Mississippi College Law Review

Volume 38 | Issue 1 Article 6

Spring 2024

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THE NEED FOR A NEW POLITICAL PLAYBOOK WHICH MITIGATES THE PUBLIC HARM CAUSED BY TAX INCENTIVES

*Robert Louis Perkins**

I. INTRODUCTION

When Amazon announced it was seeking a new city to build a second headquarters with the potential for up to 50,000 jobs, the company was explicit that any winning bid would have to have tax incentives.[1] In its September 10, 2017 announcement, Amazon listed incentives as one of the key decision drivers, and said, "Outline the type of incentive (i.e. land, site preparation, tax credits/exemptions, relocation grants, workforce grants, utility incentives/grants, permitting, and fee reductions) and the amount".[2] States began grappling with whether to revise their incentive package rules in order to compete and deliver the estimated multi-billion dollar incentives it will take to land Amazon. The state of New Jersey announced it offered Amazon $5 billion in credits against state and local taxes if Amazon locates its second headquarters in the state.[3] The city of Newark, New Jersey increased the $5 billion package of incentives by an additional $2 billion, bringing New Jersey's total tax incentive offerings to Amazon to $7 billion.[4] Although tax incentives have long been an accepted part of the economic development process, as the accompanying price tag continues to rise, the public is beginning to reckon with their cost and look for alternatives.[5] This article seeks to highlight the principal concerns with tax incentives and suggests an alternative, long term approach that will lessen a community's reliance on tax incentives for generating new economic growth.

This article is politically pragmatic and written with a clear acknowledgment that tax incentives will continue to be utilized by policymakers, despite data continuing to reflect that the actual influence tax incentives have in determining where a company or industry locates is often exceeded by their

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1. Press Release, Amazon, Amazon Opens Search for Amazon HQ2 – A Second Headquarters City in North America (Sept. 7, 2017) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=2299039).

2. Press Release, Amazon, Amazon HQ2 Request for Proposals (Sept. 10, 2017) (available at https://images-na.ssl-images-amazon.com/images/G/01/Anything/test/images/usa/RFP_3._V516043504_.pdf).

3. N.J. Pub. Law, 2017, Ch. 282.

4. Press Release, The City of Newark, New Jersey, Newark City Council Approves Amazon HQ2 Incentives Creating at Least 30,000 Jobs (July 11, 2018), https://www.newarknj.gov/news/newark-city-council-approves-amazon-hq2-incentives.

5. *See* Randle B. Pollard, *Was the Deal Worth It: The Dilemma of States with Ineffective Economic Incentives Programs*, 11 HASTINGS BUS. L.J. 1, 13 (2015).

cost.[6] Government investment in public services such as education and infrastructure are often scaled back to accommodate the cost of the incentives.[7] However, public officials have strong incentives of their own which encourage them to rely on these costly measures. These incentives include the resulting political points they score from being able to take credit for creating jobs.[8] Since there is a lack of political will to stop offering tax incentives, this article first reviews how tax incentives are used and how to evaluate their impact. Next, a review of recent incentive packages around the country and in Alabama and Mississippi provides a framework for incentive use. An examination of the negative consequences of tax incentives demonstrates how communities often receive far less than the promised benefits from offering the packages. The article then provides an explanation for why public officials continue to rely on tax incentives. Finally, the article presents solutions designed to increase transparency and accountability, which will mitigate the most harmful consequences of tax incentives.

II. TAX INCENTIVES AS ECONOMIC DEVELOPMENT TOOLS

A. Tax Incentive Usage

Tax incentives are a default tool for policymakers in all fifty states and numerous cities as government officials attempt to spur new economic development and retain existing businesses.[9] Tax incentive programs strive to entice new businesses to relocate or existing businesses to remain or expand by shrinking the businesses' tax liability.[10] This reduction in tax liability is accomplished through the use of various tax reductions, exemptions or credits to property, sales and use, or corporate income taxes.[11] Policymakers deploy these incentive programs based on the belief that tax incentives will bring future economic growth, by attracting new supporting businesses to a state or city, and increase tax revenue in the long term.[12]

In 2012, the New York Times created a comprehensive, searchable database as part of a series of articles on state and local tax incentives provided to companies.[13] Based on its compilation of the data, the Times reported that eighty

6. Brian Siegel, *Fiscal Incentives and the Economic Development Game*, 9 LBJ J. PUB. AFF. 70, 74 (1997), https://www.researchgate.net/publication/35034287_Economic_development_publicprivate_partnerships.

7. *Id.*

8. Nathan Jensen & Edmund Malesky, *FDI Incentives Pay – Politically* (June 26, 2010), https://ssrn.com/abstract=1669748.

9. *See generally Frequently Asked Questions About Economic Development Tax Incentives,* THE PEW CHARITABLE TRUSTS (June 27, 2013), http://www.pewstates.org/news- room/press-releases/frequently-asked-questions-about-economic-development-tax-incentives-85 899485601.

10. Pollard, *supra* note 5, at 8.

11. Timothy J. Bartik, *Solving the Problems of Economic Development Incentives,* 36 GROWTH & CHANGE 139, 140 (2005).

12. Pollard, *supra* note 5, at 8.

13. *See* Louise Story, *As Companies Seek Tax Deals, Governments Pay High Price*, N.Y. TIMES (Dec. 1, 2012), http://www.nytimes.com/2OI2/12/(P/us/how-local-taxpayers-bankroll- corporations.html.

billion dollars was spent annually nationwide by state and local governments.[14] In Alabama, at least $277 million per year, or 4¢ per dollar of the state budget, was estimated to have been spent on local tax incentives.[15] In Mississippi, at least $416 million per year, or 9¢ per dollar of the state budget, was estimated to have been spent on local tax incentives.[16] The state of Texas, the nation's largest spender on tax incentives, spends at least $19.1 billion per year, or 51¢ per dollar of the state budget.[17] The Times noted that these numbers were likely larger than reported since there is no state or nationwide accounting of these incentives and the figures were generated using data its reporters pulled from various sources including third party watchdog groups.[18]

To better understand tax incentives, it is important to define the three groups of tax incentives and the main types of those incentives. The three major groups of tax incentives are Tax Incentive programs (foregone revenue in the form of tax credits and exemptions), Grant and Loan programs (hard dollar appropriations), and Tax Rebates and Investment Credits (rebates/deductions).[19] Tax incentives result in foregone revenue for the state and are taken on the business' tax returns, and often are made in the form of income, franchise and sales/use tax incentives.[20] Tax incentives are granted based on company activity such as creating a certain number of jobs, hiring employees at a defined salary level, making investments in equipment or manufacturing capacity, or meeting economic goals within an identified area.[21] These credits are directly applied to lessen the company's state tax liability.[22] Grant and Loan programs require an appropriation of funds from a state legislature or appropriate government body, thereby resulting in a hard dollar disbursement from state funds directly to the recipient or for their benefit.[23] Tax Rebates and Investment Credits generally require direct payment back from the government to the recipient in the form of a refund or through a reduction in current tax collections due to credits.[24]

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14. *Id.*

15. *See* Louise Story, Explore the Data, N.Y. TIMES (Dec. 1, 2012), http://www.nytimes.com/interactive/2012/12/01/us/government-incentives.html#AL.

16. *Id.*

17. *Id.*

18. *Id.* While the New York Times data is not compiled directly from primary sources, its accuracy has not been disproven.

19. *See* generally STATE OF MISS., MISS. INCENTIVES REPORT (2017), https://d71ad12c3ec51c77ff3d-a5f8631cb8ff4476a529cdcf2eaaa70e.ssl.cf5.rackcdn.com/2018/02/FY2017-Incentives-Report-Final.pdf.

20. *Id.*

21. *See* PEW CTR. ON THE STATES, THE PEW CHARITABLE TR., EVIDENCE COUNTS: EVALUATING STATE TAX INCENTIVES FOR JOBS AND GROWTH (2012), http://www.pewtrusts.org/~/media/assets/2012/04/12/pew_evaluating_state_tax_incentives_report.pdf.

22. *See* Matthew Murray & Donald Bruce, *Best Practices for the Design and Evaluation of State Tax Incentive Programs for Economic Development*, ALABAMA DEPARTMENT OF REVENUE (Jan. 2017), https://revenue.alabama.gov/wp-content/uploads/2017/05/TaxIncentives_BestPractices20170104.pdf.

23. *See generally* State of Miss., supra note 19.

24. *Id.*

B. Notable Recent Tax Incentive Packages

In seeking to encourage cities to bid against one another via incentives, Amazon was repeating a familiar pattern employed recently by Foxconn in Wisconsin, Apple in Iowa and Google in regards to its data centers in various states. This part will examine several notable past incentive packages nationwide.

1. Foxconn in Wisconsin

On January 22, 2017, Foxconn CEO Terry Gou met with reporters and announced Foxconn would build its first United States factory with the potential for a $7 billion investment and up to 13,000 jobs.[25] After a shareholders meeting on June 22, 2017, Gou announced to reporters Foxconn was considering Michigan, Ohio, Pennsylvania, Illinois, Indiana, Texas and Wisconsin.[26] On July 26, 2017, in a press conference at the White House, Gou announced Foxconn would be building a new plant in Wisconsin.[27] Wisconsin emerged as the winner after agreeing to pay up to $2.85 billion in tax incentives in exchange for Foxconn locating in the state.[28] The total tax incentive package offered to Foxconn has increased to over $4.8 billion, amounting to an estimated $370,000 per job for the 13,000 jobs Foxconn plans to make available.[29] Wisconsin is not projected to break even on the tax incentive package with Foxconn for at least 25 years.[30]

Critics of the deal, who worry that Wisconsin Governor Walker gave up too much in tax incentives in order to boost his political prospects during his reelection campaign.[31] They immediately raised concerns that Wisconsin is violating the 2008 Great Lakes Interstate Compact by attempting to use a loophole to divert seven million gallons of water per day from Lake Michigan for the benefit of Foxconn.[32] Governor Walker responded to critics by issuing a

25. REUTERS, *Foxconn CEO Says Investment for Display Plan in US Would Exceed $7 Billion* (Jan. 22, 2017), http://www.cnbc. com/2017/01/22/foxconn-ceo-saysinvestment-for-display-plant-in-uswould-exceed-7-billion.html.

