HOUSE RESEARCH ORGANIZATION bill analysis | 5/6/2009 | HB 4525 Parker, Button (CSHB 4525 by Parker)

SUBJECT: Establishing qualified manufacturing project zones

COMMITTEE: Technology, Economic Development, and Workforce — committee substitute recommended

VOTE: 7 ayes — Strama, Parker, Button, Eissler, Gattis, Harless, Rodriguez

0 nays

2 absent — F. Brown, Ritter

WITNESSES: For — John W. Fainter, Jr., Association of Electric Companies of Texas, Inc.; Clark Lord, NRG; Carlton Schwab, Texas Economic Development Council; (*Registered, but did not testify*: Casey Kelley, Exelon Power; Rebecca Moss, Texas Association of Manufacturers; Mark Walker, NRG Texas LLC; Mance Zachary, Luminant)

Against — None

DIGEST: CSHB 4525 would amend the Local Government Code by adding ch. 399 to establish qualified manufacturing project zones.

Qualified manufacturing project. A facility would become a qualified manufacturing project on the date the owner of the facility filed to become such a project with the comptroller. A proposed new or expanded facility could become a qualified manufacturing project if, on the date it filed an election, it:

- was subject to a tax abatement agreement under which the facility was investing at least $200 million and was entered into between January 1, 2008, and January 1, 2015, with a county, municipality or other taxing unit under Tax Code, ch. 312, or with a school district under Tax Code, ch. 313;
- would be engaged in manufacturing, as defined in Tax Code, sec. 151.318 and the facility would begin construction on or after September 1, 2009;
- was forecasted to create at least 300 full-time equivalent employment positions; and

- the facility's owner was considering at least one alternative site for the facility outside of Texas or was competing against similar projects outside the state for federal funds or financial support, including loan guarantees, that would benefit the project.

Economic impact study. The owner of a qualified manufacturing project would have to conduct an economic impact study of the county in which the project would be located and submit the study to the comptroller for certification within 120 days of filing an election for the project. The economic impact study would have to provide an estimate of the following:

- the general economic impact likely to occur in the county as a result of the project;
- the anticipated increase in state sales tax receipts outlined in Tax Code, ch. 151 that would occur in the county over the 10-year period for a designated qualified manufacturing project zone and is attributable to the economic impact from the design, construction, and/or operation of the qualified manufacturing project;
- the projected number of full-time equivalent employment positions likely to be available at the project; and
- the investment projected to be made at the project.

Comptroller certification of study. Within 30 days after receiving the economic impact study from an owner of a qualified manufacturing project, the comptroller would certify the study if it estimated accurately the required information. If it did not, the comptroller, within 30 days of receiving the study, would submit a preliminary determination to the owner of the project and provide the owner with an opportunity to respond or submit a new or amended economic impact study. The comptroller would certify the study if conducted by an independent third party on behalf of the owner using generally accepted economic impact forecasting methods.

Qualified manufacturing project zone. A qualified manufacturing project owner whose economic impact study was certified by the comptroller could apply to the comptroller for county designation as a qualified manufacturing project zone in the county where the project would be located. The comptroller would approve the application after determining that the project was the first facility in the county to apply for the designation, which would take effect on September 1 preceding the date of approval of a request for a qualified manufacturing project zone designation. The project zone designation could not exceed 10 years.

Only one project within a qualified manufacturing project zone could qualify for related benefits at any one time. If more than one qualified manufacturing project applied for zone designation from a single county within a month, the comptroller would approve the qualified request or requests with the most investment in the proposed new or expanded facility, as determined by the comptroller-certified economic impact study. A project zone designation would remain in effect for the qualified manufacturing project until the expiration of any tax limitations, credits, abatement, or other benefits under a tax abatement agreement under Tax Code, ch. 312 or ch. 313.

Annual certification requirements. A qualified manufacturing project owner would make an annual certification in order to receive benefits relating to the project zone designation. The project owner within the designated project zone would have to certify, at the end of the state fiscal year, the following:

- the forecast of at least 300 full-time equivalent employment positions for the year that the facility would begin to operate for the intended purpose of the facility, or commercial operation, if the project zone had been designated for three years or less and the qualified manufacturing project had not begun commercial operations;
- the creation of at least 300 full-time equivalent employment positions or the expenditure of $1 billion on the new or expanded facility the year the facility would begin operation, and the forecast of 300 full-time equivalent positions that would be created within eight years after receiving the zone designation if the project zone had been designated for over three years and the project had not begun operation; or
- the creation of at least 300 full-time equivalent positions at the facility if the project was commercially operating.

An owner would forfeit all future benefits related to the project zone designation and would be required to pay the state or local government body within 60 calendar days all received refunds if the owner failed to make a required certification.

State project zone benefits. The owner of a qualified manufacturing zone project filing the required certification would be eligible for a refund of state sales and use taxes of 50 percent of the total amount of sales and use taxes collected on purchases of all taxable items purchased within a designated project zone less the sales tax base for the preceding fiscal year. The comptroller would pay the refund within 60 days of receiving the employment certification or the end of the fiscal year, whichever was later. The total refund amount that a project could receive as a designated project zone would be either $50 million, or five percent of the project's investments in the facility, whichever was less.

