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TO: Honorable Bob Deuell, Chair, Senate Committee on Economic Development

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3390** by Hilderbran (Relating to the Texas Economic Development Act and the Tax Increment Financing Act; authorizing a fee.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3390, As Engrossed: a negative impact of ($2,344,000) through the biennium ending August 31, 2015.

The bill would result in a significant negative impact beginning in 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Ten-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	($1,319,000)
2015	($1,025,000)
2016	($1,025,000)
2017	($48,225,000)
2018	($73,725,000)
2019	($153,725,000)
2020	($228,425,000)
2021	($299,625,000)
2022	($366,225,000)
2023	($428,125,000)

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	($1,319,000)	$0	$0	9.5
2015	($1,025,000)	$0	$0	7.6
2016	($1,025,000)	$0	$0	7.6
2017	($1,025,000)	($47,200,000)	($72,652,080)	7.6
2018	($1,025,000)	($72,700,000)	($152,731,146)	7.6
2019	($1,025,000)	($152,700,000)	($227,449,816)	7.6
2020	($1,025,000)	($227,400,000)	($298,614,050)	7.6
2021	($1,025,000)	($298,600,000)	($365,186,034)	7.6
2022	($1,025,000)	($365,200,000)	($427,137,808)	7.6
2023	($1,025,000)	($427,100,000)	($484,400,617)	7.6

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 Tax Code, Section 313.002.

Section 1 of the bill would also amend "Purposes" in Tax Code, Section 313.003.

Section 1 of the bill would also amend Tax Code, Section 313.004 to clarify that only entities subject to Chapter 171 are eligible for benefits under the chapter. The bill would clarify that economic development decisions involving school district taxes should occur at the local level with oversight by the state and should be consistent with identifiable statewide economic development goals. The bill would also clarify that, in implementing Chapter 313, the comptroller should strictly interpret the criteria and selection guidelines provided by this chapter and issue certificates for limitations on appraised value only for those applications for an ad valorem tax benefit provided that they create high-paying jobs, provide a net benefit to the state over the long term, and advance the economic goals of this state.

Section 1 of the bill would also amend Tax Code, Section 313.007 to extend the expiration date of Subchapters B and C, Chapter 313, Tax Code from December 31, 2014 to December 31, 2024. Subchapter D, related to tax credits, is repealed in Section 21 of the bill.

Section 2 of the bill would add a new Tax Code, Section 313.010 to require the State Auditor to review at least three major limitation agreements annually, and make recommendations to increase the efficiency and effectiveness of the administration of the chapter.

Section 3 of the bill would amend the definition of "qualified investment" in Tax Code, Section 313.021(1) to add "an existing building that, as part of discrete project that increases the value and productive capacity for an existing property, is expanded."

Section 3 of the bill would also amend the definition of "qualified property" in Tax Code, Section 313.021(2) to allow "expanded buildings" to become qualified property eligible for the limitation.

Section 3 of the bill would amend the definition of "qualifying job" in Tax Code, Section 313.021(3) to change the minimum required wage standard for qualifying jobs from 110 percent of the county average weekly wage for manufacturing jobs in a county, to 110 percent of the county average weekly wage for all jobs in a county. The requirement that a Subchapter B applicant create at least 25 "new jobs" would be changed to at least 25 "new qualifying jobs" in an amended Section 313.021(2)(A)(iv)(b) in Section 3 of the bill. The requirement that a Subchapter C applicant create at least 10 "new jobs" would be changed to at least 10 "new qualifying jobs" in an amended Section 313.051(b) in Section 15 of the bill. The current law provision that "at least 80 percent of all the new jobs created by the property owner must be qualifying jobs" would be deleted in both Subchapters B and C, in amended Sections 313.024(d) and 313.051(b). With these changes, Subchapter B applicants could satisfy all job and wage requirements by creating 25 "new qualifying jobs," or fewer-as allowed by four additional provisions described below. Subchapter C applicants could satisfy all job and wage requirements by creating 10 "new qualifying jobs," or fewer-as allowed by three additional provisions described below.

