By:  Parker H.B. No. 1751

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for enterprise projects for certain capital investments.

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

SECTION 1.  Chapter 171, Tax Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN CAPITAL INVESTMENTS

Sec. 171.9221.  DEFINITIONS. In this subchapter:

(1)  "Enterprise project" means a person designated as an enterprise project under Chapter 2303, Government Code, on or after September 1, 2003.

(2)  "Qualified business" has the meaning assigned by Section 2303.003, Government Code.

(3)  "Qualified capital investment" means tangible personal property first placed in service by an enterprise project after January 1, 2021, that is described in Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a qualified capital investment, but property that is leased under an operating lease is not considered a qualified capital investment. Property expensed under Section 179, Internal Revenue Code, is not considered a qualified capital investment.

Sec. 171.9222.  TANGIBLE PERSONAL PROPERTY FIRST PLACED IN SERVICE BY AN ENTERPRISE PROJECT. For purposes of determining whether an investment is a qualified capital investment under Section 171.9221, "tangible personal property first placed in service by an enterprise project" includes tangible personal property:

(1)  purchased by an enterprise project for placement in an incomplete improvement that is under active construction or other physical preparation;

(2)  identified by a purchase order, invoice, billing, sales slip, or contract; and

(3)  physically present at the enterprise project's qualified business site, as defined by Section 2303.003, Government Code, and in use by the enterprise project on the original due date of the report on which the credit is taken.

Sec. 171.9223.  ELIGIBILITY. An enterprise project that is a qualified business is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions provided by this subchapter.

Sec. 171.9224.  CALCULATION OF CREDIT. (a) An enterprise project that is eligible for a credit under this subchapter may, beginning on January 1 of the year in which the project is designated or January 1, 2021, establish a credit equal to 7.5 percent of the qualified capital investment.

(b)  A taxable entity may file an amended report to claim all or part of a credit earned in a previous tax year that has not been claimed on another report, subject to Section 171.9225, if the applicable period of limitation under Section 111.107 and Subchapter D, Chapter 111, for claiming that credit has not expired.

Sec. 171.9225.  LIMITATION. The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.9226, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

Sec. 171.9226.  CARRYFORWARD. (a) If an enterprise project is eligible for a credit from an installment that exceeds a limitation under Section 171.9225, the enterprise project may carry the unused credit forward for not more than five consecutive reports.

(b)  A carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of a limitation under Section 171.9225. A carryforward is added to the next year's installment of the credit in determining the limitation for that year. A credit carryforward from a previous report is considered to be used before the current year installment.

Sec. 171.9227.  CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the enterprise project shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the enterprise project is eligible for the credit.

(b)  The burden of establishing entitlement to and the value of the credit is on the enterprise project.

Sec. 171.9228.  BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1)  the total amount of qualified capital investments made by enterprise projects that claim a credit under this subchapter and the average and median wages paid by those enterprise projects;

(2)  the total amount of credits applied against the tax under this chapter and the amount of unused credits;

(3)  the total amount of franchise tax due by enterprise projects claiming a credit under this subchapter before and after the application of the credit and the average percentage reduction in franchise tax due by the enterprise projects;

(4)  the percentage of tax credits under this subchapter that were awarded to enterprise projects with fewer than 100 employees;

(5)  the two-digit standard industrial classification of enterprise projects claiming a credit under this subchapter;

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

(7)  the impact of the credit provided under this subchapter on employment, capital investment, personal income, and state tax revenues.

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

(c)  For purposes of this section, the comptroller may require an enterprise project that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the enterprise project's capital investment in this state and any other information necessary to complete the report required under this section.

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

Sec. 171.9229.  COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

SECTION 2.  Except as provided by Section 171.9224(b), Tax Code, as added by this Act, this Act applies only to a report originally due on or after January 1, 2021.

SECTION 3.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.