

REPORT OF THE ECONOMIC DEVELOPMENT SUBCOMMITTEE

(Ballentine, Clyburn, Hosey, Whitmire, & Lowe - Staff Contact: Teesha Trapp)

HOUSE BILL 4252

H. 4252 -- Bannister, West, Anderson, B.Cox, Elliott, Willis, W.Cox, B.Newton, Pendarvis, Ballentine, Crawford, Daning, Gagnon and Herbkersman

A BILL TO AMEND SECTION 12-10-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LEGISLATIVE INTENT OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 12-10-30, RELATING TO DEFINITIONS, SO AS TO ADD A DEFINITION OF "RELATED PERSON"; TO AMEND SECTION 12-10-50, RELATING TO QUALIFICATIONS FOR BENEFITS, SO AS TO PROVIDE THAT TO QUALIFY FOR BENEFITS A BUSINESS MUST ENTER INTO A RETAINING AGREEMENT WITH A CERTAIN TECHNICAL COLLEGE; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO PROVIDE FOR CERTAIN DESIGNATIONS OF QUALIFYING BUSINESSES AND TO INCREASE THE AMOUNT OF CERTAIN GROSS WAGES AN EMPLOYEE MUST EARN; TO AMEND SECTION 12-10-81, RELATING TO THE JOB DEVELOPMENT TAX CREDITS, SO AS TO INCREASE THE AMOUNT OF CERTAIN GROSS WAGES AN EMPLOYEE MUST EARN; AND TO AMEND SECTION 12-10-100, RELATING TO THE CRITERIA FOR DETERMINATION AND SELECTION OF A QUALIFYING BUSINESS, SO AS TO MAKE A CONFORMING CHANGE.

Received by Ways and Means:

April 22, 2021

Summary of Bill:

This bill updates definitions and codifies inflation adjustments to the Enterprise Zone Act of 1995 to conform with current practice.

Technical Changes:

Replaces "Advisory" with Coordinating Council of Economic Development

Replaces "business and council" with "qualifying business and a technical college under the jurisdiction of the State Board for Technical and Comprehensive Education".

Defines "related person" to include any entity or person that bears a relationship to a business as provided in Internal Revenue Code Section 267 or 707(b).

Added the term "qualifying" to clarify the statute and be consistent in terminology. Further, it clarifies a qualifying business includes a single member LLC not regarded as separate from its owner and a qualified subchapter "S" subsidiary.

"THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFIT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT".

Defines "two related persons" as entities whose jobs and investments located at the project may be included to determine whether the qualifying business has met and maintained the minimum job requirement and minimum capital investment requirement.

Increase in gross wages due to inflation

Added "capital or operating lease with at least a five-year term" to allow the Council to approve payments under certain long term leases as qualifying expenditures. This is essentially codifying the Council's current practice.

Estimated Revenue Impact:

None

Subcommittee Recommendation:

Passed Economic Development Subcommittee favorably on March 10, 2022.



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: H. 4252 Introduced on April 22, 2021
Author: Bannister
Subject: Redline Enterprise Zone Act
Requestor: House Ways and Means
RFA Analyst(s): Coomer
Impact Date: October 19, 2021

Fiscal Impact Summary

This bill updates definitions and codifies inflation adjustments to the Enterprise Zone Act of 1995 to conform with current practice. As such, this bill will have no expenditure or revenue impact.

Explanation of Fiscal Impact

Introduced on April 22, 2021

State Expenditure

This bill makes several conforming changes to the Enterprise Zone Act of 1995, including changes to definitions, legislative intention, and updates to code references to reflect the current wage levels according to the statutory inflation adjustment. The Department of Commerce indicates that this bill will have no expenditure impact on the agency because it adopts current practices.

State Revenue

This bill makes several conforming changes to the Enterprise Zone Act of 1995, including changes to definitions, legislative intention, and updates to code references to reflect the current wage levels according to the statutory inflation adjustment. The Department of Commerce indicates that this bill will have no revenue impact on the General Fund because it adopts current practices.

