

By: Parker, Creighton, Taylor of Collin,
Legler, Button, et al.

H.B. No. 433

Substitute the following for H.B. No. 433:

By: Murphy

C.S.H.B. No. 433

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 finds that a qualified manufacturing project, as defined by Section 399.001, Local Government Code, as added by this Act, and the enhancement of manufacturing workforce development serve the public purposes of:

(1) developing and diversifying employment in this state;

(2) eliminating unemployment or underemployment in this state; and

(3) developing and expanding 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. DEFINITIONS. In this chapter:

(1) "Eligible manufacturing facility" means a proposed new or expanded facility that, on the date of the facility's designation as a qualified manufacturing project under Section 399.002:

(A) 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 Chapter 312, Tax Code, or with a school district under Chapter 313, Tax Code, under which the

1 investment in the facility is at least \$100 million;

2 (B) will be engaged in manufacturing, as that
3 term is defined by Section 151.318, Tax Code, the construction of
4 which begins on or after September 1, 2011;

5 (C) is forecasted to create at least 200 new
6 full-time jobs; and

7 (D) is owned by a person or entity that is:

8 (i) considering at least one alternative
9 site for the facility that is not located in this state; or

10 (ii) competing against similar projects
11 located outside this state for federal funds or financial support,
12 including loan guarantees, that would benefit the project.

13 (2) "New full-time job" means a newly created
14 permanent full-time job that:

15 (A) requires at least 1,600 hours of work a year;

16 (B) is not transferred from one area in this
17 state to another area in this state; and

18 (C) is not created to replace a previous
19 employee.

20 (3) "Qualified manufacturing project" means an
21 eligible manufacturing facility the owner of which has filed an
22 election under Section 399.002 to establish the facility's status
23 as a qualified manufacturing project.

24 Sec. 399.002. DESIGNATION OF ELIGIBLE MANUFACTURING
25 FACILITY AS QUALIFIED MANUFACTURING PROJECT; DATE OF
26 QUALIFICATION. An eligible manufacturing facility becomes a
27 qualified manufacturing project on the date the owner of the

1 facility files an election for automatic designation of the
2 facility as a qualified manufacturing project, without further
3 qualification, with the comptroller.

4 Sec. 399.003. ECONOMIC IMPACT STUDY. (a) Before applying
5 for designation of the applicable county as a qualified
6 manufacturing project zone under Section 399.005, the owner of a
7 qualified manufacturing project must conduct an economic impact
8 study of the county in which the project is located and submit the
9 study to the comptroller for certification not later than the 120th
10 day after the date the owner files an election to establish the
11 facility's status as a qualified manufacturing project under
12 Section 399.002.

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

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

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

19 (A) will occur in the county during the period
20 the county is designated as a qualified manufacturing project zone;
21 and

22 (B) is directly attributable to the economic
23 impact from the design, construction, or operation of the qualified
24 manufacturing project;

25 (3) the projected number of new full-time jobs likely
26 to be available at the qualified manufacturing project; and

27 (4) the investment projected to be made at the

1 qualified manufacturing project.

2 Sec. 399.004. COMPTROLLER CERTIFICATION OF ECONOMIC IMPACT
3 STUDY. (a) Not later than the 30th day after receiving the
4 economic impact study from an owner of a qualified manufacturing
5 project, the comptroller shall certify the study if the comptroller
6 determines that the study accurately estimates the information
7 required by Sections 399.003(b)(2)-(4).

8 (b) If the comptroller determines that the economic impact
9 study does not accurately estimate the information required by
10 Sections 399.003(b)(2)-(4), the comptroller, not later than the
11 30th day after the date of receipt of the study, shall:

12 (1) notify the owner of the qualified manufacturing
13 project in writing of the comptroller's preliminary determination
14 and the basis for that determination; and

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

18 (c) In evaluating a new or amended economic impact study
19 submitted by the owner of a qualified manufacturing project
20 following the comptroller's rejection of the owner's initial study,
21 the comptroller shall determine whether to accept or certify the
22 new or amended study not later than the 30th day after the date of
23 receipt of the new or amended study.

