

## **BILL ANALYSIS**

Senate Research Center

H.B. 3694  
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S/C on Emerging Technologies & Economic Dev.  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Enterprise Zone program (program) became available in 1987 for local jurisdictions and the state to partner to offer local and state incentives to businesses expanding or locating within an enterprise zone to bring economic development into certain areas. During the 78th Legislature, changes were made to the program to simplify and streamline the process. Following those changes, the 79th Legislature amended existing statute to establish that a distressed county is an enterprise zone.

H.B. 3694 enhances the program to promote job creation and capital investment in local jurisdictions throughout the state. This bill also streamlines the program and modifies language to correspond to federal terminology accurately and reflect concepts in the current statute.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 2303.003(5-a) and (7), Government Code, to redefine "office" and "qualified employee."

SECTION 2. Amends Section 2303.004, Government Code, as follows:

Sec. 2303.004. JURISDICTION OF MUNICIPALITY. (a) Creates this subsection from existing text. Provides that, for the purposes of this chapter, the territory in the municipal boundaries and in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

(b) Authorizes the governing body of a county with a population of 750,000 or more, notwithstanding Subsection (a), to nominate for designation as an enterprise project a project or activity of a qualified business that is located within the jurisdiction of a municipality located in the county. Prohibits a county, For purposes of this subsection, during any biennium from using in any one municipality more than three of the maximum number of designations the county is permitted under Section 2303.406(d)(2).

SECTION 3. Amends Section 2303.052, Government Code, as follows:

Sec. 2303.052. New heading: BANK REPORT REGARDING PROGRAM. Requires the Texas Economic Development Bank (bank) to include certain information regarding the enterprise zone program in the report required by Section 489.107. Deletes existing text requiring the bank to conduct a continuing evaluation of the enterprise zone program, to develop data from available information demonstrating the relationship between the incentives provided under this chapter and the economy, to biennially review local incentives, and to submit to the governor, the legislature, and the Legislative Budget Board a report on or before January 1 of each year.

SECTION 4. Amends Subchapter D, Chapter 2303, Government Code, by adding Section 2303.203, as follows:

Sec. 2303.203. PARTICIPATION BY NEIGHBORHOOD ENTERPRISE ASSOCIATIONS. Provides that each neighborhood enterprise association (association) organized under Subchapter E (Housing Rehabilitation Contracts) should be encouraged to participate in planning and carrying out activities in the enterprise zone.

SECTION 5. Amends Chapter 2303, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. NEIGHBORHOOD ENTERPRISE ASSOCIATIONS

Sec. 2303.301. ORGANIZATION OF NEIGHBORHOOD ENTERPRISE ASSOCIATION. (a) Authorizes individuals residing in an enterprise zone to organize a association.

(b) Authorizes only one association to exist for a geographic neighborhood area.

(c) Requires the association to be a nonprofit corporation formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, and to be eligible for federal tax exemption under Section 501(c) of the Internal Revenue Code of 1986.

(d) Requires the certificate of formation to describe the geographic neighborhood area of the association, and authorizes the association to engage in business only in the enterprise zone in which the neighborhood area is located.

(e) Requires the organizers to publish in a newspaper of general circulation in the area designated as an enterprise zone an explanation of the proposed association and the organizers' rights in the association.

(f) Requires a copy of the association's certificate of formation and its bylaws to be available for public inspection at the office.

Sec. 2303.302. CERTIFICATION OF ASSOCIATION. (a) Requires an association's board of directors to apply to the bank for certification as a neighborhood enterprise association after an association is formed.

(b) Prohibits the bank from granting certification unless the association has hired or appointed a suitable chief executive officer.

Sec. 2303.303. MEMBERSHIP; VOTING. (a) Authorizes the membership of an association to be composed only of residents of the enterprise zone.

(b) Entitles an individual to be a member of an association if the individual is a resident of the association's geographic neighborhood area, and is of voting age.

(c) Requires a member of the association to have been a resident of the association's neighborhood area for at least one year to be entitled to vote.

Sec. 2303.304. POWERS OF NEIGHBORHOOD ENTERPRISE ASSOCIATIONS. (a) Authorizes an association to purchase or lease publicly or privately owned real property.

(b) Authorizes an association with the approval of the bank to perform certain tasks.

(c) Authorizes a service to be provided under Subsection (b) by the association or, if feasible and prudent and after agreement with the bank, by a private firm or organization.

(d) Authorizes the governmental entity responsible for providing a service in the enterprise zone to contract with an association to provide services in an amount

equal to the amount saved by the entity by the provision of the service under the contract.

