

BILL ANALYSIS

Senate Research Center

S.B. 746
By: Sibley
Economic Development
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DIGEST

Currently, the Property Redevelopment and Tax Abatement Act authorizes taxing units to grant residential and commercial-industry tax abatement. The law requires that most tax abatement agreements executed by more than one taxing unit contain identical terms (percentage and length of abatement). Additionally, taxing units are not required to perform a cost-benefit analysis prior to granting a tax abatement. This bill authorizes taxing units to grant different abatement terms and requires the performance of a cost-benefit analysis prior to granting an abatement. Additionally, this bill revises procedures that taxing units must follow when granting a tax abatement, and transfers the administration of the central registry of reinvestment zones and ad valorem tax abatement agreements from the Department of Commerce to the comptroller.

PURPOSE

As proposed, S.B. 746 sets forth revised procedures for property tax increment financing and property tax abatements, and transfers the administration of the central registry of reinvestment zones and ad valorem tax abatement agreements from the Department of Commerce to the comptroller.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller in SECTION 4 (Section 311.016(b), Tax Code) and to the Property Tax Abatement Advisory Committee in SECTION 7 (Section 312.007, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.43, Tax Code, by adding Subsection (j), to require an application for an exemption under Section 11.28 to include a copy of the certification of the governing body of the taxing unit issued for the tax year under Section 312.211(d); and any notice under Section 312.205(a)(8) that the agreement has been modified under that subsection.

SECTION 2. Amends Section 11.45(c), Tax Code, to require the chief appraiser to rely on a certification issued under Section 312.211(d) for the accuracy of the facts stated in the certification.

SECTION 3. Amends Section 111.301(a), Tax Code, to provide that an eligible person is entitled to a refund of certain state sales and use taxes and certain franchise taxes for which the person paid ad valorem taxes to a school district on property which in that year is, among three other conditions, exempt in whole or in part from the payment of ad valorem taxes imposed by a municipality or a county under a tax abatement agreement entered into with the municipality under Section 312.204 or the county under Section 312.402.

SECTION 4. Amends Section 311.016(b), Tax Code, to require a copy of a report made under this section to be sent to the comptroller, rather than the attorney general. Authorizes the comptroller to require, by rule, a municipality to provide a summary of the report, together with any additional information the comptroller determines necessary, on a form prescribed by the comptroller.

SECTION 5. Amends Section 312.004(a), Tax Code, to authorize the commissioners court of a county that enters into a tax abatement agreement for a county to enter into a tax abatement agreement applicable to the same property on behalf of a taxing unit other than the county if by

statute the ad valorem tax rate of the other taxing unit is approved by the commissioners court or the commissioner court is expressly required by statute to levy the ad valorem taxes of the other taxing unit. Provides that the tax abatement agreement entered into on behalf of the other taxing unit is not required to contain the same terms as the tax abatement agreement entered into on behalf of the county. Deletes provision relating to a tax abatement agreement executed by the commissioners court.

SECTION 6. Amends Section 312.005, Tax Code, to require the comptroller, rather than the Texas Department of Commerce (DOC), to maintain a central registry of reinvestment zones designated under this chapter and of ad valorem tax abatement agreements executed under this chapter. Requires each taxing unit that designates a reinvestment zone or executes a tax abatement agreement to deliver to the comptroller, rather than to DOC and the comptroller, before a certain date certain information. Deletes a provision that required the information, in regard to a reinvestment zone, to include a general description of the zone, including its size, the types of property located in it, and its duration. Sets forth the information required for a tax abatement agreement. Prohibits a taxing unit that executes a tax abatement agreement but does not comply with this section from entering into another tax abatement agreement until the taxing unit complies with that subsection. Authorizes the comptroller and DOC, rather than DOC, to provide assistance to a taxing unit on request of its governing body or the presiding officer of its governing body relating to the administration of this chapter. Requires the comptroller, on or before November 1 of each even-numbered year, to prepare a comprehensive report on the use of tax abatements in encouraging economic development in this state; and to deliver a copy of the report to the governor, the lieutenant governor, the speaker of the house, and, upon request, a taxing unit.

SECTION 7. Amends Chapter 312A, Tax Code, by adding Section 312.007, as follows:

Sec. 312.007. **PROPERTY TAX ABATEMENT ADVISORY COMMITTEE.** Provides that the Property Tax Abatement Advisory Committee (committee) is created. Sets forth the composition of the committee. Requires the committee to elect a presiding officer from among its members. Requires the committee to meet at least twice a year and is authorized to meet at other times at the call of the presiding officer. Provides that the committee is subject to Chapter 551, Government Code. Authorizes the committee to adopt rules for the committee's internal procedures. Provides that members of the committee are not entitled to compensation for service on the committee. Requires DOC to provide staff support for the committee. Requires the committee, by September 1, 1998, to deliver to the governor, lieutenant governor, speaker of the house, executive director of DOC, and comptroller a report containing certain models relating to tax abatements. Requires the committee to consider the diverse characteristics and economic development goals of communities throughout the state in preparing this report. Requires DOC to furnish to a taxing unit on request a copy of the report. Provides that this section expires and the committee is abolished September 1, 1998.

SECTION 8. Amends Chapter 312B, Tax Code, by adding Sections 312.2035 and 312.2045, as follows:

Sec. 312.2035. **ANALYSIS OF COSTS AND BENEFITS.** Requires a municipality to perform an analysis of the costs and benefits of a proposed tax abatement agreement before the municipality may enter into the agreement under this subchapter. Sets forth the costs examined that must be included in the analysis. Sets forth the benefits examined that must be included in the analysis. Prohibits a municipality from entering into a tax abatement agreement for which the analysis shows that the costs exceed the benefits.

