

Regular Session, 2003

HOUSE BILL NO. 1974

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TABLE OF CONTENTS

BY REPRESENTATIVE HAMMETT

ECONOMIC DEVELOPMENT: Creates the Louisiana Retention and
Modernization Program Act

AN ACT

To enact Chapter 45 of Title 51 of the Louisiana Revised Statutes of 1950, to
be comprised of R.S. 51:2751 through 2760, relative to economic
development; to create the Louisiana Retention and Modernization
Program; to provide for incentive rebates to certain businesses to
remain in Louisiana which are at high risk for relocation to another
state; to provide incentive rebates to certain businesses which
modernize their existing operations in this state; to provide for criminal
penalties; to provide for rules and regulations; to provide for
definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 45 of Title 51 of the Louisiana Revised Statutes of
1950, comprised of R.S. 51:2751 through 2760, is hereby enacted to read as
follows:

CHAPTER 45. RETENTION AND

MODERNIZATION PROGRAM

§2751. Short title

This Chapter shall be known and may be cited as the "Louisiana
Retention and Modernization Program Act".

1 §2752. Intent

2 A. It is the intent of the Louisiana Legislature that the retention
3 and modernization benefits provided for in this Chapter should be used
4 primarily as an inducement for businesses to not relocate to another
5 location outside the state of Louisiana or for business to modernize
6 their existing operations in Louisiana.

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

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

15 §2753. Definitions

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

19 (1) "Benefit rate" means the following percentages:

20 (a) For jobs retained where the modernized facility gross payroll
21 equal to eighty percent and is less than ninety percent of the wages paid
22 during the taxable year prior to filing the application, the benefit rate
23 shall be two percent of the eligible wages provided for in this
24 Subparagraph.

25 (b) For jobs retained where the modernized facility gross payroll
26 equal to ninety percent and is less than one hundred percent of the

1 wages paid during the taxable year prior to filing the application, the
2 benefit rate shall be three percent of the eligible wages provided for in
3 this Subparagraph.

4 (c) For jobs retained where the modernized facility gross payroll
5 equal or greater than one hundred percent of the wages paid during the
6 taxable year prior to filing the application and for jobs retained due to
7 nonrelocation of the facility, the benefit rate shall be four percent of the
8 eligible wages provided for in this Subparagraph.

9 (2) "Eligible wages" means a percentage of gross payroll as
10 follows:

11 (a) If modernization costs are less than or equal to ten million
12 dollars the eligible wages shall be five percent of the gross payroll of
13 the facility.

14 (b) If modernization costs are greater than ten million dollars
15 and less than or equal to twenty million dollars the eligible wages shall
16 be ten percent of the gross payroll of the facility.

17 (c) If modernization costs are greater than twenty million dollars
18 and less than or equal to thirty million dollars the eligible wages shall
19 be twenty percent of the gross payroll of the facility.

20 (d) If modernization costs are greater than thirty million dollars
21 and less than or equal to forty million dollars the eligible wages shall
22 be thirty percent of the gross payroll of the facility.

23 (e) If modernization costs are greater than forty million dollars
24 and less than or equal to fifty million dollars the eligible wages shall be
25 forty percent of the gross payroll of the facility.

1 (f) If modernization costs are greater than fifty million dollars
2 and less than or equal to sixty million dollars the eligible wages shall
3 be fifty percent of the gross payroll of the facility.

4 (g) If modernization costs are greater than sixty million dollars
5 and less than or equal to eighty million dollars the eligible wages shall
6 be sixty percent of the gross payroll of the facility.

7 (h) If modernization costs are greater than eighty million dollars
8 and less than or equal to ninety million dollars the eligible wages shall
9 be seventy percent of the gross payroll of the facility.

10 (i) If modernization costs are greater than ninety million dollars
11 and less than or equal to one hundred million dollars the eligible wages
12 shall be eighty percent of the gross payroll of the facility.

13 (j) If modernization costs are greater than one hundred million
14 dollars and less than or equal to one hundred fifty million dollars the
15 eligible wages shall be ninety percent of the gross payroll of the facility.

16 (k) If modernization costs are greater than one hundred fifty
17 million dollars or the result of a nonrelocation the eligible wages shall
18 be one hundred percent of the gross payroll of the facility.

