

Regular Session, 2012

# ACT No. 507

HOUSE BILL NO. 958

BY REPRESENTATIVES ROBIDEAUX, ADAMS, BARRAS, WESLEY BISHOP,  
BROADWATER, GUILLORY, HAZEL, HOFFMANN, JOHNSON, LORUSSO,  
AND THIBAUT

1 AN ACT

2 To enact Chapter 54 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 51:3111, relative to the creation of the Competitive Projects Payroll Incentive  
4 Program; to provide for contract for the payment of rebates to certain qualified  
5 businesses; to provide for procedures and requirements for the execution of such  
6 contracts and the payment or repayment of such rebates; to prohibit the approval of  
7 certain contracts after a certain date; to provide for an effective date; and to provide  
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 54 of Title 51 of the Louisiana Revised Statutes of 1950,  
11 comprised of R.S. 51:3111, is hereby enacted to read as follows:

12 CHAPTER 54. COMPETITIVE PROJECTS PAYROLL

13 INCENTIVE PROGRAM

14 §3111. Competitive Projects Payroll Incentive Program

15 A. Definitions. For purposes of this Section, the following words or terms  
16 as used in this Chapter shall have the following meanings, unless a different meaning  
17 appears from the context:

18 (1) "Basic health benefits plan" means coverage for basic hospital care,  
19 coverage for physician care, and coverage for health care which is determined by the  
20 Department of Economic Development to have a value of at least one dollar and  
21 twenty-five cents per hour and which is the same coverage as is provided to  
22 employees employed in a bona fide executive, administrative, or professional  
23 capacity by the employers who are exempt from the minimum wage and maximum  
24 hour requirements of the federal Fair Labor Standards Act, 29 U.S.C. §201, et seq.

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

4                   (3) "Department" means the Department of Economic Development.

5                   (4) "New jobs" means permanent full-time direct new jobs based at the  
 6                   facilities designated in the contract and filled by residents of the state.

7                   (5) "New payroll" means payment by the business to its employees for new  
 8                   jobs, exclusive of benefits, and defined as wages under Louisiana Employment  
 9                   Security Law (R.S. 23:1472(20)).

10                  (6) "Program" means the Competitive Projects Payroll Incentive Program.

11                  (7) "Qualified business" means a business certified by the secretary as  
 12                  meeting the eligibility requirements of Subsection B of this Section, approved by the  
 13                  Joint Legislative Committee on the Budget to participate in the program, and  
 14                  executing a contract providing the terms and conditions for its participation.

15                  (8) "Secretary" means the secretary of the Department of Economic  
 16                  Development.

17                  (9) "Significant positive economic benefit" means net positive tax revenue.  
 18                  This shall be determined by taking into account direct, indirect, and induced impacts  
 19                  based on a standard economic impact methodology utilized by the department, the  
 20                  value of the rebate, and any other state tax and financial incentives that are used by  
 21                  the department to secure the project.

22                  B. Eligibility requirements. (1) A business shall be eligible for participation  
 23                  in the program if all of the following requirements are met:

24                  (a) 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 who resell the product or service to an out-of-state customer or buyer for  
 27                  ultimate use, or the federal government, or any combination thereof.

28                  (b) The business will primarily engage in one of the following activities at  
 29                  the project site:

1           (i) Manufacturing of the following types of durable goods: automobiles,  
 2           motorcycles or other passenger vehicles, or components thereof; aircraft or  
 3           components thereof; spacecraft or components thereof; medical devices; batteries or  
 4           other power storage devices; motors, engines, turbines or components thereof;  
 5           environmental control systems; household appliances; computers, computer  
 6           peripherals or components thereof; communications equipment; audio or video  
 7           equipment; semiconductors; consumer-oriented electronic devices or components  
 8           thereof; industrial machinery; or construction heavy equipment such as excavators.

9           (ii) Manufacturing of pharmaceutical products.

10          (iii) Conversion of natural gas to diesel, jet fuel, or other refined fuels.

11          (iv) Data storage or data services, provided at least seventy-five percent of  
 12          sales meet the out-of-state sales requirements of Subparagraph (1)(a) of this  
 13          Subsection.

