AN OVERVIEW OF SELECTED

"Government Incentives for Development"

Dallas Bar Association – Real Property Section

February 13, 2012

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Article 3, Section 52(a), Texas Constitution

Sec. 52. COUNTIES, CITIES OR OTHER POLITICAL CORPORATIONS OR SUBDIVISIONS; LENDING CREDIT; GRANTS; BONDS. (a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

Article 3, Section 52-a, Texas Constitution

(added 1987; amended 2005)

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

Article 8, Section 1-g (a), Texas Constitution

(added 1981)

Sec. 1-g. DEVELOPMENT OR REDEVELOPMENT OF PROPERTY; AD VALOREM TAX RELIEF AND ISSUANCE OF BONDS AND NOTES. (a) The legislature by general law may authorize cities, towns, and other taxing units to grant exemptions or other relief from ad valorem taxes on property located in a reinvestment zone for the purpose of encouraging development or redevelopment and improvement of the property.

Article 8, Section 1-g (b), Texas Constitution

(added 1981)

Sec. 1-g. DEVELOPMENT OR REDEVELOPMENT OF PROPERTY; AD VALOREM TAX RELIEF AND ISSUANCE OF BONDS AND NOTES.

(b) The legislature by general law may authorize an incorporated city or town to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area within the city or town and to pledge for repayment of those bonds or notes increases in ad valorem tax revenues imposed on property in the area by the city or town and other political subdivisions.

Government Incentives for Development

- 380/381 Agreements
- Type A and Type B Economic Development Corporations
- Tax Increment Reinvestment Zones
- Public Improvement Districts
- Legislative Municipal Management Districts

380 Economic Development Agreements

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.

Sec. 381.004. COMMUNITY AND ECONOMIC DEVELOPMENT PROGRAMS IN CERTAIN COUNTIES.

(b) To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program:
(1) for state or local economic development;
(2) for small or disadvantaged business development;
(3) to stimulate, encourage, and develop business location and commercial activity in the county;
(4) to promote or advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors, and businesses;
(5) to improve the extent to which women and minority businesses are awarded county contracts;
(6) to support comprehensive literacy programs for the benefit of county residents; or
(7) for the encouragement, promotion, improvement, and application of the arts.

(h) The commissioners court may develop and administer a program authorized by Subsection (b) for making loans and grants of public money and providing personnel and services of the county.

380/381 Economic Development Agreements

- Most are city 380 Agreements, and most involve sales tax revenue for multiple years (i.e., driven by large retail projects).

- 380/381 Agreements that involve multi-year ad valorem tax revenue are less common because they require an election or are subject to annual appropriations.

- The Attorney General has opined that the agreements must include measurable economic performance standards with "claw back" provisions if the standards are not met.

- OTHERWISE, TERMS AND CONDITIONS ARE LEFT TO THE DISCRETION OF THE GOVERNING BODIES.

- EASY TO ADOPT ... protected from open records disclosure during negotiations and require no special notice or hearing requirements.

Type A and Type B Economic Development Corporations

(formerly "4A" and "4B" corporations)

Development Corporation Act
Local Government Code
Chapters 501 – 505

(formerly article 5190.6)

Type A/Type B Economic Development Corporations

- Hundreds of Type A and Type B corporations (still referred to as "4A" and "4B" corporations) in existence.

- Many are underutilized and looking for economic development opportunities.

- Created by city-wide elections and levy up to ½% sales and use tax city-wide (no issues of constitutional authority).

- May spend revenues as collected or issue bonds.

- May spend revenue on a wide variety of statutory "projects" (**including private improvements**) consistent with the voter-approved ballot proposition that created the corporation.

- May spend revenue on a wide variety of statutory "costs."

LGC	Type A	Type B	"Project" Description
501.101	√	√	Land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements for the creation or retention of PRIMARY JOBS and found by the board of directors to be required or suitable for the development, retention, or expansion of: A. manufacturing and industrial facilities; B. research and development facilities; C. military facilities …; D. transportation facilities, including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, related infrastructure located on or adjacent to an airport or railport facility, marine ports, inland ports, mass commuting facilities, and parking facilities; E. sewage or solid waste disposal facilities; F. recycling facilities; G. air or water pollution control facilities; H. facilities for furnishing water to the public; I. distribution centers; J. small warehouse facilities capable of serving as decentralized storage and distribution centers; K. primary job training facilities for use by institutions of higher education; or L. regional or national corporate headquarters facilities.
501.002(12)	√	√	"PRIMARY JOB" means (A) a job that is (i) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy and (ii) included in one of the [identified] sectors of the North American Industry Classifications System (NAICS).

