

## **Art. 5190.6. Development Corporation Act of 1979**

### **Short title**

Sec. 1. This Act may be cited as the "Development Corporation Act of 1979."

### **Definitions**

Sec. 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

- (1) "Board of directors" shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.
- (2) "Department" shall mean the Texas Department of Commerce.
- (3) "Corporation" shall mean any industrial development corporation organized pursuant to the provisions of this Act.
- (4) "Cost" as applied to a project shall mean and embrace the cost of acquisition, cleanup, construction, reconstruction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, cleaning, constructing, reconstructing, improving, and expanding any such project, administrative expense and such other expense as may be necessary or incident to the acquisition, cleanup, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing or refinancing of any such project, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of the aforementioned costs.
- (5) "City" shall mean any municipality of the state incorporated under the provisions of (i) any general or special law or (ii) the home-rule amendment to the constitution.
- (6) "County" shall mean a county of this state.
- (7) "County alliance" means two or more counties that jointly authorize the creation of a corporation under this Act.

(8) "District" shall mean a conservation and reclamation district established under authority of Article XVI, Section 59, of the Texas Constitution.

(9) "Governing body" shall mean the board, council, commission, commissioners court, or legislative body of the unit.

(10) "Industrial development corporation" shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more projects.

**\* Section 2(11) as amended by Texas Senate Bill 252, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date April 12, 2005), Texas House Bill 1253, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date , 2005), Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005); and Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005)**

(11) ~~(A)~~ "Project" shall mean:

~~(A)~~ 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 found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities, research and development facilities, military facilities, including closed or realigned military bases, 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, primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities;~~;~~

~~(B)~~ ~~"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;~~;~~

~~(C)~~ ~~"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 sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, ~~[and]~~ telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;~~;~~

**✧ Section 2(11)(D) as added by Texas House Bill 1253, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date , 2005).**

(D) land, buildings, equipment, facilities, improvements, and expenditures found by the board of directors to be required or suitable for use for a career center, if the area to be benefited by the career center is not located in the taxing jurisdiction of a junior college district.

**✧ Section 2(11)(D) and (E) as added by Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005).**

(D) for a corporation created by a city any part of which is located within 25 miles of an international border, the land, buildings, facilities, infrastructure, and improvements that:

(i) the board of directors finds are required or suitable for the development or expansion of airport facilities; or

(ii) are undertaken by the corporation if the city that created the corporation has, at the time the project is approved by the corporation as provided by this Act:

(a) a population of less than 50,000; or

(b) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved; or

(E) expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, if the corporation:

(i) is created by a city wholly or partly located in a county that is bordered by the Rio Grande, has a population of at least 500,000, and has wholly or partly within its boundaries at least four cities that each have a population of at least 25,000; and

(ii) does not support a project, as defined by this subdivision, with sales and use tax revenue collected under Section 4A or 4B of this Act.

**✧ Section 2(11) as amended by Texas Senate Bill 252, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date April 12, 2005).**

"Project" also includes the infrastructure, improvements, land acquisition, buildings, or expenditures that:

(A) are for the creation or retention of primary jobs or jobs that are included in North American Industry Classification System (NAICS) sector number 926120, Regulation and Administration of Transportation Programs, for the corresponding index entry for Coast Guard (except the Coast Guard Academy); and

(B) are found by the board of directors to be required or suitable for:

(i) promoting or supporting a military base in active use to prevent the possible future closure or realignment of the base;

(ii) attracting new military missions to a military base in active use; or

(iii) redeveloping a military base that has been closed or realigned, including a military base closed or realigned according to the recommendation of the Defense Base Closure and Realignment Commission under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note).

(12) "Resolution" shall mean the resolution, order, ordinance, or other official action by the governing body of a unit.

(13) "Unit" shall mean a city, county, or district which may create and utilize a corporation.

(14) "Bonds" includes bonds, notes, and other evidences of indebtedness.

(15) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(15) "User" means an individual, partnership, corporation, or any other private entity, whether organized for profit or not for profit, or a city, county, district, or any other political subdivision, public entity, or agency of the state or federal government.

**✳ Section 2(17) as amended by Texas Senate Bill 252, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date April 12, 2005) and as amended by Texas House Bill 551, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date , 2005) (which added “56142 - Telephone call centers” to definition of primary job)**

(17) "Primary job" means:

(A) a job that is:

(i) [~~(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

(ii) ~~(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 512131 and 512132)	Information (excluding movie theaters and drive-in theaters)
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, 5417, and 5419	Scientific Research and Development Services
551	Management of Companies and Enterprises
<u>56142</u>	<u>Telephone Call Centers</u>
922140	Correctional Institutions; <u>or</u>

(B) a job that is included in North American Industry Classification System (NAICS) sector number 928110, National Security, for the corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

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

## Findings and Construction

Sec. 3. (a) It is hereby found, determined, and declared:

(1) that the present and prospective right to gainful employment and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded business enterprises and the promotion and development of job training:

(2) that the existence, development, and expansion of business, commerce, industry, and higher education are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(2) that the existence, development, and expansion of business, commerce, industry, and job training are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(3) that the assistance provided by industrial development corporations in promoting higher education opportunities will encourage and foster the development and diversification of the economy of the state and the elimination of unemployment and underemployment in the state;

(4) that the means and measures authorized by this Act and the assistance provided in this Act, especially with respect to financing, are in the public interest and serve a public purpose of the state in promoting the welfare of the citizens of the state economically by the securing and retaining of business enterprises and the resulting maintenance of a higher level of employment, economic activity, and stability;

(5) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and have experienced difficulty in undertaking such additional projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans; and

(6) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare is hereby declared to be in the public interest and a public purpose.

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

## **Creation of Corporation; Texas Small Business Industrial Development Corporation**

Sec. 4. (a) Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector of the unit may file with the governing body of a unit a written application requesting that the unit authorize and approve creation of a corporation to act on behalf of the unit. The governing body of the unit may not charge a filing fee for the application. If the governing body by appropriate resolution finds and determines that it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, then the articles of incorporation for the corporation may be filed as hereinafter provided. A unit may authorize and approve creation of one or more corporations, provided that the resolution approving the creation of each corporation shall specify the public purpose or purposes of the unit which the corporation may further on behalf of the unit, which purpose or purposes shall be limited to the promotion and development of industrial and manufacturing enterprises to promote and encourage employment and the public welfare. No corporation may be formed unless the unit has properly adopted a resolution as herein described.

(b) There is hereby created the Texas Small Business Industrial Development Corporation which shall act on behalf of the state to carry out the public purposes of this Act. The Texas Small Business Industrial Development Corporation shall be considered to be a corporation within the meaning of this Act, shall be organized and governed in accordance with the provisions of this Act, and shall have all of the powers, and shall be subject to all of the limitations, provided for corporations by this Act, except as otherwise provided by this section. For purposes of this Act, the state shall be considered to be the unit under whose auspices the Texas Small Business Industrial Development Corporation is created and the department shall be considered to be the governing body. To the extent that the provisions of this section are inconsistent with other provisions of this Act, the provisions of this section shall control as to the existence, powers, limitations, organization, administration, operation, and affairs of the Texas Small Business Industrial Development Corporation.

