

Regular Session, 2003

HOUSE BILL NO. 1974

BY REPRESENTATIVE HAMMETT

ECONOMIC DEVELOPMENT: Creates the Louisiana Retention and Modernization Program Act

1 AN ACT

2 To enact Chapter 45 of Title 51 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 51:2751 through 2760, relative to economic  
4 development; to create the Louisiana Retention and Modernization  
5 Program; to provide for incentive rebates to certain businesses to  
6 remain in Louisiana which are at high risk for relocation to another  
7 state; to provide incentive rebates to certain businesses which  
8 modernize their existing operations in this state; to provide for criminal  
9 penalties; to provide for rules and regulations; to provide for  
10 definitions; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 45 of Title 51 of the Louisiana Revised Statutes of  
13 1950, comprised of R.S. 51:2751 through 2760, is hereby enacted to read as  
14 follows:

15 CHAPTER 45. RETENTION AND

16 MODERNIZATION PROGRAM

17 §2751. Short title

18 This Chapter shall be known and may be cited as the "Louisiana  
19 Retention and Modernization Program Act".

1           §2752. Intent

2                   A. It is the intent of the Louisiana Legislature that the retention  
3                   and modernization benefits provided for in this Chapter should be used  
4                   primarily as an inducement for businesses to not relocate to another  
5                   location outside the state of Louisiana or for businesses to modernize  
6                   their existing operations in Louisiana.

7                   B. Nothing herein shall be construed to constitute a guarantee  
8                   or assumption by the state of Louisiana of any debt of any individual,  
9                   company, corporation, or association or to authorize the credit of the  
10                   state of Louisiana to be given, pledged, or loaned to any individual,  
11                   company, corporation, or association.

12                   C. No agency shall incur monetary or personnel costs paid with  
13                   federal funds for compliance with the provisions of this Chapter when  
14                   such use of the funds is prohibited by federal law.

15           §2753. Definitions

16                   A. The following words or terms as used in this Chapter shall  
17                   have the following meaning, unless a different meaning appears from  
18                   the context:

19                   (1) "Benefit rate" means the rate established by the governor,  
20                   which shall not exceed the following percentages:

21                   (a) For jobs retained where the modernized facility gross payroll  
22                   is equal to or greater than eighty percent and is less than ninety percent  
23                   of the wages paid during the taxable year prior to filing the application,  
24                   the benefit rate shall be up to two percent of the eligible wages  
25                   provided for in this Subparagraph.

1           **(b) For jobs retained where the modernized facility gross payroll**  
2           **is equal to or greater than ninety percent and is less than one hundred**  
3           **percent of the wages paid during the taxable year prior to filing the**  
4           **application, the benefit rate shall be up to three percent of the eligible**  
5           **wages provided for in this Subparagraph.**

6           **(c) For jobs retained where the modernized facility gross payroll**  
7           **is equal to or greater than one hundred percent of the wages paid during**  
8           **the taxable year prior to filing the application, the benefit rate shall be**  
9           **up to four percent of the eligible wages provided for in this**  
10          **Subparagraph.**

11          **(d) For jobs retained due to nonrelocation of the facility or**  
12          **operation where the gross payroll is equal to or greater than an amount**  
13          **of wages established by the governor in his invitation, the benefit rate**  
14          **shall be up to four percent of the eligible wages provided for in this**  
15          **Subparagraph.**

16               **(2) "Eligible wages" means a percentage of gross payroll as**  
17               **follows:**

18               **(a) If modernization costs are less than or equal to ten million**  
19               **dollars the eligible wages shall be five percent of the gross payroll of**  
20               **the facility or operation.**

21               **(b) If modernization costs are greater than ten million dollars**  
22               **and less than or equal to twenty million dollars the eligible wages shall**  
23               **be ten percent of the gross payroll of the facility or operation.**

24               **(c) If modernization costs are greater than twenty million dollars**  
25               **and less than or equal to thirty million dollars the eligible wages shall**  
26               **be twenty percent of the gross payroll of the facility or operation.**

1           (d) If modernization costs are greater than thirty million dollars  
2           and less than or equal to forty million dollars the eligible wages shall  
3           be thirty percent of the gross payroll of the facility or operation.

4           (e) If modernization costs are greater than forty million dollars  
5           and less than or equal to fifty million dollars the eligible wages shall be  
6           forty percent of the gross payroll of the facility or operation.

7           (f) If modernization costs are greater than fifty million dollars  
8           and less than or equal to sixty million dollars the eligible wages shall  
9           be fifty percent of the gross payroll of the facility or operation.

10           (g) If modernization costs are greater than sixty million dollars  
11           and less than or equal to eighty million dollars the eligible wages shall  
12           be sixty percent of the gross payroll of the facility or operation.

