

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 amend and reenact R.S. 44:4.1(B)(29) and to enact Chapter 5 of Subtitle V of Title 47
3 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:4351 through
4 4355, relative to ad valorem taxation; to establish a program for the granting of ad
5 valorem tax exemption contracts for certain businesses; to provide for the
6 administration of the program; to provide for optional participation by parishes,
7 municipalities, and school districts; to provide relative to the confidentiality of
8 certain records in the possession of parish governing authorities relative thereto; to
9 provide for eligibility for participation in the program; to authorize contracts under
10 certain circumstances; to provide for contract terms, conditions, and limitations; to
11 provide with respect to approval of contracts and notification of certain entities
12 relative to contracts; to provide with respect to contract suspension and cancellation;
13 to authorize rulemaking; to provide for effectiveness; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 44:4.1(B)(29) is hereby amended and reenacted to read as follows:

17 §4.1. Exceptions

18 * * *

19 B. The legislature further recognizes that there exist exceptions, exemptions,
20 and limitations to the laws pertaining to public records throughout the revised

1 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
2 limitations are hereby continued in effect by incorporation into this Chapter by
3 citation:

4 * * *

5 (29) R.S. 47:15, 349, 633.6, 1508, 1515.3, 1516, 1837, 2130, 2327, 2605,
6 4352(C), 6036, 9006

7 * * *

8 Section 2. Chapter 5 of Subtitle V of Title 47 of the Louisiana Revised Statutes of
9 1950, comprised of R.S. 47:4351 through 4355, is hereby enacted to read as follows:

10 CHAPTER 5. CONTRACTS FOR BUSINESSES

11 §4351. Definitions

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

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

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

19 (3) "Department" means the Louisiana Department of Economic
20 Development.

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

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

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

4 (7) "Secretary" means the secretary of the Department of Economic
5 Development.

6 (8) "Shared service center jobs" means jobs based at a business located in
7 Louisiana that performs specific corporate operational tasks for the business or its
8 affiliates or customers, such as accounting, human resources, payroll, or purchasing.
9 §4352. Program administration; parishes

10 A. There is hereby established a program for the granting of contracts for ad
11 valorem tax exemptions for qualifying businesses with projects which, if located in
12 Louisiana, are expected to yield significant positive economic benefit to the state.
13 The program shall be implemented and administered by the Department of Economic
14 Development and shall be available and operate in all parishes, municipalities, and
15 school districts which have elected to participate therein. As provided in this
16 Chapter, the program shall consist of an application process for, and review,
17 certification, approval, and oversight of contracts for ad valorem tax exemptions. In
18 compliance with the Administrative Procedure Act, the department shall adopt and
19 promulgate such rules as are necessary for the administration of this program.

20 B.(1) The governing authority of any parish may elect to participate in the
21 program by the adoption of an ordinance approving the granting of an ad valorem tax
22 exemption for projects on any of the bases provided for in Subparagraphs (a) through
23 (c) of this Paragraph. In any parish which elects to participate in the program, the
24 program shall not be operable within any municipality or school district unless the
25 governing authority of the municipality or school district has elected to participate
26 in the program on the same bases as chosen by the parish, which election shall be
27 evidenced by the adoption of a resolution or ordinance.

28 (a) All projects recommended by the secretary and approved by the board
29 and the governor;

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

5 **(c) Projects on an individual basis by adoption of a subsequent ordinance.**

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

8 **(3) Participation in the program shall be for an indefinite term, but may be**
9 **rescinded at any time by the parish governing authority or, if applicable,**
10 **municipality or school district. However, such rescission shall not affect existing**
11 **contracts or renewals thereof, and shall be without effect as to any project previously**
12 **approved by the parish, and, if applicable, the municipality or school district, for the**
13 **ad valorem tax exemption by any of the methods provided in Paragraph (1) of this**
14 **Subsection, and for which an offer including the exemption has been made to a**
15 **business by the department.**

16 **C. A record in the custody of a parish governing authority pertaining to a**
17 **project under consideration for inclusion in the program that would be confidential**
18 **pursuant to R.S. 44:22 if it were in the custody of the department shall be**
19 **confidential to the extent provided by R.S. 44:22 as though it were in the custody of**
20 **the department.**

21 **§4353. Eligibility requirements**

22 **A. A business shall be eligible for participation in the program if all of the**
23 **following requirements are met:**

24 **(1) At least fifty percent of the total annual sales of the business from a**
25 **Louisiana site or sites is to out-of-state customers or buyers, or to in-state customers**
26 **or buyers but the product or service is resold by the purchaser to an out-of-state**
27 **customer or buyer for ultimate use, or the federal government, or any combination**
28 **thereof.**

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

6 (3) The business intends to either locate a project or undertake an expansion
7 project in Louisiana, either of which shall involve a capital expenditure within
8 Louisiana by the business or an affiliate or partner on its behalf of at least twenty-
9 five million dollars.