(c) All bonds issued and delivered by the Texas Small Business Industrial Development Corporation before September 1, 1987, and all proceedings authorizing those bonds are validated, ratified, confirmed, and approved in all respects, and they are incontestable.

(d) The members of the board of the department shall serve ex officio as the board of directors of the Texas Small Business Industrial Development Corporation.

(e) A director, officer, employee, or member of the department acting on behalf of the Texas Small Business Industrial Development Corporation is not personally liable for damage, loss, or injury resulting from the performance of the person's duties under this Act or on any contract, commitment, or agreement executed on behalf of the Texas Small Business Industrial Development Corporation under this Act.

(f) All programs and expenditures of the Texas Small Business Industrial Development Corporation must be approved on behalf of the state by the department. Expenses incurred by the Texas Small Business Industrial Development Corporation in the operation and administration of its programs

and affairs, including expenditures for employees and program assistance or development, shall be paid out of fees collected or revenues generated under this Act.

(g) The revenues and funds of the Texas Small Business Industrial Development Corporation shall be deposited with one or more financial institutions chosen for that purpose by the board of directors. Funds of the Texas Small Business Industrial Development Corporation may not be used or made available for use by the department except to reimburse the department for expenses it incurs in its official capacity on behalf of the Texas Small Business Industrial Development Corporation.

(h) In addition to the powers provided for corporations by this Act, the Texas Small Business Industrial Development Corporation may:

(A) make loans through the purchase of or participation in, and pledge, hypothecate, negotiate, and sell, bonds, notes, and other evidences of indebtedness incurred by users to finance projects that represent a direct loan, grant, or loan participation, or the repayment of which is totally or partially insured or otherwise guaranteed, by the United States of America, by the state, or by any agency, department, or instrumentality of either; and

(B) otherwise provide financing for users, either directly or indirectly, in the manner that the Texas Small Business Industrial Development Corporation determines to be necessary or convenient for the performance of its public purposes, functions, and duties under this Act.

(i) Notwithstanding any other provision of this Act, "project" includes any use of amounts financed through the purchase by the Texas Small Business Industrial Development Corporation of bonds, notes, or other evidences of indebtedness of users under this subsection if the uses are found by the board of directors of the Texas Small Business Industrial Development Corporation to be required or suitable for the promotion of economic development in the state. Those findings may be based solely on a review by the board of directors of the Texas Small Business Industrial Development Corporation of the criteria used to determine eligibility of a user for obtaining a direct loan, grant, loan participation, insurance, or any other guarantee from the United States of America, the state, or any agency or instrumentality of either. Proceeds of bonds issued before September 1, 1987, may be used to pay all or part of the costs of a project regardless of whether the costs or project were within the definition of those terms under the Texas Department of Commerce Act before that date, or for any other purposes authorized by this Act.

(j) The Texas Small Business Industrial Development Corporation may not issue bonds for any purpose after September 1, 1987.



**Corporation in City Located in County with Population of 500,000  
or Fewer or City with Population of Fewer than 50,000**

**Cities located in counties with population of 500,000 or fewer or  
with population of fewer than 50,000 in certain cases**

Sec. 4A (a) This section applies only to a city:

(1) located in a county with a population of 500,000 or fewer; or

(2) with a population of fewer than 50,000 that:

(A) is located in two or more counties, one of which has a population of 500,000 or greater;

(B) is located within the territorial limits but has not elected to become a part of a metropolitan rapid transit authority that has a principal city with a population of less than 1.9 million with such authority being created before January 1, 1980, under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes); or

(C) is located within the territorial limits but has not elected to become a part of a metropolitan rapid transit authority that has a principal city with a population of more than 750,000 with such authority being created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

(b)(1) A city may create a corporation under this Act governed by this section. The corporation has the powers and is subject to the limitations of a corporation created under other provisions of this Act. To the extent of a conflict between this section and another provision of this Act, this section prevails. The articles of incorporation of a corporation under this section must state that the corporation is governed by this section. A city may not create more than one corporation governed by this section. A corporation created under this section may spend no more than 10 percent of the corporate revenues for promotional purposes and may contract with other existing private corporations to carry out industrial development programs or objectives or to assist with the development or operation of an economic development program or objective consistent with the purposes and duties as set out in this Act.

(2) Notwithstanding Subdivision (1), a corporation created under this section may spend no more than 25 percent of the corporate revenues for promotional purposes if the corporation was created by a city:

(i) the municipal limits of which include two counties;

- (ii) that has less than 24,250 population according to the 1990 federal census; and
- (iii) any part of which is located within ten miles of a federal military reservation.

✳ **Section 4A(c) as amended by Texas House Bill 3036, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date \_\_\_\_\_, 2005).**

(c) The board of directors of a corporation under this section consists of at least five directors who are appointed by the governing body of the city and who serve at the pleasure of the governing body and may be removed by the governing body at any time without cause. The governing body of the city shall determine the number of directors and the length of the term of each director, not to exceed six years. A majority of the entire membership of the board constitutes a quorum. The board shall conduct each of its meetings within the boundaries of the city. The board shall appoint a president, a secretary, and other officers of the corporation that the governing body of the 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 city.

(c-1) The costs of a publicly owned and operated project that is purchased or constructed under this section include the maintenance and operating costs of the project. The proceeds of taxes imposed under this section may be used to pay the maintenance and operating costs of a project, unless not later than the 60th day after the date notice of this specific use of the tax proceeds is first published, the governing body of the city receives a petition from more than 10 percent of the registered voters of the city requesting that an election be held before the tax proceeds may be used to pay the maintenance and operating costs of a project.

(d) The city may levy a sales and use tax for the benefit of a corporation under this section if the tax is authorized by a majority of the qualified voters of the city voting at an election called and held for that purpose. If the city adopts the tax, there is imposed a tax on the receipts from the sale at retail of taxable items within the city at the rate approved by the voters. The rate must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent. The city may not adopt a rate that would result in a combined rate of all sales and use taxes, including the tax under this section, imposed by the city and other political subdivisions of this state having territory in the city that exceeds two percent. An election adopting a rate that exceeds the limit on the combined rate has no effect. There is also imposed an excise tax on the use, storage, or other consumption within the city of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the city. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable items.

(e) The Municipal Sales and Use Tax Act (Chapter 321, Tax Code) governs an election to authorize the imposition of the sales and use tax under this section and governs the imposition, computation, administration, governance, abolition, and use of the tax except as inconsistent with this section. The tax imposed under this section takes effect as provided by Section 321.102(a), Tax Code.

(f) On receipt of the proceeds of the sales and use tax imposed under this section from the comptroller, the city shall deliver the proceeds to the corporation to use in carrying out its functions. Tax proceeds may be used to pay the principal of, interest on, and other costs relating to the corporation's bonds, but neither the bonds nor any instrument related to the bonds may give a

bondholder a right to demand payment from tax proceeds in excess of those collected from the tax imposed by this section. Tax proceeds may also be used to pay expenses incurred by the corporation under Section 38 of this Act relating to job training.

(g) The corporation may not exercise the power of eminent domain except by action of the governing body of the city that created the corporation.

(h) Section 24 of this Act does not apply to a corporation under this section.

