

# POLICYMAKER'S GUIDE TO CORPORATE WELFARE

## Chapter 380: Economic Development Agreements

### The Issue

Modern economic development policy in Texas can trace its roots back to when the Legislature passed the Development Corporation Act of 1979. It allowed municipalities to create nonprofit economic development corporations to support economic growth. However, because the Texas Constitution prohibited state and local government funds from supporting private business entities directly, they were privately funded.

Then the floodgates opened in 1987 when voters approved a state constitutional amendment—Proposition 4—allowing public expenditures to be made in the furtherance of economic development activities. The amendment made explicit that: “the legislature may provide for the creation of programs and the making of loans and grants of public money... for the public purposes of development and diversification of the economy of the state.”

Thus, it then became allowable to use public funding for private interests through economic development corporations and other instruments. In 1989, Chapter 380 of the Local Government Code greatly expanded upon this by enabling municipalities to also engage in these activities using a variety of different means.

### The Arguments

Chapter 380 has been called the “crown jewel of incentives for local economic development” because it permits cities—both home-rule and general law—to spend on economic development programs so long as it is done for “public purposes.” As virtually anything can be construed as a public purpose, this has effectively given localities an open invitation to offer grants, loans, or other things to private businesses promising economic growth and activity.

As a result of Chapter 380’s broad grant of authority, as well as the expansion of roles and responsibilities in other places of the code, economic development incentives have become the rule instead of the exception for localities seeking to attract new business and investment. This kind of policy environment invites debate over the use and efficacy of public funds, but perhaps more immediately, it also raises a serious concern involving government transparency and accountability.

Under the current system, economic development deliberations are not public information. Under Section 551.087 of the Government Code, which covers the Open Meetings Act, economic development negotiations are excluded from the public meetings requirement. Local governments may not only consider information presented regarding a business interested in relocating, but also fully deliberate. As long as no vote is actually taken, all other aspects of the economic development negotiation process are exempt. The only thing the public will ever know during the process of negotiation is that economic development discussion is

posted for closed session.

In addition, all information about economic development negotiations, including any and all offers made by local governments to business prospects, are completely sealed from public view at least until an agreement between the government and the business is reached. Not even an open records request can reveal the details, or even the existence of a particular economic development negotiation. If no agreement is reached, any information about the economic development negotiations, even the fact that they ever occurred, may never be disclosed to the public. The only thing the public has the right to know is that the negotiations are ongoing, because closed session will be posted invoking the 551.087 exemption.

The ability of local governments to conceal the proceedings of economic development negotiations—involving Chapter 380 agreements as well as other incentives—effectively keeps the electorate disengaged from crucial elements of the decision-making process. Elected officials tout when a deal is worked out, proclaiming the new growth that has been created in the community thanks to the governing body’s action. What is not seen by the taxpayers, of course, are the negotiations over how much of their money is spent, or what special treatment the business receives. This disconnect significantly lessens any outside scrutiny of the issue, allows elected officials to take credit for whatever jobs or investment are promised, and generally ensures that the public doesn’t really know what is going on.

It should be noted that the hidden nature of economic development negotiations also benefits businesses looking to receive economic development handouts. By not having to endure a public process, these businesses avoid much of the negative perception of “crony capitalism” because no one knows the negotiations are going on until the deal is done. Even then, the deal takes a backseat to the promised number of jobs and new capital investment.

At a minimum, addressing the opaque nature of the current system should be a reform at the top of every state and local officials’ agenda.

### Recommendations

- Require local governments to create an economic development policy that clearly lays out the incentives that its governing body is willing to offer business prospects as part of its economic development negotiations.
- Allow a public comment and review period for all economic development agreements before the final vote on passage; at least two weeks after the agreement is reached.
- Require that local governments maintain active economic development agreements on the entity’s website that are accessible to all. ★

## **Resources**

[\*Texans on the Left and Right Agree: It's Time for Transparency in Economic Development\*](#) by Jess Fields, Texas Public Policy Foundation (March 2015).

[\*An Overview of Local Economic Development Policies in Texas\*](#) by Jess Fields, Texas Public Policy Foundation (Jan. 2014).

[\*Economic Development 2013\*](#), Office of the Attorney General (2013).

[\*A Hitchhiker's Guide to the Galaxy of Economic Development Entry 593\*](#) by Debra A. Drayovitch, Texas City Attorney's Association (June 2005).  
[Texas Government Code § 552.131.](#)

