

HOUSE BILL NO. 638
INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ACCOUNTABILITY FOR BUSINESS SUBSIDIES FROM STATE AND LOCAL GOVERNMENTS; DEFINING TERMS; REQUIRING A PUBLIC PURPOSE FOR BUSINESS SUBSIDIES; PROVIDING CRITERIA FOR BUSINESS SUBSIDIES; REQUIRING A SUBSIDY AGREEMENT, ALONG WITH WAGE AND JOB GOALS; PROVIDING FOR PUBLIC HEARINGS; PROVIDING FOR REPAYMENT OF A SUBSIDY FOR FAILURE TO MEET GOALS; REQUIRING REPORTS; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

(1) "Benefit date" means the date that the recipient receives the business subsidy. If the business subsidy involves the purchase, lease, or donation of physical equipment, the benefit date begins when the recipient puts the equipment into service. If the business subsidy is for improvements to property, the benefit date refers to the earlier of:

(a) the date when the improvements are finished for the entire project; or

(b) the date when a business occupies the property. If a business occupies the property and the grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each business when it first occupies the property.

(2) "Business" includes a corporation, partnership, sole proprietorship, trust, or foundation or any other individual or organization carrying on a business, whether or not operated for profit.

(3) (a) "Business subsidy" or "subsidy" means a state government agency or local government agency grant, a contribution of personal property, real property, or infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, a reduction or deferral of any tax or fee, a guarantee of payment under loan, lease, or other obligation, or any preferential use of government facilities given to a business.

(b) The following forms of financial assistance are not a business subsidy:

(i) a business subsidy of less than \$25,000;

(ii) tax reductions resulting from conformity with federal tax law;

(iii) a grant to a governmental entity; or

(iv) a renewable resource grant made pursuant to Title 85, chapter 1, part 6, or a reclamation grant made pursuant to Title 90, chapter 2, part 11.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Grantor" means any state government agency or local government agency with the authority to grant a business subsidy.

(6) "Local government agency" includes a county, a city or town, a housing authority, a port authority, an airport authority, a community development agency, a nonprofit entity created by a local government agency, or any other entity created by or authorized by a local government with authority to provide business subsidies.

(7) "Recipient" means any for-profit or nonprofit business that receives a business subsidy. Only nonprofit entities with at least 100 full-time equivalent positions and with a ratio of highest-to-lowest paid employee that exceeds 10-to-1, determined on the basis of full-time equivalent positions, are recipients.

(8) "State government agency" means any state executive branch agency that has the authority to award business subsidies.

NEW SECTION. Section 2. Public purpose -- criteria. (1) A business subsidy must meet a public purpose other than increasing the tax base. Job retention may be used as a public purpose only in cases in which job loss is imminent and demonstrable.

(2) A business subsidy may not be granted until, after a public hearing, the grantor has adopted criteria for awarding business subsidies that comply with [sections 1 through 9]. The criteria may not be adopted on a case-by-case basis. The criteria must set specific minimum requirements that recipients are required to meet in order to be eligible to receive business subsidies. The criteria must include a policy regarding the wages to be paid for the jobs created. The department shall adopt baseline criteria to be included in the agreement and shall assist local government agencies in developing additional criteria that the local government agencies decide to add to the baseline criteria.

NEW SECTION. Section 3. Subsidy agreement -- wage and job goals. (1) A recipient shall enter into a subsidy agreement with the grantor of the subsidy. The agreement must include:

(a) a description of the subsidy, including the type, public purpose, and amount of the subsidy and the type of district if the subsidy is tax increment financing;

- (b) a statement of the public purposes for the subsidy;
- (c) measurable, specific, and tangible goals for the subsidy;
- (d) a description of the financial obligation of the recipient if the goals are not met;
- (e) a statement of why the subsidy is needed;
- (f) a commitment to continue operations in the jurisdiction where the subsidy is used for at least 5 years after the benefit date;
- (g) the name and address of the parent corporation of the recipient, if any; and
- (h) a list of all financial assistance by all grantors for the project.

