

Regular Session, 2013

SENATE BILL NO. 122

BY SENATORS CHABERT, JOHNS, LONG, MURRAY, TARVER AND WHITE

TAX/TAXATION. Makes changes to both the Investor Tax Credit and the Import-Export Cargo Credit of the Ports of Louisiana Tax Credit Program and provides a new termination date for the credit. (7/1/13)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 47:6036(B)(2), R.S. 47:6036(B)(8)
3 and (13), (C)(1)(b) and (c), (G), and (I)(2)(a), relative to the Ports of Louisiana tax
4 credit; to provide the term of the credit; to provide for the activities and projects to
5 which the credit applies; to provide with respect to certain determinations and
6 certifications; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. The introductory paragraph of R.S. 47:6036(B)(2), R.S. 47:6036(B)(8)
9 and (13), (C)(1)(b) and (c), (G), and (I)(2)(a) are hereby amended and reenacted to read as
10 follows:

11 §6036. Ports of Louisiana tax credits

12 * * *

13 B. Definitions.

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

16 * * *

17 (2) "Capital costs" shall mean and include all costs and expenses ~~incurred~~

1 **paid after July 1, 2013**, by one or more investing companies in connection with the
2 acquisition, construction, installation, and equipping of a qualifying project during
3 the period commencing with the date on which the acquisition, construction,
4 installation, and equipping commences and ending on the date on which the
5 qualifying project is placed in service. Capital costs shall include, but not be limited
6 to the following:

7 * * *

8 (8) "Port or port and harbor activity" ~~shall mean and include~~ **means trade or**
9 **business activity conducted on premises in which a duly recognized port**
10 **authority has an ownership, leasehold, or other possessory interest and such**
11 **premises are used as part of the operations of a duly recognized port authority,**
12 **which is a** any trade or business described in the ~~1997~~ **2012** North American
13 Industry Classification System (NAICS) within Subsector 493 (Warehousing and
14 Storage), Industry Number 488310 (Port and Harbor Operations), or Industry
15 Number 488320 (Marine Cargo Handling), **Industry Number 336611 (Ship**
16 **Building and Repair), Industry Number 213112 (Support Activities for Oil and**
17 **Gas Operations)**, ~~when the trade or business is conducted on premises in which a~~
18 ~~duly recognized port authority has an ownership, leasehold, or other possessory~~
19 ~~interest and such premises are used as part of the operations of a duly recognized~~
20 ~~port authority~~, including the above trades and businesses as they may hereafter be
21 reclassified in any subsequent publication of the NAICS or similar classification
22 system developed in conjunction with the United States Department of Commerce
23 and Office of Management and Budget.

24 * * *

25 (13) "Qualifying project" shall mean and include a project to be sponsored
26 or undertaken by a public port and one or more investing companies that ~~have~~ **has**
27 a capital cost of not less than ~~five~~ **one and one-half** million dollars and at which the
28 predominant trade or business activity conducted will constitute ~~industrial,~~
29 warehousing; or port and harbor operations and cargo handling, including any port

1 or port and harbor activity. **However, "qualifying project" shall not mean bulk**
2 **liquid or gas facilities.**

3 * * *

4 C. Investor tax credit.

5 (1) * * *

6 (b) The Investor Tax Credit provided for in this Subsection shall be ~~issued~~
7 **granted** by the Department of Economic Development for a qualifying project if the
8 commissioner of administration, after approval of the Joint Legislative Committee
9 on the Budget, and the state bond commission certifies to the secretary of the
10 department that ~~there will be sufficient revenue received by the state to offset the~~
11 ~~effect to the state of the tax credits provided for the capital costs of the project,~~
12 ~~whether from increased port or port and harbor activity because of the grant of the~~
13 ~~tax credit or otherwise~~ **securing the project will result in a significant positive**
14 **economic benefit to the state. "Significant positive economic benefit" means net**
15 **positive tax revenue that shall be determined by taking into account direct,**
16 **indirect, and induced impacts of the project based on a standard economic**
17 **impact methodology utilized by the commissioner, and the value of the credit,**
18 **and any other state tax and financial incentives that are used by the department**
19 **to secure the project.** If the commissioner with the approval of the committee so
20 certifies, then the Department of Economic Development may grant a tax credit
21 equal to the total capital costs of a **such** qualifying project to be taken at five percent
22 per tax year; **or shall grant such other amount of tax credit to be taken at such**
23 **other percentage which is warranted by the significant positive economic benefit**
24 **determined by the commissioner, but no tax credit granted for a qualifying**
25 **project shall exceed two million five hundred thousand dollars per tax year.**
26 However, the total amount of tax credits granted on a qualifying project shall not
27 exceed the total cost of the project. **In addition, the Investor Tax Credits granted**
28 **by the department to any recipient pursuant to this Section shall be limited to**
29 **an amount which shall not result in a reduction of tax liability by all recipients**

