

BILL ANALYSIS

Senate Research Center
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S.B. 1186
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Economic Development
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1186 makes changes to the enterprise zone program. The enterprise zone program refunds sales taxes to qualifying businesses that meet employment and investment criteria set out in statute.

The enterprise zone program was initially created to provide businesses with incentives to locate in economically disadvantaged areas and create jobs. Two major provisions of S.B. 1186 include requiring qualifying businesses to create and retain jobs in order to qualify for the program, and requiring that the number of eligible enterprise zone program slots be apportioned equally during each award cycle within the biennium.

Requiring qualifying businesses to create and retain jobs in order to qualify for the program reinforces the program's original mission—creating jobs for low-income Texans in economically disadvantaged communities. Both the business community and employees benefit from this provision in that businesses receive a sales tax refund and job seekers can apply for good-paying jobs.

Requiring that the number of eligible enterprise zone program slots be apportioned equally during each award cycle within the biennium ensures the program slots, of which there are 105 made available during each biennium, are not awarded all at once. By metering out the slots, new projects that come on-line later in the biennium will be able to apply for enterprise program slots.

As proposed, S.B. 1186 amends current law relating to the enterprise zone program.

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 Section 2303.003(7), Government Code, to redefine "qualified employee."

SECTION 2. Amends Section 2303.402(a), Government Code, as follows:

(a) Provides that a person is a qualified business if the bank, for the purpose of state benefits under this chapter, or the nominating body of a project or activity of the person under this chapter, for the purpose of local incentives, certifies that:

(1) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in an enterprise zone, and at least 25 percent of the person's new permanent jobs and retained jobs, rather than new employees, in the enterprise zone eligible for enterprise zone program benefits are held by:

(A) residents of any enterprise zone in this state; or

(B) economically disadvantaged individuals; or

(2) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in an area of this state that does not qualify as an enterprise zone, and at least 35 percent of the person's new permanent jobs and retained jobs, rather than new employees, at the qualified business site eligible for enterprise zone program benefits are held by:

(A) residents of any enterprise zone in this state; or

(B) individuals who are economically disadvantaged.

SECTION 3. Amends Section 2303.403, Government Code, as follows:

Sec. 2303.403. PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION; LIMIT ON ENTERPRISE PROJECT DESIGNATIONS. (a) Creates this subsection from existing text. Requires the bank, if the bank determines that the governing body eligible to nominate an enterprise project is not complying with this chapter, to prohibit the certification of a qualified business until the bank determines that the governing body is complying with this chapter.

(b) Prohibits the bank from designating more than 105 enterprise projects during any biennium. Prohibits the bank from designating more than 10 percent of the maximum allowed enterprise projects in each of the application rounds during the biennium, except that the bank may exceed the 10 percent limit during any application round to designate an enterprise project of a qualified business considered to be a state priority project by the Texas Economic Development and Tourism Office (office). Authorizes any designations remaining at the end of a biennium to be carried forward to the next biennium.

SECTION 4. Amends Section 2303.405(b), Government Code to delete existing Subdivision (7) requiring that an application contain an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity with regard to the enterprise project, including certain other requirements, including, if the nominating body is applying for a double or triple jumbo enterprise project, as defined by Section 2303.407, an indication of which level of designation is being sought. Makes a nonsubstantive change.

SECTION 5. Amends Section 2303.4051(f), Government Code, as follows:

(f) Authorizes the nominating body by resolution, 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 make a reference to a previously issued ordinance or order that met the requirements of this section if:

(1) the resolution nominates the project or activity for designation as an enterprise project and states:

(A) whether the nominated project or activity is located in an area designated as an enterprise zone; and

(B) the ending date of the project's designation period;

(2) the local incentives described in the previously issued ordinance or order are the same on the date the resolution is issued; and

(3) the local incentives to be made available to the nominated project or activity are the same as those made available to the project or activity that are the subject of the previously issued ordinance or order.

Deletes existing text relating to the resolution stating the level of enterprise project designation being sought.

