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Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

April 24, 2013

**H. 3644**

Introduced by Reps. Loftis, Gagnon, Herbkersman, Lowe, Lucas, D.C. Moss, Ott, Pitts and Toole

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Read the first time February 27, 2013.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 13‑1‑390 SO AS TO ESTABLISH WITHIN THE DIVISION OF STATE DEVELOPMENT OF THE DEPARTMENT OF COMMERCE THE CLEAN ENERGY INDUSTRY MARKET DEVELOPMENT ADVISORY COUNCIL AND PROVIDE FOR ITS MEMBERSHIP AND FUNCTIONS; TO AMEND SECTION 12‑6‑3588, RELATING TO THE RENEWABLE ENERGY TAX CREDIT INCENTIVE PROGRAM, SO AS TO REDESIGNATE THE PROGRAM THE SOUTH CAROLINA CLEAN ENERGY TAX INCENTIVE PROGRAM, TO REVISE DEFINITIONS TO EXTEND THE CREDIT TO ADDITIONAL FORMS OF ENERGY PRODUCTION AND OPERATIONS, TO DECREASE INVESTMENT THRESHOLDS AND DECREASE JOB CREATION THRESHOLDS FOR QUALIFYING FOR THE CREDIT AND MAKE THE CREDIT, PREVIOUSLY DUE TO EXPIRE DECEMBER 31, 2015, AVAILABLE THROUGH 2019 AND TO REVISE CREDIT ADMINISTRATION PROCEDURES; AND TO AMEND SECTION 12‑6‑3600, AS AMENDED, RELATING TO THE INCOME TAX CREDIT FOR CORN‑BASED ETHANOL OR SOY‑BASED BIODIESEL PRODUCTION IN THIS STATE, SO AS TO EXTEND THE CREDIT TO ALL LIQUID FUELS DERIVED FROM RENEWABLE SOURCES, MAKE CONFORMING DEFINITIONS, REDUCE THE AMOUNT OF LIQUID FUEL ELIGIBLE FOR THE CREDIT, AND TO EXTEND THE PERIOD DURING WHICH THE CREDIT MAY BE CLAIMED THROUGH 2019.

Amend Title To Conform

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

SECTION 1. Article 3, Chapter 1, Title 13 of the 1976 Code is amended by adding:

“Section 13‑1‑390. (A) In addition to those advisory councils that may be established by the Secretary of Commerce pursuant to Section 13‑1‑40, there is established within the division a Clean Energy Industry Manufacturing Market Development Advisory Council to assist in the development of clean energy technology, materials, and products manufactured in this State.

(B) The council is composed of fourteen members. The Secretary of the South Carolina Department of Commerce or the secretary’s designee and the Director of the State Energy Office or the director’s designee shall serve on the council and the Secretary of Commerce shall appoint one member representative from each of the following:

(1) advanced vehicle technology industry;

(2) alternative transportation fuels industry;

(3) battery manufacturing industry;

(4) biomass energy industry;

(5) energy efficiency industry;

(6) higher education research institution’s incubation and business development department;

(7) hydroelectric component manufacturing industry;

(8) hydrogen storage or fuel cell industry;

(9) solar manufacturing industry;

(10) SC Technical College System’s clean energy workforce development department;

(11) utility industry; and

(12) wind components manufacturing industry.

(C) Appointed members of the council shall serve for terms of four years and until a successor is appointed and qualified. Terms of members initially appointed expire after June 30, 2017. Appointed members serve at the pleasure of their appointing authority and without compensation or expenses. The functions of the council are advisory to the State. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term.

(D) The chairman must be designated by the Secretary of Commerce and the council shall select its own vice chairman and adopt those procedures necessary for its operations. The council shall meet at least once annually and at the call of the chair or at the request of a majority of the members. A majority of the members constitutes a quorum to do business. The State Energy Office and the South Carolina Department of Commerce, if necessary, shall provide the necessary staff and administrative facilities and services to the council.

(E) Not later than October 31, 2014, the council shall provide to the Governor and the General Assembly an initial report which must include, at a minimum, the following:

(1) a description and analysis of this state’s existing clean energy manufacturing industry;

(2) an analysis of job development potential for clean energy manufacturing in this State;

(3) an analysis of market potential in this State, in other states, or in foreign countries for technology, materials, and products manufactured by a clean energy industry from this State;

(4) recommendations for actions which may be taken to provide incentives for manufacturing of clean energy technology, materials, and products from this State;

(5) recommendations on categories of clean energy markets that should be developed in this State and benchmarks to increase clean energy manufacturing in this State; and

(6) recommendations for marketing and public education programs that should be implemented by economic development entities to provide information to the public and to business and industry on the benefits of investment in the clean energy manufacturing industry in this State.

