

BILL ANALYSIS

C.S.H.B. 1556
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Provisions of the Texas Economic Development Act providing for Chapter 313, Tax Code, agreements between a public school district and a taxpayer in which the appraised value of certain qualified property is limited for purposes of public school district maintenance and operations property taxes in exchange for a qualified investment that produces a minimum number of new jobs in the district are set to expire at the end of 2022. Because school district property taxes are the largest portion of the property tax bill in Texas, this is an important tool to incentivize economic development activity in Texas. C.S.H.B. 1556 seeks to postpone the expiration of these provisions and continue the authorization to enter into Chapter 313 agreements while also revising certain provisions to bring increased benefits to Texans.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1556 amends the Tax Code to postpone until December 31, 2032, the expiration of the provisions of the Texas Economic Development Act providing for Chapter 313 agreements between a public school district and a taxpayer subject to the franchise tax in which the appraised value of certain qualified property is limited for purposes of public school district maintenance and operations (M&O) property taxes in exchange for a qualified investment that produces a minimum number of new jobs in the district. The bill makes additional changes to the policies and procedures applicable to these Chapter 313 agreements, as provided below.

Qualified Investment and Qualified Property

C.S.H.B. 1556 includes as a qualified investment a building or a permanent, nonremovable component of a building that, as part of a discrete project that increases the value of the building or component, is renovated, expanded, modernized, or otherwise improved during the applicable qualifying time period that begins on or after January 1, 2023, and that houses certain tangible personal property. The building or component that is renovated, expanded, modernized, or otherwise improved is not considered a qualified investment unless the building or component would qualify as a qualified investment if the building or component were to be built or constructed during the applicable qualifying time period and the agreement between the property owner and the school district describes with requisite specificity the manner in which the building or component will be renovated, expanded, modernized, or otherwise improved.

Accordingly, C.S.H.B. 1556 includes as qualified property applicable land on which a person proposes to renovate, expand, modernize, or otherwise improve an existing building or improvement. The bill clarifies that land on which a building or component of a building that is built or constructed during the applicable qualifying time period and that houses certain tangible personal property or that, as part of a discrete project that increases the value of the building or component, is renovated, expanded, modernized, or otherwise improved during the applicable qualifying time period and that houses certain tangible personal property is located is not considered a qualified investment. That clarifying provision also removes a specification in current statute that the land on which a building or component of a building that contains certain tangible personal property used in connection with an advanced clean energy project is located is not considered a qualified investment.

Application

C.S.H.B. 1556 alters the authority of the comptroller of public accounts to establish what information must be included on the application form for a limitation on appraised value and removes the authority for the school district's governing body to establish the application fee. Instead, the bill establishes a uniform \$60,000 application fee that is payable to the applicable district and the bill limits the information that the application form may require an applicant to provide to the following:

- the name and taxpayer identification number of the applicant and each parent, subsidiary, or affiliate of the applicant;
- the applicant's contact information;
- the name of the district in which the qualified property is located;
- a description of the project, including the category of the applicable North American Industry Classification System that describes the activities in which the applicant will engage in connection with the project;
- the project's location;
- certain estimated financial and economic information for each property tax year covered by the proposed agreement between the applicant and the district; and
- any information that the comptroller requires for the economic impact evaluation of the applicant or otherwise determines to be necessary to determine the applicant's eligibility for the limitation.

The bill removes the authorization for the comptroller to charge the applicant a fee sufficient to cover the costs of providing that economic impact evaluation and requires the district's governing body instead, for each application the body elects to consider, to deliver \$10,000 of the application fee to the comptroller. If the governing body elects not to consider an application, the body must refund \$10,000 of the application fee to the applicant.

Agreement Contents

C.S.H.B. 1556 removes the requirement for a Chapter 313 agreement to include, to the extent necessary, provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms agreed to by the property owner and the district. The bill also removes the authorization for the agreement to provide that the property owner will protect the district in the event the district incurs extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project. Instead, the bill requires the agreement to require the property owner to provide a stabilization payment to the district in each tax year during the limitation period in an amount equal to a portion, not to exceed 38 percent, as specified by the agreement of the amount computed by subtracting from the market value of the person's qualified property as described in the agreement for that tax year the value of the property as limited by the agreement and multiplying the difference by the district's M&O tax rate for that tax year.

C.S.H.B. 1556 prohibits an agreement entered into pursuant to an application filed on or after January 1, 2023, from providing for the property owner to make supplemental payments to the district or any other entity on the district's behalf. That prohibition replaces current statutory language that prohibits an agreement under which a person agrees to provide supplemental payments to a school district or any other entity on behalf of a school district in an amount that exceeds certain limits or for a period that exceeds the period beginning with the qualifying time period and ending December 31 of the third tax year after the date the person's eligibility for a limitation under Chapter 313, Tax Code, expires. The bill specifies that a stabilization payment is not considered to be a supplemental payment for purposes of an agreement entered into pursuant to an application filed before January 1, 2023, under which the property owner agrees to provide such supplemental payments.

