

1-1 By: Homer, Laubenberg, Hegan H.B. No. 2912
1-2 (Senate Sponsor - Ratliff)
1-3 (In the Senate - Received from the House May 12, 2003;
1-4 May 13, 2003, read first time and referred to Committee on State
1-5 Affairs; May 24, 2003, reported adversely, with favorable
1-6 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-7 May 24, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 2912 By: Ratliff

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to industrial development corporations; providing a civil
1-12 penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 2(11)(A), Development Corporation Act of
1-15 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
1-16 read as follows:

1-17 (A) "Project" shall mean the land, buildings,
1-18 equipment, facilities, expenditures, targeted infrastructure, and
1-19 improvements (one or more) that are for the creation or retention of
1-20 primary jobs and that are ~~[to promote new and expanded business~~
1-21 ~~development or]~~ found by the board of directors to be required or
1-22 suitable for the ~~[promotion of]~~ development, retention, or ~~[and]~~
1-23 expansion of manufacturing and industrial facilities, [job
1-24 creation and retention, job training, educational facilities,]
1-25 research and development facilities, transportation facilities
1-26 (including but not limited to airports, ports, mass commuting
1-27 facilities, and parking facilities), sewage or solid waste disposal
1-28 facilities, recycling facilities, air or water pollution control
1-29 facilities, facilities for the furnishing of water to the general
1-30 public, distribution centers, small warehouse facilities capable
1-31 of serving as decentralized storage and distribution centers, [and]
1-32 primary job training facilities for use by institutions of higher
1-33 education, and regional or national corporate headquarters
1-34 facilities ~~[for the promotion of development or redevelopment and~~
1-35 ~~expansion, including costs of administration and operation, of a~~
1-36 ~~military base closed or realigned pursuant to recommendation of the~~
1-37 ~~Defense Closure and Realignment Commission pursuant to the Defense~~
1-38 ~~Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687~~
1-39 ~~note) as amended, and of facilities which are related to any of the~~
1-40 ~~foregoing, and in furtherance of the public purposes of this Act,~~
1-41 ~~all as defined in the rules of the department, irrespective of~~
1-42 ~~whether in existence or required to be identified, acquired, or~~
1-43 ~~constructed thereafter].~~

1-44 "Project" also includes job training required or
1-45 suitable for the promotion of development and expansion of business
1-46 enterprises and other enterprises described by this Act, as
1-47 provided by Section 38 of this Act.

1-48 "Project" also includes expenditures found by the
1-49 board of directors to be required or suitable for infrastructure
1-50 necessary to promote or develop new or expanded business
1-51 enterprises limited to streets and roads, water and electric
1-52 utilities, gas utilities, drainage and related improvements, and
1-53 telecommunications and Internet improvements.

1-54 SECTION 2. Section 2, Development Corporation Act of 1979
1-55 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by
1-56 adding Subdivisions (17) and (18) to read as follows:

1-57 (17) "Primary job" means a job that is:

1-58 (A) available at a company for which a majority
1-59 of the products or services of that company are ultimately exported
1-60 to regional, statewide, national, or international markets
1-61 infusing new dollars into the local economy; and

1-62 (B) included in one of the following sectors of
1-63 the North American Industry Classification System (NAICS):

