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AMERICAN ECONOMIC LIBERTIES PROJECT

Ban Secret Deals: How Secret Corporate Subsidy Deals Harm Communities, and What to Do About It

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AMERICAN ECONOMIC LIBERTIES PROJECT AND FIGHT CORPORATE MONOPOLIES

BAN SECRET DEALS REPORT

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INTRODUCTION

In 2020, Amazon received more than $100 million in tax breaks from University Park, Illinois, to build a distribution center.[1] But in addition to those public dollars, Amazon wanted a promise that University Park's village trustees wouldn't disclose Amazon's identity until after the deal was completed. This prevented the community from providing input on a large local economic development deal until after the outcome was already a foregone conclusion. Regardless, the village's trustees granted that request.[2]

To ensure secrecy, Amazon employed an extremely common tactic in so-called "economic development" deals: forcing those involved to sign non-disclosure agreements (NDAs). These agreements preclude officials from divulging a host of relevant details, including the very identity of the corporation that is in line to receive subsidies or other favors from the public, such as cheap land or waived regulatory filing fees.

All across the country, mayors, city councilors, governors and officials at economic development boards – which are public or quasi-public agencies that negotiate economic development deals – have signed non-disclosure agreements when doling out corporate subsidies. There is no national data on how common these agreements are, but a casual survey of economic development agreements turns up many examples, several of which are detailed below.

As one local Illinois official told WBEZ, which investigated Amazon's use of NDA's in and around Chicago: "It's customary now, when mega-Fortune 500 companies come, that they prefer that you not divulge what they're doing ... It happens all the time." WBEZ also found that Amazon was extracting more public funding from predominantly Black communities in Illinois than it was from white communities, a dynamic that wasn't made public until after the fact because the deals were covered by NDAs.[3]

And some corporations are very aggressive with their use of NDAs: For example, Amazon's non-disclosure agreement for its so-called "HQ2" was signed by university researchers, urban planners, and the waitstaff at a restaurant where the local chamber of commerce met to discuss their respective city's bid.[4]

The goal of these agreements is clear: To prevent input into economic development deals from affected communities, workers, or local businesses, and thus circumvent any organized public opposition. In correspondence with a local official in San Jose, California, the tech corporation Google confirmed that the point of the agreements was to prevent public relations problems in the community.[5]

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1 Good Jobs First Subsidy Tracker, https://subsidytracker.goodjobsfirst.org

2 Lippert, John and Natalie Moore, "Amazon's Massive Chicago-Area Expansion Was Fueled By $741 Million From Taxpayers," WBEZ, Oct. 26, 2020, https://www.wbez.org/stories/amazons-massive-chicago-area-expansion-was-fueled-by-741-million-from-taxpayers/300fa829-1b71-4d9e-a2f4-1776e88d4cb3.

3 Ibid.

4 Calvert, Scott, "After Amazon HQ2, Some Lawmakers Question Nondisclosure Requirements," The Wall Street Journal, Nov. 26, 2018 https://www.wsj.com/articles/after-amazon-hq2-some-lawmakers-question-nondisclosure-requirements-1543228202

5 Pat Garofalo, "Close to Home: How the Power of Facebook and Google Affects Local Communities," American Economic Liberties Project, August 30, Some local officials argue that non-disclosure agreements are necessary to protect trade secrets or other proprietary information, as well as for preventing early judgment on negotiations that aren't finished. For example, the president and CEO of the Business Development Board of Palm Beach County, Florida, wrote that the agreements help officials "to avoid miscommunication and to control information."[6]

Of course, actual proprietary information should not be disclosed by public officials after it has been turned over in good faith. However, the nondisclosure agreements often go beyond that narrow protection, covering any discussion, negotiations, or proposals and counterproposals in which the two parties engaged.