Local Expenditure

N/A

Local Revenue

N/A

Frank A. Rainwater, Executive Director

South Carolina General Assembly
124th Session, 2021-2022

H. 4252

STATUS INFORMATION

General Bill

Sponsors: Reps. Bannister, West, Anderson, B. Cox, Elliott, Willis, W. Cox, B. Newton, Pendarvis, Ballentine, Crawford, Daning, Gagnon and Herbkersman

Document Path: I:\council\bills\df\13083sa21.docx

Introduced in the House on April 22, 2021

Currently residing in the House Committee on **Ways and Means**

Summary: Redline Enterprise Zone Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/22/2021	House	Introduced and read first time (House Journal-page 30)
4/22/2021	House	Referred to Committee on Ways and Means (House Journal-page 30)

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VERSIONS OF THIS BILL

4/22/2021

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9 **A BILL**

10
11 TO AMEND SECTION 12-10-20, CODE OF LAWS OF SOUTH
12 CAROLINA, 1976, RELATING TO THE LEGISLATIVE
13 INTENT OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO
14 MAKE CONFORMING CHANGES; TO AMEND SECTION
15 12-10-30, RELATING TO DEFINITIONS, SO AS TO ADD A
16 DEFINITION OF "RELATED PERSON"; TO AMEND SECTION
17 12-10-50, RELATING TO QUALIFICATIONS FOR BENEFITS,
18 SO AS TO PROVIDE THAT TO QUALIFY FOR BENEFITS A
19 BUSINESS MUST ENTER INTO A RETAINING AGREEMENT
20 WITH A CERTAIN TECHNICAL COLLEGE; TO AMEND
21 SECTION 12-10-80, AS AMENDED, RELATING TO JOB
22 DEVELOPMENT CREDITS, SO AS TO PROVIDE FOR
23 CERTAIN DESIGNATIONS OF QUALIFYING BUSINESSES
24 AND TO INCREASE THE AMOUNT OF CERTAIN GROSS
25 WAGES AN EMPLOYEE MUST EARN; TO AMEND SECTION
26 12-10-81, RELATING TO THE JOB DEVELOPMENT TAX
27 CREDITS, SO AS TO INCREASE THE AMOUNT OF CERTAIN
28 GROSS WAGES AN EMPLOYEE MUST EARN; AND TO
29 AMEND SECTION 12-10-100, RELATING TO THE CRITERIA
30 FOR DETERMINATION AND SELECTION OF A
31 QUALIFYING BUSINESS, SO AS TO MAKE A CONFORMING
32 CHANGE.

33
34 Be it enacted by the General Assembly of the State of South
35 Carolina:

36
37 SECTION 1. Section 12-10-20 and Section 12-10-30 of the
38 1976 Code are amended to read:

39
40 "Section 12-10-20. The General Assembly finds:

41 (1) that the economic well-being of the citizens of the State is
42 enhanced by the increased development and growth of industry

1 within the State, and that it is in the best interests of the State to
2 induce the location or expansion of manufacturing, processing,
3 services, distribution, warehousing, research and development,
4 corporate offices, technology intensive, and certain tourism projects
5 within the State to promote the public purpose of creating new jobs
6 within the State;

7 (2) that the inducement provided in this chapter will encourage
8 the creation of jobs which would not otherwise exist and will create
9 sources of tax revenues for the State and its political subdivisions;

10 (3) the powers to be granted to the ~~Advisory~~ Coordinating
11 Council for Economic Development by this chapter and the
12 purposes to be accomplished are proper governmental and public
13 purposes and that the inducement of the location or expansion of
14 manufacturing, processing, services, distribution, warehousing,
15 research and development, corporate offices, and certain tourism
16 facilities within the State is of paramount importance.

17 (4) The state's per capita income has not reached the United
18 States average and certain rural, less developed counties have not
19 experienced capital investment, per capita income, and job growth
20 at a level equal to the state's average. The economic well-being of
21 these areas will not be sustained without significant incentive to
22 induce capital investment and job creation.

23
24 Section 12-10-30. As used in this chapter:

25 (1) 'Council' means the Coordinating Council for Economic
26 Development.

27 (2) 'Department' means the South Carolina Department of
28 Revenue.

29 (3) 'Employee' means an employee of the qualifying business
30 who works full time at the project.

31 (4) 'Gross wages' means wages subject to withholding.

32 (5) 'Job development credit' means the amount a qualifying
33 business may claim as a credit against employee withholding
34 pursuant to Sections 12-10-80 and 12-10-81 and a revitalization
35 agreement.

36 (6) 'New job' means a job created or reinstated as defined in
37 Section 12-6-3360(M)(3).

38 (7) 'Qualifying business' means a business that meets the
39 requirements of Section 12-10-50 and other applicable requirements
40 of this chapter.

41 (8) 'Project' means an investment for one or more purposes
42 pursuant to this chapter needed for a qualifying business to locate,

1 remain, or expand in this State and otherwise fulfill the requirements
2 of this chapter.

3 (9) 'Preliminary revitalization agreement' means the application
4 by the qualifying business for benefits pursuant to Section 12-10-80
5 or 12-10-81 if the council approves the application and agrees in
6 writing at the time of approval to allow the approved application to
7 serve as the preliminary revitalization agreement. The date of the
8 preliminary revitalization agreement is the date of the council
9 approval.

