LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 1, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB2397** by Clardy (relating to a franchise tax credit for certain businesses that make investments in qualified opportunity zones.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2397, Committee Report 1st House, Substituted: a positive impact of $120,000,000 through the biennium ending August 31, 2021.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($694,000,000) for the 2020-21 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	$56,000,000
2021	$64,000,000
2022	($89,000,000)
2023	$16,000,000
2024	$7,000,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *Property Tax Relief Fund* 304
2020	$56,000,000	$0
2021	$64,000,000	($694,000,000)
2022	($89,000,000)	($1,197,000,000)
2023	$16,000,000	($765,000,000)
2024	$7,000,000	($479,000,000)

Fiscal Analysis

The bill would amend Chapter 171 (Franchise Tax) of the Tax Code to provide tax credits for qualifying businesses making certain types of investment expenditures in economic opportunity zones in Texas. The bill defines an economic opportunity zone as a census tract in Texas that, as of September 1, 2019, was designated as a qualified opportunity zone under Public Law No. 115-97 (the Tax Cuts and Jobs Act).

For the purposes of establishing a franchise tax credit, the bill would define a qualifying investment as an investment to: (1) remodel, rehabilitate, or construct a structure owned or leased by the entity that is located in an economic opportunity zone; or (2) purchase equipment or machinery to be located in or used in the operation of a structure owned or leased by the entity that is located in an economic opportunity zone. To be eligible for the credit, an entity would be required to make a qualifying investment on or after September 1, 2019, and in an amount of at least $100,000.

The amount of franchise tax credit established would be equal to 25 percent of the total qualifying investment. The total amount of credit claimed on a franchise tax report could not exceed the amount of tax due after any other applicable tax credits. A taxable entity could only claim one credit under this subchapter and more than one taxable entity could not claim a credit for the same qualifying investment.

Entities would be required to apply for a franchise tax credit on or with the report for the period for which the credit is claimed. Prior to claiming, selling, or assigning a franchise tax credit, the entity would be required to request a certificate of eligibility from the Comptroller's Office. The bill requires certain documentation to be included with the entity's request.

The bill would require the Comptroller to adopt rules necessary to implement and administer these tax credits and refunds.

The bill would take effect January 1, 2020, and apply to a report originally due on or after that date.

Methodology

The federal Tax Cuts and Jobs Act allows the chief executive officer of each state, the District of Columbia, and the five U.S. possessions to designate certain census tracts as qualified opportunity zones if they meet federal qualifications as low-income communities.

The estimated fiscal impact is based on an expectation of average annual private industry capital expenditures for structures and equipment in the state in excess of $175 billion per year during the forecast period under current law, of which 15 percent would be expected to occur within opportunity zones, including amounts located in the zones in response to the franchise tax credit that otherwise would have been located in other areas of the state.

At 25 percent of eligible investment, the potential value of credits would be estimated to exceed $6 billion per year. The estimated potential credit value was then reduced to reflect provisions of the bill that limit the amounts of credit that may be claimed: reductions for estimated amounts of eligible business capital expenditures that would not meet the minimum $100,000 threshold, amounts that would exceed an individual taxable entity's franchise tax liability in any one year, and amounts that could not be claimed because each taxable entity would be limited to only one claim of credit for expenditures made in one year in one zone. The value of the credit would be expected to attract additional capital spending to opportunity zones in the state that otherwise would occur outside the state, which would yield estimated gains in sales tax revenue from taxable expenditures on building materials and equipment not eligible for exemption as manufacturing equipment.

Credits earned on qualified capital expenditures after the January 1, 2020 effective date would not be expected to be certified as eligible and claimed on franchise tax reports due in May, 2020. Consequently fiscal implications for franchise tax would not be expected before fiscal 2021.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD