

BILL ANALYSIS

Senate Research Center
82R10297 SMH-F

S.B. 1590
By: Ogden, Hinojosa
Finance
4/2/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1590 caps the state's liability under Chapter 313 (Texas Economic Development Act), Tax Code, for any given year at \$225 million. The bill also prorates the benefit to eligible recipients once the amount of the benefit reaches \$225 million.

The bill eliminates the Subchapter D tax credit and payment in lieu of tax on future Chapter 313 agreements. The bill also prevents companies from pushing back start dates indefinitely by clarifying and narrowing the deferral language that was added last session.

S.B. 1590 prohibits independent school districts from entering Chapter 313 agreements unless the comptroller of public accounts recommends approval and approves the agreement. Lastly, this bill adjusts public school funding formulas to recognize funds received by school districts under existing Chapter 313 agreements through supplemental payments or payments in lieu of taxes.

As proposed, S.B. 1590 amends current law relating to the Texas Economic Development Act.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the comptroller of public accounts is modified in SECTION 9 (Section 313.031, Tax Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 13 (Section 42.25151, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 313.007, Tax Code, to provide that Subchapters B and C, rather than Subchapters B, C, and D, expire December 31, 2014.

SECTION 2. Amends Section 313.009(a), Tax Code, as follows:

(a) Requires the comptroller of public accounts (comptroller), before the beginning of each regular session of the legislature, to submit to the lieutenant governor, the speaker of the house of representatives, and each member of the legislature a report assessing the progress of each agreement entered into under this chapter. Requires that the report be based on data certified to the comptroller by each recipient of a limitation on appraised value under this chapter and state for each agreement:

- (1) the number of qualifying jobs each recipient of a limitation on appraised value committed to create;
- (2) the number of qualifying jobs each recipient created;
- (3) the median wage of the new jobs each recipient created;
- (4) the amount of the qualified investment each recipient committed to expend or allocate per project;

- (5) the amount of the qualified investment each recipient expended or allocated per project;
- (6) the market value of the qualified property of each recipient as determined by the applicable chief appraiser;
- (7) the limitation on appraised value for the qualified property of each recipient;
- (8) the dollar amount of the taxes that would have been imposed on the market value of the qualified property if the property had not received a limitation on appraised value;
- (9) the dollar amount of the taxes imposed on the qualified property;
- (10) the number of new jobs created by each recipient in each sector of the North American Industry Classification System;
- (11) of the number of new jobs each recipient created, the number of jobs created that provide health benefits for employees;
- (12) an estimate of the tax benefit to be provided to each recipient under the agreement; and
- (13) the estimated total amount of any payments to be made by each recipient to the applicable school district under the agreement, including any payments to be made by the recipient to a foundation or other entity in consideration of the approval of the agreement by the district.

SECTION 3. Amends Section 313.021(3), Tax Code, to redefine "qualifying job."

SECTION 4. Amends Sections 313.024(a) and (b), Tax Code, as follows:

- (a) Provides that this subchapter and Subchapter C (Limitation on Appraised Value of Property in Certain Rural School Districts), rather than Subchapters C and D (School Tax Credits), apply only to property owned by an entity to which Chapter 171 (Franchise Tax) applies.
- (b) Requires the entity, to be eligible for a limitation on appraised value under this subchapter, to use the property for the purposes of, rather than in connection with:
 - (1) manufacturing;
 - (2) research and development;
 - (3) a clean coal project, as defined by Section 5.001 (Definitions), Water Code;
 - (4) an advanced clean energy project, as defined by Section 382.003 (Definitions), Health and Safety Code;
 - (5) renewable energy electric generation;
 - (6) electric power generation using integrated gasification combined cycle technology;
 - (7) nuclear electric power generation; or
 - (8) a computer center primarily used in one or more activities, rather than a computer center primarily used in connection with one or more activities, described by Subdivisions (1) through (7) conducted by the entity.

SECTION 5. Amends Sections 313.025(a-1), (b), (b-1), (c), (d), and (f), Tax Code, as follows:

(a-1) Requires the school district, if the governing body of the district elects to consider the application to submit to the comptroller a copy of the application as provided by Subsection (b), rather than within seven days of the receipt of each document to submit to the comptroller a copy of the application and the agreement between the applicant and the school district. Requires the district, if an economic analysis of the proposed project is submitted to the 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 publish each document received from the school district under this subsection on the comptroller's Internet website. Requires the 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 (Certain Business Information Confidential).

