

SUBJECT: Enterprise zone changes, creation of sports facility enterprise zone

COMMITTEE: Economic Development — committee substitute recommended

VOTE: 9 ayes — Oliveira, Yarbrough, Davis, Luna, Moffat, Raymond, Shields, Solomons, Van de Putte

0 nays

WITNESSES: For — Dane Harris, Texas Association of Business and Chambers of Commerce; Karin Richmond, Owens/Corning Fiberglass, CITGO; Gerald E. Galernik, Owens-Corning; Curtis Cleveland, Texas Economic Development Council; Claudia Mora, representing Clinton Bolden, Director of Economic Development, San Antonio

Against — None

On — Dan Wattles, Department of Commerce

BACKGROUND: The Texas Enterprise Zone Act offers tax incentives to businesses that locate or remain in depressed urban or rural areas that have pervasive poverty, unemployment and economic distress. Enterprise zones must be nominated by cities and counties and apply for designation by the Texas Department of Commerce.

Qualified businesses. Businesses that locate in an enterprise zone and commit to hiring at least 25 percent of its new employees from zone residents or economically disadvantaged persons can be designated qualified businesses. Qualified businesses that meet time and job qualifications are eligible for a one-time state sales tax refund of up to \$5,000 of taxes paid for machinery and equipment used in the enterprise zone. They are also eligible for a one-time franchise tax refund of up to \$5,000, and for incentives from cities and counties including up to a 5 percent reduction on electric utility rates and some sales tax refunds.

Enterprise projects. A qualified business may be designated as an enterprise project. Enterprise projects must commit to create or retain permanent jobs, make a minimum investment in the zone and maintain a

certain level of jobs. Projects are eligible for a one-time state sales tax refund against building materials, machinery and equipment to be used in the enterprise zone. The tax refund allows a \$2,000 refund for each permanent job for five years, up to 625 jobs and \$1.25 million. Enterprise projects can also receive franchise tax reductions based on capital or surplus income based on the investment made in the enterprise zone and some local sales tax refunds.

Reinvestment zone. Cities and counties can designate areas as reinvestment zones, making businesses or property owners eligible for tax abatements and tax increment financing under the Tax Code.

DIGEST:

CSHB 2065 would reauthorize the Department of Commerce to designate enterprise projects, limit the number of projects that can be designated in the fiscal biennium to 65 and limit of the total amount of state sales and use taxes that could be refunded to such projects to \$8 million. The bill would also create a new type of enterprise zone and project designation for sports facilities and would make other changes in the designation of business for tax incentives and in enterprise zone program requirements.

CSHB 2065 would take effect September 1, 1995.

Sports facility enterprise zones and projects. CSHB 2065 would authorize the creation of a type of enterprise zone called a sports facility enterprise zones, which would be areas designated by a local government as a reinvestment zone and that include or will include a qualified sports facility project. These zones would be entitled to the benefits given to enterprise zones.

Qualified sports facility projects would be a current or proposed sports facility constructed, remodeled or rehabilitated by a city, county, other political subdivision or sports authority (a nonprofit corporation created by a local government under the Texas Transportation Corporation Act). Sports facilities would be arenas, coliseums, stadiums or speedways owned by a city, county, other political subdivision or sports authority and used for professional football, basketball, hockey, major league baseball, NASCAR or Indy Car, Olympic or international game events.

Local governments could designate sports facility enterprise zones without the zones having to go through Department of Commerce procedures for enterprise zone designation if the local government designated the area as a reinvestment zone. The governing body of a sports facility enterprise zone with a qualified sports facility project would be able to apply to the Department of Commerce for designation as an enterprise zone for the purposes of obtaining state benefits. The commerce department would be required to designate the zone if it were created in accordance with CSHB 2065 and the Tax Code.

Sports facility enterprise zones would not count toward the three-zone per community limit on enterprise zones.

If the Department of Commerce, a city or county certified that a facility is a qualified sports facility project owned by a sports authority, the facility would automatically be considered a qualified business, an enterprise project and a qualified sports facility project. Qualified sports facility projects would be deemed as meeting the employment, income and other criteria used to designate qualified business and enterprise projects. A sports facility enterprise zone with a qualified sports project would meet the requirements for enterprise zones. Jobs created or retained by a qualified sports facility project would not be counted toward the statewide limit on the number of enterprise projects.

Criteria for enterprise zone designation. CSHB 2065 would require that areas to be designated areas of pervasive poverty have an average unemployment rate of at least one and one-half times the *state* average, not the local state or national average, and that the area's population loss be at least 12 percent, instead of 9 percent, during the most recent six-year period or at least 4 percent, instead of 3 percent, during the most recent three-year period. CSHB 2065 would add to the criteria that can define areas of pervasive poverty a substantial increase in juveniles under 18 years old who are arrested for crimes.

Enterprise projects. CSHB 2065 would reauthorize the Department of Commerce's authority to designate enterprise projects and would change the measure by which the number of projects are limited. Instead of limiting the projects by the number of jobs, CSHB 2065 would set a limit

of 65 on the number of businesses that can be designated as enterprise projects in a fiscal biennium. CSHB 2065 would limit to \$8 million the total amount of the refund of state sales and use taxes that could be refunded to the projects during the fiscal 1996-97 biennium.

CSHB 2065 would place current law concerning enterprise projects that was left out of the recodification of Enterprise Zone Act in 1993 into the act with a few changes. The factors that can be considered when a business is being considered for enterprise project designation and the effort of a private entity is being evaluated would include the provision of technical and vocational job training, the provision of child care, a tutoring or mentoring program for area students and the prevention or reduction of juvenile crime.

Qualified businesses. CSHB 2035 would eliminate specific provisions and criteria that allow builders to be designated as qualified businesses. CSHB 2065 would increase from 1,040 to 1,820 the number of hours of employment per job per year required for a job in a qualified business to be designated as a new permanent job. The definition of economically disadvantaged individuals who can be employed by qualified businesses would include juvenile offenders paroled by the Texas Youth Commission. CSHB 2035 would change some of the weights in the scale used by the Department of Commerce to decide if a business is a qualified business.

Sales tax refunds. CSHB 2065 would add labor for remodeling, rehabilitating or constructing a building by an enterprise project in a zone and purchases of electricity and natural gas to the items for which enterprise projects can receive local and state sales taxes refunds .

Utility rate reductions. CSHB 2065 would allow an enterprise project or a city or county to petition a utility regulatory authority to order utilities owned by cooperatives and private investors to give reduced rates to qualified businesses in enterprise zones, replacing current law that makes any rate reduction subject only to agreement of the utility and the regulatory authority. Regulatory authorities would be authorized to order the reduced rate. The reduction that could be offered would be changed from 5 percent to 5 percent below the lowest rate offered to any customer in the zone. Utilities would retain authority to recover the rate reduction.

Tax abatements. CSHB 2065 would allow taxing jurisdictions to offer different tax abatement terms to property owners in reinvestment zones and enterprise zones than the ones offered by cities or counties. Only terms relating to the portion of property exempt from taxes and the length of the abatement could differ. Taxing jurisdictions would be authorized to execute written agreements on the terms with property owners.

Cost-benefit analysis. CSHB 2065 would require the commerce department to submit cost-benefit analysis every two years rather than annually.

Miscellaneous. Other provisions would include:

- allowing federal empowerment zones and federal enterprise communities to be automatically designated as enterprise zones. Areas automatically designated an enterprise zone because they are a federal enterprise zone, empowerment zone or enterprise community would not count toward the three-zone limit for each community;
- making language in the Development Corporation Act conform with federal language dealing with authorization to issue tax-exempt facility bonds by including federal empowerment zones and enterprise communities in the definition of project;
- changing the requirements for the content of the annual report that cities or counties that govern enterprise zones must submit to the Department of Commerce. The changes include allowing the inclusion of businesses assisted and retained in the zone; and
- exempting subcontractors, instead of contractors, from having to have a performance bond for work done in an enterprise zone.

SUPPORTERS
SAY:

CSHB 2065 would reauthorize the Department of Commerce's two-year authority to designate enterprise projects. The bill also would authorize sports facility enterprise zones so benefits could be extended to entities building or renovating sports facilities. Other provisions are necessary to incorporate into the Empowerment Zone Act provisions that were enacted by the 73rd Legislature but not included in the codification of the act, to

make changes in the enterprise zone program to ensure that high-wage, permanent jobs are encouraged and that benefits go to the economically disadvantaged and to include language in the act so it will conform to federal statutes.

Sports facility enterprise zones and projects. Offering incentives to sports facility enterprise zones and projects would help encourage and retain professional sports teams in Texas. These teams generate a large volume of economic activity, mostly in inner city areas, and deserve state and local tax incentives. The economic activity generated by professional sports includes a large economic ripple effect to restaurants, stores and other local businesses that could offset any state or local tax loss due to zone incentives. This bill would allow the state and local governments and other entities to provide the teams with upgraded facilities necessary to stay competitive, attract fans and to remain in Texas. Rebating state and local taxes to these projects would be similar to the rebates given to other businesses.

Enterprise projects. Using the number of projects, instead of jobs, to limit enterprise projects would help ensure that the best businesses producing the highest-wage jobs are given project designation and state benefits. Local nominations for projects would have to include not just the number of jobs, but, in order to compete with other nominations and to win commerce department designation, the jobs would have to be good ones. Because the commerce department has authority to weigh the factors involved in designating projects, it can take into consideration local factors and needs.

Limiting the amount of sales tax that can be refunded to the enterprise projects nominated this biennium to \$8 million would set a reasonable limit on the program ensuring that it does not get out of hand and offer incentives that the state cannot afford.

Qualified businesses. Builders should not have special criteria to become qualified businesses. The Enterprise Zone Act was designed to offer incentives for economic development and permanent job creation, not as a home construction program. Builders usually offer only temporary, short-term jobs, not the permanent jobs that are the goal of the tax incentives.

Eliminating this provision would allow builders to be designated as qualified businesses if they meet the standard criteria. Few, if any, businesses have met the current qualifications because their jobs are not permanent.

Increasing to 1,820 the number of hours of employment needed for a job to be designated as permanent would bring the hours up to the number considered full-time work.

Sales tax refunds. Expanding the items that qualify for sales tax refunds to construction labor by an enterprise project would help increase the attractiveness of enterprise zones for manufacturing companies, especially since the recent phase-out statewide of some sales taxes for business purchases. Allowing a refund on electricity and natural gas would be an incentive to businesses that are not primarily manufacturers and would give them an incentive similar one for manufacturers that allows tax breaks for some electricity use.

Utility rate reductions. It is important to involve more cooperative and investor-owned utilities in enterprise zones. Currently, only one of these utilities offers the 5 percent reduction to qualified businesses. CSHB 2065 would allow enterprise projects and cities and counties to take their case for rate reduction to the Public Utility Commission which would determine through an administrative hearing whether a reduction should be granted. This could increase incentives offered to businesses but would allow for a fair hearing on any requests and would allow utilities to raise any concerns they may have. In addition, utilities would retain authority to recover the rate reduction.

Tax abatements. Currently, taxing jurisdictions such as school districts can either accept or reject the same abatement terms offered by cities and counties but cannot offer different terms. This can lead jurisdictions to reject an abatement when they could be able to offer something, just not as much as the city or county offered. It has become a particular problem since school districts can no longer receive a partial offset in state aid for abatements. CSHB 2065 would unhook school districts and other jurisdictions from the terms negotiated by cities and counties and allow jurisdictions flexibility to offer their own package

OPPONENTS
SAY:

Sports facility enterprise zones and projects. Extending to sports facility projects — no matter where they are located — benefits designed to help economically distressed areas would be an abuse of the enterprise zone program and an unwise use of state resources. These resources should be used to help attract businesses and jobs to economically disadvantaged areas that meet specific criteria, not to keep or attract professional sports teams. The jobs created by sports facilities are usually low-wage, part-time jobs, not the permanent, high-wage jobs that are the goal of enterprise zones. It is particularly hard to justify using scarce government resources for professional sports teams when state and local governments are struggling to find funding for education, juvenile justice and human services. CSHB 2065 would do nothing to ensure that once facilities are built or renovated and the taxes breaks reaped, the teams will stay in the location or even the state. Creating special provisions for sports facilities could lead to requests from other types of projects such as performing arts centers.

Enterprise projects. Limiting enterprise projects by the number of projects instead of number of jobs could limit the access to state benefits for businesses that were not one of the designated projects. It is important to encourage jobs, not a set number of projects. This could adversely effect small businesses and rural areas that may not win a designation when compared with other proposals

Setting an \$8 million limit on the sales taxes that could be refunded to the 65 projects designated during the biennium could result in the state unfairly having to deny a benefit to a company because the dollar limit had been reached. Other limits, the \$2,000 refund for each permanent job up to 625 jobs and \$1.25 million, ensure that each company would not receive unlimited benefits.

Qualified businesses. The special criteria for designating builders as qualified businesses should remain. Most economically distressed areas are in dire need of new and renovated homes, and builders should be given incentives to work in these areas like any other business.

Utility rate reductions. Allowing utilities to be ordered to give electricity rate reductions would go against the goal of market competition in the utilities industry. Currently, utilities are able to offer and negotiate reductions, and this appropriately allows the market to operate. Any rate reductions would probably be recouped by the utilities by increasing rates charged to other customers.

Tax abatements. Allowing jurisdictions to offer property owners different abatement terms than the ones offered by cities or counties could lead to jurisdictions such as school districts to offer abatements that they could not afford and would not otherwise offer. In turn, this could increase the burden on other taxpayers.

Different abatements from jurisdictions could force property owners to negotiate with individual jurisdictions instead of just dealing with one entity.

OTHER
OPPONENTS
SAY:

If sports facility enterprise zones are to be created to benefit local sports franchises by diverting local tax funds, then they should at least be authorized by local referendum. Also, the franchises qualifying for zone designation should not be limited to major league baseball teams; minor league teams can also boost local economic development and should also be included.

NOTES:

The committee substitute made many changes in the original bill including: adding the provisions relating to sports facilities projects and zones; authorizing taxing jurisdictions to offer different tax abatement terms; adding the provisions dealing with utility rate reductions; eliminating a reduction in the number of enterprise zones per community from three to two and adding paroled juvenile offenders paroled to the definition of economically disadvantaged individuals.

The companion bill, SB 1459 by Lucio, has been referred to the Senate Economic Development Committee.

SB 1346 by West and Cain, reported favorably from the Senate State Affairs Committee, would authorize sports facility enterprise zones and would allow the reduction, elimination or refund of other fees or taxes

imposed on qualified sports facility projects, and allow cities to implement admissions and parking taxes to construct or renovate a sports facility project. The companion to SB 1346, HB 2983 by Seidlits and Marchant, is pending in the House State Affairs Committee.

HB 2963 and 2964 by Giddings, which would authorize certain tax rebates to cities to construct or to finance the construction of a professional team sports facility, have been referred to the House Ways and Means Committee. HB 664 by Wilson, requiring a nonbinding referendum be held in Houston during the November 7, 1995, election on whether to create a sports facility district, was reported favorably by the House Urban Affairs Committee on April 20.