

BILL ANALYSIS

Senate Research Center
83R16643 TJB-D

H.B. 2766
By: Hunter (Whitmire)
Finance
5/6/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law allows an entity to exclude from its total revenue, for franchise tax purposes, certain flow-through payments mandated by contract to be distributed to other entities, including payments relating to improvements on real property or the location of the boundaries of real property. Interested parties note that the comptroller of public accounts of the State of Texas has interpreted this provision as allowing an entity to exclude subcontracting payments only when the entity has a contract in place that states that a specific portion of the work will be subcontracted. Typically, the parties assert, contracts in the industry do not initially delineate which portions of a project will be completed through the use of subcontractors and which will not.

The interested parties maintain that a change in current law is necessary to allow certain subcontracting payments to be excluded when funds are mandated by law or contract to be paid to subcontractors making improvements to real property, absent a requirement that a prime contract explicitly require a contractor to use subcontractors. The parties emphasize that such changes would allow similarly situated taxpayers to be treated fairly. H.B. 2766 seeks to clarify current law relating to the exclusion of certain flow-through funds in determining total revenue for purposes of the franchise tax.

H.B. 2766 amends current law relating to the exclusion of certain flow-through funds in determining total revenue for purposes of the franchise tax.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 171.1011(g), Tax Code, as follows:

(g) Requires a taxable entity to exclude from its total revenue, to the extent included under Subsection (c)(1)(A) (relating to tabulating the total revenue of a taxable entity treated for federal income purposes as a corporation by adding certain amounts reportable as income), (c)(2)(A) (relating to tabulating the total revenue of a taxable entity treated for federal income tax purposes as a partnership by adding certain amounts reportable as income), or (c)(3) (relating to stipulating the total revenue of a taxable entity other than a taxable entity treated as a corporation or partnership for federal income tax purposes), only the following flow-through funds that are mandated by contract or subcontract to be distributed to other entities:

- (1) sales commissions to nonemployees, including split-fee real estate commissions;
- (2) the tax basis as determined under the Internal Revenue Code of securities underwritten; and

(3) subcontracting payments made under a contract or subcontract entered into, rather than subcontracting payments handled, by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property or the location of the boundaries of real property.

SECTION 2. Provides that this Act applies only to a report originally due on or after the effective date of this Act.

SECTION 3. Effective date: January 1, 2014.