2-1	<u>NAICS Sector #</u>	<u>Description</u>
2-2	<u>111</u>	<u>Crop Production</u>
2-3	<u>112</u>	<u>Animal Production</u>
2-4	<u>113</u>	<u>Forestry and Logging</u>
2-5	<u>11411</u>	<u>Commercial Fishing</u>
2-6	<u>115</u>	<u>Support Activities for Agriculture and</u>
2-7		<u>Forestry</u>
2-8	<u>211-213</u>	<u>Mining</u>
2-9	<u>221</u>	<u>Utilities</u>
2-10	<u>311-339</u>	<u>Manufacturing</u>
2-11	<u>42</u>	<u>Wholesale Trade</u>
2-12	<u>48-49</u>	<u>Transportation and Warehousing</u>
2-13	<u>51 (excluding 512131</u>	<u>Information (excluding movie theaters and</u>
2-14	<u>and 512132)</u>	<u>drive-in theaters)</u>
2-15	<u>523-525</u>	<u>Securities, Commodity Contracts, and Other</u>
2-16		<u>Financial Investments and Related</u>
2-17		<u>Activities; Insurance Carriers and Related</u>
2-18		<u>Activities; Funds, Trusts, and Other</u>
2-19		<u>Financial Vehicles</u>
2-20	<u>5413, 5415, 5416,</u>	<u>Scientific Research and Development Services</u>
2-21	<u>5417, and 5419</u>	
2-22	<u>551</u>	<u>Management of Companies and Enterprises</u>
2-23	<u>922140</u>	<u>Correctional Institutions</u>
2-24		<u>(18) "Corporate headquarters facilities" means</u>
2-25		<u>buildings proposed for construction and occupancy as the principal</u>
2-26		<u>office for a business enterprise's administrative and management</u>
2-27		<u>services.</u>
2-28		SECTION 3. Section 3(b), Development Corporation Act of
2-29		1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
2-30		read as follows:
2-31		(b) This Act shall be [liberally] construed in conformity
2-32		with the intention of the legislature herein expressed.
2-33		SECTION 4. Section 4A(i), Development Corporation Act of
2-34		1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
2-35		read as follows:
2-36		(i) Except as provided by this subsection, the corporation
2-37		may not undertake a project the primary purpose of which is to
2-38		provide transportation facilities, solid waste disposal
2-39		facilities, <u>sewage facilities, facilities for furnishing water to</u>
2-40		<u>the general public, or air or water pollution control facilities.</u>
2-41		However, the corporation may provide those facilities to benefit
2-42		property acquired for a project having another primary purpose.
2-43		The corporation may undertake a project the primary purpose of
2-44		which is to provide:
2-45		(1) a general aviation business service airport that
2-46		is an integral part of an industrial park; or
2-47		(2) port-related facilities to support waterborne
2-48		commerce.
2-49		SECTION 5. Section 4A(t), Development Corporation Act of
2-50		1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
2-51		read as follows:
2-52		(t) The department, with the assistance of the Texas
2-53		[Natural Resource Conservation] <u>Commission on Environmental</u>
2-54		<u>Quality</u> , may encourage the cleanup of contaminated property by
2-55		corporations created under this section through the use of sales
2-56		and use tax proceeds. A corporation created under this section may
2-57		use proceeds from the sales and use tax to undertake the cleanup of
2-58		contaminated property only if the use of tax proceeds for that
2-59		purpose is authorized by a majority of the qualified voters of the
2-60		city voting in an election called and held for that purpose. The
2-61		ballot in an election held under this subsection shall be printed to
2-62		provide for voting for or against the proposition: "The use of
2-63		sales and use tax proceeds for the cleanup of contaminated
2-64		property."
2-65		SECTION 6. Section 4B(a)(2), Development Corporation Act of
2-66		1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
2-67		read as follows:
2-68		(2) "Project" means land, buildings, equipment,
2-69		facilities, <u>expenditures</u> , and improvements included in the

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

3-6 (A) be required or suitable for use for
3-7 professional and amateur (including children's) sports, athletic,
3-8 entertainment, tourist, convention, and public park purposes and
3-9 events, including stadiums, ball parks, auditoriums,
3-10 amphitheaters, concert halls, [~~learning centers,~~] parks and park
3-11 facilities, open space improvements, [~~municipal buildings,~~]
3-12 museums, exhibition facilities, and related store, restaurant,
3-13 concession, and automobile parking facilities, related area
3-14 transportation facilities, and related roads, streets, and water
3-15 and sewer facilities, and other related improvements that enhance
3-16 any of those items;

