

By: Martinez Fischer

H.B. No. 246

Substitute the following for H.B. No. 246:

By: Bohac

C.S.H.B. No. 246

A BILL TO BE ENTITLED

AN ACT

relating to franchise tax credits for businesses that employ veterans; adding provisions subject to a criminal penalty.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapters P and Q to read as follows:

SUBCHAPTER P. TAX CREDITS FOR EMPLOYMENT OF VETERANS

Sec. 171.771. DEFINITIONS. In this subchapter:

(1) "Agricultural processing" means an establishment primarily engaged in activities described in categories 0724, 2011-2099, or 3111-3199 of the 1987 Standard Industrial Classification Manual published by the United States Department of Labor.

(2) "Central administrative offices" means an establishment primarily engaged in performing management or support services for other establishments of the same enterprise. An enterprise consists of all establishments having more than 50 percent common direct or indirect ownership.

(3) "Data processing" means an establishment primarily engaged in activities described in categories 7371-7379 of the 1987 Standard Industrial Classification Manual published by the United States Department of Labor.

(4) "Distribution" means an establishment primarily engaged in activities described in categories 5012-5199 of the 1987

1 Standard Industrial Classification Manual published by the United
2 States Department of Labor.

3 (5) "Group health benefit plan" means:

4 (A) a health plan provided by a health
5 maintenance organization established under Chapter 843, Insurance
6 Code;

7 (B) a health benefit plan approved by the
8 commissioner of insurance; or

9 (C) a self-funded or self-insured employee
10 welfare benefit plan that provides health benefits and is
11 established in accordance with the Employee Retirement Income
12 Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

13 (6) "Manufacturing" means an establishment primarily
14 engaged in activities described in categories 2011-3999 of the 1987
15 Standard Industrial Classification Manual published by the United
16 States Department of Labor.

17 (7) "Qualified business" means an establishment
18 primarily engaged in agricultural processing, central
19 administrative offices, distribution, data processing,
20 manufacturing, research and development, or warehousing.

21 (8) "Qualifying job" means a new permanent full-time
22 job that:

23 (A) is held by a veteran;

24 (B) pays an annual wage of at least \$50,000,
25 subject to Section 171.772;

26 (C) is covered by a group health benefit plan for
27 which the business pays at least 80 percent of the premiums or other

1 charges assessed under the plan for the employee; and

2 (D) is not created to replace a previous
3 employee.

4 (9) "Research and development" means an establishment
5 primarily engaged in activities described in category 8731 of the
6 1987 Standard Industrial Classification Manual published by the
7 United States Department of Labor.

8 (10) "Veteran" means a person who:

9 (A) has served in:

10 (i) the armed forces of the United States or
11 the United States Public Health Service under 42 U.S.C. Section 201
12 et seq.;

13 (ii) the Texas military forces, as defined
14 by Section 437.001, Government Code; or

15 (iii) an auxiliary service of a branch of
16 the armed forces described by Subparagraph (i) or (ii); and

17 (B) has been honorably discharged from the branch
18 of the service in which the person served.

19 (11) "Warehousing" means an establishment primarily
20 engaged in activities described in categories 4221-4226 of the 1987
21 Standard Industrial Classification Manual published by the United
22 States Department of Labor.

23 Sec. 171.772. BIENNIAL ADJUSTMENT OF WAGE FOR QUALIFYING
24 JOB. (a) In this section, "consumer price index" means the average
25 over a state fiscal biennium of the Consumer Price Index for All
26 Urban Consumers (CPI-U), U.S. City Average, published monthly by
27 the United States Bureau of Labor Statistics, or its successor in

1 function.

2 (b) Beginning in 2018, on January 1 of each even-numbered
3 year, the wage amount prescribed by Section 171.771(8) is increased
4 or decreased by an amount equal to the amount prescribed by that
5 section on December 31 of the preceding year multiplied by the
6 percentage increase or decrease during the preceding state fiscal
7 biennium in the consumer price index and rounded to the nearest
8 dollar.

9 (c) The amount determined under Subsection (b) applies to a
10 report originally due on or after the date the determination is
11 made.

