

AN ACT

relating to industrial development corporations; providing a civil penalty.

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

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

(A) "Project" shall mean the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and 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, ~~[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]~~ primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters

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

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

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

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

24 (17) "Primary job" means a job that is:

25 (A) available at a company for which a majority
26 of the products or services of that company are ultimately exported
27 to regional, statewide, national, or international markets

1 infusing new dollars into the local economy; and

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

<u>NAICS Sector #</u>	<u>Description</u>
4 <u>111</u>	<u>Crop Production</u>
5 <u>112</u>	<u>Animal Production</u>
6 <u>113</u>	<u>Forestry and Logging</u>
7 <u>11411</u>	<u>Commercial Fishing</u>
8 <u>115</u>	<u>Support Activities for Agriculture and</u>
9	<u>Forestry</u>
10 <u>211-213</u>	<u>Mining</u>
11 <u>221</u>	<u>Utilities</u>
12 <u>311-339</u>	<u>Manufacturing</u>
13 <u>42</u>	<u>Wholesale Trade</u>
14 <u>48-49</u>	<u>Transportation and Warehousing</u>
15 <u>51 (excluding 512131</u>	<u>Information (excluding movie theaters and</u>
16 <u>and 512132)</u>	<u>drive-in theaters)</u>
17 <u>523-525</u>	<u>Securities, Commodity Contracts, and Other</u>
18	<u>Financial Investments and Related</u>
19	<u>Activities; Insurance Carriers and Related</u>
20	<u>Activities; Funds, Trusts, and Other</u>
21	<u>Financial Vehicles</u>
22 <u>5413, 5415, 5416,</u>	<u>Scientific Research and Development Services</u>
23 <u>5417, and 5419</u>	
24 <u>551</u>	<u>Management of Companies and Enterprises</u>
25 <u>922140</u>	<u>Correctional Institutions</u>
26	
27 <u>(18) "Corporate headquarters facilities" means</u>	

1 buildings proposed for construction or occupancy as the principal
2 office for a business enterprise's administrative and management
3 services.

4 SECTION 3. Section 3(b), Development Corporation Act of
5 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
6 read as follows:

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

9 SECTION 4. Section 4A(i), Development Corporation Act of
10 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
11 read as follows:

12 (i) Except as provided by this subsection, the corporation
13 may not undertake a project the primary purpose of which is to
14 provide transportation facilities, solid waste disposal
15 facilities, sewage facilities, facilities for furnishing water to
16 the general public, or air or water pollution control facilities.
17 However, the corporation may provide those facilities to benefit
18 property acquired for a project having another primary purpose.
19 The corporation may undertake a project the primary purpose of
20 which is to provide:

21 (1) a general aviation business service airport that
22 is an integral part of an industrial park; or

23 (2) port-related facilities to support waterborne
24 commerce.

25 SECTION 5. Section 4A(t), Development Corporation Act of
26 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
27 read as follows:

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

14 SECTION 6. Section 4B(a)(2), Development Corporation Act of
15 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
16 read as follows:

17 (2) "Project" means land, buildings, equipment,
18 facilities, expenditures, and improvements included in the
19 definition of that term under Section 2 of this Act, and includes
20 job training as provided by Section 38 of this Act. For purposes of
21 this section, the term includes recycling facilities, and land,
22 buildings, equipment, facilities, and improvements found by the
23 board of directors to:

24 (A) be required or suitable for use for
25 professional and amateur (including children's) sports, athletic,
26 entertainment, tourist, convention, and public park purposes and
27 events, including stadiums, ball parks, auditoriums,

1 amphitheatres, concert halls, [~~learning centers,~~] parks and park
2 facilities, open space improvements, [~~municipal buildings,~~]
3 museums, exhibition facilities, and related store, restaurant,
4 concession, and automobile parking facilities, related area
5 transportation facilities, and related roads, streets, and water
6 and sewer facilities, and other related improvements that enhance
7 any of those items;

