Transparency and Accountability in Economic Development Efforts: Causes with Consequences*

5TAD: Workshop 4 (Transparency and Accountability in Governance)

Jeremy L. Hall, Ph.D.
Assistant Professor of Public Affairs
University of Texas at Dallas
Jeremy.Hall@utdallas.edu
972-883-5347

*Prepared for presentation at the 5th Transatlantic Dialogue, Workshop 4, Washington, DC, June 11-13, 2009. The author wishes to thank Trish Hutcheson for her valuable research assistance on this project.

Abstract

This paper considers the forces of accountability that shape state transparency laws. It then examines the competitive nature of economic development competition to explain why states emphasize accountability of one form while overshadowing others, such as transparency and openness. State transparency exemptions for economic development are identified and portrayed graphically to demonstrate the pattern of competition among the states in this area. Directions for future research are suggested as a result, including investigating the causes and effects of state transparency law exemptions for economic development purposes.

Introduction

Piotrowski and Rosenbloom (2002) contend that transparency policies make the administration comport better with U.S. democratic-constitutional values. Government accountability requires transparency to provide the necessary, though insufficient, procedural accountability upon which substantive accountability may develop (Koppell 2005). This being said, why do states exempt some facets of their governance from transparency laws? Given multiple accountability expectations, states seem to place different weights on the accountability and performance expectations they confront. In some places economic development and potential industrial recruitment outweigh the value of holding agency decision makers accountable to the electorate for their actions. Some states emphasize economic development, no matter the cost, by exempting economic development activities from transparency laws; other states emphasize accountability for responsible decisions first and foremost by covering economic development activities in transparency laws. Koppell's (2005) multiple accountabilities disorder explains why agencies fluctuate in their response to various accountability demands; transparency exemptions are distinct in that they focus on broader accountability decisions that are relatively stable over time.

Many policy decisions are framed as competitions, creating obvious winners and losers, though a preferable frame would be to make responsible decisions that maximize expected value for the jurisdiction over time (Bazerman, Baron & Shonk 2001). Competitive escalation and competitive irrationality (Bazerman 2006) can lead states or nations into bidding wars for employment-generating industry even when they should avoid bidding altogether. In the case of economic development competition, this means the winning state may afford excessive tax abatements and location incentives relative to the employment and tax value the industry will generate. If covered by transparency laws, constituents have recourse to hold the agency accountable; if exempted, the cognitive dilemma can play out with detrimental long-term, even intergenerational, consequences.

In the U.S., state transparency laws determine the openness of government and its activities related to economic development. Variance in laws across states, particularly with regard to the types of information that are covered or exempted, produces a landscape of asymmetric and therefore inefficient economic development competition. This paper evaluates transparency laws, and specifically their exemptions for economic development activities, across the fifty U.S. States. The paper is organized in two sections. The first examines the cognitive limits that shape state motivation to treat economic development as a win/lose game (leading to the transparency exemptions that manipulate the game's rules). Key elements of attention include decision framing, bounded rationality, and competitive irrationality. Decision theory is applied to recommend techniques for framing decisions so as to better integrate transparency into the accountability mix. The paper's more significant contribution is an examination of states' social, economic development exemptions from state transparency laws. By categorizing states and evaluating patterns of state competition, the paper provides a foundation on which to develop theory to explain how and why state transparency exemptions evolve. This theory will be applicable to other settings (including Europe) and contexts (policy areas). Though the paper's subject is economic development in the U.S. context, the resulting theory is salient to nations within the European Union or any inter-jurisdictional competition in which information asymmetry may skew the process outcome. It has been noted, for example, that Scandinavian nations conceptualize transparency in government quite differently than other European

countries, leading to conflict in the E.U. regarding the appropriate form of policy making (Grønbech-Jensen 1998).

Transparency Policy: Background

Our modern democratic society has embraced the values of openness and transparency as keystones of accountable government. Most widely recognized is the federal Freedom of Information Act (FOIA), but it is not a singular policy. Multiple federal policies have enhanced government transparency over time, as have state FOI laws, open records laws, and open meetings laws—often referred to as 'sunshine' laws. Such change occurred in response to public pressure to make government more accountable and responsive following an era of corruption and secrecy. The transformation ended the image of shady 'smoke-filled room' handshake deals, and became the newfound arbiter of efficiency and honesty in government. In short, transparency provides accountability in government.

Unique windows of opportunity often result in dramatic policy shifts, such as that demonstrated by the adoption of government transparency laws in the U.S., including the widely recognized federal Freedom of Information Act. However, transparency laws in the U.S. pre-date the FOIA by at least three decades, with gradual incremental shifts advancing the public's right to know. In fact, some states already had open records laws in place when FOIA was adopted. As Piotrowski and Rosenbloom (2002) note, "From the 1940s to the present, considerable legislation and judicial effort has focused on infusing public administration with constitutional values" (p. 644).

Using the metaphor of a window to equate the opening of government actions to public scrutiny, we might think of the early 1930s as a window in a very old house, sealed shut by age, frosted over by many years without use or attention. The creation of *The Federal Register* marks a key initial step in opening the actions of government to public scrutiny. "Reasonable transparency of government and its accountability under law are enduring goals of the American public administration. *The Federal Register*, created in 1935 is a historic institutional tool designed for these purposes, and it represented a seismic shift in the way government functions" (Feinberg 2001, 359). *The Federal Register* transformed participation in American government by documenting the substance of, and the reasoning behind, regulatory action (Feinberg 2001). A decade later, incremental change continued; the Administrative Procedures Act (APA) of 1946 required agencies to solicit written public comment on their actions through notice of proposed rulemaking published in the *Federal Register* (West 2004).

