

BILL ANALYSIS

Senate Research Center

H.B. 3
By: Keffer, Jim et al. (Ogden)
Finance
4/27/2006
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Supreme Court held in *Neeley v. West Orange-Cove Consolidated Independent School District*, that the state school finance system relies on revenues derived from a tax that, in effect, is a state property tax prohibited by the Texas Constitution. The court required the legislature to correct the constitutional violation by June 1, 2006. Since many Texas businesses that receive liability protection from the State do not pay the franchise tax, H.B. 3 raises state revenue by amending Chapter 171, Tax Code, to close the loopholes in the current franchise tax by extending coverage to certain active businesses. At the same time, it broadens the tax base and lowers the rate.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2 (Section 171.006), SECTION 5 (Sections 171.1011 and 171.1015), SECTION 18, and SECTION 20 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Amends Section 21.02, Tax Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Makes conforming and nonsubstantive changes.

(e) Defines "portable drilling rig." Sets forth the circumstances under which a portable drilling rig is taxable, and the taxing unit responsible for collecting said tax.

(b) Makes application of Section 21.02, Tax Code, as amended by this section, prospective to January 1, 2007.

(c) Effective date, this section: January 1, 2007.

SECTION 2. Amends Subchapter A, Chapter 171, Tax Code, as follows:

New heading: SUBCHAPTER A. DEFINITIONS; TAX IMPOSED.

Sec. 171.0001. GENERAL DEFINITIONS. Defines "affiliated group," "assigned employee," "banking corporation," "beginning date," "charter," "client company," "combined group," "controlling interest," "Internal Revenue Code," "lending institution," "management company," "retail trade," "savings and loan association," "shareholder," "staff leasing services company," "total revenue," "unitary business," and "wholesale trade."

Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Defines "taxable entity."

(b) and (c) Define what a "taxable entity" does not include.

(d) Provides that an entity that can file as a sole proprietorship for federal tax purposes is not a sole proprietorship for purposes of Subsection (b)(1) and is not

exempt under that subsection if the entity is formed in a manner under the statutes of this state or another state that limit the liability of the entity.

Sec. 171.0003. DEFINITION OF PASSIVE ENTITY. Sets forth the instances under which an entity is a passive entity.

Sec. 171.0004. DEFINITION OF CONDUCTING ACTIVE TRADE OR BUSINESS.

(a) Provides that the definition in this section applies only to Section 171.0003.

(b) Sets forth the circumstances under which an entity conducts an active trade or business.

(c) Provides that the activities performed by the entity include certain actions by others.

(d) Provides that an entity conducts active trade or business if assets, including royalties, patents, trademarks, and other intangible assets, held by the entity are used in the active trade or business of one or more related entities.

(e) Sets forth certain instances that do not constitute the conduct of an active trade or business for the purposes of this section.

Sec. 171.001. TAX IMPOSED. Provides that a franchise tax is imposed on each taxable entity, rather than corporation, that does business in this state or is chartered or organized in this state. Deletes existing text relating to taxing limited liability companies. Deletes existing definitions for this chapter.

Sec. 171.0011. ADDITIONAL TAX. (a) Provides that an additional tax is imposed on a taxable entity that for any reason becomes no longer subject to the tax imposed under this chapter, except as provided by Subsection (e). Deletes existing text relating to the earned surplus component of the tax. Makes conforming changes.

(b) Sets forth the manner in which the additional tax is computed. Makes conforming changes.

(c) Makes conforming changes.

(d) Makes no changes to this subsection.

(e) Provides that an additional tax is not imposed on a taxable entity that becomes no longer subject to the tax imposed under this chapter because the entity qualifies as a passive entity.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Provides that the rate of the franchise tax is one percent per year of privilege period of taxable margin, subject to Section 171.003 and except as provided by Subsection (b). Deletes existing text relating to the rates of the franchise tax.

(b) Provides that the rate of the franchise tax is 0.5 percent per year of privilege of taxable margin for those taxable entities primarily engaged in retail or wholesale trade. Deletes existing text relating to the computation of the franchise tax on corporations.

(c) Sets forth the conditions under which a taxable entity is primarily engaged in retail or wholesale trade. Deletes existing text relating to computations made under Subsection (b).

(c-1) Provides that Subsection (c)(2) does not apply to total revenue from activities in a retail trade described by Major Group 58 of the Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(d) Sets forth the conditions under which a taxable entity is not required to pay any tax and is not considered to owe any tax for a period.

