

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 23, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3390 by Hilderbran (Relating to the Texas Economic Development Act.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3390, As Passed 2nd House: a negative impact of (\$4,865,758) through the biennium ending August 31, 2015.

State costs would increase significantly after the 2014-15 biennium.

General Revenue-Related Funds, Ten-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$2,679,879)
2015	(\$2,185,879)
2016	(\$17,785,879)
2017	(\$62,685,879)
2018	(\$58,385,879)
2019	(\$96,885,879)
2020	(\$126,985,879)
2021	(\$155,285,879)
2022	(\$180,785,879)
2023	(\$204,185,879)

All Funds, Ten-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund 1	Probable (Cost) from Foundation School Fund 193	Probable Revenue (Loss) from School Districts	Change in Number of State Employees from FY 2013
2014	(\$2,679,879)	\$0	\$0	25.5
2015	(\$2,185,879)	\$0	\$0	23.6
2016	(\$2,185,879)	(\$15,600,000)	(\$23,983,128)	23.6
2017	(\$2,185,879)	(\$60,500,000)	(\$56,230,821)	23.6
2018	(\$2,185,879)	(\$56,200,000)	(\$94,679,323)	23.6
2019	(\$2,185,879)	(\$94,700,000)	(\$124,814,414)	23.6
2020	(\$2,185,879)	(\$124,800,000)	(\$153,089,562)	23.6
2021	(\$2,185,879)	(\$153,100,000)	(\$178,610,118)	23.6
2022	(\$2,185,879)	(\$178,600,000)	(\$201,964,990)	23.6
2023	(\$2,185,879)	(\$202,000,000)	(\$198,566,466)	23.6

Fiscal Analysis

The bill would amend Chapter 313 of the Tax Code, relating to the Texas Economic Development Act.

Section 1 of the bill would amend legislative "Findings" in Section 313.002, and amend Section 313.004 to clarify that only entities subject to Chapter 171 are eligible for benefits under this chapter.

Sections 2 and 3 would amend Sections 313.0045 and 313.006 to make conforming changes required by section redesignations.

Section 4 would amend Section 313.007 to extend the expiration date of Subchapters A-1, B and C from December 31, 2014 to December 31, 2020. The bill would not extend Subchapter D.

Section 5 would add new Subchapter A-1 titled, "Eligibility, Application, and Reporting."

Section 6 would add Sections 313.011 and 313.012 to make conforming changes required by section redesignations, and require the governing body of the school district not to approve an application unless the Comptroller recommends approval of the application.

Section 6 would add Section 313.013 to require the evaluation of certain criteria in the economic impact evaluation and to eliminate other criteria currently required in the evaluation.

Section 6 would amend Section 313.013 to require the Comptroller to conduct a study to determine the net present value of any tax revenue anticipated to be generated as a result of the project before the 25th anniversary of the beginning of the limitation period, including tax revenue anticipated to be generated during the construction of the project, and the net present value of the ad valorem tax benefit provided for the project under the proposed agreement. The bill would authorize the Comptroller to request that an applicant provide information necessary to make the determination. The Comptroller may not recommend approval of the application unless the Comptroller certifies that the net present value of any tax revenue anticipated to be generated, directly or otherwise, as a result of the project before the 25th anniversary of beginning of the limitation period, including tax revenue anticipated to be generated during the construction of the project, is likely to exceed the net present value of the ad valorem tax benefit provided for the

project under the proposed agreement; and on the basis of tangible evidence submitted by the applicant that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state.

Section 6 would add Section 313.0135 to make conforming changes related to the repeal of Subchapter D.

Section 6 would add Section 313.014 to lengthen the value limitation period from eight to 10 tax years. The limitation agreement would be required to specify the beginning year of the limitation which must be January 1 of the first tax year that begins after the application date, the qualifying time period, or the date commercial operations begin at the site of the project. The bill would require in the agreement the property owner to maintain a viable presence in the school district for at least five years, instead of three, after the date the limitation on appraised value of the owner's property expires.

Section 6 would amend Section 313.014 to require that the agreement may not provide for the deferral of the date on which the qualifying time period is to commence to a date later than January 1 of the fourth tax year that begins after the date the application is approved except, if the agreement is one of a series of agreements related to the same project, the agreement may provide for the deferral of the date on which the qualifying time period is to commence to a date not later than January 1 of the sixth tax year that begins after the date the application is approved. The bill would limit the qualifying time period to December 31 of the third tax year after the date the person's eligibility for limitation expires. The bill would require that any consideration promised in conjunction with the application and the limitation be disclosed in the limitation agreement.

Section 6 would add Section 313.0145 to allow an applicant to request, and the school district to grant a waiver of chapter requirements in the event of casualty loss.

Section 6 would add Sections 313.015, 313.016 and 313.017 to make conforming changes related to redesignated sections.