10 (10) 'Revitalization agreement' means an executed agreement
11 entered into between the council and a qualifying business that
12 describes the project and the negotiated terms and conditions for a
13 business to qualify for a job development credit pursuant to Section
14 12-10-80 or 12-10-81.

15 (11) 'Qualifying expenditures' means those expenditures that
16 meet the requirements of Section 12-10-80(C) or 12-10-81(D).

17 (12) 'Withholding' means employee withholding pursuant to
18 Chapter 8 of this title.

19 (13) 'Technology employee' means an employee at a technology
20 intensive facility as defined in Section 12-6-3360(M)(14) who is
21 directly engaged in technology intensive activities at that facility.

22 (14) 'Production employee' means an employee directly engaged
23 in manufacturing or processing at a manufacturing or processing
24 facility as defined in Section 12-6-3360(M).

25 (15) 'Retraining agreement' means an agreement entered into
26 between a ~~business and the council~~ qualifying business and a
27 technical college under the jurisdiction of the State Board for
28 Technical and Comprehensive Education in which a qualifying
29 business is entitled to retraining credit pursuant to Section 12-10-95.

30 (16) 'Retraining credit' means the amount that a qualifying
31 business may claim as a credit against withholding pursuant to
32 Section 12-10-95 and the retraining agreement.

33 (17) 'Technology intensive activities' means the design,
34 development, and introduction of new products or innovative
35 manufacturing processes, or both, through the systematic
36 application of scientific and technical knowledge at a technology
37 intensive facility as defined in Section 12-6-3360(M).

38 (18) 'Significant business' means a qualifying business making a
39 significant capital investment as defined in Section 12-44-30(7).

40 (19) 'Related person' includes any entity or person that bears a
41 relationship to a business as provided in Internal Revenue Code
42 Section 267 or 707(b). The related person must be a 'qualifying
43 business' as defined in item 7, except that the related person does

1 not have to meet the requirements of Section 12-10-50(A)(1) or, in
2 case the qualifying business qualifies for the credit against
3 withholding for retraining pursuant to Section 12-10-95 of this
4 Chapter, the related person does not have to meet the requirements
5 of Section 12-10-50(B)(1)."
6

7 SECTION 2. Section 12-10-50(B) of the 1976 Code is amended
8 to read:
9

10 "(B) To qualify for benefits pursuant to Section 12-10-95, a
11 business must:

12 (1) be engaged in manufacturing or processing operations or
13 technology intensive activities at a manufacturing, processing, or
14 technology intensive facility as defined in Section 12-6-3360(M);

15 (2) provide a benefits package, including health care, to
16 employees being retrained; and

17 (3) enter into a retraining agreement with ~~the council~~ a
18 technical college under the jurisdiction of the State Board for
19 Technical and Comprehensive Education."
20

21 SECTION 3. Section 12-10-80 of the 1976 Code, as last
22 amended by Act 265 of 2018, is further amended to read:
23

24 "Section 12-10-80. (A) A qualifying business that qualifies
25 ~~pursuant to Section 12-10-50(A)~~ and has certified to the council that
26 the business has met the minimum job requirement and minimum
27 capital investment provided for in the revitalization agreement may
28 claim job development credits as determined by this section.

29 (1) A qualifying business may claim job development credits
30 against its withholding on its quarterly state withholding tax return
31 for the amount of job development credits allowable pursuant to this
32 section.

33 (2) A qualifying business that is current with respect to its
34 withholding tax and other tax due and owing the State and that has
35 maintained its minimum employment and investment levels
36 identified in the revitalization agreement may claim the credit on a
37 quarterly basis beginning with the first quarter after the council's
38 certification to the department that the minimum employment and
39 capital investment levels were met for the entire quarter. If a
40 qualifying business is not current as to all taxes due and owing to
41 the State as of the date of the return on which the credit would be
42 claimed, without regard to extensions, the business may claim the
43 credit only in an amount reduced by the amount of taxes due and

1 owing to the State as of the date of the return on which the credit is
2 claimed.

3 (3) A qualifying business may claim its initial job development
4 credit only after the council has certified to the department that the
5 qualifying business has met the required minimum employment and
6 capital investment levels.

7 (4) To be eligible to apply to the council to claim a job
8 development credit, a qualifying business shall create at least ten
9 new, full-time jobs, as defined in Section 12-6-3360(M), at the
10 project described in the revitalization agreement within five years of
11 the effective date of the agreement.

12 (5) A qualifying business is eligible to claim a job development
13 credit pursuant to the revitalization agreement for not more than
14 fifteen years.

