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State and Local 'Anti-Poaching' Agreements: Background Information

By Wendy Patton, Policy Liaison

Discussions in the Cleveland area of a possible agreement against using economic incentives to lure local companies to nearby municipalities prompted Policy Matters Ohio to gather information on other such agreements.

Anti-raiding sentiment has a long history, but regional agreements on this issue are relatively uncommon and do not share all of the same elements. Some, such as those in Metro Denver and South Florida, are handshake agreements. In some places, like Montgomery County, Ohio, regional cooperation is the entry fee to participation in regionally allocated grants used to attract companies, as well as state and federal funding opportunities. Several examples that we have found in our research so far are cited below. While there is little analysis of their impact available and we cannot attest to the effectiveness of these agreements, the existence of these pacts in faster-growing Sunbelt areas illustrates that this is not only a response by older industrial centers.

Based on our preliminary overview of the topic, we offer the following observations/ recommendations:

- <u>Anti-poaching provisions should include language that specifically addresses the conventions of economic development practice.</u> These include rules of conduct for prospecting, for marketing and advertising, notification, interaction with the real estate community, and so forth. The codes of ethics of the economic development entities of the Bay Area (CA) and Metro Denver and the Tri-County Reciprocal Interlocal Agreement proposed for southern Florida (links to both are shown below) provide practical examples.

- <u>Anti-poaching initiatives may offer the opportunity to adopt other standards to improve the practice of economic development in the region.</u> For example, the City of Gary, Indiana passed an ordinance that addressed economic development concerns ranging from anti-poaching through disclosure requirements and wage and benefit provisions (see http://www.newrules.org/gov/gary.html).

- Revenue sharing on specific projects may be used to replace competition with cooperation. The Dayton-area 'Delphi Pact' of 2006 is intended to prevent whipsawing of communities as the bankrupt Delphi company downsizes or as shuttered facilities are redeveloped. Under the pact, no community's share of total municipal income tax from the four plants changes over time due to plant closure or redevelopment. Other examples include joint tax increment financing areas that overlap boundaries of adjoining municipalities.

Here is a list of regional agreements, formal and informal, intended to curtail poaching of companies and jobs:

- **The Metro Denver Economic Development Corporation**, comprised of 58 public, private and civic entities, implemented an anti-piracy code of ethics in the mid-1980s (http://www.policymattersohio.org/pdf/Metro_Denver_Code_of_Ethics.pdf); the highlights include the following:

  "At no time shall any member of the Metro Denver EDC solicit a fellow member's prospects....

  "At no time shall any economic development organization member of the Metro Denver EDC advertise or promote its respective area to companies within another member's geographic area in a manner which is derogatory or insulting to the other geographic area. 'Selling against' another member of the Metro Denver EDC or another Colorado Community, or direct solicitation of intrastate relocations, is strongly discouraged."

- **The Bay Area Chapter of the California Association for Local Economic Development (CALED)** also has a long standing code of ethics, which outlines the problems of intrastate competition (a negative cost/benefit ratio, unseemly rivalry creating counter-productive image, and so forth), establishes a set of rules around notification and use of incentives in intra-state relocation deals for local and state governments, and recommends regional, as opposed to local, marketing strategies (http://www.policymattersohio.org/pdf/CALED_code_of_ethics.pdf).

- **Austin, Texas** Ordinance 91 1121-C states that as an economic qualification for tax incentives, the project *"….should not be expected to solely or primarily have the effect of merely transferring employment from one part of the City of Austin to another without demonstration of increased future investment and jobs…"*

- **The Louisiana Economic Development Council, in partnership with the International Economic Development Council,** adopted an 'anti-poaching' provision of its economic development platform for rebuilding the private sector in New Orleans. This professional organization has articles that may be relevant to this topic, but are restricted for members only at (http://www.iedconline.org/).

- **Broward, Miami-Dade and Palm Beach Counties considered the provisions of the Tri County Reciprocal Interlocal Agreement**, but concern over legal enforcement has kept the proposed pact a handshake agreement (http://www.policymattersohio.org/pdf/SFlorida_Agreement.pdf).

