right-to-know provisions).

113. See supra notes 38-43 and accompanying text (noting that although almost all studies on the efficacy of incentives have called for more and better cost/benefit analysis, many governments continue to grant subsidies carelessly).

114. Some analysts have commented that states could better curtail irresponsible subsidies and perform more accurate cost/benefit analysis if each state had only one agency that dealt with incentives. See REGAN, supra note 1, at 46 (suggesting incentives would be more efficient if only one agency issued them).
Conceptually, both the job-creation and right-to-know provisions in Minnesota's corporate welfare law effectively further the cause of accountability. Both are solid mechanisms that help ensure the public sees tangible returns on its investments. Unfortunately, Minnesota's statute suffers from a lack of overall clarity that ultimately will prevent it from achieving its solid substantive goals.

B. WEAK ON FORM

Minnesota's legislation, despite its conceptual strength, suffers from several technical deficiencies. In particular, the statute fails to modify or define crucial terms and concepts such as "business," "job," "fails to meet the goals," and "repay." These are the terms that give the clawback provision force, yet the statute does not explain them.

In the absence of definition, the courts will assign these terms their plain meaning. According to the plain language of the law, any business of any size that fails to meet its job creation and wage-level goals, no matter how close it comes to achieving those goals, must return all of the assistance it received. The statute treats a 4000-employee business that attains only fifteen percent of its job-creation goal the same as it treats a ten-employee business that attains ninety percent of its job-creation goal. The statute fails to define its logistics and lacks overall clarity. It does not prorate or scale its penalty to reflect partial achievement, it does not define when and how a noncomplying business must repay the state, and it does not

115. The only term the statute defines is "assistance." MINN. STAT. ANN. § 116J.991, para. 4 (West Supp. 1996). The absence of definitions is significant because clawbacks pose a number of complex problems and could function in a variety of different ways. See supra note 54 (examining recision, penalty, and recalibration clawback provisions).

116. Where the plain language of a law is clear, the courts will not look to the law's purpose or intent for interpretive assistance. MINN. STAT. § 645.16 (1988); Minneapolis-St. Paul Sanitary Dist. v. City of St. Paul, 61 N.W.2d 533, 535-36 (Minn. 1953).

117. Minnesota's law, for example, fails to address scenarios in which recipient businesses create some new jobs but fail to meet their goals. As the law stands, a business that meets 90% of its goal presumably must repay the government in full. MINN. STAT. ANN. § 116J.991 (West Supp. 1996). Iowa's law anticipates this scenario and provides for a prorated penalty. IOWA CODE ANN. § 15.330 (1994).

118. The statute fails to establish a time schedule or method for repayment, and although these are logistical details, their omission may undermine the
exempt or differentiate between businesses of different sizes. It therefore will apply equally to large, small, and nonprofit businesses, despite obvious concern among public officials and business leaders that small businesses and nonprofits face different market obstacles.\textsuperscript{119}

Furthermore, the Minnesota statute could encourage businesses in jeopardy of not meeting their goals to transform full-time positions into multiple, part-time positions.\textsuperscript{120} Unless the granting governmental agency specifically has contracted that the jobs must be full-time or of a given type or category, part-time jobs will, for the purposes of the legislation, be of equal value.\textsuperscript{121} Hence, if the granting governmental agency establishes a job-creation goal of twenty new jobs for a particular financial package but fails to qualify or define what type of jobs they should be, a business that creates fifteen part-time jobs and only five full-time jobs will have met that goal, whereas a business that creates eighteen full-time jobs will have not. The law fails to recognize that the business which created eighteen full-time jobs most likely would provide a greater net benefit to the state than would the company that created fifteen part-time jobs and only five full-time jobs. Forcing the company that substantially complies to repay all of its assistance and not forcing repayment from the company that nominally complies creates unhealthy incentives.\textsuperscript{122}


119. The legislative treatment of small businesses in Minnesota reflects the sentiment that these businesses are less able to adapt to market changes and merit differential treatment. See MINN. STAT. § 645.445 (1994) (defining a "small business" as a business that has fewer than 20 employees and less than $1,000,000 in annual gross revenue); H.R. 869, 79th Sess. (Minn. 1995) (exempting businesses that meet the definition of a small business).

120. The Minnesota statute merely calls for "a net increase in jobs." MINN. STAT. ANN. § 116J.991, para. 1. With large sums of money involved, noncomplying businesses inevitably will seek creative means to avoid repayment.

