MAKING PUBLIC-PRIVATE PARTNERSHIPS WORK

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I. What is a "Public-Private Partnership?"

A Public-Private Partnership is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.

A Public-Private Partnership can be distinguished from what is called "privatization." However, the difference appears to be one of degree rather than difference in kind. A continuum can be constructed:

- Outsourcing – At one end of the spectrum, a government might choose to use a private enterprise to perform a particular function, such as its information technology functions (or its city attorney function). This is no different than a private corporation's decision on whether it is more efficient to have an in-house department or to contract that function to another specialized company.
- Privatization – At the other end of the spectrum, privatization involves the transfer of an entire asset from government ownership to private ownership. This can be the move of what we traditionally think of as private industry away from government ownership, such as when Germany sold Volkswagen to private investors. Or, it could be the move of what we traditionally think of as a public agency to private ownership. Japan has begun moving its mail system to private ownership.[1]
- Public Private Partnerships - for the most part, these are project or site specific, and retain a role for the local government entity.

Some examples of Public Private Partnerships can be found in the transportation arena. The Reston Train Station being planned on the Metro line being built to go to Dulles Airport seeks to combine residential, retail, hotel, and parking functions within a single project.[2] Another example would be the construction of tollways in the Dallas Fort Worth area, where a private corporation undertakes the construction of a needed new highway, and is responsible for both operating the tollway and collecting the tolls (to recover its investment) for a defined time.

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[1] http://en.wikipedia.org/wiki/Japan_Post, visited May 19, 2011. The postal system in Japan, however, included services that are commonly provided in the US by private enterprise, such as banking and insurance.

[2] http://comstockpartnerslc.com/Reston.php, visited May 20, 2011

II. Tools in Texas

A. Chapter 380

Perhaps the most powerful tool in the arsenal of a municipality in the State of Texas is the tool created by Chapter 380 of the Local Government Code. (Attachment A) While most economic development tools are severely restricted in scope by a Legislature that fears a runaway local government, Chapter 380 is extraordinary in its lack of constraints. The PDF of all of Chapter 380 comprises 4 pages. The four chapters of the Local Government Code that define and restrict the powers of 4A and 4B Economic Development Corporations comprise 92 pages. The bulk of those pages comprise detailed and complicated restrictions on how an EDC may spend money. Chapter 380, on the other hand, is almost entirely permissive.

Chapter 380 authorizes a municipality to create "a program" that may make loans or grants of public money or provide municipal personnel to any entity to "promote economic development and stimulate commercial activity" within the city or its extraterritorial jurisdiction. The program may be administered with municipal personnel, may include contracts with other governments, nonprofit organizations, or "any other entity," and may include acceptance of contributions or gifts.

When a city wants to undertake a project that involves conferring a benefit on a private entity in order to promote economic development, but is frustrated by the lack of a mechanism to do so, Chapter 380 will almost always provide the authority that is needed.

B. Transportation Code – Chapter 431, Subchapter D

Local Governments may create, under Chapter 431 of the Transportation Code (Attachment B), a transportation corporation which has the power to accomplish "any governmental power of those local governments." Chapter 431 creates a quasi-governmental entity, that is subject to many of the same rules as governmental entities (such as open meetings and procurement[3]), but is able to act more like a private corporation. The City of Dallas formed a Chapter 431 corporation to facilitate the construction of a convention center hotel.[4]

C. Tax Increment Financing – Chapter 311 Tax Code

The theory behind tax increment financing is really quite elegant. Imagine a smaller community on the outskirts of a major metropolitan area. A major developer wants to build a large retail facility that is likely to bring large traffic loads to the area. However, in order to adequately support a facility of this size, a huge investment in infrastructure is going to be necessary. Roads, drainage improvements, and increased water and wastewater capacity will be required to be built. Say that $25 million in

[3] Some rules apply, and others likely do not. The statute seems to subject a local government corporation to all state laws related to the design and construction of projects, including the procurement of design and construction services (Section 431.101(g)), but that requirement appears to be subject to exceptions that would swallow the rule (Sections 431.101(e) and 431.110).

[4] http://www.dallascityhall.com/convention_center/pdfs/resolution_08-2198.pdf, visited May 20, 2011.

infrastructure will be necessary. The increased property values and the increased ad valorem taxes that result – not to mention the increased sales taxes – will ultimately be more than sufficient to pay for the necessary infrastructure, but additional debt of this magnitude to be paid from predicted future revenues may be difficult or impossible to obtain.

The creation of a Tax Increment Reinvestment Zone under Chapter 311 of the Tax Code (Attachment C) will permit the city to avoid placing burdensome tax debt on its limited tax base, yet permit it to put the infrastructure in place by dedicating the increased tax revenues (the tax "increment") to either reimbursing the developer for constructing the improvements or repaying the debt incurred without pledging general revenues. The existing tax revenue stream to local governments is maintained, and only that portion of taxes over the base year's revenue is diverted to the TIRZ to pay for the infrastructure that made the increased revenue possible.

One of the continuing issues relating to the creation of such zones is the participation, or not, of other taxing entities. Because the decision to create a TIRZ is wholly that of the municipality, the statute provides for discretion on the part of the other taxing entities to participate. One key question would be the extent to which the projected development would increase the burden on that taxing entity. A retail development might have only indirect impact on the schools' burden, but might have a more direct impact on a drainage district, for example, if additional stormwater facilities outside the immediate area are made necessary.

Finally, in 2005 TIRZ boards were given additional powers by the legislature, commensurate with Chapter 380. As a result, if there are additional funds produced over that necessary to pay the debt of the district, the board may loan or grant that money if it will promote economic development and stimulate commercial activity.

III. Six Keys to Success[5]

A. Statutory and Political Environment

There must be a combination of leadership from the political power structure and a legal framework that permits the project to go forward as envisioned. Further, the support from leadership should be broadly based. A project supported by only the Mayor or only the City Manager, with either unenthusiastic acceptance or active resistance by the rest of the political leadership, is imperiled. Further, there should be a strong understanding of the legal structure underlying the project, and a recognition of any constraints inherent in that structure. I believe that the involvement of legal counsel at an early stage is important, and that such legal service include not only drafting the deal that is presented to the lawyer, but active participation in creating the necessary structure to accomplish the goals of the council and management.

B. Public sector ongoing commitment

Once a partnership has been established, the public sector must remain actively involved in the project or program. There may be a temptation to create a project,

[5] Derived from the National Council of Public Private Partnerships; http://www.ncppp.org/howpart/index.shtml#keys, visited May 21, 2011

establish its structure, and then just "let the private enterprise go." It is, however, important that the public sector remain involved and continue to monitor the progress of the project. Unforeseen contingencies will arise, and even if the private entity and the municipality are in complete agreement at the outset, there may be a difference of opinion regarding the proper strategy for handling such events.

C. Detailed business plan

You must know what you expect of the partnership beforehand. A carefully developed plan – usually in the form of a detailed contract – can significantly increase the probability of success of the partnership. Properly constructed, this can outline what the municipality can expect from the private contractor, and what the private contractor can expect from the municipality in terms of monitoring, reporting, and ongoing consultation. It is my experience that a private contractor is not particularly resistant to reporting requirements and the like, because there is an almost subconscious expectation that the public entity will lack diligence in requiring such reports. However, when the requirements are clearly spelled out in the agreement, there is likely to be little resistance to compliance. The ongoing public sector commitment plays a role here, as it is needed to continue to implement the monitoring structure originally envisioned, as well as to evaluate the validity of requests by the private sector to alter the original agreement.

D. Guaranteed revenue stream

While the private partner may provide the initial funding for capital improvements, there must be a means of repayment of this investment over the long term of the partnership. The income stream can be generated by a variety and combination of sources (fees, tolls, shadow tolls, tax increment financing, or a wide range of additional options), but must be assured for the length of the partnership. Ultimately, this requires the recognition that your partner is in the deal to make a profit. There must be sensitivity to the business realities faced by the private entity.

E. Stakeholder support

More people will be affected by a partnership than just the public officials and the private-sector partner. Affected employees, the portions of the public receiving the service, the press, and relevant interest groups will all have opinions and frequently significant misconceptions about a partnership and its value to all the public. For example, when a Tax Increment Financing plan provides that $25 million in tax increment will go to pay for infrastructure improvements, it may be reported that the developer has been "granted" $25 million. Perhaps if it is believed that the payment for the increased infrastructure is the inherent responsibility of the developer, then using additional tax money to reimburse the developer for the investment is a "grant" of tax money. However, in other cases the increment is going to repay the borrowed money that the municipality was unable to afford to borrow otherwise. While those who oppose the project itself (anti-stadium, anti-mall, anti-developer) will naturally criticize whatever financing structure is in place, it is important to try to win the support of those who are neither philosophically opposed or inherently supportive. An accurate representation of the actual benefits to be conferred is an important step in that process.

F. Choose the right partner

The “lowest bid” is not always the best choice for selecting a partner. The “best value” in a partner is critical in a long-term relationship that is central to a successful partnership. A candidate's experience in the specific area of partnerships being considered is an important factor in identifying the right partner. The right partner brings not only the financial abilities and strength that the public sector may lack, but the technical expertise and business experience that increase the likelihood that the project will be successful.

IV. The Texas State Railroad Experience

In 2006, facing its annual budget crunch, Texas Parks & Wildlife Department indicated that it intended to stop operating the Texas State Railroad between Palestine and Rusk. The Railroad was considered a local treasure to these two communities, but the state department was not able to recoup its costs from operating the train, thus it diverted resources which the state parks board decided were better used elsewhere.

A. History

The Texas state prison system established the railroad in 1881. Inmates built the line, which was used to transport hardwood which was used as fuel for the furnaces at the prison-operated iron smelter at the Rusk Penitentiary. The furnace supplied the State of Texas with iron products, including the columns and dome structure for the capitol building in Austin.

In 1906 prison crews extended the rail line to Maydelle and in 1909 reached their final destination of Palestine. Once the train line was completed into Palestine the line was easily accessible to the main lines, and commercial operations on the state-owned railroad increased.

In 1913 the prison ceased operations of the iron furnace and the Penitentiary was converted into the state mental hospital. In 1921 the regular rail service was discontinued and the line was leased to the Texas & New Orleans (Southern Pacific Railroad Co.) The Texas Southeastern Railroad leased the line in the early 1960s and continued operation of the line until 1969.

The railroad was conveyed to the Texas Parks and Wildlife Department in 1972 and state inmates were again brought in to help with the creation of the state historical park. The park and railroad were opened to the public on July 4th, 1976, as part of the nation's Bicentennial Celebration. In 2003 the 78th Legislature of the State of Texas designated the Texas State Railroad as the Official Railroad of Texas.

Recognizing that not only the area’s heritage but its tourism industry would be negatively affected by the closure of the railroad, the two affected cities, Rusk and Palestine, began exploring ways to save the railroad. Led by political leaders on the two city councils, along with the mayors, the cities began working together to do what they could to keep the train running. (It was generally believed that the process of deactivating a train would, in practicality, be a permanent solution, as putting a static display back into service is prohibitively expensive.)

B. The Interlocal Agreement

The first step taken by the Cities was to form a separate entity that would be the focal point of local efforts. An agency was formed by interlocal agreement between the two cities.[6] The board of the new agency would be appointed one-half by Rusk and one-half by Palestine. The President and Vice President of the Board could not be appointees of the same city.

While a key component of the success of this initial effort was the recognition by the community leaders that preservation of the railroad was more important than the relative interests of one community over another, it was nevertheless useful to create structural safeguards that equalized to the extent possible the relative powers of the two cities, and thereby create a greater comfort level that the equality would be maintained.

The purpose of the agency was primarily to do the necessary groundwork to convince the State of Texas to transfer control of the railroad to the two cities. Two things became clear rather rapidly. First, if the new plan was to be successfully implemented, legislation would likely be necessary. Second, the best opportunity to make the railroad successful was to turn to a private operator. Accordingly, the new Agency sought to draft proposed legislation to transfer control, and issued a Request for Qualifications for operators of the railroad.

Four solid proposals were received, and the proposers came to Palestine to present their plans. Although there were strong competitors, the Board selected American Heritage Railways, a company that operated excursion trains in Colorado and North Carolina.

C. The Contract

The first step in the process after American Heritage was selected was to negotiate a contract with the company. This was unusual because the agency actually had no authority to permit American Heritage to even set foot on the train. However, all negotiations were conducted with the understanding that first, the contract was contingent on the transfer of the railroad to the local entity, and second, that it would likely require readjustment after that transfer took place, depending on the restrictions placed by the state and the funding that would be available.

This step was important, however, because the political strategy of the local agency was to have a contract in place that was agreed to in principal. This had the triple purpose of proving that the local agency was serious, proving that a private entity would be interested in assuming the operation, and providing the legislature a framework upon which to base legislation.

It is my experience that most lawyers, when faced with drafting any document more complex than a simple letter, first seek a format or a template to be used – usually a previously drafted document for a similar purpose. It was difficult, however, in this instance because there was no template for this contract or for this legislation. Rather

[6] Attachment D. Government Code §791.013(a)(1) sets out the power to use an interlocal agreement to "create an administrative agency."

than relying on a previously approved document to provide a checklist, the parties had to try to foresee all of the potential traps and contingencies.

A copy of the first draft of the contract – the contract that was presented to the legislature – is Attachment E. Some of the key aspects of the contract are:

- The railroad is leased to the private operator for 5 years;
- The railroad is leased "as is;"
- The agreement is automatically renewed for 5 years unless either party gives notice more than 6 months prior to end of term;
- Submission of a "Notice of Renegotiation" allows parties to try to amend contract, and results in holdover until notice of termination given;
- The primary purposes of the railroad are excursion railroad, museum, and campground;
- Secondary purposes are film/video and freight service;
- The operator pays 2% of gross revenue to the agency;
- Twenty percent of ownership of railroad is transferred annually to private operator if threshold is met, but there are restrictions against diverting assets, and reversion if failure to operate;
- The Agency will loan the operator $500,000 for operating capital, contingent on state funding;
- A capital improvement plan must be submitted;
- The operator must make monthly, quarterly, and annual reports;
- An operator liaison must attend all agency board meetings;
- The entire agreement is contingent on receiving $12,000,000 in state funding for capital improvements;
- The operator is required to operate a minimum number of trains on a weekly basis;
- The agreement must be ratified by both city councils.

After the negotiation of a contract, the effort to save the railroad moved from East Texas to Austin.

D. The Statute

The effort to get a statute passed that would create a local agency to operate the Texas State Railroad was dependent on the support of the senators and representatives from this area. A copy of the bill that was passed is Attachment F.

The Texas State Railroad Authority was created by Senate Bill 1659 in the 2007 session. For the most part, the structure of the Authority followed the structure of the Agency created by the two cities. The first change was the insistence by the Legislative Council that there be an odd number of board members. In order to continue the

structural equivalence between the two cities, the seventh member is to be selected by the other board members. In practicality, the President of the Board who had been doing yeoman's work to bring the matter to fruition was the choice of the board to be the seventh member, even though he was a Palestine City Council member. (In fact, the two cities had decided, at the request of the board, that the original requirement in the interlocal agreement that the presidency of the agency board be rotated between the two cities be removed so that the board could continue to benefit from the first president's leadership.

In order to simplify the process, the original contract to operate the authority was exempted to from competitive bidding. The authority was authorized to lease or otherwise convey property for an authority purpose. The statute permitted the conveyance of property only if ownership reverted to the state in the event of failure to operate the railroad.

There was no great hurdle to the passage of the statute other than the old maxim that the Constitution provides for a single method for passage of a bill into law, and there are a thousand ways to kill a bill. There was no significant opposition to the bill, but it relied on the efforts of local representatives such as Byron Cook and senators such as Robert Nichols to continue to press for passage. In addition, it cannot be omitted that the support of former State Senator Todd Staples, who was elected during this process to the office of Agriculture Commissioner, was crucial to this success.

Another hurdle remained, however: funding. The attractiveness of the project really relied on the promise of approximately $12 million in state funding - $2 million in state appropriations and $10 million in grant money. This money (and more) was originally planned to be spent on retiring the train and operating the park during the 2007-08 biennium. So this could be presented to the legislature as an actual cost savings, and yet offer the private operator necessary money for track repairs and equipment rehabilitation that was necessary. These hurdles proved difficult, and almost scuttled the entire process.

Under a rider to the appropriations act, in order for the money to be released, the Legislative Budget Board would have to review and approve the contract between the State Parks and Wildlife Department and the Authority transferring the operations and the property to the local authority. The staff of the LBB recommended approval of the expenditure after reviewing the contract (Attachment G), but it became apparent that final approval was delayed. That delay came from the office of the Speaker of the House, Tom Craddick.

In the meantime, the summer season had come and gone and the transfer was not complete. In addition, the railroad experienced a major washout due to torrential rains, so that full rail operations between the two cities were not possible. Finally, a minor collision between two passenger cars resulted in damage to two cars that would need to be repaired. The deal was in danger of falling through. However, extraordinary efforts, including a personal visit by two board members and their attorney with Speaker Craddick, finally resulted in approval of the funding.

E. Keys to Success

Ultimately, there were some additional changes that were made necessary by the legislation, the passage of time, the delay of the funding, and the natural disaster. An additional loan of money was required from the two cities, and an adjustment was required for the ridership requirements. In addition, the unprecedented spike in gas prices in 2008, the damage done by the remnants of Hurricane Ike in late 2008, and the national economic downturn experienced beginning in 2009 all placed additional burdens on the ability of the railroad to succeed.

In spite of these hurdles, the Railroad continues to operate, which is ultimately the indicator that the project has succeeded. Even if the railroad shuts down tomorrow, and no replacement operator is found, the cities have had 4 additional years of service that they would otherwise have lost. Further, there are several smaller areas of great success. First, the private operator developed very popular special events. Thomas the Tank Engine, The Little Engine That Could, Peanuts Great Pumpkin trains, and most of all, The Polar Express, have drawn more riders than the state-operated train drew in an entire year. The Polar Express draws on a popular Christmas children's book where children board a train for the North Pole to visit Santa Claus. Children are invited to wear their pajamas, bring their book, and read along. Hot cocoa is served, and when the train arrives in Maydelle (between Palestine and Rusk) aka "the North Pole," Santa boards the train and distributes presents. In Palestine, where these families visit restaurants before the excursion, it is known as when "The Pajama People" come to town.

The keys to success, in my opinion, include a recognition by both the public and private partners of the interests and needs of the other partner. The public partner has to realize that there is a profit motive at work (though it is no doubt a "labor of love" for the owner); similarly, the private partner has to realize that the public partner's interests are the preservation of the heritage and history that the train represents. I think that both parties have had a respectful distrust of the other. The public board cannot simply take for granted that the private entity is going to have the same altruistic motives as the board. Ultimately, at each step, the board was careful to protect itself and its asset. Finally, the board has continued to monitor the project, seek additional funding sources, and adjust the requirements placed on the operator where necessary.

Further, the project has had the full support of the two communities. And those communities have avoided the temptation to be rivals, instead remaining teammates. Both communities have recognized that both must share in the benefits, because the support of both is necessary, and if the project fails both will share in the pain.

Assisting the Texas State Railroad Authority was one of the most rewarding projects of my professional life. Facing an economic crisis, working together to reach a solution that avoided that economic damage, and continuing to overcome obstacles that were beyond their ability to control; the cities of Rusk and Palestine accomplished a wonderful thing.

ATTACHMENT A

LOCAL GOVERNMENT CODE

TITLE 12. PLANNING AND DEVELOPMENT

SUBTITLE A. MUNICIPAL PLANNING AND DEVELOPMENT

CHAPTER 380. MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL PLANNING AND DEVELOPMENT

Sec. 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 colocated 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, Sec. 1, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 57, Sec. 1, eff. May 17, 2005.

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

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.26, eff. April 1, 2009.

Sec. 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, Sec. 1, eff. June 17, 1995.

ATTACHMENT B

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE I. TRANSPORTATION CORPORATIONS

CHAPTER 431. TEXAS TRANSPORTATION CORPORATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. SHORT TITLE. This chapter may be cited as the Texas Transportation Corporation Act.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.002. PURPOSES; LIBERAL CONSTRUCTION. (a) The purposes of this chapter are:

(1) the promotion and development of public transportation facilities and systems by new and alternative means;

(2) the expansion and improvement of transportation facilities and systems;

(3) the creation of corporations to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of those systems;

(4) the reduction of burdens and demands on the limited funds available to the commission and an increase in the effectiveness and efficiency of the commission; and

(5) the promotion and development of transportation facilities and systems that are public, not private, in nature, although these facilities and systems may benefit private interests as well as the public.

