

Regular Session, 2009

SENATE BILL NO. 252

BY SENATORS WALSWORTH AND NEVERS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ECONOMIC DEVELOPMENT. Establishes the Retention and Modernization Act of 2009.
(8/15/09)

1 AN ACT
2 To enact Chapter 39-C of Title 51 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 51:2399.1 through 2399.6, relative to economic development; to
4 provide definitions for words and terms; to provide for a modernization tax credit;
5 to provide the process for approval of the modernization tax credit; to provide for the
6 promulgation of rules and regulations; to provide for penalties for false or fraudulent
7 applications; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 39-C of Title 51 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 51:2399.1 through 2399.6 are hereby enacted to read as follows:

11 **CHAPTER 39-C. RETENTION AND MODERNIZATION ACT**

12 **§2399.1. Intent**

13 **A. It is the intent of the Legislature of Louisiana that the modernization**
14 **benefits provided for in this Chapter should be used primarily as an inducement**
15 **for businesses to remain in the state and not relocate outside the state and to**
16 **modernize their existing operations in Louisiana.**

17 **B. Nothing herein shall be construed to constitute a guarantee or**

1 assumption by the state of any debt of any individual, company, corporation, or
2 association or to authorize the credit of the state to be given, pledged, or loaned
3 to any individual, company, corporation, or association.

4 C. No agency shall incur monetary or personnel costs paid with federal
5 funds for compliance with the provisions of this Chapter when such use of the
6 funds is prohibited by federal law.

7 §2399.2. Definitions

8 The following words or terms as used in this Chapter shall have the
9 following meaning, unless a different meaning appears from the context:

10 (1)(a) "Employer" means a legal person who is engaged in a lawful
11 enterprise not excluded by this Chapter that executes a contract with the
12 department pursuant to the provisions of this Chapter and meets the following
13 elements or elements substantially equivalent thereto:

14 (b) To qualify for a contract pursuant to this Chapter, employers must
15 be a manufacturer, as defined by North American Industry Classification
16 System (NAICS) codes 113310, 211, 213111, 541360, 311-339, 511-512, and
17 54171, as the employer's primary function.

18 (c) The following employers or persons engaged in the following
19 professions or service industries shall not be eligible for any credit under this
20 Chapter:

21 (i) Retail employers as identified by the North American Industry
22 Classification System code sections 44 and 45.

23 (ii) Business associations and professional organizations as defined in
24 North American Industry Classification System (NAICS) code 8139.

25 (iii) State and local government enterprises.

26 (iv) Real estate agents, operators, and lessors.

27 (v) Automotive rental and leasing.

28 (vi) Local solid waste disposal, local sewage systems, and local water
29 systems businesses.

1 (vii) Nonprofit organizations.

2 (viii) Employers engaged in the gaming industry as identified by the
3 North American Industrial Classification System code sections 713210 and
4 721120.

5 (ix) Attorneys.

6 (d) The department may promulgate rules annually listing other
7 employers, professions, or service industries which are eligible and not eligible
8 for any credit pursuant to this Chapter, and such rules shall not take effect
9 unless presented to the Louisiana Economic Development Council and approved
10 by both the House Committee on Ways and Means and the Senate Committee
11 on Revenue and Fiscal Affairs in a public meeting held for such purpose.

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

13 (3) "Qualified expenditures" means amounts classified as capital
14 expenditures for federal income tax purposes plus exclusions from
15 capitalization provided for in Internal Revenue Code Section 263(a)(1)(A)
16 through (L), minus the capitalized cost of land, capitalized leases of land,
17 capitalized interest, and the capitalized cost for the purchase of an existing
18 building. When an employer purchases an existing building and capital
19 expenditures are used to rehabilitate the building, only the costs of the
20 rehabilitation shall be considered qualified expenditures. Additionally, an
21 employer shall be allowed to increase his qualified expenditures to the extent an
22 employer's capitalized basis is properly reduced by claiming a federal credit.

23 (4) "Project" includes the design, development, installation and
24 construction of a technology, machinery, building and equipment that results
25 in a modernization of an employer's product line, unit, or entire operations that
26 requires at least five million dollars of investment.

27 (5) "Modernization" means capitalized investment by an employer in
28 technology, machinery, building and/or equipment that meets one of the
29 following provisions:

1 (a) An increase in the increase of maximum capacity or efficiency of the
2 facility of greater than ten percent. The modernization must result in the
3 facility adopting "best practices" technology for its industry and the company
4 shall establish that without the investment that the facility would be a high risk
5 for closure in the foreseeable future. Modernization does not include the
6 replacing of existing technology with the same or similar technology.

7 (b) An approved investment from a company with multi-state operations
8 with an established competitive capital project program.

9 §2399.3. Modernization Tax Credit

10 A.(1) Except as provided in Subsection B of this Section, an employer
11 may earn and apply for and, if qualified, be granted a refundable credit on any
12 income or corporation franchise tax liability owed to the state by the employer
13 seeking to claim the credit, in the amount approved by the secretary of the
14 department for the amount of qualified expenditures incurred by the employer
15 for a modernization. Except as otherwise provided in this Paragraph, the
16 refundable credit shall be allowed against the income tax for the taxable period
17 in which the credit is earned and the franchise tax for the taxable period
18 following the period in which the credit is earned.

19 (2)(a) The credits approved by the department shall be granted at the
20 rate of five percent of the amount of qualified expenditures incurred by the
21 employer for modernization with the credit divided in equal portions for five
22 years, subject to the limitations provided for in other Paragraphs of this
23 Subsection.

24 (b) The total modernization tax credits awarded by the department that
25 are allotted in any calendar year shall not exceed ten million dollars.