26. Yoko Kubota, *Taiwan's Foxconn Eyes Seven States for $10 Billion Investment*, THE WALL STREET JOURNAL https://www.wsj.com/articles/foxconn-in-talks-with-u-s-states-over-new-plant-1498105489.

27. Terry Gou, CNBC Video, Foxconn's Terry Gou announces new plant in Wisconsin, https://www.cnbc.com/video/2017/07/26/foxconns-terry-gou-announces-new-plant-in-wisconsin.html.

28. 2017 Wisconsin Act 58 (available at https://docs.legis.wisconsin.gov/2017/related/acts/58). This act was passed by the Wisconsin Legislature to deliver on the promised tax incentives offered to Foxconn.

29. Reid Wilson, *Foxconn deal raises concerns of taxpayer giveaways*, THE HILL (June 28, 2018), http://thehill.com/homenews/state-watch/394618-foxconn-deal-raises-concerns-of-taxpayer-giveaways.

30. Shannon Vavra, *Report: Wisconsin Won't Break Even on Foxconn Plant for 25 Years*, AXIOS (Aug. 9, 2017), https://www.axios.com/report-wisconsin-wont-break-even-on-foxconn-plant-for-25-years-2471114547.html and https://www.google.com/amp/s/amp.axios.com/report-wisconsin-wont-break-even-on-foxconn-plant-for-25-years-1513304748-4751a2a3-48d2-4f8e-8907-552bb9bf37ac.html.

31. Jason Stein, *Foxconn Final: Scott Walker Signs $3 Billion Incentives Deal, One of the Largest Ever for a Foreign Company*, Tribune News Serv. (Sept. 19, 2017, 11:45 AM), http://www.governing.com/topics/finance/tns-walker-wisconsin-foxconn.html.

32. Maxwell, R. and Miller, T., *Techlash: Foxconn's Wisconsin Con & Bitcoin's Carbon Bubble.* PSYCHOL. TODAY (2018). The 2008 Great Lake Interstate Compact can be found in Great Lakes—St Lawrence River Basin Water Resources Compact of 2008, Pub. L. No. 110-342, 122 Stat. 3739. As a private company, Foxconn is legally prohibited from doing this by the 2008 Great Lakes Compact ban on water diversion outside the Great Lakes basin (where most of the planned factory will lie). Acting on behalf of Foxconn, the city of

press release listing a myth vs. facts relating to the environmental concerns for the Foxconn project.[33] Eminent domain proceedings have begun against some homeowners currently living in the planned development area, thus giving rise to the civil rights argument decided in *Kelo v. City of New London*, where the Supreme Court of the United States in a 5-4 decision approved the expansion of eminent domain to permit the transfer of land by the government from one private landowner to another private landowner for the purpose of economic development.[34]

2. Apple in Iowa

Apple announced on August 24, 2017 that it was building its next data center in Waukee, Iowa and making an investment of $1.3 billion in the process.[35] The city of Waukee and the state of Iowa agreed to give Apple $213 million in tax abatements and incentives or $4.26 million per permanent job created when the data center reaches full employment of only 50 people.[36] The 50 jobs created by the data center will have a qualifying wage of at least $29.12 per hour.[37] Taxpayer advocates were highly critical of the deal and of Iowa's Governor, Kim Reynolds, claiming that the deal was an example of "pay for fame" to be associated in positive news for political benefit alongside Apple and its chief executive, Tim Cook.[38] Media reports cited the deal as an example of the favorable negotiating position that technology companies enjoy when dealing with public officials eager to tout the high tech jobs they are attracting.[39] Less than one year after the Waukee development announcement, Apple became the first publicly listed company in the United States to

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Racine stepped in to request an exception to the ban to get the seven million gallons into their municipal system (since the Compact's implementation, waivers have been granted for water supply to residents, but not to businesses). As a public entity, Racine could then divert the water to Foxconn without considering the concerns of signatories of the Compact in neighboring states. The Wisconsin Department of Natural Resources (DNR) approved the waiver for the city of Racine. As of June 14, 2018, an appeal is scheduled to be heard by the DNR review board on this matter. Additional information is available at https://urbanmilwaukee.com/pressrelease/challenge-to-diversion-of-great-lakes-water-for-foxconn-moves-forward-amidst-an-upsurge-of-support-for-the-compact/.

33. Press Release, Governor Scott Walker, *Foxconn Myth Vs. Fact: Foxconn and Wisconsin's Environment* (June 27, 2018), https://walker.wi.gov/press-releases/foxconn-myth-vs-fact-foxconn-and-wisconsin-s-environment; https://m.marketscreener.com/FOXCONN-TECHNOLOGY-CO-LTD-6496501/news/Foxconn-Myth-Vs-Fact-Foxconn-s-10-Billion-Investment-in-the-State-of-Wisconsin-26834258/.

34. Kelo v. City of New London, 545 U.S. 469 (2005).

35. Press Release, Apple, *Apple's Next US Data Center Will Be Built in Iowa* (Aug. 24, 2017), https://www.apple.com/newsroom/2017/08/apples-next-us-data-center-will-be-built-in-iowa/.

36. Press Release, State of Iowa: Office of the Governor, Kim Reynolds, *Apple's Waukee data center deal is a win-win for Iowa* (August 30, 2017) https://governor.iowa.gov/2017/08/apples-waukee-data-center-deal-is-a-win-win-for-iowa (The State of Iowa pledged $19.65 million in tax-credit incentives. The City of Waukee abated the property taxes on the project by 71 percent for 20 years).

37. Press Release, State of Iowa: Office of the Governor, Kim Reynolds, *Iowa welcomes significant data center investment from Apple* (August 24, 2017), https://governor.iowa.gov/2017/08/iowa-welcomes-significant-data-center-investment-from-apple.

38. Michael Hiltzik, *Apple Breaks New Ground in Squeezing Local for Huge Tax Breaks While Offering Almost No Jobs*, L.A. Times (Aug. 25, 2017), http://www.latimes.com/business/hiltzik/la-fi-hiltzik-apple-iowa-20170825-story.html.

39. Christopher Matthews, *Apple to Get $4 Million in Tax Breaks Per Job at Iowa Data Center*, AXIOS, Aug. 28, 2017, https://www.axios.com/apple-to-get-4-million-in-tax-breaks-per-job-at-iowa-data-center-2477880934.html.

surpass $1 trillion in stock market value.[40] The offering of corporate welfare programs to one of the richest companies in the world illustrates the folly of these programs.[41]

3. Google's Data Centers

Alabama and twenty-six other states have established tax incentive programs specifically for data centers.[42] Data centers house large numbers of interconnected computer servers in one location and allow data to be accessed and transmitted efficiently.[43] While they have a high initial capital investment of up to $1 billion to construct, large data centers typically only employ 30 to 50 permanent workers.[44] Google, with data centers in multiple states including Oregon, North Carolina, South Carolina, and Alabama, has been the most frequent beneficiary of these tax incentives.[45] Google's approach of forcing communities and states to compete against each other was vividly demonstrated in 2007, when Google engaged in conversations with North Carolina and South Carolina without telling the states it planned to build two data centers.[46] Each state was aggressive, with North Carolina giving Google a thirty year tax incentive deal estimated at $254 million including a complete personal property tax exemption and 80 percent real estate tax abatement.[47] Google agreed to create 210 jobs as a result, causing a cost to North Carolina of $1.2 million per job over the span of the thirty year deal.[48] Meanwhile in South Carolina, where the company built the second data center, Google secured property tax abatements valued at over $58 million and an exemption on its capital investment and electrical costs.[49]

Google has received $360 million in tax abatements from the state of Oregon for datacenters, a cost of over $2 million to the state per job created.[50] In April 2018, Google broke ground on a data center in northeast Alabama with the state offering Google tax abatements for 30 years on non-educational taxes.[51] The total incentive package was $81 million for a data center that will create 75 to 100 full time jobs.[52] The state representative who sponsored Alabama's data center incentive bill in

40. The Editorial Board, THE WALL STREET JOURNAL, *A Trillion-Dollar Apple* (August 2, 2018), https://www.wsj.com/articles/a-trillion-dollar-apple-1533251700.

41. Michael Hiltzik, *Iowa's handout to Apple illustrates the folly of corporate welfare deals*, L.A. TIMES, Aug. 29, 2017, http://www.latimes.com/business/hiltzik/la-fi-hiltzik-apple-iowa-welfare-20170829-story.html#.

42. Kasis Tarczynska, *Money Lost to the Cloud: How Data Centers Benefit from State and Local Subsidies*, GOOD JOBS FIRST, http://www.goodjobsfirst.org/sites/default/files/docs/pdf/datacenters.pdf.

43. Michael F. Kaestner, *Sensible Bytes: States Need a New Approach to Justify their Recruitment of Internet Data Centers*, 38 WM. & MARY ENVTL. L. & POL'Y REV. 733, 734 (2014).

44. Tarczynska, *supra* note 42, at 4.

45. *Id.* at 8.

46. Christopher Kirkpatrick & Victoria Cherrie, *Google's S.C. Deal Puzzling to N.C.; N.C. Officials Claim Pressure from Firm*, MYRTLE BEACH SUN-NEWS (Apr. 6, 2007).