15 (6) A ~~company's~~ qualifying business's job development credits
16 shall be suspended during any quarter in which the ~~company~~
17 business fails to maintain one hundred percent of the minimum job
18 requirement set forth in the ~~company's~~ business's revitalization
19 agreement. A ~~company~~ qualifying business only may claim credits
20 on jobs, including a range of jobs approved by the council, as set
21 forth in the ~~company's~~ business's final revitalization agreement.

22 (7) Credits may be claimed beginning the quarter subsequent
23 to the council's approval of the ~~company's~~ qualifying business's
24 documentation that the minimum jobs and capital investment
25 requirements have been met.

26 (8) To the extent any return of an overpayment of withholding
27 that results from claiming job development credits is not used as
28 permitted by subsection (C) or by Section 12-10-95, it must be
29 treated as misappropriated employee withholding.

30 (9) Job development credits may not be claimed for purposes
31 of this section with regard to an employee whose job was created in
32 this State before the taxable year of the qualifying business in which
33 it enters into a preliminary revitalization agreement.

34 (10) If a qualifying business claims job development credits
35 pursuant to this section, it shall make its payroll books and records
36 available for inspection by the council and the department at the
37 times the council and the department request. Each qualifying
38 business claiming job development credits pursuant to this section
39 shall file with the council and the department the information and
40 documentation requested by the council or department respecting
41 employee withholding, the job development credit, and the use of
42 any overpayment of withholding resulting from the claiming of a
43 job development credit according to the revitalization agreement.

1 (11) Each qualifying business claiming in excess of ten
2 thousand dollars in a calendar year must furnish to the council and
3 to the department a report that itemizes the sources and uses of the
4 funds. The report must be filed with the council and the department
5 no later than June thirtieth following the calendar year in which the
6 job development credits are claimed, except when a qualifying
7 business obtains the written approval by the council for an extension
8 of that date. Extensions may be granted only for good cause shown.
9 The department shall impose a penalty pursuant to Section
10 12-54-210 for all reports filed after June thirtieth or the approved
11 extension date, whichever is later. The department shall audit each
12 qualifying business with claims in excess of ten thousand dollars in
13 a calendar year at least once every three years to verify proper
14 sources and uses of the funds.

15 (12) Each qualifying business claiming ten thousand dollars or
16 less in any calendar year must furnish a report prepared by the
17 ~~company~~ business that itemizes the sources and uses of the funds.
18 This report must be filed with the council and the department no
19 later than June thirtieth following the calendar year in which the job
20 development credits are claimed, except when a qualifying business
21 obtains the written approval by the council for an extension of that
22 date. Extensions may be granted only for good cause shown. The
23 department shall impose a penalty pursuant to Section 12-54-210 for
24 all reports filed after June thirtieth or the approved extension date,
25 whichever is later.

26 (13) An employer may not claim an amount that results in an
27 employee's receiving a smaller amount of wages on either a weekly
28 or on an annual basis than the employee would receive otherwise in
29 the absence of this chapter.

30 (14)(a) For purposes of this chapter, a qualifying business may
31 designate up to two related persons whose jobs and investments
32 located at the project may be included to determine whether the
33 qualifying business has met and maintained the minimum job
34 requirement and minimum capital investment requirement.
35 Qualified expenditures described in subsection(C) incurred by a
36 related person may be treated as though such qualifying
37 expenditures were incurred by the qualifying business for purposes
38 of claiming the job development credit and each related person may
39 claim the job development credit for the jobs created by such related
40 person and include any qualifying expenditures of the qualifying
41 business or another related person for purposes of claiming the job
42 development credit as if created and made by the related person.

1 (b) A single member limited liability company that is not
2 regarded as an entity separate from its owner and is a qualified
3 subchapter 'S' subsidiary as defined in Section 1361(b)(3)(B) of the
4 Internal Revenue Code that is not regarded as a separate entity from
5 the 'S' corporation that owns its stock, is treated as the qualifying
6 business for all purposes under this chapter, including for purposes
7 of claiming the job development credit against withholding but is
8 counts as a related person for purposes of the limit described in
9 subitem (a).

10 (B)(1) The maximum job development credit a qualifying
11 business may claim for new employees is limited to the lesser of
12 withholding tax paid to the State on a quarterly basis or the sum of
13 the following amounts:

14 (a) two percent of the gross wages of each new employee
15 who earns ~~\$8.74~~ \$10.53 or more an hour but less than ~~\$11.64~~ \$14.02
16 an hour;

17 (b) three percent of the gross wages of each new employee
18 who earns ~~\$11.65~~ \$14.03 or more an hour but less than ~~\$14.55~~
19 \$17.53 an hour;

20 (c) four percent of the gross wages of each new employee
21 who earns ~~\$14.56~~ \$17.54 or more an hour but less than ~~\$21.84~~
22 \$26.30 an hour; and

23 (d) five percent of the gross wages of each new employee
24 who earns ~~\$21.85~~ \$26.31 or more an hour.

