

2021 Regular Session

HOUSE BILL NO. 533

BY REPRESENTATIVE WRIGHT

TAX CREDITS: Establishes a competitive projects payroll tax credit for certain businesses impacted by certain public health emergencies

1 AN ACT

2 To enact R.S. 51:3122, relative to the payroll incentive program; to establish a payroll
3 income tax credit for certain businesses impacted by certain public health
4 emergencies; to provide for the amount of the credit; to provide for definitions; to
5 provide for eligibility; to provide for requirements and limitations; to provide for an
6 effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 51:3122 is hereby enacted to read as follows:

9 §3122. Payroll Tax Credit Incentive Program for COVID-19-Impacted Businesses

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

12 (1) "COVID-19-impacted business" means a for-profit corporation, a limited
13 liability company, a partnership, or a sole proprietorship that satisfies all of the
14 following criteria:

15 (a) The business is registered to do business in the state of Louisiana.

16 (b) The business is assigned a North American Industry Classification Code
17 of 44, 45, or 72.

18 (c) The business had a physical and active operation in Louisiana on March
19 13, 2020.

20 (d) The business is in good standing with the secretary of state, if applicable.

1 (e) The business filed all applicable Louisiana state tax returns for tax year
2 2018 or 2019, or, for an eligible business formed on or after January 1, 2020, intends
3 to file Louisiana taxes for tax year 2020.

4 (f) The business had no more than fifty full-time equivalent employees as of
5 March 1, 2020.

6 (g) The business is not a subsidiary of a business with more than fifty
7 full-time equivalent employees, is not part of a larger business enterprise with more
8 than fifty full-time equivalent employees, and is not owned by a business with more
9 than fifty full-time equivalent employees.

10 (h) The business filed an initial application with the department to be
11 recognized as a COVID-19 impacted business on or before December 31, 2021, and
12 included a hiring start date. Initial application for a COVID-19-impacted business
13 may include a hiring start date that precedes the initial application filing date, but the
14 hiring start date shall not be before May 15, 2020, nor shall it be after December 31,
15 2021.

16 (2) "Department" means the Department of Economic Development.

17 (3) "New job" means employment with a COVID-19-impacted business
18 where the employee satisfies all of the following criteria:

19 (a) The employee was employed by the COVID-19-impacted business at its
20 place of operation in this state.

21 (b) The employee was a Louisiana resident.

22 (c) The employee's hire or rehire date was on or after May 15, 2020.

23 (d) The employee was paid, as a base wage, at least the federal minimum
24 wage excluding tips, bonuses, and commissions.

25 B.(1) There is hereby established an income tax credit for any eligible
26 COVID-19-impacted business that meets the requirements of this Section. The
27 amount of the tax credit shall be six percent of the wages for each new job. In order
28 to qualify for the tax credit, the COVID-19-impacted business must have created a
29 minimum of five new jobs between May 15, 2020, and December 31, 2021, and must

1 have created a minimum new annual payroll from new jobs of at least forty thousand
2 dollars before December 31, 2021. In order to determine the number of new jobs
3 eligible for the tax credit established pursuant to the provisions of this Section, the
4 applicant's employment baseline shall be the total number of active full-time and
5 part-time employees at the COVID-19-impacted business's place of operation that
6 were Louisiana residents on May 14, 2020.

7 (2)(a) Initial tax credit amounts shall be based on new jobs and annual
8 payroll created between May 15, 2020 and December 31, 2021.

9 (b) A business shall be eligible for a tax credit for each year that it maintains
10 or exceeds the minimum required new jobs and annual payroll as provided in
11 Paragraph (1) of this Subsection.

12 (3)(a) Payroll eligible for this tax credit is limited to \$500,000 per COVID-
13 19 impacted business per calendar year.

14 (b) No COVID-19 impacted business shall receive a tax credit pursuant to
15 this Section for more than three years.

16 (c) No tax credits shall be paid pursuant to this program for new jobs or
17 payroll created after December 31, 2023.

18 C.(1)(a) The tax credits authorized in this Section shall be paid annually after
19 the business has filed its application for annual tax credit with the department and
20 the department has determined that the business is eligible for the tax credit for that
21 year.

22 (b) A business shall file its annual tax credit application at the end of the
23 business's fiscal year or the date that the hiring and payroll thresholds provided in
24 Subsection B of this Section are met, whichever is earlier.

25 (2) The application shall contain a sworn statement by a duly authorized
26 officer of the business concerning the following with respect to the business's fiscal
27 year:

28 (a) That the business remained a qualified COVID-19 impacted business
29 under the provisions of this Section.

1 (b) The total number of and the gross payroll of the new jobs created.

2 (c) That the new jobs were not jobs retained following the acquisition of all
3 or part of an in-state business.

4 (d) That the employees holding the new jobs were paid at least the applicable
5 federal minimum wage and were Louisiana residents.