47. Tarczynka, *supra* note 42, at 10.

48. Jen Kinney, *Adding Up the True Cost of Tax Breaks for Big Tech's Data Centers*, Next City (Oct. 11, 2016), https://nextcity.org/daily/entry/report-tech-data-center-subsidies.

49 *Id.*

50. Tarczynka, *supra* note 42, at 9

51. Jerry Underwood, Alabama Department of Commerce, Made In Alabama, *Google kicks off construction on $600M Alabama data center* (April 9, 2018), http://www.madeinalabama.com/2018/04/google-kicks-off-construction-on-alabama-data-center/.

52. Paul Gattis, *What Led Google to Choose Alabama for New Data Center?*, AL.COM (June 25, 2015),

2012 stated the motivation behind it was that Alabama had been losing out on these types of projects in recent years.[53]

C. Alabama's Use of Tax Incentives

Alabama's first significant use of tax incentives was in 1993 when it attracted Mercedes-Benz to Tuscaloosa County.[54] Recruiting automobile manufacturers through tax incentives became a trend over the next decade and then Alabama eventually expanded their use into attracting other sectors of industry.[55] A short summary of major projects attracted to Alabama through the use of tax incentives is detailed below for context and to show the political importance attached to each project announcement.

1. Mercedes-Benz to Tuscaloosa

Following an intense bidding battle with South Carolina, the initial economic development package to attract Mercedes-Benz to the Tuscaloosa area totaled $253 million including $42.6 million in direct tax incentives.[56] The bulk of this was a ten year abatement of state and local property taxes and sales taxes, along with abatements of any deed or mortgage taxes.[57] Jim Folsom was the governor at the time; over 13 years later in his 2006 campaign for Lt. Governor, Jim Folsom was still touting his role in attracting Mercedes-Benz to the state.[58] In August 2000, Governor Don Siegelman announced that Alabama would be extending total incentives of $119 million, with $54.4 million in tax incentives, consisting primarily of a 10 year extension of the original property tax abatement, to aid Mercedes in a plant expansion.[59]

2. Honda to Lincoln

In 1999, Honda received a $158.3 million economic development package with $55.6 million in tax incentives, consisting of tax abatements for ten years for all real and personal property taxes and $10 million for a training facility, in exchange

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http://www.al.com/business/index.ssf/2015/06/what_led_google_to_choose_alab.html.

53. *Id.*

54. BUSINESS ALABAMA, Resources: *Economic Development*, http://www.businessalabama.com/Incentives.pdf, available at https://web.archive.org/web/20161020003235/http://www.businessalabama.com/Incentives.pdf.

55. *Id.*

56. *Id.*

57. George R. Crowley, *Tax Incentives, Job Creation, and the Unseen: Is Alabama Giving Away the Store to Attract New Industry?*, *in* IMPROVING LIVES IN ALABAMA: A VISION FOR ECONOMIC FREEDOM AND PROSPERITY 4, 10 (Daniel Sutter ed.) (available at https://nebula.wsimg.com/96618ddb93768227e78cc43907644866?AccessKeyId=F0B126F45D4E1A4094F7&disposition=0&alloworigin=1) (full book available at https://nebula.wsimg.com/d596ad017989c33e22123a814ca05624?AccessKeyId=F0B126F45D4E1A4094F7&disposition=0&alloworigin=1).

58. FaithIntsu, *Jim Folsom Ad*, YOUTUBE (Sept. 18, 2006), https://www.youtube.com/watch?v=UhqbT3OiPLs.

59. BUSINESS ALABAMA, *supra* note 54.

for locating a manufacturing plant in Lincoln, Alabama.[60] Economic analysis at the time stated it would take at least 20 years for Alabama to break even on the deal.[61]

3. Hyundai to Montgomery

In 2002, Hyundai selected Montgomery as the site for a $1 billion investment and received a $234 million incentive package with $82 million in tax incentives, including property tax abatements for ten years.[62] Notably, the Hyundai agreement included a "clawback" penalty provision for Hyundai to pay a penalty if certain hiring thresholds were not met.[63] Governor Don Siegelman, who announced the projects, had a model car included in his official governor's portrait, illustrating the importance he attached to the growing auto industry in Alabama.[64]

Hyundai has made a series of large investments to expand operations at the Montgomery facility. In 2007, the automaker added 522 jobs with a $270 million investment at the factory. In 2011, it created 214 jobs with a $173 million project, according to Alabama Department of Commerce records. In 2016, the automaker invested $52 million in factory improvements.[65] In May 2018, it committed to creating 50 new jobs and investing $388 million to its manufacturing operations.[66]

4. ThyssenKrupp to Mobile

In 2007, German steelmaker ThyssenKrupp announced it would build a new steel plant north of Mobile in Calvert, Alabama.[67] In exchange, Alabama gave the company abatements valued at $350 million including a 20 year property tax abatement and 10 year exemption from utility taxes.[68] The overall economic development package was $1 billion with ThyssenKrupp stating it would employ 2000 workers within two years of the plant being operational.[69] The company's announcement was accompanied by self-congratulatory statements by public officials ranging from Mobile's mayor to Alabama's governor and both United States Senators.[70] The festive mood extended to a city wide celebration a few days after the announcement.[71] Unfortunately, the expansion was announced right before the 2008

60. Donijo Robbins & Gerald J. Miller, *Auction Off the Farm: Signaling, Politics, and Economic Development*, 18 J. OF PUB. BUDGETING, ACCT. & FIN. MGMT. 307, 335 (2006).

61. *Id.*

62. BUSINESS ALABAMA, *supra* note 54.

63. Crowley, *supra* note 57, at 13.

64. Ala. Dep't of Archives & History, *Don Siegelman* (Feb. 7, 2018) (available at http://www.archives.alabama.gov/conoff/siegelman.html).

65. Jerry Underwood, *Hyundai to invest $388 million to prep Alabama plant for next-generation engines*, ALA. DEP'T OF COMMERCE (May 29, 2018), http://www.madeinalabama.com/2018/05/hyundai-to-invest-388-million-to-prep-alabama-plant-for-next-generation-engines/.

66. *Id.*

67. Press Release, ThyssenKrupp, *ThyssenKrupp Breaks Ground on the Site of its Steel and Stainless Steel Facility,* https://www.thyssenkrupp.com/en/newsroom/press-releases/press-release-48271.html.

68. Crowley, *supra* note 57, at 15–16.

69. *Id.*

70. Paul Cloos, *Mobile County Wins ThyssenKrupp Plant*, MOBILE PRESS-REGISTER (May 11, 2007), http://blog.al.com/live/2007/05/mobile_county_wins_thyssenkrup.html.

71. *Id.*

recession, which drove steel prices down and prevented ThyssenKrupp from delivering on its ambitions.[72] In late 2012, the plant was sold to a competitor in the industry without ever meeting its initial job projections.[73]

D. Mississippi's Use of Tax Incentives

The small town of Durant, Mississippi is believed to be the first local government to offer corporate incentives to attract a foreign business to relocate within its jurisdiction.[74] In 1936, the town of Durant "offered the nation's first industrial revenue bond to incentivize Real Silk Hosiery Mills, and its 4,000 knitting-machine operators, to relocate southward from Indianapolis, Indiana."[75] Mississippi's first significant use of large scale tax incentives this century occurred in 2000 when, using a political playbook similar to the one used in Alabama to attract Mercedes-Benz, then Governor Ronnie Musgrove signed into law a tax incentive package of $295 million to attract Nissan North America to construct and operate an automobile manufacturing plant in central Mississippi. Since this time, Mississippi has competed alongside other southern states to successfully attract automobile and tire manufacturing plants to the region. Mississippi has also sought to diversify its industrial programs during the last decade by using a similar political playbook to attract startup clean energy sources and technology companies to the state. However, the return on tax incentive investments outside of the tire and automobile industries has not fared well for the state. When Mississippi became the first state to offer corporate welfare programs in 1936, it was one of the poorest states in the nation and it remains that way still today.[76] A short summary of the major projects in these industries is detailed below.

1. Nissan North America to Canton

In November 2000, Nissan announced it had chosen Canton as the site of its new automobile assembly plant. Mississippi offered $295 million to attract the first large scale automobile production plant in Mississippi. At the time, many questioned Mississippi's investment in a private corporation through the use of tax incentives and land acquisitions through the use of eminent domain[77]. Nissan was promising the hiring of 4,000 employees at its new plant. Eventually the hard dollar tax incentives amounted to over $378 million with an additional estimated foregone revenue of over $1 billon.[78] The Nissan assembly plant became operational in 2003. The 4.7 million square foot facility was the world's largest automobile plant at the time of its grand

72. John Sununu, *The God of Irony*, Bos. Globe (Oct. 8, 2012), https://www.bostonglobe.com/opinion/2012/10/07/public-subsidies-can-conjure-economic-development/QiTEr9lTbipCqkAzYIk9SK/story.html.

73. Crowley, *supra* note 57.

74. Joseph Parilla, *America's Cities Compete for Amazon*, 52 Intereconomics 379, 379 (2017), (available at https://archive.intereconomics.eu/year/2017/6/americas-cities-compete-for-amazon/).

75. *Id.*

76. U.S. Census Bureau, 2016 American Community Survey, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.

77. Good Jobs First, *A report on Taxpayer Assistance to Nissan in Canton, Mississippi*, GOOD JOBS FIRST, http://www.goodjobsfirst.org/sites/default/files/docs/pdf/nissan_report.pdf.

