2021 Regular Session

HOUSE BILL NO. 534

BY REPRESENTATIVE WRIGHT

TAX CREDITS: Establishes the Louisiana Re-shoring Incentive Program

AN ACT

To enact Chapter 55-A of Title 51 of the Louisiana Revised Statute of 1950, to be comprised of R.S. 51:3126, relative to the establishment of the Louisiana Re-shoring Incentive Program; to provide for the payment of income tax credits and state sales and use tax credits to certain eligible businesses; to provide for the procedures and requirements for the execution of certain contracts; to provide for definitions; to provide for the administration of the program; to prohibit the approval of certain contracts after a certain date; to authorize the promulgation of rules and regulations; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 55-A of Title 51 of the Louisiana Revised Statute of 1950, comprised of R.S. 51:3126, is hereby enacted to read as follows:

CHAPTER 55-A. LOUISIANA RE-SHORING INCENTIVE PROGRAM

§3126. Louisiana Re-shoring Incentive Program

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

(1) "Basic health benefits plan" means coverage for basic hospital care, coverage for physician care, and coverage for health care which is determined by the department to have a value of at least one dollar and twenty-five cents per hour and which is the same coverage as is provided to employees employed in a bona fide

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

executive, administrative, or professional capacity by the employers who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

(2) "Business" means an individual, firm, joint venture, association, corporation, estate, partnership, business trust, receiver, syndicate, or other legal business entity.

(3) "Department" means the Department of Economic Development.

(4) "New jobs" means permanent full-time direct new jobs based at the facilities designated in the contract and filled by residents of the state.

(5) "New payroll" means payment by the business to its employees for new jobs, exclusive of benefits, and defined as wages in R.S. 23:1472.

(6) "Program" means the Louisiana Re-Shoring Incentive Program.

(7) "Qualified business" means a business certified by the secretary as meeting the eligibility requirements of Subsection B of this Section and that executes a contract providing the terms and conditions for its participation.

(8) "Regional economic development organization" means One Acadiana, the South Louisiana Economic Council, the Baton Rouge Area Chamber, the Central Louisiana Economic Development Alliance, the Northeast Louisiana Economic Alliance, the North Louisiana Economic Partnership, Greater New Orleans, Inc., and the Southwest Louisiana Economic Development Alliance.

(9) "Re-shoring" means bringing jobs, services, production, research, or manufacturing to Louisiana from overseas with the aim of creating employment opportunities, boosting local economies, or balancing trade deficits.

(10) "Secretary" means the secretary of the department.

(11) "Significant positive economic benefit" means net positive tax revenue. This shall be determined by taking into account direct, indirect, and induced impacts based on a standard economic impact methodology utilized by the department, the value of the tax credit, and any other state tax and financial incentives that are used by the department to secure the project.

B. Eligibility requirements. (1) A business shall be eligible for participation in the program if either of the following requirements are met:

(a) The business is a new business that is locating in Louisiana and will be re-shoring its supply chain for the manufacture or production of its products in Louisiana.

(b) The business is an existing Louisiana business whose current production of goods is outside of this state or the United States and the business provides documentation that shows it is relocating the supply chain for the production of its products into Louisiana.

(2) An eligible business shall offer, or offer within ninety days of the effective date of qualifying for the incentive tax credits pursuant to the provisions of this Chapter, a basic health benefits plan to the individuals it employs as provided in Paragraph (A)(1) of this Section.

(3)(a) In addition to the eligibility requirements provided for in Paragraph (1) of this Subsection, businesses selected by regional economic development organizations in accordance with this Paragraph shall also be eligible to participate in the program.

(b) No later than December 20, 2021, each regional economic development organization may select up to two businesses from its economic development region for participation in the program. Each regional economic development organization shall base its selection of a business on whether the business will diversify the region's economy.

(c) Each business selected by a regional economic development authority shall also be approved by the secretary.

C. Applications and contract approval and administration. (1) A business may apply for a contract by submitting to the department certified statements and substantiating documents as the department may require.

(2) The secretary may certify eligibility of the business on terms and conditions specified by the secretary in a proposed contract, if the secretary determines all of the following:

(a) The business meets the eligibility requirements provided for in Subsection B of this Section.

(b) Securing the project will result in a significant positive economic benefit to the state.