12 (d) The comptroller shall make the determination required
13 by this section and may adopt rules related to making that
14 determination.

15 (e) A determination by the comptroller under this section is
16 final and may not be appealed.

17 Sec. 171.773. ELIGIBILITY. A taxable entity is eligible for
18 a credit against the tax imposed under this chapter if the taxable
19 entity:

20 (1) is a qualified business; and

21 (2) creates a minimum of 10 qualifying jobs.

22 Sec. 171.774. AMOUNT OF CREDIT. A taxable entity may
23 establish a credit equal to 25 percent of the total wages paid by
24 the taxable entity for each qualifying job during each of the first
25 12 months of employment of the person hired to perform the job that
26 occur during the period on which the report is based.

27 Sec. 171.775. LENGTH OF CREDIT. The credit established

1 shall be claimed in five equal installments of one-fifth the credit
2 amount over the five consecutive reports beginning with the report
3 based on the period during which the qualifying jobs were created.

4 Sec. 171.776. LIMITATIONS. (a) The total credit claimed
5 under this subchapter for a report, including the amount of any
6 carryforward credit under Section 171.777, may not exceed 50
7 percent of the amount of franchise tax due for the report before any
8 other applicable tax credits.

9 (b) The total credit claimed under this subchapter and
10 Subchapter Q for a report, including the amount of any carryforward
11 credits, may not exceed the amount of franchise tax due for the
12 report after any other applicable credits.

13 Sec. 171.777. CARRYFORWARD. (a) If a taxable entity is
14 eligible for a credit that exceeds the limitations under Section
15 171.776, the taxable entity may carry the unused credit forward for
16 not more than five consecutive reports.

17 (b) A carryforward is considered the remaining portion of an
18 installment that cannot be claimed in the current year because of a
19 limitation under Section 171.776. A carryforward is added to the
20 next year's installment of the credit in determining the limitation
21 for that year. A credit carryforward from a previous report is
22 considered to be used before the current year installment.

23 Sec. 171.778. CERTIFICATION OF ELIGIBILITY. (a) For the
24 initial and each succeeding report on which a credit is claimed
25 under this subchapter, the taxable entity shall file with its
26 report, on a form provided by the comptroller, information that
27 sufficiently demonstrates that the taxable entity is eligible for

1 the credit.

2 (b) The burden of establishing entitlement to and the value
3 of the credit is on the taxable entity.

4 (c) A credit expires under this subchapter and the taxable
5 entity may not take any remaining installment of the credit if in
6 one of the five years in which the installment of a credit accrues,
7 the taxable entity fails to maintain the minimum number of
8 qualifying jobs required to be created by Section 171.773.

9 (d) Notwithstanding Subsection (c), the taxable entity may
10 take the portion of an installment that accrued in a previous year
11 and was carried forward to the extent permitted under Section
12 171.777.

13 Sec. 171.779. ASSIGNMENT PROHIBITED. A taxable entity may
14 not convey, assign, or transfer the credit allowed under this
15 subchapter to another entity unless all of the assets of the taxable
16 entity are conveyed, assigned, or transferred in the same
17 transaction.

18 Sec. 171.780. BIENNIAL REPORT BY COMPTROLLER. (a) Before
19 the beginning of each regular session of the legislature, the
20 comptroller shall submit to the governor, the lieutenant governor,
21 and the speaker of the house of representatives a report that
22 states:

23 (1) the total number of jobs created by taxable
24 entities that claim a credit under this subchapter and the average
25 and median annual wage of those jobs;

26 (2) the total amount of credits applied against the
27 tax under this chapter and the amount of unused credits including:

1 (A) the total amount of franchise tax due by
2 taxable entities claiming a credit under this subchapter before and
3 after the application of the credit;

4 (B) the average percentage reduction in
5 franchise tax due by taxable entities claiming a credit under this
6 subchapter; and

7 (C) the percentage of tax credits that were
8 awarded to taxable entities with fewer than 100 employees;

9 (3) the two-digit standard industrial classification
10 of taxable entities claiming a credit under this subchapter;

11 (4) the geographical distribution of the credits
12 claimed under this subchapter; and

13 (5) the effect of the credit provided under this
14 subchapter on employment, personal income, and capital investment
15 in this state and on state tax revenues.

