

# Senate Bill 518

Sponsored by Senator WALKER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Economic and Community Development Department to file annual Unified Economic Development Report detailing economic development assistance. Requires businesses receiving state economic development assistance to report annually on progress meeting economic development objectives. Provides that state may recapture economic assistance upon failure of recipient to satisfy economic development objectives. Permits state to release information regarding financial incentives provided to businesses for purposes of economic development.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to economic development; creating new provisions; amending ORS 285A.090; and declaring  
3 an emergency.

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

5 **SECTION 1. As used in Sections 1 to 5 of this 2007 Act:**

6 (1) **"Base years" means the first two complete calendar years following the effective date**  
7 **of the receipt of development assistance.**

8 (2) **"Business organization" means any form of business organization authorized by law,**  
9 **including but not limited to a proprietorship, partnership, corporation, limited liability com-**  
10 **pany, limited liability partnership or professional corporation.**

11 (3) **"Date of assistance" means the date the development assistance agreement com-**  
12 **mences, triggering the period during which the recipient is obligated to create or retain jobs**  
13 **and continue operations at the specific project site.**

14 (4)(a) **"Development assistance" means:**

15 (A) **Tax credits and tax exemptions given as an incentive to a recipient pursuant to an**  
16 **initial certification or an initial designation made by the Economic and Community Devel-**  
17 **opment Department;**

18 (B) **Grants or loans under ORS chapter 285A or 285B given as an incentive for a business**  
19 **organization; and**

20 (C) **All other programs and tax credits designed to promote large business relocations**  
21 **and expansions.**

22 (b) **"Development assistance" does not include:**

23 (A) **Tax increment financing;**

24 (B) **Assistance provided for development of enterprise zones pursuant to local ordinance;**

25 (C) **Participation loans; or**

26 (D) **Financial transactions through statutorily authorized financial intermediaries:**

27 (i) **In support of small business loans and investments; or**

28 (ii) **Given in connection with the development of affordable housing.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (5) "Development assistance agreement" means any agreement executed by a granting  
2 body and the recipient setting forth the terms and conditions of development assistance to  
3 be provided to the recipient.

4 (6) "Full-time, permanent job" means a job in which an employee works at least 35 hours  
5 per week for an indefinite period of time.

6 (7) "Granting body" means the Economic and Community Development Department, an  
7 agency of the executive department as defined in ORS 174.112, or any division or designee  
8 of the department or an agency providing development assistance that has reporting re-  
9 quirements under sections 1 to 5 of this 2007 Act, and any successor agencies.

10 (8)(a) "New employee" means a full-time, permanent employee who represents a net in-  
11 crease in the number of the recipient's employees statewide.

12 (b) "New employee" includes an employee who previously filled a new employee position  
13 with the recipient and who was rehired after or called back from a layoff that occurs during  
14 or following the base years.

15 (c) "New employee" does not include any of the following:

16 (A) An employee of the recipient who performs a job in this state that was previously  
17 performed by another employee of the recipient or an employee of any other employer in this  
18 state, if that job existed for at least six months before the recipient hired the employee.

19 (B) A child, grandchild, parent or spouse, other than a spouse who is legally separated  
20 from the individual, of any individual who has a direct or indirect ownership interest of at  
21 least five percent in the profits, capital or value of the recipient or of any member of the  
22 recipient.

23 (9) "Part-time job" means a job in which an employee works fewer than 35 hours per  
24 week.

25 (10) "Person" has the meaning given that term in ORS 174.100.

26 (11) "Recipient" means any person that receives development assistance.

27 (12) "Retained employee" means an employee whose full-time or full-time equivalent job  
28 at a specific facility or site is jeopardized by a specific and demonstrable threat and whose  
29 job is preserved by development assistance.

30 (13) "Specific project site" means a distinct operational unit of a recipient to which any  
31 development assistance is applied.

32 (14) "Temporary job" means a job in which an employee is hired for a specific period of  
33 time or for a season.

34 (15) "Value of assistance" means the dollar amount of any form of development assist-  
35 ance.

