

BILL ANALYSIS

C.S.H.B. 4613
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Various provisions of the Tax Increment Financing Act are inconsistent or outmoded, in part due to the fact that taxing entities are no longer required to participate in tax increment reinvestment zone financing.

C.S.H.B. 4613 revises existing law relating to the funding, creation, and operation of tax increment reinvestment zones. The bill amends various provisions to clean up and update the act, and clarifies and provides for the implementation of school district participation in certain zones, under the school finance formula.

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. 4613 amends the Tax Code to specify the geographic areas of a municipality that may be designated a reinvestment zone to include an area that is in the corporate limits of the municipality, in the extraterritorial jurisdiction of the municipality, or in both. The bill establishes that the area of a county or municipality qualified to be so designated need not be contiguous, if the governing body making the designation finds that the areas are substantially related. The bill establishes that the designation of an area that is wholly or partly located in the extraterritorial jurisdiction of a municipality is not affected by a subsequent annexation of real property in the reinvestment zone by the municipality. The bill requires the tax increment base for an area in a zone subsequently annexed into a municipality to be computed with reference to the determination of taxable value of the area had it been in the municipality in the year in which it was included in the zone. The bill removes the requirement that a copy of the preliminary reinvestment zone financing plan prepared by a governing body of a municipality or county before adopting an ordinance or order providing for a reinvestment zone be sent to the governing body of each taxing unit that levies taxes on real property in the proposed zone.

C.S.H.B. 4613 authorizes the governing bodies of two or more municipalities to designate a contiguous area in the jurisdiction of the municipalities as a joint reinvestment zone. The bill requires each of the municipalities to follow the procedures provided under law for creating a reinvestment zone in designating an area as a joint reinvestment zone, with certain exceptions. The bill requires the ordinances adopted by all of the municipalities designating an area as a joint reinvestment zone to contain the same terms and to describe the boundaries of the zone, create a board of directors and specify certain information about membership and operations of the board, provide when the zone takes effect and a termination date for the zone, assign a name to the zone, establish a tax increment fund for the zone, and contain findings relating to enhancements to property value by and general benefit of improvements in the zone and meeting certain criteria for the designation. The bill establishes that the ordinances are not required to identify specific parcels of real property to be enhanced in value to comply with the requirement

that certain findings must be contained in the ordinance.

C.S.H.B. 4613 authorizes the boundaries of a joint reinvestment zone to be enlarged or reduced by ordinance of the governing bodies of the municipalities that designated the zone, subject to certain restrictions. The bill authorizes the municipalities designating a joint reinvestment zone to exercise any power necessary and convenient to carry out provisions authorizing the designation and other provisions of the Tax Increment Financing Act, including the powers granted a municipality or county under that act. The bill establishes that the board of directors of a joint reinvestment zone has the same powers and duties and is subject to the same limitations as the board of directors of a zone designated by a single municipality, with certain exceptions. The bill provides for the application of certain provisions of the Tax Increment Financing Act to all the municipalities designating a joint reinvestment zone and establishes that an action required of a municipality under those certain provisions is considered to be required of all the municipalities. The bill authorizes expenditures from tax increment financing funds or bonds secured by tax increment financing to be made without regard to the location from which the funds were derived or the location within the joint reinvestment zone at which the funds are spent, but only if those expenditures are authorized as required by the Tax Increment Financing Act.

C.S.H.B. 4613 clarifies one of the conditions that determines if an area qualifies to be designated as a reinvestment zone to add that an area qualifies for that designation if it is predominantly undeveloped or underdeveloped and substantially impairs or arrests the sound growth of the municipality or county, in addition to qualifying as a result of to being predominantly open.

C.S.H.B. 4613 authorizes the governing body of the municipality or county that created an existing reinvestment zone, by ordinance, order, or resolution, to extend the term of all or a portion of the zone after notice and hearing in the same manner as provided for the creation of the zone, provided that no other taxing entity shall be required to participate in the extended portion of the zone for the extended term except by written agreement. The bill removes provisions authorizing an existing reinvestment zone to be enlarged by the governing body of the municipality or county to include an area described in a petition requesting that area be included in the zone under certain conditions.

