

By: Coleman

H.B. No. 3470

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of state subsidies granted for economic
3 development purposes.

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

5 SECTION 1. (a) The Legislature of the state of Texas finds
6 that:

7 (1) Numerous studies indicate that state
8 funded-economic development incentives are not a principal factor
9 in attracting, creating, and sustaining quality economic and
10 employment opportunities because recipients of these funds are not
11 subject to any accountability standards.

12 (2) Absent accountability standards, there is nothing
13 that requires the recipients of economic development or enterprise
14 incentives to improve Texas employment standards to offset a labor
15 pool that has a high percentage of low-wage jobs that offer
16 inadequate or non-existent health care benefits, both of which
17 inhibit economic growth.

18 (3) Absent accountability standards, economic
19 development is not enhanced by financial incentives because long
20 term economic success and prosperity is subjugated to headline
21 hunting that brings short term political prosperity for
22 politicians.

23 (4) Other state funding priorities have proven to
24 provide much greater benefit to the state economy, including but

1 not limited to the Children's Health Insurance Program, Public
2 Education, and other "quality of life" indicators that are also
3 most important to business and corporate relocation.

4 (b) Because of the conditions stated in Subsection (a) of
5 this section, it is the purpose of this act to provide
6 accountability standards for entities that receive economic
7 subsidies or grants from the state of Texas for economic
8 development.

9 SECTION 2. Chapter 481, Government Code, is amended by
10 adding Subchapter Q to read as follows:

11 SUBCHAPTER Q. PUBLIC SUBSIDY PERFORMANCE AND ACCOUNTABILITY

12 Sec. 481.221. SHORT TITLE. This subchapter may be cited as
13 the Public Subsidy Performance and Accountability Act.

14 Sec. 481.222. DEFINITIONS. In this subchapter:

15 (1) "Benefit date" means the date on which the
16 recipient receives the subsidy, except that:

17 (A) if the subsidy involves the purchase, lease,
18 or donation of physical equipment, the benefit date is the date on
19 which the recipient places the equipment into service; or

20 (B) if the subsidy is for an improvement made to
21 property, the benefit date is the earlier of:

22 (i) the date on which the last improvement
23 to the property is made; or

24 (ii) the date on which the recipient
25 occupies the property, and if more than one recipient occupies the
26 property, a grantor may assign a separate benefit date for each
27 recipient based on when the recipient first occupies the property.

1 (2) "Grantor" means a state agency that grants a
2 subsidy.

3 (3) "Local governmental entity" means a county,
4 municipality, or other political subdivision of this state and a
5 municipally created economic development corporation, including a
6 development corporation organized under the Development
7 Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil
8 Statutes).

9 (4) "Nonprofit organization" means a private,
10 nonprofit, tax-exempt organization described by Section 501(c)(3),
11 Internal Revenue Code of 1986, that has at least 100 full-time
12 employees.

13 (5) "Public subsidy" or "subsidy" means financial
14 assistance in the form of a grant, loan at a rate below the
15 commercial rate, tax abatement, tax increment financing,
16 contribution of property, tax reduction, or infrastructure, or a
17 preferential use of a government facility, that is provided to a
18 business or nonprofit organization for economic development
19 purposes. The term does not include:

20 (A) financial assistance that is generally
21 available to all businesses or to a general class of similar
22 businesses;

23 (B) federal assistance until the assistance has
24 been repaid to and reinvested by the state;

25 (C) a public improvement made to property owned
26 by the state that serves a public purpose and does not primarily
27 benefit a single business or defined group of businesses when the

1 improvement is made;

2 (D) redevelopment property polluted by a
3 hazardous substance as defined by Section 361.003, Health and
4 Safety Code, or contaminant as defined by Section 361.401, Health
5 and Safety Code;

6 (E) assistance the sole purpose of which is to
7 provide job readiness and training services;

8 (F) assistance for housing, pollution control or
9 abatement, or energy conservation;