C.S.H.B. 1556 includes as a permissible beginning date for the limitation in the case of a project involving the renovation, expansion, modernization, or other improvement of an existing building or improvement January 1 of the first tax year that begins after the date the renovation, expansion, modernization, or other improvement is completed.

Penalties

C.S.H.B. 1556 removes the cap on the amount of a penalty imposed for the failure to comply with the applicable job-creation requirements under the agreement that is based on supplemental payments and instead caps the amount of such a penalty at an amount equal to the difference between the amount of the tax benefit received by the person under the agreement in the preceding year and the amount of any stabilization payments made to the school district in that year.

Reporting Form

C.S.H.B. 1556 requires the comptroller to adopt a single annual reporting form to be used by a recipient or former recipient of a limitation on appraised value under a Chapter 313 agreement for the purpose of submitting information necessary for the comptroller to complete the reports required under the Texas Economic Development Act. A recipient or former recipient must submit the form to the applicable school district at the same time the recipient or former recipient submits the form to the comptroller. These provisions do not apply to the form used to report on compliance with applicable job-creation requirements.

Comptroller's Report

C.S.H.B. 1556 amends the required contents of the comptroller's biennial report to the lieutenant governor, speaker of the house of representatives, and each other member of the legislature on Chapter 313 agreements to do the following:

- with respect to the component of the report that is an assessment of certain information pertaining to the agreements, considered in the aggregate:
 - specify that the period for which the information is to be assessed begins the year in which each agreement was entered into and ends the most recent year for which actual data is available;
 - remove from the information to be assessed the total effect of the agreements on personal income in Texas and the total fiscal effect of the agreements on the state and on local governments;
 - change the total number of jobs created in Texas which are to be assessed from all jobs created directly and otherwise to only qualifying jobs;
 - specify that the total amount of investment in Texas to be assessed is only the total amount of qualified investment;

- specify that the information that is assessed relating to taxable value applies to taxable value for purposes of school district property taxes for maintenance and operations and for debt;
- include among the information that must be assessed the total amount of such taxes imposed on taxable property that is on the tax rolls in Texas and the total amount of those taxes that would have been imposed on the value on property not on the tax rolls in Texas as a result of the agreements if that value had been on the rolls; and
- include among the information that must be assessed the total amount of stabilization payments made to school districts under the bill's provisions; and
- with respect to the component of the report that is an assessment of the progress of each Chapter 313 agreement that states certain information for each agreement:
 - specify that the information assessed is for the period beginning the year in which each agreement was entered into and ending the most recent year for which actual data has been certified;
 - remove from the information to be assessed the median wage of the new qualifying jobs each recipient created;
 - include among the information to be assessed the amount of the stabilization payments each recipient made to the applicable school district; and
 - specify that the taxes regarding which certain information is to be assessed are school district property taxes for maintenance and operations and for debt.

Conforming Change

C.S.H.B. 1556 amends the Education Code to make a conforming change to provide for the application of certain local share provisions under the foundation school program as the law exists before the bill's effective date. That change applies beginning with the 2023-2024 school year.

Repealers

C.S.H.B. 1556 repeals Sections 313.031(b) and 313.032(b-1), Tax Code.

EFFECTIVE DATE

January 1, 2023.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1556 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Currently, the Chapter 313 agreements provide a temporary limitation on the appraised value of a qualified property for purposes of school district M&O property taxes in exchange for a qualified investment by the property's owner. The amount of the limitation is set by the individual district in the agreement but may not be less than the amount of the qualified investment, which ranges in categories from between \$1 million and \$100 million, depending on the location and other characteristics of the district. The original overhauled this system and removed the location-based and other-characteristics-based system of determining minimum qualified investments. The original also replaced the system of appraisal limitations with tax exemptions. Under the original, districts were divided into two categories based on wealth per student with a \$10 million minimum qualified investment for districts with wealth per student at or below the state average wealth per student and a \$50 million minimum qualified investment for all other districts. Further, once a qualified investment was made the qualified property was exempted from all school district M&O and enrichment property taxes for the duration of the

agreement. The original also removed job creation requirements with which the owner was required to comply as part of the agreement. The substitute does not overhaul the system for the agreements in the same manner and instead retains the current system, with certain changes.

The original removed several types of tangible personal property that are classified as a qualified investment. The substitute retains these. The original also included as an additional qualified investment a building or a permanent, nonremovable component of a building that, as part of a discrete project that increases the value of the building or component, is renovated, expanded, or otherwise improved during the applicable qualifying time period that begins on or after January 1, 2022, and that houses certain other tangible personal property currently classified as a qualified investment. The substitute changes the date on or after which the qualifying time period must begin to January 1, 2023, and includes modernization of the building or component as an additional qualifying investment. The substitute includes a provision not in the original establishing qualifying conditions for a building or component that is renovated, expanded, modernized, or otherwise improved to be considered a qualified investment.

