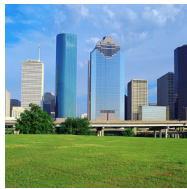




Local Economic Development



The Issue

In 1979, the Legislature passed the Development Corporation Act of 1979, allowing municipalities to create nonprofit economic development corporations to support economic growth. Because the Texas Constitution barred localities from using public monies to support private entities, these corporations were privately funded.

Then in 1987, voters passed Proposition 4, amending the state constitution to allow the use of public money to fund private entities. With that, the floodgates opened. In 1989 Chapter 380 was added to the Local Government Code, allowing for virtually unlimited use of public funds to support private development by requiring nothing more than a “public purpose” for such expenditures. Other state statutes, such as Chapter 312 and 313 of the Tax Code, were also passed permitting other types of economic development policies to be enacted, such as tax abatements for cities, counties, and special districts and limitation of appraised value for school districts.

Over time, economic development incentives have become the rule instead of the exception for localities seeking to attract new businesses and investment. According to the Texas Comptroller, there were just 336 economic development corporations (EDC) in existence in 1997. By 2011, the number of EDCs jumped by 107% to 697, even as many cities had maxed out their local sales tax caps.

Tax abatement agreements have also experienced much growth. From 2006 to 2011, a total of 758 tax abatement agreements were entered into by local governments in Texas, an average of 126 per year. The most used agreement period is 10 years, and as a result, a large number of these agreements are still in effect. Interestingly enough, the size of the business that is on the receiving end of the agreement is getting smaller.

For example, in 2006, 14% of businesses benefitting from tax abatement were classified by the Comptroller as “micro,” meaning that they had 19 or fewer employees, but by 2009 that had grown to 37.7%. Businesses employing fewer than 100 people made up 46.5% in 2006. By 2009, that had grown to 77.4%, according to the Texas Comptroller.

The trends suggest that instead of pursuing the more effective strategy of lowering taxes and eliminating barriers to job creation, many of Texas’ local governments have instead turned to offering public incentives.

While some incentives are minimal, such as waiving permitting fees and streamlining processes, others are far greater, such as when cities backstop loans for private development or offer upfront cash grants to private companies. But while the details of each instance may vary, the net effect is the same: local governments end up picking winners and losers.

Additionally, most incentive deals offered by local governments to businesses are deliberated upon in closed session, because since 1999 section 551.087 of the Texas Open Meetings Act has exempted discussions related to economic development. Economic development agreements may be passed after the governing body emerges from closed session, without any further posting or public notice requirement.

Local governments’ growing reliance on often-opaque economic development policies is a ripe issue for the Legislature to consider in the legislative session, particularly from the viewpoint of encouraging greater government transparency.

The Facts

- The Texas Open Meetings Act exempts deliberations regarding economic development activities from the public meetings requirement in section 551.087.
- Smaller and smaller businesses have been offered incentives in recent years, raising questions about the effectiveness of economic development tools.
- Chapter 380 of the Local Government Code offers virtually unlimited authority to localities to pursue economic development for the broad definition of meeting an undefined “public purpose.”
- The economy is most prosperous when government stays out of the way, including when government purports to direct resources better than the market can. The substantial weight of history’s evidence has shown that central economic planning fails, and fails completely.

Recommendations

- Require local governments to create an economic development policy that clearly lays out the incentives that its governing body is willing to offer business prospects as part of its economic development negotiations.
- Allow a public comment and review period for all economic development agreements before the final vote on passage; at least two weeks after agreement is reached.
- Require that local governments maintain active economic development agreements on the entity’s website that are accessible to all.
- Consider restricting or repealing Section 551.087 of the Texas Open Meetings Act.

Resources

Improving Transparency and Accountability in Economic Development by Jess Fields, Texas Public Policy Foundation (Jan. 2014).

An Overview of Local Economic Development Policies in Texas by Jess Fields, Texas Public Policy Foundation (Feb. 2014).

Texas Government Code Chapter 551: Open Meetings.

