

Regular Session, 2012

HOUSE BILL NO. 694

BY REPRESENTATIVE ROBIDEAUX

TAX/AD VALOREM-EXEMPTION: Establishes a program to authorize the granting of ad valorem tax exemption contracts by the Board of Commerce and Industry for certain businesses

1 AN ACT

2 To enact Chapter 5 of Subtitle V of Title 47 of the Louisiana Revised Statutes of 1950, to
3 be comprised of R.S. 47:4351 through 4355, relative to ad valorem taxation; to
4 establish a program for the granting of ad valorem tax exemption contracts for
5 certain businesses; to provide for the administration of the program; to provide for
6 optional participation by parishes; to provide for eligibility for participation in the
7 program; to authorize contracts under certain circumstances; to provide for contract
8 terms, conditions, and limitations; to provide with respect to approval of contracts
9 and notification of certain entities relative to contracts; to provide with respect to
10 contract suspension and cancellation; to authorize rulemaking; to provide for
11 effectiveness; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Chapter 5 of Subtitle V of Title 47 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 47:4351 through 4355, is hereby enacted to read as follows:

15 CHAPTER 5. CONTRACTS FOR BUSINESSES

16 §4351. Definitions.

17 For the purposes of this Chapter, the following terms shall have the meanings
18 indicated unless the context clearly indicates otherwise:

19 (1) "Board" means the State Board of Commerce and Industry or its
20 successor.

1 (2) "Business" means any individual, firm, joint venture, association,
2 corporation, estate, partnership, business trust, receiver, syndicate, or any other legal
3 business entity.

4 (3) "Department" means the Louisiana Department of Economic
5 Development.

6 (4) "Headquarters jobs" means executive, administrative, or professional
7 jobs based at a principal or regional office located in Louisiana, in which are located
8 the principal or regional executive officers normally constituting a principal or
9 regional headquarters providing corporate governance. Such principal or regional
10 executive officers include but shall not be limited to chief executive officer, chief
11 operating officer, and other senior level officers or appropriate regional equivalents.

12 (5) "Program" means the program provided for in this Chapter for the
13 granting of ad valorem tax exemptions pursuant to the authority granted under
14 Article VII, Section 21(L) of the Constitution of Louisiana.

15 (6) "Qualified business" means a business certified by the secretary of the
16 department as meeting the eligibility requirements of R.S. 47:4353 and approved to
17 participate in the program.

18 (7) "Secretary" means the secretary of the Department of Economic
19 Development.

20 (8) "Shared service center jobs" means jobs based at a business located in
21 Louisiana that performs specific corporate operational tasks for the business or its
22 affiliates or customers, such as accounting, human resources, payroll, or purchasing.
23 §4352. Program administration; parishes

24 A. There is hereby established a program for the granting of contracts for ad
25 valorem tax exemptions for qualifying businesses with projects which, if located in
26 Louisiana, are expected to yield significant positive economic benefit to the state.
27 The program shall be implemented and administered by the Department of Economic
28 Development and shall be available and operate in all parishes which have elected
29 to participate therein. As provided in this Chapter, the program shall consist of an

1 application process for, and review, certification, approval, and oversight of contracts
2 for ad valorem tax exemptions. In compliance with the Administrative Procedure
3 Act, the department shall adopt and promulgate such rules as are necessary for the
4 administration of this program.

5 B.(1) The governing authority of any parish may elect to participate in the
6 program by the adoption of a resolution or ordinance approving the granting of an
7 ad valorem tax exemption for any of the following:

8 (a) All projects recommended by the secretary and approved by the board
9 and the governor;

10 (b) All projects meeting specific criteria selected by the parish governing
11 authority from a list of options proposed by the department; however, the authority
12 may reserve the right to require its approval of any other specific project by
13 subsequent resolution or ordinance;

14 (c) On an individual project basis by subsequent resolution or ordinance.

15 (2) An election to participate in the program shall not be deemed to end
16 active negotiation for purposes of R.S. 44:22(C).

17 (3) Participation in the program shall be for an indefinite term, but may be
18 rescinded at any time by the parish governing authority. However, such rescission
19 shall not affect existing contracts or renewals thereof, and shall be without effect as
20 to any project previously approved by the parish for the ad valorem tax exemption
21 by the parish, by any of the methods provided in Paragraph (1) of this Subsection,
22 and for which an offer including the exemption has been made to a business by the
23 department.

24 C. The confidentiality granted under R.S. 44:22 shall extend to all
25 documents and records in the possession of a parish governing authority for purposes
26 of participation in the program.