78. *Id.*

opening.[79] A 2016 study reviewed the economic impact Nissan has had on the state of Mississippi during its first decade in operation. The study found Nissan to employ over 6,400 workers and to be associated with the generation of more than $300 million in local and state tax revenue annually, $2.6 billion in disposable income annually, and a contribution of $2.9 billion to the annual state GDP.[80]

2. Toyota to Blue Springs

In February 2007, Toyota announced it would construct an automobile assembly plant in Blue Springs. Mississippi offered $29 million in tax incentives to Toyota for locating the plant within its borders.[81] Trent Lott, a United States Senator from Mississippi, Governor Haley Barbour and other politicians were present at the announcement to represent their roles in recruiting Toyota to Mississippi, and publicly thanking Toyota executives for partnering the company's future economic interests with Mississippi.[82] The Toyota plant opened in November 2011. Upon opening, Toyota employed 1,500 people directly and 2,469 people indirectly, with an investment from Toyota of $1.2 billion into the Mississippi economy.[83]

In April 2018, Toyota announced it would expand its operations at the Blue Springs facility by making a $170 million corporate investment to create an additional 400 jobs directly. This new expansion brings Toyota's total investment in the Blue Springs facility alone to over $1 billion since 2007 and employment totals to 1,900 directly.[84]

3. Yokohama Tire to West Point

In April 2013, Yokohama Tire announced it would construct a $300 million dollar tire production facility in West Point, with a three phase expansion plan generating approximately $1.2 billion in economic impact in the state and 2,000 jobs.[85] Mississippi offered an initial $70 million in tax incentives (bonding authority) to Yokohama Tire and additional incentives, for expansion, up to a total of $130 million for locating the plant in Mississippi.[86] On October 5, 2015, Yokohama opened the new plant in West Point, employing 260 people with

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79. *See* Mississippi Believe It: Nissan. https://www.mississippibelieveit.com/prints/4COLX11/NissanBW.pdf.

80. *See* National Strategic Planning & Analysis Research Center: Mississippi State University, *Nissan Canton: A Catalyst for Advanced Automotive Manufacturing in Mississippi* (https://wieck-nissanao-production.s3-us-west-1.amazonaws.com/page-a34657dfad5aaaae1b3c4db6d309910b/attachment/3275be879d50aff90bfa89bdbfe3ef54579290e3 accessible at https://nissan-canton.com/en/about-nissan-canton) (last visited March 10, 2019).

81. Miss. Dev. Auth., TOYOTA & MISSISSIPPI: MOVING FORWARD, http://www.wellspringproject.com/downloads/MDAProjectOverview.pdf.

82. Kevin Krolicki, *Toyota to build $1.3 billion plant in Mississippi*, REUTERS (February 26, 2007), https://www.reuters.com/article/us-toyota-us-plant/toyota-to-build-1-3-billion-plant-in-mississippi-idUST23213920070227.

83. *See* Map of Toyota Locations, TOYOTA MOTOR MANUFACTURING MISS., https://www.toyota.com/usa/operations/map.html#!/MS.

84. Press Release, Toyota, *Toyota's Mississippi Plant Investments in Full Bloom* (Apr. 27, 2018), (available at https://newsroom.toyota.co.jp/en/corporate/22354101.html).

85. Press Release, Mississippi Development Authority, *Yokohama Tire Corp. Locates Facility in West Point*, https://www.mississippi.org/news-room/yokohama-4-29-2013/.

86. *Id.*

plans to soon employ 500 people. Governor Phil Bryant was shown in the company's press release announcement standing next to a tire and was quoted as saying "The opening of Yokohama's manufacturing facility in West Point brings full circle a project that broke ground just two short years ago. I appreciate the Yokohama team, the Mississippi Legislature and state and local officials who have worked hard from day one to expedite this project and create so many jobs for the residents of West Point and the Golden Triangle region."[87]

4. Continental Tire to Clinton

In February 2016, Continental Tire announced it would open a commercial vehicle tire plant in Clinton. Mississippi offered an initial incentive of $263 million to Continental to cover the costs to buy, clear and grade 900 acres of land for Continental, as well as contribute to building a 5 million square-foot plant.[88] The 5 million square-foot plant will be the largest tire production facility in North America and will employ 2,500 people and have an overall economic investment of $1.4 billion over the next decade in Mississippi.[89] Site preparation has begun on this project and construction is estimated for completion by 2020.

5. Stion to Hattiesburg

In January 2011, Stion, a startup solar panel manufacturing company, announced, as a result of an incentive agreement with the state of Mississippi, it would build a new production facility in Hattiesburg.[90] Mississippi offered a $74.8 million loan to Stion to secure the production facility. Stion promised in return for the loan to produce 1,000 jobs in Hattiesburg and to invest $500 million in the project within six years.[91] Six years later, Stion failed to meet these obligations and announced it had discontinued operations and closed down the plant. The Office of State Auditor for Mississippi has issued a demand the company repay $92,943,780.86 for their failure to meet the contractual demands.[92] The $74.8 million loan was paid by the Mississippi Development Authority ("MDA") from a new fund, IIFRF, established by the Mississippi Legislature in FY 2010 to provide MDA with funds it

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87. Press Release, Yokohoma, *Yokohama officially opens new $300 million commercial tire plant in Mississippi* https://www.yokohamatire.com/newsroom/yokohama-officially-opens-new-300-million-commercial-tire-plant-in-mississippi.

88. Press Release, Continental Tire, *Continental Selects Site in Mississippi for New Plant to Drive the Future Growth of Its Tire Business* (Feb. 8, 2016), http://www.mississippi.org/general/continental-tire-locating-tire-manufacturing-plant-in-hinds-county-miss/ and http://www.continentaltire.com/news/continental-selects-site-mississippi-new-plant-drive-future-growth-its-tire-business.

89. *Id.*

90. Press Release, Stion, *Gov. Barbour Celebrates Stion's Grand Opening in Hattiesburg,* http://www.stion.com/gov-barbour-celebrates-stions-grand-opening-in-hattiesburg/ and https://www.businesswire.com/news/home/20110916005594/en/Stion-Announces-Grand-Opening-New-Factory-Mississippi.

91. Press Release, State of Mississippi: Office of the State Auditor, *State Auditor Stacey Pickering and Performance Audit Division Issue $92 Million Demand against Failed "Green Project" Stion Corporation,* (March 27, 2018), http://www2.osa.ms.gov/news/state-auditor-stacey-pickering-and-performance-audit-division-issue-92-million-demand-against-failed-green-project-stion-corporation/.

92. Stacey Pickering, *Failed Projects of Economic Development Incentives Programs*, Office of the State Auditor (April 5, 2018), https://www.scribd.com/document/375631086/Mississippi-Economic-Incentives-Failed-Projects-Report-OSA.

could use to incentivize projects which create a significant economic opportunity within Mississippi without having to create special legislation each time a project was identified.[93]

6. KiOR to Columbus

In August 2010, KiOR, a startup biofuel company located in Houston, picked Columbus as one of its three new bases to manufacture a crude-oil substitute from timber. Mississippi offered a $75 million loan and an additional $2 million in research grants for KiOR to build the plant in Mississippi.[94] KiOR agreed to invest $500 million and create 1,000 jobs as part of the incentive. Mississippi issued the incentive under the IIFRF. In 2014, KiOR fell short of its intended volume and defaulted on the loan from the state and filed for bankruptcy, the matter is currently in litigation as Mississippi seeks to recover damages.[95]

III. THE WEAKNESSES OF TAX INCENTIVES

A. Measuring the Impact of Tax Incentives

Since the 1990s, when the use of tax incentives became more prevalent, scholars have struggled to develop a single, comprehensive measure for assessing the success or failure of tax incentives because of questionable methodologies and unreliable data.[96] Capturing the full amount of tax incentives offered to companies and evaluating the total economic impact on an area continue to be challenging, but recent progress has been made with the introduction of the Federal Reserve's Fiscal Impact Tool (FIT).[97] However, there is no single agreed upon standard for measuring the effects of incentives on state and local economic growth.[98] The most commonly used measure to evaluate incentive program outcomes by public officials is Economic Impact Analysis (EIA).[99] This approach fails to provide adequate information to decision makers. A more rigorous analysis such as Net Fiscal Impacts Analysis should be used instead.[100] Public officials can make wiser decisions involving incentives if they have a consistent and insightful measure to use.

EIA is the most commonly used evaluative tool. It estimates the economic effects of tax incentives by taking into account the economic impact from a new company or industry on three different levels: direct effects, indirect effects and induced effects.[101] Direct effects are the easiest to track and are

93. Mississippi Industry Incentive Financing Revolving Fund, MISS. CODE. ANN. § 57-1-221 (2010).

94. Pickering, *supra* note 92.

95. *Id.*

96. Dan Gorin, *Economic Development Incentives: Research Approaches and Current Views*, 93 Fed. Res. Bull. A61, A62 (2007), https://www.federalreserve.gov/pubs/bulletin/2008/articles/econdevelopment/default.htm.

97. Press Release, Federal Reserve, *Fiscal Impact Tool Announced* (Jan. 12, 2004) (available at https://www.federalreserve.gov/boarddocs/press/other/2004/20040112/default.htm).