(F) Following its initial report, the council shall submit to the Governor and to the General Assembly by the end of each calendar year an annual report on the clean energy manufacturing industry activities in this State which must include, at a minimum, the following:

(1) revisions which the advisory council determines are necessary to its initial and subsequent reports;

(2) a description and analysis of the clean energy manufacturing industry in this State and growth of the industry during the preceding year;

(3) recommendations regarding policies that could be implemented to achieve growth in the clean energy manufacturing industry in this State; and

(4) any other recommendations, including tax and economic development incentives, to facilitate the development of the clean energy manufacturing industry in this State.”

SECTION 2. Section 12‑6‑3588 of the 1976 Code, as added by Act 290 of 2010, is amended to read:

“Section 12‑6‑3588. (A) The General Assembly has determined to enact the ‘South Carolina ~~Renewable~~ Clean Energy Tax Incentive Program’ as contained in this section to encourage business investment that will produce high quality employment opportunities and enhance this State’s position as a center for production and use of ~~renewable~~ clean energy products. The program accomplishes this goal by providing tax incentives to companies in the solar, wind, geothermal, hydrogen, energy storage, and energy efficiency ~~and other renewable energy~~ industries ~~who~~ which are expanding or locating in South Carolina.

(B) As used in this section:

(1) ‘Capital investment’ means an expenditure to acquire, lease, or improve property that is used in operating a business, including land, buildings, machinery, and fixtures.

(2) ‘Manufacturing’ means fabricating, producing, or manufacturing raw or unprepared materials into usable products, imparting new forms, qualities, properties, and combinations. Manufacturing does not include generating electricity for off‑site consumption.

(3) ‘Qualifying investment’ means investment in land, buildings, machinery, and fixtures for expansion of an existing facility or establishment of a new facility in this State. Qualifying investment does not include relocating an existing facility in this State to another location in this State without additional capital investment.

(4) ‘~~Renewable~~ Clean energy operations’ are limited to manufacturers of systems ~~and~~ or components that are used or useful in manufacturing ~~renewable~~ or operation of clean energy equipment for the generation, storage, testing and research and development, and transmission or distribution of electricity from ~~renewable~~ clean energy sources, including specialized packaging for the ~~renewable~~ clean energy equipment manufactured at the facility. A clean energy operation does not include generating electricity for off‑site consumption.

(C) A business or corporation meeting the requirements of this section ~~beginning in 2010~~ is eligible to receive a ten percentnonrefundable income tax credit of the cost of the company’s total qualifying investments in plant and equipment in this State for ~~renewable~~ clean energy operations.

(D) The business or corporation ~~must~~ shall:

(1) manufacture ~~renewable~~ clean energy systems ~~and~~ or components in South Carolina for solar, wind, geothermal, hydrogen, energy storage, or energy efficiency ~~or other renewable energy~~ uses in order to be eligible for the tax credit authorized by this section;

(2) invest at least ~~five hundred~~ fifty million dollars in a Tier IV county; at least one hundred million dollars in a Tier III county; at least one hundred fifty million dollars in a Tier II county; and at least two hundred million dollars in a Tier I county according to the county ranking and designation system as provided pursuant to Section 12‑6‑3360(B) in the year the tax credit is claimed in new qualifying plant and equipment; and

(3) have created at least one ~~and one‑half~~ full‑time job for every ~~five hundred thousand~~ one million dollars of capital investment qualifying for the credit that each pays at least one hundred twenty‑five percent of this State’s average annual median wage as defined by the Department of Commerce.

(E) The income tax credit ~~program~~ is allowed for up to sixty months ~~for a five‑year period~~ beginning with the first month for which the business or corporation is eligible to receive the credit ~~January 1, 2010,~~ and ending no later than December 31, ~~2015~~ 2020.

(F) A taxpayer may separately qualify for new facilities in separate locations or for separate expansions of existing facilities located in this State.

(G) A taxpayer’s total credit for all expenditures allowed pursuant to this section must not exceed five hundred thousand dollars for any year and five million dollars total for all years. Unused credits may be carried forward for fifteen years after the tax year in which a qualified expenditure was made. The credit is nonrefundable.