(b) This chapter shall be liberally construed to give effect to the purposes of this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a corporation organized under this chapter.

(2) "Corporation" means a corporation organized under this chapter and includes a local government corporation.

(3) "Local government" means:

(A) a municipality;

(B) a county; or

(C) for purposes of Subchapter D, a navigation district, hospital district, or hospital authority.

(4) "Local government corporation" means a corporation incorporated as provided by Subchapter D to act on behalf of a local government.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1370, Sec. 1, eff. June 16, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 241, Sec. 1, eff. May 25, 2007.

Sec. 431.004. OPEN MEETINGS. (a) A corporation is subject to Chapter 551, Government Code.

(b) Except as provided by Subsection (c) or (d), the board shall file notice of each meeting of the board in the same manner and in the same location as is required of a state governmental body under Chapter 551, Government Code.

(c) If the commission designates an area of the state in which a corporation may act on behalf of the commission, the board shall file notice of each meeting of the board in the same manner and in the same location as is required of a governmental body under Section 551.053, Government Code.

(d) The board of a local government corporation shall file notice of each meeting of the board in the same manner and in the same location as is required of the governing body under Chapter 551, Government Code, of the one or more local governments that created the local government corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.005. OPEN RECORDS. The board is subject to Chapter 552, Government Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.006. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation to the extent that the provisions of that Act are not inconsistent with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 431.021. PURPOSE OF CORPORATION. The purpose of a corporation is limited to the promotion and development of public transportation facilities

and systems.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.022. APPLICATION. (a) Three or more individuals may file with the commission an application for the creation of a corporation within a designated area.

(b) Each of the individuals must be a qualified voter.

(c) The application must be in writing.

(d) The application must contain the articles of incorporation proposed to be used in organizing the corporation.

(e) The commission may not charge a filing fee for the application.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.023. ADOPTION OF RESOLUTION. (a) A corporation may be created only if the commission adopts a resolution authorizing the creation of a corporation to act on behalf of the commission.

(b) A resolution must state that the commission:

(1) determines that creation of the corporation is advisable; and

(2) approves the articles of incorporation proposed to be used in organizing the corporation.

(c) The commission may designate the area of the state in which the corporation may act on behalf of the commission. The designated area may include the territory of more than one political subdivision of the state.

(d) The commission may authorize the creation of more than one corporation to act within the same designated area. The resolution authorizing each corporation must specify the public purpose of that corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 17.04, eff. Sept. 1, 1999.

Sec. 431.024. FORM OF CORPORATION. (a) A corporation is a nonmember, nonstock corporation.

(b) A corporation is nonprofit, and its earnings may not benefit a private interest.

(c) A corporation may be created as a perpetual corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.025. ARTICLES OF INCORPORATION. The articles of incorporation must state:

(1) the name of the corporation;

(2) that the corporation is a nonprofit corporation;

(3) the duration of the corporation;

(4) the specific purpose for which the corporation is organized on behalf of the commission;

(5) that the corporation does not have any members and is a nonstock corporation;

(6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors of the initial board and the name and address of each director;

(8) the name and street address of each incorporator;

(9) any provision for the regulation of the internal affairs of the corporation, including any provision required or permitted by this chapter to be in the bylaws; and

(10) that the commission has:

(A) by resolution specifically authorized the corporation to act on its behalf to further the public purpose stated in the resolution and in the articles of incorporation; and

(B) approved the articles of incorporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.026. DELIVERY AND FILING OF CERTIFICATE OF INCORPORATION. (a) After the commission adopts a resolution under Section 431.023, three originals of the articles of incorporation shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the articles of incorporation conform to this chapter. On determination that the articles conform to this chapter and on receipt of a $25 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the date of the filing;

(2) file one of the originals in the secretary's office;

(3) issue two certificates of incorporation;

(4) attach to each certificate an original of the articles of incorporation; and

(5) deliver a certificate of incorporation and the attached articles of incorporation to:

(A) each incorporator or its representative; and

(B) the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.027. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) A corporation's existence begins when its certificate of incorporation is issued.

(b) After the issuance of the certificate of incorporation, the incorporation may not be contested for any reason.

(c) A certificate of incorporation is conclusive evidence that:

(1) all conditions for incorporation required of the incorporators and the commission are satisfied; and

(2) the corporation is incorporated under this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.028. BOARD. (a) A corporation must have a board in which the powers of the corporation reside.

(b) The board consists of three or more directors.

(c) The commission shall appoint each director for a term that may not exceed six years.

(d) The commission may remove a director for or without cause.

(e) A director serves without compensation but is entitled to reimbursement from the corporation for expenses incurred in the performance of the director's duties.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.029. ADVISORY DIRECTORS. (a) The board may appoint any number of advisory directors.

(b) An advisory director advises and assists the directors in promoting and developing new and expanded transportation facilities and systems.

(c) An advisory director serves until the completion of a particular project or at the will of the directors.

(d) An advisory director does not have a vote in the affairs of the corporation.

(e) An advisory director serves without compensation. The corporation may not reimburse an advisory director for expenses incurred in the performance of the director's duties.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.030. BYLAWS. (a) The board shall adopt the initial bylaws of a corporation. The commission, by resolution, must approve the initial bylaws.

(b) A corporation may change its bylaws only with the approval of the

commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.031. QUORUM. (a) A quorum of a board is the lesser of:

(1) a majority of:

(A) the membership of the board under the bylaws; or

(B) if the bylaws do not provide the membership of the board, the membership of the board under the articles of incorporation; or

(2) the number, which must be more than two, set as the quorum by the articles of incorporation or the bylaws.

(b) An act of the majority of the directors present at a meeting at which there is a quorum is an act of the board, unless the act of a greater number is required by the articles of incorporation or the bylaws.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.032. INDEMNIFICATION. (a) A corporation may indemnify a director or officer of the corporation for necessary expenses and costs, including attorney's fees, incurred by the director or officer in connection with any claim asserted against the director or officer in a court action or otherwise for negligence or misconduct.

(b) If a corporation does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by the director or officer, including attorney's fees, to pay any judgment or settlement of the claim necessarily incurred by the director or officer in connection with the claim in an amount the court considers reasonable and equitable only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the corporation.

(d) In this section, "director or officer" includes a former director or officer.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.033. EXEMPTION FROM TAXATION. A corporation affects all the people in its area by assuming to a material extent what otherwise might be an obligation or duty of the commission and is a purely public charity under

Section 2, Article VIII, Texas Constitution. However, a corporation is exempt from the franchise tax under Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.034. INCOME OF TRANSPORTATION CORPORATION. The commission has the unrestricted right at any time to receive any income earned by a corporation other than a local government corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. CORPORATE POWERS

Sec. 431.061. DEFINITIONS. In this subchapter:

(1) "Construction" includes improvement and landscaping.

(2) "Highway" includes an improvement to a highway.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.062. GENERAL POWERS. (a) A corporation has the powers and privileges of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(b) A corporation has the powers provided by this subchapter to promote and develop new and expanded transportation facilities and systems on behalf of the commission and powers incidental to or necessary for the performance of that purpose.

(c) A corporation may, at the request of the commission, perform any function not specified by this chapter to promote and develop transportation facilities and systems.

(d) A corporation has the powers necessary to construct or improve transportation facilities and systems approved by the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.063. PROMOTION AND DEVELOPMENT OF TRANSPORTATION FACILITIES AND SYSTEMS. A corporation may work directly with property owners, local and state governmental agencies, and elected officials to support an activity required to promote and develop a transportation facility or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.064. ALIGNMENT STUDIES. A corporation may perform a preliminary

or final alignment study.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.065. CONTRIBUTIONS; EXPENSES. (a) A corporation may receive:

(1) a contribution of real property for a right-of-way; and

(2) a cash donation for:

(A) the purchase of a right-of-way; or

(B) the design or construction of a transportation facility or system.

(b) A corporation may establish a formula to determine the amount of cash donations from affected property owners and others necessary to cover the cost of a service to be performed by the corporation or its consultants.

(c) A corporation may borrow money to meet any expense or need associated with the regular operation of the corporation or a particular transportation project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.066. EMPLOYEES AND CONSULTANTS. (a) A corporation may employ an administrative staff.

(b) A corporation may retain legal, public relations, and engineering services required to develop a transportation facility or system.

(c) Through its staff and retained consultants, a corporation may prepare an exhibit, right-of-way document, environmental report, schematic, or preliminary or final engineering plan necessary to develop a transportation facility or system.

(d) A corporation may pay an employee or consultant from money donated to develop a transportation facility or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.067. PROMOTIONAL ACTIVITIES. (a) A corporation may make official presentations to the state and other affected agencies or groups concerning the development of a transportation project.

(b) A corporation may issue a press release or other material to promote the activities of a transportation project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.068. CONSTRUCTION OR IMPROVEMENT CONTRACTS. (a) A corporation may contract with the commission to:

(1) construct or improve a transportation project designated by the commission; and

(2) sell the project or improvement to the commission.

(b) For a transportation project constructed by a corporation, the corporation may contract with the commission for the commission to:

(1) supervise the construction; or

(2) provide construction management services.

(c) A corporation and a county, a home-rule municipality, a county road district created under Chapter 257, or a road utility district created under Chapter 441 may contract to pay jointly the cost of a transportation project designated by the commission. The contract may obligate the corporation to design, construct, or improve the transportation project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.069. LOCATION OF TRANSPORTATION PROJECTS. A corporation may construct or improve a transportation project on real property, including a right-of-way acquired by the corporation, provided to the corporation for that purpose by the commission or a political subdivision of this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.070. BONDS AND NOTES. (a) A corporation may issue bonds and notes to carry out its purpose.

(b) The bonds and notes may be issued under any power or authority available to the corporation, including Chapter 1201, Government Code.

(c) A bond or note must state on its face that it is not an obligation of the State of Texas.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.394, eff. Sept. 1, 2001.

Sec. 431.071. APPROVAL OF BONDS AND NOTES BY ATTORNEY GENERAL. (a) A corporation shall submit a bond or note authorized under Section 431.070 and a contract supporting its issuance to the attorney general for examination.

(b) If the attorney general finds that the bond or note, and any supporting contract are authorized under this chapter, the attorney general shall approve them.

(c) After approval by the attorney general, a bond, note, or contract may not be contested for any reason.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.072. LIMITATION TO FEDERAL OR STATE HIGHWAY SYSTEM. A corporation may plan, design, acquire, construct, improve, extend, or maintain a transportation project only if the project:

(1) is intended by the commission to become part of the federal or state highway system; and

(2) is not intended to:

(A) become a county road or municipal street; or

(B) be owned by a county road district or by a road utility district.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.073. PROJECT IN COUNTY OF 500,000 OR MORE OR ADJACENT COUNTY. (a) This section applies only to a corporation that was created by the state or one or more counties or municipalities to implement a transportation project in:

(1) a county with a population of 500,000 or more; or

(2) a county adjacent to a county described by Subdivision (1).

(b) If approved and authorized by the commission, a corporation created by the state has the rights, powers, privileges, authority, and functions given the department under this title to:

(1) construct, improve, operate, and maintain high occupancy vehicle lanes; and

(2) charge a toll for the use of one or more high occupancy vehicle lanes for the purpose of congestion mitigation.

(c) A corporation in existence on August 31, 1991, has the powers, rights, and privileges of a corporation created under Chapter 11, Title 32, Revised Statutes, as that law existed on August 31, 1991, except that the required right-of-way of any highway, road, street, or turnpike may be of the width required or approved by the commission or each governing body creating the corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 1.25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 967, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER D. LOCAL GOVERNMENT CORPORATIONS

Sec. 431.101. CREATION OF LOCAL GOVERNMENT CORPORATION. (a) A local government corporation may be created to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local

governments. To be effective, the articles of incorporation and the bylaws of a local government corporation must be approved by ordinance, resolution, or order adopted by the governing body of each local government that the corporation is created to aid and act on behalf of.

(b) A local government corporation has the powers of a corporation authorized for creation by the commission under this chapter.

(c) The provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) relating to powers, standards of conduct, and interests in contracts apply to the directors and officers of the local government corporation.

(d) A provision of this chapter relating to the creation, dissolution, administration, or supervision of a corporation by the commission does not apply to a local government corporation.

(e) Section 394.904(a), Local Government Code, applies to property and improvements owned by a local government corporation. Section 394.904(b) of that code applies to each contract awarded by the local government corporation.

(f) A member of the board of directors of a local government corporation:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a reinvestment zone created under Chapter 311, Tax Code.

(g) A local government corporation must comply with all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government that created the corporation.

(h) A local government corporation formed by a navigation district shall not condemn a right-of-way through any part of a municipality without the consent of the municipality's governing body.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 983, Sec. 12, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1370, Sec. 2, 3, eff. June 16, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213, Sec. 15, eff. September 1, 2007.

Sec. 431.102. APPLICATION OF CHAPTER 394, LOCAL GOVERNMENT CODE. (a) In the manner in which Chapter 394, Local Government Code, applies to a corporation created under that chapter, that chapter applies to:

(1) the manner in which a local government corporation is created and dissolved;

(2) the appointment of the board of a local government corporation and the members' terms of service;

(3) the manner and the conditions under which the board serves; and

(4) the form, execution, approval, filing, and amending of the articles of incorporation and bylaws of a local government corporation.

(b) The property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394, Local Government Code.

(c) The requirement of Section 394.021(a), Local Government Code, that all directors must be residents of the local government shall not be applicable to directors of a local government corporation except that a person may not be appointed to the board of a local government corporation if the appointment of that person would result in less than a majority of the board members being residents of the local government.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 983, Sec. 13, eff. June 18, 1999.

Sec. 431.103. CONTRACTS WITH POLITICAL SUBDIVISIONS. A local government corporation may contract with a political subdivision of this state in the manner and to the same extent as any other corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.104. ASSUMPTION OF POWERS AND DUTIES. (a) The governing body of a local government may assume for the local government the powers and duties of a local government corporation created by the local government.

(b) A local government that assumes the powers and duties of a local government corporation assumes the assets and liabilities of the corporation.

(c) The powers and duties of a local government corporation created by more than one local government may be assumed only if each local government that created the corporation agrees to the assumption.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.105. CONTRACTUAL AUTHORITY. (a) A state agency, including the commission, or a political subdivision may contract with a local government corporation to accomplish a governmental purpose of the sponsoring local government in the same manner and to the same extent that it:

(1) may contract with any other corporation created under this chapter; and

(2) is authorized to contract under Subchapter A, Chapter 472.

(b) A local government may contract with a corporation to accomplish the purposes of the sponsoring local government in the manner provided under Subchapter C, Chapter 224.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.106. PUBLIC SAFETY RULES. A local government that creates a local government corporation may establish and enforce traffic and other public safety rules on a toll road, toll bridge, or turnpike of the corporation. Local governments that jointly create a local government corporation may jointly establish and enforce those rules.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.107. INCOME OF LOCAL GOVERNMENT CORPORATION. (a) A local government creating a local government corporation is entitled at any time to receive any income earned by the local government corporation that is not needed to pay the corporation's expenses or obligations.

(b) The earnings of a local government corporation may not benefit a private interest.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.108. GOVERNMENTAL FUNCTIONS. (a) A local government corporation is a governmental unit as that term is used in Chapter 101, Civil Practice and Remedies Code.

(b) The operations of a local government corporation are governmental, not proprietary, functions.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.109. CONTRACTS FOR HISTORICALLY UNDERUTILIZED BUSINESSES. (a) This section applies only to a local government corporation serving a county with a population of more than 2.4 million.

(b) A local government corporation shall set and make a good faith effort to meet or exceed goals for awarding contracts or subcontracts associated with a project it operates, maintains, or constructs to historically underutilized businesses.

(c) The goals must equal or exceed:

(1) the federal requirement on federal money used in highway construction and maintenance; and

(2) the goals adopted by the department under Section 201.702.

(d) The goals apply to the total value of all contracts and subcontracts awarded, including contracts and subcontracts for construction, maintenance, operations, supplies, services, materials, equipment, professional services, the issuance of bonds, and bond counsel.

(e) In this section, "historically underutilized business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations controlled by one or more persons who have been historically underutilized because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(2) a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operation is controlled by a person described by Subdivision (1);

(3) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership are owned by one or more persons described by Subdivision (1) and who also have proportionate interest in the control, daily operation, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5) a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN IMPROVEMENTS. Any competitive bidding requirement or restriction on a local government that created a local government corporation does not apply to an expenditure by the local government corporation for:

(1) an improvement:

(A) that is constructed in a reinvestment zone; and

(B) the construction of which is managed by a private venture participant; or

(2) an improvement constructed by the corporation for which more than 50 percent of the construction is funded by a private entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213, Sec. 16, eff. September 1, 2007.

SUBCHAPTER E. AMENDMENT OR RESTATEMENT OF ARTICLES OF INCORPORATION

Sec. 431.141. AMENDMENT. The articles of incorporation of a corporation created under this chapter may be amended only as provided by this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.142. AMENDMENT BY BOARD OF DIRECTORS. (a) The board at any time may file with the commission a written application requesting that the commission approve an amendment to the articles of incorporation.

(b) The application must specify the proposed amendment.

(c) The board shall amend the articles if the commission by resolution:

(1) determines that it is advisable to adopt the proposed amendment;

(2) authorizes the adoption of the amendment; and

(3) approves the form of the amendment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.143. AMENDMENT BY COMMISSION. The commission, at its sole discretion, may amend the articles of incorporation at any time by:

(1) adopting the amendment by resolution; and

(2) delivering the articles of amendment to the secretary of state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.144. CONTENTS OF ARTICLES OF AMENDMENT. The articles of amendment must:

(1) state the name of the corporation;

(2) if the amendment alters a provision of the articles of incorporation, identify by reference or describe the altered provision and include its text as it is amended;

(3) if the amendment is an addition to the articles of incorporation, state that fact and include the text of each provision added; and

(4) state that the amendment was adopted or was approved by the commission and give the date the commission adopted or approved the amendment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.145. EXECUTION AND VERIFICATION OF ARTICLES OF AMENDMENT. (a) Articles of amendment adopted by the board shall be executed by:

(1) the president or vice-president of the corporation; and

(2) the secretary or assistant secretary of the corporation.

(b) Articles of amendment adopted by the commission shall be executed by:

(1) the presiding officer of the commission; and

(2) the secretary or clerk of the commission.

(c) One of the officers signing the articles shall verify each of the articles of amendment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.146. DELIVERY AND FILING OF ARTICLES OF AMENDMENT. (a) Three originals of the articles of amendment shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the articles of amendment conform to this chapter. On determination that the articles conform to this chapter and on receipt of a $25 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the date of the filing;

(2) file one of the originals in the secretary's office;

(3) issue two certificates of amendment;

(4) attach to each certificate one of the originals; and

(5) deliver a certificate of amendment and the attached articles of amendment to:

(A) the corporation or its representative; and

(B) the commission.

(c) On the issuance of the certificate of amendment, the amendment is effective and the articles of incorporation are amended accordingly.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.147. SUITS NOT AFFECTED. (a) An amendment to the articles of incorporation does not affect:

(1) any existing cause of action in favor of or against the corporation;

(2) any pending suit to which the corporation is a party; or

(3) the existing rights of any person.

(b) If an amendment to the articles of incorporation changes the name of the corporation, a suit brought by or against the corporation under its former name does not abate for that reason.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.148. RESTATEMENT OF ARTICLES. A corporation, by following the procedure to amend the articles of incorporation in this subchapter, including obtaining the approval of the commission, may authorize, execute, and file restated articles of incorporation as provided by this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.149. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT. (a) A corporation may, without making any additional amendment, restate the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state.

(b) The introductory paragraph of a restatement under this section must contain a statement that the restatement:

(1) accurately copies the articles of incorporation and all amendments to the articles that are in effect; and

(2) does not contain any additional amendments to the articles.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.150. RESTATEMENT WITH ADDITIONAL AMENDMENT. (a) A corporation may:

(1) restate the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; and

(2) as part of the restatement, make additional amendments to the articles.