Section 4 of the bill would amend Section 313.023 to allow applicants under Subchapter B making more than the minimum qualified investment to reduce or eliminate the 25 "new qualifying jobs" requirement. Projects investing at least two, three, four or five times the minimum qualified investment could have their minimum new qualifying job requirement of 25 jobs reduced to 75 percent of the jobs required (18.75 jobs), 50 percent of the jobs required (12.5 jobs), 25 percent of the jobs required (6.25 jobs), or zero jobs, respectively. If an applicant receives a required-job reduction allowed in Section 313.025(f-1) as amended, higher-than-minimum qualified investment amounts would presumably lower further-proportionally-the final "new qualifying jobs" requirement. [See Section 7 of the bill amending Section 313.025(f-1) below]

Section 313.051(b) would be amended in Section 15 of the bill to not allow Subchapter C applicants to reduce the number of minimum 10 "new qualifying jobs" requirements by making a qualified investment two-to-five times the minimum.

Section 3 of the bill would add a new subsection 313.021(3)(F) to allow both Subchapter B and Subchapter C applicants to alternatively satisfy their minimum "new qualifying job" requirement if the Texas Workforce Commission (TWC) determines that the cumulative economic benefit of "related jobs created in connection with the project . . . . is the same or greater than that associated with the minimum number of required jobs." The TWC would be given rule-making authority to implement this provision.

Under current law, the minimum "new jobs" creation requirement could be waived by school districts if that number exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility. Section 7 of the bill would amend Section 313.025(f-1) to allow a school district to request that the Texas Workforce Commission provide a recommendation as to whether the "new qualifying jobs" requirement should be waived or reduced, for both Subchapter B and Subchapter C applicants, using the same criteria as in current law.

Section 5 of the bill would create a new subsection 313.024(d-2) to allow the Governor's Office of Texas Economic Development and Tourism to determine if two or more projects in different school districts, covered by two or more limitation agreements, may constitute a "single unified project." The new qualifying jobs created in each agreement in a unified project could be considered together when determining if the minimum new qualifying jobs requirement has been satisfied. The Office of Texas Economic Development and Tourism would be given rule-making authority to implement this provision.

Section 5 of the bill would amend Tax Code, 313.024(b) to expand the types of properties eligible for a value limitation to include a "Texas priority project." Section 6 of the bill would amend Tax Code, Section 313.024(e) to define a Texas priority project as a project on which the applicant has committed to expend or allocate a qualified investment of more than $1 billion.

Section 5 of the bill would amend Section 313.024(e) to replace the term "computer center" with "data center," and also create eligibility for applicants under the following 2007 North American Industry Classification System categories: "518210, Data Processing, Hosting, and Related Services; 519130 Internet Publishing and Broadcasting and Web Search Portals; 511210 Software Publishers; and 541513 Computer Facilities Management Services."

Section 7 of the bill would amend Tax Code, Section 313.025 to require the governing board of a school district to submit a copy of the application to the comptroller and request the comptroller conduct an economic impact evaluation of the investment proposed by the application. The bill would require the comptroller to provide the school board with an economic impact evaluation along with the comptroller's certificate or written explanation and recommendation, if requested, not later than the 90th day after the date the comptroller receives the application.

Section 7 of the bill would also amend Tax Code, Section 313.025 to require the Texas Education Agency to determine the effect that the applicant's proposal would have on the number or size of the school district's instructional facilities and submit a written report to the school district instead of the comptroller.

Section 7 of the bill would also amend Tax Code, Section 313.025 to require the comptroller, no later than 90 days after the receipt of the application, to issue a certificate for a limitation on appraised value of the property and provide the certificate to the governing body of the school district, or provide the governing body a written explanation of the comptroller's decision not to issue a certificate. The bill would require the Texas Workforce Commission, if requested by the governing body of the school district, to submit a recommendation as to whether the new qualifying jobs creation requirement should be reduced or waived and, if reduced, the number of new qualifying jobs required.