25 (2) The hourly gross wage figures in item (1) must be adjusted
26 annually by an inflation factor determined by the Revenue and
27 Fiscal Affairs Office.

28 (C) To claim a job development credit, the qualifying business
29 must incur qualified expenditures at the project or for utility or
30 transportation improvements that serve the project. To be qualified,
31 the expenditures must be:

32 (1) incurred during the term of the revitalization agreement,
33 including a preliminary revitalization agreement, or within sixty
34 days before council's receipt of an application for benefits pursuant
35 to this section;

36 (2) authorized by the revitalization agreement; and

37 (3) used for any of the following purposes:

38 (a) training costs and facilities;

39 (b) acquiring and improving real property whether
40 constructed or acquired by purchase, or in cases approved by the
41 council, acquired by capital or operating lease with at least a
42 five-year term or otherwise;

1 (c) improvements to both public and private utility systems
2 including water, sewer, electricity, natural gas, and
3 telecommunications;

4 (d) fixed transportation facilities including highway, rail,
5 water, and air;

6 (e) construction or improvements of real property and
7 fixtures constructed or improved primarily for the purpose of
8 complying with local, state, or federal environmental laws or
9 regulations;

10 (f) employee relocation expenses, but only for those
11 employees to whom the company is paying gross wages at least two
12 times the lower of the per capita income for either the state or the
13 county in which the project is located;

14 (g) financing the costs of a purpose described in items (a)
15 through (f);

16 (h) training for all relevant employees that enable a
17 company to export or increase a company's ability to export its
18 products, including training for logistics, regulatory, and
19 administrative areas connected to the company's export process and
20 other export process training that allows a qualified company to
21 maintain or expand its business in this State;

22 (i) apprenticeship programs;

23 (j) quality improvement programs of the South Carolina
24 Quality Forum.

25 (D)(1) The amount of job development credits a qualifying
26 business may claim for its use for qualifying expenditures is limited
27 according to the designation of the county as defined in Section
28 12-6-3360(B), as follows:

29 (a) one hundred percent of the maximum job development
30 credits may be claimed by businesses located in counties designated
31 as 'Tier IV';

32 (b) eighty-five percent of the maximum job development
33 credits may be claimed by businesses located in counties designated
34 as 'Tier III';

35 (c) seventy percent of the maximum job development
36 credits may be claimed by businesses located in counties designated
37 as 'Tier II'; or

38 (d) fifty-five percent of the maximum job development
39 credits may be claimed by businesses located in counties designated
40 as 'Tier I'.

41 (2) The amount that may be claimed as a job development
42 credit by a qualifying business is limited by this subsection and by

1 the revitalization agreement. The council may approve a waiver of
2 ninety-five percent of the limits provided in item (1) for:

3 (a) a significant business; and

4 (b) a related person to a significant business if the related
5 person is located at the project site of the significant business and
6 qualifies for job development credits pursuant to this chapter.

7 ~~For purposes of this item, a related person includes any entity or~~
8 ~~person that bears a relationship to a significant business as provided~~
9 ~~in Internal Revenue Code Section 267 and includes, without~~
10 ~~limitation, a limited liability company of which more than fifty~~
11 ~~percent of the capital interest or profits is owned directly or~~
12 ~~indirectly by a significant business or by a person or entity, or group~~
13 ~~of persons or entities which owns, more than fifty percent of the~~
14 ~~capital interest or profits in the significant business.~~

15 (3) The county designation of the county in which the project
16 is located ~~on the date the application for job development credit~~
17 ~~incentives is received in the Office of the Coordinating Council at~~
18 the time the qualifying business enters into a preliminary
19 revitalization agreement with the council remains in effect for the
20 entire period of the revitalization agreement, except as to additional
21 jobs created pursuant to an amendment to a revitalization agreement
22 entered into before June 1, 1997, as provided in Section 12-10-60.
23 In that case the county designation on the date of the amendment
24 remains in effect for the remaining period of the revitalization
25 agreement as to any additional jobs created after the effective date
26 of the amendment.

27 (E) The council shall certify to the department the maximum job
28 development credit for each qualifying business. After receiving
29 certification, the department shall remit an amount equal to the
30 difference between the maximum job development credit and the
31 job development credit actually claimed to the State Rural
32 Infrastructure Fund as defined and provided in Section 12-10-85.

33 (F) Any job development credit of a qualifying business
34 permanently lapses upon expiration or termination of the
35 revitalization agreement. If an employee is terminated, the
36 qualifying business immediately must cease to claim job
37 development credits as to that employee.