(3)(a)(i) The secretary shall execute the contract with the business and provide a copy of the executed contract to the Department of Revenue prior to the payment of any benefits pursuant to the contract.

(ii) No new contract shall be approved on or after December 31, 2024, but contracts existing on that date may continue and may be renewed.

(b) The contract shall include the following:

(i) The amount of the tax credit, which shall be a percentage of new payroll, up to a maximum of ten percent.

(ii) The maximum amount of new payroll eligible for the tax credit.

(iii) The number of new jobs and amount of new payroll required to be created and maintained and any other performance obligations required to be met in order to remain qualified for participation in the program.

(iv) Designation of the facility or facilities eligible for participation in the program.

(v) Monitoring of performance and consequences for failure to perform and other contract violations.

(vi) The initial term of the contract, which may be up to five years, and any renewal term available at the discretion of the secretary, which may be up to an additional five years.

(4)(a) In addition, a qualified business shall be entitled to either a state sales and use tax credit for capital expenditures for the facility or facilities designated in the contract as provided for in Subparagraph (b) of this Paragraph, or an income tax credit for project facility expenses as provided for in Subparagraph (c) of this Paragraph.

(b) Any qualified business which receives a contract pursuant to this Chapter shall also be entitled to a credit of sales and use tax imposed by the state on purchases of materials used in the construction of a building, or any addition or improvement thereon, for housing any business or machinery and equipment used in that business.

(c)(i) In lieu of a state sales and use tax credit, a qualified business shall be entitled to an income tax credit for project facility expenses equal to one and two-tenths percent of the amount of qualified capital expenditures for the facility or facilities designated in the contract.

(ii) For purposes of this Subparagraph, the term "qualified capital expenditures" means amounts classified as capital expenditures for federal income tax purposes related to the project plus exclusions from capitalization provided for in 26 U.S.C. 263(a)(1), minus the capitalized cost of land, capitalized leases of land, capitalized interest, capitalized costs of manufacturing machinery and equipment to the extent capitalized manufacturing machinery and equipment costs are excluded from sales and use tax pursuant to R.S. 47:301(3), and the capitalized cost for the purchase of an existing building. When a qualified business purchases an existing building and capital expenditures are used to rehabilitate the building, only the costs of the rehabilitation shall be considered qualified capital expenditures. Additionally, a qualified business shall be allowed to increase its qualified capital expenditures to the extent the qualified business's capitalized basis is properly reduced by claiming a federal credit.

(iii) A qualified business earns the project facility expense tax credit in the qualified business's fiscal year in which the project is placed in service, but the qualified business may not be issued the project facility expense tax credit until the department signs a project completion report or such other time as provided for by rule by the department.

D. Annual certification of eligibility. (1) The qualified business shall file requests for approval of tax credits with the department. The request shall include documentation signed by a corporate officer of the qualified business certifying its continued eligibility for the program as provided in Subsection B of this Section, its actual new payroll, and the performance of any other contractual obligations for the subject year. The qualified business may be subject to a limited audit by the department, at the expense of the qualified business, to verify its eligibility and performance. The approved contract between the qualified business and the department shall authorize continued tax credits as long as the business remains eligible for the program and complies with the terms and performance obligations of the contract. If a qualified business fails to maintain the eligibility requirements for participation in the program or fails to meet all performance obligations of the contract, the secretary may suspend or terminate its participation in the program.

(2) After verification of continued eligibility and performance, the department shall send a tax credit certification letter to the Department of Revenue stating the amount of new payroll for the subject year, the amount of the tax credit to be issued, and the entity to which the tax credit shall be issued. The Department of Revenue may require the business to submit additional information as may be necessary to properly issue the tax credit. Payment of tax credits shall be made from the current collections of the taxes imposed pursuant to Title 47 of the Louisiana Revised Statutes of 1950. If the amount of the tax credit allowed pursuant to the provisions of this Section exceeds the amount of the taxpayer's tax liability for the same tax period, then unused credit amounts may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

E. Incentive limitations. A taxpayer shall not receive any other incentive administered by the department for any expenditures or jobs for which the taxpayer has received a tax credit pursuant to this Section.

F. Rules. The department may promulgate rules in accordance with the Administrative Procedure Act, subject to oversight by the House Committee on

Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, as are necessary to implement the provisions of this Section.