Deletes text of existing Section 171.005 (Rate of Tax for Corporation in Process of Liquidation).

Sec. 171.003. INCREASE IN RATE REQUIRES VOTER APPROVAL. (a) Provides that an increase in a rate provided by Section 171.002(a) or (b) takes effect only if approved by majority vote in a statewide referendum held on the question of increasing the rate. Requires the referendum to specify the increased rate or rates.

(b) Provides that this section does not apply to a decrease in a rate provided by Section 171.002(a) or (b), but does apply to a subsequent rate increase if the rate is decreased.

(c) Sets forth certain conditions under which this section does not apply to any change in the tax imposed by this chapter.

Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR EXEMPTION AND COMPENSATION DEDUCTION. (a) Defines "consumer price index."

(b) Sets forth the manner in which the amounts prescribed by Section 171.002(d)(2) and 171.1013(c) are increased or decreased in relation to the consumer price index. Provides that said increase or decrease occurs on January 1 of each odd-numbered year, beginning in 2009.

(c) Provides that the amounts determined under Subsection (b) apply to a report originally due on or after the date the determination is made.

(d) Requires the comptroller of public accounts (comptroller) to make the determination required by this section and authorizes the comptroller to adopt rules related to making that determination.

(e) Provides that a determination made by the comptroller under this section is final and is prohibited from being appealed.

SECTION 3. Amends Section 171.052, Tax Code, to provide that an entity is subject to the franchise tax for a tax year in any portion of which the entity is in violation of an order issued by the Texas Department of Insurance under Section 2254.003(b), Insurance Code, that is final after appeal or that is no longer subject to appeal. Makes conforming changes.

SECTION 4. Amends Subchapter B, Chapter 171, Tax Code, by adding Section 171.088, as follows:

Sec. 171.088. EXEMPTION--NONCORPORATE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. Sets forth certain guidelines under which an entity that is not a corporation, but would qualify for a specific exemption under this chapter because of its activities, may qualify for the tax.

SECTION 5. Amends Subchapter C, Chapter 171, Tax Code, including the reenacting and amending of Section 171.109(g), Tax Code, as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, as follows:

New heading: SUBCHAPTER C. DETERMINATION OF TAXABLE MARGIN;
ALLOCATION AND APPORTIONMENT

Sec. 171.101. New heading: DETERMINATION OF TAXABLE MARGIN. (a) Sets forth the manner in which the taxable margin of a taxable entity is computed. Deletes existing text relating to the computation of the taxable capital of a corporation.

(b) Authorizes a staff leasing services company to subtract only compensation as determined under Section 171.1013, notwithstanding Subsection (a)(1)(B)(ii).

(c) Provides that in making a computation under this section, an amount that is zero or less is computed as a zero. Deletes existing text relating to the net taxable capital of a limited liability company and a savings and loan association.

(d) Requires an election under Subsection (a)(1)(B)(ii) to be made by the taxable entity on its annual report and provides that the election is effective only for that annual report. Authorizes the election to be changed by filing an amended report.

Sec. 171.1011. DETERMINATION OF TOTAL REVENUE FROM ENTIRE BUSINESS. (a) Provides that in this section, a reference to an Internal Revenue Service (IRS) form includes a variant of the form, and provides examples.

(b) Provides that in this section, a reference to an amount entered on a line number on an IRS form includes the corresponding amount entered on a variant of the form, or a subsequent form, with a different line number. Requires the comptroller to adopt rules as necessary to accomplish the legislative intent prescribed by this subsection and Subsection (a).

(c) Sets forth the manner in which the total revenue of a taxable entity is determined.

(d) Requires a corporation that is part of a federal consolidated group, subject to Section 171.1014, to compute its total revenue under Subsection (c) as if it had filed a separate return for federal income tax purposes.

(e) Requires a taxable entity that owns an interest in a passive entity that is not included in a group report under Section 171.1014 to include certain amounts in the taxable entity's total revenue.

(f) Requires a taxable entity to exclude certain flow-through funds from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3).

(g) Requires a taxable entity to exclude certain flow-through funds from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3).

(g-1) Requires a taxable entity that is a lending institution to exclude from its total revenue, to the extent included under above referenced subsections, proceeds from the principal repayment of loans.

(g-2) Requires a taxable entity to exclude from its total revenue, to the extent included under above referenced subsections, the tax basis as determined under the Internal Revenue Code of securities and loans sold.

(g-3) Requires a taxable entity that provides legal services to exclude certain amounts from its total revenue, to the extent included under above referenced subsections.