There is ample reason to reform the process to, at a minimum, include more input from local businesses, workers, community members, and journalists. About $95 billion is spent annually on corporate subsidy deals at the state and local level. The research consensus is that those funds fail in their primary purpose, which is to bolster local economic activity by creating jobs and new local investment.[7] Such deal making is also correlated with higher rates of officials being convicted of federal corruption charges.[8] Nonetheless, elected officials face political pressure to pursue them. Due to the publicity these deals attract, studies have also shown that elected officials who engage in more subsidization of corporations earn more votes for re-election.[9]

This brief will detail some of the harms caused by non-disclosure agreements in economic development, which is just one of the many tactics corporations use to hide their activity from the public at the state and local level. It will then provide some real-world examples of NDA use and abuse, and provide solutions for both lawmakers and community members to identify and prevent secret deals.

THE HARMS

The use of NDAs in economic development deals causes several concrete harms. First, they violate a fundamental principle of local democracy: that a community should be able to provide input into the use of public resources and receive information that allowing it to evaluate the work of elected officials and public servants.

By hiding the details of economic development deals – *which again, often includes hiding the identity of the company that will be receiving public money* – NDAs prevent this flow of information and democratic feedback.

2020, https://www.economicliberties.us/our-work/close-to-home-how-the-power-of-facebook-and-google-affects-local-communities/

6 Smallridge, Kelly, "Why Confidentiality is Important in the Economic Development Process," April 14, 2017 https://www.bdb.org/blog/2017/04/14/bdb-blog/why-confidentiality-is-important-in-the-economic-development-process/

7 Garofalo, Pat "The Billionaire Boondoggle: How Our Politicians Let Corporations and Bigwigs Steal Our Money and Jobs," MacMillan, 2018, Chapter 3.

8 Felix, Alison and James R. Hines Jr., "Who Offers Tax-Based Business Development Incentives," The Federal Reserve Bank of Kansas City Economic Research Department, Nov. 2011, https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp11-05.pdf.

9 Jensen, Nathan M. and Edmund J. Malesky, "Incentives to Pander: How Politicians Use Corporate Welfare for Political Gain," Cambridge University Press, 2018.

NDAs also harm small businesses. Economic development subsidies disproportionately flow to larger, national or multinational businesses, including chain restaurants and big box stores. This puts local businesses at a disadvantage by forcing them to subsidize their dominant competitors with their own tax dollars.[10]

A good example of this dynamic is Amazon, which has received more than $4 billion in state and local subsidies.[11] Most of these public funds have subsidized new Amazon warehouses and fulfilment centers, even though communities where a fulfillment center opens experience a subsequent loss of retail jobs and retail businesses.[12] NDAs make it functionally impossible for local businesses to voice their opposition to these subsidy arrangements until it is too late to prevent them.

Finally, NDAs harm taxpayers. Academic research shows that most economic development incentives do not actually sway corporate location decisions,[13] nor do they result in the promised economic benefits across a host of metrics.[14] In fact, one of the most reliable ways to determine if a state will increase its economic development spending in a given year isn't to look at any economic indicator, but simply to see if an incumbent governor is up for re-election.[15] Subsidies are based on politics, not economics, but NDAs eliminate the opportunity for outside parties to engage in the political process in order to improve or eliminate deals that won't benefit the state or locality, thus saving taxpayers money.

THE WORST EXAMPLES

The Chicago area's experience with Amazon is one of the more egregious examples of non-disclosure agreement abuse, but it is far from the only one. Here are four others that exemplify the abuses these agreements enable.

Dueling NDAs in Oklahoma and Kansas

A corporation, which is reportedly Panasonic, used non-disclosure agreements in order to pit Kansas and Oklahoma lawmakers against each other in an attempt to gain significant

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10 LeRoy, Greg, Carolyn Fryberger, Kasia Tarczynska, Thomas Cafcas, Elizabeth Bird and Philip Mattera, "Shortchanging Small Business: How Big Businesses Dominate State Economic Development Incentives," Good Jobs First, October 2015, https://www.goodjobsfirst.org/sites/default/files/docs/pdf/shortchanging.pdf.

11 "Amazon Tracker," Good Jobs First, accessed June 24, 2022 https://www.goodjobsfirst.org/amazon-tracker.