(b) A restatement under this section must:

(1) state that any additional amendment to the articles of incorporation conforms to this chapter;

(2) contain any statement required by this subchapter for articles of amendment except that the full text of any additional amendment is not required to be presented other than in the restatement itself;

(3) contain a statement that:

(A) the restatement is an accurate copy of the articles of incorporation and all amendments to the articles that are in effect and all additional amendments made to the articles; and

(B) the restatement does not contain any other change; and

(4) restate the text of the entire articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as additionally amended by the restated articles of incorporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.151. CHANGE IN BOARD INFORMATION NOT AMENDMENT. For the purposes of Sections 431.149 and 431.150, substituting in the restated articles of incorporation the number, names, and addresses of the directors for the initial board or omitting the name and address of each incorporator is not an amendment or change in the articles of incorporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.152. EXECUTION AND VERIFICATION OF RESTATEMENT OF ARTICLES. (a) Originals of the restated articles of incorporation shall be executed by:

(1) the president or vice-president of the corporation; and

(2) the secretary or assistant secretary of the corporation.

(b) One of the officers signing the restated articles shall verify each of the restated articles.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.153. DELIVERY AND FILING OF RESTATEMENT OF ARTICLES. (a) Three originals of the restated articles of incorporation shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the restated articles conform to this chapter. On a determination that the restated articles conform to law and on receipt of a $50 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the date of the filing;

(2) file one of the originals in the secretary's office;

(3) issue two restated certificates of incorporation;

(4) attach to each certificate one of the original restated articles; and

(5) deliver a restated certificate of incorporation and the attached restated articles to:

(A) the corporation or its representative; and

(B) the governing body of the entity that created the corporation.

(c) On the issuance of the restated certificate of incorporation, the original articles of incorporation and all amendments to the original articles are superseded. The restated articles of incorporation become the articles of incorporation of the corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. ALTERATION OR DISSOLUTION OF CORPORATION

Sec. 431.181. ALTERATION OR DISSOLUTION BY COMMISSION. (a) At any time the commission in its sole discretion may:

(1) alter the structure, organization, programs, or activities of a corporation; or

(2) dissolve a corporation.

(b) The authority of the commission under this section is limited only by:

(1) any law of this state prohibiting the impairment of a contract entered into by a corporation; and

(2) any provision of this subchapter relating to alteration or dissolution.

(c) The commission must make an alteration or dissolution under this section by a written resolution.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.182. DISSOLUTION BY BOARD ON COMPLETION OF PURPOSE. The board, with the approval by written resolution of the commission, shall dissolve the corporation as provided by this subchapter if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all obligations of the corporation have been fully paid.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.183. EXECUTION OF ARTICLES OF DISSOLUTION. Articles of dissolution shall be executed by:

(1) the president or vice-president of the corporation and the secretary or assistant secretary of the corporation; or

(2) any two members of the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.184. DELIVERY AND FILING OF ARTICLES OF DISSOLUTION. (a) Three originals of the articles of dissolution shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the articles of dissolution conform to this chapter. On a determination that the articles

conform and on receipt of a $50 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the date of the filing;

(2) file one of the originals in the secretary's office;

(3) issue two certificates of dissolution;

(4) attach to each certificate an original of the articles of dissolution; and

(5) deliver a certificate and the attached articles of dissolution to:

(A) the representative of the dissolved corporation; and

(B) the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.185. EFFECT OF ISSUANCE OF CERTIFICATE OF DISSOLUTION. The corporate existence ends on the issuance of the certificate of dissolution except for:

(1) the purpose of any ongoing suit or other proceeding; and

(2) corporate action by a director or officer under this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.186. ASSETS ON DISSOLUTION. On dissolution or liquidation of a corporation, the title to all assets, including funds and property, shall be transferred to the commission unless the corporation is a local government corporation, in which case the title shall be transferred to the local governments that created the corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

ATTACHMENT C

TAX CODE

TITLE 3. LOCAL TAXATION

SUBTITLE B. SPECIAL PROPERTY TAX PROVISIONS

CHAPTER 311. TAX INCREMENT FINANCING ACT

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Tax Increment Financing Act.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.

Sec. 311.002. DEFINITIONS. In this chapter:

(1) "Project costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality or county establishing a reinvestment zone that are listed in the project plan as costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations. "Project costs" include:

(A) capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition of land and equipment and the clearing and grading of land;

(B) financing costs, including all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity;

(C) real property assembly costs;

(D) professional service costs, including those incurred for architectural, planning, engineering, and legal advice and services;

(E) imputed administrative costs, including reasonable charges for the time spent by employees of the municipality or county in connection with the implementation of a project plan;

(F) relocation costs;

(G) organizational costs, including the costs of conducting environmental impact studies or other studies, the cost of publicizing the creation of the zone, and the cost of implementing the project plan for the zone;

(H) interest before and during construction and for one year after completion of construction, whether or not capitalized;

(I) the cost of operating the reinvestment zone and project facilities;

(J) the amount of any contributions made by the municipality or county from general revenue for the implementation of the project plan; and

(K) payments made at the discretion of the governing body of the municipality or county that the governing body finds necessary or convenient to the creation of the zone or to the implementation of the project plans for the zone.

(2) "Project plan" means the project plan for the development or redevelopment of a reinvestment zone approved under this chapter, including all amendments of the plan approved as provided by this chapter.

(3) "Reinvestment zone financing plan" means the financing plan for a reinvestment zone described by this chapter.

(4) "Taxing unit" has the meaning assigned by Section 1.04.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 1094, Sec. 35, eff. September 1, 2005.

Sec. 311.003. PROCEDURE FOR CREATING REINVESTMENT ZONE. (a) The governing body of a county by order may designate a contiguous geographic area in the county and the governing body of a municipality by ordinance may designate a contiguous or noncontiguous geographic area that is in the corporate limits of the municipality, in the extraterritorial jurisdiction of the municipality, or in both to be a reinvestment zone to promote development or redevelopment of the area if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future. The designation of an area that is wholly or partly located in the extraterritorial jurisdiction of a municipality is not affected by a subsequent annexation of real property in the reinvestment zone by the municipality.

(b) Before adopting an ordinance or order providing for a reinvestment zone, the governing body of the municipality or county must prepare a preliminary reinvestment zone financing plan. As soon as the plan is completed, a copy of the plan must be sent to the governing body of each taxing unit that levies taxes on real property in the proposed zone.

(c) Before adopting an ordinance or order providing for a reinvestment zone, the municipality or county must hold a public hearing on the creation of the zone and its benefits to the municipality or county and to property in the

proposed zone. At the hearing an interested person may speak for or against the creation of the zone, its boundaries, or the concept of tax increment financing. Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality or county.

(d) A municipality or county proposing to designate a reinvestment zone must provide a reasonable opportunity for the owner of property to protest the inclusion of the property in a proposed reinvestment zone.

(e) Not later than the 60th day before the date of the public hearing required by Subsection (c), the governing body of the municipality or county must notify in writing the governing body of each other taxing unit that levies real property taxes in the proposed reinvestment zone that it intends to establish the zone. The notice must contain a description of the proposed boundaries of the zone, the tentative plans for the development or redevelopment of the zone, and an estimate of the general impact of the proposed zone on property values and tax revenues. The notice may be given later than the 60th day before the date of the public hearing if the governing body of each municipality, county, and school district, other than the municipality or county proposing to designate a reinvestment zone, that levies real property taxes in the proposed zone agrees to waive the requirement.

(f) A taxing unit may request additional information from the governing body of the municipality or county proposing to designate a reinvestment zone. The governing body of the municipality or county shall provide the information requested to the extent practicable. In addition to the notice required by Subsection (e), the governing body of the municipality or county proposing to designate a reinvestment zone shall make a formal presentation to the governing body of each municipality, county, or school district, other than the municipality or county proposing to designate the zone, that levies real property taxes in the proposed reinvestment zone. The presentation must include a description of the proposed boundaries of the zone, the tentative plans for the development or redevelopment of the zone, and an estimate of the general impact of the proposed zone on property values and tax revenues. The governing body of the municipality or county shall notify each other taxing unit that levies real property taxes in the proposed zone of each presentation to be made to a municipality, county, or school district under this subsection. Members of the governing body of each taxing unit that levies real property taxes in the proposed zone may attend a presentation under this subsection. If agreed to by the municipalities, county, or school districts involved, the governing body of the municipality or county proposing to designate a reinvestment zone may make a single presentation to more than one

municipal, county, or school district governing body.

(g) Not later than the 15th day after the date on which the notice required by Subsection (e) is given, each taxing unit that levies real property taxes in the proposed reinvestment zone shall designate a representative to meet with the governing body of the municipality or county proposing to designate a reinvestment zone to discuss the project plan and the reinvestment zone financing plan and shall notify the governing body of the municipality or county of its designation. At any time after the 15th day after the date on which the notice required by Subsection (e) has been given to every taxing unit, the governing body of the municipality or county proposing to designate a reinvestment zone may call a meeting of the representatives of the taxing units. The governing body of the municipality or county may call as many meetings as it considers necessary. Each representative shall be notified of each meeting in advance. At the meetings the governing body of the municipality or county and the representatives of the other taxing units may discuss the boundaries of the zone, development in the zone, the tax increment that each taxing unit will contribute to the tax increment fund, the retention by a taxing unit of a portion of its tax increment as permitted by Section 311.013, the exclusion of particular parcels of property from the zone, the board of directors for the zone, and tax collection for the zone. On the motion of the governing body of the municipality or county calling the meeting, any other matter relevant to the proposed reinvestment zone may be discussed.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 16, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 983, Sec. 14, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 36, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 910, Sec. 1, eff. June 19, 2009.

Sec. 311.0031. ENTERPRISE ZONE. Designation of an area under the following other law constitutes designation of the area as a reinvestment zone under this chapter without further hearing or other procedural requirements other than those provided by the other law:

(1) Chapter 2303, Government Code; and

(2) Chapter 373A, Local Government Code.

Added by Acts 1989, 71st Leg., ch. 1106, Sec. 26, eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(22), eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1175, Sec. 16, eff. September 1, 2007.

Sec. 311.004. CONTENTS OF REINVESTMENT ZONE ORDINANCE OR ORDER. (a) The ordinance or order designating an area as a reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) create a board of directors for the zone and specify the number of directors of the board as provided by Section 311.009 or 311.0091, as applicable;

(3) provide that the zone take effect immediately upon passage of the ordinance or order;

(4) provide a date for termination of the zone;

(5) assign a name to the zone for identification, with the first zone created by a municipality or county designated as "Reinvestment Zone Number One, City (or Town, as applicable) of (name of municipality)," or "Reinvestment Zone Number One, (name of county) County," as applicable, and subsequently created zones assigned names in the same form numbered consecutively in the order of their creation;

(6) establish a tax increment fund for the zone; and

(7) contain findings that:

(A) improvements in the zone will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the municipality or county; and

(B) the area meets the requirements of Section 311.005.

(b) For purposes of complying with Subsection (a)(7)(A), the ordinance or order is not required to identify the specific parcels of real property to be enhanced in value.

(c) To designate a reinvestment zone under Section 311.005(a)(4), the governing body of a municipality or county must specify in the ordinance or order that the reinvestment zone is designated under that section.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 17, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 983, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1162, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 36, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.002, eff. September 1, 2007.

Sec. 311.005. CRITERIA FOR REINVESTMENT ZONE. (a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality or county creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title;

(H) conditions that endanger life or property by fire or other cause; or

(I) structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality or county;

(3) be in a federally assisted new community located in the municipality or county or in an area immediately adjacent to a federally assisted new community; or

(4) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

(a-1) Notwithstanding Subsection (a), if the proposed project plan for a potential zone includes the use of land in the zone in connection with the operation of an existing or proposed regional commuter or mass transit rail system, or for a structure or facility that is necessary, useful, or beneficial to such a regional rail system, the governing body of a municipality may designate an area as a reinvestment zone.

(b) In this section, "federally assisted new community" means a federally assisted area that has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act, if a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.05(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1106, Sec. 27, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1137, Sec. 18, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 1094, Sec. 37, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1347, Sec. 1, eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.003, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1361, Sec. 1, eff. June 15, 2007.

Sec. 311.006. RESTRICTIONS ON COMPOSITION OF REINVESTMENT ZONE. (a) A municipality may not create a reinvestment zone if:

(1) more than 10 percent of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes; or

(2) the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds:

(A) 20 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality is the county seat of a county:

(i) that is adjacent to a county with a population of 3.3 million or more; and

(ii) in which a planned community is located that has 20,000 or more acres of land, that was originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.), and that is subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property; or

(B) 15 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if Paragraph (A) does not apply to the municipality.

(b) A municipality may not change the boundaries of an existing reinvestment zone to include property more than 10 percent of which, excluding property dedicated to public use, is used for residential purposes or to include more than 15 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality.

(c) A municipality may not create a reinvestment zone or change the boundaries of an existing reinvestment zone if the proposed zone or proposed boundaries of the zone contain more than 15 percent of the total appraised value of real property taxable by a county or school district.

(d) For purposes of this section, property is used for residential purposes if it is occupied by a house having fewer than five living units, and the appraised value is determined according to the most recent appraisal rolls of the municipality.

(e) Subsection (a)(1) does not apply to a reinvestment zone designated under Section 311.005(a)(4).

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 19, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.004, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 543, Sec. 1, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 910, Sec. 2, eff. June 19, 2009.

Sec. 311.007. CHANGING BOUNDARIES OF EXISTING ZONE. (a) Subject to the limitations provided by Section 311.006, if applicable, the boundaries of an existing reinvestment zone may be reduced or enlarged by ordinance or resolution of the governing body of the municipality or by order or resolution of the governing body of the county that created the zone.

(b) The governing body of the municipality or county may enlarge an existing reinvestment zone to include an area described in a petition requesting that the area be included in the zone if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located. The composition of the board of directors of the zone continues to be governed by Section 311.009(a) or (b), whichever applied to the zone immediately before the enlargement of the zone, except that the membership of the board must conform to the requirements of the applicable subsection of Section 311.009 as applied to the zone after its enlargement. The provision of Section 311.006(b) relating to the amount of property used for residential purposes that may be included in the zone does not apply to the enlargement of a zone under this subsection.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 20, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 38, eff. September 1, 2005.

Sec. 311.008. POWERS OF MUNICIPALITY OR COUNTY. (a) In this section, "educational facility" includes equipment, real property, and other facilities, including a public school building, that are used or intended to be used jointly by the municipality or county and an independent school district.

(b) A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to:

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality or county to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

(4) consistent with the project plan for the zone:

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities; or

(C) in a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality.

(c) The powers authorized by Subsection (b)(2) prevail over any law or municipal charter to the contrary.

(d) A municipality or county may make available to the public on request financial information regarding the acquisition by the municipality or county of land in the zone when the municipality or county acquires the land.

(e) The implementation of a project plan to alleviate a condition described by Section 311.005(a)(1), (2), or (3) and to promote development or redevelopment of a reinvestment zone in accordance with this chapter serves a

public purpose.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 44, Sec. 2, eff. Oct. 20, 1987; Acts 1999, 76th Leg., ch. 1521, Sec. 1, eff. June 19, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1094, Sec. 39, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1094, Sec. 40, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1347, Sec. 2, eff. June 18, 2005.

Sec. 311.0085. POWER OF CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of less than 130,000 as shown by the 2000 federal decennial census that has territory in three counties.

(b) In this section, "educational facility" has the meaning assigned by Section 311.008.

(c) In addition to exercising the powers described by Section 311.008, a municipality may enter into a new agreement, or amend an existing agreement, with a school district that is located in whole or in part in a reinvestment zone created by the municipality to dedicate revenue from the tax increment fund to the school district for acquiring, constructing, or reconstructing an educational facility located in or outside of the zone.

Added by Acts 2001, 77th Leg., ch. 1133, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 38, Sec. 1, eff. May 19, 2009.

Sec. 311.0087. RESTRICTION ON POWERS OF CERTAIN MUNICIPALITIES. (a) This section applies only to a proposed reinvestment zone:

(1) the designation of which is requested in a petition submitted under Section 311.005(a)(4) before July 31, 2004, to the governing body of a home-rule municipality that:

(A) has a population of more than 1.1 million;

(B) is located primarily in a county with a population of 1.5 million or less; and

(C) has created at least 20 reinvestment zones under this chapter; and

(2) that is the subject of a resolution of intent that was adopted before October 31, 2004, by the governing body of the municipality.

(b) If the municipality imposes a fee of more than $25,000 for processing the petition, the municipality may not require a property owner who submitted the petition, as a condition of designating the reinvestment zone or approving

a development agreement, interlocal agreement, or project plan for the proposed reinvestment zone:

(1) to waive any rights of the owner under Chapter 245, Local Government Code, or under any agreed order or settlement agreement to which the municipality is a party;

(2) to dedicate more than 20 percent of the owner's land in the area described in the petition as open-space land; or

(3) to use a nonconventional use pattern for a development to be located within the proposed reinvestment zone.

Added by Acts 2005, 79th Leg., Ch. 1347, Sec. 3, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.005, eff. September 1, 2007.

Sec. 311.009. COMPOSITION OF BOARD OF DIRECTORS. (a) Except as provided by Subsection (b), the board of directors of a reinvestment zone consists of at least five and not more than 15 members, unless more than 15 members are required to satisfy the requirements of this subsection. Each taxing unit other than the municipality or county that created the zone that levies taxes on real property in the zone may appoint one member of the board. A unit may waive its right to appoint a director. The governing body of the municipality or county that created the zone may appoint not more than 10 directors to the board; except that if there are fewer than five directors appointed by taxing units other than the municipality or county, the governing body of the municipality or county may appoint more than 10 members as long as the total membership of the board does not exceed 15.

(b) If the zone was designated under Section 311.005(a)(4), the board of directors of the zone consists of nine members. Each school district, county, or municipality, other than the municipality or county that created the zone, that levies taxes on real property in the zone may appoint one member of the board if the school district, county, or municipality has approved the payment of all or part of the tax increment produced by the unit. The member of the state senate in whose district the zone is located is a member of the board, and the member of the state house of representatives in whose district the zone is located is a member of the board, except that either may designate another individual to serve in the member's place at the pleasure of the member. If the zone is located in more than one senate or house district, this subsection applies only to the senator or representative in whose district a larger portion of the zone is located than any other senate or house district, as applicable. The remaining members of the board are appointed by the governing body of the municipality or county that created the zone.

(c) Members of the board are appointed for terms of two years unless longer terms are provided under Article XI, Section 11, of the Texas Constitution. Terms of members may be staggered.

(d) A vacancy on the board is filled for the unexpired term by appointment of the governing body of the taxing unit that appointed the director who served in the vacant position.

(e) To be eligible for appointment to the board by the governing body of the municipality or county that created the zone, an individual must:

(1) if the board is covered by Subsection (a):

(A) be a qualified voter of the municipality or county, as applicable; or

(B) be at least 18 years of age and own real property in the zone, whether or not the individual resides in the municipality or county; or

(2) if the board is covered by Subsection (b):

(A) be at least 18 years of age; and

(B) own real property in the zone or be an employee or agent of a person that owns real property in the zone.

(f) Each year the governing body of the municipality or county that created the zone shall appoint one member of the board to serve as chairman for a term of one year that begins on January 1 of the following year. The board of directors may elect a vice-chairman to preside in the absence of the chairman or when there is a vacancy in the office of chairman. The board may elect other officers as it considers appropriate.

(g) A member of the board of directors of a reinvestment zone:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 21, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 983, Sec. 2, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 41, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.006, eff. September 1, 2007.

Sec. 311.0091. COMPOSITION OF BOARD OF DIRECTORS OF CERTAIN REINVESTMENT ZONES. (a) This section applies to a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 1.4 million in which the principal municipality has a population of 1.1 million or more.

(b) Except as provided by Subsection (c), the board of directors of a reinvestment zone consists of at least five and not more than 15 members, unless more than 15 members are required to satisfy the requirements of this subsection. Each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. In determining the number of members a taxing unit may appoint to the board, the taxing unit's percentage of anticipated pro rata contributions to the tax increment fund is multiplied by the number of members of the board, and a number containing a fraction that is one-half or greater shall be rounded up to the next whole number. Notwithstanding any other provision of this subsection, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint at least one member of the board, and the municipality that designated the zone is entitled to appoint at least as many members of the board as any other participating taxing unit. A taxing unit may waive its right to appoint a director.

