

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
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
4 the following amounts:

5 (i) If the total base investment is greater than one hundred thousand
6 and less than or equal to three hundred thousand dollars, a company shall be
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
9 and less than or equal to one million dollars, a company shall be allowed a tax th

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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____