19 (3)(a) "Employer" shall mean a legal person who is engaged in
20 a lawful enterprise not excluded by this Chapter that executes a contract
21 with the department pursuant to the provisions of this Chapter and
22 meets any one of the following conditions:

23 (i) Must have, or will have within one year, sales of at least
24 seventy-five percent of its total sales to out-of-state customers or
25 buyers, to in-state customers or buyers if the product or service is resold

1 by the purchaser to an out-of-state customer or buyer for ultimate use,
2 or to the federal government.

3 (ii) Must have, or will have within one year, sales of at least
4 fifty percent of its total sales to out-of-state customers or buyers, to
5 in-state customers or buyers if the products or service are resold by the
6 purchaser to an out-of-state customer or buyer for ultimate use, or to the
7 federal government. However, contracts with such employers must
8 meet one of the following additional provisions:

9 (aa) Must be classified as an industry, as defined by North
10 American Industry Classification System (NAICS) codes, that has a
11 direct state employment multiplier of 2.0 or greater according to the
12 Regional Input/Output Multiplier System II or its successor, which is
13 developed and updated by the Bureau of Economic Analysis within the
14 U.S. Department of Commerce.

15 (bb) Must be a central administrative office, which means a
16 central center that influences the environment in which data processing,
17 customer service, credit accounting, telemarketing, claims processing,
18 and other administrative functions are accomplished.

19 (cc) Must have data processing, back office operations, and
20 telephone call center operations, as defined in NAICS code 56142.

21 (dd) Must be a wholesale trade business as defined in NAICS
22 code 42 and have a distribution center of not less than twenty-five
23 thousand square feet.

24 (b) The following employers or persons engaged in the
25 following professions or service industries shall not be eligible for any
26 rebate under this Chapter:

1 (i) Retail employers as identified by the NAICS System code
2 sections 44 and 45.

3 (ii) Business associations and professional organizations as
4 defined in NAICS code 8139.

5 (iii) State and local government enterprises.

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

7 (v) Automotive rental and leasing.

8 (vi) Local solid waste disposal, local sewage systems, and local
9 water systems businesses.

10 (vii) Nonprofit organizations.

11 (viii) Employers engaged in the gaming industry as identified
12 by the NAICS code sections 713210 and 721120.

13 (ix) Attorneys.

14 (c) The Department of Economic Development may promulgate
15 rules annually listing other employers, professions, or service industries
16 which are not eligible for any rebate pursuant to this Chapter and such
17 rules shall not take effect unless presented to the Louisiana Economic
18 Development Council and approved by both the House Committee on
19 Ways and Means and the Senate Committee on Revenue and Fiscal
20 Affairs in a public meeting held for such purpose.

21 (4) "Gross payroll" means wages for the retained and new jobs
22 as defined herein upon which the particular benefit rate is calculated.

23 (5) "Job retained" means employment in this state of an
24 employee working an average of thirty-five or more hours per week.
25 Such job shall be with an employer that has qualified to receive a rebate
26 pursuant to the provisions of this Chapter, which job exists in this state

1 after the modernization of the facility or nonrelocation and existed prior
2 to the effective date the application was filed by the employer with the
3 Department of Economic Development pursuant to the provisions of
4 R.S. 51:2755 and which job is filled by an individual domiciled in the
5 state of Louisiana. "Job retained" shall not mean any job that is a result
6 of job shifts due to the gain or loss of an in-state contract to supply
7 goods and services.

8 (6) "Modernization" means investment by an employer in
9 technology, machinery, equipment, and training that results in an
10 increase in the increase of output or efficiency of the facility of greater
11 than ten percent. The modernization must result in the facility
12 adopting "best practices" technology for its industry and the company
13 must establish that without the investment that the facility would be a
14 high risk for closure in the foreseeable future. Modernization does not
15 include the replacing of existing technology with the same or similar
16 technology.

17 (7) "Nonrelocation" means an employer's facility that remains
18 in this state after establishing pursuant to rules adopted in accordance
19 with R.S. 51:2759 that the facility is at a high risk for relocation outside
20 the state and agrees to remain in the state during the period it is
21 receiving the rebates provided in this Act.

