~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

October 27, 2009

**H. 3130**

Introduced by Rep. Harvin

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Read the first time April 30, 2009.

**A** **BILL**

TO PROVIDE FOR MAJOR ECONOMIC DEVELOPMENT IN THIS STATE BY AMENDING SECTION 12-6-2320 OF THE 1976 CODE, RELATING TO THE ALLOCATION AND APPORTIONMENT OF A TAXPAYER’S INCOME, TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY ENTER INTO AN AGREEMENT WITH A TAXPAYER IF THE TAXPAYER is planning a new facility in this State and invests at least seven hundred fifty million dollars in real or personal property or both in a single county in this State and creates at least THREE THOUSAND EIGHT HUNDRED full‑time new jobs; TO AMEND SECTION 12-36-2120, RELATING TO SALES TAX EXEMPTIONS, TO EXEMPT FUEL SOLD TO CERTAIN MANUFACTURERS FOR CERTAIN PURPOSES, TO EXEMPT COMPUTER EQUIPMENT USED IN CONJUNCTION WITH A MANUFACTURING FACILITY WHERE THE TAXPAYER invests at least seven hundred fifty million dollars and creates at least THREE THOUSAND EIGHT HUNDRED full‑time new jobs in this State over a SevEN-year period, and to exempt construction materials WHERE THE TAXPAYER invests at least seven hundred fifty million dollars and creates at least THREE THOUSAND EIGHT HUNDRED full‑time new jobs in this State over a SEVEN-year period; to amend CHAPTER 41, TITLE 11 OF THE 1976 CODE, RELATING TO THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT, TO REVISE THE FINDINGS OF THE ACT, TO AUTHORIZE THE ISSUANCE OF ADDITIONAL ECONOMIC DEVELOPMENT BONDS, AND TO PRESCRIBE THE LIMITATIONS APPLICABLE TO THE ISSUANCE OF THESE ECONOMIC DEVELOPMENT BONDS.

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

SECTION 1. A. Section 12‑6‑2320(B) of the 1976 Code is amended to read:

“(B)(1) For the purposes of this chapter, the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer’s income for a period not to exceed five years, if the following conditions are met:

(a) the taxpayer is planning a new facility in this State or an expansion of an existing facility;

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer’s proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic Development’s sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(2) For the purposes of this subsection the word ‘taxpayer’ includes any one or more of the members of a controlled group of corporations authorized to file a consolidated return under Section 12‑6‑5020. Also, the word ‘taxpayer’ includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

(3) Notwithstanding the provisions of item (1), the department may enter into an agreement with the taxpayer establishing the allocation and apportionment of the taxpayer’s income for a period not to exceed ten years if the following conditions are met:

(a)(i) the taxpayer is planning a new facility in this State or an expansion of an existing facility and the new or expanded facility results in a total investment of at least ten million dollars and the creation of at least two hundred new full‑time jobs, with an average cash compensation level for the new jobs of more than three times the per capita income of this State at the time the jobs are filled which must be within five years of the Advisory Coordinating Council for Economic Development’s certification. Per capita income for the State shall be determined by using the most recent data available from the Board of Economic Advisors; or

(ii) the taxpayer is planning a new facility in this State and invests at least seven hundred fifty million dollars in real or personal property or both in a single county in this State and creates at least three thousand eight hundred full‑time new jobs, as those terms are defined in Section 12‑6‑3360(M), within the county. The taxpayer has seven years from the date it makes the notification provided for in subitem (b) of this item to make the required investment and create the required number of jobs; and

(b) the taxpayer asks the department to enter into a contract under this subsection reciting an allocation and apportionment method; and

(c) after reviewing the taxpayer’s proposal and planned new facility or expansion, the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public. It is within the Advisory Coordinating Council for Economic Development’s sole discretion to determine whether a new facility or expansion has a significant economic effect on the region for which it is planned.

(4) The taxpayer may begin operating under the agreement beginning with the tax year in which the agreement is executed. If the taxpayer fails to meet the requirements of subitem (3)(a)(ii), the department may assess any tax due as a result of the taxpayer’s failure to meet the requirements of subitem (3)(a)(ii). For any subsequent year that the taxpayer fails to maintain three thousand eight hundred full‑time new jobs, then the department may assess any tax due for that year.”