12 Chava, Sudheer, Alexander Oettl, Manpreet Singh, and Linghang Zeng, "Creative Destruction? Impact of E-Commerce on the Retail Sector," NBER Working Paper Series, Working Paper 30077, May 2022, https://www.nber.org/system/files/working_papers/w30077/w30077.pdf?utm_campaign=PANTHEON_STRIPPED&amp%3Butm_medium=PANTHEON_STRIPPED&amp%3Butm_source=PANTHEON_STRIPPED.

13 Bartik, Timothy J., "'But For' Percentages for Economic Development Incentives: What percentage estimates are plausible based on the research literature?" Upjohn Institute Working Paper 18-289, July 1, 2018, https://doi.org/10.17848/wp18-289.

14 Among many works, see: Garofalo, Pat, "The Billionaire Boondoggle: How Our Politicians Let Corporations and Bigwigs Steal Our Money and Jobs," Thomas Dunne Books, March 2019; LeRoy, Greg, "The Great American Jobs Scam: Corporate Tax Dodging and the Myth of Job Creation," Berrett-Koehler Publishers, July 2005; Florida, Richard, "The Uselessness of Economic Development Incentives," CityLab, Dec. 7, 2012 https://www.bloomberg.com/news/articles/2012-12-07/the-uselessness-of-economic-development-incentives; and Slattery, Cailin, and Owen Zidar, "Evaluating State and Local Business Tax Incentives," Journal of Economic Perspectives 34.2. Spring 2020, https://scholar.princeton.edu/zidar/publications/evaluating-state-and-local-business-tax-incentives.

15 Slattery and Zidar, "Evaluating State and Local Business Tax Incentives," https://scholar.princeton.edu/zidar/publications/evaluating-state-and-local-business-tax-incentives.

subsidies for a new electric vehicle battery plant. Many state lawmakers in each state, as well as the governor of Oklahoma, signed them, which led to "public" debates over the incentive packages during which lawmakers either did not know or could n0t disclose the identity of the proposed recipient. Some lawmakers voted to approve the deal without even knowing where in their state the proposed facility would be located. Kansas ultimately approved $1.2 billion in subsidies, while Oklahoma approved $700 million. As Oklahoma Democratic State Rep. Collin Walke said during the "debate" over the Oklahoma bill, "How am I supposed to go back to my constituents and say, 'I gave away three-quarters of a billion dollars to a company that I don't even know their name?' Is that responsible?"[16]

A Big Tech Secret in Tennessee

When the city council of Gallatin, Tennessee, approved nearly $20 million in tax breaks to support a data center in May of 2020, the entity receiving the benefit was called "Project Woolhawk." Months later, the actual beneficiary was revealed to be Facebook. Local officials who negotiated the deal were bound by a non-disclosure agreement, and members of the city council claimed they didn't know the identity of the corporation they voted to subsidize.[17] A similar incident occurred in Columbus, Ohio, for what was ultimately a Google data center.[18] Data centers deals specifically are exceptionally bad for local communities, as data centers are exceedingly expensive per job created and cause very little in terms of second-order economic benefits.[19]

Michigan's GM Gambit

In order to facilitate the passage of a new $1 billion subsidy program, the Michigan Economic Development Corporation, a public agency that negotiates subsidy deals, required more than a dozen Michigan lawmakers to sign non-disclosure agreements, including the governor and House and Senate leaders from both parties. Ultimately, $666 million of the $1 billion was granted to General Motors. The 5-year non-disclosure agreements precluded those officials from discussing vital data, such as the proposed number of jobs GM would create and where.[20]

Georgia Riven by Rivian

Georgia officials at the state and local level were negotiating for months with Rivian, an electric vehicle backed by Amazon, over a $1.5 billion subsidy package. Local residents knew

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16 Garofalo, Pat, "Dueling Secret Deals," Boondoggle, April 20, 2022, https://boondoggle.substack.com/p/dueling-secret-deals.

17 Cross, Josh, "Rumored Facebook project could get tax breaks," Gallatin News, May 15, 2020, https://www.gallatinnews.com/news/rumored-facebook-project- could-get-tax-breaks/article_c4478a7c-96ba-11ea-b7ea-97ea5cce2faf.html.