13           (h) If modernization costs are greater than eighty million dollars  
14           and less than or equal to ninety million dollars the eligible wages shall  
15           be seventy percent of the gross payroll of the facility or operation.

16           (i) If modernization costs are greater than ninety million dollars  
17           and less than or equal to one hundred million dollars the eligible wages  
18           shall be eighty percent of the gross payroll of the facility or operation.

19           (j) If modernization costs are greater than one hundred million  
20           dollars and less than or equal to one hundred fifty million dollars the  
21           eligible wages shall be ninety percent of the gross payroll of the facility  
22           or operation.

23           (k) If modernization costs are greater than one hundred fifty  
24           million dollars, the eligible wages shall be one hundred percent of the  
25           gross payroll of the facility or operation.

1           (1) The eligible wages shall be one hundred percent of the gross  
2           payroll of the facility or operation if the employer is awarded a contract  
3           because of the nonrelocation of the employer's facility or operation  
4           located in Louisiana and the employer agrees to retain at such facility  
5           or operation an amount of total wages established by the governor in his  
6           invitation.

7           (3)(a) "Employer" shall mean a legal person who is engaged in  
8           a lawful enterprise not excluded by this Chapter that executes a contract  
9           with the department pursuant to the provisions of this Chapter who  
10           shall have, or will have within one year, sales of at least seventy-five  
11           percent of its total sales to out-of-state customers or buyers, to in-state  
12           customers or buyers if the product or service is resold by the purchaser  
13           to an out-of-state customer or buyer for ultimate use, or to the federal  
14           government.

15           (b) The following employers or persons engaged in the  
16           following professions or service industries shall not be eligible for any  
17           rebate under this Chapter:

18           (i) Retail employers as identified by the NAICS System code  
19           sections 44 and 45.

20           (ii) Business associations and professional organizations as  
21           defined in NAICS code 8139.

22           (iii) State and local government enterprises.

23           (iv) Real estate agents, operators, and lessors.

24           (v) Automotive rental and leasing.

25           (vi) Local solid waste disposal, local sewage systems, and local  
26           water systems businesses.

1                   (vii) Nonprofit organizations.

2                   (viii) Employers engaged in the gaming industry as identified  
3 by the NAICS code sections 713210 and 721120.

4                   (ix) Attorneys.

5                   (c) The Department of Economic Development may promulgate  
6 rules annually listing other employers, professions, or service industries  
7 which are not eligible for any rebate pursuant to this Chapter and such  
8 rules shall not take effect unless presented to the Louisiana Economic  
9 Development Council and approved by both the House Committee on  
10 Ways and Means and the Senate Committee on Revenue and Fiscal  
11 Affairs in a public meeting held for such purpose.

12                   (4) "Gross payroll" means wages for the jobs retained and new  
13 jobs as defined herein upon which the particular benefit rate is  
14 calculated, unless the new jobs are the subject of another state incentive  
15 program.

16                   (5) "Job retained" means employment in this state of an  
17 employee working an average of thirty-five or more hours per week.  
18 Such job shall be with an employer that has qualified to receive a rebate  
19 pursuant to the provisions of this Chapter, which job exists in this state  
20 after the modernization of the facility or operation or nonrelocation and  
21 existed prior to the effective date the application was filed by the  
22 employer with the Department of Economic Development pursuant to  
23 the provisions of R.S. 51:2755 and which job is filled by an individual  
24 domiciled in the state of Louisiana. "Job retained" shall not mean any  
25 job that is a result of job shifts due to the gain or loss of an in-state  
26 contract to supply goods and services.

1           (6) "Modernization" means investment by an employer in  
2           technology, machinery, equipment, and training that results in an  
3           increase of output or efficiency of the facility or operation of greater  
4           than ten percent. The modernization must result in the facility or  
5           operation adopting "best practices" technology for its industry and the  
6           company must establish that without the investment that the facility or  
7           operation would be a high risk for closure in the foreseeable future.  
8           Modernization does not include the replacing of existing technology  
9           with the same or similar technology.

10           (7) "Nonrelocation" means an employer's facility or operation  
11           that remains in this state after establishing pursuant to rules adopted in  
12           accordance with R.S. 51:2759 that the facility or operation is at a high  
13           risk for relocation outside the state and agrees to remain in the state and  
14           retain the amount of wages at such facility or operation established by  
15           the governor in his invitation during the period it is receiving the  
16           rebates provided in this Act.

