

# ACT No. 520

HOUSE BILL NO. 733

BY REPRESENTATIVES LEGER, ABRAMSON, AUBERT, BROSSETT, HENRY BURNS, TIM BURNS, BURRELL, CARMODY, HINES, HOWARD, ROSALIND JONES, SAM JONES, LABRUZZO, LAFONTA, PETERSON, RICHMOND, ROBIDEAUX, ST. GERMAIN, AND STIAES AND SENATORS DORSEY AND GRAY EVANS

1 AN ACT

2 To enact R.S. 47:6035, relative to tax credits; to authorize a tax credit for certain "green job  
3 industries"; to provide for certain definitions; to provide for the application for,  
4 certification of, and the administration of the tax credit; to provide for the maximum  
5 amount of the credit that may be issued; to provide for certain requirements and  
6 limitations; to provide for the recapture and recovery of the credit under certain  
7 circumstances; to provide for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6035 is hereby enacted to read as follows:

10 §6035. Tax credit for "green job industries"

11 A. Definitions. For the purposes of this Section, the following words shall  
12 have the following definitions unless the context clearly indicates otherwise:

13 (1) "Base investment" means expenditures for the construction, repair, or  
14 renovation of state-certified green projects for which a credit is granted in this  
15 Section, or investments made by a company or financier which are for such  
16 expenditures.

17 (2) "Company" or "financier" means any individual, firm, partnership, limited  
18 liability company, joint venture, association, corporation, estate, trust, or other entity,  
19 group, or combination acting as a unit, and the plural as well as the singular number.

20 (3) "Expended in the state" means expenditures for tangible property to be  
21 used within the state; and in the case of services, means expenditures for services  
22 performed within the state; and in the case of intangible property, means the  
23 acquisition of permits, licenses, or other rights related to state-certified green projects  
24 used within the state.

1           (4) "Green job industry" or "green job industries" shall mean energy  
2           efficiency and renewable energy industries, energy-efficient building, construction,  
3           and retrofit industries, the renewable electric power industry, the energy efficient and  
4           advanced drive train vehicle industry, the biofuels industry, the deconstruction and  
5           materials use industries, the energy efficiency assessment industry serving the  
6           residential, commercial, or industrial sectors, and manufacturers that produce  
7           sustainable products using environmentally sustainable processes and materials  
8           approved by a nationally recognized high performance environmental building rating  
9           system, or that have the ENERGY STAR designation from the United States  
10           Environmental Protection Agency. However, any such rating system that uses a  
11           material or product-based credit system which is disadvantageous to materials or  
12           products manufactured or produced in the state of Louisiana shall not be utilized.

13           (5) "Payroll" means all salary, wages, and other compensation, including  
14           related benefits for services performed in Louisiana.

15           (6) "Resident" or "resident of Louisiana", for the purpose of determining  
16           eligibility for the tax incentives provided by this Section, means either:

17           (a) A natural person who meets any of the following qualifications:

18           (i) The person is domiciled in the state of Louisiana.

19           (ii) The person maintains a permanent place of abode within the state and  
20           spends in the aggregate more than six months of each year within the state.

21           (iii) The person pays taxes to the state on the amount of money paid to such  
22           person for which a credit is sought pursuant to this Section.

23           (b) A company owned or controlled by a person qualifying under the  
24           provisions of Subparagraph (a) of this Paragraph, and which lends the services of  
25           that person for a state-certified green project, if such company is organized or  
26           authorized to do business in the state and pays taxes to the state on the amount of  
27           money paid to such company for such services of such person.

28           (7) "State-certified green project" means a capital infrastructure project in  
29           the state directly related to green job industries as defined in this Section, and  
30           movable and immovable property and equipment related thereto, or any other facility

1 which supports and is a necessary component of such facility, and any expenditures  
2 in the state related to the construction, repair, or renovation of such project, which  
3 are certified, verified, and approved as provided for in this Section.

4 B. Income tax credits for state-certified green projects:

5 (1) There is hereby authorized a base investment tax credit for certified,  
6 verified, and approved expenditures in the state for the construction, repair, or  
7 renovation of a state-certified green project, or for investments made by a company  
8 or a financier in such project which are, in turn, expended for such construction,  
9 repair, or renovation, not to exceed one million dollars per state-certified green  
10 project. No more than five million dollars in tax credits under this Section shall be  
11 granted for state-certified green projects per year.

12 (a) If all or a portion of a project is a facility which may be used for other  
13 purposes not directly related to the green job industry, then the project shall be  
14 approved only if a determination is made that the multiple-use facility will support  
15 and will be necessary to secure support industries for the green job industry, and the  
16 applicant provides sufficient contractual assurances the facility will be used for  
17 support industries or as a component thereof, for the useful life of the facility.

18 (b) No tax credits shall be earned on multiple-use facilities until the facility  
19 directly used in the green job industries is complete.

20 (2)(a) Tax credits for state-certified green projects shall be earned only as  
21 follows:

22 (i) Twenty-five percent of the total base investment provided for in the initial  
23 certification of a project pursuant to Subsection D of this Section shall be certified,  
24 verified, and approved as expended before any credits may be earned.

