LEGISLATIVE BUDGET BOARD
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FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

Revision 1

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TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3694** by Deshotel (Relating to the enterprise zone program.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3694, Committee Report 2nd House, Substituted: a negative impact of ($4,400,000) relating to the provisions of the entire bill, with the exception of the language regarding qualified hotel projects. However, there could be a significant negative fiscal impact to General Revenue Related Funds concerning qualified hotel projects depending on the number of projects.

The table below addresses the entire bill, with the exception of the language regarding qualified hotel projects.
Note: HB 2, 79th Legislature, Third Called Session (2006) dedicates to the Property Tax Relief Fund all revenues collected under Chapter 171 in excess of the amount that would have been collected under the chapter as it existed on August 31, 2007. The following fiscal impact table reflects that dedication.

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *Property Tax Relief Fund* 304
2008	($1,400,000)	($5,371,000)
2009	($3,000,000)	($4,297,000)
2010	($3,000,000)	($3,437,000)
2011	($3,000,000)	($2,750,000)
2012	($3,000,000)	($2,200,000)

The table below addresses only the bill's language concerning qualified hotel projects and is provided for illustrative purposes only. **It represents the potential loss in state and local revenues for a single hypothetical project in one city and does not represent the entire potential loss in state and local revenues.**

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *Cities*	Probable Revenue Gain/(Loss) from *Counties*	Probable Revenue Gain/(Loss) from *Transit Authorities*
2008	($3,277,000)	($2,148,000)	($30,000)	($79,000)
2009	($3,415,000)	($2,235,000)	($31,000)	($82,000)
2010	($3,553,000)	($2,320,000)	($32,000)	($86,000)
2011	($3,695,000)	($3,409,000)	($33,000)	($89,000)
2012	($3,835,000)	($2,490,000)	($35,000)	($93,000)

Fiscal Year	Probable Revenue Gain/(Loss) from *Enterprise Project (Hotel)*
2008	$5,534,000
2009	$5,786,000
2010	$5,991,000
2011	$6,223,000
2012	$6,453,000

Fiscal Analysis

The bill would amend Chapter 2303 of the Government Code and Section 151.429 of the Tax Code, relating to the enterprise zone program. Under the provisions of the bill, the definitions of "new permanent job" and "retained job" would be amended as they relate to enterprise zones. The bill would raise the number of enterprise projects that could be designated during a biennium to 105 from 85, and allow any designations remaining at the end of a biennium to be carried forward to the next biennium.

Under the provisions of the bill, the Texas Economic Development Bank (TEDB) could lower the designation level of a proposed project if there were fewer designations available than applications received or to further the economic interests of the state. The Comptroller of Public accounts reports that a benefit to the state would not be obtained for jobs moved from one jurisdiction to another in the state. Furthermore, the bill would allow the Comptroller to monitor qualified business or enterprise project commitments currently monitored by TEDB; and require the Comptroller to submit a report to TEDB stating the actual amount of capital investment made and the actual number of jobs created as a result of a project's designation after the completion of an enterprise project's close-out.

Under current law, enterprise projects are eligible for a refund of sales and use taxes paid on purchases of certain machinery, equipment, materials, labor, and electricity and natural gas. The bill would allow the refund for purchases of all taxable items purchased for use at a qualified business site related to an enterprise project or activity.

The bill would amend the Tax Code by adding a subchapter for a capital investment tax credit. A taxable entity would have to have been designated as an enterprise project on or after September 1, 2001 and before January 1, 2005 to be eligible for the credit. To claim the credit, the taxable entity, other than a combined group, would have to have been subject to the franchise tax on May 1, 2006. A combined group could claim the credit only for members of the group that were subject to the franchise tax on May 1, 2006. An enterprise project would not be eligible for the credit if the enterprise project had claimed a credit under Subchapter Q, before the repeal of that subchapter on January 1, 2008.

