

BILL ANALYSIS

Senate Research Center

H.B. 3676
By: Heflin et al. (Seliger)
Economic Development
5/23/2009
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Provisions of the Texas Economic Development Act relating to agreements between school districts and owners or lessees of certain kinds of property to limit the appraised value of the owner's property are unclear. Attorney General Opinion GA-318 (2008) has caused further uncertainty and confusion among school districts about entering into tax abatement agreements. By clarifying present law, school districts will feel more confident about entering into agreements with businesses, which will encourage economic growth and development in Texas. Such growth will create employment opportunities and community growth.

H.B. 3676 clarifies provisions of the Texas Economic Development Act relating to agreements between school districts and an owner or lessee of a qualified property, or the holder of another possessory interest in such a property, to limit the property's appraised value.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 313.007, Tax Code, to provide that Subchapters B (Limitation on Appraised Value of Certain Property), C (Limitation on Appraised Value of Property in Certain Rural School Districts), and D (School Tax Credits) expire December 31, 2015, rather than 2011.

SECTION 2. Amends Section 313.021, Tax Code, to redefine "qualified investment," "qualified property," "qualifying job," "qualifying time period," and "county average weekly wage for manufacturing jobs."

SECTION 3. Amends Section 313.024(b), Tax Code, to require the entity, to be eligible for a limitation on appraised value under this subchapter, to use the property in connection with certain activities, including a computer center primarily used in connection with one or more activities described by Subdivisions (1) through (7) (relating to requiring an entity, to be eligible for a limitation on appraised value, to use property in connection with certain industries and industries related to electric power) conducted by the entity.

SECTION 4. Amends Section 313.024(e), Tax Code, by amending Subdivision (1) and adding Subdivisions (5) and (6), to redefine "manufacturing," and define "research and development" and "computer center."

SECTION 5. Amends Section 313.025, Tax Code, by amending Subsections (a), (b), and (d) and adding Subsections (a-1), (d-1), (h), and (i), as follows:

(a) Authorizes the owner or lessee of, or the holder of another possessory interest in, any qualified property described by Section 313.021(2)(A) (relating to the definition of "qualified property" as it relates to "land"), (B) (relating to the definition of "qualified property" as it relates to new buildings or a certain other new improvement), or (C) (relating to the definition of "qualified property" as it relates to tangible personal property) to apply to the governing body of the school district in which the property is located for a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes of the person's qualified property.

(a-1) Requires the school district, within seven days of the receipt of each document, to submit to the comptroller of public accounts (comptroller) a copy of the application and the agreement between the applicant and the school district. Requires the school district, if an economic analysis of the proposed project is submitted to the school district, to submit a copy of the analysis to the comptroller. Requires the school district, in addition, to submit to the comptroller any subsequent revision of or amendment to any of those documents within seven days of its receipt. Requires the comptroller to publish each document received from the school district under this subsection on the comptroller's Internet website. Requires the school district, if the school district maintains a generally accessible Internet website, to provide on its website a link to the location of those documents posted on the comptroller's website in compliance with this subsection. Provides that this subsection does not require the comptroller to post information that is confidential under Section 313.028.

(b) Requires the governing body of a school district to approve or disapprove an application before the 151st, rather than 121st, day after the date the application is filed, unless the economic impact evaluation has not been received or an extension is agreed to by the governing body and the applicant.

(d) Requires the comptroller, before the 91st, rather than 61st, day after the date the comptroller receives the copy of the application, to submit a recommendation to the governing body of the school district as to whether the application should be approved or disapproved.

(d-1) Authorizes the governing body of a school district to approve an application that the comptroller has recommended should be disapproved only if the governing body holds a public hearing the sole purpose of which is to consider the application and the comptroller's recommendation, and at a subsequent meeting of the governing body held after the date of the public hearing, at least two-thirds of the members of the governing body vote to approve the application.

(h) Requires the comptroller, after receiving a copy of the application, to determine whether the property meets the requirements of Section 313.024 (Eligible Property) for eligibility for a limitation on appraised value under this subchapter. Requires the comptroller to notify the governing body of the school district of the comptroller's determination and provide the applicant an opportunity for a hearing before the determination becomes final. Provides that a hearing under this subsection is a contested case hearing and is required to be conducted by the State Office of Administrative Hearings in the manner provided by Section 2003.101 (Tax Division), Government Code. Provides that the applicant has the burden of proof on each issue in the hearing. Authorizes the applicant to seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule as provided by Subchapter G (Contested Cases; Judicial Review), Chapter 2001 (Administrative Procedure), Government Code.