8 (B) promote or develop new or expanded business
9 enterprises that create or retain primary jobs, including a project
10 to provide public safety facilities, streets and roads, drainage
11 and related improvements, demolition of existing structures,
12 general municipally owned improvements, as well as any improvements
13 or facilities that are related to any of those projects and any
14 other project that the board in its discretion determines promotes
15 or develops new or expanded business enterprises that create or
16 retain primary jobs;

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

20 (D) be required or suitable for the development
21 or improvement of water supply facilities, including dams,
22 transmission lines, well field developments, and other water supply
23 alternatives; or

24 (E) be required or suitable for the development
25 and institution of water conservation programs, including
26 incentives to install water-saving plumbing fixtures, educational
27 programs, brush control programs, and programs to replace

1 malfunctioning or leaking water lines and other water facilities.

2 SECTION 7. Section 4B(a-5), Development Corporation Act of
3 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
4 read as follows:

5 (a-5)(1) Notwithstanding any other provision of this
6 section, a corporation created under this section may use proceeds
7 from the sales and use tax to undertake a project described by
8 Subsection (a)(2)(D) or (E) of this section only if the use of tax
9 proceeds for that purpose is authorized by a majority of the
10 qualified voters of the city voting in an election called and held
11 for that purpose. The ballot in an [~~proposition at the~~] election
12 held under this subsection shall be printed to provide for voting
13 for or against the proposition: "The use of sales and use tax
14 proceeds for infrastructure relating to _____ (insert water
15 supply facilities or water conservation programs, as
16 appropriate)."

17 (2) An election held under Subdivision (1) of this
18 subsection may be authorized by the governing body of an eligible
19 city subsequent to an earlier election authorized under Subsection
20 (d) of this section [~~to adopt a sales and use tax under Subsection~~
21 ~~(d) of this section must clearly describe the project to be~~
22 ~~undertaken by the corporation if the project is described by~~
23 ~~Subsection (a)(2)(D) or (E) of this section].~~

24 SECTION 8. Section 4B(c), Development Corporation Act of
25 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
26 read as follows:

27 (c) The board of directors of a corporation under this

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

23 SECTION 9. Section 4B(p), Development Corporation Act of
24 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
25 read as follows:

26 (p) The department, with the assistance of the Texas
27 [~~Natural Resource Conservation~~] Commission on Environmental

1 Quality, may encourage the cleanup of contaminated property by
2 corporations created under this section through the use of sales
3 and use tax proceeds. Notwithstanding any other provision of this
4 section, a corporation created under this section may use proceeds
5 from the sales and use tax to undertake the cleanup of contaminated
6 property only if the use of tax proceeds for that purpose is
7 authorized by a majority of the qualified voters of the city voting
8 in an election called and held for that purpose. The ballot in an
9 election held under this subsection shall be printed to provide for
10 voting for or against the proposition: "The use of sales and use
11 tax proceeds for the cleanup of contaminated property."

12 SECTION 10. Section 38(b), Development Corporation Act of
13 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
14 read as follows:

15 (b) A [~~Except as provided by Subsection (c) of this section,~~
16 ~~a]~~ corporation may spend tax revenue received under this Act for job
17 training offered through a business enterprise only if the business
18 enterprise has committed in writing to:

19 (1) create new jobs that pay wages that are at least
20 equal to the prevailing [average weekly] wage for the applicable
21 occupation in the local labor market area; or

22 (2) increase its payroll to pay wages that are at least
23 equal to the prevailing wage for the applicable occupation in the
24 local labor market area [~~the county in which the jobs are to be~~
25 ~~located~~].

26 SECTION 11. Section 39, Development Corporation Act of 1979
27 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by

1 amending Subsections (b) and (c) and adding Subsections (e)-(h) to
2 read as follows:

3 (b) At least once in each 24-month period, the following
4 persons shall attend a training seminar regarding the operation of
5 a corporation created under this Act [~~sponsored by the department~~
6 ~~under Section 481.0231, Government Code~~]:

7 (1) the city attorney, the city administrator, or the
8 city clerk of a city that created a corporation;

9 (2) the county clerk or the county attorney of a county
10 that created a corporation; and

11 (3) the executive director of the corporation or other
12 person who is responsible for the daily administration of the
13 corporation.

