

BILL ANALYSIS

C.S.H.B. 5
By: Hunter
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to 2019 data released by the International Monetary Fund, the State of Texas has the ninth largest economy in the world with a GDP of roughly \$2 trillion. However, when it comes to competitiveness with neighboring states for large scale economic development projects, the state lags due to its high dependence on property taxes. According to a report from the Texas Taxpayers and Research Association (TTARA), in 2021, Texas businesses paid 59.3 percent of state and local taxes—considerably higher than the national average of 43.6 percent. The TTARA report also indicates that 44 other states have tax structures more favorable to businesses than Texas' tax structure. C.S.H.B. 5 seeks to create an innovative, transparent, and accountable economic development program to attract jobs and investment to Texas through school district property tax abatement agreements. This bill is needed to ensure that the state is using the tools that other states and countries are using to attract businesses and ensure that Texas remains the top state in the nation for business investment and job creation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

School District Property Tax Abatement Agreements

C.S.H.B. 5 amends the Government Code to set out provisions providing for property tax abatement agreements between a public school district and a person proposing to construct an eligible project within the district under which the district agrees to limit the taxable value for school district maintenance and operation (M&O) property tax purposes of the eligible property used as part of the proposed project in exchange for the investment and job creation associated with the project. The bill sets the bill's provisions regarding the agreements to expire December 31, 2036.

Eligible Projects

C.S.H.B. 5 defines "eligible project" as a national or state security project, a supply chain infrastructure project, a manufacturing project, or a project that requires an investment in a school district in Texas of more than \$1 billion.

Eligible Property

C.S.H.B. 5 establishes that the property eligible for a limitation on taxable value under an abatement agreement with a school district is property, other than property used for intermittent power generation to supply electricity to the power grid, that is used as part of an eligible project that is wholly owned by an applicant or leased by an applicant under a capitalized lease and consists of:

- a new building or expansion of an existing building, including a permanent, nonremovable component of a building, that is constructed after the date the agreement pertaining to the project is entered into and located in an area designated as a reinvestment zone under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act or as an enterprise zone under the Texas Enterprise Zone Act at the time the agreement pertaining to the project is entered into; or
- tangible personal property, other than inventory, first located in the reinvestment zone or enterprise zone after the date the agreement pertaining to the project is entered into.

Required Jobs and Investment

C.S.H.B. 5 requires an applicant for a limitation on taxable value of eligible property used as part of a proposed eligible project to agree to do the following to be eligible to enter into a tax abatement agreement with a school district:

- if the project is to be located in a district with a taxable value of property of \$10 billion or more for the tax year preceding the year in which the applicant submits the application:
 - create at least 50 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and
 - make an investment in the project in an amount of at least \$100 million before the incentive period begins;
- if the project is to be located in a district with a taxable value of property of at least \$1 billion but less than \$10 billion for the tax year preceding the year in which the applicant submits the application:
 - create at least 40 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and
 - make an investment in the project in an amount of at least \$80 million before the incentive period begins;
- if the project is to be located in a district with a taxable value of property of at least \$500 million but less than \$1 billion for the tax year preceding the year in which the applicant submits the application:
 - create at least 25 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and
 - make an investment in the project in an amount of at least \$50 million before the incentive period begins;
- if the project is to be located in a district with a taxable value of property of at least \$100 million but less than \$500 million for the tax year preceding the year in which the applicant submits the application:
 - create at least 10 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

- make an investment in the project in an amount of at least \$25 million before the incentive period begins; or
- if the project is to be located in a district with a taxable value of property of less than \$100 million for the tax year preceding the year in which the applicant submits the application or in a district that is not located in an area designated as a metropolitan statistical area by the U.S. Office of Management and Budget:
 - create at least five required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and
 - make an investment in the project in an amount of at least \$10 million before the incentive period begins.

The bill requires each required job created in connection with an eligible project to be a new full-time job in Texas that is maintained in the usual course and scope of the applicant's business, which may be performed by an individual who is a trainee under the Texans Work program, or that is performed by an independent contractor and the independent contractor's employees at the site of the project. The jobs may not be transferred by the applicant from an existing facility or location in Texas or otherwise created to replace an existing job, unless the applicant fills the vacancy caused by the transfer. For the bill's purposes a "full-time job" is a permanent full-time job that requires a total of at least 1,600 hours of work a year in connection with an eligible project.

C.S.H.B. 5 authorizes an applicant to count as a required job one construction job credit. The bill entitles an applicant to one construction job credit in connection with an eligible project for every 10 construction jobs created in connection with the project before the date the incentive period for the project begins. An applicant may elect to determine the number of construction jobs as the quotient of:

- the total amount paid by the applicant for labor in connection with construction of the project before the incentive period for the project begins, as evidenced by separate charges for labor services on contractor invoices or other documentation from contractors of the cost of labor performed under lump-sum contracts; and
- the average annual wage for all jobs in the county in which the project is primarily located during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission (TWC).

C.S.H.B. 5 authorizes an applicant, in calculating the applicable number of required jobs in connection with an eligible project, to aggregate the number of hours worked by one or more individuals who work fewer than 1,600 hours a year in connection with the project if the number of hours worked by each of those individuals combined meets or exceeds 1,600 hours of work a year.

C.S.H.B. 5 authorizes an applicant to demonstrate that they have met the applicable minimum investment requirement by any reasonable means. The applicant is considered to have met the applicable minimum investment requirement if the most recent appraisal roll for the county in which the eligible property is located indicates that the appraised value of the property composing the project as of January 1 of the first year of the incentive period is equal to or greater than the minimum investment requirement applicable to the project.

C.S.H.B. 5 exempts a national or state security project and a supply chain infrastructure project from these job and investment requirements.

Taxable Value of Eligible Property

C.S.H.B. 5, for school district M&O property tax purposes, sets the taxable value of eligible property subject to a tax abatement agreement for each tax year of the incentive period prescribed by the agreement at an amount equal to the following:

- \$100 million, if the project subject to the agreement is located in a district with a taxable value of property of \$10 billion or more for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains;
- \$75 million, if the project subject to the agreement is located in a district with a taxable value of property of at least \$1 billion but less than \$10 billion for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains;
- \$50 million, if the project subject to the agreement is located in a district with a taxable value of property of at least \$500 million but less than \$1 billion for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains;
- \$25 million, if the project subject to the agreement is located in a district with a taxable value of property of at least \$100 million but less than \$500 million for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains; or
- \$5 million, if the project subject to the agreement is located in a district with a taxable value of property of less than \$100 million for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains.

However, the bill establishes that the taxable value of eligible property for M&O tax purposes for a tax year during the incentive period is the property's appraised value for that tax year if that value is less than the value of the property as determined in accordance with the limitation. The taxable value of eligible property for school district M&O tax purposes is zero for each tax year beginning with the tax year following the year in which the agreement pertaining to the property is entered into and ending December 31 of the tax year that includes the construction completion date for the applicable eligible project.