22 (8) "Wages" means all remuneration for services from whatever
23 source, including commissions and bonuses and the cash value of all
24 remuneration in any medium other than cash, and dismissal payments
25 which the employer is required by law or contract to make. Gratuities
26 customarily received by an individual in the course of his work from

1 persons other than his employer shall be treated as wages received from
2 his employer. The reasonable cash value of remuneration in any
3 medium other than cash and the reasonable amount of gratuities shall
4 be estimated and determined in accordance with the Internal Revenue
5 Code and its rules and regulations. The term "wages" shall not include
6 the following:

7 (a) The amount of any payment with respect to services
8 performed after January 1, 1951, to or on behalf of an individual in its
9 employ under a plan or system established by an employer which makes
10 provisions for individuals in its employ generally, or for a class or
11 classes of such individuals, including any amount paid by an employer
12 for insurance or annuities, or into a fund to provide for any such
13 payment, on account of:

14 (i) Retirement.

15 (ii) Sickness or accident disability.

16 (iii) Medical and hospitalization expenses in connection with
17 sickness or accident disability.

18 (iv) Death, provided the individual in its employ:

19 (aa) Has not the option to receive, instead of provision for such
20 death benefit, any part of such payment or, if such death benefit is
21 insured, any part of the premium or contributions to premiums paid by
22 his employer.

23 (bb) Has not the right, under the provisions of the plan or
24 system or policy of insurance providing for such death benefit, to assign
25 such benefit or to receive cash consideration in lieu of such benefit
26 either upon his withdrawal from the plan or system providing for such

1 benefit or upon the termination of such plan or system or policy of
2 insurance or of his services with such employer.

3 (v) A bona fide thrift or savings fund, providing:

4 (aa) Such payment is conditioned upon a payment of a
5 substantial sum by such individuals in its employ.

6 (bb) Such sum paid by the employer cannot under the provisions
7 of such plan be withdrawn by an individual more frequently than once
8 in any twelve-month period, except upon an individual's separation
9 from that employment.

10 (b) Any payment made to, or on behalf of, an employee or his
11 beneficiary under a cafeteria plan of the type described in 26 U.S.C.
12 125 and referred to in 26 U.S.C. 3306(b)(5)(G).

13 (c) Any payment made, or benefit furnished, to or for the benefit
14 of an employee if at the time of such payment or such financing it is
15 reasonable to believe that the employee will be able to exclude such
16 payment or benefit from income under an educational assistance
17 program as described in 26 U.S.C. 127 or a dependent care assistance
18 program as described in 26 U.S.C. 129 and as referred to in 26 U.S.C.
19 3306(b)(13).

20 (d) The payment by an employer, without deduction from the
21 remuneration of the individual in its employ, of the tax imposed upon
22 such individual in its employ under Section 3101 of the federal Internal
23 Revenue Code with respect to domestic services in a private home of
24 the employer or for agricultural labor performed after December 31,
25 1980.

1 (e) Dismissal payments which the employer is not required by
2 law or contract to make.

3 (f) The value of any meals and lodging furnished by or on
4 behalf of an employer to an individual in his employ, provided the
5 meals and lodging are furnished on the business premises of the
6 employer for the convenience of the employer.

7 §2754. Rebate approval

8 A. The state Board of Commerce and Industry, or its successor,
9 after consultation with the secretaries of the Department of Labor and
10 the Department of Revenue, with the approval of the governor, may
11 enter into a contract with an employer complying with the provisions
12 of this Chapter for a period of up to five years. A contract with an
13 employer shall be limited to a single physical location, and the benefits
14 the employer shall receive shall be based solely upon the operations at
15 that location. An employer may have more than one contract covering
16 multiple locations; however, eligibility of each location shall be
17 determined separately, with the exception that, in determining gross
18 payroll of jobs retained, the department shall certify that the employer
19 has maintained a statewide gross payroll of at least eighty percent of the
20 wages paid statewide during the previous taxable year. Before a
21 contract can be entered into, an economic costs-benefit analysis of the
22 project, including an analysis of the direct and indirect net economic
23 impact and fiscal benefits to the state and local communities, including
24 an evaluation based on the Regional Input/Output Model System II
25 (RIMS), or its successor, shall be preformed and it must demonstrate
26 that the benefits of retaining the payroll of the employer outweigh the

1 cost of the benefits the employer receives from the provisions of this
2 Chapter.

