

House Bill 2087

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

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**.

Requires recipient employers that receive economic development subsidies to submit annual reports to granting bodies. Permits granting bodies access to recipient employers' records and project sites at all reasonable times without notice.

Requires granting bodies to publish reports on granting bodies' websites annually. Requires placement of links to reports on Oregon transparency website.

Establishes employment and compensation standards for recipient employers. Directs granting body to reduce or recapture subsidy for noncompliance.

Requires property taxing entities to report annually to Department of Revenue regarding property tax abatements, exemptions and credits. Directs department to post reports on Oregon transparency website.

Provides that all records required by Act are subject to disclosure to general public.

Directs Secretary of State to conduct audits of recipient employers every three years.

Authorizes taxpayer to bring civil action for enforcement, injunctive relief, damages and attorney fees when granting body fails to enforce Act.

A BILL FOR AN ACT

1
2 Relating to economic development subsidies.

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

SECTION 1. As used in sections 1 to 8 of this 2015 Act:

4
5 (1) **"Audit fee" means five percent of an economic development subsidy that is used to**
6 **conduct audits by the Secretary of State in accordance with section 7 of this 2015 Act.**

7 (2) **"Base employment" means the number of full-time employees of the recipient em-**
8 **ployer on the date that the recipient employer makes application to a governing body for an**
9 **economic development subsidy.**

10 (3) **"Compensation" means the total amount of gross wages, employment taxes, insurance**
11 **benefits and other benefits not required by law including, but not limited to, vacation, sick**
12 **leave, retirement and transportation passes that an employee receives from an employer.**

13 (4) **"Economic development subsidy" means any expenditure of public funds with a value**
14 **of at least \$25,000 for the purpose of stimulating economic development in Oregon, including**
15 **but not limited to bonds, grants, loans, loan guarantees, enterprise zone incentives, tax in-**
16 **crement financing, fee waivers, land price subsidies, matching funds, tax abatements, tax**
17 **exemptions and tax credits.**

18 (5) **"Employer" means:**

19 (a) **Any person, including a public body as defined in ORS 174.109, that employs an indi-**
20 **vidual;**

21 (b) **Any person acting directly or indirectly in the interests of an employer in relation to**
22 **an employee; or**

23 (c) **To the extent that an employer has not paid employees in full, any successor to the**
24 **business of an employer or a purchaser of the employer's property for the continuance of the**

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 same business.

2 (6) "Employs" means to hire to work in exchange for compensation. "Employs" does not
3 mean to obtain:

4 (a) Voluntary or donated services performed for no compensation, or without expectation
5 or contemplation of compensation, for:

6 (A) A public body as defined in ORS 174.109; or

7 (B) A religious charitable, educational, public service or similar nonprofit corporation,
8 organization or institution for community service, religious or humanitarian reasons; or

9 (b) Services performed by general or public assistance recipients as part of a work
10 training program administered under state or federal assistance laws.

11 (7) "Full-time employment" means a job or position in which an individual is employed
12 by a recipient employer for at least 40 hours per week.

13 (8) "Granting body" means any agency, board, office, public or private partnership, public
14 benefit corporation, local governmental body or state governmental body that provides an
15 economic development subsidy to a recipient employer.

16 (9) "Local governmental body" means a city, county, administrative subdivision of a city
17 or county, agency, board, commission, office, public benefit corporation or other public au-
18 thority of a local government as defined in ORS 174.116.

19 (10) "New employee" means an employee hired to work in full-time employment who re-
20 presents an increase to the base employment of a recipient employer in this state. "New
21 employee" does not mean:

22 (a) An employee who fills a particular position that was previously performed by another
23 employee of the recipient employer if that position existed for at least six months before
24 hiring the employee;

25 (b) An employee who is hired to work in a position that previously existed in a different
26 facility controlled by the recipient employer in this state; or

27 (c) An employee who is hired to work in a position that previously existed in a different
28 facility controlled by the recipient employer in a different state when that state has laws
29 substantially similar to sections 1 to 8 of this 2015 Act.

30 (11) "Parent of the recipient employer" means any person, association, company, corpo-
31 ration, joint venture, partnership, nonprofit or other entity that owns or controls 50 percent
32 or more of a recipient employer.

33 (12) "Part-time employment" means a job or position in which an individual is employed
34 by a recipient employer for less than 40 hours per week.

35 (13) "Project site" means the site of a project for which an economic development subsidy
36 is provided, as specified by street address, name of locality and zip code.

37 (14) "Property taxing entity" means any entity that levies taxes upon real or personal
38 property.

39 (15) "Recipient employer" means an employer located in Oregon that receives an eco-
40 nomic development subsidy.

41 (16) "Social benefits" means benefits to society that contribute to the public's general
42 well-being beyond an economic benefit, such as educational, environmental, cultural, or
43 community-oriented benefits.

