

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

DIGEST

Proposed law establishes a program to implement the exemption provided by the proposed constitutional amendment contained in HB 674 for "targeted non-manufacturing businesses" to be implemented and administered by the Department of Economic Development [DED], which is required to adopt and promulgate such rules as are necessary for the administration of the program in compliance with the APA.

Proposed law provides that a contract for exemption is available only in parishes which have agreed to participate in the program - which requires approval of all of the following local governmental entities:

1. The parish governing authority.
2. All municipalities in the parish which levy an ad valorem tax.
3. All school boards in the parish which levy an ad valorem tax.
4. The parish law enforcement district.
5. The assessor.

Any one of the above entities may withdraw the participation of a parish, effective 90 days after the date upon which such entity provides written notification to the secretary of its intention to discontinue participation. The withdrawal of a participating parish does not affect existing contracts.

Proposed law requires "targeted non-manufacturing businesses" to meet all of the following requirements:

1. The business must undertake a project to establish a new or expanded "facility" in the state.

"Facility" is defined as the new or expanded site of a targeted non-manufacturing business's activities in Louisiana, including buildings, improvements, equipment and other property necessary or beneficial to such operation, which is owned or leased for a term of more than 5 years by the business. "Facility" does not include the land underlying the facility and other property pertaining to the facility on which ad valorem taxes have previously been paid, inventories, consumables, and property eligible for the manufacturing exemption provided by the present constitution.
2. The primary activities at the facility are or will be among the following "targeted non-manufacturing business activities": corporate headquarters, distribution facilities, data services facilities, research and development operations, and digital media and software development centers.
3. A business primarily engaged in retail sales, real estate, professional services, natural resource extraction or exploration, financial services, or venture capital funds is not eligible for the program unless it's a business providing at least 50 new "headquarters jobs" or "shared service center jobs".

"Headquarters jobs" is defined as executive, administrative, or professional jobs based at a principal or regional office located in Louisiana, in which are located the principal or regional executive officers normally constituting a principal or regional headquarters providing corporate governance, such principal or regional executive officers include but are not limited to chief executive officer, chief operating officer, and other senior level officers or appropriate regional equivalents.

"Shared service center jobs" is defined as jobs based at a business located in Louisiana that performs specific corporate operational tasks for the business or its affiliates or customers, such as accounting, human resources, payroll, or purchasing.

No business engaged in gaming or gambling is eligible for the program

4. Within the time period provided in the contract, the business makes capital expenditures of \$25 million dollars for the facility, and creates and maintains at least 50 "new direct jobs". "New direct jobs" is defined as permanent full-time positions of employment (meaning working 30 or more hours per week) exclusive of contract labor, based at the facility and filled by Louisiana residents, and not existing in the state prior to implementation of the project and the effective date of the contract.
5. At least 50% of total annual sales by the business from a Louisiana site or sites are to out-of-state customers or buyers, or to 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 to the federal government, or any combination thereof. The secretary, at his discretion, may include sales by closely associated affiliates of the business in determining the percentage of sales meeting the requirement.

Proposed law authorizes a "targeted non-manufacturing business" undertaking a project in a participating parish to apply for a contract at the invitation of the secretary of DED or any of the local governmental entities listed above to apply for a contract by submitting to the department such certified statements and documentation as the department may require.

The secretary of DED may recommend the project to the State Board of Commerce and Industry for a contract upon determining the applicant meets the requirements and the exemption would be advantageous in a competitive site selection situation to encourage the establishment of a targeted non-manufacturing business facility which is expected to yield significant positive economic benefit to the state and the parish.

Proposed law requires the proposed contract terms and conditions to include:

1. A term of 10 years.
2. Performance obligations, including required capital expenditures and new direct jobs, and the time for performance of such obligations.
3. Monitoring by DED, reporting by the business and auditing of contract performance.
4. Consequences of failure to perform contract obligations.

Proposed law requires that approved contracts be sent by the secretary to the assessor and governing authority of the respective. 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.

Proposed law requires the state to be the "sole proper defendant" in any taxpayer challenge to the correctness of an assessment based upon the constitutionality of an exemption provided for in the proposed law.

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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the re-reengrossed bill

1. Requires the targeted non-manufacturing business to create 50 "new direct jobs" and provides the definitions of "new direct jobs" to be created and the "facility" to be established by a targeted non-manufacturing business.
2. Includes the parish law enforcement district and the assessor as entities which must approve parish participation, or cause a withdrawal from the program.
3. Removes "clean technology", "destination health care", "renewable energy", and "other business sectors targeted by the secretary" of DED as the types of activities eligible for exemption.
4. Removes the requirement for approval by the governor.
5. Requires a term of 10 years for the contract.
6. Removes the authorization for a affiliate or partner of the targeted non-manufacturing business to provide the capital expenditure required.
7. Removes a requirement that the local governmental entities in the parish must elect to participate in the program on the same "bases" as follows:
 - (a) All projects recommended by the secretary and approved by the board and the governor.
 - (b) All projects meeting specific criteria selected by the parish governing authority from a list of options proposed by DED and by approval of other specific projects by subsequent resolution or ordinance.
 - (c) Projects on an individual basis by adoption of a subsequent ordinance.
8. Removes the provision limiting prohibiting parish withdrawal after an offer of an exemption contract has been made to a business, but provides that a withdrawal is not effective until 90 days after the date upon which the withdrawing local entity provides written notification to the secretary of DED of its intention to discontinue participation.
9. Removes the exception to the Public Records Law for a record in the custody of a parish governing authority pertaining to a project under consideration for inclusion in the program that would be confidential pursuant to R.S. 44:22 if it were in the custody of DED.