One cannot consider these landmark policies to represent vast departure from the status quo, however. Bureaucratic resistance in implementation dramatically reduced their effectiveness—particularly the APA. "[A]dministrative secrecy was so ingrained by the late 1940s that the [APA]'s language requiring the release of information to persons 'properly and directly concerned' was immediately misinterpreted as a significant 'standing' requirement and misused to withhold information" (Piotrowski & Rosenbloom 2002, p. 644). The Freedom of Information Act of 1966 corrected this interpretive malady.

Further legislative change has continued to enhance government transparency. The Government in the Sunshine Act (1976), the Inspector General Act (1978), and the Government Printing Office Electronic Information Access Enhancement Act (1993) all provide the public with greater access to government information. The latter, for example, requires free online availability of *The Federal Register* (Feinberg, 2001)—taking information access far from its

humble beginning into the 21st Century. Moreover, executive policy has also played a significant role in opening government information to the public, from President Clinton's memorandum for Plain Language in Government Writing (Feinberg, 2001) to President George W. Bush's E.O. 13392, *Improving Agency Disclosure of Information.* (I revisit this latter policy change below.) For a timeline of key transparency legislation, and legislation into which important transparency policy changes were written, see table 1.

The FOIA represented a more fundamental shift in thinking as it moved the burden from the requestor (to prove that they needed to know) to the government agency (to prove that there is an identifiable reason why the requestor should not obtain the information) (U.S. GAO 2006). Just as the APA was met with resistance in 1946, so the FOIA found resistance from a federal bureaucratic enterprise steeped in the tradition of secrecy. No "federal agency urged its passage, and, for a time, even the president's approval of it seemed uncertain" (Relyea 1975, 3). Looking back on the first decade of the FOIA, Relyea (1975) notes:

> [A]dministration of the statute has not been particularly impressive. The bureaucracy did not want this law. Unfortunately, this attitude of opposition has manifested itself during the first years of the act's operation in excessive processing fees, response delays, and pleas of ignorance when petitioned for documents in terms other than an exact title or other type of precise identification (4).

In spite of this resistance, Relyea (1975) goes on to observe that, "[a]lthough the administration of these laws has not always been consistent with the spirit of their enactment, these policy instruments generally reflect a desire to open government information, at least at the federal level, to the citizenry" (p. 8). The record demonstrates "a new operating presumption that government information, whether in documentary or observable form, be available to the public unless it is otherwise specifically exempted" (Relyea 1975, 8). Transparency policy change has adhered to fairly stable shifts throughout its history, but, if one overlooks the temporary bureaucratic resistance to the FOIA, that landmark legislation nevertheless represents a major reorientation of thought regarding the proper role of the public in the day-to-day business of government. "FOIA establishes a legal right of access to government records and information, on the basis of the principles of openness and accountability in government. … FOIA established a 'right to know' standard for access, instead of a 'need to know." (GAO 2006, 4).

Diffusion of transparency laws through the several states was has taken place over time. The primary impetus came with the federal FOIA but diffusion and internal determinants have played a role in state adoptions since that time, enhancing transparency throughout the intergovernmental system (as state laws govern their non-sovereign local governments and public bodies). If we view the federal change from the perspective of a punctuated equilibrium (Baumgartner & Jones 1991), the dramatic shift has been followed by a lengthy period of relative incremental stability at the federal level and incremental change at the state level. In the post-transparency adoption environment, change has been gradual—with the obvious windfall punctuation in 1966 with the passage of the FOIA.

However, this shift has not been unidirectional as one might suspect. The FOIA's reach has been constrained by altered interpretations over time. Even as soon as it was passed, a stalwart administration began to incrementally carve out additional exemptions. President Nixon's E.O. 11652 expanded exemption from issues of national defense to interests of national defense or foreign relations (Relyea 1975, 6). While transparency serves a high purpose, most states and the federal government have rejected its universal application in favor of varied

exemptions. Today, the federal Freedom of Information Act, for example, includes nine categories of exemptions under which requests may be denied in whole or in part (GAO 2006; see figure 1). The most commonly used exemptions among federal agencies to deny requests for information are personal privacy related (item 6 and 7c in figure 1; U.S. GAO 2002). Other exemptions include national defense, law enforcement techniques, the location of wells, and so forth.

Incremental broadening of the general scope of transparency laws has continued at the state level as well, as has the concomitant narrowing of applicability to certain situations and in particular policy arenas. The field of economic development provides one example which I elaborate below. While sunshine laws, public meeting laws, and other transparency policies have been added by states over time, the application of those laws has generated concern for performance of particular functions, such as industrial recruitment, leading to gradual exemption of those specific government functions from the ever-broadening general policy. To summarize, although changes to governmental transparency policy have been general in nature, the actualized policy change across substantive policy fields has not been uniform. Transparency exemptions for economic development may be characterized as incremental, gradually diffusing across states (see Berry & Berry 1990).

In order to fashion a better understanding of the changes we observe in transparency policy—both historically and in the present—it is worthwhile to review the rationale dictating transparency's application to governance. The following section provides that rationale, drawing on transparency's role as a core democratic-constitutional value necessary for government accountability, and then elaborating the ensuing conflict resulting under the New Public Management's dictum of performance measurement. I now turn to considering the competing meanings of 'accountability.'

