

## **BILL ANALYSIS**

C.S.H.B. 433

By: Parker

Economic & Small Business Development  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The current national economic downturn continues to keep the unemployment rate in Texas above eight percent, more than twice its level in 2006. More alarming, even though Texas has experienced net jobs growth in the five consecutive months of October 2010 – February 2011, manufacturing specific jobs experienced losses in the months of November 2010 and February 2011. From 2006 – 2010 alone, through a competitive bid process, Texas lost out on the location of multiple new manufacturing facilities that would have combined for more than 14,000 new jobs and over 11.5 billion dollars in facility investments.

C.S.H.B. 433 offers a qualifying manufacturing project a refund on 50 percent of the additional state sales tax revenue that a qualified manufacturing project brings to their host county, as determined by the Comptroller. This refund -- which is capped at the lesser of 5 percent of the qualified manufacturing project's investment in new or expanded facilities or \$50 million – is required to be invested in job creation and workforce training programs undertaken by facility.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

C.S.H.B. 433 amends the Local Government Code to add provisions relating to a qualified manufacturing project, qualified manufacturing project zone, and qualified manufacturing project in a qualified manufacturing project zone.

#### **Qualified Manufacturing Project**

C.S.H.B. 433 establishes legislative findings relating to a qualified manufacturing project and the public purposes of such a project. The bill establishes that an eligible manufacturing facility becomes a qualified manufacturing project on the date the owner of the facility files an election for automatic designation of the facility as a qualified manufacturing project, without further qualification, with the comptroller of public accounts.

C.S.H.B. 433 defines "eligible manufacturing facility" as a proposed new or expanded facility for which, on the date of the facility's designation as a qualified manufacturing project, the following is true: the facility is subject to an agreement entered into on or after January 1, 2012, but before January 1, 2017, with a county, municipality, or other taxing unit under the Property Redevelopment and Tax Abatement Act, or with a school district under the Texas Economic Development Act, under which the investment in the facility is at least \$100 million; the facility will be engaged in the manufacturing, as that term is defined in provisions relating to limited sales, excise, and use tax exemptions on property used in manufacturing, and construction of the facility will begin on or after September 1, 2011; the facility is forecasted to create at least 200

new full-time jobs; and the facility is owned by a person or entity that is considering at least one alternative site for the facility outside Texas or is competing against similar projects located outside Texas for federal funds or financial support, including loan guarantees, that would benefit the project.

C.S.H.B. 433 defines "new full-time job" to mean a newly created permanent full-time job that requires at least 1,600 hours of work per year, is not transferred from one area to another area in Texas, and is not created to replace a previous employee. The bill defines "qualified manufacturing project" to mean an eligible manufacturing facility the owner of which has filed an election for automatic designation as a qualified manufacturing project under these provisions.

### **Qualified Manufacturing Project Zone**

C.S.H.B. 433 requires the owner of a qualified manufacturing project that applies for designation of the county in which the project is located as a qualified manufacturing project zone to conduct an economic impact study of the county and to submit the study to the comptroller for certification not later than the 120th day after the date the owner files an election to establish the facility's status as a qualified manufacturing project. The bill requires the study to provide an estimate of the following: the general economic impact likely to occur in the county as a result of the project; the anticipated increase in limited sales, excise, and use tax receipts to the state that will occur in the county during the period the county is designated as a qualified manufacturing project zone and that is directly attributable to the economic impact from the design, construction, or operation of the project; the projected number of new full-time jobs likely to be available at the project; and the investment projected to be made at the project.

C.S.H.B. 433 requires the comptroller, not later than the 30th day after the date an economic impact study is received from the owner of a qualified manufacturing project, to certify the study if the comptroller determines that the study provides an accurate estimate of the economic impact of the project or, if the comptroller determines that the study does not accurately estimate the economic impact of the project, to notify the owner of the project in writing of the comptroller's preliminary determination and the basis for that determination and to provide the owner with an opportunity to respond or submit a new or amended economic impact study. The bill requires the comptroller to accept or certify a new or amended study not later than the 30th day after the date a new or amended study is received. The bill establishes that a project loses its status as a qualified manufacturing project if, not later than the 90th day after receiving notice of the comptroller's rejection of the owner's initial economic impact study, the owner of the project has failed to receive the comptroller's certification of a new or amended study or has failed to submit a new or amended study to the comptroller.

C.S.H.B. 433 authorizes the owner of a qualified manufacturing project for which the comptroller has certified an economic impact study in accordance with the bill's provisions to apply to the comptroller for designation of the county in which the project is located as a qualified manufacturing project zone. The bill requires the comptroller to approve the application on a determination that the project is the first facility in the county to apply for the designation. The bill establishes that a designation takes effect on September 1 preceding the date that an application for designation of the county as a qualified manufacturing project zone is approved.

C.S.H.B. 433 authorizes only one project in a qualified manufacturing project zone to qualify for benefits at any one time. The bill requires the comptroller, if the owner of more than one project applies for zone designation from a single county within a calendar month, to approve the qualified application that the comptroller determines will have the greatest economic impact on that county. The bill establishes that a project zone designation remains in effect until the expiration of any tax limitations, credits, abatements, or other benefits obtained for the project under the Property Redevelopment and Tax Abatement Act or the Texas Economic Development Act.

