

By: Keffer of Eastland

H.B. No. 2412

A BILL TO BE ENTITLED

AN ACT

relating to the enterprise zone program.

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

SECTION 1. Section 2303.401, Government Code, is amended to read as follows:

Sec. 2303.401. DEFINITIONS. In this subchapter:

(1) "Certified job" means a new or retained job that:

(A) has provided at least 1,820 hours of employment a year to a qualified employee of a qualified business as described by Section 2303.402;

(B) is intended to exist for at least three years after the date on which the comptroller makes the initial certification of hiring commitments for the qualified business under Section 2303.516(d); and

(C) has been certified by the comptroller as eligible for receipt of a state benefit under this chapter.

(2) "New [permanent] job" means any [a] new job [employment position] created by a qualified business as described by Section 2303.402 at the qualified business site or in an enterprise zone after the business's project or activity has been designated as an enterprise project [that:

~~[(A) has provided at least 1,820 hours of employment a year to a qualified employee; and~~

~~[(B) is intended to exist at the qualified~~

1 ~~business site for at least three years after the date on which a~~
2 ~~state benefit is received as authorized by this chapter].~~

3 (3) [~~2~~] "Retained job" means any [~~a~~] job that
4 existed with a qualified business before designation of the
5 business's project or activity as an enterprise project [~~that:~~

6 [~~(A) has provided employment to a qualified~~
7 ~~employee of at least 1,820 hours annually; and~~

8 [~~(B) is intended to be an employment position for~~
9 ~~at least three years after the date on which a state benefit is~~
10 ~~received as authorized by this chapter].~~

11 SECTION 2. Section 2303.405(b), Government Code, is amended
12 to read as follows:

13 (b) An application must contain an economic analysis of the
14 plans of the qualified business for expansion, revitalization, or
15 other activity with regard to the enterprise project, including:

16 (1) the number of anticipated certified [~~new~~
17 ~~permanent~~] jobs the enterprise project will create during the
18 designation period;

19 (2) the anticipated number of certified [~~permanent~~]
20 jobs the enterprise project will retain during the designation
21 period;

22 (3) the amount of investment to be made by the
23 enterprise project;

24 (4) a complete description of the projected schedule
25 for completion of the specific activity described by Section
26 2303.404(b) to be undertaken by the enterprise project;

27 (5) other information the bank requires;

1 (6) a description of the local effort made by the
2 nominating body, the qualified business, and other affected
3 entities to develop and revitalize the jurisdiction of the
4 governmental entity nominating the project or activity; and

5 (7) if the nominating body is applying for a double or
6 triple jumbo enterprise project, as defined by Section 2303.407, an
7 indication of which of those types of designations is being sought.

8 SECTION 3. Sections 2303.4051(e) and (f), Government Code,
9 are amended to read as follows:

10 (e) Except as provided by Subsection (f), an [~~Unless the~~
11 ~~nominating body holds a public hearing before adopting an ordinance~~
12 ~~or order under this section, the~~] ordinance or order adopted under
13 this section is not valid unless the nominating body holds a public
14 hearing before adopting the ordinance or order.

15 (f) If the nominating body has previously nominated a
16 project or activity for designation as an enterprise project, the
17 nominating body, instead of issuing a new ordinance or order and
18 holding another hearing under this section for a nominated project
19 or activity, may by resolution make a reference to a previously
20 issued ordinance or order that met the requirements of this section
21 if:

22 (1) the resolution nominates the project or activity
23 for designation as an enterprise project and states whether the
24 nominated project or activity is located in an area designated as an
25 enterprise zone;

26 (2) the local incentives described in the previously
27 issued ordinance or order for the areas described by Subsections

1 (b)(1) and (2) are substantially the same on the date the resolution
2 is issued; ~~and~~

3 (3) the local incentives to be made available to the
4 nominated project or activity are substantially the same as those
5 made available to the project or activity that are the subject of
6 the previously issued ordinance or order; and

7 (4) the resolution briefly summarizes each of the
8 local incentives, if any, that are specific to the nominated
9 project or activity.

