

1-1 By: Parker, et al. (Senate Sponsor - Ellis) H.B. No. 4525
1-2 (In the Senate - Received from the House May 8, 2009;
1-3 May 8, 2009, read first time and referred to Committee on Economic
1-4 Development; May 26, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 1;
1-6 May 26, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 4525 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to qualified manufacturing project zones.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The Legislature of the State of Texas finds that
1-13 a qualified manufacturing project, as defined in this Act, and the
1-14 enhancement of manufacturing workforce development serve the
1-15 public purposes of development and diversification of the
1-16 employment of this state, elimination of unemployment or
1-17 underemployment in this state, and development or expansion of
1-18 commerce in this state.

1-19 SECTION 2. Subtitle C, Title 12, Local Government Code, is
1-20 amended by adding Chapter 399 to read as follows:

1-21 CHAPTER 399. QUALIFIED MANUFACTURING PROJECT ZONES

1-22 Sec. 399.001. DEFINITIONS. In this chapter:

1-23 (1) "Qualified manufacturing project":

1-24 (A) means a proposed new or expanded facility
1-25 that, on the date of qualification under Section 399.002:

1-26 (i) is not subject to either an agreement
1-27 with a county or other taxing unit under Chapter 312, Tax Code, or
1-28 with a school district under Chapter 313, Tax Code, entered into on
1-29 or before the effective date of this Act; and

1-30 (ii) is subject to an agreement entered
1-31 into after the effective date of this Act, but before September 1,
1-32 2013, with a county or other taxing unit under Chapter 312, Tax
1-33 Code, or with a school district under Chapter 313, Tax Code, under
1-34 which the investment in the facility:

1-35 (a) is at least \$200 million; or

1-36 (b) is at least \$100 million if the
1-37 facility is related to:

1-38 (1) renewable energy generation,
1-39 including solar, wind, biomass, geothermal, tidal, or small
1-40 hydroelectric generation;

1-41 (2) advanced battery technology
1-42 or other advanced energy storage technology; or

1-43 (3) waste recycling;

1-44 (iii) will be engaged in manufacturing, as
1-45 that term is defined by Section 151.318, Tax Code, the construction
1-46 of which begins on or after September 1, 2009;

1-47 (iv) is forecasted to create at least 300
1-48 full-time equivalent employment positions; and

1-49 (v) the owner of which is:

1-50 (a) considering at least one
1-51 alternative site for the facility that is not located in this state;
1-52 or

1-53 (b) competing against similar
1-54 projects located outside this state for federal funds or financial
1-55 support, including loan guarantees, that would benefit the project;
1-56 and

1-57 (B) does not include a proposed new or expanded
1-58 facility that produces a stream of carbon dioxide if the facility
1-59 involves the generation of electricity or the creation of liquid
1-60 fuels outside of the existing fuel production infrastructure while
1-61 co-generating electricity, other than a facility that generates
1-62 electricity from biomass or biofuels, unless the facility captures
1-63 and sequesters, by geologic storage or other means, not less than 60

2-1 percent of the carbon dioxide from the facility's emissions stream.
2-2 (2) "Waste recycling" means the process of extracting
2-3 resources or value from waste by recovering or reusing the
2-4 materials, including the collection and reuse of everyday waste
2-5 materials.
2-6 Sec. 399.002. DATE OF QUALIFICATION. A proposed facility
2-7 becomes a qualified manufacturing project on the date the owner of
2-8 the facility files an election to become a qualified manufacturing
2-9 project with the comptroller.
2-10 Sec. 399.003. ECONOMIC IMPACT STUDY. (a) The owner of a
2-11 qualified manufacturing project must conduct an economic impact
2-12 study of the county in which the qualified manufacturing project is
2-13 located and submit the study to the comptroller for certification
2-14 not later than the 120th day after the date the owner files an
2-15 election for that designation under Section 399.002.
2-16 (b) The economic impact study must provide an estimate of:
2-17 (1) the general economic impact likely to occur in the
2-18 county as a result of the qualified manufacturing project;
2-19 (2) the anticipated amount of increase in the tax
2-20 receipts to this state from the taxes imposed under Chapter 151, Tax
2-21 Code, that:
2-22 (A) will occur in the county during the period
2-23 that the qualified manufacturing project zone is designated; and
2-24 (B) is directly attributable to the economic
2-25 impact from the design, construction, or operation of the qualified
2-26 manufacturing project;
2-27 (3) the projected number of full-time equivalent
2-28 employment positions likely to be available at the qualified
2-29 manufacturing project; and
2-30 (4) the investment projected to be made at the
2-31 qualified manufacturing project.
2-32 Sec. 399.004. COMPTROLLER CERTIFICATION OF ECONOMIC IMPACT
2-33 STUDY. (a) Not later than the 30th day after receiving the
2-34 economic impact study from an owner of a qualified manufacturing
2-35 project, the comptroller shall certify the study if the comptroller
2-36 determines that:
2-37 (1) the study accurately estimates the information
2-38 required by Sections 399.003(b)(2)-(4); or
2-39 (2) the study:
2-40 (A) was conducted by an independent third party;
2-41 (B) was conducted using generally accepted
2-42 economic impact forecasting methods to estimate the information
2-43 required by Section 399.003(b); and
2-44 (C) contains the information required by Section
2-45 399.003(b).
2-46 (b) If the comptroller determines that the economic impact
2-47 study submitted by the owner of the qualified manufacturing project
2-48 does not meet the requirements of Subsection (a)(1) or (2), as
2-49 applicable, the comptroller, not later than the 30th day after the
2-50 date of receiving the study, shall:
2-51 (1) submit a preliminary determination to the owner of
2-52 the qualified manufacturing project; and
2-53 (2) provide the owner of the qualified manufacturing
2-54 project with an opportunity to respond or submit a new or amended
2-55 economic impact study to the comptroller.
2-56 Sec. 399.005. QUALIFIED MANUFACTURING PROJECT ZONE. (a)
2-57 The owner of a qualified manufacturing project for which the
2-58 comptroller has certified an economic impact study in accordance
2-59 with Section 399.004 may apply to the comptroller for designation
2-60 of the county in which the project is located as a qualified
2-61 manufacturing project zone. Subject to Subsections (b) and (c),
2-62 the comptroller shall approve the application on a determination
2-63 that the qualified manufacturing project is the first facility in
2-64 the county to apply for the designation. The designation takes
2-65 effect on September 1 after the date of approval of an application
2-66 for designation of the county as a qualified manufacturing project
2-67 zone for the project.
2-68 (b) Only one qualified manufacturing project that is in a
2-69 qualified manufacturing project zone may qualify for benefits under

