

By: Dukes

H.B. No. 2398

A BILL TO BE ENTITLED

AN ACT

relating to fiscal accountability for the receipt of a subsidy or other form of assistance for economic development purposes; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 4, Government Code, is amended by adding Chapter 489 to read as follows:

CHAPTER 489. ECONOMIC DEVELOPMENT AND FISCAL ACCOUNTABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 489.001. DEFINITIONS. In this chapter:

(1) "Corporate parent" means a person that owns or controls 50 percent or more of a recipient corporation.

(2) "Date of the subsidy" means the date on which the recipient corporation receives the development subsidy, except that:

(A) if the development subsidy involves the purchase of new equipment, the date of the subsidy is the date on which the recipient corporation places the equipment into service;  
or

(B) if the development subsidy is for an improvement made to property, the date of the subsidy is the earlier of:

(i) the date on which the last improvement to the property is made; or

1                   (ii) the date on which the recipient  
2 corporation occupies the property.

3                   (3) "Department" means the Texas Department of  
4 Economic Development or its successor.

5                   (4) "Development subsidy" means an expenditure of  
6 public money or financial assistance in the form of a bond, grant,  
7 loan at a rate below the commercial rate, loan guarantee, tax  
8 credit, tax increment financing, fee waiver, land price subsidy,  
9 matching funds, tax abatement, tax exemption, or tax reduction that  
10 is provided to a recipient corporation for economic development  
11 purposes. The term does not include:

12                   (A) financial assistance that is generally  
13 available to all businesses or to a general class of similar  
14 businesses; and

15                   (B) bonds issued to refund outstanding bonds.

16                   (5) "Full-time employee" means an employee who is  
17 normally scheduled to work at least 35 hours a week.

18                   (6) "Granting entity" means a state agency or local  
19 governmental entity that grants a development subsidy.

20                   (7) "Local governmental entity" means a county,  
21 municipality, or other political subdivision of this state and a  
22 municipally created economic development corporation, including a  
23 development corporation organized under the Development  
24 Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil  
25 Statutes).

26                   (8) "Part-time employee" means an employee who is not  
27 a full-time employee or temporary employee.

1           (9) "Person" does not include a government or  
2 governmental subdivision or agency;

3           (10) "Project" means any undertaking or work that the  
4 granting entity determines will result in new or expanded business  
5 development or opportunities or other types of economic  
6 development;

7           (11) "Project site" means the site of a project for  
8 which a development subsidy is granted.

9           (12) "Property-taxing entity" means an entity that  
10 imposes taxes on real or personal property in this state.

11           (13) "Recipient corporation" means a person that  
12 receives a development subsidy from a granting entity.

13           (14) "Small business" means a corporation that:

14                   (A) is formed to make a profit;

15                   (B) has fewer than 20 full-time employees or less  
16 than \$1 million in annual gross receipts; and

17                   (C) does not have a subsidiary or corporate  
18 parent that has more than 20 full-time employees or more than \$1  
19 million in annual gross receipts.

20           (15) "Temporary employee" means an individual  
21 employed on a temporary basis for the performance of services for an  
22 employer during regular employee absences, temporary skill  
23 shortages, seasonal work loads, special assignments and projects,  
24 and other similar work situations for a limited period.

25           Sec. 489.002. PUBLIC RECORD; DISCLOSURE. A report or other  
26 document required to be prepared or maintained under this chapter,  
27 including an application, progress report, or recapture notice, and

1 any related record or proceeding, is a public record subject to  
2 Chapter 552.

3 [Sections 489.003-489.100 reserved for expansion]

4 SUBCHAPTER B. DEVELOPMENT SUBSIDIES

5 Sec. 489.101. APPLICABILITY OF SUBCHAPTER TO CERTAIN  
6 DEVELOPMENT SUBSIDY AMOUNTS. Except as otherwise provided by this  
7 subchapter, this subchapter applies only to a development subsidy  
8 of more than \$25,000.

