

REPORT OF THE ECONOMIC DEVELOPMENT, CAPITAL IMPROVEMENT & OTHER TAXES SUBCOMMITTEE

(Loftis, Cobb-Hunter, J.R. Smith, Barfield & Ott - Staff Contact: Daniel Boan)

HOUSE BILL 3557

H. 3557 -- Reps. Cobb-Hunter, White, Bannister, Rutherford, Harrell, Merrill, Simrill, Stavrinakis, Loftis, Horne, Weeks and Mitchell: A BILL TO AMEND SECTION 12-6-3375, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO AS TO EXPAND THE TYPES OF BUSINESSES THAT QUALIFY FOR THE CREDIT, TO GIVE THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT DISCRETION IN AWARDING CREDITS, TO FURTHER DEFINE TERMS, TO PROVIDE THAT TAXPAYERS ENGAGED IN THE MOVEMENT OF GOODS IMPORTED OR EXPORTED THROUGH SOUTH CAROLINA'S PORT FACILITIES MAY BE ELIGIBLE FOR THE CREDIT IF THE CARGO SUPPORTS A PRESENCE IN THE STATE AND MEETS OTHER JOB AND CAPITAL INVESTMENT REQUIREMENTS, AND TO PROVIDE THAT A TAXPAYER THAT FAILS TO MEET THE REQUIREMENTS OF THE CREDIT MUST REPAY A PRO RATA PORTION OF THE CREDIT.

Summary of Bill:

This bill would expand the availability of the port cargo tax credit to additional port-related companies that increase port volume but are not defined by current statute.

Introduced: 02/19/2013

Received by Ways and Means: 02/19/2013

Estimated Fiscal Impact:

None

Subcommittee Recommendation:

Favorable

Full Committee Recommendation:

Pending

Other Notes/Comments:

Current law limits all tax credits claimed under this section to a total of \$8 million. The bill does not alter that limit.

Statement of Estimated State Revenue Impact

Date: April 17, 2013

Bill Number: H.B. 3557

Authors: Cobb-Hunter, White, Bannister, Rutherford, Harrell, *et. al.*

Committee Requesting Impact: House Ways & Means Committee

Bill Summary

A bill to amend Section 12-6-3375, as amended, of the Code of Laws of South Carolina, 1976, relating to the tax credit for port cargo volume increase, so as to expand the types of businesses that qualify for the credit, to give the Coordinating Council for Economic Development discretion in awarding credits, to further define terms, to provide that taxpayers engaged in the movement of goods imported or exported through South Carolina's port facilities may be eligible for the credit if the cargo supports a presence in the state and meets other job and capital investment requirements, and to provide that a taxpayer that fails to meet the requirements of the credit must repay a pro rata portion of the credit.

REVENUE IMPACT ¹¹

This bill is not expected to affect General Fund income taxes or individual income withholding taxes in FY2013-14 or FY2014-15.

Explanation

Currently, a taxpayer is allowed a tax credit if the taxpayer is engaged in manufacturing, warehousing, or distribution that uses South Carolina port facilities and increase its port cargo volume at these facilities by at least five (5) percent in a calendar year over its base year port cargo volume. The amount of the credit is determined by the Coordinating Council for Economic Development of the Department of Commerce upon application by the taxpayer. The maximum amount of tax credits allowed to all qualifying taxpayers may not exceed \$8,000,000 for each calendar year. Any unused credits may be carried forward for five (5) years.

This bill would amend Section 12-6-3375 to amend the port usage tax credit by making several changes. This bill would expand the types of businesses that would be eligible to claim a tax credit to include freight forwarding, freight handling, goods processing, cross docking, transloading, and wholesaling of goods. The expansion of the types of jobs would broaden the base of the total number of jobs eligible to apply for tax credits. Once the taxpayer files an application with the Coordinating Council for Economic Development, the CCED would now be required to consider factors related to the economic benefit of the State or other factors in making the sole discretion in awarding credits based upon the taxpayer's application.