16 (b) The final report issued before the expiration of this
17 subchapter must include historical information on the credit
18 authorized under this subchapter.

19 (c) The comptroller may not include in the report
20 information that is confidential by law.

21 (d) For purposes of this section, the comptroller may
22 require a taxable entity that claims a credit under this subchapter
23 to submit information, on a form provided by the comptroller, on the
24 location of the taxable entity's job creation in this state and any
25 other information necessary to complete the report required under
26 this section.

27 (e) The comptroller shall provide notice to the members of

1 the legislature that the report required under this section is
2 available on request.

3 Sec. 171.781. COMPTROLLER POWERS AND DUTIES. The
4 comptroller shall adopt rules and forms necessary to implement this
5 subchapter.

6 Sec. 171.782. EXPIRATION. (a) This subchapter expires
7 December 31, 2025.

8 (b) The expiration of this subchapter does not affect the
9 carryforward of a credit under Section 171.777 or those credits for
10 which a taxable entity is eligible before the date this subchapter
11 expires.

12 SUBCHAPTER Q. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS MADE BY
13 BUSINESSES THAT EMPLOY VETERANS

14 Sec. 171.821. DEFINITIONS. In this subchapter:

15 (1) "Agricultural processing" and "qualified
16 business" have the meanings assigned those terms by Section
17 171.771.

18 (2) "Qualified capital investment" means tangible
19 personal property first placed in service in this state by a taxable
20 entity primarily engaged in agricultural processing, and that is
21 described in Section 1245(a), Internal Revenue Code, such as
22 engines, machinery, tools, and implements used in a trade or
23 business or held for investment and subject to an allowance for
24 depreciation, cost recovery under the accelerated cost recovery
25 system, or amortization. The term does not include real property or
26 buildings and their structural components. Property that is leased
27 under a capitalized lease is considered a "qualified capital

1 investment," but property that is leased under an operating lease
2 is not considered a "qualified capital investment." Property
3 expensed under Section 179, Internal Revenue Code, is not
4 considered a "qualified capital investment."

5 Sec. 171.822. ELIGIBILITY. (a) A qualified business is
6 eligible for a credit against the tax imposed under this chapter in
7 the amount and under the conditions and limitations provided by
8 this subchapter.

9 (b) To qualify for the credit authorized under this
10 subchapter, a qualified business must:

11 (1) pay an annual wage to each veteran employed by the
12 qualified business of at least the amount required for a qualifying
13 job as defined by Section 171.771 for the period on which the report
14 is based;

15 (2) offer health benefits coverage to all full-time
16 employees at the location with respect to which the credit is
17 claimed through a group health benefit plan, as defined by Section
18 171.771, for which the business pays at least 80 percent of the
19 premiums or other charges assessed under the plan for the
20 employees; and

21 (3) make a minimum \$500,000 qualified capital
22 investment.

23 Sec. 171.823. AMOUNT OF CREDIT. A taxable entity may
24 establish a credit equal to 7.5 percent of the qualified capital
25 investment during the period on which the report is based.

26 Sec. 171.824. LENGTH OF CREDIT. The credit established
27 shall be claimed in five equal installments of one-fifth the credit

1 amount over the five consecutive reports beginning with the report
2 based on the period during which the qualified capital investment
3 was made.

4 Sec. 171.825. LIMITATIONS. (a) The total credit claimed
5 under this subchapter for a report, including the amount of any
6 carryforward credit under Section 171.826, may not exceed 50
7 percent of the amount of franchise tax due for the report before any
8 other applicable tax credits.

9 (b) The total credit claimed under this subchapter and
10 Subchapter P for a report, including the amount of any carryforward
11 credits, may not exceed the amount of franchise tax due for the
12 report after any other applicable tax credits.

13 Sec. 171.826. CARRYFORWARD. (a) If a taxable entity is
14 eligible for a credit from an installment that exceeds the
15 limitation under Section 171.825, the taxable entity may carry the
16 unused credit forward for not more than five consecutive reports.

