

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

TO: Honorable Garnet Coleman, Chair, House Committee on County Affairs

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

IN RE: HB3484 by Coleman (Relating to certain acts and proceedings of certain local governments, including those related to tax increment financing, and the validity of certain acts and proceedings.), **Committee Report 1st House, Substituted**

To the extent that provisions of the bill result in the inclusion of more property and longer durations in tax increment financing agreements, the provisions would create a cost to taxing units. Because information necessary to estimate the amount of new property or extensions of tax increment financing agreements is not available, there could be an indeterminate fiscal impact to the state.

Article 1 of the bill would amend Chapter 375, Local Government Code regarding acts and proceedings of local governments. Article 2 would amend several provisions of Chapter 311, Tax Code, regarding tax increment reinvestment zones, Chapter 403, Government Code and Chapter 42, Education Code.

Article 1 of the bill would amend Chapter 375, Local Government Code, to provide that a governmental act or proceeding relating to the designation, operation, or administration of a reinvestment zone or implementation of a project plan or financing plan is conclusively presumed valid and to have occurred in accordance with all applicable statutes and rules if two years have passed since the action in question, if no lawsuit has been filed to annul or invalidate the action, if the action was not a felony or misdemeanor, and the action was not void at the time it occurred or subject to other similar restrictions.

Article 2, Section 2.01 of the bill would add remediation of contaminated land or buildings, certain building preservation and demolition costs, educational facilities, buildings owned by schools or other political subdivisions, affordable housing or areas of public assembly in or out of the tax increment zone, and certain reinvestment zone development programs to the capital costs that may be incurred by a city or county and that are listed in the project plan for the tax increment zone.

Article 2, Section 2.02 of the bill would strike the provision requiring that the reinvestment zone's area be contiguous and would specify that the area need not be contiguous if the non-contiguous areas are substantially related.

Article 2, Section 2.03 of the bill would create a procedure for two or more cities to jointly designate a contiguous area in their jurisdictions as a reinvestment zone. The bill would provide the procedures for creating the zone's board of directors, provide that the zone take effect immediately on adoption of the ordinance required in each participating city, provide that the board of directors of a joint reinvestment zone have the same powers and duties as single-city zones unless otherwise specified, and provide that expenditures from the tax increment fund that are otherwise authorized may be spent at any location in the zone regardless of the location from which the funds were derived.

Article 2, Section 2.04 of the bill would allow reinvestment zone land to be predominately undeveloped or underdeveloped in addition to predominately open land as is required in current law.

Article 2, Section 2.05 of the bill would allow the city or county that created a reinvestment zone to change the boundaries of the zone without restrictions based on the percentage of taxable real or residential property in the zone, and to extend the term of the zone after following notice and hearing requirements. No other taxing unit would be required to participate in the zone during the extended term.

Article 2, Section 2.06 of the bill would allow the governing body of a municipality or county to sell real property and to impose a reasonable petition processing fee on property owners who submit a petition requesting that an area be designated as a reinvestment zone, and would make other non-substantive clarifications.

Article 2, Section 2.07 of the bill would amend language allowing a city to agree with a school district to acquire construct, or reconstruct an educational facility located in or outside of the zone to allow these activities only in a city with a population of less than 130,000 as shown by the 2000 federal decennial census that has territory in three counties.

Article 2, Section 2.08 of the bill would prohibit a taxing unit other than a city or county from appointing a member to the reinvestment zone board of directors unless it has approved the payment of all or part of its tax increment into the tax increment fund and would provide for additional city or county board appointments if the number of taxing units eligible to appoint board members is seven or fewer to insure that the board comprises nine members. Section 2.08 would also make certain changes to the reinvestment zone board of directors eligibility requirements.

Article 2, Section 2.09 of the bill would provide that in certain reinvestment zones the eligibility criteria for appointment to a reinvestment zone board of directors does not apply to an individual appointed by a four-county conservation and reclamation district created under Section 59, Article XVI of the Texas Constitution.

Article 2, Section 2.10 of the bill would provide that the costs of roads, sidewalks or other public infrastructure may be paid from the tax increment fund and would include, subject to approval by the governing body, counties as entities that may administer development programs and make grants or loans. The restriction on grants and loans in excess of the amount of tax increment paid into the tax increment fund would be deleted.

Article 2, Section 2.11 of the bill would provide that Section 311.01005 of the Tax Code, regarding costs associated with certain transportation projects, not be construed to limit the general ability of a zone to finance project costs outside the zone as provided in Section 311.002 of the Tax Code.

Article 2, Section 2.12 of the bill would strike the requirement that final project and financing plans be as consistent as possible with the preliminary plans developed for the zone. The requirement that project plans include maps, a city master plan, and a list of estimated non-project costs would be deleted. The project plan would be required to include a finding that the plan is economically feasible and other items. School districts would not be required to increase the percentage or amount of their tax increment paid into a tax increment fund because of an amendment to the project plan or reinvestment zone financing plan. All figures contained in a project or reinvestment zone plan would be considered estimates.

Article 2, Section 2.13 of the bill would replace "appraised" with "taxable" in the definition of "tax increment base" and would provide that the base year for real property added or deleted from a zone because of boundary changes is the year in which such property was added or deleted.

Article 2, Section 2.14 of the bill would provide that an agreement may specify the projects to which a participating taxing unit's tax increment will be dedicated and would permit agreements to specify that a taxing unit's participation may be computed on a base year later than the original base year. Cities included with the taxing units that could offer abatements in lieu of forwarding tax revenue into a tax increment fund subject to approval by the board of directors of the reinvestment zone and the governing body of each taxing unit that deposits taxes in the tax increment fund.

Article 2, Section 2.15 of the bill would specify that money deposited in a tax increment fund does not belong to the participating taxing units and would permit disbursement of money from the tax increment fund for certain economic development programs.

Article 2, Section 2.16 of the bill would allow a city or county to make payments pursuant to certain agreements and economic development programs from the proceeds of tax increment bonds, notes or certificates of obligation. A city would be permitted to use tax increment funds to pay debt service on certificates of obligation. Language requiring that tax increment bonds or notes must mature within 20 years of the date of issue would be deleted and replaced with language requiring maturity by the date on which the final payment of tax increment is due.

Article 2, Section 2.17 of the bill would extend the deadline by which the city or county must submit to the chief executive of each taxing unit a reinvestment zone status report from 90 to 150 days following the end of the fiscal year.

Article 2, Section 2.18 of the bill would require the city or county to provide a copy of the reinvestment zone status report to the attorney general and the comptroller.

Article 2, Section 2.19 of the bill would provide for varying reinvestment zone termination dates depending on individual circumstances in each zone and make clarifications regarding the termination of the zone, the disbursement of funds after termination, the retention of assets and other matters pertaining to the end of the zone's term.

Article 2, Section 2.20 of the bill would provide that a governmental act or proceeding relating to the designation, operation or administration of a reinvestment zone or implementation of a project plan or financing plan is conclusively presumed valid and to have occurred in accordance with all applicable statutes and rules if two years have passed since the action in question, if no lawsuit has been filed to annul or invalidate the action, if the action was not a felony or misdemeanor, and the action was not void at the time it occurred or subject to other similar restrictions.

Article 2, of the bill in Section 2.21, would amend Chapter 42 of the Education Code to instruct the Texas Education Agency to reduce school district revenue by the amount of payments into a tax increment zone based on the difference between the school district's 2005 tax rate and current tax rate in computing the target revenue for purposes of the state hold-harmless funding provision.

Article 2, Section 2.22 of the bill would require the Texas Education Agency to reimburse school districts for their eligible payments into tax increment funds on the same schedule that other state funding is paid. Funding would be based on the school district's preceding year tax increment fund payments and adjusted when current year payments are final.

Article 2, Section 2.23 of the bill would amend Chapter 403, Government Code to delete a requirement that the Comptroller impute and deduct from the taxable value used for funding purposes a value related to the additional payment into a tax increment fund based on the difference between the school district's 2005 tax rate and current tax rate.

Article 2, Section 2.24 of the bill would amend 373A.151(b), Local Government Code to specify that Section 311.005, Tax Code, which establishes criteria for a reinvestment zone, does not apply to a reinvestment zone established under that subchapter.

Article 2, Section 2.25 of the bill would repeal Sections 311.003(e), (f), and (g), which require a city or county to send notices, provide information and provide for meetings with taxing units on the subject of a proposed reinvestment zone; Section 311.006, which prohibits tax increment zones with more than certain percentages of residential property or taxable real property in the city; and sections with certain outdated and duplicative provisions.

Article 2, Section 2.26 of the bill would validate all governmental acts and proceedings of a city or county taken before the effective date of the bill subject to certain restrictions.

Article 2, Section 2.27 of the bill would specify that Section 311.002(1), Tax Code as amended by this bill would apply to all costs described by that subdivision regardless of when they were incurred. Section 311.0091, Tax Code as amended by the bill would apply only to an individual appointed by a conservation and reclamation district to the board of directors of a reinvestment zone on or after the effective date of the bill. Section 311.012(c), Tax Code, as amended by the bill would apply only to the determination of the tax increment base of a taxing unit for a tax year beginning on or after the effective date of the bill except that a tax increment base that was calculated prior to the effective date of the bill based on the new method set out in the bill would be validated.

Article 2, Section 2.28 of the bill would require that Section 42.2516, Education Code, as amended by the bill be applied as if Subsection (b)(4) of that section were in effect in the state fiscal year beginning September 1, 2006 and any amounts due on that basis shall be paid to the district in the state fiscal year beginning September 1, 2009.

Article 1 of the bill would take effect September 1, 2009. Article 2 of the bill would take effect immediately upon enactment, assuming that the bill received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2009.

The provision that would change the definition of tax increment base to reflect taxable value rather than appraised value and that validates base values that were incorrectly calculated prior to the effective date of the bill would create a cost to taxing units and to the state to the extent that taxable value is less than appraised value because of exemptions. In calculating a taxing unit's tax increment, the base value (reduced for exemptions under the bill) is subtracted from the captured appraised value (not reduced for exemptions under the bill) resulting in a higher tax increment which would translate into a higher payment into the tax increment fund. Because information necessary to estimate the amount of exempt property associated with tax increment financing is unavailable, the cost of this provision cannot be estimated.

Local Government Impact

Based on analysis from the Comptroller of Public Accounts, for the reasons stated above, the fiscal impact to units of local government cannot be estimated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, DB, TP, MN, SD