9 Sec. 489.102. APPLICATION. (a) To receive a development  
10 subsidy for a project, a person eligible for the subsidy must file a  
11 written application with the appropriate granting entity. The  
12 application must be on a form prescribed by the department and must  
13 contain:

14 (1) an application tracking number provided by the  
15 granting entity;

16 (2) the name, business address, and business phone  
17 number of the chief executive officer of the granting entity  
18 provided by the granting entity;

19 (3) the name, business address, and business phone  
20 number of the chief executive officer of the applicant;

21 (4) the name, business address, and business phone  
22 number of the chief executive officer of the applicant's corporate  
23 parent, if any;

24 (5) the street address of the project site;

25 (6) the three-digit North American industry  
26 classification system number of the project site;

27 (7) the total number of full-time, part-time, and

1 temporary employees employed by the applicant at the project site  
2 on the date of the application;

3 (8) the total number of full-time, part-time, and  
4 temporary employees in this state that are employed by the  
5 corporate parent and each subsidiary of the applicant, if any, as of  
6 December 31 of the prior fiscal year;

7 (9) the dollar amount or fair market value to the  
8 applicant of the development subsidy for which application is being  
9 made;

10 (10) the number of the applicant's current full-time,  
11 part-time, and temporary employment positions at the project site  
12 for which the hourly wage is:

13 (A) less than \$6 an hour;

14 (B) at least \$6 an hour but less than \$7;

15 (C) at least \$7 an hour but less than \$8;

16 (D) at least \$8 an hour but less than \$9;

17 (E) at least \$9 an hour but less than \$10;

18 (F) at least \$10 an hour but less than \$11;

19 (G) at least \$11 an hour but less than \$12;

20 (H) at least \$12 an hour but less than \$13;

21 (I) at least \$13 an hour but less than \$14; or

22 (J) at least \$14 an hour;

23 (11) the number of new full-time, part-time, and  
24 temporary employment positions to be created by the applicant at  
25 the project site for which the starting wage is:

26 (A) less than \$6 an hour;

27 (B) at least \$6 an hour but less than \$7;

1           (C) at least \$7 an hour but less than \$8;

2           (D) at least \$8 an hour but less than \$9;

3           (E) at least \$9 an hour but less than \$10;

4           (F) at least \$10 an hour but less than \$11;

5           (G) at least \$11 an hour but less than \$12;

6           (H) at least \$12 an hour but less than \$13;

7           (I) at least \$13 an hour but less than \$14; or

8           (J) at least \$14 an hour;

9           (12) the average hourly wage to be paid to the  
10 applicant's current full-time, part-time, and temporary employees  
11 at the project site for each of the wage groups described by  
12 Subdivision (10);

13           (13) the average hourly wage to be paid to the  
14 applicant's new full-time, part-time, and temporary employees at  
15 the project site for each of the wage groups described by  
16 Subdivision (11);

17           (14) if the project site is located in a metropolitan  
18 statistical area, as defined by the federal office of management  
19 and budget, the average hourly wage paid to nonsupervisory  
20 employees in this state for the industries involved at the project,  
21 as established by the United States Bureau of Labor Statistics;

22           (15) if the project site is located outside the  
23 boundaries of a metropolitan statistical area, the average weekly  
24 wage paid to nonsupervisory employees in the county for industries  
25 involved at the project, as established by the United States  
26 Department of Commerce;

27           (16) the type and amount of health care coverage to be

1 provided by the applicant to its employees not later than the 90th  
2 day after the commencement of employment at the project site,  
3 including any costs of the coverage to be paid by the employees;

4 (17) a description of any other development subsidy  
5 for which the applicant has filed an application or is eligible for  
6 and interested in receiving, including the name of the granting  
7 entity for each subsidy;

8 (18) a statement as to whether receipt of the  
9 development subsidy will cause a reduction in the workforce at any  
10 other project site or job site of the applicant or the applicant's  
11 corporate parent in this state or another state as a result of  
12 automation, merger, acquisition, corporate restructuring, or other  
13 business activity; and

14 (19) a statement as to whether the project involves  
15 the relocation of jobs from another location and if it does involve  
16 the relocation of jobs, the number of full-time, part-time, and  
17 temporary employees to be relocated to the project site, and the  
18 location from which the employees are being transferred.

19 (b) The application must include a signed sworn statement of  
20 the chief executive officer of the applicant certifying that the  
21 application has been reviewed by the officer for factual accuracy.