**✪ Section 4A(i) as amended by Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005).**

(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; or

(3) airport-related facilities, if the corporation is created by a city that is wholly or partly located within 25 miles of an international border and has, at the time the project is approved by the corporation as provided by this Act:

(A) a population of less than 50,000; or

(B) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved.

(j) The corporation, a director of the corporation, the city creating the corporation, a member of the governing body of the city, or an employee of the corporation or city is not liable for damages arising from the performance of a governmental function of the corporation or city. For the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code), the corporation is a governmental unit and its actions are governmental functions.

(k) On petition of 10 percent or more of the registered voters of the city requesting an election on the dissolution of the corporation, the governing body shall order an election on the issue at the next available uniform election date that is not less than 45 days after the date that the petition is filed. The election must be conducted according to the applicable provisions of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the \_\_\_\_\_ (name of the corporation)." If a majority of voters voting on the issue approve the dissolution, the corporation shall continue operations only as necessary to pay the

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principal of and interest on its bonds and to meet obligations incurred before the date of the election and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations. When the last of the obligations is satisfied, any remaining assets of the corporation shall be transferred to the city, and the corporation is dissolved. A tax imposed under this section may not be collected after the last day of the first calendar quarter beginning after notification to the comptroller by the corporation that the last of its obligations is satisfied.

(l) On approval of the governing body of each unit and corporation involved, a corporation created under this Act that is not created under this section may transfer all of its assets to a corporation governed by this section and dissolve as provided by this Act.

(m) In an election to adopt the tax under this section, the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of \_\_\_\_\_ of one percent" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

(n) At an election called and held under Subsection (d) or (o) of this section, the city may also allow the voters to vote on a ballot proposition that limits the length of time that a sales and use tax may be imposed. If a city elects to limit the period the sales and use tax may be imposed, there shall be added to the end of the ballot proposition prescribed by Subsection (m) of this section: "to be imposed for \_\_\_\_\_ years" (the number of years to be inserted as appropriate). The governing body of the city shall set the expiration date of the proposed tax to occur on the appropriate anniversary of the effective date of the tax. A sales and use tax imposed for a limited period under this subsection expires on the date set by the governing body under this section or on an earlier date if, by a majority of the voters voting in an election held in the city, the tax is repealed. If an earlier abolition election is held, Sections 321.102(a) and 321.402(b), Tax Code, apply to the date of repeal.

A tax that is approved without a limit on its period of imposition is effective until repealed by election. Before the 60th day before the date that a tax is to expire, the governing body shall send a notice to the comptroller stating the expiration date of the tax. Revenue collected after the expiration of the tax from the imposition of the tax after its expiration date shall be forwarded by the state to the governing body to be used to pay current bonded indebtedness of the municipality. A municipality that has imposed a tax under this section may not extend the period of the tax's imposition or reimpose the tax unless the extension or reimposition is authorized by a majority of the qualified voters of the municipality voting in an election called and held for that purpose. If a city reduces the rate of an additional sales and use tax under Chapter 321, Tax Code, to impose a tax under this section for a limited period as provided under this subsection, and does not have an election to change the rate of the additional sales and use tax before the expiration date of the tax under this section, the rate of the additional sales and use tax under Section 321.101(b), Tax Code, in the city returns to its previous rate in effect at the time the tax imposed under this section was adopted on the expiration date of the tax under this section without having to hold an election under Chapter 321, Tax Code, to impose the increase in the rate.

(o) In a city in which a sales and use tax for the benefit of a corporation has been imposed under this section, in the same manner and by the same procedure the city by majority vote of the qualified voters of the city voting at an election called and held for the purpose may reduce or increase the tax. The rate may be reduced in one or more increments of one-eighth of one percent to a minimum of one-eighth of one percent or increased in one or more increments of one-eighth of one percent to a

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maximum of one-half of one percent. On petition of 10 percent or more of the registered voters of the city requesting an election on the increase or decrease of the tax under this section, the governing body of the city shall order an election on the issue. The ballot shall be printed in the same manner as the ballot under Subsection (m) of this section.

(o-1) Notwithstanding Subsection (a), this subsection applies only to a city that is located within the territorial limits of a regional transportation authority and has been added to the territory of the authority under Section 452.6025, Transportation Code. Notwithstanding any other provision of this section, a tax imposed by the city under this section is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code.

(p) A city that is authorized by this section to impose, reduce, increase, or abolish the tax under this section may, at the same time and on the same ballot, impose, reduce, increase, or abolish the additional sales and use tax imposed under Section 321.101(b), Tax Code, if the city is authorized by Chapter 321, Tax Code, to impose, reduce, increase, or abolish the additional sales and use tax. The city must follow, in relation to the imposition, reduction, increase, or abolishment of the additional sales and use tax imposed under Section 321.101(b), Tax Code, the procedures of that chapter, except that in an election to impose, reduce, increase, or abolish the tax under this section and the additional sales and use tax the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of \_\_\_\_\_ of one percent (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate) and the adoption of an additional sales and use tax within the city at the rate of \_\_\_\_\_ of one percent to be used to reduce the property tax rate" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

(q) A corporation under this section may not assume a debt or make any expenditure to pay principal or interest on a debt if the debt existed before the date the city created the corporation.

(r) At an election called or held under Subsection (d) or (o) of this section, the city may also allow the voters to vote on a ballot proposition that limits the use of the sales and use tax to a specific project. If a city elects to limit the use to a specific project, in the ballot proposition prescribed by Subsection (m) or (p) a description of the project shall be substituted in place of the words "new and expanded business enterprises." When the last of its obligations for the specific project have been satisfied, the corporation shall send a notice to the comptroller stating that the sales and use tax imposed for the specific project may not be collected after the last day of the first calendar quarter beginning after the date of notification. A sales and use tax imposed for a specific project under this subsection may not be collected after the last day of the first calendar quarter beginning after the date of the notification to the comptroller. Revenue collected after the obligations for the specific project have been satisfied shall be forwarded by the state to the governing body to be used to pay current bonded indebtedness of the municipality. A corporation that has been created to perform a specific project under this subsection may retain its corporate existence and perform other projects as may be approved by the voters of the city under an election called and held under Subsection (d) or (o) of this section.

(s)(1) A city that creates or has created a corporation governed by this section may submit to the voters of the city, at a separate election to be held on a uniform election date or at an election held under another provision of this Act, including the election at which the proposition to initially

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authorize the collection of a sales and use tax for the benefit of the corporation is submitted, a ballot proposition that authorizes the corporation to use the sales and use tax, including any amount previously authorized and collected, for a specific project or for a specific category of projects, including a sports venue and related infrastructure, that does not qualify under this section but qualifies under Section 4B of this Act. Prior approval of a specific project at an election or completion of a specific project approved at an election does not prohibit a city from seeking voter approval of an additional project or category of projects under this subsection to be funded from the same sales and use tax.

(2) In the election to authorize the use of the sales or use tax for a specific project or for a specific category of projects not authorized under this section, including a sports venue and related infrastructure, the project or category of projects must be clearly described on the ballot so that a voter will be able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales or use tax, the ballot language must clearly state that fact.

(3) Before an election may be held under this subsection, a public hearing shall be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located. The notice shall be published on a weekly basis until the date of the hearing.