(h) Prohibits the taxable entity, if it belongs to an affiliated group, from excluding certain payments that are made to entities that are members of the affiliated group.

(i) Prohibits a payment made under an ordinary contract for the provision of services in the regular course of business from being excluded, except as provided by Subsection (g).

(j) Prohibits any amount excluded under this section from being included in the determination of cost of goods sold under Section 171.1012 or the determination of compensation under Section 171.1013.

- (k) Requires a taxable entity that is a staff leasing services company to exclude certain payments from its total revenue.
- (l) Defines "sales commission" and "principal" for the purposes of Subsection (g)(1).
- (m) Requires a taxable entity to exclude from its total revenue dividends and interest received from federal obligations, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3).
- (m-1) Requires a taxable entity that is a management company to exclude certain reimbursements of specified costs from its total revenue.
- (n) Requires a taxable entity that is a health care provider to exclude certain amounts from its total revenue, except as provided by Subsection (o).
- (n-1) Requires the comptroller to adopt rules governing the computation of the actual cost to a health care provider of certain uncompensated care, and the audit requirements related to these computations.
- (o) Requires a health care provider that is a health care institution to exclude from its total revenue 50 percent of the amounts described by Subsection (n), to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3).
- (p) Defines, for this section, "federal obligations," "health care institution," "health care provider," "obligation," "pro bono services," "out-of-pocket expenses," "United States government," "United States government agency," and "United State-sponsored agency."
- (q) Requires a taxable entity to exclude certain amounts from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3).
- (r) Requires a taxable entity to exclude certain amounts from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3).
- (s) Requires the comptroller to certify dates during which the monthly average closing price of West Texas Intermediate crude oil is below \$40 per barrel, and the average closing price of gas is below \$5 per MMBtu, as recorded on the New York Mercantile Exchange.

Sec. 171.1012. DETERMINATION OF COST OF GOODS SOLD. (a) Defines "goods," "production," and "tangible personal property."

- (b) Requires a taxable entity that elects to subtract cost of goods sold for the purpose of computing its taxable margin, subject to Section 171.1014, to determine the amount of that cost of goods sold as provided by this section.
- (c) Sets forth those items included in determining the cost of goods sold.
- (d) Sets forth additional items included in determining the cost of goods sold in relation to the taxable entity's goods.
- (e) Sets forth certain items that are not included in determining the cost of goods sold in relation to the taxable entity's goods.
- (f) Authorizes a taxable entity to subtract certain costs as a cost of goods sold. Prohibits any costs excluded under Subsection (e) from being subtracted under this subsection.

(g) Requires a taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to specific sections of the Internal Revenue Code to capitalize that cost in a specific manner.

(h) Requires a taxable entity to determine its cost of goods sold, except as otherwise provided by this section, in accordance with methods permitted by federal statutes and regulations. Provides that this subsection does not affect the type or category of cost of goods sold that may be subtracted under this section.

(i) Authorizes a taxable entity to make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods. Sets forth the manner in which taxable entities are determined to be the owner of real property, labor or materials, or goods being manufactured or produced.

(j) Prohibits a taxable entity from making a subtraction under this section for cost of goods sold to the extent the costs was funded by partner contributions and deducted under Subsection (c)(13).

(k) Authorizes a taxable entity, if the entity is a lending institution that offers loans to the public and elects to subtract the cost of goods sold, to subtract as a cost an amount equal to interest expense, notwithstanding any other provision of this section.

(k-1) Authorizes specified taxable entities to subtract as a cost of goods sold the costs otherwise allowed by this section in relation to tangible personal property that the entity rents or leases in the ordinary course of business, notwithstanding any other provision of this section.

(l) Authorizes a payment made by one member of an affiliated group to another member of the group not included in the combined group to be subtracted as a cost of goods sold only if it is a transaction made at arm's length, notwithstanding any other provision of this section.

(m) Defines "arm's length."

(n) Defines "related party."

Sec. 171.1013. DETERMINATION OF COMPENSATION. (a) Defines "wages and cash compensation."

(b) Authorizes a taxable entity that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101 to subtract certain amounts, subject to Section 171.1014.

(c) Prohibits a taxable entity from including more than \$300,000, or the amount determined under Section 171.006, for any person in the amount of wages and cash compensation it determines under Section 171.101, notwithstanding the actual amount of wages and cash compensation paid by the taxable entity to its officers, directors, owners, partners, and employees.

