

2021 Regular Session

SENATE BILL NO. 217

BY SENATOR HARRIS

TAX/TAXATION. Provides for the Louisiana Import Tax Credit. (gov sig)

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AN ACT

To enact R.S. 47:6036.1, relative to tax credits; to create the Louisiana Import Tax Credit; to provide for eligibility requirements for port credits; to provide for application requirements; to provide for the allocation of port credits; to require certifications; to provide relative to the utilization of port credits; to authorize the Department of Economic Development to promulgate rules; to provide for definitions; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6036.1 is hereby enacted to read as follows:

§6036.1. Louisiana Import Tax Credit

A. The primary purpose of this Section is to encourage the utilization of Louisiana public port facilities for cargo imports and the development of new port infrastructure facilities for the manufacturing, distribution, and warehousing of imported goods. This Section presents a streamlined and efficient method for applying for and utilizing tax credits for imports that places Louisiana ports in an equal position with competing states' ports that have very simple programs in place to incentivize cargo growth.

1 **B. Definitions. For purposes of this Section, the following words and**
2 **phrases shall have the following meanings unless the context clearly indicates**
3 **otherwise:**

4 **(1) "Actual cargo volume" shall mean the total amount of imported**
5 **cargo received (in TEUs) by a port facility user within its port credit incentive**
6 **period.**

7 **(2) "Base cargo volume" shall mean the average amount of imported**
8 **cargo received (in TEUs) by a port facility user in the three years preceding an**
9 **application for port credits. Only cargo that is owned by a port facility user at**
10 **the time the port facility is used may be included in the calculation of base cargo**
11 **volume.**

12 **(3) "Base cargo volume period" shall mean the three hundred sixty-five**
13 **day period ending on the last day of the month immediately preceding the**
14 **month in which an application for port credits is postmarked, provided that**
15 **project agreements awarding port credits may specify a different base cargo**
16 **volume period.**

17 **(4) "Port credit" shall mean a one-time tax credit of up to fifty dollars**
18 **per TEU of cargo imported through a Louisiana public port, or up to one**
19 **hundred dollars per TEU of cargo imported through a Louisiana public port if**
20 **entering into a project agreement with the state, that may be applied against**
21 **Louisiana income tax liability, as set forth in Subsection (G) of this Section.**

22 **(5) "Port credit incentive period" shall mean the three hundred sixty-five**
23 **day period designated by an applicant on its application as the twelve month**
24 **period in which it is eligible to earn port credits as approved by the Department**
25 **of Economic Development, provided that the port credit incentive period shall**
26 **begin no earlier than the first day of the month immediately following the date**
27 **of the application and shall begin no later than ninety days following the date**
28 **of the application. Project agreements awarding port credits may specify a port**
29 **credit incentive period beginning on any date.**

1 (6) "Port facility user" shall mean any person engaged in the
2 manufacturing, warehousing, or distribution of goods imported through a
3 public port of the state.

4 (7) "Public port" shall mean any deep-water port commission or port,
5 harbor, and terminal district as defined in Article VI, Section 44 of the
6 Constitution of Louisiana, and any other port, harbor, and terminal district
7 established under Title 34 of the Louisiana Revised Statutes of 1950.

8 (8) "TEU" shall mean twenty-foot equivalent unit, that is a standard
9 measurement in shipping volumes in units of twenty-foot long containers.

10 C. Eligibility for port credits.

11 (1) In order to become eligible for an award of port credits, an applicant
12 shall meet all of the following criteria:

13 (a) The applicant shall be a port facility user that imports more than fifty
14 TEUs of cargo through Louisiana public ports.

15 (b) The applicant shall file an application for port credits with the
16 Department of Economic Development as set forth in Subsection (D) of this
17 Section.

18 (c) The applicant shall increase its imported cargo volumes by at least
19 one hundred five percent during its port credit incentive period as compared to
20 imported cargo volumes during its base cargo volume period.

21 (2) A recipient of port credits granted pursuant to this Section shall not
22 be eligible for import-export cargo tax credits pursuant to R.S. 47:6036(I). A
23 recipient of import-export cargo tax credits as provided in R. S. 47:6036(I) shall
24 not be eligible for port credits pursuant to this Section.

25 D. Application for and allocation of port credits based on cargo volumes.

26 (1) Application for port credits. Port facility users seeking to obtain port
27 credits shall file an application on a form prescribed by the Department of
28 Economic Development. Applications shall be accepted on or after September
29 1, 2021, until port credits are no longer available.

