87R24087 SMH-D

By:  Murphy, Burrows, Moody, Shine H.B. No. 1556

Substitute the following for H.B. No. 1556:

By:  Shine C.S.H.B. No. 1556

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Economic Development Act; requiring the imposition of an authorized fee and changing the amounts of certain fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 313.007, Tax Code, is amended to read as follows:

Sec. 313.007.  EXPIRATION. Subchapters B and C expire December 31, 2032 [~~2022~~].

SECTION 2.  Sections 313.021(1) and (2), Tax Code, are amended to read as follows:

(1)  "Qualified investment" means:

(A)  tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is described as Section 1245 property by Section 1245(a), Internal Revenue Code of 1986;

(B)  tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including:

(i)  integrated systems, fixtures, and piping;

(ii)  all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; and

(iii)  production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting;

(C)  tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the operation of a nuclear electric power generation facility, including:

(i)  property, including pressure vessels, pumps, turbines, generators, and condensers, used to produce nuclear electric power; and

(ii)  property and systems necessary to control radioactive contamination;

(D)  tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an integrated gasification combined cycle electric generation facility, including:

(i)  property used to produce electric power by means of a combined combustion turbine and steam turbine application using synthetic gas or another product produced by the gasification of coal or another carbon-based feedstock; or

(ii)  property used in handling materials to be used as feedstock for gasification or used in the gasification process to produce synthetic gas or another carbon-based feedstock for use in the production of electric power in the manner described by Subparagraph (i);

(E)  tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2010, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with operating an advanced clean energy project, as defined by Section 382.003, Health and Safety Code; [~~or~~]

(F)  a building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by Paragraph (A), (B), (C), (D), or (E); or

(G)  a building or a permanent, nonremovable component of a building that, as part of a discrete project that increases the value of the building or component, is renovated, expanded, modernized, or otherwise improved during the applicable qualifying time period that begins on or after January 1, 2023, and that houses tangible personal property described by Paragraph (A), (B), (C), (D), or (E).

(2)  "Qualified property" means:

(A)  land:

(i)  that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii)  on which a person proposes to:

(a)  construct a new building or erect or affix a new improvement that does not exist before the date the person submits a complete application for a limitation on appraised value under this subchapter; or

(b)  renovate, expand, modernize, or otherwise improve an existing building or improvement;

(iii)  that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(iv)  on which, in connection with the [~~new~~] building or [~~new~~] improvement described by Subparagraph (ii), the owner or lessee of, or the holder of another possessory interest in, the land proposes to:

(a)  make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b)  create at least 25 new qualifying jobs;

(B)  the [~~new~~] building or other [~~new~~] improvement described by Paragraph (A)(ii); and

(C)  tangible personal property:

(i)  that is not subject to a tax abatement agreement entered into by a school district under Chapter 312;

(ii)  for which a sales and use tax refund is not claimed under Section 151.3186; and

(iii)  except for new equipment described in Section 151.318(q) or (q-1), that is first placed in service in the new building, in the newly renovated, expanded, modernized, or improved building, or in or on the new or newly renovated, expanded, modernized, or improved improvement described by Paragraph (A)(ii), or on the land on which that [~~new~~] building or [~~new~~] improvement is located, if the personal property is ancillary and necessary to the business conducted in that [~~new~~] building or in or on that [~~new~~] improvement.

SECTION 3.  Section 313.024(c), Tax Code, is amended to read as follows:

(c)  For purposes of determining an applicant's eligibility for a limitation under this subchapter:

(1)  the land on which a building or component of a building described by Section 313.021(1)(F) or (G) [~~313.021(1)(E)~~] is located is not considered a qualified investment;

(2)  property that is leased under a capitalized lease may be considered a qualified investment;

(3)  property that is leased under an operating lease may not be considered a qualified investment; [~~and~~]

(4)  property that is owned by a person other than the applicant and that is pooled or proposed to be pooled with property owned by the applicant may not be included in determining the amount of the applicant's qualifying investment; and

(5)  a building or component of a building that is renovated, expanded, modernized, or otherwise improved as described by Section 313.021(1)(G) is not considered a qualified investment unless:

(A)  the building or component would qualify as a qualified investment if the building or component were to be built or constructed during the applicable qualifying time period; and

(B)  the agreement between the property owner and the school district describes with specificity as required by Section 313.027(e) the manner in which the building or component will be renovated, expanded, modernized, or otherwise improved.

