

By: Homer, Laubenberg, Hegar

H.B. No. 2912

A BILL TO BE ENTITLED

AN ACT

relating to industrial development corporations; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2(11)(A) and (C), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), are amended to read as follows:

(A) "Project" shall mean the land, buildings, equipment, facilities, targeted infrastructure, and improvements (one or more) that are ~~[to promote new and expanded business development or]~~ found by the board of directors to be required or suitable for the ~~[promotion of]~~ development, retention, or ~~[and]~~ expansion of manufacturing and industrial facilities.

"Project" also includes ~~[, job creation and retention, job training, educational facilities,]~~ research and development facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, ~~[facilities for the furnishing of water to the general public,]~~ distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, ~~[and]~~ facilities for use by institutions of higher education, and corporate headquarters facilities ~~[for the promotion of]~~

1 ~~development or redevelopment and expansion, including costs of~~
2 ~~administration and operation, of a military base closed or~~
3 ~~realigned pursuant to recommendation of the Defense Closure and~~
4 ~~Realignment Commission pursuant to the Defense Base Closure and~~
5 ~~Realignment Act of 1990 (10 U.S.C. Section 2687 note) as amended,~~
6 ~~and of facilities which are related to any of the foregoing, and in~~
7 ~~furtherance of the public purposes of this Act, all as defined in~~
8 ~~the rules of the department, irrespective of whether in existence~~
9 ~~or required to be identified, acquired, or constructed thereafter].~~

10 "Project" also includes job training required or
11 suitable for the promotion of development and expansion of business
12 enterprises and other enterprises described by this Act, as
13 provided by Section 38 of this Act.

14 "Project" also includes expenditures found by the
15 board of directors to be required or suitable for infrastructure
16 necessary to promote or develop new or expanded business
17 enterprises that create or retain primary jobs, limited to streets
18 and roads, water and electric utilities, gas utilities, drainage
19 and related improvements, and telecommunications and Internet
20 improvements.

21 (C) As used in this Act, the term blighted or
22 economically depressed areas shall mean those areas and areas
23 immediately adjacent thereto within a city which by reason of the
24 presence of a substantial number of substandard, slum,
25 deteriorated, or deteriorating structures, or which suffer from a
26 high relative rate of unemployment, or which have been designated
27 and included in a tax incremental district created under Chapter

1 695, Acts of the 66th Legislature, Regular Session, 1979 (Article
2 1066d, Vernon's Texas Civil Statutes), or any combination of the
3 foregoing, the city finds and determines, after a hearing,
4 substantially impair or arrest the sound growth of the city, or
5 constitute an economic or social liability and are a menace to the
6 public health, safety, or welfare in their present condition and
7 use. The department shall adopt guidelines that describe the kinds
8 of areas that may be considered to be blighted or economically
9 depressed. The city shall consider these guidelines in making its
10 findings and determinations. Notice of the hearing at which the
11 city considers establishment of [~~a development area or~~] an
12 economically depressed or blighted area shall be posted at the city
13 hall before the hearing.

14 "Federally assisted new communities" shall mean
15 those federally assisted areas which have received or will receive
16 assistance in the form of loan guarantees under Title X of the
17 National Housing Act and a portion of the federally assisted area
18 has received grants under Section 107(a)(1) of the Housing and
19 Community Development Act of 1974, as amended.

20 SECTION 2. Section 2, Development Corporation Act of 1979
21 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by
22 adding Subdivisions (17) and (18) to read as follows:

23 (17) "Primary job" means a job that is:
24 (A) available at a company for which a majority
25 of the products or services of that company are ultimately exported
26 to regional, statewide, national, or international markets
27 infusing new dollars into the local economy; and

(B) included in one of the following sectors of the North American Industry Classification System (NAICS):

<u>NAICS Sector #</u>	<u>Description</u>
<u>111</u>	<u>Crop Production</u>
<u>112</u>	<u>Animal Production</u>
<u>113</u>	<u>Forestry and Logging</u>
<u>11411</u>	<u>Commercial Fishing</u>
<u>115</u>	<u>Support Activities for Agriculture and Forestry</u>
<u>211-213</u>	<u>Mining</u>
<u>221</u>	<u>Utilities</u>
<u>311-339</u>	<u>Manufacturing</u>
<u>42</u>	<u>Wholesale Trade</u>
<u>48-49</u>	<u>Transportation and Warehousing</u>
<u>51 (excluding 512131 and 512132)</u>	<u>Information (excluding movie theaters and drive-in theaters)</u>
<u>523-525</u>	<u>Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles</u>
<u>5413, 5415, 5416, 5417, and 5419</u>	<u>Scientific Research and Development Services</u>
<u>551</u>	<u>Management of Companies and Enterprises</u>

(18) "Corporate headquarters facilities" means buildings proposed for construction and occupancy as the principal office for a business enterprise's administrative and management

1 services.