(3) Before an election may be held under this subsection, a public hearing shall be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located. The notice should be published on a weekly basis until the date of the hearing.

(4) If a majority of the voters voting on the issue do not approve a specific project or a specific category of projects at an election under this subsection, another election may not be held on the same project or category of projects before the first anniversary of the date of the most recent election disapproving the project or category of projects.

(5) In this subsection:

(A) "Related infrastructure" has the meaning assigned by Section 334.001, Local Government Code.

(B) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility:

(i) that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events; and

(ii) for which a fee for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events, is charged or is planned to be charged.

(5) Projects undertaken under this subsection are governed by the provisions of this section including the provisions relating to the authorization and expiration of any sales and use tax.

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(t) The department, with the assistance of the Texas 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."

(u)(1) In this subsection:

(A) "Base taxable value" means the taxable value of property located in the defined area of a project as of January 1 of the year in which the agreement is entered into under this subsection.

(B) "Corresponding taxing unit" means another taxing unit of the same type of political subdivision as a taxing unit that enters into an agreement under this subsection.

(C) "Taxing unit" has the meaning assigned by Section 1.04, Tax Code.

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

(3) A taxing unit may 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. A corporation may enter into an agreement under this subsection with more than one taxing unit.

(4) An agreement entered into under this subsection shall state the base taxable value of the property in the defined area of the project.

(5) The agreement may 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 so long as the corresponding taxing unit imposes taxes on that property.

(6) If a corporation enters into an agreement under this subsection, the corporation shall 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).

(7) This subsection does not affect a taxing unit's authority to grant a tax abatement.

(8) This subsection does not affect a corporation's authority to invest in a project or recover its total investment by contract under Section 23(a) of this Act.

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## Corporation in City Located in County With Population of 750,000 or More, or 150,000 or more

Sec. 4B. (a) In this section:

(1) "Eligible city" means a city:

(A) that is located in a county with a population of 500,000 or more, according to the most recent federal decennial census and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city does not exceed 8.25 percent on the date of any election held under or made applicable to this section;

(B) that has a population of 400,000 or more according to the most recent federal decennial census, and that is located in more than one county, and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city, including taxes under this section, does not exceed 8.25 percent;  
or

(C) to which Section 4A of this Act applies.

✳ **Section 4B(a)(2)(F) as added by Texas House Bill 2755, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date , 2005).**

(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, parks and park facilities, open space improvements, 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; or

(F) be required or suitable for the development, retention, or expansion of business enterprises if the project is undertaken by a corporation created by an eligible city:

(i) that has not for each of the preceding two fiscal years received more than \$50,000 in revenues from sales and use taxes imposed under this section; and

(ii) the governing body of which has authorized the project by adopting a resolution only after giving the resolution at least two separate readings conducted at least one week apart.

**✧ Section 4B(a)(3) as added by Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005).**

(3) For a corporation created by an eligible city with a population of 20,000 or less, “project” shall also include the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development. A corporation may not undertake a project authorized by this subdivision that requires an expenditure of more than \$10,000 until the governing body of the eligible city creating the corporation adopts a resolution authorizing the project after giving the resolution at least two separate readings.

**✧ Section 4B(a)(4) as added by Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005).**

(4)(A) In this subdivision, “landlocked community” means a city that is wholly or partly located in a county with a population of 2 million or more and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city.

(B) For a landlocked 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 within the landlocked community.

(a-1) A corporation may undertake a project under this section unless within 60 days after first publishing notice of a specific project or type of general project 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. An election is not required to be held after the submission of a petition if the qualified citizens of the city have previously approved the undertaking of a specific project or that general type of project 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.

(a-2) The costs of a publicly owned and operated project that is purchased or constructed under this section include the maintenance and operating costs of the project, and the proceeds of taxes may be used to pay the maintenance and operating costs of a project, unless within 60 days after first publishing notice of this specific use of the proceeds of the taxes 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 the proceeds of taxes imposed under this section may be used to pay the maintenance and operating costs of a project. An election is not required to be held after the submission of a petition if the qualified citizens of the city have previously approved that the costs of a publicly owned and operated project purchased or constructed under this section include the maintenance and operating costs of the project and that the proceeds of taxes may be used to pay the maintenance and operating costs of a project, 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. The election in this subsection shall not be required in a municipality located in a county with a population in excess of 1.3 million that has held an election prior to February 1, 1993, under this section and at which election the additional sales tax was approved.

(a-3)(1) A city that creates or has created a corporation governed by this section may submit to the voters of the city, at a separate election to be held on a uniform election date or at an election held under another provision of this Act, including the election at which the proposition to initially authorize the collection of a sales and use tax for the benefit of the corporation is submitted, a ballot proposition that authorizes the corporation to use the sales and use tax, including any amount previously authorized and collected, for a specific sports venue project, including related infrastructure, or for a specific category of sports venue projects, including related infrastructure. Prior approval of a specific sports venue project at an election or completion of a specific sports venue project approved at an election does not prohibit a city from seeking voter approval of an additional project or category of projects under this subsection to be funded from the same sales and use tax that is used to fund the previously approved sports venue project. This subsection does not affect the authority of a municipality to call an election under this section to levy a sales and use tax for any purpose authorized by this section after the sales and use tax described by this subsection is no longer collected as provided by Subsection (i) of this section.

(2) In the election to authorize the use of the sales or use tax for a specific sports venue project or for a specific category of sports venue projects, the project or category of projects must be clearly described on the ballot so that a voter will be able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales or use tax, the ballot language must clearly state that fact.

(3) Before an election may be held under this subsection, a public hearing shall be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located. The notice shall be published on a weekly basis until the date of the hearing.

(4) If a majority of the voters voting on the issue do not approve a specific sports venue project or a specific category of sports venue projects at an election under this subsection, another election may not be held on the same project or category of projects before the first anniversary of the date of the most recent election disapproving the project or category of projects.

(a-4) In this section:

(1) "Related infrastructure" has the meaning assigned by Section 334.001, Local Government Code.

(2) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events and for which a fee for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events, is charged or is planned to be charged. The term does not include an arena, coliseum, stadium, or other type of area or facility that is or will be owned and operated by a state-supported institution of higher education.

(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 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.

(b) An eligible city may create a corporation under this Act governed by this section. The corporation has the powers granted by this section and by other sections of this Act and is subject to the limitations of a corporation created under other provisions of this Act. To the extent of a conflict between this section and another provision of this Act, this section prevails. The articles of incorporation of a corporation under this section must state that the corporation is governed by this section and may include within its name any words and phrases specified by the eligible city. An eligible city may not create more than one corporation governed by this section. A corporation created under this section may spend no more than 10 percent of the corporate revenues for promotional purposes and may contract with another existing private corporation to carry out an industrial development program or objective or to assist with the development or operation of an

economic development program or objective consistent with the purposes and duties specified in this Act.

(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 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.

(d) The governing body of an eligible city by ordinance may levy a sales and use tax for the benefit of the corporation under this section if the tax is authorized by a majority of the qualified voters of the eligible city voting at an election called and held for that purpose in accordance with Chapter 321, Tax Code. This election requirement is satisfied and another election is not required if the voters of the eligible city approved the levy and collection of an additional one-half cent sales and use tax at an election held before the effective date of this section under an ordinance calling the election that was published in a newspaper of general circulation within the eligible city at least 14 days in advance of the election and that expressly stated that the election was held in anticipation of the enactment of enabling and implementing legislation without further elections. An election described by this section and held before the effective date of this section is validated as of the date on which the election occurred.

