2017 Regular Session

HOUSE BILL NO. 645

BY REPRESENTATIVE GARY CARTER

TAX CREDITS: Establishes a tax credit pilot program for certain Louisiana-based manufacturing industries

AN ACT

To enact R.S. 47:6040, relative to tax credits; to establish a tax credit pilot program for certain manufacturing industries; to provide for the amount of the credit; to provide for definitions; to establish eligibility requirements for tax credit applicants; to provide for application requirements; to provide for certification requirements; to provide for the administration of the credit; to authorize the promulgation of rules and regulations; to require the submission of certain reports; to authorize the recapture and recovery of tax credits under certain circumstances; to provide for implementation of the tax credit pilot program; to provide for certain limitations and requirements; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6040 is hereby enacted to read as follows:

<u>§6040. Louisiana-based manufacturing tax credit; pilot program; applications; limitations</u>

<u>A. Purpose. The primary purpose of this Section is to encourage private investment in and provide incentives for businesses to further manufacture products and component parts of products into marketable products in Louisiana rather than shipping their products for further processing to other states and countries using Louisiana's port, rail, trucking, and other multimodal methods. It is in the best interests of this state to promote the development of businesses which manufacture</u>

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

products such as steel, rubber, aluminum, forestry products, coffee, and other food products into marketable products in this state prior to being shipped into intrastate and interstate commerce. Because public funding sources for business investment has not kept pace with the need to expand our economy, it is determined that private investment and public-private partnerships should be encouraged as a means to assist the state in financing investment in manufacturing establishments in our state and in our citizens. The development of unique business investment and opportunities are essential to Louisiana's economic health and the ability of business and industry associated with manufacturing establishments to compete cost effectively on a regional, national, and global scale.

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

(1) "Department" shall mean the Department of Economic Development.

(2) "Project" shall mean and include any land, building, or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in existence, located or to be located in this state to produce manufacturing establishments which engage in the business of working raw materials into wares and marketable products. "Project" shall also include machinery, equipment, materials, products, or commodities owned by a business entity which are imported to or from a manufacturing establishment, or fabrication, assembly, distribution, processing, or warehouse facility located in Louisiana and which are so moved by way of an oceangoing vessel, rail, truck, or other multimodal method during the taxable year.

(3) "Qualifying project" shall mean and include a project to be undertaken by a manufacturing establishment or a business that has a minimum capital cost of not less than one and one-half million dollars and at which the predominant trade or business activity conducted will constitute manufacturing products or assembling raw materials into a marketable product in this state. However, "qualifying project" shall not mean or include manufacturing of chemicals or bulk liquid or gas facilities.

C. Tax credit.

(1) There is hereby authorized an income and corporate franchise tax credit for expenses associated with construction of a qualifying project in this state. The maximum amount of the credit shall be equal to fifty percent of the costs of the qualifying project, not to exceed one million dollars per project. The total aggregate amount of credits which may be certified and granted by the department in accordance with the provisions of this Section shall not exceed ten million dollars over the five-year life of the pilot program.

(2) Tax credits certified and granted by the department may be paid in a lump sum or may be structured over time depending on the applicant and the nature of the business.

D. Certification and administration.

(1) The credit provided for in this Section shall be granted by the department for a qualifying project if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget, certifies 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 secretary of the department, 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 may grant a tax credit equal to fifty percent of the costs of the qualifying project, or may grant a credit in a lesser amount which is warranted by the significant positive economic benefit determined by the commissioner; however, no tax credit granted for a qualifying project shall exceed one million dollars. The total amount of tax credits granted on a qualifying project shall not exceed the total cost of the project.

(2) Tax credits granted pursuant to this Section shall be earned by the applicant at the time expenditures are made by an applicant; however, tax credits

shall not be applied against an applicant's tax liability before January 1, 2018, and not until project cost expenditures are certified by the department. The department shall certify project cost expenditures no less than twice during the duration of the qualifying project unless the applicant agrees, in writing, to reimburse the department for the costs of any additional certifications.

(3) If the tax credit allowed pursuant to this Section exceeds the amount of taxes due for such tax period, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

(4) The secretary of the department shall determine through the promulgation of rules and regulations in accordance with the Administrative Procedure Act, which projects and expenditures qualify for tax credits. The department shall take the following factors into consideration when determining which projects qualify:

(a) The economic impact of the qualifying project on similar or existing manufacturing establishments or businesses located within one hundred miles of the qualifying project.

(b) The impact of the qualifying project on the immediate and long-term objectives of the tax credit provided for the investment.

(c) The impact of the qualifying project on the employment of Louisiana residents.

(d) The impact of the qualifying project on the overall economy of the state.

(5)(a) Application. An applicant for the tax credit authorized pursuant to the provisions of this Section shall submit an application for initial certification of the qualifying project to the department that includes the following information:

(i) A preliminary budget including the actual or if not known, the estimated capital costs of the qualifying project and the qualifying project's estimated Louisiana payroll.

(ii) A detailed description of the qualifying project.

(iii) A statement that the proposed project will qualify as a qualifying project.

(iv) Estimated start and completion dates. The estimated start date shall include the estimated date on which the acquisition, construction, installation, or equipping of the qualifying project was commenced or is expected to commence.

(v) The name of each company, or the name or names of its shareholders, partners, members, owners, or beneficiaries to become entitled to the tax credit.

(vi) Any other information required by the department.

(b) If the application is incomplete, additional information may be requested prior to further action by the department.

(c) Prior to final certification of a qualifying project, the applicant shall submit to the department a cost report of project expenditures which the department may require to be prepared by an independent certified public accountant. The department shall review the expenditures and shall issue a tax credit certification letter to the applicant and to the Department of Revenue indicating the amount of tax credits certified for the qualifying project and the amount of the tax credit to be taken each tax year.