(c) If the zone was designated under Section 311.005(a)(4), the board of directors of the zone consists of nine members, unless a greater number of members is necessary to comply with this subsection. Each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint a number of members to the board in proportion to the taxing unit's pro rata share of the total anticipated tax increment to be deposited into the tax increment fund during the term of the zone. In determining the number of members a taxing unit may appoint to the board, the taxing unit's percentage of anticipated pro rata contributions to the tax increment fund is multiplied by nine, and a number containing a fraction that is one-half or greater shall be rounded up to the next whole number. Notwithstanding any other provision of this subsection, each taxing unit that approves the payment of all or part of its tax increment into the tax increment fund is entitled to appoint at least one member of the board, and the municipality that designated the zone is entitled to appoint at least as many members of the board as any other participating taxing unit. A taxing unit may waive its right to appoint a director. The member of the state senate in whose district the zone is located is a member of the board, and the member of the state house of representatives in whose district the zone is located is a member of the board, except that either may designate another individual to serve in the member's place at the pleasure of the member. If the zone is located in more than one senate or house district, this subsection applies only

to the senator or representative in whose district a larger portion of the zone is located than any other senate or house district, as applicable.

(d) Members of the board are appointed for terms of two years unless longer terms are provided under Section 11, Article XI, Texas Constitution. Terms of members may be staggered.

(e) A vacancy on the board is filled for the unexpired term by appointment of the governing body of the taxing unit that appointed the director who served in the vacant position.

(f) To be eligible for appointment to the board, an individual must:

(1) be a qualified voter of the municipality; or

(2) be at least 18 years of age and own real property in the zone or be an employee or agent of a person that owns real property in the zone.

(g) Each year the board of directors of a reinvestment zone shall elect one of its members to serve as presiding officer for a term of one year. The board of directors may elect an assistant presiding officer to preside in the absence of the presiding officer or when there is a vacancy in the office of presiding officer. The board may elect other officers as it considers appropriate.

(h) A member of the board of directors of a reinvestment zone:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1162, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.007, eff. September 1, 2007.

Sec. 311.010. POWERS AND DUTIES OF BOARD OF DIRECTORS. (a) The board of directors of a reinvestment zone shall make recommendations to the governing body of the municipality or county that created the zone concerning the administration of this chapter in the zone. The governing body of the municipality by ordinance or resolution or the county by order or resolution may authorize the board to exercise any of the municipality's or county's powers with respect to the administration, management, or operation of the zone or the implementation of the project plan for the zone, except that the governing body may not authorize the board to:

(1) issue bonds;

(2) impose taxes or fees;

(3) exercise the power of eminent domain; or

(4) give final approval to the project plan.

(b) The board of directors of a reinvestment zone and the governing body of the municipality or county that creates a reinvestment zone may each enter into agreements as the board or the governing body considers necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes. An agreement may provide for the regulation or restriction of the use of land by imposing conditions, restrictions, or covenants that run with the land. An agreement may during the term of the agreement dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay any project costs that benefit the reinvestment zone, including project costs relating to the cost of buildings, schools, or other educational facilities owned by or on behalf of a school district, community college district, or other political subdivision of this state, railroad or transit facilities, affordable housing, the remediation of conditions that contaminate public or private land or buildings, the preservation of the facade of a private or public building, the demolition of public or private buildings, or the construction of a road, sidewalk, or other public infrastructure in or out of the zone, including the cost of acquiring the real property necessary for the construction of the road, sidewalk, or other public infrastructure. An agreement may dedicate revenue from the tax increment fund to pay the costs of providing affordable housing or areas of public assembly in or out of the zone.

(c) Subject to the approval of the governing body of the municipality that created the zone, the board of a zone designated by the governing body of a municipality under Section 311.005(a)(4) may exercise the power granted by Chapter 211, Local Government Code, to the governing body of the municipality that created the zone to restrict the use or uses of property in the zone. The board may provide that a restriction adopted by the board continues in effect after the termination of the zone. In that event, after termination of the zone the restriction is treated as if it had been adopted by the governing body of the municipality.

(d) The board of directors of a reinvestment zone may exercise any power granted to a municipality or county by Section 311.008, except that:

(1) the municipality or county that created the reinvestment zone by ordinance, resolution, or order may restrict any power granted to the board by this chapter; and

(2) the board may exercise a power granted to a municipality or county under Section 311.008(b)(2) only with the consent of the governing body of the municipality or county.

(e) After the governing body of a municipality by ordinance or the governing body of a county by order creates a reinvestment zone under this chapter, the board of directors of the zone may exercise any power granted to a

board under this chapter.

(f) The board of directors of a reinvestment zone and the governing body of the municipality or county that created the zone may enter into a contract with a local government corporation or a political subdivision to manage the reinvestment zone or implement the project plan and reinvestment zone financing plan for the term of the agreement. In this subsection, "local government corporation" means a local government corporation created by the municipality or county under Chapter 431, Transportation Code.

(g) Chapter 252, Local Government Code, does not apply to a dedication, pledge, or other use of revenue in the tax increment fund for a reinvestment zone by the board of directors of the zone in carrying out its powers under Subsection (b).

(h) Subject to the approval of the governing body of the municipality that created the zone, the board of directors of a reinvestment zone, as necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code.

(i) The board of directors of a reinvestment zone or a local government corporation administering a reinvestment zone may contract with the municipality that created the zone to allocate from the tax increment fund for the zone an amount equal to the tax increment produced by the municipality and paid into the tax increment fund for the zone to pay the incremental costs of providing municipal services incurred as a result of the creation of the zone or the development or redevelopment of the land in the zone, regardless of whether the costs of those services are identified in the project plan or reinvestment zone financing plan for the zone.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 22, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 2nd C.S., ch. 11, Sec. 58, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(23), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch.

983, Sec. 3, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 42, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1347, Sec. 4, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.008, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1358, Sec. 1, eff. June 19, 2009.

Sec. 311.01005. COSTS ASSOCIATED WITH TRANSPORTATION OR TRANSIT PROJECTS. (a) In this section:

(1) "Bus rapid transit project" means a mass transportation facility designed to give preferential treatment to buses on a roadway in order to reduce bus travel time, improve service reliability, increase the convenience of users, and increase bus ridership, including:

(A) a fixed guideway, high occupancy vehicle lane, bus way, or bus lane;

(B) a transit center or station;

(C) a maintenance facility; and

(D) other real property associated with a bus rapid transit operation.

(2) "Rail transportation project" means a passenger rail facility, including:

(A) tracks;

(B) a rail line;

(C) a depot;

(D) a maintenance facility; and

(E) other real property associated with a passenger rail operation.

(b) This section does not affect the power of the board of directors of a reinvestment zone or the governing body of the municipality that creates a reinvestment zone to enter into an agreement under Section 311.010(b) to dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay the costs of acquiring, constructing, operating, or maintaining property located in the zone or to acquire or reimburse acquisition costs of real property outside the zone for right-of-way or easements necessary to construct public rights-of-way or infrastructure that benefits the zone.

(c) An agreement under Section 311.010(b) may dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay the costs of acquiring land, or the development rights or a conservation easement in land, located outside the reinvestment zone, if:

(1) the zone is or will be served by a rail transportation project or

bus rapid transit project;

(2) the land or the development rights or conservation easement in the land is acquired for the purpose of preserving the land in its natural or undeveloped condition; and

(3) the land is located in the county in which the zone is located.

(d) The board of directors of a reinvestment zone, if all of the members of the board are appointed by the municipality that creates the zone, or the governing body of the municipality that creates a reinvestment zone may enter into an agreement described by Subsection (c) only if:

(1) the board or the governing body determines that the acquisition of the land, or the development rights or conservation easement in the land, located outside the zone benefits or will benefit the zone by facilitating the preservation of regional open space in order to balance the regional effects of urban development promoted by the rail transportation project or bus rapid transit project; and

(2) the municipality that creates the reinvestment zone and the county in which the zone is located pay the same portion of their tax increment into the tax increment fund for the zone.

(e) Property acquired under Subsection (c) may not be acquired through condemnation.

Added by Acts 2005, 79th Leg., Ch. 1134, Sec. 1, eff. June 18, 2005.

Sec. 311.0101. PARTICIPATION OF DISADVANTAGED BUSINESSES IN CERTAIN ZONES. (a) It is the goal of the legislature, subject to the constitutional requirements spelled out by the United States Supreme Court in J. A. Croson Company v. City of Richmond (822 F.2d 1355) and as hereafter further elaborated by federal and state courts, that all disadvantaged businesses in the zone designated under Section 311.005(a)(4) be given full and complete access to the procurement process whereby supplies, materials, services, and equipment are acquired by the board. It is also the intent of the legislature that to the extent constitutionally permissible, a preference be given to disadvantaged businesses. The board and general contractor shall give preference, among bids or other proposals that are otherwise comparable, to a bid or other proposal by a disadvantaged business having its home office located in this state.

(b) It is the intent of the legislature that the zone shall:

(1) implement a program or programs targeted to disadvantaged businesses in order to inform them fully about the zone procurement process and the requirements for their participation in that process;

(2) implement such steps as are necessary to ensure that all disadvantaged businesses are made fully aware of opportunities in the zone,

including but not limited to specific opportunities to submit bids and proposals. Steps that may be appropriate in certain circumstances include mailing requests for proposals or notices inviting bids to all disadvantaged businesses in the county;

(3) require prime contractors, as part of their responses to requests for proposals or bids, to make a specific showing of how they intend to maximize participation by disadvantaged businesses as subcontractors. The zone shall be required to evaluate such actions by prime contractors as a factor in the award of contracts within the zone procurement process;

(4) identify disadvantaged businesses in the county that provide or have the potential to provide supplies, materials, services, and equipment to the zone; and

(5) identify barriers to participation by disadvantaged businesses in the zone procurement process, such as bonding, insurance, and working capital requirements that may be imposed on businesses.

(c) It is the intent of the legislature that the zone shall be required to develop a program pursuant to this Act for the purchase of supplies, materials, services, and equipment and that the board of the zone compile a report on an annual basis listing the total number and dollar amount of contracts awarded to disadvantaged businesses during the previous year as well as the total number and dollar amount of all contracts awarded. Such annual report shall be available for inspection by the general public during regular business hours.

(d) The board by rule shall adopt goals for the participation of minority business enterprises and women-owned business enterprises in the awarding of state contracts for professional services. To implement the participation goals, the board shall encourage each issuer to award to minority business enterprises and women-owned business enterprises not less than 15 percent of the total value of all professional services contract awards that the issuer expects to make in its fiscal year.

Added by Acts 1989, 71st Leg., ch. 1137, Sec. 23, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.009, eff. September 1, 2007.

Sec. 311.011. PROJECT AND FINANCING PLANS. (a) The board of directors of a reinvestment zone shall prepare and adopt a project plan and a reinvestment zone financing plan for the zone and submit the plans to the governing body of the municipality or county that created the zone. The plans must be as consistent as possible with the preliminary plans developed for the zone before the creation of the board.

(b) The project plan must include:

(1) a map showing existing uses and conditions of real property in the zone and a map showing proposed improvements to and proposed uses of that property;

(2) proposed changes of zoning ordinances, the master plan of the municipality, building codes, other municipal ordinances, and subdivision rules and regulations, if any, of the county, if applicable;

(3) a list of estimated nonproject costs; and

(4) a statement of a method of relocating persons to be displaced as a result of implementing the plan.

(c) The reinvestment zone financing plan must include:

(1) a detailed list describing the estimated project costs of the zone, including administrative expenses;

(2) a statement listing the kind, number, and location of all proposed public works or public improvements in the zone;

(3) an economic feasibility study;

(4) the estimated amount of bonded indebtedness to be incurred;

(5) the time when related costs or monetary obligations are to be incurred;

(6) a description of the methods of financing all estimated project costs and the expected sources of revenue to finance or pay project costs, including the percentage of tax increment to be derived from the property taxes of each taxing unit that levies taxes on real property in the zone;

(7) the current total appraised value of taxable real property in the zone;

(8) the estimated captured appraised value of the zone during each year of its existence; and

(9) the duration of the zone.

(d) The governing body of the municipality or county that created the zone must approve a project plan or reinvestment zone financing plan after its adoption by the board. The approval must be by ordinance, in the case of a municipality, or by order, in the case of a county, that finds that the plan is feasible and conforms to the master plan, if any, of the municipality or to subdivision rules and regulations, if any, of the county.

(e) The board of directors of the zone at any time may adopt an amendment to the project plan consistent with the requirements and limitations of this chapter. The amendment takes effect on approval by the governing body of the municipality or county that created the zone. That approval must be by ordinance, in the case of a municipality, or by order, in the case of a county. If an amendment reduces or increases the geographic area of the zone,

increases the amount of bonded indebtedness to be incurred, increases or decreases the percentage of a tax increment to be contributed by a taxing unit, increases the total estimated project costs, or designates additional property in the zone to be acquired by the municipality or county, the approval must be by ordinance or order, as applicable, adopted after a public hearing that satisfies the procedural requirements of Sections 311.003(c) and (d).

(f) In a zone designated under Section 311.005(a)(4) that is located in a county with a population of 3.3 million or more, the project plan must provide that at least one-third of the tax increment of the zone be used to provide affordable housing during the term of the zone.

(g) An amendment to the project plan or the reinvestment zone financing plan for a zone does not apply to a school district that participates in the zone unless the governing body of the school district by official action approves the amendment, if the amendment:

(1) has the effect of directly or indirectly increasing the percentage or amount of the tax increment to be contributed by the school district; or

(2) requires or authorizes the municipality or county creating the zone to issue additional tax increment bonds or notes.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 24, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 983, Sec. 4, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 120, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 43, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 14.010, eff. September 1, 2007.

Sec. 311.012. DETERMINATION OF AMOUNT OF TAX INCREMENT. (a) The amount of a taxing unit's tax increment for a year is the amount of property taxes levied and assessed by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone or the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone. The governing body of a taxing unit shall determine which of the methods specified by this subsection is used to calculate the amount of the unit's tax increment.

(b) The captured appraised value of real property taxable by a taxing unit for a year is the total appraised value of all real property taxable by the unit and located in a reinvestment zone for that year less the tax increment base of the unit.

(c) The tax increment base of a taxing unit is the total appraised value of all real property taxable by the unit and located in a reinvestment zone for the year in which the zone was designated under this chapter.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 983, Sec. 5, eff. June 18, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 910, Sec. 3, eff. June 19, 2009.

Sec. 311.0123. SALES TAX INCREMENT. (a) In this section, "sales tax base" for a reinvestment zone means the amount of municipal sales and use taxes attributable to the zone for the year in which the zone was designated under this chapter.

(b) The governing body of a municipality may determine, in an ordinance designating an area as a reinvestment zone or in an ordinance adopted subsequent to the designation of a zone, the portion or amount of tax increment generated from municipal sales and use taxes attributable to the zone, above the sales tax base, to be deposited into the tax increment fund. Nothing in this section requires a municipality to contribute sales tax increment into a tax increment fund.

(c) Before the issuance of a bond, note, or other obligation under this chapter that pledges the payments into the tax increment fund under Subsection (b), the governing body of a municipality may enter into an agreement, under Subchapter E, Chapter 271, Local Government Code, to authorize and direct the comptroller to:

(1) withhold from any payment to which the municipality may be entitled the amount of the payment into the tax increment fund under Subsection (b);

(2) deposit that amount into the tax increment fund; and

(3) continue withholding and making additional payments into the tax increment fund until an amount sufficient to satisfy the amount due has been met.

(d) A local government corporation created under Chapter 431, Transportation Code, that has contracted with a reinvestment zone and a municipality under Section 311.010(f) may be a party to an agreement under Subsection (c) and the agreement may provide for payments to be made to a paying agent of the local government corporation.

(e) The sales and use taxes to be deposited into the tax increment fund under this section may be disbursed from the fund only to:

(1) satisfy claims of holders of tax increment bonds, notes, or other obligations issued or incurred for the reinvestment zone;

(2) pay project costs for the zone; and

(3) make payments in accordance with an agreement made under Section 311.010(b) dedicating revenue from the tax increment fund.

Added by Acts 2005, 79th Leg., Ch. 114, Sec. 1, eff. May 20, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 189, Sec. 1, eff. May 23, 2007.

Sec. 311.0125. TAX ABATEMENT AGREEMENTS. (a) Notwithstanding any provision in this chapter to the contrary, a taxing unit other than a school district may enter into a tax abatement agreement with an owner of real or personal property in a reinvestment zone, regardless of whether the taxing unit deposits or agrees to deposit any portion of its tax increment into the tax increment fund.

(b) To be effective, an agreement to abate taxes on real property in a reinvestment zone must be approved by:

(1) the board of directors of the reinvestment zone; and

(2) the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone.

(c) In any contract entered into by the board of directors of a reinvestment zone in connection with bonds or other obligations, the board may convenant that the board will not approve a tax abatement agreement that applies to real property in that zone.

(d) If a taxing unit enters into a tax abatement agreement authorized by this section, taxes that are abated under that agreement are not considered taxes to be imposed or produced by that taxing unit in calculating the amount of:

(1) the tax increment of that taxing unit; or

(2) that taxing unit's deposit to the tax increment fund for the reinvestment zone.

(e) The Texas Department of Economic Development or its successor may recommend that a taxing unit enter into a tax abatement agreement with a person under this chapter. In determining whether to approve an agreement to abate taxes on real property in a reinvestment zone under Subsection (b), the board of directors of the reinvestment zone and the governing body of a taxing unit shall consider any recommendation made by the Texas Department of Economic Development or its successor.

Added by Acts 1999, 76th Leg., ch. 983, Sec. 6, eff. June 18, 1999. Amended by Acts 2003, 78th Leg., ch. 978, Sec. 4, eff. Sept. 1, 2003.

Sec. 311.013. COLLECTION AND DEPOSIT OF TAX INCREMENTS. (a) Each taxing unit that taxes real property located in a reinvestment zone shall provide for the collection of its taxes in the zone as for any other property taxed by the unit.

(b) Each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit, less the sum of:

(1) property taxes produced from the tax increments that are, by contract executed before the designation of the area as a reinvestment zone, required to be paid by the unit to another political subdivision; and

(2) for a taxing unit other than the municipality that created the zone, a portion, not to exceed 15 percent, of the tax increment produced by the unit as provided by the reinvestment zone financing plan or a larger portion as provided by Subsection (f).

(c) Notwithstanding any termination of the reinvestment zone under Section 311.017(a), a taxing unit shall make a payment required by Subsection (b) not later than the 90th day after the delinquency date for the unit's property taxes. A delinquent payment incurs a penalty of five percent of the amount delinquent and accrues interest at an annual rate of 10 percent.

(d) If the reinvestment zone is created on or after August 29, 1983, a taxing unit is not required to pay a tax increment into the tax increment fund of the zone after three years from the date the zone is created unless the following conditions exist or have been met within the three-year period:

(1) bonds have been issued for the zone under Section 311.015;

(2) the municipality or county that created the zone has acquired property in the zone pursuant to the project plan; or

(3) construction of improvements pursuant to the project plan has begun in the zone.

(e) If the reinvestment zone was created before August 29, 1983, a taxing unit is not required to pay a tax increment into the tax increment fund of the zone after September 1, 1986, unless the following conditions existed or were met before September 1, 1986:

(1) bonds were issued for the zone under Section 311.015;

(2) the municipality acquired property in the zone pursuant to the project plan; or

(3) construction of improvements pursuant to the project plan has begun in the zone.

(f) A taxing unit is not required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone designated under Section 311.005(a) or in an area added to a reinvestment zone under Section 311.007 unless the taxing unit enters into an agreement to do so

with the governing body of the municipality or county that created the zone. A taxing unit may enter into an agreement under this subsection at any time before or after the zone is created or enlarged. The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that tax increment is to be paid into the fund. The agreement and the conditions in the agreement are binding on the taxing unit, the municipality or county, and the board of directors of the zone.

(g) Subject to the provisions of Section 311.0125, in lieu of permitting a portion of its tax increment to be paid into the tax increment fund, and notwithstanding the provisions of Section 312.203, a taxing unit, including a municipality, may elect to offer the owners of taxable real property in a reinvestment zone created under this chapter an exemption from taxation of all or part of the value of the property. To be effective, an agreement to exempt real property from ad valorem taxes under this subsection must be approved by:

(1) the board of directors of the reinvestment zone; and

(2) the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone.