3 B. The contract may be renewed for an additional five years
4 provided that:

5 (1) The applicant has complied with all the terms of the contract
6 and has not performed any act, nor failed to perform any act, which
7 would have made the applicant liable for suspension, and has complied
8 with the provisions of this Chapter.

9 (2) The modernization continues to be a "best practices" model
10 for the applicant's industry or that the company is still a high risk for
11 relocation.

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

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

24 (b) Violation of the provisions of this Paragraph shall void the
25 contract and any rebates paid to the employer prior to the date of the
26 discovery of such violation shall be added to the income tax liability of

1 the employer for the taxable year in which the discovery occurred, with
2 interest from the date of violation, and the employer shall receive no
3 further rebates pursuant to this Chapter.

4 (3) Every contract executed pursuant to this Chapter shall
5 include a requirement that if the employer receives a rebate under this
6 Chapter and an assessment or judgment that is final and non-appealable
7 has been rendered against the employer in favor of the state or any of
8 its agencies or political subdivisions, then the contract shall be
9 suspended pending satisfaction of the assessment or judgment and no
10 rebate shall accrue to the employer under the contract during the period
11 of suspension.

12 D. Every contract executed pursuant to this Chapter shall
13 include the following requirements:

14 (1) If the employer receives a rebate under this Chapter and it
15 is subsequently determined that the employer did not qualify for such
16 rebate, the future rebates issued to the employer shall be reduced by the
17 amount of such rebate monies previously received by the employer.

18 (2) If there are no future rebates from which to deduct the
19 amount owed back to the state, the tax liability of the employer for the
20 taxable period in which the determination was made shall be increased
21 by the amount of such rebate monies previously received by the
22 employer.

23 (3) The secretary of the Department of Revenue may recover
24 any rebates previously granted to an employer but which rebates are
25 disallowed as authorized by R.S. 47:1561.2. The contract shall provide

1 that the employer shall waive prescription for the purposes of
2 recovering any disallowed rebates.

3 §2755. Incentive rebates

4 A. An employer who has entered into a contract may receive a
5 rebate for the taxable periods specified in the contract entered into
6 pursuant to the provisions of this Chapter in an amount which shall be
7 equal to the benefit rate as defined in R.S. 51:2753(3), multiplied by the
8 eligible wages, as defined in R.S. 51:2753(7), for the taxable period as
9 verified by the Department of Economic Development through the use
10 of information provided to it by the Department of Labor.

11 B. Notwithstanding anything to the contrary in either Chapter
12 1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised
13 Statutes of 1950, as amended, the following rules shall apply with
14 respect to the application of the rebate allowed in Subsection A of this
15 Section:

16 (1) The incentive rebate allowed a corporation classified under
17 Subchapter S of the Internal Revenue Code of 1954, as amended, as an
18 S corporation shall be paid to the S corporation entity and not the
19 individual shareholders of the corporation.

20 (2) The incentive rebate allowed a partnership, limited liability
21 partnership, or limited liability company shall be paid to such entity and
22 shall not be paid to the individual partners or members of such entity.

23 C. Notwithstanding any other provision of law to the contrary
24 in Title 47 of the Louisiana Revised Statutes of 1950, as amended, the
25 secretary of the Department of Revenue shall make the rebate
26 authorized in this Section from the current collections of the taxes

1 imposed by Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the
2 Louisiana Revised Statutes of 1950, as amended. The right to such
3 rebate shall not be subject to the requirements of R.S. 47:1621(B).

4 D.(1) In order to receive a contract for the rebate pursuant to the
5 provisions of this Chapter, an employer shall apply to the Department
6 of Economic Development. The application shall be on a form
7 prescribed by the department and shall contain such information as may
8 be required by the department to determine if the applicant is qualified.

9 (2) The original application shall contain a sworn statement by
10 a duly authorized officer of the employer listing the names of persons
11 or other entities who have received or who will receive any payment or
12 other consideration from the employer for the purpose of representing
13 the employer in applying for or receiving the benefits provided for in
14 this Chapter.

