

By: Farabee

H.B. No. 512

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a franchise tax credit for enterprise projects and
3 defense readjustment projects for job creation activities and
4 capital investments.

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

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

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

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

12 (2) a franchise tax credit under Subchapter P1 or Q1,
13 Chapter 171, Tax Code.

14 (b) At the time of receipt of any tax benefit available as a
15 result of participating in the enterprise zone program, including a
16 state sales and use tax refund or franchise tax credit, three
17 percent of the amount of the tax benefit shall be transferred to the
18 Texas economic development bank fund under Subchapter B, Chapter
19 489, to defray the cost of administering this chapter.

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

1 SECTION 2. Section 2310.404(a), Government Code, is amended
2 to read as follows:

3 (a) Subject to Section 2310.413, a defense readjustment
4 project is eligible for:

5 (1) a refund of state taxes under Section 151.4291,
6 Tax Code;

7 (2) a franchise tax credit under Subchapter P1 [~~P~~] or
8 Q1 [~~Q~~], Chapter 171, Tax Code; and

9 (3) the exclusion of receipts from service performed
10 in a readjustment zone in the determination of gross receipts from
11 business done in this state under Section [~~Sections~~] 171.103 [~~and~~
12 ~~171.1032~~], Tax Code.

13 SECTION 3. Chapter 171, Tax Code, is amended by adding
14 Subchapters P1 and Q1 to read as follows:

15 SUBCHAPTER P1. TAX CREDITS FOR ENTERPRISE PROJECTS AND DEFENSE
16 READJUSTMENT PROJECTS FOR CERTAIN JOB CREATION ACTIVITIES

17 Sec. 171.781. DEFINITIONS. In this subchapter:

18 (1) "Defense readjustment project" means:

19 (A) a person designated by the Texas Department
20 of Economic Development as a defense readjustment project under
21 Chapter 2310, Government Code, on or after September 1, 2001, but
22 before September 1, 2003; and

23 (B) a person designated by the Texas Economic
24 Development Bank as a defense readjustment project under Chapter
25 2310, Government Code, on or after September 1, 2003.

26 (2) "Enterprise project" means:

27 (A) a person designated by the Texas Department

1 of Economic Development as an enterprise project under Chapter
2 2303, Government Code, on or after September 1, 2001, but before
3 September 1, 2003; and

4 (B) a person designated by the Texas Economic
5 Development Bank as an enterprise project under Chapter 2303,
6 Government Code, on or after September 1, 2003.

7 (3) "Enterprise zone" has the meaning assigned by
8 Section 2303.003, Government Code.

9 (4) "Qualified business" means a person certified as a
10 qualified business under Section 2303.402 or 2310.302, Government
11 Code.

12 (5) "Qualifying job" means a new permanent full-time
13 job that is:

14 (A) located in an enterprise zone and is created
15 by a qualified business that has been designated as an enterprise
16 project; or

17 (B) located in a readjustment zone and is created
18 by a qualified business that has been designated as a defense
19 readjustment project.

20 (6) "Readjustment zone" has the meaning assigned by
21 Section 2310.001, Government Code.

22 Sec. 171.782. ELIGIBILITY. (a) An enterprise project or a
23 defense readjustment project is eligible for a credit against the
24 tax imposed under this chapter if the enterprise project or defense
25 readjustment project is a qualified business as defined in Section
26 171.781.

27 (b) An enterprise project or defense readjustment project

1 that is eligible for a credit under this subchapter may claim a
2 credit or take a carryforward credit without regard to whether the
3 enterprise zone or readjustment zone in which it created the
4 qualifying jobs subsequently loses its designation as an enterprise
5 zone or readjustment zone.

6 Sec. 171.783. CALCULATION OF CREDIT. (a) An enterprise
7 project or defense readjustment project that is eligible for a
8 credit under this subchapter may, on or after the later of January
9 1, 2008, or the date the project is designated, establish a credit
10 equal to 25 percent of the total wages and salaries paid on or after
11 January 1, 2005, and before January 1, 2010, by the enterprise
12 project or defense readjustment project for qualifying jobs.

13 (b) Subject to Sections 171.784 and 171.785, the enterprise
14 project or defense readjustment project may claim the entire amount
15 of the credit established under Subsection (a) on a report
16 originally due on or after September 1, 2007, and before January 1,
17 2011.

18 Sec. 171.784. LIMITATIONS. (a) The total credit claimed
19 under this subchapter for a report, including the amount of any
20 carryforward credit under Section 171.785, may not exceed 50
21 percent of the amount of franchise tax due for the report before any
22 other applicable tax credits.