LGC	Type A	Type B	"Project" Description
501.002(9)	√	√	"Corporate headquarters facility" means buildings proposed for construction or occupancy as the principal office for a business enterprise's administrative and management services.
501.102	√	√	… job training
501.103	√	√	Expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and internet improvements; or (3) beach remediation along the Gulf of Mexico.
501.104	√	√	… military bases
501.105	√	√	… career centers
501.106	√	√	… certain projects for border municipalities
501.107	√	√	… infrastructure projects for border counties

LGC	Type A	Type B	"Project" Description
501.152	√	√	"Cost" with respect to a project means the cost of the acquisition, cleanup, construction, reconstruction, improvement, or expansion of a project, including: (1) the cost of acquiring all land, rights-of-way, property rights, easements, and interests; (2) the cost of all machinery and equipment; (3) financing charges; (4) the cost of inventory, raw materials, and other supplies; (5) research and development costs; (6) interest accruing before and during construction and until the first anniversary of the date the construction is completed, regardless of whether capitalized; (7) necessary reserve funds; (8) the cost of estimates, including estimates of cost and revenue; (9) the cost of engineering or legal services; (10) the cost of plans, specifications, or surveys; (11) other expenses necessary or incident to determining the feasibility and practicability of acquiring, cleaning, constructing, reconstructing, improving, and expanding the project; (12) administrative expenses; and (13) other expenditures necessary or incident to: (A) acquiring, cleaning, constructing, reconstructing, improving, and expanding the project; (B) placing the project in operation; and (C) financing or refinancing the project, including refunding any outstanding obligations, mortgages, or advances issued, made, or given by a person for a cost described by this section.

LGC	Type A	Type B	"Project" Description
501.002(9)	√	√	"Corporate headquarters facility" means buildings proposed for construction or occupancy as the principal office for a business enterprise's administrative and management services.
501.158	√	√	A corporation may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Subchapter C of this chapter or by Subchapter D, Chapter 505, unless the corporation enters into a PERFORMANCE AGREEMENT with the business enterprise … [that must]: (1) provide, at a minimum, for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement; and (2) specify the terms under which REPAYMENT MUST BE MADE if the business enterprise does not meet the performance requirements specified in the agreement.
502.052	√	√	A corporation may … spend tax revenue … for the development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.
504.103	√		[Except as provided] … a Type A corporation may not undertake a project the primary purpose of which is to provide a transportation facility, solid waste disposal facility, sewage facility, a facility for furnishing water to the general public, or an air or water pollution control facility …. [Notwithstanding the foregoing], a Type A may provide such projects to benefit property acquired for a project that has another primary purpose and may undertake a project the primary purpose of which is to provide [airport or port-related facilities].
504.105	√		A Type A corporation may not spend more than 10% of its revenue for promotional purposes.
504.152	√		A Type A corporation can undertake Type B projects if approved at an election.

LGC	Type A	Type B	"Project" Description
505.103		√	A Type B corporation may not spend more than 10% of its revenue for promotional purposes
505.151		√	Land, buildings, equipment, facilities, expenditures, and improvements included in the definition of "project" under Chapter 501, including job training and recycling facilities.
505.152		√	Land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for: professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described ….
505.153		√	Land, buildings, equipment, facilities, and improvements fund by the board of directors to be required or suitable for … affordable housing.

LGC	Type A	Type B	"Project" Description
505.154		√	Land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for (1) development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or (2) development of … [water conservation programs].
505.155		√	Land, buildings, equipment, facilities, and improvements found by the board of directors to promote or develop new or expanded business enterprises that create **PRIMARY JOBS**, including: (1) a project to provide public safety facilities, streets, and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, and any improvements or facilities related to a project described by this subdivision; and (2) any other project that the board of directors in the board's discretion determines promotes or develops new or expanded business enterprises that create or retain **PRIMARY JOBS**.
505.1561		√	Land, buildings, equipment, facilities, and improvements found buy the board of directors to be required or suitable for the development or expansion of airport and railport facilities ….