27 §4353. Eligibility requirements

28 A. A business shall be eligible for participation in the program if all of the
29 following requirements are met:

1 (1) At least fifty percent of the total annual sales of the business from a
2 Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers
3 or buyers but the product or service is resold by the purchaser to an out-of-state
4 customer or buyer for ultimate use, or the federal government, or any combination
5 thereof; and

6 (2) The activities of the business at a Louisiana site or sites include or will
7 include corporate headquarters, logistics, warehousing, data center, clean technology,
8 destination health care, research and development, renewable energy, digital media
9 and software development, or other business sector targeted by the secretary as a
10 focus of the department's economic development efforts.

11 (3) The business intends to either locate a project or undertake an expansion
12 project in Louisiana, either of which shall entail a capital expenditure within
13 Louisiana of at least twenty-five million dollars.

14 B. The secretary, at his discretion, may include sales by affiliates of the
15 business in determining the percentage of sales meeting the requirements of
16 Paragraph (A)(1) of this Section.

17 C. With the exception of a business providing at least twenty-five new
18 headquarter jobs or shared service center jobs, a business primarily engaged in retail
19 sales, real estate, professional services, natural resource extraction or exploration,
20 financial services, or venture capital funds, shall not be eligible for this program. No
21 business engaged in gaming or gambling shall be eligible for the program.

22 §4354. Application and recommendation

23 A. At the invitation of the secretary or parish governing authority, a qualified
24 business may apply for a contract based on a project located in a parish participating
25 in the program. Application shall consist of submission by the business to the
26 department such certified statements and substantiating documents as the department
27 may require. The secretary shall only consider applications for projects which entail
28 a capital investment in Louisiana of at least twenty-five million dollars. At his

1 discretion, he may recommend the project of a qualified business for a contract in
2 either of the following circumstances:

3 (1) The granting of a contract would be advantageous in the case of a
4 competitive site selection situation so as to encourage a new business to locate its
5 project in the state.

6 (2) The granting of a contract would encourage an existing business to locate
7 a competitive expansion project in the state.

8 B. The secretary's recommendation shall include proposed contract terms
9 and conditions. A contract shall include at a minimum the following terms:

10 (1) An initial term of no more than five calendar years with, at the option of
11 the secretary and the board a renewal of up to an additional five years.

12 (2) Requirements for specific performance and reporting thereof.

13 (3) Audits and review of performance.

14 (4) Provisions governing the consequences for failure to perform or other
15 contract violations.

16 §4355. Approval of contract; contract administration

17 A.(1) If the project is located in a parish which requires the approval of each
18 proposed contract by the parish governing authority pursuant to R.S.
19 47:4352(B)(1)(c), the secretary shall submit the proposed contract to the authority.
20 If approved, the proposed contract shall then be submitted by the secretary to the
21 board and the governor for approval.

22 (2) If the project is located in a parish which does not require parish
23 approval of each contract, the secretary shall submit the proposed contract to the
24 board and the governor for approval.

25 (3) Upon approval by the governor, the secretary shall execute the contract
26 and provide a copy of the contract to the assessor and the parish governing authority
27 of the respective parish. The secretary shall notify the assessor and parish governing
28 authority when an existing contract expires, is suspended, or is cancelled.

1 B. In the event the secretary determines that a business has failed to meet the
 2 eligibility requirements of the program or the performance objectives of the contract,
 3 the secretary may, at his discretion, suspend or cancel the contract. A contract
 4 suspension would remove the exemption for the tax year in which the failure
 5 occurred. A contract cancellation would remove the exemption for the tax year in
 6 which it occurred and all future years. Upon receipt of notification from the
 7 secretary that a contract was suspended or cancelled, the assessor shall adjust the
 8 property assessment in the manner provided by law. Taxes becoming due for a prior
 9 year due to removal of an exemption shall, at the discretion of the tax collector, be
 10 collectable immediately or with the taxes for the current year.

11 Section 2. This Act shall take effect and become operative for all taxable years
 12 commencing after the proposed amendment adding Article VII, Section 21(L) of the
 13 Constitution of Louisiana contained in the Act which originated as House Bill No. ___ of
 14 this 2012 Regular Session of the Legislature is adopted at the statewide election to be held
 15 on November 6, 2012, and becomes effective.

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)]

Robideaux

HB No. 694

Abstract: Authorizes the State Board of Commerce and Industry to enter into ad valorem tax exemption contracts with certain businesses which locate or expand a project in La. which includes at least \$25 million in capital investments.