Section 6 would add Section 313.018 to modify the types of data the Comptroller must include in the required "Report on Compliance with Agreements." The bill would authorize the Comptroller to use standard economic estimation techniques, including economic multipliers. The bill would require that data must be based on data certified to the Comptroller by each recipient of a limitation on appraised value.

Section 7 would change the title of Subchapter B to "General Limitation on Appraised Value of Certain Property Used to Create Jobs."

Sections 8 and 9 would amend Sections 313.022 and 313.023 to make conforming changes related to redesignated sections.

Section 10 would add Section 313.0235 to require an amount agreed to by the governing body of the school district on a minimum limitation on appraised value following a category to which the school district belongs.

Section 11 would change the title of Subchapter C to "Limitation on Appraised Value of Property in Certain School Districts"

Section 12 would amend Section 313.051 to require that the determination of geographic eligibility for Subchapter C uses the most recent two federal decennial censuses and criteria

similar to former Strategic Investment Areas.

Section 13 would amend Sections 313.052 and 313.053 to make conforming changes related to redesignated sections.

Section 14 would amend Section 313.054 to require under the subchapter that the amount of the limitation on appraised value must be at least \$60 million. The limitation amount listed is a minimum amount and a school district may agree to a greater amount.

Section 15 would change the title of Subchapter E to "Effect of Program Expiration or Repeal."

Section 16 would amend Subchapter E, Section 313.171, to state the repeal of Subchapter D does not affect a property owner's entitlement to a tax credit granted.

Sections 17 and 18 would amend the Education Code, Sections 42.2515 and 42.302, to make conforming changes related to repeal of Subchapter D.

Section 19 would repeal Tax Code Sections 313.005, 313.008 and 313.009, regarding redundant reporting requirements.

Section 19 would repeal Subchapter D, Chapter 313, Tax Code, regarding "School Tax Credits."

Section 20 clarifies that changes within the bill would only apply to applications filed on or after the effective date of the bill.

Floor Amendment 5 to CSHB 3390 (Senate committee printing) would add new Tax Code Section 313.0146 to require the Comptroller to conduct an annual review and issue a determination as to whether a person with whom a school district has entered into an agreement under this chapter satisfied in the preceding year the requirements of this chapter regarding the creation of the required number of qualifying jobs. If the Comptroller makes an adverse determination in the review, the Comptroller would notify the person of the cause of the adverse determination and the corrective measures necessary to remedy the determination and require the person to submit to the Comptroller a plan for remedying the determination and certify the person's intent to fully implement the plan not later December 31 of the year in which the determination was made.

The bill would require the Comptroller to impose a penalty on a person who receives an adverse determination and fails to comply following the notification of the determination and receives an adverse determination in the following year. The penalty is in an amount computed by parameters set by this subsection. The bill would require that the penalty not exceed an amount equal to the difference between the amount of the ad valorem tax benefit received by the person under the agreement in the preceding year and the amount of any supplemental payments made to the school district in that year. A job created by a person that is not a qualifying job because the job does not meet a numerical requirement is considered for the purposes of this section to be a nonqualifying job only if the job fails to meet the numerical requirement by 10 percent.

The bill would authorize a person to challenge the determination made by the Comptroller under Subchapters A and B, Chapter 112, Tax Code, if a person on whom a penalty is imposed under this section contends that the amount of the penalty is unlawful or that the Comptroller may not legally demand or collect the penalty. The bill would authorize the Comptroller to rescind the agreement between the person and the school district if the Comptroller imposes a penalty on a person under this section three times. A determination by the Comptroller to rescind an agreement between a person and a school district under this chapter pursuant to subsection (h) is a contested case

defined by Section 2001.003, Government Code. If a person appeals a final decision of the Comptroller to rescind an agreement between a person and a school district under this chapter pursuant to subsection (h) and that decision is upheld on appeal, the person shall pay to the Comptroller any tax that would have been due and payable to the school district during the pendency of the appeal, including statutory interest and penalties imposed on delinquent taxes under Sections 111.060 and 111.061, Tax Code. The bill would require the Comptroller to deposit a penalty collected, including any interest and penalty applicable to the penalty, to the credit of the Foundation School Fund.

The bill would add new Tax Code Section 313.019, to require each recipient of a limitation on appraised value under this chapter to submit to the Comptroller an annual report on the form provided by the Comptroller that provides information sufficient to determine whether the applicant is creating the number of new qualifying jobs required by this chapter.

Floor Amendment 6 to CSHB 3390 (Senate committee printing) would add new Tax Code Section 313.0075 to require the State Auditor to review at least three major limitation agreements annually to determine whether each agreement accomplishes the purpose of Chapter 313, each agreement complies with the intent of Chapter 313 and that the terms of the agreements were executed in compliance with the terms of Chapter 313. As part of the review, the auditor shall make recommendations to increase the efficiency and effectiveness of the administration of the chapter.

Floor Amendment 7 to CSHB 3390 (Senate committee printing) would amend Tax Code Chapter 311 to expand the provisions for areas that could be designated as reinvestment zones.