17           (8) "Wages" means all remuneration for services from whatever  
18           source, including commissions and bonuses and the cash value of all  
19           remuneration in any medium other than cash, and dismissal payments  
20           which the employer is required by law or contract to make. Gratuities  
21           customarily received by an individual in the course of his work from  
22           persons other than his employer shall be treated as wages received from  
23           his employer. The reasonable cash value of remuneration in any  
24           medium other than cash and the reasonable amount of gratuities shall  
25           be estimated and determined in accordance with the Internal Revenue

1           Code and its rules and regulations. The term "wages" shall not include  
2           the following:

3                   (a) The amount of any payment with respect to services  
4                   performed after January 1, 1951, to or on behalf of an individual in its  
5                   employ under a plan or system established by an employer which makes  
6                   provisions for individuals in its employ generally, or for a class or  
7                   classes of such individuals, including any amount paid by an employer  
8                   for insurance or annuities, or into a fund to provide for any such  
9                   payment, on account of:

10                           (i) Retirement.

11                           (ii) Sickness or accident disability.

12                           (iii) Medical and hospitalization expenses in connection with  
13                   sickness or accident disability.

14                           (iv) Death, provided the individual is in its employ:

15                           (aa) Has not the option to receive, instead of provision for such  
16                   death benefit, any part of such payment or, if such death benefit is  
17                   insured, any part of the premium or contributions to premiums paid by  
18                   his employer.

19                           (bb) Has not the right, under the provisions of the plan or  
20                   system or policy of insurance providing for such death benefit, to assign  
21                   such benefit or to receive cash consideration in lieu of such benefit  
22                   either upon his withdrawal from the plan or system providing for such  
23                   benefit or upon the termination of such plan or system or policy of  
24                   insurance or of his services with such employer.

25                           (v) A bona fide thrift or savings fund, providing:



1           ~~(aa) Such payment is conditioned upon a payment of a~~  
2           ~~substantial sum by such individuals in its employ.~~

3           ~~(bb) Such sum paid by the employer cannot under the provisions~~  
4           ~~of such plan be withdrawn by an individual more frequently than once~~  
5           ~~in any twelve-month period, except upon an individual's separation~~  
6           ~~from that employment.~~

7           ~~(b) Any payment made to, or on behalf of, an employee or his~~  
8           ~~beneficiary under a cafeteria plan of the type described in 26 U.S.C.~~  
9           ~~125 and referred to in 26 U.S.C. 3306(b)(5)(G).~~

10          ~~(c) Any payment made, or benefit furnished, to or for the benefit~~  
11          ~~of an employee if at the time of such payment or such financing it is~~  
12          ~~reasonable to believe that the employee will be able to exclude such~~  
13          ~~payment or benefit from income under an educational assistance~~  
14          ~~program as described in 26 U.S.C. 127 or a dependent care assistance~~  
15          ~~program as described in 26 U.S.C. 129 and as referred to in 26 U.S.C.~~  
16          ~~3306(b)(13).~~

17          ~~(d) The payment by an employer, without deduction from the~~  
18          ~~remuneration of the individual in its employ, of the tax imposed upon~~  
19          ~~such individual in its employ under Section 3101 of the federal Internal~~  
20          ~~Revenue Code with respect to domestic services in a private home of~~  
21          ~~the employer or for agricultural labor performed after December 31,~~  
22          ~~1980.~~

23          ~~(e) Dismissal payments which the employer is not required by~~  
24          ~~law or contract to make.~~

25          ~~(f) The value of any meals and lodging furnished by or on~~  
26          ~~behalf of an employer to an individual in his employ, provided the~~

1        meals and lodging are furnished on the business premises of the  
2        employer for the convenience of the employer.

3        §2754. Rebate approval

4                A. The secretary of the Department of Economic Development  
5        must make a recommendation to the governor to extend an invitation  
6        to apply for this program and the governor must invite the employer to  
7        apply for the program and establish terms of the contract and the  
8        benefit rate which shall not exceed the rates established by R.S.  
9        51:2753(A)(1). Then if the governor extends an invitation, the  
10       Department of Economic Development, after consultation with the  
11       secretaries of the Department of Labor and the Department of Revenue,  
12       may enter into a contract with an employer complying with the  
13       provisions of this Chapter for a period of up to five years, but only upon  
14       the approval of the governor and the Board of Commerce and Industry,  
15       or its successor, and after such approvals, the approval of the Joint  
16       Legislative Committee on the Budget. A contract with an employer  
17       shall be limited to a single physical location, and the benefits the  
18       employer shall receive shall be based solely upon the operations at that  
19       location. An employer may have more than one contract covering  
20       multiple locations; however, eligibility of each location shall be  
21       determined separately, with the exception that, in determining gross  
22       payroll of jobs retained, the department shall certify that the employer  
23       has maintained a statewide gross payroll of at least eighty percent of the  
24       wages paid statewide during the previous taxable year. Before a  
25       contract can be entered into, an economic costs-benefit analysis of the  
26       project, including an analysis of the direct and indirect net economic

1 impact and fiscal benefits to the state and local communities, including  
2 an evaluation based on the Regional Input/Output Model System II  
3 (RIMS), or its successor, shall be performed and it must demonstrate  
4 that the benefits of retaining the payroll of the employer outweigh the  
5 cost of the benefits the employer receives from the provisions of this  
6 Chapter. In addition, the employer must demonstrate that they are  
7 reinvesting in their Louisiana operations or facilities.