SECTION 6. Amends Section 2303.4052, as follows:

Sec. 2303.4052. **REQUIRED INFORMATION FOR 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:

- (1) a certified copy of the ordinance or order, as appropriate, or reference to an ordinance or order as required by Section 2303.4051 (Ordinance or Order for Identification of Local Incentives);
- (2) a certified copy of the minutes, rather than a transcript, of all public hearings conducted with respect to local incentives available to qualified businesses within the jurisdiction of the governmental entity nominating the project or activity, regardless of whether those businesses are located in an enterprise zone;
- (3) the name, title, address, telephone number, and electronic mail address of the nominating body's liaison designated under Section 2303.204 (Liaison);
- (4) if the business is seeking job retention benefits, documentation showing the number of employment positions, rather than employment positions at the qualified business site; and
- (5) any additional information the bank may require.

SECTION 7. Amends Sections 2303.406(b) and (g), Government Code, as follows:

(b) Requires the bank to designate qualified businesses as enterprise projects on a competitive basis, subject to the limitations provided by Section 2303.403 (Prohibition on Qualified Business Certification; Limit on Enterprise Project Designations). Deletes existing text providing that this subsection does not apply to a qualified business located in a federally designated zone, as described by Section 2303.101(2), which will receive priority designation in allocating the number of enterprise projects allowed statewide per biennium as provided by Section 2303.403.

(g) Authorizes the bank to split, rather than lower the designation level of, a proposed project or activity nominated for enterprise project designation based on the number of projected new permanent jobs or retained jobs if there are fewer designations available than applications received, or to further the economic interest of the state. Authorizes the bank, if an enterprise project designation is split between two or more projects or activities, to determine how to proportionally allocate state benefits among the projects or activities. Makes nonsubstantive changes.

SECTION 8. Amends Sections 2303.407(a) and (b), Government Code, as follows:

(a) Requires the bank to allocate to an enterprise project the maximum number of new permanent jobs or retained jobs eligible based on the amount of capital investment made in the project, and the refund per job with a maximum refund to be included in a computation of a tax refund for the project. Deletes existing text relating to the project's designation level.

(b) Provides that a capital investment in a project of:

- (1) \$40,000 to \$399,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$25,000 for the creation or retention of 10 jobs;

- (2) \$400,000 to \$999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$62,500 for the creation or retention of 25 jobs;
- (3) \$1,000,000 to \$4,999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$312,500 for the creation or retention of 125 jobs; or
- (4) \$5,000,000 or more, rather than \$5,000,000 to \$149,999,999, will result in a refund of up to \$2,500 per job with a maximum refund of \$1,250,000 for the creation or retention of 500 jobs.

Deletes existing Subdivision (5) providing 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.

Deletes existing Subdivision (6) providing that a capital investment in a project of \$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.

SECTION 9. Amends Section 2303.504, Government Code, as follows:

Sec. 2303.504. New heading: STATE TAX REFUNDS; REPORT. (a) Entitles an enterprise project, subject to Section 2303.516 (Monitoring Qualified Business or Enterprise Project Commitments), to a refund of state taxes under Section 151.429, Tax Code. Deletes existing text entitling an enterprise project, subject Section 2303.516, to a franchise tax credit under Subchapter Q-1, Chapter 171 (Franchise Tax), Tax Code. Makes nonsubstantive changes.

(b) Requires that three percent of the amount of the tax benefit, at the time of receipt of any tax benefit available as a result of participating in the enterprise zone program, including a state sales and use tax refund, rather than including a state sales and use tax refund or franchise tax credit, be transferred to the Texas economic development bank fund under Subchapter B (Creation and Operation of Bank; Texas Economic Development Bank Fund), Chapter 489 (Texas Economic Development Bank), to defray the cost of administering this chapter.

(c) Requires the comptroller of public accounts (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, rather than tax refunds and credits, made under this section during that fiscal year.

SECTION 10. Amends Section 2303.516(b), Government Code, to authorize the comptroller to determine that the business or project is not entitled to a refund of state taxes, rather than a refund or credit of state taxes, under Section 2303.504 if the comptroller makes certain findings that the business or project is not willing to cooperate with the comptroller in providing the comptroller with the information the comptroller needs to determine the state benefits, or the business or project has substantially failed to follow through on any commitments made by it or on its behalf under this chapter.

