



## Improving Transparency and Accountability in Economic Development

by Jess Fields  
Senior Policy Analyst

### Key Points

- Local governments should take steps to increase the transparency and accountability of the economic development decision-making process.
- A governing body should define a policy on its use of economic development incentives that includes the scope of which policies it is willing to use, and which it is not.
- The public should have an opportunity to review and comment on incentive agreements that have been negotiated in closed session before action is taken by the governing body.
- Active economic development agreements should be publicly posted on the internet for the public to see, similar to agendas and minutes.

### Introduction

Many local governments in Texas are engaged in economic development, whereby a particular business prospect is offered incentives to relocate to the governing body's taxing jurisdiction. These incentives may take many forms, such as tax abatements or infrastructure deals.

One consistent aspect of nearly all such deals, however, is the lack of transparency accompanying their deliberation. Economic development negotiations are exempt from the Open Meetings Act, which otherwise requires governing bodies to deliberate in public meetings.<sup>1</sup>

Local governments should consider taking proactive steps to increase the transparency and accountability of government negotiations with business prospects. What follows are several policy proposals that would substantively improve the openness of economic development negotiations in Texas' local governments, without adding any significant burden upon their elected officials or staffs.

### Reviewing the Issue

Since 1999, economic development negotiations have been exempt from the requirements of the Texas Open Meetings Act, which requires the vast majority of government deliberations to be held in public meetings. Section 551.087 of the Government Code allows for economic development negotiations to be done in closed session.<sup>2</sup>

Section 551.087 reads as follows:

Sec. 551.087. DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS; CLOSED MEETING. This chapter does not require a governmental body to conduct an open meeting:

(1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or

(2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).<sup>3</sup>

This provision means that the public may not know the identity of business prospects under consideration or what incentives are being offered to them, even if those incentives involve direct payments of cash or conveyance of government-owned property. If negotiations and deliberation for an economic development deal are being conducted in closed session, in most cases the only indication that the citizens of a local government will have that such negotiations are occurring is the governing body's invocation of Section 551.087 when posting for the closed sessions.

If negotiations fail to result in an agreement, the public will likely never know the nature of such negotiations, or what incentives the governing body offered the business prospect. If an economic development agreement

*continued*

# Increasing Transparency in Economic Development ... 3 Easy Steps

**1.** **Create an Economic Development Policy**  
Clearly lay out the incentives that your governing body is willing to offer business prospects as part of economic development negotiations.

**2.** **Allow Public Comment and Review**  
Give citizens a chance to review economic development agreements before the final vote on passage; at least two weeks after agreement is reached.

**3.** **Maintain Accessible Public Records**  
Make currently active economic development agreements accessible to the public via your website, or wherever important public records are accessed.

is reached as a result of closed session negotiations, the governing body may take action on it immediately after emerging from the closed session. Only at that point will the public know many of the details of the agreement. There is no requirement for the governing body to allow for public review or comment on what incentives are being offered the business prospect.

At present, the economic development process largely excludes the public from participation, and does not provide adequate access to the kinds of information necessary to fully understand these policy decisions.

### ***Recommendation 1: Maintain Publicly Available Incentives Policy***

Even with the present exemption for economic development negotiations, citizens of localities that wish to learn more about their local government's economic development practices would be well-served by more publicly

available information about what sorts of incentives their public officials are willing to offer business prospects.

A straightforward way to solve this problem is by crafting a publicly available Economic Development Incentives Policy to explain what incentives a local government is willing to make available and offer business prospects.

This policy should include at least the following:

- A list of those particular economic development incentive methods the governing body is willing to use in an agreement with a business prospect. For example, a local government might be willing to use tax abatement agreements and tax increment financing (TIF) districts to attract business prospects, and so would list those in the incentives policy. If possible, each incentive listed should have the applicable statute referenced (i.e., Chapter 312 for tax abatement agreements).<sup>4</sup>

## **The adoption of an Economic Development Incentives Policy offers an opportunity for elected officials, staff members, and the citizenry to discuss and ultimately better understand how these incentives will be used, and under what conditions.**

- A list of incentive methods the governing body is not willing to use in an agreement with a business prospect. For example, if a local government is unwilling to provide cash or convey government-owned land, this should be listed in the incentives policy.
- Any thresholds that the governing body requires met to consider the offering of incentives. For example, the governing body might only make incentives available to businesses willing to invest a certain amount of money in a new development, or create a certain number of jobs, or both.
- Any limits or specifications upon the kinds of business prospects to which incentives will be offered. For example, a governing body might be interested in attracting industrial and office development, and is willing to offer incentives to those prospects, but is unwilling to offer incentives for retail development.

