

## BILL ANALYSIS

Senate Research Center

H.B. 2912  
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State Affairs  
5/18/2003  
Engrossed

### DIGEST AND PURPOSE

The Industrial Development Corporation Act, Sections 4A and 4B, allows voters in eligible cities to impose a local sales and use tax dedicated to helping finance their communities' economic development projects. Over the past few years, a few cities have spent their economic sales tax revenue in a manner inconsistent with the legislative intent behind the Act. H.B. 2912 amends the Industrial Development Corporation Act of 1979 to refocus the use of the economic development sales tax on the creation or retention of primary jobs. This bill also prohibits a 4A or 4B corporation from providing a direct incentive or making an expenditure on behalf of a business unless both parties enter into a performance agreement. H.B. 2912 also provides a civil penalty.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(11)(A) and (C), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), as follows:

(A) Redefines "project."

(C) Deletes the phrase "a development area" in relation to the posting of a notice of a hearing by a city considering the establishment of certain economically depressed areas.

SECTION 2. Amends Section 2, Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), by adding Subdivisions (17) and (18), as follows:

(17) Defines "primary job."

(18) Defines "corporate headquarters facilities."

SECTION 3. Amends Section 3(b), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to remove the term "liberally" in relation to the manner in which this Act is required to be construed.

SECTION 4. Amends Section 4A(t), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to authorize the Texas Department of Economic Development, with the assistance of the Texas Commission on Environmental Quality, rather than the Texas Natural Resource Conservation Commission, to encourage the cleanup of contaminated property by corporations created under this section through the use of sales and use tax proceeds.

SECTION 5. Amends Section 4A, Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), by adding Subsections (u) and (v), as follows:

(u)(1) (A) Defines "base taxable value."

(B) Defines "corresponding taxing unit."

(C) Defines "taxing unit."

(u)(2) Requires the corporation undertaking the project, before entering into an agreement under this subsection, to designate a defined area that includes the territory where the project is to be located.

(u)(3) Authorizes a taxing unit other than a school district to enter into an agreement with a corporation created under this section to invest in a project that is undertaken by the corporation and that is not located in the territory of the taxing unit. Authorizes a corporation to enter into an agreement under this subsection with more than one taxing unit.

(u)(4) Requires an agreement under this subsection to state the base taxable value of the property in the defined area of the project.

(u)(5) Authorizes the agreement to provide that the taxing unit is entitled to receive from the corporation, in exchange for the investment, an amount equal to a specified percentage of the tax revenue from taxes imposed by the corresponding taxing unit that taxes property located in the defined area of the project on the taxable value of the property in the defined area that exceeds the base taxable value, for as long as the corresponding taxing unit imposes taxes on that property.

(u)(6) Requires the corporation, if a corporation enters into an agreement under this subsection, to enter into an agreement with a corresponding taxing unit that taxes property located in the defined area of the project to recover the amount paid by the corporation to a taxing unit as provided by Subdivision (5) of this subsection.

(v)(1) Defines "base taxable value."

(v)(2) Authorizes the corporation, before entering into an agreement under this subsection, to designate a defined area that includes the territory where the project is to be located.

(v)(3) Authorizes a corporation created under this section to enter into an agreement with another corporation created under this section to invest in a project undertaken by the other corporation.

(v)(4) Requires an agreement entered into under this subsection to state the base taxable value of the property in the defined area that is taxable by the city that created the corporation under taking the project.

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

SECTION 6. Amends Section 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to redefine "project."

SECTION 7. Amends Section 4B(a-1), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to authorize a corporation to undertake a project under this section other than a project described by Subsection (a)(2)(G) of this section unless within 60 days after first publishing notice of a specific project or type of general project other than a project described by Subsection (a)(2)(G) of this section the governing body of the city receives a petition from more than 10 percent of the registered voters of the city where the petition requests that an election be held before that specific project or that general type of project is undertaken. Provides that an

election is not required to be held after the submission of a petition under this subdivision if the qualified citizens of the city have previously approved the undertaking of a specific project or that general type of project that is the subject of the petition at an election called for that purpose by the governing body of the city or in conjunction with another election required to be held under this section. Prohibits a corporation from undertaking a project described by Subsection (a)(2)(G) of this section unless the governing body of the city creating the corporation under this section orders an election on the question of undertaking the project and the majority of the votes cast at the election are in favor of the undertaking.

SECTION 8. Amends Section 4B(a-5), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to authorize a corporation created under this section to 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. Requires the ballot in an election held under this subsection to 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)." Deletes existing text relating to the ballot.

SECTION 9. Amends Section 4B, Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), by adding Subsection (a-6), as follows:

(a-6) (1) Defines "land-locked community."

(2) Provides that for a land-locked community that creates or has created a corporation governed by this section, "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises and commercial activity within the land-locked community.

(3) Prohibits a corporation from undertaking a project described by Subdivision (2) of this subsection unless the governing body of the land-locked community creating the corporation under this section orders an election on the question of undertaking the project and the majority of the votes cast at the election are in favor of the undertaking.

SECTION 10. Amends Section 4B(c), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to require each member of the board of directors of a corporation created by an eligible city with a population of less than 20,000 be a resident of the eligible city, be a resident of 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.

SECTION 11. Amends Section 4B(p), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to make a conforming change.

SECTION 12. Amends the Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.) by adding Sections 40 and 41, as follows:

Sec. 40. DIRECT INCENTIVE PROVIDED TO BUSINESS ENTERPRISE. (a) Prohibits a corporation created under this Act from providing a direct incentive to or making 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) Requires a performance agreement between a corporation and business enterprise, at a minimum, to provide for a schedule of jobs and capital investment to be made or created as consideration for any direct incentives provided or expenditures made by the corporation under the agreement. Requires the performance agreement to 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) Provides that this section does not apply to a payment to an employee of the corporation.

(b) Requires a corporation organized under Section 4A or 4B of this Act to 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) Provides that 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) Authorizes the attorney general to bring an action to recover the civil penalty in a district court in Travis County or the county in which the violation occurred.

SECTION 13. Repealer: Section 2(11)(B) (defining "development areas"), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.).

SECTION 14. Makes application of the changes in law made by Sections 2 and 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), as amended by this Act, prospective.

SECTION 15. Effective date: upon passage or September 1, 2003.