10 (G) workers' compensation and unemployment
11 compensation;

12 (H) a benefit derived from regulation;

13 (I) an indirect benefit derived from assistance
14 provided to an educational institution;

15 (J) bonds issued to refund outstanding bonds;

16 (K) bonds issued for the benefit of an
17 organization described by Section 501(c)(3), Internal Revenue Code
18 of 1986;

19 (L) assistance for a collaboration between an
20 institution of higher education as defined by Section 61.003,
21 Education Code, and a business;

22 (M) redevelopment if the recipient's investment
23 in the purchase of the site and in-site preparation is 70 percent or
24 more of the assessor's estimated market value for the current year;
25 and

26 (N) federal loan funds provided through the
27 United States Department of Commerce, Economic Development

1 Administration.

2 (6) "Recipient" means a business entity or nonprofit
3 organization that receives a subsidy from a grantor.

4 Sec. 481.223. APPLICABILITY OF SUBCHAPTER TO CERTAIN
5 SUBSIDIES. (a) Except as otherwise provided by this subchapter,
6 this subchapter applies only to a public subsidy of more than
7 \$25,000.

8 (b) This subchapter does not apply to a subsidy in the form
9 of a loan of \$75,000 or less.

10 Sec. 481.224. GRANTING OF SUBSIDY; PUBLIC PURPOSE. A state
11 agency may not grant a public subsidy unless:

12 (1) the agency has adopted criteria for issuance of
13 the subsidy;

14 (2) the agency enters into a subsidy agreement under
15 Section 481.227 with an eligible recipient; and

16 (3) if the eligible recipient is a business entity,
17 the entity executes a corporate responsibility agreement as
18 provided by Section 481.228.

19 Sec. 481.225. CRITERIA FOR GRANTING SUBSIDY. (a) A state
20 agency, after a public hearing, shall adopt eligibility and other
21 criteria for granting a subsidy.

22 (b) The criteria adopted by the agency must:

23 (1) be standard for all recipients and may not be
24 adopted on a case-by-case basis;

25 (2) set specific minimum requirements that a business
26 entity or nonprofit organization must meet to be eligible to
27 receive a subsidy, including requirements that:

1 (A) the entity or organization must be in good
2 standing under the laws of the state in which the entity or
3 organization was formed or organized, as evidenced by a certificate
4 issued by the secretary of state or the state official having
5 custody of the records pertaining to entities or other
6 organizations formed under the laws of that state;

7 (B) the entity or organization must owe no
8 delinquent taxes to a taxing unit of this state or to another state,
9 local, or federal governmental entity; and

10 (C) the entity or organization must be in
11 compliance with:

12 (i) any applicable rules or regulations
13 adopted by any environmental protection agency of the United
14 States, this state, or a political subdivision of this state for the
15 prevention, control, or reduction of air, water, or land pollution;

16 (ii) any applicable rules or regulations
17 adopted by the Occupational Safety and Health Administration; and

18 (iii) any applicable state or federal laws
19 applying to employment issues, including Chapters 21 and 61, Labor
20 Code, and the Fair Labor Standards Act of 1938 (29 U.S.C. Section
21 201 et seq.); and

22 (3) include a floor for the wages to be paid for any
23 jobs created with the subsidy.

24 (c) The requirement of Subsection (b)(3) must be stated as a
25 specific dollar amount or a formula that will generate a specific
26 dollar amount.

27 (d) The state agency shall submit a copy of the criteria to

1 the office for review and comment.

2 (e) A state agency may modify the criteria adopted by the
3 agency under this section by documenting the applicable
4 modification and submitting a copy of the report to the office for
5 review and comment not later than the 30th day after the date on
6 which the modification is made.

7 Sec. 481.226. DUTY OF GRANTOR TO DETERMINE ELIGIBILITY.
8 Before a grantor enters into a public subsidy agreement, the
9 grantor shall contact the office to determine whether the proposed
10 recipient is eligible to receive a subsidy under this subchapter.