10 SECTION 4. Section 2303.406(b), Government Code, is amended
11 to read as follows:

12 (b) This subsection does not apply to a qualified business
13 located in a federally designated zone, as described by Section
14 2303.101(2), which will receive priority designation in allocating
15 the number of enterprise projects allowed statewide per biennium as
16 provided by Section 2303.403. The bank shall designate qualified
17 businesses as enterprise projects on a competitive basis. The bank
18 shall make its designation decisions using a weighted scale in
19 which:

20 (1) 40 percent of the evaluation depends on the
21 economic distress of the block group in which a proposed enterprise
22 project is located;

23 (2) 25 percent of the evaluation depends on the local
24 effort to achieve development and revitalization of the area within
25 the jurisdiction of the nominating governmental entity [~~block group~~
26 ~~in which a proposed enterprise project is located~~]; and

27 (3) 35 percent of the evaluation depends on the

1 evaluation criteria as determined by the bank, which must include:

2 (A) the level of cooperation and support the
3 project applicant commits to the revitalization goals of all of the
4 enterprise zone block groups within the jurisdiction of the
5 nominating governmental entity; and

6 (B) the type and wage level of the certified jobs
7 to be created or retained by the business.

8 SECTION 5. Section 2303.407, Government Code, is amended to
9 read as follows:

10 Sec. 2303.407. ALLOCATION OF JOBS ELIGIBLE FOR TAX REFUND.

11 (a) The bank shall allocate to an enterprise project the maximum
12 number of certified [~~new permanent jobs or retained~~] jobs eligible
13 based on the amount of capital investment made in the project and
14 the refund per job with a maximum refund to be included in a
15 computation of a tax refund for the project.

16 (b) A capital investment in a project of:

17 (1) \$40,000 to \$399,999 will result in a refund of up
18 to \$2,500 per job with a maximum refund of \$25,000 for the creation
19 or retention of 10 certified jobs;

20 (2) \$400,000 to \$999,999 will result in a refund of up
21 to \$2,500 per job with a maximum refund of \$62,500 for the creation
22 or retention of 25 certified jobs;

23 (3) \$1,000,000 to \$4,999,999 will result in a refund
24 of up to \$2,500 per job with a maximum refund of \$312,500 for the
25 creation or retention of 125 certified jobs;

26 (4) \$5,000,000 to \$149,999,999 will result in a refund
27 of up to \$2,500 per job with a maximum refund of \$1,250,000 for the

1 creation or retention of 500 certified jobs;

2 (5) \$150,000,000 to \$249,999,999 will result in a
3 refund of up to \$5,000 per job with a maximum refund of \$2,500,000
4 for the creation or retention of 500 certified jobs; or

5 (6) \$250,000,000 or more will result in a refund of up
6 to \$7,500 per job with a maximum refund of \$3,750,000 for the
7 creation or retention of 500 certified jobs.

8 (c) A capital investment in the range amount and the
9 creation or retention of the number of certified jobs described by
10 Subsection (b)(5) is considered a double jumbo enterprise project.

11 (d) A capital investment in the range amount and the
12 creation or retention of the number of certified jobs described by
13 Subsection (b)(6) is considered a triple jumbo enterprise project.

14 SECTION 6. Section 2303.4072, Government Code, is amended
15 to read as follows:

16 Sec. 2303.4072. ENTERPRISE PROJECT CLAIM FOR STATE BENEFIT.
17 A person must make a claim to the comptroller for a state benefit as
18 prescribed under this chapter and Chapter [~~Chapters~~] 151 [~~and 171~~],
19 Tax Code, not later than 18 months after the date on which the term
20 of the enterprise project designation expires as provided by
21 Section 2303.404.

22 SECTION 7. Sections 2303.504(b) and (c), Government Code,
23 are amended to read as follows:

24 (b) At the time of receipt of any tax benefit available as a
25 result of participating in the enterprise zone program, including a
26 state sales and use tax refund [~~or franchise tax credit~~], a fee in
27 an amount equal to three percent of the amount of the tax benefit

1 shall be transferred to the Texas economic development bank fund
2 under Subchapter B, Chapter 489, to defray the cost of
3 administering this chapter. The fee does not reduce the amount of
4 the refund to which the enterprise project is entitled under
5 Section 2303.4071.

