

BILL ANALYSIS

Senate Research Center
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S.B. 48
By: Brimer
Finance
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 2004, franchise tax-paying corporations that brought businesses and jobs to Texas learned that tax incentives were not available because of inconsistencies in the Government Code and the Tax Code. Section 2303, Government Code, and Section 171, Tax Code, did not allow enterprise projects to benefit from the Job Creation Franchise Tax Credit, and the Capital Investment Franchise Tax Credit.

Following passage of S.B. 275, 78th Legislature, Regular Session, 2003, it was discovered that certain sections of the Government Code and Tax Code were inadvertently not updated. Certain time limits to claim the tax benefits have expired, no longer permitting any projects to claim these benefits. As a result, a valuable benefit to those companies still paying substantial franchise taxes has been lost.

An attempt was made to correct the oversight during the 79th Legislature, Regular Session, 2005, but the language as part of a larger omnibus tax bill (H.B. 2233) that passed both houses met some unrelated, personal opposition in the house during the waning hours of the Regular Session. As a result, the language did not pass and those companies that have already made the capital investment and created and sustained the jobs as required have not received the tax credits as agreed.

S.B. 48 was drafted in cooperation with the Governor's Office of Economic Development and Tourism and the Comptroller's Tax Administration Division and reflects continuity concerning what needs to be achieved in Section 2303, Government Code, regarding franchise tax credits and Section 171, Tax Code, regarding franchise tax credits for franchise tax-paying corporations doing business in Texas.

The bill only applies to: companies that were designated as triple jumbo enterprise projects (investing \$250 million or more and creating and retaining 500 jobs) on or after September 1, 2004, and on or before November 30, 2004; to companies that were designated as enterprise projects on or after September 1, 2004, and on or before November 30, 2004; and to companies that paid a franchise tax beginning December 31, 2004

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 (Sections 171.789 and 171.825, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 2303.504, Government Code, to read as follows:

Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT.

SECTION 2. Amends Section 2303.504, Government Code, by adding Subsection (a-1) and amending Subsection (c), as follows:

(a-1) Provides that an enterprise project is entitled to a franchise tax credit under Subchapter P-1 or Q-1, Chapter 171, Tax Code, subject to Section 2303.516, under certain conditions.

(c) Makes a conforming change.

SECTION 3. Amends Chapter 171, Tax Code, by adding Subchapters P-1 and Q-1, as follows:

SUBCHAPTER P-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN JOB CREATION ACTIVITIES

Sec. 171.781. **DEFINITIONS.** Defines "enterprise project," "qualified business," and "qualifying job."

Sec. 171.7811. **APPLICABILITY OF SUBCHAPTER.** Sets forth the enterprise projects to which this subchapter applies.

Sec. 171.782. **ELIGIBILITY.** Provides that an enterprise project (project) is eligible for a credit against the tax imposed under this chapter if the project is a qualified business as defined by Section 171.781.

Sec. 171.783. **CALCULATION OF CREDIT.** (a) Authorizes a project that is eligible for a credit under this subchapter to establish a credit equal to 25 percent of the total wages and salaries paid or to be paid by the project for qualifying jobs created during the period beginning on the date the project is designated as a project through December 31, 2009.

(b) Sets forth the manner in which a project may claim the credit established under Subsection (a), subject to Sections 171.784 and 171.785.

(c) Requires a project that is eligible for and establishes a credit authorized by Subsection (a) to provide to the comptroller of public accounts (comptroller) an estimate of the total wages and salaries on which the project establishes the credit. Requires the project to provide the estimate on the first report originally due on or after September 1, 2006.

Sec. 171.784. **LIMITATIONS.** (a) Prohibits the total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.785, from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) Prohibits the total credit claimed under this subchapter and Subchapter Q-1 for a report, including the amount of any carryforward credits, from exceeding the amount of franchise tax due for the report after any other applicable credits.

Sec. 171.785. **CARRYFORWARD.** (a) Authorizes a project to carry an unused credit forward for not more than five consecutive reports if the project is eligible for a credit that exceeds the limitations under Section 171.784.

(b) Provides that a carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of a tax limitation under Section 171.784. Provides that a carryforward is added to the next year's credit in determining the tax limitation for that year. Provides that a credit carryforward from a previous report is considered to be used before the current year credit.

Sec. 171.786. **CERTIFICATION OF ELIGIBILITY.** Requires the project to file with its report, for the initial and each succeeding report in which a credit is claimed under this subchapter and on a form provided by the comptroller, information that sufficiently demonstrates that the project is eligible for the credit and is in compliance with Section 171.782. Provides that the burden of establishing entitlement to and the value of the credit is on the project.

