

**SUBJECT:** Authorizing school district tax abatement agreements

**COMMITTEE:** Ways & Means — committee substitute recommended

**VOTE:** 11 ayes — Meyer, Thierry, Button, Craddick, Gervin-Hawkins, Hefner, Muñoz, Noble, Raymond, Shine, Turner

0 nays

**WITNESSES:** For — Bob Adair, Advantous Consulting, LLC; Susan Bohn, Aledo ISD, Fast Growth School Coalition, North Texas Commission; Mitch Thames, Bay City Chamber of Commerce; Rebecca Kelley, Brazosport ISD & Texas School Coalition; Sarah Tindall, CCREDC; Javier Villalobos, City of McAllen; Mike Rosa, Dallas Regional Chamber; Steve Ahlenius, Greater Beaumont Chamber of Commerce; Bob Harvey, Greater Houston Partnership; Stewart McGregor, Kaufman Economic Development Corporation and Texas Economic Development Council; Michael Ferdinand, Matagorda County Economic Development Corp.; Gary Farmer, Opportunity Austin; Mark Porterie, Port Arthur Independent School District; Jeff Webster, San Antonio Chamber of Commerce; Kent Sharp, Sherman Economic Development Corp; Devin Padavil, Taylor ISD; Glenn Hamer, Texas Association of Business; Ray Dunlap, Texas Economic Development Council Terrell EDC; Barry Smitherman, Texas Geothermal Energy Alliance; Marina Gonzales, Texas Hispanic Chamber of Commerce Coalition; Pete Pape, Texas Schools for Economic Development; J.J. Hollie, The Woodlands Area Chamber of Commerce; Pat Avery, US Chamber of Commerce, Texas Association of Business; Bill Gravell, Williamson County (*Registered, but did not testify*); Eddie Solis, Abilene Chamber; Isaac Albarado, Oscar Garza, Kelly Sadler, AEP Texas; Corbin Van Arsdale, AGC-Texas Building Branch; Ross Giesinger, Air Liquide; Scott Stewart, American Council of Engineering Companies of Texas; Kerry Hall, Austin Chamber of Commerce; Ali Khataw, Austin Chamber of Commerce; Mark Bell, Association of Electric Companies of Texas; Martha Landwehr, BASF Corporation; Mike Meroney, BASF Corporation; David Blackburn, Bell County; Randy Pittenger, Belton Area Chamber of Commerce; John Colyandro,

Carbon Neutral Coalition; June Deadrick, CenterPoint Energy; Moises Murillo, Cheniere; Jeff Heckler, City of Buda; Gerald Lee, City of Del Rio; Guadalupe Cuellar, City of El Paso; TJ Patterson, City of Fort Worth; Alexa Aragonz, City of Houston, Mayor's Office; Victoria Vargas, City of Kyle Economic Development Department; Scott Jones, City of Manor, TX; Nadia Islam, City of San Antonio; Rebecca Young Montgomery, Coalition East Tarrant Chambers; Michael Bruno, Competitive Power Ventures; Adam Haynes, Conference of Urban Counties; Kari Gibson, ConocoPhillips; Casey Kelley, Constellation Energy Generation; Manuel Montanez, Copperas Cove City Counsel; Rebekah Chenelle, Dallas County Commissioners Court; Matthew Garcia, Dallas Regional Chamber; Greg Macksood, Devon Energy; Sam Gammage, Dow; Bryan Hebert, Downtown Austin Alliance; Tom Forbes, El Paso chamber of Commerce; Jason Damen, Energy Transfer; Scott Hutchinson, Entergy Texas; Lindsey Miller, Enterprise Products Partners; Samantha Omev, ExxonMobil; Kyle Jacobson, Fort Worth Chamber of Commerce; Rebecca Young Montgomery, Fort Worth Hispanic Chamber of Commerce - Member; Lauren Fairbanks, Freeport LNG; Rebecca Young Montgomery, Frisco Chamber of Commerce; Rebecca Young Montgomery, Greater Arlington Chamber of Commerce; Wendy Foster, Independent Bankers Assoc of Texas; David Emerick, JPMorgan Chase & Co.; Shannon Ratliff, Jupiter Power; Myra Leo, Kansas City Southern; Julie Snyder, Kyle Area Chamber of Commerce; Michael Ashton, Linde; Mindy Ellmer, Lyondell Basel; Bob Harvey, Metro 8 Chambers of Commerce; Shannan Reid, Montgomery area chamber of commerce; Wesley Burnett, Nacero, Inc; Michele Boggs, New Braunfels Chamber; Alyssa Coker, New Braunfels Chamber of Commerce; Alexandra Meade, New Braunfels Economic Development Foundation; Patrick Brophy, North Texas Commission Regional Chamber Coalition; Jessica Oney, NRG Energy; Joel Romo, Nueces County; Patricia Shipton, Nueces County; Julie Moore, Occidental Petroleum; Pasha Moore, Olin; Anne Billingsley, ONEOK, Inc.; Charisse Bodisch, Opportunity Austin; Stacy Schmitt, Opportunity Austin; Michael D. Lozano, Permian Basin Petroleum Association; Neftali Partida, Phillips 66; Brian Yarbrough, Port of Corpus Christi Authority; Dana Chiodo, Raytheon Technologies; Alina Carnahan, Real Estate Council of Austin; Stephanie Reyes, Real Estate