3-17 (B) promote or develop new or expanded business
3-18 enterprises that create or retain primary jobs, including a project
3-19 to provide public safety facilities, streets and roads, drainage
3-20 and related improvements, demolition of existing structures,
3-21 general municipally owned improvements, as well as any improvements
3-22 or facilities that are related to any of those projects and any
3-23 other project that the board in its discretion determines promotes
3-24 or develops new or expanded business enterprises that create or
3-25 retain primary jobs;

3-26 (C) be required or suitable for the promotion of
3-27 development and expansion of affordable housing, as defined by 42
3-28 U.S.C. Section 12745;

3-29 (D) be required or suitable for the development
3-30 or improvement of water supply facilities, including dams,
3-31 transmission lines, well field developments, and other water supply
3-32 alternatives; or

3-33 (E) be required or suitable for the development
3-34 and institution of water conservation programs, including
3-35 incentives to install water-saving plumbing fixtures, educational
3-36 programs, brush control programs, and programs to replace
3-37 malfunctioning or leaking water lines and other water facilities.

3-38 SECTION 7. Section 4B(a-5), Development Corporation Act of
3-39 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
3-40 read as follows:

3-41 (a-5)(1) Notwithstanding any other provision of this
3-42 section, a corporation created under this section may use proceeds
3-43 from the sales and use tax to undertake a project described by
3-44 Subsection (a)(2)(D) or (E) of this section only if the use of tax
3-45 proceeds for that purpose is authorized by a majority of the
3-46 qualified voters of the city voting in an election called and held
3-47 for that purpose. The ballot in an [~~proposition at the~~] election
3-48 held under this subsection shall be printed to provide for voting
3-49 for or against the proposition: "The use of sales and use tax
3-50 proceeds for infrastructure relating to _____ (insert water
3-51 supply facilities or water conservation programs, as
3-52 appropriate)."

3-53 (2) An election held under Subdivision (1) of this
3-54 subsection may be authorized by the governing body of an eligible
3-55 city subsequent to an earlier election authorized under Subsection
3-56 (d) of this section [~~to adopt a sales and use tax under Subsection~~
3-57 (d) of this section must clearly describe the project to be
3-58 undertaken by the corporation if the project is described by
3-59 Subsection (a)(2)(D) or (E) of this section].

3-60 SECTION 8. Section 4B(c), Development Corporation Act of
3-61 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
3-62 read as follows:

3-63 (c) The board of directors of a corporation under this
3-64 section consists of seven directors who are appointed by the
3-65 governing body of the eligible city for two-year terms of office. A
3-66 director may be removed by the governing body of the eligible city
3-67 at any time without cause. Each director of a corporation created
3-68 by an eligible city with a population of 20,000 or more must be a
3-69 resident of the eligible city. Each director of a corporation

4-1 created by an eligible city with a population of less than 20,000
 4-2 must be a resident of the eligible city, be a resident of ~~or~~ the
 4-3 county in which the major part of the area of the eligible city is
 4-4 located, or reside at a place that is within 10 miles of the
 4-5 eligible city's boundaries and is in a county bordering the county
 4-6 in which the major part of the area of the eligible city is located.

4-7 Three directors shall be persons who are not employees, officers,
 4-8 or members of the governing body of the eligible city. A majority
 4-9 of the entire membership of the board is a quorum. The board shall
 4-10 conduct all meetings within the boundaries of the eligible city.
 4-11 The board shall appoint a president, a secretary, and other
 4-12 officers of the corporation that the governing body of the eligible
 4-13 city considers necessary. The corporation's registered agent must
 4-14 be an individual resident of the state and the corporation's
 4-15 registered office must be within the boundaries of the eligible
 4-16 city.