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

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

18 §4354. Application and recommendation

19 A. At the invitation of the secretary or parish governing authority, a qualified
20 business may apply for a contract based on a project located in a parish and, if
21 applicable, municipality or school district, participating in the program. Application
22 shall consist of submission by the business to the department such certified
23 statements and substantiating documents as the department may require. At the
24 discretion of the secretary, he may recommend the project of a qualified business for
25 a contract in either of the following circumstances:

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

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

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

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

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

8 (3) Audits and review of performance.

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

11 §4355. Approval of contract; contract administration

12 A.(1) If the project is located in a parish, municipality, or school district
13 which requires the approval of each proposed contract by the parish governing
14 authority and, if applicable, municipality or school district, pursuant to R.S.
15 47:4352(B)(1)(c), the secretary shall submit the proposed contract to the authority.
16 If approved, the proposed contract shall then be submitted by the secretary to the
17 board and the governor for approval.

18 (2) If the project is located in a parish which does not require parish, and, if
19 applicable, municipality or school district, approval of each contract, the secretary
20 shall submit the proposed contract to the board and the governor for approval.

21 (3) Upon approval by the board and the governor, the secretary shall execute
22 the contract on behalf of the board and provide a copy of the contract to the assessor
23 and the parish governing authority of the respective parish and, if applicable, the
24 governing authority of the municipality and school district. The secretary shall
25 notify the assessor and parish governing authority when an existing contract is
26 renewed, expires, is suspended, or is cancelled.

27 B. In the event the secretary determines that a business has failed to meet the
28 eligibility requirements of the program or the performance objectives of the contract,
29 the secretary may, at his discretion, suspend or cancel the contract. A contract

1 suspension would remove the exemption for the calendar year in which the failure
 2 occurred. A contract cancellation would remove the exemption for the calendar year
 3 in which it occurred and all future years. Upon receipt of notification from the
 4 secretary that a contract was suspended or cancelled, the assessor shall adjust the
 5 property assessment in the manner provided by law. Taxes becoming due for a prior
 6 year due to removal of an exemption shall, at the discretion of the tax collector, be
 7 collectable immediately or with the taxes for the current year.

8 Section 3. This Act shall take effect and become operative for all calendar years
 9 commencing after the proposed amendment adding Article VII, Section 21(L) of the
 10 Constitution of Louisiana contained in the Act which originated as House Bill No. 674 of
 11 this 2012 Regular Session of the Legislature is adopted at the statewide election to be held
 12 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 secretary of the Dept. of Economic Development on behalf of the State Board of Commerce and Industry to enter into ad valorem tax exemption contracts with certain businesses that locate or expand a project in La. if the project 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 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, and, if applicable, municipalities and school districts 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 in 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 projects on a case by case basis. However, in any parish which has elected to participate in the program, the program shall not be operable within any municipality or school district unless the governing authority of the municipality or school

district has elected to participate in the program on the same bases as was chosen by the parish.

Proposed law provides that the election to participate in the program by a parish governing authority shall be evidenced by the adoption of an ordinance. Participation in the program shall be for an indefinite term and may be rescinded at any time by the parish governing authority, or, if applicable, the governing authority of a municipality or school district. Withdrawal by a parish, municipality, or school district shall not affect existing contracts or renewals thereof.

Proposed law provides the criteria for eligibility of a business to participate 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.
- (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 involve a capital expenditure of at least \$25 million by the business or an affiliate or partner on its behalf.

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 qualified business 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, municipality, or school district.

Proposed law requires that approved contracts be sent by the secretary to the assessor and governing authority of the respective parish, and, if applicable, municipality, or school district. Such parties shall also be notified by the secretary if a contract is renewed, 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 calendar year in which the failure occurred. A contract cancellation would remove the exemption for the calendar year in which it occurred and all future years. Upon receipt of notification from the secretary that a 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 compliance with the Administrative Procedure Act.

Effective for all calendar years commencing after the constitutional amendment proposed in House Bill No. 674 of this 2012 R.S. is adopted and becomes effective.

(Amends R.S. 44:4.1(B)(29); 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. Adds requirement that a project include at least \$25 million in capital investments in La.
2. Deletes the 24 month waiting period for effectiveness of a parish's discontinuation of participation in the program.
3. Adds specific circumstances under which a parish may indicate its approval of ad valorem tax exemption contracts for certain businesses.
4. Adds authorization for a parish governing authority to invite an eligible business to apply for a tax exemption contract.
5. Adds provisions for the approval of specific ad valorem tax exemption contracts by a parish governing authority.

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill.

1. Clarifies the application of the proposed public records limitation by providing that a record in the custody of a parish governing authority pertaining to a project is confidential to the same extent as a record in the custody of the department pursuant to present law relative to economic development negotiations.
2. Includes a reference to the public records limitation in the Public Records Law.
3. Specifies that the required minimum \$25 million capital expenditure be made by the business or an affiliate or partner on its behalf.

4. Specifies that the secretary executes the contract on behalf of the State Board of Commerce and Industry.
5. Provides that the secretary notify the assessor and the governing authority if a contract is renewed.
6. Changes references to "year", "tax year", and "taxable year" to "calendar year."

House Floor Amendments to the reengrossed bill.

1. Adds approval authority for municipalities and school districts relative to program participation and the granting of ad valorem tax exemption contracts.