(h) Repealed by Acts 2003, 78th Leg., ch. 8, Sec. 1, eff. April 24, 2003.

(i) Notwithstanding Subsection (c) and Section 311.012(a), a taxing unit is not required to pay into a tax increment fund the applicable portion of a tax increment attributable to delinquent taxes until those taxes are collected.

(j) Section 26.05(f) does not prohibit a taxing unit from depositing all of the tax increment produced by the taxing unit in a reinvestment zone into the tax increment fund for that zone.

(k) A school district is not required to pay into the tax increment fund any of its tax increment produced from property located in an area added to the reinvestment zone under Section 311.007(a) or (b) unless the governing body of the school district enters into an agreement to do so with the governing body of the municipality or county that created the zone. The governing body of a school district may enter into an agreement under this subsection at any time before or after the zone is created or enlarged. The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that tax increment is to be paid into the fund. The agreement and the conditions in the agreement are binding on the school district, the municipality or county, and the board of directors of the zone.

(l) The governing body of a municipality that designates an area as a reinvestment zone may determine, in the designating ordinance adopted under

Section 311.003 or in the ordinance adopted under Section 311.011 approving the reinvestment zone financing plan for the zone, the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. If a municipality does not determine the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, the municipality is required to pay into the fund for the zone the entire tax increment produced by the municipality, except as provided by Subsection (b)(1).

(m) The governing body of a municipality that is located in a county with a population of more than 1.4 million but less than 2.1 million or in a county with a population of 3.3 million or more by ordinance may reduce the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. The municipality may not reduce under this subsection the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone unless the municipality provides each county that has entered into an agreement with the municipality to pay all or a portion of the county's tax increment into the fund an opportunity to enter into an agreement with the municipality to reduce the portion of the tax increment produced by the county that the county is required to pay into the tax increment fund for the zone by the same proportion that the portion of the municipality's tax increment that the municipality is required to pay into the fund is reduced. The portion of the tax increment produced by a municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, as reduced by the ordinance adopted under this subsection, together with all other revenues required to be paid into the fund, must be sufficient to complete and pay for the estimated costs of projects listed in the reinvestment zone financing plan and pay any tax increment bonds or notes issued for the zone, and any other obligations of the zone.

(n) This subsection applies only to a school district whose taxable value computed under Section 403.302(d), Government Code, is reduced in accordance with Subdivision (4) of that subsection. In addition to the amount otherwise required to be paid into the tax increment fund, the district shall pay into the fund an amount equal to the amount by which the amount of taxes the district would have been required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1137, Sec. 25, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 17.06, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 112, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 983, Sec. 7, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 8, Sec. 1, eff. April 24, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 44, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1347, Sec. 5, eff. June 18, 2005.
Acts 2006, 79th Leg., 3rd C.S., Ch. 5, Sec. 1.16, eff. May 31, 2006.
Acts 2009, 81st Leg., R.S., Ch. 910, Sec. 4, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1328, Sec. 89, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1358, Sec. 2, eff. June 19, 2009.

Sec. 311.014. TAX INCREMENT FUND. (a) In addition to the deposits required by Section 311.013, all revenues from the sale of tax increment bonds or notes, revenues from the sale of any property acquired as part of the tax increment financing plan, and other revenues to be used in the reinvestment zone shall be deposited in the tax increment fund for the zone.

(b) Money may be disbursed from the fund only to satisfy claims of holders of tax increment bonds or notes issued for the zone, to pay project costs for the zone, to make payments pursuant to an agreement made under Section 311.010(b) dedicating revenue from the tax increment fund, or to repay other obligations incurred for the zone.

(c) Subject to an agreement with the holders of tax increment bonds or notes, money in a tax increment fund may be temporarily invested in the same manner as other funds of the municipality or county that created the zone.

(d) After all project costs, all tax increment bonds or notes issued for a reinvestment zone, and any other obligations incurred for the zone have been paid, and subject to any agreement with bondholders, any money remaining in the tax increment fund shall be paid to the municipality or county that created the zone and other taxing units levying taxes on property in the zone in proportion to the municipality's or county's and each other unit's respective share of the total amount of tax increments derived from taxable real property in the zone that were deposited in the fund during the fund's existence.

(e) A taxing unit that levies taxes on real property in a reinvestment zone may make a loan to the board of directors of the zone for deposit in the tax increment fund for the zone if the governing body of the taxing unit determines that the loan is beneficial to, and serves a public purpose of, the taxing unit. The loan is payable on the terms agreed to by the taxing unit, or an instrumentality of the taxing unit if applicable, and the board of directors of the zone. A loan under this subsection:

(1) is not considered to be a tax increment bond or note under Section 311.015; and

(2) is considered to be:

(A) an authorized investment under Chapter 2256, Government Code; and

(B) an obligation incurred for the zone.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1137, Sec. 26, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 1094, Sec. 45, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 189, Sec. 2, eff. May 23, 2007.

Sec. 311.015. TAX INCREMENT BONDS AND NOTES. (a) A municipality creating a reinvestment zone may issue tax increment bonds or notes, the proceeds of which may be used to pay project costs for the reinvestment zone on behalf of which the bonds or notes were issued or to satisfy claims of holders of the bonds or notes. The municipality may issue refunding bonds or notes for the payment or retirement of tax increment bonds or notes previously issued by it.

(b) Tax increment bonds and notes are payable, as to both principal and interest, solely from the tax increment fund established for the reinvestment zone. The governing body of the municipality may pledge irrevocably all or part of the fund for payment of tax increment bonds or notes. The part of the fund pledged in payment may be used only for the payment of the bonds or notes or interest on the bonds or notes until the bonds or notes have been fully paid. A holder of the bonds or notes or of coupons issued on the bonds has a lien against the fund for payment of the bonds or notes and interest on the bonds or notes and may protect or enforce the lien at law or in equity.

(c) Tax increment bonds are issued by ordinance of the municipality without any additional approval other than that of the attorney general.

(d) Tax increment bonds or notes, together with the interest on and income from those bonds or notes, are exempt from all taxes.

(e) The issuing municipality may provide in the contract with the owners or holders of tax increment bonds that it will pay into the tax increment fund all or any part of the revenue produced or received from the operation or sale of a facility acquired, improved, or constructed pursuant to a project plan, to be used to pay principal and interest on the bonds. If the municipality agrees, the owners or holders of tax increment bonds may have a lien or mortgage on a facility acquired, improved, or constructed with the proceeds of the bonds.

(f) Tax increment bonds may be issued in one or more series. The ordinance approving a tax increment bond or note, or the trust indenture or mortgage issued in connection with the bond or note, shall provide:

(1) the date that the bond or note bears;

(2) that the bond or note is payable on demand or at a specified time;

(3) the interest rate that the bond or note bears;

(4) the denomination of the bond or note;

(5) whether the bond or note is in coupon or registered form;

(6) the conversion or registration privileges of the bond or note;

(7) the rank or priority of the bond or note;

(8) the manner of execution of the bond or note;

(9) the medium of payment in which and the place or places at which the bond or note is payable;

(10) the terms of redemption, with or without premium, to which the bond or note is subject;

(11) the manner in which the bond or note is secured; and

(12) any other characteristic of the bond or note.

(g) A bond or note issued under this chapter is fully negotiable. In a suit, action, or other proceeding involving the validity or enforceability of a bond or note issued under this chapter or the security of a bond or note issued under this chapter, if the bond or note recites in substance that it was issued by the municipality for a reinvestment zone, the bond or note is conclusively deemed to have been issued for that purpose, and the development or redevelopment of the zone is conclusively deemed to have been planned, located, and carried out as provided by this chapter.

(h) A bank, trust company, savings bank or institution, savings and loan association, investment company or other person carrying on a banking or investment business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, curator, trustee, or other fiduciary may invest any sinking funds, money, or other funds belonging to it or in its control in tax increment bonds or notes issued under this chapter. Tax increment bonds or notes are authorized security for all public deposits. A person, political subdivision, or public or private officer may use funds owned or controlled by the person, political subdivision, or officer to purchase tax increment bonds or notes. This chapter does not relieve any person of the duty to exercise reasonable care in selecting securities.

(i) A tax increment bond or note is not a general obligation of the municipality issuing the bond or note. A tax increment bond or note does not

give rise to a charge against the general credit or taxing powers of the municipality and is not payable except as provided by this chapter. A tax increment bond or note issued under this chapter must state the restrictions of this subsection on its face.

(i-1) A municipality's obligation to deposit sales and use taxes into the tax increment fund is not a general obligation of the municipality. An obligation to make payments from sales and use taxes under Section 311.0123 does not give rise to a charge against the general credit or taxing powers of the municipality and is not payable except as provided by this chapter. A tax increment bond or note issued under this chapter that pledges payments made under Section 311.0123 must state the restrictions of this subsection on its face.

(j) A tax increment bond or note may not be included in any computation of the debt of the issuing municipality.

(k) A municipality may not issue tax increment bonds or notes in an amount that exceeds the total cost of implementing the project plan for the reinvestment zone for which the bonds or notes are issued.

(l) A tax increment bond or note must mature within 20 years of the date of issue.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 114, Sec. 2, eff. May 20, 2005.

Sec. 311.016. ANNUAL REPORT BY MUNICIPALITY OR COUNTY. (a) On or before the 90th day following the end of the fiscal year of the municipality or county, the governing body of a municipality or county shall submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone created by the municipality or county a report on the status of the zone. The report must include:

(1) the amount and source of revenue in the tax increment fund established for the zone;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on outstanding bonded indebtedness;

(4) the tax increment base and current captured appraised value retained by the zone; and

(5) the captured appraised value shared by the municipality or county and other taxing units, the total amount of tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body of the municipality or

county.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 977, Sec. 2

(b) The municipality shall send a copy of a report made under this section to the comptroller.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 1094, Sec. 46

(b) The municipality or county shall send a copy of a report made under this section to:

(1) the attorney general; and

(2) the comptroller.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 14.06(a), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 471, Sec. 1, eff. June 11, 2001; Acts 2001, 77th Leg., ch. 471, Sec. 2, eff. June 11, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 977, Sec. 2, eff. June 18, 2005.
Acts 2005, 79th Leg., Ch. 1094, Sec. 46, eff. September 1, 2005.

Sec. 311.0163. ANNUAL REPORT BY COMPTROLLER. (a) Not later than December 31 of each even-numbered year, the comptroller shall submit a report to the legislature and to the governor on reinvestment zones designated under this chapter and on project plans and reinvestment zone financing plans adopted under this chapter.

(b) A report submitted under this section must include, for each reinvestment zone designated under this chapter, a summary of the information reported under Section 311.016.

Added by Acts 2001, 77th Leg., ch. 471, Sec. 3, eff. June 11, 2001.

Sec. 311.017. TERMINATION OF REINVESTMENT ZONE. (a) A reinvestment zone terminates on the earlier of:

(1) the termination date designated in the ordinance or order, as applicable, creating the zone or an earlier or later termination date designated by an ordinance or order adopted subsequent to the ordinance or order creating the zone; or

(2) the date on which all project costs, tax increment bonds and

interest on those bonds, and other obligations have been paid in full.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 137, Sec. 1

(a-1) This subsection applies only to a reinvestment zone created by a municipality that has a population of 195,000 or more and is the county seat of a county that has a population of 245,000 or less. Notwithstanding Subsection (a)(1), a municipality by ordinance adopted subsequent to the ordinance adopted by the municipality creating a reinvestment zone may designate a termination date for the zone that is later than the termination date designated in the ordinance creating the zone but not later than the 20th anniversary of that date. If a municipality adopts an ordinance extending the termination date for a reinvestment zone as authorized by this subsection, the zone terminates on the earlier of:

(1) the termination date designated in the ordinance; or

(2) the date provided by Subsection (a)(2).

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 910, Sec. 5

(a-1) Notwithstanding the designation of a later termination date under Subsection (a), a taxing unit that taxes real property located in the reinvestment zone, other than the municipality or county that created the zone, is not required to pay any of its tax increment into the tax increment fund for the zone after the termination date designated in the ordinance or order creating the zone unless the governing body of the taxing unit enters into an agreement to do so with the governing body of the municipality or county that created the zone.

(b) The tax increment pledged to the payment of bonds and interest on the bonds and to the payment of any other obligations may be discharged and the reinvestment zone may be terminated if the municipality or county that created the zone deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in an amount that, together with the interest on the investment of the funds in direct obligations of the United States, will be sufficient to pay the principal of, premium, if any, and interest on all bonds issued on behalf of the reinvestment zone at maturity or at the date fixed for redemption of the bonds, and to pay any other amounts that may become due, including compensation due or to become due to the trustee or escrow agent, as well as to pay the principal of and interest on any other obligations incurred on behalf of the zone.

Added by Acts 1987, 70th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 1094, Sec. 46, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 189, Sec. 3, eff. May 23, 2007.
Acts 2009, 81st Leg., R.S., Ch. 137, Sec. 1, eff. May 23, 2009.
Acts 2009, 81st Leg., R.S., Ch. 910, Sec. 5, eff. June 19, 2009.

Sec. 311.018. CONFLICTS WITH MUNICIPAL CHARTER. To the extent of a conflict between this chapter and a municipal charter, this chapter controls.

Added by Acts 1999, 76th Leg., ch. 983, Sec. 8, eff. June 18, 1999.

Sec. 311.019. CENTRAL REGISTRY. (a) The comptroller shall maintain a central registry of:

(1) reinvestment zones designated under this chapter;

(2) project plans and reinvestment zone financing plans adopted under this chapter; and

(3) annual reports submitted under Section 311.016.

(b) A municipality or county that designates a reinvestment zone or approves a project plan or reinvestment zone financing plan under this chapter shall deliver to the comptroller before April 1 of the year following the year in which the zone is designated or the plan is approved a report containing:

(1) a general description of each zone, including:

(A) the size of the zone;

(B) the types of property located in the zone;

(C) the duration of the zone; and

(D) the guidelines and criteria established for the zone under Section 311.005;

(2) a copy of each project plan or reinvestment zone financing plan adopted; and

(3) any other information required by the comptroller to administer this section and Subchapter F, Chapter 111.

(c) A municipality or county that amends or modifies a project plan or reinvestment zone financing plan adopted under this chapter shall deliver a copy of the amendment or modification to the comptroller before April 1 of the year following the year in which the plan was amended or modified.

Added by Acts 2001, 77th Leg., ch. 471, Sec. 4, eff. June 11, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1094, Sec. 47, eff. September 1, 2005.

Sec. 311.020. STATE ASSISTANCE. (a) On request of the governing body of a municipality or county or of the presiding officer of the governing body, the comptroller may provide assistance to a municipality or county relating to the administration of this chapter.

(b) The Texas Department of Economic Development and the comptroller may provide technical assistance to a municipality or county regarding:

(1) the designation of reinvestment zones under this chapter; and

(2) the adoption and execution of project plans or reinvestment zone financing plans under this chapter.

Added by Acts 2001, 77th Leg., ch. 471, Sec. 4, eff. June 11, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1094, Sec. 48, eff. September 1, 2005.

ATTACHMENT D

INTERLOCAL AGREEMENT
TEXAS STATE RAILROAD OPERATING AGENCY

STATE OF TEXAS	§
	§
COUNTIES OF ANDERSON	§
AND CHEROKEE	§

This Interlocal Agreement ("Agreement") is entered into between the City of Palestine, Texas ("Palestine"), and the City of Rusk ("Rusk").

W I T N E S S E T H

WHEREAS, the Texas State Railroad is an extraordinarily valuable and unique cultural, historical, economic, recreational, and civic asset; and

WHEREAS, the State of Texas has announced that it will no longer fund the Texas State Railroad as an operating entity within the state park system; and

WHEREAS, Rusk and Palestine (collectively, the "Cities") have demonstrated their intense and lasting commitment to maintaining and improving the Texas State Railroad as a functioning historical and cultural resource in Cherokee and Anderson Counties; and,

WHEREAS, in order to accomplish these shared goals, it is efficient to have a single entity, controlled by both Cities equally, to take the necessary actions to make possible the continued operations of the Texas State Railroad;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, the Cities mutually agree, as follows:

PURPOSE

It is the purpose of the Cities to create an administrative agency, as permitted by Section 791.013 of the Texas Government Code, which will be empowered to provide those functions that the Cities could individually provide. The agency will be empowered to take any necessary action determined by the Board to be appropriate for the long-term success and preservation of the Texas State Railroad as an operating entity. The purpose of this Agreement, therefore, is not to define the ultimate details of the plans to continue railroad operations, but to put in place the structure that will be sufficiently flexible to devise and implement such plans. It is also the purpose of the Cities to facilitate, if possible, the transition of the Texas State Railroad from a state-owned and –controlled operation to a locally-owned and –controlled operation, and the Cities envision that the Texas Legislature will, in the 2007 legislative session, take such necessary and appropriate action to create a permanent structure for fulfilling this purpose. However, the Cities agree that if the Legislature takes no such action, the Cities will nevertheless endeavor to take all appropriate steps to make the long-term successful operation of the Texas State Railroad a possibility.

TERMS, RIGHTS AND DUTIES

PART I – CREATION OF AN ADMINISTRATIVE AGENCY

1.1 The Cities hereby create the Texas State Railroad Operating Agency (the "Agency").

1.2 Powers of the Agency. The powers of the Agency include, but are not limited to:

1.2.1 The power to contract with other entities to provide any or all of the services that the Texas State Railroad now offers or may offer in the future.

1.2.1.1 The power to contract with a third party to operate the concessions, operate the rail equipment, provide maintenance to the facilities or equipment, provide entertainment or performances in conjunction with special events, use the facilities and equipment for filming or photography, or perform any other function of the railroad.

1.2.1.2 The contracting powers set forth in Paragraph 1.2.1.1 are intended as examples of permissible contracts, and are not to be interpreted as an exclusive list.

1.2.2 The power to lease or sell the real or personal property controlled by the Agency in furtherance of the purposes set forth in Part II.

1.2.2.1 Subject to Paragraph 1.2.2.2, if title to real property held by the Agency is in the name of a City, the Agency may not sell the property or lease the property for a term of greater than one year without the express consent of the City holding title to the property.

1.2.2.2 Provided, however, that consent to sell or lease real property controlled by the Agency that was transferred by the State of Texas to a City after the effective date of this Agreement shall not be necessary.

1.2.2.3 Provided further, however, that consent to sell or lease property that is transferred directly to the Agency shall not be necessary.

1.2.3 The power to accept donations of real or personal property, or cash, in furtherance of the purposes set forth in Part II.

1.2.4 The power to employ necessary personnel to accomplish the purposes set forth in Part II.

1.2.5 The power to accept funding from the State of Texas, its agencies, and its political subdivisions (including counties and economic development corporations).

1.2.6 The power to accept funding from the United States of America, its agencies, and its political subdivisions.

1.3 Contracts executed by the Agency shall be subject to the right of either City to terminate such contract upon the vote of the City Council.

1.3.1 Provided, however, that if the Agency shall submit the contract to each City Council for ratification, and the City Council shall vote by resolution to ratify said contract, then the termination rights under that contract are determined by the language of the contract.

1.3.2 Provided, further, that the Agency shall have no power to contractually obligate either City for payment of funds not held separately by the Agency unless the obligation is ratified by the City Council of the City so obligated.

1.3.3 A party to a contract with the Agency that has not been explicitly ratified by a City may not seek compensation, payment, or damages under that contract from that City, but solely from the funds controlled by the Agency and the funds of a City that has ratified the contract.

1.3.4 Notwithstanding the provisions of this section 1.3 and its subsections, the ability of the Agency to enter into contracts for the sale, lease, or other transfer of real property shall be governed by the provisions of section 1.2 and its subsections. The powers granted in section 1.2 and its subsections, however, do not include the power to obligate either city for the payment of funds.

1.4 Notwithstanding the powers granted herein to the Agency to take actions independently of the Cities, the Agency is encouraged and directed to provide regular updates to the City Council of each City, and to solicit feedback and advice from the City Council, Mayor, and staff of each City.

PART II – PURPOSES

2.1 The overriding purpose of the Agency is to ensure the continued and lasting operation of the Texas State Railroad as an operating historical and recreational park.

