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H.B. No. 4525

A BILL TO BE ENTITLED

AN ACT

relating to qualified manufacturing project zones.

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

SECTION 1. The Legislature of the State of Texas finds that a qualified manufacturing project, as defined in this Act, and the enhancement of manufacturing workforce development serve the public purposes of development and diversification of the employment of this state, elimination of unemployment or underemployment in this state, and development or expansion of commerce in this state.

SECTION 2. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 399 to read as follows:

CHAPTER 399. QUALIFIED MANUFACTURING PROJECT ZONES

Sec. 399.001. DEFINITION. In this chapter, "qualified manufacturing project" means a proposed new or expanded facility that, on the date of qualification under Section 399.002:

(1) is subject to an agreement entered into on or after January 1, 2008, but before January 1, 2015, with a county, municipality, or other taxing unit under Chapter 312, Tax Code, or with a school district under Chapter 313, Tax Code, under which the investment in the facility is at least \$200 million;

(2) will be engaged in manufacturing, as that term is defined by Section 151.318, Tax Code, the construction of which begins on or after September 1, 2009;

1           (3) is forecasted to create at least 300 full-time  
2 equivalent employment positions; and

3           (4) the owner of which is:

4                   (A) considering at least one alternative site for  
5 the facility that is not located in this state; or

6                   (B) competing against similar projects located  
7 outside this state for federal funds or financial support,  
8 including loan guarantees, that would benefit the project.

9           Sec. 399.002. DATE OF QUALIFICATION. A proposed facility  
10 becomes a qualified manufacturing project on the date the owner of  
11 the facility files an election to become a qualified manufacturing  
12 project with the comptroller.

13           Sec. 399.003. ECONOMIC IMPACT STUDY. (a) The owner of a  
14 qualified manufacturing project must conduct an economic impact  
15 study of the county in which the qualified manufacturing project is  
16 located and submit the study to the comptroller for certification  
17 not later than the 120th day after the date the owner files an  
18 election for that designation under Section 399.002.

19           (b) The economic impact study must provide an estimate of:

20                   (1) the general economic impact likely to occur in the  
21 county as a result of the qualified manufacturing project;

22                   (2) the anticipated amount of increase in the tax  
23 receipts to this state from the taxes imposed under Chapter 151, Tax  
24 Code, that:

25                           (A) will occur in the county during the period  
26 that the qualified manufacturing project zone is designated; and

27                           (B) is directly attributable to the economic

1 impact from the design, construction, or operation of the qualified  
2 manufacturing project;

3 (3) the projected number of full-time equivalent  
4 employment positions likely to be available at the qualified  
5 manufacturing project; and

6 (4) the investment projected to be made at the  
7 qualified manufacturing project.

8 Sec. 399.004. COMPTROLLER CERTIFICATION OF ECONOMIC IMPACT

9 STUDY. (a) Not later than the 30th day after receiving the  
10 economic impact study from an owner of a qualified manufacturing  
11 project, the comptroller shall certify the study if the comptroller  
12 determines that:

13 (1) the study accurately estimates the information  
14 required by Sections 399.003(b)(2)-(4); or

15 (2) the study:

16 (A) was conducted by an independent third party;

17 (B) was conducted using generally accepted  
18 economic impact forecasting methods; and

19 (C) contains the information required by Section  
20 399.003(b).

21 (b) If the comptroller determines that the economic impact  
22 study submitted by the owner of the qualified manufacturing project  
23 does not accurately estimate the information required by Sections  
24 399.003(b)(2)-(4) or that the study does not meet the requirements  
25 of Subsection (a)(2), as applicable, the comptroller, not later  
26 than the 30th day after the date of receiving the study, shall:

27 (1) submit a preliminary determination to the owner of

1 the qualified manufacturing project; and

2 (2) provide the owner of the qualified manufacturing  
3 project with an opportunity to respond or submit a new or amended  
4 economic impact study to the comptroller.

5 Sec. 399.005. QUALIFIED MANUFACTURING PROJECT ZONE. (a)

6 The owner of a qualified manufacturing project for which the  
7 comptroller has certified an economic impact study in accordance  
8 with Section 399.004 may apply to the comptroller for designation  
9 of the county in which the project is located as a qualified  
10 manufacturing project zone. The comptroller shall approve the  
11 application on a determination that the qualified manufacturing  
12 project is the first facility in the county to apply for the  
13 designation. The designation takes effect on September 1 preceding  
14 the date of approval of an application for designation of the county  
15 as a qualified manufacturing project zone.

16 (b) Only one qualified manufacturing project that is in a  
17 qualified manufacturing project zone may qualify for benefits under  
18 this chapter at any one time.

19 (c) If more than one qualified manufacturing project  
20 applies for zone designation from a single county within a calendar  
21 month, the comptroller shall approve the qualified application with  
22 the most investment in the proposed new or expanded facility, as  
23 determined by the economic impact study certified under Section  
24 399.004.

25 (d) A qualified manufacturing project zone designation  
26 remains in effect until the expiration of any tax limitations,  
27 credits, abatements, or other benefits under an agreement entered

1 into under Chapter 312 or 313, Tax Code, for the qualified  
2 manufacturing project.