C.S.H.B. 5 requires the chief appraiser for the appraisal district in which eligible property is located to determine the property's market value and appraised value and include the market value, appraised value, and taxable value of the property as determined in accordance with the limitation provided by the bill in the appraisal district's appraisal records. The bill prohibits the chief appraiser from using an estimated value included in the application to which the agreement pertains to determine the property's market value.

Application

C.S.H.B. 5 requires a person submitting an application to a district for a tax abatement agreement to use a form prescribed by the comptroller of public accounts. The bill requires the form to contain the following information:

- the applicant's name, address, and Texas taxpayer identification number and the contact information for the applicant's authorized representative;
- the applicant's form of business and, if applicable, the name, address, and Texas taxpayer identification number of the applicant's parent entity;
- the applicable school district's name and address and the contact information for the district's authorized representative;
- the legal description of the property on which the project is proposed to be located and, if applicable, the address of the proposed project;
- the applicable number of required jobs for the proposed project;
- a list of each taxing unit in which the project is proposed to be located;
- a brief description of the proposed project, including the classification of the project as designated by the North American Industry Classification System;
- a brief description of the eligible property to be used as part of the proposed project;
- a projected timeline for construction and completion of the proposed project, including the projected dates on which construction will begin, construction will be completed, and commercial operations will start;
- the proposed incentive period;

- the name and location of the existing or proposed reinvestment zone or enterprise zone in which the proposed project will be located;
- a brief summary of the projected economic benefits of the proposed project; and
- the applicant's signature and certification of the accuracy of the information included in the application.

The form prescribed by the comptroller must allow the applicant to segregate certain confidential business information from other information in the application.

C.S.H.B. 5 requires an applicant also to include the following with the application:

- an application fee payable to the school district in an amount determined by the district not to exceed \$60,000 for an initial application, inclusive of the costs of processing the application, retaining professional services, preparing the school finance impact report required by the bill's provisions, and, if applicable, creating a reinvestment zone or enterprise zone;
- a map showing the site of the proposed project; and
- the economic benefit statement prepared under the bill's provisions in connection with the proposed project.

The bill requires a school district that receives an application to forward the application to the comptroller not later than the seventh day after the date the district receives the application. The comptroller may request that an applicant provide any additional information the comptroller reasonably determines is necessary to complete the evaluation of the application and may require an applicant to submit the additional information by a certain date. The bill authorizes the comptroller to extend that deadline on a showing of good cause and establishes that the comptroller is not required to take any further action on an application until it is complete. The bill requires the comptroller to notify an applicant and the pertinent district when the applicant's application is administratively complete.

Economic Benefit Statement

C.S.H.B. 5 requires the economic benefit statement included with the application to include the following information for each year of the period that begins on the date the applicant projects construction of the proposed project that is the subject of the application will begin and ends on the 25th anniversary of the date the incentive period ends:

- an estimate of the number of total jobs that will be created by the project;
- an estimate of the total amount of capital investment that will be created by the project;
- an estimate of the increase in appraised value of property that will be attributable to the project;
- an estimate of the amount of property taxes that will be imposed by each taxing unit other than the school district on the property used as part of the project;
- an estimate of the amount of state taxes that will be paid in connection with the project; and
- an estimate of the associated economic benefits that may reasonably be attributed to the project, including:
 - the impact on the gross revenues and employment levels of local businesses that provide goods or services in connection with the project or to the applicant's employees;
 - the amount of state and local taxes that will be generated as a result of the indirect economic impact of the project, including all property taxes not otherwise included in the aforementioned property tax estimate that will be imposed on property placed into service as a result of the project;
 - the development of complementary businesses or industries that locate in Texas as a direct consequence of the project;
 - the total impact of the project on the state's gross domestic product;
 - the total impact of the project on personal income in Texas; and
 - the total impact of the project on state and local taxes.

An applicant may use standard economic estimation techniques, including economic multipliers, to create the economic benefit statement. The bill requires the comptroller to establish criteria for the methodology to be used by an applicant to create an economic benefit statement and authorizes the comptroller to require an applicant to supplement or modify the statement to ensure the accuracy of the estimates required to be included in the statement.

School Finance Impact Report

C.S.H.B. 5 requires a school district that receives an application to promptly prepare a school finance impact report for the proposed project that is the subject of the application that details the projected tax and revenue consequences for the district of the proposed project for each year of the 25-year period beginning on the date the application is received by the district. The bill requires the report to include an estimate of the amount of property taxes imposed by the district during that period on the property used as part of the proposed project, together with all related property owned by the applicant or leased by the applicant under a capitalized lease and placed in service as a direct result of the project for M&O purposes and for interest and sinking (I&S) fund purposes.

Comptroller Determination Regarding Application

C.S.H.B. 5 requires the comptroller to determine whether to recommend that a school district approve an application submitted to the district. The comptroller must notify an applicant and a district of the comptroller's determination regarding an application submitted to the district by the applicant not later than the 60th day after the date the comptroller determines the application is complete. The bill requires the comptroller to recommend that the district approve the application on finding that the following are true:

- the proposed project that is the subject of the application is an eligible project;
- the proposed project is reasonably likely to generate, before the 25th anniversary of the last day of the incentive period, state or local tax revenue, including property tax revenue attributable to the effect of the project on the state economy, in an amount sufficient to offset the district M&O property tax revenue lost as a result of the tax abatement agreement; and
- the agreement is a determining factor in the applicant's decision to make the investment and locate the project in Texas.

The bill provision regarding such a determining factor does not apply to an application if the proposed project that is the subject of the application is a grid reliability project.

Contested Case Hearing

C.S.H.B. 5 entitles an applicant to a hearing if the comptroller determines not to recommend that the applicable school district approve an application submitted by the applicant. The bill establishes that the hearing is a contested case hearing and requires that the hearing be conducted by the State Office of Administrative Hearings (SOAH) in the manner provided by applicable state law governing SOAH tax hearings. To receive a hearing, an applicant must file a notice of appeal with the comptroller not later than the 30th day after the date the comptroller notifies the applicant of the comptroller's determination on the application. The comptroller's determination becomes final if the applicant does not file the notice of appeal with the comptroller by the deadline provided. The bill authorizes an applicant to seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule as provided by the Administrative Procedure Act.

School District Action on Application

C.S.H.B. 5 requires a school district's governing body to approve or disapprove an application submitted to the district that the comptroller recommends be approved by the district. The governing body may approve an application only if the comptroller recommends the application

be approved. The bill requires the governing body to approve or disapprove the application not later than the 35th day after the date the comptroller notifies the district of the comptroller's determination on the application, except that the governing body may extend the deadline on written request of the applicant.

C.S.H.B. 5 authorizes a governing body that disapproves an application to propose amendments to the application and reconsider the amended application not later than the 60th day after the date the governing body disapproves the application. The bill authorizes the governing body to extend the deadline on written request of the applicant and to impose a \$15,000 fee for an amendment to an application. If the governing body and the applicant agree on an amendment, the amended application must be submitted to the comptroller for a redetermination regarding the application. The bill requires the comptroller to notify the applicant and the district of the comptroller's redetermination regarding the application not later than the 30th day after the date the comptroller receives the amended application.