Tax Increment Reinvestment Zones

Chapter 311, Texas Tax Code

(referred to as a “TIRZ” or “TIF”)

Tax Increment Reinvestment Zone

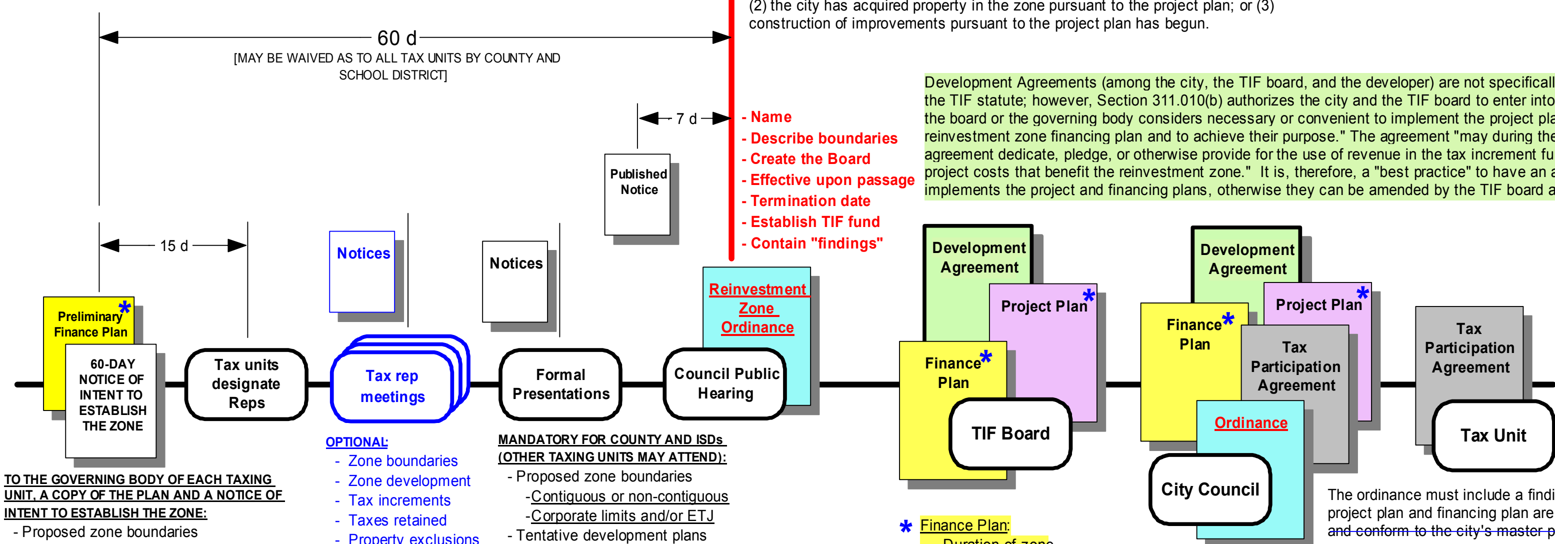
- Geographic area designated by a city pursuant to the Chapter 311 public hearing process (greatly simplified by HB 2853) [**a legislative, discretionary process**].

- Establishes a base year (January 1 of the year the zone is created) for ad valorem and sales tax revenues within the zone.

- City (and other taxing units that elect to participate) deposits into a tax increment fund all or a portion of the incremental increases in ad valorem and sales tax revenues that result from development within the zone.

- Money in the tax increment fund is used to pay project costs (historically for public infrastructure) or make "380" economic development grants (new since 2005).

TIRZ Creation Timeline (pre HB 2853)



A taxing unit is not required to pay a tax increment after three years from the date the zone is created unless ... within the three-year period: (1) bonds have been issued for the zone; (2) the city has acquired property in the zone pursuant to the project plan; or (3) construction of improvements pursuant to the project plan has begun.

Development Agreements (among the city, the TIF board, and the developer) are not specifically addressed i the TIF statute; however, Section 311.010(b) authorizes the city and the TIF board to enter into agreements ' the board or the governing body considers necessary or convenient to implement the project plan and reinvestment zone financing plan and to achieve their purpose." The 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." It is, therefore, a "best practice" to have an agreement tha implements the project and financing plans, otherwise they can be amended by the TIF board and city counc

TO THE GOVERNING BODY OF EACH TAXING UNIT, A COPY OF THE PLAN AND A NOTICE OF INTENT TO ESTABLISH THE ZONE:

- Proposed zone boundaries
  - -Contiguous or non-contiguous
  - -Corporate limits and/or ETJ
- Tentative development plans
- Impact on property values
- Impact on tax revenue

OPTIONAL:

- Zone boundaries
- Zone development
- Tax increments
- Taxes retained
- Property exclusions
- Board of Directors
- Tax collections
- Other relevant matters