3-1 this chapter at any one time.

3-2 (c) If more than one qualified manufacturing project
 3-3 applies for zone designation from a single county within a calendar
 3-4 month, the comptroller shall approve the qualified application with
 3-5 the most investment in the proposed new or expanded facility, as
 3-6 determined by the economic impact study certified under Section
 3-7 399.004.

3-8 (d) A qualified manufacturing project zone designation for
 3-9 a qualified manufacturing project remains in effect until the
 3-10 expiration of any tax limitations, credits, abatements, or other
 3-11 benefits under an agreement entered into under Chapter 312 or 313,
 3-12 Tax Code, for the qualified manufacturing project.

3-13 Sec. 399.006. ANNUAL CERTIFICATION. (a) To receive state
 3-14 benefits under this chapter, the owner of a qualified manufacturing
 3-15 project in a qualified manufacturing project zone must submit the
 3-16 report required by Subsection (b) and make the following applicable
 3-17 annual certification to the comptroller, as of the last day of the
 3-18 state fiscal year for each year of the zone's designation:

3-19 (1) if the qualified manufacturing project zone
 3-20 designation has been in effect for three years or less and the
 3-21 qualified manufacturing project has not commenced commercial
 3-22 operation, the owner must certify the forecast of at least 300
 3-23 full-time equivalent employment positions for the year that the
 3-24 facility will begin commercial operation;

3-25 (2) if the qualified manufacturing project zone
 3-26 designation has been in effect for more than three years and the
 3-27 qualified manufacturing project has not started commercial
 3-28 operation, the owner must certify:

3-29 (A) the creation of at least 300 full-time
 3-30 equivalent employment positions; or

3-31 (B) all of the following:

3-32 (i) the expenditure of at least \$1 billion
 3-33 on the new or expanded facility has occurred;

3-34 (ii) the year in which the facility will
 3-35 begin commercial operation; and

3-36 (iii) the forecast of at least 300
 3-37 full-time equivalent employment positions that will be created not
 3-38 later than the eighth anniversary of the date of the zone's
 3-39 designation; or

3-40 (3) if the qualified manufacturing project has started
 3-41 commercial operation, the owner must certify the creation of at
 3-42 least 300 full-time equivalent employment positions at the
 3-43 facility.

3-44 (b) At the time the applicable certification required under
 3-45 Subsection (a) is submitted, the owner of a qualified manufacturing
 3-46 project shall also submit an annual report to the comptroller that
 3-47 contains a summary of wages, salaries, and health care benefits
 3-48 associated with the jobs created by the qualified manufacturing
 3-49 project.

3-50 (c) If the owner of a qualified manufacturing project fails
 3-51 to make the applicable certification required under Subsection (a)
 3-52 and submit the report required by Subsection (b), the owner
 3-53 forfeits the right to receive future state benefits under this
 3-54 chapter and shall pay to the comptroller, not later than the 60th
 3-55 calendar day after the date the certification is due, the entire
 3-56 amount of all refunds previously received as provided by this
 3-57 chapter.

3-58 (d) For purposes of this section, "commercial operation,"
 3-59 with respect to a facility, means that the facility has begun to
 3-60 operate for the facility's intended purpose.

3-61 Sec. 399.007. STATE BENEFITS. Subject to Section 399.006,
 3-62 the owner of a qualified manufacturing project in a qualified
 3-63 manufacturing project zone is eligible for a refund of state sales
 3-64 and use taxes as provided by Section 151.4292, Tax Code.