C.S.H.B. 5 requires the presiding officer of the governing body to notify the applicant and the comptroller of the governing body's approval or disapproval of an application not later than the seventh day after the date the governing body approves or disapproves the application. Except with respect to a payment expressly authorized by the bill, the bill:

- prohibits a school district employee or representative, a member of the governing body, or any other person from intentionally or knowingly soliciting, accepting, agreeing to accept, or requiring any payment of money or transfer of property or other thing of value, directly or indirectly, to the district, an employee or representative of the district, a member of the governing body, or any other person in recognition of, anticipation of, or consideration for approval of an application; and
- prohibits an applicant, a employee or representative of the applicant, or any other person from intentionally or knowingly offering, conferring, agreeing to confer, or making a payment of money or transfer of property or other thing of value, directly or indirectly, to the district, a district employee or representative, a member of the governing body, or any other person in recognition of, anticipation of, or consideration for approval of an application.

Agreement

C.S.H.B. 5 requires the governing body of a school district that approves an application for a tax abatement agreement to enter into an agreement with the applicant that submitted the application. The agreement must, as follows:

- specify the project to which the agreement applies;
- specify the term of the agreement, which must begin on the date the agreement is entered into and end on December 31 of the third tax year following the end of the incentive period;
- specify the incentive period for the project;
- specify the manner for determining the taxable value for school district M&O tax purposes during the incentive period for the eligible property subject to the agreement;
- specify the applicable jobs and investment requirements and require the applicant to comply with those requirements;
- if the applicant is subject to the jobs requirement, require that the average annual wage paid to all persons employed by the applicant in connection with the project used to calculate total jobs, other than a required job derived from a construction job credit, exceed the average annual wage for all jobs in the county during the most recent four quarters for which data is available, as computed by TWC, with the applicant's average annual wage being equal to the quotient of:
 - the applicant's total wages paid, other than wages paid for construction jobs, as reported in the applicant's biennial compliance report; and
 - the applicant's number of total jobs, other than a required job derived from a construction job credit, as reported in the applicant's biennial compliance report;

- require the applicant to pay a penalty as prescribed by the bill if the applicant fails to comply with an applicable jobs or wage requirement;
- authorize the district to terminate the agreement if the applicant fails to meet a material requirement of the agreement; and
- incorporate each relevant provision of the bill's provisions authorizing the agreements.

C.S.H.B. 5 provides that the agreement may:

- require the applicant to either share a percentage of the applicant's tax revenue savings with the district or pay the district an amount specified in the agreement, which may not be less than \$75,000 for each tax year during the incentive period;
- if the agreement requires the applicant to share a percentage of the applicant's tax revenue savings, require the applicant to specify the tax savings percentages required to compute the applicable tax sharing amount;
- require the applicant to make an indemnity payment to the district as provided by the bill;
- authorize the applicant to terminate the agreement as an alternative to making an indemnity payment to the district as provided by the bill; and
- authorize the district to terminate the agreement if the district determines that the indemnity payment would not fully reimburse the district as required by the bill.

The bill prohibits an agreement from requiring the applicant to make a payment to the district other than a payment prescribed by the bill.

With respect to an agreement that includes a term authorizing the termination of the agreement if the applicant fails to meet a material requirement of the agreement, C.S.H.B. 5 requires the agreement to further provide that the school district:

- is authorized to terminate the agreement if the applicant fails to meet a material requirement of the agreement, other than a requirement described under the bill's provisions relating to the computation of the tax sharing amount;
- may not terminate the agreement until the district provides written notice to the applicant of the proposed termination;
- must provide the applicant the opportunity to cure and dispute the alleged failure, including through judicial action; and
- is entitled to recover all lost property tax revenue from the project and interest on that amount calculated in the manner provided for the interest due on delinquent state taxes under the Tax Code.

With respect to an agreement that includes a term requiring the applicant to make an indemnity payment to the school district as provided by the bill, C.S.H.B. 5 provides the following:

- the agreement must require the applicant to make an indemnity payment to the district for a tax year during the incentive period in which the district's revenue is substantially reduced as a result of the enactment of legislation, an amendment to the Texas Constitution, or a final judicial determination directly affecting the tax incentives authorized by the bill, as determined by the Texas Education Agency (TEA);
- TEA must determine whether such a law, amendment, or determination results in a substantial change that affects the foundation school program, not including facilities funding, and directly affects the agreement;
- if TEA makes such a determination, TEA must establish the method the applicable district must use to calculate the indemnity payment and must certify the calculation made by the district;
- the amount of the payment is equal to the difference between the amount of revenue the district would have received in that tax year had the legislation not been enacted, the constitution not been amended, or the final judicial determination not been made and the amount of revenue actually received by the district in that tax year;

- the agreement must provide that, as an alternative to making the payment, the applicant may elect to terminate the agreement by notifying the district in writing of the termination;
- an agreement terminated under this bill provision is void and all remaining obligations and benefits under the agreement and under the bill's provisions relating to the agreement terminate on the date the agreement is terminated; and
- the agreement may not require the applicant to pay back any benefit the applicant received under the agreement before the date the agreement is terminated.

With respect to an agreement that includes a term authorizing the school district to terminate the agreement if the district determines that the indemnity payment made by the applicant would not fully reimburse the district as required by the bill, C.S.H.B. 5 provides the following:

- the district must notify the applicant in writing of the termination;
- such a terminated agreement is void and all remaining obligations and benefits under the agreement and under the bill's provisions relating to the agreement terminate on the date the agreement is terminated; and
- the agreement may not require the applicant to pay back any benefit the applicant received under the agreement before the date the agreement is terminated.

C.S.H.B. 5 sets out additional provisions with respect to an agreement that, as follows:

- authorize an applicant and a district to modify the terms of an agreement that do not materially modify the jobs or investment requirements prescribed by the agreement;
- authorize a district to impose a fee of \$15,000 for an amendment to an agreement;
- require the district to append to the agreement the economic benefit statement prescribed by the bill applicable to the project that is the subject of the agreement; and
- require the district to submit each agreement entered into by the district to the comptroller not later than the seventh day after the date the agreement is entered into.

Incentive Period

Duration

C.S.H.B. 5 establishes that an incentive period pertaining to an eligible project is the period specified in the agreement for the project, which must be a period of 10 consecutive tax years. An incentive period may not begin earlier than January 1 of the first tax year following the construction completion date or later than January 1 of the first tax year following the 10th anniversary of the date the agreement is entered into.

Deferral

C.S.H.B. 5 establishes that the beginning date of an incentive period specified in an agreement pertaining to an eligible project is deferred if the applicant does not satisfy the minimum investment requirement applicable to the project on or before the date the incentive period is specified to begin under the agreement. The incentive period is deferred until January 1 of the year following the year in which the applicant satisfies the investment requirement pertaining to the project. The deferral of an incentive period does not affect the date on which the incentive period ends as prescribed by the agreement.

