LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION
Revision 1

May 2, 2023

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB5** by Hunter (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.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB5, Committee Report 1st House, Substituted : a negative impact of ($5,480,624) through the biennium ending August 31, 2025.

However, the cost to the Foundation School Program increases to ($458.6 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:

Fiscal Year	**Probable Net Positive/(Negative) Impact to** ***General Revenue Related Funds***
2024	($2,731,250)
2025	($2,749,374)
2026	($2,749,374)
2027	($1,192,374)
2028	($2,257,374)
2029	($9,298,374)
2030	($42,295,374)
2031	($110,772,374)
2032	($258,460,374)
2033	($458,909,374)

All Funds, Ten-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Probable Savings/(Cost) from *Foundation School Fund* 193	Probable Savings/(Cost) from *Recapture Payments Atten Crdts* 8905	Probable Revenue Gain/(Loss) from *School Districts*
2024	($2,731,250)	$0	$0	$0
2025	($2,749,374)	$0	$0	$0
2026	($2,749,374)	$0	$0	$0
2027	($349,374)	($843,000)	$431,000	($870,000)
2028	($349,374)	($1,908,000)	$925,000	($1,974,000)
2029	($349,374)	($8,949,000)	$4,043,000	($9,231,000)
2030	($349,374)	($41,946,000)	$18,687,000	($43,271,000)
2031	($349,374)	($110,423,000)	$53,098,000	($115,379,000)
2032	($349,374)	($258,111,000)	$128,962,000	$267,888,000
2033	($349,374)	($458,560,000)	$226,850,000	($485,142,000)

Fiscal Year	*Change in Number of State Employees from FY 2023*
2024	4.0
2025	4.0
2026	4.0
2027	4.0
2028	4.0
2029	4.0
2030	4.0
2031	4.0
2032	4.0
2033	4.0

Fiscal Analysis

The bill would amend Chapter 403 of the Government Code to create a program to provide temporary and limited incentives for large scale manufacturing projects in a qualified industry that is defined as a national or state security project or supply chain infrastructure project, a manufacturing project (including semiconductor fabrication cleanrooms and equipment), and a project that requires $1.0 billion in investment in a school district in this state.

The bill defines "National or state security project or supply chain infrastructure project" as a grid reliability project or a seawater or brackish groundwater desalination project. A "Grid reliability project" is defined as a project that that generates base load or dispatchable electricity for the power grid, or 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.

Eligibility for an agreement to reduce taxable value would be contingent on achieving minimum job and investment amounts. The minimum investment amounts must be met prior to the beginning of the incentive period and the jobs must be created by the first year of the incentive period. These minimums would not be applicable to a national or state security project or supply chain infrastructure project. The required minimums would be based on school district taxable property values for the proceeding tax year as follows:

1) at least $100.0 million in investment and 50 jobs created in districts with taxable values of $10.0 billion or more;
2) at least $80.0 million in investment and 40 jobs created in districts with taxable values of at least $1.0 billion but less than $10.0 billion;

3) at least $50.0 million in investment and 25 jobs created in districts with taxable values of at least $500.0 million but less than $1.0 billion;
4) at least $25.0 million in investment and 10 jobs created in districts with taxable values of at least $100.0 million but less than $500.0 million; and
5) at least $10.0 million in investment and 5 jobs created in districts with taxable values of less than $100.0 million or districts that are not located in a metropolitan statistical area.

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. The bill also permits the start of the incentive period to automatically move to January 1 of the subsequent tax year if the applicant fails to make its minimum investment before the start of the incentive period without changing the end date for the incentive period.

During the incentive period, taxable values for eligible property would be based on total taxable property values in the school district for the preceding tax year and would be reduced to the following:

1) $100.0 million in a district with total taxable values of $10.0 billion or more;
2) $75.0 million in a district with total taxable values of at least $1.0 billion but less than $10.0 billion;
3) $50.0 million in taxable value taxable value of eligible property located in a district with total taxable values of at least $500.0 million but less than $1 billion would be reduced to;
4) $25.0 million in a district with total taxable values of at least $100.0 million but less than $500.0 million; and
5) $5.0 million in a district with total taxable values less than $100.0 million or a district that is not located in a metropolitan statistical area.