(c-1) Prohibits a taxable entity from subtracting any wages or cash compensation paid to an undocumented worker, subject to Section 171.1014. Defines "undocumented worker."

(d) Sets forth certain requirements and prohibitions of a staff leasing services company in determining its wages or cash compensation payments.

(e) Sets forth the manner in which a taxable entity that is a client company that contracts with a staff leasing services company determines compensation.

(f) Sets forth certain requirements and prohibition of a management company in determining its wages or cash compensation payments.

(g) Requires a managed entity to include reimbursements made to the management company for wages and compensation as if the reimbursed amounts had been paid to employees of the managed entity.

(h) Prohibits a taxable entity that subtracts compensation in computing its taxable margin from including amounts paid to an employee whose primary employment is directly associated with the operation of certain facilities as wages or cash compensation, subject to Section 171.1014.

Sec. 171.1014. COMBINED REPORTING; AFFILIATED GROUP ENGAGED IN UNITARY BUSINESS. (a) Requires taxable entities that are part of an affiliated group engaged in a unitary business to file a combined group report in lieu of individual reports based on the combined group's business. Prohibits the combined group from including a taxable entity that conducts business outside the United States if 80 percent or more of the entity's property and payroll are assigned to locations outside of the United States. Sets forth guidelines to determine how an entity's property and payroll are assigned.

(b) Provides that the combined group is a single taxable entity for purposes of the application of the tax imposed under this chapter.

(c) Sets forth guidelines to determine a combined group's total revenue, for purposes of Section 171.101.

(d) Requires a combined group to make an election to subtract either costs of goods sold or compensation that applies to all of its members, for purposes of Section 171.101.

(e) Sets forth requirements in determining the amount of cost of goods sold for a combined group that subtracts said cost, for purposes of Section 171.101.

(f) Sets forth requirements in determining the amount of compensation for a combined group that subtracts said amount, for purposes of Section 171.101.

(g) Authorizes a combined group to elect to include in the combined group an exempt entity that would be included in the group if the entity were not exempt, and to treat the exempt entity as if it were a taxable entity.

Sec. 171.1015. REPORTING FOR CERTAIN PARTNERSHIPS IN TIERED PARTNERSHIP ARRANGEMENT. (a) Defines "tiered partnership arrangement."

(b) Authorizes a taxable entity that is a lower tier entity, in addition to the tax it is required to pay under this chapter on its own taxable margin, to pay the tax on the taxable margin of a higher tier partnership if the higher tier partnership submits a report to the comptroller showing the amount of taxable margin that each lower tier entity that owns it should include within the lower tier entity's own taxable margin, according to the profits interest of the lower tier entity. Provides that an upper tier partnership is not required to pay tax under this chapter on any taxable margin reported under this section.

(c) Provides that this section does not apply to that percentage of the taxable margin attributable to a lower tier entity by an upper tier entity partnership if the lower tier entity is not subject to the tax under this chapter. Provides that in this case, the higher tier partnership is liable for the tax on its taxable margin.

(d) Requires the comptroller to adopt rules to administer this section.

Deletes text of existing Section 171.102 (Determination of Taxable Capital of Corporation in Process of Liquidation).

Sec. 171.103. New heading: DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR MARGIN. (a) Sets forth the manner in which the gross receipts of a taxable entity from its business done in this state is determined for the purpose of apportioning margin. Deletes existing text relating to determining the gross receipts of a corporation. Makes conforming changes. Deletes portions of existing text of Section 171.1032 relating to determining the gross receipts of a corporation in apportioning taxable capital.

Sec. 171.105. New heading: DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR MARGIN. (a) Deletes existing text of Section 171.105, and redesignates text of existing Section 171.1051. Sets forth the manner in which the gross receipts of a taxable entity from its entire business are determined for the purpose of apportioning margin. Deletes existing text relating to determining the gross receipts of a corporation. Makes conforming changes.

(b) Makes conforming changes.

(c) Requires a combined group to include in its gross receipts computed under Subsection (a) the gross receipts of each taxable entity that is a member of the combined group, without regard to whether that entity has a nexus with this state for the purposes of taxation.

Sec. 171.1055. EXCLUSION OF CERTAIN RECEIPTS FOR MARGIN APPORTIONMENT. (a) Prohibits receipts excluded from total revenue by a taxable entity under Section 171.1011, in apportioning margin, from being included in either the receipts of the taxable entity from its business done in this state as determined under Section 171.103 or the receipts of the taxable entity from its entire business done as determined under Section 171.105.