The refund could be used to pay for or to refund eligible expenses incurred before or after the project received its designation as a project zone for manufacturing workforce development. Manufacturing workforce development would be defined as expenditures incurred by the project owner, or a contractor or subcontractor of the owner, for recruiting or training present, prospective, or potential employees for available jobs or expected to be available for the planning, designing, construction, fabrication, or operation of a project. Expenditures in this area could also relate to the salaries, wages, and benefits of employees through the first two years that the project was commercially operating.

Local government project zone benefits. The owner of a qualified manufacturing project located in a designated project zone could benefit from a local governmental body, including a municipality, county, or political subdivision, rebating, refunding, or paying eligible taxable proceeds for up to 10 years following the date the project zone designation was awarded. A local governmental body that made an agreement regarding local tax benefits for a project zone would rebate, refund, or pay directly the project owner. Eligible taxable proceeds would mean an amount, as determined by a finding of a local government body, of taxable proceeds generated, paid, or collected by a qualified manufacturing project zone that were directly or indirectly related to the design, construction, or operation of the project, including hotel occupancy taxes, property taxes, sales and use taxes, and mixed beverage taxes.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS SAY:

CSHB 4525 would provide another economic development tool for the state and local governments to retain and recruit manufacturers by incentivizing job creation, workforce development, and capital investments. Between 2001 and 2007, Texas lost just over 200,000 manufacturing jobs, more than any other state except California. Manufacturing remains a large part of the Texas economy, with 94 percent of Texas exports in 2007 representing manufactured goods, but the state must foster manufacturing jobs due to their strong multiplier effect. For every new position created in the manufacturing industry, four additional jobs are created elsewhere. Given their high spin-off effect and the overall decline in manufacturing, Texas should pursue as a public policy priority investment in manufacturing.

The incentives provided by CSHB 4525 would help tip the scales in favor of Texas when manufacturers are making business decisions on relocation or expansion, and would not benefit needlessly projects already in planning or construction stages. To qualify for incentives, a business would have to be considering at least one out-of-state site or competing with similar projects outside the state for federal funds. As such, the bill would help bring manufacturing jobs to the state that otherwise would not locate here, and would encourage retention of existing businesses.

The bill would help underemployed and unemployed workers to make the transition into new manufacturing jobs by providing workforce development money for manufacturers that create at least 300 full-time jobs. This is crucial, as over 80 percent of manufacturers have difficulty finding qualified employees because entry-level jobs in manufacturing increasingly require additional skills and education as a result of technological advances.

The bill would provide several safeguards to ensure that only projects that would provide a large positive impact to the state's economy would be awarded. As the criteria for eligible manufacturing projects is purposely restrictive, granting designations would be selectively used for projects that would have a large "bang for the buck." Additionally, the bill would contain "clawback" provisions if the designated project reached the required job or investment thresholds. Any agreement between a local government body and a designated project would be strictly optional. Lastly, the comptroller would have clear authority to reject an economic impact study if it did not accurately estimate required information for projected job creation or investments.

The fiscal note ignores that the related sales and local taxes would not have been otherwise realized by the state and local governments had an eligible manufacturer not expanded or relocated. As such, returning a portion of these sales and local taxes would be fiscally reasonable, especially given the related benefits of manufacturing investment.

OPPONENTS SAY:

CSHB 4525 would be a costly and unnecessary business subsidy that would divert precious tax revenue due the state and local government go to businesses that likely would locate to Texas or expand existing facilities without it. While Texas is known as a business-friendly state, it should not forgo roughly $135 million in general revenue over the next five years, especially to promote an industry that is in decline.

According to the methodology for the fiscal note, several nuclear power projects that are well into the planning stages of development, and one close to the construction phase, would meet the eligibility requirements for a qualified manufacturing project zone. These include the two additional units for the South Texas Nuclear Project in Matagorda County, expected to begin construction after the bill's effective date, and could possibly include two other nuclear projects, one in Somervell County and one in Victoria County. As these projects are either in motion or planned, they need not be incentivized by state funds.

The bill would require the comptroller to accept automatically an economic impact study from a project owner requesting designation as a project zone if the study was conducted by an independent third party using generally accepted economic impact forecasting methods. Unlike the field of accounting, which has generally accepted accounting practices, economic forecasts generally are based on a number of assumptions about a given project. Should those assumptions not be reasonable, the entire forecast could be called into question. At the very least, the comptroller should have the authority either to reject or question the forecasting methods used by an applicant, especially given the amount of taxpayer money in question.

The bill would allow tax rebates to be used for workforce development for manufacturing jobs and also to cover the salaries, wages, and benefits of employees over the first two years of operation. While job creation is a laudable goal, the state and its local governments should not give up tax revenue that would otherwise go to public services to cover an expense that firms would rightfully incur as part of normal operations.

CSHB 4525 would provide up to $50 million in sales tax rebates in addition to local tax incentives to a designated project in a qualified manufacturing zone. This incentive could be accessed for up to three years before the project had even begun to operate, based solely on forecasting the required number of jobs to be created. A more reasonable provision would be that the firm not receive benefits until it created actual positions. Additionally, while there would be a $50 million cap on state sales tax rebates, there is no such limit on local taxes that could be rebated or refunded.

NOTES:

According the fiscal note, the Legislative Budget Board projects that the bill would cost $8.87 million in general revenue-related funds of through the next biennium and roughly $135 million over the next five years.