

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 485 (Medina) – As Introduced February 12, 2019

SUBJECT: Local government: economic development subsidies.

SUMMARY: Requires local agencies to take specified actions before approving or granting economic development subsidies of \$100,000 or more for warehouse distribution centers, and during the term of such subsidies. Specifically, **this bill:**

- 1) Requires each local agency, on and after January 1, 2020, to provide specified information to the public before approving any economic development subsidy (subsidy) for a warehouse distribution center within its jurisdiction. All of the following information must be made available to the public in written form and through the local agency's Internet Web site (website), if applicable:
 - a) The name and address of all corporations, including members of a commonly controlled group or members of a combined reporting group of which the corporation is a member, or any other business entities, except for sole proprietorships, that are the beneficiary of the subsidy;
 - b) The name and address of all warehouse distribution centers that are the beneficiary of the economic development subsidy;
 - c) The start and end dates and schedule, if applicable, for the subsidy;
 - d) A description of the subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the subsidy;
 - e) A statement of the public purposes for the subsidy;
 - f) The projected tax revenue to the local agency as a result of the subsidy;
 - g) The estimated number of jobs created by the subsidy, including job classifications and wage rates, broken down by full-time, part-time, and temporary positions;
 - h) The estimated number of independent contractors, including contract rates, funded by the subsidy;
 - i) The estimated value of benefit packages, including health benefits, fringe benefits, and defined benefit pensions, for each job classification created by the subsidy;
 - j) The estimated number of jobs for disadvantaged workers created by the subsidy;

- k) Both of the following regarding each warehouse distribution center that is the beneficiary of the subsidy:
 - i) A description of the outreach, training, and hiring plans, including plans to hire disadvantaged workers;
 - ii) A description and total value of any state or federal subsidies applied for, or received by, the warehouse distribution center; and,
 - l) A description of any accountability measures, including, but not limited to, clawbacks of subsidies provided in the contract if the warehouse distribution center does not meet the goal outlined in the contract for subsidies.
- 2) Requires each local agency to provide public notice and a hearing before granting a subsidy to a warehouse distribution center, although this is not required if a hearing and notice regarding the subsidy is otherwise required by law.
 - 3) Requires the information specified in 1), above, to remain available to the public under existing state and federal law and to be posted on the local agency's website, if applicable, for the entire term of the subsidy.
 - 4) Requires a local agency, after it grants a subsidy for a warehouse distribution center, to issue an annual report for each subsidy during the term of each subsidy and make the report available to the public and through its website, if applicable.
 - 5) Requires the report specified in 4), above, to contain the information described in 1), above, and the following additional information, if applicable:
 - a) The net tax revenue accruing to the local agency as a result of the subsidy;
 - b) The net number of jobs created by the subsidy, including job classifications and wage rates, broken down by full-time, part-time, and temporary positions;
 - c) The number of independent contractors, including contract rates, funded by the subsidy;
 - d) The total value of benefit packages, including health benefits, fringe benefits, and defined benefit pensions, for each job classification created by the subsidy;
 - e) The net number of jobs for disadvantaged workers created by the subsidy;
 - f) The timeline for replacement of workers with automated systems;
 - g) The amount of space being requested for future planned automation;
 - h) All of the following regarding each warehouse distribution center that is the beneficiary of the subsidy:
 - i) The amount spent on training, apprenticeship, or other skills development programs for employees;

- ii) The retention rate of employees broken down by full-time, part-time, and temporary positions, and if the turnover rate of employees exceeds 20%; and,
 - iii) The number of employment arbitration agreements signed by employees and independent contractors, if any.
- 6) Requires each local agency, after it grants a subsidy for a warehouse distribution center, to hold an annual public hearing during the term of the subsidy to consider any written or oral comments on the information contained in the report prepared pursuant to 4), above.
- 7) Requires each public hearing required by this bill to be consolidated with a local agency's regularly scheduled hearing.
- 8) Requires the local agency to submit the reports required pursuant to 4), above, to the Governor's Office of Business and Economic Development (GO-Biz), and requires GO-Biz to make these reports available to the public and through its website.
- 9) Prohibits a local agency from signing a nondisclosure agreement regarding a warehouse distribution center within its jurisdiction as part of negotiations or in the contract for any economic development subsidy.
- 10) Requires a warehouse distribution center to provide a local agency any information necessary to comply with this bill.
- 11) Provides the following definitions for the purposes of this bill:
- a) "Disadvantaged worker" means an employee of the warehouse distribution center who satisfies any of the following:
 - i) Was unemployed for the six months immediately preceding employment with the warehouse distribution center. In the case of an employee that completed a program of study at a college, university, or other postsecondary educational institution, received a baccalaureate, postgraduate, or professional degree, and was unemployed for the six months immediately preceding employment with the warehouse distribution center, that employee must have completed that program of study at least 12 months before the individual's commencement of employment with the warehouse distribution center;
 - ii) Is a veteran who separated from service in the Armed Forces of the United States within the 12 months preceding commencement of employment with the warehouse distribution center;
 - iii) Was a recipient of the credit allowed under Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal purposes, for the previous taxable year;
 - iv) Is an ex-offender previously convicted of a felony; or,

