

BILL ANALYSIS

S.B. 313
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Ways & Means
Committee Report (Amended)

BACKGROUND AND PURPOSE

Provisions of the Tax Code establish a tax increment financing structure to aid cities and counties in financing public improvements. The code sets out a procedure by which the existing tax revenues of each taxing unit are frozen, tax increment financing bonds are sold, improvements are constructed, the area is revitalized, property values increase, and property tax revenues increase. Increased tax revenues above the tax increment base are then used to retire the tax increment financing obligations. The code currently authorizes a city or county to designate by ordinance or order, as applicable, the termination date of a reinvestment zone it creates, but does not authorize a city or county to extend the termination date.

An attorney general opinion from 2004 (GA-0276) has found that cities do not have the statutory authority to extend the termination date of reinvestment zones. However, a natural disaster, poor economic climate, or another pressing reason may prompt a need to extend the life of a reinvestment zone to avoid default or to allow bonds to be refinanced. Prior to the opinion, cities and counties commonly amended the order or ordinance creating a zone or enacted a new order or ordinance to extend the termination date of a zone.

S.B. 313 authorizes a city or county to extend the termination date of a reinvestment zone. The bill also provides that any taxing unit that taxes property located in the zone, other than the city or county that created the zone, is not required to pay any of its tax increment into the tax increment fund after the original termination date unless it enters into an agreement to do so with the city or county that created the zone.

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

S.B. 313 amends the Tax Code to specify that the amount of a taxing unit's tax increment for a year is the amount of property taxes assessed and levied, rather than the amount levied and collected, by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone.

S.B. 313 authorizes a reinvestment zone created under the Tax Increment Financing Act to have a termination date later than that specified when the zone was created, if such a date is designated by an ordinance or order adopted subsequent to the ordinance or order creating the zone. The bill specifies that, notwithstanding the later termination date if so established, a taxing unit that taxes real property located in the reinvestment 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 of the municipality or county that created the zone.

S.B. 313 legislatively confirms and validates, as of the date on which they occurred, all governmental acts and proceedings of a municipality or county that were taken before the bill's effective date and that relate to or are associated with the extension of the term of a reinvestment zone created under the act by the municipality or county. The bill prohibits the acts and proceedings from being held invalid because they were not in accordance with the act or with other law, except in the case of a matter that, as of the bill's effective date, has been held invalid by the final judgment of a court, or that, as of that date, is involved in litigation and the litigation ultimately results in the matter being held invalid by a final judgment of a court.

EFFECTIVE DATE

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

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1

S.B. 313, as amended, amends the Tax Code to specify that the geographic areas of a municipality that may be designated a reinvestment zone includes an area that is in the corporate limits of the municipality, in the extraterritorial jurisdiction of the municipality, or in both. The amendment 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 determines that the tracts included in the area are substantially related. The amendment 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 amendment establishes that the tax increment base of a municipality that annexes an area in a zone after the area is included in the zone is to be computed as if the area were located in the corporate limits of the municipality at the time it was included in the zone. The amendment 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.

S.B. 313, as amended, authorizes the governing bodies of two or more municipalities to designate a contiguous area in the jurisdiction of each of the municipalities to be a joint reinvestment zone. The amendment requires each of the municipalities to follow the procedures provided under law for creating a reinvestment zone for such a designation. The amendment 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, contain findings that improvements in the zone will significantly enhance the value of all taxable property in the zone and be of general benefit to the municipalities, and contain findings that the area meets certain criteria for designation. The amendment specifies that the ordinances are not required to identify the specific parcels of real property to be enhanced in value for purposes of complying with the requirement that those findings be contained in the ordinance.

S.B. 313, as amended, 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 amendment 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 amendment 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 amendment 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 amendment 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.

S.B. 313, as amended, clarifies one of the conditions that determines if an area qualifies to be designated as a reinvestment zone by adding that an area qualifies for designation if it is predominantly undeveloped or underdeveloped and substantially impairs or arrests the sound growth of the municipality or county.

S.B. 313, as amended, authorizes the governing body of the municipality or county that designated a reinvestment zone, by ordinance or resolution or by order or resolution, respectively, to extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. The amendment provides that a taxing unit other than the municipality or county that designated the zone is not required to participate in the zone or portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so. The amendment 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.

S.B. 313, as amended, authorizes the governing body of a municipality or county to impose a fee on property owners who submit a petition for an area to be designated as a reinvestment zone or for reviewing a project designated or proposed to be designated under the Tax Increment Financing Act. The amendment requires the fee to be reasonably related to the estimated cost to the municipality or county of processing the petition or reviewing the project, respectively.

S.B. 313, as amended, 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.