2.2 To those ends, the creation of the Agency is to create a single entity which is empowered to:

2.2.1 Purchase, own, hold, lease, and otherwise acquire real and personal property.

2.2.2 Operate concessions, museums, campgrounds, and other facilities it deems appropriate in connection with the Texas State Railroad.

2.2.3 Enhance, augment, and improve the historical, educational, cultural, and recreational benefits offered by the Texas State Railroad.

PART III - TERM

3.1 The term of this Interlocal Agreement shall begin on the execution thereof by the Cities hereto. The initial term shall end on August 31, 2007.

3.2 If an entity is created by the Texas Legislature at the 2007 Regular Session that will perform the functions and pursue the purposes of the Agency, then this Agreement will be automatically extended for only so long as necessary to accomplish the transition of those functions to the new entity.

3.3 If the Texas Legislature fails to take action at the 2007 Regular Session to create a successor entity to the Agency:

3.3.1 Either City may terminate this agreement.

3.3.2 The Cities may extend this agreement for an additional term.

3.3.3 The Cities may negotiate an amended agreement.

3.3.4 If no City takes any action, the Agency will continue in existence only so long as necessary to wind up its affairs.

3.4 If the Agency ceases to exist either under 3.3.1 or 3.3.4, the following procedure shall govern the windup of the Agency's affairs:

3.4.1 The Board may approve an allocation of assets and obligations, based on the standards of Section 3.5.

3.4.1.2 An allocation of assets under Subsection 3.4.1 must be approved by a majority of the Board members representing each City.

3.4.2 If the Board is unable to approve an allocation of assets and obligations, the Cities shall attempt to negotiate an allocation, based on the standards of Section 3.5.

3.4.3 If the Cities are unable to negotiate an allocation, the dispute shall be referred to binding arbitration in Tyler, Texas in accordance with the applicable arbitration rules of the American Arbitration Association ("AAA") then in effect, and judgment upon the award may be entered in any court having jurisdiction. Provided, however, the dispute or claim shall be heard and decided by a single arbitrator (who shall be a retired/former district court or county court at law judge selected by AAA) and expedited procedures shall be used.

3.4.3.1 The arbitrator shall allocate the assets and obligations, based on the standards of Section 3.5.

3.4.3.2 The exclusive venue for any law suit shall be in the state district court for Anderson or Cherokee County. Provided, however, that, the Cities hereby agree that the case shall be transferred, if possible, to the 369th District Court, which district encompasses both Cherokee and Anderson Counties.

3.5 In determining the allocation of assets and obligations, the following standards shall be used.

3.5.1 Property that was provided to the Agency with a proviso that upon dissolution of the Agency, it should revert to a specified City should be allocated to that specified city.

3.5.2 Real property located in Cherokee County should be allocated to Rusk, and real property in Anderson County should be allocated to Palestine.

3.5.3 Personal property

3.5.3.1 Personal property that is specifically associated with a piece of real property should be allocated along with that real property.

3.5.3.2 Personal property that was provided to the Agency by a City should be allocated to the City that provided the property.

3.5.4 Obligations that are specifically associated with a particular piece of property should be allocated along with that piece of property.

3.5.5 All property and obligations not allocated by Subsections 3.5.1 through 3.5.4 should be allocated equally between the parties.

PART IV – BOARD

4.1 The Agency will be governed by a Board of Directors (the "Board"). Except as otherwise provided by this Agreement, the decisions of the Board are not subject to affirmation, ratification, or veto by either City.

4.2 Three directors shall be appointed by the Mayor of the City of Rusk, and confirmed by the Rusk City Council. Three directors shall be appointed by the Mayor of the City of Palestine, and confirmed by the Palestine City Council.

4.3 A director shall serve until the director dies, resigns, or is removed by the City that appointed the director.

4.3.1 A director may be removed for any reason by vote of the city council of the city that appointed that director.

4.3.2 A director that dies, resigns, or is removed shall be replaced promptly by the mayor and city council of the city that appointed the director that is no longer on the Board.

4.4 The Board shall elect a President, a Vice President, and any other officers deemed appropriate by the Board.

4.4.1 The President and Vice President shall not be appointees of the same city.

4.4.2 The initial President and Vice-President shall serve until March 1, 2007. In February 2007, the Board shall elect a Second President and a Second Vice-President. The Second President shall be an appointee of the City other than the City that appointed the Initial President. The Second President shall be an appointee of the City other than the City that appointed the Initial President.

V. OBLIGATIONS OF THE PARTIES

5.1 To further those purposes, the Cities agree to:

5.1.1 Transfer control of real and personal property now owned by the City that is currently associated with the Texas State Railroad;

5.1.1.1 Provided, however, that the Cities' obligation to transfer control of property now owned by the City is not effective until the State of Texas, or one or more of its agencies, acts to transfer control of the Texas State Railroad to the Cities or the Agency.

5.1.2 Transfer control of any real or personal property acquired from the State of Texas after the effective date of this agreement that is transferred to the City for the purpose of effectuating local control of the Texas State Railroad;

5.1.3 Subject to the provisions of Subsection 1.2.2, and the paragraphs of that subsection, execute necessary documentation to lease or sell property controlled by the Agency that is titled in the name of a single City;

5.1.4 Provide assistance (for example, administrative support, technical expertise, or surplus equipment) to the Agency as appropriate, consistent with other municipal duties of the City;

5.2 Funding

5.2.1 The Cities envision that the State of Texas will provide all necessary funding for the operation of the Texas State Railroad through the end of the 2006-2007 state fiscal year.

5.2.2 At the time of execution of this agreement, the Cities do not expect that monetary support to the Agency will be necessary. If such support becomes necessary, the Cities will address this issue by way of an amendment to this agreement. Nevertheless, neither City has agreed at this point to provide monetary support to the Agency.

5.3 The Cities may, but are not obligated to, offer the services of city employees to assist the Agency in performing its duties and functions. The Agency may agree to compensate the City providing the employee, and may make such agreement contingent on the receipt of outside funding. Because each City is empowered, under Chapter 331 of the Local Government Code, to operate facilities such as those operated by the Texas State Railroad, such activities by the city employee are appropriate municipal functions.

VI. SEVERABILITY

6.1 In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, such invalidation, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Provided, however, that if the purposes of the Agreement are defeated by the invalidity of the provision, the Cities shall renegotiate this Agreement to fulfill those purposes.

PART VII – AUTHORITY

7.1 This agreement is governed by, and authorized by, the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

PART VIII – APPROVAL

8.1 This Agreement shall take effect only upon the approval of the Agreement by the City Councils of Palestine and Rusk, and the signature by the Mayor or City Manager of each City.

PART IX – ENTIRETY

9.1 This Agreement contains the entire agreement of the Cities. Any prior agreements, promises, negotiations or representations not expressly contained in this Agreement are of no force and effect.

IN WITNESS WHEREOF, THE CITY OF PALESTINE AND THE CITY OF RUSK enter into this Interlocal Agreement EFFECTIVE October 13, 2006.

APPROVED by the CITY OF PALESTINE, TEXAS on the 13th day of October, 2006, and executed by R. DALE BROWN, City Manager, as authorized representative of Palestine.

ATTEST:

By: _____
Secretary

CITY OF PALESTINE, TEXAS

By: _____
R. Dale Brown, City Manager

APPROVED by the CITY OF RUSK, TEXAS on the 12th day of October, 2006, and executed by MICHAEL MURRAY, City Manager, as authorized representative of Rusk.

ATTEST:

By: _____
Secretary

CITY OF RUSK, TEXAS

By: _____
Michael Murray, City Manager

ATTACHMENT E

RAILROAD OPERATING CONTRACT
Texas State Railroad
2007

WHEREAS, The Texas State Railroad originated in the 19th Century as a freight railroad to serve the East Texas Penitentiary in Rusk, Texas, and was soon extended to Palestine, Texas; and

WHEREAS, In 1976, the Texas State Railroad gained a new life as a historical and cultural asset of the Texas Parks and Wildlife Department; and

WHEREAS, The Texas State Railroad has operated for 30 years between the Cities of Rusk and Palestine, providing an invaluable historic and cultural resource to the citizens of Cherokee and Anderson Counties, and the citizens of the State of Texas; and

WHEREAS, In 2006, the Texas Parks and Wildlife Department announced that it was no longer economically feasible for the State of Texas to operate the Texas State Railroad as an excursion railroad, and planned to convert the operating rail equipment into a static display; and

WHEREAS, The Cities of Rusk and Palestine have spearheaded a grassroots effort to transfer control of, and responsibility for, the Texas State Railroad to a local entity; and

WHEREAS, The Cities of Rusk and Palestine have created the Texas State Railroad Operating Agency to initiate the efforts to ensure continued operations of the Texas State Railroad; and

WHEREAS, In order to provide convincing proof to the Texas Legislature that a locally-controlled operating authority can successfully operate the Texas State Railroad, the Texas State Railroad Operating Authority issued a Request for Qualifications that solicited proposals from private entities qualified to operate the Texas State Railroad; and

WHEREAS, American Heritage Railways, Inc. has submitted a responsive proposal to operate the Texas State Railroad.

NOW, THEREFORE, the Texas State Railroad Operating Agency (the "Agency") and American Heritage Railways, Inc. (the "Railway") hereby agree as follows:

1. In consideration of the promises and representations contained in this Operating Contract (the "Contract"), the Agency hereby leases to the Railway all of the Agency's interest in the Texas State Railroad (the "Railroad"). The lease is conditioned on the transfer to the Agency of the right and power to further convey rights in the Railroad. The Railway expressly acknowledges that such transfer has not taken place at

the time of the execution of this Contract, and that the implementation of such transfer depends to some extent on circumstances beyond the control of the Agency.

2. The Railroad includes all real and personal property associated with its current operation. "Railroad Real Property" includes all rights of way, roadbed, track, buildings, structures, and other real property associated with or used in connection with the Railroad, as described in Exhibit "A." "Railroad Personal Property" includes all personal property associated with or used in connection with the Railroad, including locomotives, rolling stock, concession equipment, and otherwise as described in Exhibit "B."

3. This Contract does not include, and the Agency shall have no obligation to convey to the Railway, any real or personal property not within its control and identified by this Agreement.

4. This Lease of the Railroad is on an "AS IS, WHERE IS" basis. The Agency makes no warranties, either express or implied, as to any matter whatsoever concerning the Railroad, its condition, merchantability, economic viability, the amount of or need for passenger rail traffic, the fitness for any particular purpose, or the ownership of or title to any portion of the Railroad Real Property or Railroad Personal Property. The Railway has had an opportunity to inspect and examine the Railroad and its books, records, facilities, equipment, and right of way in order to fully inform itself regarding the condition of all Railroad Real Property or Railroad Personal Property.

5. This Contract shall be for a term of five years. The initial term shall begin at midnight on September 1, 2007, and will expire at 11:59 p.m. on August 31, 2012, unless earlier terminated in accordance with the provisions of this Contract. The Contract will automatically renew for successive five-year terms unless Notice of Termination or Notice of Renegotiation is given by either party. If either party intends to terminate the Contract at the end of its term, it shall give Notice of Termination to the other party no less than six months prior to the termination of the contract, in which case the Contract shall terminate by its own terms. If either party gives Notice of Renegotiation to the other party prior to the expiration of the contract, the parties shall work together for no less than three months to come to an agreement on any appropriate amendments to the agreement. If Notice of Renegotiation has been given by either party, the Contract shall not renew for another term until an agreement is reached. The Contract shall, however, be extended until a new agreement is reached, or until a Termination Date set out in a Notice of Termination given by either party. The Notice of Termination shall state a Termination Date no less than six months after the Notice is given. A Notice of Termination may not be given less than three months after a Notice of Renegotiation is given.

6. Railway shall use the Premises:

a) to operate passenger excursion trains;

b) to display historic and educational exhibits;

c) to provide related public services, including but not limited to food and gift concessions;

d) to operate campgrounds and other park facilities in association with train operations;

e) to maintain the property, equipment, and facilities so as to preserve and enhance uses (a) through (d);

f) in a manner consistent with uses (a) through (d), to make the facilities and equipment of the Railroad available for film and video productions;

g) in a manner consistent with uses (a) through (d), to operate the facilities and equipment of the Railroad to provide freight service;

h) in a manner consistent with uses (a) through (d), to utilize the facilities and equipment of the Railroad to produce revenue ancillary to the primary use.

7. Railway shall pay to the Agency, for the use of the Railroad, including but not limited to the Railroad Real Property and the Railroad Personal Property, Annual Rental equal to 2% of the Gross Operating Review of the Railroad. The Annual Rental will be payable on or before September 30 of every year, and will be based on the Gross Operating Review received during the previous 12-month period ending August 31. The rental payable on September 30, 2007 shall be $72,000.

8. On September 30 of every year, beginning on September 30, 2008, if the Annual Rental payment made in conjunction with Paragraph 7 exceeds the threshold set out herein, an undivided 20% of the ownership interest of Railroad Personal Property shall be transferred from the Agency to the Railway. Provided, however, that this Paragraph shall not apply to such Railroad Personal Property listed in Exhibit C. The thresholds shall be as follows:

a)	September 30, 2008	$80,000
b	September 30, 2009	$85,000
c)	September 30, 2010	$90,000
d)	September 30, 2011	$95,000
e)	September 30, 2012	$100,000
f)	future years	$100,000

9. Notwithstanding the transfer of partial or complete ownership of Railroad Personal Property, the Railway may not divert Railroad Personal Property from use in conjunction with operations of the Railroad without the consent of the Agency. The Railway may not mortgage or otherwise pledge the Railroad Personal Property it owns without the express written consent of the Agency. If the Railway proposes to replace any Railroad Personal Property with other equipment ("Replacement Railroad Personal Property"), the Railway hereby agrees that any right of repurchase or reversion in this Contract applicable to the replaced equipment shall be applicable to the Replacement Railroad Personal Property. Upon replacement of equipment that is no longer useful with equipment provided at the cost of the Railway, such replacement will be approved in advance by the Agency with conditions that recognize the investment by the Railway and the responsibility of the Agency to ensure continued operation of the Railroad.

10. The Agency shall, upon receipt of funding from the State of Texas for this purpose, lend $500,000 to the Railway for a working capital fund. In consideration of this loan, the Railway shall execute a promissory note in the substantial form as set forth in Exhibit B. The initial rental payment described in Paragraph 5 shall be withheld from the loan proceeds remitted to the Railway. Payments to the Agency as provided in the Note shall be deposited in, and used for, the Capital Improvement & Rehabilitation Plan set out in Paragraph 16.

11. Railway shall be responsible to operate the Railroad for the term of the Contract, at its sole cost. Railway may use subcontractors to operate any portion of the Railroad, provided that the proposed subcontractor is presented to and approved by the Agency in advance.

12. Railway shall be solely responsible for obtaining all necessary approvals from the Federal Railroad Administration, and any other state or federal agency.

13. With the exception of the Railroad Personal Property provided to the Railway by the Agency upon the initiation of the Lease, the Railway shall provide all personal property necessary for the operation of the Railroad.

14. The Agency will not have any operational responsibility for the Railroad. The Agency will act to administer this contract in a manner to further the purposes set out herein. The Agency will also endeavor to access other public and private funding sources to support ongoing capital improvement and rehabilitation efforts.

15. The Railway shall maintain a complete file of all records pertaining to the operation and maintenance of the Railroad, shall make such records fully available to the Agency at any time upon reasonable notice, and subject to the need for such records in order to operate the Railroad. The Railway shall follow generally accepted accounting principles in maintaining its financial records for rail service. The Railway shall submit monthly, quarterly, and annual operating reports, covering the prior applicable period, in accordance with the accounting system established by the Railway. The Railway shall permit the Agency to audit the Railway's records to determine if monthly and annual reports accurately reflect the operations being conducted, and to assess the financial condition of the Railway with regard to its operation of the railroad. Periodic reports will be submitted:

a) For monthly and quarterly reports, no later than 15 days following the end of the previous period;

b) For annual reports, no later than 45 days following the end of the previous period.

16. The Railway shall submit to the Agency a Capital Improvement and Rehabilitation Plan setting forth the necessary improvements and additions to the capital facilities of the Railroad. The Capital Improvement and Rehabilitation Plan will be submitted to the Agency no later than September 30, 2007. The Agency will provide funding for the Capital Improvement and Rehabilitation Plan as funds are available

pursuant to Paragraph 36 of this Agreement. After completion of the Capital Improvement and Rehabilitation Plan, the Railway will be responsible for maintenance of the facilities and equipment of the Railroad so as to maintain at least a Class 2 safety/speed rating. Although the Railway will be expected to fund necessary upkeep and repairs after the completion of the initial plan, the Agency will attempt to locate and secure other sources of funding for such efforts as set forth in Paragraph 14.

17. The Railway will, in addition to the Capital Improvement and Rehabilitation Plan, perform regular maintenance so as to keep the Railroad in a safe condition, in good repair, in an attractive condition, and in compliance with all applicable state and federal regulatory requirements.

a) The Railway will submit to the Agency an Annual Maintenance Plan on or before December 1 for the following calendar year. The Railway will perform maintenance in accordance with that schedule. The Annual Maintenance Plan shall be sufficient to

i) ensure that buildings and facilities (including rolling stock used for display purposes only) are maintained in a safe, clean, and attractive condition;

ii) ensure that locomotives and rolling stock (other than that used for display purposes only) are maintained in a safe, attractive, and historically accurate fashion, and in compliance with state and federal safety regulations; and

iii) adequately control vegetation along the right of way.

b) Capital improvements are defined as major expenditures required for bridges, tunnels, and other structures, the cost of new rolling stock, and the cost of major rehabilitation of rolling stock. The costs for replacement of railroad ties, locomotive boiler flues, flue sheets, and rebuilding running gear shall not be a capital expenditure.

c) The Capital Improvement and Rehabilitation Plan will include a tie replacement plan. After completion of the tie replacement portion of the Capital Improvement and Rehabilitation Plan, the Annual Maintenance Plan will include a regular tie replacement component.

18. The Agency reserves the right to inspect the Railroad for the purpose of determining the Railway's compliance with this Contract. Upon request, the Railroad agrees to provide a suitable rail inspection vehicle and a qualified operator to take the authorized representatives of the Agency on such an inspection, provided that the inspection shall not interfere with the operation of the Railway.

19. The Railway shall obtain insurance from a responsible insurance company admitted to do insurance business in the State of Texas. The insurance shall show the Agency, the City of Palestine, and the City of Rusk as additional insureds, and shall contain a provision against cancellation by the carrier without 60 days' notice to the Railway and to the Agency. The Railway shall provide copies of certificates of insurance to the Agency and maintain that insurance in force and effect at all times during the term of this Contract. The insurance required is as follows:

a) general public liability insurance for personal injury and property damage resulting from operation of the Railroad, including all associated activities including the operation of campgrounds, historical exhibits, museums, and any other recreational, cultural, or historical facilities, in the amount of $5,000,000 (with a retention of no greater than $100,000);

b) property casualty insurance for the buildings, structures, locomotives, rolling stock, tools, and equipment of the Railroad;

c) workers' compensation insurance as provided by Texas law.

d) on the policies of all insurance maintained to meet the requirements of this Paragraph.

20. The Railway will indemnify, defend, and hold harmless the Agency, the City of Palestine, and the City of Rusk from all claims arising out of the operation by the Railway of the Railroad. The Railway will also save harmless the Agency from all mechanic's, contractor's, and materialman's liens on any improvement to the Railroad.

21. The Railway will be responsible for all federal, state, or local income, sales, or ad valorem property taxes. If title to any Railroad Personal Property or Railroad Real Property is transferred to the Railway pursuant to this Contract or any amendment to this Contract, the Railway agrees and acknowledges that it will become liable for any applicable ad valorem taxes for which the property may have been exempt when held by the State of Texas, a local government, or the Agency. The Railway agrees to collect and remit all applicable sales and use taxes on taxable sales of goods and services at the Railroad.

22. The Railway will be responsible for arranging for and paying for all water, gas, electrical, wastewater, or other utility services to the Railroad.

23. The Railway will endeavor to offer continued employment to all employees of the State of Texas Parks and Wildlife Department currently working at the Texas State Railroad. The Railway will identify any current employee not offered continued employment at the same or similar position to the Agency, along with an explanation of why continued employment was not offered.