121. The plain language of the law does not distinguish between part-time and full-time jobs, and thus the courts will, under the language of the law, interpret both to qualify as "jobs." While the granting governmental agency could and should easily get around this problem by defining specifically what constitutes a "job," there is nothing in the statute that requires any governmental agency to do so.

122. Businesses that have not met their job creation goals will have strong incentives to transform full-time positions into multiple part-time jobs so as to increase the net number of new jobs. This clearly is not consistent with the
The statute also fails to clarify whether it applies to financial aid that is intended to maintain employment in the state. The statute's language states that a business receiving "assistance for economic development or job growth purposes must create a net increase in jobs in Minnesota." While analysts often equate economic development to job creation, the canon of statutory interpretation that seeks to avoid redundancy would suggest that in this law "economic development" and "job creation" are not absolute synonyms. That canon would suggest economic development, for the purposes of the statute, also encompasses other goals, such as preventing jobs from leaving the state. Such an interpretation would suggest that if a business threatens to relocate its operations to another state promising improved infrastructure and a better business climate, and the state of Minnesota decides to offer financial assistance to prevent the relocation, that business must create new jobs within two years. While this interpretation is consistent with the spirit of the law in that it demands performance from recipients of public aid, it would likely meet with adamant opposition from the business community. In any event the statute is not clear on the issue. It does not precisely indicate whether or how the law applies when Minnesota gives financial aid to entities such as Northwest Airlines, Dayton-Hudson, or even Minnesota's professional basketball team, the Timberwolves, to ensure that they do not relocate all or part of their operations out of the state. Such big-name businesses frequently seek financial aid from the state and it is a

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123. MINN. STAT. ANN. § 116J.991, para. 1.
124. "It is a 'cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant.'" WILLIAM N. ESKRIDGE & PHILIP P. FRICKEY, CASES AND MATERIALS ON LEGISLATION 644 (1988) (citing Kungys v. United States, 485 U.S. 759, 778 (1988)).
125. To interpret the terms to avoid redundancy, the reader must interpret "economic development" to include more than just job creation. Hence, the law's language does not seem to prohibit explicitly a reading which would interpret economic development to include projects seeking to maintain employment.
126. The plain meaning rule, supra note 86, and the cannon that interprets to avoid redundancy, supra note 124, would encourage such a reading.
127. Business leaders frequently argue that overly stringent requirements will cast an "anti-business" shadow over the state. See Swiger, supra note 43, at 17 (noting the fear that strict requirements will deter investment and job creation).
128. Both Northwest and the Timberwolves have asked the state for financial assistance in recent years, and it is inevitable that similar scenarios.
weakness of the statute that its applicability in such situations is not clear.

III. FILLING THE GAPS: THE IMPROVED INCENTIVE ACCOUNTABILITY LAW

As one of the first laws in the country that comprehensively seeks to subject public money targeted toward economic development to a degree of accountability, Minnesota's corporate welfare law will serve as a guide for other states. Minnesota's statute, however, could be more comprehensive in several obvious ways. This Note proposes a model statute termed the Improved Incentive Accountability Law (IIAL) to address the deficiencies in current corporate-incentive accountability legislation. The IIAL begins with the premise that public money must be used to benefit the public. It clearly states that its purpose is to demand accountability from recipients of public money. Furthermore, the IIAL clarifies the ambiguities in Minnesota's law by clearly defining to whom and how its provisions apply, and by articulating expectations of all the parties involved.

A. GOVERNMENTAL AGENCIES: SHOW US IT'S WORTH IT

The governmental agencies and public officials that grant incentive agreements often are as responsible for wasteful and inefficient agreements as the businesses that fail to deliver meaningful public benefits. The IIAL articulates the expectations of these governmental agencies and public officials. Beyond requiring that they compile and publish reports about the efficacy of their incentive projects, the law requires governmental agencies to demonstrate that the projected benefits of a recipient project outweigh the projected costs of the project. Analysts have almost unanimously called for such systematic cost/benefit analysis and other states have begun to experiment

See Mike Meyers, Government Subsidies for Private Businesses Ought to Be Stopped, STAR TRIB. (Minneapolis), Dec. 1, 1995, at D2 (commenting that local politicians have been particularly susceptible to requests from high profile businesses).

