

2017 Regular Session

SENATE BILL NO. 149

BY SENATOR CHABERT

TAX/TAXATION. Provides for investor tax credits for qualifying small projects performed at Louisiana ports. (gov sig)

AN ACT

To amend and reenact the introductory paragraph of R.S. 47:6036(B)(2) and (B)(2)(a), (c), and (d), (12), (13), and (14), the introductory paragraph of (C)(1)(a) and (a)(i), (b), and (2), and the introductory paragraph of (4)(c), and (D)(2)(c) and (d), and to enact R.S. 47:6036(B)(15), relative to taxes; to provide relative to investor tax credits for qualifying projects and qualifying small projects performed in Louisiana ports; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The introductory paragraph of R.S. 47:6036(B)(2) and (B)(2)(a), (c), and (d), (12), (13), and (14), the introductory paragraph of (C)(1)(a) and (a)(i), (b), and (2), and the introductory paragraph of (4)(c), and (D)(2)(c) and (d) are hereby amended and reenacted and R.S. 47:6036(B)(15) is hereby enacted to read as follows:

§6036. Ports of Louisiana tax credits

* * *

B. Definitions.

For purposes of this Section, the following words shall have the following meanings unless the context clearly indicates otherwise:

* * *

(2) "Capital costs" shall mean and include all costs and expenses paid after July 1, 2013, 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 **or qualifying small project** is placed in service. Capital costs shall include, but not be limited to the following:

(a) The costs of acquiring, constructing, installing, equipping, and financing a qualifying project **or qualifying small project**, including all obligations incurred for labor and to contractors, subcontractors, builders, and materialmen.

* * *

(c) The costs of contract bonds and of insurance of any kind that may be required or necessary during the acquisition, construction, or installation of a qualifying project **or qualifying small project**.

(d) The costs of architectural and engineering services, including test borings, surveys, estimates, plans, and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, and installation of a qualifying project **or qualifying small project**.

* * *

(12) "Qualifying investment" shall mean and include the undertaking by one or more investing companies of a qualifying project **or qualifying small project**.

(13) "Qualifying project" shall mean and include a project to be sponsored or undertaken by a public port and one or more investing companies that has a capital cost of not less than ~~one and one-half~~ **five** million dollars and at which the predominant trade or business activity conducted will constitute warehousing or port and harbor operations and cargo handling, including any port or port and harbor activity. However, "qualifying project" shall not mean bulk liquid or gas facilities.

(14) "Qualifying small project" shall mean and include a project to be sponsored or undertaken by a public port and one or more investing companies that has a capital cost of less than five million dollars and at which the predominant trade or business activity conducted will constitute warehousing or port and harbor operations and cargo handling, including any port or port and harbor activity. However, "qualifying small project" shall not mean bulk liquid or gas facilities.

~~(14)~~ (15) "Ton" shall be a net ton of two thousand pounds and in the case of containerized cargo it shall exclude the weight of the container.

C. Investor tax credit.

(1)(a) There are hereby authorized the following credits against state income, insurance premium, and corporate franchise tax:

(i) An Investor Tax Credit as provided for in Subsections A through H of this Section for the total capital costs of a qualifying project or qualifying small project in the manner and according to the provisions of those Subsections.

* * *

~~(b)~~(i) The Investor Tax Credit for qualifying projects provided for in this ~~Subsection~~ Subparagraph shall be granted by the Department of Economic Development for a qualifying project if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget, and the state bond commission certifies to the secretary of the department that securing the project will result in a significant positive economic benefit to the state. "Significant positive economic benefit" means net positive tax revenue that shall 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 the department to secure the project. If the commissioner with the approval of the committee so certifies, then the Department of Economic Development ~~may~~ shall grant a tax credit equal to seventy-two percent of the total capital costs of such

1 qualifying project to be taken at ~~five~~ **no less than ten** percent per tax year or shall
 2 grant such other amount of tax credit to be taken at such other percentage which is
 3 warranted by the significant positive economic benefit determined by the
 4 commissioner, but no tax credit granted for a qualifying project shall exceed ~~one ten~~
 5 million ~~eight hundred thousand~~ dollars per tax year. However, the total amount of
 6 tax credits granted on a qualifying project shall not exceed the total cost of the
 7 project. In addition, the investor tax credits granted by the department to any
 8 recipient pursuant to this ~~Section~~ **Subparagraph** shall be limited to an amount which
 9 shall not result in a reduction of tax liability by all recipients of such credits to
 10 exceed ~~four~~ **twenty-five** million ~~five hundred thousand~~ dollars in any fiscal year.

11 **(ii) The Investor Tax Credit for qualifying small projects provided for**
 12 **in this Subparagraph shall be equal to one hundred percent of the total capital**
 13 **costs expenditures of such qualifying small projects and up to twenty-five**
 14 **percent of the credit amount may be taken each year beginning with the second**
 15 **anniversary of the date upon which the capital cost expenditures were certified**
 16 **by the department pursuant to Subparagraph (1)(c) of this Subsection. No**
 17 **more than forty million dollars of tax credits under this Subparagraph may be**
 18 **certified in any one year.**

19 * * *

20 (2) Prior to issuance of any tax credit pursuant to the provisions of ~~this~~
 21 ~~Subsection~~ **Item (1)(b)(i) of this Subsection**, a cooperative endeavor agreement
 22 shall be fully executed between the investing company or entity proposing the
 23 qualifying project and the public port in whose geographic jurisdiction the proposed
 24 qualifying project is to be located indicating cooperation and support among all of
 25 the parties. Failure to fully execute the cooperative endeavor agreement shall render
 26 the qualifying project ineligible for the tax credit authorized by ~~this Subsection~~ **Item**
 27 **(1)(b)(i) of this Subsection.**

28 * * *

29 (4) Application of the credit.