14          (v) Other activities as recommended by the secretary and approved by the  
 15          Joint Legislative Committee on the Budget.

16          (c) The business offers, or will offer within ninety days of the effective date  
 17          of qualifying for the incentive rebates pursuant to the provisions of this Chapter, a  
 18          basic health benefits plan to the individuals it employs as provided in Paragraph  
 19          (A)(1) of this Section.

20          (2) The secretary, at his discretion, may include sales by affiliates of the  
 21          business in determining the percentage of sales meeting the requirements of  
 22          Paragraph (1) of this Subsection.

23          (3) All of the following shall not be eligible for the program:

24          (a) A business engaged in gaming or gambling.

25          (b) A business primarily engaged in natural resource extraction or  
 26          exploration, unless the project activity is conversion of natural gas to diesel, jet fuel,  
 27          or other refined fuels.

28          (c) A business primarily engaged in retail sales; real estate; professional  
 29          services; financial services; venture capital funds; shipbuilding; wood products;

1           agriculture; or manufacturing of machinery or equipment primarily intended to serve  
2           the energy industry.

3           C. Applications and contract approval and administration. (1) At the  
4           invitation of the secretary, a business may apply for a contract by submitting to the  
5           department such certified statements and substantiating documents as the department  
6           may require.

7           (2) Certification. The secretary may certify eligibility of the business and  
8           request approval by the Joint Legislative Committee on the Budget of its  
9           participation in the program on terms and conditions specified by the secretary in a  
10          proposed contract, if the secretary determines all of the following:

11          (a) The business meets the eligibility requirements provided for in  
12          Subsection B of this Section.

13          (b) Participation in the program is needed in a highly competitive site  
14          selection situation to encourage the business to locate or expand in the state.

15          (c) Securing the project will result in a significant positive economic benefit  
16          to the state.

17          (3)(a)(i) Upon the approval by the Joint Legislative Committee on the  
18          Budget of participation in the program by the business, the secretary shall execute  
19          the contract with the business, and provide a copy to the Department of Revenue  
20          prior to the payment of any benefits under the contract.

21          (ii) No new contract shall be approved on or after July 1, 2017, but contracts  
22          existing on that date may continue and may be renewed.

23          (b) The contract shall provide for a rebate to the qualified business based  
24          upon new payroll and shall include the following provisions:

25          (i) The percentage of new payroll eligible for rebate, up to a maximum of  
26          fifteen percent.

27          (ii) The maximum amount of new payroll eligible for rebate.

28          (iii) The number of new jobs and amount of new payroll required to be  
29          created and maintained and any other performance obligations required to be met in  
30          order to remain qualified for participation in the program.

1                    (iv) Designation of the facility or facilities eligible for participation in the  
2                    program.

3                    (v) Monitoring of performance and consequences for failure to perform and  
4                    other contract violations.

5                    (vi) An initial term of the contract, which may be up to five years, and any  
6                    renewal term available at the discretion of the secretary, which may be up to an  
7                    additional five years.

8                    (4)(a) In addition, a qualified business shall be entitled to either the same  
9                    sales and use tax rebates authorized in R.S. 51:1787 for capital expenditures for the  
10                   facility or facilities designated in the contract, or the project facility expense rebate  
11                   provided for in Subparagraph (c) of this Paragraph, if the employer meets the  
12                   enterprise zone program hiring requirements and all other limitations, procedures,  
13                   and requirements in R.S. 51:1787.

14                   (b) Any qualified business which receives a contract pursuant to this Chapter  
15                   shall also be entitled to a rebate of local sales and use taxes under the same  
16                   procedures and requirements provided for in R.S. 51:1787 for approval of rebates for  
17                   the sales and use taxes of political subdivisions and law enforcement districts,  
18                   including but not limited to the requirement that any such request for a rebate of  
19                   local sales and use taxes be accompanied by an endorsement resolution approved by  
20                   the governing authority of the appropriate political subdivision or law enforcement  
21                   district in whose jurisdiction the qualified business is or will be located.

