

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 25, 2023

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB5** by Hunter (Relating to agreements authorizing a limitation on taxable value of certain property to provide for the creation of jobs and the generation of state and local tax revenue; authorizing a fee; authorizing penalties.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB5, As Passed 2nd House : a negative impact of (\$5,991,092) through the biennium ending August 31, 2025.

However, the cost to the Foundation School Program increases to (\$336.0 million) in fiscal year 2033.

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

General Revenue-Related Funds, Ten- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to <i>General Revenue Related Funds</i>
2024	(\$2,979,688)
2025	(\$3,011,404)
2026	(\$3,011,404)
2027	(\$1,454,404)
2028	(\$2,276,404)
2029	(\$9,394,404)
2030	(\$40,865,404)
2031	(\$89,645,404)
2032	(\$194,856,404)
2033	(\$336,586,404)

All Funds, Ten-Year Impact:

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Savings/(Cost) from Foundation School Fund 193</i>	<i>Probable Savings/(Cost) from Recapture Payments Atten Crdts 8905</i>	<i>Probable Revenue Gain/(Loss) from School Districts</i>
2024	(\$2,979,688)	\$0	\$0	\$0
2025	(\$3,011,404)	\$0	\$0	\$0
2026	(\$3,011,404)	\$0	\$0	\$0
2027	(\$611,404)	(\$843,000)	\$431,000	(\$870,000)
2028	(\$611,404)	(\$1,665,000)	\$822,000	(\$1,724,000)
2029	(\$611,404)	(\$8,783,000)	\$3,967,000	(\$9,060,000)
2030	(\$611,404)	(\$40,254,000)	\$17,909,000	(\$41,528,000)
2031	(\$611,404)	(\$89,034,000)	\$42,816,000	(\$93,029,000)
2032	(\$611,404)	(\$194,245,000)	\$96,998,000	(\$201,602,000)
2033	(\$611,404)	(\$335,975,000)	\$167,035,000	(\$357,480,000)

<i>Fiscal Year</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	7.0
2025	7.0
2026	7.0
2027	7.0
2028	7.0
2029	7.0
2030	7.0
2031	7.0
2032	7.0
2033	7.0

Fiscal Analysis

The bill would amend Chapter 403 of the Government Code by adding Subchapter T, the Texas Jobs, Energy, Technology and Innovation Act.

The bill would create a program to provide temporary and limited incentives for certain large scale economic development projects in a qualified industry defined as: manufacturing facilities, utility service provision facilities including dispatchable energy generation facilities, facilities related to the development of natural resources, or critical infrastructure expansion or construction facilities.

Non-dispatchable electric generation and electric energy storage facilities would not be eligible.

- Eligibility for an agreement to reduce taxable value would be contingent on achieving minimum job and investment amounts. These minimums would not be applicable to electric generation facilities. The required investment minimums would be based on county populations as follows:
- 1) at least \$200 million in investment and 150 jobs created in counties with a population of 750,000 or more;
  - 2) at least \$100 million in investment and 100 jobs created in counties with a population of at least 250,000 but less than 750,000;
  - 3) at least \$50 million in investment and 70 jobs created in counties with a population of at least 100,000 but less than 250,000;
  - 4) at least \$20 million in investment and 20 jobs created in districts a population of less than 100,000.

The bill would provide a ten-year reduction of taxable value for school district maintenance and operations ad valorem tax for eligible property, also known as the incentive period. The bill specifies that the term of the incentive period must be 10 consecutive years. The bill permits an applicant to defer the start of the full

incentive period to not later than January 1 of the tax year following the 10th anniversary of the agreement start date.

During the incentive period, taxable values for eligible property would be based on a proportion of the project's market value and if the property were located in a qualified opportunity zone. Specifically, projects not located in a qualified opportunity zone would be limited to a school district maintenance and operations ad valorem taxable value of 50 percent of the market value of the property for that tax year. Projects that are within a qualified opportunity zone would be limited to a taxable value of 25 percent of the of the market value of the property for that tax year.

The bill also provides a 100 percent reduction of taxable value for school district maintenance and operations ad valorem tax for eligible property beginning with the tax year following the year in which the agreement is entered into and ending December 31 of the tax year that includes the construction completion date, also known as the construction period.

This bill would require the eligible applicant to:

- 1) submit the application to the Comptroller on a form prescribed by the Comptroller that includes information about the applicant, school district, proposed project, eligible property, proposed investment, proposed jobs, proposed incentive period, reinvestment or enterprise zone and brief summary of the projected economic benefits;
- 2) include with the application:
  - a. an application fee payable to the Comptroller to cover application evaluations administrative costs;
  - b. a map of the proposed project site; and
  - c. the economic benefit statement;
- 3) enter into agreements with the Governor and school districts as specified in the bill; and
- 4) submit an biennial report to the Comptroller including the reporting information required in the bill; and
- 5) at agreement execute a performance bond in an amount the Comptroller determines to be reasonable and necessary to protect the interests of the state and school district conditioned on the applicant's compliance with the terms of the agreement.