B. This SECTION is effective on November 1, 2009, and item (3)(a)(ii) only applies to a taxpayer enters into an agreement prior to October 31, 2015.

SECTION 2. A. Section 12‑36‑2120(9) of the 1976 Code is amended to read:

“(9) coal, or coke or other fuel sold to manufacturers, electric power companies, and transportation companies for:

(a) use or consumption in the production of by‑products;

(b) the generation of heat or power used in manufacturing tangible personal property for sale. For purposes of this item, ‘manufacturer’ or ‘manufacturing’ includes the activities of a processor;

(c) the generation of electric power or energy for use in manufacturing tangible personal property for sale; ~~or~~

(d) the generation of motive power for transportation. For the purposes of this exemption, ‘manufacturer’ or ‘manufacturing’ includes the activities of mining and quarrying;

(e) the generation of motive power for test flights of aircraft by the manufacturer of the aircraft where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven‑year period; and

(ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the single manufacturing facility during that seven‑year period; or

(f) the transportation of aircraft prior to its completion from one facility of the manufacturer of the aircraft to another facility of the manufacturer of the aircraft, not including the transportation of major component parts for construction or assembly, or the transportation of personnel. This exemption only applies when:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility over a seven‑year period; and

(ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the single manufacturing facility during that seven‑year period.

To qualify for the exemptions provided for in subitems (e) and (f), the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment and create the required number of full‑time new jobs over the seven-year period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the seven hundred fifty million dollar investment requirement and has created the three thousand eight hundred full‑time new jobs or, after the expiration of the seven-year period, that it has not met the seven hundred fifty million dollar investment requirement and created the three thousand eight hundred full‑time new jobs. The department may assess any tax due on fuel purchased tax free pursuant to subitems (e) and (f) but due the State as a result of the taxpayer’s failure to meet the seven hundred fifty million dollar investment requirement and create the three thousand eight hundred full‑time new jobs. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the seven hundred fifty million dollar investment requirement and created the three thousand eight hundred full‑time new jobs.

As used in subitems (e) and (f), ‘taxpayer’ includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.”

B. The exemptions in subitems (e) and (f) are effective November 1, 2009, and only apply to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.

SECTION 3. A. Section 12‑36‑2120(65) of the 1976 Code is amended to read:

“(65)(a) computer equipment, as defined in subitem ~~(b)~~ (c) of this item, used in connection with a technology intensive facility as defined in Section 12‑6‑3360(M)(14)(b), where:

(i) the taxpayer invests at least three hundred million dollars in real or personal property or both comprising or located at the facility over a five‑year period;

(ii) the taxpayer creates at least one hundred new full‑time jobs at the facility during that five‑year period, and the average cash compensation of at least one hundred of the new full‑time jobs is one hundred fifty percent of the per capita income of the state according to the most recently published data available at the time the facility’s construction starts; and

(iii) at least sixty percent of the three hundred million dollars minimum investment consists of computer equipment;

(b) computer equipment, as defined in subitem (c) of this item, used in connection with a manufacturing facility, where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven‑year period; and

(ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the facility during that seven‑year period.

As used in this subitem, ‘taxpayer’ includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.

~~(b)~~(c) For the purposes of this item, ‘computer equipment’ means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

~~(c)~~(d) ~~This exemption applies~~ These exemptions apply from the start of the investment in or construction of the technology intensive facility or the manufacturing facility ~~as defined in subitem (a)~~. The taxpayer shall notify the Department of Revenue of its use of the exemption provided in this item on or before the first sales tax return filed with the department after the first such use. Upon receipt of the notification, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes under this item. Within six months after the fifth anniversary of the taxpayer’s first use of this exemption, the taxpayer shall notify the department in writing that it has or has not met the investment and job requirements of this item by the end of that five‑year period. Once the department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of or investments in computer equipment, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption described above, regardless of when the taxpayer makes the investments.