6 (c) Not later than the 60th day after the last day of each
7 fiscal year, the comptroller shall report to the bank the statewide
8 total of actual certified jobs created, actual certified jobs
9 retained, and the tax refunds made under this section during that
10 fiscal year.

11 SECTION 8. Section 2303.516, Government Code, is amended by
12 amending Subsections (b) and (d) and adding Subsection (d-1) to
13 read as follows:

14 (b) The bank may determine that the business or project is
15 not entitled to a refund [~~or credit~~] of state taxes under Section
16 2303.504 if the bank finds that:

17 (1) the business or project is not willing to
18 cooperate with the bank in providing the bank with the information
19 the bank needs to make the determination under Subsection (a); or

20 (2) the business or project has substantially failed
21 to follow through on any commitments made by it or on its behalf
22 under this chapter.

23 (d) A qualified business may obtain a state benefit, earned
24 through a specific enterprise project designation, on completion
25 of:

26 (1) a review of the project or activity for
27 completeness that is conducted [~~an audit performed~~] by the

1 comptroller to [~~that will~~] certify hiring commitments of a
2 qualified business under this chapter; and

3 (2) a verification process conducted by the
4 comptroller to certify eligible purchases of taxable items made by
5 or on behalf of the [~~a~~] qualified business [~~under this chapter~~].

6 (d-1) The comptroller shall certify that a purchase is
7 eligible for a state benefit not later than the 90th day after the
8 date documentation related to the purchase is submitted for
9 verification under Subsection (d)(2).

10 SECTION 9. Section 2303.517, Government Code, is amended to
11 read as follows:

12 Sec. 2303.517. REPORT. Before obtaining a state benefit,
13 the qualified business must submit to the bank a certified report of
14 the actual number of certified jobs created or retained and the
15 capital investment made at or committed to the qualified business
16 site.

17 SECTION 10. Section 151.429, Tax Code, is amended by
18 amending Subsections (a), (b), (c), (e), and (g) and adding
19 Subsections (c-1) and (c-2) to read as follows:

20 (a) An enterprise project is eligible for a refund in the
21 amount provided by this section of the taxes imposed by this chapter
22 on purchases of taxable items [~~+~~

23 [~~(1) equipment or machinery sold to an enterprise~~
24 ~~project for use at the qualified business site,~~

25 [~~(2) building materials sold to an enterprise project~~
26 ~~for use in remodeling, rehabilitating, or constructing a structure~~
27 ~~at the qualified business site,~~

1 ~~[(3) labor for remodeling, rehabilitating, or~~
2 ~~constructing a structure by an enterprise project at the qualified~~
3 ~~business site; and~~

4 ~~[(4) electricity and natural gas purchased and~~
5 ~~consumed in the normal course of business at the qualified business~~
6 ~~site].~~

7 (b) Subject to the limitations provided by Subsection (c) or
8 (c-1) of this section, an enterprise project qualifies for a refund
9 of taxes under this section based on the amount of capital
10 investment made at the qualified business site and refund per job
11 with a maximum refund to be included in a computation of a tax
12 refund for the project. A capital investment at the qualified
13 business site of:

14 (1) \$40,000 to \$399,999 will result in a refund of up
15 to \$2,500 per job with a maximum refund of \$25,000 for the creation
16 or retention of 10 certified jobs;

17 (2) \$400,000 to \$999,999 will result in a refund of up
18 to \$2,500 per job with a maximum refund of \$62,500 for the creation
19 or retention of 25 certified jobs;

20 (3) \$1,000,000 to \$4,999,999 will result in a refund
21 of up to \$2,500 per job with a maximum refund of \$312,500 for the
22 creation or retention of 125 certified jobs;

23 (4) \$5,000,000 to \$149,999,999 will result in a refund
24 of up to \$2,500 per job with a maximum refund of \$1,250,000 for the
25 creation or retention of 500 certified jobs;

26 (5) \$150,000,000 to \$249,999,999 will result in a
27 refund of up to \$5,000 per job with a maximum refund of \$2,500,000

1 for the creation or retention of 500 certified jobs; or

2 (6) \$250,000,000 or more will result in a refund of up
3 to \$7,500 per job with a maximum refund of \$3,750,000 for the
4 creation or retention of 500 certified jobs.