1 **of such credits to exceed six million two hundred fifty thousand dollars in any**
2 **fiscal year.**

3 (c) ~~The tax credit~~ **Any tax credits granted pursuant to Subparagraph (b)**
4 **of this Paragraph** shall be earned by investors at the time expenditures are made by
5 an investing company; however, **such** tax credits shall not be applied against a tax
6 liability **before July 1, 2014, and not** until the project is approved by the department
7 after certification from the commissioner with the approval of the committee and the
8 state bond commission and capital cost expenditures are certified by the department.
9 The Department of Economic Development shall certify capital cost expenditures no
10 less than twice during the duration of the qualifying project unless the investing
11 company agrees, in writing, to reimburse the Department of Economic Development
12 for the costs of any additional certifications.

13 * * *

14 G. Termination of Investor **and Import-Export Cargo** Tax Credits.

15 The provisions of Subsection C **and I** of this Section shall be effective until
16 ~~January 1, 2017~~ **January 1, 2020**, and no investor tax credit **or import-export cargo**
17 **credit** pursuant to the provisions of this Section shall be granted after such date.

18 * * *

19 I. ~~Import-Export~~ Cargo Credit.

20 * * *

21 (2)(a)(i) ~~For taxable years beginning on and after January 1, 2009,~~ **There**
22 shall be allowed a credit against the individual income, corporation income, and
23 corporation franchise tax liability of a taxpayer who has received certification
24 pursuant to the provisions of Paragraph (1) of this Subsection; **provided that the**
25 **credit shall be allowed only against the tax liability of the international business**
26 **entity which receives the certification.** The amount of the credit shall be equal to
27 the product of multiplying five dollars by the taxpayer's number of tons of qualified
28 cargo for the taxable year ~~but only for the total amount of the allocation provided to~~
29 ~~the taxpayer by the secretary of the Department of Economic Development for such~~

1 ~~taxable year~~ which exceeds the pre-contract tonnage or the product of
2 multiplying the number of dollars by the taxpayer's number of tons of qualified
3 cargo for the taxable year or portion of a taxable year which exceeds the pre-
4 contract tonnage which is warranted by the significant positive economic benefit
5 determined by the commissioner pursuant to Item (ii) of this Subparagraph,
6 whichever is less. For purposes of this Item, "pre-contract tonnage" means the
7 number of tons of cargo which meets the definition of qualified cargo for
8 purposes of this credit, and which was owned by the international business
9 entity receiving the credit, were imported or exported to or from a
10 manufacturing, fabrication, assembly, distribution, processing, or warehouse
11 facility located in Louisiana, and which were so moved by way of an oceangoing
12 vessel berthed at public port facilities in Louisiana during the twelve months
13 immediately preceding the effective date of the certification of the credit.
14 However, each tax credit granted to a taxpayer shall be subject to the same limit
15 as is provided for a qualifying project pursuant to Subparagraph (C)(1)(b) of
16 this Section. In addition, the Import-Export Cargo Credits granted by the
17 department to any recipient pursuant to this Section shall be limited to an
18 amount which shall not result in a reduction of tax liability by all recipients of
19 such credits to exceed six million two hundred fifty thousand dollars in any
20 fiscal year.

21 (ii) The tax credit provided for in this Subsection shall ~~only~~ be allowed for
22 ~~all or a portion of a fiscal year~~ if the commissioner of administration certifies to the
23 secretary of the Department of Economic Development that ~~there will be sufficient~~
24 ~~revenue received by the state to offset the effect to the state of the tax credits~~
25 provided for in this Subsection whether from the increased utilization of public port
26 facilities and other activity in Louisiana associated with the import or export of
27 the international business entities qualified cargo will result in a significant
28 positive economic benefit to the state. "Significant positive economic benefit"
29 means net positive tax revenue that shall be determined by taking into account

1 **direct, indirect, and induced impacts of the port and state activity based on a**
 2 **standard economic impact methodology utilized by the commissioner, and the**
 3 **value of the credit, and any other state tax and financial incentives that are used**
 4 **by the department to secure the port and state activity** because of the tax credit
 5 ~~or otherwise~~, and such certification is approved by the Joint Legislative Committee
 6 on the Budget, **which approval shall not be granted earlier than July 1, 2014**, and
 7 the state bond commission.

* * *

9 Section 2. This Act shall become effective on July 1, 2013; if vetoed by the governor
 10 and subsequently approved by the legislature, this Act shall become effective on July 1,
 11 2013, or on the day following such approval by the legislature, whichever is later.

The original instrument was prepared by Riley Boudreaux. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by J. W. Wiley.

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.

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

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 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-contract 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-contract tonnage and is warranted by the "significant positive economic benefit" determined by the commissioner, if it is less than \$5.

Proposed law defines "pre-contract 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 twelve months immediately preceding the effective date of the certification of the credit.

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".