38 (G) For purposes of the job development credit allowed by this
39 section, an employee is a person whose job was created in this State.

40 (H) Job development credits may not be claimed by a
41 governmental employer who employs persons at a closed or
42 realigned military installation as defined in Section 12-10-88(E).

1 (I) A taxpayer who qualifies for the job development credit
2 pursuant to the provisions of this section and who is located in a
3 multicounty business or industrial park jointly established pursuant
4 to Section 13 of Article VIII of the Constitution of this State is
5 allowed a job development credit equal to the amount allowed
6 pursuant to subsection (D) for the designation of the county which
7 has the lowest development status of the counties containing the
8 park if:

9 (1) the park is developed and established on the geographical
10 boundary of adjacent counties; and

11 (2) the written agreement, pursuant to Section 4-1-170,
12 requires revenue from the park to be allocated to each county on an
13 equal basis.

14 (J) Where the qualifying business that creates new jobs under
15 this section is a qualifying service-related facility as defined in
16 Section 12-6-3360(M)(13), the determination of the number of jobs
17 created must be based on the total number of new jobs created within
18 five years of the effective date of the revitalization agreement,
19 without regard to monthly or other averaging.

20 (K) For purposes of this section, the job and per capita income
21 thresholds contained in the definition of 'qualifying service-related
22 facility' as set forth in Section 12-6-3360(M)(13)(b) must be
23 modified to read as set forth in the item below:

24 (1) a business, other than a business engaged in legal,
25 accounting, banking, or investment services (including a business
26 identified under NAICS Section 55) or retail sales, which has a net
27 increase of at least:

28 (a) one hundred twenty-five jobs at a single location;

29 (b) one hundred jobs at a single location comprised of a
30 building or portion of a building that has been vacant for at least
31 twelve consecutive months before the taxpayer's investment;

32 (c) seventy-five jobs at a single location and the jobs have
33 an average cash compensation level of more than one and one-half
34 times the lower of state per capita income or per capita income in
35 the county where the jobs are located;

36 (d) fifty jobs at a single location and the jobs have an
37 average cash compensation level of more than twice the lower of
38 state per capita income or per capita income in the county where the
39 jobs are located; or

40 (e) twenty-five jobs at a single location and the jobs have
41 an average cash compensation level of more than two and one-half
42 times the lower of state per capita income or per capita income in
43 the county where the jobs are located.

1 (L) For purposes of this section and notwithstanding the
2 provisions of Section 12-10-50(A)(1), subject to the discretion of
3 the council, the definition of 'qualifying service-related facility' as
4 defined in Section 12-6-3360(M)(13), as modified by Section
5 12-10-80(K)(1), shall also include the following:

6 (1) a business engaged in legal, accounting, banking, or
7 investment services operating at a single facility if the single facility
8 would otherwise qualify as a qualifying service-related facility as
9 defined in Section 12-6-3360(M)(13)(b), as modified by subsections
10 (J) and (K) above, if not for the exclusions contained in Section
11 12-6-3360(M)(13)(b);

12 (2) a business generally engaged in retail sales at a single
13 facility if that single facility would otherwise qualify as a qualifying
14 service-related facility as defined in Section 12-6-3360(M)(13)(b),
15 as modified by subsections (J) and (K) above, if not for the
16 exclusions contained in Section 12-6-3360(M)(13)(b) and provided
17 that no retail sales are conducted at that single facility; and

18 (3) In making a determination with regard to Section
19 12-10-80(L)(1) or Section 12-10-80(L)(2), the council may consider
20 the following:

21 (a) the percentage of such business's annual gross receipts
22 from services or other income producing activity derived from
23 customers or clients located outside of South Carolina for the twelve
24 months preceding the month in which such business applies to the
25 council to claim a job development credit and such percentage may
26 not be less than seventy-five percent;

27 (b) the nature of the new jobs to be created at the project;

28 (c) the wages of the new jobs to be created at the project;

29 (d) the capital investment of the project; and

30 (e) the potential for expansion or growth of the business or
31 industry."