- v) Is a recipient of either CalWORKs or general assistance, in accordance with the Welfare and Institutions Code, as specified.
 - b) "Economic development subsidy" means any expenditure of public funds or loss of revenue to a local agency in the amount of \$100,000 or more, for the purpose of stimulating economic development within the jurisdiction of a local agency, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits. "Economic development subsidy" shall not include expenditures of public funds by, or loss of revenue to, the local agency for the purpose of providing housing affordable to persons and families of low or moderate income, as defined in the Health and Safety Code, as specified.
 - c) "Local agency" means a city, including a charter city, county, or city and county.
 - d) "Members of a combined reporting group" has the same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as that section read on January 1, 2019.
 - e) "Members of a commonly controlled group" has the same meaning as that term is defined in Section 25105 of the Revenue and Taxation Code.
 - f) "Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System Codes:
 - i) 493110 for General Warehousing and Storage.
 - ii) 423 for Merchant Wholesalers, Durable Goods.
 - iii) 424 for Merchant Wholesalers, Nondurable Goods.
- 12) Finds and declares that the right of the public to be informed of subsidies for warehouse distribution centers approved by their local agencies, as described in and added by this bill, is a matter of statewide concern, and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this bill applies to all cities, including charter cities.
- 13) Finds and declares that this bill furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies and declares, pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, that the Legislature makes the following findings: This bill ensures the public's right of access to information about the conduct of their government agencies relating to subsidies for warehouse distribution centers.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Author's Statement.** According to the author, "AB 485 seeks to give local governments and communities the necessary information to hold warehouse and distribution companies that receive public subsidies accountable for good job creation. As online shopping continues to grow, companies are increasing their warehouse footprints swelling the demand for streamlined logistics centers. These warehouses are often placed in communities desperate for jobs and still recovering from the recession. Many of the jobs in these warehouses are grueling and high-stress. The benefits may be enticing but don't become available until after a year of employment. Some of the jobs are temporary or seasonal, causing employment opportunities to fluctuate and throwing families into economic instability.

"In the Economic Policy Institutes report entitled 'Unfulfilled Promises,' EPI economist Ben Zipperer and economic analysts Janelle Jones concluded that on average, 'Amazon's fulfillment centers are ineffective at providing net job growth.' Cities are constantly in a race to the bottom as highlighted by the current bidding wars for warehouse distribution centers. If the jobs and benefits promised do not materialize, the quality of living drops, and the traffic and air quality worsens, what did the city gain? Was the economic subsidy worth the tax revenue loss? Is any job a good job or can cities do better in elevating their attractiveness without sacrificing needed tax revenue?"

- 2) **Background.** Local governments engage in a wide variety of economic development activities to build their tax bases. In this respect, local officials use their regulatory powers to direct spending and tax policies which, in turn, influence where, when and how the private sector invests capital and improves real property.

AB 562 (Williams), Chapter 740, Statutes of 2013, established requirements for local agencies to meet before approving any subsidy and during the term of such subsidies. In arguing for the bill, the author noted, "Each year, local governments give out billions of dollars in tax incentives to corporations in hopes of increasing economic growth and drawing jobs for their residents...State requirements for local budgets, annual financial reports, and regular audits allow constituents to review most of the direct fiscal decisions made by local governments. However, local economic subsidies do not receive the same public scrutiny as budgets and regulatory decisions. Additionally, local governments rarely track how many jobs are created and it's impossible to know whether the jobs would have been created without the aid. AB 562 seeks to remedy this shortcoming."

AB 562 succeeded, after several years of failed attempts, in requiring local agencies to gather and make available to the public – in writing and on the agency's website – specified information about any subsidy of \$100,000 or more, both before the subsidy is approved and during the life of the subsidy. In addition to basic identifying information about each subsidy and public hearing requirements, AB 562 required the following information:

- a) The estimated total amount of the expenditure of public funds by, or revenue lost to, the local agency as a result of the subsidy;
- b) Projected and actual tax revenue accruing to the local agency as a result of the subsidy; and,

c) Estimated and actual number of jobs created by the subsidy, broken down by full-time, part-time, and temporary positions.