Transparency and Accountability: Core Values in Conflict

"Belief in the openness of government to regular inspection is so firmly ingrained in our collective consciousness that transparency has innate value" (Koppell 2005, 96). Why have we come to place such a high value on transparency? Perhaps because the "The growth in the size of the bureaucracy and the development of immensely technical and complex fields of specialization have placed tremendous powers in the hands of public officials" (O'Brien, Clarke, Kamieniecki 1984, 339). Powerful parties in government require checks on their actions. Whereas the bureaucracy was impotent in the early days of the republic, it required no significant checks on its action. The Constitution institutionalizes checks among the executive, legislative, and judicial branches of government because it grants each of them specific powers. The bureaucracy has increased in power over time as it has expanded in size beyond the manageable limits of executive control by the President.

Piotrowski and Rosenbloom (2002) contend that transparency policies make the administration "comport better with U.S. democratic-constitutional values" (645). "In democratic-constitutional theory, the question is not simply whether government does the right thing most of the time. A central issue…is how to prevent it from doing the wrong thing some of the time—or ever." (p. 648). What determines whether an action is wrong? How is it that we should not trust public officials to execute their duties honestly and rightly? The founding fathers struggled with such difficult questions, but had the foresight to understand that

government must come with restrictions to prevent it from overstepping its intended bounds. Writing in Federalist 51, James Madison observed:

> "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions" (Madison 2006).

In Madison's words we find recognition of a stark reality—a government by the people is fallible, and so precautions must be taken. Speaking from hindsight, or experience, as he does, Madison brings to mind the atrocities of government unbound by limitations on its action. As the framers agreed, checks and balances are necessary for government to control itself. This basis serves as a foundation of values upon which our government is built, and central among them is transparency. "If the fundamental basis of democracy is an alert and aware public, active in the affairs of government, such measures [as the Freedom of Information Act] seemingly have a potential for fostering an informed citizenry" (Relyea 1975, 3). Moreover, "[t]he fundamental basis of a democracy lies in an alert and articulate public, active in the affairs of state. Without that participation, a democratic government cannot truly be said to exist" (Relyea 1975, 8). Piotrowski and Rosenbloom (2002) suggest that "the Freedom of Information Act embodies the democratic-constitutional value of government transparency; …Freedom of information is an archetypal democratic-constitutional value" (649).

Transparency is a core democratic value; however, its value comes not from its existence but from the results it brings to bear. Transparency fosters accountability, holding public officials and administrators responsible for their actions. We rely on transparency to examine the inner workings of an agency and to assess its performance. What makes an organization transparent? According to Koppell (2005), the "critical question for evaluating organizational accountability along the transparency dimension is straightforward: Did the organization reveal the facts of its performance?" (96). Public meetings are one mechanism for ensuring government transparency. Such meetings provide valuable opportunities for citizen participation in the political process; public meetings may not contribute to deliberation or rational persuasion, but they do allow opportunities for providing information, showing support, shaming, and agenda setting, among others (Adams 2004). In other words, they may influence, but not directly change votes.

West (2004), writing on the value of public comment in agency rulemaking procedures, finds that variation in the level of public participation in such activities varies as a result of the level of controversy surrounding the rule, the breadth of its effects, the degree to which it is based on agency discretion as opposed to legislative or judicial directives, and the resources available to participants. This suggests that it is not necessary to receive public comment on every action—in fact there will be many actions that do not receive nor require comment—but that the public must at least have the opportunity to participate. "Obviously, public comment must occur in order to influence what agencies do" (West 2004, 70). Scholars have variously assessed the effects of agency rulemaking procedures as an opportunity for interests to participate and influence policy, as a symbolic gesture, and as a 'fire alarm' mechanism to

trigger political accountability: “rulemaking procedures promote responsiveness by triggering political involvement in the administrative process” (West 2004, 73).

If we can observe the organization’s outputs, and the process by which they were derived, then we can make valid assessments about its effort and overall performance. In order to hold an agency accountable for its actions, one must be able to observe those actions. *Accountability* conjures images of effective and responsible government when used in such general terms, and indeed that may be the result. The reality is a much clumsier term with varied and often misunderstood interpretations. What is accountability?

“Accountability is good—there is little disagreement on this point… And yet while everyone agrees on its desirability, the meaning of accountability remains elusive.” (Koppell 2005, 94). Koppell’s (2005) key concern with accountability is that the scholarly literature has failed to achieve a uniform understanding as to what the term means; it refers to bureaucratic control in some contexts and transparency in others. He adds: “[r]elying on a single word to convey disparate conceptual understandings masks disagreement over a core issue of political science. The perpetuation of fuzziness regarding this important term is a failing of our discipline” (Koppell 2005, 94). And “[l]ack of conceptual clarity presents more than a rhetorical problem. The many meanings of accountability suggested by the varied use of the word are not consistent with each other: that is, organizations cannot be accountable in all of the senses implied by this single word” (Koppell 2005, 95).

