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DIGEST

Chabert (SB 122)

Present law authorizes the Department of Economic Development (DED) to grant a credit against corporate income and franchise tax liability equal to the total capital costs of a "qualifying project", to be taken at 5% per tax year, limited to the total cost of the project.

"Capital costs" is defined as all costs and expenses incurred by one or more investing companies in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period commencing with the date on which the acquisition, construction, installation, and equipping commences and ending on the date on which the qualifying project is placed in service.

Proposed law provides in order to meet the definition of capital costs the costs and expenses must be paid after July 1, 2013.

Present law provides the following definitions:

- (1) "Qualifying project" is defined as a project sponsored or undertaken by a public port and one or more investing companies that has a capital cost of not less than \$5 million and at which the predominant trade or business activity conducted will constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port or port and harbor activity.
- (2) "Port or port and harbor activity" means trade or business activity conducted on premises in which a duly recognized port authority as described in the 2012 North American Industry Classification System (NAICS) within Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling).

Proposed law reduces the capital cost of a qualifying project from \$5 million to \$1.5 million. Excludes projects at which the predominant trade or business activity conducted will constitute industrial operations and bulk liquid or gas facilities from the definition of "qualifying project".

Proposed law expands the definition of "port or port and harbor activity" to any activity when the trade or business is conducted on port authority premises including, NAICS Code-described businesses set forth in present law (above) and adds Industry Number 336611 (Ship Building and Repair) and Industry Number 213112 (Support Activities for Oil and Gas Operations).

Present law authorizes DED to issue the Investor Tax Credit for a "qualifying project" if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget, which approval shall not be granted earlier than July 1, 2014, and the state bond commission certifies to the secretary of DED that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits provided, whether from increased port or port and harbor activity because of the grant of the tax credit or otherwise.

Proposed law authorizes DED to issue the Investor Tax Credit if the commissioner of administration certifies, after approval of the Joint Legislative Committee on the Budget, that securing the project will result in a "significant positive economic benefit to the state". "Significant positive economic benefit" is defined as net positive tax revenue that must be determined by taking into account direct, indirect, and induced impacts of the project based on a standard economic impact methodology utilized by the commissioner, and the value of

the credit, and any other state tax and financial incentives that are used by DED to secure the project.

Proposed law requires DED to grant, in lieu of a credit equal to the total capital costs of the project taken at 5% per tax year, another amount of tax credit to be taken at such other percentage which is warranted by the "significant positive economic benefit" determined by the commissioner.

Proposed law provides that no tax credit may be granted for a qualifying project which exceeds \$2.5 million per tax year. In addition, the total amount of the Investor Tax Credits which may be granted by DED for all recipients cannot exceed \$6.25 million per fiscal year.

Present law provides that the tax credit will be earned by investors at the time expenditures are made by an investing company; however, tax credits will not be applied against a tax liability until the project is approved by the department after certification from the commissioner with the approval of the committee and the state bond commission and capital cost expenditures are certified by the department.

Proposed law provides that the tax credit will not apply to a tax liability before July 1, 2014, and not until capital cost expenditures are certified only by the department.

Present law authorizes the secretary of DED to certify "international business entities" for an Import-Export Cargo Credit against the individual and corporate income and corporate franchise tax equal to the product of multiplying \$5 by the "international business entity's" number of tons of "qualified cargo" for the taxable year, but only for all or a portion of a fiscal year if the commissioner of administration certifies to the secretary of DED that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits provided whether from increased utilization of public port facilities because of the tax credit or otherwise, and the certification is approved by the Joint Legislative Committee on the Budget, which approval shall not be granted earlier than July 1, 2014, and the state bond commission.

"International business entity" is defined as a taxpayer entity, all or a portion of whose activities involve the import or export of breakbulk or containerized cargo to or from manufacturing, fabrication, assembly, distribution, processing, or warehousing facilities located within Louisiana.

"Qualified cargo" is defined as any breakbulk or containerized machinery, equipment, materials, products, or commodities owned by an "international business entity" which are imported or exported to or from a manufacturing, fabrication, assembly, distribution, processing, or warehouse facility located in Louisiana and which are so moved by way of an oceangoing vessel berthed at a public port facility during the taxable year.

Proposed law authorizes the secretary of DED to certify the credit, for taxable years beginning on and after Jan. 1, 2014, for an international business entity if the commissioner of administration certifies to the secretary that the increased utilization of public port facilities and other activity in Louisiana associated with the import or export of the international business entities qualified cargo will result in a "significant positive economic benefit to the state". "Significant positive economic benefit" is defined as net positive tax revenue that shall be determined by taking into account direct, indirect, and induced impacts of the port and state activity based on a standard economic impact methodology utilized by the commissioner, and the value of the credit, and any other state tax and financial incentives that are used by DED to secure the port and state activity. Approval of the certification by the Joint Legislative Committee on the Budget, which approval shall not be granted earlier than July 1, 2014, and the state bond commission is still required.

Proposed law authorizes DED the option to grant, in lieu of a credit equal to the product of multiplying \$5 by the number of tons of cargo for the taxable year which exceeds the pre-certification tonnage or a portion of a fiscal year, a credit equal to the product of multiplying the number of dollars by the taxpayer's number of tons of qualified cargo for the taxable year or portion of a taxable year which exceeds the pre-certification tonnage and is warranted by

the "significant positive economic benefit" determined by the commissioner, if it is less than \$5.

Proposed law defines "pre-certification tonnage" as the number of tons of cargo which meets the definition of qualified cargo for purposes of this credit, and which was owned by the international business entity receiving the credit, were imported or exported to or from a manufacturing, fabrication, assembly, distribution, processing, or warehouse facility located in Louisiana, and which were so moved by way of an oceangoing vessel berthed at public port facilities in Louisiana during the 2013 calendar year.

Proposed law provides that the total amount of the Import-Export Cargo Credits which may be granted by DED for all recipients cannot exceed \$6.25 million per fiscal year.

Proposed law specifies that the credit can be allowed only against the tax liability of the international business entity which receives the certification.

Proposed law extends the termination date of the Investor Tax Credit from January 1, 2017, to January 1, 2020, and terminates the Import-Export Credit on that same date.

Effective July 1, 2013.

(Amends R.S. 47:6036(B)(2)(intro para), (8) and (13), (C)(1)(b) and (c), (G), and (I)(2)(a))

Summary of Amendments Adopted by Senate

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

1. Caps the Investor Tax Credit for a "qualifying project" at \$2.5 million per tax year and places an overall cap of \$12.5 million for tax credits granted for all qualifying projects in a fiscal year.
2. Limits DED's option to grant a per-ton Import-Export Cargo Tax Credit equal to the number of dollars per ton which is warranted by the "significant positive economic benefit" determined by the commissioner to less than \$5 per ton.
3. For purposes of the Investor Tax Credit, deletes the clause "but not limited to" from the provision defining "port or port and harbor activity" as any activity when the trade or business is conducted on port authority premises "including" the NAICS Code-described businesses.
4. Excludes from the Investor Tax Credit "qualifying projects" at which the predominant trade or business activity conducted will constitute industrial operations and bulk liquid/gas facilities.
5. Restores the commissioner of administration's discretion in present law to grant an Investor Tax Credit of 5% per tax year.
6. Restores the approvals needed for both credits from the state bond commission in present law.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Technical amendment.
2. Modifies definition of port or port and harbor activity.

3. Provides that the date which the Joint Legislative Committee on the Budget approves any Investor Tax Credit qualifying project issued by the Department of Economic Development shall not be granted earlier than July 1, 2014.
4. Provides that no later than March 31, 2014, the secretary of the Department of Economic Development shall promulgate rules in accordance with the APA which establish the process by which a taxpayer shall apply for certification for the Import-Export Cargo Credit.
5. Provides that the date which the Joint Legislative Committee on the Budget approves any Import-Export Cargo Credit qualifying project issued by the Department of Economic Development shall not be granted earlier than July 1, 2014.
6. Requires that the Import-Export Cargo Credit shall be subject to the same limits as is provided for a qualifying project for the Investor Tax Credit.
7. Provides that the date which the Joint Legislative Committee on the Budget approves the certification by the commissioner of administration of significant positive economic benefit of a qualifying Import-Export Cargo Credit project issued by the Department of Economic Development shall not be earlier than July 1, 2014.

Senate Floor Amendments to reengrossed bill

1. Makes Legislative Bureau changes.
2. Changes definition of "capital costs".
3. Provides that the Investor Tax credit will not apply to a tax liability before July 1, 2014, and changes the certification process of the capital cost expenditures.
4. Changes the \$12.5 million cap to a \$6.25 million cap on the Investor Tax Credit.
5. Changes the calculation of the Import-Export Cargo Credit and establishes a \$6.25 million cap on the credit.
6. Adds definition for "pre-contract tonnage".

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the re-engrossed bill.

1. Adds a commencement date for purposes of earning the import-export cargo credit of taxable years beginning on and after Jan. 1, 2014.
2. Changes, for purposes of calculating the amount of the import-export cargo credit and for defining qualified cargo, references from "pre-contract tonnage" to "pre-certification tonnage".
3. Changes the time for calculating the "pre-certification tonnage" of cargo moved by way of oceangoing vessels berthed at public port facilities from the 12 months immediately preceding the effective date of the certification of the credit to the 2013 calendar year.