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

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 534 Original 2021 Regular Session Wright

Abstract: Establishes an income tax credit of up to 10% of new payroll for qualified businesses and *either* a state sales and use tax credit for capital expenditures for facilities *or* a project facility expense tax credit for businesses that re-shore jobs, services, production, research, or manufacturing to La. from overseas.

Proposed law authorizes an incentive program for qualified businesses that re-shore jobs, services, production, research, or manufacturing to La. from overseas with the aim of creating employment opportunities, boosting local economies, or balancing trade deficits. The incentives include an income tax credit of up to 10% of new payroll for qualified businesses *and* either a state sales and use tax credit for capital expenditures for facilities *or* a project facility expense tax credit.

Proposed law provides that the state sales and use tax credit shall be on purchases of materials used in the construction of a building, or any addition or improvement to the building, for housing a legitimate business enterprise or machinery and equipment used in that enterprise.

Proposed law provides that the project facility expense tax credit shall be equal to 1.2% of the amount of qualified capital expenditures for the facility designated in the contract. Proposed law defines "qualified capital expenditures" as amounts classified as capital expenditures for federal income tax purposes related to the project plus exclusions from capitalization provided for in federal tax law, minus certain capitalized costs and the cost for the purchase of an existing building. A qualified business earns the project facility expense tax credit in the fiscal year in which the project is placed in service but may not be issued the tax credit until the Dept. of Economic Development (DED) signs a project completion report.

Proposed law defines a qualified business as one which meets either of the following eligibility requirements:

(1) A new business that is locating in La. that will be re-shoring its supply chain for the manufacture or production of its products in La.

(2) An existing La. business whose current production of goods is outside of this state or the U.S. and the business provides documentation that it is relocating the supply chain for the production of its products into La.

Proposed law authorizes businesses selected by regional economic development organizations to also participate in the incentive program if approved by the secretary of DED. No later than Dec. 20, 2021, each regional economic development organization may select up to two businesses from its region to participate in the program. Each regional economic development organization is required to base its selection of a business on whether the sector will diversify the region's economy.

Proposed law requires a qualified business to offer, or offer within 90 days of the date of qualifying for the incentive tax credits in proposed law, a basic health benefits plan to individuals it employs that includes coverage for basic hospital care, physician care, and health care and is determined by DED to have a value of at least $1.25 per hour and which is the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employers who are exempt from the minimum wage and maximum hour requirements of federal law.

Proposed law establishes an application process for participation in the incentive program as well as a process for businesses to apply for an incentive contract with DED. Authorizes the secretary of DED to certify that a business meets the eligibility requirements provided for in proposed law and that securing the project will result in a significant positive economic benefit to the state.

Proposed law requires the contract for the payment of a payroll tax credit to include the following:

(1) The amount of the tax credit, which is a percentage of new payroll, up to a maximum of 10%.

(2) The maximum amount of new payroll eligible for the credit.

(3) The number of new jobs and amount of new payroll required to be created and maintained and any other performance obligations required to be met in order to remain qualified for participation in the program.

(4) Designation of the facility or facilities eligible for participation in the program.

(5) Monitoring of performance and consequences for failure to perform and other contract violations.

(6) An initial contract term of up to five years, and any renewal term available at the discretion of the secretary, which may be up to an additional five years.

Proposed law requires a business to annually certify its eligibility and to file requests for approval of tax credits with DED. After verification of continued eligibility and performance, DED shall send a tax credit certification letter to the Dept. of Revenue, stating the amount of actual new payroll for the subject year, the amount of credit to be issued, and the entity to which the tax credit shall be issued. Tax credits shall be paid from the current collections of the taxes imposed pursuant to present law. Further provides that if the amount of the tax credit exceeds the amount of the taxpayer's tax liability for the same tax 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 taxpayer who received the incentive provided for in proposed law from receiving any other incentive administered by DED for any expenditures or jobs for which the taxpayer has received a tax credit pursuant to proposed law.

Proposed law authorizes the department to promulgate rules in accordance with present law subject to oversight by the Ways and Means and Revenue and Fiscal Affairs committees to implement the provisions of proposed law.

Proposed law prohibits any new contract from being approved on or after Dec. 31, 2024, but contracts existing on that date may continue and may be renewed.

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

(Adds R.S. 51:3126)