

AS PASSED BY THE SENATE

June 3, 2014

H. 3644

Introduced by Reps. Loftis, Gagnon, Herbkersman, Lowe, Lucas, D.C. Moss, H.L. Ott, Pitts, Toole and Bowers

S. Printed 6/3/14--S.

Read the first time February 5, 2014.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 13-1-390 SO AS TO ESTABLISH WITHIN THE DIVISION OF STATE DEVELOPMENT OF THE DEPARTMENT OF COMMERCE THE CLEAN ENERGY INDUSTRY MARKET DEVELOPMENT ADVISORY COUNCIL AND PROVIDE FOR ITS MEMBERSHIP AND FUNCTIONS; TO AMEND SECTION 12-6-3588, RELATING TO THE RENEWABLE ENERGY TAX CREDIT INCENTIVE PROGRAM, SO AS TO REDESIGNATE THE PROGRAM THE SOUTH CAROLINA CLEAN ENERGY TAX INCENTIVE PROGRAM, TO REVISE DEFINITIONS TO EXTEND THE CREDIT TO ADDITIONAL FORMS OF ENERGY PRODUCTION AND OPERATIONS, TO DECREASE INVESTMENT THRESHOLDS AND DECREASE JOB CREATION THRESHOLDS FOR QUALIFYING FOR THE CREDIT AND MAKE THE CREDIT, PREVIOUSLY DUE TO EXPIRE DECEMBER 31, 2015, AVAILABLE THROUGH 2019 AND TO REVISE CREDIT ADMINISTRATION PROCEDURES; AND TO AMEND SECTION 12-6-3600, AS AMENDED, RELATING TO THE INCOME TAX CREDIT FOR CORN-BASED ETHANOL OR SOY-BASED BIODIESEL PRODUCTION IN THIS STATE, SO AS TO EXTEND THE CREDIT TO ALL LIQUID FUELS DERIVED FROM RENEWABLE SOURCES, MAKE CONFORMING DEFINITIONS, REDUCE THE AMOUNT OF LIQUID FUEL ELIGIBLE FOR THE CREDIT, AND TO EXTEND THE PERIOD DURING WHICH THE CREDIT MAY BE CLAIMED THROUGH 2019.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Section 12-6-3588 of the 1976 Code is amended to read:

"Section 12-6-3588. (A) The General Assembly has determined to enact the 'South Carolina ~~Renewable Clean~~ Energy Tax Incentive Program' as contained in this section to encourage business investment that will produce high quality employment opportunities and enhance this state's position as a center for production and use of ~~renewable clean~~ energy products. The program accomplishes this goal by providing tax incentives to companies in the solar, wind, geothermal, and other ~~renewable clean~~ energy industries ~~who~~ which are expanding or locating in South Carolina.

(B) As used in this section:

(1) 'Capital investment' means an expenditure to acquire, lease, or improve property that is used in operating a business, including land, buildings, machinery, and fixtures.

(2) 'Manufacturing' means fabricating, producing, or manufacturing raw or unprepared materials into usable products, imparting new forms, qualities, properties, and combinations. Manufacturing does not include generating electricity for off-site consumption.

(3) 'Qualifying investment' means investment in land, buildings, machinery, and fixtures for expansion of an existing facility or establishment of a new facility in this State. Qualifying investment does not include relocating an existing facility in this State to another location in this State without additional capital investment.

(4) '~~Renewable Clean~~ energy operations' are limited to manufacturers of systems ~~and~~ or components that are used or useful in manufacturing ~~renewable or operation of clean~~ energy equipment for the generation, storage, testing and research and development, and transmission or distribution of electricity from ~~renewable clean~~ energy sources, including specialized packaging for the ~~renewable clean~~ energy equipment manufactured at the facility. A clean energy operation does not include generating electricity for off-site consumption.

(C) A business or corporation meeting the requirements of this section ~~beginning in 2010~~ is eligible to receive a ten percent-nonrefundable income tax credit of the cost of the company's total qualifying investments in plant and equipment in this State for ~~renewable clean~~ energy operations.

(D) The business or corporation ~~must~~ shall:

(1) manufacture ~~renewable~~ clean energy systems ~~and or~~ components in South Carolina for solar, wind, geothermal, or other ~~renewable~~ clean energy uses in order to be eligible for the tax credit authorized by this section;

(2) invest at least ~~five hundred~~ fifty million dollars in a Tier IV county, at least one hundred million dollars in a Tier III county, at least one hundred fifty million dollars in a Tier II county, and at least two hundred million dollars in a Tier I county according to the county ranking and designation system as provided pursuant to Section 12-6-3360(B) in the year the tax credit is claimed in new qualifying plant and equipment; and

(3) have created at least one and one-half full-time job for every five hundred thousand one million dollars of capital investment qualifying for the credit that each pays at least one hundred twenty-five percent of this state's average annual median wage as defined by the Department of Commerce.

