

By: Farabee

H.B. No. 512

Substitute the following for H.B. No. 512:

By: Ritter

C.S.H.B. No. 512

A BILL TO BE ENTITLED

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AN ACT

relating to a franchise tax credit for enterprise projects for capital investments.

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

SECTION 1. Section 2303.504, Government Code, is amended to read as follows:

Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT. (a) Subject to Section 2303.516, an enterprise project is entitled to:

(1) a refund of state taxes under Section 151.429, Tax Code; and

(2) a franchise tax credit under Subchapter Q-1, Chapter 171, Tax Code.

(b) At the time of receipt of any tax benefit available as a result of participating in the enterprise zone program, including a state sales and use tax refund or franchise tax credit, three percent of the amount of the tax benefit shall be transferred to the Texas economic development bank fund under Subchapter B, Chapter 489, to defray the cost of administering this chapter.

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

SECTION 2. Chapter 171, Tax Code, is amended by adding

1 Subchapter Q-1 to read as follows:

2 SUBCHAPTER Q-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN  
3 CAPITAL INVESTMENTS

4 Sec. 171.815. DEFINITIONS. In this subchapter:

5 (1) "Enterprise project" means:

6 (A) a person designated by the Texas Department  
7 of Economic Development as an enterprise project under Chapter  
8 2303, Government Code, on or after September 1, 2001, but before  
9 September 1, 2003; and

10 (B) a person designated by the Texas Economic  
11 Development Bank as an enterprise project under Chapter 2303,  
12 Government Code, on or after September 1, 2003, but before January  
13 1, 2005.

14 (2) "Enterprise zone" has the meaning assigned by  
15 Section 2303.003, Government Code.

16 (3) "Qualified business" means a person certified as a  
17 qualified business under Section 2303.402, Government Code.

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

1 considered a qualified capital investment, but property that is  
2 leased under an operating lease is not considered a qualified  
3 capital investment. Property expensed under Section 179, Internal  
4 Revenue Code, is not considered a qualified capital investment.

5 Sec. 171.816. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN  
6 SERVICE IN AN ENTERPRISE ZONE. For purposes of determining whether  
7 an investment is a qualified capital investment under Section  
8 171.815, "tangible personal property first placed in service in an  
9 enterprise zone" includes tangible personal property:

10 (1) purchased by an enterprise project for placement  
11 in an improvement that was under active construction or other  
12 physical preparation;

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

15 (3) physically present at the enterprise project's  
16 qualified business site, as defined by Section 2303.003, Government  
17 Code, and in use by the enterprise project on the original due date  
18 of the report on which the credit is taken.

19 Sec. 171.817. ELIGIBILITY. (a) Subject to Subsection (b),  
20 an enterprise project is eligible for a credit against the tax  
21 imposed under this chapter in the amount and under the conditions  
22 and limitations provided by this subchapter if the enterprise  
23 project is a qualified business.

24 (b) An enterprise project is not eligible for a credit under  
25 this subchapter if the enterprise project claimed a credit under  
26 Subchapter Q before the repeal of that subchapter on January 1,  
27 2008.

1       (c) An enterprise project that is eligible for a credit  
2 under this subchapter may claim a credit or take a carryforward  
3 credit without regard to whether the enterprise zone in which it  
4 made the qualified capital investment subsequently loses its  
5 designation as an enterprise zone.

6       (d) A taxable entity, other than a combined group, may not  
7 claim the credit under this subchapter unless the taxable entity  
8 was, on May 1, 2006, subject to the tax imposed by this chapter as  
9 this chapter existed on that date. A taxable entity that is a  
10 combined group may claim the credit for each member entity that was,  
11 on May 1, 2006, subject to the tax imposed by this chapter as this  
12 chapter existed on that date and shall compute the amount of the  
13 credit for that member as provided by this subchapter.

14       Sec. 171.818. CALCULATION OF CREDIT. (a) An enterprise  
15 project that is eligible for a credit under this subchapter may, on  
16 or after the later of January 1, 2008, or the date the project was  
17 designated, establish a credit equal to 7.5 percent of the  
18 qualified capital investment made on or after January 1, 2005, and  
19 before January 1, 2007.