SECTION 11. Amends Sections 151.429(b) and (c), Tax Code, as follows:

(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 on the amount of capital investment made at the qualified business site and the refund per job with a maximum refund to be included in a computation of a tax refund for the project. Deletes existing text relating to the project's designation level. Provides that a capital investment at the qualified business site of:

- (1) \$40,000 to \$399,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$25,000 for the creation or retention of 10 jobs;
- (2) \$400,000 to \$999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$62,500 for the creation or retention of 25 jobs;
- (3) \$1,000,000 to \$4,999,999 will result in a refund of up to \$2,500 per job with a maximum refund of \$312,500 for the creation or retention of 125 jobs; or
- (4) \$5,000,000 or more, rather than \$5,000,000 to \$149,999,999, will result in a refund of up to \$2,500 per job with a maximum refund of \$1,250,000 for the creation or retention of 500 jobs.

Deletes existing Subdivision (5) providing that a 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.

Deletes existing Subdivision (6) providing that a capital investment at the qualified business site of \$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. Authorizes an enterprise project, if the 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. Prohibits the total amount that may be refunded to an enterprise project under this section from exceeding the amount determined by multiplying \$250,000 by the number of state fiscal years during which the enterprise project created or retained one or more jobs for qualified employees.

Deletes existing text relating to a double jumbo enterprise project or triple jumbo enterprise project.

Deletes existing text prohibiting the total amount of tax refund that a double jumbo enterprise project may apply for in a state fiscal year from exceeding \$500,000, at not more than \$5,000 per job. Deletes existing text prohibiting the total amount of tax refund that a triple jumbo enterprise project may apply for in a state fiscal year from exceeding \$750,000, at not more than \$7,500 per job.

Deletes existing Subdivision (2) prohibiting the total amount that may be refunded to a double jumbo enterprise project under this section from exceeding the amount determined by multiplying \$500,000 by the number of state fiscal years during which the double jumbo enterprise project created or retained one or more jobs for qualified employees.

Deletes existing Subdivision (3) prohibiting the total amount that may be refunded to a triple jumbo enterprise project under this section from exceeding the amount determined by multiplying \$750,000 by the number of state fiscal years during which the triple jumbo enterprise project created or retained one or more jobs for qualified employees.

SECTION 12. Provides that the following laws are repealed:

(1) Section 2303.109(b) (authorizing an area designated by the federal government as a renewal community, a federal empowerment zone, or a federal enterprise community, notwithstanding Subsection (a), to be designated as an enterprise zone without further

qualification for not longer than the period permitted for the respective designation by federal law), Government Code;

(2) Sections 2303.406(e) (authorizing the office during any biennium, to designate multiple concurrent enterprise projects to a qualified business located at a qualified business site) and (f) (providing that an approved designation as a double jumbo enterprise project, as defined by Section 2303.407, counts as two project designations against both the nominating body for purposes of Subsection (d) and the number of enterprise project designations allowed statewide per biennium under Section 2303.403, and providing that an approved designation as a triple jumbo enterprise project, as defined by Section 2303.407, counts as three project designations against both the nominating body for purposes of Subsection (d) and the number of enterprise project designations allowed statewide per biennium under Section 2303.403), Government Code;

(3) Sections 2303.407(c) (providing 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 by Subsection (b)(5) is made is considered a double jumbo enterprise project if the project is so designated by the bank) and (d) (providing 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 by Subsection (b)(6) is made is considered a triple jumbo enterprise project if the project is so designated by the bank), Government Code;

(4) Sections 2303.4071(a) (defining, in this section, "double jumbo enterprise project" and "triple jumbo enterprise project"), (c) (providing that a double jumbo enterprise project is eligible for a maximum refund of \$500,000 in each state fiscal year), and (d) (providing that a triple jumbo enterprise project is eligible for a maximum refund of \$750,000 in each state fiscal year), Government Code; and

(5) Sections 151.429(e)(5) (defining, in this section, "double jumbo enterprise project" and "triple jumbo enterprise project") and (i) (providing that, as provided by Subsection (c), a double jumbo enterprise project is eligible for a maximum refund of \$500,000 and a triple jumbo enterprise project is eligible for a maximum refund of \$750,000 in each state fiscal year), Tax Code.

SECTION 13. Provides that the changes in law made by this Act to Section 2303.402, Government Code, apply only to an application for a designation of an enterprise project under the enterprise zone program under Chapter 2303, Government Code, as amended by this Act, filed on or after the effective date of this Act. Provides that an application for designation of an enterprise project under the enterprise zone program filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 14. Effective date: upon passage or September 1, 2011.