C.S.H.B. 433 requires the owner of a qualified manufacturing project that seeks to receive state benefits in a qualified manufacturing project zone to make the applicable annual certification to the comptroller, as of the last day of the state fiscal year for each year of the zone's designation, as follows:

- if the project zone designation has been in effect for three years or less and the project has not started commercial operation, the owner must certify the forecast of at least 200 new full-time jobs for the year the facility will begin commercial operation;
- if the project zone designation has been in effect for more than three years and the project has not started commercial operation, the owner must certify either the creation of at least 200 new full-time jobs or must certify the expenditure of at least \$500 million on the new or expanded facility, the year in which the facility will begin commercial operation, and the forecast of at least 200 new full-time jobs that will be created not later than eight years after the date the project zone is designated; or
- if the project has started commercial operation, the owner must certify the creation of at least 200 new full-time jobs at the facility.

The bill establishes the following consequences if the owner of a project fails to make the required annual certification to the comptroller: the owner forfeits the right to receive future benefits under the bill's provisions; the owner is required to pay to the applicable governmental body within 60 calendar days the entire amount of all tax refunds received under the bill's provisions; and the project loses its status as a qualified manufacturing project for purposes of the bill's provisions. The bill defines "commercial operation."

C.S.H.B. 433 requires the comptroller, before the beginning of each regular session of the legislature, to submit to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature a report assessing the progress of qualified manufacturing projects receiving state benefits under the bill's provisions. The bill sets out the required content of the report and authorizes the comptroller to require an owner of a qualified manufacturing project to submit, on a form the comptroller provides, information required to complete the report. The bill prohibits the report from including information that is made confidential by law.

C.S.H.B. 433 requires the comptroller to adopt rules, forms, and fees necessary to perform the comptroller's duties associated with qualified manufacturing project zones. The bill authorizes the comptroller to charge an application fee in an amount sufficient to cover the comptroller's costs in administering the bill's provisions relating to qualified manufacturing project zones.

### **Qualified Manufacturing Project in a Qualified Manufacturing Project Zone**

C.S.H.B. 433 amends the Tax Code to entitle the owner of a qualified manufacturing project in a qualified manufacturing project zone to receive a refund of 50 percent of the additional state sales and use tax for the preceding state fiscal year that is directly attributable, as determined by the comptroller in accordance with procedures developed by the comptroller, to the economic activity derived from the presence of the project, provided that the owner has made the applicable annual employment certification to the comptroller required under the bill's provisions. The bill requires the comptroller, for the duration of a project zone designation but not to exceed 10 years, to pay the refund not later than the 120th day after the later of the date of receipt of the employment certification or the last day of the state fiscal year. The bill requires the comptroller, if the comptroller determines that none of the additional state sales and use tax for the preceding state fiscal year is directly attributable to the economic activity derived from the presence of the project, to notify the owner of the project of the comptroller's determination and the basis for that determination. The bill establishes that the owner is not entitled to receive a refund if the comptroller makes such a determination.

C.S.H.B. 433 prohibits the total amount of refunds that a project may receive over the course of

a qualified manufacturing project zone designation from exceeding an amount equal to the lesser of \$50 million or five percent of the project's investments in the facility. The bill requires a refund to be used to pay for or to refund eligible expenses for manufacturing workforce development for the project incurred after a qualified manufacturing project zone is designated. The bill requires the owner of a project, if the owner fails to make the required annual certification to the comptroller, or if the comptroller elects to audit the certification and determines that the qualified manufacturing project has started commercial operation and failed to meet the job creation requirement, to pay to the comptroller the entire amount of all refunds received under the bill's provisions not later than the 60th calendar day after the date the certification is due or the date the comptroller completes the audit, and specifies that under these circumstances the owner forfeits the right to receive future benefits. The bill defines "additional sales and use tax," "manufacturing workforce development," and "sales tax base."

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 433 differs from the original, in provisions defining the term "eligible manufacturing facility," by making the term apply to a proposed new or expanded facility that, on the date of the facility's designation as a qualified manufacturing project, is subject to an agreement entered into with certain entities on or after January 1, 2012, but before January 1, 2017, whereas the original makes the term apply to a designated facility that is subject to an agreement entered into with certain entities on or after January 1, 2011, but before January 1, 2017.

C.S.H.B. 433 differs from the original by using the phrase "new full-time jobs" in provisions regarding a qualified manufacturing project and defining "new full-time job," whereas the original uses the phrase "full-time equivalent employment positions." The substitute contains provisions not included in the original regarding a report on compliance with job or capital investment certification.

C.S.H.B. 433 differs from the original by requiring the comptroller of public accounts to pay the refund of certain taxes to the owner of a qualified manufacturing project not later than the 120th day after the later of the date of receipt of the owner's employment certification or the last day of the state fiscal year, whereas the original requires the comptroller to pay the refund not later than the 60th day after the later of those dates. The substitute, in provisions establishing consequences if the owner of a qualified manufacturing projects fails to make the applicable employment certification to the comptroller, contains a provision not included in the original providing an option for the comptroller to audit the certification to determine if the project has met the job creation requirement and making changes conforming to the audit option.