22                   (c) In lieu of the sales and use tax rebate, a qualified business shall be  
23                   entitled to a project facility expense rebate equal to one and one-half percent of the  
24                   amount of qualified capital expenditures for the facility or facilities designated in the  
25                   contract. For purposes of this Subparagraph, the term "qualified capital  
26                   expenditures" means amounts classified as capital expenditures for federal income  
27                   tax purposes related to the project plus exclusions from capitalization provided for  
28                   in Internal Revenue Code Section 263 (a)(1)(A) through (L), minus the capitalized  
29                   cost of land, capitalized leases of land, capitalized interest, capitalized costs of  
30                   machinery and equipment, and the capitalized cost for the purchase of an existing

1 building. When a qualified business purchases an existing building and capital  
2 expenditures are used to rehabilitate the building, only the costs of the rehabilitation  
3 shall be considered qualified capital expenditures. Additionally, a qualified business  
4 shall be allowed to increase its qualified capital expenditures to the extent the  
5 qualified business' capitalized basis is properly reduced by claiming a federal credit.  
6 A qualified business earns the project facility expense rebate in the qualified  
7 business' fiscal year in which the project is placed in service but the qualified  
8 business may not be issued the project facility expense rebate until the Department  
9 of Economic Development signs a project completion report or such other time as  
10 provided for by rule or regulation. The project completion report for the project  
11 facility expense rebate shall adhere to the same requirements found in R.S.  
12 51:1787(A)(1)(a)(ii) for the sales and use tax rebate.

13 D. Annual Certification of Eligibility. (1) The qualified business shall file  
14 requests for approval of annual rebates with the department. The request shall  
15 include documentation signed by a corporate officer of the qualified business  
16 certifying its continued eligibility for the program, as provided in Subsection B of  
17 this Section, and its actual new payroll and the performance of any other contractual  
18 obligations for the subject year. The qualified business may be subject to a limited  
19 audit by the department, at the expense of the qualified business, to verify such  
20 eligibility and performance. The approved contract between the qualified business  
21 and the department shall authorize the continued rebate as long as the business  
22 remains eligible for the program and complies with the terms and performance  
23 obligations of the contract. If a qualified business fails to maintain the eligibility  
24 requirements for participation in the program or fails to meet all performance  
25 obligations of the contract, the secretary may suspend or terminate its participation  
26 in the program.

27 (2)(a) After verification of continued eligibility and performance, the  
28 department shall send a rebate certification letter to the Department of Revenue,  
29 stating the amount of actual new payroll for the subject year, the amount of rebate  
30 to be issued, and the entity to which the rebate shall be issued. The Department of

1           Revenue may require the business to submit additional information as may be  
2           necessary to properly issue the rebate. Payment of rebates shall be made from the  
3           current collections of the taxes imposed pursuant to Title 47 of the Louisiana  
4           Revised Statutes of 1950, as amended.

5                   (b) No payment of a rebate shall be made under a specific contract during  
6           the fiscal year in which such contract is approved by the Joint Legislative Committee  
7           on the Budget.

8                   E. Incentive limitations. A taxpayer shall not receive any other incentive  
9           administered by the Department of Economic Development for any expenditures or  
10           jobs for which the taxpayer has received a rebate pursuant to this Section.

11                   F. Economic Analysis Verification. Prior to the implementation of the  
12           program, an independent third-party economist selected by the Legislative Fiscal  
13           Office and the department, and retained by the department after approval of the Joint  
14           Legislative Committee on the Budget, shall verify the standard economic impact  
15           methodology utilized by the department.

16                   G. Rules. The department may promulgate rules and regulations after  
17           approval of the House Committee on Ways and Means and the Senate Committee  
18           on Revenue and Fiscal Affairs meeting jointly within sixty days of publication of  
19           such proposed rules and regulations in the State Register.

20           Section 2. This Act shall become effective on July 1, 2012; if vetoed by the governor  
21           and subsequently approved by the legislature, this Act shall become effective on July 1,  
22           2012, or on the day following such approval by the legislature, whichever is later.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

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