4-17 SECTION 9. Section 4B(p), Development Corporation Act of
 4-18 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
 4-19 read as follows:

4-20 (p) The department, with the assistance of the Texas
 4-21 ~~[Natural Resource Conservation]~~ Commission on Environmental
 4-22 Quality, may encourage the cleanup of contaminated property by
 4-23 corporations created under this section through the use of sales
 4-24 and use tax proceeds. Notwithstanding any other provision of this
 4-25 section, a corporation created under this section may use proceeds
 4-26 from the sales and use tax to undertake the cleanup of contaminated
 4-27 property only if the use of tax proceeds for that purpose is
 4-28 authorized by a majority of the qualified voters of the city voting
 4-29 in an election called and held for that purpose. The ballot in an
 4-30 election held under this subsection shall be printed to provide for
 4-31 voting for or against the proposition: "The use of sales and use
 4-32 tax proceeds for the cleanup of contaminated property."

4-33 SECTION 10. Section 38(b), Development Corporation Act of
 4-34 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to
 4-35 read as follows:

4-36 (b) ~~A [Except as provided by Subsection (c) of this section,~~
 4-37 ~~a] corporation may spend tax revenue received under this Act for job~~
 4-38 ~~training offered through a business enterprise only if the business~~
 4-39 ~~enterprise has committed in writing to:~~

4-40 (1) create new jobs that pay wages that are at least
 4-41 equal to the prevailing [average weekly] wage for the applicable
 4-42 occupation in the local labor market area; or

4-43 (2) increase its payroll to pay wages that are at least
 4-44 equal to the prevailing wage for the applicable occupation in the
 4-45 local labor market area [the county in which the jobs are to be
 4-46 located].

4-47 SECTION 11. Section 39, Development Corporation Act of 1979
 4-48 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by
 4-49 amending Subsections (b) and (c) and adding Subsections (e)-(h) to
 4-50 read as follows:

4-51 (b) At least once in each 24-month period, the following
 4-52 persons shall attend a training seminar regarding the operation of
 4-53 a corporation created under this Act [sponsored by the department
 4-54 under Section 481.0231, Government Code]:

4-55 (1) the city attorney, the city administrator, or the
 4-56 city clerk of a city that created a corporation;

4-57 (2) the county clerk or the county attorney of a county
 4-58 that created a corporation; and

4-59 (3) the executive director of the corporation or other
 4-60 person who is responsible for the daily administration of the
 4-61 corporation.

4-62 (c) A corporation shall present proof of compliance with
 4-63 this section to the comptroller by presenting the certificates of
 4-64 completion issued under Subsection (h) of this section [Section
 4-65 481.0231, Government Code,] for each person that was required to
 4-66 attend the training seminar. The comptroller may impose an
 4-67 administrative penalty, in an amount not to exceed \$1,000 for each
 4-68 violation, against a corporation that fails to present proof in
 4-69 accordance with this section.

5-1 (e) The training seminar described by Subsection (b) of this
 5-2 section must:

5-3 (1) be provided by a statewide organization that
 5-4 represents corporations organized under this Act, except as
 5-5 provided by Subsection (f) of this section;

5-6 (2) provide at least six hours of instruction devoted
 5-7 to topics relating to the legal and proper operation of a
 5-8 corporation created under this Act; and

5-9 (3) be held at least four times per calendar year in a
 5-10 different geographical region of this state.

5-11 (f) If the department or its successor determines that no
 5-12 statewide organization is able to provide a training seminar as
 5-13 prescribed by Subsection (e) of this section, the department or its
 5-14 successor, in conjunction with the attorney general and the
 5-15 comptroller, shall by rule develop a training seminar in
 5-16 conformance with this section. The department or its successor may
 5-17 enter into an agreement for the provision of a training seminar
 5-18 developed under this subsection with any person determined by the
 5-19 department or its successor to be qualified to provide the training
 5-20 seminar.

5-21 (g) A person, entity, or organization that provides a
 5-22 training seminar under this section may:

5-23 (1) charge a reasonable fee for attending the seminar;
 5-24 and

5-25 (2) compensate an individual who provides instruction
 5-26 at the seminar.