22 Sec. 489.103. SUBSIDY LIMIT AND JOB QUALITY STANDARDS. (a)  
23 A granting entity may not grant a development subsidy if the cost  
24 per employment position is greater than \$35,000.

25 (b) The cost per employment position is determined by  
26 dividing the total amount or face value of the development subsidy  
27 by the number of full-time employment positions to be created by the

1 applicant as described in the application.

2 (c) A granting entity may not grant a subsidy to an  
3 applicant unless the applicant pays wages to employees at the  
4 project site that are equal to or exceed 85 percent of the average  
5 wage rate established under Sections 489.102(a)(14) and (15), as  
6 appropriate, except that if the applicant is a small business, the  
7 applicant shall pay wages that are equal to or exceed 75 percent of  
8 the average wage rate established under those sections.

9 Sec. 489.104. APPROVAL OF APPLICATION; AWARDING OF  
10 DEVELOPMENT SUBSIDY. (a) On receipt of a proper application, the  
11 granting entity shall review the application for approval.

12 (b) A granting entity may not approve an application unless:

13 (1) the applicant agrees to:

14 (A) meet its job creation, wage, and health care  
15 coverage requirements not later than the second anniversary of the  
16 date of the subsidy; and

17 (B) maintain those requirements for the term of  
18 the subsidy or five years, whichever is later; and

19 (2) the corporate parent of the applicant, if any,  
20 agrees to maintain at least 90 percent of its workforce in this  
21 state on the date of the subsidy for the later of five years or the  
22 term of the subsidy.

23 (c) A granting entity shall send a copy of each approved  
24 application to the department not later than the 15th day after the  
25 date of approval. The granting entity shall maintain a file of  
26 applications for development subsidies that are not approved.

27 Sec. 489.105. ANNUAL PROGRESS REPORT. (a) Not later than



1 February 1 of each year, each granting entity shall file a progress  
2 report with the department for each project for which a development  
3 subsidy has been granted during the previous fiscal year.

4 (b) The progress report must contain:

5 (1) the application tracking number;

6 (2) the name, business address, and business phone  
7 number of the granting entity and of the entity's chief executive  
8 officer;

9 (3) the name, business address, and business phone  
10 number of the recipient corporation and of the corporation's chief  
11 executive officer;

12 (4) a summary of the number of full-time, part-time,  
13 and temporary employment positions required, created, and lost  
14 during the year, by wage groups as described by Sections  
15 489.102(a)(10) and (11);

16 (5) the type and amount of health care coverage  
17 provided to employees at the project site, including any costs of  
18 the coverage to be paid by the employees;

19 (6) a comparison of the total number of full-time,  
20 part-time, and temporary employees in this state employed by the  
21 recipient's corporate parent, if any, on the date of the  
22 application and on the date of the report; and

23 (7) a statement as to whether the use of the  
24 development subsidy during the fiscal year has reduced the  
25 workforce at any other project site or job site of the recipient  
26 corporation or its corporate parent, in this state or another  
27 state, as a result of automation, merger, acquisition, corporate

1 restructuring, or other business activity.

2 (c) The progress report must include a signed sworn  
3 statement of the chief executive officer of the recipient  
4 corporation certifying that the report has been reviewed by the  
5 officer for factual accuracy.

6 (d) On each progress report following the initial progress  
7 report, the granting entity must indicate whether the recipient  
8 corporation has met or is still in compliance with its job creation,  
9 wage, and health care coverage requirements and whether the  
10 corporate parent of the recipient corporation, if any, has met or is  
11 still in compliance with its state employment requirement. If  
12 either the recipient corporation or its corporate parent are not in  
13 compliance with any of the requirements described in this  
14 subsection, the recipient corporation or corporate parent shall  
15 state the reason for the noncompliance.

16 (e) A granting entity shall file a progress report until the  
17 later of:

18 (1) the end of the term of the development subsidy; or

19 (2) the fifth anniversary of the date of the subsidy.

