

By: Homer, Laubenberg, Hegar

H.B. No. 2912

Substitute the following for H.B. No. 2912:

By: Homer

C.S.H.B. No. 2912

A BILL TO BE ENTITLED

AN ACT

relating to industrial development corporations.

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 development or redevelopment and expansion, including costs of~~

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

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

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

20 (C) As used in this Act, the term blighted or  
21 economically depressed areas shall mean those areas and areas  
22 immediately adjacent thereto within a city which by reason of the  
23 presence of a substantial number of substandard, slum,  
24 deteriorated, or deteriorating structures, or which suffer from a  
25 high relative rate of unemployment, or which have been designated  
26 and included in a tax incremental district created under Chapter  
27 695, Acts of the 66th Legislature, Regular Session, 1979 (Article

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

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

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

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

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

27 (B) included in one of the following sectors of

1 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>

24 SECTION 3. Section 3(b), Development Corporation Act of  
25 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to  
26 read as follows:

27 (b) This Act shall be [~~liberally~~] construed in conformity

1 with the intention of the legislature herein expressed.

2 SECTION 4. Section 4A(t), Development Corporation Act of  
3 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to  
4 read as follows:

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

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

21 (u)(1) In this subsection:

22 (A) "Base taxable value" means the taxable value  
23 of property located in the defined area of a project as of January 1  
24 of the year in which the agreement is entered into under this  
25 subsection.

26 (B) "Corresponding taxing unit" means another  
27 taxing unit of the same type of political subdivision as a taxing

1 unit that enters into an agreement under this subsection.

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

4 (2) Before entering into an agreement under this  
5 subsection, the corporation undertaking the project must designate  
6 a defined area that includes the territory where the project is to  
7 be located.

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

14 (4) An agreement entered into under this subsection  
15 shall state the base taxable value of the property in the defined  
16 area of the project.

17 (5) The agreement may provide that the taxing unit is  
18 entitled to receive from the corporation, in exchange for the  
19 investment, an amount equal to a specified percentage of the tax  
20 revenue from taxes imposed by the corresponding taxing unit that  
21 taxes property located in the defined area of the project on the  
22 taxable value of the property in the defined area that exceeds the  
23 base taxable value, for as long as the corresponding taxing unit  
24 imposes taxes on that property.

25 (6) If a corporation enters into an agreement under  
26 this subsection, the corporation shall enter into an agreement with  
27 a corresponding taxing unit that taxes property located in the

1 defined area of the project to recover the amount paid by the  
2 corporation to a taxing unit as provided by Subdivision (5) of this  
3 subsection.

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

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

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

13 (4) An agreement entered into under this subsection  
14 shall state the base taxable value of the property in the defined  
15 area that is taxable by the city that created the corporation  
16 undertaking the project.

17 (5) The agreement may provide that the corporation  
18 making the investment is entitled to receive from the city that  
19 created the corporation undertaking the project, in exchange for  
20 the investment, an amount equal to a specified percentage of the tax  
21 revenue from taxes imposed by the city on the taxable value of the  
22 defined area of the project that exceeds the base taxable value, for  
23 as long as the city imposes taxes on that property.

24 SECTION 6. Section 4B(a)(2), Development Corporation Act of  
25 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to  
26 read as follows:

27 (2) "Project" means land, buildings, equipment,

1 facilities, expenditures, and improvements included in the  
2 definition of that term under Section 2 of this Act, and includes  
3 job training as provided by Section 38 of this Act. For purposes of  
4 this section, the term includes recycling facilities, and land,  
5 buildings, equipment, facilities, and improvements found by the  
6 board of directors to:

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

18 (B) promote or develop new or expanded business  
19 enterprises that create or retain primary jobs, including a project  
20 to provide public safety facilities, streets and roads, drainage  
21 and related improvements, demolition of existing structures,  
22 general municipally owned improvements, as well as any improvements  
23 or facilities that are related to any of those projects and any  
24 other project that the board in its discretion determines promotes  
25 or develops new or expanded business enterprises that create or  
26 retain primary jobs;

27 (C) be required or suitable for the promotion of



1 development and expansion of affordable housing, as defined by 42  
2 U.S.C. Section 12745;

3 (D) be required or suitable for the development  
4 or improvement of water supply facilities, including dams,  
5 transmission lines, well field developments, and other water supply  
6 alternatives; ~~or~~

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

13 (F) be required or suitable for infrastructure  
14 necessary to promote or develop new or expanded business  
15 enterprises, including streets and roads, water and electric  
16 utilities, drainage and related improvements, and  
17 telecommunications and Internet improvements.

18 SECTION 7. Section 4B(p), Development Corporation Act of  
19 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to  
20 read as follows:

21 (p) The department, with the assistance of the Texas  
22 ~~[Natural Resource Conservation]~~ Commission on Environmental  
23 Quality, may encourage the cleanup of contaminated property by  
24 corporations created under this section through the use of sales  
25 and use tax proceeds. Notwithstanding any other provision of this  
26 section, a corporation created under this section may use proceeds  
27 from the sales and use tax to undertake the cleanup of contaminated

1 property only if the use of tax proceeds for that purpose is  
2 authorized by a majority of the qualified voters of the city voting  
3 in an election called and held for that purpose. The ballot in an  
4 election held under this subsection shall be printed to provide for  
5 voting for or against the proposition: "The use of sales and use  
6 tax proceeds for the cleanup of contaminated property."

7 SECTION 8. The Development Corporation Act of 1979 (Article  
8 5190.6, Vernon's Texas Civil Statutes) is amended by adding  
9 Sections 40 and 41 to read as follows:

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

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

16 (b) A performance agreement between a corporation and  
17 business enterprise, at a minimum, must provide for a schedule of  
18 jobs and capital investment to be made or created as consideration  
19 for any direct incentives provided or expenditures made by the  
20 corporation under the agreement. The performance agreement must  
21 also specify the terms under which repayment must be made if the  
22 business enterprise fails to meet the performance requirements  
23 specified in the agreement.

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

27 (b) A corporation organized under Section 4A or 4B of this

1 Act must enter into a written contract approved by the  
2 corporation's board of directors in connection with the payment of  
3 a commission, fee, or other compensation or thing of value to a  
4 broker, agent, or other third party who is involved in business  
5 recruitment or development.

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

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

12 SECTION 9. Section 2(11)(B), Development Corporation Act of  
13 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is repealed.

14 SECTION 10. The changes in law made by Section 2,  
15 Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas  
16 Civil Statutes), as amended by this Act, apply only to a project  
17 that is undertaken on or after the effective date of this Act. A  
18 project that is undertaken before the effective date of this Act is  
19 governed by the law in effect on the date the project is undertaken,  
20 and the former law is continued in effect for that purpose.

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