(b) Provides that the governing body of a school district is not required to consider an application for a limitation on appraised value that is filed with the governing body under Subsection (a). Requires the governing body, if the governing body of the school district does elect to consider an application, to deliver a copy, rather than three copies, of the application to the comptroller and request that the comptroller provide an economic impact evaluation of the application to the school district. Requires the comptroller, except as provided by Subsection (b-1), to conduct or contract with a third person to conduct the evaluation, which is required to be completed and provided to the governing body of the school district as soon as practicable. Requires the governing body to provide to the comptroller or third person any requested information. Authorizes a methodology to allow comparisons of economic impact for different schedules of the addition of qualified investment or qualified property to be developed as part of the economic impact evaluation. Requires the governing body to provide a copy of the evaluation to the applicant on request. Authorizes the comptroller to charge and collect a fee sufficient to cover the costs of providing the economic impact evaluation. Requires the governing body of a school district to approve or disapprove an application not later than the 60th day after the date the governing body receives a recommendation from the comptroller as to whether the application should be approved or disapproved, unless the comptroller has agreed to an extension, rather than before the 151st 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.

(b-1) Requires the comptroller to deliver a copy of an application received by the comptroller to the Texas Education Agency (TEA), rather than to indicate on one copy of the application the date the comptroller received the application and deliver that copy to TEA. Requires TEA to determine the effect that the applicant's proposal will have on the number or size of the school district's instructional facilities and the projected effect on the Foundation School Program of payments to the district for each year of the agreement. Requires the governing body of the school district to provide any requested information to TEA. Requires TEA, not later than the 45th day after the date TEA receives the information necessary to make the determination required by this section, rather than the date the application indicates that the comptroller received the application, to make the required determinations, and submit a written report, containing TEA's determinations to the comptroller. Provides that a third person contracted by the comptroller to conduct an economic impact evaluation of an application is not required to make a determination that TEA is required to make and report to the comptroller under this subsection.

Deletes existing text requiring TEA to determine the effect that the applicant's proposal will have on the number or size of the school district's instructional facilities, as required to be included in the economic impact evaluation by Section 313.026(a)(9) (requiring the

economic impact evaluation of the application to include the ability of the applicant to locate or relocate in another state or another region of this state), and submit a written report containing the TEA's determination to the comptroller.

(c) Entitles the governing body of the school district, in determining whether to grant an application, to request and receive assistance from:

- (1) the comptroller;
- (2) the Texas Economic Development and Tourism Office, rather than the Texas Department of Economic Development;
- (3) the Texas Workforce Investment Council; and
- (4) the Texas Workforce Commission.

(d) Requires the comptroller, before the later of the 91st day after the date the comptroller receives the copy of the application or the 46th day after the date TEA submits to the comptroller the report required by Subsection (b-1), to submit a recommendation to the governing body of the school district as to whether the application should be approved or disapproved.

(f) Authorizes the governing body to approve an application only if:

- (1) the comptroller submits a recommendation to the governing body that the application be approved; and
- (2) the governing body finds that the information in the application is true and correct, finds that the applicant is eligible for the limitation on the appraised value of the person's qualified property, and determines that granting the application is in the best interest of the school district and this state.

SECTION 6. Amends Section 313.026, Tax Code, as follows:

Sec. 313.026. ECONOMIC IMPACT EVALUATION. (a) Requires that the economic impact evaluation of the application include the following:

- (1) the recommendations of the comptroller;
- (2) the name of the school district;
- (3) the name of the applicant;
- (4) the general nature of the applicant's investment;
- (5) the relationship between the applicant's industry and the types of qualifying jobs to be created by the applicant to the long-term economic growth, rather than the long-term economic growth plans of this state as described in the strategic plan for economic development submitted by the Texas Strategic Economic Development Planning Commission under Section 481.033 (Sunset Provision), Government Code, as that section existed before February 1, 1999;
- (6) an evaluation of the relative level of the applicant's investment per qualifying job to be created by the applicant;
- (7) an evaluation of the number of qualifying jobs to be created by the applicant in comparison with the average number of jobs created in the applicant's industry for a similar type of project at a similar level of investment;

(8) an evaluation of the wages, salaries, and benefits to be offered by the applicant to qualifying job holders;

