

Enforcement of Economic Development Agreements

Can you yank the chain without choking the golden goose?

Thomas A. Gwosdz
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The Genesis:

<p style="text-align: center;"><u>Starlight</u></p> <ul style="list-style-type: none"> •\$5M / 383 FTE •6-yr. Tax abatement •\$300,000 capital reimbursement 	<p style="text-align: center;"><u>Plasticorp</u></p> <ul style="list-style-type: none"> •\$6M / 290 FTE •6 -yr Tax abatement
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Traditional Incentives.

<p style="text-align: center;"><u>Require Recapture</u></p> <ul style="list-style-type: none"> •312 Tax Abatement •Sales Tax Development •Texas EDA 	<p><u>Tex. Tax Code Ann. § 312.205(a)(1):</u></p> <p>Abatement agreement <i>must</i> contain a recapture provision providing for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.</p> <p><u>Tex. Tax Code Ann. § 312.205(b)(6):</u></p> <p>Abatement agreement <i>may</i> include recapture provision providing for recapture if owner fails to create jobs, if improved property fails to meet appraised value, or if other violations of agreement.</p>
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Traditional Incentives.

**Require
Recapture**

- 312 Tax Abatement
- Sales Tax Development
- Texas EDA

Tex. Loc. Gov't Code Ann. § 501.158

When providing direct expenditures, the corporation must enter into a performance agreement with the business enterprise.

Tex. Loc. Gov't Code Ann. § 501.158

The performance agreement must specify, among other things, "the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement."

Traditional Incentives.

**Require
Recapture**

- 312 Tax Abatement
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Tex. Tax Code Ann. § 313.027(e):

Any limitation agreement under the Texas Economic Development Act must describe with specificity the qualified investment to be made on the property subject to the limitation agreement

Tex. Tax Code Ann. § 313.027(f)(4):

Agreement must provide for the termination of the agreement, recapture of the lost tax revenue, and payment of penalty or interest on the recaptured tax revenue

**Require
Recapture**

- 312 Tax Abatement
- Sales Tax Development
- Texas EDA

**380
Agreements**

- Stimulate economy
- Ensure Public Purpose
- limited to money?

“Just gimme what I want...”

Tex. Loc. Gov't Code Ann. § 380.001

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.

380 Agreements

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...or I'll go to Louisiana.”

The *Economic Development Handbook* states that a city should ensure the expenditure meets a public purpose:

- Enter into a binding contract that outlines what steps the business will take that justify the provision of public funding, such as the creation of jobs, expansion of the tax base, or enhancement of physical facilities.
- Include in the contract a recapture provision.
- Include in the agreement tangible means for measuring whether the industry has met its obligations under the contract.

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Ex parte City of Irving, 343 S.W3d 850, 855 (Tex. App. 2011), reh'g overruled (June 29, 2011), review granted, judgment vacated, and remanded by agreement (Nov. 4, 2011)

“Additionally, section 52-a states that “the legislature may provide for the creation of programs and the making of loans and grants of public money ... for the public purposes of development and diversification of the economy of the state...” Tex. Const. art. III, § 52-a (emphasis added). It does not state that the economic development program has to make loans or grants of public money, as the Attorney General contends. See *id*”

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Options?

<p><u>Require Recapture</u></p> <ul style="list-style-type: none">•312 Tax Abatement•Sales Tax Development•Texas EDA	<p><u>380 Agreements</u></p> <ul style="list-style-type: none">•Stimulate economy•Ensure Public Purpose•Limited to money?
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Q & A

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