20       (b) The enterprise project may claim the entire credit  
21 earned on a report originally due on or after January 1, 2008, and  
22 before January 1, 2009, subject to Section 171.819.

23       Sec. 171.819. LIMITATIONS. The total credit claimed under  
24 this subchapter for a report, including the amount of any  
25 carryforward credit under Section 171.820, may not exceed 50  
26 percent of the amount of franchise tax due for the report before any  
27 other applicable tax credits.

1       Sec. 171.820. CARRYFORWARD. If an enterprise project is  
2 eligible for a credit that exceeds the limitation under Section  
3 171.819, the enterprise project may carry the unused credit forward  
4 for not more than five consecutive reports.

5       Sec. 171.821. CERTIFICATION OF ELIGIBILITY. (a) For the  
6 initial and each succeeding report in which a credit is claimed  
7 under this subchapter, the enterprise project shall file with its  
8 report, on a form provided by the comptroller, information that  
9 sufficiently demonstrates that the enterprise project is eligible  
10 for the credit.

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

13       Sec. 171.822. ASSIGNMENT PROHIBITED. An enterprise project  
14 may not convey, assign, or transfer the credit allowed under this  
15 subchapter to another entity unless all of the assets of the  
16 enterprise project are conveyed, assigned, or transferred in the  
17 same transaction.

18       Sec. 171.823. BIENNIAL REPORT BY COMPTROLLER. (a) Before  
19 the beginning of each regular session of the legislature, the  
20 comptroller shall submit to the governor, the lieutenant governor,  
21 and the speaker of the house of representatives a report that  
22 states:

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

27           (2) the total amount of credits applied against the

1 tax under this chapter and the amount of unused credits, including:

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

5 (B) the average percentage reduction in  
6 franchise tax due by enterprise projects claiming a credit under  
7 this subchapter;

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

10 (D) the two-digit standard industrial  
11 classification of enterprise projects claiming a credit under this  
12 subchapter;

13 (3) the geographical distribution of the qualified  
14 capital investments on which tax credit claims are made under this  
15 subchapter; and

16 (4) the impact of the credit provided under this  
17 subchapter on employment, capital investment, personal income, and  
18 state tax revenues.

19 (b) The final report issued before the expiration of this  
20 subchapter must include historical information on the credit  
21 authorized under this subchapter.

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

24 (d) For purposes of this section, the comptroller may  
25 require an enterprise project that claims a credit under this  
26 subchapter to submit information, on a form provided by the  
27 comptroller, on the location of the enterprise project's capital

1 investment in this state and any other information necessary to  
2 complete the report required under this section.

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

6 Sec. 171.824. COMPTROLLER POWERS AND DUTIES. The  
7 comptroller shall adopt rules and forms necessary to implement this  
8 subchapter.

9 Sec. 171.825. EXPIRATION. (a) This subchapter expires  
10 December 31, 2009.

11 (b) The expiration of this subchapter does not affect the  
12 carryforward of a credit under Section 171.820 or those credits for  
13 which an enterprise project is eligible before the date this  
14 subchapter expires.

15 SECTION 3. (a) A taxable entity may claim a credit under  
16 Subchapter Q-1, Chapter 171, Tax Code, as added by this Act, only:

17 (1) on a franchise tax report originally due on or  
18 after January 1, 2008; and

19 (2) notwithstanding any other law, for qualified  
20 capital investments made on or after January 1, 2005, and before  
21 January 1, 2007.

22 (b) The comptroller by rule shall prescribe the manner in  
23 which a taxable entity may claim a credit for qualified capital  
24 investments made on or after January 1, 2005, and before January 1,  
25 2007.

26 (c) The changes in law made by this Act do not affect taxes  
27 imposed before January 1, 2008, and the law in effect before that

1 date is continued in effect for purposes of the liability for and  
2 collection of those taxes.

3 SECTION 4. This Act takes effect January 1, 2008.