98. Pollard, *supra* note 5, at 15.

99. Murray & Bruce, *supra* note 22, at 22.

100. Pollard, *supra* note 5, at 18.

101. *Id.* at 17.

linked to payroll expenses such as new jobs created and the average salary of employees.[102] Indirect effects are the non-payroll expenditures such as purchase of equipment, construction costs, or spending on local suppliers.[103] Induced effects are determined by applying a multiplier to the direct effects and using that to calculate the overall economic impact as it spreads through the economy.[104]

EIA suffers from some notable defects, which limit its effectiveness in evaluating tax incentives.[105] The model fails to distinguish new activity that occurs because of the tax incentives from activity that would have occurred regardless of the incentive.[106] Instead, it lumps all company activity together and then applies the multiplier, leading to an overestimate of the benefits to the economy.[107] The EIA model also does not account for the "crowding out effect" which is when no net economic gain takes place because competitor economic activity has been reduced.[108] An example of the "crowding out effect" is Wal-Mart, which is a popular beneficiary of tax benefits.[109] Research shows that Wal-Mart creates 100 jobs on average, but 50 jobs disappear from other competitors in the community, thus reducing the positive effect of Wal-Mart's job creation.[110] As a result, the multiplier used in the EIA analysis is overstated and the total estimated economic gain is too high.[111] This results in public officials' overestimating the economic impact of a potential company and offering too generous of an incentive plan.

The better approach to understanding the costs and benefits of a potential economic development project is to use a Net Fiscal Impact Analysis such as the Federal Reserve's FIT or Georgia Tech's Local Fiscal Impact Model (LOCI).[112] A fiscal impact analysis examines the costs of forgoing tax revenue and making infrastructure improvements and compares it to the revenue created from job creation.[113] This allows for a more realistic prediction of the financial impact of the tax incentives.[114] Taking into account the effects on the revenue collection and the budgetary impact helps decision makers more easily identify the tradeoffs embedded in a decision to grant incentives.[115] Another useful step in assessing tax incentives is to focus on the net economic gains through measuring "incentive utilization", such as job creation by companies who receive incentives to understand overall economic outcomes for a state or city like the growth in

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102. Murray & Bruce, *supra* note 22, at 26.

103. *Id.*

104. Pollard, *supra* note 5, at 18.

105. Murray & Bruce, *supra* note 22, at 26.

106. *Id.*

107. *Id.*

108. *Id.* at 27.

109. Christopher J. Coyne & Lotta Moberg, *The Political Economy of State Targeted Benefits*, Mercatus Ctr. George Mason Univ., 10 (2014).

110. *Id.*

111. Murray & Bruce, *supra* note 22, at 26.

112. Carlianne Patrick, *The Economic Development Incentives Game: An Imperfect Information, Heterogeneous Communities Approach*, Annals of Regional Science, Aug. 2014, at 139.

113. Pollard, *supra* note 5, at 18.

114. Patrick, *supra* note 112, at 139.

115. Murray & Bruce, *supra* note 22, at 28.

nonfarm employment.[116] This approach eliminates the problems with EIA because it does not force a distinction to be made between what new activity is due to incentives and what is not.[117] Additionally, the "crowding out effect" is built into the analysis and does not distort the model's results.[118] When this insight is used along with the fiscal impact analysis, a more realistic prediction of the financial impact of the tax incentives is possible.[119] Even through the use of tools like FIT and LOCI can assist communities in understanding the benefits and costs of an incentive action, they are underutilized.[120] This article later outlines a proposal for increasing the use of these tools by economic professionals and public officials.

B. *Tax Incentives Pass Hidden Costs to Communities*

Tax incentives have become an expectation in the economic development recruiting process. Despite concerns that incentives draw communities into no-win situations and reduce money spent on factors that contribute to an attractive business climate such as workforce development and infrastructure, incentives are here to stay.[121] Community leaders rationalize their incentive use based on the belief that if their community does not offer incentives, another community will.[122]

1. Tax Incentives Encourage No Win Bidding Competitions

The incentive process is structurally skewed against communities; there are typically more communities seeking an economic development project or company relocation than there are companies interested in moving to a community.[123] Phrased another way, the supply of possible locations exceeds the demand by business and industry to relocate or make investments.[124] The result is a competitive bidding war with tax incentives as the key currency to even initiate a conversation about a company or industry coming to an area.[125] Companies, as rational actors, utilize this market demand to extract the best possible deal for themselves. Policymakers weaken their bargaining position further by assuming that "all growth is good" and not considering the costs if the company should fail to deliver on its promises.[126]

Comparing the possible actions that two communities in an economic development recruitment competition could take showcases the problems with

116. *Id.* at 27.
117. *Id.*
118. *Id.*
119. Pollard, *supra* note 5, at 18.
120. Patrick, *supra* note 112, at 139.
121. *See* Siegel, *supra* note 6, at 70.
122. John J. Garman, *The New War between the States: A Look at the Incentives to Recruit Foreign Automakers to the South, Daimlerchrysler Corp. v. Cuno, and the European Union's Prohibition against State Aid*, 24 T. M. COOLEY L. REV. 313, 332 (2007).
123. *See* Siegel, *supra* note 6, at 71.
124. *Id.*
125. *Id.*
126. Bartik, *supra* note 11, at 146.

tax incentives and their seeming irresistibility. If Community A offers tax incentives, but Community B does not, Community A will likely win the business competition at a moderate cost.[127] The tax incentives are kept at a reasonable level since there is no competing community driving the price upward.[128] If neither community offers incentives, then the company or industry makes its decision solely on other factors like workforce, location, and quality of life.[129]

If both communities offer tax incentives, a bidding war could escalate with each community making counteroffers to best the other's incentive package.[130] The nearly identical bids from the communities will cause the company or industry to make its decision between the two communities based on other factors since it will receive generous tax breaks wherever it locates.[131] Companies are aware of the bidding war dynamic and exploit it for their benefit.[132] Using internal company documents, Professor Carlianne Patrick examined BMW negotiations with South Carolina about a prospective investment.[133] South Carolina increased its tax incentive package from $35 million to $150 million after Nebraska made a competing bid.[134] However, company documents revealed that Nebraska was not under consideration for the BMW investment despite its bid.[135] Thus, the "winning" community achieved a hallow victory; paying more for a result which was based on factors that have nothing to do with the incentive package.[136] The "winner's curse" is a term coined by economists to describe situations where the cost of the tax incentive exceeds the return from the economic development project.[137] Applications of competitive bidding theory to the economic development context have demonstrated that communities, on average, fall victim to the winner's curse.[138]

Communities offering incentives believe they are well positioned to attract a new company regardless of what a competing community does.[139] In contrast, not offering incentives only succeeds in attracting the company or industry if no other community offers incentives, which is highly unlikely.[140] If a community knew that no other community was offering incentives, there is a high probability it would then offer modest tax incentives to ensure it attracted

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127. Siegel, *supra* note 6, at 72.

128. *Id.*

129. Scott J. Ziance, *Making Economic Development Incentives More Efficient*, 30 URB. LAW. 33, 61 (1998).

130. Siegel, *supra* note 6, at 72.

131. *Id.*

132. Carlianne Patrick, *Identifying the Local Economic Development Effects of Million Dollar Facilities*, ECON. INQUIRY 1737, 1745 (2016).

133. *Id.*

134. Patrick, *supra* note 132, at 1746.

135. *Id.*

136. Siegel, *supra* note 6, at 73.

137. Patrick, *supra* note 112, at 141.

138. Robbins & Miller, *supra* note 60, at 334.

139. Daniel P. Petrov, *Prisoners No More: State Investment Relocation Incentives and the Prisoners' Dilemma*, 30 CASE W. RES. J. INT'L L., 71, 81 (2001).

140. *Id.*

the company or business despite the possibility of the "winner's curse".[141] Since companies and industries are seeking to generate maximum profits, soliciting incentives packages is a rational choice for them; since communities are seeking to generate economic development, offering incentives packages are a rational choice for them, despite the high costs associated with a potential bidding war.[142]

If a community is able to win a bidding war on the strength of a generous incentives package, the community is primed to commit more resources for the retention of the company or industry because of the sizable financial commitment the community has already made.[143] An illustration of this effect is when the city of Arlington, Texas attracted General Motors away from Michigan through the use of abatements.[144] A few years later, when General Motors threatened to relocate again, Arlington granted additional abatements so its sizeable earlier investment would not be wasted.[145] These tax incentives were granted even through GM slashed 600 jobs during the same time period.[146]

2. Tax Incentives Reduce Investment in Communities

When a tax incentive package results in a revenue shortfall for a community, the local government must respond with either a tax increase on existing residents and businesses or a reduction in services.[147] The newly attracted company and existing companies can be harmed by the resulting cuts to public services that they rely on.[148] Texas provides a vivid illustration of how tax incentives can minimize investment by the government within the community. Under the leadership of Governor Rick Perry, Texas led the nation in its use of tax incentives, giving out close to $19 billion per year.[149] While Governor Perry could eagerly tout that Texas also led the nation in job creation, the state also had the third highest number of jobs paying at or below the minimum wage and had to cut public education spending by $5.4 billion.[150]

A detailed look at the Manor school district in Texas demonstrates the tradeoff between tax incentives and education spending.[151] In 2005, Samsung was given tax abatements for fifteen years valued at $112 million to build a fabrication plant.[152] The abatement was done through the Chapter 313 program which provides tax relief from local property taxes.[153] The abatement is fixed

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141. Patrick, *supra* note 112, at 141.

142. Siegel, *supra* note 6, at 74.

143. *Id.*

144. *See* Charles Mahtesian, *Romancing the Smokestack*, GOVERNING MAG. 36–40 (Nov. 1994).

145. *Id.*

146. *Id.*

147. Patrick, *supra* note 112, at 141.

148. *Id.*

149. *See* Louise Story, *Lines Blur as Texas Gives Industries a Bonanza*, N.Y. TIMES, Dec. 2, 2012, http://www.nytimes.com/2012/12/03/us/winners-and-losers-in-texas.html?pagewanted=all.