(e) The rate of a tax adopted under this section must be one-eighth, one-fourth, three-eighths, or one-half of one percent. The ballot proposition at the election held to adopt the tax must specify the rate of the tax to be adopted. A corporation that holds an election to reduce or abolish a tax imposed under Section 4A of this Act may in the same or in a separate proposition on the same ballot adopt a tax under this section. If an eligible city adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items within the eligible city at the rate approved at the election. There is also imposed an excise tax on the use, storage, or other consumption within the eligible city of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective within the eligible city. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

(e-1) Notwithstanding any other provision of this section, if a city dissolves a corporation created under Section 4A of this Act and creates a corporation under this section, a person serving as a director of the corporation created under Section 4A of this Act at the time of dissolution may serve on the board of directors of the corporation created under this section.

(f) Chapter 321, Tax Code, governs the imposition, computation, administration, collection, and remittance of the tax except as inconsistent with this section. The tax imposed under this section takes effect as provided by Section 321.102(a), Tax Code. If, however, an election is held under this section at the same time an election is held to impose or change the rate of the additional municipal sales and use tax, the tax under this section and the imposition or change in rate of the additional municipal sales and use tax take effect as provided by Section 321.102(b), Tax Code. After the effective date of the taxes imposed under this section, the adoption of a sales and use tax or the attempted adoption of a sales and use tax by the eligible city or any other taxing jurisdiction having territory in the city does not impair the taxes imposed under this section.

(g) On receipt of the proceeds of the sales and use tax imposed under this section from the comptroller, the eligible city shall deliver the proceeds to the corporation. Tax proceeds may be used to:

- (1) pay the costs of projects of the types added to the definition of that term by Subsection (a) of this section; or
- (2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the corporation to pay the costs of the projects or to refund bonds or other obligations issued to pay the costs of projects.

(h) Bonds or other obligations having a maturity not longer than 30 years and issued to pay the costs of projects of the types added to the definition of that term by Subsection (a) of this section may be made payable from any source of funds available to the corporation, including the proceeds of a sales and use tax imposed under this section. The bonds or other obligations that by their terms are payable from the tax may not be paid in whole or in part from any property taxes raised or to be raised by the eligible city and are not a debt of and do not give rise to a claim for payment against the eligible city except as to sales and use tax revenue held by a city and required under this section to be paid over to the corporation.

(i) A sales and use tax imposed under this section may not be collected after the last day of the first calendar quarter occurring after notification to the comptroller by the corporation that all bonds or other obligations of the corporation that are payable in whole or in part from the proceeds of the sales and use tax under this section, including any refunding bonds or other obligations, have been paid in full or the full amount of money, exclusive of guaranteed interest, necessary to pay in full the bonds and other obligations has been set aside in a trust account dedicated to the payment of the bonds and other obligations.

(j) The corporation may exercise the power of eminent domain only on approval of the action by the governing body of the eligible city. The power must be exercised in accordance with and subject to the laws applicable to the eligible city.

(k) The legislature finds for all constitutional and statutory purposes that projects of the types added to the definition of that term by Subsection (a) of this section are owned, used, and held for public purposes for and on behalf of the eligible city incorporating the corporation, and except as otherwise provided by this subsection, Section 23(b) of this Act and Section 25.07(a), Tax Code, are not applicable to leasehold or other possessory interests granted by the corporation during the period

projects are owned by the corporation on behalf of the eligible city. Projects are exempt from taxation under Section 11.11, Tax Code, for that period. For a corporation governed by this section in which the voters of the eligible city that created the corporation have not authorized the levy of a sales and use tax for the benefit of the corporation under Subsection (d) of this section, an ownership, leasehold, or other possessory interest of a person other than the corporation in real property constituting a project of the corporation described by this subsection is subject to ad valorem taxation under Section 25.07(a), Tax Code, except that an ownership, leasehold, or other possessory interest of a person other than the corporation in real property described by this subsection that is created under an agreement entered into by the corporation before September 1, 1999, is covered by the provisions of this subsection governing ad valorem taxation of the ownership, leasehold, or other possessory interest that were in effect on the date on which the agreement was executed.

(l) Section 24 of this Act does not apply to a corporation under this section.

(m) The corporation, a director of the corporation, the eligible city creating the corporation, a member of the governing body of the eligible city, or an employee of the corporation or eligible city is not liable for damages arising from the performance of a governmental function of the corporation or eligible city. For the purposes of Chapter 101, Civil Practice and Remedies Code, the corporation is a governmental unit and its actions are governmental functions.

(n) Before expending funds to undertake a project, a corporation under this section shall hold at least one public hearing on the proposed project.

(n-1) This subsection applies only to a city that is located within the territorial limits of a regional transportation authority that has been added to the territory of the authority under Section 452.6025, Transportation Code. Notwithstanding any other provision of this section, a tax imposed by the city under this section is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code.

(o)(1) The governing body of a city creating a corporation under this section shall order an election on the dissolution of the corporation on receipt of a petition requesting the election that is signed by at least 10 percent of the registered voters of the city. The election must be held on the first available uniform election date that occurs on or after the 45th day after the date the petition is filed with the city.

(2) At the election the ballot shall be printed to permit voting for or against the proposition: "Dissolution of the \_\_\_\_\_ (name of corporation)."

(3) If a majority of the votes cast are in favor of the dissolution, the corporation shall continue operations only as necessary to meet obligations the corporation incurred before the date of the election, including paying the principal of and interest on bonds. To the extent practicable, the corporation shall liquidate assets of the corporation and apply the proceeds to satisfy the corporation's obligations. After all of the obligations are satisfied, any remaining assets of the corporation shall be transferred to the city, and the corporation is dissolved. The city shall promptly notify the comptroller and the secretary of state of the date a corporation is dissolved under this

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subsection.

(4) A tax imposed under this section may not be collected after the last day of the first calendar quarter that begins after the city provides notice under Subdivision (3) of this section.

(5) If less than a majority of the votes cast at the election favor the dissolution, Subdivisions (3) and (4) of this subsection have no effect.

(p) The department, with the assistance of the Texas 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."



## Report to Comptroller

Sec. 4C. (a) Not later than February 1 of each year, the board of directors of a corporation created under Section 4A or 4B of this Act shall submit to the comptroller a report in the form required by the comptroller.

(b) The reporting form shall not exceed one page in length and must include:

- (1) a statement of the corporation's primary economic development objectives;
- (2) a statement of the corporation's total revenues during the preceding fiscal year;
- (3) a statement of the corporation's total expenditures during the preceding fiscal year;
- (4) a statement of the corporation's total expenditures during the preceding fiscal year in each of the following categories:
  - (A) administration;
  - (B) personnel;
  - (C) marketing or promotion;
  - (D) direct business incentives;
  - (E) job training;
  - (F) debt service;
  - (G) capital costs;
  - (H) affordable housing; and
  - (I) payments to taxing units, including school districts;
- (5) a list of the corporation's capital assets, including land and buildings; and
- (6) any other information the comptroller requires to determine the use of the sales and use tax imposed under Section 4A or 4B of this Act to encourage economic development in this state.

