

BILL ANALYSIS

C.S.H.B. 512
By: Farabee
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Before January 1, 2005, companies and businesses designated as enterprise projects were eligible for franchise tax credits. Numerous companies began economic development projects with the expectations of receiving these credits and budgeted as such. However, after January 1, 2005, the credits were no longer available, even for those companies and businesses that began projects under the provisions of the statute. CSHB 512 makes the franchise tax credits retroactive for companies approved as enterprise zone projects before January 1, 2005. The bill does not allow for any additional benefits, it only restores the tax credits pledged to the companies when they started their projects.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller in SECTION 2 and SECTION 3 of this bill.

ANALYSIS

Section 1

Amends current law to provide that enterprise projects are eligible for certain new state franchise tax credits, as described in Subchapter Q1, Chapter 171, Tax Code.

Section 2

Amends Chapter 171, Tax Code, by adding a new subchapter, Subchapter Q-1 Tax Credits for Enterprise Projects for Certain Capital Investments. The new subchapter:

1. Defines “enterprise project,” “enterprise zone,” “qualified business,” and “qualified capital investment.” The definition of enterprise projects include those projects designated by either the Texas Department of Economic Development or the Texas Economic Development Bank prior to January 1, 2005. The definition of the term “qualified capital investment” describes the type of expenditures that may be claimed as part of the franchise tax credit authorized by this new subchapter when first placed in service in an enterprise zone by a qualified business. According to the bill, “qualified capital investment” may include tangible personal property including engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components or property that is leased under an operating lease (property under a capitalized lease is allowable).
2. Specifies that a qualified capital investment is determined to be placed in service in an enterprise zone by a qualified business when the tangible personal property is identified by a purchase order, invoice, billing sales slip, or contract, purchased for placement in an improvement that was under construction or other physical preparation and is physically present and in use by the enterprise project in the enterprise zone when the credit is taken.
3. Specifies that only a qualified business is eligible to claim a credit and that the credit may be taken even if the enterprise zone where the qualifying capital investment was made subsequently loses its designation as an enterprise zone. CSHB 512 specifies that an

enterprise project is not eligible for a credit under this new subchapter if the enterprise project claimed a credit under Subchapter Q, Chapter 171, Tax Code before its repeal on January 1, 2008. Additionally, CSHB 512 specifies that an enterprise project is only eligible to take a credit under this new subchapter if the enterprise project was a taxable entity under Chapter 171, Tax Code, as that chapter existed on May 1, 2006.

4. Authorizes an enterprise project that is eligible for credit under this subchapter to, on or after the later of January 1, 2008, or the date the project was designated, to establish a credit **equal to 7.5 percent of the qualified capital investment** made on or after January 1, 2005, and before January 1, 2007. The enterprise project may claim the established credit on a tax report due on or after January 1, 2008 and before January 1, 2009.
5. Limits the total credit, including carryforward credits, to 50% of the tax due for the report *before* other applicable credits.
6. Authorizes an enterprise project to carryforward any unused credit for not more than five consecutive reports. This provision applies to an enterprise project eligible for a credit that exceeds the limitation limiting the total credit to 50 % of the tax due.
7. Requires an enterprise project to annually certify its eligibility for the credits authorized under this Subchapter on a form provided by the Comptroller of Public Accounts.
8. Prohibits an enterprise project from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the enterprise project are conveyed, assigned, or transferred in the same transaction.
9. Requires the Comptroller to compile and distribute a comprehensive report on the tax credits authorized by this subchapter.
10. Grants the Comptroller rule-making authority to adopt rules and forms necessary to carryout its duties under this program.
11. Provides that this subchapter expires December 31, 2009, but does not affect the carryforward of previously claimed credits.

Section 3

1. Authorizes a taxable entity to claim a credit under Subchapters Q1 on a franchise tax report originally due on or after January 1, 2008 for qualified capital investments made on or after January 1, 2005 and before January 1, 2007.
2. Requires the comptroller to prescribe by rule the manner in which a taxable entity may claim a credit for qualified capital investments made on or after January 1, 2005, and before January 1, 2007.
3. Provide that the changes in law made by this Act do not affect taxes imposed before January 1, 2008, and the law in effect before that date is continued in effect for purposes of the liability for and collection of those taxes.

Section 5

Effective date January 1, 2008

EFFECTIVE DATE

January 1, 2008

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 512 modifies the original H.B. 512 by removing the proposed Subchapter P, Tax Credits for Enterprise Projects and Defense Readjustment Projects for Certain Job Creation Activities and all references to defense readjustment projects. As result, only qualified businesses making a qualified capital investment in an enterprise zone would be eligible to establish a tax credit.

C.S.H.B. 512 limits the new Subchapter Q capital investment tax credit to enterprise projects that were nominated before January 1, 2005. The original H.B. 512 allowed all enterprise projects nominated after January 1, 2003 to qualify for the tax credit. Thus, C.S.H.B. 512 would limit the availability of the credit to those projects that were nominated before the original tax credit expired in January 1, 2005.

C.S.H.B. 512 clarifies that an enterprise project is eligible for the credit only if the enterprise project had not claimed a credit under Subchapter Q, Chapter 171, Tax Code before the repeal of that subchapter on January 1, 2008. The original H.B. 512 did not contain a similar prohibition.

C.S.H.B. 512 specifies that an enterprise project is eligible for the capital investment tax credit if the enterprise project was a taxable entity under the Franchise Tax (Chapter 171, Tax Code) prior May 1, 2006. Thus, to qualify to take a credit under this bill, an enterprise project must have been a taxable entity prior to changes implemented in the Franchise Tax during the 79th Legislature, 3rd Called Special Session by H.B. 3.

C.S.H.B. 512 modifies the original H.B. 512 by limiting the period in which a qualified capital investment must have been made to qualify for the credit to the time period beginning on or after January 1, 2005 and ending before January 1, 2007. The time period in the original H.B. 512 began on or after January 1, 2005 and ended before January 1, 2010. Additionally, C.S.H.B. 512 requires that the entire credit earned by the enterprise project be claimed on a report originally due on or after January 1, 2008 and before January 1, 2009. The original language in H.B. 512 required that the credit earned by the enterprise project be claimed on a report originally due on or after September 1, 2007, and before January 1, 2011. Thus, the time period in which a qualified capital investment could be made in an enterprise zone was shortened to a two year period from the original five year period. Additionally, the credit, notwithstanding the carryforwards, may only be claimed on one report, the report originally due on or after January 1, 2008 and before January 1, 2009. Under the original language, the credit, not withstanding the carryforwards, could be taken on one of the returns originally due on or after September 1, 2007, and before January 1, 2011.