25 (ii) No tax credit shall be allowed for expenditures made for any state-  
26 certified green project two years after its initial certification, unless fifty percent of  
27 total base investment provided for in the initial certification of the project has been  
28 expended prior to that time. The expenditures may be finally certified at a later date.

29 (iii) The initial certification may require the tax credits to be taken or  
30 transferred in the tax period in which the credit is earned, or the tax credit may be

1           structured in the initial certification of the project to provide that only a portion of  
2           the tax credit be taken over the course of two or more tax years.

3           (b) The base investment credit for state-certified green projects shall be for  
4           the following amounts:

5           (i) If the total base investment is greater than one hundred thousand dollars  
6           and less than or equal to three hundred thousand dollars, a company shall be allowed  
7           a tax credit of ten percent of the base investment made by that company.

8           (ii) If the total base investment is greater than three hundred thousand dollars  
9           and less than or equal to one million dollars, a company shall be allowed a tax credit  
10           of twenty percent of the base investment made by that company.

11           (iii) If the total base investment is greater than one million dollars, a  
12           company shall be allowed a tax credit of twenty-five percent of the base investment  
13           made by that company.

14           (c) To the extent that base investment is expended on payroll for Louisiana  
15           residents employed in connection with the construction of a state-certified green  
16           project, a company shall be allowed an additional tax credit of ten percent of the  
17           payroll; however, if the amount paid to any one person exceeds one million dollars,  
18           the additional credit shall not include any amount paid to that person that exceeds  
19           one million dollars.

20           (d) To the extent that base investment is expended on payroll for Louisiana  
21           residents employed in connection with a state-certified green project, who are  
22           graduates of an institution within the Louisiana Community and Technical College  
23           System or graduates of an apprenticeship program registered with the Louisiana  
24           Workforce Commission, each investor shall be allowed an additional tax credit of  
25           one percent of such payroll.

26           (3)(a) The tax credits shall be earned each calendar year to the extent the  
27           Department of Economic Development verifies in writing that expenditures  
28           qualifying for a credit pursuant to this Section have been expended for the calendar  
29           year in accordance with the estimates of such expenditures for the calendar year set  
30           forth in the certification of the project.

1           (b) In addition, a state-certified green project which receives tax credits  
2           pursuant to the provisions of this Chapter shall not be eligible to receive the rebates  
3           provided for in R.S. 51:2451 through 2461 in connection with the activity for which  
4           the tax credits were received.

5           (4) Tax credits associated with a state-certified green project shall never  
6           exceed the total base investment in the project.

7           (5) The granting of credits under this Section shall be on a first-come, first-  
8           served basis. If the total amount of credits applied for in any particular year exceeds  
9           the aggregate amount of tax credits allowed for that year, the excess shall be treated  
10          as having been applied for on the first day of the subsequent year.

11          C.(1) The credit shall be allowed against individual or corporate income tax  
12          of the companies or financiers of the project in accordance with their share of the  
13          credit as provided for in the application for certification for the project. A company  
14          or financier may on a one-time basis, transfer the credit, or any refund of an  
15          overpayment, to an individual or other entity including without limitation a bank or  
16          other lender, provided that the transfer shall not be effective until receipt by the  
17          Department of Revenue of written notice of such transfer. The credit shall be  
18          allowed for the taxable period in which expenditures eligible for a credit are  
19          expended. Any excess of the credit over the income tax liability against which the  
20          credit may be applied shall constitute an overpayment, as defined in R.S.  
21          47:1621(A), and the secretary shall make a refund of such overpayment from the  
22          current collections of the taxes imposed by Chapter 1 of Subtitle II of this Title, as  
23          amended. The right to a refund of any such overpayment shall not be subject to the  
24          requirements of R.S. 47:1621(B).

25          (2) Application of the credit.

26          (a) Individuals, estates, and trusts shall claim their share of any credit on  
27          their income tax return.

28          (b) Entities not taxed as corporations shall claim their share of any credit on  
29          the returns of the partners or members.

1           (c) Corporate partners or members shall claim their share of any credit on  
2           their corporation income tax returns.

3           (d) Individual partners or members shall claim their share of any credit on  
4           their individual income tax returns.

5           (e) Partners or members that are estates or trusts shall claim their share of  
6           any credit on their fiduciary income tax returns.

7           D. Certification and administration. (1) The secretary of the Department of  
8           Economic Development, the commissioner of administration, and the office of the  
9           governor shall determine which state-certified green projects shall be certified  
10          pursuant to this Section through the adoption and promulgation of rules by the  
11          department, in consultation with the commissioner and the office of the governor.  
12          The rules shall also provide for all of the following:

13           (a) The minimum criteria for such certification.

14           (b) The manner in which the department shall decide which expenditures for  
15          such projects will qualify for the credits provided for in this Section.

16           (c) An appeals process in the event that an application for or the certification  
17          of a project, or an expenditure related to such project, is denied.

