LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable Chris Harris, Chair, Senate Committee on Economic Development

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

IN RE: **HB3676** by Heflin (Relating to the Texas Economic Development Act.), **As Engrossed**

The bill would result in school district levy losses due to changes in the Tax Code relating to the Texas Economic Development Act. As a result of the school funding formula, the bill would have a negative effect on the State's cash flow.

The bill would amend Chapter 313 of the Tax Code, relating to the Texas Economic Development Act.

The bill would amend Section 313.007 to extend from December 31, 2011 to December 31, 2015 the expiration date of significant portions of this Chapter.

The bill would amend Section 313.021(1)(A) to clarify that qualified property could include tangible personal property without regard to whether the property is affixed to, or incorporated into, real property. The bill would also clarify that a person owning qualified property need not own the land associated with the qualified property. The bill would amend Section 313.025(a) to clarify that lessees of, or other holders of possessory interest in, qualified property may apply for value limitations.

The bill would amend Section 313.021(1) of the Tax Code to allow as a "qualified investment" certain tangible personal property used in connection with an advanced clean energy project. The bill would also amend Section 313.021(4) to provide a three year delay of the beginning of a qualifying time period that could last as long as five years for such projects.

The bill would amend Section 313.021(3)(D) by striking a reference to a repealed statute.

The bill would amend the definition of qualifying time period in Section 313.021(4)(A). The beginning of the qualifying time period would be the date the application is approved by the school board, rather than the beginning of the tax year following the year in which the board approved the application. Section 7 of the bill would amend Section 313.027 adding a new subsection (h) allowing a school board and property owner to delay indefinitely the beginning of the qualifying time period.

The bill would amend Tax Code 313.021(3)(E) to specify that the wage target for qualifying jobs for projects creating more than 1,000 jobs in a county would be 110 percent of the county average weekly wage for all jobs, rather than 110 percent of the county average weekly wage for manufacturing jobs.

The bill would amend the definition "County average weekly wage for manufacturing jobs" in Tax Code 313.021(5) to create for project owners the choice of two wage targets for qualifying jobs. One definition, in 313.021(5)(A), would be the manufacturing wage in the county computed by the Texas Workforce Commission (TWC), based on the four most recent quarters of data available at the time an application is made to a school district. The second definition, in 313.021(5)(B), would be that wage computed by TWC for manufacturing wages in the region based on the four most recent quarters of data available at the time an application is made to a school district. Presumably, the wage target required for the applicant would be the lesser of the two options, and would remain a fixed wage target for each project for the length of each agreement (10-15 years).

The bill would amend Tax Code 313.024(b) by adding to the list of eligibility criteria "a computer center primarily used in connection with one or more" of the other eligibility criteria listed in 313.024 (b).

The bill would also amend Section 313.025 to require school districts to submit to the Comptroller copies of applications, agreements, and any economic analyses (or any revisions of those documents) within seven days of receipt. The Comptroller would be required to post each document on the Comptroller Web site. Districts would be required to have links to the Comptroller Web site. Confidential information would be exempt from posting requirements.

The bill would amend Tax Code 313.025(b) to lengthen the application review period from 120 days to 150 days, and the period of time for Comptroller review of the application from 60 days to 90 days.

The bill would also amend Section 313.025 by adding a new subsection (d-1) to provide that, when the Comptroller recommends disapproval of an application, a district could only approve that application with at least a vote of two-thirds of the school board.

The bill would also amend Section 313.025 by adding new subsections (h) and (i) requiring the Comptroller to determine whether the property described in the application meets the eligibility requirements of the chapter, and offer applicants the opportunity for a hearing on project eligibility conducted by the State Office of Administrative Hearings (SOAH). Under the bill, applicants could seek judicial review of the eligibility determination in a Travis County district court. If the Comptroller's determination was upheld by the appeals process, the Comptroller would not be required to provide the economic impact evaluation or recommendation otherwise required by the chapter.

The bill would amend section 313.026, to expand the Comptroller’s economic impact evaluation to include the impact a project would have on the state and individual units of government instead of the region. It also would require the economic impact evaluation to include tax and other revenue gains, direct or indirect, that would be realized as well as 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.

The bill would add a new Section 313.0265 titled, "Disclosure of Appraised Value Limitation Information." The new section would require the Comptroller to designate applications and certain other documents related to value limitation applications and projects as "substantive" and post them within 15 days of their creation or receipt on the Comptroller Web site. The Comptroller would also be required to maintain them until the expiration of the limitation (at least 10 years and four months). School districts would be required to have links to the Comptroller Web site.

Section 313.027 would be amended to allow agreements to include a provision for payments from the owner to the school district for "extraordinary education-related expenses" related to the project.

Section 313.027 would also be amended to limit "supplemental payments" from the project owner to the district to $100 per student per year for a number of years not to exceed the number of years in the qualifying time period, the limitation period and the tax credit settle-up period.

Section 9 of the bill would create a new section of the chapter titled, "Recapture of Ad Valorem Tax Revenue Lost" specifying that if the owner of the project does not make the minimum qualified investment or create the "required" number of qualifying jobs, they lose the tax benefit in any year in which they were out of compliance. The section does not specify responsibility for oversight of the provisions of the new section.

The bill would amend Section 313.028 to specify that confidential information be segregated in the application from information not considered confidential, and that certain information could not be considered confidential business information.

The bill would amend Section 313.051(a)(1) to allow school districts to be classified as rural under Subchapter C of Chapter 313 if the school district has territory in an area that was previously designated as a strategic investment area (SIA) immediately prior to the expiration of Subchapter O, Tax Code, Chapter 171. The bill would also delete Section 313.051(a)(2)(B) which currently prevents school districts partially or wholly located within a metropolitan statistical area (MSA) from being classified as rural under the subchapter.

The bill would amend Tax Code 313.103 to allow companies to file a tax credit application with the school district at any time, rather than before September 1 of the third year of an agreement, as specified in current law. Similarly, the bill would allow school boards to approve the tax credit at any time, rather than within 90 days after application filing.

The bill would amend Section 403.302(d) of the Government Code to specify that portions of a school district's tax base not taxed at full market value because of actions taken by a school district under subchapter B or C, Chapter 313, before the expiration of the subchapter, would be deducted from the Comptroller's annual property value study.

The bill would repeal Section 313.029, which prohibits school districts with Chapter 313 agreements from holding tax rate rollback elections in the two tax years following the approval of a value limitation application.

Without extension of the Texas Economic Development Act, the last group of Chapter 313 projects commencing would be those approved before December 31, 2011 and starting in tax year 2012. The proposed extension of the Act would allow four more groups of projects starting in tax years 2013, 2014, 2015 and 2016. The school district levy loss for a project approved in tax year 2012—beginning in tax year 2013—would not occur until tax year 2015, with associated state impact through the Foundation School Program in state fiscal year 2016. There would be no fiscal impact to the state or units of local government from the extension of the Texas Economic Development Act until state fiscal year 2016—outside the time frame of this fiscal note. There would be significant school district levy losses associated with four additional years of new Chapter 313 projects, beginning in state fiscal year 2016.

The modification of the wage target for projects creating more than 1,000 jobs would increase the applicant pool for Chapter 313 projects. This cost cannot be determined.

The creation of two new definitions for "county average weekly wage for manufacturing jobs" would appear to create a fixed wage target for each project for the length of each agreement, linked to the lesser of the manufacturing wage in the county or the manufacturing wage in the region in the four quarters preceding the application. This cost cannot be determined.

The number of new applicants eligible to apply for Chapter 313 limitations due to the addition of "computer centers" as an eligibility criteria cannot be determined.

To estimate the fiscal impact of modifying the definitions of "rural" under the chapter, existing Chapter 313 program data were analyzed to estimate probable higher school district levy loss due to reduced property tax value limitation amounts for school districts with territory in metropolitan statistical areas, and in areas previously designated as strategic investment areas. Chapter 313 projects applying during 2009 would fall under provisions of the bill if a school board approved an application after the effective date of the bill but before the end of the calendar year. Therefore the proposed changes in criteria for being rural under the subchapter would initially affect school district levy losses for projects beginning in property tax year (calendar year) 2010. Levy losses associated with those tax year 2010 projects appear first in tax year 2012, which would be state fiscal year 2013. Projects beginning in tax year 2011 would create another "set" of levy losses starting in state fiscal year 2014.

In addition to the levy loss, these SIA-related and MSA-related provisions of the bill would have a slight negative effect on the state's cash flow during fiscal year 2014, as approximately eight percent of the total levy loss in the program is attributable to the tax credit features of the program paid through the Foundation School Program. (Tax credits earned by a company in the first two years of a project are first credited against other property tax levies in the fourth year of an agreement.) The addition of language in the chapter to allow districts and companies to delay the start of value limitation agreements could negatively affect school levies, but that possible loss cannot be determined.

The impact of proposed changes related to the tax credit, and the impact of considering certain districts rural for having territory in an area that was previously designated as a strategic investment area, and not excluding districts from the rural designation for having territory within metropolitan statistical areas, is shown in the following tables.

Fiscal Year:	Gain/(Loss) to School District Levy Due to Rural Designations
2010	$0
2011	0
2012	0
2013	(4,992,000)
2014	(9,984,000)

Fiscal Year:	Gain/(Loss) to School District Levy Due to Tax Credit Changes
2010	($1,600,000)
2011	(750,000)
2012	(750,000)
2013	(750,000)
2014	(750,000)

Fiscal Year:	Gain/(Loss) to Foundation School Program Due to Tax Credit Changes
2010	($1,600,000)
2011	(750,000)
2012	(750,000)
2013	(750,000)
2014	(750,000)

The bill would require the Comptroller to post application information on the Web site within 15 days after receipt of each individual document related to an application. Section 5 of the bill would require additional information be included in the economic impact evaluation prepared by the Comptroller. Section 10 of the bill would require that value limitation application information be segregated into confidential and non-confidential information, with certain documents required to be posted on the Comptroller Web site.

A SOAH hearings process would be established for districts contesting a Comptroller determination of project eligibility.

The bill would allow companies to file for—and school district to grant—tax credits at any time, rather than according to the timeline currently specified in Chapter 313. This proposed change would have a fiscal impact equal to the sum of credits for which companies have not made a timely filing, estimated to be about $4.6 million between fiscal year 2009 and fiscal year 2015.

The Texas Economic Development Act has provisions for continuation of the statute for projects already in existence at the time of the Act's expiration date, currently December 31, 2011.

Most sections of the bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2009. Sections of the bill relating to posting of documents and Comptroller determination of project eligibility would not take effect until January 1, 2010.

Local Government Impact

The bill would have a negative impact on units of local government.

Source Agencies: 304 Comptroller of Public Accounts

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