20 Sec. 489.106. RECAPTURE. (a) If a granting entity  
21 determines that a corporation has failed to comply with the  
22 requirements of Section 489.103 and 489.104, the granting body  
23 shall recapture the development subsidy from the recipient  
24 corporation as follows:

25 (1) if a recipient corporation fails to create the  
26 required number of jobs, pay the required wages, or provide the  
27 required health care coverage, the amount to be recaptured shall be

1 computed based on the pro rata amount by which the unfulfilled jobs,  
2 wages, or benefits bear to the total amount of the development  
3 subsidy; and

4 (2) if a corporate parent fails to maintain 90 percent  
5 of its employment in this state, the percentage rate of the amount  
6 to be recaptured is equal to the percentage rate by which the  
7 employment is less than 90 percent multiplied by two.

8 (b) The granting entity shall provide notice to the  
9 recipient corporation of its intent to recapture the development  
10 subsidy. The notice must include the grounds for the recapture and  
11 the amount to be recaptured.

12 (c) The recipient corporation shall remit to the granting  
13 entity the amount recaptured under this section not later than the  
14 60th calendar day after the date on which the recapture notice is  
15 received by the corporation.

16 (d) If a recipient corporation defaults on a development  
17 subsidy for three consecutive calendar years, the granting entity  
18 shall declare the subsidy void and shall notify the department and  
19 the recipient corporation of its declaration. The recipient  
20 corporation must pay any remaining amount or face value of the  
21 development subsidy to the granting entity not later than the 180th  
22 calendar day after the date on which the notice of default is  
23 received by the corporation.

24 (e) A recipient corporation may appeal a determination or  
25 declaration made by a granting entity under this section to the  
26 department.

27 Sec. 489.107. UPDATE REPORT ON DEVELOPMENT SUBSIDY. (a)

1 Not later than the 15th day after the second anniversary of the date  
2 of the subsidy, the granting entity shall file a report with the  
3 department that contains the same information required under  
4 Section 489.105 for the two-year period, including whether the  
5 recipient corporation has achieved its job creation, wage, and  
6 health care coverage requirements and whether the corporate parent,  
7 if any, has maintained its state employment requirement.

8 (b) The update report must include a signed sworn statement  
9 of the chief executive officer of the recipient corporation  
10 certifying that the report has been reviewed by the officer for  
11 factual accuracy.

12 Sec. 489.108. PUBLISHING OF REPORTS. For each of the  
13 reports required under this subchapter, the department shall  
14 annually consolidate all of the information contained in the  
15 reports and make the consolidated information available in both  
16 written and electronic form, including making the information  
17 available in a printable format on the department's Internet  
18 website.

19 [Sections 489.109-489.200 reserved for expansion]

20 SUBCHAPTER C. ECONOMIC DEVELOPMENT BUDGETS AND REPORTS

21 Sec. 489.201. CONSOLIDATED ECONOMIC DEVELOPMENT BUDGET.

22 (a) In this section, "company" means a corporation, partnership,  
23 limited partnership, registered limited liability partnership,  
24 trust, association, joint stock company, joint venture, limited  
25 liability company, or other form of business organization. The  
26 term does not include a sole proprietorship or individual.

27 (b) Not later than the 90th day after the end of the state's

1 fiscal year, the comptroller shall submit an annual consolidated  
2 economic development budget to the legislature. The report must  
3 include:

4 (1) for each state agency or local governmental entity  
5 that developed or engaged in an economic development activity or  
6 project:

7 (A) legislative appropriations for each economic  
8 development activity or project, if any;

9 (B) the amount of bond proceeds, taxes, or other  
10 revenue received or collected in connection with or to support each  
11 economic development activity or project, if applicable; and

12 (C) the amount spent on each economic development  
13 activity or project;

14 (2) the amount of revenue foregone by this state or a  
15 local governmental entity, to the extent it is possible to assess,  
16 because of exemptions, discounts, exclusions, credits, special  
17 valuations, or abatements provided by this state or a local  
18 governmental entity to a company in relation to:

19 (A) the state sales, excise, and use tax under  
20 Chapter 151, Tax Code;

21 (B) the franchise tax under Chapter 171, Tax  
22 Code;

23 (C) property taxes, including school district  
24 property taxes, property taxes imposed for special district  
25 purposes, and property taxes imposed on inventory;

26 (D) utility taxes; and

27 (E) gross receipts taxes; and

1           (3) the name of each company that claimed any  
2 exemption, discount, exclusion, credit, special valuation, or  
3 abatement described by Subdivision (2) in an amount equal to or  
4 greater than \$5,000, including the dollar amount received by that  
5 company.