Floor Amendment 8 to CSHB 3390 (Senate committee printing) would amend the Government Code to require the review of state and local tax preferences. The Comptroller would be required to identify and develop a schedule for review of each state tax preference and each type of local tax preference and identify for the Legislative Budget Board the tax preferences that must be reviewed for a report. The Legislative Budget Board would be required to periodically review tax preferences and prepare a report to the presiding officers of the Senate Finance Committee and the House Ways and Means Committee, and could request assistance from the Comptroller and other state agencies to perform this review. The Comptroller would be directed to provide the Board with complete electronic access to the tax files it maintains as the Board deems necessary to perform this review.

Floor Amendment 9 to CSHB 3390 (Senate committee printing) would amend the Utilities Code to allow certain municipalities that own and operate a transmission facility to enter into an agreement with a municipality, school district or county to make payments in lieu of ad valorem taxes on a transmission facility that do not exceed what the municipality would pay if the facility were subject to ad valorem taxation. The bill permits a municipally owned facility that makes payments in lieu of ad valorem taxes to recover, as a part of the utility's cost of service, the amount paid in payments in lieu of taxes.

Floor Amendment 10 to CSHB 3390 (Senate committee printing) would amend Health and Safety Code, Section 382.003 to add natural gas to the fuels potentially eligible to be used in "advanced clean energy projects."

The bill would take effect on January 1, 2014.

Methodology

CSHB No. 3390 (senate committee printing) and Floor Amendments 1-6 would amend Chapter 313 of the Tax Code. Currently, Subchapters B, C, and D expire December 31, 2014. The repeal of Subchapter D would eliminate the tax benefit received through the tax credit, leaving only the benefit flowing through the limitation, increased from eight years to 10 years. This estimate assumes that each project's 10-year limitation period will begin at the beginning of the second complete tax year after the agreement is executed, and will last through the eleventh complete tax year. Because applicants and school districts would be permitted increased flexibility in their selection of the limitation period start date, increased school district levy losses could result. Those additional levy losses are not estimated.

Extending the expiration of Subchapters B and C would allow six more years, or "classes," of applicant projects. This estimate assumes participation in the program of a total of 26 projects per year in each of those years. Of the 26 projects assumed for each year, 18 are modeled as manufacturing projects, and six are modeled as renewable energy projects. Of the 18 manufacturing projects in each class, two are modeled as "deferred" projects: one project with a two-year deferral, and one project with a four-year deferral. In addition, two projects are modeled as advanced clean energy projects.

Minimum limitation amounts for this estimate were derived by applying the updated demographic and economic criteria set forth in the bill for Subchapter C eligibility in Sections 313.051(a) and (b).

Investment and taxable value estimates for each model project were derived using data from existing Chapter 313 agreements executed in 2012. Different distributions of project investment amounts or locations would result in different estimated school district Maintenance and Operation (M&O) property tax levy losses. This estimate assumes no significant avoidance of wage and job requirements through the hiring of contract personnel.

The state would incur cost under the Foundation School Program (FSP) corresponding to local M&O revenue losses. Costs of \$15.6 million are estimated beginning in FY 2016, increasing to \$56.2 million by FY 2018 and \$202.0 million by FY 2023. Different distributions of project investment amounts or locations from that estimate described in the preceding paragraphs would affect state costs under the FSP.

Floor Amendment 7 would have no state revenue implications. The revenue implications for local units of government cannot be determined.

Floor Amendments 8, 9 and 10 would have no revenue implications to the state.

The General Revenue costs for the Legislative Budget Board reflect the funds needed to hire an estimated 4 Full-time Equivalents (FTEs) needed to complete the Review of State and Local Tax Preferences.

The General Revenue costs for the Comptroller of Public Accounts reflect the funds needed to hire 14 FTEs to provide for the significantly expanded economic analysis and data collection functions required in the biennial report to the Legislature and to conduct job and wage compliance audits. The requested FTEs are also needed to identify all state tax preferences and types of local tax preferences, create and maintain the review schedule, provide a forum for public comment, store and send information, and provide assistance to the Legislative Budget Board. As the administrator of all taxes, the Comptroller of Public Accounts anticipates receiving a large number

of substantial and complex requests for information and analysis requiring significant staff resources.

The General Revenue costs for the State Auditor's Office reflect the funds needed to hire an estimated 7.5 FTEs in fiscal year 2014 and 5.6 FTEs in every year thereafter to complete the audits required by Floor Amendment 6.

Technology

There would be a one-time technology cost of \$200,000 in fiscal 2014 for programming and system support costs.

Local Government Impact

School districts entering into Chapter 313 agreements would benefit from additional Foundation School Program aid or reductions in recapture corresponding to losses in local M&O revenue resulting from the limitation on taxable value of affected property. Estimated losses in local M&O revenue are noted in the tables above.

Source Agencies: 304 Comptroller of Public Accounts, 308 State Auditor's Office

LBB Staff: UP, RB, SD, KK, JSp