

By: Brimer

S.B. No. 48

A BILL TO BE ENTITLED

1 AN ACT

2 relating to authority of certain enterprise projects to receive  
3 franchise tax credits for job creation and capital investment.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Section 2303.504, Government  
6 Code, is amended to read as follows:

7 Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT.

8 SECTION 2. Section 2303.504, Government Code, is amended by  
9 adding Subsection (a-1) and amending Subsection (c) to read as  
10 follows:

11 (a-1) Subject to Section 2303.516, an enterprise project is  
12 entitled to a franchise tax credit under Subchapter P-1 or Q-1,  
13 Chapter 171, Tax Code, but only if the enterprise project:

14 (1) is owned by a corporation that was obligated to pay  
15 the franchise tax under Chapter 171, Tax Code, as that chapter  
16 existed on December 31, 2004;

17 (2) is not located in an enterprise zone;

18 (3) was designated as an enterprise project on or  
19 after September 1, 2004; and

20 (4) was approved as a triple jumbo enterprise project  
21 as described by Section 2303.407 on or after September 1, 2004, and  
22 on or before November 30, 2004.

23 (c) Not later than the 60th day after the last day of each  
24 fiscal year, the comptroller shall report to the bank the statewide

1 total of actual jobs created, actual jobs retained, and the tax  
2 refunds and credits made under this section during that fiscal  
3 year.

4 SECTION 3. Chapter 171, Tax Code, is amended by adding  
5 Subchapters P-1 and Q-1 to read as follows:

6 SUBCHAPTER P-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN  
7 JOB CREATION ACTIVITIES

8 Sec. 171.781. DEFINITIONS. In this subchapter:

9 (1) "Enterprise project" means a person designated as  
10 an enterprise project under Chapter 2303, Government Code.

11 (2) "Qualified business" means an establishment that:

12 (A) is owned by a corporation that was obligated  
13 to pay the franchise tax under this chapter as it existed on  
14 December 31, 2004;

15 (B) is not located in an enterprise zone;

16 (C) was designated as an enterprise project on or  
17 after September 1, 2004; and

18 (D) was approved as a triple jumbo enterprise  
19 project as described by Section 2303.407, Government Code, on or  
20 after September 1, 2004, and on or before November 30, 2004.

21 (3) "Qualifying job" means a new permanent full-time  
22 job created by an enterprise project.

23 Sec. 171.7811. APPLICABILITY OF SUBCHAPTER. This  
24 subchapter applies only to an enterprise project that:

25 (1) is owned by a corporation that was obligated to pay  
26 the franchise tax under this chapter as it existed on December 31,  
27 2004;

1           (2) is not located in an enterprise zone;

2           (3) was designated as an enterprise project on or  
3 after September 1, 2004; and

4           (4) was approved as a triple jumbo enterprise project  
5 as described by Section 2303.407, Government Code, on or after  
6 September 1, 2004, and on or before November 30, 2004.

7           Sec. 171.782. ELIGIBILITY. An enterprise project is  
8 eligible for a credit against the tax imposed under this chapter if  
9 the enterprise project is a qualified business as defined in  
10 Section 171.781.

11           Sec. 171.783. CALCULATION OF CREDIT. (a) An enterprise  
12 project that is eligible for a credit under this subchapter may  
13 establish a credit equal to 25 percent of the total wages and  
14 salaries paid or to be paid by the enterprise project for qualifying  
15 jobs created during the period beginning on the date the project is  
16 designated as an enterprise project through December 31, 2009.

17           (b) Subject to Sections 171.784 and 171.785, the enterprise  
18 project may claim:

19           (1) the entire amount of the credit established under  
20 Subsection (a) on the first report originally due on or after  
21 September 1, 2006; or

22           (2) an equal portion of the total credit established  
23 under Subsection (a) on each report originally due on or after  
24 September 1, 2006, and before December 31, 2010.

25           (c) An enterprise project that is eligible for and  
26 establishes the credit authorized by Subsection (a) shall provide  
27 to the comptroller an estimate of the total wages and salaries on

1 which the enterprise project establishes the credit. The  
2 enterprise project shall provide the estimate on the first report  
3 originally due on or after September 1, 2006.

