

BILL ANALYSIS

C.S.H.B. 3589
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that, on creation of a tax increment reinvestment zone by a municipality or county, taxing entities may choose to contribute tax increments to the tax increment fund, which is established for the deposit, accounting, and payment of such contributions. The parties contend that it is the intent of the law to require transparency and accountability in the handling of these special funds, but that some public entities have begun a practice of commingling these special funds into their general fund and that certain municipalities have failed to use proper or accurate accounting practices in maintaining the funds, in addition to other transgressions. C.S.H.B. 3589 seeks to revise statutory provisions relating to the Tax Increment Financing Act.

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. 3589 amends the Tax Code to remove provisions limiting the applicability of provisions relating to restricting the powers of certain municipalities under the Tax Increment Financing Act to a proposed reinvestment zone the designation of which is requested in a petition submitted before July 31, 2004, to the governing body of a home-rule municipality that meets certain population criteria and has created at least 20 reinvestment zones and that is the subject of a resolution of intent that was adopted before October 31, 2004, by the governing body of the municipality. The bill instead applies the provisions to a municipality that has a population of more than 1.1 million, that is located primarily in a county with a population of 2.2 million or less, and that has created at least 20 reinvestment zones.

C.S.H.B. 3589 limits the applicability of a provision prohibiting a certain municipality from requiring certain acts from a property owner who submits a certain petition requesting that an area be designated as a reinvestment zone to a petition submitted before July 31, 2004, that is the subject of a resolution of intent adopted by the governing body of a municipality before October 31, 2004.

C.S.H.B. 3589 prohibits the governing body of a municipality from requiring, as a condition of the designation of a reinvestment zone or the approval of a development agreement, interlocal agreement, or project plan related to the reinvestment zone, that a property owner requesting designation of a reinvestment zone do any of the following:

- perform an action prohibited of a municipality imposing a fee of more than \$25,000 for processing the petition requesting that an area be designated as a reinvestment zone;
- waive the right to file an adversarial proceeding for declaratory, injunctive, or other relief relating to the provisions of the development agreement, interlocal agreement, or project plan; or
- agree to include a provision in the development agreement, interlocal agreement, or

project plan related to the reinvestment zone that states that the reinvestment zone will terminate if the property owner files an adversarial proceeding for declaratory, injunctive, or other relief relating to the provisions of the development agreement, interlocal agreement, or project plan.

C.S.H.B. 3589 establishes that, for the purposes of the terms of a development agreement, interlocal agreement, or project plan related to a reinvestment zone, the filing of a declaratory action by a party to the development agreement, interlocal agreement, or project plan is not considered to be litigation if the declaratory action seeks only to clarify the meaning of a provision of the development agreement, interlocal agreement, or project plan or determine the validity of a provision of the applicable agreement or plan.

C.S.H.B. 3589 requires a reimbursement of money required under the terms of a development agreement, interlocal agreement, or project plan related to a reinvestment zone and approved by the zone's board of directors to be paid on or before the 30th day after the date on which the board approves the reimbursement or, if payment is not possible on such date because of insufficient funds, the 30th day after the date on which sufficient funds become available to make the reimbursement. The bill requires each tax increment fund established by the municipality under the Texas Increment Financing Act to be maintained in an account that is separate from any other account into which the municipality deposits money.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3589 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 311.087(a)(1)(B), Tax Code, is amended to read as follows:

Sec. 311.087. RESTRICTION ON POWERS OF CERTAIN MUNICIPALITIES.

(a) This section applies only to a **proposed reinvestment zone**:

(1) **the designation of which is requested in a petition submitted under Section 311.005(a)(4) before July 31, 2004, to the governing body of a home-rule municipality that:**

(A) has a population of more than 1.1 million;

(B) is located in a county with a population of 2.2 million or less; and

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 311.0087, Tax Code, is amended to read as follows:

Sec. 311.0087. RESTRICTION ON POWERS OF CERTAIN MUNICIPALITIES. (a) This section applies only to a **municipality that [proposed reinvestment zone]**:

(1) ~~the designation of which is requested in a petition submitted under Section 311.005(a)(4) before July 31, 2004, to the governing body of a home-rule municipality that:~~

~~[(A)]~~ has a population of more than 1.1 million;

(2) ~~[(B)]~~ is located **primarily** in a county with a population of 2.2 ~~[1.5]~~ million or less; and

(3) ~~[(C)]~~ has created at least 20 reinvestment zones under this chapter~~;~~ **and**

~~[(2) that is the subject of a resolution of intent that was adopted before October 31, 2004, by the governing body of the~~

municipality].