- 3) **Subsidies and Warehouse Distribution Centers.** Since AB 562 was enacted, a number of news reports and studies have focused on Amazon distribution centers and the subsidies state and local agencies have granted in an effort to convince Amazon to locate in their jurisdictions. This followed on the heels of several years of controversy surrounding Amazon's avoidance of sales taxes as a cornerstone of the company's business development strategy. Among the publications and research institutes that have reported recently on the issue of local government subsidies, both generally and specifically for Amazon, are the Economic Policy Institute, the Institute for Local Self-Reliance, The Atlantic, the New Republic, the Fresno Bee, the New York Times, Good Jobs First, and others.

According to a New York Times article dated December 1, 2012, "A Times investigation has examined and tallied thousands of local incentives granted nationwide and has found that states, counties and cities are giving up more than \$80 billion each year to companies. The beneficiaries come from virtually every corner of the corporate world, encompassing oil and coal conglomerates, technology and entertainment companies, banks and big-box retail chains. The cost of the awards is certainly far higher. A full accounting, The Times discovered, is not possible because the incentives are granted by thousands of government agencies and officials, and many do not know the value of all their awards. Nor do they know if the money was worth it because they rarely track how many jobs are created. Even where officials do track incentives, they acknowledge that it is impossible to know whether the jobs would have been created without the aid..."

"A portrait arises of mayors and governors who are desperate to create jobs, outmatched by multinational corporations and short on tools to fact-check what companies tell them. Many of the officials said they feared that companies would move jobs overseas if they did not get subsidies in the United States. Over the years, corporations have increasingly exploited that fear, creating a high-stakes bazaar where they pit local officials against one another to get the most lucrative packages. States compete with other states, cities compete with surrounding suburbs, and even small towns have entered the race with the goal of defeating their neighbors...Questioned about incentives, officials at dozens of other large corporations said they owed it to shareholders to maximize profits. Many emphasized that they employ thousands of Americans who pay taxes and spend money in the local economy."

Focusing on subsidies exclusively for Amazon, the Economic Policy Institute issued a report on February 1, 2018, which states, "The expansion of Amazon's physical distribution network has coincided with a strategic business plan of negotiating millions in tax abatements, credits, exemptions, and infrastructure assistance from state and local governments in the name of regional economic development. By the end of 2016, Amazon had likely received over \$1 billion in state and local subsidies for its facilities, which would include not only fulfillment centers but 'sortation' centers that only sort packages, mailing centers, and other facilities. In return for the incentives each of the fulfillment centers receives, Amazon claims to create hundreds of jobs with competitive pay and benefits.

"Using tax and other incentives to lure businesses to state and local areas is a long-running economic development strategy pursued by subnational governments. In nearly every state, businesses can receive a significantly lighter tax burden for constructing a sports stadium,

filming a movie, or building a manufacturing assembly plant. The results on whether these types of community development strategies have a positive impact on job creation and growth is highly debated in popular news outlets and among researchers. And as Amazon has grown, the debate in some cases has specifically focused on Amazon."

The report found that, "When Amazon opens a new fulfillment center, the host county gains roughly 30 percent more warehousing and storage jobs but no new net jobs overall, as the jobs created in warehousing and storage are likely offset by job losses in other industries...State and local governments give away millions in tax abatements, credits, exemptions, and infrastructure assistance to lure Amazon warehouses but don't get a commensurate 'return' on that investment. Rather than spending public resources on an ineffective strategy to boost local employment (luring Amazon fulfillment centers), state and local governments should invest in public services (particularly in early-childhood education and infrastructure) that are proven to spur long-term economic development."

- 4) **Bill Summary.** This bill establishes requirements that local agencies must meet before and during the term of any subsidy exceeding \$100,000 for warehouse distribution centers. In addition to the requirements established by AB 562 for all subsidies exceeding \$100,000, this bill requires local agencies to provide the following additional information regarding subsidies specific to warehouse distribution centers:
- a) The name and address of all corporations, including members of a commonly controlled group or members of a combined reporting group of which the corporation is a member, or any other business entities, except for sole proprietorships, that are the beneficiary of the subsidy;
 - b) Job classifications and wage rates for the estimated and actual number of jobs created by the subsidy;
 - c) The estimated and actual number of independent contractors, including contract rates, funded by the subsidy;
 - d) The estimated value of benefit packages for each job classification created by the subsidy and the total value of these packages actually created by the subsidy, including health benefits, fringe benefits, and defined benefit pensions;
 - e) The estimated and net number of jobs for disadvantaged workers created by the subsidy;
 - f) The timeline for replacement of workers with automated systems;
 - g) The amount of space being requested for future planned automations;
 - h) For each warehouse distribution center that is a beneficiary of a subsidy:
 - i) A description of its outreach, training, and hiring plans, including plans to hire disadvantaged workers;
 - ii) A description and total value of any state or federal subsidies applied for, or received by, the warehouse distribution center;

- iii) The amount spent on training, apprenticeship, or other skills development programs for employees;
- iv) The retention rate of employees broken down by full-time, part-time, and temporary positions, and if the turnover rate of employees exceeds 20%; and,
- v) The number of employment arbitration agreements signed by employees and independent contractors, if any.