5-27 (h) The person, entity, or organization providing a
 5-28 training seminar under this section shall issue a certificate of
 5-29 completion, on a form approved by the comptroller, to each person
 5-30 who completes the training seminar.

5-31 SECTION 12. The Development Corporation Act of 1979
 5-32 (Article 5190.6, Vernon's Texas Civil Statutes) is amended by
 5-33 adding Sections 40, 41, and 42 to read as follows:

5-34 Sec. 40. DIRECT INCENTIVE PROVIDED TO BUSINESS ENTERPRISE.

5-35 (a) A corporation created under this Act may not provide a direct
 5-36 incentive to or make an expenditure on behalf of a business
 5-37 enterprise under a project as defined by Section 2 or 4B(a)(2) of
 5-38 this Act unless the corporation enters into a performance agreement
 5-39 with the business enterprise.

5-40 (b) A performance agreement between a corporation and
 5-41 business enterprise, at a minimum, must provide for a schedule of
 5-42 additional payroll or jobs to be created or retained and capital
 5-43 investment to be made as consideration for any direct incentives
 5-44 provided or expenditures made by the corporation under the
 5-45 agreement. The performance agreement must also specify the terms
 5-46 under which repayment must be made if the business enterprise fails
 5-47 to meet the performance requirements specified in the agreement.

5-48 Sec. 41. REQUIREMENT FOR THIRD-PARTY CONTRACT FOR BUSINESS
 5-49 RECRUITMENT OR DEVELOPMENT. (a) This section does not apply to a
 5-50 payment to an employee of the corporation.

5-51 (b) A corporation organized under Section 4A or 4B of this
 5-52 Act must enter into a written contract approved by the
 5-53 corporation's board of directors in connection with the payment of
 5-54 a commission, fee, or other compensation or thing of value to a
 5-55 broker, agent, or other third party who is involved in business
 5-56 recruitment or development.

5-57 (c) A corporation that violates Subsection (b) of this
 5-58 section is liable to the state for a civil penalty in an amount not
 5-59 to exceed \$10,000.

5-60 (d) The attorney general may bring an action to recover the
 5-61 civil penalty in a district court in Travis County or the county in
 5-62 which the violation occurred.

5-63 Sec. 42. ECONOMIC INCENTIVE FOR CERTAIN BUSINESS ENTERPRISE
 5-64 PROHIBITED. (a) In this section, "related party" means a person or
 5-65 entity that owns at least 80 percent of the business enterprise to
 5-66 which the sales and use tax would be rebated as part of an economic
 5-67 incentive.

5-68 (b) Notwithstanding any other provision of this Act, a
 5-69 corporation created under this Act may not offer to provide an

6-1 economic incentive for a business enterprise whose business
6-2 consists primarily of purchasing taxable items using a resale
6-3 certificate and then reselling those items to a related party.

6-4 SECTION 13. Sections 2(11)(B) and (C), 38(a), and
6-5 38(c)-(e), Development Corporation Act of 1979 (Article 5190.6,
6-6 Vernon's Texas Civil Statutes), and Section 481.0231, Government
6-7 Code, are repealed.

6-8 SECTION 14. The changes in law made by this Act apply only
6-9 to a project that is undertaken or approved, by an election or
6-10 otherwise, on or after the effective date of this Act. A project
6-11 that is undertaken or approved before the effective date of this Act
6-12 is governed by the law in effect on the date the project is
6-13 undertaken or approved, and the former law is continued in effect
6-14 for that purpose.

6-15 SECTION 15. This Act takes effect immediately if it
6-16 receives a vote of two-thirds of all the members elected to each
6-17 house, as provided by Section 39, Article III, Texas Constitution.
6-18 If this Act does not receive the vote necessary for immediate
6-19 effect, this Act takes effect September 1, 2003.

6-20 * * * * *