

By: Hinojosa

S.B. No. 1389

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, 2013, 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

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

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

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

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

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

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

23 Sec. 171.9224. CALCULATION OF CREDIT. (a) An enterprise  
24 project that is eligible for a credit under this subchapter may,  
25 beginning on January 1 of the year in which the project is  
26 designated or January 1, 2013, establish a credit equal to 7.5  
27 percent of the qualified capital investment.

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

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

12        Sec. 171.9226. CARRYFORWARD. (a) If an enterprise project  
13 is eligible for a credit from an installment that exceeds a  
14 limitation under Section 171.9225, the enterprise project may carry  
15 the unused credit forward for not more than five consecutive  
16 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 tax limitation under Section 171.9225. A carryforward is added to  
20 the next year's installment of the credit in determining the tax  
21 limitation for that year. A credit carryforward from a previous  
22 report is considered to be used before the current year  
23 installment.

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

1 sufficiently demonstrates that the enterprise project is eligible  
2 for the credit.

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

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

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

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

16 (A) the total amount of franchise tax due by  
17 enterprise projects claiming a credit under this subchapter before  
18 and after the application of the credit;

19 (B) the average percentage reduction in  
20 franchise tax due by enterprise projects claiming a credit under  
21 this subchapter;

22 (C) the percentage of tax credits that were  
23 awarded to enterprise projects with fewer than 100 employees; and

24 (D) the two-digit standard industrial  
25 classification of enterprise projects claiming a credit under this  
26 subchapter;

27 (3) the geographical distribution of the qualified

1 capital investments on which tax credit claims are made under this  
2 subchapter; and

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

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

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

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

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

20 SECTION 2. Except as provided by Section 171.9224(b), Tax  
21 Code, as added by this Act, this Act applies only to a report  
22 originally due on or after the effective date of this Act.

23 SECTION 3. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2017.