

SUBJECT: Authorizing local economic development programs, loans, and debt

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 4 ayes — B. Cook, Kolkhorst, Deshotel, McCall
1 nay — Anchia
2 absent — Ritter, Seaman

WITNESSES: For — Brandon Aghamalian, City of Fort Worth; Jerry Converse and Sandra Hentges, Greater Austin Chamber of Commerce; Bennett Sandlin, Texas Municipal League; Steve Sheets, City of Round Rock
(*Registered but did not testify:* Timothy Keleher, Fort Worth Chamber of Commerce; Russell Kelley, Dell Computer; Carl Richie, Greater Austin Chamber of Commerce

Against — Bill Bunch, Greater Edwards Aquifer Alliance; Brian Rodgers

BACKGROUND: Texas Constitution, Art. 3, sec. 52 generally prohibits the Legislature from authorizing local governments to lend their credit or grant public funds to any individual, association, or corporation. One of the exceptions to this general prohibition is found in Art. 3, sec. 52-a, adopted in 1987, which authorizes the Legislature to allow local governments to create economic development programs funded through loans and grants of public money, such as municipal sales tax rebates. These programs, referred to as “380 agreements” because the statutory authorization appears in Local Government Code, ch. 380, are designed to promote economic development and commercial activity in the municipality. A contract between a business and the municipality specifies the rebate terms and the duration of the agreement.

DIGEST: HJR 80 would amend Texas Constitution, Art. 3, sec. 52-a to stipulate that economic development grants and loans would not constitute debt prohibited by the constitution or any state law.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2005. The ballot proposal would read: “The constitutional amendment clarifying that certain economic development programs do not constitute a debt.”

**SUPPORTERS
SAY:**

HJR 80 explicitly would affirm the legality of 380 tax incentive packages. These agreements are responsible for promoting economic development activities and forming public-private partnerships throughout the state. With the constitutional and statutory authority already in place, 380 agreements provide a wide array of economic development programs that have attracted new business, employment, and tax revenue. For example, a 380 agreement helped Round Rock lure Dell Computers, which employs about 10,000 people in Round Rock and provides nearly \$16.7 million annually in sales tax revenue for the city.

In February 2005, state district Judge Darlene Byrne of Travis County ruled in *Save Our Springs Alliance v. Village of Bee Cave* (cause number 400441), that a 380 agreement was unconstitutional. Even though the case has been appealed to the Third Court of Appeals and the ruling likely will be overturned, 380 agreements are too valuable for the state’s economic development to risk being scuttled by an adverse court ruling. The proposed constitutional amendment would affirm the legal viability of such agreements and would provide new language for an appeals court to consider. It explicitly would state that the agreements did not constitute illegal debt and therefore would safeguard the future of 380 agreements in Texas.

These economic development programs usually involve 20-year terms between cities and developers. The benefits of economic development occur over a period of growth and workforce development in which communities can incrementally transition into an improved economic environment. HJR 80 would protect long-term economic development goals to create jobs and business activity.

**OPPONENTS
SAY:**

It is likely the Third Court of Appeals will overturn the recent district court ruling that a 380 agreement in Travis County violated Art. 11, sec. 5, of the Texas Constitution, which prohibits cities from assuming long-term debt in the absence of an appropriate funding source, because the ruling applied only to the narrow circumstances of that case. Therefore, HJR 80 is not needed to protect the state from such lawsuits.

The danger in adopting this constitutional amendment, however, is that it would grant blanket approval for economic development programs regardless of their overall implications for local government and public benefit. While economic development certainly is vital to municipal prosperity, some 380 agreements encourage cities to entice development that might not be in the best interests of communities. This type of economic development caters mainly to strip malls and retail centers that actually do not need incentives in the first place. Texas' growing population and economy naturally lure these business without development incentives that obligate local governments for 20 or 30 year terms. Such long-term agreements bind future city councils and restrict their ability to write future budgets by restricting revenue.

The jobs created under 380 agreements often are low-paying jobs in the retail sector, which perpetuates poor workforce development and does not advance local employment. When 380 agreements amount to local governments giving away valuable revenue in return for low-paying jobs, they become unaccountable to taxpayers. All economic development programs should be subject to review to ensure corporate interests or poor planning policies do not overcome local benefits.