(b) Prohibits receipts derived from transactions between individual members of a combined group that are excluded under Section 171.1014(c)(3), in apportioning margin, from being included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103, except that receipts derived from the sale of a combined group where one member party to the transaction does not have nexus in this state is required to be included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103 to the extent that the member of the combined group that does not have nexus in this state resells the tangible personal property without modification to a purchase in this state.

(c) Prohibits receipts derived from transactions between individual members of a combined group that are excluded under Section 171.1014(c)(3), in apportioning margin, from being included in the receipts of the taxable entity from its entire business done as determined under Section 171.105.

Deletes text of existing Sections 171.1051(c) and (d).

Sec. 171.106. New heading: APPORTIONMENT OF MARGIN TO THIS STATE. Deletes existing text relating to the apportionment of a corporation's taxable capital. Deletes existing text relating to certain entities registered with the State Securities Board filing a report with the comptroller and a requirement of the comptroller to issue a report evaluating the statewide fiscal impact of certain provisions of this section, as it previously existed. Makes conforming changes.

Deletes text of existing Section 171.1061. (Allocation of Certain Taxable Earned Surplus to this State).

Sec. 171.107. New heading: DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM MARGIN APPORTIONED TO THIS STATE. (b) Authorizes a taxable entity, rather than a corporation, to deduct from its apportioned margin, rather than taxable

earned surplus, 10 percent of the amortized cost of a solar energy device if meets certain criteria. Deletes existing text relating to a corporation's deduction of a solar energy device.

(c) Requires the amortization of the cost of a solar energy device to provide for equal monthly amounts or conform to federal depreciation schedules.

(d) Makes conforming changes. Deletes existing Subsection (e) relating to a corporation deductions.

Sec. 171.108. New heading: DEDUCTION OF COST OF CLEAN COAL PROJECT FROM MARGIN APPORTIONED TO MARGIN APPORTIONED TO THIS STATE. Makes conforming changes. Deletes existing Subsections (e) relating to a corporations deductions. Deletes existing Sections 171.109 and 171.110 relating to a surplus and a determination of net taxable earned surplus.

Sec. 171.111. New heading: TEMPORARY CREDIT ON TAXABLE MARGIN. (a) Authorizes a taxable entity, not later than March 1, 2007, rather than not later than March 1, 1992, to notify the comptroller in writing of its intent to preserve its right to take a credit in an amount allowed by this section on the tax due on taxable margin. Makes conforming changes.

(b) Provides that the credit allowed under this section for any privilege period is computer in certain manner. Deletes existing text relating to the method of computing the credit.

(c) Redesignates Subsections (c) - (e) as Subsection (c). Deletes existing text relating to a corporation computing a certain amount and the manner it computes the amount. Deletes existing text relating to requirements after a certain election. Makes conforming changes.

(d) Provides that a credit that a taxable entity is to is entitled to under this section does not convey, and is prohibited from being assigned or transferred, in relation to a transaction in which the taxable entity is purchased by another entity.

(e) Redesignates Subsections (f) - (i) as Subsection (e). Provides that this section expires September 1, 2026, rather than September 1, 2012. Deletes Section 171.112 relating to gross receipts for taxable capital.

Sec. 171.1121. New heading: GROSS RECEIPTS FOR MARGIN. Makes conforming changes. Deletes existing Section 171.113 relating to an alternative method of determining taxable capital and gross receipts for certain corporations.

SECTION 6. Amends Subchapter D, Chapter 171, Tax Code, as follows:

Sec. 171.152. Makes a conforming change.

Deletes existing Sections 171.153 and 171.1531 relating to business on which tax on net taxable capital is based and credit for survivor of merger.

Sec. 171.1532. New heading: BUSINESS ON WHICH TAX ON NET TAXABLE MARGIN IS BASED. Makes conforming changes.

Sec. 171.154. Makes a conforming change.

Sec. 171.158. New heading: PAYMENT BY FOREIGN TAXABLE ENTITY BEFORE WITHDRAWAL FROM STATE. (a) Authorizes a foreign taxable entity holding a registration or certificate of authority to do business in this state, except as provided by Subsection (b), to withdraw from business in this state by filing a certificate of withdrawal with the secretary of state. Makes conforming changes and a nonsubstantive change.

(b) Makes conforming changes.

SECTION 7. Amends Subchapter E, Chapter 171, Tax Code, as follows:

Sec. 171.201. (a) Requires a taxable entity on which the franchise tax is imposed, except as provided by Section 171.2022 (Exemption From Reporting Requirements), to file an initial report with comptroller containing certain information. Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

Sec. 171.202. (a) - (c) Makes conforming changes.

