SENATE BILL REPORT
SB 5901

As of January 31, 2022

Title: An act relating to economic development tax incentives for targeted counties.

Brief Description: Concerning economic development tax incentives for targeted counties.

Sponsors: Senators Randall, Billig, Holy, Mullet, Nguyen and Saldaña.

Brief History:

Committee Activity: Business, Financial Services & Trade: 1/27/22.

Brief Summary of Bill

- Creates a manufacturing and research and development sales and use tax incentive program for targeted counties.
- Expands the warehouse sales and use tax exemption to include warehouses over 100,000 square feet in targeted counties.
- Caps the maximum amount of sales and use tax that may be exempted for the construction or expansion of any warehouse or grain elevator at $400,000.
- Expires the warehouse sales and use tax exemption on July 1, 2032.
- Requires the Joint Legislative Audit and Review Committee to evaluate the effectiveness of the changes in the warehouse sales and use tax exemption in diversifying the tax base and increasing employment within targeted counties.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Staff: Jeffrey Mitchell (786-7438)

Background: Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

In general, construction activities constitute retail services subject to sales tax. Construction activities include, but are not limited to installing, repairing, cleaning, improving, constructing and decorating real property; constructing and improving new or existing buildings and structures; and cleaning, fumigating, razing or moving structures. Businesses performing construction activities must also collect and remit retail sales tax on their total charges for the project unless a specific exemption applies. This taxable amount includes charges for permits and other fees, labor, profit, materials and charges for subcontractors. Sales tax rates vary around the state. Contractors performing retail services must collect sales tax based on the tax rate of the jurisdiction in which they perform their services.

Sales and Use Tax Deferral Programs. Deferral programs authorize businesses the ability to postpone payment of sales and use taxes based on meeting specific requirements and performance criteria. Once an application for a deferral program is filed and approved, businesses are granted a tax deferral certificate which must be provided to vendors and contractors to defer sales or use tax. Over the years, the Legislature has authorized various sales and use tax deferral programs, some of which allow for a complete waiver of sales and use taxes if certain specific requirements and performance criteria are met over a specified period of time.

Warehouse Sale and Use Tax Remittance. Current law provides a warehouse tax remittance incentive that allows for up to a 100 percent exemption from the state's portion—6.5 percent—of the retail sales or use tax paid on the eligible construction costs for qualified warehouses, grain elevators, and distribution centers. The incentive also allows for a 50 percent exemption from the state's portion of the retail sales or use tax paid on purchases and installation of material-handling and racking equipment. Eligible businesses receive the exemption in the form of a remittance from the Department of Revenue (DOR). The application is filed once retail sales tax or use tax has been paid for a calendar quarter.

The following businesses are eligible for the incentive: wholesalers or third party warehousers who own or operate warehouses or grain elevators; and retailers who own or operate distribution centers.

The incentive applies to sales and use tax paid on materials and labor on the construction or expansion of the following:

- a warehouse or distribution center of at least 200,000 square feet qualifies for a 100 percent exemption;

- a grain elevator of at least 1 million, but less than 2 million, bushel storage capacity qualifies for a 50 percent exemption; and
- a grain elevator of 2 million or more bushel storage capacity qualifies for a 100 percent exemption.

Sales or use tax paid on material-handling and racking equipment for a qualifying facility is eligible for a 50 percent exemption. This includes labor and services for installing, repairing, cleaning, altering or improving the equipment.

Summary of Bill: Sales and Use Tax Deferral Program for Designated Counties. A new sales and use tax deferral program is established for investment projects in qualifying counties. A qualifying county is a county with a population of less than 650,000 at the time an application for deferral is submitted. An investment project means construction of new structures, or expansion or renovation of existing structures, for increasing floor space or production capacity used for manufacturing or research and development activities. An investment project also includes the investment in all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation.

Application for deferral of taxes must be made before initiation of the construction of the investment project or acquisition of machinery or equipment. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by DOR. DOR must rule on the application within 60 days. DOR may not accept applications for the deferral after June 30, 2032.

If approved, DOR must issue a sales and use tax deferral certificate for state and local sales and use taxes on each eligible investment project. The amount of state and local sales and use taxes eligible for deferral is limited to $400,000 per eligible investment project per person.

The recipient of a deferral certificate must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. The investment project must be operationally complete within five calendar years from the issuance of the tax deferral certificate.

If an investment project is used for purposes other than a qualified manufacturing or research and development operation at any time during the calendar year in which the investment project is certified by DOR as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in Which Use Occurs	Percent of Deferred Taxes Due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

After the 8-year period, deferred sales and use taxes would not have to be repaid.

Each recipient of a deferral certificate must file a complete annual tax performance report with DOR during the period covered by the schedule above providing wage, employment, and tax savings information.

The Joint Legislative Audit and Review Committee (JLARC), as part of its tax preference review process, must use the information reported on the annual tax performance report to study the tax deferral program. JLARC must report to the Legislature by December 1, 2030. The report must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as JLARC selects.

Warehouse Sale and Use Tax Remittance. The warehouse sales and use tax exemption is expanded to include warehouses over 100,000 square feet located in a qualifying county. A warehouse would be eligible for a 100 percent exemption on the construction or expansion of the facility and a 50 percent exemption on the purchase of material-handling and racking equipment. A qualifying county is a county with a population of less than 650,000.

The maximum amount of sales and use tax that may be exempted for the construction or expansion of any warehouse or grain elevator is limited to $400,000.

The warehouse sales and use tax exemption expires July 1, 2032.

A tax preference performance statement is provided that states a specific public policy objective to induce the construction of new or expanded warehouses and distribution centers in certain targeted counties by reducing the square footage requirement in order to diversify the tax base and increase employment within the targeted counties.

Prior to the expiration of the warehouse sales and use tax exemption, JLARC must evaluate the changes in the number of employment positions in the warehousing and distribution industry sector in the targeted counties and changes to the tax base as a result of increased warehousing and distribution activity.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2022.