(i) Provides that the comptroller is not required to provide an economic impact evaluation of the application or to submit a recommendation to the school district as to whether the application should be approved or disapproved, and the governing body of the school district is prohibited from granting the application, if the comptroller's determination under Subsection (h) that the property does not meet the requirements of Section 313.024 for eligibility for a limitation on appraised value under this subchapter becomes final.

SECTION 6. Amends Sections 313.026(a) and (b), Tax Code, as follows:

(a) Requires the economic impact evaluation of the application to include certain information, including the name of the school district; the name of the applicant; the general nature of the applicant's investment; the number of qualifying jobs to be created by the applicant; the impact the project will have on this state and individual local units of government, rather than the impact the added infrastructure will have on the region,

including tax and other revenue gains, direct or indirect, that would be realized during the qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the comptroller, rather than revenue gains that would be realized by the school district, and economic effects of the project, including the impact on jobs and income, during the qualifying time period, the limitation period, and a period of time after the limitation period considered appropriate by the comptroller, rather than subsequent economic effects on the local and regional tax bases; the projected market value of the qualified property of the applicant as determined by the comptroller; the proposed limitation on appraised value for the qualified property of the applicant; the projected dollar amount of the taxes that would be imposed on the qualified property, for each year of the agreement, if the property does not receive a limitation on appraised value with assumptions of the projected appreciation or depreciation of the investment and projected tax rates clearly stated; the projected dollar amount of the taxes that would be imposed on the qualified property, for each tax year of the agreement, if the property receives a limitation on appraised value with assumptions of the projected appreciation or depreciation of the investment clearly stated; the projected effect on the Foundation School Program of payments to the district for each year of the agreement; the projected future tax credits if the applicant also applies for school tax credits under Section 313.103 (Application); and the total amount of taxes projected to be lost or gained by the district over the life of the agreement computed by subtracting the projected taxes stated in Subdivision (17) from the projected taxes stated in Subdivision (16).

(b) Requires the comptroller's recommendations to be based on the criteria listed in Subsections (a)(5)-(20), rather than (a)(2)-(9) and on any other information available to the comptroller, including information provided by the governing body of the school district under Section 313.025(b) (relating to requirements for an application for a limitation on appraised value that is filed with the governing body of a school district; requirements for information on an economic impact evaluation of that limitation; authorizing the collection of fees for an economic impact evaluation; and timelines for approve or disapprove of an application for a limitation on appraised value.).

SECTION 7. Amends Subchapter B, Chapter 313, Tax Code, by adding Section 313.0265, as follows:

Sec. 313.0265. DISCLOSURE OF APPRAISED VALUE LIMITATION INFORMATION. (a) Requires the comptroller to post on the comptroller's Internet website each document or item of information the comptroller designates as substantive before the 15th day after the date the document or item of information was received or created. Requires each document or item of information to continue to be posted until the appraised value limitation expires.

(b) Requires the comptroller to designate as substantive each application requesting a limitation on appraised value, the economic impact evaluation made in connection with the application, and each application requesting school tax credits under Section 313.103.

(c) Requires the school district, if a school district maintains a generally accessible Internet website, to maintain a link on its Internet website to the area of the comptroller's Internet website where information on each of the district's agreements to limit appraised value is maintained.

SECTION 8. Amends Section 313.027, Tax Code, by amending Subsection (f) and adding Subsections (h) and (i), as follows:

(f) Authorizes the agreement, in addition, to adhere to certain requirements and authorizations, including to provide that the property owner will protect the school 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. Makes nonsubstantive changes.

(h) Authorizes the agreement between the governing body of the school district and the applicant to provide for a deferral of the date on which the qualifying time period for the project is to commence or, subsequent to the date the agreement is entered into, be amended to provide for such a deferral. Prohibits this subsection from being construed to permit a qualifying time period that has commenced to continue for more than the number of years applicable to the project under Section 313.021(4) (relating to the definition of "qualifying time period").

(i) Prohibits a person and the school district from entering into an agreement under which the person agrees to provide supplemental payments to a school district in an amount that exceeds an amount equal to \$100 per student per year in average daily attendance, as defined by Section 42.005 (Average Daily Attendance), Education Code, or for a period that exceeds the period beginning with the period described by Section 313.021(4) and ending with the period described by Section 313.104(2)(B) (relating to requiring the governing body of the school district, before a certain date the application for a tax credit is filled, if the person's application is approved, by order or resolution direct the collector of taxes for the school district, in a certain amount of time, to credit against the taxes imposed on the qualified property by the school district a certain amount and proving certain exceptions) of this code. Provides that this limit does not apply to amounts described by Subsection (f)(1) (relating to the agreement requiring to incorporate certain relevant provisions and payment of revenue offsets, and certain other mechanisms) or (2) (relating to authorizing the agreement to provide that the property owner will protect the school district in the event the district incurs certain extraordinary education-related expenses related to the project that are not directly funded in state aid formulas) of this section.