(E) The income tax credit ~~program is for a five year period~~ allowed for up to sixty months beginning January 1, 2010, and ending with the first taxable year for which the business or corporation is eligible to receive the credit, so long as the business or corporation becomes eligible to receive the credit no later than the tax year ending on December 31, 2015 2020.

(F) A taxpayer may separately qualify for new facilities in separate locations or for separate expansions of existing facilities located in this State.

(G) A taxpayer's total credit for all expenditures allowed pursuant to this section must not exceed five hundred thousand dollars for any year and five million dollars total for all years. Unused credits may be carried forward for fifteen years after the tax year in which a qualified expenditure was made. The credit is nonrefundable.

(H) For any credit awarded after tax year 2014, to obtain the amount of the credit available to a taxpayer, each taxpayer shall notify the Department of Revenue, in writing, of its intention to claim the tax credit. The Department of Revenue shall determine the proof necessary to meet the requirements of subsections (D)(1) and (D)(2). Expenditures qualifying for a the tax credit allowed by this section must be certified by the ~~State Energy Office~~ Department of Revenue. ~~The State Energy Office may~~ Department of Revenue must consult with the Department of Commerce, the State Energy Office, or any other appropriate state and federal officials on standards for certification.

~~(I) To obtain the amount of the credit available to a taxpayer,~~
each Each taxpayer ~~must~~ shall submit a request for the credit to the ~~State Energy~~

~~Office~~ Department of Revenue by January thirty-first for qualifying expenses incurred in the previous calendar year and the ~~State Energy Office~~ Department of Revenue must notify the taxpayer that the submitted expenditures qualify for the credit and the amount of credit allocated to such taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year.

(I) To obtain the amount of the credit available to a taxpayer, the Department of Commerce also must certify to the ~~State Energy Office~~ Department of Revenue that the taxpayer has met the job creation requirements of subsection (D)(3).

(J) The credits authorized by this section are in lieu of any other applicable income tax credits or abatements allowed by state law, and in the event of an overlap or conflict in available credits or abatements to a taxpayer, the taxpayer must select the credit or abatement ~~he~~ the taxpayer desires in the manner prescribed by the Department of Revenue to the extent the credits or abatements conflict or overlap."

B. This SECTION takes effect upon approval by the Governor and applies to tax years beginning after 2013.

SECTION 2. Section 12-6-3620 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

"() Notwithstanding subsections (A) or (D)(1), for any credit requested after tax year 2013, to obtain the maximum amount of credit available to a taxpayer, a taxpayer must submit a request for credit to the Department of Revenue by January thirty-first for all qualifying equipment placed in service in the previous calendar year and the department must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit, including, but not limited to, documentation relating to certifying the costs incurred by a taxpayer. The Department of Revenue shall consult with the State Energy Office or any other appropriate state and federal officials on standards for certification."

SECTION 3. A. Section 12-20-105(B) of the 1976 Code is amended by adding an appropriately numbered item to read:

"(3) In a county in which at least five million dollars in state accommodations tax imposed pursuant to Section 12-36-920 has been collected in at least one fiscal year, a county or municipality-owned multiuse sports and recreational complex is considered

an 'eligible project' promoting economic development for all purposes of the credit allowed pursuant to this section."

B. Section 12-20-105 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

"() For the purposes of this section, for a qualifying project pursuant to subsection (B)(3), infrastructure includes all applicable provisions of subsection (C) applying to the development and construction of the sports and recreational complex and further includes costs of land acquisition and preparation, construction of facilities and venues in the complex, improvements and upgrades to existing facilities and venues, and any other capital costs incurred in the acquisition, construction, and operation of the complex."

C. This SECTION takes effect upon approval by the Governor and applies for contributions made for a multiuse sports and recreational complex placed in service after 2011.

SECTION 4. A. Section 12-10-95 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 12-10-95. (A)(1) Subject to the conditions in this section, a business engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in Section 12-6-3360(M) and that meets the requirements of Section 12-10-50(B)(2) may negotiate with ~~the council~~ a technical college, with approval from the State Board for Technical and Comprehensive Education, to claim as a credit against withholding ~~five hundred one thousand~~ five hundred one thousand dollars a year for the retraining of a production or technology first line employee or immediate supervisor who has been continuously employed by the business for a minimum of two years and is a full-time employee, so long as ~~if~~ retraining is necessary for the qualifying business to remain competitive or to introduce new technologies. In addition to the yearly limits, the retraining credit claimed against withholding may not exceed ~~two~~ five thousand dollars over five consecutive years for each retrained production or technology first line employee or immediate supervisor.