3 Sec. 399.006. ANNUAL CERTIFICATION. (a) To receive state  
4 benefits under this chapter, the owner of a qualified manufacturing  
5 project in a qualified manufacturing project zone must make the  
6 following applicable annual certification to the comptroller, as of  
7 the last day of the state fiscal year for each year of the zone's  
8 designation:

9 (1) if the qualified manufacturing project zone  
10 designation has been in effect for three years or less and the  
11 qualified manufacturing project has not commenced commercial  
12 operation, the owner must certify the forecast of at least 300  
13 full-time equivalent employment positions for the year that the  
14 facility will begin commercial operation;

15 (2) if the qualified manufacturing project zone  
16 designation has been in effect for more than three years and the  
17 qualified manufacturing project has not started commercial  
18 operation, the owner must certify:

19 (A) the creation of at least 300 full-time  
20 equivalent employment positions; or

21 (B) all of the following:

22 (i) the expenditure of at least \$1 billion  
23 on the new or expanded facility has occurred;

24 (ii) the year in which the facility will  
25 begin commercial operation; and

26 (iii) the forecast of at least 300  
27 full-time equivalent employment positions that will be created not

1 later than the eighth anniversary of the date of the zone's  
2 designation; or

3 (3) if the qualified manufacturing project has started  
4 commercial operation, the owner must certify the creation of at  
5 least 300 full-time equivalent employment positions at the  
6 facility.

7 (b) If the owner of a qualified manufacturing project fails  
8 to make the applicable certification required under Subsection (a),  
9 the owner forfeits the right to receive future benefits under this  
10 chapter and shall pay to the applicable governmental body within 60  
11 calendar days the entire amount of all refunds previously received  
12 under this chapter.

13 (c) For purposes of this section, "commercial operation,"  
14 with respect to a facility, means that the facility has begun to  
15 operate for the facility's intended purpose.

16 Sec. 399.007. STATE BENEFITS. The owner of a qualified  
17 manufacturing project in a qualified manufacturing project zone is  
18 eligible for a refund of state sales and use taxes as provided by  
19 Section 151.4292, Tax Code.

20 Sec. 399.008. COMPTROLLER DUTIES. The comptroller shall  
21 adopt rules and forms necessary to perform the comptroller's duties  
22 under this chapter.

23 SECTION 3. Subchapter I, Chapter 151, Tax Code, is amended  
24 by adding Section 151.4292 to read as follows:

25 Sec. 151.4292. TAX REFUNDS FOR QUALIFIED MANUFACTURING  
26 PROJECTS. (a) In this section:

27 (1) "Additional sales and use tax" means the total

1 amount of sales and use taxes collected under this chapter on  
2 purchases of all taxable items purchased within a qualified  
3 manufacturing project zone for each state fiscal year for the  
4 duration of the qualified manufacturing project zone designation  
5 less the sales tax base, not otherwise due as a rebate or refund  
6 under any other applicable law.

7           (2) "Manufacturing workforce development" means,  
8 solely for purposes of this section, any expenditures incurred in  
9 the state by the owner, or a contractor or subcontractor of the  
10 owner, of a qualified manufacturing project for recruiting or  
11 training present, prospective, or potential employees not employed  
12 in a "bona fide executive, administrative, or professional  
13 capacity," as that phrase is used for purposes of establishing an  
14 exemption to the overtime provisions of the federal Fair Labor  
15 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), excluding  
16 operating staff, maintenance staff, and engineering staff, for jobs  
17 in this state presently available or expected to be available for  
18 the planning, designing, construction, fabrication, or operation  
19 of a qualified manufacturing project, and the salaries, wages, and  
20 benefits of those employees through the first two years of  
21 commercial operation of the qualified manufacturing project.

22           (3) "Qualified manufacturing project" has the meaning  
23 assigned that term by Section 399.001, Local Government Code.

24           (4) "Sales tax base" means the amount of the sales and  
25 use taxes collected under this chapter on purchases of all taxable  
26 items purchased within the boundaries of a qualified manufacturing  
27 project zone for the state fiscal year ending before the date the

1 zone is designated.

2 (b) The owner of a qualified manufacturing project in a  
3 qualified manufacturing project zone is entitled to receive a  
4 payment of a refund of 50 percent of the additional sales and use  
5 tax for the preceding state fiscal year provided the owner has made  
6 the applicable employment certification to the comptroller  
7 required under Section 399.006, Local Government Code. For the  
8 duration of a qualified manufacturing project zone designation, but  
9 not to exceed 10 years, the comptroller shall pay the refund not  
10 later than the 60th day after the later of the date of receipt of the  
11 employment certification or the last day of the state fiscal year.

12 (c) The total amount of refunds that a qualified  
13 manufacturing project may receive over the course of the  
14 designation of the county in which it is located as a qualified  
15 manufacturing project zone may not exceed an amount equal to the  
16 lesser of \$50 million or five percent of the qualified  
17 manufacturing project's investments in the facility under Chapter  
18 399, Local Government Code.

19 (d) A refund received under this section shall be used to  
20 pay for or to refund eligible expenses incurred before or after  
21 designation of the county in which the project is located as a  
22 qualified manufacturing project zone for manufacturing workforce  
23 development for the project.

24 (e) If the owner of a qualified manufacturing project fails  
25 to make the applicable certification required by Section 399.006,  
26 Local Government Code, the owner forfeits the right to receive all  
27 future benefits under this section and shall pay to the



1 comptroller, not later than the 60th calendar day after the date the  
2 certification is due, the entire amount of all refunds previously  
3 received under this section.

4         SECTION 4. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2009.