

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

(Loftis, Cobb-Hunter, Stavrinakis, Lowe & Long - Staff Contact: AJ Newton)

SENATE BILL 743

S. 743 -- Senators Matthews, Hutto, Campsen, Johnson and Bennett: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "PORT ENHANCEMENT ZONE ACT"; TO AMEND SECTION 12-6-3360, RELATING TO THE JOB TAX CREDIT, SO AS TO PROVIDE FOR A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-6-3367, RELATING TO THE MORATORIUM ON CERTAIN TAXES FOR CERTAIN TAXPAYERS, SO AS TO EXTEND THE MORATORIUM TO TAXPAYERS CREATING AT LEAST FIFTY FULL-TIME NEW JOBS IN A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-6-3375, AS AMENDED, RELATING TO THE TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO AS TO INCREASE THE MAXIMUM ANNUAL CREDIT AMOUNT FROM EIGHT MILLION TO NINE MILLION DOLLARS AND TO PROVIDE THAT ONE MILLION DOLLARS MAY BE AWARDED TO A NEW WAREHOUSE OR DISTRIBUTION FACILITY THAT MEETS CERTAIN REQUIREMENTS AND EMPLOYS AT LEAST FIFTY NEW FULL-TIME JOBS IN A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO ALLOW EIGHTY-FIVE PERCENT OF THE MAXIMUM CREDIT TO BE CLAIMED BY BUSINESSES LOCATED IN A PORT ENHANCEMENT ZONE; TO AMEND SECTION 12-14-60, RELATING TO THE INVESTMENT TAX CREDIT, SO AS TO DOUBLE THE AMOUNT OF THE CREDIT FOR ANY QUALIFIED MANUFACTURING AND PRODUCTIVE EQUIPMENT PROPERTY LOCATED IN A PORT ENHANCEMENT ZONE; AND TO AMEND SECTION 12-36-2120, RELATING TO EXEMPTIONS FROM THE STATE SALES TAX, SO AS TO EXTEND THE EXEMPTION FOR MATERIALS HANDLING TO A TAXPAYER THAT INVESTS AT LEAST TWENTY MILLION DOLLARS IN A PORT ENHANCEMENT ZONE, AND TO EXTEND THE EXEMPTION FOR CONSTRUCTION MATERIALS TO A TAXPAYER THAT INVESTS AT LEAST FORTY MILLION DOLLARS, IN REAL AND PERSONAL PROPERTY, IN A PORT ENHANCEMENT ZONE.

Summary of Bill:

Section 1: Names the act "Port Enhancement Zone Act."

Section 2: It amends Section 12-6-3360(E)(1) to allow qualifying job tax credits in a "port enhancement zone" to receive an additional one thousand dollar credit for each new full-time job created. It also amends Section 12-6-3360(M) to define a "port enhancement zone." (including: distance from the Port of Charleston, being in a census tract with 18% of households making \$15,000 or less, being in a county ranked at either Tier III or IV, or in a Tier I or II county with a census tract with 35% of households making \$15,000 or less.)

Section 3: It amends Section 12-6-3367(A) to lower the threshold which allows a taxpayer that creates and

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maintains at least 50 full-time jobs in a "port enhancement zone" to petition for a moratorium on state corporate income taxes and insurance premium taxes for ten taxable years.

Section 4: It amends Section 12-6-3375 to increase the maximum tax credit of all qualifying tax payers in this section from \$8million to \$9million per year. It allows for \$1million of this tax credit to be used against employee withholdings not otherwise refundable pursuant to this title for a new warehouse of distribution facility in a "port enhancement zone." It must be at least a \$20million investment, create 50 new full-time jobs, and have a base year cargo of no less than 5000 TEUs.

Section 5: It amends Section 12-10-80(D) to allow 85% or the maximum job development credit may be claimed by businesses located in a "port enhancement zone." Thus it allows any business that follows the guidelines laid out to receive JDCs of at least a Tier III county.

Section 6: It amends Section 12-14-60(A) to allow the amount of an investment tax credit against a taxpayer's income tax to double for any qualified manufacturing and productive equipment property located in a "port enhancement zone."

Section 7: It amends Section 12-36-2120(51) to lower the investment threshold from \$35million to \$20million in a port enhancement zone over a 5 year period to qualify for sales and use tax exemption on material handling systems and material handling equipment.

It also amends Section 12-36-2120(67) to lower the investment threshold from \$100million to \$40million in a port enhancement zone over a 18 month period to sales and use tax exemption on construction materials used in construction or expansion of a facility.

Introduced: 05/04/2015

Received by Ways and Means: 04/12/2016

Estimated Fiscal Impact:

The bill would reduce General fund income tax revenue by an estimated \$1,160,000 in FY16-17 and \$900,000 in FY 17-18-FY21-22. It would also reduce sales and use tax revenue by \$1,200,000(General fund by \$800,000, EIA by \$200,000 and Homestead Exemption Fund by \$200,000) in FY16-17.