The substitute does not revise the list of qualifying uses of a property to be eligible and does not revise the definition of "qualifying time period," as in the original. The substitute provides that a building or component that is renovated, expanded, modernized, or otherwise improved is not considered a qualified investment unless the building or component would qualify as a qualified investment if the building or component were to be built or constructed during the applicable qualifying time period and the agreement between the property owner and the school district describes with requisite specificity the manner in which the building or component will be renovated, expanded, modernized, or otherwise improved; the original does not contain such a provision.

While both the original and the substitute remove the authority of a district to establish its own application fee and instead set a uniform application fee in statute, the substitute sets that fee at \$60,000, whereas the original set the fee at \$50,000. Additionally, the substitute specifies that the fee is to be payable to the district, whereas the original did not. The substitute also includes a provision not in the original requiring that \$10,000 of the fee be refunded if the district elects not to consider the application and that \$10,000 of the fee be paid to the comptroller if the application is considered and delivered to the comptroller for evaluation.

The original provided that an application for an exemption from school district M&O and enrichment property taxes may be submitted to the comptroller, and the original made related conforming changes. The substitute maintains current law, which provides that an application for a limitation on the appraised value for school district M&O property taxes may be submitted to the governing body of the school district. The original and the substitute each establish a limited scope of information that may be required on the application form. The original removes the authority of the comptroller of public accounts to establish what information must be included on the application form and also differs as follows:

- the original included information not required by the substitute specifically relating to the number of construction and operations jobs to be created at a project site and the total amount of wages to be paid to those persons, as opposed to information on qualifying jobs the applicant commits to create, which is required by the substitute;
- the original included information not required by the substitute relating to the number of operations jobs held by independent contractors and the total amount of wages to be paid to those persons;
- the original did not include certain estimated financial and economic information for each property tax year covered by the proposed agreement between the applicant and the district; and
- the original did not include any information that the comptroller requires for the economic impact evaluation of the applicant or otherwise determines to be necessary to determine the applicant's eligibility for the limitation.

The original provided that the comptroller may not issue a certificate for an exemption from school district M&O and enrichment property taxes unless the comptroller determined that the exemption will not financially harm the school district in which the property is located and stated in writing the basis for the determination. The substitute does not contain such a provision.

The substitute removes the authorization for an agreement to provide that the property owner will protect the district in the event the district incurs extraordinary education-related expenses related to the project that are not directly funded in state aid formulas and instead require that an agreement require the property owner to provide a stabilization payment to the district each tax year. The original, however, did not do this and retained the existing authorization. The original prohibited an agreement under which a person agrees to provide supplemental payments to a school district or any other entity on behalf of a school district, but specified that a person was not prohibited from voluntarily providing supplemental payments to the school district or another entity on behalf of the district. The substitute, however, prohibits an agreement entered into pursuant to an application filed on or after January 1, 2023, from providing for the property owner to make supplemental payments to the district or any other entity on the district's behalf. The original contained a provision specifying that a Chapter 313 agreement must stipulate that all obligations of the parties to the agreement are stated in the agreement, and any separate agreement between the parties that imposes any additional obligation on either party is void. The substitute does not so provide.

The original includes provisions not in the substitute relating to liability of a person with whom a school district enters into a Chapter 313 agreement. Those provisions affect liability for failure to make the minimum amount of qualified investment during the qualifying time period and for differences between property tax benefits received and wages and other compensation paid.

The substitute includes provisions not in the original requiring the comptroller to adopt a certain single annual reporting form.

The original and the substitute each revise the required contents of the biennial report from the comptroller to the lieutenant governor, speaker, and other members of the legislature on the agreements, with each version requiring information in accordance with each bill's approach including information relating to the number of jobs in applicable categories, the amount of investment for applicable projects, and the value of the property. The original required the comptroller to verify a random sample of not less than 33 percent of the data used to prepare the report and submitted under the section of the Tax Code governing the report.

The original specified certain information that each recipient of an exemption from property taxes must annually report to the comptroller regarding jobs, wages, qualified investment, market value of certain property, and taxes that would have been imposed if not for an exemption from property taxes. The substitute does not contain such provisions.

The substitute does not repeal the following provisions of the Tax Code, which were repealed by the original:

- Section 313.006;
- Section 313.009;
- Sections 313.021(3) and (5);
- Sections 313.024(d) and (d-2);
- Sections 313.024(e)(3), (4), and (6);
- Section 313.025(f-1);
- Sections 313.027(b), (c), and (g);
- Section 313.0276; and
- Subchapter C, Chapter 313.

The substitute repeals Section 313.031(b), Tax Code, whereas the original struck Section 313.031(b), Tax Code, from statute but did not do so by repeal.

The substitute changes the bill's effective date from September 1, 2021, as in the original, to January 1, 2023.

The substitute changes the bill's caption.