

BILL ANALYSIS

C.S.H.B. 5169
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that current statutory provisions governing sales tax rebate agreements are tools that municipalities use to provide incentives for developers and businesses to establish operations within their areas. However, the bill author has further informed the committee that there is a potential to misuse these agreements to shift local sales tax revenue from one municipality to another in exchange for substantial sales tax rebates and payments to third-party consultants for facilitating the agreement and that these large rebate agreements no longer benefit taxpayers or the general public, as they represent a direct reduction in available funds for public safety and infrastructure investment. C.S.H.B. 5169 seeks to eliminate the misuse of sales tax through form-over-substance practices that redirect tax revenue across the state in exchange for substantial rebates to the remitter and third-party consultants.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 5169 amends the Tax Code to set out provisions relating to limitations on a rebate of municipal sales and use taxes or a grant loan based on those taxes. The bill's provisions apply to one or more agreements as follows:

- the parties to which include the following:
 - a municipality or a local government corporation or other entity created by the municipality; and
 - a retailer or an entity that is a member of the same affiliated group as a retailer;
- the terms of which include the following:
 - the relocation of an existing place of business of a retailer party to the agreement or of a retailer that is a member of the same affiliated group as a retailer or entity party to the agreement to a municipality party to the agreement from one or more other municipalities in Texas; or
 - the establishment in the municipality or a local government corporation or other entity created by the municipality of a new place of business of the retailer or an entity that is a member of the same affiliated group as a retailer, or a retailer that is a member of such an affiliated group;
- that have the effect of sales tax being payable to the municipality or a local government corporation or other entity created by the municipality instead of one or more other municipalities in Texas; and

- under which such a municipality, corporation, or other entity agrees to do the following:
 - rebate to the retailer or entity, a member of the retailer or entity's affiliated group, or another party designated by the retailer or entity an amount of tax imposed by the municipality under the Municipal Sales and Use Tax Act or an amount of revenue derived from that tax; or
 - provide a grant or loan to the retailer or entity, a member of the retailer or entity's affiliated group, or another party designated by the retailer or entity in an amount that is based on an amount of tax imposed by the municipality under that act or based on an amount of revenue derived from that tax.

C.S.H.B. 5169 limits the circumstances under which a municipality or a local government corporation or other entity created by the municipality may enter into an agreement with a retailer, a member of the retailer's affiliated group, or another party designated by the retailer that results in the relocation or establishment of a place of business described by the bill's provisions as follows:

- the agreement changes the economic position, other than through a tax benefit, of the retailer, a member of the retailer's affiliated group, or another party designated by the retailer; and
- the retailer, member of the retailer's affiliated group, or another party designated by the retailer has a substantial purpose, other than a tax benefit, for entering into the agreement.

The bill requires the comptroller of public accounts, if the comptroller determines that a municipality, corporation, or other entity has violated these provisions, to, with respect to the retailer, disregard the place of business described by the bill's provisions when determining where the sale of taxable items is consummated and revoke any sales tax permit issued for the location.

C.S.H.B. 5169 defines "affiliated group" by reference to statutory provisions governing the franchise tax.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5169 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.

The substitute omits the provisions from the introduced that did the following:

- set out provisions for an agreement between a municipality or a local government corporation or other entity created by a municipality and a business under which the following apply:
 - the business agrees to relocate to the municipality from one or more other municipalities in Texas; and
 - the municipality, corporation, or other entity agrees to:
 - rebate to the business an amount of tax imposed by the municipality under the Municipal Sales and Use Tax Act or an amount of revenue derived from that tax; or
 - provide a grant or loan to the business in an amount that is based on an amount of tax imposed by the municipality under the Municipal Sales and Use Tax Act or based on an amount of revenue derived from that tax;
- did the following if a business is relocating from one municipality in Texas to another municipality pursuant to a certain agreement:

- capped the amount of a certain rebate, grant, or loan from exceeding the amount of any similar rebate, grant, or loan provided by the municipality from which the business is relocating; and
- capped the duration of that agreement from exceeding the duration of any similar agreement between the business and the municipality from which the business is relocating;
- did the following if a business is relocating from more than one municipality in Texas to another municipality pursuant to a certain agreement:
 - capped the amount of a certain rebate, grant, or loan from exceeding the weighted average amount of any similar rebates, grants, and loans provided by the municipalities from which the business is relocating, weighted according to the amount of taxes under the Municipal Sales and Use Tax Act collected by the business in each of those municipalities; and
 - capped the duration of that agreement from exceeding the weighted average duration of any similar agreements between the business and the municipalities from which the business is relocating, weighted according to the amount of taxes under the Municipal Sales and Use Tax Act collected by the business in each of those municipalities; and
- established that the bill does not apply to an agreement entered into before the bill's effective date, except that the bill's provisions do apply to any renewal, modification, or extension of the agreement that occurred on or after the bill's effective date.

Instead, the substitute includes provisions absent from the introduced that limit and provide for the circumstances under which a municipality or a local government corporation or other entity created by the municipality may enter into an agreement with a retailer, a member of the retailer's affiliated group, or another party designated by the retailer that results in the relocation or establishment of a certain place of business. The substitute also includes a provision absent from the introduced that requires the comptroller to disregard an applicable place of business and revoke any sales tax permit issued for the location. The substitute provides for the types of agreements to which these provisions apply, which the introduced did not do. The substitute includes a definition for "affiliated group" which did not appear in the introduced.