150. *Id.*

151. *Id.*

152. *Id.*

153. Nathan Jensen, *Exit Options in Firm-Government Negotiations: An Evaluation of the Texas Chapter 313 Program*, U. OF TX 1, 8 (2014), http://www.natemjensen.com/wp-content/uploads/2017/02/Jensen-Chapter-313-Research-Paper.pdf.

under Texas law based on the investment's location and the size.[154] School boards must approve the amounts they are giving up, which the school district did in this case.[155] Even as enrollment tripled from 2000, spending decreased by $540 per student in the 2012 as the full effects of the abatement were felt.[156] Samsung reported that the fabrication plant created 2,500 payroll jobs and 2,000 contract employee positions, with only 495 employees living in the Manor school district.[157] When Samsung expanded the plant in 2012, it received an additional deal for $83 million in tax incentives.[158] Projections are that the expansion project will generate $65.2 million in property tax revenues over the next 16 years but Samsung will only have to pay $3.8 million due to the tax incentives.[159] The decrease in educational quality because of the surge in students and decline in funding has sparked criticism from citizens concerned about long-term educational skills.[160] Examples such as Texas demonstrate that tax incentives can reduce investment in factors that are important to an area's long term growth such as infrastructure and education at a time when the demand for these community resources is increasing.

C. Why Policymakers Continue to Use Tax Incentives

Despite the compelling data that questions the effectiveness of tax incentives, policymakers will continue to use them. Public officials believe that they must offer the incentives to remain competitive with other communities in the hunt for jobs for their constituents.[161] Tax incentives allow public officials to point to concrete action they are taking for the benefit of their communities and to reap the political gain when companies or industries do decide to locate in the community.[162] Tax incentives allow politicians to create the illusion that they are responsible for the economic growth with the seeming cause and effect of incentives leading directly to investment. Since most states have weak disclosure mechanisms for tracking tax incentives or the results from the incentives, political actors get to reap the positive press of announcing job growth without enduring the accountability of public scrutiny.[163]

Members of the executive branch at state and local levels of government, such as governors and mayors, experience unique pressure to appear to be

154. *Id.*

155. Story, *supra* note 149.

156. *Id.*

157. *Id.*

158. WORKERS DEFENSE PROJECT, The Failed Promise of the Texas Miracle, 28 (Dec. 2015) (available at http://www.workersdefense.org/wp-content/uploads/2016/02/The-Failed-Promise-of-the-Texas-Miracle-compressed-file.pdf).

159. Kirk Ladendorf, *City Details Samsung Plant Deal*, AUSTIN AMERICAN-STATESMAN (Jun. 12, 2010), https://www.pressreader.com/usa/austin-american-statesman/20100612/283253094153243, also available at https://www.newspapers.com/newspage/435068692/.

160. Workers Defense Project, *supra* note 158.

161. Peter Enrich, *Business Tax Incentives: A Status Report,* 34 URB. LAW 415, 416 (2002).

162. *Id.*

163. Dale A. Oesterle, *State and Local Government Subsidies for Businesses: A Siren's Trap*, 6 OHIO ST. ENTREPREN. BUS. L.J. 491, 492 (2011).

generating economic growth.[164] For example, John Kasich criticized the use of tax incentives for economic development while a Congressman.[165] As governor, Kasich used authority previously granted by the legislature to offer over $100 million in tax incentives to two Ohio based companies, American Greetings Company and Bob Evans, to retain them in the state.[166] Governors and mayors are often granted significant discretion by the legislative branch in their use of incentives; the more discretion the official has, the more incentive business firms have to lobby the official.[167] The recipients of tax incentives are highly motivated to ensure that tax incentive programs remain robust and are willing to support public officials with campaign contributions.[168] For a politician, it's much easier to be cutting a ribbon at a new plant opening than explaining to voters why a company decided to move away under the politician's watch.[169] Losing a major local employer can remove citizens' primary source of income and also depress property values, leading to discontent among voters.[170] In addition to the desire for positive optics, there have been reports of public officials receiving campaign contributions from companies that receive generous tax incentives.[171] For example, Kasich received campaign contributions from Bob Evans Farms and the CEO of American Greetings Company for his 2016 presidential campaign after previously awarding both companies generous tax incentives.[172]

Tax incentives allow public officials to exert influence over potential tax incentives recipients, often resulting in an exchange of incentives for campaign cash. In Texas, Governor Rick Perry received $250,000 for his 2012 campaign for the Republican nomination from Dallas-based tax consultant G. Brint Ryan.[173] Ryan runs Ryan LLC which specializes in helping large corporate clients such as Verizon and ExxonMobil receive state and local tax incentives and gets a percentage of benefits the firm returns to its clients.[174] In one Texas economic development tax incentive program, 82 of the 222 awards from March

164. Jensen & Malesky, *supra* note 8.

165. Oesterle, *supra* note 163, at 493.

166. *Id.* at 493; Mark Niquette, *States Use Tax Breaks in War for Jobs*, BLOOMBERG BUSINESSWEEK (May 4, 2011), http://www.businessweek.com/ magazine/content/1 1_20/b4228029534552.htm?campaign-id=yhoo.

167. Robbins & Miller, *supra* note 60, at 312.

168. Oesterle, *supra* note 163, at 493.

169. David Brunori, *Pay to Play? Campaign Contributions and Tax Incentives*, FORBES (Oct. 29, 2014), https://www.forbes.com/sites/taxanalysts/2014/10/29/pay-to-play-campaign-contributions-and-tax-incentives/#32e6f46120bb.

170. Robbins & Miller, *supra* note 60, at 312.

171. Brunori, *supra* note 169. South Carolina Governor Nikki Haley was accused of receiving $100,000 in campaign contributions from companies that benefited from tax incentives. During New Jersey Governor Chris Christie's time as the Chairman of the Republican Governors Association (RGA), it was reported that if a company donated to the association it was more likely to get incentives from New Jersey. Lockheed Martin donated $50,000 to the RGA and then applied for $100 million in tax incentives for expansion in Camden, NJ.

172. Stephen Koff, *John Kasich's Campaign Cash: the Notables Who Gave, the Consultants Who Got*, Cleveland.com (Oct. 20, 2015), https://www.cleveland.com/open/2015/10/john_kasichs_campaign_cash_the_notables_who_gave_the_consultants_who_got.html.

173. Story, *supra* note 149.

174. *Id.*

2008 to June 2012 went to Ryan LLC represented companies.[175] Ryan had donated more than $500,000 to Perry's campaigns over that time period in addition to later chairing Perry's presidential political action committee.[176] Ryan also donated over $150,000 to the lieutenant governor's 2012 campaign and was later appointed by the lieutenant governor to a commission created to evaluate the impact of state tax incentive programs.[177] He invited Samsung, one of his clients, to testify to the commission about the benefits of tax incentives.[178] This illustrates the way tax incentives can foster a climate of cronyism by elevating the importance of a company's political connections instead of its economic benefit.[179]

Job creation and landing significant economic development projects is often a landmark, career-defining moment which public officials will tout in future campaigns. After Foxconn announced it would build a plant in Wisconsin, both Paul Ryan and Scott Walker began running digital ads promoting their involvement with the project.[180] In Walker's reelection ads, he showcased the number of jobs created in Wisconsin featuring a worker saying "Thanks Scott" as he goes to work and a montage of job announcement news stories.[181] In Texas, Rick Perry is featured in multiple ads extolling the amount of job creation in Texas and memorably flips a "Closed" sign over to "Texas is Open for Business".[182] As was discussed earlier in this article, politicians have referred to their involvement in tax-incentive-fueled economic development frequently on the campaign trail.[183]

In Mississippi, Governor Bryant received over $11.2 million dollars in campaign contributions between FY 2010 (the year in which his candidacy for governor began) and FY 2016.[184] The salary for the Governor of Mississippi is set by statute at $122,160.[185] During the first five fiscal years, Governor Bryant's administration oversaw $707,216,301 in grant and loan incentives (an average of $141 million per year) which were not the result of foregone revenue

175. *Id.*

176. Fredreka Schouten & Christopher Schnaars, *Romney, Perry Tap Different Sources for Fundraising*, USA TODAY (Nov. 17, 2011), http://usatoday30.usatoday.com/news/politics/story/2011-10-16/perry-romney-fundraising/50796252/1.

177. Coyne & Moberg, *supra* note 109, at 27.

178. *Id.*

179. *Id.* at 25–26.

180. Jessie Opoien, *Paul Ryan, Scott Walker Launch Ad Campaign Promoting Foxconn Deal in Wisconsin*, The Capital Times (Aug. 1, 2017), http://host.madison.com/ct/news/local/govt-and-politics/election-matters/paul-ryan-scott-walker-launch-ad-campaign-promoting-foxconn-deal/article_bc1b86b4-f466-5bdc-96e2-5810ad1e1105.html; James Wigderson, *Walker Campaign Launches Digital Ad Campaign Promoting Foxconn Announcement*, Right Wis. (Aug. 1, 2017), https://rightwisconsin.com/2017/08/01/walker-campaign-launches-digital-ad-campaign-promoting-foxconn-announcement.

181. Scott Walker, Creating Jobs, YOUTUBE (Sept. 4, 2014), https://www.youtube.com/watch?v=GhQCNvGSEQA; Scott Walker, It's Working, YOUTUBE (Aug. 13, 2014), https://www.youtube.com/watch?v=4Jcv8tBoa6k.

182. Texas Tribune, *Campaign Ads: Rick Perry 2010 Governor Race*, YOUTUBE (July 18, 2011), https://www.youtube.com/watch?v=lmIqH7uj80M.

183. FaithIntsu, *supra* note 58; ALDAH, *supra* note 64.

184. *See* Campaign Finance Search, State of Mississippi: Office of the Secretary of State http://www.sos.ms.gov/Elections-Voting/Pages/Campaign-Finance-Lobbying.aspx.

