

# **Chapter 380 of the Texas Local Government Code**

**Newly Elected City Officials' Orientations  
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## 1. What are chapter 380 grants?

Chapter 380 is a reference to chapter 380 of the Texas Local Government Code. This chapter of the Texas Local Government Code authorizes Texas municipalities, both home-rule and general law municipalities to provide assistance for economic development. Texas cities may provide monies, loans, city personnel, and city services for promotion and encouragement of economic development.

## 2. What type of assistance may a city provide under chapter 380 of the Local Government Code for economic development?

Cities are authorized to “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.” Nonetheless, the programs must serve the purpose of promoting state or local economic development by stimulating business and commercial activity within the city, within the extraterritorial jurisdiction (or “ETJ”) of the city, or an area annexed by the city for limited purposes.<sup>1</sup>

## 3. What constitutes serving a public purpose?

The Texas Constitution requires all expenditures of municipal funds serve a “public purpose.”<sup>2</sup> Accordingly, expenditures pursuant to chapter 380 programs must also serve a public purpose. Prior to 1987, Texas cities did not have constitutional authorization to provide economic assistance to businesses for economic development. In 1987, the Texas voters approved a constitutional amendment which provided that grants of monies for economic development may serve a “public purpose.” Article III, section 52-a of the Texas Constitution authorizes “the making of loans and grants of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state . . . or the development or expansion of transportation or commerce in the state.”<sup>3</sup> Further, any transaction providing public monies must contain sufficient controls “to insure that the public purpose [is] carried out.”<sup>4</sup>

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<sup>1</sup> TEX. LOC. GOV'T CODE ANN. § 380.001(a).

<sup>2</sup> TEX. CONST. art. III, § 52(a). *See also*, *Texas Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002) (“A political subdivision’s paying public money is not gratuitous, within meaning of state constitutional provision prohibiting gratuitous payments to individuals, associations, or corporations, if the political subdivision receives return consideration.”).

<sup>3</sup> TEX. CONST. art. III, § 52-a. *See also*, Op. Tex. Att’y Gen. No. GA-0529 (2007) (“Texas Constitution article III, section 52-a and Local Government Code section 380.001 authorize a city to make a loan for a housing project if the project will promote economic development within the meaning of these provisions.”)

<sup>4</sup> Op. Tex. Att’y Gen. No. JM-1255 (1990) at 8-9.

#### **4. Is there a durational limitation on economic assistance provided under chapter 380 of the Texas Local Government Code?**

Unlike tax abatements which are limited to ten (10) years,<sup>5</sup> chapter 380 of the Local Government Code does not contain a durational limitation. Consequently, some Texas cities have entered into 380 agreements which extend beyond ten (10) years. Whether your particular city has a durational limitation may be controlled by a home-rule city charter or other local provision.

#### **5. Can you abate delinquent taxes under chapter 380 of the Local Government Code?**

Article III, section 55 of the Texas Constitution provides that the legislature “shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any country or defined subdivision thereof.” In a Texas Attorney General opinion, the Attorney General concluded “section 380.001(a) of the Local Government Code does not authorize a municipality, as part of an economic development program, to agree to abate a taxpayer’s delinquent taxes.”<sup>6</sup>

#### **6. Can a City provide a municipal sales tax rebate as a form of chapter 380 grant?**

Many cities may condition the grant or loan of public monies based upon estimated sales tax revenue generated by the business prospect. In a recent Texas Attorney General opinion, the Attorney General considered whether recent legislative changes prevented Texas cities from providing chapter 380 grants in the form of a sales tax rebate.<sup>7</sup> The Attorney General concluded the “Local Government Code authorizes municipalities to refund or rebate municipal sales taxes and otherwise expend public funds for certain economic development purposes.”<sup>8</sup> The recent legislative change “does not invalidate existing tax rebate contracts, nor does it prohibit municipalities from executing new ones.”<sup>9</sup>

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<sup>5</sup> TEX. TAX CODE ANN. § 312.204(a).

<sup>6</sup> Tex. Att’y Gen. LO 95-090 (1995).

<sup>7</sup> Op. Tex. Att’y Gen. No. GA-0071 (2003).

<sup>8</sup> Op. Tex. Att’y Gen. No. GA-0137 (2004) at 1.

<sup>9</sup> *Id.* at 4.

## **7. Can a city provide Type A or Type B economic development corporations municipal funds for economic development?**

A home-rule municipality may provide public money to a Type A or Type B economic development corporation [formerly referred to as section 4A or section 4B corporation].<sup>10</sup> Nonetheless, the grant of public monies must be pursuant to a contract. Further, the development corporation must use the grant money for the “development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.”<sup>11</sup>

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<sup>10</sup> TEX. LOC. GOV'T CODE ANN. § 380.002(b).

<sup>11</sup> *Id.*

## **Chapter 380 of the Texas Local Government Code**

### **§ 380.001. ECONOMIC DEVELOPMENT PROGRAMS.**

(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. For purposes of this subsection, a municipality includes an area that:

- (1) has been annexed by the municipality for limited purposes; or
- (2) is in the extraterritorial jurisdiction of the municipality.

(b) The governing body may:

- (1) administer a program by the use of municipal personnel;
- (2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and
- (3) accept contributions, gifts, or other resources to develop and administer a program.

(c) Any city along the Texas-Mexico border with a population of more than 500,000 may establish not-for-profit corporations and cooperative associations for the purpose of creating and developing an intermodal transportation hub to stimulate economic development. Such intermodal hub may also function as an international intermodal transportation center and may be collocated with or near local, state, or federal facilities and facilities of Mexico in order to fulfill its purpose.

Added by Acts 1989, 71st Leg., ch. 555, § 1, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 593, § 1, eff. Sept. 1, 1999.

**§ 380.002. ECONOMIC DEVELOPMENT GRANTS BY CERTAIN MUNICIPALITIES.**

(a) A home-rule municipality with a population of more than 100,000 may create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(3) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state. The grants must be in furtherance of those public purposes and shall be used by the recipient as determined by the recipient's governing board for programs found by the municipality to be in furtherance of this section and under conditions prescribed by the municipality.

(b) A home-rule municipality may, under a contract with a development corporation created by the municipality under the Development Corporation Act (Subtitle C1, Title 12), grant public money to the corporation. The development corporation shall use the grant money for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.

(c) The funds granted by the municipality under this section shall be derived from any source lawfully available to the municipality under its charter or other law, other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.

Added by Acts 1991, 72nd Leg., ch. 16, § 13.06(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 4, § 25.02, eff. Aug. 22, 1991; Acts 2001, 77th Leg., ch. 56, § 1, eff. Sept. 1, 2001.

**§ 380.003. APPLICATION FOR MATCHING FUNDS FROM FEDERAL GOVERNMENT.**

A municipality may, as an agency of the state, provide matching funds for a federal program that requires local matching funds from a state agency to the extent state agencies that are eligible decline to participate or do not fully participate in the program.

Added by Acts 1995, 74th Leg., ch. 1051, § 1, eff. June 17, 1995.

### **Article III, Section 52-a of the Texas Constitution**

Sec. 52-a. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.