So does accountability refer to control by political principals, or does it mean openness to public scrutiny? The answer is ‘yes,’ but under different conditions. These two conceptualizations together still do not cover the gamut of meanings *accountability* carries. Romzek and Dubnick (1987) differentiate accountability in terms of the source (internal or external) and degree (high or low) of control, labeling varied realities as bureaucratic, legal, professional, or political in nature. Roberts (2002) proposes an administrative model of accountability that includes direction-based accountability (goals and objectives), performance-based accountability (specification of outputs and outcomes), and procedure-based accountability (specific laws and rules for conduct of bureaucratic activity).

Transparency is one of five dimensions of accountability, including transparency, liability, controllability, responsibility, and responsiveness (Koppell 2005). The problem of accountability is that each component of this set of varied conceptualizations of the term results in a different expectation for the agency; hence, an organization’s effectiveness may be decreased to the extent it faces conflicting expectations derived from simultaneous application of conflicting definitions of the term. Such a situation is what Koppell (2005) refers to as the multiple accountabilities disorder. The disorder manifests itself when an organization alternates among behaviors consistent with conflicting definitions of accountability, sometimes serving principals, sometimes serving clients, but pleasing neither in the end (Koppell 2005). The five dimensions, while potentially conflicting, are not purely mutually exclusive. Transparency and liability, according to Koppell (2005), are prerequisites for the remaining three substantive dimensions, among which conflict is expected to be more heated. Transparency, then, is essential to accountability because it is a tool without which other forms of accountability would not be possible.

At the end of the day, tension among various conceptualizations of accountability exists, and it often leads to difficulty for administrators striving to prioritize particular roles and functions of their agencies. The essence of the problem is that, agreeing on the necessity of accountability, there is little agreement on which particular accountability mechanisms should

receive priority (Roberts 2002). Different parties can—and do—press for accountability for such diverse concerns as finances, performance, and fairness (O'Connell 2005). Most notable among these pressures are the oft divergent foci of achieving core organizational tasks and providing the due process and transparency necessary to ensure a properly-functioning democratic government. As O'Brien, Clarke and Kamieniecki (1984) have observed, "[t]he problem that public officials now face is how to combine the core democratic values of accuntability [sic] and representativeness with the tenets of administrative efficiency, e.g. increasing demands for technical expertise, economy, and efficiency" (339). The varied meanings of accountability, and the varied mechanisms for achieving it, result in a web of overlapping accountability relationships in which public officials must work (Roberts 2002).

Variations in accountability are not always irreconcilable. Roberts (2002) finds that the paradox of accountability can be avoided even in complex settings with multiple actors. She found that dialogue, while time consuming and resource demanding, enabled participants to build a "system of responsibility based on personal agency, accountability to authority, and obligation to external principles and standards" that reinforced traditional accountability mechanisms by making them more transparent and visible (Roberts 2002, 666).

O'Brien, Clarke, and Kamieniecki (1984) emphasize the new era ushered in by the advancement of transparency policy: "expertise and economy were the values emphasized in the past. Today, however, these must be tempered by more democratic norms, i.e., greater public involvement and a more open decision-making process" (339). As trends are wont to change in cycles, the emphasis on accountability to the public (through democratic values derived from transparency policy) has given way to focus on the performance aspects of accountability (holding government agencies accountable for their performance) as a result of the performance emphasis of the New Public Management. The reality of the complex web of meaning surrounding *accountability* has real significance for our understanding of organizational performance, particularly under the NPM which emphasizes outputs and outcomes as the basis of agency success. As Koppell (2005) notes:

> [T]he lack of specificity regarding the meaning of accountability-or failure to articulate a choice—can undermine an organization's performance. First, the organization may attempt to be accountable in the wrong sense. Second, and perhaps worse, an organization may attempt to be accountable in *every* sense" (95).

The NPM focuses on achieving results in the most cost effective manner, rejecting input and process requirements in favor of output and outcome expectations; the NPR viewed democratic-constitutional values as incompatible with highly cost-effective, results-oriented public administration (Piotrowski & Rosenbloom 2002). The problem, simply stated, is that transparency and similar red tape requirements redirect time, energy, and resources away from the agency's primary goals, and thus negatively impact outcome performance over what might be possible under a system with no such constraints. As Piotrowski and Rosenbloom (2002) have succinctly described, "much of what encumbers conventional administration is the requirement that it comport with democratic-constitutional values such as transparency and due process, which in the NPM's sense are neither mission-based nor part of a results-oriented calculus" (p. 643).

Piotrowski and Rosenbloom (2002) examine the extent to which democratic-constitutional values are integrated into agencies' performance calculi, finding, to their surprise, that freedom of information is not integrated. Their analysis finds that "improving performance

on the FOIA is, in fact, not a substantial goal—or even *any* part—of major federal agencies' performance plans" (p. 651). They fear that the exclusion of transparency measures from agency performance plans is a natural side effect of the NPM, and without finding ways to explicitly include it in measurement, the democratic values will be displaced by performance goals. You get what you measure, so to be sure you get democratic values, their performance ought to be measured as well.

Concern that renegade agencies may disregard democratic values and the foundational accountability resulting from transparency is warranted, though somewhat premature. To allay some of the concern, the U.S. Government Accountability Office (2006) finds that FOIA requests received and processed continue to rise. The NPM indeed focuses on results, and hence agency effort is directed toward performance of those direct mission-oriented tasks, but few agencies function with singular goals, instead pursuing multi-pronged programs and various activities aimed at achieving multiple objectives. Simply ensuring that non-mission oriented transparency is a priority, alongside traditional mission-oriented goals, means that performance outputs and outcomes for those efforts, too, may be tracked and monitored under the framework of the NPM. "The Constitution recognizes higher values than speed and efficiency" (Piotrowski & Rosenbloom 2002, p. 646). Better linking rewards to the stated goals is essential to effective performance management systems.