26 (c) An employer earns the modernization tax credits in the year in which
27 the project is placed in service, but the employer may not claim modernization
28 tax credits until the department signs a project completion form.

29 (d) After approving modernization tax credits for an employer, the

1 department shall issue a tax credit certificate, a copy of which is to be attached
2 to the tax return of the employer. The tax credit certificate shall contain the
3 employer's name, address, tax identification number, the amount of credit, and
4 other information required by the Department of Revenue. The tax credit
5 certificate, unless rescinded by the department, shall be accepted by the
6 Department of Revenue as proof of the credit.

7 (e) The Department of Economic Development shall maintain a list of
8 the tax credit certificates issued.

9 (3)(a) All entities taxed as corporations for Louisiana income or
10 corporation franchise tax purposes shall claim any credit allowed under this
11 Section on their corporation income and corporation franchise tax return.

12 (b) Individuals shall claim any credit allowed under this Section on their
13 individual income tax return.

14 (c) Estates or trusts shall claim any credit allowed under this Section on
15 their fiduciary income tax returns.

16 (d) Entities not taxed as corporations shall claim any credit allowed
17 under this Section on the returns of the partners or members as follows:

18 (i) Corporate partners or members shall claim their share of the credit
19 on their corporation income or corporation franchise tax returns.

20 (ii) Individual partners or members shall claim their share of the credit
21 on their individual income tax returns.

22 (iii) Partners or members that are estates or trusts shall claim their
23 share of the credit on their fiduciary income tax returns.

24 B. A retention and modernization tax credit shall expire and have no
25 value or effect on tax liability beginning with the eleventh tax year after the tax
26 year in which it was originally granted.

27 §2399.4. Modernization tax credit approval

28 A. The department, after consultation with the executive director of the
29 Louisiana Workforce Commission and the secretary of the Department of

1 Revenue, may issue modernization tax credits provided the employer meets the
2 requirements established by Subsection B of this Section. Nothing in this
3 Chapter shall establish a right of the employer to receive retention and
4 modernization tax credits unless approved by the department.

5 B. The employer shall establish one of the following:

6 (1) An increase in the increase of maximum capacity or efficiency of the
7 facility of greater than ten percent.

8 (2) An approved investment from a company with multi-state operations
9 with an established competitive capital project program.

10 C. (1) No contract shall be executed pursuant to this Chapter with an
11 employer who has defaulted on or otherwise not repaid any loan or other
12 obligation involving public funds nor with any employer who has ever declared
13 bankruptcy under which an obligation of the employer to pay or repay public
14 funds or monies was discharged as part of such bankruptcy.

15 (2) No contract shall be executed under this Chapter with an employer
16 who is in default on any filing or payment with or to the state or any of its
17 agencies or political subdivisions and in which an assessment or judgment that
18 is final and non-appealable has been rendered, and remains outstanding, in
19 favor of the state, or any of its agencies, or political subdivisions.

20 §2399.5. Promulgation of rules

21 The Department of Economic Development, the Louisiana Workforce
22 Commission and the Department of Revenue shall each promulgate such rules,
23 in accordance with the Administrative Procedure Act, as may be necessary to
24 implement the provisions of this Chapter.

25 §2399.6. False or fraudulent information in making application, claim for
26 credit or other instrument; penalties

27 A. Any person making an application, claim for a tax credit, or any
28 report, return, statement, or other instrument or providing any other
29 information pursuant to the provisions of this Chapter who willfully makes a

1 **false or fraudulent application, claim, report, return, statement, invoice, or**
 2 **other instrument or who willfully provides any false or fraudulent information,**
 3 **any person who willfully aids or abets another in making such false or**
 4 **fraudulent application, claim, report, return, statement, invoice, or other**
 5 **instrument, or any person who willfully aids or abets another in providing any**
 6 **false or fraudulent information, shall be guilty, upon conviction, of a felony and**
 7 **shall be punished by the imposition of a fine of not less than one thousand**
 8 **dollars and not more than fifty thousand dollars, or imprisoned for not less than**
 9 **two years and not more than five years, or both.**

10 **B. Any person convicted of a violation of this Section shall be liable for**
 11 **the repayment of all credits which were granted to the employer. Interest shall**
 12 **be due on such credits at the rate of fifteen percent per annum.**

The original instrument was prepared by Christopher Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

Walsworth (SB 252)

Proposed law provides the intent of the legislature that the modernization benefits provided for in proposed law should be used primarily as an inducement for businesses to not relocate to another location outside the state and to modernize their existing operations in Louisiana.

Proposed law provides definitions of words or terms as used in this Chapter.

Proposed law provides for the modernization tax credit that an employer may earn and apply for, and if qualified, be granted a refundable credit on any income or corporation franchise tax liability owed to the state by the employer seeking to claim the credit, in the amount approved by the secretary of the Department of Economic Development for the amount of qualified expenditures incurred by the employer for a modernization.

Proposed law provides DED, after consulting with the executive director of the Louisiana Workforce Commission and the secretary of the Department of Revenue, may issue the modernization credits if the employer meets the requirements.

Proposed law requires DED, LWC, and DOR to promulgate rules necessary in accordance with the Administrative Procedure Act to implement the provisions of proposed law.

Proposed law provides for penalties for any person making a false or fraudulent application, claim for rebate, or instrument.

Effective August 15, 2009.

(Adds R.S. 51:2399.1-2399.6)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Clarifies that "only" the costs of the rehabilitation shall be considered qualified expenditures when an employer purchases an existing building and capital expenditures are used to rehabilitate the building.
2. Clarifies the definition of "project."
3. Clarifies that DED, LA Workforce Commission and DOR shall each promulgate rules in accordance with the Administrative Procedure Act.