Sec. 312.2045. **NOTICE OF TAX ABATEMENT AGREEMENT.** Requires the municipality that enters into a tax abatement agreement to give notice of the agreement in one of two ways. Sets forth the required contents for the notice.

SECTION 9. Amends Section 312.205, Tax Code, as follows:

(a) Requires an agreement made under Section 312.204, among other items, to list the kind, number, and location of all proposed improvements of the property to which the agreement applies; contain each term agreed to by the property owner; require the property owner to certify before February 1 of each year to the governing body of each taxing unit whether the owner is in compliance with each applicable term of the agreement and, if not, state the reason for the noncompliance; state any circumstances under which the property owner may be excused by the governing body of the municipality for failing to comply with the agreement; provide for recapture by the governing body of the municipality of all or part of the property tax revenue lost as a result of the agreement if the owner, among two options, fails to comply with any performance standard contained in the agreement; and provide for the cancellation or modification of the agreement by the governing body of the municipality if the property owner fails to comply with the agreement and for written notice of the cancellation or modification. Deletes certain previous requirements of the agreement.

(b) Authorizes such an agreement to include provisions for, among other items, the use to be made by the property owner of local suppliers during the term of the agreement; health benefits and child care during the term of the agreement for employees of the property owner who work at the property covered by the agreement; the percentage of any jobs to be created under Subsection (a)(4)(A) to be given to economically disadvantaged individuals as defined by Section 2303.402, Government Code; and payment of a penalty in a specified amount and interest at a specified rate if the municipality is entitled to recapture lost property tax revenue. Deletes a provision for an agreement relating to an economic feasibility study. Makes conforming changes.

SECTION 10. Amends Section 312.206(a), Tax Code, to provide that if the property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written tax abatement agreement with the owner of the property by a specified date. Provides that the agreement is not required to, rather than must, contain terms identical to those contained in the agreement with the municipality. Deletes a clause requiring the agreement to contain terms identical to those contained in the agreement with the municipality providing for the portion of the property that is to be exempt from taxation under the agreement, the duration of the agreement, and the provisions included in the agreement under Section 312.205. Provides that Sections 312.2035, 312.2045, and 312.205, apply to a taxing unit that enters into a tax abatement agreement under this section. Deletes a provision relating to tax abatement agreements under this section. Makes a conforming change.

SECTION 11. Amends Chapter 312B, Tax Code, by adding Sections 312.211 and 312.212, as follows:

Sec. 312.211. CERTIFICATION OF COMPLIANCE. Requires the governing body of a taxing unit that is a party to a tax abatement agreement, before April 1 of each year, to determine in the manner provided by law for official action of the governing body whether each property owner receiving a tax abatement under the agreement is in compliance with each term of the agreement and, if not, whether the noncompliance is excused. Requires the governing body to consider any certification furnished by the property owner under Section 312.205(a)(5). Authorizes the governing body to require the property owner to present additional evidence the governing body considers necessary to make the determination. Provides that the burden of proof is on the property owner to show that the owner is in compliance with each term of the agreement. Provides that each property owner who is a party to the tax abatement agreement is entitled to a hearing and to present evidence before the governing body of the taxing unit in person or by a representative on the issue of compliance with the terms of the agreement. Requires the governing body to certify in writing to the property owner whether the owner is in compliance with each term of the tax abatement and, if not, whether the noncompliance is excused.

Sec. 312.212. ACTION BY TAXING UNIT ON NONCOMPLIANCE. Requires the governing body of the taxing unit, if a property owner fails to comply with a tax abatement

agreement, to recapture all or part of the property tax revenue lost as a result of the agreement as provided by Section 312.205(a)(7); and cancel or modify the agreement and give written notice of the cancellation or modification as provided by Section 312.205(a)(8). Authorizes the governing body of the taxing unit to excuse the property owner's failure to comply with the agreement under a circumstance stated in the tax abatement agreement as provided by Section 312.205(a)(6).

SECTION 12. Amends Sections 312.402(a), (c), and (e), Tax Code, to provide that Sections 312.2035-312.205 apply to an agreement made by a county under this section in the same manner as those sections apply to an agreement made by a municipality. Provides that if property subject to an agreement with a county under this section is annexed by a municipality during the existence of the agreement, the terms of the county agreement regarding the share of the property to be exempt in each year of the agreement apply to the taxation of the property by the municipality if before the annexation the governing body of the municipality by official action expresses an intent to be bound by the terms of the county agreement after annexation. Provides that an agreement made under this section by a county or other taxing unit is subject to certification and may be canceled, modified, or terminated in the same manner and subject to the same limitations as provided by Sections 312.208, 312.211, and 312.212 for an agreement made under Subchapter B.

SECTION 13. Requires the comptroller and DOC to coordinate the transfer of the administration of the central registry of reinvestment zones and of ad valorem tax abatement agreements consistent with this Act. Requires the transfer from DOC to the comptroller to occur as soon as practicable on or after the effective date of this Act. Provides that the transfer includes files and related materials used by DOC.

SECTION 14. Requires the attorney general to transfer to the comptroller the copies of the reports by governing bodies of municipalities on the status of reinvestment zones consistent with this Act as soon as practicable on or after the effective date of this Act.

SECTION 15. Requires the executive director of DOC to designate the members of the Property Tax Abatement Advisory Committee as soon as practicable on or after the effective date of this Act.

SECTION 16. Makes application of this Act prospective for tax abatement agreements.
Makes application of this Act prospective to January 1, 1998, for ad valorem taxes.

SECTION 17. Effective date: September 1, 1997.

SECTION 18. Emergency clause.