15 E. The department shall determine if the applicant is qualified
16 to receive rebates authorized in this Chapter.

17 F. Upon approval of such an original application, the
18 Department of Economic Development shall notify the Department of
19 Revenue and shall provide it with a copy of the application. The
20 Department of Revenue may require the qualified employer to submit
21 such additional information as may be necessary to administer the
22 provisions of this Chapter. The approved employer shall file
23 applications for rebates with the Department of Economic Development
24 to show its continued eligibility for the rebates, as provided in R.S.
25 51:2757. The employer may be audited by the Department of
26 Economic Development to verify such eligibility. The approved

1 contract between the employer and the Department of Economic
2 Development shall authorize the continued rebate as long as the
3 employer retains its eligibility as defined in and established pursuant to
4 this Section and R.S. 51:2753 and 2757 and within the limitations
5 contained in this Chapter, as it existed at the time of such approval.

6 G. An employer's benefit rate shall be determined annually
7 using employer information from the employer's fiscal year for which
8 the rebate is claimed.

9 §2756. Rebate; payments

10 A. The rebates authorized in this Chapter shall be paid annually
11 after the employer has filed its request for annual rebate at the end of
12 the employer's fiscal year with the Department of Economic
13 Development, and the department has determined from the information
14 submitted along with such application as provided for in R.S. 51:2757
15 that the employer is eligible for such rebate for such year.

16 B. In addition to the rebates provided in this Chapter, an
17 employer who has executed a contract under the provisions of this
18 Chapter shall be entitled to the same sales and use tax rebates
19 authorized in R.S. 51:1787. If the employer has complied with the
20 terms of this Chapter he shall be deemed to have complied with the
21 eligibility requirements of R.S. 51:1787. Any contract executed under
22 this Chapter which provides for a rebate of local sales and use taxes
23 shall include the same procedures and requirements under R.S. 51:1787
24 for rebates involving local sales and use taxes, including but not limited
25 to the requirement that any such request for a rebate of local sales and
26 use taxes be accompanied by an endorsement resolution approved by

1 the governing authority of the appropriate municipality, parish, port
2 district, or industrial district board in whose jurisdiction the employer
3 is or will be located.

4 §2757. Filing claim to receive rebate; determination; repayment

5 A.(1) After the end of the fiscal year of an employer for which
6 an employer has qualified to receive a rebate, the employer shall file a
7 request for the annual rebate as required in R.S. 51:2756 with the
8 Department of Economic Development.

9 (2) The request shall contain a sworn statement by a duly
10 authorized officer of the employer concerning with respect to the
11 employer's fiscal year:

12 (a) That the employer remained a qualified employer under the
13 provisions of R.S. 51:2753(1)(b) and (c), and shall state the nature of
14 the employer's qualification.

15 (b)(i) The total number of and the gross payroll of:

16 (aa) Jobs that existed in the taxable year prior to filing the
17 application.

18 (bb) Jobs retained as a result of the modernization or
19 nonrelocation.

20 (ii) The number of full-time employees working an average of
21 thirty-five, or more hours per week in jobs retained.

22 (iii) That the employer maintained a statewide gross payroll of
23 at least eighty percent of the wages paid statewide during the previous
24 taxable year, in the case where an employer has contracts covering
25 multiple locations.

26 (c) That employees holding jobs retained:

1 (i) Were paid wages in cash, which met the other requirements
2 of R.S. 51:2753(4).

3 (ii) Were domiciled in the state of Louisiana, if required.

4 (iii) Were not jobs created as a result of job shifts due to the
5 gain or loss of an in-state contract to supply goods and services.

6 (d) That the employer:

7 (i) Did not default on or otherwise not repay any loan or other
8 obligation involving public funds.

9 (ii) Has not declared bankruptcy under which an obligation of
10 the employer to pay or repay public funds or monies was discharged as
11 part of such bankruptcy.

12 (iii) Is not in default on any filing or payment with or to the
13 state or any of its agencies or political subdivisions in which such
14 assessment or judgment is final and non-appealable and remains
15 outstanding.

16 (3) The department may request such additional information
17 from the employer as may be necessary to determine whether the
18 application is correct and whether the employer is eligible for the
19 annual rebate for that year, or may request that the employer revise its
20 application.