18 Jeans, David, "Data In The Dark: How Big Tech Secretly Secured $800 Million In Tax Breaks For Data Centers," Forbes, August 19, 2021, https://www.forbes.com/sites/davidjeans/2021/08/19/data-in-the-dark-how-big-tech-secretly-secured-800-million-in-tax-breaks-for-data-centers/?sh=45a0a2386b43.

19 Garofalo, Pat, "Facebook's Data Center Fluff," Boondoggle, Sept. 23, 2021, https://boondoggle.substack.com/p/facebooks-data-center-fluff.

20 Egan, Paul, "Records: Thirteen Michigan lawmakers signed confidentiality deals with state agency," Detroit Free Press, Jan. 4, 2022, https://www.freep.com/story/news/politics/elections/2022/01/04/michigan-lawmakers-confidentiality-agreements-medc/9095642002/; and Robinson, Samuel J., "Non-disclosure agreements surrounded GM tax incentives, something new legislation aims to ban," Michigan Live, Feb. 28, 2022, https://www.mlive.com/public-interest/2022/02/non-disclosure-agreements-surrounded-gm-tax-incentives-something-new-legislation-aims-to-ban.html.

nothing about it due to non-disclosure agreements. By the time residents were let in on the plans, it was too late for opponents to successfully organize, even though they had significant concerns about traffic, the plant's effect on farmland, and its water usage. Even months after the deal was disclosed publicly, residents were still missing key details of the plan, including site design and expected environmental effects. "This is not a little deal," said Edwin Snell, a local resident. "And to have it sprung on us after all these NDAs and secret meetings, can you not understand why we don't trust you?"[21]

SOLUTIONS: STATE AND LOCAL

State Level Legislation to Ban Secret Deals

State lawmakers have the power to ban these nondisclosure agreements outright. Bills to do so were introduced in four states in 2022: New York, Michigan, Illinois, and Florida.[22] New York's bill passed the State Senate on a bipartisan, unanimous vote of 61-0, the first successful vote on such a ban anywhere in the U.S.

The goal of this legislation is not to ensure that every aspect of the negotiations happen in public, but that vital information – the who, when, why, and how much of corporate subsidies – happens in public, and that there is opportunity for public organizing and input before a deal is closed. If your state is considering legislation like this, you can organize your community to generate calls to your local representatives urging them to pass the bill. If your state isn't considering this type of legislation, you can do the same thing, but urge your representatives to introduce the legislation instead. If you need any help getting started, email us at info@bansecretdeals.org.

Local Tactics to Expose and Fight Secret Deals

Legislation, though, is not the only way to combat secret deals. Community members have several tools at their disposal to use at the local level. Do some digging to see if a secret deal may be happening in your community:

Spot The Deal

The first step in spotting a secret deal is knowing what to look for. Here are some possible signs that a secret deal is in the works:

1. There's a development project in your area with a non-descript name like "Project Olive" or "Project Mastodon." Often, the name includes a random noun that doesn't describe any sort of particular business.

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21 Kann, Drew, "Residents slam state's handling of Rivian project at public meeting," Atlanta Journal-Constitution, April 19, 2022, https://www.ajc.com/news/residents-slam-states-handling-of-rivian-project-at-public-meeting/GCR3M6BRV5FENCWKCBUOFZ4MGQ/; and Peters, Andy, "Rivian's Georgia electric vehicle plant sparks fears among neighbors," Atlanta Journal-Constitution, Jan. 22, 2022, https://www.ajc.com/news/rivians-georgia-electric-vehicle-plant-sparks-fears-among-neighbors/MHSOOW54DNE4ZEOZ4ZDN3DVCVY/.

22 New York, S1196/A9092; Illinois, SB3038, "The Honesty in Economic Development Act"; Florida, HB6059; Michigan, HB 5866 and 5867.

2. Local filings for the project include only real estate developers, such as Trammell Crow, and no indication of who a building's actual tenant will be.
3. Local filings or political leaders only mention the line of business a particular tenant will be in such as: "An e-commerce company," "a logistics company," "a heavy manufacturer."
4. Local or state officials refuse to explain which company they're talking to, only referring to it as "the firm" or some other ambiguous name.