Taxpayers are eligible for tax credits by increasing its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume. The increase may be stated as a percentage increase, a total increase in net tons of

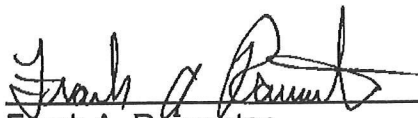
Statement of Estimated State Revenue Impact

noncontainerized cargo, a measurement of cargo, and a number of twenty-foot equivalent units, or TEU's of cargo. This bill removes the fixed base year period and changes the base year to the initial January 1st through December 31st period the taxpayer meets the 75 net tons of noncontainerized cargo, or 385 cubic meters of cargo, or ten loaded TEU's. The base year port cargo volume must be recalculated each calendar year after the initial base year.

This bill provides for the awarding of up to \$1,000,000 of the \$8,000,000 of total credits available against employee withholdings to a new warehouse or distribution facility which invests at least \$40,000,000 at a single site and creates 100 new full-time jobs if the base year cargo is not less than 5,000 TEU's or its noncontainerized equivalent. The taxpayer must make satisfactory progress in meeting the job and capital investment criteria within three years of the initial approval of the tax credits. This bill also adds a provision to allow a taxpayer that meets the initial port volume requirement but does not have a distribution center in the State to be eligible for the tax credit if the cargo supports a presence in the State. The taxpayer must employ at least 250 full-time equivalent South Carolinians statewide, and must complete the construction of a distributional facility in the State within five years of the initial approval of the tax credits.

This bill adds a "claw back" provision such that if a taxpayer fails to meet the new full-time job and capital investment requirements of the distribution centers above, the taxpayer must repay the department a pro rata portion of the credits claimed.

According to the Department of Revenue, 78 taxpayers have claimed a total of \$6,670,868 of nonrefundable credits since passage of the port volume increase tax credit in 2005. Based upon the effective date and research of current activity, this bill is not expected to affect General Fund revenues in FY2013-14 and FY2014-15. While the bill does expand the list of eligible businesses and we expect new businesses to qualify, they would be competing for all other entities within the \$8,000,000 cap limitation. This act takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.



Frank A. Rainwater
Chief Economist

Analyst: Martin

¹⁷ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact of Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

South Carolina General Assembly
120th Session, 2013-2014

H. 3557

STATUS INFORMATION

General Bill

Sponsors: Reps. Cobb-Hunter, White, Bannister, Rutherford, Harrell, Merrill, Simrill, Stavrinakis, Loftis, Horne, Weeks, Mitchell, Ott and Sellers

Document Path: I:\council\bill\13132dg13.docx

Introduced in the House on February 19, 2013

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

Summary: Tax credits

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/19/2013	House	Introduced and read first time (House Journal-page 25)
2/19/2013	House	Referred to Committee on Ways and Means (House Journal-page 25)
2/20/2013	House	Member(s) request name added as sponsor: Ott
3/13/2013	House	Member(s) request name added as sponsor: Sellers

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VERSIONS OF THIS BILL

2/19/2013

1
2
3
4
5
6
7
8
9 **A BILL**

10
11 TO AMEND SECTION 12-6-3375, AS AMENDED, CODE OF
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE
13 TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO
14 AS TO EXPAND THE TYPES OF BUSINESSES THAT
15 QUALIFY FOR THE CREDIT, TO GIVE THE
16 COORDINATING COUNCIL FOR ECONOMIC
17 DEVELOPMENT DISCRETION IN AWARDING CREDITS, TO
18 FURTHER DEFINE TERMS, TO PROVIDE THAT
19 TAXPAYERS ENGAGED IN THE MOVEMENT OF GOODS
20 IMPORTED OR EXPORTED THROUGH SOUTH
21 CAROLINA'S PORT FACILITIES MAY BE ELIGIBLE FOR
22 THE CREDIT IF THE CARGO SUPPORTS A PRESENCE IN
23 THE STATE AND MEETS OTHER JOB AND CAPITAL
24 INVESTMENT REQUIREMENTS, AND TO PROVIDE THAT
25 A TAXPAYER THAT FAILS TO MEET THE
26 REQUIREMENTS OF THE CREDIT MUST REPAY A PRO
27 RATA PORTION OF THE CREDIT.

