

BILL ANALYSIS

C.S.H.B. 3676
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. An opinion of the attorney general (Op. Tex. Att'y Gen. No. 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.

C.S.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

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. 3676 amends the Tax Code to postpone from December 31, 2011, to December 31, 2015, the expiration date of provisions of the Texas Economic Development Act relating to the limitation on appraised value of certain property used to create jobs, to the limitation on appraised value of property in certain rural school districts, and to school tax credits. The bill makes clarifying changes to a provision relating to an application for a limitation on the appraised value of a qualified property used to create jobs for school district maintenance and operations property tax purposes. The bill requires a school district, within seven days of the receipt of each document relating to an application for a limitation on the appraised value for school district maintenance and operations property tax purposes on a person's qualified property used to create jobs, to submit to the comptroller of public accounts a copy of the application and the agreement between the applicant and the school district; a copy of an economic analysis of the proposed project, if such an analysis is submitted to the district; and any subsequent revision of or amendment to any of those documents within seven days of its receipt. The bill requires the comptroller to publish each document received from the school district on the comptroller's Internet website. The bill requires a school district that 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. The bill provides that these provisions do not require the comptroller to post certain confidential business information.

C.S.H.B. 3676 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 if 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. The bill requires the comptroller, after receiving a copy of the application, to determine whether the property meets the requirements for eligibility for a limitation on appraised value, to notify the governing body of the school district of the comptroller's determination and to provide the applicant an opportunity for a hearing before the determination becomes final. The bill establishes that such a hearing is a contested case hearing and is required to be conducted by the State Office of Administrative Hearings in the manner provided for a hearing by the office's tax division. The bill provides that the applicant has the burden of proof on each issue in the hearing and authorizes the applicant to seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule under the Administrative Procedure Act. The bill provides that the comptroller, if the comptroller's determination that the property does not meet the applicable requirements becomes final, 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 prohibits the governing body of the school district from granting the application.

C.S.H.B. 3676 amends the information required on the economic impact evaluation of an application for a limitation on appraised value to include 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 projected market value of the qualified property of the applicant as determined by the comptroller; the proposed limitation on appraised value for 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 subsequent 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; and the total amount of taxes projected to be lost or gained by the district over the life of the agreement. The bill removes language requiring the evaluation to include the impact the added infrastructure will have on the region, including revenue gains that would be realized by the school district and subsequent economic efforts on the local and regional tax bases. The bill instead requires the evaluation to include the impact the project will have on Texas 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.

C.S.H.B. 3676 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. The bill requires each document or item of information to continue to be posted until the appraised value limitation expires. The bill 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. The bill requires a school district that maintains a generally accessible Internet website to maintain a link on its website to the area of the comptroller's website where information on each of the district's agreements to limit appraised value is maintained.

C.S.H.B. 3676 authorizes an agreement between the governing body of the school district and the applicant on the limitation on the appraised value for school district maintenance and operations property tax purposes of the owner's qualified property 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. The bill authorizes such an agreement 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, and prohibits this provision 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. The bill 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 or for a period that exceeds the qualifying time period or the period for an application for school tax credits. The bill makes the limit inapplicable to adjustments for the protection of future school district revenues and to protection by the property owner for extraordinary education-related expenses related to the project.

C.S.H.B. 3676 requires a person with whom a school district enters into an agreement limiting appraisal value to make the minimum amount of qualified investment during the qualifying time period and to create the required number of qualifying jobs during each year of the agreement. The bill makes a property owner who in any tax year fails to comply with these requirements liable to the 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 year. The bill establishes that this penalty becomes delinquent if not paid on or before February 1 of the following year. The bill establishes that provisions relating to delinquent taxes generally apply to such a delinquent penalty in the same manner as they apply to delinquent taxes.

C.S.H.B. 3676 requires business information on an application for a limitation on property value that is confidential under law to be segregated in the application from other information in the application. The bill 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, 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. The bill provides that information in the custody of the comptroller if the governing body approves the application is not confidential.

C.S.H.B. 3676 redefines "qualifying time period" to mean the period that begins on the date that a person's application for a limitation on appraised value under these provisions is approved by the governing body of the school district and ends on December 31 of the second tax year that begins after that date, rather than the first two tax years that begin on or after the date a person's application for a limitation on appraised value is approved, and adds as an exception to that meaning incorporating the delay in the agreement agreed to by the governing body and the property owner described above. The bill includes in the definition, in connection with an advanced clean energy project as defined by state law, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value, unless a shorter time period is agreed to by the governing body of the school district and the property owner.

C.S.H.B. 3676 redefines "county average weekly wage for manufacturing jobs" to specify that the term applies the average weekly wage in a county during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on appraised value, as computed by the Texas Workforce Commission. The bill includes in the definition of "qualified investment" tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2010,

without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project, and makes clarifying changes to the definition. The bill makes clarifying changes to the definitions for "qualified job," "qualified property," and "manufacturing." The bill defines "research and development."

C.S.H.B. 3676 amends the subchapter of the Texas Economic Development Act relating to the limitation on appraised value in certain rural school districts, to revise the applicability of that subchapter and its limitation provisions. The bill, reflecting the expirations of statutory provisions and definitions relating to tax credits for certain research and development areas, makes the subchapter and its limitation applicable to a school district with territory either in an area that qualified as a strategic investment area immediately before such expiration or in a county with a population of less than 50,000 whose population did not increase by more than three percent per annum from 1990 to 2000 and removes a condition that the county not be partially or wholly located in a metropolitan statistical area.

C.S.H.B. 3676 provides that an application for a school tax credit or any information provided by the school district to the Texas Education Agency relating to additional state aid for property tax credits under the Texas Economic Development Act is not confidential.

C.S.H.B. 3676 amends the Government Code to clarify that the application of the term "taxable value" to the market value of all taxable property less a portion of the market value of property not otherwise fully taxable by a school district at market value because of action taken by the district under provisions relating to limitations on the appraised value of certain properties refers to an action taken, before the expiration date of those provisions, for purposes of the comptroller's study of school district property values.

C.S.H.B. 3676 repeals Section 313.029, Tax Code, which prohibits a governing body that grants an application for a limitation on appraised value, for a certain time period, from adopting a tax rate that exceeds the district's rollback tax rate.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3676 differs from the original by including in the definition of "qualified investment" tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins on or after January 1, 2010, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project. The substitute differs from the original by including in the definition of "qualifying time period," in connection with an advanced clean energy project as defined by state law, the first five tax years that begin on or after the third anniversary of the date the school district approves the property owner's application for a limitation on appraised value, unless a shorter time period is agreed to by the governing body of the school district and the property owner. The substitute redefines "county average weekly wage for manufacturing jobs," whereas the original defines "county average weekly wage" and removes references to manufacturing jobs.

C.S.H.B. 3676 adds provisions not in the original requiring a school district to submit to the comptroller of public accounts a copy of an application and agreement for limited appraisal value and an economic analysis of a project, and requiring the comptroller and school district to publish information on their websites. The substitute adds provisions not in the original setting forth the conditions under which a school district may approve an application the comptroller has recommended should be disapproved, and regarding the comptroller's determination of the

property's eligibility for the limitation and an owner's opportunity for a hearing. The substitute differs from the original by modifying the information that must be included in an economic impact evaluation of an application, whereas the original has no such provision. The substitute adds provisions not in the original relating to disclosure of appraised value limitation information.

C.S.H.B. 3676 adds a provision not in the original authorizing an agreement between the governing body of the school district and the applicant on the limitation on the appraised value for school district maintenance and operations property tax purposes of the owner's qualified property 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. The substitute differs from the original by authorizing such an agreement 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, whereas the original authorizes the governing body of a school district and an owner of property located in a designated reinvestment zone to agree to delay the effective date of such an agreement or to subsequently amend the agreement to delay the agreement's effective date for a period not to exceed five years from the date the governing body first approves the agreement. The substitute removes a provision included in the original establishing that, if the governing body of the school district and the property owner agree to delay the agreement's effective date, the qualifying time period consists of the first two tax years that begin on or after the effective date of the agreement. The substitute adds provisions not in the original relating to the limit on the amount of supplemental payments to a school district to which a person and the school district are authorized to agree.

C.S.H.B. 3676 adds provisions not in the original requiring a person with whom a school district enters into an agreement limiting appraisal value to make the minimum amount of qualified investment during the qualifying time period and to create the required number of qualifying jobs during each year of the agreement, and providing a penalty for failing to do so. The substitute adds provisions not in the original relating to confidential business information.

C.S.H.B. 3676 omits a provision included in the original that removes language applicable to a school district that meets the county-based criteria requiring new jobs created by a property owner entering into a limitation agreement to meet certain wage criteria.

C.S.H.B. 3676 adds a provision not in the original establishing that an application for a school tax credit or any information provided by the school district to the Texas Education Agency relating to additional state aid for property tax credits under the Texas Economic Development Act is not confidential. The substitute repeals a provision not repealed in the original prohibiting a governing body that grants an application for a limitation on appraised value, for a certain time period, from adopting a tax rate that exceeds the district's rollback tax rate.