S.B. 313, as amended, makes the authorization for each taxing unit, other than the municipality or county that designated 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 for the zone. The amendment authorizes the governing body of a municipality or county that designated a zone as the result of a petition requesting the designation to provide for a nine-member board of directors for the zone unless more than nine members are required under the bill's provisions. The amendment authorizes a municipality or county, if fewer than seven taxing units, other than the municipality or county that designated a zone, are eligible to appoint members of the board of directors of the zone, to appoint a number of members of the board such that the board comprises nine members and in such cases authorizes the municipality or county to appoint one member. The amendment removes a provision providing for the appointment by the governing body of the municipality or county that created the zone of members remaining to be appointed after prescribed appointments have been made. The amendment 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 of this state and a citizen of the United States 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 amendment adds to the optional qualifications to be appointed to a board of a reinvestment zone designated as the result of a petition the fact that an individual is a tenant of a person who owns real property in the zone.

S.B. 313, as amended, 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.

S.B. 313, as amended, adds to the projects for which revenue in the tax increment fund is authorized to be used under an agreement by the board of directors of a reinvestment zone or the governing body of the municipality or county that designates the zone to implement the project plan and financing plan the construction of a road, sidewalk, or other public infrastructure in or out of the zone, including the cost of acquiring the real property necessary for the construction of the road, sidewalk, or other public infrastructure. The amendment removes provisions relating to dedicated revenue from the tax increment fund to pay a neighborhood enterprise association. The amendment clarifies that provisions relating to the purchasing and contracting authority of municipalities do not apply to a dedication, pledge, or other use of revenue in the tax increment fund for a reinvestment zone, rather than only to uses of revenue in the tax increment fund by the board of directors of the zone in carrying out its powers. The amendment subjects the authority of the board of directors of a reinvestment zone to the approval of the governing body of a county that designated the zone when establishing and providing for the administration of programs for public purposes.

S.B. 313, as amended, clarifies that provisions requiring approval of a governing body that designated 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 amendment 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 amendment authorizes the approval required of the governing body of a municipality or county for the board of directors 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, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to one of those plans.

S.B. 313, as amended, establishes that provisions regarding the use of revenue in the tax increment fund to pay costs associated with transportation or transit projects does not limit the power of the board of directors of a reinvestment zone or the governing body of the municipality that designates a reinvestment zone to dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund for the zone to finance costs of a project involving real property located outside the zone.

S.B. 313, as amended, 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 amendment removes the requirement that the project plan include a map showing existing uses and conditions of real property in the zone and proposed uses of that property and instead requires the plan to provide a description of that information. The amendment removes the requirement that the project plan include a map showing the proposed improvements to a property, the master plan of the municipality, and a list of estimated nonproject costs. The amendment 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 amendment 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 amendment clarifies that the financing plan is required to include the estimated time when related costs or monetary obligations are to be incurred. The amendment 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 amendment 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 amendment 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 because of an amendment unless approved by the district's governing body. The amendment establishes that, unless specifically provided otherwise in the plan, all amounts contained in the project plan or reinvestment zone financing plan, including amounts of expenditures relating to project costs and amounts relating to participation by taxing units, are considered estimates and do not act as a limitation on the described items.

S.B. 313, as amended, adds an alternative method for determining the amount of a taxing unit's tax increment for a year to give the governing body of a taxing unit the option to make the tax increment the amount of property taxes levied and assessed by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone. The amendment requires the governing body to determine which of the specified methods is used to calculate the amount of the unit's tax increment.

S.B. 313, as amended, 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 amendment establishes that the tax increment base is increased or reduced based on whether the boundaries of a zone are enlarged or reduced 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 in the zone's boundaries. The amendment establishes that the tax increment base, if a municipality that designates a zone does not levy a property tax in the year in which the zone is designated, is determined by the appraisal district in which the zone is located using assumptions regarding exemptions and other relevant information provided to the appraisal district by the municipality.

S.B. 313, as amended, authorizes a tax increment agreement between the governing body that designated 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. The amendment includes rather than excludes a municipality as a taxing unit authorized to elect to offer the owners of a taxable real property in a designated reinvestment zone an exemption from taxation of all or part of the value of the property in lieu of permitting a portion of its tax increment to be paid into the tax increment fund. The amendment removes the requirement that any agreement concerning an exemption be executed subject to limitations of the Property Redevelopment and Tax Abatement Act with an exception for the location of property covered by the agreement. The amendment removes a prohibition against a taxing unit offering a tax abatement agreement to property owners after the unit has entered into an agreement to pay its tax increments into the tax increment fund. The amendment requires an agreement, in order to be effective, to be approved by the board of directors of the reinvestment zone and the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone.

The amendment removes a provision limiting the amount a school district is required to pay into a tax increment fund from exceeding the amount the school district realizes from the reduction in the school district's taxable value.

S.B. 313, as amended, authorizes a municipality or county designating a reinvestment zone to issue tax increment bonds or notes, the proceeds of which may be used to make payments pursuant to agreements of the zone and to make payments to programs established for the public purposes of developing and diversifying the economy of the zone. The amendment authorizes a municipality, in lieu of issuing bonds or notes, to issue certificates of obligation to pay the project costs for a zone and authorizes the municipality to use tax increment from the zone to pay debt service on the certificates. The amendment requires the tax increment bond or note not 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.

S.B. 313, as amended, requires tax increment and other funds deposited in the tax increment fund of the zone to be administered by the governing body of the municipality or county that designated the zone or, if delegated by the governing body, by the board of directors of the zone, to implement the project plan and reinvestment zone financing plan for the zone during the term of the zone, as it may be extended, and for any period in which the zone remains in existence for collection and disbursement of the tax increment. The amendment 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.

S.B. 313, as amended, revises the authorized purposes for which the proceeds of tax increment bonds or notes issued by a municipality or county that designates a reinvestment zone may be used to include payments made pursuant to an agreement to implement a reinvestment zone project plan or refinancing plan and programs for public purposes that benefit the zone. The amendment authorizes a municipality to issue certificates of obligation under the Public Property Finance Act to pay the project costs for a zone and use tax increment from the zone to pay debt service on the certificates. The amendment 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.

S.B. 313, as amended, 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 designated by the municipality or county a report on the status of the zone from on or before the 90th day to on or before the 150th day following the end of the fiscal year of the municipality or county.

S.B. 313, as amended, clarifies that a taxing unit that taxes real property located in the zone, other than the municipality or county that designated 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 that designates the zone unless the governing body of the taxing unit enters into an agreement to do so with the governing body that designated the zone. The amendment establishes that a tax increment reinvestment zone established as a reinvestment zone because of its designation under the Texas Enterprise Zone Act or provisions relating to homestead preservation districts and reinvestment zones terminates on the date specified in the ordinance or order designating the zone, regardless of whether the zone has terminated under the other law under which the zone was originally designated.

S.B. 313, as amended, establishes that a zone remains 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 other obligations issued or incurred for the zone are outstanding when the zone terminates. The amendment requires those tax increment funds to be used to pay tax increment bonds or other obligations

issued or incurred for the zone. The amendment establishes that the termination date of a zone for purposes of any contract entered into by the board or by the municipality or county that designated the zone remains the termination date designated by ordinance or order in effect on the date the contract was executed unless a subsequent amendment to the contract expressly provides otherwise. The amendment authorizes the governing body of the city or the county that designated 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 amendment establishes that a zone continued for that purpose retains 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.

S.B. 313, as amended, establishes that a governmental act or proceeding of a municipality or county, the board of directors of a reinvestment zone, or an entity acting under the Tax Increment Financing Act relating to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan 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 amendment 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.

S.B. 313, as amended, 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 actual costs of the preservation of the façade of a public or private building; and the actual costs of 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; the costs of school buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or other political subdivision of the state; and the costs of providing affordable housing or areas of public assembly in or outside of the zone.

S.B. 313, as amended, 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 the district is required to pay into the tax increment fund for a reinvestment zone under the Tax Increment Financing Act in the current tax year. The amendment requires those amounts to be paid to a district at the same time other state revenue is paid to the district and to be based on the amounts paid for the preceding year. The amendment 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 following year.

S.B. 313, as amended, amends the Government Code to remove from the meaning of "taxable value" for purposes of determining the school district property values, the market value of all taxable property less certain amounts for a school district for which a deduction from taxable value is made based on the fact that district property is within a reinvestment zone that meets certain conditions relating to the date the zone was created or the date the property was included within the boundaries of the zone, or the fact that district property generates taxes paid into a tax increment fund under a reinvestment zone financing plan approved before a certain date.

S.B. 313, as amended, amends the Local Government Code to make a conforming change related to the repeal of certain provisions of the Tax Code.

S.B. 313, as amended, 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.

S.B. 313, as amended, makes conforming changes and clarifying corrections to Tax Code provisions.

S.B. 313, as amended, repeals provisions of the Tax Code relating to procedures for creating a reinvestment zone and restrictions on the composition of a reinvestment zone. The amendment repeals obsolete provisions of the Tax Code relating to the collection and deposit of tax increments by a reinvestment zone created before, on, or after a certain date.

S.B. 313, as amended, makes provisions relating to the definition of "project costs" applicable to all costs regardless of when they were incurred. The amendment makes its provisions relating to the meaning of "taxable value" for purposes of determining school district property value applicable as if the changes made to those provisions were in effect in the state fiscal year beginning September 1, 2006. The amendment requires any amounts due a school district under those provisions for the state fiscal years beginning September 1, 2006, September 1, 2007, and September 1, 2009, to be paid to the district in the state fiscal year beginning September 1, 2009, at the time payments are made from the Foundation School Fund.

S.B. 313, as amended, reenacts Section 311.016(b), Tax Code, as amended by Chapters 977 (H.B. 1820) and 1094 (H.B. 2120), Acts of the 79th Legislature, Regular Session, 2005.

S.B. 313, as amended, repeals Sections 311.003(e), (f), and (g), 311.006, and 311.013(d) and (e), Tax Code.

S.B. 313, as amended, sets forth an effective date provision.