8 B. The contract may be renewed for an additional five years  
9 provided that:

10 (1) The applicant has complied with all the terms of the contract  
11 and has not performed any act, nor failed to perform any act, which  
12 would have made the applicant liable for suspension, and has complied  
13 with the provisions of this Chapter.

14 (2) The modernization continues to be a "best practices" model  
15 for the applicant's industry or that the company is still a high risk for  
16 relocation.

17 C.(1) No contract shall be executed pursuant to this Chapter  
18 with an employer who has defaulted on or otherwise not repaid any  
19 loan or other obligation involving public funds nor with any employer  
20 who has ever declared bankruptcy under which an obligation of the  
21 employer to pay or repay public funds or monies was discharged as part  
22 of such bankruptcy.

23 (2)(a) No contract shall be executed under this Chapter with an  
24 employer who is in default on any filing or payment with or to the state  
25 or any of its agencies or political subdivisions and in which an  
26 assessment or judgment that is final and non-appealable has been

1           ~~rendered, and remains outstanding, in favor of the state, or any of its~~  
2           ~~agencies, or political subdivisions.~~

3           (b) No contract shall be executed under this Chapter with an  
4           employer who employs more than fifty employees who has entered into  
5           a contract or other agreement with any person or entity in which the  
6           employer is required to pay to or otherwise give consideration to such  
7           person contingent upon their success in obtaining benefits provided for  
8           in this Chapter.

9           (c) Violation of the provisions of this Paragraph shall void the  
10          contract and any rebates paid to the employer prior to the date of the  
11          discovery of such violation shall be added to the income tax liability of  
12          the employer for the taxable year in which the discovery occurred, with  
13          interest from the date of violation, and the employer shall receive no  
14          further rebates pursuant to this Chapter.

15          (3) Every contract executed pursuant to this Chapter shall  
16          include a requirement that if the employer receives a rebate under this  
17          Chapter and an assessment or judgment that is final and non-appealable  
18          has been rendered against the employer in favor of the state or any of  
19          its agencies or political subdivisions, then the contract shall be  
20          suspended pending satisfaction of the assessment or judgment and no  
21          rebate shall accrue to the employer under the contract during the period  
22          of suspension.

23          D. Every contract executed pursuant to this Chapter shall  
24          include the following requirements:

25                 (1) If the employer receives a rebate under this Chapter and it  
26                 is subsequently determined that the employer did not qualify for such

1        rebate, the future rebates issued to the employer shall be reduced by the  
2        amount of such rebate monies previously received by the employer.

3            (2) If there are no future rebates from which to deduct the  
4        amount owed back to the state, the tax liability of the employer for the  
5        taxable period in which the determination was made shall be increased  
6        by the amount of such rebate monies previously received by the  
7        employer.

8            (3) The secretary of the Department of Revenue may recover  
9        any rebates previously granted to an employer but which rebates are  
10       disallowed as authorized by R.S. 47:1561.2. The contract shall provide  
11       that the employer shall waive prescription for the purposes of  
12       recovering any disallowed rebates.

13        §2755. Incentive rebates

14            A. An employer who has entered into a contract may receive a  
15        rebate for the taxable periods specified in the contract entered into  
16        pursuant to the provisions of this Chapter in an amount which shall be  
17        equal to the benefit rate as defined in R.S. 51:2753(A)(1), multiplied by  
18        the eligible wages, as defined in R.S. 51:2753(A)(2), for the taxable  
19        period as verified by the Department of Economic Development  
20        through the use of information provided to it by the Department of  
21        Labor.

22            B. Notwithstanding anything to the contrary in either Chapter  
23        1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised  
24        Statutes of 1950, as amended, the following rules shall apply with  
25        respect to the application of the rebate allowed in Subsection A of this  
26        Section:

1           (1) The incentive rebate allowed a corporation classified under  
2           Subchapter S of the Internal Revenue Code of 1954, as amended, as an  
3           S corporation shall be paid to the S corporation entity and not the  
4           individual shareholders of the corporation.

5           (2) The incentive rebate allowed a partnership, limited liability  
6           partnership, or limited liability company shall be paid to such entity and  
7           shall not be paid to the individual partners or members of such entity.

8           C. Notwithstanding any other provision of law to the contrary  
9           in Title 47 of the Louisiana Revised Statutes of 1950, as amended, the  
10           secretary of the Department of Revenue shall make the rebate  
11           authorized in this Section from the current collections of the taxes  
12           imposed by Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the  
13           Louisiana Revised Statutes of 1950, as amended. The right to such  
14           rebate shall not be subject to the requirements of R.S. 47:1621(B).