Council of San Antonio (RECSA); Jordan Robinson, Round Rock Chamber of Commerce; Matt Grabner, Ryan, LLC; JD Slaughter, S&B Engineering & Constructors; Brook Brookshire, S&B Engineering & Contractors; Dana Harris, Samsung Austin Semiconductor; Martin Gutierrez, San Antonio Hispanic Chamber of Commerce; Brad Cesak, San Marcos Area Chamber of Commerce; Robert Nathan, Schneider Electric; Chester Jenke, Seguin Area Chamber of Commerce; Ronald Golemon, Shell USA; Michael Ruggieri, Southwestern Elec. Power Co.; John Kroll, Switch; Lauren Spreen, Targa Resources; Jason Modglin, Texas Alliance of Energy Producers; Tony Bennett, Texas Association of Manufacturers; Fred Shannon, Texas Association of Manufacturers, Applied Materials, HP, and Gerdau Ameristeel; Greg Vaughn, Texas Association of Workforce Boards; Justin Yancy, Texas Business Leadership Council; Hector Rivero, Texas Chemical Council; Michele Richmond, Texas Competitive Power Advocates; Carlton Schwab, Texas Economic Development Council; Craig Chick, Texas Hydrogen Alliance; Ed Longanecker, Texas Independent Producers & Royalty Owners Association; Shannon Rusing, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Dee Carney, Texas School Alliance; Craig Eiland, Texas Schools for Economic Development; AJ Louderback, Texas Sheriffs Regional Alliance; Becky Walker, Texas Society of Architects; Dale Craymer, Texas Taxpayers and Research Association; Seth Juergens, Tezas REALTORS; Wendy Herman, The City of Corpus Christi; Amy DeWeese, The PNC Financial Services Group; Jami Sims, The Real Estate Council of Dallas, Real Estate Council of Greater Fort Worth; Chris Shields, Toyota; Al Arreola, United Corpus Christi Chamber of Commerce; Brad Schlueter, USAA; Jay Brown, Valero Energy Corporation; Mance Zachary, Vistra Corporation; Lauren Spreen, Williams Companies; Damon Withrow, Xcel Energy; and 6 individuals)

Against — Manning Rollerson, Better Brazoria; Melanie Oldham, Better Brazoria Clean Air and Water; Miles Brandon, Doug Greco, Jose Guerrero, Everett Lunning, Lydia Moore, Central Texas Interfaith/Texas IAF; Rena Oden, COPS/Metro/Texas IAF; Jerome Frank, Dallas Area Interfaith/Texas IAF; Gabriel Clark-Leach, EIP; Luke Metzger, Environment Texas; Dick Lavine, Every Texan; Cyrus Reed, Lone Star