(e) Provides that an association has powers established by other law or rule, including powers available to similar corporations under state law.

(f) Authorizes an association to enter into a contract and participate in a joint venture with the state or a state agency or institution.

(g) Authorizes an association to receive money without approval of the bank.

Sec. 2303.305. APPROVED PROJECTS. (a) Authorizes an association, on approval of the bank, to carry out projects other than those under Section 2303.304(b). Requires the association to submit to the bank an application that describes the nature and benefit of the project and that specifically states certain information.

(b) Provides that the application is considered to be approved if the bank does not disapprove an application submitted under Subsection (a) before the 45th day after the day of receipt of the application.

(c) Requires the bank to notify the association of the specific reasons for the decision and to allow the association to amend the application on or before the 60th day after the date of the notification if the bank disapproves an application submitted under Subsection (a).

(d) Requires the association to furnish to the bank an annual statement of the programmatic and financial status of each approved project, and an audited financial statement of the project.

SECTION 6. Amends Section 2303.401, Government Code, as follows:

Sec. 2303.401. DEFINITIONS. Redefines "new permanent job" and "retained job."

SECTION 7. Amends Section 2303.402(c), Government Code, as follows:

(c) Provides that, for the purposes of this section, an economically disadvantaged individual is an individual who is a low-income individual, rather than an economically disadvantaged individual, as defined by Section 101, Workforce Investment Act of 1998 (29 U.S.C. Section 2801(25)), rather than Section 4(8), Job Training Partnership Act (29 U.S.C. Section 1503(8)), and is an individual with a disability, rather than with handicaps, as defined by 29 U.S.C. Section 705(20)(A), rather than 29 U.S.C. Section 706(8).

SECTION 8. Amends Section 2303.403, Government Code, as follows:

Sec. 2303.403. PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION; LIMIT ON ENTERPRISE PROJECT DESIGNATIONS. Prohibits the bank from designating more than 120, rather than 85, enterprise projects during any biennium. Authorizes any designations remaining at the end of a biennium to be carried forward to the next biennium.

SECTION 9. Amends Section 2303.404(c), Government Code, as follows:

(c) Prohibits the designation period for an enterprise project from being for less than one year or more than five years, rather than exceeding five years, from the date on which the designation is made.

SECTION 10. Amends Sections 2303.405(a), (b), and (c), Government Code, as follows:

(a) Authorizes the governing body to apply to the bank for the designation of the project or activity of a qualified business as an enterprise project only after it submits to the bank

the order or ordinance and other information that complies with the requirements of Sections 2303.4051 (Ordinance or Order for Identification of Local Incentives) and 2303.4052 (Requires Information From Nominating Body) if the governing body approves a request made under Section 2303.404 (Request for Application for Enterprise Project Designation).

(b) Requires an application to contain an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity with regard to the enterprise project, including the number of employment positions in existence at the qualified business site on the 91st day before the application deadline; the number of new permanent jobs the enterprise project commits to create during the designation period presented in the form of a tabular listing of the classification titles of those jobs, and the number of jobs and salary range for each classification title, the number of permanent jobs the enterprise project commits to retain during the designation period presented in the form of a tabular listing of the classification titles of the retained jobs, and the number of retained jobs and salary range for each classification title, rather than the number of anticipated new permanent jobs the enterprise project will create and retain during the designation period, and if the nominating body is applying for a double or triple jumbo enterprise project, as defined by Section 2303.407 (Allocation of Jobs Eligible for Tax Refund), an indication of which level of designation is being sought. Makes a nonsubstantive change.

(c) Provides that, for the purposes of this section, local effort to develop and revitalize a municipality or county is the willingness of public entities in the municipality or county to provide services, incentives, and regulatory relief authorized by this chapter and to negotiate with the qualified business for which application is made and with neighborhood enterprise associations and other local groups or businesses to achieve the public purposes of this chapter.

SECTION 11. Amends Sections 2303.4051(a), (b), (e), (f), and (g), Government Code, as follows:

(a) Redefines "local incentive."

(b) Deletes existing text requiring the governing body of the municipality or county in which the business is located, by ordinance or order, as appropriate, to identify and summarize briefly any local incentives available in each of the block groups or other areas within its jurisdiction that qualify as an enterprise zone under Section 2303.101 (Qualification for Enterprise Zone Designation), if any, and in any area within its jurisdiction that does not qualify as an enterprise zone before nominating the project or activity of a qualified business for designation as an enterprise project.