15           D.(1) In order to receive a contract for the rebate pursuant to the  
16           provisions of this Chapter, an employer shall apply to the Department  
17           of Economic Development. The application shall be on a form  
18           prescribed by the department and shall contain such information as may  
19           be required by the department to determine if the applicant is qualified.

20           (2) The original application shall contain a sworn statement by  
21           a duly authorized officer of the employer listing the names of persons  
22           or other entities who have received or who will receive any payment or  
23           other consideration from the employer for the purpose of representing  
24           the employer in applying for or receiving the benefits provided for in  
25           this Chapter.

1           E. The department shall determine if the applicant is qualified  
2           to receive rebates authorized in this Chapter.

3           F. Upon approval of such an original application, the  
4           Department of Economic Development shall notify the Department of  
5           Revenue and shall provide it with a copy of the application. The  
6           Department of Revenue may require the qualified employer to submit  
7           such additional information as may be necessary to administer the  
8           provisions of this Chapter. The approved employer shall file  
9           applications for rebates with the Department of Economic Development  
10          to show its continued eligibility for the rebates, as provided in R.S.  
11          51:2757. The employer may be audited by the Department of  
12          Economic Development to verify such eligibility. The approved  
13          contract between the employer and the Department of Economic  
14          Development shall authorize the continued rebate as long as the  
15          employer retains its eligibility as defined in and established pursuant to  
16          this Section and R.S. 51:2753 and 2757 and within the limitations  
17          contained in this Chapter, as it existed at the time of such approval.

18          G. An employer's benefit rate shall be determined annually  
19          using employer information from the employer's fiscal year for which  
20          the rebate is claimed.

21          §2756. Rebate; payments

22          A. The rebates authorized in this Chapter shall be paid annually  
23          after the employer has filed its request for annual rebate at the end of  
24          the employer's fiscal year with the Department of Economic  
25          Development, and the department has determined from the information

1           submitted along with such application as provided for in R.S. 51:2757  
2           that the employer is eligible for such rebate for such year.

3           B. In addition to the rebates provided in this Chapter, an  
4           employer who has executed a contract under the provisions of this  
5           Chapter shall be entitled to the same sales and use tax rebates  
6           authorized in R.S. 51:1787. If the employer has complied with the  
7           terms of this Chapter he shall be deemed to have complied with the  
8           eligibility requirements of R.S. 51:1787. Any contract executed under  
9           this Chapter which provides for a rebate of local sales and use taxes  
10           shall include the same procedures and requirements under R.S. 51:1787  
11           for rebates involving local sales and use taxes, including but not limited  
12           to the requirement that any such request for a rebate of local sales and  
13           use taxes be accompanied by an endorsement resolution approved by  
14           the governing authority of the appropriate municipality, parish, port  
15           district, or industrial district board in whose jurisdiction the employer  
16           is or will be located.

17           §2757. Filing claim to receive rebate; determination; repayment

18           A.(1) After the end of the fiscal year of an employer for which  
19           an employer has qualified to receive a rebate, the employer shall file a  
20           request for the annual rebate as required in R.S. 51:2756 with the  
21           Department of Economic Development.

22           (2) The request shall contain a sworn statement by a duly  
23           authorized officer of the employer concerning with respect to the  
24           employer's fiscal year:



1           (a) That the employer remained a qualified employer under the  
2           provisions of R.S. 51:2753(A)(3), and shall state the nature of the  
3           employer's qualification.

4           (b)(i) The total number of and the gross payroll of:

5           (aa) Jobs that existed in the taxable year prior to filing the  
6           application.

7           (bb) Jobs retained after the modernization or nonrelocation.

8           (ii) The number of full-time employees working an average of  
9           thirty-five or more hours per week in jobs retained.

10          (iii) That the employer maintained a statewide gross payroll of  
11          at least eighty percent of the wages paid statewide during the previous  
12          taxable year, in the case where an employer has contracts covering  
13          multiple locations.

14          (c) That employees holding jobs retained:

15          (i) Were paid wages in cash, which met the other requirements  
16          of R.S. 51:2753(A)(5).

17          (ii) Were domiciled in the state of Louisiana, if required.

18          (iii) Were not jobs created as a result of job shifts due to the  
19          gain or loss of an in-state contract to supply goods and services.

20          (d) That the employer:

21          (i) Did not default on or otherwise not repay any loan or other  
22          obligation involving public funds.

23          (ii) Has not declared bankruptcy under which an obligation of  
24          the employer to pay or repay public funds or monies was discharged as  
25          part of such bankruptcy.

1            (iii) Is not in default on any filing or payment with or to the  
2            state or any of its agencies or political subdivisions in which such  
3            assessment or judgment is final and non-appealable and remains  
4            outstanding.