24. The Railway will not discriminate because of race, color, religion, gender, or national origin, against any person, or refuse to furnish such person any accommodation, facility, service, or privilege offered to, or enjoyed by, the general public. Further, the Railway shall not publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of that person's race, color, religion, gender, or national origin. The Railway will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, or because the employee or applicant is over 40 years of age, and will include a statement of non-discrimination in all advertisements or solicitations for employees.

25. The Railway shall establish a coordinated sales and reservations operation. Although the Railway may provide such services in conjunction with its operations in other states, such coordination shall be transparent to the customer. Telephone reservations and purchases shall be toll-free from the Palestine and Rusk areas. Ticket purchases shall be available on site at both depots during normal operating hours, either through Railway personnel or independent contractors operating concessions at the depot.

26. The Railway shall have a license to use the "Texas State Railroad" name and any logo created in association with the name. Any logo, trademark, or other marketing device created by the Railway in connection with the Railroad will be the property of the Agency. The Agency, the City of Rusk, and the City of Palestine may also use the name "Texas State Railroad" and any logo, including any logo or trademark created by the Railway. The Agency, the City of Rusk, and the City of Palestine may not, however, permit the use of any trademark or the Texas State Railroad name by any third person without the consent of the Railway.

27. In order to promote the cultural, recreational, and historic resource represented by the Railroad, the Railway will engage in a coordinated, professional marketing effort to increase awareness of the Railroad, increase ridership, and increase profitability. Marketing materials shall be developed in consultation with the Agency, and a full report on the marketing effort, including samples of advertising, shall be made to the Agency as part of the quarterly reports in Paragraph 15.

28. Rates and schedules shall be developed by the Railway and submitted to the Agency. Changes in the rates and schedules shall be immediately reported to the Agency.

29. The Railway will endeavor to schedule special events, including special holiday events and events in conjunction with licensed characters and promotions (such as Peanuts or Polar Express). To the extent that the license for such events is held by an affiliate of the Railway, the licensing fees and contractual arrangements for such events at the Railroad will be no less favorable to the Railway than those offered to other excursion railroads.

30. The Railway will endeavor to work with film production companies, television production companies, and advertising agencies to encourage the use of the Railroad's facilities in connection with such productions. The Railway will report periodically to the Agency regarding its efforts in this regard.

31. A designated representative of the Railway will attend all meetings of the Agency and act as liaison with the Agency. The Railway will provide the name and contact information of the designated liaison to the Agency.

32. The Railway will have an emergency plan in the event of a natural disaster, terrorist attack, or other emergency. The Railway will provide a copy of the

current emergency plan to the Agency. The Railway will ensure that such a plan complies with government requirements to protect operations, track, bridges, and rolling stock.

33. The Railway hereby expressly agrees that before it may bring any cause of action against the Agency, the City of Palestine, or the City of Rusk, it will first present such claim in writing to the governing board of the Agency, or the appropriate City Council. If the Railway is dissatisfied with the response of the Agency or the appropriate City, it may request mediation of the dispute. The Railway may not commence litigation of any claim until 60 days after the demand of mediation is made.

34. The Railway agrees to the assignment of this Contract to an entity created by the State of Texas for the purpose of governing the operation of the Railroad (the "Successor Entity"). Otherwise, any assignment of this Contract by either Party must be with the consent of the other party, and assignment must be expressly accepted in writing by the Party to which the Contract is assigned.

35. If the State of Texas does not take action to permit the Agency, or the Successor Entity, to take control of the Railroad, and to permit the Agency or the Successor Entity to contract with a private entity to manage and operate the Railroad, this Contract will terminate.

36. If the State does not provide at least $12,000,000 to the Agency for the Capital Improvement and Rehabilitation Plan, the Railway may terminate this Contract without penalty.

37. The Agency may terminate this Contract for a material breach of its terms by the Railway, subject to the opportunity to cure as set out in Paragraph 39. The Agency may also terminate this Contract for failure by the Railway, in the opinion of the Agency, to adequately operate the Railway. If the Contract is terminated other than for material breach under Paragraph 39, the Railway may

a) have 120 days, or until October 1, whichever is later, to conclude operations;

b) present to the Agency an invoice for capital or other permanent improvements for which it was financially responsible and which improvements will continue to benefit the operation of the Railroad;

c) request that the Agency either

i) commit that the current value of the improvements (as reasonably determined by the Agency) will be reimbursed to the Railway upon the execution of a contract with another operating company;

ii) permit the Railway to remove the improvements if possible; or

iii) if the improvements cannot be removed, and the Agency does not execute a contract with another operating company, the Agency will have no obligation to reimburse the Railway for the cost or value of the improvement.

38. Upon determination by the Agency that the Railway has failed to adequately operate the Railroad, the Agency shall provide notice of the specifics of such failure, and give the Railway an opportunity to cure. The Railway shall have 60 days to cure such failures before the Agency may terminate the Contract as provided in Paragraph 37. If the Agency determines that the failures have not been cured, the dispute shall be submitted to mediation within 60 days after such determination. After mediation has been convened, the Agency may terminate the contract under Paragraph 37.

39. Upon determination by the Agency that the Railway has materially breached the Contract, the Agency shall provide written notice to the Railway of the breach. The Railway shall have 30 days to cure the breach before the Agency may terminate the Contract as provided in Paragraph 40. If the Agency determines that the breach has not been cured, the Railway shall conclude operations within 45 days, transfer any property acquired under Paragraph 8 to the Agency for consideration of $100, and transfer control of the Railroad to the Agency or its designee.

40. The following shall constitute material breach of this Contract by the Railway:

a) Failure to make the payments required by Paragraph 7;

b) Failure to operate at least four round trip schedules per week, with capacity for at least 200 passengers, during the months of March through September (provided that if schedules are temporarily disrupted due to mechanical failures, weather conditions, or other circumstances beyond the reasonable control of the Railway, such temporary disruption will not be considered a material breach so long as prompt action by the Railway is undertaken to remedy the disruption);

c) Failure to operate in compliance with state or federal regulations;

d) The application for, or consent to, the appointment of a receiver, trustee, or liquidator of the Railway or a substantial part of its assets, the filing of a petition for voluntary bankruptcy, the general assignment of assets for the benefit of creditors, or the filing of an answer admitting the material allegations of a petition filed against the Railway in a bankruptcy, reorganization, or insolvency proceeding;

e) Failure to provide routine maintenance of the Railroad Real Property and the Railroad Personal Property;

f) Failure to maintain the insurance required by Paragraph 19;

g) Failure to make necessary repairs to correct mechanical breakdowns within a reasonable amount of time;

h) Making a material misstatement of fact in the proposal to operate the Railroad, or in the negotiation of this Contract;

i) Failure to perform any action required by this Contract;

j) Taking any action prohibited by this Contract; or

k) Default under the terms of the promissory note described in Paragraph 10.

41. This document contains the entire understanding between the Parties. There are no understandings, representations, or warranties not set forth or expressly incorporated by reference in this document. The Parties are represented by counsel, and have had the opportunity to read and analyze the provisions herein. The Parties are not relying on representations by the other party regarding the facts underlying this agreement, or the legal effect of its provisions. This Contract may not be orally modified, changed, or discharged.

42. The failure by the Agency to insist upon strict performance of any of the terms, conditions, and agreements contained in this Contract shall not be construed a waiver of any right or remedy that the Agency has, and shall not be construed as a waiver of any subsequent breach or default.

43. The Railway shall be an independent contractor of the Agency, and the Railway is not required, to the extent permitted by law, to meet state law requirements for competitive bidding that apply to municipalities, political subdivisions, or state agencies.

44. This Contract shall be construed under the laws of the State of Texas. Venue of any cause of action arising under this Contract or the operations covered by the Contract shall be exclusively in either Anderson or Cherokee County, Texas.

45. If any provision of this Contract shall be found invalid, the remainder of the Contract shall remain valid if it is possible to fulfill the purposes of the Contract in the absence of the invalidated provision.

46. Notice required by this Contract shall be given as follows:

If to the Agency:

Dale Brown
c/o City of Palestine
504 N. Queen Street
Palestine, Texas 75801

If to the Railway:

Notice of a change in the person or address as provided herein shall be given as required by this Paragraph.

47. The Parties recognize that this Contract is being executed in contemplation of the establishment of a new relationship and a new operation of the Railroad. The terms and conditions of this Contract may, therefore, need to be adjusted and amended to react to unforeseen operational or financial circumstances or as a result of unforeseen action by the Texas Legislature. Accordingly, the Parties commit to negotiate necessary amendments to this Contract in good faith an in furtherance of the purposes of this Contract.

48. Because the Texas State Railroad is an invaluable and irreplaceable cultural, recreational, and historical resource to the citizens of Rusk and Palestine, this contract is subject to ratification by the City Councils of the Cities of Rusk and Palestine, and if not ratified within 30 days of its execution, shall be of no effect.

ATTACHMENT F

AN ACT

relating to the transfer of the Texas State Railroad to, and the creation of, the Texas State Railroad Authority.

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

SECTION 1. Title 4, Special District Local Laws Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. PARKS AND RECREATION

CHAPTER 4501. TEXAS STATE RAILROAD AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4501.001. DEFINITIONS. In this chapter:

(1) "Authority" means the Texas State Railroad Authority.

(2) "Board" means the authority's board of directors.

(3) "Director" means a board member.

Sec. 4501.002. CREATION AND NATURE OF AUTHORITY. The Texas State Railroad Authority is a special district created under Section 59, Article XVI, Texas Constitution, for the development of parks and recreational facilities.

Sec. 4501.003. PURPOSES OF AUTHORITY. (a) The authority is created to:

(1) purchase, own, hold, lease, and otherwise acquire facilities or other property to operate and maintain the Texas State Railroad;

(2) continue and improve the operation of the Texas

State Railroad as a public recreational, historical, and cultural resource;

(3) operate concessions, museums, campgrounds, and other facilities associated with the Texas State Railroad; and

(4) enhance, augment, and improve the historical, educational, and cultural benefits offered by the Texas State Railroad.

(b) The creation of the authority is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, tourism, recreation, the arts, entertainment, economic development, and public welfare in Anderson and Cherokee Counties.

Sec. 4501.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The authority is created to serve a public use and benefit.

(b) All residents of this state will benefit from the works and projects provided by the authority.

(c) The creation of the authority is in the public interest and is essential to:

(1) further the public purposes of development and diversification of the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop and expand commerce, tourism, recreation, historical awareness, education, and the arts.

(d) The authority will:

(1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in Anderson and Cherokee Counties;

(2) preserve, maintain, and enhance the Texas State Railroad; and

(3) preserve, maintain, and enhance the economic health and vitality of Anderson and Cherokee Counties.

(e) The authority may not act as the agent or instrumentality of any private interest, even though the authority will incidentally benefit many private interests in addition to the paramount public interest.

Sec. 4501.005. GENERAL WATER DISTRICT LAW NOT APPLICABLE. Chapter 49, Water Code, does not apply to the authority.

[Sections 4501.006-4501.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 4501.051. GOVERNING BODY; TERMS. (a) The authority is governed by a board of seven voting directors appointed under Section 4501.053, with three directors appointed by the City of Palestine, three directors appointed by the City of Rusk, and one director appointed by the other directors.

(b) Voting directors serve staggered three-year terms, with:

(1) as near as possible to one-third of the terms of directors appointed by each city or other political subdivision expiring September 1 of each year; and

(2) the term of the director appointed by the other directors expiring October 1 of each third year.

Sec. 4501.052. ELIGIBILITY. (a) To be qualified to serve as a director, a person must be at least 21 years of age.

(b) A voting director may not serve more than three

consecutive terms.

(c) At least two of the three directors appointed by:

(1) the City of Palestine must reside in Anderson County; and

(2) the City of Rusk must reside in Cherokee County.

Sec. 4501.053. APPOINTMENT OF DIRECTORS. (a) Not later than August 31 of each year, by majority vote:

(1) the city council of the City of Palestine shall appoint as a voting director one person proposed by the mayor of Palestine; and

(2) the city council of the City of Rusk shall appoint as a voting director one person proposed by the mayor of Rusk.

(b) Not later than September 30 of every third year, by majority vote, the directors appointed under Subsection (a) shall appoint a seventh director.

Sec. 4501.054. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting directors:

(1) the mayor of the City of Palestine or a member of the city council of the City of Palestine designated by the mayor; and

(2) the mayor of the City of Rusk or a member of the city council of the City of Rusk designated by the mayor.

(b) A nonvoting director is not counted in determining the board quorum.

Sec. 4501.055. VACANCIES. A board vacancy is filled in the same manner as the original appointment.

Sec. 4501.056. VOTING AUTHORITY OF PRESIDENT. The board

president is a voting director but may vote only to break a tie. All other voting directors are entitled to one vote on any issue before the board.

Sec. 4501.057. OFFICERS. (a) Each year, the board shall elect from among the voting directors officers for the authority, including a president, a vice president, a secretary, and a treasurer.

(b) The president and the vice president may not be directors appointed by the same city.

[Sections 4501.058-4501.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 4501.101. GENERAL POWERS. The authority has the powers necessary to accomplish any authority purpose, including the purposes specified in Section 4501.003.

Sec. 4501.102. CONTRACT TO MANAGE OR OPERATE AUTHORITY PROPERTY. The authority may contract with any person to manage or operate all or part of authority property.

Sec. 4501.103. COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the competitive bidding requirements for a municipality under Chapter 252, Local Government Code, apply to the authority.

(b) A contract with a private person under Section 4501.102 or 4501.104(2) is exempt from the competitive bidding requirements of Chapter 252, Local Government Code, or any other statute if the contract:

(1) is entered into before the effective date of the Act creating this chapter;

(2) is conditioned on the passage of the Act creating this chapter; and

(3) is assigned by a party to the contract after the effective date of the Act creating this chapter.

Sec. 4501.104. GENERAL PROPERTY POWERS. The authority may:

(1) acquire, own, lease, operate, construct, maintain, repair, improve, or extend improvements, equipment, or any other property necessary to accomplish an authority purpose; or

(2) lease or otherwise convey authority property to private parties for an authority purpose.

Sec. 4501.105. CONDITIONAL TRANSFER OF PROPERTY. (a) A conveyance of authority property, including a lease, to a private operator or any other person must be conditioned on an obligation that the property must be used as provided by this section.

(b) The conveyance must provide that ownership of authority property automatically reverts to the Parks and Wildlife Department if the authority or a private operator:

(1) does not use the property:

(A) to support the operations of the Texas State Railroad; or

(B) in a manner that primarily promotes a state public interest; or

(2) converts the Texas State Railroad to a static display.

Sec. 4501.106. SURPLUS PROPERTY. The authority, with the consent of the Parks and Wildlife Department, may dispose of surplus property, including by exchanging the surplus property with

another person for other property, to improve the quality and usefulness of property used by the authority.

Sec. 4501.107. DISPOSITION OF PUBLIC PARKS AND RECREATIONAL LANDS; EXEMPTION FROM APPLICABILITY OF OTHER LAW. Chapter 253, Local Government Code, and Chapter 26, Parks and Wildlife Code, do not apply to the use, transfer, or other disposition of property by any method:

(1) to the authority by any person; or

(2) by the authority to any person.

Sec. 4501.108. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist the authority in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation.

Sec. 4501.109. AUTHORITY TO SUE AND BE SUED; IMMUNITY. (a) The authority may sue and be sued in this state.

(b) This section does not waive any governmental immunity that would otherwise apply to the authority.

[Sections 4501.110-4501.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 4501.151. AD VALOREM TAXES PROHIBITED. The authority may not impose an ad valorem tax.

Sec. 4501.152. GRANTS; DONATIONS. The authority may accept grants and donations, including property, for any authority

purpose.

Sec. 4501.153. GRANTS FROM OTHER TAXING AUTHORITY; CONTRACT. (a) A taxing authority in Anderson or Cherokee County may by contract grant to the authority:

(1) sales tax revenue received from a sale made on property owned, controlled, or leased by the authority or by a person with whom the authority contracts under Section 4501.102; or

(2) local hotel occupancy tax revenue received from a hotel located within one mile of a place where the Texas State Railroad loads or unloads passengers.

(b) The grant must serve a public purpose of the taxing authority making the grant.

[Sections 4501.154-4501.200 reserved for expansion]

SUBCHAPTER E. DISSOLUTION

Sec. 4501.201. DISSOLUTION OF AUTHORITY; OUTSTANDING DEBT. (a) The board may dissolve the authority regardless of whether the authority has debt.

(b) If the authority has debt when it is dissolved, the authority shall remain in existence solely for the purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

SECTION 2. Section 22.182, Parks and Wildlife Code, is repealed.

SECTION 3. (a) Not later than September 1, 2007:

(1) the city council of the City of Palestine shall appoint three voting directors from three persons proposed by the mayor of Palestine to serve as directors under Subchapter B,

Chapter 4501, Special District Local Laws Code, as added by this Act; and

(2) the city council of the City of Rusk shall appoint three voting directors from three persons proposed by the mayor of Rusk to serve as directors under Subchapter B, Chapter 4501, Special District Local Laws Code, as added by this Act.

(b) After the directors have been appointed under this section, the directors representing each city shall draw lots to determine which director from each city serves a term expiring:

(1) September 1, 2008;

(2) September 1, 2009; and

(3) September 1, 2010.

(c) Not later than September 30, 2007, the directors appointed under Subsection (a) of this section shall meet in open session and appoint a seventh director. The seventh director shall serve a term expiring October 1, 2010.

SECTION 4. (a) Not earlier than September 1, 2007, and on execution of the requirements of Section 5 of this Act, the following are transferred to the Texas State Railroad Authority:

(1) the property described by Section 5 of this Act;

(2) all obligations and liabilities of the Parks and Wildlife Department relating to the Texas State Railroad; and

(3) all files and other records of the Parks and Wildlife Department kept by the department regarding the Texas State Railroad.

(b) Before September 1, 2007, the Parks and Wildlife Department may agree with the Texas State Railroad Authority to

transfer any property of the Parks and Wildlife Department to the Texas State Railroad Authority to implement the transfer required by this Act.

(c) In the period beginning on the effective date of this Act and ending on execution of the requirements of Section 5 of this Act, the Parks and Wildlife Department shall continue to perform functions and activities under Section 22.182, Parks and Wildlife Code, as if that section had not been repealed by this Act, and the former law is continued in effect for that purpose.

SECTION 5. (a) Not later than October 1, 2007, the Parks and Wildlife Department shall transfer to the Texas State Railroad Authority, for the consideration described by Subsection (b) of this section, the property described by Subsection (d) of this section.

(b) Consideration for the transfer authorized by Subsection (a) of this section is an agreement between the parties that requires the Texas State Railroad Authority to use the property in a manner that primarily promotes a state public purpose. If the Texas State Railroad Authority does not use the property transferred under this Act in a manner that primarily promotes a state public interest, ownership of the property automatically reverts to the Parks and Wildlife Department.

(c) The Parks and Wildlife Department shall transfer the property by an appropriate instrument of transfer. The instrument of transfer must include a provision that:

(1) requires the Texas State Railroad Authority to use the property in a manner that primarily promotes a state public

purpose;

(2) indicates that ownership of the property automatically reverts to the Parks and Wildlife Department if the Texas State Railroad Authority fails to use the property in that manner;

(3) authorizes the Texas State Railroad Authority to transfer the property to a private operator under conditions as provided by Section 4501.105, Special District Local Laws Code, as added by this Act;

(4) authorizes the Texas State Railroad Authority, with the consent of the Parks and Wildlife Department, to dispose of surplus property as provided by Section 4501.106, Special District Local Laws Code, as added by this Act; and

(5) transfers the right-of-way and trackage of the Texas State Railroad by a 99-year lease or a similar instrument under which fee ownership is retained by the State of Texas.

(d) The property to which Subsection (a) of this section refers is all real and personal property associated with the Texas State Railroad owned by the State of Texas, including:

(1) the right-of-way and trackage of the Texas State Railroad;

(2) all trains and other property used to operate the Texas State Railroad; and

(3) all equipment or other property of the Parks and Wildlife Department used for the administration of or related to the Texas State Railroad.

