

- SUBJECT:** Revising and extending local tax abatement agreement authority
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 11 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, C. Howard, P. King, Paxton, Peña, Taylor, Villarreal
- 0 nays
- WITNESSES:** For — Chris Shields, Tenaska, San Antonio Chamber of Commerce; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Sabrina Brown, Dow; Daniel Casey; George Christian, Texas Taxpayers and Research Association; Jayme Cox, Shell Oil; Jay Dauenhauer, Clean Coal Technology Foundation of Texas; Bill Hammond, Texas Association of Business; Chris Hughes, Total Services, Inc.; Vanessa Kellogg, Horizon Wind Energy; Donald Lee, Texas Conference of Urban Counties; Royce Poinsett, Exxon Mobil; Shannon Ratliff, Invenergy; Cindy Segovia, Bexar County Commissioners Court; John Thompson, Polk County)
- Against — none
- BACKGROUND:** Tax Code, ch. 312, the Property Redevelopment and Tax Abatement Act, allows cities and counties to create reinvestment zones and to enter into property tax abatement agreements with companies for up to 10 years.
- Attorney General Greg Abbott issued Opinion No. GA-0600 on January 29, 2008 concerning section 312.402(a) of the Tax Code. The opinion concluded that fixtures and improvements owned by a company as personal property could not be considered real property that was the subject of a tax abatement agreement under section 312.402(a). This opinion has called into question whether a county could continue to grant to companies abatements and limitations on property taxes if the developers are not able to apply in their own names because they are not the owners of the real property.
- Under Tax Code, sec. 312.006, the authority for cities and counties to make tax abatement agreements expires on September 1, 2009.

DIGEST:

CSHB 3896 would amend Tax Code, ch. 312, the Property Redevelopment and Tax Abatement Act, to allow a city or county to defer an abatement period. CSHB 3896 also would allow a county to enter into an abatement agreement with an owner of personal property located on real property, or an individual with a leasehold interest in or owner of personal property located on tax-exempt real property, even if that individual did not own the real property.

Deferment of abatement period. CSHB 3896 would amend Tax Code, ch. 312 to allow a county that entered into a tax abatement agreement and the owner of the property to agree to defer the start of an abatement period until a date later than the date the agreement was entered into. An abatement period could not exceed ten years. The bill would state that this provision was intended to clarify rather than change existing law.

Personal property located on real property. CSHB 3896 would amend Tax Code, sec. 312.402, to allow a county to execute a tax abatement agreement with the owner of tangible personal property, located on real property in a reinvestment zone, that would exempt from taxation all or a portion of the value of the real property, all or a portion of the value of the tangible personal property located on the real property, or all or a portion of the value of both.

Leasehold interests and personal property located on tax-exempt real property. The bill would revise and partially replace provisions relating to the execution of a tax abatement agreement with the owner of a leasehold interest in tax-exempt real property or leasehold interests or improvements on tax-exempt real property.

The new provisions would allow a county to execute a tax abatement agreement with the owner of a leasehold interest in tax-exempt real property, located in a reinvestment zone, that would exempt all or a portion of the value of the leasehold interest in the real property.

The bill also would allow a county to execute a tax abatement agreement with the owner of tangible personal property or an improvement located on tax-exempt real property, located in a designated reinvestment zone, that would exempt all or a portion of the value of the tangible personal property or improvement located on the real property.

Repeal of Sunset provision. CSHB 3896 would repeal Tax Code, sec. 312.006, which provides a Sunset date of September 1, 2009 for Tax Code, ch. 312, the Property Redevelopment and Tax Abatement Act.

CSHB 3896 also would repeal Tax Code, ch. 320, which provides that the expiration of Tax Code, ch. 312 would not affect the validity of a reinvestment zone designated or a tax abatement agreement executed before the expiration.

Effective Date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009. The provisions of this bill would not be retroactive.

SUPPORTERS
SAY:

Deferment of abatement period. CSHB 3896 would allow cities and counties to defer the start date of an abatement period for any project with a long start-up time. This would enable cities and counties to give advance abatement approval on those projects, reducing uncertainty regarding the future profitability of projects that may have a later start date. The 80th Legislature enacted a similar provision in 2007 in HB 2994 by Bonnen, which allowed the start of the abatement period on nuclear plants to be deferred because of long regulatory approval and construction processes.

Personal property located on real property and leasehold interests and personal property located on tax-exempt real property. CSHB 3896 also would resolve a technical issue that was raised by an attorney general's opinion by clarifying that a county could enter into a tax abatement agreement with an owner of property even if the owner of the abated property did not own the underlying land.

Repeal of Sunset provision. Tax abatement agreements under the Property Redevelopment and Tax Abatement Act are important economic development tools for attracting and keeping project developers in Texas. While Texas has many resources that are attractive to project developers seeking to locate in the state, high property taxes in Texas are a disincentive when location decisions are made.

While some argue that extending indefinitely the program to issue tax abatements may not be appropriate and would cost revenue to the taxing unit, that argument assumes that companies would locate in Texas even without the incentive of a tax abatement. Project development often is a

multi-year process with long timeframes for site location, regulatory approval, and construction. Developers of projects plan many years in advance of application for an abatement. Any uncertainty over whether an abatement statute would be in place when the time came to apply would hurt Texas' chances of being the location of the project. Also, job creation and other economic development opportunities often are greater than any loss of revenue to the taxing unit. If local tax abatement agreements are not being made appropriately or the program is not accomplishing its purpose, the Legislature always could modify or repeal it.

OPPONENTS
SAY:

Deferment of abatement period. Allowing projects with long start-up times to defer the abatement period could create more property tax abatement agreements, resulting in a loss of revenue to cities and counties.

Repeal of Sunset provision. CSHB 3896 would repeal the Sunset provision for the Property Redevelopment and Tax Abatement Act. Reviewing this local tax break for businesses periodically to determine whether it is accomplishing its purpose would allow more effective oversight. HB 773 by Oliveira, passed by the House earlier this session, would extend the Sunset date to September 1, 2019, and would more appropriately allow the Legislature to review these tax abatement agreements again in ten years.

NOTES:

The committee substitute differs from the bill as filed by referring to an abatement agreement between a county and the owner of taxable real property, or tangible personal property, or an owner of a leasehold interest in tax-exempt real property, rather than to an agreement between a county and an owner or lessee of taxable real property, or an owner of tangible personal property. The substitute also differs by referring to an agreement for an exemption from taxation of all or a portion of the value of real property, tangible personal property, or both, as well as to an agreement for an exemption from taxation of all or a portion of the value of a leasehold interest in tax-exempt real property.

In the fiscal note, the LBB estimates that new tax abatement agreements allowed under an unlimited extension of Tax Code, ch. 312 would cost counties \$27.8 million and cities \$13.2 million in property tax revenue in fiscal 2011-12.

HB 773 by Oliveira, which would extend the sunset date for city and county tax abatement authority in Tax Code, ch. 312 to September 1, 2019, passed the House by 145-1 on March 31 and was referred to the Senate Administration Committee, where it was left pending on May 8.