129. Appendix A, infra page 1611.
130. IIAL § 1, Appendix A, infra page 1611.
131. See supra notes 37-38 and accompanying text (explaining that governments carelessly fail to perform cost/benefit analysis).
132. IIAL § 2, Appendix A, infra page 1611.
133. Id. § 2(b).
with cost/benefit provisions.\textsuperscript{134} The IIAL requires cost/benefit analysis and, to help ensure governmental agencies accurately measure costs and benefits,\textsuperscript{135} the law requires governments to calculate the present value of all potential benefits.\textsuperscript{136} Conversely, it requires measurements of costs to reflect the opportunity costs of foregone projects\textsuperscript{137} as well as the financial costs of the incentive package. By requiring that governmental agencies perform cost/benefit analysis, the IIAL reflects and defines the government's duty to issue incentives responsibly.

B. RECIPIENT BUSINESSES: WHO, WHAT, AND HOW?

The applicability and logistics of Minnesota's law currently are unclear. The IIAL clarifies how and to whom its provisions apply. Business leaders and public officials are particularly sensitive about imposing requirements on small businesses, presumably because small businesses are less flexible and less able to adjust to financial disruptions.\textsuperscript{138} Other legislation has exempted or differentiated small businesses.\textsuperscript{139} The IIAL does not exempt these business, but it does recognize that they are subject to different pressures.\textsuperscript{140} The law is more flexible with such businesses by granting them more time to meet their job creation goals and defining more leniently the payback schedules.

\textsuperscript{134} A recent Louisiana economic development law requires that a quantifiable measure of a project's projected benefits exceed the cost of the state's incentive payments. \textit{La. Rev. Stat. Ann.} § 51:2455(E) (West 1995); see also supra note 38 and accompanying text (noting that almost all studies on the efficacy of business incentives have called for more and better cost/benefit analysis).

\textsuperscript{135} Costs and benefits can be measured in a variety of ways, and while a detailed description of cost/benefit analyses is beyond the scope of this Note, other authors have explained thoroughly the methods and difficulties of measuring costs and benefits of publicly financed projects. \textit{E.g.}, \textsc{Harvey S. Rosen}, \textit{Public Finance} 238-64 (4th ed. 1995); \textsc{David L. Weimer} \& \textsc{Aidan R. Vining}, \textit{Policy Analysis} 259-87 (2d ed. 1992).

\textsuperscript{136} IIAL § 2(b), Appendix A, infra page 1611; see \textsc{Weimer} \& \textsc{Vining}, supra note 142, at 239 (explaining the concept of "present value").

\textsuperscript{137} IIAL § 2(b), Appendix A, infra page 1611; see \textsc{Weimer} \& \textsc{Vining}, supra note 142, at 254-58 (discussing the importance of measuring the opportunity costs of projects foregone).

\textsuperscript{138} \textit{See, e.g.}, \textsc{Given}, supra note 59, at A7 (suggesting that small businesses are less able to withstand increased burdens).

\textsuperscript{139} \textit{See Minn. Stat.} § 645.445 (1994) (defining a "small business" as a business which has fewer than 20 employees and less than $1,000,000 in annual gross revenue); \textsc{H.R. 869}, 79th Sess. (Minn. 1995) (exempting businesses that meet the definition of a small business)

\textsuperscript{140} IIAL § 4, Appendix A, infra page 1611.
for businesses that fail to meet their goals.\footnote{141} By differentiating the requirements for small businesses, the IIAL addresses the business community's concerns without compromising the spirit of accountability.

The IIAL also articulates employment-maintenance expectations for businesses receiving incentive aid.\footnote{142} The IIAL maintains that although it may not be practical to require these businesses to create jobs,\footnote{143} they should not be exempt from current job-provision expectations. The law requires businesses receiving aid to maintain jobs in the state to stay true to their word. The IIAL contains a provision that prohibits recipient businesses from relocating out of the state for at least ten years after receiving the aid, and demands repayment from those that do.\footnote{144}

The IIAL also clarifies much of the ambiguity that clouds the logistics of Minnesota's corporate welfare law.\footnote{145} Most importantly, it defines what constitutes noncompliance and when and how noncomplying businesses are to repay the state.\footnote{146} Furthermore, the law clearly defines a "job" as a full-time job, and it prorates the penalty for businesses that create a significant number of jobs but fail to reach their goals.\footnote{147}

The IIAL also contains job-quality provisions. Although critics adamantly opposed the job quality provision in Minnesota's original bill, and the city of St. Paul recently voted