23 (b) The total credit claimed under this subchapter and
24 Subchapter Q1 for a report, including the amount of any
25 carryforward credits, may not exceed the amount of franchise tax
26 due for the report after any other applicable credits.

27 Sec. 171.785. CARRYFORWARD. (a) If an enterprise project

1 or a defense readjustment project is eligible for a credit that
2 exceeds the limitations under Section 171.784, the enterprise
3 project or defense readjustment project may carry the unused credit
4 forward for not more than five consecutive reports.

5 (b) A carryforward is considered the remaining portion of a
6 credit that cannot be claimed in the current year because of a tax
7 limitation under Section 171.784. A carryforward is added to the
8 next year's credit in determining the tax limitation for that year.
9 A credit carryforward from a previous report is considered to be
10 used before the current year credit.

11 Sec. 171.786. CERTIFICATION OF ELIGIBILITY. (a) For the
12 initial and each succeeding report in which a credit is claimed
13 under this subchapter, the enterprise project or defense
14 readjustment project shall file with its report, on a form provided
15 by the comptroller, information that sufficiently demonstrates
16 that the enterprise project or defense readjustment project is
17 eligible for the credit and is in compliance with Section 171.782.

18 (b) The burden of establishing entitlement to and the value
19 of the credit is on the enterprise project or defense readjustment
20 project.

21 Sec. 171.787. ASSIGNMENT PROHIBITED. An enterprise project
22 or a defense readjustment project may not convey, assign, or
23 transfer the credit allowed under this subchapter to another entity
24 unless all of the assets of the enterprise project or defense
25 readjustment project are conveyed, assigned, or transferred in the
26 same transaction.

27 Sec. 171.788. BIENNIAL REPORT BY COMPTROLLER. (a) Before

1 the beginning of each regular session of the legislature, the
2 comptroller shall submit to the governor, the lieutenant governor,
3 and the speaker of the house of representatives a report that
4 states:

5 (1) the total number of jobs created by enterprise
6 projects and defense readjustment projects that claim a credit
7 under this subchapter and the average and median annual wages of
8 those jobs;

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

11 (A) the total amount of franchise tax due by
12 enterprise projects and defense readjustment projects claiming a
13 credit under this subchapter before and after the application of
14 the credit;

15 (B) the average percentage reduction in
16 franchise tax due by enterprise projects and defense readjustment
17 projects claiming a credit under this subchapter; and

18 (C) the percentage of tax credits that were
19 awarded to enterprise projects and defense readjustment projects
20 with fewer than 100 employees;

21 (3) a breakdown of the two-digit standard industrial
22 classification of enterprise projects and defense readjustment
23 projects claiming a credit under this subchapter;

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

26 (5) the impact of the credit provided under this
27 subchapter on employment, personal income, and capital investment

1 in this state and on state tax revenues.

2 (b) The final report issued before the expiration of this
3 subchapter must include historical information on the credit
4 authorized under this subchapter.

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

7 (d) For purposes of this section, the comptroller may
8 require an enterprise project or defense readjustment project that
9 claims a credit under this subchapter to submit information, on a
10 form provided by the comptroller, on the location of the enterprise
11 project's or defense readjustment project's job creation in this
12 state and any other information necessary to complete the report
13 required under this section.

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

17 Sec. 171.789. COMPTROLLER POWERS AND DUTIES. The
18 comptroller shall adopt rules and forms necessary to implement this
19 subchapter.

20 Sec. 171.790. EXPIRATION. (a) This subchapter expires
21 December 31, 2009.

22 (b) The expiration of this subchapter does not affect the
23 carryforward of a credit under Section 171.785 or those credits for
24 which an enterprise project or a defense readjustment project is
25 eligible before the date this subchapter expires.

1 SUBCHAPTER Q1. TAX CREDITS FOR ENTERPRISE PROJECTS AND DEFENSE

2 READJUSTMENT PROJECTS FOR CERTAIN CAPITAL INVESTMENTS

3 Sec. 171.815. DEFINITIONS. In this subchapter:

4 (1) "Defense readjustment project," "enterprise
5 project," "enterprise zone," "qualified business," and
6 "readjustment zone" have the meanings assigned by Section 171.781.