Under the provisions of the bill, the franchise tax credit for capital investment would be based on qualified capital investment made by the enterprise project and first placed in service in an enterprise zone. "Qualified capital investment" would be defined as tangible personal property described in Section 1245(a) of the Internal Revenue Code and subject to depreciation. Qualified capital investment would not include real property or buildings and their structural components. The amount of credit would be equal to 7.5 percent of the qualified capital investment made on or after January 1, 2005 and before January 1, 2007. The credit could be claimed on a franchise tax report originally due on or after January 1, 2008 and before January 1, 2009. The amount of credit that could be used to reduce franchise tax liability on a report would be limited to 50 percent of the tax due on that report. Credit that could not be used to reduce tax liability because of the limitation could be carried forward for no more than five consecutive reports.

The bill would require the Comptroller to provide a form to be submitted by the enterprise project claiming credit for documenting the eligibility of the entity for the credit. The credit earned by an enterprise project could not be transferred to another entity unless all of the assets of the enterprise were transferred in the same transaction. The Comptroller, by rule, would prescribe the manner in which a taxable entity could claim a credit for or qualified capital investments made on or after January 1, 2005 and before January 1, 2007. The provisions of this bill would expire on December 31,

2009. The expiration of the provisions would not affect the carryforward of a credit earned before the expiration date.

Sections 2303.4051(d), relating to local financial incentives for enterprise projects, and 2303.406(e), as added by Chapter 209, Acts of the 78th Legislature, Regular Session (2003), relating to designating multiple concurrent enterprise projects in the same enterprise zone would be repealed.

The bill would take effect immediately if it were to receive the required two-thirds vote in each house of the legislature; otherwise, it would take effect September 1, 2007.

Methodology

For the purpose of this analysis, the Comptroller of Public Accounts based the estimated fiscal impact of the refund of the sales and use taxes on the average amount of sales and use tax refunds paid to enterprise projects under current law, relative to the broader refund language and greater number of projects that would be provided for in this bill. Specifically with respect to the 20 additional projects that would be allowed under the bill, the Comptroller's analysis assumes that the additional projects would be designated in fiscal 2008 and would be eligible to begin receiving refunds in fiscal 2009.

The Comptroller estimated the fiscal impact of the franchise tax credit provisions based on information provided by the Texas Economic Development Bank (TEDB) on enterprise projects designated after September 1, 2001 and before January 1, 2005. The information includes the anticipated dollar amount of new investment and identified potentially eligible enterprise projects for the credit. In the estimate, the Comptroller also used information on the utilization investment credits by corporations under the credit provisions of the existing franchise tax.

Additionally, under Chapter 2303 of the Government Code, a municipality, county, or other political subdivision could agree, for a period that could not exceed 10 years, to rebate, refund, or pay eligible taxable proceeds to the owner of a qualified hotel project at which the eligible taxable proceeds were generated. Eligible taxable proceeds include taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project, including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes, including state taxes.

Based on the expanded definition of qualified hotel projects, as established by this bill, the Comptroller reports that more projects could be eligible for state and local tax rebates. Taxable receipts for sales and use, hotel and mixed beverage taxes for an appropriately-sized hotel were estimated based on Comptroller tax files. State sales tax collections were multiplied by the state tax rate of 6.25 percent to determine the loss the General Revenue Fund. The Comptroller proportionally estimated the fiscal impacts on units of local government.

The Comptroller multiplied hotel receipts by the six percent state hotel occupancy tax rate to estimate the loss to the General Revenue Fund and by a representative seven percent local hotel tax rate to estimate the loss in city hotel tax revenues. The General Revenue Fund losses in state mixed beverage tax collections were also estimated and then adjusted for local allocations to estimate the corresponding local losses.

It is not known how many eligible hotel projects or the size of the projects would be authorized to receive the taxable proceeds; therefore, the possible fiscal effect of the bill to the state cannot be estimated.

Local Government Impact

Local governmental entities in which enterprise zones are located would be allowed to utilize the additional designations for further capital investment. The fiscal impact to local governments concerning qualified hotel projects is illustrated in the tables above; however, it represents the potential loss in state and local revenues for a single hypothetical project in one city and does not represent the entire potential loss in state and local revenues. It is not known how many eligible hotel projects or the size of the projects would be authorized to receive the taxable proceeds; therefore, the possible fiscal effect of the bill to all local governments cannot be estimated.

Source Agencies: 301 Office of the Governor, 304 Comptroller of Public Accounts
LBB Staff: JOB, JRO, SD, EB, KJG