(d) Requires the optional payment under Subsection (c)(2)(B) or (e)(2)(B), in the case of a taxpayer whose previous return was its initial report, to be a certain amount.

(e), (f), and (i) Makes conforming changes.

Sec. 171.2022. Makes conforming changes.

Sec. 171.203. Makes a nonsubstantive change.

Sec. 171.2035. ADDITIONAL PUBLIC INFORMATION REPORT. (a) Requires a taxable entity that has more than 100,000 employees in this state to file a report with the comptroller stating the number of the taxable entity's employees in this state that receive assistance for that employee or the employee's family under the Children's Health Insurance Program (CHIP) or the Medicaid program.

(b) Requires a taxable entity described by Subsection (a) to file the report once a year on a form prescribed by the comptroller.

Sec. 171.204. INFORMATION REPORT. (a) Authorizes the comptroller, except as provided by Subsection (b), to determine eligibility for the exemption provided by Section 171.2022, or to determine the amount of the franchise tax or the correctness of a franchise tax report, to require a taxable entity, rather than an officer of a taxable entity, that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the taxable entity's margin, or any other information the comptroller may request that is necessary to make a determination under this subsection. Makes conforming changes.

(b) Makes conforming changes.

Sec. 171.205. Makes conforming changes.

Sec. 171.206. Provides that certain information is confidential and is prohibited from being made open to public inspection. Makes a nonsubstantive change.

Sec. 171.207. Makes a conforming and a nonsubstantive change.

Sec. 171.208. Prohibits a person, including certain state employees or an owner a taxable entity, who has access to a report filed under this chapter from making known in a manner not permitted by law the amount or source of the taxable entity's income, profits, losses, expenditures, cost of goods sold, compensation, or other information in the report relating to the financial condition of the taxable entity. Makes conforming changes.

Sec. 171.209. New heading: RIGHT OF OWNER TO EXAMINE OR RECEIVE REPORTS. Makes conforming changes and a nonsubstantive change.

Sec. 171.211. New heading: EXAMINATION OF RECORDS. Makes conforming changes.

Sec. 171.212. Requires a taxable entity to file an amended report under this chapter if the taxable entity files an amended federal income tax return that changes the taxable entity's taxable margin, rather than earned surplus. Makes conforming changes.

SECTION 8. Amends the heading to Subchapter F, Chapter 171, Tax Code, to read as follows:

SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

SECTION 9. Amends Subchapter F, Chapter 171, Tax Code, by adding Section 171.2515, as follows:

Sec. 171.2515. **FORFEITURE OF RIGHT OF TAXABLE ENTITY TO TRANSACT BUSINESS IN THIS STATE.** (a) Authorizes the comptroller to, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a taxable entity to transact business in this state.

(b) Provides that the provisions of this subchapter, including Section 171.255 (Liability of Director and Officers), that apply to the forfeiture of corporate privileges apply to the forfeiture of a taxable entity's right to transact business in this state.

SECTION 10. Amends Section 171.351, Tax Code, to make conforming changes.

SECTION 11. Amends Section 171.353, Tax Code, to make conforming changes.

SECTION 12. Amends Section 171.354, Tax Code, to make conforming changes.

SECTION 13. Amends Sections 171.362(a), (d), and (e), Tax Code, to make conforming and nonsubstantive changes.

SECTION 14. Amends Sections 171.363(a) and (b), Tax Code, to make conforming changes.

SECTION 15. Amends Section 171.401, Tax Code, to make a conforming change.

SECTION 16. (a) Amends Section 313.007, Tax Code, as follows:

Sec. 313.007. Provides that Subchapters B, C, and D expire December 31, 2011, rather than December 31, 2007.

(b) Amends Section 313.024(a), Tax Code, to provide that this subchapter and Subchapter C and D apply only to property owned by an entity to which Chapter 171 (Franchise Tax), rather than Section 171.001 (Tax Imposed), applies.

(c) Amends Section 313.024(b), Tax Code, to make a conforming change.