Modification

C.S.H.B. 5 provides for the modification of the incentive period as follows:

- an applicant may propose to modify the beginning and ending dates of the incentive period as provided under these provisions;

- the applicant must provide notice of the proposed modification to the comptroller and the district not later than the 90th day before the first day of the specified incentive period or as proposed to be modified, whichever is earlier;
- the applicant must revise the most recent economic benefit statement as necessary to reflect the proposed change to the incentive period and must include the revised economic benefit statement with the notice provided to the comptroller and the district proposing the modification;
- with regard to the project as proposed to be modified, the comptroller must make the finding that the amounts that would be generated over the applicable period are sufficient to offset the district's lost property tax revenue or the comptroller must determine that the finding cannot be made;
- the comptroller must notify the applicant and the district of the comptroller's finding or determination not later than the 60th day after the date the comptroller receives notice from the applicant of the proposed modification;
- the applicant may appeal the comptroller's determination through a contested case hearing conducted by the State Office of Administrative Hearings and, if applicable, judicial review in the manner provided by the bill; and
- the incentive period for the project may not be modified if, as follows:
 - the comptroller determines that the finding cannot be made that, with respect to the project as proposed to be modified, the amounts that would be generated over the applicable period are sufficient to offset the district's lost property tax revenue; or
 - if the determination is appealed, the applicant is not successful on appeal before the beginning of the original or modified incentive period, whichever is earlier.

Computation of Tax Sharing Amount

C.S.H.B. 5 establishes that an applicant's tax revenue savings for eligible property that is subject to a tax abatement agreement is an amount equal to the product of:

- for a tax year during the period in which the M&O property tax rate is zero as provided by the bill, the amount computed by dividing the appraised value of the property for that tax year by 100 and the district's adopted M&O property tax rate for that tax year; and
- for a tax year during the incentive period prescribed by the agreement, an amount equal to the product of:
 - the amount computed by subtracting the property's taxable value as determined under the agreement from the appraised value of the property for that tax year; and dividing the amount by 100; and
 - the district's adopted M&O property tax rate for that tax year.

C.S.H.B. 5 establishes that an applicant's tax sharing amount for a tax year during the period during which the district's M&O property tax rate is zero is equal to 20 percent of the applicant's tax revenue savings as computed for that tax year. The bill provides for the calculation of an applicant's tax sharing amount for a tax year during the incentive period based on the applicant's tax revenue savings as computed under the bill, as follows:

- for savings of \$3 million or less, the amount is equal to the product of the amount computed and the applicable tax savings percentage specified in the agreement between the applicant and the school district, which may not exceed 30 percent;
- for savings of more than \$3 million but less than \$7 million, the amount is equal to the sum of the following amounts:
 - the product of \$3 million and the applicable tax savings percentage specified in the agreement, which may not exceed 30 percent; and
 - the product of the difference between the amount computed and \$3 million and the applicable tax savings percentage specified in the agreement, which may not exceed 20 percent; and

- for savings of \$7 million or more, the amount is equal to the sum of the following amounts:
 - the product of \$3 million and the applicable tax savings percentage specified in the agreement, which may not exceed 30 percent;
 - the product of \$4 million and the applicable tax savings percentage specified in the agreement, which may not exceed 20 percent; and
 - the product of the difference between the amount computed and \$7 million and the applicable tax savings percentage specified in the agreement, which may not exceed 10 percent.

Failure to Comply With Jobs or Wage Requirement

C.S.H.B. 5 makes an applicant liable to the state for a penalty if the applicant fails to maintain at least the number of required jobs prescribed by the tax abatement agreement to which the applicant is a party during the periods covered by two consecutive biennial compliance reports submitted by the applicant. The amount of the penalty is equal to the product of the following, subject to a cap on the total penalty as provided by the bill:

- the difference between the number of required jobs prescribed by the agreement and the number of required jobs actually created as stated in the most recent biennial compliance report submitted by the applicant; and
- the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by TWC.

C.S.H.B. 5 makes an applicant liable to the state for a penalty if the applicant fails to meet the average annual wage requirement prescribed by the agreement to which the applicant is a party, if any, during the periods covered by two consecutive biennial compliance reports submitted by the applicant. The amount of the penalty is equal to the difference between the following products, subject to a cap on the total penalty as provided by the bill:

- the product of the actual average annual wage paid to all persons employed by the applicant in connection with the project that is the subject of the agreement as computed under the bill and the number of required jobs prescribed by the agreement; and
- the product of the average annual wage prescribed by the agreement and the number of required jobs prescribed by the agreement.

C.S.H.B. 5 caps the amount of an applicable penalty imposed on an applicant at the amount of the property tax benefit received by the applicant under the agreement that is the subject of the applicable penalty.

C.S.H.B. 5 requires an applicant, on request of the comptroller, to provide to the comptroller a schedule of required jobs created as of the date of the request under an agreement to which the applicant is a party. The bill establishes that a determination by the comptroller that an applicant has failed to meet the applicable jobs or wage requirement is a deficiency determination under the Tax Code and further establishes that a penalty imposed on an applicant is an amount the comptroller is required to collect, receive, administer, or enforce, and is subject to the payment and redetermination requirements of the Tax Code as applicable to state taxation. A redetermination of the comptroller's determination is a contested case as defined by the Administrative Procedure Act. The bill authorizes an applicant to challenge under certain provisions of the Tax Code governing taxpayers' suits a determination that imposes a penalty on the applicant if the applicant contends that the amount of the penalty is unlawful or that the comptroller may not legally demand or collect the amount. The bill requires the comptroller to deposit a penalty collected, including any interest applicable to the amount, to the credit of the foundation school fund.

Audit of Agreements by State Auditor

C.S.H.B. 5 requires the state auditor to select and review at least three major tax abatement agreements each year to determine whether each agreement accomplishes the purposes of the

bill's provisions authorizing the agreements and the terms of each agreement were executed in compliance with the terms of those bill provisions. As part of the review, the state auditor must make recommendations relating to increasing the efficiency and effectiveness of the administration of the bill's provisions relating to the agreements.

Biennial Compliance Report by Applicant

C.S.H.B. 5 requires an applicant that is a party to a tax abatement agreement to submit a report to the comptroller using the applicable form adopted by the comptroller. An applicant must submit the report to the comptroller not later than June 1 of each even-numbered year during the term of the agreement that is the subject of the report. The bill requires the report to include the following documents and information applicable to the agreement that is the subject of the report:

- a certification by the applicant that is a party to the agreement that the applicant has met the jobs and investment requirements prescribed by the agreement, which must include:
 - a sworn affidavit stating:
 - the number of required jobs prescribed by the agreement;
 - the number of total jobs created under the agreement as of December 31 of the preceding two years, including the number of total jobs for each category of required jobs; and
 - the name and contact information of each person who employs a person in a job created under the agreement, other than the applicant or the applicant's affiliates;
 - if applicable, payroll records maintained for unemployment insurance purposes; and
 - if applicable, evidence of the number of construction jobs created and construction job credits counted by the applicant as a required job;
- the number assigned to the application by the comptroller for the agreement, name of the applicant, name of the district, and name of and contact information for the applicant's representative;
- the number of total jobs, not including construction job credits counted by the applicant as a required job, created by the project in each of the preceding two years;
- the total wages paid for total jobs, not including wages paid for construction jobs, in each of the preceding two years;
- the number of construction jobs created, as determined in the manner provided by the bill;
- the total amount of the applicant's investment, including any additional amount invested by the applicant after the incentive period begins;
- the appraised and the taxable value of all property composing the project for each previous tax year of the agreement;
- the amount of school district M&O and I&S property taxes imposed on the property composing the project and paid by the applicant for each previous tax year of the agreement;
- the amount of school district property taxes that would have been imposed on the property composing the project and paid by the applicant in the absence of the agreement for each previous tax year of the agreement;
- the amount of payments made by the applicant to the district as prescribed by the agreement for each previous tax year of the agreement, listed by type of payment; and
- the amount of property taxes imposed on the property composing the project by each taxing unit other than the district and paid by the applicant for each previous tax year of the agreement, stated by taxing unit.