(2) Retraining programs that are eligible for the credit include, but are not limited to:

(a) retraining of current employees on newly installed equipment; and

(b) retraining of current employees on newly implemented technology, such as computer platforms, software implementation and upgrades, Total Quality Management, ISO 9000, and self-directed work teams.

Executive training, management development training, career development, personal enrichment training, and cross-training of employees on equipment or technology that is not new to the company are not eligible for the credit.

(B) A qualifying business is eligible to claim as a retraining credit against withholding the lower amount of the following:

(1) the retraining credit for the applicable withholding period as determined by subsection (A); or

(2) withholding paid to the State for the applicable withholding period.

(C) All retraining must be approved by a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education. A qualifying business must submit a retraining program for approval by the appropriate technical college. The approving technical college may provide the retraining itself, subject to the retraining program, or contract with other training entities to provide the required retraining, or supervise the employer's approved internal training program.

~~(D) Travel and lodging expenses and wages for retraining participants are not reimbursable. An employer may not receive the credit allowed by this section if the employer requires that the employee reimburse or pay the employer for the direct costs of retraining, or if the employee is required to reimburse or pay the employer indirectly through the forfeiture of leave time, vacation time, or other compensable time. Direct costs of retraining include instructor salaries, development of retraining programs, purchase or rental of materials and supplies, textbooks and manuals, instructional media, such as video tapes, presentations, equipment used for retraining only, not to include production equipment, and reasonable travel costs as limited by the state's travel expense reimbursement policy.~~

(E) The qualifying business must ~~match on a dollar-for-dollar basis~~ expend at least one dollar fifty cents on retraining eligible employees for every dollar the amount claimed as a credit against withholding for retraining. ~~When applicable, the total amount of retraining credits and matching funds must be paid to the technical college that provides the training.~~ All training costs, including costs in excess of the retraining credits and matching funds, are the responsibility of the business.

~~(F)~~ A qualifying business claiming retraining credits pursuant to this section is subject to the reporting and audit requirements in ~~Section 12-10-80(A)~~.

~~(G)~~ A qualifying business may not claim retraining credit for training provided to the following production or technology first line employees or immediate supervisors:

- (a) temporary or contract employees; and
- (b) employees who are subject to a revitalization agreement, including a preliminary revitalization agreement.

~~(H)~~(G) Notwithstanding another provision of this section, the retraining credit allowed by this section is for:

- (1) apprenticeship programs; and
- (2) retraining for all relevant employees that enable a company to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a qualified company to maintain or expand its business in this State.

~~(I)~~(H) ~~The council may establish~~ There is hereby established an annual renewal fee of ~~five hundred~~ two-hundred fifty dollars to be ~~shared equally with the department for administrative, data collection, reporting, and other obligations of this chapter~~ billed and collected by the department.

(I)(1) All approved programs and training must be reviewed annually by the State Board for Technical and Comprehensive Education.

(2) Every three years, the Department of Revenue must audit any business that claimed the job retraining credit pursuant to this section during that time period, solely for the purpose of verifying proper sources and uses of the credits.

(J) The State Board for Technical and Comprehensive Education shall establish policies and procedures to provide the oversight and review provisions of this section. By November fifteenth of each year, the State Board for Technical and Comprehensive Education shall submit a statewide aggregated report detailing the utilization of the retraining credit pursuant to this section, as well as the board's activities in regard to oversight, to the Governor, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Finance Committee, the Coordinating Council for Economic Development, and the Department of Revenue.

Also, the board shall make the report available in a conspicuous place on the website maintained by the board."

B. Section 12-10-105 of the 1976 Code, as last amended by Act 145 of 2005, is further amended to read:

"Section 12-10-105. In addition to the application fee provided in Section 12-10-100, an additional annual fee of one thousand dollars must be remitted by those qualifying businesses claiming in excess of ten thousand dollars of job development credits or in excess of ~~ten~~ forty thousand dollars in job retraining credits in one calendar year. The fee is due for each project that is subject to a revitalization ~~or retraining~~ agreement that exceeds ten thousand dollars or retraining agreement that exceeds forty thousand dollars in one calendar year and must be remitted to the Department of Revenue to be used to reimburse the department for costs incurred auditing reports required pursuant to Section 12-10-80(A). The fee becomes due at the time the single project's claims for job development credits ~~or job retraining credits~~ exceeds ten thousand dollars or job retraining credits exceed forty thousand dollars for that calendar year."

C. This SECTION takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.

SECTION 5. Except where provided otherwise, this act takes effect upon approval by the Governor.