SECTION 4.  Section 313.025, Tax Code, is amended by amending Subsections (a), (a-1), and (b) and adding Subsection (a-2) to read as follows:

(a)  The owner or lessee of, or the holder of another possessory interest in, any qualified property described by Section 313.021(2)(A), (B), or (C) may apply to the governing body of the school district in which the property is located for a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes of the person's qualified property. An application must be made on the form prescribed by the comptroller and [~~include the information required by the comptroller, and it must~~] be accompanied by a [~~:~~

[~~(1)  the application~~] fee in the amount of $60,000 payable to [~~established by the governing body of~~] the school district[~~;~~

[~~(2)  information sufficient to show that the real and personal property identified in the application as qualified property meets the applicable criteria established by Section 313.021(2); and~~

[~~(3)  any information required by the comptroller for the purposes of Section 313.026~~].

(a-1)  The application form may require the applicant to provide only the following information:

(1)  the name and taxpayer identification number of the applicant and each parent, subsidiary, or affiliate of the applicant;

(2)  contact information for the applicant;

(3)  the name of the school district in which the qualified property is located;

(4)  a description of the project, including the category of the applicable North American Industry Classification System that describes the activities in which the applicant will engage in connection with the project;

(5)  the location of the project;

(6)  for each ad valorem tax year covered by the proposed agreement between the applicant and the school district:

(A)  an estimate of the amount of the qualified investment to be spent or allocated for the project;

(B)  the number of qualifying jobs the applicant commits to create and the total amount of wages that will be paid to the persons holding those jobs;

(C)  an estimate of the appraised value of the project if the project were not subject to the proposed agreement;

(D)  an estimate of the amount of ad valorem taxes for maintenance and operations and for debt that would be imposed by the school district on the project if the project were not subject to the proposed agreement;

(E)  an estimate of the appraised value of the project for school district maintenance and operations ad valorem tax purposes as determined in accordance with the proposed agreement; and

(F)  an estimate of the amount of ad valorem taxes for maintenance and operations that will be imposed by the school district on the project as determined in accordance with the proposed agreement; and

(7)  any information that the comptroller:

(A)  requires for the purposes of Section 313.026; or

(B)  otherwise determines to be necessary to determine the applicant's eligibility for a limitation on appraised value.

(a-2)  Within seven days of the receipt of each document, the school district shall submit to the comptroller a copy of the application and the proposed agreement between the applicant and the school district. If the applicant submits an economic analysis of the proposed project to the school district, the district shall submit a copy of the analysis to the comptroller. In addition, the school district shall submit to the comptroller any subsequent revision of or amendment to any of those documents within seven days of its receipt. The comptroller shall publish each document received from the school district under this subsection on the comptroller's Internet website. If the school district maintains a generally accessible Internet website, the district shall provide on its website a link to the location of those documents posted on the comptroller's website in compliance with this subsection. This subsection does not require the comptroller to post information that is confidential under Section 313.028.