C.S.H.B. 4613 authorizes the governing body of a municipality or county to impose a fee on property owners who submit a petition that an area be designated as a reinvestment zone reasonably related to the estimated costs of the municipality or county for processing the petition or for reviewing a project designated or proposed to be designated.

C.S.H.B. 4613 increases from 120,000 to 130,000, as shown by the 2000 federal decennial census, the population threshold that determines in part if provisions regarding the power of certain municipalities to enter into an agreement or amend an existing agreement with a school district located in a reinvestment zone to dedicate revenue from the tax increment fund to the district apply to a municipality.

C.S.H.B. 4613 makes the authorization for each taxing unit, other than the municipality or county that created a reinvestment zone on a basis other than by petition for designation, that levies taxes on real property in the zone to appoint one member of the zone's board of directors contingent on whether the taxing unit has approved the payment of all or part of the tax increment produced by the unit into the tax increment fund. The bill authorizes the governing body of a municipality or county that created a zone that was designated as the result of a petition requesting the designation to provide for a nine-member board of directors for the zone and for the board's composition as determined by provisions of law. The bill clarifies that to be eligible for appointment to the board of directors of a reinvestment zone not designated as such as the result of a petition an individual must be a resident citizen of the state and at least 18 years of age, rather than a qualified voter of the municipality or county, as applicable, or be at least 18 years of age and own real property in the zone, whether or not the individual resides in the

municipality or county. The bill adds to the optional qualifications to be appointed to a board of a reinvestment zone designated as the result of a petition that an individual is a tenant of a person who owns real property in the zone.

C.S.H.B. 4613 exempts from the eligibility criteria for appointment to the board of a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 1.4 million in which the principal municipality has a population of 1.1 million or more, an individual appointed by a conservation and reclamation district with jurisdiction covering four counties.

C.S.H.B. 4613 clarifies that provisions requiring approval of a governing body that created a reinvestment zone before the zone's board of directors may establish and administer programs for the purposes of developing and diversifying the economy of the zone, eliminating unemployment or underemployment in the zone, and stimulating or expanding transportation, business, and commercial activity in the zone, include the approval of the governing board of a county and makes related conforming changes. The bill removes language specifying that grants and loans made as part of a program for public purposes that benefit the zone and stimulate economic, employment, and commercial activity in the zone are grants and loans from the tax increment fund of the zone and removes the limit on the aggregate amount of grants and loans for those purposes. The bill authorizes the approval of the governing body of a municipality or county granting the board of directors of a zone the authority to exercise the powers of a municipality or county with respect to the administration, management, or operation of the zone to be granted in an ordinance or order approving a project plan and reinvestment zone financing plan or an amendment to those plans.

C.S.H.B. 4613 establishes that provisions regarding the use revenue in the tax increment fund to pay costs associated with transportation or transit projects may not be construed to limit the general ability of a zone to finance project costs outside the zone as provided by the Tax Increment Financing Act.

C.S.H.B. 4613 removes the requirement that a project plan and a reinvestment zone financing plan adopted for a zone be as consistent as possible with the preliminary plans developed for the zone before the creation of the board. The bill removes the requirement that the project plan include a map showing existing uses and conditions of real property in the zone and instead requires the plan to provide a description of that information. The bill removes the requirement that the project plan include the proposed improvements to a property, the master plan of the municipality, and a list of estimated nonproject costs. The bill clarifies that the statement listing public works or public improvements required to be included in the financing plan is required to list the works or improvements to be financed by the zone, rather than those in the zone. The bill clarifies that the reinvestment zone financing plan is required to include a finding that the financing plan is economically feasible, rather than an economic feasibility study. The bill clarifies that the taxing units required to be described in the description of expected sources of revenue to finance or pay project costs are taxing units anticipated to contribute tax increment to the zone. The bill removes the requirement that the ordinance or order approving a project plan or reinvestment zone financing plan find that the plan conforms to the master plan, if any, of the municipality or to subdivision rules and regulations, if any, of the county. The bill removes certain conditions under which a school district that participates in the zone is exempt from an amendment to the project plan or the reinvestment zone financing plan for a zone, and instead establishes that a participating district is not required to increase the percentage or amount of tax increment contributed by the district due to an amendment unless approved by the district's governing body. The bill establishes that, unless specifically provided otherwise in the project plan and reinvestment zone financing plan, all figures contained in the plan shall be considered estimates and shall not act as a limitation on the described items, including without limitation expenditures relating to project costs and participation by taxing units.

C.S.H.B. 4613 clarifies that the tax increment base of a taxing unit for the calculation of the unit's tax increment for a year is the total taxable, rather than appraised, value of all real property taxable by the unit and located in a reinvestment zone for the year in which the zone was designated. The bill requires the tax increment base, if the boundaries of a zone are enlarged or reduced, to be increased or reduced, as applicable, by the taxable value of the real property added to or removed from the zone for the year in which such property was added or the year in which such property was originally included within the zone's boundaries, as applicable. The bill requires the tax increment base, if a municipality creating a zone does not levy a property tax in the year the zone is created, to be determined by the applicable county appraisal district using assumptions regarding exemptions and other relevant information provided to it by the municipality.

C.S.H.B. 4613 authorizes a tax increment agreement between the governing body that created a reinvestment zone and a participating taxing unit to specify the projects to which the taxing unit's tax increment will be dedicated and that the taxing unit's participation may be computed with respect to a base year later than the original base year of the zone.

C.S.H.B. 4613 establishes that funds deposited in the tax increment fund are not funds of the participating taxing entities and are required to be administered by the zone board to implement the zone's project plan and financing plan. The bill revises the authorized purposes for which money may be disbursed from the tax increment fund to include making payments for a program for public purposes that benefit the zone and stimulate the economic, employment, and commercial activity in the zone.

C.S.H.B. 4613 revises the authorized purposes for which the proceeds of tax increment bonds or notes issued by a municipality or county creating a reinvestment zone may be used to include making payments pursuant to an agreement to implement a reinvestment zone project plan or refinancing plan and programs for public purposes that benefit the zone. The bill requires a tax increment bond or note to mature on or before the date by which the final payments of tax increment into the tax increment fund are due, rather than within 20 years of the date of issue.

C.S.H.B. 4613 extends the deadline by which the governing body of a municipality or county is required to submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone created by the municipality or county a report on the status of the zone from on or before the 90th, to on or before the 150th, day following the end of the fiscal year of the municipality or county.

C.S.H.B. 4613 clarifies that a taxing unit that taxes real property located in the zone, other than the municipality or county that created the zone, is not required to pay any of its tax increment into the tax increment fund for the zone after the termination date designated in the ordinance or order creating the zone unless the governing body of the taxing unit enters into an agreement to do so with the governing body that created the zone. The bill establishes that a tax increment reinvestment zone established as a reinvestment zone because of its designation under the Texas Enterprise Zone Act or homestead preservation district and reinvestment zone provisions shall terminate on the date specified in the ordinance or order designating the zone as a tax increment reinvestment zone for the expiration of the tax increment aspects of the zone.

C.S.H.B. 4613 establishes that a zone shall remain in existence solely for the purpose of collecting and disbursing the tax increment with respect to the tax years during the designated term of the zone, as it may have been extended, if tax increment bonds or obligations of the zone are outstanding when the zone terminates. The bill requires such tax increment funds to be used to pay the zone's obligations or the tax increment bonds. The bill establishes that a contractual obligation to a developer in the zone is not a zone obligation for these purposes.

C.S.H.B. 4613 authorizes the governing body of the city or the county that created the zone, after the zone's termination, to continue the zone for an additional period for the purpose of

continuing the implementation of the project plan and reinvestment zone financing plan. The bill establishes that a zone continued for that purpose shall retain all remaining funds, property, and assets of the zone to be used to implement the plans as authorized by the governing body, although tax increment shall cease to be deposited with respect to tax years following termination.

C.S.H.B. 4613 establishes that a governmental act or proceeding relating to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan under the Tax Increment Financing Act of a municipality or county, zone board, or an entity acting pursuant to a contract with a local government corporation or a political subdivision for the management of the zone or implementation of the plans is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and rules if the second anniversary of the effective date of the act or proceeding has expired and a lawsuit to annul or invalidate the act or proceeding has not been filed on or before the later of that anniversary or August 1, 2009. The bill exempts from such presumption an act or proceeding that was void at the time it occurred; an act or proceeding that was, at the time the act or proceeding occurred, a misdemeanor or felony under a state or federal statute; a rule that, at the time it was passed, was preempted by a state or federal statute, including provisions relating to the regulation of alcoholic beverages; or a matter that on the effective date of the bill is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court or has been held invalid by a final judgment of a court.