1 **(2) Allocation of port credits.**

2 **(a) Eligible applicants may be awarded port credits of up to fifty dollars**
3 **per net new TEU of actual cargo volumes imported through a public port of the**
4 **state during its port credit incentive period in excess of the applicant's base**
5 **cargo volume of cargo imports through the applicable public port for the**
6 **applicant's base cargo volume period.**

7 **(b) Port credit allocations are conditional and may be awarded based on**
8 **procedures adopted by the Department of Economic Development by rule.**

9 **(c) Port credits are earned based upon actual cargo volumes transiting**
10 **the applicable public port during the port credit incentive period and the**
11 **certification of actual cargo volumes as set forth in Subsection (E) of this**
12 **Section.**

13 **(d) A port facility user that is awarded port credits pursuant to this**
14 **Section shall not be entitled to claim more port credits than are approved by the**
15 **Department of Economic Development for that particular port facility user.**

16 **E. Certification of cargo volumes.**

17 **(1) Certification of base cargo volumes. Calculation of base cargo**
18 **volumes shall be supported by records from the applicable public port facility**
19 **confirming the total amount of imported cargo volumes in TEUs for the**
20 **applicant during the three-year period immediately preceding the port facility**
21 **user's application. If the applicant is a new port facility user, the applicant shall**
22 **propose a base cargo volume, subject to approval by the Department of**
23 **Economic Development.**

24 **(2) Certification of actual cargo volumes. Within ninety days of the end**
25 **of the port credit incentive period, the port facility user shall file a certification**
26 **of cargo volume on a form prescribed by Department of Economic**
27 **Development. Certifications postmarked after this date shall not be accepted**
28 **unless the port facility user receives approval for late submission from the**
29 **Department of Economic Development prior to the deadline. Calculations of**

1 actual cargo volume shall be supported by records from the applicable public
2 port facility confirming the total amount of cargo volume for the applicable
3 base port credit incentive period. Only cargo that is owned by the port facility
4 user at the time the public port facility is used shall be included in the
5 calculation of actual cargo volume.

6 F. Award of port credits by project agreement.

7 (1) Port credits may be allocated by the governor and awarded by the
8 Department of Economic Development pursuant to a project agreement
9 between the state and a port facility user. A port facility user may be awarded
10 port credits by entering into a project agreement with the Department of
11 Economic Development in an amount of up to one hundred dollars per TEU
12 imported through public ports of the state during a three-year period, as
13 defined in the project agreement, subject to the following:

14 (a) A port facility user seeking an award of port credits by project
15 agreement shall file an application with the Department of Economic
16 Development on a form prescribed by the Department of Economic
17 Development for project agreement port credits before commencement of the
18 project.

19 (b) The Department of Economic Development may approve an award
20 of port credits based on the net new TEUs of actual cargo volume imported by
21 a port facility user according to the terms set forth in an executed project
22 agreement.

23 (2) Notwithstanding approval by the Department of Economic
24 Development, a port facility user shall only become eligible to earn port credits
25 by project agreement upon execution and delivery of a project agreement
26 between the state and the port facility user.

27 (3) A port facility user that is awarded port credits by project agreement
28 shall not be entitled to claim more port credits than are approved by the
29 Department of Economic Development for that port facility user.

G. Utilization of port credits.

(1) Port credits may be applied against an approved company's Louisiana income tax liability for the tax year containing the last day of the port credit incentive period.

(2) Port credits are not refundable or transferable, but any unused credit may be carried forward for up to five years.

H. The Louisiana Import Tax Credits awarded by the department to any recipient pursuant to this Section shall be subject to the program limitation of four million five hundred thousand dollars per fiscal year as provided for pursuant to R.S. 47:6036(I)(2)(a)(i).

I. The Department of Economic Development may promulgate rules and regulations to implement the provisions of this Section.

J. No credits shall be awarded pursuant to this Section for applications received after July 1, 2025.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument was prepared by Curry J. Lann. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jeanne Johnston.

DIGEST

SB 217 Reengrossed

2021 Regular Session

Harris

Proposed law provides for the Louisiana Import Tax Credit to encourage the utilization of Louisiana public port facilities for cargo imports and the development of new port infrastructure facilities for the manufacturing, distribution, and warehousing of imported goods.

Proposed law defines the following terms and phrases:

- (1) "Actual cargo volume" shall mean the total amount of imported cargo received (in TEUs) by a port facility user within its port credit incentive period.
- (2) "Base cargo volume" shall mean the average amount of imported cargo received (in TEUs) by a port facility user in the three years preceding an application for port

credits. Only cargo that is owned by a port facility user at the time the port facility is used may be included in the calculation of base cargo volume.