36 **SECTION 2.** (1) Not later than October 1, the Economic and Community Development  
37 Department shall submit a Unified Economic Development Report to the Legislative Assem-  
38 bly.

39 (2) The Unified Economic Development Report shall present all types of development as-  
40 sistance granted during the prior fiscal year, including:

41 (a) The amount of uncollected or diverted state tax revenues resulting from each type  
42 of development assistance provided in the tax statutes, as reported to the Department of  
43 Revenue on tax returns filed during the fiscal year.

44 (b) The aggregate amount of grants and loans awarded as development assistance under  
45 ORS chapters 285A and 285B.

1 (c) The dollar amount of development assistance provided through other programs de-  
 2 signed to promote large business relocations and expansions.

3 (3) The Unified Economic Development Report presented to the Legislative Assembly is  
 4 a public document and all data in the report are subject to disclosure under public records  
 5 law.

6 (4) The Department of Revenue shall submit a report of the amounts in subsection (2)(a)  
 7 of this section to the Economic and Community Development Department at the end of the  
 8 applicable fiscal year for inclusion in the Economic and Community Development Department  
 9 report. The Economic and Community Development Department may append the Department  
 10 of Revenue report to the Unified Economic Development Report rather than separately re-  
 11 porting the amounts.

12 **SECTION 3.** (1) A final application requesting development assistance that is submitted  
 13 to a granting body shall contain, at a minimum:

14 (a) An application tracking number that is specific to both the granting body and the  
 15 application.

16 (b) The office mailing address, the office telephone number and the name of the chief  
 17 officer of the granting body.

18 (c) The office mailing address, the office telephone number and the four-digit Standard  
 19 Industrial Classification (SIC) number or a successor number for each specific project site  
 20 for which development assistance is requested, and the name of the chief officer of the ap-  
 21 plicant or the applicant's authorized designee.

22 (d) The applicant's total number of employees at the specific project site on the date that  
 23 the application is submitted, including the number of employees in full-time, permanent jobs,  
 24 the number of employees in part-time jobs and the number of employees in temporary jobs.

25 (e) The type of development assistance and value of assistance being requested.

26 (f) The number of jobs to be created and the number of jobs in which employees will be  
 27 retained by the applicant as a result of the development assistance, including the number  
 28 of full-time, permanent jobs, the number of part-time jobs and the number of temporary jobs.

29 (g) Detailed information projecting:

30 (A) The number of new employees to be hired and the number of retained employees to  
 31 continue in full-time, permanent jobs and the occupations or job classifications associated  
 32 with those jobs;

33 (B) The anticipated starting dates of all new employees;

34 (C) The anticipated average wage of all employees by occupation or job classification; and

35 (D) The total payroll to be created as a result of the development assistance.

36 (h) A list of all other forms of development assistance that the applicant is requesting  
 37 for the specific project site and the name of each granting body from which development  
 38 assistance is being requested.

39 (i) A description of the specific and demonstrable threat to the continuance of any full-  
 40 time or full-time equivalent job, if the application requests development assistance to pre-  
 41 serve any full-time or full-time equivalent job that would be lost without development  
 42 assistance.

43 (j) A description of why the development assistance is needed and, if applicable, how the  
 44 applicant's use of development assistance may cause a loss of jobs at any site within the  
 45 state.

1 (k) A certification by the chief officer of the applicant or the applicant's authorized  
 2 designee that the information in the application contains no misrepresentation of material  
 3 facts upon which eligibility for development assistance is based.

4 (2) Every granting body shall complete, or shall require the applicant to complete, an  
 5 application form that meets the minimum requirements under this section each time an ap-  
 6 plicant applies for development assistance.

7 (3) The Economic and Community Development Department may modify any standard-  
 8 ized application form for development assistance required under subsection (1) of this section  
 9 if the form is used for grants that are not given as an incentive for a business organization.

10 **SECTION 4.** (1) Not later than February 1, each granting body shall submit to the Eco-  
 11 nomic and Community Development Department copies of all development assistance agree-  
 12 ments that the granting body approved in the prior calendar year.