21 (4) Upon approval of the request for the annual rebate, the
22 request shall be forwarded to the Department of Revenue for payment.
23 The Department of Revenue shall make payment of the rebate after
24 offset, if applicable, under R.S. 47:1622. The rebate shall be
25 considered a refundable overpayment for the purpose of such offset.

1 B. An employer that has qualified pursuant to R.S. 51:2755 is
2 eligible to receive rebates under this Chapter only in accordance with
3 the provisions under which it initially applied and was approved.

4 §2758. Employers receiving rebates not eligible to receive certain
5 other tax credits and exemptions

6 Notwithstanding any other provision of law and except as
7 provided in R.S. 51:2756(B), a qualified employer who receives a
8 rebate pursuant to the provisions of this Chapter shall not be eligible to
9 receive the other credits or exemptions provided for in the following
10 provisions of law in connection with the activity for which the rebate
11 was received:

12 (1) The tax credit for generation of new jobs in Louisiana
13 provided for in R.S. 47:34.

14 (2) The income tax credit for conversion of vehicles to alternate
15 fuel usage provided for in R.S. 47:38 and 287.757.

16 (3) Contracts for tax exemption for manufacturing
17 establishments by the Board of Commerce and Industry provided for in
18 R.S. 47:4301 through 4306.

19 (4) The employer credit for employment of a previously
20 unemployed person provided for in R.S. 47:6004.

21 (5) The Louisiana basic skills training tax credit--income tax
22 credit provided for in R.S. 47:6009.

23 (6) The employer income tax credit for employee alcohol and
24 substance abuse treatment programs provided for in R.S. 47:6010.

1 (7) The sales and use tax exemption for materials to be used in
2 the construction of a building and for machinery and income tax credit
3 for each employee in an enterprise zone provided for in R.S. 51:1787.

4 (8) The re-entrant jobs corporation income tax credit for
5 formerly incarcerated employees provided for in R.S. 47:287.748.

6 (9) The corporation income tax credit for new jobs provided for
7 in R.S. 47:287.749.

8 (10) The neighborhood assistance income tax credit provided
9 for in R.S. 47:287.753.

10 §2759. Promulgation of rules

11 The Department of Economic Development, the Department of
12 Revenue, and the Department of Labor shall each promulgate such
13 rules as may be necessary to implement the provisions of this Chapter.
14 However, prior to such rules taking effect all rules shall be approved by
15 the House Committee on Ways and Means and the Senate Committee
16 on Revenue and Fiscal Affairs.

17 §2760. False or fraudulent information in making application, claim
18 for rebate, or other instrument; penalties

19 A. Any person making an application, claim for a rebate, or any
20 report, return, statement, or other instrument or providing any other
21 information pursuant to the provisions of this Chapter who willfully
22 makes a false or fraudulent application, claim, report, return, statement,
23 invoice, or other instrument or who willfully provides any false or
24 fraudulent information, any person who willfully aids or abets another
25 in making such false or fraudulent application, claim, report, return,
26 statement, invoice, or other instrument, or any person who willfully aids

1 or abets another in providing any false or fraudulent information, shall
2 be guilty, upon conviction, of a felony and shall be punished by the
3 imposition of a fine of not less than one thousand dollars and not more
4 than fifty thousand dollars, or imprisoned for not less than two years
5 and not more than five years, or both.

6 B. Any person convicted of a violation of this Section shall be
7 liable for the repayment of all rebates which were granted to the
8 employer. Interest shall be due on such rebates at the rate of fifteen
9 percent per annum.

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Hammett

HB No. 1974

Abstract: Creates the Louisiana Retention & Modernization Program Act to provide incentives for businesses which are likely to relocate to other states to remain in Louisiana and to provide incentives for certain businesses to modernize their Louisiana operations.

Proposed law authorizes the Board of Commerce and Industry, or its successor, after consultation with the secretaries of the Dept. of Labor and the Dept. of Revenue, with the approval of the governor, may enter into a rebate contract with an employer for a period of up to five years.

Proposed law provides that a contract with an employer shall be limited to a single physical location, and the benefits the employer shall receive shall be

based solely upon the operations at that location. An employer may have more than one contract covering multiple locations under certain circumstances.