C.S.H.B. 5 requires an applicant to also include the following along with the certification in a report for the period that includes the first year of the incentive period as prescribed by the agreement that is the subject of the report or as deferred:

- a list of the property tax account numbers assigned to the property composing the project;
- the current total appraised value of the property composing the project; and
- if applicable, a statement that the incentive period was deferred because the applicant did not meet the minimum investment requirement prescribed by the agreement before the date specified in the agreement.

School District Report

C.S.H.B. 5 requires a district that is a party to a tax abatement agreement to submit a report to the comptroller not later than June 1 of each even-numbered year beginning in the first even-numbered year following the year in which the school district's governing body approves the application for the project that is the subject of the agreement and ending in the last even-numbered year before the third anniversary of the expiration of the incentive period prescribed by the agreement. The report must include the following information:

- the total amount received from the applicant under the agreement for each previous year;
- the total amount of any other direct or indirect benefit received from the applicant for each previous year, including an in-kind contribution; and
- the purposes for which the payments and benefits were used by the district.

Biennial Report to the Legislature by the Comptroller

C.S.H.B. 5 requires the comptroller, not later than December 1 of each even-numbered year, to submit to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature a report on the tax abatement agreements entered into under the bill's provisions. The report must include the following:

- an assessment of the following with regard to the agreements, considered in the aggregate:
 - the total number of jobs created in Texas;
 - the total effect on personal income in Texas;
 - the total amount of investment in Texas;
 - the total taxable value of property on the tax rolls in Texas resulting from the agreements, including property subject to an agreement that has expired;
 - the total value of property subject to agreements that have not expired; and
 - the total fiscal effect resulting from the agreements on the state and on local governments in Texas; and
- an assessment of each agreement that states for each agreement:
 - the number of required jobs prescribed by the agreement;
 - the number of jobs actually created under the agreement, including:
 - each job maintained in the usual course and scope of the applicant's business;
 - each job performed by an independent contractor and the independent contractor's employees at the project site;
 - each construction job credit counted by an applicant as a required job; and
 - any additional jobs created or maintained in connection with the project that is the subject of the agreement, if reported by the applicant;
 - the number of total jobs created under the agreement, if the term of the agreement has expired;
 - the amount of the investment specified by the agreement;
 - the amount of the actual investment made for the applicable project before the expiration of the agreement;
 - the difference between the amount of property taxes that would have been imposed on the property composing the applicable project in the absence of the agreement and the amount of property taxes actually imposed on that property during the term of the agreement;

- the total amount of state and local tax revenue attributable to the applicable project during the term of the agreement;
- the total amount received by the district from the applicant under the agreement for each previous year and the purposes for which they were used; and
- the total amount of any other direct or indirect benefit received by the district from the applicant for each previous year, including an in-kind contribution, and the purposes for which they were used.

The bill prohibits the comptroller from including in the report information that is confidential under law and authorizes the comptroller to use standard economic estimation techniques, including economic multipliers, to prepare the portion of the report regarding the aggregate assessment of the impacts of the agreements. The comptroller may require an applicant to submit information required to complete the report on a form prescribed by the comptroller.

Conflict of Interest

C.S.H.B. 5 prohibits a person from directly or indirectly representing, advising, or providing a service to both an applicant and a school district in connection with the same application submitted or agreement entered into.

Treatment of Payments to School Districts

C.S.H.B. 5 prohibits a payment by an applicant to a school district under the bill, other than a payment of property taxes imposed by the district, from being treated as tax revenue collected by the district for any purpose under statutory provisions relating to the foundation school program (FSP) or those providing options to reduce local revenue in excess of the district's entitlement amount under the FSP.

Confidentiality of Certain Business Information

C.S.H.B. 5 makes confidential and exempt from disclosure under state public information law information provided to a district or the comptroller by an applicant that is a trade secret, as defined by the Civil Practice and Remedies Code, and any payroll records included in an applicant's biennial compliance report to the comptroller.

Internet Posting of Information

C.S.H.B. 5 requires the comptroller to post on the comptroller's website the following information received by the comptroller:

- each application for a tax abatement agreement submitted;
- each map and economic benefit statement required to be submitted with an application;
- each amendment to an application;
- each agreement entered into; and
- each biennial compliance report submitted.

The bill requires the comptroller to post such information as soon as practicable after the date the comptroller receives the information and requires the application-related materials to be posted not later than the 10th business day after the date of receipt. The comptroller must continue to post this information until the date the agreement to which the information relates expires.

Rules and Forms

C.S.H.B. 5 requires the comptroller to adopt rules and forms necessary to implement and administer the bill's provisions providing for the tax abatement agreements, including:

- rules for determining whether an applicant meets the jobs and investment requirements and authorizing an applicant or district to submit any required form or information electronically; and

- forms to be used by an applicant when applying for an agreement or when submitting the biennial compliance report and forms to be used by a district in submitting its report to the comptroller.

The bill requires the comptroller to provide without charge one copy of the rules and forms that are adopted to any person who states that the person intends to submit an application to a district.

Purpose

C.S.H.B. 5 establishes the following as the purposes of the bill's provisions providing for the tax abatement agreements:

- creating new, high-paying permanent jobs and construction jobs in Texas;
- encouraging financially positive economic development in Texas;
- providing a temporary competitive economic incentive for attracting large-scale manufacturing projects to Texas that, in the absence of the provisions providing for such agreements, would likely locate in another state or nation;
- strengthening the security and resource independence of the state and nation by encouraging energy and water infrastructure development, new and expanded electric power generation, and electric grid reliability projects;
- promoting the relocation of offshore manufacturing facilities to Texas;
- making the state a national and international leader in new and innovative technologies;
- encouraging the establishment of advanced manufacturing industry sectors critical to national defense and health care;
- creating new wealth, raising personal income, and fostering long-term expansion of state and local tax bases;
- providing growing and sustainable economic opportunity for Texas residents; and
- incentivizing the preceding objectives in a balanced, transparent, and accountable manner.

