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Some state leaders say incentive talks must remain secret

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Caterpillar's public pitting of Spartanburg against two other Southeastern cities in the race for a new heavy equipment plant meant state and local governments were piling on the incentives, though South Carolina taxpayers never knew what was at stake, and still don't.

That's not the case in North Carolina, where incentive offers ? potentially \$73 million for Caterpillar ? are required by law to be made public in advance. Even before Caterpillar picked Winston-Salem, N.C., last week, Montgomery, Ala.'s mayor told *The Montgomery Advertiser* that his city wasn't likely to match the North Carolina city's lure.

That left South Carolina playing tax-break poker and the public unaware of the size of the bet.

It's an approach that everyone from Gov. Mark Sanford to some business advocates say can tilt the playing field for both good and ill, attracting major employers and remaking local economies while potentially overpaying even as established employers labor on without comparable benefits.

"If the whole process was on eBay, we'd save the states millions of dollars," said Bob Orr, a former North Carolina Supreme Court justice and executive director of the N.C. Institute for Constitutional Law, which has occasionally sued over what it argues are that state's incentive deals that violate its constitution.

However, South Carolina officials say they believe it's important to protect a company's confidential business plans, and that all the states would have to agree to such front-end transparency before it would work.

House Speaker Bobby Harrell told *The Greenville News* before Caterpillar picked Winston Salem that he wasn't aware of the prospect but that North Carolina's solo move to disclose incentive offers is "not real bright" because it tips off other states and helps them make better offers.

It didn't seem to keep North Carolina from winning the Caterpillar project, though it remains unclear if the other two states were ever serious contenders. Orr said that's part of the game ? using the competition to maximize an incentive offer ? but that he's seen no evidence that North Carolina's transparency law puts the state at a competitive disadvantage.

Caterpillar's new plant is expected to be a \$400 million, 850,000-square-foot manufacturing facility that will employ more than 500 people. The heavy equipment maker already has Upstate engine and logistics facilities as well as plants in most eastern states.

Multiple attempts to reach Caterpillar officials this week were unsuccessful.

Harrell said that with secret negotiations there "may be" a risk of overpaying, but he believes there would be

much less chance of landing big-time employment prospects if the process was public. He said he totally supports the state's private approach because the terms are disclosed when a deal is signed.

Other state and local officials say incentives here have become much more sophisticated in recent years, and that overpaying for a prospect is unlikely because it's not hard to know what competing states will offer based on past cases and state statutes.

When asked after the fact Friday what South Carolina had offered Caterpillar by way of incentives, state Department of Commerce spokeswoman Kara Borie said she couldn't confirm or deny projects the department "may or may not be working," and that state law only requires that incentives be disclosed after an agreement has been signed or a project is announced, whichever comes later.

Borie said the state is frequently under confidentiality agreements and that "you can't disclose something that you don't have yet."

The state generally requires companies to maintain certain numbers of new jobs and investment before they get a windfall, and tax benefits also are extended to existing firms that add employees or investment.

Orr said billion-dollar corporations don't really make location decisions based on six- or seven-figure annual incentives deals anyway, but they use the current economic development game to pit states and even local governments against one another for the largest subsidies they can get ? even as state budgets are being drastically cut.

"We have local governments and state governments in financial difficulty. We have the federal government in debt in the trillions. Why are we doing this?" Orr said. "Why don't we have across-the-board tax benefits?"

In what has become a well-known incentive story, Orr said North Carolina gave Dell Computer an incentive package worth about \$300 million only to find out after the fact that its nearest competitor had offered a fraction of that amount.

Dell later decided to close the plant, though the company also decided to pay back some of its local incentives ? funds Winston-Salem used to help lure Caterpillar, the *Winston-Salem Journal* reported.

Hal Johnson, president and CEO of The Upstate Alliance, said the issue in keeping negotiations private is the fierce competition between companies and brands in which giving competitors a heads-up on your plans could prove devastating and lessen the chance that a major new operation will be able to elevate a community.

He said it's true that the size of the incentives don't themselves decide where a company will locate, but that frequently the decision between two locations is so close there has to be differentiator ? and sometimes it's a financial one.

Johnson said it would be great if all states agreed to pull out of the incentives game and compete solely on their local merits ? education, the quality of the work force, tax rates.

Still, "You show me the first state that's going to go out there and say we're not going to offer incentives," Johnson said.

Borie said South Carolina doesn't write checks to companies but routes grants through local governments,

pays for public enhancements such as infrastructure and insists on "clawback" provisions that require new jobs or investment to be in place before companies get benefits such as a refund on withholding taxes.

"Companies don't like them, but the reality is that you should have them in place," Johnson said. "Every incentive that our state offers is an if-then. It is all competitive. If you reach this much in capital investment, then you're eligible for this."

State Sen. Larry Martin said one drawback to the economic development game is the potential to overspend on an employment recruit, while another is the "sour taste" local businesses get when the state is paying a competitor to locate nearby.

He said North Carolina never saw the benefits of the Dell agreement, but that such a deal wouldn't have happened in South Carolina because of the safeguards in place. He also noted that tax credits for new jobs and reduced property taxes are also available to existing companies that make new investments.

"We've gotten smarter about how these offerings are made," he said, adding states must constantly review whether the benefits are worth the costs.

Orr said 200 small businesses may add one job each and get little in the way of state investment, while a single company creating the same number of jobs could be in the running for a significant windfall.

That's where both Orr and Martin say a realignment of the tax code may be in order so small businesses can take advantage of other breaks.

Both candidates for governor have called for tax reform, with Democratic candidate Vincent Sheheen calling for comprehensive reform and Republican candidate Nikki Haley saying she wants to eliminate the small business income tax.

Sheheen responded to questions from *The Greenville News* by saying in a statement he supports "aggressive use of incentives when tied to job creation" and that he would also support a comprehensive review of incentives "with an eye toward competitiveness and transparency."

Haley told *The News* in a statement that there's a place for incentives for out-of-state firms, but that they "must be transparent to taxpayers" and benefit businesses already here. She said it's not the quantity but the quality of the employer that matters.

Martin said the question is figuring out how to pay for a business tax cut that would benefit more companies across the board. Orr said doing away with existing incentive deals could pay the way.

He said he's waiting for small- and mid-sized businesses to build a movement against the deals that so often benefit their larger competitors.

Harrell, who owns two firms of fewer than 25 employees, said he understands the small-business complaint that comparable incentives aren't available to them.

Asked what the Legislature could do, he said he could envision a set of tax credits for expanding small firms, though the state would need to spell out the rules on what constitutes an expansion and how long new employees would need to be on the rolls to qualify for a benefit.

Aside from the conservative idea that business tax rates should go lower, Orr also suggests federal action that

would limit states' ability to subsidize a company's interstate move ? states couldn't pay to steal another state's employer.

Johnson said South Carolina must focus on its main assets for luring employers such as education and worker skills, or else it could be viewed by others as a state where incentives are used to compensate for its inadequacies.