Proposed law provides that before a contract can be entered into, an economic cost-benefit analysis of the project shall be preformed and it must demonstrate that the benefits of retaining the payroll of the employer outweigh the cost of the benefits the employer receives under proposed law.

Proposed law provides that a contract may be renewed for an additional five years provided that the applicant has complied with all the terms of the contract and the modernization continues to be a "best practices" model for the applicant's industry or that the company is still a high risk for relocation.

Proposed law provides that no contract shall be executed with an employer who has defaulted on or otherwise not repaid any loan or other obligation involving public funds nor with any employer who has ever declared bankruptcy under which an obligation of the employer to pay or repay public funds or monies was discharged as part of such bankruptcy.

Proposed law provides that no contract shall be executed with an employer who is in default on any filing or payment with or to the state or any of its agencies or political subdivisions and in which an assessment or judgment that is final and non-appealable has been rendered, and remains outstanding, in favor of the state, or any of its agencies, or political subdivisions.

Proposed law provides that every contract executed shall include the following requirements:

- (1) If the employer receives a rebate and it is subsequently determined that the employer did not qualify for such rebate, the future rebates issued to the employer shall be reduced by the amount of such rebate monies previously received by the employer.
- (2) If there are no future rebates from which to deduct the amount owed back to the state, the tax liability of the employer for the taxable period in which the determination was made shall be increased by the amount of such rebate monies previously received by the employer.
- (3) The secretary of the Dept. of Revenue may recover any rebates previously granted to an employer but which rebates are disallowed as authorized by R.S. 47:1561.2.

Proposed law, provides that an employer who has entered into a contract may receive a rebate for the taxable periods specified in the contract in an amount which shall be equal to the benefit rate multiplied by the eligible wages for the taxable period as verified by DED through the use of information provided to it by the Dept. of Labor.

Proposed law provides that in order to receive a rebate contract, an employer shall apply to the Dept. of Economic Development. The original application shall contain a sworn statement by a duly authorized officer of the employer listing the names of persons or other entities who have received or who will

receive any payment or other consideration from the employer for the purpose of representing the employer in applying for or receiving the benefits provided for in proposed law. DED shall determine if the applicant is qualified to receive rebates.

Proposed law, upon approval of such an original application, provides that the DED shall notify the Dept. of Revenue and shall provide it with a copy of the application. The Dept. of Revenue may require the qualified employer to submit such additional information as may be necessary to administer the provisions of this Chapter. The approved employer shall file applications for rebates with DED to show its continued eligibility for the rebates. The employer may be audited by DED to verify such eligibility. The approved contract between the employer and DED shall authorize the continued rebate as long as the employer retains its eligibility and within the limitations contained in proposed law, as it existed at the time of such approval.

An employer's benefit rate shall be determined annually using employer information from the employer's fiscal year for which the rebate is claimed.

Proposed law defines "employer" to mean a legal person who is engaged in a lawful enterprise not excluded by proposed law that executes a contract with the department pursuant to the provisions of proposed law and meets the following elements or elements substantially equivalent thereto:

- (1) Must have, or will have within one year, sales of at least 75% of its total sales to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government.
- (2) Must have, or will have within one year, sales of at least 50% of its total sales to out-of-state customers or buyers, to in-state customers or buyers if the products or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government. However, contracts with such employers must meet one of the following additional provisions:
 - (a) Must be classified as an industry, as defined by NAICS codes, that has a direct state employment multiplier of 2.0 or greater according to the Regional Input/Output Multiplier System II or its successor, which is developed and updated by the Bureau of Economic Analysis within the U.S. Department of Commerce.
 - (b) Must be a central administrative office, which means a central center that influences the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions are accomplished.
 - (c) Must have data processing, back office operations, and telephone call center operations.

- (d) Must be a wholesale trade business and have a distribution center of not less than 25,000 square feet.

Proposed law provides that retail employers, business associations and professional organizations, state and local government enterprises, real estate agents, operators, and lessors, automotive rental and leasing, local solid waste disposal, local sewage systems, local water systems businesses, nonprofit organizations, employers engaged in the gaming industry, and attorneys shall not be eligible for any rebate. Further authorizes DED to promulgate rules listing other employers, professions, or service industries which are not eligible for rebates.