SECTION 6. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1659 passed the Senate on April 26, 2007, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 15, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1659 passed the House, with amendment, on May 10, 2007, by the following vote: Yeas 135, Nays 3, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

ATTACHMENT G

AGREEMENT BETWEEN
THE TEXAS PARKS AND WILDLIFE DEPARTMENT
AND THE TEXAS STATE RAILROAD AUTHORITY REGARDING
THE TRANSFER OF THE TEXAS STATE RAILROAD

This Agreement is made by and between the Texas Parks and Wildlife Department (TPWD), an agency of the State of Texas, and the Texas State Railroad Authority (TSRA), a special district created by the Texas Legislature, regarding the transfer of the Texas State Railroad to TSRA.

WHEREAS, the Texas State Railroad is a historic steam train that currently runs between Rusk and Palestine, Texas;

WHEREAS, the Texas State Railroad, including Palestine State Park and Rusk State Park, has been operated by TPWD since on or about 1976;

WHEREAS, Senate Bill 1659, 80th Texas Legislature, Regular Session (SB 1659), added Chapter 4501, Special District Local Laws Code, creating the TSRA as a special district authorized by Texas Constitution, Article XVI, Section 59, and directed the transfer of assets associated with the Texas State Railroad, including the facilities in Rusk and Palestine (collectively referred to herein as the TSRR), from TPWD to the TSRA, effective at 12:01 a.m., September 1, 2007 (the Transfer Date);

WHEREAS, Article IX, §19.81(f), and Article VI, TPWD, Rider 25, of House Bill 1, 80th Texas Legislature, Regular Session, (HB 1), also known as the 2008-2009 General Appropriations Act, addressed the transfer of certain funds to the TSRA in connection with the TSRR;

WHEREAS, TPWD and TSRA (collectively referred to herein as "the Parties") wish to work together to facilitate a smooth transfer of the TSRR;

NOW, THEREFORE, TPWD and TSRA agree as follows:

A. PROPERTY

1. **Transfer Restrictions.** The real and personal property described herein is transferred from TPWD to TSRA effective September 1, 2007. In addition to other restrictions of record and except as otherwise provided by law, these transfers are made upon the following conditions:

   a. Public Purpose. The TSRA must use the property in a manner that primarily promotes a state public purpose.

   b. Reversion. Ownership of the property automatically reverts to TPWD if the TSRA fails to use the property in a manner that primarily promotes a state public purpose.

   c. Transfer to Private Operator. The TSRA may transfer the property to a private operator under conditions as provided by Section 4501.105, Special District Local Laws Code, as added by SB 1659.

d. Disposal of Property. The TSRA, with the consent of TPWD, may dispose of surplus property as provided by Section 4501.106, Special District Local Laws Code, as added by SB 1659.

i. Procedures. If TSRA or an agent of TSRA wishes to dispose of property in accordance with this provision, the TSRA or its agent shall send notice to TPWD in care of its Executive Director. That notice shall contain:

A. a description of the specific property to be removed from service at the Texas State Railroad;
B. a description of the condition of the property to be removed from service, and an explanation of why that condition makes the removal of the property from service consistent with the mission of the TSRA;
C. a description of the property, if any, that will be used in place of the property to be removed from service;
D. a description of restrictions, if any, on the disposal of the property, including, but not limited to restrictions contained in the terms of an agreement or other conveyance document through which the property was acquired and restrictions contained in other applicable law.

ii. Standards. TPWD will consent to the disposal of any surplus property if:

A. the proposed disposal and exchange, if any, will improve the quality and usefulness of the property to be used by TSRA and its agents;

B. the proposed disposal is not otherwise prohibited by the terms of an agreement or other conveyance document through which the property was acquired, or by other applicable law. Provided, however, if the proposed disposal is otherwise prohibited as described in this paragraph, TPWD will cooperate with the TSRA to seek the removal of such restriction if the disposal will improve the quality and usefulness of the property to be used by TSRA and its agents.

iii. Consent. TPWD will notify TSRA of its determination regarding consent within 30 days of the receipt of the request. TPWD may request additional information from TSRA regarding the proposed disposal. If TPWD requests additional information, it will have no less than 15 days to make its determination after receipt of the response from TSRA. If TPWD fails to act on TSRA's request within the time periods set out in this subsection, TPWD will be deemed to have given its consent to the disposal.

e. Use of Property. In accordance with the Advanced Funding Agreement (AFA) referenced in Paragraph C.1, below, TSRA agrees to use the property subject to the AFA for the purposes and period provided in the AFA.

f. Compliance with Applicable Law. TSRA will be responsible for compliance with applicable law regarding activities occurring on or using the transferred property, including, but not limited to the right-of-way. Such legal requirements include, but are not limited to, any requirement to obtain a permit in compliance with Subchapter E, Section 191.131 (b) of the Texas Antiquities Code (Texas Natural Resources Code) before initiating any ground-disturbing activities, and any requirement to preserve endangered or threatened plant species, including the rough-stemmed aster (*aster puniceus* var. *scabricaulis*) located along the TSRR right-of-way at approximately mile post 22.

g. Notice. If TPWD is of the opinion that TSRA is failing to use the property in a manner that primarily promotes a state public purpose, or is failing to comply with any other requirement of this Agreement or SB 1659, TPWD shall give written notice to TSRA, including reasonable detail regarding the acts or omissions of TSRA of which TPWD complains. The notice shall be directed to the President of the Board of TSRA, with copies to the Cities of Palestine and Rusk.

h. Opportunity to Cure. If TPWD has given notice as provided by Subsection g, TSRA shall be given a reasonable opportunity to cure the matters included in the written notice. In determining a reasonable time to cure, notice and cure provisions in any operating agreement with a private operator of the railroad shall be taken into account.

2. Transfer of Real Property

a. Palestine State Park. TPWD and TSRA will execute a document in a form substantially as contained in Exhibit A, transferring title to the real property associated with Palestine State Park to TSRA.

b. Rusk State Park. TPWD and TSRA will execute a document in a form substantially as contained in Exhibit B, canceling the lease from the City of Rusk to TPWD of real property associated with Rusk State Park, and a document in a form substantially as contained in Exhibit C, transferring title to that real property associated with Rusk State Park that is owned by TPWD to TSRA.

c. Right-of-Way. TPWD and TSRA will execute a document in a form substantially as contained in Exhibit D, leasing the right-of-way and trackage associated with the TSRR to the TSRA for a 99-year term. Fee ownership of the right-of-way and trackage will be retained by TPWD.

d. Maydelle Depot. TPWD and TSRA will execute a document in a form substantially as contained in Exhibit E, transferring title to the real property associated with Maydelle Depot to TSRA.

e. Jarvis Wye. TPWD and TSRA will execute a document in a form substantially as contained in Exhibit F, transferring the lease of the Jarvis Wye from TPWD to the TSRA.

3. Transfer of Personal Property

a. Equipment and Property. The equipment and property currently located at the TSRR will be transferred from TPWD to TSRA as of the transfer date. The capitalized and controlled personal property that will be transferred from TPWD to TSRA is listed in Exhibit G. To the extent the property being transferred under this paragraph is subject to titling requirements by the Texas Department of Transportation (TxDOT) or other entity, TPWD and TSRA will work together to execute the appropriate forms required to document the transfer of title from TPWD to TSRA. Because Exhibit G includes all capitalized property associated with the TSRR, some of the property listed in Exhibit G may also be listed in other exhibits in connection with the transfer of specific types of property. The additional listing of a piece of property shall not be construed to suggest that additional property is being conveyed. Individual properties can generally be identified by the listed property number.

b. Media. All of TPWD's legal rights in photographs, motion pictures, videotapes or other similar media located at the TSRR will be transferred from TPWD to TSRA. Copies of photographs, motion pictures, videotapes or other similar media related to the TSRR located elsewhere within TPWD will be made available for reproduction by TSRA upon request.

c. Federal Surplus. The property described in Exhibit H was acquired by TPWD through the federal surplus program administered by the Texas Building and Procurement Commission (TBPC), soon to be administered by the Texas Facilities Commission. TPWD and TSRA will work with TBPC and/or the Texas Facilities Commission and/or the appropriate federal authority to determine the required disposition of such property. To the extent allowed, it is the desire of TPWD and TSRA that such property be transferred to the TSRA. If such property is transferred to TSRA, TSRA agrees to comply with all legal requirements regarding the use and disposition of such federal surplus property.

d. Park Store Inventory. Inventory remaining within the Park Store at the TSRR as of the transfer date will be transferred to TSRA, except for inventory with the TPWD name, logo or other TPWD insignia. Prior to the transfer date, TPWD will remove from the TSRR all Park Store inventory with the TPWD name, logo or other TPWD insignia.

e. Technology.

i. *Equipment.* Computer and technology equipment, including telecommunications equipment, listed in Exhibit I will be transferred from TPWD to TSRA.

ii. *Microsoft Office Software.* TPWD will remove the Microsoft Office software from the computer equipment being transferred.

iii. *Wabtech Software.* TPWD and TSRA will work together to obtain any necessary approvals for the transfer to TSRA of the license for software acquired by TPWD from Wabtech Corporation. In the event that the license cannot be transferred,

TPWD will remove the Wabtech software from the computer and technology equipment being transferred.

iv. *Other Software.* TPWD will remove all other licensed software from the computer and technology equipment being transferred.

v. *Wide Area Network (WAN) Connectivity.* The Frame Relay data circuits (T1 lines) will be disconnected by TPWD by no later than August 31, 2007.

vi. *Telephone Service.* The telephone service for the telephone lines listed in Exhibit J and responsibility for that service will be cancelled by TPWD by no later than August 31, 2007. Provided, however, TPWD will consent to the transfer of the land lines associated with the TSRR to the TSRA.

vii. *Credit Card Machine.* The credit card swipe equipment located at the TSRR will be transferred to TSRA. TSRA will obtain a new merchant number. TPWD will instruct Global Payments to deactivate the merchant number established by TPWD for the TSRA as of the transfer date.

viii. *Data.* To the extent that data contained on TPWD computers is necessary to ensure a smooth transition and transfer to TSRA, upon request of TSRA, TPWD will copy such data to a disk, flash drive, or other media and provide such data to TSRA.

f. Artifacts and Interpretative Collections. TPWD has no archeological collections from the TSRR; therefore, no archeological collections will be transferred to the TSRA. Accessioned curatorial items and outreach collections listed in Exhibit K will be transferred to TSRA.

g. Repair of Damaged Car. TPWD and TSRA acknowledge that Car 43 of the TSRR sustained damage in an accident that occurred on or about July 6, 2007. TPWD will pay to TSRA $13,500 to be used solely to remove and repair Car 43. TSRA, in conjunction with the private operator it selects, will be responsible for removal and repair of Car 43. Within 30 days after completion of the removal and repair of Car 43, TSRA will provide to TPWD documentation of the actual costs of repairs.

4. Records

Records regarding the TSRR that are located at the TSRR will be transferred to TSRA as of the transfer date, except for TPWD personnel records, TPWD contracts (provided, however, that copies of any contracts to be transferred to TSRA shall be provided to TSRA), TPWD accounting/purchasing records, and similar records that TPWD must retain for audit and similar purposes. All records that are not being transferred to TSRA will be transferred to the TPWD State Parks Region 8 Headquarters and/or TPWD Austin Headquarters on or before the transfer date. Such records will be assembled and made available to TSRA, upon request and to the extent allowed by law, including, but not limited to the Texas Public Information Act.

5. TPWD Name and Insignia

Prior to the transfer date, TPWD will endeavor to remove the TPWD name, logo or other TPWD insignia from all property being transferred. TPWD and TSRA will work together to ensure that ownership and responsibility for the TSRR is accurately reflected on transferred property.

B. SERVICES, CONTRACTS AND MISCELLANEOUS ITEMS

1. Contracts and Leases

a. Operational Contracts. The contracts listed in Exhibit L are associated with the TSRR. TPWD will notify each contractor of the cancellation of the contract with TPWD as of the transfer date.

b. Credit Cards. All business credit cards held by TPWD staff associated with the TSRR will be cancelled as of the transfer date.

c. Park Hosts and Volunteers. All existing agreements and waivers between TPWD and current park hosts and volunteers will be terminated as of the transfer date. TPWD will notify current park hosts and volunteers of the termination of such agreements and waivers. TPWD will provide TSRA with the form of such agreements and waivers and a list of the current park hosts and volunteers.

2. Customer Service

TPWD's Customer Service Center will provide information on the transfer of the TSRR to TSRA but will not make reservations, sell tickets, accept payments, or perform similar functions after the transfer date. A link to the TSRA web site, or other website requested by TSRA, will be established from the TSRR information on the TPWD web site. This link will remain active until at least September 1, 2008.

3. Reservations

To ensure a smooth transition, requests for TSRR reservations received by TPWD prior to the transfer date that will be fulfilled after the transfer date will be forwarded by TPWD staff to a toll-free number provided by TSRA. Requests for reservations received after the transfer date will be the responsibility of TSRA.

4. Utilities

a. Transfer of Utilities. TPWD and TSRA will work together to transfer all utilities listed in Exhibit M from TPWD to TSRA.

b. TCEQ Permits. TSRA and TPWD will cooperate in providing information to the Texas Commission on Environmental Quality regarding the transfer of existing permits or the acquisition of new permits required in connection with the water and wastewater utility facilities associated with the TSRR. Such facilities are located at Rusk, Palestine and Maydale. The current permits and associated facilities are listed in Exhibit N. Beginning

on the transfer date, TSRA will be responsible for these facilities and for ensuring compliance with all regulatory requirements associated with these facilities.

5. Continued Operation

To the extent permitted by the condition of the TSRR, TPWD will endeavor to operate the TSRR until the transfer date, provided, however, TPWD reserves the right to temporarily cease operation immediately prior to the transfer date to facilitate the smooth transfer of the TSRR to the TSRA.

6. TSRA Agents

To facilitate the smooth transition and transfer of the TSRR from TPWD to the TSRA, TSRA may locate agents of TSRA, including but not limited to officers, employees and contractors (referred to collectively herein as TSRA Agents) at TSRR facilities prior to the transfer date, subject to the following:

a. No Interference. TSRA Agents will in no way interfere with the smooth operation of the TSRR.

b. Compliance with Work Rules. TSRA Agents will comply with reasonable work rules established by TPWD's Superintendent of the TSRR.

c. Responsible for Actions. TSRA will be solely responsible for all actions of the TSRA Agents.

d. Indemnification. To the extent allowed by law, TSRA shall hold TPWD harmless from any and all claims and causes of action which may be asserted by reason of persons killed or injured and property damaged or destroyed and which deaths, injuries and/or damages would not have occurred except for the presence of TSRA Agents (excluding from this indemnity, however, injuries and damages resulting from the sole negligence of TPWD). Where personal injury, death or loss of or damage to property is the result of joint negligence or willful misconduct of TPWD and TSRA, TSRA's duty of indemnification shall be in proportion to its allocable share of such joint negligence or willful misconduct.

7. Federal Railroad Administration. TSRA will comply with the requirements of the Federal Railroad Administration (FRA) in operation of the TSRR, to the extent applicable. As of the Transfer Date, it is believed by TPWD that TSRR is considered a non-general, non-insular railroad that may be subject to limited jurisdiction by the FRA, including but not limited to the FRA's jurisdiction as stated in 49 C.F.R. §§171-179, 209-211, 215, 216, 225, 230, 234, 245 and 49 U.S.C. §§20102, 20301-201303, 20502-20505, 20701, 20902, 21302, 21304.

C. FUNDS AND PROJECTS

1. Existing Transportation Enhancement Funds

Upon approval by TxDOT, TPWD will transfer to TSRA approximately $2.3 million remaining from funds received by TPWD pursuant to the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) for renovations to the TSRR, as provided in the Advanced Funding Agreement, dated on or about January 2001, attached hereto as Exhibit O. Unless modified by TxDOT, pursuant to the Advanced Funding Agreement, these funds may only be used to purchase rail; provided, however, that TPWD will cooperate with efforts by TSRA to modify the Advanced Funding Agreement.

2. Match for Transportation Enhancement Funds

Upon approval of this Agreement by the Texas Legislative Budget Board, TPWD will transfer to TSRA $2 million to be used as match for Transportation Enhancement Funds. TPWD will have no obligation to fund or otherwise assist in the acquisition of the Transportation Funds, except as otherwise provided by law. TPWD will work with TxDOT in reviewing the project for which the TSRA proposes to use Transportation Enhancement Funds to determine if the project meets the federal Transportation Enhancement Program guidelines in Title 23 of the United State Code.

3. No Additional Funding

TPWD will not be obligated to provide any funding to the TSRA, its agents or contractors, other than that expressly provided in this Agreement or by law, including but not limited to Article IX, §19.81(f), and Article VI, TPWD, Rider 25, of HB 1.

4. Funding for Track Repair

TPWD and TSRA acknowledge that there have been recent damages to the TSRR Right-of-Way caused by extraordinary rainfall during the Spring and Summer of 2007 ("Recent Damages"). TPWD will pay to TSRA $631,732 to be used solely to repair the Recent Damages. This amount is based on a cost estimate provided by an engineering firm retained by TPWD. TSRA, in conjunction with the private operator it selects, will be responsible for repair of the Recent Damages on the TSRR Right-of-Way. TPWD will cooperate with TSRA and will provide engineering studies, cost estimates and other information maintained by TPWD to TSRA or TSRA's private operator in an effort to facilitate the repair of the Recent Damages. Within 30 days after completion of the repair of the Recent Damages, TSRA will provide to TPWD documentation of the actual costs of repairs.

5. Accounting System

All State Parks Accounting System revenue and reporting functions will cease at close of business on August 31, 2007, except as necessary for auditing purposes. Software access will be terminated on or before the transfer date.

6. Bank Accounts, Petty Cash Accounts and Revenue
TPWD will close all bank and petty cash accounts associated with the Texas State Railroad. All revenue received by TPWD in connection with the operation of the TSRR prior to 12:01 a.m. September 1, 2007, will be retained by TPWD.

D. OTHER TERMS AND CONDITIONS

1. Entire Agreement; Modification
This Agreement is the entire agreement between the Parties. Any changes, deletions, extensions, or amendments to this Agreement shall be in writing signed by both Parties to this Agreement. Any other attempted changes, including oral modifications, written notices, or other modifications of any type that have not been signed by both Parties shall be invalid.

2. Term
This Agreement will be effective upon execution by both Parties hereto.

3. Severability
If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision, and the Parties shall negotiate in good faith to amend this Agreement so that the revised agreement accomplishes as nearly as possible the terms and conditions that existed under this Agreement upon the date of execution or most recent amendment without regard to the invalidity, illegality, or unenforceability.

4. Inability to Perform
If TPWD or TSRA is unable to carry out its responsibilities under this Agreement by reason of events outside the control of TSRA or TPWD, including, but not limited to, natural disaster, civil disturbance, acts of public enemies, acts of Congress, acts of the Texas Legislature, or other government action, TSRA and TPWD will immediately initiate discussions regarding the impact of these events on the Parties' respective obligations under this Agreement.

5. Controlling Law and Venue
This Agreement is made and shall be interpreted under the laws applicable in the State of Texas.

6. Assignment
This Agreement is not assignable without the prior written consent of both Parties.

7. Notices
Notices under this Agreement are to be in writing and directed to the person executing this Agreement for that Party at the address shown.

8. No Third-Party Beneficiary
The obligations and restrictions contained in this Agreement are for the benefit of the Parties to this Agreement, and are expressly not intended to benefit individual third parties. The Parties do not intend to create any rights of individual third parties to enforce the obligations created herein.

9. Captions
The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

10. Exhibits
All exhibits referred to in this Agreement are attached and incorporated by reference.

11. Certifications
The undersigned contracting Parties certify as follows:

a. the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the Parties;

b. the proposed arrangements serve the interest of efficient and economical administration of state and local government; and,

c. the services, supplies or materials contracted for are not required by Section 21 of Article XVI of the Texas Constitution to be supplied under contract given to the lowest responsible bidder.

12. Authority to Enter into Agreement
Each individual executing this Agreement certifies that he or she has authority to enter into this Agreement on behalf of the specified party.

Agreed to by and on behalf of the Parties to this Agreement by the authorized representatives whose signatures appear below:

Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

By: Robert L. Cook
Executive Director

Date: 8/20/07

Texas State Railroad Authority
c/o Dale Brown, Secretary
504 North Queen Street
Palestine, Texas 75801

By: Steve Presley
Title: President

Date: 8-24-07