

SENATE BILL NO. 252

BY SENATORS WALSWORTH AND NEVERS AND REPRESENTATIVES ARNOLD, BALDONE, BURFORD, HENRY BURNS, CARMODY, CHANEY, HAZEL, HOFFMANN, HOWARD, ROSALIND JONES, KATZ, LITTLE, NOWLIN, PUGH, SIMON, TUCKER, WADDELL AND WHITE

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

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

**§2399.1. Intent**

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

**B. Nothing herein shall be construed to constitute a guarantee or assumption by the state of any debt of any individual, company, corporation, or association or to authorize the credit of the state to be given, pledged, or loaned to any individual, company, corporation, or association.**

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

1        **§2399.2. Definitions**

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

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

8                **(b) To qualify for a contract pursuant to this Chapter, employers must**  
9 **be a manufacturer, as defined by North American Industry Classification**  
10 **System (NAICS) codes 113310, 211, 213111, 541360, 311-339, 511-512, and**  
11 **54171, as the employer's primary function.**

12                **(c) The following employers or persons engaged in the following**  
13 **professions or service industries shall not be eligible for any credit under this**  
14 **Chapter:**

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

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

19                **(iii) State and local government enterprises.**

20                **(iv) Real estate agents, operators, and lessors.**

21                **(v) Automotive rental and leasing.**

22                **(vi) Local solid waste disposal, local sewage systems, and local water**  
23 **systems businesses.**

24                **(vii) Nonprofit organizations.**

25                **(viii) Employers engaged in the gaming industry as identified by the**  
26 **North American Industrial Classification System code sections 713210 and**  
27 **721120.**

28                **(ix) Attorneys.**

29                **(d) The department may promulgate rules annually listing other**  
30 **employers, professions, or service industries which are eligible and not eligible**

1 for any credit pursuant to this Chapter, and such rules shall not take effect  
2 unless presented to the Louisiana Economic Development Council and approved  
3 by both the House Committee on Ways and Means and the Senate Committee  
4 on Revenue and Fiscal Affairs in a public meeting held for such purpose.

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

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

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

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

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

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

1       **§2399.3. Modernization Tax Credit**

2               **A.(1) Except as provided in Subsection B of this Section, an employer**  
3       **may earn and apply for and, if qualified, be granted a refundable credit on any**  
4       **income or corporation franchise tax liability owed to the state by the employer**  
5       **seeking to claim the credit, in the amount approved by the secretary of the**  
6       **department for the amount of qualified expenditures incurred by the employer**  
7       **for a modernization. Except as otherwise provided in this Paragraph, the**  
8       **refundable credit shall be allowed against the income tax for the taxable period**  
9       **in which the credit is earned and the franchise tax for the taxable period**  
10       **following the period in which the credit is earned.**

11               **(2)(a) The credits approved by the department shall be granted at the**  
12       **rate of five percent of the amount of qualified expenditures incurred by the**  
13       **employer for modernization with the credit divided in equal portions for five**  
14       **years, subject to the limitations provided for in other Paragraphs of this**  
15       **Subsection.**

16               **(b) The total amount of modernization tax credits granted by the**  
17       **Department of Economic Development in any calendar year shall not exceed ten**  
18       **million dollars irrespective of the year in which claimed. The department shall**  
19       **by rule establish the method of allocating available tax credits to applicants,**  
20       **including but not limited to a first come, first served system, reservation of tax**  
21       **credits for a specified time period, or other method which the department, in**  
22       **its discretion, may find beneficial to the program. In the event that the total**  
23       **amount of credits granted in any calendar year is less than ten million dollars,**  
24       **any residual amount of unused credits shall carry forward for use in subsequent**  
25       **years and may be granted in addition to the ten million dollar limit for each**  
26       **year.**

27               **(c) An employer earns the modernization tax credits in the year in which**  
28       **the project is placed in service, but the employer may not claim modernization**  
29       **tax credits until the department signs a project completion form. No project**  
30       **placed in service before July 1, 2011 shall be eligible for the tax credit**

1 authorized pursuant to the provisions of this Section.

2 (d) After approving modernization tax credits for an employer, the  
3 department shall issue a tax credit certificate, a copy of which is to be attached  
4 to the tax return of the employer. The tax credit certificate shall contain the  
5 employer's name, address, tax identification number, the amount of credit, and  
6 other information required by the Department of Revenue. The tax credit  
7 certificate, unless rescinded by the department, shall be accepted by the  
8 Department of Revenue as proof of the credit.

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

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

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

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

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

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

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

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

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

29 §2399.4. Modernization tax credit approval

30 A. The department, after consultation with the executive director of the

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

6 **B. The employer shall establish one of the following:**

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

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

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

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

21 **§2399.5. Promulgation of rules**

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

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

28 **A. Any person making an application, claim for a tax credit, or any**  
29 **report, return, statement, or other instrument or providing any other**  
30 **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.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_