* * *

(c) Entities not taxed as corporations shall claim any credit allowed under this Subsection on the returns of the partners or members, **in any manner in which the partners or members may agree in writing**, as follows:

* * *

D. Certification and administration.

* * *

(2) * * *

(c) The Department of Economic Development shall submit its initial certification of a project as a qualifying project **or qualifying small project** to the investing company and to the secretary of the Department of Revenue. The initial certification shall include a unique identifying number for each qualifying project **or qualifying small project**, the total amount of tax credits issued for the capital costs of the qualifying project **or qualifying small project** and the amount to be taken at five percent per tax year.

(d) Prior to any certification of a qualifying project **or qualifying small project**, the investing company shall submit to the Department of Economic Development a cost report of project expenditures which the Department of Economic Development may require to be prepared by an independent certified public accountant. Additionally, the Department of Transportation and Development shall inspect the construction site of the qualifying project **or qualifying small project** and shall verify that the capital costs expenditures for which the investing company is applying for tax credits has been expended by the investing company. The Department of Economic Development shall review such expenditures and shall issue a tax credit certification letter to the investing company indicating the amount of tax credits certified for the state-certified qualifying project **or qualifying small project** and the amount to be taken at five percent per tax year.

* * *

Section 2. This Act shall become effective upon signature by the governor

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Sharon F. Lyles.

DIGEST

SB 149 Original

2017 Regular Session

Chabert

Present law authorizes the Dept. of Economic Development (DED) to grant a tax credit equal to the 72% of total "capital costs" of a "qualifying project" in a La. "port or port and harbor" to be taken at 5% per tax year if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget and the state bond commission, certifies to the secretary of the department that there will be sufficient revenue received by the state to offset the effect to the state of the tax credits provided for the capital costs of the project, whether from increased port or port and harbor activity because of the grant of the tax credit or otherwise. The tax credit may be carried forward for 10 years.

Proposed law adds authority for DED to grant a ports of Louisiana tax credit equal to 100% of total "capital costs" for a "qualifying small project" without certification of the commissioner of administration and approval of the JLCB and the state bond commission to be taken at up to 25% beginning on the second anniversary of certification of capital cost expenditures by DED.

Present law defines "capital costs" to include all costs and expenses incurred by one or more investing companies in connection with the acquisition, construction, installation, and equipping of a "qualifying project", but provides that "capital costs" shall not include property owned or leased by the investing company or a related party before the commencement of "qualified project" unless the property was physically located outside the state for a period of at least one year prior to the date the qualifying project was placed in service.

Present law defines "qualifying investment" to include the undertaking by one or more investing companies as a qualifying project.

Proposed law retains present law and defines "capital costs" and "qualifying investment" to also include a "qualifying small project".

Present law defines "qualifying project" to include a project to be sponsored or undertaken by a public port and one or more investing companies that has a capital cost of not less than \$1.5 million dollars, and at which the predominant trade or business activity conducted will constitute warehousing or port and harbor activities, but excludes bulk liquid and gas facilities.

Proposed law changes a "qualifying project" from one with capital costs of not less than \$1.5 million to one with capital costs not less than \$5 million.

Proposed law adds a definition for a "qualifying small project" to include a project to be sponsored or undertaken by a public port and one or more investing companies that has a capital cost of less than \$5 million dollars and at which the predominant trade or business activity conducted will constitute warehousing or port and harbor operations and cargo handling, including any port or port and harbor activity, excluding bulk liquid or gas

facilities.

Present law authorizes the investor tax credit against state income and corporate franchise tax.

Proposed law adds authority to take the investor tax credit against the insurance premium tax.

Proposed law changes present law to require DED to grant a tax credit equal to 72% of the total "capital costs" of a "qualifying project" in a La. "port or port and harbor" to be taken from 5% per tax year to 10% and increases the maximum tax credit allowable per project per year from not to exceed \$1.8 to 10 million and increases the limit to reduce tax liability from not to exceed \$4.5 to \$25 million in any fiscal year.

Proposed law adds requirement for DED to grant a tax credit equal to 100% of the total "capital costs" of a "qualifying small project" in a La. "port or port and harbor" to be taken up to 25% per tax year beginning with the second anniversary of the date DED certifies a projects capital costs and limits to \$40 million the tax credits that may be certified in any one year.

Present law requires execution of a cooperative endeavor agreement between the investing company proposing a "qualifying project" and the public port in whose geographic jurisdiction the qualifying project is to be located indicating cooperation and support among all the parties.

Proposed law does not require execution of a cooperative endeavor agreement for a "qualifying small project".

Present law provides for application of the tax credit to entities not taxed as corporations on the returns of partners or members.

Proposed law retains present law and adds that application of the tax credit may be made in any manner in which the partners or members may agree in writing.

Present law provides for the certification and administration of the tax credit and requires DED to submit its initial certification of a project to the investing company and to the secretary of Dept. of Revenue. Further requires the Dept. of Transportation and Development to inspect the construction site of the qualifying project to verify that capital cost expenditures have been expended by the investing company.

Proposed law provides that certification and administration of the tax credit also applies to a "small qualifying project".

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

(Amends R.S. 47:6036(B)(2)(intro para) and (B)(2)(a), (c), and (d), (12), (13), and (14), (C)(1)(a)(intro para) and (a)(i), (b), and (2), and (4)(c)(intro para), and (D)(2)(c) and (d); adds R.S. 47:6036(B)(2)(15))