(b)  The governing body of a school district is not required to consider an application for a limitation on appraised value. If the governing body of the school district elects not to consider the application, the governing body shall refund $10,000 of the payment described by Subsection (a) to the applicant. If the governing body of the school district elects to consider an application, the governing body shall deliver a copy of the application and $10,000 of the payment described by Subsection (a) to the comptroller and request that the comptroller conduct an economic impact evaluation of the investment proposed by the application. The comptroller shall conduct or contract with a third person to conduct the economic impact evaluation, which shall be completed and provided to the governing body of the school district, along with the comptroller's certificate or written explanation under Subsection (d), as soon as practicable but not later than the 90th day after the date the comptroller receives the application. The governing body shall provide to the comptroller or to a third person contracted by the comptroller to conduct the economic impact evaluation any requested information. A methodology to allow comparisons of economic impact for different schedules of the addition of qualified investment or qualified property may be developed as part of the economic impact evaluation. The governing body shall provide a copy of the economic impact evaluation to the applicant on request. [~~The comptroller may charge the applicant a fee sufficient to cover the costs of providing the economic impact evaluation.~~] The governing body of a school district shall approve or disapprove an application not later than the 150th day after the date the application is filed, unless the economic impact evaluation has not been received or an extension is agreed to by the governing body and the applicant.

SECTION 5.  Sections 313.027(a-1), (f), and (i), Tax Code, are amended to read as follows:

(a-1)  The agreement must:

(1)  provide that the limitation under Subsection (a) applies for a period of 10 years; and

(2)  specify the beginning date of the limitation, which must be January 1 of the first tax year that begins after:

(A)  the application date;

(B)  the qualifying time period; or

(C)  the following applicable date:

(i)  in the case of a project involving the construction of a new building or the erection or affixing of a new improvement, the date commercial operations begin at the site of the project; or

(ii)  in the case of a project involving the renovation, expansion, modernization, or other improvement of an existing building or improvement, the date the renovation, expansion, modernization, or other improvement is completed.

(f)  In addition, the agreement:

(1)  must incorporate each relevant provision of this subchapter [~~and, to the extent necessary, include provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms agreed to by the property owner and the school district~~];

(2)  must require the property owner to provide a stabilization payment to the school district in each tax year during the period for which the limitation under Subsection (a) applies in an amount equal to a portion, not to exceed 38 percent, as specified by the agreement of the amount computed by subtracting from the market value of the person's qualified property as described in the agreement for that tax year the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district for that tax year [~~may provide that the property owner will protect the school district in the event the district incurs extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project~~];

(3)  must require the property owner to maintain a viable presence in the school district for at least five years after the date the limitation on appraised value of the owner's property expires;

(4)  must provide for the termination of the agreement, the recapture of ad valorem tax revenue lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of a penalty or interest, or both, on that recaptured ad valorem tax revenue;

(5)  may specify any conditions the occurrence of which will require the district and the property owner to renegotiate all or any part of the agreement;

(6)  must specify the ad valorem tax years covered by the agreement; and

(7)  must be in a form approved by the comptroller.

(i)  A person and the school district may not enter into an agreement pursuant to an application filed on or after January 1, 2023, under which the person agrees to provide supplemental payments to a school district or any other entity on behalf of a school district. A stabilization payment as described by Subsection (f)(2) is not considered to be a supplemental payment for purposes of an agreement entered into by a person and a school district pursuant to an application filed before January 1, 2023, under which the person agrees to provide supplemental payments to the school district or another entity on behalf of the school district [~~in an amount that exceeds an amount equal to the greater of $100 per student per year in average daily attendance, as defined by Section 48.005, Education Code, or $50,000 per year, or for a period that exceeds the period beginning with the period described by Section 313.021(4) and ending December 31 of the third tax year after the date the person's eligibility for a limitation under this chapter expires.  This limit does not apply to amounts described by Subsection (f)(1) or (2)~~].

SECTION 6.  Section 313.0276(e), Tax Code, is amended to read as follows:

(e)  Notwithstanding Subsections (c) and (d), a penalty imposed under this section may 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 stabilization [~~supplemental~~] payments as described by Section 313.027(f)(2) made to the school district in that year.

SECTION 7.  The heading to Section 313.031, Tax Code, is amended to read as follows:

Sec. 313.031.  RULES AND FORMS[~~; FEES~~].

SECTION 8.  Section 313.031, Tax Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  The comptroller shall adopt a single annual reporting form to be used by a recipient or former recipient of a limitation on appraised value under this chapter for the purpose of submitting information necessary for the comptroller to complete the reports required by this chapter. A recipient or former recipient shall submit the form to the applicable school district at the same time the recipient or former recipient submits the form to the comptroller. This subsection does not apply to the form described by Section 313.033.