28
29 Be it enacted by the General Assembly of the State of South
30 Carolina:

31
32 SECTION 1. Section 12-6-3375 of the 1976 Code, as last
33 amended by Act 290 of 2010, is further amended to read:

34
35 "Section 12-6-3375. (A)(1) A taxpayer engaged in any of
36 the following: manufacturing, warehousing, freight forwarding,
37 freight handling, goods processing, cross docking, transloading,
38 wholesaling of goods, or distribution, exported or imported
39 through which ~~uses~~ port facilities in ~~this State~~ South Carolina and
40 which increases its port cargo volume at these facilities by a
41 minimum of five percent in a single calendar year over its base
42 year port cargo volume is eligible to claim an income tax credit or

1 a credit against employee withholding in the amount determined
2 by the Coordinating Council for Economic Development (council).

3 (2) The maximum amount of tax credits allowed to all
4 qualifying taxpayers pursuant to this section may not exceed eight
5 million dollars for each calendar year. The credits may be claimed
6 against the taxes imposed pursuant to Sections 12-6-530 and
7 12-6-545 and credits against employee withholdings may not
8 exceed four million dollars out of eight million dollars. The
9 council has sole discretion in allocating the credits provided by this
10 section ~~on a priority basis or such other basis as the board deems~~
11 ~~appropriate, taking into consideration and must consider~~ the
12 following factors:

13 (a) the amount of base year port cargo volume;
14 (b) the total and percentage increase in port cargo volume;

15 and

16 (c) ~~the number of qualifying taxpayers factors related to~~
17 the economic benefit of the State or other factors;

18 (d) ~~the type of cargo transported; and~~

19 (e) ~~other factors related to the economic benefit of the~~
20 ~~State, as determined by the council.~~

21 (3) If the credit exceeds the taxpayer's tax liability for the
22 taxable year, the excess amount may be carried forward and
23 claimed against income taxes in the next five succeeding taxable
24 years.

25 (4) ~~The credit may be claimed by the taxpayer as provided in~~
26 ~~subsection (A)(1) only if the taxpayer owns the cargo at the time~~
27 ~~the port facilities are used.~~

28 (B)(1) For every year in which a taxpayer claims the credit, the
29 taxpayer shall submit an application to the council after the
30 calendar year in which the increase in port cargo volume occurs.
31 ~~The council may make allocations of the credit~~ Allocations of the
32 credit may be made on a monthly, quarterly, or annual basis. The
33 taxpayer shall attach a schedule to the taxpayer's application to the
34 council with the following information and information requested
35 by the council or the department:

36 (a) a description of how the base year port cargo volume
37 and the increase in port cargo volume was determined;

38 (b) the amount of the base year port cargo volume;

39 (c) the amount of the increase in port cargo volume for the
40 taxable year stated both as a percentage increase and as a total
41 increase in net tons of ~~nonecontainerized~~ non-containerized cargo,
42 measurement of cargo, and TEUs of cargo, including information
43 which demonstrates an increase in port cargo volume in excess of

1 the minimum amount required to claim the tax credits pursuant to
2 this section;

3 (d) any tax credit utilized by the taxpayer in prior years;
4 and

5 (e) the amount of tax credit carried over from prior years.

6 (2) To receive the credit the taxpayer shall claim the credit
7 on its income tax or withholding return in a manner prescribed by
8 the department. The department may require a copy of the
9 certification form issued by the council be attached to the return or
10 otherwise provided.

11 (C) As used in this section:

12 (1) 'TEU' means a 'twenty-foot equivalent unit'; a
13 volumetric measure based on the size of a container twenty feet
14 long by eight feet wide by eight feet, six inches high. A 'weighted
15 TEU' is equal to seven and a half tons. A "measured TEU" is
16 equal to thirty-eight and a half cubic meters.