Definitions

C.S.H.B. 5 sets out the following definitions, among others, applicable to the bill's provisions providing for the tax abatement agreements:

- "additional job" means a full-time job in connection with an eligible project that is not a required job for the same project;
- "applicant" means a person that applies for, or enters into an agreement providing for, a limitation on the taxable value of eligible property used as part of an eligible project, including the person's assignees or successors-in-interest;
- "appraised value," "tax year," and "taxing unit" have the same meaning assigned by the Property Tax Code;
- "construction completion date" means the date on which an eligible project is first capable of being used for the purposes for which it is constructed;
- "construction job" means an otherwise full-time job that is temporary in nature and is performed before the start of the incentive period applicable to an eligible project to perform construction, maintenance, remodeling, or repair work for an applicant in connection with the project;
- "construction period" means the period prescribed by an agreement as the construction period of the eligible project that is the subject of the agreement;
- "grid reliability project" means a project:
 - that generates base load or dispatchable electricity for the power grid, including from thermal sources, or that provides stored energy to the power grid from batteries, regardless of power source;
 - that increases the output capacity or reliability of an existing dispatchable electric power generation facility or that replaces dispatchable electric power generation assets to extend the useful life of the facility, including equipment that enables the use of multiple fuels;

- that creates or expands the capability to store fuel used by an electric power generation facility, regardless of whether the fuel is stored at the facility site;
- to produce hydrogen fuel or feed stock;
- that is a natural gas terminal or storage facility; or
- that is a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;
- "incentive period" for an eligible project means the period prescribed by the agreement pertaining to the project during which the eligible property used as part of the project is subject to a limitation on taxable value;
- "independent contractor" has the definition provided under Labor Code provisions providing for workers' compensation coverage of certain independent contractors;
- "investment" means the costs incurred by an applicant to acquire or construct eligible property composing an eligible project, other than the cost of land or inventory;
- "manufacturing project" means a project primarily engaged in activities described by sectors 31-33 of the 2007 North American Industry Classification System, including semiconductor fabrication cleanrooms and equipment as defined by the Limited Sales, Excise, and Use Tax Act;
- "metropolitan statistical area" means an area so designated by the U.S. Office of Management and Budget;
- "national or state security project or supply chain infrastructure project" means a grid reliability project or a seawater or brackish groundwater desalination project;
- "required job" means a job that an applicant commits to create or demonstrate in connection with an eligible project; and
- "total jobs" means the sum of required jobs and additional jobs in connection with an eligible project.

Foundation School Program Financing

C.S.H.B. 5 amends the Education Code to incorporate the tax abatement agreements provided for by the bill into various financing formulas under the FSP. Specifically, the bill does the following:

- with respect to the formula used to calculate a school district's maximum compressed tax rate and the use in that formula of "E," which is defined as the expiration of the exclusion of appraised property value for the preceding tax year that is recognized as taxable property value for the current tax year, the bill includes property no longer subject to a limitation on taxable value under a tax abatement agreement entered into as provided by the bill's provisions in the formula used to determine "E"; and
- with respect to the calculation of a school district's share of the FSP, the bill makes provisions requiring the commissioner of education to exclude a portion of the market value of property not otherwise fully taxable by the district when determining "DPV," which is the taxable value of property in the district for the current tax year as provided by the comptroller's study of school district property values, applicable now with respect to the tax abatement agreements provided for by the bill, rather than the former Chapter 313 agreements.

However, the bill provides for those provisions regarding the determination of "DPV" to continue to apply to a Chapter 313 agreement that was in effect on January 1, 2023.

Enterprise Zones

C.S.H.B. 5 amends the Government Code to specify that the designation of an area as an enterprise zone under the Texas Enterprise Zone Act is also a designation of the area as a reinvestment zone for limitations on taxable value under a tax abatement agreement entered into as provided by the bill's provisions.

Various Tax Code Provisions

C.S.H.B. 5 amends the Tax Code to do the following with respect to tax abatement agreements entered into as provided by the bill's provisions:

- require a chief appraiser, when compiling and sending to the Texas Economic Development and Tourism Office annually a list of properties in the appraisal district with a market value of \$100 million or more or that are subject to a Chapter 313 agreement, to include also any properties subject to a limitation on taxable value under an agreement entered into as provided by the bill;
- exclude any new property value of property subject to such an abatement agreement from the current total value of a school district when determining a district's "current total value" for property tax assessment purposes;
- prohibit the comptroller from issuing a franchise tax credit for a clean energy project before the expiration of such an agreement regarding the project for which the credit is issued; and
- authorize a school district's governing body to designate an area entirely within the district's territory as a reinvestment zone under the Property Redevelopment and Tax Abatement Act if the governing body finds that, as a result of the designation and the granting of a limitation on taxable value under such an agreement for property located in the reinvestment zone, the designation is reasonably likely to:
 - contribute to the expansion of primary employment in the reinvestment zone; or
 - attract major investment in the reinvestment zone that would be a benefit to property in the reinvestment zone and to the district and contribute to the economic development of the region of Texas in which the district is located.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Tax Abatement Agreements

The introduced and the substitute both relate to tax abatement agreements between certain persons and public school districts. However, the substitute contains substantially greater detail and structural elements with respect to the agreements and their execution, thereby providing a more expansive framework for the operation and oversight of the agreements. Specifically, the substitute includes provisions relating to the following that are absent from the introduced:

- an expiration date of December 31, 2036, for the provisions providing for the agreements;
- job and investment requirements for certain projects and repercussions for the failure of an applicant to comply with a jobs or wage requirement;
- what the taxable value of eligible property is under an agreement;
- a school finance impact report, which must be included with an application;
- contested case hearings on the comptroller's determination not to recommend approval of an application and judicial review under the substantial evidence rule of such a determination;
- the specific contents of an agreement, with attendant provisions applicable to an applicant and eligible project;
- the incentive period, including the duration of the period, the beginning and ending dates of the period, deferral of the period, and the modification of the period;

- the audit of three major agreements annually by the state auditor;
- a biennial report from the comptroller to the legislature on the agreements entered into;
- conflict of interest protections; and
- the treatment of payments made to districts.

Eligibility

Whereas the introduced made the tax abatement agreements available to the owner of a new investment project, defined as the construction and operation of new improvements to realty or placement into service in Texas new tangible personal property that did not exist on the date of the agreement, the substitute makes the agreements available to a person who proposes to construct an eligible project in a school district. Accordingly, the substitute sets out a definition of "eligible project," which was not in the introduced, and which is a project that:

- is a national or state security project or supply chain infrastructure project;
- is a manufacturing project; or
- requires an investment in a school district in Texas of more than \$1 billion.

The introduced, on the other hand, defined "qualified industry" to mean manufacturing, critical infrastructure, or national and state security and critical domestic supply chain support. This definition, however, was not made specifically applicable to an applicant, was not used again in the introduced once defined, and is not included in the substitute, though, as previously described, the substitute contemplates eligible projects of a similar nature to those referenced in the introduced's definition.

