

BILL ANALYSIS

Senate Research Center
78R17287 CLG-F

C.S.H.B. 2912
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State Affairs
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Committee Report (Substituted)

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. C.S.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. C.S.H.B. 2912 also provides a civil penalty.

RULEMAKING AUTHORITY

Requires the Texas Department of Economic Development or its successor, in conjunction with the attorney general and the comptroller, by rule to develop a training seminar in conformance with this section, under certain circumstances in SECTION 11 (Section 39, Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.))

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2(11)(A), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to redefine "project."

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(i), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to prohibit the corporation to 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, except as provided by this subsection.

SECTION 5. 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 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-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)." Authorizes an election held under Subdivision (1) of this subsection to be authorized by the governing body of an eligible city subsequent to an earlier election authorized under Subsection (d) of this section. Deletes existing text relating to the ballot.

SECTION 8. 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 9. Amends Section 4B(p), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to make a conforming change.

SECTION 10. Amends Section 38(b), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), to authorize a corporation to spend tax revenue received under this Act for job training offered through a business enterprise only if the business enterprise has committed to certain conditions in writing.

SECTION 11. Amends Section 39, Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.) by amending Subsections (b) and (c) and adding Subsections (e)-(h), as follows:

(b) Requires certain individuals to attend a training seminar regarding the operation of a corporation created under this Act, rather than sponsored by the Texas Department of Economic Development (TDED) under Section 481.0231, Government Code.

(c) Requires a corporation to present proof of compliance with this section to the comptroller by a certain method.

(e) Requires the training seminar to meet certain requirements.

(f) Requires TDED or its successor, in conjunction with the attorney general and the comptroller, by rule to develop a training seminar in conformance with this section, under certain circumstances. Authorizes TDED or its successor to enter into an agreement for the provision of a training seminar developed under this subsection with any person determined by TDED or its successor to be qualified to provide the training seminar.

(g) Authorizes a person, entity, or organization that provides a training seminar under this section to charge a reasonable fee for the seminar and compensate the instructor.

(h) Requires the person, entity, or organization providing a training seminar under this section to issue a certificate of completion, on a form approved by the comptroller, to each person who completes the training seminar.

SECTION 12. Amends the Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.) by adding Sections 40, 41, and 42, 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.

Sec. 42. ECONOMIC INCENTIVE FOR CERTAIN BUSINESS ENTERPRISE PROHIBITED. (a) Defines "related party."

(b) Prohibits a corporation created under this Act from offering 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 property.

SECTION 13. Repealer: Sections 2(11)(B) and (C), 38(a) and 38(c)-(e), Development Corporation Act of 1979 (Article 5190.6, V.T.C.S.), and Section 481.0231, Government Code.

SECTION 14. Makes application of this Act prospective.

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