

BILL ANALYSIS

Senate Research Center
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S.B. 100
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Enterprise Zone Program was initially created to incentivize businesses to locate in economically disadvantaged areas and create jobs. However, over the years the program moved away from its mission of creating jobs and moved away from assisting with job retention in extenuating circumstances. The program refunds taxes to qualified businesses that meet employment and investment criteria. S.B. 100 seeks to change certain provisions of the enterprise zone program.

S.B. 100 seeks to re-focus the Texas Enterprise Zone Program on job creation in places that need it the most while maintaining job retention incentives for certain projects.

Currently the program offers greater incentives to bigger projects based on higher pledged jobs (created or retained) and greater capital investment. These bigger designations are termed "double jumbo" and "triple jumbo."

Projects with a double jumbo designation receive double (\$5,000/qualified job) the tax refund per job allocation of a single designation (\$2,500/qualified job).

Projects with a triple jumbo designation receive triple (\$7,500/qualified job) the tax refund per job allocation of a single designation (\$2,500/qualified job).

Currently all triple jumbo and almost all double jumbo designations receive tax benefits solely for job retention—a gross departure from the program's mission.

Because the enterprise zone program is statutorily limited in the number of designations that may be awarded over the biennium (105 over the biennium), these double jumbo designations (which take up two slots) and triple jumbo designations (which take up three slots) limit availability to job-creating projects.

S.B. 100 makes changes to the Texas Enterprise Zone Program to maximize the job creation potential of the program by:

- promoting stronger incentives for job creation by allowing double jumbo and triple jumbo designations to be used only for projects creating new jobs;
- maintaining incentives for job retention through single designations;
- freeing up slots by prohibiting multiple concurrent designations for a single project and limiting double and triple jumbos to only job creation projects effectively allowing more businesses to participate; and
- creating half designations to promote small businesses access and participation in the Texas Enterprise Zone Program.

S.B. 100 also:

- incentivizes the hiring of honorably discharged veterans, effectively giving businesses flexibility with an extra labor pool to draw from for program workforce requirements; and
- promotes local flexibility between counties and municipalities when nominating projects for enterprise designations by allowing interlocal agreements when nominating certain projects.

As proposed, S.B. 100 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, Government Code, by amending Subdivision (7) and adding Subdivision (9), to redefine "qualified employee" and define "veteran."

SECTION 2. Amends Section 2303.004, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes the governing body of a county, rather than the governing body of a county with a population of one million or more, 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, notwithstanding Subsection (a) (providing that a territory in the municipal boundaries and in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality). Deletes existing text prohibiting a county, for purpose 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).

(c) Requires the nominating county to enter into an interlocal agreement with the municipality that has jurisdiction of the territory in which the nominated project or activity will be located before a county makes a nomination under Subsection (b). Requires that the interlocal agreement specify that either the nominating county or the municipality that has jurisdiction of the territory in which the nominated project or activity will be located is the governmental body having administration authority under Section 2303.201 (Administration by Governing Body) and that both the nominating county and municipality approve the nomination. Authorizes a county, for purposes of this subsection, to use the maximum number of designations the county is permitted under Section 2303.406(d) (providing the maximum number of enterprise projects that the bank may designate for each nominating body during any biennium) within the territory described by this subsection.

SECTION 3. Amends Section 2303.201, Government Code, as follows:

Sec. 2303.201. ADMINISTRATION BY GOVERNING BODY. (a) Creates this subsection from existing text. Provides that the governing body of an enterprise zone is the governing body of the municipality or county with jurisdiction over the area designated as an enterprise zone, except as provided by Subsection (b).

(b) Provides that the governing body with administration authority over an enterprise project nominated under Section 2303.004(c) is determined under the terms of an interlocal agreement required by that subsection.

SECTION 4. Amends Section 2303.402 (a), Government Code, as follows:

(a) Provides that a person is a qualified business if the Texas Economic Development Bank (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, rather than new employees, in the enterprise zone are held by:

- (A) Makes a nonsubstantive change;
- (B) Makes no change to this paragraph;
- (C) veterans; 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, rather than the person's new employees, at the qualified business site are held by:

- (A) Makes a nonsubstantive change;
- (B) individuals who are economically disadvantaged; or
- (C) veterans.

SECTION 5. 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:

- (1) Makes no change to this subdivision;
- (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) Makes no change to this subdivision;
- (4) Makes a nonsubstantive change;
- (5) any interlocal agreement required under Section 2303.004(c) that states:
 - (A) which governing body has the administration authority under Section 2303.201; and
 - (B) that both the county in which the project or activity is located and the municipality in whose jurisdiction the project or activity is located approve the nomination of the project or activity; and
- (6) Creates this subdivision from existing text and makes no further change to this subdivision.

SECTION 6. Amends Section 2303.406, Government Code, by amending Subsections (b) and (e) and adding Subsection (d-1), as follows:

(b) 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. Requires the bank to designate qualified businesses as enterprise projects on a competitive basis. Requires that the bank make its designation decisions using certain weighted scale as set forth.

(d-1) Authorizes an enterprise project designation to be split into two half designations. Provides that a half designation uses one-half of one of the enterprise project designations allowed to a nominating body under Subsection (d) and to the bank under Section 2303.403 (Prohibition on Qualified Business Certification; Limit on Enterprise Project Designations).