5            (3) The department may request such additional information  
6            from the employer as may be necessary to determine whether the  
7            application is correct and whether the employer is eligible for the  
8            annual rebate for that year, or may request that the employer revise its  
9            application.

10           (4) Prior to the confection of any contract or the payment of any  
11           rebate authorized by this Chapter, the employer shall agree that the  
12           legislative auditor, auditors from the division of administration, or  
13           internal auditor from the Department of Economic Development shall  
14           have the authority to audit all relevant books, records, and accounts of  
15           the employer to determine the employer's initial and continued  
16           eligibility for rebates under this Chapter, and to determine the actual  
17           amount of wages retained as a result of the rebate contract.

18           (5) Upon approval of the request for the annual rebate, the  
19           request shall be forwarded to the Department of Revenue for payment.  
20           The Department of Revenue shall make payment of the rebate after  
21           offset, if applicable, under R.S. 47:1622. The rebate shall be  
22           considered a refundable overpayment for the purpose of such offset.

23           B. An employer that has qualified pursuant to R.S. 51:2755 is  
24           eligible to receive rebates under this Chapter only in accordance with  
25           the provisions under which it initially applied and was approved.

1           §2758. Employers receiving rebates not eligible to receive certain  
2                           other tax credits and exemptions

3           Notwithstanding any other provision of law and except as  
4           provided in R.S. 51:2756(B), a qualified employer who receives a  
5           rebate pursuant to the provisions of this Chapter shall not be eligible to  
6           receive the other credits or exemptions provided for in the following  
7           provisions of law in connection with the modernization and  
8           nonrelocation for which the rebate was received:

9                   (1) The tax credit for generation of new jobs in Louisiana  
10                   provided for in R.S. 47:34.

11                   (2) The income tax credit for conversion of vehicles to alternate  
12                   fuel usage provided for in R.S. 47:38 and 287.757.

13                   (3) Contracts for tax exemption for manufacturing  
14                   establishments by the Board of Commerce and Industry provided for in  
15                   R.S. 47:4301 through 4306.

16                   (4) The employer credit for employment of a previously  
17                   unemployed person provided for in R.S. 47:6004.

18                   (5) The Louisiana basic skills training tax credit--income tax  
19                   credit provided for in R.S. 47:6009.

20                   (6) The employer income tax credit for employee alcohol and  
21                   substance abuse treatment programs provided for in R.S. 47:6010.

22                   (7) The sales and use tax exemption for materials to be used in  
23                   the construction of a building and for machinery and income tax credit  
24                   for each employee in an enterprise zone provided for in R.S. 51:1787.

25                   (8) The re-entrant jobs corporation income tax credit for  
26                   formerly incarcerated employees provided for in R.S. 47:287.748.

1                   (9) The corporation income tax credit for new jobs provided for  
2                   in R.S. 47:287.749.

3                   (10) The neighborhood assistance income tax credit provided  
4                   for in R.S. 47:287.753.

5                   §2759. Promulgation of rules

6                   The Department of Economic Development, the Department of  
7                   Revenue, and the Department of Labor shall each promulgate such  
8                   rules as may be necessary to implement the provisions of this Chapter.  
9                   However, prior to such rules taking effect all rules shall be approved by  
10                  the House Committee on Ways and Means and the Senate Committee  
11                  on Revenue and Fiscal Affairs, pursuant to the Administrative  
12                  Procedure Act.

13                  §2760. False or fraudulent information in making application, claim  
14                  for rebate, or other instrument; penalties

15                  A. Any person making an application, claim for a rebate, or any  
16                  report, return, statement, or other instrument or providing any other  
17                  information pursuant to the provisions of this Chapter who willfully  
18                  makes a false or fraudulent application, claim, report, return, statement,  
19                  invoice, or other instrument or who willfully provides any false or  
20                  fraudulent information, any person who willfully aids or abets another  
21                  in making such false or fraudulent application, claim, report, return,  
22                  statement, invoice, or other instrument, or any person who willfully aids  
23                  or abets another in providing any false or fraudulent information, shall  
24                  be guilty, upon conviction, of a felony and shall be punished by the  
25                  imposition of a fine of not less than one thousand dollars and not more

1           than fifty thousand dollars, or imprisoned for not less than two years  
 2           and not more than five years, or both.

3                   B. Any person convicted of a violation of this Section shall be  
 4           liable for the repayment of all rebates which were granted to the  
 5           employer. Interest shall be due on such rebates at the rate of fifteen  
 6           percent per annum.

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

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Hammett

HB No. 1974

**Abstract:** Creates the Louisiana Retention & Modernization Program Act to provide incentives for businesses which are likely to relocate to other states to remain in Louisiana and to provide incentives for certain businesses to modernize their Louisiana operations.