MANDATORY FOR COUNTY AND ISDs (OTHER TAXING UNITS MAY ATTEND):

- Proposed zone boundaries
  - -Contiguous or non-contiguous
  - -Corporate limits and/or ETJ
- Tentative development plans
- Impact on property values
- Impact on tax revenue

* Finance Plan:

- Duration of zone
- Detailed list of project costs
- Kind, number, and location of public improvements
- Economic feasibility study
- Estimate of bonded indebtedness
- Timing of obligations to be incurred
- Description of methods and sources of financing
- Current appraised value of property in the zone
- Estimate of yearly captures appraised value

* Project Plan:

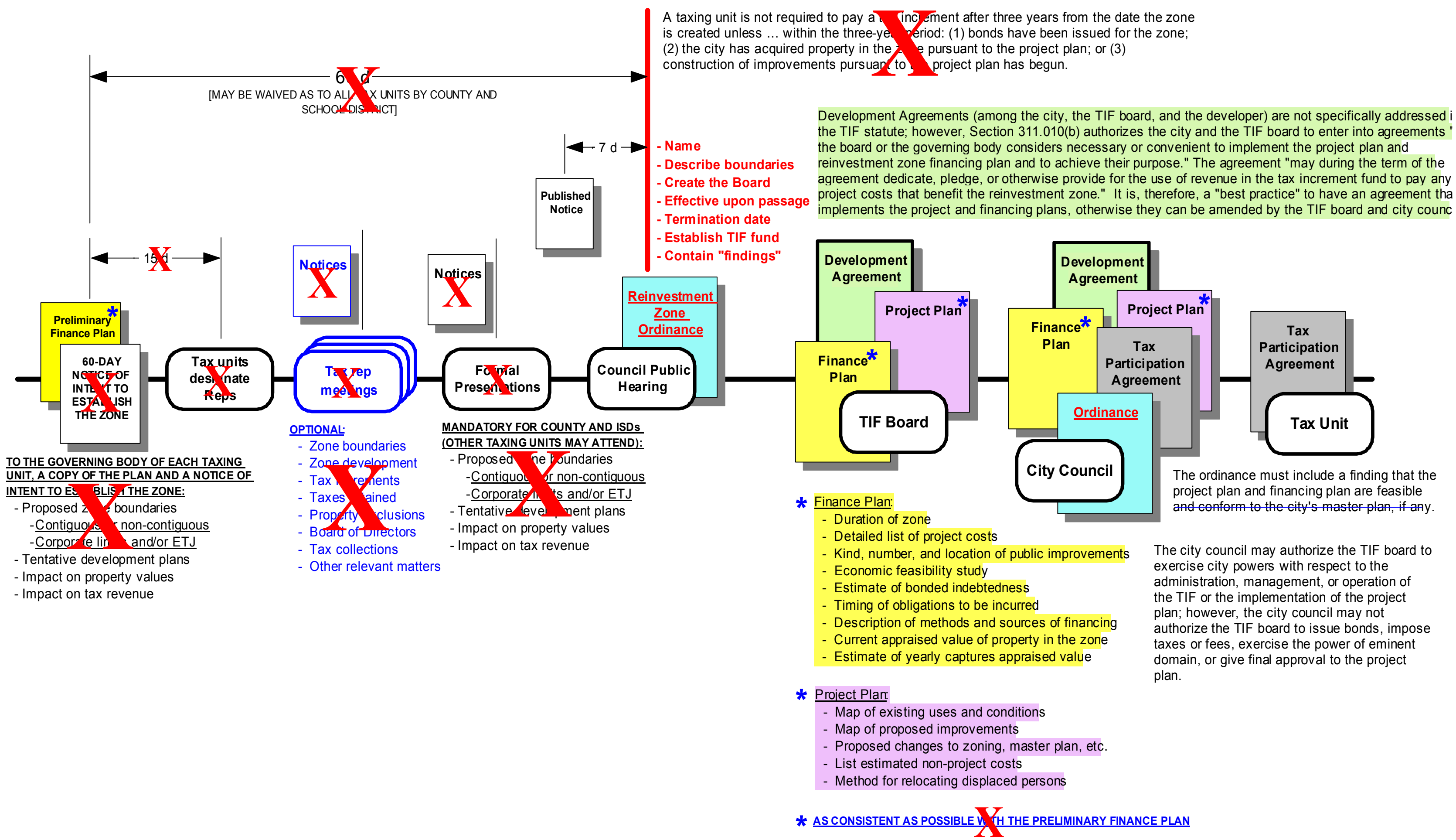
- Map of existing uses and conditions
- Map of proposed improvements
- Proposed changes to zoning, master plan, etc.
- List estimated non-project costs
- Method for relocating displaced persons