(9) an evaluation of the ability of the applicant to locate or relocate in another state or another region of this state;

(10) an evaluation of the economic condition of the region of the state at the time the person's application is being considered and the impact of the project on the region, rather than an evaluation of the impact the project will have on this state and individual local units of government 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; 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;

(11) the projected market value of the qualified property as certified by the applicant to the comptroller, rather than the projected market value of the qualified property of the applicant as determined by the comptroller;

(12) the proposed limitation on appraised value for the qualified property of the applicant;

(13) 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;

(14) 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; and

(15) the projected effect on the Foundation School Program of payments to the district for each year of the agreement.

Deletes existing Subdivision (12) relating to the number of new facilities built or expanded in the region during the two years preceding the date of the application that were eligible to apply for a limitation on appraised value under this subchapter. Deletes existing Subdivision (13) relating to the effect of the applicant's proposal, if approved, on the number or size of the school district's instructional facilities, as defined by Section 46.001 (Definition), Education Code. Deletes existing Subdivision (19) relating to the projected future tax credits if the applicant also applies for school tax credits under Section 313.103 (Application). Deletes existing Subdivision (20) relating to 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 existing Subdivision (17) from the projected taxes stated in Subdivision (16). Makes nonsubstantive changes.

(b) Requires that the comptroller's recommendations be based on the criteria listed in Subsections (a)(5)-(15), rather than (a)(5)-(20), 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).

SECTION 7. Amends Section 313.0265(b), Tax Code, as follows:

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

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

(h) Authorizes the governing body of the school district and the applicant, at any time before the applicant spends an amount that is considered to be a qualified investment, to amend the agreement to defer the date on which the qualifying time period for the project is to commence. Prohibits the commencement of the qualifying time period from being deferred to a date later than the second anniversary of the date the qualifying time period was originally scheduled to end. 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) (defining, in this subchapter, "qualifying time period"). Prohibits any amount the applicant spends before the date the qualifying time period commences from being considered to be a qualified investment.

Deletes existing text authorizing 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.

(i) Prohibits a person and the school district from entering into an agreement if in conjunction with the agreement any payments or other benefits are to be provided by or on behalf of the person in recognition or anticipation of, or in consideration for, the district entering into the agreement, other than payments or benefits authorized under Subsection (f)(1) (requiring that the agreement incorporate each relevant provision of this subchapter and, to the extent necessary, include 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 school district) or (2) (authorizing the agreement 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).

Deletes existing text relating to 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) (requiring the governing body of the school district, before granting the application for a tax credit, if the person's application is approved, by order or resolution, in the first three tax years that begin on or after the date the person's eligibility for the limitation under Subchapter B or C expires, to credit against the taxes imposed on the qualified property by the district an amount equal to the portion of the total amount of tax credit to which the person is entitled under Section 313.102 that was not credited against the person's taxes under Paragraph (A) in a tax year covered by Paragraph (A), except that the amount of a tax credit granted under this paragraph in any tax year is prohibited from exceeding the total amount of ad valorem school taxes imposed on the qualified property by the school district in that tax year) of this code. Deletes existing text providing that this limit does not apply to amounts described by Subsection (f)(1) or (2) of this section.

(j) Prohibits a school district from entering into an agreement or an amendment to an agreement under this section without the prior approval of the comptroller.

SECTION 9. Amends Section 313.031(a), Tax Code, to require the comptroller to adopt rules and forms necessary for the implementation and administration of this chapter, including rules for determining whether a property owner's property qualifies as a qualified investment under Section 313.021(1) (defining, in this subchapter, "qualified investment"), and provide without charge one copy of the rules and forms to any school district and to any person who states that the person intends to apply for a limitation on appraised value under this subchapter, rather than a limitation on appraised value under this subchapter or a tax credit under Subchapter D (School Tax Credits).

SECTION 10. Amends the heading to Subchapter E, Chapter 313, Tax Code, to read as follows:

**SUBCHAPTER E. AVAILABILITY OF TAX CREDIT AFTER PROGRAM EXPIRES OR
IS REPEALED**

SECTION 11. Amends Section 313.171(b), Tax Code, to provide that the repeal, rather than expiration, of Subchapter D does not affect a property owner's entitlement to a tax credit granted under Subchapter D if the property owner qualified for the tax credit before the repeal, rather than expiration, of Subchapter D.