13 (2) For each development assistance agreement for which the date of assistance occurred  
 14 in the prior calendar year, the recipient shall submit to the department by the date set by  
 15 the department by rule a progress report that includes, but is not limited to, the following:

16 (a) The application tracking number.

17 (b) The office mailing address, the office telephone number and the name of the chief  
 18 officer of the granting body.

19 (c) The office mailing address, the office telephone number and the four-digit Standard  
 20 Industrial Classification (SIC) number or a successor number for each specific project site  
 21 for which development assistance was approved by the granting body, and the name of the  
 22 chief officer of the recipient or the recipient's authorized designee.

23 (d) The type of development assistance and the value of assistance approved by the  
 24 granting body.

25 (e) The recipient's total number of employees at the specific project site on the date that  
 26 the application was submitted and the recipient's total number of employees at the specific  
 27 project site on the date of the progress report. The report shall include the number of the  
 28 recipient's employees with full-time, permanent jobs, the number with part-time jobs and the  
 29 number with temporary jobs, and a computation of the gain or loss of jobs in each category.

30 (f) The number of new employees and the number of retained employees that were  
 31 projected in the development assistance application or, if the numbers specified in the de-  
 32 velopment assistance agreement differ from the numbers in the application, the numbers  
 33 specified in the agreement. The recipient shall report by category the number of full-time,  
 34 permanent jobs, the number of part-time jobs and the number of temporary jobs that were  
 35 projected in the application for development assistance or, if the numbers specified in the  
 36 development assistance agreement differ from the numbers in the application, the numbers  
 37 specified in the agreement.

38 (g) A declaration of whether the recipient believes that the recipient is in compliance  
 39 with the development assistance agreement.

40 (h) Detailed information demonstrating the recipient's progress toward meeting the  
 41 projections in the application for development assistance or the development assistance  
 42 agreement, including:

43 (A) The occupation or job classifications and the number of new employees hired and the  
 44 number of retained employees that continued in full-time, permanent jobs and the occupa-  
 45 tions or job classifications associated with those jobs;

1 (B) The starting dates, both actual and anticipated, of all new employees;

2 (C) The average wage paid to all employees by occupation or job classification; and

3 (D) The total payroll created as a result of the development assistance.

4 (i) A description, if applicable, of how the recipient's use of the development assistance  
5 during the reporting year has caused a loss of jobs at any site within the state.

6 (j) A certification by the chief officer of the recipient or the recipient's authorized  
7 designee that the information in the progress report contains no misrepresentation of ma-  
8 terial facts upon which award of development assistance was based.

9 (3) The granting body, or a successor agency, shall verify information contained in each  
10 progress report. The granting body or successor may inspect the specific project site and  
11 inspect the records of the recipient that are subject to the development assistance agree-  
12 ment.

13 (4) The department shall compile and publish the data in all of the progress reports in  
14 both written and electronic form not later than June 1 of each year. The published reports  
15 are subject to disclosure as public records under the provisions of ORS 192.410 to 192.505.

16 (5) If a recipient fails to comply with subsection (2) of this section, the department shall,  
17 within 21 business days after the reporting deadline, suspend any current state development  
18 assistance to the recipient under the department's control. Until the department receives  
19 proof that the recipient is in compliance with the requirements of subsection (2) of this  
20 section, the department or granting body may not provide development assistance to the  
21 recipient.

22 (6) The department by rule may modify the requirements for the progress report de-  
23 scribed in subsection (2) of this section consistent with the goal of providing comparable in-  
24 formation about economic assistance provided using moneys in the Economic Stabilization  
25 and Conversion Fund created in ORS 285A.224.

26 **SECTION 5.** (1) A development assistance agreement shall contain, at a minimum, the  
27 following provisions:

28 (a) A requirement that the recipient must:

29 (A) Make the level of capital investment in the economic development project specified  
30 in the development assistance agreement; and

31 (B) Create or retain the requisite number of jobs, paying not less than specified wages  
32 for the created and retained jobs, during the time period specified in the statutes authoriz-  
33 ing, or the administrative rules implementing, the development assistance program or the  
34 development assistance agreement.

