

By: Parker

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, 2011, 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  
6 full-time equivalent employment positions; 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) "Qualified manufacturing project" means an  
14 eligible manufacturing facility the owner of which has filed an  
15 election under Section 399.002 to establish the facility's status  
16 as a qualified manufacturing project.

17 Sec. 399.002. DESIGNATION OF ELIGIBLE MANUFACTURING  
18 FACILITY AS QUALIFIED MANUFACTURING PROJECT; DATE OF  
19 QUALIFICATION. An eligible manufacturing facility becomes a  
20 qualified manufacturing project on the date the owner of the  
21 facility files an election for automatic designation of the  
22 facility as a qualified manufacturing project, without further  
23 qualification, with the comptroller.

24 Sec. 399.003. ECONOMIC IMPACT STUDY. (a) Before applying  
25 for designation of the applicable county as a qualified  
26 manufacturing project zone under Section 399.005, the owner of a  
27 qualified manufacturing project must conduct an economic impact

1 study of the county in which the project is located and submit the  
2 study to the comptroller for certification not later than the 120th  
3 day after the date the owner files an election to establish the  
4 facility's status as a qualified manufacturing project under  
5 Section 399.002.

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

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

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

12 (A) will occur in the county during the period  
13 the county is designated as a qualified manufacturing project zone;  
14 and

15 (B) is directly attributable to the economic  
16 impact from the design, construction, or operation of the qualified  
17 manufacturing project;

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

21 (4) the investment projected to be made at the  
22 qualified manufacturing project.

23 Sec. 399.004. COMPTROLLER CERTIFICATION OF ECONOMIC IMPACT  
24 STUDY. (a) Not later than the 30th day after receiving the  
25 economic impact study from an owner of a qualified manufacturing  
26 project, the comptroller shall certify the study if the comptroller  
27 determines that the study accurately estimates the information

1 required by Sections 399.003(b)(2)-(4).

2 (b) If the comptroller determines that the economic impact  
3 study does not accurately estimate the information required by  
4 Sections 399.003(b)(2)-(4), the comptroller, not later than the  
5 30th day after the date of receiving the study, shall:

6 (1) notify the owner of the qualified manufacturing  
7 project in writing of the comptroller's preliminary determination  
8 and the basis for that determination; and

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

12 (c) In evaluating a new or amended economic impact study  
13 submitted by the owner of a qualified manufacturing project  
14 following the comptroller's rejection of the owner's initial study,  
15 the comptroller shall determine whether to accept or certify the  
16 new or amended study not later than the 30th day after the date of  
17 receipt of the new or amended study.

18 (d) If, not later than the 90th day after receiving notice  
19 of the comptroller's rejection of the owner's initial economic  
20 impact study, the owner of a qualified manufacturing project either  
21 fails to receive the comptroller's certification of a new or  
22 amended economic impact study the owner submitted within that  
23 period or fails to submit a new or amended study to the comptroller,  
24 the qualified manufacturing project loses its status as a qualified  
25 manufacturing project at the end of the 90-day period.

26 Sec. 399.005. DESIGNATION OF QUALIFIED MANUFACTURING  
27 PROJECT ZONE; APPLICATION. (a) The owner of a qualified

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

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

14 (c) If the owner of more than one qualified manufacturing  
15 project applies for zone designation from a single county within a  
16 calendar month, the comptroller shall approve the qualified  
17 application that the comptroller determines will have the greatest  
18 economic impact on that county.

19 (d) A qualified manufacturing project zone designation  
20 remains in effect until the expiration of any tax limitations,  
21 credits, abatements, or other benefits under an agreement entered  
22 into under Chapter 312 or 313, Tax Code, for the qualified  
23 manufacturing project.

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

27 Sec. 399.006. ANNUAL CERTIFICATION. (a) In this section,

1 "commercial operation," with respect to a facility, means that the  
2 facility has started to operate for the facility's intended  
3 purpose.

4 (b) To receive state benefits under this chapter, the owner  
5 of a qualified manufacturing project in a qualified manufacturing  
6 project zone must make the following applicable annual  
7 certification to the comptroller, as of the last day of the state  
8 fiscal year for each year of the zone's 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 started commercial  
12 operation, the owner must certify the forecast of at least 200  
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 200 full-time  
20 equivalent employment positions; or

21 (B) all of the following:

22 (i) the expenditure of at least \$500  
23 million 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 200  
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 200 full-time equivalent employment positions at the  
6 facility.

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

9 (1) the owner forfeits the right to receive future  
10 benefits under this chapter;

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

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

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

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

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

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

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

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

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

25           (B) notwithstanding Paragraph (A), includes any  
26 expenditures incurred for the recruiting or training of, or the  
27 salaries, wages, and benefits of, operating staff, maintenance



1 staff, and engineering staff.

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

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

9 (b) The owner of a qualified manufacturing project in a  
10 qualified manufacturing project zone is entitled to receive a  
11 payment of a refund of 50 percent of the additional sales and use  
12 tax for the preceding state fiscal year that is directly  
13 attributable, as determined by the comptroller in accordance with  
14 procedures developed by the comptroller, to the economic activity  
15 derived from the presence of the qualified manufacturing project,  
16 provided the owner has made the applicable employment certification  
17 to the comptroller required under Section 399.006, Local Government  
18 Code. For the duration of a qualified manufacturing project zone  
19 designation, but not to exceed 10 years, the comptroller shall pay  
20 the refund not later than the 60th day after the later of the date of  
21 receipt of the employment certification or the last day of the state  
22 fiscal year.

23 (c) If the comptroller determines that none of the  
24 additional sales and use tax for the preceding state fiscal year is  
25 directly attributable to the economic activity derived from the  
26 presence of the qualified manufacturing project, the owner of the  
27 project is not entitled to receive a refund under this section and

1 the comptroller shall notify the owner of the comptroller's  
2 determination and the basis for that determination.

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

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

15 (f) If the owner of a qualified manufacturing project fails  
16 to make the applicable certification required by Section 399.006,  
17 Local Government Code, the owner forfeits the right to receive all  
18 future benefits under this section and shall pay to the  
19 comptroller, not later than the 60th calendar day after the date the  
20 certification is due, the entire amount of all refunds previously  
21 received under this section.

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