SECTION 2. Section 311.0087, Tax Code, is amended by amending Subsection (b) thereto; adding Subsections (b)(4), (b)(5), (c) and (d) thereto; and to read as follows:

(b) If the municipality currently imposes a fee of more than \$25,000 for processing the petition, the municipality may not require a property owner who submitted the petition, as a condition of designating the reinvestment zone or approving a development agreement, interlocal agreement, or project plan for the proposed reinvestment zone:

- (1) to waive any rights of the owner under Chapter 245, Local Government Code, or under any agreed order or settlement agreement to which the municipality is a party;
- (2) to dedicate more than 20 percent of the owner's land in the area described in the petition as open-space land; or
- (3) to use a nonconventional use pattern for a development to be located within the proposed reinvestment zone; or

(4) agree to waive the right to file adversarial proceedings for declaratory, injunctive or other relief related to the provisions of an agreement which is approved by the governing body which created the zone; or

(5) allow for termination of the zone in the event an adversarial action is brought to enforce an agreement for reimbursement to

SECTION 1. (Cont'd.)

(b) This subsection applies only to a petition submitted under Section 311.005(a)(4) before July 31, 2004, that is the subject of a resolution of intent adopted by the governing body of a municipality before October 31, 2004.

If a [the] municipality imposes a fee of more than \$25,000 for processing a [the] petition requesting that an area be designated as a reinvestment zone, the municipality may not require a property owner who submits a [submitted the] petition, as a condition of designating the reinvestment zone or approving a development agreement, interlocal agreement, or project plan for the proposed reinvestment zone:

- (1) to waive any rights of the owner under Chapter 245, Local Government Code, or under any agreed order or settlement agreement to which the municipality is a party;
- (2) to dedicate more than 20 percent of the owner's land in the area described in the petition as open-space land; or
- (3) to use a nonconventional use pattern for a development to be located within the proposed reinvestment zone.

(c) The governing body of a municipality may not require, as a condition of the designation of a reinvestment zone or the approval of a development agreement, interlocal agreement, or project plan related to the reinvestment zone, that a property owner requesting designation of a reinvestment zone:

(1) perform an action that may not be required of a property owner under Subsection (b);

(2) waive the right to file an adversarial proceeding for declaratory, injunctive, or other relief relating to the provisions of the development agreement, interlocal agreement, or project plan; or

(3) agree to include a provision in the development agreement, interlocal agreement, or project plan related to the

a developer or other party which has been approved by the board of a reinvestment zone and the governing body which created the zone.

(c) If a provision or condition identified in Section 311.087(b)(1-5) is contained in a development agreement, said provision is void as a matter of public policy.

(d) Each tax increment fund established for the zone by the municipality pursuant to Section 311.004(a)(6), may only be deposited and maintained in a physically separate depository account, and may not be commingled with any other funds of the board or governing body. Failure to comply with this section is an act of official misconduct by the governing body's chief executive officer.

No equivalent provision.

reinvestment zone that states that the reinvestment zone will terminate if the property owner files an adversarial proceeding for declaratory, injunctive, or other relief relating to the provisions of the development agreement, interlocal agreement, or project plan.

(d) For purposes of the terms of a development agreement, interlocal agreement, or project plan related to a reinvestment zone, the filing of a declaratory action by a party to the development agreement, interlocal agreement, or project plan is not considered to be litigation if the declaratory action seeks only to:

(1) clarify the meaning of a provision of the development agreement, interlocal agreement, or project plan; or

(2) determine the validity of a provision of the development agreement, interlocal agreement, or project plan.

(e) A reimbursement of money required under the terms of a development agreement, interlocal agreement, or project plan related to a reinvestment zone and approved by the board of directors of the reinvestment zone must be paid on or before:

(1) the 30th day after the date on which the board approves the reimbursement; or

(2) if payment is not possible on the date prescribed by Subdivision (1) because of insufficient funds, the 30th day after the date on which sufficient funds become available to make the reimbursement.

(f) Each tax increment fund established by a municipality under this chapter must be maintained in an account that is separate from any other account into which the municipality deposits money.

SECTION 2. Section 311.0087(c), Tax Code, as added by this Act, applies only to the designation of a reinvestment zone or the approval of a development agreement,

interlocal agreement, or project plan related to the reinvestment zone on or after the effective date of this Act

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.