Proposed law defines "benefit rate" to mean the following percentages:

- (1) For jobs retained where the modernized facility gross payroll equal to 80% and is less than 90% of the wages paid during the taxable year prior to filing the application, the benefit rate shall be 2% of the eligible wages.
- (2) For jobs retained where the modernized facility gross payroll equal to 90% and is less than 100% of the wages paid during the taxable year prior to filing the application, the benefit rate shall be 3% of the eligible wages.
- (3) For jobs retained where the modernized facility gross payroll equal or greater than 100% of the wages paid during the taxable year prior to filing the application and for jobs retained due to nonrelocation of the facility, the benefit rate shall be 4% of the eligible wages.

Proposed law defines "nonrelocation" to mean an employer's facility that remains in this state after establishing that the facility is at a high risk for relocation outside the state and agrees to remain in the state during the period it is receiving the rebates.

Proposed law defines "modernization" to mean investment by an employer in technology, machinery, equipment, and training that results in an increase in the increase of output or efficiency of the facility of greater than 10%. "Modernization" does not include the replacing of existing technology with the same or similar technology.

Proposed law defines "eligible wages" to mean a percentage of gross payroll as follows:

Modernization Cost
Percentage of Gross Payroll

| | |
|------------------------------------|-----|
| Less than or equal to \$10,000,000 | 5% |
| \$10,000,001 to \$20,000,000 | 10% |
| \$20,000,001 to \$30,000,000 | 20% |
| \$30,000,001 to \$40,000,000 | 30% |
| \$40,000,001 to \$50,000,000 | 40% |
| \$50,000,001 to \$60,000,000 | 50% |

| | |
|--------------------------------|------|
| \$60,000,001 to \$80,000,000 | 60% |
| \$80,000,001 to \$90,000,000 | 70% |
| \$90,000,001 to \$100,000,000 | 80% |
| \$100,000,001 to \$150,000,000 | 90% |
| Greater than \$150,000,000 | 100% |

Proposed law defines "wages" to mean all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of his work from persons other than his employer shall be treated as wages received from his employer. Further provides for certain exclusion from the definition of the term "wages".

Proposed law provides that an employer who has executed a rebate contract shall be entitled to the same sales and use tax rebates authorized for the enterprise zone program. The employer will have to follow the same procedures and requirements under such program for rebates involving local sales and use taxes.

Proposed law provides that after the end of the fiscal year of an employer for which an employer has qualified to receive a rebate, the employer shall file a request for the annual rebate with DED. The request shall contain a sworn statement by a duly authorized officer of the employer concerning certain information which will enable DED to determine if the employer qualifies for the rebate. Upon approval of the request for the annual rebate, the request shall be forwarded to the Dept. of Revenue for payment. The Dept. of Revenue shall make payment of the rebate after offset, if applicable, under R.S. 47:1622. The rebate shall be considered a refundable overpayment for the purpose of such offset.

Proposed law provides that a qualified employer who receives a rebate pursuant to the provisions of this Chapter shall not be eligible to receive certain other tax credits or exemptions in connection with the activity for which the rebate was received.

Proposed law provides that any person who willfully provides any false or fraudulent information under any provision of proposed law, any person who willfully aids or abets another in making such false or fraudulent information, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than \$1,000 and not more than \$50,000, or imprisoned for not less than two years and not more than five years, or both. Further provides that any person convicted of a violation shall be liable for the repayment of all rebates, including interest, which were granted to the employer.

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

(Adds R.S. 51:2751-2760)

2003 REGULAR SESSION
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BY REPRESENTATIVE HAMMETT

TABLE OF CONTENTS

TITLE 51. TRADE AND COMMERCE

CHAPTER 45. RETENTION AND MODERNIZATION PROGRAM 1

 §2751. Short title 1

 §2752. Intent 2

 §2753. Definitions 2

 §2754. Rebate approval 10

 §2755. Incentive rebates 13

 §2756. Rebate; payments 15

 §2757. Filing claim to receive rebate; determination; repayment 16

 §2758. Employers receiving rebates not eligible to receive certain other
 tax credits and exemptions 18

 §2759. Promulgation of rules 19

 §2760. False or fraudulent information in making application, claim for
 rebate, or other instrument; penalties 19

Digest 20