~~(d)~~(e) The department may assess any tax due on property purchased tax free pursuant to this item but due the State if the taxpayer subsequently fails timely to meet the investment and job requirements of this item after being granted the exemption; for purposes of determining whether the taxpayer has timely satisfied the investment requirement, replacement computer equipment counts toward the investment requirement to the extent that the value of the replacement computer equipment exceeds the cost of the computer equipment so replaced, but, provided the taxpayer otherwise qualifies for the exemption, the full value of the replacement computer equipment is exempt from sales and use tax. The running of the periods of limitation within which the department may assess taxes provided pursuant to Section 12‑54‑85 is suspended during the time period beginning with the taxpayer’s first use of this exemption and ending with the later of the fifth anniversary of first use or notice to the department that the taxpayer either has met or has not met the investment and job requirements of this item;”

B. The exemption provided for in subitem (b) is effective on November 1, 2009, and only applies to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this section.

SECTION 4. A. Section 12‑36‑2120(67) of the 1976 Code is amended to read:

“(67) effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen‑month period, or effective November 1, 2009, construction materials used in the construction of a new or expanded single manufacturing facility where:

(i) the taxpayer invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at the facility over a seven‑year period; and

(ii) the taxpayer creates at least three thousand eight hundred full‑time new jobs at the facility during that seven‑year period. ~~The taxpayer must provide notice of the exemption, and the Department of Revenue may assess taxes owing in the manner provided in Section 12‑36‑2120(51).~~

To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall make the required investment over the applicable time period beginning on the date provided by the taxpayer to the department in its notices. The taxpayer shall notify the department in writing that it has met the investment requirement or, after the expiration of the applicable time period, that it has not met the investment requirement. The department may assess any tax due on construction materials purchased tax free pursuant to this subitem but due the State as a result of the taxpayer’s failure to meet the investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12‑54‑85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the investment requirement.

As used in this subitem, ‘taxpayer’ includes a person who bears a relationship to the taxpayer as described in Section 267(b) of the Internal Revenue Code.”

B. The additional exemption provided by this SECTION is effective November 1, 2009, and only applies to a taxpayer that notifies the department prior to October 31, 2015, of its intent to utilize the exemption provided by this SECTION.

SECTION 5. A. The General Assembly hereby finds, as a fact, that the construction of infrastructure, as defined in, and subject to the terms and conditions of, the State General Obligation Economic Development Bond Act, for use by private parties enhances the recruitment of businesses to the State, facilitates the operation and growth of businesses in the State, and thereby provides significant and substantial direct and indirect benefits to the State and its residents, including employment and other opportunities; that such benefits outweigh the costs of such infrastructure; that for such reasons it is in the best interest of the State to authorize the issuance of economic development bonds as defined in, and subject to the terms and conditions of, the State General Obligation Economic Development Bond Act; and that such economic development bonds, issued for such purpose, serve a public purpose in fostering economic development and increasing employment in the State. The General Assembly further finds, as a fact, that the primary beneficiaries of the issuance of such economic development bonds and the construction of such infrastructure are the State of South Carolina and its residents.

B. Section 11‑41‑20 of the 1976 Code is amended to read:

“Section 11‑41‑20. As incident to this chapter, the General Assembly finds:

(1) That by Section 4, Act 10 of 1985, the General Assembly ratified an amendment to Article X, Section 13(6)(c), Constitution of this State, 1895. One amendment in Article X, Section 13(6)(c) limits the issuance of general obligation debt of the State such that maximum annual debt service on all general obligation bonds of the State, excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, must not exceed five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(2) That Article X, Section 13(6)(c), as amended, further provides that the percentage rate of general revenues of the State by which general obligation bond debt service is limited may be reduced to four or increased to seven percent by legislative enactment passed by a two‑thirds vote of the total membership of the Senate and a two‑thirds vote of the total membership of the House of Representatives.

(3) ~~In order to foster economic development and to encourage the creation of high‑paying jobs in the life sciences industry within the State, it is in the best interests of the State that the limitation on general obligation debt imposed by~~ That pursuant to Article X, Section 13(6)(c), the General Assembly, in Act 254 of 2002 and Act 187 of 2004, ~~be~~ increased to five and one‑half percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to provide infrastructure required for significant economic development projects within the State, including those related to the life sciences industry that create high‑paying jobs and meet certain investment criteria.

(4) That pursuant to Article X, Section 13(6)(c), the General Assembly, in Act 187 of 2004, increased to six percent the percentage rate of the general revenues of the State by which general obligation bond debt service is limited with the additional debt service capacity available at any time as a consequence of the increase available only for the repayment of general obligation bonds issued to advance economic development and to facilitate and increase research within the State at the research universities.