\footnotesize{\begin{enumerate}
\item \textit{Id.} § 4(b).
\item \textit{Id.} § 5.
\item Businesses frequently request state aid precisely because they allege they are under financial stress. \textit{See}, \textit{e.g.}, Jill Hodges & David Phelps, \textit{Northwest's Break from Turbulence}, \textit{STAR TRIB.} (Minneapolis), Apr. 17, 1995, at 4D (explaining that Northwest approached Minnesota in 1991 under great financial duress). Although certainly not all businesses seeking such deals are in financial crisis, it would be impractical to demand growth from those that are.
\item IIAL § 5(b), Appendix A, \textit{infra} page 1611.
\item \textit{See supra} note 86 and accompanying text (noting that the law defines very few of its most important terms).
\item IIAL § 3(b)(ii), (c)(ii), Appendix A, \textit{infra} page 1611.
\item \textit{Id.} § 3(b). Businesses that achieve only part of the their goals repay an amount commensurate with the amount of their shortcoming. \textit{Id.} Under such a system, the state, in effect, only pays for what it gets. Furthermore, recognizing partial performance would reduce the possibility of imposing crippling penalties on smaller businesses and reduce the incentives businesses would otherwise have to manipulate the system.
\end{enumerate}}
by referendum to reject such a provision for city contracts,\textsuperscript{148} the IIAL embraces job quality as a powerful means of ensuring expenditures of public money only on projects that truly benefit the public.\textsuperscript{149} In the face of strong opposition,\textsuperscript{150} however, the IIAL's job-quality provision is more flexible. It does not require that all new jobs pay a poverty level wage. Rather, the IIAL requires only that a significant proportion of the new jobs pay a livable wage.\textsuperscript{151}

Although the IIAL is not a perfect accountability statute, it builds on the foundation that Minnesota and other state's corporate welfare laws have established. The IIAL, as a response, provides a framework from which to proceed toward further accountability.\textsuperscript{152}

CONCLUSION

Despite serious questions about their effectiveness, business incentives have become a way of life for most state and local governments. Traditionally, governmental agencies have handed out incentives without requiring anything of the recipient businesses. Recent reports about the astounding quantity and cost of these incentives have left the public wondering, with so many other areas in need, just what it is getting for its considerable investment.

Minnesota's corporate welfare statute is among the first in the country that comprehensively seeks accountability. While

\textsuperscript{148} See supra note 59 (describing the referendum in St. Paul and the debate which enveloped it).

\textsuperscript{149} IIAL § 3(b), Appendix A, infra page 1611; see also supra note 51 (explaining the scenario that has inspired a push for job-quality requirements and which still makes them a viable option).

\textsuperscript{150} See supra note 59 (describing opposition to job-quality provisions).

\textsuperscript{151} IIAL § 3(c), Appendix A, infra page 1611.

\textsuperscript{152} A new Minnesota bill stands as evidence that accountability remains a hot topic. On January 25, 1996, the authors of Minnesota's enacted corporate welfare law introduced into the Minnesota House of Representatives a new bill which seeks to build on the original law. H.R. 2562, 79th Sess. (Minn. 1996). Although the new bill does not clarify any of the original law's ambiguities, it does require that businesses receiving public assistance for economic development or job growth "pay every employee hired as a result of the assistance at least a poverty level wage." \textit{Id.} § 1(1)(b). The bill demands accountability by demanding that public money does not sponsor "bad," below poverty level wage jobs. Although a similar job-quality provision was eliminated from House Bill 869 before it became law in the previous year, the renewed fight for the provision clearly indicates that support for a job-creation requirement and support for accountability legislation in general remain strong.
the statute is far from perfect, it is significant. The Improved Incentive Accountability Law this Note proposes builds on its strengths, addresses its weaknesses, and provides an analytical framework from which to proceed. Accountability is the future. The IIAL will serve as a useful guide to other states as they too push for accountability and progress toward a system in which the public can be confident that public money is spent to confer meaningful public benefit.
APPENDIX A

IMPROVED INCENTIVE ACCOUNTABILITY LAW

A BILL

Be it Enacted by the Legislature of the State assembled:

SEC. 1. PURPOSES.

The purposes of this chapter are to ensure that businesses receiving financial assistance contribute positively to the economic development of the state by (a) creating employment, (b) maintaining employment, or (c) otherwise promoting economic development within the state. Those businesses that do not, as determined by the guidelines set forth in this statute, will be required to repay the assistance they have received.

SEC. 2. GRANTING GOVERNMENTAL AGENCIES

(a) This section applies to state, municipal, or county governmental agencies granting financial assistance to businesses for the purpose of economic development or job growth. For the purposes of this subdivision, “assistance” means grants, loans, or tax increment financing which, in sum, exceed $25,000 in a fiscal year.