35 (b) If the recipient fails to create or retain the requisite number of jobs for the time  
36 period specified in the statutes authorizing, or the administrative rules implementing, the  
37 development assistance program, or for the time period specified in the development assist-  
38 ance agreement if that period is shorter, the recipient no longer qualifies for the develop-  
39 ment assistance and recapture provisions take effect.

40 (2)(a) The development assistance agreement may not waive a recapture provision that  
41 exists at the time of the agreement in the statutes authorizing, or the administrative rules  
42 implementing, the development assistance program, unless the legislation or administrative  
43 rules permit waiver of the recapture provision.

44 (b) The development assistance agreement may specify recapture provisions in addition  
45 to the recapture provisions that exist in the statutes authorizing, or the administrative rules

1 **implementing, the development assistance program at the time of the agreement.**

2 **(3) The Director of the Economic and Community Development Department may elect**  
 3 **to waive enforcement of any contractual provision arising out of the development assistance**  
 4 **agreement based on a finding that the waiver is necessary to avert an imminent and de-**  
 5 **monstrable hardship to the recipient that may result in the recipient's insolvency or dis-**  
 6 **charge of employees. If a waiver is granted, the recipient must agree to a contractual**  
 7 **modification, which may include recapture provisions, to the development assistance agree-**  
 8 **ment. Notwithstanding ORS 192.502 (16), the existence of a waiver granted pursuant to this**  
 9 **subsection, the date of the granting of the waiver and a brief summary of the reasons sup-**  
 10 **porting the granting of the waiver shall be disclosed consistent with the provisions of section**  
 11 **4 of this 2007 Act.**

12 **(4)(a) Not later than June 1, the Economic and Community Development Department**  
 13 **shall compile a report on the outcomes and effectiveness of recapture provisions for each**  
 14 **development assistance program, including but not limited to:**

15 **(A) The total number of recipients;**

16 **(B) The total number of recipients in violation of development assistance agreements;**

17 **(C) The total number of completed recapture efforts;**

18 **(D) The total number of recapture efforts initiated; and**

19 **(E) The number of waivers granted for recapture provisions.**

20 **(b) Notwithstanding ORS 192.502 (16), the department shall publish the report in both**  
 21 **written and electronic form not later than September 1.**

22 **(c) Data regarding the outcomes and effectiveness of recapture provisions for grants**  
 23 **under ORS 285A.224 are not required to be included in the report required by this subsection.**

24 **SECTION 6.** ORS 285A.090 is amended to read:

25 285A.090. The Economic and Community Development Department shall:

26 (1) Implement programs consistent with policies of the Oregon Economic and Community De-  
 27 velopment Commission.

28 (2) Provide field representatives in the various geographical regions of the state. The field rep-  
 29 resentatives shall be in the unclassified service and shall receive such salary as may be set by the  
 30 Director of the Economic and Community Development Department, unless otherwise provided by  
 31 law. The field representatives shall:

32 (a) Serve as internal advocates and centralized contacts within state government for businesses  
 33 seeking to locate or expand in the region and shall guide the businesses through all required pro-  
 34 cesses with state regulatory agencies and local units of government to facilitate and expedite siting  
 35 or expansion of the businesses within the businesses' budgets and in an economically viable manner;

36 (b) Seek assistance and direction from the Governor or a designee of the Governor for resolving  
 37 issues that have delayed a project in order to ensure that governmental decisions and actions on  
 38 projects are made in a timely and reasonable manner;

39 (c) Work with local units of government and the private sector as they establish and carry out  
 40 economic and community development plans and programs under ORS 280.500;

41 (d) Establish links with and act as liaisons between businesses seeking to locate or expand in  
 42 the region and resources within the public and private institutions of higher education in Oregon  
 43 familiar with technological advancements and grant opportunities;

44 (e) Serve as liaisons between businesses seeking to locate or expand in the region and appro-  
 45 priate governmental, university, community college and industry representatives to assist and part-