44 (17) "State governmental body" means an agency, board, commission, office, public ben-
45 efit corporation or other institution of state government.

1 (18) "Subsidy value" means the value of all economic development subsidies received by
 2 a recipient employer and, if the economic development subsidy is a loan, the amount of the
 3 loan and the savings to the recipient employer over the cost of obtaining a conventional loan.

4 (19) "Temporary employment" means a job or position for which the established period
 5 of employment is one year or less.

6 (20) "Wages" means the amount paid for performance of services by an employee for an
 7 employer.

8 **SECTION 2.** (1) No later than February 1 of each year, a recipient employer shall file a
 9 disclosure report with the granting body that granted the economic development subsidy.
 10 The reporting form shall be issued by the granting body on a form prepared by the Oregon
 11 Department of Administrative Services. The form shall contain, at a minimum, the following
 12 information:

13 (a) The recipient employer's:

14 (A) Legal name and business name, if any;

15 (B) Street and mailing addresses;

16 (C) Telephone numbers;

17 (D) North American Industry Classification System industry code; and

18 (E) Dun & Bradstreet identifier number;

19 (b) The name and signature of the chief officer of the recipient employer;

20 (c) The name of and contact information, including electronic mail address, for the re-
 21 cipient employer's designated financial data contact person;

22 (d) The street address of the project site where the subsidized activity takes place if the
 23 project site address is different from the addresses provided in paragraph (a) of this sub-
 24 section;

25 (e) A summary of the number of jobs required by the terms of the subsidy agreement
 26 and the actual number of jobs created or lost as of December 31 of the previous year, broken
 27 down by full-time, part-time and temporary employment, and by wage groups as delineated
 28 in reports to the Employment Department or as reported to the Department of Revenue;

29 (f) A statement as to whether health care insurance coverage is provided to the em-
 30 ployees of the recipient employer at the project site, the share of the policy premiums paid
 31 by the recipient employer and the percentage of employees receiving health care insurance
 32 coverage;

33 (g) If applicable, the total number of employees who were employed by the parent of the
 34 recipient employer in this state on December 31 of the two previous years, broken down by
 35 full-time, part-time and temporary employment;

36 (h) A summary of capital investment or other activity, if any, required by the terms of
 37 the subsidy agreement, the actual capital investment made or other activity performed in
 38 the previous year as of December 31 and the accumulative total amount actually made, in-
 39 cluding the investment above any caps;

40 (i) A statement as to whether any site controlled by the recipient employer or parent of
 41 the recipient employer, inside or outside this state, reduced its number of employees during
 42 the previous calendar year as a result of automation, merger, acquisition, corporate re-
 43 structuring, relocation or other business activity and, if so, the number and percentage of
 44 employees affected;

45 (j) A statement summarizing any instances during the previous calendar year in which

1 the recipient employer or a parent of the recipient employer was determined to have violated
 2 any federal, state or local law or regulation relating to environmental protection, taxation,
 3 labor standards or employment discrimination, or was notified that an investigation of a
 4 possible violation had been initiated;

5 (k) A statement of the percentage of employees on H-1B visas; and

6 (L) A signed certification by the chief officer of the recipient employer verifying the ac-
 7 curacy of the disclosure report.

8 (2) Recipient employers shall file the disclosure report required under subsection (1) of
 9 this section for the duration of the subsidy or for not less than five years, whichever period
 10 is greater.

11 (3) A recipient employer that fails to provide the granting body with a completed disclo-
 12 sure report within 30 days of the February 1 due date shall lose the economic development
 13 subsidy and void the subsidy agreement. Late fees may be assessed by the governing body
 14 at the discretion of the granting body.

15 (4) The granting body, or the designated agent or representative of the granting body,
 16 shall have access at all reasonable times to the project site and the records of the recipient
 17 employer without prior notice in order to monitor the project site and verify the content of
 18 the disclosure reports provided under subsection (1) of this section.

19 (5) A recipient employer that fails to provide the granting body access to the project site
 20 at a reasonable time shall be subject to a fine of \$1,000 per day starting with the day access
 21 is first not provided.

22 (6) Any recipient employer that fails to provide access within 90 days shall lose the eco-
 23 nomic development subsidy and void the subsidy agreement from the beginning of the re-
 24 porting period.

25 (7) The recipient employer shall certify that all subcontractors and contracting entities
 26 are abiding by Oregon's minimum wage standards.

27 (8) Each economic development subsidy shall provide that five percent of the value of the
 28 subsidy shall be paid by the recipient employer to the Secretary of State for performance of
 29 the audits conducted pursuant to section 7 of this 2015 Act. The audit fee shall be due and
 30 payable upon receipt of the subsidy.