You'll find some of these pieces of information in the meeting agendas and minutes of your local government's website. Some people have even been tipped off to secret deals in their community because of the sudden presence of corporate developers or sudden zoning changes, such as a rural zone quickly being re-zoned to industrial.

Ask The Right Questions

One of our best tools as advocates is the ability to bring the secret deal into the light and demand transparency from our public officials. In some cases, the mere act of making the deal known to your community will inspire enough opposition to stop the deal altogether. **As soon as you suspect a deal, it's important to try and get your public officials on the record answering questions about the specifics.**

Not all of these questions will apply, but consider asking the following:

- What are the financial terms of the deal? Will the corporations pay property taxes? Will they be subject to any local tax bonds?
- What permanent jobs will the project create? What is the salary range of those permanent jobs? Will they be full-time employees and not contracted out?
- How will workers be transported to and from the facility? What are the housing needs for these workers, if any?
- What environmental impact will the project have? What is the annual water and electrical needs of the facility? Will the corporation receive a discount on utilities?
- What type of waste will the facility create?

The best forum for asking these questions is typically during a public meeting. You can find when meetings are happening by searching your local government's website. If you're able, try and pack the meeting with community members who share your concerns. You can also ask these questions by emailing your public officials, calling them, or enlisting a reporter to help you get your officials on the record.

Turn Up The Pressure

If your public officials are not responsive, there are a number of tactics that you can use to demand transparency from your public officials, and even possibly stop the deal. You can:

- Send letters to the editor to your local newspaper
- Generate calls to your public officials, asking them to stop the deal
- Knock on your neighbors' doors and enlist them to make calls, knock more doors, or pack the next public meeting

- Let others in your community know about the deal through Facebook, Nextdoor, the PTA list, flyers at the library, etc.
- File complaints under state or local open meetings law
- File public records requests or freedom of information requests.[23] This is useful even if those requests are rejected or the materials are redacted, as that can provide proof a secret deal is in the works.

Local Tactics Case Study

What does the above strategy look like in action? In April 2022, county officials and staff in Frederick County, Maryland, met in what they called a "closed session" to hear Amazon's pitch about bringing several Amazon Web Services data centers to the region. The next day, officials in the town of Brunswick, Maryland, did the same. None of them revealed anything to the public about what sort of talks were underway, and it seems possible that county staff signed non-disclosure agreements — the county refuses to acknowledge either way.

Local residents heard rumors about the potential project — as Amazon representatives were present in the community trying to buy up local land — and were concerned about local resources like water and environmental impact in an area with significant agriculture.

After many unsuccessful attempts to have local officials explain their plans, community members asked the state Open Meetings Compliance Board, which enforces state open meetings law, to reprimand both the county and the town of Brunswick for open meetings violations. The Board did so, saying that in neither instance was there adequate disclosure regarding the meetings with Amazon.

Amazon ultimately abandoned the project. According to a county official, "Amazon seemed to underestimate the complexity of the process the county usually follows for development projects, including opportunities for public engagement if a proposal moves forward."

Polling

Banning non-disclosure agreements is not only good policy, but it makes sense politically for lawmakers and candidates. According to a June 2022 poll conducted by GBAO on behalf of Fight Corporate Monopolies, 71 percent of respondents said that they were more likely to support a candidate who favors banning backroom subsidy deals negotiated without public input. 42 percent said it made them *much* more likely. The results were similar across party identification, race, age, education, and geographic region, with particular strength in the eastern Midwest and Mountain/Great Plains regions.

23 For a complete guide to state public records and open meetings laws, see the Open Government Guide from the Reporters Committee for Freedom of the Press: https://www.rcfp.org/open-government-guide/.

AMERICAN ECONOMIC LIBERTIES PROJECT

FIGHT CORPORATE MONOPOLIES

The American Economic Liberties Project is an independent organization fighting against concentrated corporate power to realize economic liberty for all, in support of a secure, inclusive democratic society.

Fight Corporate Monopolies works to ensure that our democracy and economy work for the people, not just big corporations, the rich and powerful, and the politicians that they bankroll.

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