4 Sec. 171.784. LIMITATIONS. (a) The total credit claimed  
5 under this subchapter for a report, including the amount of any  
6 carryforward credit under Section 171.785, may not exceed 50  
7 percent of the amount of franchise tax due for the report before any  
8 other applicable tax credits.

9 (b) The total credit claimed under this subchapter and  
10 Subchapter Q-1 for a report, including the amount of any  
11 carryforward credits, may not exceed the amount of franchise tax  
12 due for the report after any other applicable credits.

13 Sec. 171.785. CARRYFORWARD. (a) If an enterprise project  
14 is eligible for a credit that exceeds the limitations under Section  
15 171.784, the enterprise project may carry the unused credit forward  
16 for not more than five consecutive reports.

17 (b) A carryforward is considered the remaining portion of a  
18 credit that cannot be claimed in the current year because of a tax  
19 limitation under Section 171.784. A carryforward is added to the  
20 next year's credit in determining the tax limitation for that year.  
21 A credit carryforward from a previous report is considered to be  
22 used before the current year credit.

23 Sec. 171.786. CERTIFICATION OF ELIGIBILITY. (a) For the  
24 initial and each succeeding report in which a credit is claimed  
25 under this subchapter, the enterprise project shall file with its  
26 report, on a form provided by the comptroller, information that  
27 sufficiently demonstrates that the enterprise project is eligible

1 for the credit and is in compliance with Section 171.782.

2 (b) The burden of establishing entitlement to and the value  
3 of the credit is on the enterprise project.

4 Sec. 171.787. ASSIGNMENT PROHIBITED. An enterprise project  
5 may not convey, assign, or transfer the credit allowed under this  
6 subchapter to another entity unless all of the assets of the  
7 enterprise project are conveyed, assigned, or transferred in the  
8 same transaction.

9 Sec. 171.788. BIENNIAL REPORT BY COMPTROLLER. (a) Before  
10 the beginning of each regular session of the legislature, the  
11 comptroller shall submit to the governor, the lieutenant governor,  
12 and the speaker of the house of representatives a report that  
13 states:

14 (1) the total number of jobs created by enterprise  
15 projects that claim a credit under this subchapter and the average  
16 and median annual wages of those jobs;

17 (2) the total amount of credits applied against the  
18 tax under this chapter and the amount of unused credits including:

19 (A) the total amount of franchise tax due by  
20 enterprise projects claiming a credit under this subchapter before  
21 and after the application of the credit;

22 (B) the average percentage reduction in  
23 franchise tax due by enterprise projects claiming a credit under  
24 this subchapter; and

25 (C) the percentage of tax credits that were  
26 awarded to enterprise projects with fewer than 100 employees;

27 (3) a breakdown of the two-digit standard industrial

1 classification of enterprise projects claiming a credit under this  
2 subchapter;

3 (4) the geographical distribution of the credits  
4 claimed under this subchapter; and

5 (5) the impact of the credit provided under this  
6 subchapter on employment, personal income, and capital investment  
7 in this state and on state tax revenues.

8 (b) The final report issued before the expiration of this  
9 subchapter shall include historical information on the credit  
10 authorized under this subchapter.

11 (c) The comptroller may not include in the report  
12 information that is confidential by law.

13 (d) For purposes of this section, the comptroller may  
14 require an enterprise project that claims a credit under this  
15 subchapter to submit information, on a form provided by the  
16 comptroller, on the location of the enterprise project's job  
17 creation in this state and any other information necessary to  
18 complete the report required under this section.

19 (e) The comptroller shall provide notice to the members of  
20 the legislature that the report required under this section is  
21 available on request.

22 Sec. 171.789. COMPTROLLER POWERS AND DUTIES. The  
23 comptroller shall adopt rules and forms necessary to implement this  
24 subchapter.

25 Sec. 171.790. EXPIRATION. (a) This subchapter expires  
26 December 31, 2009.

27 (b) The expiration of this subchapter does not affect the

1 carryforward of a credit under Section 171.785 or those credits for  
2 which an enterprise project is eligible before the date this  
3 subchapter expires. An enterprise project may not, under any  
4 circumstances, obtain a greater benefit than the benefit to which  
5 the enterprise project would have been entitled if this subchapter  
6 did not expire.