(H) To obtain the amount of the credit available to a taxpayer, each taxpayer shall notify the Department of Revenue and the Department of Commerce, in writing, of its intention to claim the tax credit. The Department of Revenue shall determine the proof necessary to meet the requirements of subsection (D)(1) and (2). Expenditures qualifying for ~~a~~ the tax credit allowed by this section must be certified by the ~~State Energy Office~~ Department of Revenue. The ~~State Energy Office~~ Department of Revenue may consult with appropriate state and federal officials on standards for certification.

~~(I)~~ ~~To obtain the amount of the credit available to a taxpayer,~~  Each taxpayer ~~must~~ shall submit a request for the credit to the ~~State Energy Office~~ Department of Revenue by January thirty‑first for qualifying expenses incurred in the previous calendar year and the ~~State Energy Office~~ Department of Revenue must notify the taxpayer that the submitted expenditures qualify for the credit and the amount of credit allocated to such taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty‑first of the previous calendar year.

(I) To obtain the amount of the credit available to a taxpayer, the Department of Commerce also must certify to the ~~State Energy Office~~ Department of Revenue that the taxpayer has met the job creation requirements of subsection (D)(3).

(J) The credits authorized by this section are in lieu of any other applicable income tax credits or abatements allowed by state law, and in the event of an overlap or conflict in available credits or abatements to a taxpayer, the taxpayer must select the credit or abatement ~~he~~ the taxpayer desires in the manner prescribed by the Department of Revenue to the extent the credits or abatements conflict or overlap.”

SECTION 3. Section 12‑6‑3600 of the 1976 Code, as last amended by Act 261 of 2008, is further amended to read:

“Section 12‑6‑3600. (A)(1) For taxable years beginning after 2006, and before ~~2017~~ 2020, there is allowed a credit against the tax imposed pursuant to this chapter for any corn‑based ~~ethanol~~ or soy‑based ~~biodiesel~~ liquid fuel production facility which is in production at the rate of at least twenty‑five percent of its name plate design capacity for the production of corn‑based ~~ethanol~~ or soy‑based ~~biodiesel~~ liquid fuel, before denaturing, on or before December 31, ~~2011~~ 2015. The credit equals twenty cents a gallon of corn‑based ~~ethanol~~ or soy‑based ~~biodiesel~~ liquid fuel produced and is allowed for sixty months beginning with the first month for which the facility is eligible to receive the credit and ending not later than December 31, ~~2016~~ 2019. The taxpayer is eligible to claim the credit after the facility has six consecutive months of operation at an average production rate of at least twenty‑five percent of its name plate design capacity. In the first taxable year in which the taxpayer is eligible to claim the credit, the taxpayer may claim the credit for the first six months it met the requirements in addition to qualifying production during its current taxable year.

(2) For taxable years beginning after 2006, and before ~~2017~~ 2020, there is allowed a credit against the tax imposed pursuant to this chapter for ~~an ethanol~~ a liquid fuel production facility using a feedstock other than corn or ~~a biodiesel facility using a feedstock other than~~ soy oil which is in production at the rate of at least twenty‑five percent of its name plate design capacity for the production of ~~ethanol or biodiesel~~ liquid fuel, before denaturing, on or before December 31, ~~2011~~ 2015. The credit equals thirty cents a gallon of noncorn ~~ethanol~~ or nonsoy oil ~~biodiesel~~ liquid fuel produced and is allowed for up to sixty months beginning with the first month for which the facility is eligible to receive the credit and ending no later than December 31, ~~2016~~ 2019. The taxpayer is eligible to claim the credit after the facility has six consecutive months of operation at an average production rate of at least twenty‑five percent of its name plate design capacity. In the first taxable year in which the taxpayer is eligible to claim the credit, the taxpayer may claim the credit for the first six months it met the requirements in addition to qualifying production during its current taxable year.

(3) Any unused credit may be carried forward for ten years.

(B) As used in this section:

(1) ‘Liquid fuel’ means any fuel that will power an internal combustion engine and is derived from algae, cellulose, corn, natural gas, soy, used oil, waste oil, or yellow grease and used as a substitute for gasoline or diesel fuel. Liquid fuel as defined in this item does not include fuels derived from crude tall oil. ~~Ethanol facility” means a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from renewable and sustainable bioproducts used as a substitute for gasoline fuel.~~

(2) ‘Liquid fuel production facility’ means a plant or facility primarily engaged in the production of liquid fuel as defined in this section. ~~Biodiesel facility” means a plant or facility primarily engaged in the production of plant‑ or animal‑based fuels used as a substitute for diesel fuel.~~

(3) ‘Name plate design capacity’ means the original designed capacity of ~~an ethanol or biodiesel~~ a liquid fuel production facility. Capacity may be specified as bushels of grain ground or gallons of ~~ethanol or biodiesel~~ liquid fuel produced a year.