11 Sec. 481.227. SUBSIDY AGREEMENT. (a) As a condition of
12 receiving the subsidy, an eligible recipient must enter into a
13 subsidy agreement with the grantor that meets the requirements of
14 this section.

15 (b) The subsidy agreement must:

16 (1) describe the subsidy, including the amount and
17 type of subsidy, and the type of district if the subsidy is tax
18 increment financing;

19 (2) state the purpose for the subsidy;

20 (3) describe the project to be developed or performed
21 with the subsidy and the project site;

22 (4) contain measurable, specific, and tangible goals
23 for the subsidy, including:

24 (A) the schedule for accomplishing the goals;

25 (B) goals for the number of jobs to be created by
26 the recipient with the subsidy, which may include separate goals

27 for:

1 (i) the number of part-time or full-time
2 jobs; or

3 (ii) in cases in which job loss is imminent
4 and demonstrable, goals for the number of jobs retained; and

5 (C) wage goals for the jobs created or retained;

6 (5) describe the financial obligation of the recipient
7 if the goals described in Subdivision (4) are not met in accordance
8 with Section 481.231;

9 (6) require the recipient to continue the recipient's
10 operations in the municipality in which the subsidy is to be used
11 for at least five years after the benefit date;

12 (7) state the name and address of the parent
13 corporation of the recipient, if any; and

14 (8) list any other form of financial assistance
15 provided to the recipient by other grantors or local governmental
16 entities for the project.

17 (c) The goals specified in Subsections (b)(4)(B) and (C)
18 must be attained not later than the fifth anniversary of the benefit
19 date. In determining whether the recipient has met the goals
20 specified in Subsection (b)(4)(B), the grantor must include only
21 jobs created by the recipient at the sites of the funded project.

22 (d) If, after a public hearing, the grantor determines that
23 the creation or retention of jobs is not a goal of the subsidy
24 agreement, the wage and job goals may be set at zero.
25 Notwithstanding Subsection (b)(6), a recipient may move its
26 operations without violating the terms of the subsidy agreement if
27 the grantor, after a public hearing, approves the recipient's

1 request to move its operations.

2 (e) A subsidy in the form of a grant must be structured as a
3 forgivable loan. An agreement for a subsidy in a form other than a
4 grant must state:

5 (1) the fair market value of the subsidy to the
6 recipient, including the value of conveying property at less than a
7 fair market price; or

8 (2) whether the recipient is receiving an in-kind
9 benefit.

10 (f) If a subsidy benefits more than one recipient, the
11 grantor must assign a portion of the subsidy to each recipient that
12 signs a subsidy agreement. The proportion of the benefits assessed
13 to each recipient must reflect a reasonable estimate of the
14 recipient's share of the total benefits of the project.

15 (g) The grantor and each recipient must sign the subsidy
16 agreement. The subsidy agreement may provide for an informal
17 dispute resolution process that provides for adjudication by an
18 appropriate disinterested person in a regional office of the
19 office.

20 Sec. 481.228. CORPORATE RESPONSIBILITY AGREEMENT. (a) The
21 grantor shall require each business entity eligible to receive a
22 subsidy from the grantor to sign a corporate responsibility
23 agreement as a condition of receiving the subsidy.

24 (b) The responsibility agreement shall require that:

25 (1) the business entity agree to:

26 (A) provide basic health insurance coverage to
27 all entity employees residing in this state and to dependents of

1 employees residing in this state that is at least comparable to the
2 basic health coverage provided to state employees and dependents of
3 state employees under Chapter 1551, Insurance Code; and

4 (B) pay at least 50 percent of the cost of the
5 insurance coverage;

6 (2) the business entity agree to provide pension
7 benefits substantially similar to service retirement benefits
8 provided by the Employees Retirement System of Texas for members in
9 the employee class under Subtitle B, Title 8, Government Code;