* AS CONSISTENT AS POSSIBLE WITH THE PRELIMINARY FINANCE PLAN

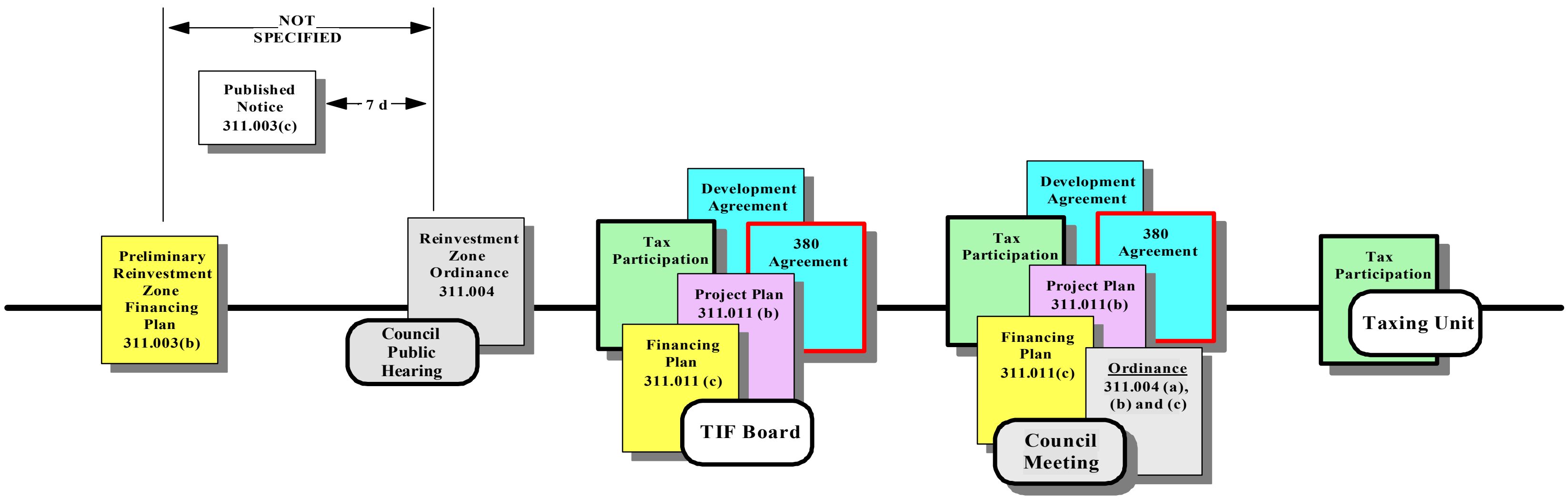
The ordinance must include a finding that the project plan and financing plan are feasible ~~and conform to the city's master plan, if any~~.

The city council may authorize the TIF board to exercise city powers with respect to the administration, management, or operation of the TIF or the implementation of the project plan; however, the city council may not authorize the TIF board to issue bonds, impose taxes or fees, exercise the power of eminent domain, or give final approval to the project plan.

TIRZ Creation Timeline (Impact of HB 2853)