185. MISS. CODE § 25-3-31 (2018) (Salaries of elective statewide and district officers).

but rather appropriation of hard dollar funds, federal allocations, or the issuance of bonds to fund programs.[186] The cost per job to Mississippi is estimated at $18,157 per worker.[187] Governor Bryant was reelected to a second four-year term commencing in January 2016. During the first full fiscal year of Governor Bryant's second and final term due to term limits, his administration oversaw $77,633,969 in similar incentives, a reduction of an average of over 46% in tax incentives, from a five-year annual average of $141,443,260.[188] Mississippi ethics laws prohibit the appearance of improprieties or breach of the public trust by public employees.[189] The ethics laws are present to provide the public with a sense of surety their elected officials aren't engaging in self-dealing or nepotism.

The literature currently does not include an analysis of tax incentives during the first term of a term limited politician in comparison with their final term. An analysis might show a disparity in the distribution of incentives between the two terms, with a possible increase during the final year of a politician's term as they prepare to leave the governmental sector. During the final full year of former Mississippi Governor Haley Barbour's second term, FY 2011, Mississippi offered $330,020,312 in grant and loan incentives, an increase of 282% from the previous year and an increase of 207% compared to the following year, for similar incentives.[190]

The Supreme Court of the *United States in Citizens United v. Federal Election Commission* held the First Amendment of the United States Constitution protects the free speech of corporations, labor unions and other associations.[191] The *Citizens* holding removes the prohibitions from the law which limited the amount of political spending such organizations could provide directly and indirectly to political candidates, and deems political spending is protected under the free speech clause of the First Amendment.[192]

In light of *Citizens* and state ethics laws, political candidates are often placed in a compromising position. The proverbial political playbook suggests candidates must raise significant monetary funding in order to disseminate their name and message to the voting populace through various forms of media, thereby increasing their chances of becoming elected. However, state ethics laws similar to those in Mississippi prohibit candidates from raising a suspicion from the general public of a breach of trust by the candidate.[193] In examining the

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186. *See* Mississippi Incentives Report 2016, at 25. https://d71ad12c3ec51c77ff3d-a5f8631cb8ff4476a529cdcf2eaaa70e.ssl.cf5.rackcdn.com/2017/02/FY2016-Incentives-Report-Final.pdf (Governor inaugurations in Mississippi occur in the middle of a fiscal year. As a result of the current reporting format it is not known which administration is responsible for the incentive programs).

187. *Id.*

188. *See* Mississippi Incentives Report 2017, at 7. https://d71ad12c3ec51c77ff3d-a5f8631cb8ff4476a529cdcf2eaaa70e.ssl.cf5.rackcdn.com/2018/02/FY2017-Incentives-Report-Final.pdf

189. *See, e.g.*, MISS. CODE § 25-4-101 (2018) (Declaration of public policy).

190. *See* Mississippi Incentives Report 2012 at 9. https://www.mississippi.org/assets/docs/library/incentives-report.pdf.

191. *See* Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 392–93 (2010).

192. *Id.*

193. *See* National Conference of State Legislatures, *Penalties for Violations of State Ethics and Public Corruption Laws* (Jan. 21, 2019), http://www.ncsl.org/research/ethics/50-state-chart-criminal-penalties-for-

campaigns and administrations of public officials, the appearance of impropriety must exist where a candidate/office holder raises eight-figure financial contributions for a job which will pay only a low-end six figure salary. Furthermore, the granting of tax payer monies through incentives to campaign contributors businesses must only increase the suspicion. The *Citizens* ruling, while protecting the free speech provisions of the Constitution, can make it difficult to enforce the ethics laws of the states, as large corporate stakeholders are now able to contribute to political candidates, who then have the ability to reward their contributors with large tax incentives, thereby allowing companies to make small investments in candidates in exchange for a large financial return. Although an express quid pro quo is prohibited, *Citizens* makes the appearance of impropriety all the more difficult to prove.

Such anecdotal examples provide further support to the findings of Nate Jensen, which demonstrated politicians use tax incentives to take credit for job creation and as a useful tool for ensuring reelection.[194] To test for this, Jensen asked survey respondents how a hypothetical 1,000 job economic development project locating in their state or in a different state (with and without the use of tax incentives) would impact their voting decision regarding an incumbent governor.[195] Notable results were that incumbent governors received a 5% voting bump among independents if they used tax incentives and landed the project versus governors that landed the project but did not use incentives.[196] This finding is consistent with the theory that incentives are used as signals to show that an area is pro-business with a leader who is actively recruiting industry.[197] Even more revealing were Jensen's results when the incumbent governor's state lost the project; in that circumstance, independent voters gave the tax-incentive-offering governor an 11% voting bump compared to a governor that lost the project and offered no incentives.[198] This affirms the notion that citizens believe leaders have tools to attract business to a community and will punish a leader they perceive to not be using those tools.[199] The message that politicians have received and put into action is that offering tax incentives is politically helpful regardless of whether the state lands the project or not.[200]

IV. A NEW APPROACH: TOOLS FOR STRATEGICALLY USING TAX INCENTIVES

A. Increasing Knowledge in the Incentives Bidding Process

Local communities often face a knowledge deficit in the economic development process compared to companies that have information about the firm's short term and even long term economic viability in an area.[201] The lack

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194. Jensen & Malesky, *supra* note 8.
195. *Id.*
196. *Id.*
197. Robbins & Miller, *supra* note 60, at 314.
198. Jensen & Malesky, *supra* note 8.
199. Robbins & Miller, *supra* note 60, at 314.
200. Jensen & Malesky, *supra* note 8.
201. Robbins & Miller, *supra* note 60, at 315.

of information available to communities in the midst of the bidding process to attract a new company creates a climate where political actors unwisely offer tax incentive packages without properly considering the consequences.[202] Since companies often insist on secrecy during the negotiation process, multiple communities seeking to attract a company can only rely on the company's representations of how a particular community's bid stands in relation to others.[203] Furthermore, many states fail to use rigorous systems of evaluation during the bidding process to analyze the potential benefits and costs of tax incentives or to evaluate the success of the incentives after they have been granted.[204] Only 13 states have evaluation programs that assist policymakers in the incentive offering process.[205] Through increased transparency in the bidding process and imposing the use of more rigorous evaluation models for accessing incentives, public officials will be more strategic in their use of incentives.

1. Creating More Transparency

Public officials often claim that if tax incentive negotiations with a company are open to the public, it will hamper their ability to reach a deal or scare off the company from engaging in the process.[206] Fifteen states took steps to ensure that negotiations and bids are hidden from public view by exempting economic development negotiations from their open records or "sunshine" laws.[207] Eleven more states, including Alabama, have laws which make records that relate to state economic development commissions confidential.[208] Under the Alabama law, public officials are allowed to sign a binding confidentiality agreement with the prospective company; Alabama used this provision in its pursuit of ThyssenKrupp to shield all details from public inspection.[209]

Opening bids to public inspection would not dissuade companies from engaging in negotiations and would be beneficial to communities.[210] It would prevent communities from having to exclusively rely on the firm to provide information about competing bids from other communities and clearly show the value that other communities have assigned to attracting the project.[211] Open bids would reduce the likelihood that a community falls victim to the "winner's curse", which is overestimating the potential benefits of a company and offering

202. *See* Stephen Ellis, Grant Hayden & Cynthia Rogers, *A Game Changer for the Political Economy of Economic Development Incentives*, 56 ARIZ. L. REV. 954, 974 (2014).

203. *Id.* at 961.

204. *Id.* at 962.

205. *See* PEW CTR., *supra* note 21.

206. Aimee Edmondson & Charles N. Davis, *"Prisoners" of Private Industry: Economic Development and State Sunshine Laws*, 16 COMM. L. & POL'Y 317, 320 (2011).

207. *Id.* at 323.

208. *Id.* at 325.

209. *Id.* at 325–326.

210. Sherry L. Jarrell, J. Neal Robbins, Gary L. Shoesmith & Brendan A. Fox, *Economic Development Incentives and the Legal and Economic Issues of Open versus Sealed Bids*, 7 S.C. J. INT'L L. & BUS. 27, 28 (2011).

211. Carlianne Patrick, *Does Increasing Available Non-Tax Economic Development Incentives Result in More Jobs?*, 67 NAT'L TAX J. 351, 365 (2014).

too much in tax incentives resulting in a net loss.[212] The public disclosure of incentive offers would provide economic developers with more information as they craft bids and bolster their bargaining position through knowing comparable offers.[213] This increased transparency would have positive side effect of giving researchers more information to study development incentives.[214] Finally, public disclosure is consistent with the practice of international bodies like the European Union which requires its member states to publicly disclose tax incentives.[215]

An additional safeguard to increase accountability and transparency would be to use an independent panel to determine which companies receive tax incentives.[216] In Utah, the governor's power is checked by allowing decisions to be made by a panel outside of state government.[217] By removing the power of an individual policymaker to grant incentives, it lessens the impact of political pressure on the incentive decision.[218]

The Governmental Accounting Standards Board's Statement No. 77 requires governments that enter into tax abatement agreements to disclose the following information about the agreements, beginning with all statements for periods beginning after December 15, 2015. The disclosure shall include:

- Brief descriptive information, such as the tax being abated, the authority under which tax abatements are provided, eligibility criteria, the mechanism by which taxes are abated, provisions for recapturing abated taxes, and the types of commitments made by tax abatement recipients
- The gross dollar amount of taxes abated during the period
- Commitments made by a government, other than to abate taxes, as part of a tax abatement agreement.[219]

While this document is to be used for the purpose of educating the public with information they need to evaluate the financial health of governments, make decisions, and assess accountability, it can also be used to keep government officials accountable for their actions when using incentives.