2 SECTION 3. Section 3(b), Development Corporation Act of
3 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
4 read as follows:

5 (b) This Act shall be [~~liberally~~] construed in conformity
6 with the intention of the legislature herein expressed.

7 SECTION 4. Section 4A(t), Development Corporation Act of
8 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
9 read as follows:

10 (t) The department, with the assistance of the Texas
11 [~~Natural Resource Conservation~~] Commission on Environmental
12 Quality, may encourage the cleanup of contaminated property by
13 corporations created under this section through the use of sales
14 and use tax proceeds. A corporation created under this section may
15 use proceeds from the sales and use tax to undertake the cleanup of
16 contaminated property only if the use of tax proceeds for that
17 purpose is authorized by a majority of the qualified voters of the
18 city voting in an election called and held for that purpose. The
19 ballot in an election held under this subsection shall be printed to
20 provide for voting for or against the proposition: "The use of
21 sales and use tax proceeds for the cleanup of contaminated
22 property."

23 SECTION 5. Section 4A, Development Corporation Act of 1979
24 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by
25 adding Subsections (u) and (v) to read as follows:

26 (u)(1) In this subsection:

27 (A) "Base taxable value" means the taxable value

1 of property located in the defined area of a project as of January 1
2 of the year in which the agreement is entered into under this
3 subsection.

4 (B) "Corresponding taxing unit" means another
5 taxing unit of the same type of political subdivision as a taxing
6 unit that enters into an agreement under this subsection.

7 (C) "Taxing unit" has the meaning assigned by
8 Section 1.04, Tax Code.

9 (2) Before entering into an agreement under this
10 subsection, the corporation undertaking the project must designate
11 a defined area that includes the territory where the project is to
12 be located.

13 (3) A taxing unit other than a school district may
14 enter into an agreement with a corporation created under this
15 section to invest in a project that is undertaken by the corporation
16 and that is not located in the territory of the taxing unit. A
17 corporation may enter into an agreement under this subsection with
18 more than one taxing unit.

19 (4) An agreement entered into under this subsection
20 shall state the base taxable value of the property in the defined
21 area of the project.

22 (5) The agreement may provide that the taxing unit is
23 entitled to receive from the corporation, in exchange for the
24 investment, an amount equal to a specified percentage of the tax
25 revenue from taxes imposed by the corresponding taxing unit that
26 taxes property located in the defined area of the project on the
27 taxable value of the property in the defined area that exceeds the

1 base taxable value, for as long as the corresponding taxing unit
2 imposes taxes on that property.

3 (6) If a corporation enters into an agreement under
4 this subsection, the corporation shall enter into an agreement with
5 a corresponding taxing unit that taxes property located in the
6 defined area of the project to recover the amount paid by the
7 corporation to a taxing unit as provided by Subdivision (5) of this
8 subsection.

9 (v)(1) In this subsection, "base taxable value" has the
10 meaning assigned by Subsection (u) of this section.

11 (2) Before entering into an agreement under this
12 subsection, the corporation undertaking the project must designate
13 a defined area that includes the territory where the project is to
14 be located.

15 (3) A corporation created under this section may enter
16 into an agreement with another corporation created under this
17 section to invest in a project undertaken by the other corporation.

18 (4) An agreement entered into under this subsection
19 shall state the base taxable value of the property in the defined
20 area that is taxable by the city that created the corporation
21 undertaking the project.

22 (5) The agreement may provide that the corporation
23 making the investment is entitled to receive from the city that
24 created the corporation undertaking the project, in exchange for
25 the investment, an amount equal to a specified percentage of the tax
26 revenue from taxes imposed by the city on the taxable value of the
27 defined area of the project that exceeds the base taxable value, for

1 as long as the city imposes taxes on that property.