(d) Amends Section 313.025(b), Tax Code, to provide that the governing body of a school district is not required to consider an application for a limitation on appraised value that is filed with the governing body under Subsection (a). Requires the governing body, if the governing body of the school district does elect to consider an application, to request that TEA conduct an economic impact evaluation of the application on behalf of the school district, rather than engage a third person to conduct an economic impact evaluation of the application on behalf of the school district, and provides that TEA is required to conduct the evaluation as soon as practicable. Requires the governing body to provide to TEA any information requested by TEA. Authorizes TEA to develop a methodology to allow comparisons of economic impact for different schedules of addition of qualified investment or qualified property as part of the economic impact evaluation. Provides that the economic impact evaluation of TEA is binding on the

governing body of the school district and the applicant. Requires the governing body to provide a copy of the evaluation to the applicant on request. Authorizes TEA to charge and collect a fee sufficient to cover the costs of providing the economic impact evaluation. Requires the governing body of a school district to approve or disapprove an application before the 121st day after the date the application is filed, unless TEA's economic impact evaluation has not been received or an extension is agreed to by the governing body and the applicant. Makes a nonsubstantive change.

(e) Amends Section 313.051, Tax Code, as follows:

Sec. 313.051. (a) Provides that this chapter applies only to a school district that has territory in certain areas or counties.

(a-1) Provides that notwithstanding Subsection (a), if on January 1, 2002, this subchapter applied to a school district in whose territory is located a federal nuclear facility, this subchapter continues to apply to the school district regardless of whether the school district ceased or ceases to be described by Subsection (a) after that date.

(b) Requires at least 80 percent of all the new jobs created to be certain qualifying jobs, except that, for a school district described by Subsection (a)(2), each qualifying job is required to pay at least 110 percent of the average weekly wage for manufacturing jobs in the region designated for the regional planning commission, council of governments, or similar regional planning agency created under Chapter 391 (Regional Planning Commissions), Local Government Code, in which the district is located.

(f) Provides that Section 313.051(b), Tax Code, as amended by this section, applies only to a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes for which the owner files an application on or after the effective date of this Act. Provides that a limitation on the appraised value for school district maintenance and operations ad valorem tax purposes for which the owner files an application before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 17. (a) Provides that the repeal of Section 171.111 (Temporary Credit on Net Taxable Earned Surplus), Tax Code, by this Act does not affect a credit that accrued under that section before the effective date of this Act.

(b) Authorizes a corporation that has any unused credits accrued before the effective date of this Act under Section 171.111, Tax Code, to claim those unused credits on or with the tax report for the period in which the credits were accrued, and provides that the former law under which the corporation accrued the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

SECTION 18. (a) Repealer: Subchapter L (Tax Credit Wages Paid To Texas Department of Criminal Justice Work Program Participants or Former Participants); Subchapter M (Tax credit for Wages Paid to Certain Children Committed to Texas Youth Commission); Subchapter N (Tax credit for Establishing Day-Care Center or Purchasing Child Services); Subchapter O (Tax credit for Certain Research and Development Activities); Subchapter P (Tax credits for certain Job Creation Activities); Subchapter Q (Tax Credits for Certain Capital Investments); Subchapter R (Tax Credit for Contributions to Before and After School Programs); Subchapter S (Credits Limitation); Subchapter T (Tax Credit for Wages Paid to Persons With Certain Disabilities); Subchapter U (Tax Credit for Title Insurance Holding Companies) as added by Chapter 209, Acts of the 78th Legislature, Regular Session, 2003; and Subchapter U (Tax Credit for Title Insurance Holding Companies) as added by Chapter 1274, Acts of the 78th Legislature, Regular Session, 2003.

(b) Provides that this section does not affect a credit authorized by a provision listed in Subsection (a) of this section that accrued under Chapter 171, Tax Code, before the effective date of this Act or a credit that continues to accrue under Section 19 of this Act.

(c) Authorizes a corporation that has any unused credits accrued before the effective date of this Act under a provision other than Subchapter O, P, or Q, Chapter 171, Tax Code, to claim those unused credits on or with the tax report for the period in which the credits were accrued, and provides that the former law under which the corporation accrued the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(d) Authorizes a corporation that has any unused credits accrued before the effective date of this Act under Subchapter O, Chapter 171, Tax Code, to claim those unused credits on or with the tax report for the period in which the credit was accrued. Authorizes the corporation, if the corporation was allowed to carry forward unused credits under that subchapter, to continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter O, Chapter 171, Tax Code, had it continued in existence, or December 31, 2027, and provides that the former law under which the corporation accrued the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(e) Authorizes a corporation that has any unused credits accrued before the effective date of this Act under Subchapter P, Chapter 171, Tax Code, to claim those unused credits on or with the tax report for the period in which the credit was accrued. Authorizes the corporation, if the corporation was allowed to carry forward unused credits under that subchapter, to continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter P, Chapter 171, Tax Code, had it continued in existence, or December 31, 2012, and provides that the former law under which the corporation accrued the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(f) Authorizes a corporation that has any unused credits accrued before the effective date of this Act under Subchapter Q, Chapter 171, Tax Code, to claim those unused credits on or with the tax report for the period in which the credit was accrued. Authorizes the corporation, if the corporation was allowed to carry forward unused credits under that subchapter, to continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter Q, Chapter 171, Tax Code, had it continued in existence, or December 31, 2012, and provides that the former law under which the corporation accrued the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(g) Requires the comptroller to adopt rules to administer this section.

SECTION 19. Provides that a written agreement between the Texas Department of Economic Development or its successor and a taxpayer effective before June 1, 2006, that allows for credits against the tax imposed under Chapter 171, Tax Code, continues in effect and the credits allowed under the agreement continue to accrue and may be claimed in the manner provided by the agreement against the tax imposed under Chapter 171, Tax Code, as amended by this Act, for the duration of the agreement. Provides that the former law under which the agreement was made and under which the taxpayer received the entitlement to the credits is continued in effect for purposes of determining the amount of the credits the taxpayer may claim and the manner in which the taxpayer may claim the credits.

SECTION 20. Requires the comptroller to adopt rules to implement the legislative intent in Sections 171.1012(e)(14) and 171.1013(c-1), Tax Code.

SECTION 21. Provides that the franchise tax imposed by Chapter 171, Tax Code, as amended by this Act, is not an income tax and Pub. L. No. 86-272 does not apply to the tax.

SECTION 22. (a) Provides that subject to other provisions of this section, this Act applies to reports originally due on or after the effective date of this Act.

(b) Sets forth the requirements for an entity becoming subject to the franchise tax under this Act.

(c) Provides that for purposes of this Act, an existing partnership is considered as continuing if it is not terminated.

(d) Provides that a partnership is considered terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

(e) Provides that for a merger or consolidation of two or more partnerships, the resulting partnership is, for purposes of this Act, considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(f) Provides that for a division of a partnership into two or more partnerships, the resulting partnerships, other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership, are, for purposes of this Act, considered a continuation of the prior partnership.

SECTION 23. (a) Requires the comptroller to require the entities specified by this section to file an information report in the manner provided by this section. Provides that the information report is confidential and exempt from disclosure under Chapter 552 (Public Information), Government Code.

(b) Requires the information report required under this section to contain the same information that an entity required to file the report would have submitted in its report due to the comptroller in 2006 under Chapter 171, Tax Code, if the changes made by this Act to Chapter 171, Tax Code, had been in effect January 1, 2006. Requires the information report to also contain the total of maintenance and operations school property taxes paid by the entity to school districts in Texas in the 2005, 2006, and 2007 tax years. Requires the comptroller to provide the forms and instructions to the entities required to file a report under this section.

(c) Requires the comptroller to take action to revoke the charter, as that term is defined by Section 171.0001, Tax Code, as added by this Act, of an entity that does not file an information return in the manner and under the time limits provided by this section.

(d) Requires the comptroller to identify and require certain entities to file an information report under this section.

(e) Authorizes an entity to be listed in one or more of the categories under Subsection (d) of this section. Provides that an entity that is listed more than once is required by this section to file only one information return.

(f) Sets forth certain duties required of the comptroller.

(g) Prohibits the report required under Subsection (f)(6) of this section from being formatted in a manner or including any information that discloses or effectively discloses the specific identity of a reporting entity.

(h) Provides that this section takes effect as provided by Section 27 of this Act.

SECTION 24. (a) Provides that the supreme court has exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act and may issue injunctive or declaratory relief in connection with the challenge.

(b) Requires the supreme court to rule on a challenge filed under this section on or before the 120th day after the date the challenge is filed.

(c) Provides that this section takes effect as provided by Section 27 of this Act.

SECTION 25. (a) Provides that the amount of \$2 million is appropriated out of the general revenue fund to the comptroller for the state fiscal biennium ending August 31, 2007, for the implementation of this Act and for audit and enforcement activities.

(b) Provides that this section takes effect as provided by Section 27 of this Act.

SECTION 26. Effective date: January 1, 2008, except as otherwise provided by Section 27. Makes application of this Act prospective for reports originally due on or after the effective date.

SECTION 27. Effective date of sections noted as taking effect as provided by this section: June 1, 2006, or September 1, 2006.