7 SUBCHAPTER Q-1. TAX CREDITS FOR ENTERPRISE PROJECTS

8 FOR CERTAIN CAPITAL INVESTMENTS

9 Sec. 171.815. DEFINITIONS. In this subchapter:

10 (1) "Enterprise project" has the meaning assigned by  
11 Section 171.781.

12 (2) "Qualified business" has the meaning assigned by  
13 Section 171.781.

14 (3) "Qualified capital investment" means tangible  
15 personal property first placed in service by an enterprise project  
16 that is described in Section 1245(a), Internal Revenue Code, such  
17 as engines, machinery, tools, and implements used in a trade or  
18 business or held for investment and subject to an allowance for  
19 depreciation, cost recovery under the accelerated cost recovery  
20 system, or amortization. The term does not include real property or  
21 buildings and their structural components. Property that is leased  
22 under a capitalized lease is considered a qualified capital  
23 investment, but property that is leased under an operating lease is  
24 not considered a qualified capital investment. Property expensed  
25 under Section 179, Internal Revenue Code, is not considered a  
26 qualified capital investment.

27 Sec. 171.8151. APPLICABILITY OF SUBCHAPTER. This

1 subchapter applies only to an enterprise project that:

2 (1) is owned by a corporation that was obligated to pay  
3 the franchise tax under this chapter as it existed on December 31,  
4 2004;

5 (2) is not located in an enterprise zone;

6 (3) was designated as an enterprise project on or  
7 after September 1, 2004; and

8 (4) was approved as a triple jumbo enterprise project  
9 as described by Section 2303.407, Government Code, on or after  
10 September 1, 2004, and on or before November 30, 2004.

11 Sec. 171.816. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN  
12 SERVICE BY AN ENTERPRISE PROJECT. For purposes of determining  
13 whether an investment is a qualified capital investment under  
14 Section 171.815, "tangible personal property first placed in  
15 service by an enterprise project" includes tangible personal  
16 property:

17 (1) purchased by an enterprise project for placement  
18 in an incomplete improvement that is under active construction or  
19 other physical preparation;

20 (2) identified by a purchase order, invoice, billing,  
21 sales slip, or contract; and

22 (3) physically present at the enterprise project's  
23 qualified business site, as defined by Section 2303.003(6-a),  
24 Government Code, and in use by the enterprise project on the  
25 original due date of the report on which the credit is taken.

26 Sec. 171.817. ELIGIBILITY. (a) An enterprise project that  
27 is a qualified business as defined in Section 171.781 is eligible



1 for a credit against the tax imposed under this chapter in the  
2 amount and under the conditions and limitations provided by this  
3 subchapter.

4 (b) An enterprise project that is eligible for a credit  
5 under this subchapter may claim a credit or take a carryforward  
6 credit without regard to whether the enterprise zone in which it  
7 made the qualified capital investment subsequently loses its  
8 designation as an enterprise zone, if applicable.

9 Sec. 171.818. CALCULATION OF CREDIT. An enterprise project  
10 that is eligible for a credit under this subchapter may, beginning  
11 on the date the project is designated, establish a credit equal to  
12 7.5 percent of the qualified capital investment.

13 Sec. 171.819. LENGTH OF CREDIT. An enterprise project that  
14 is eligible for a credit under this subchapter may:

15 (1) claim a credit established under this subchapter  
16 in five equal installments of one-fifth the credit amount over the  
17 five consecutive reports beginning with the report based on the  
18 period during which the qualified capital investment was made; or

19 (2) claim the entire credit earned on a report  
20 originally due on or after September 1, 2006, and before December  
21 31, 2009, subject to Section 171.820.

22 Sec. 171.820. LIMITATIONS. (a) The total credit claimed  
23 under this subchapter for a report, including the amount of any  
24 carryforward credit under Section 171.821, may not exceed 50  
25 percent of the amount of franchise tax due for the report before any  
26 other applicable tax credits.

27 (b) The total credit claimed under this subchapter and

1 Subchapter P-1 for a report, including the amount of any  
2 carryforward credits, may not exceed the amount of franchise tax  
3 due for the report after any other applicable tax credits.

4 Sec. 171.821. CARRYFORWARD. (a) If an enterprise project  
5 is eligible for a credit from an installment that exceeds a  
6 limitation under Section 171.820, the enterprise project may carry  
7 the unused credit forward for not more than five consecutive  
8 reports.