SECTION 9. Amends Subchapter B, Chapter 313, Tax Code, by adding Section 313.0275, as follows:

Sec. 313.0275. RECAPTURE OF AD VALOREM TAX REVENUE LOST. (a) Requires a person with whom a school district enters into an agreement under this subchapter to make the minimum amount of qualified investment during the qualifying time period and create the required number of qualifying jobs during each year of the agreement, notwithstanding any other provision of this chapter to the contrary.

(b) Provides that the property owner is liable to this state for a penalty equal to the amount computed by subtracting from the market value of the property for that tax year the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district for that tax year, if in any tax year a property owner fails to comply with Subsection (a).

(c) Provides that a penalty imposed under Subsection (b) becomes delinquent if not paid on or before February 1 of the following tax year. Provides that Section 33.01 (Penalties and Interest) applies to the delinquent penalty in the manner that section applies to delinquent taxes.

SECTION 10. Amends Section 313.028, Tax Code, as follows:

Sec. 313.028. CERTAIN BUSINESS INFORMATION CONFIDENTIAL. Requires information provided to a school district in connection with an application for a limitation on appraised value under this subchapter that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application to be segregated in the application from other information in the application and is confidential and not subject to public disclosure unless the governing body of the school district approves the application. Prohibits other information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility under this chapter, such as the nature and amount of the projected investment, employment, wages, and benefits, from being considered

confidential business information if the governing body of the school district agrees to consider the application. Provides that information in the custody of a school district or the comptroller if the governing body approves the application is not confidential under this section.

SECTION 11. Amends Section 313.051(a), Tax Code, as follows:

(a) Provides that this subchapter applies only to a certain school district, including a school district that has territory in an area that qualified as a strategic investment area under Subchapter O, Chapter 171 (Franchise Tax), immediately before that subchapter expired, rather than a strategic investment area, as defined by Section 171.721. Deletes existing text related to a school district applying to this subchapter if a county that is not partially or wholly located in a metropolitan statistical area. Makes a nonsubstantive change.

SECTION 12. Amends Sections 313.103 and 313.104, Tax Code, as follows:

Sec. 313.103. APPLICATION. (a) Creates this subsection from existing text. Deletes existing text related to requiring the application to be filed before September 1 of the year immediately following the applicable qualifying time period.

(b) Provides that an application for a tax credit under this subchapter or any information provided by the school district to the Texas Education Agency under Section 42.2515 (Additional State Aid for Ad Valorem Tax Credits under Texas Economic Act), Education Code, is not confidential.

Sec. 313.104. ACTION ON APPLICATION; GRANT OF CREDIT. Requires the governing body of the school district, before granting, rather than before the 90th day after the date, the application for a tax credit, to determine the person's eligibility for a tax credit under this subchapter and if the person's application is approved, by order or resolution direct the collector of taxes for the school district to take certain actions.

SECTION 13. Amends Section 403.302(d), Government Code, to redefine "taxable value" for the purposes of this section.

SECTION 14. Repealer: Section 313.029 (Tax Limitation), Tax Code.

SECTION 15. Provides that Sections 313.021(1)(A), (2), and (5), 313.024(e), and 313.025(a), Tax Code, as amended by this Act, are intended to clarify rather than change existing law. Provides that the clarification made by Section 313.021(5), Tax Code, as amended by this Act, is necessary to allow the Texas Workforce Commission to implement that subdivision in conformance with the data collection requirements imposed by the federal government.

SECTION 16. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2009.

(b) Effective date, Sections 313.025(a-1), (h), and (i) and 313.0265, Tax Code, as added by this Act: January 1, 2010.

SUMMARY OF COMMITTEE CHANGES

(1) Amends H.B. 3676 by striking "2015" on page __, line__ and substituting "2014".

(2) Amends H.B. 3676 by adding the following SECTION to the bill, appropriately numbered:

SECTION___. Amends Section 403.302, Government Code, by adding Subsection (m) to provide that Subsection (d)(10) (relating to a portion of the market value of property not otherwise fully taxable) does not apply to property that was the subject of an application under Subchapter B (Limitation on Appraised Value of Certain Property Used to Create Jobs) or C (Limitation on Appraised Value of Property in Certain Rural School Districts),

Chapter 313 (Texas Economic Development Act), Tax Code, made after May 1, 2009, that the comptroller recommended should be disapproved.

(3) Amends H.B. 3676 by adding the following SECTION to the bill, appropriately numbered:

SECTION __. Requires the Legislative Budget Board to conduct an effectiveness and efficiency review of the economic development program established under Chapter 313, Tax Code, and report the results of the review to the legislature not later than January 1, 2011.