(e) Prohibits the Texas Economic Development and Tourism Office (office) from designating multiple concurrent enterprise projects to a qualified business located at a qualified business site, rather than authorizing the office during any biennium to designate multiple concurrent enterprise projects to a qualified business located at a qualified business site.

SECTION 7. Amends Section 2303.407, Government Code, by amending Subsections (b), (c), and (d) and adding Subsections (e) and (f), as follows:

(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;

(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, except as provided by Subdivision (5) or (6);

(5) \$150,000,000 to \$249,999,999 will result in a refund of up to \$5,000 per new permanent job with a maximum refund of \$2,500,000 for the creation of 500 new permanent jobs, rather than creation or retention of 500 jobs, if the bank designates the project as a double jumbo enterprise project; or

(6) \$250,000,000 or more will result in a refund of up to \$7,500 per new permanent job with a maximum refund of \$3,750,000 for the creation of at least 500 new permanent jobs, rather than 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 of the number of new permanent jobs, rather than 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. Prohibits the bank from designating a project as a double jumbo enterprise project after the initial designation period approved by the bank under Section 2303.404(b) (setting forth the requirements for the enterprise project designation).

(d) Provides that an enterprise project for which a commitment for a capital investment in the range amount and the creation of the number of new permanent jobs, rather than

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. Prohibits the bank from designating a project as a triple jumbo enterprise project after the initial designation period approved by the bank under Section 2303.404(b).

(e) Provides that a state-mandated or federally mandated capital investment, including an investment in pollution abatement equipment, does not qualify as a committed capital investment in an enterprise project under this chapter.

(f) Provides that the maximum number of jobs that the bank is authorized to allocate to an enterprise project split into two half designations as provided by Section 2303.406(d-1) is 250.

SECTION 8. Amends Section 2303.4071, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Defines "half enterprise project."

(e) Provides that a half enterprise project is eligible for a maximum refund not to exceed \$125,000 in each state fiscal year and is subject to the capital investment and job allocation requirements under Section 2303.407(b)(1), (2), or (3).

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

Sec. 2303.504. New heading: STATE TAX REFUNDS; REPORT. (a) Provides that, subject to Section 2303.516 (Monitoring Qualified Business or Enterprise Project Commitments), an enterprise project is entitled to a refund of state taxes under Section 151.429 (Tax Refunds For Enterprise Projects), Tax Code. Deletes existing Subdivision (2) providing that an enterprise project subject to Section 2303.516 is entitled to a franchise tax credit under Subchapter Q-1, Chapter 171, Tax Code.

(b) Requires that three percent of the amount of the tax benefit be transferred to the Texas economic development bank fund under Subchapter B (Creation and Operation of Bank; Texas Economic Development Bank Fund), Chapter 489, to defray the cost of administering this chapter 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.

(c) Requires the comptroller of public accounts of the State of Texas (comptroller) 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 not later than the 60th day after the last day of each fiscal year.

SECTION 10. Amends Section 2303.516(b), Government Code, as follows:

(b) Provides that the comptroller may determine that the business or project is not entitled to a refund, rather than a refund or credit, of state taxes under Section 2303.504 if the comptroller makes certain findings.

SECTION 11. Amends Section 151.429, Tax Code, by amending Subsections (b) and (c) and adding Subsection (k), as follows:

(b) Provides that 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, the project's designation level, and the refund per job with a maximum refund to be included in a computation of a tax refund for the project, subject to the limitations provided by Subsection (c) of this section. 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 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;
- (4) \$5,000,000 or more, rather than \$5,000,00 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, except as provided by Subdivision (5) or (6);
- (5) \$150,000,000 to \$249,999,999 will result in a refund of up to \$5,000 per new permanent job with a maximum refund of \$2,500,000 for the creation of 500 new permanent jobs, rather than creation or retention of 500 jobs, if the Texas Economic Development Bank designates the project as a double jumbo enterprise project; or
- (6) \$250,000,000 or more will result in a refund of up to \$7,500 per new permanent job with a maximum refund of \$3,750,000 for the creation of at least 500 new permanent jobs, rather than 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 is authorized to 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 a double jumbo enterprise project is authorized to apply for in a state fiscal year from exceeding \$500,000, at not more than \$5,000 per new permanent job. Prohibits the total amount of tax refund that a triple jumbo enterprise project is authorized to apply for in a state fiscal year from exceeding \$750,000, at not more than \$7,500 per new permanent job. Authorizes an enterprise project, double jumbo enterprise project, or triple jumbo enterprise project, if such a 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 authorized to be refunded to:

- (1) 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;
- (2) 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 one or more new permanent jobs, rather than created or retained one or more jobs, for qualified employees; or
- (3) 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 one or more permanent jobs, rather than created or retained one or more jobs, for qualified employees.

(k) Provides that a half enterprise project is eligible for a maximum refund not to exceed \$125,000 in each state fiscal year and is subject to the capital investment and job allocation requirements under Subsection (b)(1), (2), or (3).

SECTION 12. Amends Section 151.429(e), Tax Code, by adding Subdivision (6) to define "half enterprise project."

SECTION 13. Repealer: 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 to be designated as an enterprise zone), Government Code.

SECTION 14. (a) Provides that the changes in law made by this Act to Section 2303.402(a), 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. Makes application of this Act prospective.

(b) Provides that the changes in law made by this Act to Section 2303.407, Government Code, and Section 151.429, Tax Code, apply only to an enterprise project designation made on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 15. Effective date: September 1, 2015.