6           (c) The report may not include an itemization for any  
7 exemption, discount, exclusion, credit, special valuation, or  
8 abatement described by Subsection (b)(2) in an amount that is less  
9 than \$5,000. The comptroller shall report the total dollar amount  
10 for those exemptions, discounts, exclusions, credits, special  
11 valuations, or abatements and the total number of companies  
12 receiving them.

13           (d) Each state agency and local governmental entity shall  
14 cooperate with the comptroller to the extent necessary and allowed  
15 by law to enable the comptroller to prepare the report required by  
16 this section.

17           Sec. 489.202. CONSOLIDATED REPORT OF PROPERTY TAX  
18 ABATEMENTS AND REDUCTIONS. (a) Not later than the 90th day after  
19 the end of the entity's fiscal year, each property-taxing entity  
20 shall submit, on a form prescribed by the comptroller, an annual  
21 report to the comptroller regarding any real property in the  
22 entity's jurisdiction that has received an exemption from taxation  
23 under a property tax abatement agreement or a reduction from  
24 taxation for economic development purposes during the entity's  
25 fiscal year.

26           (b) The report must include:

27           (1) the name of the property owner;

1           (2) the location of the property, including the street  
2 address of the property;

3           (3) the term of any tax abatement agreement, including  
4 the beginning and ending dates of the property tax exemption;

5           (4) the schedule of any tax reduction for the  
6 property;

7           (5) the portion of the value of the property that is  
8 exempt from taxation in each year covered by a tax abatement  
9 agreement;

10          (6) the appraised value of the property before any tax  
11 abatement agreement or reduction takes effect;

12          (7) an estimate of any loss in ad valorem tax revenue  
13 from the property during the term of any tax abatement agreement or  
14 as a result of any tax reduction; and

15          (8) any other tax abatement, reduction, or exemption  
16 provided by the entity for the property.

17          (c) At the end of the entity's fiscal year, each  
18 property-taxing entity shall also submit a report to the  
19 comptroller containing the total property tax revenue foregone by  
20 the entity during the fiscal year as a result of property tax  
21 abatements, reductions, or exemptions provided in the entity's  
22 jurisdiction.

23          (d) If a property-taxing entity fails to submit a required  
24 report within the prescribed time, the comptroller shall withhold  
25 further payments of any development subsidy to the delinquent  
26 entity until the entity files the required report.

27          Sec. 489.203. PUBLISHING OF REPORTS. For each of the

1 reports required under this subchapter, the comptroller shall  
2 annually consolidate all of the information contained in the  
3 reports and make the consolidated information available in both  
4 written and electronic form, including making the information  
5 available in a printable format on the comptroller's Internet  
6 website.

7 [Sections 489.204-489.300 reserved for expansion]

8 SUBCHAPTER D. MONITORING AND ENFORCEMENT

9 Sec. 489.301. ACCESS TO PROJECT SITE AND CERTAIN RECORDS.

10 (a) The granting entity and the department have the authority to  
11 access the project site and the relevant records of the recipient  
12 corporation at any reasonable time for purposes of monitoring the  
13 project and preparing a progress or other report required under  
14 this chapter.

15 (b) A recipient corporation that fails to provide the  
16 granting entity with the information or access required under this  
17 section is liable to the state for a civil penalty in an amount not  
18 to exceed:

19 (1) \$1,000 for each day of violation occurring after  
20 the 10th day after the date on which the report is due but before the  
21 21st day after the due date of the report; or

22 (2) \$5,000 for each day of violation occurring after  
23 the 20th day after the report's due date.

24 (c) The attorney general may bring suit to recover the civil  
25 penalty imposed by this section.

26 Sec. 489.302. PRIVATE ENFORCEMENT ACTION. (a) If a  
27 granting entity fails to enforce this chapter, any interested



1 person may bring an action to compel enforcement of this chapter.

2 (b) The court shall award reasonable attorney's fees and  
3 court costs to a prevailing plaintiff under this section.

4 SECTION 2. This Act takes effect July 1, 2004.