(e) Provides that an ordinance or order adopted under this section is not valid unless the nominating body holds a public hearing before adopting the ordinance or order. Requires notice of the hearing to be published in a newspaper having general circulation in the municipality not later than the seventh calendar day before the date of the hearing. Requires the notice to contain certain information. Deletes existing text providing that an ordinance or order is not valid unless the nominating body holds a public hearing before adopting an ordinance or order under this section.

(f) Authorizes a nominating body, if the nominating body has previously nominated a project or activity for designation as an enterprise project, instead of issuing a new ordinance or order under this section for a nominated project or activity, to by resolution make a reference to a previously issued ordinance or order that met the requirements of this section if the resolution nominates the project or activity for designation as an enterprise project and states the level of enterprise project designation being sought, and the ending date of the project's designation period. Deletes existing text authorizing the nominating body to by resolution make a reference to a previously issued ordinance or order that met the requirements of this section if the local incentives described in the previously issued ordinance or order for the areas described by Subsections (b)(1) and (2) are substantially the same on the date the resolution is issued.

(g) Provides that this section does not prohibit a municipality or county from extending additional incentives, including tax incentives, for qualified businesses, rather than for business enterprises, in an enterprise zone by a separate order or ordinance.

SECTION 12. Amends Section 2303.4052, Government Code, as follows:

Sec. 2303.4052. **REQUIRED INFORMATION FROM NOMINATING BODY.** Requires the nominating body, before nominating the project or activity of a qualified business for designation as an enterprise project, to submit to the bank, if the business is seeking job retention benefits, documentation showing the number of employment positions at the qualified business site. Makes conforming changes.

SECTION 13. Amends Section 2303.406, Government Code, by amending Subsection (a) and adding Subsections (g) and (h), as follows:

(a) Authorizes the bank to designate a project or activity of a business as an enterprise project only if the bank receives all of the information required by Section 2303.4052 and determines that, if the business is seeking job retention benefits, the business has clearly demonstrated that the business is able to employ individuals in accordance with Section 2303.402, or the business facility has been legitimately destroyed or substantially impaired because of fire, flood, tornado, hurricane, or any other natural disaster and that at least 60 percent of the capital investment is being spent to repair damages resulting from the disaster. Deletes existing text authorizing the bank to designate a project or activity of a business as an enterprise project only if the bank receives all of the information required by Section 2303.4052 and determines that, if the business is seeking job retention benefits, a 10 percent increase in the production capacity of the business will occur, a 10 percent decrease in overall cost per unit produced will occur, or the business facility is both adding a new business line or product and deleting or decreasing an existing business line or product, and the designation will prevent the facility's net production capacity from decreasing.

(g) Authorizes the bank to lower the designation level of a proposed project or activity nominated for enterprise project designation if there are fewer designations available than applications received, or to further the economic interests of the state.

(h) Prohibits a state benefit from being obtained under this chapter or Chapter 151, Tax Code, for jobs moved from one jurisdiction in this state to another jurisdiction in this state.

SECTION 14. Amends Section 2303.406(e), Government Code, as added by Chapter 814, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(e) Authorizes the Texas Economic Development and Tourism Office (office), during any biennium, to designate multiple concurrent enterprise projects to a qualified business located in an enterprise zone. Makes a nonsubstantive change.

SECTION 15. Amends Section 2303.407, Government Code, as follows:

Sec. 2303.407. **ALLOCATION OF JOBS ELIGIBLE FOR TAX REFUND.** (a) Requires the bank to allocate to an enterprise project the maximum number of new permanent jobs or retained jobs eligible based on certain factors, including the project's designation level.

(b) Provides that a capital investment in a project of \$150,000,000 to \$249,999,999 will result in a refund of up to \$5,000 per job with a maximum refund of \$2,500,000 for the creation or retention of 500 jobs if the bank designates the project as a double jumbo enterprise project, or \$250,000,000 or more will result in a refund of up to \$7,500 per job with a maximum refund of \$3,750,000 for the creation or retention of at least 500 jobs if the bank designates the project as a triple jumbo enterprise project.

(c) Provides that an enterprise project for which a commitment for a capital investment in the range amount and the creation or retention of the number of jobs specified, rather than described, by Subsection (b)(5) is made is considered a double jumbo enterprise project if the project is so designated by the bank.

(d) Makes a conforming change.

SECTION 16. Amends Section 2303.4072, Government Code, as follows:

Sec. 2303.4072. ENTERPRISE PROJECT CLAIM FOR STATE BENEFIT. Requires a person to make a claim to the comptroller for a state benefit as prescribed under this chapter and Chapter 151 (Limited Sales, Excise, and Use Tax), rather than Chapters 151 and 171, Tax Code, not later than 18 months after the date on which the term of the enterprise project designation expires as provided by Section 2303.404.