10 (3) the business entity agree not to create, during
11 the 15 years immediately following the date of the agreement,
12 employment suitable for performance in this state, in another
13 state, or a country other than the United States and, as a result,
14 eliminate or fail to create similar employment in this state;

15 (4) the business entity agree to annually provide to
16 the grantor salary and benefits information for all of the entity's
17 employees in this state, including salary and benefits information
18 relating to the chief executive officer of the entity;

19 (5) the business entity owe no delinquent taxes to a
20 taxing unit of this state or to another state, local, or federal
21 governmental entity;

22 (6) the business entity agree to submit to an annual
23 performance audit when requested by the grantor; and

24 (7) the business entity comply with:

25 (A) applicable rules or regulations adopted by
26 any environmental protection agency of the United States, this
27 state, or a political subdivision of this state for the prevention,

1 control, or reduction of air, water, or land pollution;

2 (B) applicable rules or regulations adopted by
3 the Occupational Safety and Health Administration; and

4 (C) Chapters 21 and 61, Labor Code, and the Fair
5 Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and any
6 other applicable state or federal law applying to employment
7 issues.

8 (c) The grantor may require as part of the responsibility
9 agreement that the business entity provide a surety bond, purchase
10 insurance, or provide other security in a reasonable amount
11 necessary to cover the amount of the grant.

12 Sec. 481.229. EXTENSION OF TIME TO MEET AGREED GOALS. (a)
13 A grantor, after a public hearing, may extend up to one year the
14 period for meeting job and wage goals under the subsidy agreement.

15 (b) A grantor may extend the period for meeting goals other
16 than job and wage goals. The grantor shall:

17 (1) prepare and maintain a written record of any
18 extension granted under this subsection that includes the reason
19 for the extension; and

20 (2) forward a copy of a record maintained under this
21 subsection with the annual report required under Section 481.237.

22 Sec. 481.230. PUBLIC NOTICE AND HEARING BEFORE GRANTING
23 LARGE SUBSIDY. (a) Notwithstanding Section 552.131, a state
24 agency shall publish notice and hold a public hearing before
25 granting a subsidy of more than \$500,000.

26 (b) Public notice and a hearing to grant a subsidy under
27 this section is not required if notice and hearing is otherwise

1 required by law.

2 (c) A state agency shall publish notice of the hearing
3 required under this section in the Texas Register and shall hold the
4 hearing in Austin. The notice must:

5 (1) include the date, time, and place of the hearing;
6 and

7 (2) identify the location at which information about
8 the subsidy, including a summary of the terms of the subsidy
9 agreement, is available.

10 (d) A grantor shall:

11 (1) make printed copies of information on the subsidy
12 available on request to members of the public; and

13 (2) to the extent possible, make the information
14 available through the Internet.

15 Sec. 481.231. FAILURE TO MEET GOALS AND OBLIGATIONS UNDER
16 SUBSIDY AGREEMENT. (a) A subsidy agreement entered into under
17 Section 481.227 must contain a provision requiring a recipient that
18 fails to meet each of the goals specified in the agreement within
19 the deadline specified in the agreement or that fails to comply with
20 each of the terms of the corporate responsibility agreement
21 executed under Section 481.228 to, at a minimum, repay the amount of
22 the subsidy with interest at the agreed rate and terms. The
23 repayment must be prorated to reflect a partial fulfillment of
24 goals.

25 (b) On making a determination that a recipient has failed to
26 meet a deadline specified in the subsidy agreement or has otherwise
27 violated the terms of the subsidy agreement or the corporate

1 responsibility agreement or any extensions or modifications made to
2 the subsidy agreement, the grantor shall immediately send notice of
3 the failure to the recipient and demand repayment of the subsidy.
4 The notice must be sent by registered mail, return receipt
5 requested.