17 (b) A carryforward is considered the remaining portion of an
18 installment that cannot be claimed in the current year because of a
19 limitation under Section 171.825. A carryforward is added to the
20 next year's installment of the credit in determining the limitation
21 for that year. A credit carryforward from a previous report is
22 considered to be used before the current year installment.

23 Sec. 171.827. CERTIFICATION OF ELIGIBILITY. (a) For the
24 initial and each succeeding report on which a credit is claimed
25 under this subchapter, the taxable entity shall file with its
26 report, on a form provided by the comptroller, information that
27 sufficiently demonstrates that the taxable entity is eligible for

1 the credit.

2 (b) The burden of establishing entitlement to and the value
3 of the credit is on the taxable entity.

4 (c) A credit expires under this subchapter and the taxable
5 entity may not take any remaining installment of the credit if in
6 one of the five years in which the installment of a credit accrues,
7 the taxable entity:

8 (1) disposes of the qualified capital investment;

9 (2) takes the qualified capital investment out of
10 service;

11 (3) moves the qualified capital investment out of this
12 state; or

13 (4) fails to pay in accordance with Section
14 171.822(b)(1) the annual wage required for a qualifying job under
15 Section 171.771 for the period covered by the report on which the
16 taxable entity would otherwise claim the credit.

17 (d) Notwithstanding Subsection (c), the taxable entity may
18 take the portion of an installment that accrued in a previous year
19 and was carried forward to the extent permitted under Section
20 171.826.

21 Sec. 171.828. ASSIGNMENT PROHIBITED. A taxable entity may
22 not convey, assign, or transfer the credit allowed under this
23 subchapter to another entity unless all of the assets of the taxable
24 entity are conveyed, assigned, or transferred in the same
25 transaction.

26 Sec. 171.829. BIENNIAL REPORT BY COMPTROLLER. (a) Before
27 the beginning of each regular session of the legislature, the

1 comptroller shall submit to the governor, the lieutenant governor,
2 and the speaker of the house of representatives a report that
3 states:

4 (1) the total amount of qualified capital investments
5 made by taxable entities that claim a credit under this subchapter
6 and the average and median wages paid by those taxable entities;

7 (2) the total amount of credits applied against the
8 tax under this chapter and the amount of unused credits, including:

9 (A) the total amount of franchise tax due by
10 taxable entities claiming a credit under this subchapter before and
11 after the application of the credit;

12 (B) the average percentage reduction in
13 franchise tax due by taxable entities claiming a credit under this
14 subchapter;

15 (C) the percentage of tax credits that were
16 awarded to taxable entities with fewer than 100 employees; and

17 (D) the two-digit standard industrial
18 classification of taxable entities claiming a credit under this
19 subchapter;

20 (3) the geographical distribution of the qualified
21 capital investments on which tax credit claims are made under this
22 subchapter; and

23 (4) the effect of the credit provided under this
24 subchapter on employment, personal income, and capital investment
25 in this state and on state tax revenues.

26 (b) The final report issued before the expiration of this
27 subchapter must include historical information on the credit

1 authorized under this subchapter.

2 (c) The comptroller may not include in the report
3 information that is confidential by law.

4 (d) For purposes of this section, the comptroller may
5 require a taxable entity that claims a credit under this subchapter
6 to submit information, on a form provided by the comptroller, on the
7 location of the taxable entity's capital investment in this state
8 and any other information necessary to complete the report required
9 under this section.

10 (e) The comptroller shall provide notice to the members of
11 the legislature that the report required under this section is
12 available on request.

13 Sec. 171.830. COMPTROLLER POWERS AND DUTIES. The
14 comptroller shall adopt rules and forms necessary to implement this
15 subchapter.

16 Sec. 171.831. EXPIRATION. (a) This subchapter expires
17 December 31, 2025.

18 (b) The expiration of this subchapter does not affect the
19 carryforward of a credit under Section 171.826 or those credits for
20 which a taxable entity is eligible before the date this subchapter
21 expires.

22 SECTION 2. This Act applies only to a report originally due
23 on or after the effective date of this Act.

24 SECTION 3. This Act takes effect January 1, 2016.