Proposed law creates the Louisiana Retention & Modernization Program Act to provide incentives for businesses which are likely to relocate to other states to remain in Louisiana and to provide incentives for certain businesses to modernize their Louisiana operations.

Proposed law provides that the secretary of the Dept. of Economic Development must make a recommendation to the governor to extend an invitation to apply for a rebate contract and the governor must invite an employer to enter into a rebate contract. If the governor extends the invitation, then DED, after consultation with the secretaries of the Dept. of Labor and the Dept. of Revenue, may enter into a rebate contract with an employer for a period of up to five years, only after approval of the governor and the Board of Commerce and Industry, and approval thereafter of the Joint Legislative Committee on the Budget.

Proposed law provides that a contract with an employer shall be limited to a single physical location, and the benefits the employer shall receive shall be based solely upon the operations at that location. An employer may have more than one contract covering multiple locations under certain circumstances.

Proposed law provides that before a contract can be entered into, an economic cost-benefit analysis of the project shall be performed and it must demonstrate that the benefits of retaining the payroll of the employer outweigh the cost of the benefits the employer receives under proposed law. The employer must further demonstrate that they are reinvesting in their Louisiana operations or facilities.

Proposed law provides that a contract may be renewed for an additional five years provided that the applicant has complied with all the terms of the contract and the modernization continues to be a "best practices" model for the applicant's industry or that the company is still a high risk for relocation.

Proposed law provides that no contract shall be executed with an employer who has defaulted on or otherwise not repaid any loan or other obligation involving public funds nor with any employer who has ever declared bankruptcy under which an obligation of the employer to pay or repay public funds or monies was discharged as part of such bankruptcy.

Proposed law provides that no contract shall be executed with an employer who is in default on any filing or payment with or to the state or any of its agencies or political subdivisions and in which an assessment or judgment that is final and non-appealable has been rendered, and remains outstanding, in favor of the state, or any of its agencies, or political subdivisions.

Proposed law provides that no contract shall be executed with an employer who employs more than 50 employees who has entered into certain contingent contracts.

Proposed law provides that every contract executed shall include the following requirements:

- (1) If the employer receives a rebate and it is subsequently determined that the employer did not qualify for such rebate, the future rebates issued to the employer shall be reduced by the amount of such rebate monies previously received by the employer.
- (2) If there are no future rebates from which to deduct the amount owed back to the state, the tax liability of the employer for the taxable period in which the determination was made shall be increased by the amount of such rebate monies previously received by the employer.
- (3) The secretary of the Dept. of Revenue may recover any rebates previously granted to an employer but which rebates are disallowed as authorized by R.S. 47:1561.2.

Proposed law provides that an employer who has entered into a contract may receive a rebate for the taxable periods specified in the contract in an amount

which shall be equal to the benefit rate multiplied by the eligible wages for the taxable period as verified by DED through the use of information provided to it by the Dept. of Labor.

Proposed law provides that in order to receive a rebate contract, an employer shall apply to the Dept. of Economic Development. The original application shall contain a sworn statement by a duly authorized officer of the employer listing the names of persons or other entities who have received or who will receive any payment or other consideration from the employer for the purpose of representing the employer in applying for or receiving the benefits provided for in proposed law. DED shall determine if the applicant is qualified to receive rebates.

Proposed law, upon approval of such an original application, provides that the DED shall notify the Dept. of Revenue and shall provide it with a copy of the application. The Dept. of Revenue may require the qualified employer to submit such additional information as may be necessary to administer the provisions of this Chapter. The approved employer shall file applications for rebates with DED to show its continued eligibility for the rebates. The employer may be audited by DED to verify such eligibility. The approved contract between the employer and DED shall authorize the continued rebate as long as the employer retains its eligibility and within the limitations contained in proposed law, as it existed at the time of such approval.

An employer's benefit rate shall be determined annually using employer information from the employer's fiscal year for which the rebate is claimed.

Proposed law defines "employer" to mean a legal person who is engaged in a lawful enterprise not excluded by proposed law that executes a contract with the department pursuant to the provisions of proposed law and who shall have, or will have within one year, sales of at least 75% of its total sales to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government.

Proposed law provides that certain employers are specifically prohibited from eligibility for rebates. Further authorizes DED to promulgate rules listing other employers, professions, or service industries which are not eligible for rebates.

Proposed law defines "benefit rate" to mean the rate established by the governor, which shall not exceed the following percentages:

- (1) For jobs retained where the modernized facility gross payroll is equal to or greater than 80% and is less than 90% of the wages paid during the taxable year prior to filing the application, the benefit rate shall be up to 2% of the eligible wages.
- (2) For jobs retained where the modernized facility gross payroll is equal to or greater than 90% and is less than 100% of the wages paid during the taxable year prior to filing the application, the benefit rate shall be up to 3% of the eligible wages.