SECTION 12. Amends Section 42.2515, Education Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Entitles a school district including a school district that is otherwise ineligible for state aid under this chapter, for each school year, to state aid in an amount equal to the amount of all tax credits credited against ad valorem taxes of the district in that year under former Subchapter D, Chapter 313, Tax Code.

(a-1) Requires the commissioner of education (commissioner), not later than December 1 of each year, to submit to the comptroller an estimate of the total amount of additional state aid to which a school district is entitled under this section for the school year beginning in that year.

SECTION 13. Amends Subchapter E, Chapter 42, Education Code, by adding Section 42.25151, as follows:

Sec. 42.25151. ADJUSTMENT FOR BENEFITS ASSOCIATED WITH AGREEMENTS UNDER TEXAS ECONOMIC DEVELOPMENT ACT. (a) Defines, in this section, "supplemental payment."

(b) Requires the commissioner, notwithstanding Section 42.2516, for any school year, to:

(1) reduce the amounts due to a school district under this chapter by an amount equal to the value of any supplemental payments provided during that school year in conjunction with an agreement with the district under Chapter 313, Tax Code; or

(2) increase the amounts necessary for a school district to comply with the requirements of Chapter 41 (Equalized Wealth Level) by an amount equal to the value of any supplemental payments provided during that school year in conjunction with an agreement with the district under Chapter 313, Tax Code.

(c) Requires a school district to:

(1) report each supplemental payment through the Public Education Information Management System (PEIMS); and

(2) clearly identify each supplemental payment in the district's adopted budget and in the annual report required by Section 44.007 (Accounting System; Report).

(d) Authorizes the commissioner, in consultation with the comptroller, as appropriate, to adopt rules necessary to implement this section.

SECTION 14. Amends Section 42.302(e), Education Code, to provide that, for purposes of this section, school district taxes for which credit is granted under former Subchapter D, Chapter 313, Tax Code, rather than under Subchapter D, Chapter 313, Tax Code, are considered taxes collected by the school district as if the taxes were paid when the credit for the taxes was granted.

SECTION 15. Reenacts Section 403.302(d), Government Code, as amended by Chapters 1186 (H.B. 3676) and 1328 (H.B. 3646), Acts of the 81st Legislature, Regular Session, 2009, and amends it, to redefine "taxable value."

SECTION 16. Amends Section 403.302(m), Government Code, as added by Chapter 1186 (H.B. 3676), Acts of the 81st Legislature, Regular Session, 2009, to conform to Section 80, Chapter 1328 (H.B. 3646), Acts of the 81st Legislature, Regular Session, 2009, to provide that Subsection (d)(9), rather than Subsection (d)(10), 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, Chapter 313, Tax Code, made after May 1, 2009, that the comptroller recommended should be disapproved.

SECTION 17. Amends Section 403.302, Government Code, by adding Subsection (p), as follows:

(p) Requires the comptroller, notwithstanding Subsection (d)(9), if the estimated statewide levy loss exceeds \$225 million in any year, to reduce the amount of the deduction under Subsection (d)(9) from the market value of the taxable property in each school district for that year based on the proportion that the amount of the deduction under that subsection for each school district bears to the estimated statewide levy loss so that the estimated statewide levy loss does not exceed \$225 million in that year. Defines, for the purposes of this subsection "estimated statewide levy loss."

SECTION 18. Repealer: Section 313.008 (Report on Compliance with Energy-Related Agreements), Tax Code.

Repealer: 313.025(d-1) (authorizing the governing body of a school district to approve an application that the comptroller has recommended should be disapproved only if certain conditions are met), Tax Code.

Repealer: 313.025(g) (authorizing the Texas Department of Economic Development or its successor to recommend that a school district grant a person a limitation on appraised value under this chapter), Tax Code.

Repealer: 313.032 (Report on Compliance with Agreements), Tax Code.

Repealer: Subchapter D (School Tax Credits), Chapter 313 (Texas Economic Development Act), Tax Code.

SECTION 19. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 20. Provides that Chapter 313, Tax Code, as amended by this Act, applies only to an agreement entered into under that chapter on or after the effective date of this Act. Provides that an agreement entered into under that chapter before the effective date of this Act is governed by

the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 21. Effective date: upon passage or September 1, 2011.