18           (2) In addition, these rules shall be approved by the House Committee on  
19          Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

20           (3) State certification shall not be granted to a project by any person or  
21          company, or financed by any person or company, or any company or financier  
22          owned, affiliated, or controlled, in whole or in part, by any company or person,  
23          which is in default on a loan made by the state or a loan guaranteed by the state, or  
24          which has ever declared bankruptcy under which an obligation of the company or  
25          person to pay or repay public funds or monies was discharged as a part of such  
26          bankruptcy.

27           (4) When determining which projects qualify for certification, the  
28          Department of Economic Development, the commissioner of administration, and the  
29          office of the governor shall take the following factors into consideration:

1           (a) The impact of the state-certified green project on the employment of  
2           Louisiana residents.

3           (b) The extent to which students in Louisiana colleges, universities, and  
4           vocational-technical schools will have an opportunity to work in a facility which  
5           manufactures green products.

6           (c) The impact of the project on the overall economy of the state including  
7           the manner in which available federal and state incentives will be utilized in the  
8           financing or operation of the project.

9           (5) Upon approval by the Department of Economic Development, the  
10           commissioner of administration, and the office of the governor, the department shall  
11           initially certify a project as a state-certified green project and send notice of such  
12           certification to the applicant and to the secretary of the Department of Revenue. The  
13           initial certification shall include all of the following:

14           (a) The total base investment to be expended on the state-certified green  
15           project.

16           (b) The companies or financiers to whom the credits shall be allocated.

17           (c) The estimated amounts of the credits to be allocated to each.

18           (d) When the tax credits may be taken or transferred.

19           (e) A unique identifying number for the state-certified green project.

20           (6) An applicant applying for the credits shall be required to reimburse the  
21           Department of Economic Development for any audits required in relation to granting  
22           the certification or tax credits.

23           (7) The Department of Economic Development shall provide for the  
24           implementation of this Section with existing personnel and resources and shall not  
25           hire any additional personnel for this purpose.

26           E. Application. (1) An applicant for the tax credit shall submit an  
27           application for initial certification to the Department of Economic Development that  
28           includes the following information:

1                   (a) A preliminary budget including estimated Louisiana payroll, estimated  
 2                   base investment, including the manner in which available federal and state incentives  
 3                   will be utilized in the financing or operation of the project.

4                   (b) A general description of the project.

5                   (c) Estimated dates for start and completion of the construction of the  
 6                   project.

7                   (d) The names of the companies and financiers to whom the credits shall be  
 8                   allocated and the estimated amounts of the credits to be allocated to each.

9                   (2) Additional information may be requested if deemed necessary by the  
 10                  Louisiana Department of Economic Development.

11                  F.(1) Recapture of credits. If the office of the governor, the Department of  
 12                  Economic Development, or the Department of Revenue find that funds for which a  
 13                  taxpayer received credits according to this Section were not expended for  
 14                  expenditures qualifying for a credit as provided in this Section, then the taxpayer's  
 15                  state income tax for such taxable period shall be increased by such amount necessary  
 16                  for the recapture of credit provided by this Section.

17                  (2)(a) Recovery of credits by Department of Revenue. Credits granted to a  
 18                  taxpayer, but later disallowed, may be recovered by the secretary of the Department  
 19                  of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated  
 20                  within three years from December thirty-first of the year in which the credit was  
 21                  taken.

22                  (b) The only interest that may be assessed and collected on recovered credits  
 23                  is interest at a rate three percentage points above the rate provided in R.S.  
 24                  9:3500(B)(1), which shall be computed from the original date of the return on which  
 25                  the credit was taken.

26                  (3) The provisions of this Subsection are in addition to and shall not limit the  
 27                  authority of the secretary of the Department of Revenue to assess or to collect under  
 28                  any other provision of law.

29                  G. The division of administration and the Department of Economic  
 30                  Development shall prepare, with input from the Legislative Fiscal Office, a written

1           report to be submitted to the Senate Committee on Revenue and Fiscal Affairs and  
 2           the House Committee on Ways and Means no less than sixty days prior to the start  
 3           of the 2010 Regular Session of the Legislature, and every second year thereafter.  
 4           The report shall include the overall impact of the tax credits, the amount of the tax  
 5           credits issued, the number of net new jobs created, the amount of Louisiana payroll  
 6           created, the economic impact of the tax credits, and any other factors that describe  
 7           the impact of the program.

8           H. Within one hundred eighty days of the effective date of this Act, the  
 9           secretary of the Department of Revenue shall establish rules and regulations to  
 10          provide for the implementation of the provisions of this Act. Such rules shall  
 11          provide for the taxable periods for which the tax credit for "green job industries"  
 12          shall apply, including an end date for the availability and application of the tax credit  
 13          due to the exhaustion of federal funding.

14          Section 2. The provisions of this Act shall become effective if, as, and when the  
 15          Department of Natural Resources receives a letter of award from the United States  
 16          Department of Energy evidencing the obligation of funding in the amount of at least five  
 17          million dollars per year, for a minimum of three years. Such obligation may be established  
 18          through the United States Department of Energy, Energy Efficiency and Conservation Block  
 19          Grant program, the Advanced Battery Manufacturing Grants, or any other federal program  
 20          which provides funding related to support of green job industries. The secretary of the  
 21          Department of Natural Resources shall notify the secretary of state upon receipt of the letter.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_