31 **SECTION 3.** (1) A granting body that provides an economic development subsidy to a
 32 recipient employer shall publish prominently on its website a compilation of the disclosure
 33 reports required and received under section 2 of this 2015 Act no later than November 29 of
 34 each year.

35 (2) The website must contain all of the data from the disclosure reports required under
 36 section 2 of this 2015 Act as a searchable database and as a spreadsheet that can be down-
 37 loaded in its entirety. When a new disclosure report is posted, earlier versions of the report
 38 shall remain available on the website.

39 (3) The website must also contain the granting body's determination of whether the re-
 40 cipient employer has met its obligations for job creation, wages and benefits as required by
 41 the economic development subsidy agreement. If the granting body has previously deter-
 42 mined that the recipient employer has met the recipient employer's obligations, the website
 43 must contain the granting body's determination of whether the recipient employer has con-
 44 tinued to meet its obligations.

45 (4) The granting body shall post, in addition to disclosure reports, copies of key docu-

1 ments relating to economic development subsidies on its website.

2 (5) If the granting body determines that the recipient employer has failed to meet its
 3 obligations for job creation, wages and benefits as required by the economic development
 4 subsidy agreement in the required period of time, or if the granting body determines that the
 5 recipient employer has failed to continue to meet its obligations, the website shall also state
 6 the penalty or penalties the granting body has imposed upon the recipient employer.

7 (6) The website must include the granting body's verification that the parent of the re-
 8 cipient employer, if one exists, has maintained at least 90 percent of its employment in the
 9 state since December 31 of the year in which the economic development subsidy was granted.
 10 If the granting body determines that the parent of the recipient employer has failed to
 11 maintain such a level of employment, the website must include the penalty or penalties the
 12 governing body has imposed upon the recipient employer.

13 (7) References and links to the websites of granting bodies required under this section
 14 shall be posted on the Oregon transparency website under ORS 184.483.

15 **SECTION 4.** (1) Subject to the requirements of subsection (3) of this section, each recip-
 16 ient employer, as a condition of receiving an economic development subsidy, must hire at
 17 least one new employee for full-time employment, or two or more employees for part-time
 18 employment provided the total amount of compensation received by the part-time employees
 19 is at least equal to the amount of compensation received by a new employee hired for full-
 20 time employment. A recipient employer may not receive economic development subsidies
 21 that total more than the aggregate of five years of income taxes and property taxes paid by
 22 both the recipient employer and the new employees.

23 (2) The position created by the hiring of a new employee by a recipient employer must:

24 (a) Be retained by the recipient employer for a period of time equaling twice the duration
 25 of subsidies received by the recipient employer; and

26 (b) Provide at least 2,080 hours of paid wages per year.

27 (3) The hiring of a new employee by a recipient employer does not comply with the re-
 28 quirements to avoid subsidy recapture or rescission under subsection (5) of this section un-
 29 less:

30 (a) For recipient employers with project sites located within a metropolitan statistical
 31 area, as defined by the most recent federal decennial census, new employees are paid com-
 32 pensation so that the total amount of the average hourly wage for non-managerial positions
 33 and other compensation paid is no lower than the lesser of:

34 (A) 150 percent of the average state wage for that industry as most recently established
 35 by the Bureau of Labor Statistics of the United States Department of Labor; or

36 (B) Between 130 percent and 150 percent of the county or state average in annual per
 37 employee compensation.

38 (b) For recipient employers with project sites located outside a metropolitan statistical
 39 area, as defined by the most recent federal decennial census, new employees are paid com-
 40 pensation so that the total amount of the average hourly wage for non-managerial positions
 41 and other compensation paid is no lower than the lesser of:

42 (A) 150 percent of the average county wage for that industry as most recently established
 43 by the Bureau of Labor Statistics of the United States Department of Labor; or

44 (B) Between 130 percent and 150 percent of the county or state average in annual per
 45 employee compensation.

1 (4) A granting body shall verify that a recipient employer has complied with subsections
 2 (1) to (3) of this section and shall conduct periodic, unannounced visits to project sites.

3 (5) A recipient employer that does not comply with subsections (1) to (3) of this section
 4 shall be subject to subsidy recapture or rescission as follows:

5 (a) For each year that a recipient employer is in noncompliance, the subsidy value must
 6 be reduced by 150 percent of the compensation of positions that were not hired or that failed
 7 to meet compensation requirements. If the subsidy has already been paid to the recipient
 8 employer, the granting body shall recapture the amount of the subsidy reduction.

9 (b) If a recipient employer is noncompliant by 25 percent or more of the compensation
 10 of positions that were not hired or that failed to meet compensation requirements for three
 11 consecutive years, the full subsidy value must be recaptured and the subsidy will be consid-
 12 ered rescinded on December 31 of the third year that the recipient employer is in noncom-
 13 pliance.