Sec. 171.787. **ASSIGNMENT PROHIBITED.** Prohibits a project from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless

all of the assets of the project are conveyed, assigned, or transferred in the same transaction.

Sec. 171.788. **BIENNIAL REPORT BY COMPTROLLER.** (a) Requires the comptroller, before the beginning of each regular session of the legislature, to submit to certain elected officials, a report detailing certain information regarding projects.

(b) Requires the final report issued before the expiration of this subchapter to include historical information on the credit authorized under this subchapter.

(c) Prohibits the comptroller from including information that is confidential by law in the report.

(d) Authorizes the comptroller, for the purposes of this section, to require a project that claims a credit under this subchapter to submit certain information on a form provided by the comptroller.

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

Sec. 171.789. **COMPTROLLER POWERS AND DUTIES.** Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.790. **EXPIRATION.** Provides that this subchapter expires December 31, 2009. Provides that the expiration of this subchapter does not affect the carryforward of a credit under Section 171.785 or those credit for which a project is eligible before the date this subchapter expires. Prohibits a project, under any circumstances, from obtaining a greater benefit than the benefit to which the project would have been entitled if this subchapter did not expire.

SUBCHAPTER Q-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN CAPITAL INVESTMENTS

Sec. 171.815. **DEFINITIONS.** Defines "enterprise Project," "qualified business," and "qualified capital investment."

Sec. 171.8151. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to a project that meets certain criteria.

Sec. 171.816. **TANGIBLE PERSONAL PROPERTY FIRST PLACED IN SERVICE BY AN ENTERPRISE PROJECT.** Provides that "tangible personal property first placed in service by an enterprise project," for purposes of determining whether a certain investment is a qualified capital investment, includes certain tangible personal property.

Sec. 171.817. **ELIGIBILITY.** (a) Provides that an enterprise project that is a certain qualified business is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

(b) Authorizes an enterprise project that is eligible for a credit under this subchapter to claim a credit or take a carryforward credit without regard to whether the enterprise zone in which it made the qualified capital investment subsequently loses its designation as an enterprise zone, if applicable.

Sec. 171.818. **CALCULATION OF CREDIT.** Authorizes an enterprise project that is eligible for a credit under this subchapter to, beginning on the date the project is designated, establish a credit equal to 7.5 percent of the qualified capital investment.

Sec. 171.819. **LENGTH OF CREDIT.** Authorizes a project that is eligible for a credit under this subchapter to claim certain credits.

Sec. 171.820. **LIMITATIONS.** (a) Prohibits the total credit claimed under this subchapter for a report, including the amount of certain carryforward credits, from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) Provides that the total credit claimed under this subchapter and Subchapter P-1 for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

Sec. 171.821. **CARRYFORWARD.** (a) Authorizes the project, if an enterprise project is eligible for a credit from an installment that exceeds a certain limitation, to carry the unused credit forward for not more than five consecutive reports.

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

Sec. 171.822. **CERTIFICATION OF ELIGIBILITY.** (a) Requires the project, for the initial and each succeeding report in which a credit is claimed under this subchapter, to 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) Provides that the burden of establishing entitlement to and the value of the credit is on the enterprise project.

(c) Provides that a credit expires under this subchapter and the enterprise project is prohibited from taking any remaining installment of the credit if in one of the five years in which the installment of a credit accrues, the enterprise project takes certain actions regarding the investment.

(d) Authorizes the project to take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.821, notwithstanding Subsection (c).

Sec. 171.823. **ASSIGNMENT PROHIBITED.** Prohibits a project from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the enterprise project are conveyed, assigned, or transferred in the same transaction.

Sec. 171.824. **BIENNIAL REPORT BY COMPTROLLER.** (a) Requires the comptroller, before the beginning of each regular session of the legislature, to submit to certain state elected officials a certain report.

(b) Requires the final report issued before the expiration of this subchapter to include historical information on the credit authorized under this subchapter.

(c) Prohibits the comptroller from including in the report information that is confidential by law.

(d) Authorizes the comptroller for purposes of this section, to 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.

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

Sec. 171.825. COMPTROLLER POWERS AND DUTIES. Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.826. EXPIRATION. Provides that this subchapter expires December 31, 2009. Provides that the expiration of this subchapter does not affect a the carryforward of a credit under Section 171.821 or those credits for which an enterprise project is eligible before the date this subchapter expires. Prohibits an enterprise project from, under any circumstances, obtaining a greater benefit than the benefit to which the enterprise project would have been entitled if this subchapter did not expire.

SECTION 4. Effective date: September 1, 2006.
Makes application of this Act prospective.