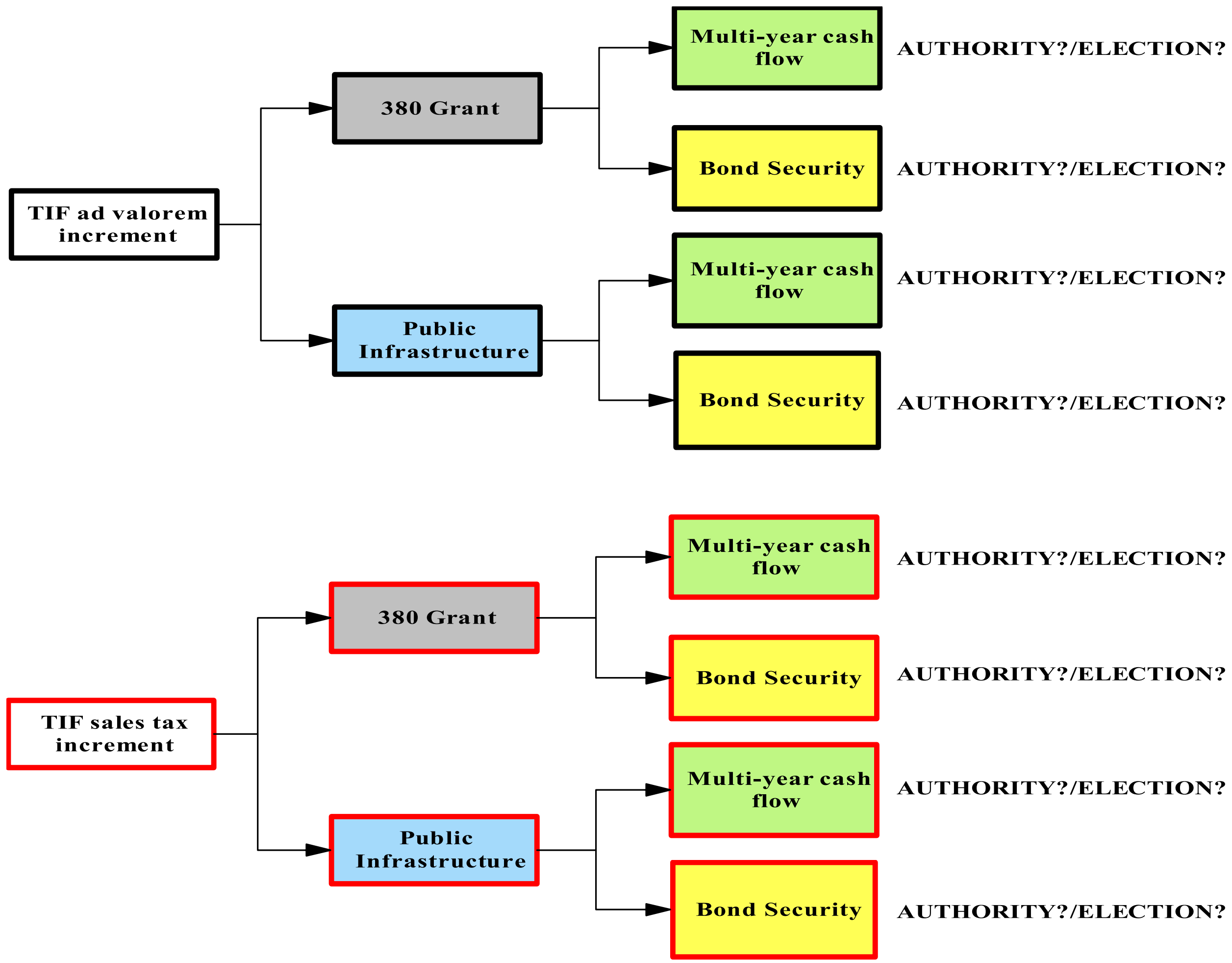
TIRZ Creation Timeline (post HB 2853)



Tax Code Section 311.010(h) – Economic Development Grants

(h) Subject to the approval of the **governing body** of the municipality or county that designated [~~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 or county, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code. The approval required by this subsection may be granted in an ordinance, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan.

Tax Increment Revenue Analysis



Public Improvement Districts

Chapter 372, Local Government Code

(referred to as “PIDs”)

Public Improvement Districts

- Contiguous geographic area designated by a city within which assessments are levied to pay for public improvements that confer a special benefit on the property within the area [**a legislative, discretionary process**].

- The amount of an assessment against a parcel cannot exceed the special benefit conferred on the parcel by the improvements being financed.

- Assessments may be paid in full at any time together with interest through the date of payment, but otherwise without cost or expense to the landowner.

- Assessments, if not paid in full, are payable in annual installments together with interest, collection costs, administrative costs, and delinquency charges.

Public Improvement Districts

- Once levied, assessments do not increase; however, annual installments may be increased or reduced based on variations in collection costs, administrative costs, and delinquency charges.

- Assessments and annual installments are deposited into a fund and used to reimburse the developer for costs or to pay debt service on bonds the proceeds of which are used to reimburse the developer.

- Assessments are a personal liability of the landowner and are secured by a lien on the property that is junior to all liens for ad valorem taxes but otherwise is senior to all other liens.

- A city has not liability for the payment of assessments or bonds secured by assessments.