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 school district 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 school district in an amount not to exceed $60,000;
b. a map of the proposed project site; and
c. the economic benefit statement;
3) enter into agreements with school districts as specified in the bill; and
4) submit a biennial report to the Comptroller including the reporting information required in the bill.

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) recommend an application for approval to the school district if conditions met;
6) collect, receive, administer, or enforce penalties imposed for the applicant's failure to comply with the jobs or wages requirement; and
7) submit a biennial report to the legislature on even numbered years.

Under provisions of the bill, the comptroller would be required to recommend that a school district approve an application if it is determined that the project is eligible for an agreement, is reasonably likely to generate state or local tax revenue in an amount sufficient to offset the tax revenue lost as a result of the agreement, and the agreement is a determining factor to make the investment and locate the project in this state. However, the comptroller is not required to establish whether the agreement is a determining factor in the applicant's decision to pursue a grid reliability project in this state.

The bill would require the governing body of an individual school district to:
1) forward the application to the Comptroller within seven days of receipt from the applicant;
2) prepare a school finance report with the annual projected tax and revenue consequences for the district for the 25 years after the application was received by the district; approve or disapprove the application within 35 days of receipt of the comptroller's recommendation and notify the applicant and comptroller of its decision within seven days;
3) enter into agreements with applicants as specified in the bill;
4) submit agreements to the comptroller; and
5) submit biennial reports to the comptroller containing the total payments received from the applicant under the agreement for each previous year, including any other direct or indirect benefit, and the purposes for which the payments and benefits were used by the school district.

The bill provides that agreements may contain tax revenue savings sharing and indemnity payment provisions that are outlined in the bill. The bill outlines a specific tax sharing formula that is based on total tax benefit realized by the applicant.

The bill authorizes a penalty for failure to comply with the jobs or wage requirements. The comptroller is required to collect, administer or enforce the penalty and deposit amounts collected in the foundation school fund. The penalty may not exceed the amount of the ad valorem tax benefit received by the applicant under the agreement that is the subject of the penalty.

The bill requires an annual audit of at least three major agreements 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, 2036.

The bill makes conforming changes in the Education and Tax Code.

Methodology

The bill would create an incentive program to provide temporary and limited incentives for large scale manufacturing projects. The program would consist of 10 year reductions of eligible property taxable value for purpose of school district maintenance and operations ad valorem taxes, minimum investment and job requirements stratified by school district total taxable property values. Additionally, the bill provides for a 100.0 percent reduction of taxable value on property for school district maintenance and operations ad valorem tax purposes during the construction period.

Annual 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. School district taxable values were used to derive the reduced taxable value categories. Additionally, as desalination projects were not eligible under Chapter 313, one example desalination project was added to the model class. The model class revenue estimates were increased 8.0 percent in each year to adjust for estimated annual program growth.

The program proposed in this bill would allow projects and property not previously permitted in the Chapter 313 program, including desalination projects, natural gas terminals and natural gas storage facilities. The program adds a 100.0 percent reduction of taxable value during the constructions period while project under the Chapter 313 program were fully taxed during construction. Further, under the proposed program grid reliability projects are not subject to determining factor evaluations, job requirements, or minimum investment amounts in the program proposed by the bill which should attract projects that otherwise would not have been eligible under the prior program. Additionally, grid reliability projects that previously entered into agreements under the Chapter 313 program could be eligible for a new agreement under the proposed program since they are not required to demonstrate that the agreement is a determining factor to make the investment and locate the project in this state.

Therefore, a conservative 5.0 percent inflation over the model class base value is required to accurately reflect increased program participation due to the addition of new project types, construction period tax savings, reduced requirements for grid reliability projects and likely cross-over from projects previously approved under the Chapter 313 program.

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, $1.9 million in fiscal year 2028, increasing to $458.6 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, $0.9 million in fiscal year 2028, increasing to $226.9 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 4.0 Program Specialist IVs to implement the provisions of the bill. This analysis assumes staffing related costs of $331,250 in fiscal year 2024 and $349,374 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

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