(2) Business subsidies, including grants, must state the fair market value of the subsidy to the recipient, including the value of conveying property at less than a fair market price or other in-kind benefits to the recipient.

(3) If a business subsidy benefits more than one recipient, the grantor shall assign a proportion of the business subsidy to each recipient that signs a subsidy agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.

(4) Representatives of the state government agency or local government agency and the recipient shall sign the subsidy agreement, and if the grantor is a local government agency, the agreement must be approved by the governing body.

(5) Notwithstanding the provision in subsection (1)(f), a recipient may be authorized to move from the jurisdiction where the subsidy is used within the 5-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. For the purpose of this subsection, if the grantor is a state government agency, "jurisdiction" means a city or town.

(6) (a) The subsidy agreement, in addition to any other goals, must include:

(i) goals for the number of jobs created, which must include separate goals for the number of part-time or full-time jobs, or, in cases in which job loss is specific and demonstrable, goals for the number of jobs retained; and

(ii) wage goals for the jobs created or retained.

(b) In addition to other specific goal timeframes, the wage and job goals must contain specific goals to be attained within 2 years of the benefit date.

NEW SECTION. Section 4. Public notice and hearing. (1) Before granting a business subsidy that exceeds \$200,000 for a state government agency grantor and \$50,000 for a local government agency grantor, the grantor shall provide public notice and a hearing on the subsidy. A public hearing and notice under this

subsection are not required if a hearing and notice on the subsidy are otherwise required by law.

(2) Public notice of a proposed business subsidy under this section by a state government agency grantor must be published in the state register. Public notice of a proposed business subsidy under this section by a local government agency grantor must be published in a local newspaper of general circulation. The public notice must identify the location at which information about the business subsidy, including a summary of the terms of the subsidy, is available. The published notice must be sufficiently conspicuous in size and placement to distinguish the notice from the surrounding text. The grantor shall make the information available in printed paper copies and, if possible, on the internet. The state government agency or local government agency grantor shall provide at least a 10-day notice for the public hearing.

(3) The public notice must include the date, time, and place of the hearing.

(4) A public hearing by a state government agency grantor must be held in the jurisdiction in which the subsidy will be used.

NEW SECTION. Section 5. Failure to meet goals. (1) The subsidy agreement provided for in [section 3] must specify the recipient's obligation if the recipient does not fulfill the agreement. At a minimum, the agreement must require a recipient failing to meet subsidy agreement goals to pay back the assistance plus interest to the grantor if repayment may be prorated to reflect partial fulfillment of goals. The interest rate must be set in the agreement. The grantor, after a public hearing, may extend for up to 1 year the period for meeting the wage and job goals provided in a subsidy agreement under [section 3]. A grantor may extend the period for meeting other goals under [section 3(1)(c)] by documenting, in writing, the reason for the extension and attaching a copy of the document to its next annual report to the department.

(2) A recipient that fails to meet the terms of a subsidy agreement may not receive a business subsidy from any grantor for a period of 5 years from the date of failure or until a recipient satisfies its repayment obligation under this section, whichever occurs first.

(3) Before a grantor signs a business subsidy agreement, the grantor shall examine the compilation and summary report required by [section 8] to determine if the recipient is eligible to receive a business subsidy.

NEW SECTION. Section 6. Reports by recipients to grantors. (1) A grantor shall monitor the progress by the recipient in achieving subsidy agreement goals.

(2) A recipient shall provide information regarding goals and results for 2 years after the benefit date or until the goals are met, whichever is later. If the goals are not met, the recipient shall continue to provide

information on the subsidy until the subsidy is repaid. The information must be filed on forms developed by the department in cooperation with representatives of local government. Copies of the completed forms must be sent to the local government agency that provided the subsidy or to the department if the grantor is a state government agency. The report must include:

(a) the type, public purpose, and amount of the subsidy and the type of district if the subsidy is tax increment financing;

(b) the hourly wage of each job created, with separate bands of wages;

(c) the sum of the hourly wages and cost of health insurance provided by the employer, with separate bands of wages;

(d) the date on which the job and wage goals will be reached;

(e) a statement of goals identified in the subsidy agreement and an update on achievement of those goals;

(f) the location of the recipient prior to receiving the business subsidy;

(g) if the recipient was previously located at another site in Montana, why the recipient did not complete the project outlined in the subsidy agreement at the recipient's previous location;

(h) the name and address of the parent corporation of the recipient, if any;

(i) a list of all financial assistance by all grantors for the project; and

(j) other information that the grantor may request.