- (3) For jobs retained where the modernized facility gross payroll is equal or greater than 100% of the wages paid during the taxable year prior to filing the application, the benefit rate shall be up to 4% of the eligible wages.
- (4) For jobs retained due to nonrelocation of the facility or operation where the gross payroll is equal to or greater than an amount of wages established by the governor in this invitation, the benefit rate shall be up to 4% of the eligible wages.

Proposed law defines "nonrelocation" to mean an employer's facility that remains in this state after establishing that the facility or operation is at a high risk for relocation outside the state and agrees to remain in the state and retain the amount of wages at such facility or operation established by the governor at his invitation during the period it is receiving the rebates.

Proposed law defines "modernization" to mean investment by an employer in technology, machinery, equipment, and training that results in an increase of output or efficiency of the facility or operation of greater than 10%. "Modernization" does not include the replacing of existing technology with the same or similar technology.

Proposed law defines "eligible wages" to mean a percentage of gross payroll as follows:

Modernization Cost Percentage of Gross Payroll	
Less than or equal to \$10,000,000	5%
\$10,000,001 to \$20,000,000	10%
\$20,000,001 to \$30,000,000	20%
\$30,000,001 to \$40,000,000	30%
\$40,000,001 to \$50,000,000	40%
\$50,000,001 to \$60,000,000	50%
\$60,000,001 to \$80,000,000	60%
\$80,000,001 to \$90,000,000	70%
\$90,000,001 to \$100,000,000	80%
\$100,000,001 to \$150,000,000	90%
Greater that \$150,000,000	100%

Proposed law provides that "eligible wages" for nonrelocation contracts shall be 100% of the gross payroll of the facility or operation if the employer is awarded a contract and the employer agrees to retain at such facility or operation an amount of total wages established by the governor in his invitation.

Proposed law defines "gross payroll" to mean wages for the jobs retained and new jobs as defined herein upon which the particular benefit rate is calculated, unless the new jobs are the subject of another state incentive program.

Proposed law defines "wages" to mean all remuneration for services from whatever source, including commissions and bonuses and the cash value of all



remuneration in any medium other than cash, and dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of his work from persons other than his employer shall be treated as wages received from his employer. Further provides for certain exclusion from the definition of the term "wages".

Proposed law provides that an employer who has executed a rebate contract shall be entitled to the same sales and use tax rebates authorized for the enterprise zone program. The employer will have to follow the same procedures and requirements under such program for rebates involving local sales and use taxes.

Proposed law provides that after the end of the fiscal year of an employer for which an employer has qualified to receive a rebate, the employer shall file a request for the annual rebate with DED. The request shall contain a sworn statement by a duly authorized officer of the employer concerning certain information which will enable DED to determine if the employer qualifies for the rebate. Upon approval of the request for the annual rebate, the request shall be forwarded to the Dept. of Revenue for payment. The Dept. of Revenue shall make payment of the rebate after offset, if applicable, under R.S. 47:1622. The rebate shall be considered a refundable overpayment for the purpose of such offset.

Proposed law requires that an employer agree to audits of its books, records, and accounts prior to entering into a contract.

Proposed law provides that a qualified employer who receives a rebate pursuant to the provisions of this Chapter shall not be eligible to receive certain other tax credits or exemptions in connection with the activity for which the rebate was received.

Proposed law provides that any person who willfully provides any false or fraudulent information under any provision of proposed law, any person who willfully aids or abets another in making such false or fraudulent information, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than \$1,000 and not more than \$50,000, or imprisoned for not less than two years and not more than five years, or both. Further provides that any person convicted of a violation shall be liable for the repayment of all rebates, including interest, which were granted to the employer.

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

(Adds R.S. 51:2751-2760)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Provides that the benefit rate shall be established by the governor.

2. Clarifies that the benefit rate for nonrelocation of facility or operations is a separate benefit from the benefit rate for modernization.
3. Provides that the rebates shall be for eligible facilities or operations in this state.
4. Revises the definition of employer to include only those enterprises which have, or will have within one year, sales of at least 75% of its total sales to out-of-state customers or for eventual use out-of-state.
5. Clarifies that rebates will not be paid if the jobs which they are based upon are the subject of another state incentive program.
6. Requires the employer to retain its same amount of wages during the rebate period.
7. Provides that an employer may only enter into a contract after DED recommends the employer to the governor, and the governor invites the employer to enter into a rebate contract.
8. Requires the employer to demonstrate that they are reinvesting in their La. facilities or operations.
9. Prohibits certain employers from entering into contingent contracts for obtaining rebates.
10. Requires employers under contract to audits of its books, records, and accounts.

House Floor Amendments to the engrossed bill.

1. Requires the contracts to be approved by the governor, the Board of Commerce and Industry, and the Joint Legislative Committee on the Budget.