The creation of an Economic Development Incentives Policy has two significant benefits. First and foremost, the public can have a clear understanding of the boundaries within which economic development negotiations shall occur. The transparency of the process is markedly improved.

Another benefit, however, is that the creation of the policy allows for elected officials and staffers interested in economic development to have a public discussion beforehand about what kinds of incentives they feel are appropriate to use, or not to use. Such a discussion can, and ideally should involve the citizens they represent. If a governing body chooses to become involved in offering economic development incentives, it should strongly consider how its citizens feel about the subject.

The adoption of an Economic Development Incentives Policy offers an opportunity for elected officials, staff members, and the citizenry to discuss and ultimately better understand how these incentives will be used, and under what conditions.

### ***Recommendation 2: Establish Public Review for Economic Development Agreements***

After negotiations in closed session, local governments may take action without any public review or comment. Considering the gravity of such decisions, governing bodies should consider adopting periods for public review on economic development agreements that have been deliberated upon in closed session, before the governing body takes final action.

While funds for economic development incentives may be set aside within the yearly budget, the specific expenditure of those funds, if at all, is not likely to be known until an agreement is reached with a business prospect. In some cases, without having a budget for economic development or one that is large enough to cover the nature of the incentives offered for a particular agreement, the governing body may use available cash reserves to cover incentives.

If incentives do not require funding to be set aside, tax abatement agreements being an example, it can still be said that such incentives involve some kind of impact upon the budget, by affecting future tax receipts, general fund balances, or other resources of the governing body.

As a result, a good model to use for public review of economic development agreements is the public hearing requirement that accompanies the consideration of a proposed budget, which for municipalities is covered by Section 102.006 of the Texas Local Government Code. It reads as follows:

Sec. 102.006. PUBLIC HEARING ON PROPOSED BUDGET. (a) The governing body of a municipality shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.

(b) The governing body shall set the hearing for a date occurring after the 15th day after the date the proposed

## By adopting a public review process for economic development agreements, citizens may offer feedback to their elected officials in ways previously unavailable.

budget is filed with the municipal clerk but before the date the governing body makes its tax levy.

(c) The governing body shall provide for public notice of the date, time, and location of the hearing. The notice must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 102.005(b).<sup>5</sup>

The requirement of this section to hold an open public hearing at least two weeks after the budget is filed, and to provide for public notice of the meeting, is a reasonable measure to apply to the public review of economic development negotiations.

To allow for public review, a local government wishing to take action upon an economic development agreement should make the agreement available as soon as it is known, when they might otherwise take action on it immediately after closed session deliberation. The governing body should make clear to the public that an agreement has been reached, and make it available to the public from that point. Then, at least one public hearing should be held at least two weeks after the agreement is finalized and made publicly available.

The governing body may wish to hold additional public hearings, but at least one should be held before action is taken. Action could be taken at the same meeting as the public hearing, or one meeting thereafter. In either case, the delay to the adoption of the agreement will almost certainly not be more than one month, and could be as short as two weeks.

By adopting a public review process for economic development agreements, citizens may offer feedback to their

elected officials in ways previously unavailable. Governing bodies will gain the benefit of additional perspective from their community on the particulars of an incentives agreement, and get a sense of the public's interest in it. The public gains the opportunity to be engaged in an important policy matter that heretofore has not been open to them, and may show either support or opposition to proposed agreements as they see fit.

Considering the important place these agreements hold in the realm of local government policy, and keeping in mind the traditional place of citizens to be involved in the decision-making process of their local governments, a public review process for economic development agreements represents a solid step towards accountability.

### ***Recommendation 3: Transparency in Economic Development Agreements***

It is unlikely that, outside of any initial attention by the local media, the details of existing economic development agreements are well-known to the citizens.