This bill also requires annual reporting and public hearings regarding subsidies for warehouse distribution centers, and requires such centers to provide local agencies with any information necessary for local agencies to comply with the bill's requirements. Local agencies must submit the annual reports required by the bill to GO-Biz, which must make the reports available to the public and through its website. This bill also prohibits local agencies from signing nondisclosure agreements regarding a warehouse distribution center within their jurisdictions as part of negotiations or in the contract for any economic development subsidy. This bill applies to counties and cities, including charter cities.

This bill is sponsored by the California Labor Federation.

- 5) **Proposition 42.** Proposition 42 was passed by voters on June 3, 2014, and requires all local governments to comply with the Public Records Act and the Ralph M. Brown Act (Brown Act) and with any subsequent changes to those Acts. Proposition 42 also eliminated reimbursement to local agencies for costs of complying with the Public Records Act and the Brown Act.

This bill contains language that says that the Legislature finds and declares that the bill furthers the purpose of the California Constitution as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the Constitution, the bill also includes a finding that states, "This act ensures the public's right of access to information about the conduct of their government agencies relating to subsidies for warehouse distribution centers."

- 6) **Previous Legislation.** AB 2853 (Medina) of 2018 was similar to this bill. AB 2853 was vetoed by the Governor with the following message:

"This bill requires local governments that provide economic subsidies of \$100,000 or more for warehouse distribution centers to publically report on information such as employee wage rates, independent contractor rates, and the value of employee benefit packages for each job classification created by the subsidy. There is value in taxpayers knowing whether economic development incentives ultimately benefit their community. That is why I signed legislation in 2013 that required local agencies to provide information about the expected and actual impacts of approved economic development subsidies. This bill, however, significantly expands current law and goes too far by adding reporting rules that will be overly burdensome to a single industry. It may actually hinder efforts to improve business opportunities in local communities, which is an outcome no one desires."

- 7) **Arguments in Support.** The California Labor Federation, sponsor of this bill, writes, "When cities engage in a race to the bottom giving away taxpayer funds in exchange for low-wage, temporary jobs that do nothing to grow the economy or reduce inequality, the state of California loses, as well. AB 485 builds on current law that requires disclosure by companies – specifically warehouse distribution centers – that receive local public subsidies of the amount of the subsidy along with the estimated tax impact on the local government and jobs created. This bill requires companies seeking local subsidies to publicly disclose job quality, plans for automation, and any accountability mechanisms should they fail to live up to their promises.

"The bill then requires the company to file an annual report to its approving city or county that reports on its promise of quality job creation and retention for the life of the subsidy, presented at a public meeting so community members can track progress or lack thereof and recommend corrective measures. It also bans non-disclosure provisions in contracts to allow the public to know the details of a deal before they agree to subsidies. This bill is narrow and targeted to give local government the tools to make smart economic development choices that benefit their residents and to hold warehouse distribution centers accountable for the public dollars they receive."

- 8) **Arguments in Opposition.** City of Fresno Mayor Lee Brand, opposed unless amended, writes, "This bill would impose excessively harsh and severe reporting requirements anytime a city or county provides an economic incentive for any type of warehouse distribution project. Making this bill law will affect our ability to be competitive for any new warehouse or e-commerce projects in California, sending those jobs to states such as Nevada and Arizona.

"While Fresno believes in transparency and willingly follows current reporting requirements related to economic incentive agreements, AB 485's language is clearly designed to stymie such projects. Specifically, the bill requires reporting of data that is unquestionably proprietary information that no company – public or private – would share...In the prior two years, the City of Fresno has seen unprecedented success in attracting three major e-commerce projects, creating an estimated 4,000 new jobs and chipping away at the generational poverty that has long plagued our community...If AB 458 becomes law, it will effectively end Fresno's ongoing effort to diversify the economy, raise wages and lower the region's stubbornly high unemployment rate."

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation [SPONSOR]
American Federation of State, County and Municipal Employees, AFL-CIO
California Teamsters Public Affairs Council
Teamsters Local 1932
Warehouse Worker Resource Center

Opposition

California Chamber of Commerce (unless amended)
City of Fresno Mayor Lee Brand (unless amended)

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