President George W. Bush issued E.O. 13392, *Improving Agency Disclosure of Information*, in December, 2005. The Executive Order requires agencies to develop FOIA improvement plans, and focuses "agency managers' attention on the important role that FOIA plays in keeping citizens well-informed about the operations of government. By requiring measurable goals and timetables, the Executive Order provides for a results-oriented framework by which agency heads can hold officials accountable for improvements in FOIA processing." (U.S. GAO 2006, p. 26-27). This effort reflects a desire to prevent freedom of information from being overshadowed in the NPM environment, though freedom of information is only one component of the larger transparency picture. Moreover, the fact remains that efficiency in attaining the mission-oriented goals will be compromised by transparency activities; focusing on accountability for results necessarily leads to neglect of other kinds of transparency, and vice versa. Focus on results decreases commitment to democratic-constitutional values, especially when they are not a priority, or are not central to the organization's goals (Piotrowski and Rosenbloom 2002). Or more generally, "the NPR was correct that the accretion of administrative law and other regulations sometimes stifles results-oriented public administration. Nevertheless—both in theory and in practice—deregulated, empowered, results-oriented administrators imbued with a utilitarian ethos can create a tension with the rule of law" (Piotrowski & Rosenbloom 2002, p. 649).

The Policy Arena: Economic Development

One of the more common exemptions to state open records laws covers negotiations tied to state economic development activities, and particularly industrial recruitment. States continue to view industrial recruitment as a competition, offering hefty incentives and tax breaks to footloose firms in search of a future home; Eisinger (1995) observes this reversion to industrial recruitment in light of significant increases in state competition for firms and the drastic increases in incentives states have placed on the table to land major manufacturers. Economic development performance has been particularly challenging for researchers and practitioners to

measure as a result of disagreements regarding which outcomes are most important and as a result of plausible alternative explanations. Thus, the adage "shoot anything that flies, claim anything that falls," which emphasizes the importance of firms landing in one's own jurisdiction.

Firm location choices are observable, as are the jobs they create, so performance-minded development practitioners are apt to focus on this aspect of their role; firm locations become the mission-oriented goal of many state development strategies. Once a firm has settled on a short list of potential sites, government incentives have been shown to affect firm location decisions. Academicians have found that incentives prove to be effective only when a place is already on a firm's short list, but the effects of economic development efforts are generally very limited (Goss & Phillips 1997, Clark & Montjoy 2001, Saiz 2001). As such, a state's (or community's) competitive edge results from offering the best incentive package out of a short list of competing sites. Information asymmetry among the players forms the basis of negotiations, with firms asking for more than they need, and governments offering as much as (or more than) they can afford; revealing the details of your offer provides an edge for those places competing against you. Cautious prescriptions have been offered for governments to evaluate the relative costs and benefits of incentive packages (such as with Tax Increment Financing, Weber 2003), seeking to offer only an amount the net present value of which is less than the expected net present value of benefits to be derived from the investment.

Firms locate where they maximize profits, and government incentives interfere with otherwise efficient market decisions. Since all firms must locate somewhere, industrial recruitment has often been called a zero-sum game; to be sure, there is no prize for second place. In order to capitalize on the inherent information asymmetries among contenders, states have adopted transparency policy exemptions to protect the details of these negotiations from public scrutiny. The value of jobs and industrial growth—the direct mission-oriented goals of economic development efforts—in these states would seem to outweigh the potential negative consequences of recruitment packages developed outside the scrutiny of the public eye.

Cognitive Errors and Economic Development Decision Making

Economic development has traditionally been viewed as an extremely competitive policy arena with states, localities, and nations competing with each other to lure businesses and industries to their jurisdictions to create jobs, local tax revenue, and positive externalities through economic multiplier effects. The competitive framework puts competing jurisdictions in a winner-take-all mindset that precludes rational analysis of costs and benefits. The result is escalation of competition through bidding wars with tax abatements and other spending and concessions by the competing parties. The winning bidder of a competitive game, assuming no information asymmetry exists, by definition offers more than the market price—the price all others were willing to pay. The result of such irrational decision making is often buyer's remorse—the realization that you have paid too much for the item of interest (Bazerman 2006).

While most competition is of a direct nature, with localities or states vying to assuage footloose firms to locate within their jurisdictions, a more sinister form of competition has been taking place indirectly and behind the scenes. To keep states accountable to their constituents for the economic development decisions they make, transparency laws including open meetings and open records acts provide the public with access to information about government decisions in most forums. With knowledge pertaining to local or state government decisions at hand, constituents can evaluate the costs and the benefits and critique the decision on rational grounds

during or after it has been made. Consequently, the other avenues for enforcing accountability can then be applied—at the ballot box, for example.

The negative effect of such transparency, of course, is information asymmetry in an otherwise competitive game. Were the details of an economic development recruitment offer to leak out of government through such transparency processes, they may give other players an unfair advantage in the negotiation process. This underlying detail—the substance of economic development negotiations—becomes the focus of indirect competition through limits on what may and may not be disclosed under state transparency laws.