Economic development agreements are not presently required to be posted on the web site of local governments who maintain websites. Similarly, the Texas Comptroller's Leadership Circle, which recognizes local governments who post financial records online, does not currently include public posting of economic development agreements as a criteria for recognition.<sup>6</sup>

In most cases, if the public wishes to review economic development agreements that a local government has passed, they must file open records requests. This process takes a great deal of time, for both the interested citizen as well as the staff members compiling the response to the request.<sup>7</sup>

In order to ensure that incentive agreements are known to their citizens, local governments should strive to include in their financial transparency efforts any outstanding, current economic development agreements. The method for doing so is fairly simple.

In the same way that many local governments already post their agendas, minutes, and annual budgets on the internet, and indeed are required to post certain notices if they maintain a website,<sup>8</sup> so too should they post a document

containing existing economic development agreements. The first part of the document should be a summary containing a simple breakdown of the agreements, and it should include the following:

- Name and brief details about each business prospect;
- Type and amount of incentives offered for each agreement, including length of agreement;
- Performance metrics, such as jobs to be created or property value to be created; and
- Original tax value of the property, and value after promised improvements.

The second part of the document should contain the full text, as enacted, of each agreement, ideally in the order presented in the summary. In this way, if citizens wish to review the agreements in any detail, they are able to do so.

If a local government lacks a website, agreements should be kept as accessible as possible, in one place and in a document as described above, at the primary location where records are kept.

Making active agreements available on the internet for the public to view is critically important so that the public may understand what types of incentives their local governments have engaged in. Furthermore, it ensures that staff members and elected officials are aware of what agreements are outstanding, and do not have to search in order to find them.

## Conclusion

At present, economic development agreement decision-making processes are largely shielded from public view due to their exemption from public meetings in the Texas Open Meetings Act. Until agreements are passed, the public is unaware of what is going on behind closed doors, and agreements are often passed immediately out of closed session. The citizenry cannot know what incen-

## **At present, economic development agreement decision-making processes are largely shielded from public view due to their exemption from public meetings in the Texas Open Meetings Act.**

tives are being offered to which business prospect until the agreement is passed, leaving virtually no time for public review or comment. Complicating the matter is that these agreements are not readily available to the public.

In order to take steps towards solving these challenges to accountability and transparency in the realm of economic development policy, three solutions are proposed:

1. Adoption of an Economic Development Incentives Policy, laying out the incentive options that a local government is willing to offer business prospects within economic development agreements
2. Allowing for public review and comment by waiting at least two weeks after an economic development agreement is ready and would normally be passed out of executive session to take action, and holding a public hearing.
3. Maintaining records of currently active economic development agreements on the local government website, in a document that contains a summary of the agreements as well as the raw documents themselves.

Enacting these proposals would herald a serious step towards transparency for any governing body serious about good governance, without placing a significant burden upon the economic development process. ★

## Endnotes

<sup>1</sup> Tex. Gov't Code § 551.087

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Tex. Tax Code § 312

<sup>5</sup> Tex. Local Gov't Code § 102.006

<sup>6</sup> Combs, Susan, "Texas Comptroller Leadership Circle 2013," Office of the Texas Comptroller Economic Development and Analysis Division.

<sup>7</sup> Tex. Gov't Code § 552.221

<sup>8</sup> Tex. Gov't Code § 551.056



## About the Author



**Jess Fields** is Senior Policy Analyst in the Center for Local Governance at the Texas Public Policy Foundation, one of the largest conservative state-level public policy think tanks in the United States.

Fields served on the College Station City Council from 2010 to 2013, representing all of College Station's nearly 100,000 residents in an at-large position.

As a councilman, Fields successfully fought for improved public safety, lower electric rates, cutting unnecessary city spending, and reducing property tax rates to their lowest level in over a decade. He succeeded in improving financial transparency by proposing that College Station post all financial records online, leading to the city obtaining the Gold Leadership Circle award from the Texas Comptroller's office.

Fields has served as both a delegate and alternate to the Republican National Convention from Texas' Congressional District 17, in 2012 and 2008 respectively, and in multiple volunteer capacities for the Brazos County Republican Party. He also served as a congressional page for Congressman Ted Poe.

He graduated from Texas A&M University in College Station, where he began and operated an independent student newspaper affiliated with the Collegiate Network, part of the Intercollegiate Studies Institute.

He and his wife Courtney have a daughter born in July 2013, Lacey.

## About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