(C)(1) Beginning January 1, ~~2017~~ 2020, ~~an ethanol or biodiesel~~ a liquid fuel production facility must receive a credit against the tax imposed by this chapter in the amount of seven and one‑half cents a gallon of ~~ethanol or biodiesel~~ liquid fuel, before denaturing, for new production for a period not to exceed thirty‑six consecutive months.

(2) For purposes of this subsection, ‘new production’ means production which results from a new facility, a facility which has not received credits before ~~2017~~ 2020, or the expansion of the capacity of an existing facility by at least two million gallons first placed into service after ~~2016~~ 2019, as certified by the design engineer of the facility to the State Energy Office.

(3) For expansion of the capacity of an existing facility, ‘new production’ means annual production in excess of twelve times the monthly average of the highest three months of ~~ethanol or biodiesel~~ liquid fuel production at ~~an ethanol or biodiesel~~ a liquid fuel production facility during the twenty‑four‑month period immediately preceding certification of the facility by the design engineer.

(4) Credits are not allowed pursuant to this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three‑month average amount determined pursuant to this subsection during any twelve‑consecutive‑month period beginning no sooner than January 1, ~~2017~~ 2020.

(5) The amount of a credit granted pursuant to this section based on new production must be approved by the State Energy Office based on the ~~ethanol or biodiesel~~ liquid fuel production records as may be necessary to reasonably determine the level of new production.

(D)(1) The credits described in this section are allowed only for ~~ethanol or biodiesel~~ liquid fuel produced at a plant in this State at which all fermentation, distillation, and dehydration takes place. Credit is not allowed for ~~ethanol or biodiesel~~ liquid fuel produced or sold for use in the production of distilled spirits.

(2) Not more than ~~twenty‑five million~~ ten million gallons of ~~ethanol or biodiesel~~ liquid fuel produced annually at ~~an ethanol or biodiesel~~ a liquid fuel production facility is eligible for the credits in subsections (A) and (B) of this section, and the credits only may be claimed by a producer for the periods specified in subsections (A) and (B) of this section.

(3) Not more than ten million gallons of ~~ethanol or biodiesel~~ liquid fuel produced during a twelve‑consecutive‑month period at ~~an ethanol or biodiesel~~ a liquid fuel production facility is eligible for the credit described in subsection (C) of this section, and the credit only may be claimed by a producer for the periods specified in subsection (C) of this section.

(4) Not more than ~~one hundred twenty‑five~~ fifty million gallons of ~~ethanol or biodiesel~~ liquid fuel produced at ~~an ethanol or biodiesel~~ a liquid fuel production facility by the end of the sixty‑month period set forth in subsection (A) or (B) of this section is eligible for the credit under the subsection. ~~An~~ ~~ethanol or biodiesel~~ A liquid fuel production facility which receives a credit for ~~ethanol or biodiesel~~ liquid fuel produced under subsection (A) or (B) of this section may not receive a credit pursuant to subsection (C) of this section until its eligibility to receive a credit under subsection (A) or (B) of this section has been completed.

(E) The State Energy Office shall prescribe an application form and procedures for claiming credits under this section.

(F) For purposes of ascertaining the correctness of the credit allowed pursuant to this section, the State Energy Office or the department may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon these matters.

(G) ~~Notwithstanding the credit amount allowed by this section, for Fiscal Year 2008‑2009, all claims made pursuant to this section must not exceed eight hundred thousand dollars and must apply proportionately to all eligible claimants.~~

~~(H)(1)~~ To obtain the maximum amount of the credit available to a taxpayer, each taxpayer must submit a request for credit to the State Energy Office by January thirty‑first for all gallons of qualifying fuel produced in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum credit for its taxable year which contains the December thirty‑first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

~~(2)~~ ~~For the state’s fiscal year beginning July 1, 2008, the maximum amount of credit is to be determined based on an eighteen‑month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen‑month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen‑month period may claim the credit for its tax year which contains December 31, 2009.~~

~~(3)~~ ~~To the extent the maximum amount of the credit contained in this section is repealed, the elimination of the maximum amount shall be seen as the last expression of the legislature and to the extent any language in this act conflicts with that repeal, it shall be considered null and void.~~”

SECTION 4. This act takes effect upon approval by the Governor.

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