17 (2) 'Base year port cargo volume' initially means the total
18 amount of net tons of ~~nonecontainerized~~ non-containerized cargo,
19 measured equivalent of non-cargo or TEUs of cargo actually
20 transported by way of a waterborne ship through a port facility
21 during the period from January 1, 2009, ~~first~~ through December
22 ~~31, 2009~~ thirty-first of the same year. Base year port cargo volume
23 must be at least seventy-five net tons of ~~nonecontainerized~~
24 non-containerized cargo three hundred and eighty-five cubic
25 meters, or ten TEUs for a taxpayer to be eligible for the credits
26 provided in this section. For a taxpayer that does not ship that
27 amount in the year ending December 31, 2009 ~~thirty-first of the~~
28 previous year, including a taxpayer who locates in South Carolina
29 after December 31, 2009 ~~thirty-first of the previous year~~, its base
30 cargo volume will be measured by the initial January first through
31 December thirty-first calendar year in which it meets the
32 requirements of seventy-five net tons of ~~nonecontainerized~~
33 non-containerized cargo, three hundred eighty-five cubic meters,
34 or ten loaded TEUs. Base year port cargo volume must be
35 recalculated each calendar year after the initial base year.

36 (3) 'Port facility' means any publicly or privately owned
37 facility located within this State through which cargo is transported
38 by way of a waterborne ship or vehicle to or from destinations
39 outside this State and which handles cargo owned by third parties
40 in addition to cargo owned by the port facility's owner.

41 (4) 'Port cargo volume' means the total amount of net tons
42 of ~~nonecontainerized~~ non-containerized cargo or containers
43 measured in twenty-foot equivalent units (TEUs) of cargo

1 transported by way of a waterborne ship or vehicle through a port
2 facility, or measured cubic meters of cargo.

3 (D) The council may annually award up to one million dollars
4 of the eight million dollars of credits against employee
5 withholdings that are not otherwise refundable pursuant to this title
6 to a new warehouse or distribution facility which commits to
7 expending at least forty million dollars at a single site and creating
8 one hundred new full-time jobs, and the base year cargo provisions
9 contained in this section do not apply shall not be less than five
10 thousand TEU's or its non-containerized equivalent. The council
11 may make the award in the year the facility is announced provided
12 that it may not tender the certificate until it has received
13 satisfactory proof that the capital investment and job creation
14 requirements have, or will be, satisfied. Any credit certificate
15 expires three years after issuance if satisfactory proof has not been
16 received. If the credit exceeds the taxpayer's withholding tax
17 liability for the taxable quarter that is not otherwise refundable
18 pursuant to this title, the excess amount may be carried forward
19 and claimed against withholding liability that is not otherwise
20 refundable pursuant to this title in the next twenty succeeding
21 taxable quarters.

22 (E)(1) A taxpayer engaged in the movement of goods imported
23 or exported through South Carolina's port facilities may be eligible
24 for the port volume tax credit if the cargo supports a presence in
25 the State and the taxpayer does not have a distribution center in the
26 State at the time of initial approval of the port volume tax credit, so
27 long as:

28 (a) the taxpayer employs at least two hundred and fifty
29 full-time or full-time equivalent South Carolinians in operations
30 statewide;

31 (b) the taxpayer completes the construction of the
32 distribution facility in South Carolina, and is operational, within
33 five years of the initial approval of the port volume tax credit; and

34 (c) the base year for the taxpayer shall be not less than
35 five thousand TEU's or its non-containerized equivalent.

36 (2) Any credit certificate expires three years after issuance if
37 satisfactory proof has not been received.

38 (F) The council has discretion to award the credits pursuant to
39 either subsection (D) or (E).

40 (G) Notwithstanding Section 12-54-240, the department and the
41 Department of Commerce may exchange information submitted by
42 a taxpayer pursuant to this section.

1 (H)(1) If a taxpayer receives the credit under subsection (D) but
2 fails to meet the requirements of subsection (D) at the end of the
3 three-year period, the taxpayer must repay the department a pro
4 rata portion of the credits claimed.
5 (2) If a taxpayer receives the credit under subsection (E) but
6 fails to meet the requirements of subsection (E)(1) at the end of the
7 five-year period, the taxpayer must repay the department a pro rata
8 portion of the credits claimed.”
9
10 SECTION 2. This act takes effect upon approval by the Governor
11 and applies to tax years beginning after December 31, 2013.
12 -----XX-----
13