SECTION 9.  Section 313.032(a), Tax Code, is amended to read as follows:

(a)  Before the beginning of each regular session of the legislature, the comptroller shall submit to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature a report on the agreements entered into under this chapter that includes:

(1)  an assessment of the following with regard to the agreements entered into under this chapter, considered in the aggregate, from the year in which each agreement was entered into to the most recent year for which actual data is available:

(A)  the total number of qualifying jobs created[~~, direct and otherwise,~~] in this state;

(B)  [~~the total effect on personal income, direct and otherwise, in this state;~~

[~~(C)~~]  the total amount of qualified investment in this state;

(C) [~~(D)~~]  the total taxable value for purposes of school district ad valorem taxes for maintenance and operations and for debt of property on the tax rolls in this state, including property for which the limitation period has expired, and the total amount of school district ad valorem taxes for maintenance and operations and for debt imposed on that property;

(D) [~~(E)~~]  the total value of property not on the tax rolls in this state as a result of agreements entered into under this chapter and the total amount of school district maintenance and operations ad valorem taxes that would have been imposed on that value if that value were on the tax rolls; and

(E)  the total amount of stabilization payments as described by Section 313.027(f)(2) made to school districts [~~(F)  the total fiscal effect on the state and local governments~~]; and

(2)  an assessment of the progress of each agreement made under this chapter that states for each agreement from the year in which the agreement was entered into to the most recent year for which actual data has been certified:

(A)  the number of qualifying jobs each recipient of a limitation on appraised value committed to create;

(B)  the number of qualifying jobs each recipient created;

(C)  the total amount of wages [~~and the median wage~~] of the new qualifying jobs each recipient created;

(D)  the amount of the qualified investment each recipient committed to spend or allocate for each project;

(E)  the amount of the qualified investment each recipient spent or allocated for each project;

(F)  the market value of the qualified property of each recipient as determined by the applicable chief appraiser, including property that is no longer eligible for a limitation on appraised value under the agreement;

(G)  the limitation on appraised value for the qualified property of each recipient;

(H)  the dollar amount of the school district ad valorem taxes for maintenance and operations and for debt that would have been imposed on the qualified property if the property had not received a limitation on appraised value; [~~and~~]

(I)  the dollar amount of the school district ad valorem taxes for maintenance and operations and for debt imposed on the qualified property; and

(J)  the amount of stabilization payments as described by Section 313.027(f)(2) each recipient made to the applicable school district.

SECTION 10.  Section 48.256(d), Education Code, is amended to read as follows:

(d)  This subsection applies to a school district in which the board of trustees entered into a written agreement with a property owner under Section 313.027, Tax Code, for the implementation of a limitation on appraised value under Subchapter B or C, Chapter 313, Tax Code. For purposes of determining "DPV" under Subsection (a) for a school district to which this subsection applies, the commissioner shall exclude a portion of the market value of property not otherwise fully taxable by the district under Subchapter B or C, Chapter 313, Tax Code, before the expiration of the subchapter. The comptroller shall provide information to the agency necessary for this subsection. A revenue protection payment described by Section 313.027(f)(1), Tax Code, as that subdivision existed before January 1, 2023, required as part of an agreement for a limitation on appraised value shall be based on the district's taxable value of property for the preceding tax year.

SECTION 11.  The following provisions of the Tax Code are repealed:

(1)  Section 313.031(b); and

(2)  Section 313.032(b-1).

SECTION 12.  (a) The changes in law made by this Act apply only to an agreement entered into under Chapter 313, Tax Code, pursuant to an application filed under that chapter on or after the effective date of this Act. An agreement entered into under that chapter pursuant to an application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b)  The change in law made by this Act to Section 48.256(d), Education Code, applies beginning with the 2023-2024 school year.

SECTION 13.  This Act takes effect January 1, 2023.