C.S.H.B. 4613 makes conforming changes to the definition of the term "project costs" and adds to the term's meaning: the actual costs of the remediation of conditions that contaminate public or private land or buildings, the preservation of the façade of a private or public building, and the demolition of public or private buildings; certain programs for public purposes that benefit a reinvestment zone and stimulate economic, employment, and commercial activity in the zone; costs of buildings, schools, or other educational facilities owned by or on behalf of a school district, community college district, or other political subdivision of the state; and costs of providing affordable housing or areas of public assembly in or out of the zone.

C.S.H.B. 4613 amends the Education Code to add to the sum of money for which a school district is entitled to state revenue an amount equal to the amount a district was contractually obligated to pay into a tax increment fund for a reinvestment zone under the Tax Increment Financing Act in the year 2005 less the amount the district was contractually obligated to pay into that fund in the current year at a tax levy equal to the compression rate. The bill requires the amounts to be paid to a district pursuant to an adjustment for the optional homestead exemption under the Foundation School Program to be paid at the same time other state revenue is paid to the district and to be based on the amounts paid pursuant to the adjustment of the previous year. The bill requires any deficiency to be paid to the district at the time the final amount to be paid to the district is determined and any overpayment to be deducted from the payments the district would otherwise receive in the next year.

C.S.H.B. 4613 provides for the validation and confirmation of governmental acts and proceedings that were taken before the effective date of the bill related to or associated with the designation, operation, or administration of a reinvestment zone or implementation of a project plan or reinvestment zone financing plan with the exception of any matter that, on the 30th day following the effective date of the bill, is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court or has been held invalid by a final judgment of a court.

C.S.H.B. 4613 makes conforming changes and clarifying corrections to Tax Code provisions.

C.S.H.B. 4613 repeals provisions of the Tax Code regarding the written notice that a governing body of a municipality or county intends to establish a reinvestment zone required to be provided

to the governing body of each other taxing unit that levies real property taxes in the proposed zone, the additional information a taxing unit is authorized to request from the governing body proposing to designate the zone, and the required meeting between the designated representative of each taxing unit within the proposed zone and the governing body proposing to designate the zone; restrictions on the composition of a reinvestment zone; the conditions under which a taxing unit is not required to pay a tax increment into the tax increment fund of a reinvestment zone created on or after August 29, 1983; and the requirement that a municipality send a copy of an annual report on the status of a reinvestment zone to the comptroller of public accounts.

C.S.H.B. 4613 repeals provisions of the Government Code relating to the total dollar amount of any captured appraised value of property that is within certain reinvestment zones created for the purposes of determining school district property values.

C.S.H.B. 4613 repeals the following sections of the Tax Code:

- Section 311.003(e), (f), and (g);
- Section 311.006;
- Sections 311.013(d) and (e); and
- Section 311.016(b) as amended by Acts 2005, 79th Leg., R.S., Ch. 977, Sec.2.

The bill repeals Sections 403.302 (d) (4) and (e), Government Code.

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. 4613 differs from the original by adding to the definition of "project costs" costs of buildings, schools, or other educational buildings, or other educational facilities owned by or on behalf of a school district, community college district, or other political subdivision of the state and costs of providing affordable housing or areas of public assembly in or out of the reinvestment zone, and makes conforming changes.

C.S.H.B. 4613 differs from the original by including the specification for the geographic area of a municipality authorized to be designated a reinvestment zone. The substitute adds provisions not in the original regarding the effect of a municipality's subsequent annexation of real property in the reinvestment zone on the designation of an area wholly or partly located in the extraterritorial jurisdiction of the municipality.

C.S.H.B. 4613 adds provisions not in the original establishing procedures for the designation of a joint reinvestment zone.

C.S.H.B. 4613 differs from the original by making a conforming change to include an order of a county among the authorized methods to extend the term of an existing reinvestment zone, and by clarifying that the governing body is authorized to extend the term of all or a portion of the zone.