As indicated above, numerous exemptions have been applied by states for as many reasons—privacy, security not among the least of them. And because state laws apply not only to state economic development efforts but to the municipal creatures of those states, state transparency policy exemptions stand to influence economic development outcomes and long term state budget performance. In the way of hypotheses, states with exemptions to their transparency laws for economic development competition are expected to outperform states without such exemptions in firm recruitment. However, those more competitive states are likely to suffer worse economic performance and poorer long-term economic development performance as their less progressive approach favors decisions that overcompensate firms for their location decisions and focus on irrationally winning the competition rather than maximizing long term expected value. Exemptions may serve the competitive process directly, but other exemptions may aid in recruitment by creating a business friendly atmosphere. For example, protection of trade secrets to which government agencies have access or protection of information obtained through corporate regulation and investigation are both examples that protect firms from competition. These exemptions are not the focus of this paper; I look exclusively at exemptions focused directly on competition and general economic development activities.

While this paper provides exposition to the topic and assesses differences among the states in transparency law exemptions for economic development purposes, it does not extend to the deeper analysis of causes of state behavior (i.e. adoption of such exemptions) such as political, social and economic conditions. Nor does it assess the impacts of transparency on economic development and state budget performance. Both of these elements provide significant opportunity for further research in the area. I turn now to examine the nature of state transparency law exemptions for economic development purposes.

Exclusions and Exemptions: Evidence of Goal Multiplicity in Economic Development

The effects of goal multiplicity—expected to vary according to the degree and type of conflict (related to the model of accountability in use)—are observed in differences across states, but also across policy arenas. Concurrent with the theme of this paper, the indirect conflict between the goals of economic development policy and transparency policy has led to alterations in state transparency laws (such as exemptions for specific activities)—open meetings, open records, or freedom of information more generally—over time. I next examine the case of indirect goal conflict (and partial, temporary, and varied exemptions) found in economic development policy.

Turning to economic development (and industrial recruitment, specifically), I focus primarily on the South, where most states have at least some exclusion, exemption, or exception for economic development recruitment activities in their FOI laws. The variety of exemptions

and their diversity necessitates a greater number of examples. To identify provisions in state law pertaining to transparency, I first look to the core statute governing government procedures for meetings or information, and subsequently review the authorizing statutes for economic development activities. The latter category serves as the primary mechanism for exemptions, in the least transparent fashion possible. That is, the FOI law is not directly amended, but its effect is marginalized for specific activities or for economic development more generally in program authorizing legislation by exempting those activities from transparency statutes.

I begin with the short list—those that do not appear to have an exemption to FOI for economic development activities. Delaware lacks an exemption (Title 29, Ch. 100, Delaware Code). Georgia presently lacks an exemption, but the topic has received attention. Georgia House Bill 218 was introduced in 2005 to "provide for an exemption for certain records of an agency engaged in a program of economic development" (Georgia General Assembly, 2006). The bill passed the state House, but was ultimately tabled in the Senate. Maryland does not have a specific exemption for economic development, but has a general provision allowing records to be withheld if their inspection could be "contrary to the public interest," allowing significant discretion in interpretation (Maryland Code §10-618(a)). Maryland does have a more specific exemption for confidential financial information of the Maryland Technology Development Corporation (Maryland Code §10-618(i)); Though MTDC is an economic development venture, it operates as a corporation, so this exemption should probably not be construed as an exemption for economic development competition purposes.

Moving to states that have some specific form of exemption, we find increased variety. Alabama has a specific exemption for economic development in the open meetings statute, but no specific exemption in the open records law (36 Code of AL 25A-7). South Carolina has the exemption, but once a recruitment offer is accepted, or the deal is announced (whichever is later), the exemption expires (S.C. Code of Laws 30-4-40.9). Virginia has an exemption that permits discretion on the part of the custodian as to whether or not to release the record (Code of Virginia 2.2-3705.6) (Virginia's law also permits closed meetings for the purpose of discussing economic development recruitment [Code of Virginia 2.2-3711(5)]). Florida permits exemption, but the potential beneficiary of the economic development negotiation must first request in writing that records indicating their interest be kept confidential (2005 Florida Statutes 19-288.075(2)). Perhaps more interesting is the tradeoff observed in subsection (4) of the same statute, which prohibits a public officer from entering into a binding agreement with such a party until 90 days after the information has been made public.

Tennessee exempts any record the release of which is determined to "harm the ability of this state to compete…for economic or community development" for 5 years time (Code of Tennessee 4-3-730(c)(1-2)). And Mississippi also exempts economic development records that disclose client information for a period of two years (MS Code § 57-1-14(1)). North Carolina's exemption is intriguing, on the one hand allowing for exemption of records associated with an industrial development project (§132-1.2(1.c)), but on the other specifically requiring the release of methodology and assumptions used in cost benefit analyses associated with such projects (§132.1.11(a)). Arkansas exempts records maintained by the Arkansas Economic Development Commission related to "any business entity's planning, site location, expansion, operations…unless approval for release of those records is granted by the business entity" (AR Code 25-19-105(b.9A)), though the exemption doesn't apply to expenditures or grants made (AR Code 25-19-105(b.9B)). Kentucky exempts public records "pertaining to a prospective location of a business or industry" (KRS 61.878(1.d)). So secretive is the KY Economic Development

Cabinet that the Commonwealth's Legislative Research Commission has been unable to access information regarding the level of tax breaks received by individual companies. KY House Bill 745 (2006) sought to 'open' the records to state government itself! (Stamper, 2006). Louisiana permits exemption of records (or identifying information on financial records) when requested in writing by the beneficiary for a period of 12 months (LRS 44:22(A-C)). Texas, Oklahoma, and West Virginia each have similar exemptions to FOI laws for economic development purposes.