Section 7 of the bill would also amend Tax Code, Section 313.025 to require that a governing body of a school district may not approve an application unless the comptroller submits to the governing body a certificate for a limitation on appraised value of the property. The bill would authorize a governing board of a school district to waive or reduce the new jobs creation requirement if the Texas Workforce Commission determines that the new jobs creation requirement exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility that is described in the application and recommends waiving or reducing the requirement.

Section 8 of the bill would amend Tax Code, Section 313.026 to require the economic impact evaluation to include any information the comptroller determines is necessary or helpful to the governing body of the school district in determining whether to approve the application. The itemized list of criteria required to be included in the economic impact evaluation under current law would be deleted [Section 313.026(a)(1) through Section 313.026(a)(20)]. The bill would require the comptroller to not issue a certificate for a limitation on appraised value unless the comptroller determines that "the project proposed by the applicant is reasonably likely to generate, before the 25th anniversary of the beginning of the limitation period, tax revenue, including state tax revenue, school district maintenance and operations ad valorem tax revenue attributable to the project, and any other tax revenue attributable to the effect of the project on the economy of the state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement." Before issuing a certificate of limitation, the comptroller would also be required to determine that "the limitation on appraised value is a significant consideration by the applicant in determining whether to invest capital and construct the project in this state." If the comptroller cannot make the determination related to the fiscal impact of the project, or determine whether Chapter 313 was a consideration by the applicant in deciding to locate in Texas, the comptroller would be authorized to make a "qualitative determination" that "other considerations associated with the project result in a net positive benefit to the state," and issue the certificate.

Section 9 of the bill would amend Tax Code, Section 313.0265 to make conforming changes related to the repeal of Subchapter D.

Section 10 of the bill would amend Tax Code, Section 313.027 to extend the value limitation period from eight to ten tax years, and to limit the deferral date on which a qualifying time period could begin to a date not later than January 1 of the sixth tax year after the date the application is approved. The bill would prohibit any supplemental payments from property owners to school districts, or to an entity that exists primarily to provide financial or material support to the school district, in an amount that exceeds an amount equal to the greater of $100 per student per year in average daily attendance or $50,000 per year, or for a period of more than 14 years.

Section 11 of the bill would amend Tax Code, Section 313.0275 to allow a person to request and the comptroller to grant a waiver of a penalty imposed in the event of casualty loss.

Section 12 of the bill would amend Tax Code, Section 313.031 to authorize the comptroller to establish reasonable fees to be paid by property owners who apply to a school district for a limitation on the value of the person's property under Subchapter B. The fee amount must be reasonable and may not exceed the estimated cost to the comptroller of performing the comptroller's duties.

Section 12 of the bill would also amend Tax Code, Section 313.031 to clarify that the amount of the application fee may not exceed the estimated cost to the district of processing and acting on an application, including any costs to the school district associated with the economic impact evaluation.

Section 13 of the bill would amend Tax Code, Section 313.032 to modify the types of data the comptroller must include in the required "Report on Compliance with Agreements." The bill would require the report include an assessment of agreements considered in the aggregate. The bill would authorize the comptroller to use standard economic estimation techniques, including economic multipliers in preparing the report. The bill would require that data must be based on data certified to the comptroller by each recipient, or former recipient of a limitation on appraised value.

Section 14 of the bill would change Subchapter C's title to "Limitation on Appraised Value of Property in Strategic Investment Area or Certain Rural Districts."

Section 15 the bill would also amend Tax Code, Section 313.051 to create a definition of a strategic investment area as an area the comptroller determines is a county within this state with unemployment above the state average and per capita income below the state average, an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community, or a defense economic readjustment zone designated under Chapter 2310, Government Code.

Section 15 of the bill would amend Tax Code, 313.051 to require the comptroller to determine demographic eligibility under Subchapter C using the latest two federal censuses, and to also consider the average rate of population increase in the state during the same period.