5 (c) The total amount of tax refund that an enterprise
6 project may apply for in a state fiscal year may not exceed
7 \$250,000. If an enterprise project qualifies in a state fiscal year
8 for a refund of taxes in an amount in excess of the limitation
9 provided by this subsection, it may apply for a refund of those
10 taxes in a subsequent year, subject to the \$250,000 limitation for
11 each year. The total amount that may be refunded to an enterprise
12 project under this section may not exceed the amount determined by
13 multiplying \$250,000 by the number of state fiscal years during
14 which the enterprise project created or retained one or more
15 certified jobs for qualified employees.

16 (c-1) To the same extent and in the same manner as provided
17 by Subsection (c) for an enterprise project, a double jumbo
18 enterprise project is eligible for a maximum refund of \$500,000 and
19 a triple jumbo enterprise project is eligible for a maximum refund
20 of \$750,000 in each state fiscal year.

21 (c-2) Cumulative tax refunds based on two or more prior
22 years may be applied for and refunded in any one year, subject to
23 the limitation for that year provided by Subsection (c) for an
24 enterprise project or by Subsection (c-1) for a double jumbo
25 enterprise project or triple jumbo enterprise project.

26 (e) In this section:

27 (1) "Enterprise project" means a person designated by

1 the Texas Economic Development Bank as an enterprise project under
2 Chapter 2303, Government Code.

3 (2) "Enterprise zone," "qualified employee," and
4 "qualified hotel project" have the meanings assigned to those terms
5 by Section 2303.003, Government Code.

6 (3) "New ~~[permanent]~~ job" has the meaning assigned by
7 Section 2303.401, Government Code ~~[means a new employment position~~
8 ~~created by a qualified business as described by Section 2303.402,~~
9 ~~Government Code, that:~~

10 [~~(A) has provided at least 1,820 hours of~~
11 ~~employment a year to a qualified employee; and~~

12 [~~(B) is intended to exist for at least three~~
13 ~~years after a state benefit is received under Chapter 2303,~~
14 ~~Government Code].~~

15 (4) "Retained job" has the meaning assigned by
16 Section 2303.401, Government Code.

17 (4-a) "Certified job" has the meaning assigned by
18 Section 2303.401, Government Code.

19 (5) "Double jumbo enterprise project" and "triple
20 jumbo enterprise project" have the meanings assigned by Section
21 2303.407, Government Code.

22 (g) The refund provided by this section is conditioned on
23 the enterprise project maintaining for a three-year period at least
24 the same number ~~[level]~~ of certified jobs ~~[employment of qualified~~
25 ~~employees]~~ as existed on the date the comptroller initially
26 certified the hiring commitments for the project under Section
27 2303.516(d)(1), Government Code ~~[at the time it qualified for a~~

1 ~~refund for a period of three years from that date~~]. The comptroller
2 shall annually certify whether that number [~~level~~] of certified
3 jobs [~~employment of qualified employees~~] has been maintained. On
4 certifying that such a number [~~level~~] has not been maintained, the
5 comptroller shall assess that portion of the refund attributable to
6 any such decrease in certified jobs [~~employment~~], including penalty
7 and interest from the date of the refund.

8 SECTION 11. Section 151.429(i), Tax Code, is repealed.

9 SECTION 12. The changes in law made by this Act to Chapter
10 2303, Government Code, apply only to an application for a
11 designation under the enterprise zone program under Chapter 2303,
12 Government Code, as amended by this Act, that is filed on or after
13 the effective date of this Act. An application for designation
14 under the enterprise zone program that is filed before the
15 effective date of this Act is governed by the law in effect on the
16 date the application was filed, and the former law is continued in
17 effect for that purpose.

18 SECTION 13. The changes in law made by this Act to Section
19 151.429, Tax Code, apply only to an application for a tax refund
20 made on or after the effective date of this Act. An application for
21 a tax refund made before the effective date of this Act is governed
22 by the law in effect on the date the application was made, and the
23 former law is continued in effect for that purpose.

24 SECTION 14. This Act takes effect September 1, 2005.