(c) If a corporation fails to file a report in accordance with this section or fails to include sufficient information in the report, the comptroller shall provide to the corporation written notice of this failure. The written notice must include information on how to correct the failure.

(d) The comptroller may impose an administrative penalty of \$200 against a corporation that does not correct the failure before the 31st day after the date the corporation receives the written notice under Subsection (c) of this section.

(e) The comptroller by rule shall prescribe the procedures for the imposition of an administrative penalty under this section. The rules must protect the due process rights of a corporation.

(f) Not later than November 1 of each even-numbered year, the comptroller shall submit to the legislature a report on the use of the sales and use tax imposed under Sections 4A and 4B of this Act to encourage economic development in this state.

(g) On request, the comptroller shall provide without charge a copy of the report required by Subsection (f) of this section to a corporation organized under Section 4A or 4B of this Act.

### **Form of corporation**

Sec. 5. The corporation shall be a nonmember, nonstock corporation.

### **Articles of incorporation**

Sec. 6. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation is a nonprofit corporation;
- (3) the period of duration which may be perpetual;
- (4) the specific purpose or purposes for which the corporation is organized and may issue bonds on behalf of the unit;
- (5) that the corporation has no members and is a nonstock corporation;
- (6) any provision not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, for the regulation of the internal affairs of the corporation;
- (7) the street address of its initial registered office and the name of its initial registered agent at such street address;
- (8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (9) the name and street address of each incorporator; and
- (10) a recital that the unit has specifically authorized the corporation by resolution to act on its behalf to further the public purpose or purposes stated in the resolution and in the articles of incorporation and has approved the articles of incorporation.

### **Certificate of Incorporation**

Sec. 7. (a) Triplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act, he shall:

- (1) endorse on each original the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of incorporation to each of which he shall affix one of such originals.

(b) A certificate of incorporation together with an original of the articles of incorporation affixed thereto by the secretary of state shall be delivered to the incorporators or their representatives and to the governing body of the unit under whose auspices the corporation was created. A certificate of incorporation granted to a county alliance corporation and the original of the articles of incorporation that is required to be delivered under this subsection to the governing body of the county alliance under whose auspices the corporation was created shall be delivered to the commissioners court of any county in the county alliance and that county shall provide photocopies of the certificate of incorporation and the articles of incorporation to each other member of the county alliance.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin. After the issuance of the certificate of incorporation, the incorporation of the corporation shall be incontestable for any cause, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the unit have been complied with and that the corporation has been incorporated under this Act.

## **Registered office and agent**

Sec. 8. Each corporation shall have and continuously maintain in this state:

- (1) a registered office which may be, but need not be, the same as its principal office; and
- (2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

## **Change of registered office or agent**

Sec. 9. (a) A corporation may change its registered office or change its registered agent or both upon filing in the office of the secretary of state a statement setting forth:

- (1) the name of the corporation;

- (2) the post-office address of its then registered office;
- (3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent is to be changed, the name of its successor registered agent;
- (6) that the post-office address of its registered office and the post-office address of the business office of its registered agent as changed will be identical; and
- (7) that such change was authorized by its board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Duplicate originals of such statement shall be executed by the corporation by its president or vice-president and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) return the other original to the corporation or its representative.

(c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent or both, as the case may be, shall become effective.

(d) Any registered agent of a corporation may resign:

- (1) by giving written notice to the corporation at its last known address; and
- (2) by giving written notice in triplicate to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the

filing thereof;

(2) file one of such originals in his office;

(3) return one original to such resigning registered agent; and

(4) return one original to the corporation at the last known address of the corporation as shown in such written notice.

### **Service of process on president or vice-president; service on secretary of state**

Sec. 10. (a) The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

**✳ Section 10(b) as amended by Texas House Bill 297, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005).**

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him or with the deputy ~~assistant~~ secretary of state or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this article and shall record therein the time of such service and his action with reference thereto.

### **Board of directors**

Sec. 11. (a) The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, each of whom shall be appointed by the governing body of the unit under whose auspices the corporation was created for a term of no more than six years, and each of whom shall be removable by the unit for cause or at will. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

(b) The board of directors is subject to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

## **Organizational meeting of board**

Sec. 12. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

## **Adoption and approval of initial bylaws**

Sec. 13. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the governing body of the unit under whose auspices the corporation was created.

## **Quorum; actions of majority at meeting; action without meeting**

Sec. 14. (a) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Any action required by this Act to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

## **Application of Open Records Act**

Sec. 14A. The board of directors is subject to the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

## **Indemnification of directors and officers; notice of meetings; waiver of notice**

Sec. 15. (a) The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him by action in court or otherwise by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by such director or officer (including attorneys' fees) in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(c) Regular meetings of the board of directors may be held within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(d) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

## **Officers**

Sec. 16. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. One person may hold more than one office, except that the president may not hold the office of secretary.

## **Amendment of articles**

Sec. 17. (a) The articles of incorporation may at any time and from time to time be amended,

provided that the board of directors files with the governing body of the unit under whose auspices the corporation was created a written application requesting that the unit approve such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made. If the governing body by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles as hereinafter provided.

(b) The articles of incorporation may also be amended at any time by the governing body of the unit under whose auspices the corporation was created at its sole discretion by adopting an amendment to the articles of incorporation of the corporation by resolution of such governing body and delivering the articles of amendment to the secretary of state as hereinafter provided.

(c) An amendment of the articles of incorporation of a county alliance corporation may not be adopted under this section unless approved by the governing body of each member of the county alliance under whose auspices the corporation was created.

### **Execution and verification of amendments**

Sec. 18. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the unit under whose auspices the corporation was created, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(3) the fact that such amendment was adopted or approved by the governing body of the unit and the date of the meeting at which the amendment was adopted or approved by such governing body.

### **Certificate of amendment; effect of amendment**

Sec. 19. (a) Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and



- (3) issue two certificates of amendment to each of which he shall affix an original.
- (b) A certificate of amendment together with an original of the articles of amendment affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.
- (c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.
- (d) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than members; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

### **Restated articles of incorporation and restated certificate of incorporation**

Sec. 20. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act including obtaining the approval of the governing body of the unit under whose auspices the corporation was created, authorize, execute, and file restated articles of incorporation which may restate either:

- (1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or
  - (2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.
- (b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.
- (c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and shall further set forth the statements required by this Act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted; and

(3) restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by the restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing such articles. Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one of such originals.

(e) A restated certificate of incorporation together with a triplicate original of the restated articles of incorporation affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created. A restated certificate of incorporation granted to a county alliance corporation and the originals of the restated articles of incorporation that are required to be delivered under this subsection to the governing body of the county alliance under whose auspices the corporation was created shall be delivered to the commissioners court of any county that is a member of the county alliance and that county shall provide photocopies of the certificate of incorporation and the articles of incorporation to each other member of the county alliance.