(6) The secretary of the Department of Economic Development, in consultation with the Department of Revenue, shall promulgate rules and regulations in accordance with the Administrative Procedure Act as are necessary to carry out the intent and purposes of this Section. All rules promulgated to implement the provisions of this Section shall be subject to oversight and approval by the House Ways and Means Committee and the Senate Committee on Revenue and Fiscal Affairs.

(7) Any taxpayer applying for the credit shall be required to reimburse the department for any audit required in relation to granting the credit.

E. Recapture of credits. If the department finds that funds for which an applicant received credits according to the provisions of this Section are not invested in and expended with respect to capital costs of a qualifying investment, the applicant's state income tax for the taxable period shall be increased by an amount necessary for the recapture of credit provided by Subsection (C) of this Section.

F. Recovery of credits by the Department of Revenue.

(1) Tax credits previously granted to a taxpayer, but later disallowed, pursuant to the provisions of Subsection E of this Section, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within the later of any of the following:

(a) Two years from December thirty-first in the year in which the tax credit was paid.

(b) Three years from December thirty-first of the year in which the taxes for the filing period were due.

(c) Three years from December thirty-first of the year in which the final tax credit certification letter was issued.

(d) The time period for which prescription has been extended, as provided by R.S. 47:1580.

(2) The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

(3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or to collect under any other provision of law.

G. Implementation of tax credits.

(1) No tax credit authorized pursuant to the provisions of this Section shall be certified or granted and become eligible to be applied against tax liability until January 1, 2018.

(2) No tax credit shall be issued pursuant to the provisions of this Section and no initial certification shall be granted by the secretary of the department on or after January 1, 2023.

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 645 Engrossed 2017 Regular Session Gary Carter

Abstract: Authorizes an income and corporate franchise tax credit pilot program for expenses associated with the construction of manufacturing establishments that will assemble raw materials into marketable products in this state.

Proposed law authorizes an income and corporate franchise tax credit for expenses associated with construction of a qualifying project in this state. The maximum amount of the credit shall be equal to 50% of the costs of the qualifying project, not to exceed $1M per project. The total aggregate amount of credits which may be certified and granted by the Dept. of Economic Development (DED) shall not exceed $10M over the five-year life of the pilot program. Proposed law authorizes tax credits certified and granted by DED to be paid in a lump sum or may be structured over time depending on the applicant and the nature of the business.

Proposed law provides that tax credits shall be earned at the time expenditures are made by an applicant; however, tax credits shall not be applied against an applicant's tax liability before Jan. 1, 2018, and not until project cost expenditures are certified by the department.

Proposed law defines a "qualifying project" as a project undertaken by a manufacturing establishment or other business that has a minimum capital cost of not less than $1.5M and at which the predominant trade or business activity will constitute manufacturing products or assembling raw materials into a marketable product in this state. Proposed law excludes manufacturing of chemicals or bulk liquid or gas facilities from the definition of a "qualifying project".

Proposed law requires the credit to be granted by DED for a qualifying project if the commissioner of administration, after approval of the Joint Legislative Committee on the Budget, certifies that securing the project will result in a significant positive economic benefit to the state. Further defines "significant positive economic benefit" as net positive tax revenue that is determined by taking into account direct, indirect, and induced impacts of the project based on a standard economic impact methodology utilized by DED, and the value of the credit, and any other state tax and financial incentives used by DED to secure the project.

Proposed law authorizes DED to grant a credit in a lesser amount if the lesser amount is warranted by the significant positive economic benefit determined by the commissioner. The total amount of credits granted on a project shall not exceed the total cost of the project.

Proposed law authorizes the carry forward of tax credit amounts against subsequent tax liability if the amount of the credit exceeds the applicant's tax liability for a period not to exceed five years.

Proposed law authorizes the promulgation of rules and regulations in accordance with the APA, to determine which projects and expenditures qualify for tax credits. Proposed law requires factors such as the economic impact of the qualifying project on similar or existing manufacturing establishments or businesses located within 100 miles of the project, the impact of the project on the immediate and long-term objectives of the tax credit provided for the investment, the impact of the project on the employment of La. residents, and the impact of the project on the overall economy of the state to be considered when determining which projects qualify for the tax credit.

Proposed law provides for an application process for initial certification of the qualifying project which includes submission of information such as a preliminary budget, the estimated capital costs of the project, the project's estimated La. payroll, and estimated start and completion dates.

Proposed law requires, prior to final certification of a qualifying project, an applicant to submit a cost report of project expenditures which DED may require to be prepared by an independent certified public accountant, prior to issuance of final certification. Further requires DED to review the expenditures and to issue a tax certification letter to the applicant and to DOR indicating the amount of tax credits certified for the qualifying project and the amount of tax credits that may be taken each tax year.

Proposed law requires a taxpayer applying for the credit to reimburse DED for any audit required in relation to granting the credit.

Proposed law provides for the recapture and recovery of credits by the Dept. of Revenue through any collection remedy authorized by present law and sets forth specific prescriptive periods in which the proceedings to recover tax credits must be initiated. Further authorizes the assessment and collection of interest on recovered credits.

Proposed law prohibits tax credits from being certified or granted or to be applied against tax liability until Jan. 1, 2018. Further prohibits tax credits from being issued or initial certifications from being granted by DED on or after Jan. 1, 2023.

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

(Adds R.S. 47:6040)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Delete requirement that DED submit its initial certification of a qualifying project to DOR.

2. Add requirement that DED *also* issue its tax credit certification letter to DOR which indicates the amount of tax credits certified for the qualifying project and the amount of credits that may be taken each year.

3. Add specific prescriptive periods for DOR to recover disallowed credits from a taxpayer.