6 Sec. 481.232. PROHIBITION ON RECEIPT OF SUBSIDY. A
7 recipient that fails to meet the terms of a subsidy agreement or the
8 corporate responsibility agreement under Section 481.228 may not
9 receive a subsidy from a grantor before the earlier of:

10 (1) five years after the date on which the grantor made
11 its determination regarding the failure; or

12 (2) the date on which the recipient satisfies its
13 repayment obligation under the terms of the subsidy agreement.

14 Sec. 481.233. ANNUAL REPORT REQUIRED BY RECIPIENT. (a) A
15 grantor must monitor the progress of a recipient in achieving the
16 goals as stated in the subsidy agreement and a recipient's
17 continued compliance with the corporate responsibility agreement.

18 (b) For each subsidy received, a recipient shall submit, not
19 later than March 1 of each year, a report containing the information
20 compiled during the previous year regarding progress in the
21 attainment of each of the stated goals and, if applicable, the
22 recipient's continued compliance with the corporate responsibility
23 agreement. The recipient shall submit the report to the office.

24 (c) The information required under this section must be
25 submitted on a form and in the manner prescribed by the office.

26 Sec. 481.234. CONTENTS OF ANNUAL REPORT. (a) The annual
27 report must include:

1 (1) the type, public purpose, and amount of subsidy
2 and type of district if the subsidy is tax increment financing;

3 (2) the number of any new jobs to be created because of
4 the subsidy for which the starting wage is:

5 (A) less than \$8 an hour;

6 (B) at least \$8 but less than \$20 an hour; and

7 (C) at least \$20 an hour;

8 (3) the sum of the hourly wages and cost of health
9 insurance provided by the employer with respect to the wages;

10 (4) the date job and wage goals were or will be met;

11 (5) a statement of goals identified in the subsidy
12 agreement and the recipient's progress toward attainment of those
13 goals;

14 (6) the principal office of the recipient before
15 receiving a subsidy if the recipient changed its principal office
16 after receiving the subsidy;

17 (7) if applicable, any reasons why the recipient did
18 not complete the project at the site disclosed in the subsidy
19 agreement if the recipient moves its operations to another site;

20 (8) the name and address of the parent corporation of
21 the recipient, if any;

22 (9) a list of all financial assistance by all grantors
23 or local governmental entities for the project; and

24 (10) any other information that may be requested by
25 the office.

26 (b) If the recipient is a business entity, the report must
27 also include information on:

1 (1) health insurance coverage provided by the
2 recipient to all of the recipient's employees residing in this
3 state and to dependents of those employees; and

4 (2) the employee salary and benefit information
5 required to be provided under Section 481.228(b)(4).

6 Sec. 481.235. FILING OF ANNUAL REPORT. (a) A recipient
7 shall file the report required by Section 481.233 not later than
8 March 1 of each year.

9 (b) In addition to filing a report within the reporting
10 period prescribed by Subsection (a), the recipient must file a
11 report containing the information required by Section 481.233(a)
12 not later than the 30th day after the date of the deadline for
13 attaining the job and wage goals specified in the subsidy
14 agreement.

15 (c) A recipient shall continue to file the report containing
16 the information required by Section 481.233(a) until the second
17 anniversary of the later of:

18 (1) the benefit date; or

19 (2) the date on which the goals are met.

20 (d) A recipient shall continue to file the report containing
21 the information required by Section 481.233(b) until the date the
22 subsidy agreement expires.

23 (e) Notwithstanding Subsection (c), a recipient that has
24 not met the goals stated in the subsidy agreement shall file the
25 report required under this section until the subsidy is repaid.

26 Sec. 481.236. FAILURE TO FILE REPORT. (a) If a recipient
27 fails to file a report under Section 481.233, the grantor shall send

1 a written reminder to the recipient not later than the seventh day
2 after the date on which the report is due.

3 (b) If the recipient fails to file a report before the 14th
4 day after the date a reminder letter sent under Subsection (a) is
5 postmarked, the recipient is liable to the grantor for a penalty of
6 \$100 for each day the report is not filed.

7 (c) The penalty under this section may not exceed \$1,000.