Chapter Sierra Club; Trevor Carroll, Texas Campaign for the Environment; Robin Schneider, Texas Campaign for the Environment; Bob Fleming, TMO Houston IAF affiliate; Rosalie Tristan, Valley Interfaith/Texas IAF; Charles Boone; Mark V Goloby; Katherine Hahn (*Registered, but did not testify*: Laura Chris Green, Jommar Reyes, Enrique J. Saenz, James Weems, Deborah White, Central Texas Interfaith; Virginia Palacios, Commission Shift; Jeanie Turner, Yolanda Turner, Cops Metro; Colin Leyden, Environmental Defense Fund; Shannon Doyle, National Association of Social Workers - Texas Chapter; Adrian Shelley, Public Citizen; Leonard Aguilar, Texas AFL-CIO; Alejandro Pena, Texas American Federation of Teachers; Edith Clark, Texas IAF/Central Texas Interfaith; Jason Sabo, Texas Public Interest Research Group; Brent Bennett, Texas Public Policy Foundation; John Pitts, Jr, Texas Solar Power Association; Elaina Fowler, Texas State Teachers Association; Fran Rhodes, True Texas Project; Cary Cheshire; Tracy Cornelius)

On —Jeffrey Clark, Advanced Power Alliance; Teddy Clevenger, Bartlett ISD; Korry Castillo, Comptroller of Public Accounts; Aaron Hood, Robert Lee ISD; Adriana Cruz, Texas Economic Development & Tourism, Office of the Governor; George Christian (*Registered, but did not testify*: John Villarreal, Comptroller of Public Accounts; Michael Lee, TARS; Colby Nichols, Texas Association of School Administrators; Texas Association of Community Schools; Matthew Boms)

**BACKGROUND:** Some have suggested that an innovative, transparent, and accountable economic development program could help to attract more jobs and investment into Texas.

**DIGEST:** CSHB 5 would establish provisions for property tax abatement agreements between a school district and a person interested in constructing an eligible, large-scale economic development project within the district. Under an agreement the district would limit temporarily the taxable value of eligible property for school district maintenance and operation property tax purposes when used as part of a proposed project in exchange for the investment and job creation associated with the project.

Authority to enter into such agreements would expire December 31, 2036.

Projects eligible under a tax abatement agreement would include a national or state security project or supply chain infrastructure project, a manufacturing project, or a project that would require an investment in a Texas school district of more than \$1 billion.

The bill would define a national or state security project or supply chain project as a grid reliability project or a seawater or brackish groundwater desalination project. A grid reliability project would be defined further as a project:

- that generated base load or dispatchable electricity for a power grid, including from thermal sources, or that provided stored energy from batteries regardless of the power source;
- that increased the output capacity or reliability of an existing detachable electric power generation facility or that replaced dispatchable electric power generation assets to extend the useful life of the facility, including equipment that enabled the use of multiple fuels;
- that created or expanded the capability to store fuel used by an electric power generation facility, regardless of whether the fuel was stored at the facility site;
- to produce hydrogen fuel or feed stock;
- that was a natural gas terminal or storage facility; or
- that was a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

**Required jobs and investment.** For projects other than a national or state security project or supply chain infrastructure project, the bill would establish the number of jobs that would have be created and the amount that would be required to be invested in the project prior to the start of the incentive period specified in the agreement. Requirements would differ based on the overall taxable value of property in a district.

To satisfy the eligibility requirement for an agreement, each required job

created in connection with an eligible project would be required to meet criteria specified in the bill. CSHB 5 also would allow an applicant to count one construction job credit for every 10 construction jobs created and provide a means by which to calculate the number of eligible construction jobs affiliated with the project.

An applicant could use any reasonable means to demonstrate the applicant had met the applicable minimum investment requirement. The applicant would be considered to have met this requirement if the most recent appraisal roll for the county in which the eligible property was located indicated that the appraised value of the property encompassing the project as of January 1 of the first year of the incentive period was equal to or greater than the minimum investment requirement of the applicable project.

The taxable value for school district maintenance and operations property tax purposes of eligible property subject to an agreement for each tax year of the incentive period prescribed in the agreement would be equal to:

- \$100 million, if the project subject to the agreement was located in a school district with a taxable value of property of \$10 billion or more;
- \$75 million, if the project subject to the agreement was located in a school district with a taxable value of property of at least \$1 billion but less than \$10 billion;
- \$50 million, if the project subject to the agreement was located in a school district with a taxable value of property of at least \$500 million but less than \$1 billion;
- \$25 million, if the project subject to the agreement was located in a school district with a taxable value of property of at least \$100 million but less than \$500 million; or
- \$5 million, if the project subject to the agreement was located in a school district with a taxable value of property of less than \$100 million.

The bill would specify criteria for determining the taxable value of

eligible property for school district maintenance and operations tax purposes for a tax year during the incentive period. The chief appraiser where eligible property was located would be required to determine the market value and appraised value of the property and include the market value, appraised value, and taxable value of the property in the appraisal records for the appraisal district. The chief appraiser could not use an estimated value included in the application to which the agreement referenced in order to determine the market value of the property.

**Application.** A person submitting an application for an agreement would be required to use the form prescribed by the comptroller. The bill would specify the information the applicant would be required to provide on the form.

In addition to the form, an applicant also would be required to include the following with the application:

- an application fee payable to the school district in an amount determined by the district not to exceed \$60,000 for an initial application, which would include processing costs, professional services, preparing a school finance impact report required by the bill, and, if applicable, creating a reinvestment zone or enterprise zone;
- a map showing the site of the proposed project; and
- an economic benefit statement.

A school district would be required to forward a submitted application to the comptroller no later than seven days after the date the district received the application. The comptroller could request additional information from the applicant and require the applicant to submit the additional information by a certain date, a deadline which could be extended on a showing of good cause. The bill would specify that the comptroller would not be required to take further action on an application until it was complete. The bill would require the comptroller to notify an applicant and the district when the application was administratively complete.

**Economic benefit statement.** The economic benefit statement, which would have to be submitted with the application, would be required to include the following estimates for each year beginning with the commencement of project construction and ending on the 25th anniversary of the date the incentive period ended:

- the number of total jobs that would be created by the project;
- the total amount of capital investment that would be created by the project;
- the increase in appraised value of property attributed to the project;
- the amount of property taxes that would be imposed by each taxing unit other than the school district on the property used as part of the project;
- the amount of state taxes that would be paid in connection with the project; and
- the associated economic benefits that could reasonably be attributed to the project as prescribed by the bill.

The bill would specify components that would have to be addressed in the statement and would require the comptroller to establish criteria for the methodology an applicant could use to create the statement. The comptroller also could require an applicant to supplement or modify the statement to ensure the accuracy of the required estimates.

**School finance impact report.** A school district that received an application for a tax abatement project would be required to prepare a school finance impact report for the proposed project. The impact report would be required to describe the projected tax and revenue consequences for the district of the proposed project for each year of the 25-year period beginning on the date the application was received by the district. The report would be required to include an estimated amount of property taxes imposed by the district during that period on the property used as part of the proposed project, together with all related property owned or leased by the applicant and placed in service as a direct result of the project for maintenance and operations purposes, and for interest and sinking fund purposes.



**Comptroller recommendation.** The comptroller would be required to provide a recommendation to the school district as to whether an application submitted to the district should be approved. The comptroller would be required to notify an applicant and a district of the comptroller's recommendation within 60 days of determining that the application was complete. The bill would require the comptroller to recommend that the district approve an application if:

- the proposed project was eligible;
- the proposed project was reasonably likely to generate, before the 25th anniversary of the last day of the incentive period, state or local tax revenue, including property tax revenue attributable to the effect of the project on the state economy, in an amount sufficient to offset the district property tax revenue lost as a result of the tax abatement agreement; and
- the agreement was a determining factor in the applicant's decision to make the investment and locate the project in Texas.

The bill provisions regarding the preceding determining factors would not apply to an application if the proposed project was a grid reliability project.

An applicant would be entitled to a hearing if the comptroller decided not to recommend school district approval of an application. The bill would specify that the hearing would be a contested case hearing that would have to be conducted by the State Office of Administrative Hearings (SOAH) in the manner provided by applicable state law governing SOAH tax hearings. To receive a hearing, an applicant would be required to file a notice of appeal with the comptroller within 30 days after the date the comptroller notified the applicant of the comptroller's determination. The comptroller's determination would become final if the applicant failed to file the notice of appeal by the deadline. An applicant could seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule as provided by the Administrative Procedure Act.

**School district action.** The governing body of a school district would be required to either approve or disapprove an application that the comptroller had recommended be approved by the district. The governing body could approve an application only if the comptroller recommended the application be approved. The governing body would be required to approve or disapprove the application not later than the 35th day after the district had received the comptroller's determination on the application. The governing body could extend the deadline based on a written request of the applicant.

A governing body that disapproved an application could propose amendments to the application and reconsider an amended application no later than 60 days after the governing body had disapproved the application. The bill would allow the governing body to impose a \$15,000 fee on the applicant for amending the application and extend the deadline for preparing an amendment based on a written request of the applicant. If the governing body and the applicant agreed on an amendment, the amended application would have to be submitted to the comptroller for a redetermination regarding the application. The comptroller would be required to notify the applicant and the district of redetermination of the application within 30 days after the date the comptroller received the amended application.

The governing body would be required to notify the applicant and the comptroller of the governing body's approval or disapproval of an application within seven days after the date the governing body approved or disapproved the application. The bill would include prohibitions related to soliciting or accepting payments unrelated to application fees by school district employees and applicants.

**Agreement.** The governing body of a school district that approved an application for a tax abatement agreement would be required to enter into an agreement with the applicant that would include certain terms specified within the bill.

The agreement could require the applicant to either share a percentage of

the applicant's tax revenue savings with the district or pay the district an amount specified in the agreement that could not be less than \$75,000 for each tax year during the incentive period. If the agreement required the applicant to share a percentage of the tax revenue savings, the agreement would be required to:

- specify the tax savings percentage to be shared;
- require the applicant to make an indemnity payment to the district;
- authorize the applicant to terminate the agreement as an alternative to making an indemnity payment; and
- authorize the district to terminate the agreement.

The agreement could not require the applicant to make a payment to the district other than a payment established under the bill.

The agreement would establish that the school district:

- would be authorized to terminate the agreement if the applicant failed to meet a material requirement of the agreement;
- could not terminate the agreement until the district provided written notice to the applicant of the proposed termination;
- would be required to provide the applicant the opportunity to cure and dispute the alleged failure, including through judicial action; and
- would be entitled to recover all lost property tax revenue from the project and interest on the amount as allowed.

If applicable, an applicant would be required to make an indemnity payment to a district for a tax year during the incentive period in which the district's revenue was substantially reduced as a result of legislation, an amendment to the constitution, or a final judicial determination directly affecting tax incentives authorized under the bill and determined by the Texas Education Agency. The bill would include the process for determining the amount of an applicable indemnity payment.

The agreement also would include an alternative for the applicant to

terminate the agreement by notifying the district in writing of the termination. An agreement terminated under this provision would be void and all remaining obligations and benefits of the agreement would terminate. The agreement could not require the applicant to pay back any benefit the applicant received under the agreement prior to the termination.

The Texas Education Agency would be required to determine whether a law enacted by the Legislature, an amendment to the constitution, or a final judicial determination would result in substantial change that affected the Foundation School Program and directly affected any tax abatement agreements approved under the bill. If the agency determined there was an impact to an agreement, the agency would be required to establish the method the district would be required to use to calculate the indemnity payment and certify a calculation made by a district.

The agreement could authorize a school district to terminate the agreement if the district determined that the indemnity payment made by an applicant would not fully reimburse the district as required. An agreement terminated by this provision would be void and all remaining obligations and benefits would terminate on the date the agreement was terminated. The agreement could not require an applicant to repay any benefit the applicant received prior to termination of the agreement.

An applicant and a school district could modify terms of an agreement that would not materially modify the jobs or investment requirements included in the agreement.

**Incentive period.** Each agreement would be required to include an incentive period of 10 consecutive tax years that would begin no earlier than January 1 of the first tax year following the construction completion date or later than January 1 of the first tax year following the tenth anniversary date of the agreement.

The beginning date of an incentive period could be deferred if an applicant did not satisfy the minimum investment requirement applicable

to the project on or before the date the incentive period was set to begin. The incentive period would be deferred until January 1 of the year following the year in which the applicant satisfied the investment requirement. Deferral of the incentive date would not affect the date on which the incentive period would end as specified in the agreement.

An applicant could propose modification to the beginning and ending dates of an incentive period. An applicant would be required to submit a modification request to the comptroller and the district within the established timeline, and would be required to submit an updated economic benefit statement with the request. The comptroller would be required to determine whether the modified project still met the requirements for approval of an application. An applicant could appeal the comptroller's determination in the same manner that it could appeal a decision on an original application.

**Computation for tax sharing.** CSHB 5 would establish the process an applicant and a district would be required to use to determine an applicant's tax revenue savings for eligible property subject to a tax abatement agreement.

**Compliance with jobs and wage requirement.** Under provisions identified in the bill, a penalty would be assessed against an applicant if it failed to maintain at least the number of required jobs included in the tax abatement agreement. The penalty would be assessed and collected by the comptroller and could be challenged by the applicant under provisions specified in the bill.

**Audits.** CSHB 5 would require the state auditor to annually select at least three major tax abatement agreements to determine whether each agreement accomplished the purposes of the tax abatement opportunity and whether the terms of each agreement were executed in accordance with terms required in the bill. As part of the audit, the auditor would be required to make recommendations to improve the efficiency and effectiveness of the administration of the law.

**Compliance reports.** Each applicant and school district would be required to submit a biennial compliance report to the comptroller that included applicable elements identified in the bill. Reports would be submitted independently on separate forms developed by the comptroller.

**Biennial report to Legislature.** The comptroller would be required to submit a report to the Legislature by December 1 of each even numbered year that included specified information related to tax abatement agreements.

**School district payments.** Applicant payments to a school district, other than a payment of property taxes imposed by the school district, could not be treated as tax revenue collected by the district for any purpose under the Foundation School Program or provide any option to reduce local revenue in excess of the district's entitlement amount under the Foundation School Program.

**Transparency.** The comptroller would be required to post on its website the following information:

- each application for a tax abatement agreement received;
- each map and economic benefit statement required to be submitted with an application;
- each amendment to an application;
- each agreement entered into; and
- each biennial compliance report received.

Required information would be posted as soon as practicable after the date received, and materials related to an application would be required to be posted within 10 days after the date of receipt.

**Enterprise and reinvestment zones.** The designation of an area as an enterprise zone also would be a designation of the area as a reinvestment zone for limitations on taxable value under a tax abatement agreement authorized under the bill.

A governing body of a school district could designate an area entirely within the territory of the school district as a reinvestment zone if the governing body found that the designation and the granting of a limitation on appraised value likely would contribute to the expansion of primary employment in the reinvestment zone or attract major investment in the reinvestment zone that would be a benefit to property in the reinvestment zone and to the school district, and contribute to the economic development of the region.

**Conforming.** The bill would include conforming changes to align provisions related to the tax abatement agreements with applicable statutes. Applicable formulas within the Education Code also would be amended to incorporate allowances for tax abatement agreements.

The bill also would retain provisions for existing economic development tax limits and tax credits under Tax Code Chapter 313 approved agreements.

**Definitions.** The bill would include definitions to implement requirements in the bill.

The bill would take effect September 1, 2023.

**NOTES:**

According to the Legislative Budget Board, CSHB 5 would have a negative general revenue impact of \$5,480,624 through the biennium ending August 31, 2025. The cost to the Foundation School Program increases to \$458.6 million in fiscal year 2033.