

BILL ANALYSIS

C.S.H.B. 2853
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Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Fiscally responsible economic development is critical to sustaining communities and managing growth at all levels of government, especially under current economic conditions. Observers note that tax increment financing is one of the most effective and frequently used economic tools available to local governments. This is a procedure used by local governments to finance public infrastructure improvements within a specified geographic area and is often used to finance the public streets and roads and other infrastructure improvements necessary to promote private growth and development. Interested parties note that tax increment financing provides neither a tax abatement nor a partial or total tax exemption and is not a new tax.

Interested parties contend that legislation is needed to update the statutory provisions that govern tax increment financing by eliminating provisions that are no longer necessary or that are obsolete, making certain changes and removing certain restrictions to enhance a local government's ability to engage in economic development through tax increment reinvestment zones, and validating acts and proceedings relating to the designation of such zones. C.S.H.B. 2853 seeks to address such matters relating to tax increment financing.

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. 2853 amends the Tax Code to include in the definition of "project costs" under the Tax Increment Financing Act the following: the actual costs of the remediation of conditions that contaminate public or private land or buildings; the actual costs of the preservation of the facade of a public or private building; the actual costs of the demolition of public or private buildings; the costs of a program established by the board of directors of a reinvestment zone for certain specified public purposes; and the costs of school buildings, other educational buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or other political subdivision of Texas.

C.S.H.B. 2853 requires the governing body of a municipality or county to prepare a preliminary reinvestment zone financing plan before adopting an ordinance or order designating, rather than providing for, a reinvestment zone and removes a requirement for such a municipal or county governing body to send a copy of the completed plan to the governing body of each taxing unit that levies taxes on real property in the proposed zone.

C.S.H.B. 2853, in provisions establishing eligibility requirements for an area to be designated as a reinvestment zone, includes an area that is undeveloped or underdeveloped, in addition to an area that is predominantly open, and that, because of certain factors, substantially impairs or arrests the sound growth of a municipality or county. The bill changes the restriction on the composition of a reinvestment zone to prohibit a municipality from designating such a zone if

the following conditions apply:

- more than 30 percent, rather than 10 percent, of the property in the proposed zone, excluding publicly owned property, is used for residential purposes; or
- the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds 25 percent, rather than 20 percent, of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality and the municipality has a population of 100,000 or more or if that total appraised value of taxable real property exceeds 50 percent, rather than 15 percent, of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality and the municipality has a population of less than 100,000.

The bill removes conditions specifying the municipality being the county seat of certain counties. The bill prohibits a municipality from changing the boundaries of an existing reinvestment zone to include property in excess of such restrictions on composition of a zone.

C.S.H.B. 2853 authorizes the governing body of the municipality or county that designated a reinvestment zone to extend the term of all or part of the zone after notice and hearing in the manner provided for the zone's designation. The bill exempts a taxing unit other than the municipality or county that designated the zone from required participation in the zone or part of the zone for the extended term unless the taxing unit enters into a written agreement to do so.

C.S.H.B. 2853 makes the authority for a taxing unit, other than the municipality or county that designated the zone, that levies taxes on real property in the zone to appoint one member of the board contingent on the taxing unit having approved the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone. The bill, in provisions relating to the board of directors of a zone created by petition, authorizes the governing body of the municipality or county that designated the zone to provide that the zone's board of directors consists of nine appointed members, unless more than nine members are required to provide representation for each taxing unit that is authorized to appoint a member. The bill authorizes each taxing unit, rather than each school district, county, or municipality, other than the municipality or county that designated the zone, that levies taxes on real property in the zone to appoint one member of the board if the taxing unit has approved the payment of all or part of the tax increment produced by the unit into the zone's tax increment fund. The bill authorizes the municipality or county that designated the zone, if fewer than seven taxing units, other than the municipality or county, are eligible to appoint members of the zone's board of directors, to appoint a number of members such that the board comprises nine members. The bill authorizes the municipality or county to appoint one member if at least seven taxing units, other than the municipality or county that designated the zone, are eligible to appoint members of the zone's board of directors. The bill requires an individual, to be eligible for appointment to the board by the governing body of the municipality or county that designated the zone, if the zone was not created by petition, to be a resident of the county in which the zone is located or a county adjacent to that county, rather than a qualified voter of the municipality or county, or to own real property in the zone, regardless of whether the individual resides in the county in which the zone is located or in an adjacent county. The bill exempts an individual appointed by a conservation and reclamation district with a jurisdiction covering four counties from the eligibility criteria for appointment to the board of a reinvestment zone designated by a municipality that 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.

C.S.H.B. 2853 generally exempts a dedication, pledge, or other use of revenue in the tax increment fund for a reinvestment zone from provisions relating to purchasing and contracting authority of municipalities, rather than specifically exempting a dedication, pledge, or other use of revenue in the fund by the zone's board of directors in carrying out its powers. The bill, in provisions authorizing a zone's board of directors to establish and provide for one or more

programs for certain specified public purposes, including programs to make grants and loans, removes a specification that capped the aggregate amount of grants or loans from the zone's tax increment fund at the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone. The bill authorizes the approval of the governing body of the municipality or county that designated the zone required for the establishment of such programs by the board of directors to be granted in a municipal ordinance or a county order, as applicable, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan.