1 ner with the businesses in their developmental efforts;

2 (f) Assemble regional rapid response teams that include regional departmental staff and repre-  
3 sentatives of local governments in the region to work with businesses seeking to locate or expand  
4 in the region by facilitating developmental procedures and eliminating obstacles to completion of  
5 projects;

6 (g) Assign specific responsibilities for and monitor progress of rapid response team members  
7 toward completion of tasks essential to the achievement of a successful outcome of a project for all  
8 parties involved;

9 (h) Coordinate meetings between businesses seeking to locate or expand in the region and the  
10 members of rapid response teams to establish and monitor the adherence to developmental timelines  
11 and to ensure satisfaction with services provided;

12 (i) Deliver to local units of government and the private sector the assistance and services  
13 available from the department, including publications, research and technical and financial assist-  
14 ance programs; and

15 (j) Promote local awareness of department policy and department programs and services and of  
16 assistance and economic incentives available from government at all levels.

17 (3) Process requests received by state agencies and interested parties for information pertaining  
18 to industrial and commercial locations and relocations throughout the state.

19 (4) Consult and advise with, coordinate activities of, and give technical assistance and encour-  
20 agement to, state and local organizations, including local development corporations, county, city,  
21 and metropolitan-area committees, chambers of commerce, labor organizations and similar agencies  
22 interested in obtaining new industrial plants or commercial enterprises.

23 (5) Act as the state's official liaison agency between persons interested in locating industrial  
24 or business firms in the state, and state and local groups seeking new industry or business, main-  
25 taining the confidential nature of the negotiations it conducts as requested by persons contemplating  
26 location in the state. **Notwithstanding ORS 192.502 (16), when the state enters into a written**  
27 **agreement with a person contemplating locating a firm in the state, or if the person, or a**  
28 **state official with the person's knowledge or consent, announces an agreement between the**  
29 **person and the state to locate a firm in the state, the duty to maintain the confidential na-**  
30 **ture of negotiations under this subsection ends and any information subject to disclosure**  
31 **under sections 1 to 5 of this 2007 Act may be disclosed.**

32 (6) Coordinate state and federal economic and community development programs.

33 (7) Consult and advise with, coordinate activities of, and give technical assistance and encour-  
34 agement to all parties including, but not limited to, port districts within the state working in the  
35 field of international trade or interested in promoting their own trading activity.

36 (8) Provide advice and technical assistance to Oregon business and labor.

37 (9) Collect and disseminate information regarding the advantages of developing new business  
38 and expanding existing business in the state.

39 (10) Aid local communities in planning for and obtaining new business to locate therein and  
40 provide assistance in local applications for federal development grants.

41 (11) Work actively to recruit domestic and international business firms to those communities  
42 that desire such recruitment.

43 (12) In carrying out its duties under ORS chapters 285A, 285B and 285C and ORS 329.905 to  
44 329.975, give priority to assisting small businesses in this state by encouraging the creation of new  
45 businesses, the expansion of existing businesses and the retention of economically distressed busi-

1 nesses which are economically viable.

2 (13) Establish and operate foreign trade offices in those foreign countries in which the depart-  
3 ment considers a foreign trade office necessary using department employees, contracts with public  
4 or private persons or a combination of department employees and contractors. Department employ-  
5 ees, including managers, who are assigned to work in a foreign trade office shall be in the unclas-  
6 sified service, and the director shall set the salaries of those persons. Foreign trade offices shall  
7 provide one or more of the following services:

8 (a) Work with the private sector to assist them in finding international markets for their goods  
9 and services;

10 (b) Work with local units of government to assist them in locating foreign businesses within  
11 their jurisdiction;

12 (c) Promote awareness in foreign countries of department policy, programs and services and of  
13 assistance and economic incentives available from government at all levels; or

14 (d) Provide other assistance considered necessary by the director.

15 **SECTION 7. This 2007 Act being necessary for the immediate preservation of the public**  
16 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
17 **on its passage.**

18