Present constitution and present law authorize political subdivisions of the state to impose ad valorem taxes.

Proposed law retains present law and establishes a program for the granting of contracts for ad valorem tax exemptions by the Board of Commerce and Industry (hereinafter board) for business projects which entail capital investments in excess of \$25 million which, if located in La., are expected to yield significant positive economic benefit to the state. The program shall be implemented and administered by the Dept. of Economic Development (hereinafter department) and shall be available and operate in all parishes which have elected to participate therein.

Proposed law provides definitions for purposes of proposed law.

Proposed law provides for optional participation in the program by parish governments. A parish may choose to participate in the program and approve the granting of ad valorem tax

exemptions on the following manner: approval of all projects recommended by the department, or all projects recommended by the department which meet specific criteria determined by the parish, or on a case by case basis.

Proposed law provides that the election to participate in the program by a parish governing authority shall be evidenced by the adoption of a resolution or ordinance. Participation in the program shall be for an indefinite term, and may be rescinded at any time by the parish governing authority. A parish's withdrawal from the program shall not affect existing contracts or renewals thereof.

Proposed law provides the criteria for eligibility of a business to participation in the program:

- (1) A business which has at least 50% of the total annual sales from a La. site or sites is to out-of-state customers or buyers, in-state customers or buyers but the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or the federal government, or any combination thereof; and
- (2) The activities of the business at a La. site or sites include corporate headquarters, logistics, warehousing, data center, clean technology, destination health care, research and development, renewable energy, digital media and software development, or other business sector targeted by the secretary as a focus of the department's economic development efforts.
- (3) The business intends to either locate a project or undertake an expansion project in La., either of which shall entail a capital expenditure of at least \$25 million.

Proposed law further provides that the secretary, at his discretion, may include sales by affiliates of the business in determining the percentage of sales meeting the requirements for eligibility.

Proposed law provides that the following types of business are ineligible for participation in the program:

- (1) With the exception of a business providing at least 25 new headquarter jobs or shared service center jobs, a business primarily engaged in retail sales, real estate, professional services, natural resource extraction or exploration, financial services, or venture capital funds.
- (2) Businesses engaged in gaming or gambling.

Proposed law provides that a business may apply for a contract upon invitation of the secretary or the parish governing authority. The application shall consist of the business furnishing to the department such certified statements and substantiating documents as the department may require.

Proposed law authorizes the secretary, at his discretion, to recommend a business project which entails a capital investment in La. of at least \$25 million for a contract in either of the following circumstances:

- (1) The granting of a contract would be advantageous in the case of a competitive site selection situation so as to encourage a new business to locate its project in the state.
- (2) The granting of a contract would encourage an existing business to locate an expansion project in the state.

Proposed law provides that the terms of a contract shall be recommended by the secretary and provides for minimum contract terms with respect to duration, performance, audits, and violations.

Proposed law requires approval of each contract by the board and the governor, and in certain circumstances by the parish governing authority.

Proposed law requires that approved contracts be sent by the secretary to the assessor and governing authority of the respective parish. Such parties shall also be notified by the secretary if a contract expires, is suspended, or cancelled.

Proposed law authorizes the secretary to suspend or cancel a contract if it is determined that a business has failed to meet the eligibility requirements of the program or the performance objectives of the contract. A contract suspension would remove the exemption for the tax year in which the failure occurred. A contract cancellation would remove the exemption for the tax year in which it occurred and all future years. Upon receipt of notification from the secretary that contract was suspended or cancelled, the assessor shall adjust the property assessment in the manner provided by law. Taxes becoming due for a prior year due to removal of an exemption shall, at the discretion of the tax collector, be collectable immediately or with the taxes for the current year.

Proposed law authorizes the rulemaking by the department in accordance with the Administrative Procedure Act.

Effective for all taxable years commencing after the constitutional amendment proposed in House Bill No. ___ of this 2012 R.S. is adopted and becomes effective.

(Adds R.S. 47:4351-4355)

Summary of Amendments Adopted by House

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

1. Added requirement that a project include at least \$25 million in capital investments in La.
2. Deleted the 24 month waiting period for effectiveness of a parish's discontinuation of participation in the program.
3. Added specific circumstances under which a parish may indicate its approval of ad valorem tax exemption contracts for certain businesses.
4. Added authorization for a parish governing authority to invite an eligible business to apply for a tax exemption contract.
5. Added provisions for the approval of specific ad valorem tax exemption contracts by a parish governing authority.