C.S.H.B. 2853 removes a requirement that the project plan and reinvestment zone financing plan prepared by a reinvestment zone's board of directors be as consistent as possible with the preliminary plans developed for the zone before the creation of the board. The bill removes a requirement for the project plan to include a map showing existing uses and conditions of real property in the zone and a map showing proposed improvements to and uses of that property and instead requires a description of those existing and proposed uses. The bill removes requirements that the plan include the municipality's master plan and a list of estimated nonproject costs. The bill requires the reinvestment zone financing plan to include a finding that the plan is economically feasible, rather than an economic feasibility study, the estimated time when related costs or monetary obligations are to be incurred, and the percentage of tax increment to be derived from the property taxes of each taxing unit anticipated to contribute tax increment to the zone that levies taxes on real property in the zone. The bill clarifies that a school district participating in a zone is not required to increase the percentage or amount of the tax increment to be contributed by the school district because of an amendment to the project plan or reinvestment zone financing plan for the zone unless the school district's governing body approves the amendment.

C.S.H.B. 2853 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. The bill prohibits this provision from being construed to increase the amount of any reduction in the total taxable value of the property in a school district that participates in the zone as computed under Government Code provisions establishing the taxable value of that property.

C.S.H.B. 2853 provides that the captured appraised value of real property taxable by a taxing unit for a year is the total taxable value, rather than the total appraised value, of all real property taxable by the unit and located in a reinvestment zone for that year less the unit's tax increment base and that a taxing unit's tax increment base is the total taxable value, rather than the total 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 establishes that, if the boundaries of a zone are enlarged, the tax increment base is increased by the taxable value of the real property added to the zone for the year in which the property was added and, if the boundaries of a zone are reduced, the tax increment base is reduced by the taxable value of the real property removed from the zone for the year in which the property was originally included in the zone's boundaries. The bill establishes that, if the municipality that designates a zone does not levy a property tax in the year in which the zone is designated, the tax increment base 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.

C.S.H.B. 2853 authorizes an agreement between a taxing unit and the governing body of the entity that created a reinvestment zone, under which agreement the taxing unit is required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone or in an area added to such a zone, to specify, in addition to any other terms to which the parties may agree, the projects to which a participating 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 bill expands provisions authorizing the

governing body of an entity that designates a reinvestment zone to determine the portion of the tax increment produced by the entity that the entity is required to pay into the zone's tax increment fund to apply to a county as well as to a municipality designating such a zone.

C.S.H.B. 2853 expands the authorized uses of money from the tax increment fund to authorize payments from the fund to a program established by a zone's board of directors for the public purposes of developing and diversifying the zone's economy; eliminating unemployment and underemployment in the zone; developing or expanding transportation, business, and commercial activity in the zone; and making grants and loans for activities that benefit the zone and stimulate business and commercial activities. The bill authorizes a municipality designating a reinvestment zone to use the proceeds from tax increment bonds or notes to make payments under an agreement between a reinvestment zone's board of directors and the governing body of the municipality or county that created the zone authorizing a dedication, pledge, or other use of revenue in the tax increment fund to pay any project costs that benefit the zone and to make payments to programs established by a zone's board of directors for the public purposes previously described. 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. 2853 extends the time frame for the governing body of a municipality or county to submit a report on the status of the zone 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 from on or before the 90th day following the end of the fiscal year of the municipality or county to on or before the 150th day following that date.

C.S.H.B. 2853 establishes a conclusive presumption that a governmental act or proceeding of a municipality, county, reinvestment zone's board of directors, or local government corporation or political subdivision relating to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan is valid as of the date it occurred and that it 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 second anniversary or August 1, 2011. The bill excludes from this presumption of validity an act or proceeding that was void at the time it occurred; an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred; a rule that, at the time it was passed, was preempted by a statute of this state or the United States; 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. 2853 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.

C.S.H.B. 2853 reenacts and amends Section 403.302(d), Government Code, as amended by Chapters 1186 (H.B. 3676) and 1328 (H.B. 3646), Acts of the 81st Legislature, Regular Session, 2009, to make a conforming change.

C.S.H.B. 2853 reenacts and amends Section 403.302(m), Government Code, as added by Chapter 1186 (H.B. 3676), Acts of the 81st Legislature, Regular Session, 2009, to make a conforming change.

C.S.H.B. 2853 establishes that the legislature validates and confirms all governmental acts and proceedings of a municipality or county, the board of directors of a reinvestment zone, or a local government corporation or political subdivision that were taken before the bill's effective date and relate to or are associated with the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan,

including the extension of the term of a reinvestment zone, as of the dates on which they occurred. The bill prohibits such acts and proceedings from being held invalid because they were not in accordance with the applicable Tax Code provisions or other law. The bill excludes from this provision of validation and confirmation any matter that on the 30th day after the bill's effective date 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. The bill provides that to the extent of any conflict, this bill prevails over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 2853 repeals the following provisions of the Tax Code:

- Sections 311.003(e), (f), and (g)
- Section 311.006(c)
- Sections 311.013(d) and (e)

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2853 contains a provision not included in the original prohibiting a provision relating to amounts contained in a tax increment financing project plan or reinvestment zone financing plan from being construed to increase the amount of any reduction in the total taxable value of the property in a school district that participates in the zone.