9 (b) A carryforward is considered the remaining portion of an  
10 installment that cannot be claimed in the current year because of a  
11 tax limitation under Section 171.820. A carryforward is added to  
12 the next year's installment of the credit in determining the tax  
13 limitation for that year. A credit carryforward from a previous  
14 report is considered to be used before the current year  
15 installment.

16 Sec. 171.822. CERTIFICATION OF ELIGIBILITY. (a) For the  
17 initial and each succeeding report in which a credit is claimed  
18 under this subchapter, the enterprise project shall file with its  
19 report, on a form provided by the comptroller, information that  
20 sufficiently demonstrates that the enterprise project is eligible  
21 for the credit.

22 (b) The burden of establishing entitlement to and the value  
23 of the credit is on the enterprise project.

24 (c) A credit expires under this subchapter and the  
25 enterprise project may not take any remaining installment of the  
26 credit if in one of the five years in which the installment of a  
27 credit accrues, the enterprise project:

- 1           (1) disposes of the qualified capital investment;  
2           (2) takes the qualified capital investment out of  
3 service; or  
4           (3) moves the qualified capital investment out of this  
5 state.

6           (d) Notwithstanding Subsection (c), the enterprise project  
7 may take the portion of an installment that accrued in a previous  
8 year and was carried forward to the extent permitted under Section  
9 171.821.

10           Sec. 171.823. ASSIGNMENT PROHIBITED. An enterprise project  
11 may not convey, assign, or transfer the credit allowed under this  
12 subchapter to another entity unless all of the assets of the  
13 enterprise project are conveyed, assigned, or transferred in the  
14 same transaction.

15           Sec. 171.824. BIENNIAL REPORT BY COMPTROLLER. (a) Before  
16 the beginning of each regular session of the legislature, the  
17 comptroller shall submit to the governor, the lieutenant governor,  
18 and the speaker of the house of representatives a report that  
19 states:

20           (1) the total amount of qualified capital investments  
21 made by enterprise projects that claim a credit under this  
22 subchapter and the average and median wages paid by those  
23 enterprise projects;

24           (2) the total amount of credits applied against the  
25 tax under this chapter and the amount of unused credits, including:

26           (A) the total amount of franchise tax due by  
27 enterprise projects claiming a credit under this subchapter before

1 and after the application of the credit;

2 (B) the average percentage reduction in  
3 franchise tax due by enterprise projects claiming a credit under  
4 this subchapter;

5 (C) the percentage of tax credits that were  
6 awarded to enterprise projects with fewer than 100 employees; and

7 (D) the two-digit standard industrial  
8 classification of enterprise projects claiming a credit under this  
9 subchapter;

10 (3) the geographical distribution of the qualified  
11 capital investments on which tax credit claims are made under this  
12 subchapter; and

13 (4) the impact of the credit provided under this  
14 subchapter on employment, capital investment, personal income, and  
15 state tax revenues.

16 (b) The final report issued before the expiration of this  
17 subchapter shall include historical information on the credit  
18 authorized under this subchapter.

19 (c) The comptroller may not include in the report  
20 information that is confidential by law.

21 (d) For purposes of this section, the comptroller may  
22 require an enterprise project that claims a credit under this  
23 subchapter to submit information, on a form provided by the  
24 comptroller, on the location of the enterprise project's capital  
25 investment in this state and any other information necessary to  
26 complete the report required under this section.

27 (e) The comptroller shall provide notice to the members of

1 the legislature that the report required under this section is  
2 available on request.

3 Sec. 171.825. COMPTROLLER POWERS AND DUTIES. The  
4 comptroller shall adopt rules and forms necessary to implement this  
5 subchapter.

6 Sec. 171.826. EXPIRATION. (a) This subchapter expires  
7 December 31, 2009.

8 (b) The expiration of this subchapter does not affect the  
9 carryforward of a credit under Section 171.821 or those credits for  
10 which an enterprise project is eligible before the date this  
11 subchapter expires. An enterprise project may not, under any  
12 circumstances, obtain a greater benefit than the benefit to which  
13 the enterprise project would have been entitled if this subchapter  
14 did not expire.

15 SECTION 4. This Act takes effect September 1, 2006, and  
16 applies only to a report originally due on or after that date.