32
33 SECTION 4. Section 12-10-81 of the 1976 Code is amended to
34 read:

35
36 "Section 12-10-81. (A) A qualifying business may claim a job
37 development credit as determined by this section if the:

38 (1) council approves the use of this section for the business;

39 (2) business qualifies pursuant to Section 12-10-50; and

40 (3) business is a tire manufacturer that has more than four
41 hundred twenty-five million dollars in capital invested in this State
42 and employs more than one thousand employees in this State and
43 that commits within a period of five years from the date of a

1 revitalization agreement, to invest an additional three hundred fifty
2 million dollars and create an additional three hundred fifty jobs in
3 this State qualifying for job development fees or credits pursuant to
4 current or future revitalization agreements; except that the business
5 must certify to the council that the business has satisfied all
6 minimum capital investment and job requirements identified in the
7 revitalization agreements but not certified by the council to the
8 department before July 1, 2001. The council, in its discretion, may
9 extend the five-year period for two additional years if the business
10 has made a commitment to the additional three hundred fifty million
11 dollars and makes substantial progress toward satisfying the goal
12 before the end of the initial five-year period. A business that
13 represents to the council its intent to qualify pursuant to this section
14 and is approved by the council may put job development fees
15 computed pursuant to this section into an escrow account until the
16 date the business certifies to the council that the business has
17 satisfied the capital and job requirements of this section.

18 (B)(1) A business qualifying pursuant to this section may claim
19 its job development credit against its withholding on its quarterly
20 state withholding tax return for the amount of job development
21 credit allowable pursuant to this section for not more than fifteen
22 years. Job development credits allowed pursuant to subsection
23 (C)(1)(a) through (d) of this section apply only to withholding on
24 jobs created pursuant to a revitalization agreement adopted pursuant
25 to this section and to the amounts withheld on wages and salaries on
26 those jobs.

27 (2) A business that is current with respect to its withholding
28 tax as well as any other tax due and owing the State and that has
29 maintained its minimum employment and investment levels
30 identified in the revitalization agreement may claim the credit on a
31 quarterly basis beginning with the quarter subsequent to the
32 council's certification to the department that the minimum
33 employment and capital investment levels have been met for the
34 entire quarter. If a qualifying business is not current as to all taxes
35 due and owing to the State as of the date of the return on which the
36 credit would be claimed, without regard to extensions, the business
37 is barred from claiming the credit that would otherwise be allowed
38 for that quarter.

39 (3) To be eligible to apply to the council to claim a job
40 development credit pursuant to this section, a qualifying business
41 must create at least ten new, full-time jobs as defined in Section
42 12-6-3360(M) at the project or projects described in the
43 revitalization agreement.

1 (4) To the extent a return of an overpayment of withholding
2 that results from claiming job development credits is not used as
3 permitted by subsection (D), it must be treated as misappropriated
4 employee withholding.

5 (5) Job development credits may not be claimed for purposes
6 of this section with regard to an employee whose job was created in
7 this State before the taxable year the qualifying business enters into
8 a preliminary revitalization agreement.

9 (6) If a qualifying business claims job development credits
10 pursuant to this section, it must make its payroll books and records
11 available for inspection by the council and the department at the
12 times the council and the department request. Each qualifying
13 business claiming job development credits pursuant to this section
14 must file with the council and the department the information and
15 documentation they request respecting employee withholding, the
16 job development credit, and the use of overpayment of withholding
17 resulting from the claiming of a job development credit according
18 to the revitalization agreement.

19 (7) Each qualifying business must furnish an audited report
20 prepared by an independent certified public accountant that itemizes
21 the sources and uses of the funds. The audited report must be filed
22 with the council and the department no later than June thirtieth
23 following the calendar year in which the job development credits are
24 claimed, except when a qualifying business obtains written approval
25 of council for an extension of that date. Extensions may be granted
26 for good cause shown. The department shall impose a penalty
27 pursuant to Section 12-54-210 for all reports filed after June thirtieth
28 or the approved extension date, whichever is later.

29 (8) An employer may not claim an amount that results in an
30 employee's receiving a smaller amount of wages on either a weekly
31 or on an annual basis than the employee would otherwise receive in
32 the absence of this chapter.

33 (C)(1) The maximum job development credit a qualifying
34 business may claim for new employees is determined by the sum of
35 the following amounts:

36 (a) two percent of the gross wages of each new employee
37 who earns ~~\$6.95~~ \$10.53 or more an hour but less than ~~\$9.27~~ \$14.02
38 an hour;

39 (b) three percent of the gross wages of each new employee
40 who earns ~~\$9.27~~ \$14.03 or more an hour but less than ~~\$11.58~~ \$17.53
41 an hour;

1 (c) four percent of the gross wages of each new employee
2 who earns ~~\$11.58~~ \$17.54 or more an hour but less than ~~\$17.38~~
3 \$26.30 an hour;

4 (d) five percent of the gross wages of each new employee
5 who earns ~~\$17.38~~ \$26.31 or more an hour; and

6 (e) the increase in the state sales and use tax of the business
7 from the year of the effective date of its revitalization agreement
8 pursuant to this section and subsequent years, over its state sales and
9 use tax for the first of the three years preceding the effective date of
10 this revitalization agreement.

