

BILL ANALYSIS

C.S.H.B. 3140

By: Paxton

Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many municipalities use economic development programs to provide incentives for new and expanding businesses. C.S.H.B. 3140 authorizes municipalities within certain counties to create economic development programs and provide loans or grants for those programs to promote new business activity or the expansion of that business activity through the use of revenue bonds. The bill is intended to support economic development projects that will develop and diversify the economy, expand commerce, and provide further employment.

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. 3140 amends the Government Code authorize a municipality located in a county with a population of 750,000 or more that is adjacent to a county that borders Oklahoma to establish and provide for the administration of one or more programs for loans and grants of money, including the proceeds of authorized revenue bonds, to a private entity for use in the promotion of new manufacturing, industrial, retail, commercial, multifamily residential, or other business activity or the expansion of that business activity, including a project for purposes of that promotion or expansion. The bill specifies that its provisions provide for the creation of one or more programs authorized under the Texas Constitution, including the following public purposes: the development and diversification of the Texas economy, the elimination of unemployment or underemployment in Texas, and the development or expansion of commerce in Texas. The bill authorizes a municipality, to accomplish such a public purpose and under the terms and by the methods the municipality may determine, to acquire land and to construct or acquire a building or other facility for the purpose of selling or leasing the land, building, or other facility to a private entity receiving a loan or grant.

C.S.H.B. 3140 authorizes a municipality to issue and sell revenue bonds to finance an authorized action taken to accomplish a public purpose under the bill's provisions. The bill specifies that the bonds are not general obligations of the municipality if no tax revenue or other general revenue of the municipality is pledged to the repayment of the bonds.

C.S.H.B. 3140 prohibits a municipality from loaning or granting money to a private entity for an authorized project or activity unless the municipality enters into a program agreement with the entity. The bill requires a program agreement to include:

- the terms under which the municipality will loan or grant the money to the entity
- a provision requiring that a revenue bond issued by the municipality is secured by the credit of the private entity, by funds, revenue, or assets pledged by one or more investors for the project, or by a combination of both, is additionally secured by an encumbrance or mortgage on any real or personal property acquired, constructed, or improved with the

proceeds of the revenue bond, and is the obligation of the private entity and not of the municipality if no municipal revenue is pledged for repayment of the bonds

- a description of and the amount of the capital investment that will be made by the entity in Texas for the project or activity
- a schedule of the number and types of jobs that will be created or retained as a result of the project or activity
- a provision requiring repayment of the loan or grant or other penalty to be imposed on the entity if the entity does not meet the job creation or other requirements specified in the program agreement
- the estimated increase in tax revenue from all sources to the municipality as a result of the project or activity, calculated by the municipality
- the designated area where the project or activity will be located
- a provision prohibiting the entity from using a loan or grant for a project or activity involving a gambling, gaming, or adult entertainment enterprise or facility, or an expenditure for which reporting is required under statutory provisions governing the registration of lobbyists

C.S.H.B. 3140 authorizes a municipality to enter into not more than two program agreements and prohibits a municipality from entering into a program agreement with an entity after December 31, 2015. The bill makes a program agreement subject to the state's open records law.

C.S.H.B. 3140 authorizes revenue bonds issued by a municipality under the bill's provisions to be payable from and secured by pledging the following: all or part of revenue received by the municipality from a loan made as provided by the bill's provisions; a portion of revenue collected by the municipality under the Municipal Sales and Use Tax Act, not to exceed the lesser of one percent of the revenue collected by the municipality or one-half of the revenue collected by the municipality from the area designated in the applicable program agreement; all or part of revenue authorized for the payment of bonds pledged under certain statutory provisions relating to municipal hotel occupancy taxes; all or part of revenue from the sale or lease of all or part of the land, building, or other facility financed by the bonds; or any combination of the revenue described by these provisions. The bill authorizes a municipality to provide that the revenue pledged to the bonds issued by the municipality is limited to the revenue collected from a designated area within the municipality or from a designated facility.