C.S.H.B. 4613 adds a provision not in the original authorizing the governing body of a municipality or county to impose a fee for the cost of processing a petition for designation as a zone.

C.S.H.B. 4613 adds a provision not in the original increasing the population threshold to determine application of certain provisions relating to an agreement between a school district and a municipality to dedicate tax increment fund revenue to the district.

C.S.H.B. 4613 differs from the original by authorizing the governing body of the city or county that created a reinvestment zone designated through a petition to provide that the board consists of nine members and for the composition of the board of directors of the zone, whereas the original establishes that the board of directors of such a zone consists of nine members. The substitute adds a provision not in the original exempting an individual appointed by a conservation and reclamation district that meets certain conditions from eligibility criteria for appointment to the board of a reinvestment zone.

C.S.H.B. 4613 adds a provision not in the original establishing that provisions regarding costs associated with transportation or transit projects are not to be construed to limit the general ability of a zone to finance project costs outside the zone.

C.S.H.B. 4613 differs from the original by clarifying that the taxing units required to be described in the description of expected sources of revenue to finance or pay project costs are taxing units anticipated to contribute tax increment to the zone, whereas the original references taxing units anticipated to participate in the zone financing.

C.S.H.B. 4613 differs from the original by requiring the tax increment base to be increased or reduced depending on whether the boundaries of a zone are enlarged or reduced and providing for the determination of the tax increment base for a municipality creating a zone that does not levy a property tax in the year the zone is created, whereas the original establishes that the base year for any land annexed into the zone is the year in which such land was annexed.

C.S.H.B. 4613 adds a provision not in the original authorizing a tax increment agreement between the governing body that created a reinvestment zone and a participating taxing unit to specify the projects to which a participating taxing unit's tax increment will be dedicated.

C.S.H.B. 4613 adds a provision not in the original establishing that funds deposited in the tax increment fund are not funds of the participating taxing entities and requiring those funds to be administered by the zone board to implement the project and financing plans of the zone.

C.S.H.B. 4613 differs from the original by authorizing a county to issue tax increment bonds or notes to make certain payments.

C.S.H.B. 4613 differs from the original by changing the termination date of a zone established as a reinvestment zone because of its designation under other law from the date on which all project costs, tax increment bonds and interest on those bonds, and other obligations have been paid in full as in the original, to the date specified in the ordinance or order designating the zone as a tax increment reinvestment zone for the expiration of the tax increment aspects of the zone. The substitute differs from the original by specifying the purposes for which a zone is authorized to remain in existence if tax increment bonds or obligations are outstanding when the zone terminates relating to the collection and disbursement of tax increment with respect to tax years during the designated term of the zone, whereas the original requires the zone to remain in existence solely for the purpose of fully paying its obligations or the tax increment bonds. The substitute omits a provision included in the original establishing that the termination is effective when all zone obligations or tax increment bonds have been fully paid. The substitute adds provisions not in the original authorizing the continuation of a zone for the purpose of the implementation of the project plan and financing plan.

C.S.H.B. 4613 differs from the original by changing the date by which a lawsuit to annul or invalidate a governmental act or proceeding is required to be filed from on or before the second anniversary of the effective date of the act or proceeding as in the original, to the later of that second anniversary or August 1, 2009.

C.S.H.B. 4613 omits provisions included in the original repealing Section 311.01005, Tax Code, relating to costs associated with transportation or transit projects. The substitute omits a repealer included in the original repealing Section 311.007(b), Tax Code, and instead strikes the substance of that provision. The substitute adds a provision not in the original repealing Sections 403.302(d)(4) and (e), Government Code, relating to the determination of school district property values.

C.S.H.B. 4613 adds provisions not in the original relating to the money to which a school district is entitled to state revenue. The substitute omits a provision included in the original providing for the deduction from the local revenue available to the district the amount of taxes paid by the district into a tax increment reinvestment zone in computing the local revenue per student.

C.S.H.B. 4613 differs from the original by including a deadline by which a matter must be involved in litigation or be found invalid by a court to be exempt from the provision validating and confirming all governmental acts and proceedings with respect to the designation, operation, or administration at a reinvestment zone. The substitute adds transition provisions not included in the original and makes conforming changes not made by the original.