11 (2) The hourly base wages in item (1) must be adjusted
12 annually by the inflation factor determined by the Revenue and
13 Fiscal Affairs Office.

14 (D) To claim a job development credit, the qualifying business
15 must incur expenditures at the project or for utility or transportation
16 improvements that serve the project. To be qualified, the
17 expenditures must be:

18 (1) incurred during the term of the revitalization agreement,
19 including a preliminary revitalization agreement, or within sixty
20 days before council's receipt of an application for benefits pursuant
21 to this section;

22 (2) authorized by the revitalization agreement; and

23 (3) used to reimburse the business for:

24 (a) training costs and facilities;

25 (b) acquiring and improving real estate whether
26 constructed or acquired by purchase, or in cases approved by the
27 council, acquired by lease capital or operating lease with at least a
28 five-year term or otherwise;

29 (c) improvements to both public and private utility systems
30 including water, sewer, electricity, natural gas, and
31 telecommunication;

32 (d) fixed transportation facilities including highway, rail,
33 water, and air; or

34 (e) construction or improvements of real property and
35 fixtures constructed or improved primarily for the purpose of
36 complying with local, state, or federal environmental laws or
37 regulations.

38 (E)(1) For purposes of subsection (C)(1)(a) through (d), the
39 amount of job development credits a qualifying business may claim
40 for its use for qualifying expenditures is limited according to the
41 designation of the county as defined in Section 12-6-3360(B) as
42 follows:

1 (a) one hundred percent of the maximum job development
2 credits may be claimed by businesses located in counties designated
3 as ~~distressed or least developed~~ 'Tier IV');

4 (b) eighty-five percent of the maximum job development
5 credits may be claimed by businesses located in counties designated
6 as ~~"underdeveloped"~~ 'Tier III';

7 (c) seventy percent of the maximum job development
8 credits may be claimed by businesses located in counties designated
9 as ~~"moderately developed"~~ 'Tier II'; or

10 (d) fifty-five percent of the maximum job development
11 credits may be claimed by businesses located in counties designated
12 as ~~"developed"~~ 'Tier I'.

13 (2) For purposes of this subsection, the county designation of
14 the county in which the project is located at the time the qualifying
15 business enters into a preliminary revitalization agreement with the
16 council remains in effect for the entire period of the revitalization
17 agreement.

18 (3) The amount claimed by a qualifying business is limited by
19 this subsection and the terms of the revitalization agreements. The
20 business may use either the job development escrow procedure
21 pursuant to revitalization agreements with effective dates before
22 1997 or the job development credit, or a combination of the two. For
23 a business qualifying pursuant to this section, the council also may
24 approve or waive sections of a revitalization agreement and rules of
25 the council, in the council's discretion, to assist the business.

26 (4) The council shall certify to the department the maximum
27 job development credit for each qualifying business. After receiving
28 certification, the department shall remit an amount equal to the
29 difference between the maximum job development credit and the
30 job development credit actually claimed to the State Rural
31 Infrastructure Fund as defined and provided in Section 12-10-85.

32 (F) A job development credit of a qualifying business
33 permanently lapses upon expiration or termination of the
34 revitalization agreement. If an employee is terminated, the
35 qualifying business immediately must cease to claim job
36 development credits as to that employee.

37 (G) For purposes of the job development credit allowed by this
38 section, an employee is a person whose job was created in this
39 State."

40
41 SECTION 5. Section 12-10-100(A) of the 1976 Code is amended
42 to read:

1 “(A) The council may establish criteria for the determination and
2 selection of qualifying businesses and the approval of revitalization
3 agreements. These criteria may include and may give greatest
4 weight to the creditworthiness of the business, the number, type, and
5 quality of new jobs to be provided by the project to residents of this
6 State, and the economic viability of the business. The council may
7 include in its criteria requirements relating to the capital costs of,
8 and projected employment to be produced by, projects eligible for
9 benefits under this chapter and requirements relating to the
10 employment of previously unemployed or underemployed persons.

11 With respect to each business and project, the council shall
12 request the materials and make the inquiries necessary to determine
13 whether the business and its proposed project satisfy the council’s
14 announced criteria and to conduct an adequate cost/benefit analysis
15 with respect to the proposed project and the incentives proposed to
16 be granted by the council with respect to the project. After a review
17 of the relevant materials and completion of its ~~inquires~~ inquiries and
18 analysis, the council may by resolution of its members designate an
19 applicant business as a qualifying business and authorize the
20 undertaking of its project according to the revitalization agreement.
21 The decision to enter into a revitalization agreement with a
22 qualifying business is solely within the discretion of the council and
23 a qualifying business does not have a right of appeal from the
24 council’s decision.”

25
26 SECTION 6. This act takes effect upon approval by the Governor.

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