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

10 (4) Upon approval of the application for a tax credit, the department shall
11 send a certification letter to the Department of Revenue for payment of the tax credit.
12 The letter shall provide the name of the business and the amount of the tax credit.
13 The Department of Revenue shall verify the tax return filing information required
14 by Subparagraph (A)(2)(c) of this Section and may require the business to submit
15 any additional information as may be necessary to effect the payment of the tax
16 credit. Payment shall be made from the current collections of the taxes imposed by
17 Title 47 of the Louisiana Revised Statutes of 1950. If the amount of the tax credit
18 allowed pursuant to the provisions of this Section exceeds the amount of the
19 taxpayer's tax liability for the same tax period, unused credit amounts may be carried
20 forward as a credit against subsequent tax liability for a period not to exceed five
21 years.

22 D.(1) If a business receives a tax credit pursuant to this Section and it is
23 subsequently determined that the business did not qualify for the tax credit, future
24 tax credits issued to the business pursuant to this Section shall be reduced by the
25 amount of the disallowed tax credits.

26 (2) If there are no future tax credits from which to deduct the amount of the
27 disallowed tax credits, the tax liability of the business for the taxable period in which
28 the determination was made shall be increased by the amount of the disallowed tax
29 credits.

1 (3) The secretary of the Department of Revenue may recover any tax credits
2 previously granted to a business that are later disallowed as authorized by R.S.
3 47:1561.2.

4 E. A business shall not receive any other nondiscretionary statutory incentive
5 administered by the department for any payroll expenditures for which the business
6 has received a tax credit pursuant to this Section.

7 F. The department, in consultation with the Department of Revenue, may
8 adopt and promulgate rules and regulations that are necessary to carry out the intent
9 and purposes of this Section. Rules promulgated pursuant to the provisions of this
10 Section shall be subject to oversight of the House Committee on Ways and Means
11 and Senate Committee on Revenue and Fiscal Affairs.

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 533 Original

2021 Regular Session

Wright

Abstract: Establishes an income tax credit for COVID-19-impacted businesses that meet certain eligibility requirements in the Competitive Projects Payroll Incentive Program and provides for the amount of the credit, maximum term of the contract, and other incentive requirements.

Present law establishes the Competitive Projects Payroll Incentive Program (program) for qualified businesses to receive a rebate of up to 15% of eligible new payroll and for either a sales and use tax rebate for capital expenditures for a facility designated in the contract or for a project facility expense rebate.

Present law authorizes businesses to participate in the program upon invitation by the secretary of the Dept. of Economic Development (DED) and approval by the Joint Legislative Committee on the Budget (JLCB). Further authorizes other business activities to be eligible to participate in the program as recommended by the secretary of DED and approved by JLCB.

Present law prohibits any new contracts from being approved on or after July 1, 2022, but contracts existing on that date may continue and may be renewed.

Proposed law establishes an income tax credit for any eligible COVID-19-impacted business (impacted business) assigned a North American Industry Classification Code of 44, 45, or 72 that meets certain criteria including having a physical and active operation in La. on March 13, 2020, having no more than 50 full-time employees as of March 1, 2020, filing all applicable state tax returns, and filing an initial application with DED to be recognized as an impacted business on or before Dec. 31, 2021. In order to qualify for the credit, the impacted business must have created a minimum of five new jobs between May 15, 2020, and Dec. 31, 2021, and must have created a minimum new annual payroll from new jobs of at least \$40,000 before Dec. 31, 2021.

Proposed law establishes the rate for the tax credit to be 6% of the wages for each new job created. In order to determine the number of new jobs eligible for the credit, the applicant's employment baseline shall be the total number of active full-time and part-time employees at the impacted business's place of operation that were La. residents on May 14, 2020.

Proposed law defines "new jobs" as employment with an impacted business where each employee was employed by the impacted business at its place of operation, the employee was a La. resident, the employee's hire or rehire date was on or after May 15, 2020, and the employee was paid, as a base wage, at least the federal minimum wage excluding tips, bonuses, and commissions.

Proposed law requires the initial tax credit amount to be based on new jobs and annual payroll created between May 15, 2020, and Dec. 31, 2021. Further provides that a business shall be eligible for a credit for each year that it maintains or exceeds the minimum required new jobs and annual payroll as provided in proposed law.

Proposed law limits eligible payroll to \$500,000 per impacted business per calendar year, limits impacted businesses from receiving the credit for more than three years, and prohibits a credit from being paid for any new job or payroll created after Dec. 31, 2023.

Proposed law provides for the application, administration, payment, and recovery of the tax credit. Further provides that if the tax credit amount exceeds the taxpayer's tax liability for that same period, then unused credit amounts may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

Proposed law prohibits a business from receiving any other nondiscretionary statutory incentive administered by DED for any payroll expenditures for which the business has received a tax credit pursuant to proposed law.

Proposed law authorizes DED, in consultation with DOR, to adopt and promulgate rules and regulations as are necessary to implement proposed law. Rules promulgated shall be subject to oversight of the House Ways and Means and Senate Revenue and Fiscal Affairs Committees.

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

(Adds R.S. 51:3122)