24 (d) If, not later than the 90th day after receiving notice
25 of the comptroller's rejection of the owner's initial economic
26 impact study, the owner of a qualified manufacturing project either
27 fails to receive the comptroller's certification of a new or

1 amended economic impact study the owner submitted within that
2 period or fails to submit a new or amended study to the comptroller,
3 the qualified manufacturing project loses its status as a qualified
4 manufacturing project at the end of the 90-day period.

5 Sec. 399.005. DESIGNATION OF QUALIFIED MANUFACTURING
6 PROJECT ZONE; APPLICATION. (a) The owner of a qualified
7 manufacturing project for which the comptroller has certified an
8 economic impact study in accordance with Section 399.004 may apply
9 to the comptroller for designation of the county in which the
10 project is located as a qualified manufacturing project zone. The
11 comptroller shall approve the application on a determination that
12 the qualified manufacturing project is the first facility in the
13 county to apply for the designation. The designation takes effect
14 on September 1 preceding the date of approval of an application for
15 designation of the county as a qualified manufacturing project
16 zone.

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

20 (c) If the owner of more than one qualified manufacturing
21 project applies for zone designation from a single county within a
22 calendar month, the comptroller shall approve the qualified
23 application that the comptroller determines will have the greatest
24 economic impact on that county.

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 (e) The comptroller may charge an application fee in an
4 amount sufficient to cover the comptroller's costs in administering
5 this chapter.

6 Sec. 399.006. ANNUAL CERTIFICATION. (a) In this section,
7 "commercial operation," with respect to a facility, means that the
8 facility has started to operate for the facility's intended
9 purpose.

10 (b) To receive state benefits under this chapter, the owner
11 of a qualified manufacturing project in a qualified manufacturing
12 project zone must make the following applicable annual
13 certification to the comptroller, as of the last day of the state
14 fiscal year for each year of the zone's designation:

15 (1) if the qualified manufacturing project zone
16 designation has been in effect for three years or less and the
17 qualified manufacturing project has not started commercial
18 operation, the owner must certify the forecast of at least 200 new
19 full-time jobs for the year that the facility will begin commercial
20 operation;

21 (2) if the qualified manufacturing project zone
22 designation has been in effect for more than three years and the
23 qualified manufacturing project has not started commercial
24 operation, the owner must certify:

25 (A) the creation of at least 200 new full-time
26 jobs; or

27 (B) all of the following:

1 (i) the expenditure of at least \$500
2 million on the new or expanded facility has occurred;

3 (ii) the year in which the facility will
4 begin commercial operation; and

5 (iii) the forecast of at least 200 new
6 full-time jobs that will be created not later than the eighth
7 anniversary of the date of the zone's designation; or

8 (3) if the qualified manufacturing project has started
9 commercial operation, the owner must certify the creation of at
10 least 200 new full-time jobs at the facility.

11 (c) If the owner of a qualified manufacturing project fails
12 to make the applicable certification required under Subsection (b):

13 (1) the owner forfeits the right to receive future
14 benefits under this chapter;

15 (2) the owner shall pay to the applicable governmental
16 body within 60 calendar days the entire amount of all refunds
17 previously received under this chapter; and

18 (3) the qualified manufacturing project loses its
19 status as a qualified manufacturing project for purposes of this
20 chapter and Section 151.4292, Tax Code.

21 Sec. 399.007. STATE BENEFITS. The owner of a qualified
22 manufacturing project in a qualified manufacturing project zone is
23 eligible for a refund of state sales and use taxes as provided by
24 Section 151.4292, Tax Code.