3-65 Sec. 399.008. COMPTROLLER DUTIES. The comptroller shall
 3-66 adopt rules and forms necessary to perform the comptroller's duties
 3-67 under this chapter.

3-68 SECTION 3. Subchapter I, Chapter 151, Tax Code, is amended
 3-69 by adding Section 151.4292 to read as follows:

4-1 Sec. 151.4292. TAX REFUNDS FOR QUALIFIED MANUFACTURING
 4-2 PROJECTS. (a) In this section:

4-3 (1) "Additional sales and use tax" means the total
 4-4 amount of sales and use taxes collected under this chapter on
 4-5 purchases of all taxable items purchased within a qualified
 4-6 manufacturing project zone for each state fiscal year for the
 4-7 duration of the qualified manufacturing project zone designation
 4-8 less the sales tax base, not otherwise due as a rebate or refund
 4-9 under any other applicable law.

4-10 (2) "Manufacturing workforce development" means,
 4-11 solely for purposes of this section, any expenditures incurred in
 4-12 the state by the owner, or a contractor or subcontractor of the
 4-13 owner, of a qualified manufacturing project for recruiting or
 4-14 training present, prospective, or potential employees for jobs in
 4-15 this state presently available or expected to be available for the
 4-16 planning, designing, construction, fabrication, or operation of a
 4-17 qualified manufacturing project, and the salaries, wages, and
 4-18 benefits of those employees through the first two years of
 4-19 commercial operation of the qualified manufacturing project. The
 4-20 term:

4-21 (A) does not include any expenditures incurred
 4-22 for recruiting or training, or the salaries, wages, and benefits of
 4-23 persons employed in a "bona fide executive, administrative, or
 4-24 professional capacity," as that phrase is used for purposes of
 4-25 establishing an exemption to the overtime provisions of the federal
 4-26 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.);
 4-27 and

4-28 (B) notwithstanding Paragraph (A), includes any
 4-29 expenditures incurred for recruiting or training, or the salaries,
 4-30 wages, and benefits of operating staff, maintenance staff, and
 4-31 engineering staff.

4-32 (3) "Qualified manufacturing project" has the meaning
 4-33 assigned that term by Section 399.001, Local Government Code.

4-34 (4) "Sales tax base" means the amount of the sales and
 4-35 use taxes collected under this chapter on purchases of all taxable
 4-36 items purchased within the boundaries of a qualified manufacturing
 4-37 project zone for the state fiscal year ending before the date the
 4-38 zone is designated.

4-39 (b) The owner of a qualified manufacturing project in a
 4-40 qualified manufacturing project zone is entitled to receive a
 4-41 payment of a refund of 50 percent of the additional sales and use
 4-42 tax for the preceding state fiscal year provided the owner has made
 4-43 the applicable employment certification to the comptroller
 4-44 required under Section 399.006, Local Government Code, and submits
 4-45 the report required under that section. A refund may not be made
 4-46 under this subsection for any sales and use taxes paid before the
 4-47 date an application for designation of a qualified manufacturing
 4-48 project zone is approved for the project. For the duration of a
 4-49 qualified manufacturing project zone designation for a qualified
 4-50 manufacturing project, but not to exceed 10 years, the comptroller
 4-51 shall pay the refund not later than the 60th day after the later of
 4-52 the date of receipt of the employment certification or the last day
 4-53 of the state fiscal year.

4-54 (c) The total amount of refunds that a qualified
 4-55 manufacturing project may receive over the course of the
 4-56 designation of the county in which it is located as a qualified
 4-57 manufacturing project zone may not exceed an amount equal to the
 4-58 lesser of \$50 million or five percent of the qualified
 4-59 manufacturing project's investments in the facility under Chapter
 4-60 399, Local Government Code.

4-61 (d) Subject to Subsection (f), a refund received under this
 4-62 section shall be used to pay for or to refund eligible expenses
 4-63 incurred before or after designation of the county in which the
 4-64 project is located as a qualified manufacturing project zone for
 4-65 manufacturing workforce development for the project.

4-66 (e) If the owner of a qualified manufacturing project fails
 4-67 to make the applicable certification and submit the report required
 4-68 by Section 399.006, Local Government Code, the owner forfeits the
 4-69 right to receive all future benefits under this section and shall

5-1 pay to the comptroller, not later than the 60th calendar day after
5-2 the date the certification is due, the entire amount of all refunds
5-3 previously received under this section.

5-4 (f) At least 10 percent of the amount received as a refund
5-5 under this section in each state fiscal year must be expended for
5-6 job skills training programs that serve persons who are unemployed
5-7 or whose incomes are at or below 200 percent of the federal poverty
5-8 level.

5-9 SECTION 4. This Act takes effect immediately if it receives
5-10 a vote of two-thirds of all the members elected to each house, as
5-11 provided by Section 39, Article III, Texas Constitution. If this
5-12 Act does not receive the vote necessary for immediate effect, this
5-13 Act takes effect September 1, 2009.

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