(3) A report must be filed no later than March 1 of each year for the previous year. The local government agency shall forward copies of the reports received by recipients to the department by April 1.

(4) Financial assistance that is excluded from the definition of business subsidy in [section 1] is subject to the reporting requirements of this section, except that the report of the recipient must include instead:

(a) the type, public purpose, and amount of the financial assistance and the type of district if the assistance is tax increment financing;

(b) progress toward meeting goals stated in any agreement for financial assistance;

(c) if the agreement includes job creation, the hourly wage of each job created, with separate bands of wages;

(d) if the agreement includes job creation, the sum of the hourly wages and cost of health insurance provided by the employer, with separate bands of wages;

(e) the location of the recipient prior to receiving the assistance; and

(f) other information that the grantor requests.

(5) If the recipient does not submit its report, the local government agency shall mail the recipient a warning within 1 week of the required filing date. If, after 14 days of the postmarked date of the warning, the recipient fails to provide a report, the recipient shall pay to the grantor a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty may not exceed \$1,000.

NEW SECTION. Section 7. Reports by grantors. (1) Local government agencies of a local government with a population of more than 10,000 and state government agencies, regardless of whether or not they have awarded any business subsidies, shall file a report by April 1 of each year with the department. Local government agencies of a local government with a population of 10,000 or less are exempt from filing this report if they have not awarded a business subsidy in the past 5 years. The report must include a list of recipients that did not complete the recipient report required under [section 6] and a list of recipients that have not met their job and wage goals within 2 years and the steps being taken to bring them into compliance or to recoup the subsidy.

(2) If the department has not received the report by April 1 from a state government agency or local government agency that was required to report, the department shall issue a warning to the state government agency or local government agency. If the department has not received the report by June 1 of that same year from a state government agency or local government agency that was required to report, that government agency may not award any business subsidies until the report has been filed.

(3) The department shall provide information on reporting requirements to state government agencies and local government agencies.

NEW SECTION. Section 8. Compilation and summary report. (1) The department shall publish a compilation and summary of the results of the reports for the previous calendar year by August 1 of each year. The reports of the state government agencies and local government agencies to the department and the compilation and summary report of the department must be made available to the public.

(2) The department shall coordinate the production of reports so that useful comparisons across time periods and across grantors can be made. The department may add other information to the report that the department considers necessary to evaluate business subsidies. Among the information in the summary and compilation report, the department shall include:

- (a) total amount of subsidies awarded in each region of the state;
- (b) distribution of business subsidy amounts by size of the business subsidy;
- (c) distribution of business subsidy amounts by time category;

- (d) distribution of subsidies by type and by public purpose;
 - (e) percent of all business subsidies that reached their goals;
 - (f) percent of recipients that did not reach their goals within 2 years after the benefit date;
 - (g) total dollar amount paid to recipients that did not meet their goals after 2 years from the benefit date;
 - (h) percent of recipients that did not meet their goals and that did not make repayment;
 - (i) list of recipients that failed to meet the terms of a subsidy agreement in the past 5 years and that did not satisfy their repayment obligations;
 - (j) number of part-time and full-time jobs within separate bands of wages; and
 - (k) benefits paid within separate bands of wages.
- (3) The department shall publish a compilation of grantors' criteria adopted in the previous calendar year by August 1 of each year.

NEW SECTION. Section 9. Economic grants. An appropriation to a state government agency that specifies the particular business or class of businesses to receive a grant must contain a statement of the expected benefits associated with the grant. At a minimum, the statement must include goals for the number of jobs created, wages paid, and tax revenue increases resulting from the grant.

NEW SECTION. Section 10. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1 through 9].

NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 2003.

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