(f) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

## **Authority to issue bonds; approval of programs and expenditures; financial statements, books and records**

Sec. 21. Every unit is hereby authorized to utilize a corporation to issue bonds on its behalf to finance the cost of projects, including projects in federally designated empowerment zones and enterprise communities or enterprise zones designated under the Texas Enterprise Zone Act, to promote and develop new and expanded business enterprises to promote and encourage employment and the public welfare. No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation, except that a city may grant public money to a corporation under a contract authorized by Section 380.002, Local Government Code. The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation.

## **Bonds not debt of state or political subdivision; corporation as constituted authority and instrumentality but not political subdivision or corporation**

Sec. 22. Bonds issued under the provisions of this Act shall be deemed not to constitute a debt of the state, of the unit, or of any other political corporation, subdivision, or agency of this state or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state, the unit, nor any political corporation, subdivision, or agency of the state shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the state, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The corporation shall not be authorized to incur financial obligations which cannot be paid from proceeds of the bonds, from revenues realized from the lease or sale of a project or realized from a loan made by the corporation to finance or refinance in whole or in part a project, or from revenues from a contract with a city under Section 380.002, Local Government Code. The corporation when established and created pursuant to the terms of the Act shall be a constituted authority and an instrumentality (within the meaning of those terms in the regulations of the treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended) and shall be authorized to act on behalf of the unit under whose auspices it is created for the specific public purpose or purposes authorized by such unit; but the corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, including without limitation Article III, Section 52, of the Texas Constitution, and a unit shall never delegate to a corporation any of such unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

## **Powers of Corporation**

Sec. 23. (a) The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil

Statutes); but to the extent that the provisions of the general laws are in conflict or inconsistent with this Act, this Act prevails. In addition, the corporation shall have the following powers with respect to projects together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) to acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one or more of such methods and to construct, improve, maintain, equip, and furnish one or more projects undertaken by a different corporation or located within the state or within the coastal waters of the state and within or partially within the limits of the unit under whose auspices the corporation was created or within the limits of a different unit, where the governing body of the different corporation or the unit requests the corporation to exercise its powers therein;

(2) to recover the costs of an investment under Subdivision (1) of this subsection from a unit or another corporation under a contract that may have an unlimited duration;

(3) to lease to a user all or any part of any project for such rentals and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(4) to sell by installment payments or otherwise and convey all or any part of any project to a user for such purchase price and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(5) to donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property or furnishings, fixtures or equipment, or personal property to an institution of higher education for a legal purpose of the institution upon such terms and conditions as the corporation's board of directors may deem advisable that are not in conflict with the provisions of this Act;

(6) to make secured or unsecured loans to a user for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project; and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(7) to issue bonds for the purpose of defraying all or part of the cost of any project, whether or not the bonds are exempt in whole or part from federal income taxation, to secure the payment of such bonds as provided in this Act, and to sell bonds at a price or prices determined by the board of directors or to exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project, and those bonds may bear interest at any rate or rates determined by the board of directors, subject to the limitations set forth in this Act;

(8) as security for the payment of the principal of and interest on any bonds issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to assign any

mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation and to pledge the revenues and receipts therefrom;

(9) to sue and be sued, complain and defend, in its corporate name;

(10) to have a corporate seal and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required to be executed by its proper officers;

(11) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state with the approval of the unit under whose auspices the corporation was created by resolution of the governing body for the administration and regulation of the affairs of the corporation;

(12) to cease its corporate activities and terminate its existence by voluntary dissolution as provided herein; and

(13) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created.

 **Section 23(b) as amended by Texas Senate Bill 252, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date April 12, 2005).**

(b) The corporation shall not have the power to own or operate any project as a business other than as lessor, seller, or lender or pursuant to the requirements of any trust agreement securing the credit transaction. Accordingly, the user pursuant to any lease, sale, or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales, and use taxes or any other taxes levied or imposed by this state or any political subdivision of this state. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof shall not be deemed the operation of a project. The corporation shall, however, have all powers necessary to own and operate a project as a business if the project is a military installation or military facility that has been closed or realigned, including a military installation or facility closed or realigned pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) as amended.

(c) Notwithstanding any law to the contrary, any corporation created by a unit under this Act may, with the consent of the unit, obtain health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the unit's insurance policies, self-funded coverage, or coverage provided under an Interlocal Agreement with other political subdivisions. Health benefits coverage may be extended to the corporation's directors and employees, and the dependents of such directors and employees. Workers' compensation benefits may be extended to the corporation's directors, employees, and volunteers. The liability coverage may be extended to protect the corporation and its directors and employees.

(d) Notwithstanding any law to the contrary, any corporation created by a unit under this Act may,

with the consent of the unit, obtain retirement benefits under any retirement program operated or participated in by the unit. Retirement benefits may be extended to the corporation's employees.

(e) A corporation may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

**Leases, Sales, and Loan Agreements; Approval of Bonds, Leases, Sales, or Loan Agreements; Permit for Offer and Sale of Securities; Fee Schedules and Bond Procedures; Rules and Regulations**

**\* Section 24 does not apply to 4A or 4B corporations. See Sections 4A (h) and 4B (l).**

Sec. 24. (a) The department shall approve the contents of any lease, sale, or loan agreement made under this Act. The department shall prescribe rules and regulations setting forth minimum standards for project eligibility and for lease, sale, and loan agreements and guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under any such agreement, but in no event shall the department approve any agreement unless it affirmatively finds that the project sought to be financed is in furtherance of the public purposes of this Act. Appeal from any adverse ruling or decision of the department under this subsection may be made by the corporation to the District Court of Travis County. The substantial evidence rule shall apply. Rules, regulations, and guidelines promulgated by the department and amendments thereto shall be effective only after they have been filed with the secretary of state.

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the department and request that the department approve the bonds. On filing a request for the department's approval of issuance of the bonds, the corporation shall pay to the department a nonrefundable filing fee. The department shall set the amount of the fee at a reasonable amount, but not less than \$500 or more than \$25,000. If the department refuses to approve the bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court, and for this purpose the chair of the department shall be considered a state officer as provided in Section 22.002, Government Code.

(c) The department may delegate to the executive director of the department the authority to approve a lease, sale, or loan agreement made under this Act or bonds issued by a corporation or any documents submitted as provided herein.

(d) No corporation shall sell or offer for sale any bonds or other securities until a permit authorizing the corporation to offer and sell such securities has been granted by the securities commissioner under the registration provisions of The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), except as the State Securities Board may exempt from registration by rule, regulation, or order. Appeal from any adverse decision of the securities commissioner or the State Securities Board shall be as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The substantial evidence rule shall apply in all such appeals.

(e) The department by rule shall require corporations to file fee schedules and bond procedures.

Bond counsel and financial advisors participating in an issue shall be mutually acceptable to the corporation and the user.

(f) The department shall adopt rules and regulations governing programs for small businesses receiving loans guaranteed in whole or in part by the Small Business Administration or other federal agencies. The department may also adopt rules and regulations governing the terms and conditions of loans by a corporation to banks or other lending institutions the proceeds of which are reloaned as permanent or temporary financing of a project.