- **Montgomery County, Ohio,** since 1992 has administered a regional development program that encompasses both economic development incentives and fiscal equalization (add link). While not exactly an anti-poaching pact, its inception was based on cooperative regional development. The Montgomery County ED/GE (Economic Development and Governmental Equity) uses economic development grants to attract state and federal economic development subsidies. The legal basis for the ED/GE program is Ohio Revised Code Section 307.07. Operational since 1992, the program collects a part of its sales tax for economic development grants (that's the ED part), and redistributes a share of municipal income tax revenues from participating governments (that's the "governmental equity" or GE part) through a formula based on growth.

- **Dayton metro area's Delphi Pact** of 2006 (http://www.policymattersohio.org/pdf/Delphi_Dayton_agreement_2006_03.pdf) was implemented by local legislation and created to prevent competition for jobs and redevelopment among the municipalities that host the bankrupt Delphi Corporation. It targets specific plants with a goal of eliminating competition in economic development and obligates communities to support any movement of work between the Dayton-area facilities. All the communities benefit if there is growth from new firms in the old real estate, and injury is minimized if a plant is shuttered. No state legislative authority was needed, since participants are home rule and municipal income tax sharing is the basis.

- **In California, officials in the East Bay counties of Alameda (Oakland) and Contra Costa** have had a long-standing practice of informing the affected community if a local company is looking to relocate. A mayors' conference of cities in the two counties approved an agreement not to create incentives to attract businesses from one city to another. We are attempting to gather more information on this.

- **Gary, Indiana's** municipal law (Ordinance NO. 89-45, Resolution 2252), passed in the late 1980s, states in section 7 that no abatement shall be granted for the relocation of existing employment opportunities within the corporate limits of the City of Gary unless all existing employees are given the right to transfer and no abatement shall be granted for the relocation of existing jobs from outside the corporate limits of the City of Gary.

Anti-poaching or anti-piracy legislation, whether called that or not, has been discussed and enacted over the past 20 years in at least eight states -- Alabama, California, Connecticut, Florida, Michigan, New Mexico, Ohio, and Wisconsin -- as well as in Puerto Rico. The best source of information on state anti-poaching legislation is at http://newrules.org (in particular, http://www.newrules.org/retail/piracy.html).

Other examples of state laws not summarized at http://newrules.org include:

- **Connecticut**, in 2004, passed an amendment to its urban and industrial site reinvestment program's Section 18 (Substitute house Bill 5647) to prevent economic incentives from being used for projects that are intrastate relocation unless they are necessary to keep the firm from leaving the state. According to the legislative analysis of the bill:

  Under the bill, a business applying for credits cannot receive them if the project would relocate a facility from one Connecticut town to another. But the DECD commissioner can approve credits for a relocation within the state if he determines that the credits would discourage the business from relocating to another state and if the business supports this determination by certifying that it received a bona fide offer or incentive from a government agency in another state to move the facility there.

- **Florida** modified its provisions under F.S. 288.106 for the qualified Target Industry Refund Program by adding an anti-raiding clause prohibiting the use of state incentives to relocate a Florida business from one county to another.

Ohio law from 1997, Ohio Revised Code (O.R.C.) 5709.633, states that enterprise zone tax abatements will not be provided to companies relocating or transferring jobs from one Ohio site to another site in the state unless the Director of Development finds the relocation necessary due to one of the following conditions:

- The land of the current site is not big enough for a planned expansion;
- The relocation is necessary due to "market conditions" including, but not limited to, new or modified contracts with customers or suppliers (such as 'just-in-time' requirements); changes in production methods; loss of customers or major contracts such that a change of product and markets must be made; or certain changes in ownership or control.
- The relocation is due to consolidation of operations and certain thresholds for increases in employment and property valuation can be met at the site of consolidation. The thresholds differ for intra-state and inter-state consolidations.

In addition, income and corporate franchise tax credits, defined in O.R.C. 5709.65, are prohibited in the case of intrastate relocation in O.R.C. 5709.64(A)(4), but an investigative and appeals process defined under this section allows for waiver by the Director of Development.

The loopholes in these Ohio laws sharply limit their effectiveness in curtailing poaching. The laws are available at: http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=titlepage.htm

No doubt this is an incomplete list of such legislation and local agreements. If you know of either in your state or community, please contact Wendy Patton, Policy Matters Ohio, (614) 486-4602 wpatton@policymattersohio.org.

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