2. Improving Incentive Assessment

It is common for communities to have large economic development recruiting staffs that are quite adept at marketing but lack the ability to perform fiscal analysis to determine a project's benefits and costs.[220] As outlined earlier

212. Robbins & Miller, *supra* note 60, at 337.

213. Bartik, *supra* note 11, at 149.

214. *Id.*

215. *Id.*

216. Lesley Mitchell, *Nonstate Panel to Decide Which Companies Get Incentives*, SALT LAKE TRIB., Mar. 14, 2005.

217. *Id.*

218. Coyne & Moberg, *supra* note 109, at 30.

219. Governmental Accounting Standards Board, Statement No. 77: *Summary of Statement No. 77: Tax Abatement Disclosures*, (issued Aug. 2015) https://gasb.org/jsp/GASB/Pronouncement_C/GASBSummaryPage&cid=1176166392168.

220. Patrick, *supra* note 112, at 146.

in this article, fiscal impact analysis provides more useful insight than the commonly used EIA model.[221] Utah is an example for other states to follow because it uses fiscal impact analysis to assess economic development before offering any tax incentives.[222] Included in Utah's model is a specific consideration of the burden the new company will create on government services and tax revenue.[223] For tax incentives to be offered, the model must show that the state will have a positive return on its investment and that the company will pay higher wages than the area's average.[224] State governments should require that all potential incentives be examined through a cost-benefit analysis with emphasis on wage effects and the tax revenue impact on the community.[225] Using the FIT or LOCI models previously discussed would provide decision makers with valuable insight and provoke responsible debate on the merits of a particular incentive decision.[226]

South Carolina law currently requires that a cost benefit analysis be conducted and released to the public after the incentive agreement is finalized and the project is publicly announced.[227] Although release of the analysis prior to an incentive agreement would be preferable, allowing the public to review the data public officials reviewed before making the decision to offer incentives can assist with critiquing public officials' judgment.[228] Even more accountability can be imposed on public officials by placing a hard cap on the dollar volume of incentives a community can offer in a year.[229] Additional criteria, like requiring businesses to legally certify that without the incentive they would have located elsewhere can build increased accountability and screen out some abusive business practices.[230]

Combining more comprehensive evaluation methods of incentives with a procedural duty of care for local governments to consult the results would increase political accountability.[231] Commentators have noted that public officials representing citizens in attracting economic development has many parallels with a corporate board's representing shareholders' interests in a private business setting.[232] Like shareholders electing directors, citizens have voting power to elect public officials.[233] Although both shareholders and citizens have "ownership" (shareholders by owning corporate stock and citizens by choosing to live in a community), both groups are separated from the day-to-day control.[234] Furthermore, the goals of managers/public officials (personal success)

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221. *Id.*
222. Elaine Stuart, *No More Blind Bids*, 39 ST. GOV'T NEWS 6 (1996).
223. *Id.*
224. *Id.*
225. Bartik, *supra* note 11, at 149–50.
226. Patrick, *supra* note 112, at 139.
227. Edmondson & Davis, *supra* note 206, at 344.
228. *Id.*
229. Bartik, *supra* note 11, at 148.
230. *Id.* at 149.
231. Ellis, *supra* note 202, at 973–74.
232. *Id.* at 969–971.
233. Ziance, *supra* note 129, at 47.
234. Ellis, *supra* note 202, at 970.

can diverge from the goals of shareholders/citizens (company- or community-wide success).[235]

Corporate directors have certain fiduciary duties including the duty of care, which requires that directors use prudence in making decisions for a business.[236] A shareholder can sue if they believe this duty of care has been violated.[237] The business judgment rule limits the duty of care by preventing courts from reviewing a corporate board's substantive business choices.[238] The actual decision cannot be evaluated but the quality of procedures and information gathering the directors used to make a decision can be examined by a court.[239] Imposing a duty of care on public officials regarding tax incentives by allowing private citizens to sue public officials for failing to use appropriate data collection procedures would serve as a more immediate check on improper behavior than an election.[240] By ensuring that public officials used a standardized process for evaluation, perhaps a legislatively codified series of evaluative steps, citizens would at least know that public officials had confronted the costs as well as the benefits of a project.[241] Extending the business judgment rule, such a duty of care would not prevent public officials from offering tax incentives and would not subject them to liability for the results of an incentive decision; only for the process used to make the decision.[242] This would alleviate concerns about reducing sovereign immunity too broadly, while still creating more alignment between the goals of public officials and citizens.[243]

B. Improving Incentive Design

The harm that communities experience from tax incentives can be mitigated through designing incentives so that companies are penalized for failing to live up to their promises and focusing incentives on long term factors that create community-wide, not just company-focused, growth. As the use of tax incentives has grown, communities are more commonly including penalty or "clawback" provisions, which require a company to pay a community back if the company relocates or fails to create the number of jobs it promised.[244] The cost of enforcing these penalty provisions limits their benefit to communities; it is difficult to reclaim something you have already given away.[245] Additionally, communities are often hesitant to enforce these penalties against a company for fear of being labeled anti-business.[246]

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235. Ziance, *supra* note 129, at 47–48.

236. *See* Daniel Fischel, *The Business Judgment Rule and the Trans Union Case,* 40 BUS. L. 1437, 1444 (1985).

237. *Id.*

238. *See* Smith v. Van Gorkom, 488 A.2d 858, 872–73 (Del. 1985).

239. *See id.* at 872–73.

240. Ellis, *supra* note 202, at 974.

241. Lynn A. Stout, *In Praise of Procedure: An Economic and Behavioral Defense of* Smith v. Van Gorkam *and the Business Judgment Rule,* 96 NW. U. L. REV. 675, 676 (2002).

242. Ellis, *supra* note 202, at 974.

243. Ziance, *supra* note 129, at 51.

244. Bartik, *supra* note 11, at 150–51.

245. Ziance, *supra* note 129, at 44.

246. *Id.*

A better approach is for communities to structure their tax incentives as tax credits which are awarded to the company on an annual basis if the company meets objective targets in hiring or investment.[247] Tax credits are the most effective policy instrument in affecting firm-level tax liabilities and allow for communities to encourage certain types of behavior to receive the credit.[248] Examples include a wage based tax credit if a company hires workers above a certain pay grade or job training credit that rewards a company for investing in the job skills of its work force.[249] Finally, tax credits can be awarded once the objective measure is achieved, preventing communities from having to reclaim the money if a company falls short.[250]

Indiana and Louisiana are two states that serve as an example of how tax incentives can be structured to hold companies accountable.[251] Indiana's tax credit agreement requires a company to maintain operations at a location for twice as long as the term of the tax credit and requires the average wages of employees to be more than the average county wage.[252] Louisiana requires companies to create a certain number of jobs within three years or the company's tax liability increases by the amount of any tax credits taken previously.[253] Additionally, the company must pay its employees one and half times the minimum wage.[254] By linking incentives to job quality and wages, states can insure the assumptions built into the benefit-cost analysis are fulfilled.[255] Communities can also ensure accountability by restricting incentives to the year of the activity that triggers the award instead of paying out incentives for a term of years.[256]

Communities' incentive use should be influenced by how companies select a location.[257] Studies demonstrate the process occurs in two stages with the company first determining profit-maximizing locations, based on factors such as well-educated workers and good infrastructure, and then use incentives to assist with differentiating similar locations.[258] Incentives act as a "tie breaker" at most.[259] Armed with this knowledge, communities should make sure that incentives they do offer result in positive effects to worker training levels or infrastructure so that the area is more attractive to companies in the future and to companies currently in the area.[260] Incentives that focus on customized job

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247. *Id.* at 46.

248. Murray & Bruce, *supra* note 22, at 18.

249. *Id.* at 19.

250. Bartik, *supra* note 11, at 151.

251. Ivan C. Dale, *Economic Development Incentives, Accountability Legislation and a Double Negative Commerce Clause*, 46 ST. LOUIS U. L.J. 247, 265 (2002).

252. Jennifer L. Gilbert, *Selling the City Without Selling Out: New Legislation on Development Incentives Emphasizes Accountability*, 27 URB. LAW. 427, 483–84 (1995).

253. Dale, *supra* note 251.

254. *Id.*

255. Bartik, *supra* note 11, at 150.

256. *Id.*

257. Patrick, *supra* note 211, at 378.

258. Ziance, *supra* note 129, at 61.

259. Robbins & Miller, *supra* note 60, at 309.

260. Coyne & Moberg, *supra* note 109, at 12.

training or the construction of infrastructure benefit the community regardless of a particular company's long-term viability.[261] Even if the company moves away one day, a highway or the majority of the trained labor force will remain in the community, providing an enduring benefit.[262]

V. CONCLUSION

As they pursue economic development goals, public officials will continue to use tax incentives because of their political benefits. However, improved accountability and incentive design allow communities to recapture some of the revenue and investment that a community sacrifices when it devotes resources to a tax incentive package. The solutions presented for mitigating the harm of tax incentives are designed to increase the quality of knowledge in the incentive bidding process and to increase the effectiveness of incentive implementation. Incentives focused on infrastructure and workforce development can provide a sustainable foundation for a favorable business climate and long term economic growth. This foundation makes a community more competitive in economic development and reduces the area's future reliance on tax incentives to attract and retain companies. Potential future areas of scholarship based on this article include continued refinement of tax incentive impact measures, increased tax incentive reporting to ensure accountability and further research connecting campaign contributions to incentive actions by public officials. By using tax incentives strategically, communities can come closer to reaping the whole package of economic development benefits that a new company or industry promises and can disarm politicians from causing long-tail harm to the constituency after the politician has left office.

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261. Bartik, *supra* note 11, at 152.
262. *Id.*