Application

The substitute and introduced both set out application content requirements, on a form prescribed by the comptroller, but the substitute revises the requirements for the contents of an application as set out by the introduced to do the following:

- include among the required contents:
 - the legal description of the property on which the project is proposed to be located;
 - the applicable number of required jobs for the proposed project;
 - a list of each taxing unit in which the project is proposed to be located; and
 - the proposed incentive period;
- exclude the requirement in the introduced for the application to include the county in which the district is located or the county in which the project is located if the district is in more than one county;
- expand the scope of the requirement in the introduced for the application to include projections on when the construction on the project will begin and end and when commercial operations will start by requiring that information to be included as part of a broader projected timeline for construction and completion of the proposed project;
- clarify that the certification required to be included is a certification of the accuracy of the information included in the application; and
- expand the scope of the requirement for the application to include the name of the existing reinvestment or enterprise zone in which the proposed project will be located to also require the name of any proposed reinvestment or enterprise zone in which the proposed project will be located to be included in the application.

The substitute includes a requirement absent from the introduced for the application form to allow the applicant to segregate certain confidential information from other information in the application.

While the introduced required an applicant to pay an application fee, no amount was specified. The substitute requires the fee to be in amount determined by the district, not to exceed \$60,000 for an initial application, inclusive of the costs of processing the application, retaining professional services, preparing the school finance impact report, and, if applicable, creating a

reinvestment zone or enterprise zone. The substitute includes a requirement not in the introduced for an applicant to provide along with their application a map showing the site of the proposed project and an economic benefit statement prepared in connection with the proposed project.

The substitute and introduced both set a deadline for a district to forward an application to the comptroller. The introduced set the deadline at the 30th day after receipt of the application but the substitute sets the deadline at the seventh day after receipt. The substitute includes provisions not in the introduced that:

- authorize the comptroller to request that an applicant provide any additional information the comptroller reasonably determines is necessary to complete the comptroller's evaluation of the application;
- authorize the comptroller to require an applicant to submit the additional information by a certain date and to extend that deadline on a showing of good cause;
- establish that the comptroller is not required to take any further action on an application until it is complete; and
- require the comptroller to notify an applicant and the pertinent district when the applicant's application is administratively complete.

Economic Benefit Statement

Both the substitute and the introduced require an applicant to submit an economic benefit statement with their application. However, whereas the introduced did not include any specific content requirements for the statement, the substitute does. Moreover, the substitute specified that the information included in the statement be provided for each year of the 25-year period covered by the statement, while the introduced did not contain such a specification. The substitute includes a provision not in the introduced authorizing an applicant to use standard economic estimation techniques, including economic multipliers, to create the statement.

Comptroller Determination Regarding Application

The introduced required the comptroller to recommend an application for approval by the district if the comptroller finds that the project provides a net economic or financial benefit to the state and prohibits the comptroller from recommending the application for approval if the comptroller finds that the project does not meet that criteria. However, the substitute sets out a more detailed provision regarding the circumstances under which the comptroller must recommend that a district approve a submitted application, as follows:

- the comptroller must notify an applicant and a district of the comptroller's determination not later than the 60th day after the date the comptroller determines the application is complete; and
- the comptroller must recommend approval if the comptroller finds that:
 - the proposed project that is the subject of the application is an eligible project under the bill's provisions;
 - the proposed project is reasonably likely to generate, before the 25th anniversary of the last day of the incentive period, state or local tax revenue, including property tax revenue attributable to the effect of the project on the state economy, in an amount sufficient to offset the school district M&O property tax revenue lost as a result of the agreement; and
 - the agreement is a determining factor in the applicant's decision to make the investment and locate the project in Texas.

The substitute also includes a provision absent from the introduced making the required finding of the agreement in the immediately preceding bulleted item inapplicable to a proposed grid reliability project.

School District Action on Application

The substitute sets the deadline for a district to approve or disapprove an application following receipt of the comptroller's determination regarding whether to recommend approval at the 35th

day after receipt, whereas the introduced did not set a hard deadline for the approval or disapproval, requiring approval or disapproval within days of receiving the recommendation. The substitute includes provisions not in the introduced authorizing a district to extend that 35-day deadline on written request of the applicant and providing that the school district's governing body may approve an application only if the comptroller recommends the application be approved. In addition, the substitute includes the following provisions, absent from the introduced, related to a district's action on an application:

- provisions establishing a process for amending an application under which the governing body of a district that disapproves an application may propose amendments to the application and reconsider the amended application and under which the amended application must be submitted to the comptroller for a redetermination regarding the application;
- a provision requiring the presiding officer of a district's governing body to notify the applicant and the comptroller of the governing body's approval or disapproval of an application not later than the seventh day after the date the governing body approves or disapproves the application;
- a provision prohibiting an employee or representative of a school district, a member of the governing body of the district, or any other person from intentionally or knowingly soliciting, accepting, agreeing to accept, or requiring any payment of money or transfer of property or other thing of value, directly or indirectly, to the district, an employee or representative of the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an application, except for a payment authorized by the bill; and
- a provision prohibiting an applicant, an employee or representative of the applicant, or any other person from intentionally or knowingly offering, conferring, agreeing to confer, or making a payment of money or transfer of property or other thing of value, directly or indirectly, to the district, an employee or representative of the district, a member of the district's governing body, or any other person in recognition of, anticipation of, or consideration for approval of an application, except for a payment authorized by the bill.

Tax Savings; Tax Sharing

Whereas the introduced required an applicant to annually calculate the tax savings from the agreement by multiplying the school district M&O property tax rate by the difference between the taxable value in the absence of the agreement and the taxable value as specified by the agreement, as shown on the tax bill received by the applicant from the district, the substitute establishes instead that an applicant's tax revenue savings for eligible property that is subject to an agreement is an amount equal to the product of:

- for a tax year during the period in which the M&O property tax rate is zero as provided by the bill, the amount computed by dividing the appraised value of the property for that tax year by 100 and the district's adopted M&O property tax rate for that tax year; and
- for a tax year during the incentive period prescribed by the agreement:
 - the amount computed by subtracting the property's taxable value as determined under the agreement from the appraised value of the property for that tax year; and dividing the amount by 100; and
 - the district's adopted M&O property tax rate for that tax year.

The substitute does not include the provision from the introduced, with respect to the distribution of savings from the agreement, requiring the applicant, as provided by rule, to retain the greater percentage of any tax savings resulting from the agreement each year of the term of the agreement and remit to the comptroller the lesser percentage of the tax savings for distribution to the applicable school district and to the general revenue fund. The substitute sets out provisions not in the introduced that instead establish various formulas for use in calculating an applicant's tax sharing amount for a given year during the term of the agreement. The substitute

does not contain any analogous provision as in the introduced requiring certain savings to be remitted to the comptroller.