Public Improvement Districts

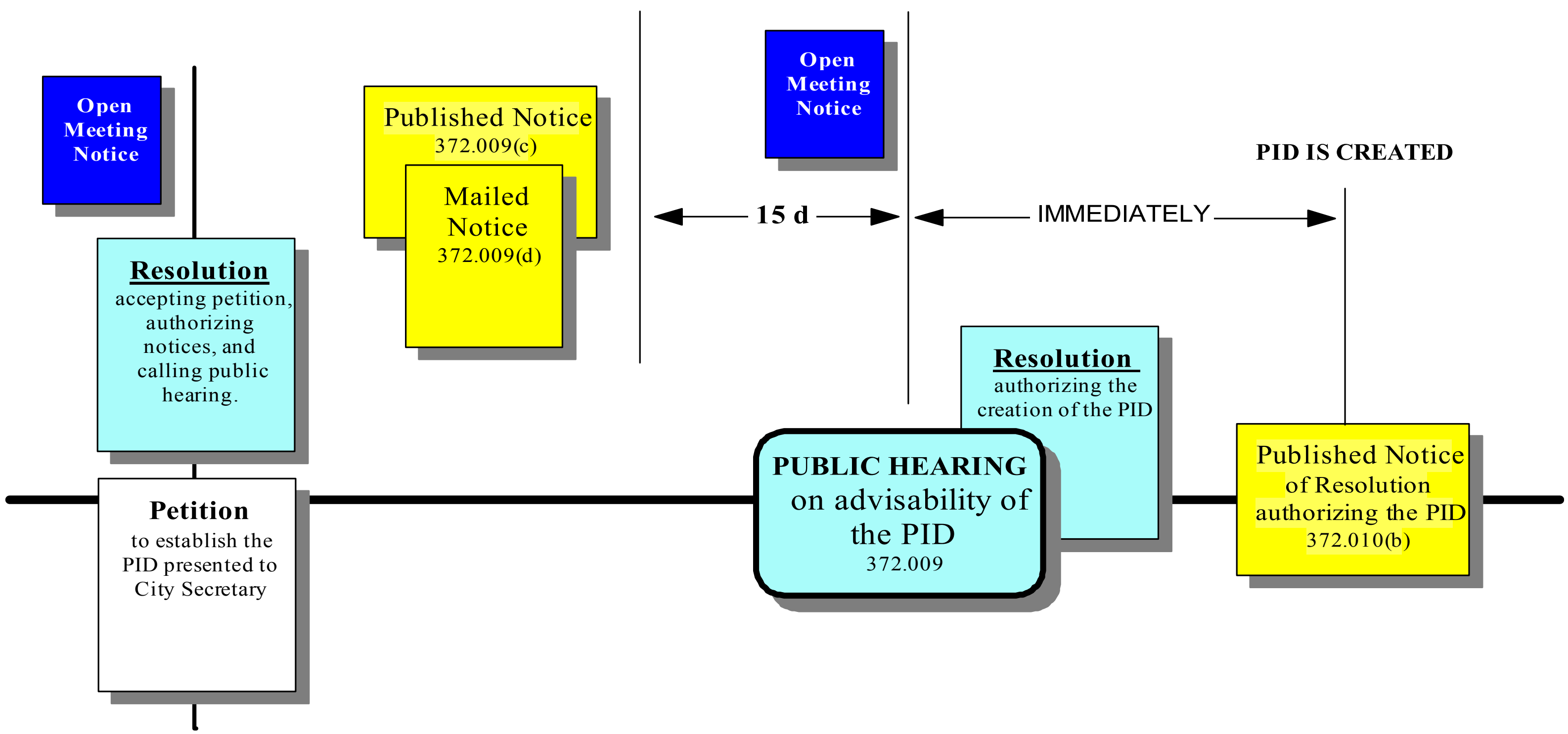
- SB 412 (2011 Legislative Session) eliminated the interest rate cap on PID bonds and significantly increased the interest rate on reimbursement agreements (5% above the weekly bond index for the first five years and 2% above the index thereafter).

- SB 422 (2011 Legislative Session) authorized cities to contract with the central appraisal district to collect assessments.