25 Sec. 399.008. REPORT ON COMPLIANCE WITH JOB OR CAPITAL
26 INVESTMENT CERTIFICATION. (a) Before the beginning of each regular
27 session of the legislature, the comptroller shall submit to the

1 lieutenant governor, the speaker of the house of representatives,
2 and each other member of the legislature a report assessing the
3 progress of qualified manufacturing projects receiving state
4 benefits under this chapter. The report must be based on data
5 annually certified to the comptroller by each owner of a qualified
6 manufacturing project under this chapter and state for each
7 project:

8 (1) the number of new full-time jobs the owner of the
9 project committed to create;

10 (2) the number of new full-time jobs the owner of the
11 project created;

12 (3) the median wage of the new full-time jobs created;

13 (4) the amount of capital investment the owner of the
14 project committed to expend in the facility; and

15 (5) the amount of capital investment the owner
16 expended in the facility.

17 (b) The report may not include information that is made
18 confidential by law.

19 (c) The comptroller may require an owner of a qualified
20 manufacturing project to submit, on a form the comptroller
21 provides, information required to complete the report.

22 Sec. 399.009. COMPTROLLER DUTIES. The comptroller shall
23 adopt rules, forms, and fees necessary to perform the comptroller's
24 duties under this chapter.

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

27 Sec. 151.4292. TAX REFUNDS FOR QUALIFIED MANUFACTURING

1 PROJECTS. (a) In this section:

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

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

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

26 (B) notwithstanding Paragraph (A), includes any
27 expenditures incurred for the recruiting or training of, or the

1 salaries, wages, and benefits of, operating staff, maintenance
2 staff, and engineering staff.

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

5 (4) "Sales tax base" means the amount of the sales and
6 use taxes collected under this chapter on purchases of all taxable
7 items purchased within the boundaries of a qualified manufacturing
8 project zone for the state fiscal year ending before the date the
9 zone is designated.

10 (b) The owner of a qualified manufacturing project in a
11 qualified manufacturing project zone is entitled to receive a
12 payment of a refund of 50 percent of the additional sales and use
13 tax for the preceding state fiscal year that is directly
14 attributable, as determined by the comptroller in accordance with
15 procedures developed by the comptroller, to the economic activity
16 derived from the presence of the qualified manufacturing project,
17 provided the owner has made the applicable employment certification
18 to the comptroller required under Section 399.006, Local Government
19 Code. For the duration of a qualified manufacturing project zone
20 designation, but not to exceed 10 years, the comptroller shall pay
21 the refund not later than the 120th day after the later of the date
22 of receipt of the employment certification or the last day of the
23 state fiscal year.

24 (c) If the comptroller determines that none of the
25 additional sales and use tax for the preceding state fiscal year is
26 directly attributable to the economic activity derived from the
27 presence of the qualified manufacturing project, the owner of the

1 project is not entitled to receive a refund under this section and
2 the comptroller shall notify the owner of the comptroller's
3 determination and the basis for that determination.

4 (d) The total amount of refunds that a qualified
5 manufacturing project may receive over the course of the
6 designation of the county in which it is located as a qualified
7 manufacturing project zone may not exceed an amount equal to the
8 lesser of \$50 million or five percent of the qualified
9 manufacturing project's investments in the facility under Chapter
10 399, Local Government Code.

11 (e) A refund received under this section shall be used to
12 pay for or to refund eligible expenses incurred after designation
13 of the county in which the project is located as a qualified
14 manufacturing project zone for manufacturing workforce development
15 for the project.

16 (f) If the owner of a qualified manufacturing project fails
17 to make the applicable certification required by Section 399.006,
18 Local Government Code, or if the comptroller elects to audit the
19 certification and determines that the qualified manufacturing
20 project has started commercial operation and failed to meet the job
21 creation requirement, the owner forfeits the right to receive all
22 future benefits under this section and shall pay to the comptroller
23 the entire amount of all refunds previously received under this
24 section. Payment of a refund under this subsection shall be made
25 not later than the 60th calendar day after, as applicable, the date
26 the certification is due or the date the comptroller completes the
27 audit.

1 SECTION 4. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2011.