Biennial Compliance Report

The substitute and introduced both set out provisions requiring that a biennial compliance report be submitted to the comptroller but the substitute changes the date by which an applicant must submit the biennial compliance report each even-numbered year from April 1, as in the introduced, to June 1. Whereas the introduced required the reports to contain information for each year since the application was approved and for three years after the limitation has expired, the substitute requires the report instead to be submitted during the term of the agreement. With respect to the required contents, the substitute, as follows:

- requires a report to contain the following information, which the introduced did not:
 - a certification by the applicant that is a party to the agreement that the applicant has met the jobs and investment requirements prescribed by the agreement, which must include certain prescribed information; and
 - the amount of property taxes imposed on the property composing the project by each taxing unit other than the district and paid by the applicant for each previous tax year of the agreement, stated by taxing unit;
- revises the requirement shared by both the substitute and the introduced for the report to include the total number of jobs created by the project by specifying that the reportable period is each of the preceding two years and by requiring construction job credits counted as a required job to be excluded from the total number reported;
- revises the requirement shared by both the substitute and the introduced for the report to include the total wages paid by specifying that the reportable period is each of the preceding two years and by requiring wages paid for construction jobs to be excluded from the total wages reported;
- requires the report to include the number of construction jobs created as a standalone item, which the introduced did not;
- revises the requirement shared by both the substitute and the introduced for the report to include the total amount of the investment made by specifying that the report must include any additional amount invested by the applicant after the incentive period begins;
- replaces the requirement in the introduced for the report to include the appraised value of all property associated with the project, including property subject to the agreement and any other real or tangible personal property owned by the applicant as part of the project, with a requirement for the report to include the appraised value of all property composing the project and specifies that the information must be reported for each previous tax year of the agreement;
- replaces the requirement in the introduced for the report to include the taxable value of all property associated with the project, including property subject to the agreement and any other real or tangible personal property owned by the applicant as part of the project, for school district M&O property tax purposes, with a requirement for the report to include the taxable value of all property composing the project and specifies that the information must be reported for each previous tax year of the agreement;
- specifies that, with respect to the requirements in the substitute and the introduced for the report to include the total amount of M&O taxes paid by the applicant, the total amount of I&S taxes paid by the applicant, and the total amount of school district property taxes that would have been paid in the absence of the agreement, the report must include that information only with respect to the taxes imposed on the property composing the project and must include that information for each previous tax year of the agreement; and
- replaces the requirement in the introduced for the report to include the total amount of payments other than property taxes made by the applicant to the school district with a requirement for the report to include the amount of payments made by the applicant to the school district as prescribed by the agreement for each previous tax year of the agreement, listed by type of payment.

The substitute includes provisions not in the introduced establishing certain additional content requirements applicable only to a report required to be submitted by an applicant for the period that includes the first year of the incentive period as prescribed by the agreement that is the subject of the report or as deferred.

School District Report

The substitute and the introduced both require a district to submit a report to the comptroller each even-numbered year, but the substitute changes the deadline for submission from April 1, as in the introduced, to June 1 and does not include the specification from the introduced that the district must submit the report at its own expense. Regarding the contents of the report, the substitute revises the requirement from the introduced for the report to include the total amount of payments other than property taxes received from the applicant and the total amount of any other direct or indirect benefits received from the applicant to specify that such information must be provided for each previous year and to omit the language excluding property tax payments from the total amount of payments that must be reported.

Internet Posting of Information; Confidentiality

The introduced and the substitute both provide for the posting of certain information. However, while the substitute retains the requirement for the comptroller to post each application for an agreement, the rest of the required information differs as follows:

- the substitute omits the following from the information that must be posted:
 - the applicant's form of business and, if applicable, the name, address, and Texas taxpayer identification number of the applicant's parent entity;
 - the school district's name and address, the county in which the district is located or the county in which the project is located if the district is in more than one county, and the contact information of the district's authorized representative;
 - the address of the project or proposed facility, if different from the applicant's address; and
 - a brief description of the project, including the classification of the project as designated by the North American Industry Classification System as of the date of the application; and
- the substitute requires instead that the following be posted:
 - each map and economic benefit statement required to be submitted with an application;
 - each agreement entered into; and
 - each biennial compliance report submitted.

Whereas the introduced required the comptroller to publish any subsequent revisions of an application or of the information required to be submitted, the substitute requires that only amendments made to an application be published. Moreover, the substitute includes certain deadlines for the comptroller to publish the various information, which the introduced did not, as well as a requirement, also absent from the introduced, for the information to be posted until the date the related agreement expires. Also, whereas the introduced referenced confidentiality protections, none were provided in the bill. The substitute, on the other hand, does provide for the confidentiality of certain business information and clarifies that the posting of information by the comptroller as required by the bill is subject to those confidentiality protections.

Rules and Forms

While both the introduced and the substitute require the comptroller to adopt rules and forms necessary to implement and administer the bill's provisions relating to the agreements, the substitute includes provisions absent from the introduced specifying certain rules and forms that must be adopted. In addition, the substitute also includes a requirement not in the introduced for the comptroller to provide without charge one copy of the rules and forms to any person who states that the person intends to submit an application to a school district.

Definitions

While the substitute and the introduced share substantially the same definition of "agreement," the substitute does not include the definitions from the introduced of "new investment project" and "qualified industry," and the substitute includes definitions for the following terms, which were not in the introduced and none of which are applicable to the type of projects that were defined in the introduced:

- "additional job";
- "applicant";
- "appraised value," "tax year," and "taxing unit";
- "construction completion date";
- "construction job";
- "construction period";
- "eligible project";
- "eligible property";
- "full-time job";
- "grid reliability project";
- "incentive period";
- "independent contractor";
- "investment";
- "manufacturing project";
- "metropolitan statistical area";
- "national or state security project or supply chain infrastructure project";
- "required job"; and
- "total jobs."

Purpose

The substitute includes, but revises, the purposes of the bill's provisions, as set out in the introduced, providing for the tax abatement agreements. Specifically, the substitute does the following:

- expands the scope of the statement in the introduced that one purpose is to strengthen the security and resource independence of the state and nation by encouraging infrastructure development to specify that the infrastructure development is energy and water infrastructure development, new and expanded electric power generation, and electric grid reliability projects;
- revises the statement in the introduced that one purpose is to encourage the establishment of advanced manufacturing industry sectors critical to national defense and security by replacing the reference to security in the introduced with a reference to health care; and
- includes as an additional purpose the incentivizing of all the stated objectives in a balanced, transparent, and accountable manner.

Other Provisions

The substitute includes provisions absent from the introduced regarding the following:

- the financing of the foundation school program;
- designation of an area as an enterprise zone under the Texas Enterprise Zone Act;
- the annual submission by a chief appraiser of a list of properties in the appraisal district that are subject in that tax year to a limitation on taxable value under a tax abatement agreement entered into as provided by the bill's provisions;
- the definition of "current total value" for purposes of the Property Tax Code provisions governing assessments;
- the issuance of franchise tax credits for clean energy projects; and

- the designation of a reinvestment zone by a school district under the Property Redevelopment and Tax Abatement Act.

Caption

The substitute changes the bill's caption from "relating to agreements to create jobs and to generate state and local tax revenue for this state," as in the introduced, to "relating to agreements authorizing a limitation on taxable value on certain property to provide for the creation of jobs and the generation of state and local tax revenue; authorizing fees; authorizing a penalty."