- (3) "Base cargo volume period" shall mean the 365 day period ending on the last day of the month immediately preceding the month in which an application for port credits is postmarked, provided that project agreements awarding port credits may specify a different base cargo volume period.
- (4) "Port credit" shall mean a one-time tax credit of up to \$50 per TEU of cargo imported through a Louisiana public port, or up to \$100 per TEU of cargo imported through a Louisiana public port if entering into a project agreement with the state, that may be applied against Louisiana income tax liability.
- (5) "Port credit incentive period" shall mean the 365 day period designated by an applicant on its application as the twelve month period in which it is eligible to earn port credits as approved by the Dept. of Economic Development, provided that the port credit incentive period shall begin no earlier than the first day of the month immediately following the date of the application and shall begin no later than ninety days following the date of the application. Project agreements awarding port credits may specify a port credit incentive period beginning on any date.
- (6) "Port facility user" shall mean any person engaged in the manufacturing, warehousing, or distribution of goods imported through a public port of the state.
- (7) "Public port" shall mean any deep-water port commission or port, harbor, and terminal district as defined in the Constitution of Louisiana, and any other port, harbor, and terminal district established under present law.
- (8) "TEU" shall mean 20 foot equivalent unit, which is a standard measurement in shipping volumes in units of 20 foot long containers.

Proposed law requires an applicant for port credits to meet all of the following criteria:

- (1) Be a port facility user who imports more than 50 TEUs of cargo through Louisiana public ports.
- (2) File an application for port credits with the Dept. of Economic Development.
- (3) Increase its imported cargo volumes by at least 105% during its port credit incentive period as compared to imported cargo volumes during its base cargo volume period.

Proposed law prohibits recipients of port credits from being eligible for import-export cargo tax credits and prohibits recipients of import-export cargo tax credits from being eligible for port credits.

Proposed law requires port facility users seeking port credits to file applications on forms prescribed by the Dept. of Economic Development. Applications will be accepted on or after September 1, 2021, until port credits are no longer available.

Proposed law provides eligible applicants may be awarded port credits of up to \$50 per net new TEU of actual cargo volumes imported through a public port of the state during its port credit incentive period in excess of the applicant's base cargo volume of cargo imports through the applicable public port for the applicant's base cargo volume period.

Proposed law provides that port credit allocations are conditional and may be awarded based on procedures adopted by the Dept. of Economic Development by rule.

Proposed law provides that port credits are earned based upon actual cargo volumes

transiting the applicable public port during the port credit incentive period and the certification of actual cargo volumes as set forth in proposed law.

Proposed law prohibits a port facility user that is awarded port credits from claiming more port credits than are approved by the Dept. of Economic Development.

Proposed law requires calculation of base cargo volumes to be supported by records from the applicable public port facility confirming the total amount of imported cargo volumes in TEUs for the applicant during the three-year period immediately preceding the port facility user's application.

Proposed law requires applicants that are new port facility users to propose a base cargo volume, subject to approval by the Dept. of Economic Development.

Proposed law requires the port facility user to file a certification of cargo volume on a form prescribed by Department of Economic Development within 90 days of the end of the port credit incentive period.

Proposed law provides that certifications postmarked after the deadline will not be accepted unless the port facility user receives approval for late submission from Dept. of Economic Development prior to the deadline.

Proposed law authorizes port credits to be allocated by the governor and awarded by the Dept. of Economic Development pursuant to a project agreement between the state and a port facility user.

Proposed law authorizes a port facility user to be awarded port credits by entering into a project agreement with the Dept. of Economic Development in an amount of up to \$100 per TEU imported through public ports of the state during a three year period, as defined in the project agreement, subject to the following:

- (1) A port facility user seeking an award of port credits by project agreement shall file an application with the Dept. of Economic Development on a form prescribed by the Dept. of Economic Development for project agreement port credits before commencement of the project.
- (2) The Dept. of Economic Development may approve an award of port credits based on net new TEUs of actual cargo volume imported by a port facility user according to the terms set forth in an executed project agreement.

Proposed law provides that a port facility user's eligibility to earn port credits by project agreement is contingent upon execution and delivery of a project agreement between the state and the port facility user.

Proposed law prohibits a port facility user that is awarded port credits by project agreement from claiming more port credits than are approved by the Dept. of Economic Development.

Proposed law provides that port credits may be applied against an approved company's Louisiana income tax liability for the tax year containing the last day of the port credit incentive period.

Proposed law provides that port credits are not refundable or transferable, but any unused credit may be carried forward for up to five years.

Proposed law provides for a \$4.5 million cap on the port credits program per fiscal year.

Proposed law authorizes the Department of Economic Development to promulgate rules and regulations to implement the provisions of proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 47:6036.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Provides for a \$4.5 million cap on the port credits per fiscal year.
2. Clarifies that port credits are based on net new TEUs of actual cargo volume.
3. Provides for a sunset date.
4. Makes technical changes.

Senate Floor Amendments to engrossed bill

1. Make technical corrections.