SECTION 17. Amends Section 2303.502(c), Government Code, to requires the bank to disseminate the reports to the governing bodies of the entities that nominated the enterprise projects, rather than governing bodies of enterprise zones, and others as necessary to advance the purposes of this chapter.

SECTION 18. Amends Section 2303.505(a), Government Code, as follows:

(a) Authorizes the governing body of a municipality, through a program to encourage the development of areas designated as enterprise zones, to refund its local sales and use taxes paid by a qualified business on all taxable items purchased for use at the qualified business site related to the project or activity. Deletes existing text authorizing the governing body of a municipality through a program, to encourage the development of areas designated as enterprise zones, to refund its local sales and use taxes paid by a qualified business on certain purchases and expenses.

SECTION 19. Amends Section 2303.516, Government Code, as follows:

Sec. 2303.516. MONITORING QUALIFIED BUSINESS OR ENTERPRISE PROJECT COMMITMENTS. (a) Authorizes the comptroller of public accounts (comptroller) rather than the bank, to monitor a qualified business or enterprise project to determine whether and to what extent the business or project has followed through on any commitments made by it or on its behalf under this chapter.

(b) Makes conforming changes.

(c) Deletes existing text requiring the nominating body, on the date on which a certificate of occupancy is issued with respect to an enterprise project or at the completion of the enterprise project designation period as indicated by the approved application, to monitor the qualified business to determine whether the business or project has followed through on any commitments or goals made by it or on its behalf in the designation application. Deletes existing text requiring the nominating body to submit a report of its findings to the bank and comptroller on completion.

SECTION 20. Amends Section 2303.517, Government Code, as follows:

Sec. 2303.517. REPORT. (a) Creates this subsection from existing text. Makes a conforming change.

(b) Requires the comptroller, not later than the 30th day after the date the comptroller completes an enterprise project's close-out, to submit to the bank a report stating the actual amount of capital investment made and the actual number of jobs created or retained as a result of the enterprise project designation.

SECTION 21. Amends Sections 151.429(a), (b), (c), and (e), Tax Code, as follows:

(a) Provides that an enterprise project is eligible for a refund in the amount provided by this section of the taxes imposed by this chapter on purchases of all taxable items purchased for use at the qualified business site related to the project or activity. Deletes existing text providing that an enterprise project is eligible for a refund in the amount provided by this section of the taxes imposed by this chapter on purchases of certain materials and labor.

(b) Provides that, subject to the limitations provided by Subsection (c) of this section, an enterprise project qualifies for a refund of taxes under this section based certain factors, including the project's designation level. Provides that capital investment at the qualified business site of \$150,000,000 to \$249,999,999 will result in a refund of up to \$5,000 per job with a maximum refund of \$2,500,000 for the creation or retention of 500 jobs if the Texas Economic Development Bank designates the project as a double jumbo enterprise project. or \$250,000,000 or more will result in a refund of up to \$7,500 per job with a maximum refund of \$3,750,000 for the creation or retention of at least 500 jobs if the Texas Economic Development Bank designates the project as a triple jumbo enterprise project.

(c) Prohibits the total amount of tax refund that an enterprise project may apply for in a state fiscal year from exceeding \$250,000, at not more than \$2,500 per job. Prohibits the total amount of tax refund that an enterprise project may apply for in a state fiscal year from exceeding \$500,000, at not more than \$5,000 per job. Prohibits the total amount of tax refund that an enterprise project may apply for in a state fiscal year from exceeding \$750,000, at not more than \$7,500 per job. Authorizes an enterprise project. if an enterprise project, double jumbo enterprise project, or triple jumbo enterprise project qualifies in a state fiscal year for a refund of taxes in an amount in excess of the applicable limitation provided by this subsection, to apply for a refund of those taxes in a subsequent year, subject to the applicable limitation for each year, rather than the \$250,000 limitation for each year. Provides the total amount that may be refunded to enterprise project, double jumbo enterprise project, or triple jumbo enterprise project.

(e) Redefines "enterprise project" and "new permanent job." Deletes existing definition of "enterprise zone." Makes conforming changes.

SECTION 22. Repealer: Section 2303.4051(d) (relating to incentives period applicable), Government Code, and Section 2303.406(e) (relating to multiple and concurrent enterprise projects), Government Code.

SECTION 23. Makes application of Chapter 2303, Government Code, as amended by this Act, prospective.

SECTION 24. Makes application of Section 151.429, Tax Code, as amended by this Act, prospective.

SECTION 25. Effective date: September 1, 2007.