2 SECTION 6. Section 4B(a)(2), Development Corporation Act of
3 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
4 read as follows:

5 (2) "Project" means land, buildings, equipment,
6 facilities, expenditures, and improvements included in the
7 definition of that term under Section 2 of this Act, and includes
8 job training as provided by Section 38 of this Act. For purposes of
9 this section, the term includes recycling facilities, and land,
10 buildings, equipment, facilities, and improvements found by the
11 board of directors to:

12 (A) be required or suitable for use for
13 professional and amateur (including children's) sports, athletic,
14 entertainment, tourist, convention, and public park purposes and
15 events, including stadiums, ball parks, auditoriums,
16 amphitheatres, concert halls, [~~learning centers,~~] parks and park
17 facilities, open space improvements, [~~municipal buildings,~~]
18 museums, exhibition facilities, and related store, restaurant,
19 concession, and automobile parking facilities, related area
20 transportation facilities, and related roads, streets, and water
21 and sewer facilities, and other related improvements that enhance
22 any of those items;

23 (B) promote or develop new or expanded business
24 enterprises that create or retain primary jobs, including a project
25 to provide public safety facilities, streets and roads, drainage
26 and related improvements, demolition of existing structures,
27 general municipally owned improvements, as well as any improvements

1 or facilities that are related to any of those projects and any
2 other project that the board in its discretion determines promotes
3 or develops new or expanded business enterprises that create or
4 retain primary jobs;

5 (C) be required or suitable for the promotion of
6 development and expansion of affordable housing, as defined by 42
7 U.S.C. Section 12745;

8 (D) be required or suitable for the development
9 or improvement of water supply facilities, including dams,
10 transmission lines, well field developments, and other water supply
11 alternatives; ~~or~~

12 (E) be required or suitable for the development
13 and institution of water conservation programs, including
14 incentives to install water-saving plumbing fixtures, educational
15 programs, brush control programs, and programs to replace
16 malfunctioning or leaking water lines and other water facilities;

17 (F) be required or suitable for infrastructure
18 necessary to promote or develop new or expanded business
19 enterprises, including streets and roads, water and electric
20 utilities, drainage and related improvements, and
21 telecommunications and Internet improvements; or

22 (G) be required for job training that is suitable
23 for job creation and retention.

24 SECTION 7. Section 4B(a-1), Development Corporation Act of
25 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
26 read as follows:

27 (a-1)(1) A corporation may undertake a project under this

1 section other than a project described by Subsection (a)(2)(G) of
2 this section unless within 60 days after first publishing notice of
3 a specific project or type of general project other than a project
4 described by Subsection (a)(2)(G) of this section the governing
5 body of the city receives a petition from more than 10 percent of
6 the registered voters of the city where the petition requests that
7 an election be held before that specific project or that general
8 type of project is undertaken. An election is not required to be
9 held after the submission of a petition under this subdivision if
10 the qualified citizens of the city have previously approved the
11 undertaking of a specific project or that general type of project
12 that is the subject of the petition at an election called for that
13 purpose by the governing body of the city or in conjunction with
14 another election required to be held under this section.

15 (2) A corporation may not undertake a project
16 described by Subsection (a)(2)(G) of this section unless the
17 governing body of the city creating the corporation under this
18 section orders an election on the question of undertaking the
19 project and the majority of the votes cast at the election are in
20 favor of the undertaking.

21 SECTION 8. Section 4B(a-5), Development Corporation Act of
22 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
23 read as follows:

24 (a-5) Notwithstanding any other provision of this section,
25 a corporation created under this section may use proceeds from the
26 sales and use tax to undertake a project described by Subsection
27 (a)(2)(D) or (E) of this section only if the use of tax proceeds for

1 that purpose is authorized by a majority of the qualified voters of
2 the city voting in an election called and held for that purpose.
3 The ballot in an [~~proposition at the~~] election held under this
4 subsection shall be printed to provide for voting for or against the
5 proposition: "The use of sales and use tax proceeds for
6 infrastructure relating to _____ (insert water supply
7 facilities or water conservation programs, as appropriate)." [~~to~~
8 ~~adopt a sales and use tax under Subsection (d) of this section must~~
9 ~~clearly describe the project to be undertaken by the corporation if~~
10 ~~the project is described by Subsection (a)(2)(D) or (E) of this~~
11 ~~section)].~~

12 SECTION 9. Section 4B, Development Corporation Act of 1979
13 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by
14 adding Subsection (a-6) to read as follows:

15 (a-6)(1) In this subsection, "land-locked community" means
16 a city that has within its city limits and extraterritorial
17 jurisdiction less than 500 acres that can be used for the
18 development of manufacturing or industrial facilities in
19 accordance with the zoning laws or land use restrictions of the
20 city.

21 (2) For a land-locked community that creates or has
22 created a corporation governed by this section, "project" also
23 includes expenditures found by the board of directors to be
24 required for the promotion of new or expanded business enterprises
25 and commercial activity within the land-locked community.