14 (c) A corporation shall present proof of compliance with
15 this section to the comptroller by presenting the certificates of
16 completion issued under Subsection (h) of this section [~~Section~~
17 ~~481.0231, Government Code,~~] for each person that was required to
18 attend the training seminar. The comptroller may impose an
19 administrative penalty, in an amount not to exceed \$1,000 for each
20 violation, against a corporation that fails to present proof in
21 accordance with this section.

22 (e) The training seminar described by Subsection (b) of this
23 section must:

24 (1) be provided by a statewide organization that
25 represents corporations organized under this Act, except as
26 provided by Subsection (f) of this section;

27 (2) provide at least six hours of instruction devoted

1 to topics relating to the legal and proper operation of a
2 corporation created under this Act; and

3 (3) be held at least four times per calendar year in a
4 different geographical region of this state.

5 (f) If the department or its successor determines that no
6 statewide organization is able to provide a training seminar as
7 prescribed by Subsection (e) of this section, the department or its
8 successor, in conjunction with the attorney general and the
9 comptroller, shall by rule develop a training seminar in
10 conformance with this section. The department or its successor may
11 enter into an agreement for the provision of a training seminar
12 developed under this subsection with any person determined by the
13 department or its successor to be qualified to provide the training
14 seminar.

15 (g) A person, entity, or organization that provides a
16 training seminar under this section may:

17 (1) charge a reasonable fee for attending the seminar;
18 and

19 (2) compensate an individual who provides instruction
20 at the seminar.

21 (h) The person, entity, or organization providing a
22 training seminar under this section shall issue a certificate of
23 completion, on a form approved by the comptroller, to each person
24 who completes the training seminar.

25 SECTION 12. The Development Corporation Act of 1979
26 (Article 5190.6, Vernon's Texas Civil Statutes) is amended by
27 adding Sections 40, 41, and 42 to read as follows:

1 Sec. 40. DIRECT INCENTIVE PROVIDED TO BUSINESS ENTERPRISE.

2 (a) A corporation created under this Act may not provide a direct
3 incentive to or make an expenditure on behalf of a business
4 enterprise under a project as defined by Section 2 or 4B(a)(2) of
5 this Act unless the corporation enters into a performance agreement
6 with the business enterprise.

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

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

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

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

27 (d) The attorney general may bring an action to recover the

1 civil penalty in a district court in Travis County or the county in
2 which the violation occurred.

3 Sec. 42. ECONOMIC INCENTIVE FOR CERTAIN BUSINESS ENTERPRISE
4 PROHIBITED. (a) In this section, "related party" means a person or
5 entity that owns at least 80 percent of the business enterprise to
6 which the sales and use tax would be rebated as part of an economic
7 incentive.

8 (b) Notwithstanding any other provision of this Act, a
9 corporation created under this Act may not offer to provide an
10 economic incentive for a business enterprise whose business
11 consists primarily of purchasing taxable items using a resale
12 certificate and then reselling those items to a related party.

13 SECTION 13. Sections 2(11)(B) and (C), 38(a), and
14 38(c)-(e), Development Corporation Act of 1979 (Article 5190.6,
15 Vernon's Texas Civil Statutes), and Section 481.0231, Government
16 Code, are repealed.

17 SECTION 14. The changes in law made by this Act apply only
18 to a project that is undertaken or approved, by an election or
19 otherwise, on or after the effective date of this Act. A project
20 that is undertaken or approved before the effective date of this Act
21 is governed by the law in effect on the date the project is
22 undertaken or approved, and the former law is continued in effect
23 for that purpose.

24 SECTION 15. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

H.B. No. 2912

1 effect, this Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I certify that H.B. No. 2912 was passed by the House on May 10, 2003, by the following vote: Yeas 131, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2912 on May 30, 2003, by the following vote: Yeas 138, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2912 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor