

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 18, 2009

TO: Honorable Rene Oliveira, Chair, House Committee on Ways & Means

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

IN RE: SB313 by Wentworth (Relating to the term of a reinvestment zone and to the assessment and payment of tax increments under the Tax Increment Financing Act.), **Committee Report 2nd House, As Amended**

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

The bill would amend several provisions of Chapter 311 of the Tax Code, regarding tax increment reinvestment zones. SECTIONS of the bill that would have a fiscal impact are summarized:

SECTION 1 of the bill would add remediation of contaminated land or buildings, certain building preservation and demolition costs, and certain reinvestment zone development programs to the capital costs that may be incurred by a municipality or county and that are listed in the project plan for the tax increment zone.

SECTION 2 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.

SECTION 3 of the bill would create a procedure for two or more municipalities 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 municipality, provide that the board of directors of a joint reinvestment zone have the same powers and duties as single-municipality 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.

SECTION 5 of the bill would allow the municipality 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.

SECTION 6 of the bill would allow the governing body of a municipality or county 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.

SECTION 7 of the bill would amend language allowing a municipality 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.

SECTION 10 of the bill 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.

SECTION 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 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 the costs of a project involving real property located outside the zone.

SECTION 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 municipality 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.

SECTION 13 of the bill would replace "appraised" with "taxable" in the definition of "tax increment base" and would provide that the base year for any land annexed into the zone is the year in which such land was annexed.

SECTION 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.

SECTION 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.

SECTION 16 of the bill would allow a municipality or county to make payments pursuant to certain agreements and economic development programs from the proceeds of tax increment bonds or notes. 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.

SECTION 17 of the bill would extend the deadline by which the municipality 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.

SECTION 18 would re-enact Section 311.016(b) as amended in 2005 requiring a municipality or county to send a copy of the reinvestment zone status report to the attorney general and to the comptroller.

SECTION 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.

SECTION 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.

SECTION 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.

SECTION 22 would amend Chapter 42, Education Code, to require that the amounts paid under Section 42.2516(b)(4) shall be paid at the same time as other state revenue is paid to a school district, would establish that the amounts would be based on amounts paid under that section in the preceding year; and would specify requirements related to payments of deficiencies and overpayments.

SECTION 25 of the bill would repeal Sections 311.003(e), (f), and (g), which require a municipality 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 municipality; and sections with certain outdated and duplicative provisions.

SECTIONS 27 and 28 specify when different proposed changes to the Tax Code and Education Code would apply.

The bill would take effect immediately if it was to receive the required two-thirds vote in each house; otherwise, it would take effect September 1, 2009.

According to the Comptroller of Public Accounts, to the extent that provisions of the bill would result in the inclusion of more property and longer durations in tax increment financing agreements, the provisions would create a cost to taxing units and the state. Because information necessary to estimate the amount of new property or extensions of tax increment financing agreements is not available, the cost cannot be estimated.

The provision that would change the definition of tax increment base to reflect taxable value rather than appraised value would create a cost to taxing units and 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 future 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, SJS, DB, MN, SD