26 (3) A corporation may not undertake a project
27 described by Subdivision (2) of this subsection unless the

1 governing body of the land-locked community creating the
2 corporation under this section orders an election on the question
3 of undertaking the project and the majority of the votes cast at the
4 election are in favor of the undertaking.

5 SECTION 10. Section 4B(c), Development Corporation Act of
6 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
7 read as follows:

8 (c) The board of directors of a corporation under this
9 section consists of seven directors who are appointed by the
10 governing body of the eligible city for two-year terms of office. A
11 director may be removed by the governing body of the eligible city
12 at any time without cause. Each director of a corporation created
13 by an eligible city with a population of 20,000 or more must be a
14 resident of the eligible city. Each director of a corporation
15 created by an eligible city with a population of less than 20,000
16 must be a resident of the eligible city, be a resident of [ex] the
17 county in which the major part of the area of the eligible city is
18 located, or reside at a place that is within 10 miles of the
19 eligible city's boundaries and is in a county bordering the county
20 in which the major part of the area of the eligible city is located.
21 Three directors shall be persons who are not employees, officers,
22 or members of the governing body of the eligible city. A majority
23 of the entire membership of the board is a quorum. The board shall
24 conduct all meetings within the boundaries of the eligible city.
25 The board shall appoint a president, a secretary, and other
26 officers of the corporation that the governing body of the eligible
27 city considers necessary. The corporation's registered agent must

1 be an individual resident of the state and the corporation's
2 registered office must be within the boundaries of the eligible
3 city.

4 SECTION 11. Section 4B(p), Development Corporation Act of
5 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
6 read as follows:

7 (p) The department, with the assistance of the Texas
8 [~~Natural Resource Conservation~~] Commission on Environmental
9 Quality, may encourage the cleanup of contaminated property by
10 corporations created under this section through the use of sales
11 and use tax proceeds. Notwithstanding any other provision of this
12 section, a corporation created under this section may use proceeds
13 from the sales and use tax to undertake the cleanup of contaminated
14 property only if the use of tax proceeds for that purpose is
15 authorized by a majority of the qualified voters of the city voting
16 in an election called and held for that purpose. The ballot in an
17 election held under this subsection shall be printed to provide for
18 voting for or against the proposition: "The use of sales and use
19 tax proceeds for the cleanup of contaminated property."

20 SECTION 12. The Development Corporation Act of 1979
21 (Article 5190.6, Vernon's Texas Civil Statutes) is amended by
22 adding Sections 40 and 41 to read as follows:

23 Sec. 40. DIRECT INCENTIVE PROVIDED TO BUSINESS ENTERPRISE.
24 (a) A corporation created under this Act may not provide a direct
25 incentive to or make an expenditure on behalf of a business
26 enterprise under a project as defined by Section 2 or 4B(a)(2) of
27 this Act unless the corporation enters into a performance agreement

1 with the business enterprise.

2 (b) A performance agreement between a corporation and
3 business enterprise, at a minimum, must provide for a schedule of
4 jobs and capital investment to be made or created as consideration
5 for any direct incentives provided or expenditures made by the
6 corporation under the agreement. The performance agreement must
7 also specify the terms under which repayment must be made if the
8 business enterprise fails to meet the performance requirements
9 specified in the agreement.

10 Sec. 41. REQUIREMENT FOR THIRD-PARTY CONTRACT FOR BUSINESS
11 RECRUITMENT OR DEVELOPMENT. (a) This section does not apply to a
12 payment to an employee of the corporation.

13 (b) A corporation organized under Section 4A or 4B of this
14 Act must enter into a written contract approved by the
15 corporation's board of directors in connection with the payment of
16 a commission, fee, or other compensation or thing of value to a
17 broker, agent, or other third party who is involved in business
18 recruitment or development.

19 (c) A corporation that violates Subsection (b) of this
20 section is liable to the state for a civil penalty in an amount not
21 to exceed \$10,000.

22 (d) The attorney general may bring an action to recover the
23 civil penalty in a district court in Travis County or the county in
24 which the violation occurred.

25 SECTION 13. Section 2(11)(B), Development Corporation Act
26 of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is
27 repealed.

1 SECTION 14. The changes in law made by Sections 2 and
2 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6,
3 Vernon's Texas Civil Statutes), as amended by this Act, apply only
4 to a project that is undertaken or approved, by an election or
5 otherwise, on or after the effective date of this Act. A project
6 that is undertaken or approved before the effective date of this Act
7 is governed by the law in effect on the date the project is
8 undertaken or approved, and the former law is continued in effect
9 for that purpose.

10 SECTION 15. This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect September 1, 2003.