(5) That Article X, Section 13(5) of the Constitution of this State, 1895, provides that if general obligation debt be authorized by two‑thirds of the members of each House of the General Assembly, then there shall be no conditions or restrictions limiting the incurring of such indebtedness except those restrictions and limitations imposed in the authorization to incur such indebtedness, and the provisions of Article X, Section 13(3) of the Constitution of this State.

(6) That Article X, Section 13(5) provides additional constitutional authority for bonds authorized by this chapter.

(7) In order to continue fostering economic development within the State as set out in subsections (3) and (4) of this section, it is in the best interests of the State that the General Assembly authorize an additional amount of general obligation debt pursuant to Article X, Section 13(5) of the Constitution of this State, with such indebtedness limited to a principal amount of general obligation debt not exceeding one hundred seventy million dollars at any time, provided that no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.”

C. Sections 11‑41‑50 and 11‑41‑60 of the 1976 Code are amended to read:

“Section 11‑41‑50. (A) Pursuant to Article X, Section 13(6)(c) of the Constitution of this State, 1895, the General Assembly provides that economic development bonds may be issued ~~under~~ pursuant to this ~~chapter only~~ subsection at such times as the maximum annual debt service on all general obligation bonds of the State, including economic development bonds outstanding and being issued, but excluding research university infrastructure bonds pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, will not exceed five and one‑half percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. The State at any time may not issue general obligation bonds, excluding economic development bonds issued pursuant to this chapter, research university infrastructure bonds issued pursuant to Chapter 51 of this title, highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes, if at the time of issuance the maximum annual debt service on all such general obligation bonds, outstanding and being issued exceeds five percent of the general revenues of the State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds.

(B) ~~With respect to the first eight hundred fifty million dollars in principal amount of general obligation~~ In addition to and exclusive of the economic development bonds provided for and issued ~~after the effective date of this chapter within the debt service constraints set forth in~~ pursuant to subsection (A) of this section, the General Assembly provides ~~additional constitutional authorization for such bonds~~ that pursuant to Article X, Section 13(5) of the Constitution of this State, 1895~~. This authorization is the same authorization contained in, and is not duplicative of, the authorization set forth in Section 11‑51‑50(c).~~, (i) additional economic development bonds may be issued under this chapter in an aggregate principal amount that does not exceed one hundred seventy million dollars, and (ii) in addition to the authorization contained in the preceding clause, additional economic development bonds may be issued provided that the aggregate principal amount of economic development bonds then outstanding under clauses (i) and (ii), together with the economic development bonds to be issued pursuant to this clause (ii), does not at any time exceed the principal amount specified in clause (i). From the proceeds of the economic development bonds authorized pursuant to this subsection, no more than a total of one hundred seventy million dollars of proceeds may be used for any one project regardless of available capacity.”

Section 11‑41‑60. The maximum annual debt service on bonds issued pursuant to subsection (A) of Section 11‑41‑50 of this chapter must not exceed one‑half of one percent of the general revenues of this State for the fiscal year next preceding, excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds. Bonds issued pursuant to subsection (B) of Section 11‑41‑50 of this chapter shall not be subject to the limitation on maximum annual debt service prescribed by Article X, Section 13(6)(c) of the Constitution of this State, 1895.”

D. Section 11‑41‑90 of the 1976 Code is amended to read:

“Section 11‑41‑90. To effect the issuance of bonds, the State Budget and Control Board shall adopt a resolution providing for the issuance of bonds pursuant to the provisions of this chapter. The authorizing resolution must include:

(1) a statement of whether the bonds are being authorized and issued pursuant to Section 11‑41‑50(A) or Section 11‑41‑50(B);

(2) a schedule showing the aggregate of bonds issued, the annual principal payments required to retire the bonds, and the interest on the bonds;

~~(2)~~(3) the amount of bonds proposed to be issued;

~~(3)~~(4) a schedule showing future annual principal requirements and estimated annual interest requirements on the bonds to be issued; and

~~(4)~~(5) certificates evidencing that the provisions of Sections 11‑41‑50 and 11‑41‑60 of this chapter have been or will be met.”

SECTION 6. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of major economic development opportunities in this State as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 7. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. Except where otherwise provided, this act takes effect upon approval by the Governor.

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