C.S.H.B. 3140 requires bonds issued under the bill's provisions to be additionally secured by an encumbrance or mortgage on any real or personal property acquired, constructed, or improved with proceeds of bonds or the proceeds of a loan or grant made from proceeds of bonds. The bill authorizes the bonds issued by a municipality to be additionally secured by a pledge of any portion of a grant, a donation, or revenue, or income received or to be received from the United States or any other public or private source, other than the municipality itself.

C.S.H.B. 3140 authorizes the governing body of a municipality, in an ordinance, order, or resolution authorizing the issuance of bonds under the bill's provisions, to provide for the deposit and accounting of money; provide for the establishment and maintenance of an interest and sinking fund, a reserve fund, or other funds relating to the bonds or a project funded with bond proceeds; and to make additional covenants relating to the bonds, the pledged revenue, or the operation and maintenance of any land, building, or other facility the revenue of which is pledged for bond payments.

C.S.H.B. 3140 authorizes the proceeds of bonds issued under the bill's provisions to be used to pay interest on the bonds while the project or facility is being acquired, constructed, or improved and for the year after it is acquired, constructed, or improved; finance other funds relating to the bonds, including debt service reserve and contingency; and pay the cost or expense of the

issuance of the bonds. The bill requires the bonds to mature not later than 40 years after the date the bonds are issued.

C.S.H.B. 3140 exempts a municipality issuing bonds under the bill's provisions from provisions of law relating to the purchasing and contracting authority of municipalities regarding notice, competitive bids, and the right to referendum. The bill specifies that to the extent of a conflict or inconsistency between the bill's provisions and another law, the bill's provisions control. The bill prohibits its provisions from being construed or interpreted to violate either the constitution of Texas or of the United States, and specifies that its provisions do not authorize an act that violates those constitutions. The bill provides that if a court finds that any of the bill's provisions violate the constitution of Texas or of the United States, a municipality is authorized to establish an alternative procedure that conforms with the constitution and that the validity of any other provision of the bill is not affected.

C.S.H.B. 3140 amends the Tax Code to authorize a municipality to which its provisions apply to use municipal sales and use tax money and municipal hotel occupancy tax money to provide for the payment of the principal of or interest on bonds issued by the municipality under the bill's provisions.

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. 3140 differs from the original by making its provisions relating to revenue bonds for economic development programs applicable to a municipality located in a county with a population of 750,000 or more that is adjacent to a county that borders Oklahoma, whereas the original makes its provisions relating to the establishment of programs and the issuance of bonds for economic development applicable to a municipality with a population of at least 100,000 and less than 120,000 that is located partially in a county with a population of at least 780,000.

C.S.H.B. 3140 differs from the original by establishing that its provisions provide for the creation of one or more programs authorized under the Texas Constitution for certain public purposes, whereas the original establishes that its provisions are established as a legislative program under the Texas Constitution for certain purposes and includes among those purposes the development or expansion of transportation in Texas.

C.S.H.B. 3140 differs from the original by authorizing a municipality to establish and provide for the administration of one or more programs for loans and grants of money to a private entity for the promotion of new manufacturing, industrial, retail, commercial, multifamily residential, or other business activity or the expansion of that activity and to acquire land and construct or acquire a facility to accomplish those purposes, whereas the original authorizes a municipality to establish and provide for the administration of one or more programs to promote economic development and diversification, stimulate business and commercial activity, promote development or new or expanded business enterprises and promote employment and tourism and business activity.

C.S.H.B. 3140 omits provisions included in the original relating to the execution of contracts for an authorized project. The substitute contains provisions not included in the original relating to the issuance of revenue bonds, the use of certain tax revenue to repay the bonds, and a program agreement with a private entity to which the municipality loans or grants money. The substitute contains provisions not included in the original relating to its applicability, control over other laws, and construction.

C.S.H.B. 3140 differs from the original by making the bill effective on passage, or, if the bill

does not receive the necessary vote, September 1, 2011, whereas the original makes the bill effective September 1, 2011.