7 (2) "Qualified capital investment" means tangible
8 personal property that is first placed in service in an enterprise
9 zone or a readjustment zone by a qualified business that has been
10 designated as an enterprise project or a defense readjustment
11 project, as applicable, and that is described in Section 1245(a),
12 Internal Revenue Code, such as engines, machinery, tools, and
13 implements used in a trade or business or held for investment and
14 subject to an allowance for depreciation, cost recovery under the
15 accelerated cost recovery system, or amortization. The term does
16 not include real property or buildings and their structural
17 components. Property that is leased under a capitalized lease is
18 considered a qualified capital investment, but property that is
19 leased under an operating lease is not considered a qualified
20 capital investment. Property expensed under Section 179, Internal
21 Revenue Code, is not considered a qualified capital investment.

22 Sec. 171.816. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN
23 SERVICE IN AN ENTERPRISE ZONE. For purposes of determining whether
24 an investment is a qualified capital investment under Section
25 171.815, "tangible personal property first placed in service in an
26 enterprise zone" includes tangible personal property:

27 (1) purchased by an enterprise project for placement

1 in an incomplete improvement that is under active construction or
2 other physical preparation;

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

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

9 Sec. 171.817. ELIGIBILITY. (a) An enterprise project or a
10 defense readjustment project is eligible for a credit against the
11 tax imposed under this chapter in the amount and under the
12 conditions and limitations provided by this subchapter if the
13 enterprise project or defense readjustment project is a qualified
14 business.

15 (b) An enterprise project or defense readjustment project
16 that is eligible for a credit under this subchapter may claim a
17 credit or take a carryforward credit without regard to whether the
18 enterprise zone or readjustment zone in which it made the qualified
19 capital investment subsequently loses its designation as an
20 enterprise zone or readjustment zone.

21 Sec. 171.818. CALCULATION OF CREDIT. (a) An enterprise
22 project or defense readjustment project that is eligible for a
23 credit under this subchapter may, on or after the later of January
24 1, 2008, or the date the project was designated, establish a credit
25 equal to 7.5 percent of the qualified capital investment made on or
26 after January 1, 2005, and before January 1, 2010.

27 (b) The enterprise project or defense readjustment project

1 may claim the entire credit earned on a report originally due on or
2 after September 1, 2007, and before January 1, 2011, subject to
3 Section 171.819.

4 Sec. 171.819. LIMITATIONS. (a) The total credit claimed
5 under this subchapter for a report, including the amount of any
6 carryforward credit under Section 171.820, 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 P1 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 tax credits.

13 Sec. 171.820. CARRYFORWARD. (a) If an enterprise project
14 or a defense readjustment project is eligible for a credit from an
15 installment that exceeds a limitation under Section 171.819, the
16 enterprise project or defense readjustment project may carry the
17 unused credit forward for not more than five consecutive reports.

18 (b) A carryforward is considered the remaining portion of an
19 installment that cannot be claimed in the current year because of a
20 tax limitation under Section 171.819. A carryforward is added to
21 the next year's installment of the credit in determining the tax
22 limitation for that year. A credit carryforward from a previous
23 report is considered to be used before the current year
24 installment.

25 Sec. 171.821. CERTIFICATION OF ELIGIBILITY. (a) For the
26 initial and each succeeding report in which a credit is claimed
27 under this subchapter, the enterprise project or defense

1 readjustment project shall file with its report, on a form provided
2 by the comptroller, information that sufficiently demonstrates
3 that the enterprise project or defense readjustment project is
4 eligible for the credit.

5 (b) The burden of establishing entitlement to and the value
6 of the credit is on the enterprise project or defense readjustment
7 project.

8 Sec. 171.822. ASSIGNMENT PROHIBITED. An enterprise project
9 or a defense readjustment project may not convey, assign, or
10 transfer the credit allowed under this subchapter to another entity
11 unless all of the assets of the enterprise project or defense
12 readjustment project are conveyed, assigned, or transferred in the
13 same transaction.

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

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

1 credit under this subchapter before and after the application of
2 the credit;

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

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

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

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

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

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

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

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

1 this state and any other information necessary to complete the
2 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 or a defense readjustment project is
14 eligible before the date this subchapter expires.

15 SECTION 4. (a) A taxable entity may claim a credit under
16 Subchapter P1 or Q1, Chapter 171, Tax Code, as added by this Act,
17 only:

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

20 (2) notwithstanding any other law, for wages and
21 salaries paid or qualified capital investments made on or after
22 January 1, 2005.

23 (b) The comptroller by rule shall prescribe the manner in
24 which a taxable entity may claim a credit for wages and salaries
25 paid or qualified capital investments made on or after January 1,
26 2005, and before January 1, 2008.

27 (c) The changes in law made by this Act do not affect taxes

1 imposed before January 1, 2008, and the law in effect before that
2 date is continued in effect for purposes of the liability for and
3 collection of those taxes.

4 SECTION 5. This Act takes effect January 1, 2008.