8 Sec. 481.237. REPORT BY GRANTOR TO OFFICE. (a) Not later
9 than April 1 of each year, each state agency that has awarded a
10 public subsidy shall file a report with the office regarding the
11 subsidy.

12 (b) The office shall adopt procedures regarding the
13 reporting requirements of this section and shall provide
14 information on those requirements to each appropriate state agency.

15 (c) The report must include:

16 (1) a list of recipients that did not complete the
17 report required under Section 481.233;

18 (2) a list of recipients that have not met their job
19 and wage goals within the past two years and any action being taken
20 by the grantor to:

21 (A) bring those recipients into compliance; or

22 (B) recoup the subsidy; and

23 (3) a list of recipients that have not complied with
24 the terms of a corporate responsibility agreement under this
25 subchapter and any action being taken by the grantor to recoup the
26 subsidy.

27 (d) The office shall send a written reminder to each grantor

1 that does not file a report within the time prescribed by this
2 section. A grantor for whom the office has not received a required
3 report by June 1 of the same year the report is due is prohibited
4 from granting a subsidy until it files the report with the office.

5 Sec. 481.238. SUBSIDY COMPILATION AND SUMMARY REPORT BY
6 OFFICE. (a) Not later than July 1 of each year, the office shall
7 submit to the legislature a report summarizing the results of the
8 reports required under Sections 481.233 and 481.237 for the
9 previous calendar year. The summary report must include for each
10 grantor:

11 (1) the total amount of subsidies awarded in each
12 development region of the state, as defined by office rule;

13 (2) the distribution of subsidy amounts by size of the
14 subsidy;

15 (3) the distribution of subsidy amounts by month,
16 quarter, and year;

17 (4) the distribution of subsidy amounts by type;

18 (5) the percentage of recipients that met the goals
19 specified in the subsidy agreement;

20 (6) the percentage of recipients that did not meet the
21 goals specified in the subsidy agreement by the fifth anniversary
22 of the benefit date;

23 (7) the percentage of recipients that did not comply
24 with the terms of the corporate responsibility agreement;

25 (8) the total amount of subsidies issued to recipients
26 that did not meet the goals specified in the subsidy agreement by
27 the fifth anniversary of the benefit date;

1 (9) the percentage of recipients that did not meet the
2 goals specified in the subsidy agreement and have not satisfied
3 their repayment obligations;

4 (10) the percentage of recipients that did not comply
5 with the terms of the corporate responsibility agreement and have
6 not satisfied their repayment obligation;

7 (11) the name of each recipient that failed to meet the
8 terms of its subsidy agreement in the previous five years and has
9 not satisfied its repayment obligation;

10 (12) the number of part-time and full-time jobs
11 created because of the subsidy for which the starting wage is:

12 (A) less than \$8 an hour;

13 (B) at least \$8 but less than \$20 an hour; and

14 (C) at least \$20 an hour; and

15 (13) the benefits paid for jobs created because of the
16 subsidy for which the starting wage is:

17 (A) less than \$8 an hour;

18 (B) at least \$8 but less than \$20 an hour; and

19 (C) at least \$20 an hour.

20 (b) The office shall coordinate information provided to the
21 office under this subchapter in a manner that allows a person to
22 make a useful comparison among grantors and across different
23 periods.

24 (c) The office may include any other information in the
25 report as necessary to evaluate subsidies.

26 Sec. 481.239. REPORT MADE AVAILABLE TO PUBLIC. The office
27 shall make available to the public on the office's Internet website

1 all reports submitted to the office under Section 481.237 and the
2 summary report submitted by the office under Section 481.238.

3 Sec. 481.240. SUBSIDY CRITERIA COMPILATION REPORT BY
4 OFFICE. Not later than August 1 of each year, the office shall
5 publish a compilation of grantors' criteria policies adopted in the
6 previous calendar year.

7 SECTION 2. This Act takes effect September 1, 2005.