(b) The governmental agency granting the assistance must be able to demonstrate that the financial value of the projected benefits of the project exceed the projected costs of this project. For the purposes of this subdivision, “projected benefits” must be calculated at their present value and discounted to account for risk. “Costs” must include the opportunity cost of projects foregone and the present value of the financial cost of the assistance.

(c) If the purpose of the assistance is to create job growth, the granting agency must establish wage-rate and job-creation requirements to be met by the recipient business within two years of receiving the assistance.

(d) Each governmental agency must report the wage and job requirements and the subsequent results for each project in achieving those requirements to the Department of Trade and Economic Development. The department shall compile and publish the results of the reports for the previous calendar year.
by June 1 of each year. The reports of the agencies to the department and the compilation report of the department shall be made available to the public.

SEC. 3. BUSINESSES RECEIVING JOB-CREATION ASSISTANCE

(a) This section applies to businesses that receive financial assistance if the purpose of the assistance is to promote job growth. For the purposes of this subdivision, a “business” is a for-profit corporation, a nonprofit corporation if the ratio of total compensation of the corporation’s chief executive officer to its lowest paid employee exceeds 25 to 1, a partnership, a limited liability company, or a sole proprietorship that does not meet the definition of a small business in section 4 of this chapter. “Assistance” means grants, loans, or tax increment financing which, in sum, exceed $25,000 in a fiscal year. “Job” means full-time, at least 40-hour-per-week employment.

(b) If the recipient business fails to meet 100% of the job-creation requirement established by the granting governmental agency as specified in section 2(c) within two years of receiving assistance, the assistance shall be recaptured or disallowed. The recipient shall repay the granting governmental agency according to the following criteria:

(i) If the recipient fails to achieve at least 50% of the job-attainment requirement, 100% of the value of the assistance will be due.

(ii) If the recipient achieves more than 50% of the job-attainment requirement, the amount due will be prorated according to the percentage of jobs attained and the percentage of the shortfall.

(iii) In the case of either subsection (i) or (ii), the amount due will be considered a loan to which an annual interest rate as determined periodically by the Department of Trade and Economic Development will apply. The amount due must be repaid within two years of the recipient’s failure to meet its goals.

(c) At least 70% of the jobs to be created must pay at least a “poverty-level wage.” For the purposes of this section, “poverty-level wage” means the hourly wage, including the employer’s share of any health or dental coverage, necessary for an employee working 40 hours per week, 52 weeks per year, to earn an annual wage equal to 100% of the federal poverty level.
for a family of four. If 70% of the jobs created at the end of two years do not pay at least a poverty level wage, the recipient business shall be required to repay the granting governmental agency according to the following criteria:

(i) If the recipient business fails to meet 100% of the job-creation requirement as defined in section 3(c), the amount due shall be that as defined in section 3(b)(i)-(iii).

(ii) If the recipient business meets the 100% of the job-creation requirement but fails to pay at least a poverty-level wage to at least 70% of those jobs, the amount due shall be equal to two times the difference between the poverty-level wage and the wage actually paid. The recipient business shall pay this amount within one year of failing to comply.

SEC. 4. SMALL BUSINESSES RECEIVING JOB CREATION ASSISTANCE

(a) This section applies to small businesses receiving financial assistance for economic development or job-creation purposes. The governmental agency granting the assistance must establish job creation requirements to be met by the recipient business within five years of receiving the assistance. For the purposes of this section, a "small business" is a business that employs fewer than 20 employees and has a gross annual revenue of less than $1,000,000.

(b) If the recipient business fails to meet 100% of the job-creation goal within five years of receiving assistance, the assistance shall be recaptured or disallowed. The granting governmental agency shall demand repayment using the criteria defined in section (3)(b)(i)-(iii) except that the business shall have five years to repay the amount due.

SEC. 5. ASSISTANCE TO MAINTAIN EMPLOYMENT

(a) This section applies to businesses, as defined in section 3(a), and small businesses, as defined in section 4(a), that receive financial assistance for the purpose of maintaining employment in the state. For the purpose of this section, "assistance" means grants, loans, or tax increment financing which, in sum, exceed $25,000 in a fiscal year.

(b) The recipient business shall not relocate outside of the state for 10 years after receiving such assistance or during the term of a loan or loan guarantee, whichever is longer, unless the full amount of the assistance and a penalty equal to 10% of the
total assistance received is paid to the governmental agency granting the assistance within two years of the relocation.