Section 15 of the bill would also amend Tax Code, Section 313.051 to require the comptroller, not later than September 1 of each year, to determine areas that qualify as a strategic investment areas using the most recently completed full calendar year data available on that date and, not later than October 1, publish a list and map of the designated areas. The determination would be effective for the following tax year.

Section 16 of the bill would amend Subchapter E's title to, "Availability of Tax Credit after Program Expires or is Repealed."

Section 17 of the bill would amend Tax Code, Section 313.171 to state the repeal of Subchapter D does not affect a property owner's entitlement to a tax credit granted prior to the repeal.

Section 18 of the bill would amend Tax Code Section 311.014 related to Tax Increment Funds (TIFs) to allow money in TIFs to be transferred to TIFs in adjacent reinvestment zones under certain circumstances.

Sections 19 and 20 of the bill would amend Education Code, Sections 42.2515 and 42.302 to make conforming changes related to repeal of Subchapter D.

Section 21 of the bill would repeal Tax Code, Sections 313.008 and 313.009 regarding redundant reporting requirements, as well as Section 313.021(5), the definition of county average weekly wage for manufacturing jobs.

Section 21 of the bill would also repeal Tax Code, Chapter 313, Subchapter D, "School Tax Credits." Future Chapter 313 project owners would receive a ten-year benefit from the limitation on appraised value, with no benefit through a tax credit.

Section 22 of the bill states that changes within this Act would only apply to applications filed on or after the effective date of this Act, with certain exceptions for projects with agreements entered into after January 1, 2013. Such projects could be exempted from current law wage and jobs requirements and allowed to access the amended, more flexible job and wage requirements proposed in this bill, which if enacted, would otherwise take effect January 1, 2014.

Section 23 of the bill clarifies the comptroller shall make the initial determinations of areas that qualify as a strategic investment not later than September 1, 2014 and shall publish the initial list and map required not later than October 1, 2014.

The bill would take effect January 1, 2014.

Methodology

Currently, Subchapters B, C, and D of Tax Code, Chapter 313 expire December 31, 2014.

The estimate assumes a 10 year limitation period but no tax credit benefit.

Extending the expiration of Subchapters B and C of the Act would allow ten more years, or "classes," of applicant projects. This estimate assumes participation in the program of a total of 60 projects per year in each of those years. 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.

Under current law, only property not existing before the date a Chapter 313 application is filed with the school district may become qualified property. As the bill would appear to allow existing (expanded) buildings to become qualified property, the amount of exempted tax base could increase significantly.

The proposed reduction in the wage standard, the reduced "new qualifying jobs" requirement, the elimination of the requirement that 80 percent of all jobs be qualifying jobs, and the flexibility to meet the minimum job requirements in different ways would allow significantly more applicants to access the program, with a commensurate increase in school levy loss.

The added eligibility of data centers and other software and Internet-related businesses would allow increased participation in the program.

A provision for the Governor's Office to allow projects with multiple limitation agreements in different school districts to be considered "a single unified project" for the purposes of meeting minimum the "new qualifying jobs" requirement would not have a significant fiscal impact, as most such projects currently receive a waiver of the "new jobs" creation requirement.

The state would incur cost under the Foundation School Program (FSP) corresponding to local M&O revenue losses. Costs of $47.2 million are estimated beginning in FY 2017, increasing to $72.7 million by FY 2018 and $427.1 million by FY 2023. Different distributions of project investment amounts or locations from the estimated above would affect state costs under the FSP.

The Comptroller's office indicates it would be necessary to hire two FTEs to handle the new duties outlined in this legislation including expanded economic impact evaluations and recommendations, expanded data collection and reporting, and additional applications due to amended eligibility requirements.

The State Auditor's office would also incur costs to comply with provisions of the bill in Section 313.010 requiring audits of 3 of the agreements.

Local Government Impact

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

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

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