## **Bonds and proceeds of bonds**

Sec. 25. (a) The principal of and the interest on any bonds issued by a corporation shall be payable solely from the funds provided for such payment and from the revenues of the one or more projects for which the bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates that are fixed, variable, floating, or otherwise, shall mature at such time or times not exceeding 40 years from their date as may be determined by the board of directors, and may be made redeemable before maturity at the option of the board of directors at such price or prices and under such terms and conditions as may be fixed by the board of directors of the corporation prior to the issuance of the bonds.

(b) The board of directors shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature for all purposes is the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both as the board of directors of the corporation may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The corporation may sell bonds at public or private sale and at an interest rate not to exceed that permitted by the constitution or laws of the state.

(c) The proceeds of the bonds of each issue shall be used for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the project or projects for which authorized as defined herein and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the same. Bond proceeds may be used to pay all costs incurred in issuing the bonds, interest on the bonds for such time as may be determined by the board of directors of the corporation, and to establish reserve funds and sinking funds for the bonds. If the proceeds of the bonds of any series issued with respect to the cost of any project shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or used to purchase bonds in the open market.

(d) Prior to the preparation of definitive bonds, the corporation may under like restrictions issue interim or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued and lease, sale, and loan agreements entered into under the provisions of this Act without obtaining the consent or

approval of any department, division, commission, board, bureau, or agency of the state except as otherwise provided herein.

(e) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project so financed or from the loan made by the corporation with respect to the project so financed or refinanced and may be secured by a mortgage covering all or any part of such project, including any enlargements of and additions to such project thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage may contain any agreements and provisions respecting the maintenance of the project covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions hereof. The resolution under which the bonds are authorized to be issued and the mortgage may contain any agreements and provisions for satisfying the financial assurance requirements applicable to a project for which a permit is required under Chapter 361, Health and Safety Code, or Chapter 27, Water Code, including those relating to construction, proper operation, liability coverage, emergency response capability, well plugging, closure, and postclosure care. Evidence of the passage of a resolution by a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements applicable to such a project is an adequate demonstration that sufficient financial resources will be available to comply with all existing financial assurance requirements. Each pledge, agreement, and mortgage made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit for which the same were made have been fully paid.

(f) No issue of bonds, including refunding bonds, shall be delivered by the corporation without a resolution of the governing body adopted no more than 60 days prior to the date of delivery of the bonds specifically approving the resolution of the corporation providing for the issuance of the bonds. If the corporation is authorized by a county alliance, the resolution required by this subsection must be adopted by the commissioners courts of at least three-fifths of the members of the county alliance.

(g) Bonds issued under this Act, and coupons, if any, representing interest on the bonds, are securities as defined by Chapter 8, Business & Commerce Code, as amended, and are negotiable if issued in accordance with this Act.

## **Refunding bonds**



Sec. 26. Each corporation is hereby authorized to provide by resolution for the issuance of its refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the corporation, for the additional purpose of financing improvements, extensions, or enlargements to the project in connection with which the bonds to be refunded shall have been issued or for another project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect to the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the corporation, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

### **Trust agreements**

Sec. 27. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a project for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project.

### **Enforcement of agreements or mortgages**

Sec. 28. (a) Any agreement relating to any project shall be for the benefit of the corporation. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with such resolution, mortgage, or instrument.

(b) Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

### **Option to purchase granted to lessee**

Sec. 29. A corporation may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

### **Authority of Corporation Regarding Bonds, Lease, Sale, or Loan Agreements**

Sec. 30. Except as limited by the provisions of this Act or as limited by the rules, regulations, and guidelines of the department, each corporation shall have full and complete authority with respect to bonds, lease, sale, or loan agreements and the provisions thereof.

### **Validation of Acts of Defense Base Development Corporations**

Sec. 30A. (a) For purposes of this section, a "defense base development corporation" means a corporation established under Section 4B of this Act, for the purpose of promoting projects regarding a military base closure or realignment under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) and its subsequent amendments.

(b) Each of the following acts of a defense base development corporation is validated and confirmed as of the date it occurred:

- (1) each act or proceeding of the corporation taken before March 1, 1999;
- (2) the election or appointment and each act of a director or other official of the corporation who took office before the effective date of this Act;
- (3) each act or proceeding relating to a bond or other obligation of the corporation authorized before the effective date of this Act; and
- (4) each act or proceeding relating to the entity's incorporation under this Act.

(c) This section does not apply to:

- (1) an act, proceeding, bond, or obligation the validity of which is the subject of litigation that is pending on the effective date of this Act;

- (2) an election or appointment of a director or official the validity of which is the subject of litigation that is pending on the effective date of this Act;
- (3) an act or proceeding that was void or that, under a statute of this state at the time the action or proceeding occurred, was a misdemeanor or felony; or
- (4) an act or proceeding that has been held invalid by a final judgment of a court.

### **Bonds as legal and authorized investments**

Sec. 31. Any bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

### **Exemption from taxation**

Sec. 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

### **Nonprofit nature of corporation**

Sec. 33. The corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the unit under whose auspices the corporation was created.

### **Authority to alter or dissolve corporation**

Sec. 34. At any time the unit may in its sole discretion alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the constitution and laws of the state on the impairment of contracts entered into by the corporation. Such alteration or dissolution shall be made by written resolution of the governing

body of the unit and as hereinafter provided.

### **Dissolution upon completion of purposes**

Sec. 35. Whenever the board of directors of the corporation by resolution shall determine that the purposes for which the corporation was formed have been substantially complied with and that all bonds theretofore issued by the corporation have been fully paid, the members of the board of directors of the corporation shall, with the approval by written resolution of the unit under whose auspices the corporation was created, thereupon dissolve the corporation as hereinafter provided.

### **Dissolution and certificate of dissolution**

Sec. 36. (a) Articles of dissolution shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and secretary or clerk of the governing body under whose auspices the corporation was created. Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of dissolution to each of which he shall affix an original.

(b) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the governing body of the unit. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

(c) Whenever dissolution occurs, whether instituted by the governing body unit or by the board of directors of the corporation, the dissolution proceedings shall transfer the title to all funds and properties then owned by the corporation to the unit under whose auspices the corporation was created.

### **Construction with other laws and federal and state constitutions; severability**

Sec. 37. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of the corporations authorized herein and all actions by such corporations authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this

Act shall prevail and control; provided, however, any unit and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as is herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation or to impair any police power thereover of any official or agency of the state and its governmental subdivisions as may be otherwise provided by law.

Nothing in this Act shall be construed to violate any provision of the federal or state constitution, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the corporation shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provisions of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

### **Average weekly wage; job training expenditures**

Sec. 38. (b) 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 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.

### **Training Seminars**

Sec. 39. (a) This section applies only to a corporation created under Section 4A or 4B of this Act or an entity that creates a corporation under Section 4A or 4B of this Act.

(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:

- (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 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.

(d) A corporation may spend corporate revenue to pay the costs of attending a seminar required by Subsection (b) of 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.

## **Direct Incentive Provided to Business Enterprise**

 **Section 40(a) as amended by Texas House Bill 2928, 79<sup>th</sup> Legislature, Regular Session (2005) (effective date September 1, 2005).**

Sec. 40. (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), (3), or (4) 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.

### **Requirement for Third-Party Contract for Business Recruitment or Development**

Sec. 41. (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.

### **Economic Incentive for Certain Business Enterprise Prohibited**

Sec. 42. (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.