These examples demonstrate the variety of approaches states have taken to restricting access to information that may place them at a disadvantage in competition for economic development. None of the states listed here provides absolute exemption for such activities, but partial, temporary, or contingent on custodial discretion. This descriptive treatment is exemplary in nature; the systematic assessment follows.

State Economic Development Exemptions

State statutes were reviewed to identify whether there are specific provisions allowing general economic development activities to occur without respect to transparency requirements. This was achieved by first reviewing the core transparency laws where exemptions are often listed, and then by reviewing the substantive economic development statutes where such exemptions are often tucked away out of sight of those interested in transparency issues. The search resulted in the list of exemptions noted in table 1. For geographic comparison, this data is transferred to a map of the U.S. states to reveal the patterns of competition (figure 1). Generally speaking, it appears that expected patterns of diffusion and internal determinants are relevant (Berry & Berry 1990). States with exemptions for economic development activities tend to be contiguous, and the South, Midwest, and Pacific Northwest states appear to be competing in this fashion while states in the Southwest, Northeast and the Rocky Mountain region are not. As mentioned previously, it is beyond this paper to assess the specific causes or effects of economic development competition through transparency law exemptions. However, these results suggest a need for further consideration in this area.

References

Adams, Brian. 2004. Public Meetings and the Democratic Process. *Public Administration Review (64)*1, pp. 43-54.

Baumgartner, Frank & Bryan D. Jones. 1991. Agenda Dynamics and Policy Subsystems. *Journal of Politics 53* (4): 1044-1074.

Bazerman, Max H. 2006. *Judgment in Managerial Decision Making*. 6th Ed. Hoboken, NJ: John Wiley & Sons.

Bazerman, Max H., Jonathan Baron, and Katherine Shonk. 2001. *You Can't Enlarge the Pie: Six Barriers to Effective Government*. Cambridge, MA: Basic Books.

Berry, Frances Stokes & William D. Berry. 1990. State Lottery Adoptions as Polity Innovations: An Event History Analysis. *The American Political Science Review 84* (2): 395-415.

Clark, Cal & Robert Montjoy. 2001. Globalization's Impact on State-Local Economic Development Policy: Introduction to the Symposium. *Policy Studies Review 18*(3): 5-12.
Eisinger, Peter. 1995. State Economic Development in the 1990s: Politics and Policy Learning. *Economic Development Quarterly 9*(2), pp. p146-158.

Feinberg, Lotte. 2001. Mr. Justice Brandeis and the Creation of the Federal Register. *Public Administration Review (61)*3, pp. 359-370.

Frederickson, David G. and H. George Frederickson. 2006. *Measuring the Performance of the Hollow State.* Washington, D.C.: Georgetown UP.

Georgia General Assembly. HB 218 Summary. Accessed March 7, 2006 at http://www.legis.state.ga.us/legis/2005_06/sum/hb218.htm.

Goss, Ernest & Joseph Phillips. 1997. The Effect of State Economic Development Agency Spending. *Economic Development Quarterly 11*(1): 88-96.

Grønbech-Jensen, Carsten. 1998. The Scandinavian tradition of open government and the European Union: Problems of compatibility? *Journal of European Public Policy (5)*1, pp. 185-199.

Koppell, Jonathan GS. 2005. Pathologies of Accountability: ICANN and the Challenge of "Multiple Accountabilities Disorder". *Public Administration Review (65)*1, pp. 94-108.

Madison, James. 2006. *Federalist 51*. Accessed December 26, 2006 at http://www.constitution.org/fed/federa51.htm.

McCubbins, Mathew & Thomas Schwartz. 1984. Congressional Oversight Overlooked: Police Patrol vs. Fire Alarms. *AJPS, 28* (1): 165-179.

O'Brien, Robert M., Michael Clarke & Sheldon Kamieniecki. 1984. Open and Closed Systems of Decision Making: The Case of Toxic Waste Management. *Public Administration Review (44)*4, pp. 334-340.

O'Connell, Lenahan. 2005. Program Accountability as an Emergent Property: The Role of Stakeholders in a Program's Field. *Public Administration Review 65*(1), pp. 85-93.
Piotrowski, Suzanne J. & David H. Rosenbloom. 2002. Nonmission-Based Values in Results-Oriented Public Management: The Case of Freedom of Information. *Public Administration Review 62*(6), pp. 643-657.

Relyea, Harold C. 1975. Opening Government to Public Scrutiny: A Decade of Federal Efforts. *Public Administration Review (35)*1, pp. 3-10.

Reporters Committee for Freedom of the Press. Accessed April 10, 2007 at www.rcfp.org/ogg.index.php.

Roberts, Nancy C. 2002. Keeping Public Officials Accountable through Dialogue: Resolving the Accountability Paradox. *Public Administration Review 62*(6), pp. 658-669.

Romzek, Barbara S., and Melvin J. Dubnick. 1987. Accountability in the Public Sector: Lessons from the Challenger Tragedy. *Public Administration Review* 47(3), pp. 227-238.

Sabatier, Paul A. 1999. *Theories of the Policy Process: Theoretical Lenses on Public Policy*. Westview press: Boulder, CO.

