

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 facilities ~~[for the promotion of development or redevelopment and expansion, including costs of administration and operation, of a military base closed or realigned pursuant to recommendation of the Defense Closure and Realignment Commission pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) as amended, and of facilities which are related to any of the~~

foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the department, irrespective of whether in existence or required to be identified, acquired, or constructed thereafter].

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

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

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

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

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

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

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 51213 Information (excluding movie theaters and and 512132)	drive-in theaters)

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523-525           Securities, Commodity Contracts, and Other  
                    Financial Investments and Related  
                    Activities; Insurance Carriers and Related  
                    Activities; Funds, Trusts, and Other  
                    Financial Vehicles  
5413, 5415, 5416,   Scientific Research and Development  
                    Services  
5417, and 5419  
                    551           Management of Companies and Enterprises  
                    922140        Correctional Institutions

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

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

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

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

(i) Except as provided by this subsection, the corporation may not undertake a project the primary purpose of which is to provide transportation facilities, solid waste disposal facilities, sewage facilities, facilities for furnishing water to the general public, or air or water pollution control facilities.

However, the corporation may provide those facilities to benefit property acquired for a project having another primary purpose. The corporation may undertake a project the primary purpose of which is to provide:

- (1) a general aviation business service airport that is an integral part of an industrial park; or
- (2) port-related facilities to support waterborne commerce.

SECTION 5. Section 4A(t), Development Corporation Act of

1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

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

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

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

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

(B) promote or develop new or expanded business

enterprises that create or retain primary jobs, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, as well as any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs;

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

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

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

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

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

(2) An election held under Subdivision (1) of this subsection may be authorized by the governing body of an eligible

city subsequent to an earlier election authorized under Subsection (d) of this section [~~to adopt a sales and use tax under Subsection (d) of this section must clearly describe the project to be undertaken by the corporation if the project is described by Subsection (a)(2)(D) or (E) of this section~~].

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

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

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

(p) The department, with the assistance of the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality, may encourage the cleanup of contaminated property by

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

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

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

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

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

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

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

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

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

(3) the executive director of the corporation or other

person who is responsible for the daily administration of the corporation.

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

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

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

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

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

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

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

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

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

(h) The person, entity, or organization providing a

training seminar under this section shall issue a certificate of completion, on a form approved by the comptroller, to each person who completes the training seminar.

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

Sec. 40. DIRECT INCENTIVE PROVIDED TO BUSINESS ENTERPRISE.

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

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

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

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

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

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

Sec. 42. ECONOMIC INCENTIVE FOR CERTAIN BUSINESS ENTERPRISE PROHIBITED. (a) In this section, "related party" means a person or

entity that owns at least 80 percent of the business enterprise to which the sales and use tax would be rebated as part of an economic incentive.

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

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

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

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

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President of the Senate

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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.

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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.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor