SUBJECT: Creating temporary fee, tax exemptions for new veteran-owned businesses

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Cole, Guerra, Murphy, Noble, Rodriguez, Shine

0 nays

2 absent — Martinez Fischer, Sanford

SENATE VOTE: On final passage, April 13 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Annie Spilman, NFIB)

Against — None

On — (*Registered, but did not testify*: Tom Currah, Comptroller of Public Accounts)

BACKGROUND: Tax Code ch. 171 governs the imposition of franchise taxes on certain taxable entities chartered or organized in Texas.

Business Organizations Code ch. 4, subch. D requires fees to be filed with the secretary of state for certain entities, including for-profit corporations, nonprofit corporations, limited liability companies, limited partnerships, professional associations, professional corporations, general partnerships, nonprofit associations, foreign entities, and cooperative associations.

Tax Code sec. 171.063(g) specifies that if the federal tax exemption of an exempted nonprofit corporation is withdrawn by the Internal Revenue Service for failure to qualify or maintain qualification for the exemption, the exemption ends on the effective date of the withdrawal by the IRS. The effective date of the withdrawal is considered the corporation's beginning date for purposes of determining the corporation's privilege periods and for all other purposes of ch. 171.

Some have called for the state to exempt certain veteran-owned businesses from the franchise tax during the initial period of operation in order to encourage veteran entrepreneurship in Texas.

DIGEST: SB 938 would exempt a new veteran-owned business from the franchise tax and require the secretary of state to waive all filing fees imposed for such a business until the earlier of the fifth anniversary of the business' formation or the date the business ceased to qualify. These exemptions would expire January 1, 2026, and certain statutes amended by the bill would revert to their current language on that date.

The bill would define a new veteran-owned business as a taxable entity that was a new business in which each owner served in and was honorably discharged from a branch of the U.S. armed forces and provided verification to the comptroller of the person's service and discharge. An entity would be considered a new business if it first began doing business in the state on or after January 1, 2022.

The Texas Veterans Commission would have to provide to a person meeting the service and discharge requirements written verification of that status in a form required by the comptroller. The comptroller would have to adopt rules prescribing the form and content of the verification and the manner in which the verification could be provided.

The comptroller could require a new veteran-owned business exempted from the franchise tax to file an information report stating the entity's beginning date for tax purposes and any other information the comptroller determined necessary. The comptroller could not require the entity to report or compute its margin.

The bill would specify that, if an exempted nonprofit corporation would have been subject to the franchise tax in the absence of the federal tax exemption and the effective date of the withdrawal of the federal tax exemption by the IRS was a date before the corporation would have become subject to the franchise tax, this date would be considered the corporation's beginning date for those purposes.

The bill provisions would have to be implemented only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, the commission could, but would not be required to, implement the bill using other appropriations available for that purpose.

Changes in law made by the bill that took effect January 1, 2026, would not apply to a business that first qualified as a new veteran-owned business before that date.

The bill would take effect January 1, 2022, except as otherwise provided.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $363,000 to general revenue through fiscal 2023.

The bill would have a direct impact of a revenue loss to the Property Tax Relief Fund of $300,000 for the 2022-23 biennium, and any loss to that fund would have to be made up with an equal amount of general revenue to fund the Foundation School Program.