14 (c) For each year that the parent of a recipient employer fails to maintain at least 90
 15 percent of its base employment in the state as of December 31 of the year in which the
 16 subsidy was granted, the subsidy to the recipient employer must be reduced by twice the
 17 percentage of the rate at which the parent of the recipient employer's has lost employment
 18 positions in this state. If the subsidy has already been paid to the recipient employer, the
 19 granting body shall recapture the amount of the subsidy reduction.

20 (d) If the parent of a recipient employer fails to maintain at least 90 percent of its base
 21 employment in the state as of December 31 of the year in which the subsidy was granted for
 22 three consecutive years, the full subsidy value must be recaptured and the subsidy will be
 23 considered rescinded on December 31 of the third year that the parent of the recipient em-
 24 ployer is in noncompliance.

25 **SECTION 5.** (1) A state or local property taxing entity shall submit a report annually to
 26 the Department of Revenue regarding any real property in the property taxing entity's ju-
 27 risdiction that has received a property tax abatement, exemption or credit during the tax
 28 year. The report shall contain, at a minimum, the following information:

29 (a) The legal name and business name, if any, of the property owner of the real property
 30 that received a property tax abatement, exemption or credit during the tax year;

31 (b) The address of the real property that received a property tax abatement, exemption
 32 or credit during the tax year;

33 (c) The starting and ending dates of the property tax abatement, exemption or credit;

34 (d) For each tax year, the effective amount of the property tax abatement, exemption or
 35 credit, by both percentage rate and dollar value; and

36 (e) A statement of the social benefits provided by the property to the public.

37 (2) A state or local property taxing entity shall also submit a report annually to the De-
 38 partment of Revenue regarding any real property that is publicly owned and leased to a pri-
 39 vate entity for the purpose of economic development and is exempt from property taxes. The
 40 report shall contain the same information specified in subsection (1) of this section.

41 (3) A state or local property taxing entity shall also submit a report annually to the De-
 42 partment of Revenue that sets forth the total property tax revenue lost during the tax year
 43 as a result of all property tax abatements, exemptions and credits in the entity's jurisdiction.

44 (4) The reports required under this section must be submitted in electronic spreadsheet
 45 form to the Department of Revenue and may use a form created by the Oregon Department

1 of Administrative Services or the Department of Revenue. Each report must be submitted
 2 no more than three months after the end of the tax year.

3 (5) No more than six months after the end of each tax year, the Department of Revenue
 4 shall compile and publish on a department website all of the data contained in the reports
 5 required under this section in both written and electronic spreadsheet form that can be
 6 downloaded. The department shall also compile and submit this information for posting on
 7 the Oregon transparency website under ORS 184.483.

8 (6) If a property taxing entity fails to submit its reports to the Department of Revenue
 9 within the prescribed time, the department shall withhold payments of all state moneys due
 10 to the delinquent property taxing entity until the entity files its reports with the department
 11 and pays any related penalties.

12 SECTION 6. Notwithstanding any provisions of ORS chapter 192 providing for exemption
 13 from disclosure, all records required to be prepared, maintained or placed upon a granting
 14 body's website or the Oregon transparency website under ORS 184.483 by sections 1 to 8 of
 15 this 2015 Act are public records and subject to disclosure to the general public.

16 SECTION 7. The Secretary of State shall conduct an audit of each recipient employer and
 17 issue an audit report at least once every three years. The audit fee described in section 2 (8)
 18 shall be applied to the cost of the audits and reports. Audit reports shall be posted on the
 19 Oregon transparency website under ORS 184.483.

20 SECTION 8. If a granting body fails to enforce any provision of sections 1 to 8 of this 2015
 21 Act, any individual who paid personal income taxes in this state in the calendar year prior
 22 to the year in dispute, or any organization representing such individuals, may bring a civil
 23 action in any court of competent jurisdiction to require the granting body to enforce the
 24 provisions of sections 1 to 8 of this 2015 Act. In addition to other relief, the court may grant
 25 injunctive relief, award punitive damages and award payment of reasonable attorney fees and
 26 costs to the prevailing party.

27 SECTION 9. If any provision of sections 1 to 8 of this 2015 Act, or the application of
 28 sections 1 to 8 of this 2015 Act to any person or circumstance, is held invalid or
 29 unenforceable, the invalidity or unenforceability does not affect other provisions or applica-
 30 tions of sections 1 to 8 of this 2015 Act that can be given effect without the invalid or
 31 unenforceable provision or application, and to this end the provisions of sections 1 to 8 are
 32 severable.

33 SECTION 10. Sections 1 to 8 of this 2015 Act apply to economic development subsidies
 34 received on or after the effective date of this 2015 Act.