

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3694
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Business & Commerce
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Committee Report (Substituted)

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.

C.S.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 and reflect concepts in the current statute.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 16 (Sections 171.824 and 171.825, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

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

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 (Annual Report)-, Government Code. 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 Section 2303.401, Government Code, as follows:

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

SECTION 5. 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 6. 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 105, 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 7. 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 8. Amends Sections 2303.405(a), and (b), 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.

SECTION 9. 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 10. 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 11. 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 12. Amends Section 2303.406(e), Government Code, as added by Chapter 814, Acts of the 78th Legislature, Regular Session, 2003, to authorize 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 13. 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 14. 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 of public accounts (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 15. 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 16. (a) Amends Section 2303.504, Government Code, as follows:

Sec. 2303.504. New heading: STATE TAX REFUNDS AND CREDITS; REPORT. (a) Entitles an enterprise project to a refund of state taxes under Section 151.429 (Tax Refunds for Enterprise Projects), Tax Code, and a franchise tax credit under Subchapter Q-1, Chapter 171 (Franchise Tax), Tax Code, subject to Section 2303.516, Government Code.

(b) Makes no changes to this subsection.

(c) Requires the comptroller, not later than the 60th day after the last day of each fiscal year, to report to the bank the statewide total of actual jobs created, actual jobs retained, and the tax refunds and credits made under this section during that fiscal year.

(b) Amends Chapter 171, Tax Code, by adding Subchapter Q-1, as follows:

SUBCHAPTER Q-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN
CAPITAL INVESTMENTS

Sec. 171.815. DEFINITIONS. Defines "enterprise project," "enterprise zone," "qualified business," and "qualified capital investment."

Sec. 171.816. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN SERVICE IN AN ENTERPRISE ZONE. Defines "tangible personal property first placed in service in an enterprise zone" for purposes of determining whether an investment is a qualified capital investment under Section 171.815.

Sec. 171.817. ELIGIBILITY. (a) Provides that subject to Subsection (b), an enterprise project is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter if the enterprise project is a qualified business.

(b) Provides that an enterprise project is not eligible for a credit under this subchapter if the enterprise project claimed a credit under Subchapter Q before the repeal of that subchapter on January 1, 2008.

(c) Authorizes an enterprise project that is eligible for a credit under this subchapter to claim a credit or take a carryforward credit without regard to whether the enterprise zone in which it made the qualified capital investment subsequently loses its designation as an enterprise zone.

(d) Prohibits a taxable entity, other than a combined group, from claiming the credit under this subchapter unless the taxable entity was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date. Authorizes a taxable entity that is a combined group to claim the credit for each member entity that was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date and requires that taxable entity to compute the amount of the credit for that member as provided by this subchapter.

Sec. 171.818. CALCULATION OF CREDIT. (a) Authorizes an enterprise project that is eligible for a credit under this subchapter, on or after the later of January 1, 2008, or the date the project was designated, established a credit equal to 7.5 percent of the qualified capital investment made on or after January 1, 2005, and before January 1, 2007.

(b) Authorizes the enterprise project to claim the entire credit earned on a report originally due on or after January 1, 2008, and before January 1, 2009, subject to Section 171.819.

Sec. 171.819. LIMITATIONS. Prohibits the total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.820, from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

Sec. 171.820. CARRYFORWARD. Authorizes an enterprise project that is eligible for a credit that exceeds the limitation under Section 171.819 to carry the unused credit forward for not more than five consecutive reports.

Sec. 171.821. CERTIFICATION OF ELIGIBILITY. (a) Requires the enterprise project to file, for the initial and each succeeding report in which a credit is claimed under this subchapter, with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the enterprise project is eligible for the credit.

(b) Provides that the burden of establishing entitlement to and the value of the credit is on the enterprise project.

Sec. 171.822. ASSIGNMENT PROHIBITED. Prohibits an enterprise project from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the enterprise project are conveyed, assigned, or transferred in the same transaction.

Sec. 171.823. BIENNIAL REPORT BY COMPTROLLER. (a) Requires the comptroller, before the beginning of each regular session of the legislature, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states the total amount of qualified capital investments made by enterprise projects that claim a credit under this subchapter and the average and median wages paid by those enterprise projects; the total amount of credits applied against the tax under this chapter and the amount of unused credits, including certain information pertaining to enterprise projects and qualified capital investments on which tax credit claims are made under this chapter; and the impact of the credit provided under this subchapter on employment, capital investment, personal income, and state tax revenues.

(b) Requires the final report issued before the expiration of this subchapter to include historical information on the credit authorized under this subchapter.

(c) Prohibits the comptroller from including in the report information that is confidential by law.

(d) Authorizes the comptroller, for purposes of this section, to require an enterprise project that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the enterprise project's capital investment in this state and any other information necessary to complete the report required under this section.

(e) Requires the comptroller to provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.824. COMPTROLLER POWERS AND DUTIES. Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.825. EXPIRATION. (a) Provides that this subchapter expires December 31, 2009.

(b) Provides that this expiration of this subchapter does not affect the carryforward of a credit under Section 171.820 or those credits for which an enterprise project is eligible before the date this subchapter expires.

(c) Authorizes a taxable entity to claim a credit under Subchapter Q-1, Chapter 171, Tax Code, as added by this section, only on a franchise tax report originally due on or after January 1, 2008 and notwithstanding any other law, for qualified capital investments made on or after January 1, 2005, and before January 1, 2007.

(d) Requires the comptroller by rule to prescribed the manner in which a taxable entity is authorized to claim a credit for qualified capital investments made on or after January 1, 2005, and before January 1, 2007.

(e) Makes application of Subchapter Q-1, Chapter 171, Tax Code, as added by this section, and Section 2303.504, Government Code, prospective to January 1, 2008.

(f) Provides that notwithstanding any other provision of this Act this section takes effect January 1, 2008.

SECTION 17. 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 18. Amends Section 2303.516, Government Code, as follows:

Sec. 2303.516. MONITORING QUALIFIED BUSINESS OR ENTERPRISE PROJECT COMMITMENTS. (a) Authorizes the 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 19. 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 20. 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 21. 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 22. Makes application of Chapter 2303, Government Code, as amended by this Act, prospective.

SECTION 23. Makes application of Section 151.429, Tax Code, as amended by this Act, prospective.

SECTION 24. Effective date: upon passage or September 1, 2007.