Saiz, Martin. 2001. Politics and Economic Development: Why Governments Adopt Different Strategies to Induce Economic Growth. *Policy Studies Journal 29*(2):203-214.

Stamper, John. 2006. State Business Incentives Would be Less Secret. *Lexington Herald Leader*. Tuesday, Feb. 28, 2006. Accessed March 2, 2006 at http://www.kentucky.com/mld/kentucky/news/legislature/13978821.htm.

U.S. General Accounting Office. 2002. *Information Management: Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments (GAO-02-493).* Washington, D.C.

U.S. Government Accountability Office. 2006. *Freedom of Information Act: Preliminary Analysis of Processing Trend Shows Importance of Improvement Plans (GAO-06-1022T).* Washington, D.C.

Weber, Rachel. 2003. Tax Increment Financing in Theory and Practice. In White, Bingham & Hill, Eds., *Financing Economic Development in the 21st Century*. Armonk, NY: M.E. Sharpe.

West, William F. 2004. Formal Procedures, Informal Processes, Accountability, and Responsiveness in Bureaucratic Policy Making: An Institutional Policy Analysis. *Public Administration Review 64*(1), pp. 66-80.

Wilson, James Q. 1989. *Bureaucracy: What Government Agencies Do and Why they Do it.* New York: Basic Books.

Tables and Figures:

Table 1: State Exemptions to Transparency Policy for Economic Development Purposes

State	Economic Development Exemptions	Statutory Reference
Alabama	Y	Ala. Code § 41-6A-7 (2000); Ala. Code § 2-15-62(e) Ala. Code § 9-16-83(b)(16) (2001)
Alaska	Y	AS 27.09.030.; AS 27.30.090. ; AS 10.13.930; AS 41.41.150. AS 43.55.025(f). AS 43.82.310AS 44.88.020.
Arizona		
Arkansas	Y	Ark. Code Ann. § 25-19-105(b)(9)(B; § 15-4-606 (
California		
Colorado		

Connecticut	Y	Conn. Gen. Stat. § 32-244a.
Delaware		
Florida	Y	F.S. 196.1995
Georgia		
Hawaii		
Idaho	Y	Idaho Code § 9-340D(2). ; Idaho Code § 9-340D(6). ; Idaho Code § 9-340D(7). ; Idaho Code § 9-340D(8). ; Idaho Code § 22-436. Idaho Code § 9-340D(9). ; Idaho Code § 9-340D(10). ; Idaho Code § 9-340D(16). ; Idaho Code § 9-340F(5).
Illinois	Y	5 ILCS 140/7(1)(k).
Indiana		
Iowa	Y	Iowa Code § 22.7(8); Iowa Code § 22.7(25).; Iowa Code § 22.7(20).
Kansas	Y	. K.S.A. 45-221(a)(31). K.S.A. 45-221(a)(32)K.S.A. 45-221(a)(37). K.S.A. 40-2c20K.S.A. 45-221(a)(43).
Kentucky	Y	KRS 61.878(1)(c)(2); KRS 61.878(1)(d)
Louisiana	Y	Op. Att'y Gen. 86-669.La. Rev. Stat. Ann. § 27:237.
Maine		
Maryland	Y	§ 10-617(d); § 10-618(i)(1).
Massachusetts	Y	G.L. c. 30, § 39R. ; G.L. c. 40G, § 10
Michigan		
Minnesota	Y	Data Pratices Act § 13.62. : Agricultural Loan and Grant Programs. § 13.643).
Mississippi		
Missouri	Y	Mo.Rev.Stat. § 100.296
Montana		
Nebraska		
Nevada	Y	NRS 701A.200-230
New Hampshire		
New Jersey		
New Mexico		
New York		
North Carolina	Y	G.S. § 132-6(d)
North Dakota	Y	N.D.C.C. § 10-30.2-07. ; N.D.C.C. § 44-04-18.4; N.D.C.C. § 44-04-18.4; (§§ 44-04-18.2(1)(a) and (b)).
Ohio	Y	Ohio Rev. Code §§ 149.43(A)(1)(w), 150.01
Oklahoma		
Oregon	Y	ORS 192.501(25); ORS 192.502(16); ORS 192.502(30); ORS 192.502(5); (ORS 194.160)
Pennsylvania	Y	53 Pa. Cons. Stat. § 39862
Rhode Island		
South Carolina	Y	S.C. Code Ann,§ 30-4-49(9); S.C. Code Ann. § 48-30-70.
South Dakota	Y	S.D.C.L. § 1-16B-14.1; S.D.C.L. §§ 1-16G-11 and 1-16H-28); S.D.C.L. § 9-34-19
Tennessee	Y	T.C.A. § 10-7-504(a)(10); T.C.A. § 4-3-712; T.C.A § 13-27-113 (
Texas (ORD)	Y	(§ 552.113) ; (§ 552.128) ; (§ 552.131)
Utah	Y	Utah Code Ann. 63-2-304(ii)
Vermont		
Virginia (FOIA)	Y	Va. Code Ann. § 2.2-3705.6(2). ; Va. Code Ann. § 2.2-3705.6(3).Va. Code Ann. § 2.2-3705.6(13).
Washington	Y	RCW Ch. 42.56; RCW Ch. 42.56; RCW 42.17.31
West Virginia		
Wisconsin		
Wyoming		

Figure 1: U.S. States with Statutory Exemptions to State Transparency Policy for Economic Development Purposes