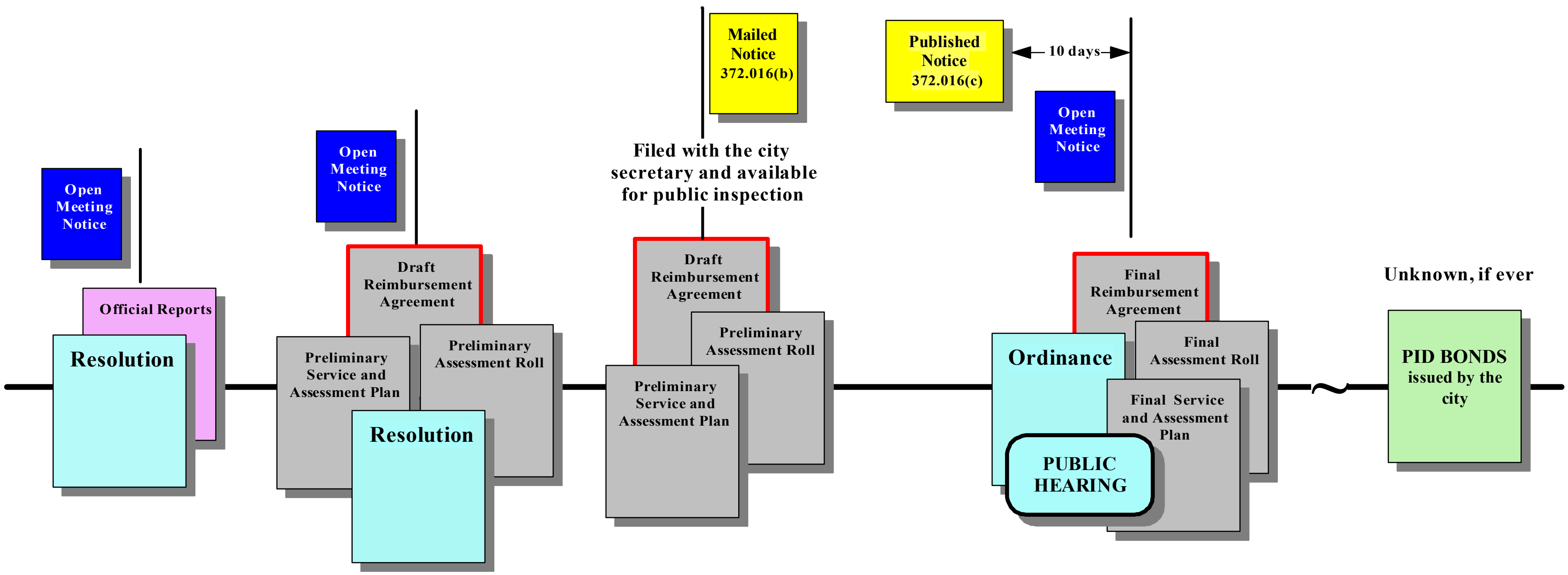
- **PIDs offer one of few opportunities to issue "bare land" bonds and use the proceeds to construct public improvements** [**subject, however, to the confusing "All Bond Counsel ... Proposed Public Improvement District Guidelines" dated December 17, 2008, issued by the Attorney General**].

- Creating a PID is quick and easy; levying assessments much more difficult.

Public Improvement Districts
Creation Timeline



Public Improvement Districts
Levy of Assessments (with Reimbursement Agreements) Timeline



“Legislative” Municipal Management Districts

Chapter 375, Local Government Code
Chapter 54, Water Code
(referred to as MMDs)

Legislative Municipal Management Districts

- Numerous in-city "legislative" MMDs have been created during recent legislative sessions to reimburse developers for public infrastructure from the proceeds of bonds issued by the MMDs and secured by ad valorem taxes or special assessments or both:
    - Viridian MMD, Arlington
    - Cypress Waters MMD, Dallas
    - Trinity River MMD, Dallas
    - North Oak Cliff MMD, Dallas

- MMDs are political subdivisions (i.e., conservation and reclamation districts pursuant to Article 16, Section 59, Texas Constitution) similar, in most respects, to those much-criticized Municipal Utility Districts, Fresh Water Supply Districts, and Water Control and Improvement Districts.

- Most (but not all) of the legislative MMDs are subject to bond review by the TCEQ for financial feasibility.

Legislative Municipal Management Districts

- Most (but not all) of the recent MMD legislation authorizes the inclusion of MMD land in a TIRZ and the use of TIRZ increment revenue to mitigate the "double taxation" burden by either reducing the MMD tax rate or by reducing the amount of debt the MMD issues (but creation of the TIRZ and payment of the increment are still discretionary).
- MMD legislation was based on the Senate IGR "template" (Senator Royce West)
- **MMD legislation gave cities control over the boards of directors and finance plans (i.e., gave the cities a new "tax tool" to create economic development at the expense/risk of the owner/developer and without any capital cost).**
- **The legislative process provided an opportunity for all "political stakeholders" to exact their respective "pound of flesh" from the owner/developer without any worries about "proportionality."**