The bill would require the Comptroller to:

- 1) adopt rules and forms necessary to implement and administer this chapter;
- 2) determine whether an application is administratively complete and whether the project proposes to meet the jobs and investment requirements;
- 3) establish criteria for the methodology to be used by an application to create an economic benefit statement;
- 4) publicly post all application information excluding any information deemed confidential;
- 5) provide a copy of received applications to the applicable school district;
- 6) recommend an application for consideration by the Governor if conditions met;
- 7) collect, receive, administer, or enforce penalties imposed for the applicant's failure to comply with the jobs or wages requirement; and
- 8) submit a biennial report to the Legislature on even numbered years.

The bill would require the Governor to:

- 1) remove any submitted applications that already have an agreement or previously disapproved by the oversight committee;
- 2) submit a list with all Governor ineligible applicants at least twice a year to the Oversight Committee;
- 3) enter into agreements with the governing body of a school district and applicants as specified in the bill; and
- 4) terminate the agreement if job or wage conditions are not met;

The bill would require the school district to:

- 1) determine whether the district agrees to enter an agreement for applications received by the comptroller within 30 days of their receipt;
- 2) hold a public hearing on received applications; and
- 3) provide written notice of the district's determination to the Comptroller, Governor and the applicant.

The bill would require the Jobs, Energy, Technology and Innovation Act Oversight Committee to, if necessary, disapprove an application if a majority of members sign a resolution by 30 days after receipt. The oversight committee may also recommend in a written report to the legislature types of projects that the committee

determines should be statutorily added to or removed from the definition of "eligible project".

The bill would require an annual audit of at least 10 percent of the agreements in effect during the current year by the state auditor and authorizes the state auditor to make recommendations relating to increasing the efficiency and effectiveness of the administration of the program.

The subchapter would expire December 31, 2033.

The bill would make conforming changes in the Education and Tax Code.

## **Methodology**

The bill will create an incentive program to provide temporary and limited incentives certain large scale economic development projects. The program would consist of 10-year reductions of eligible property school district maintenance and operations ad valorem taxable values. Additionally, the bill provides for a 100 percent reduction of taxable value on property for school district maintenance and operations ad valorem tax purposes during the construction period.

Estimated annual cohorts—or "model classes"—of future applicants to this program were created from an analysis of Chapter 313 manufacturing project data from active projects submitted from 2015 through 2022. Projects were selected based on investment amount and project type. Using the Texas Opportunity Zone mapping tool on the Texas Economic Development and Tourism Office website, selected projects were mapped to determine if they were located in qualified opportunity zones to determine their incentive values. Additionally, as added categories such as the expansion of critical infrastructure and the development of natural resources are not clearly defined, one example possible infrastructure project was added to the model class. Cohort estimates were increased 8 percent in each year to adjust for estimated annual applicant program growth.

A conservative 5 percent inflation over the model class base value is also applied to accurately reflect increased program participation due to the addition of new broad project eligibility categories as compared to the previous Chapter 313 program. Additionally, it is the opinion of this office that the adopted Senate floor amendment with "compelling factor" site selection language would not result in a reduction in the number of applicants. Consequently, the size of the model class was not reduced on account of this change.

The program adds a 100 percent reduction of taxable value during the constructions period; under the Chapter 313 program, projects were fully taxed during construction.

Estimates of the lifetime gross tax benefit for each of the nine additional annual "model classes" after 2025 were increased eight percent annually—a rate lower than the historical Chapter 313 growth rate.

Under provisions of the Education Code, the school district tax revenue loss is partially transferred to the state. The estimated cost to the Foundation School Program (FSP) is \$0.8 million in fiscal year 2027, \$1.7 million in fiscal year 2028, increasing to \$336.0 million in fiscal year 2033. The cost to the FSP includes estimated decreases in Recapture Payments - Attendance Credits of \$0.4 million in fiscal year 2027, \$0.8 million in fiscal year 2028, increasing to \$167.0 million in fiscal year 2033 as a result of school district tax revenue loss. The decrease in recapture is reflected as a savings in the table above because recapture is appropriated as a method of finance for the FSP in the General Appropriations Act.

The Comptroller's office anticipates needing to hire 7.0 Program Specialist IVs to implement the provisions of the bill. This analysis assumes staffing related costs of \$579,688 in fiscal year 2024 and \$611,404 in fiscal year 2025 and each subsequent year. The Comptroller's office anticipates technology costs of \$2.4 million per year in fiscal years 2024 through 2026.

## **Technology**

Included in the administrative costs are technology costs to the Comptroller's office totaling \$7,200,000 for 48,000 software programming hours over three fiscal years beginning in 2024, or \$2,400,000 for 16,000 hours for each fiscal year, to create a database needed to implement the provisions of this bill.

**Local Government Impact**

The fiscal impact to school districts is shown in the table above.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KK, SD, BRI, SZ