Subcommittee Recommendation: Favorable

Full Committee Recommendation: Pending



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: S0743
Author: Matthews
Subject: Port Enhancement Zone Act
Requestor: Senate Finance
RFA Analyst(s): Martin and Stein
Impact Date: April 4, 2016 - Updated for revised analysis and fiscal impact

Estimate of Fiscal Impact

	FY 2016-17	FY 2017-18 To FY 2021-22
State Expenditure		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	(\$1,960,000)	(\$900,000)
Other and Federal	(\$400,000)	\$0
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

Fiscal Impact Summary

This bill would reduce General Fund income tax revenue by an estimated \$1,160,000 in FY2016-17, and by an estimated \$900,000 in FY2017-18, and each fiscal year through FY2021-22. This bill would also reduce sales and use tax revenue by an estimated \$1,200,000 in FY2016-17. Of this amount, General Fund sales and use tax would be reduced by \$800,000, the EIA fund would be reduced by \$200,000, and the Homestead Exemption Fund would be reduced by \$200,000 in FY2016-17. Since the bill takes effect upon approval by the Governor, this fiscal impact statement is updated to adjust the timing of the revenue impact forward one year from the original fiscal impact statement completed in 2015. The jobs tax credit tier designation for Orangeburg County and the list of moratorium counties pursuant to Section 12-6-3317 are also updated.

Explanation of Fiscal Impact

State Expenditure

The Department of Commerce reports that this bill would have no expenditure impact on the General Fund, Federal Funds, and Other Funds.

State Revenue

This bill would create a port enhancement zone to serve as a distribution hub for cargo shipped from and to the Port of Charleston. According to the Department of Commerce, a distribution facility with an initial capital investment of \$20,000,000 and employing fifty new full-time jobs

to process a minimum of 5,000 TEUs (shipping containers) would be barely operable as a going concern. The analysis below uses an initial capital investment of \$40,000,000 and employs 100 new full-time jobs to process a minimum of 5,000 TEUs at the facility. The following is a section-by-section analysis of the bill.

Section 1. This act may be cited as the Port Enhancement Zone Act.

Section 2. This section would amend Section 12-6-3360(E)(1) to allow taxpayers that qualify for the job tax credit, which are located in a port enhancement zone, to be allowed an additional one thousand dollar credit for each new full-time job created.

This section would amend Section 12-6-3360(M) to define a port enhancement zone. A port enhancement zone must meet the following criteria:

- Is comprised of one or more contiguous census tracts as defined by the U.S. Census Bureau's American Community Survey in 2014,
- All of the area is located within a 23 mile radius of the intersection of two interstate highways that is no more than 60 miles from the Port of Charleston and is capable of being used to enhance port operations,
- Every census tract that comprises the area has a least eighteen percent of households with income of \$15,000 or less, and
- All of the area is in a county ranked as either Tier III or IV, provided that a census tract in a Tier I or II county with at least thirty-five percent of households with incomes of \$15,000 or less also qualifies if it meets all of the other conditions of this subsection.

In addition, the area of a county that is included in one or more port enhancement zones must not exceed five percent of the total area of the county. Based upon data from the Revenue and Fiscal Affairs Office, Office of Health and Demographics, Mapping Section, the following counties would have census tracts that would qualify as port enhancement zones – Bamberg, Clarendon, Colleton, Dorchester, and Orangeburg.

Taxpayers that qualify for the job tax credit pursuant to Section 12-6-3360(C) and are located in a port enhancement zone are allowed an additional \$1,000 credit for each new full-time job created. This additional credit is permitted for five years beginning in the taxable year following the creation of the job (the second year). Multiplying 100 new full-time jobs by an additional job tax credit of \$1,000 per job, yields a reduction in General Fund income tax revenue of an estimated \$100,000 in FY2017-18, and each fiscal year through FY2021-22.

Taxpayers that qualify for the job tax credit pursuant to Section 12-6-3360(C) are allowed a job tax credit for each new full-time job created based upon the county in which the new job is located. Since most of the qualifying census tracts for the port enhancement zone are located in Orangeburg County, this county will be used for the analysis. According to the Department of Revenue, new qualified full-time jobs created in Orangeburg County are entitled to a Tier IV job

tax credit of \$8,000 per job. Multiplying 100 new full-time jobs by a job tax credit amount of \$8,000 yields a reduction in General Fund income tax revenue of an estimated \$800,000 in FY2017-18, and each fiscal year through FY2021-22.

Section 3. Currently, a taxpayer must create and maintain at least one hundred new full-time jobs to petition for a moratorium on state corporate income and insurance premium taxes for ten taxable years. This section would amend Section 12-6-3367(A) by lowering the threshold to allow a taxpayer that creates and maintains at least fifty full-time new jobs in a port enhancement zone to petition for a moratorium on state corporate income taxes or insurance premium taxes for ten taxable years. If the number of full-time jobs falls below fifty full-time jobs in a port enhancement zone the tax moratorium shall cease.

According to the Department of Revenue, the following counties have been designated moratorium counties pursuant to Section 12-6-3367 – Dillon, Marlboro, and Marion. This section would also amend Section 12-6-3367(B) to add to the list of qualifications for a tax moratorium that the taxpayer must create fifty full-time new jobs in a port enhancement zone. This would lower the threshold for a taxpayer to qualify for a tax moratorium on corporate income and insurance premium taxes. Because a company in a port enhancement zone has never remitted tax payments to the state and is not included in the official revenue estimate of the Board of Economic Advisors, there would be no loss in revenue from granting a tax moratorium to a company in the future. This section, therefore, is not expected to affect General Fund revenue in FY2016-17.

Section 4. 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. Any unused credits may be carried forward for five (5) years.

This section would amend Section 12-6-3375 to increase the maximum amount of tax credits allowed to all qualifying taxpayers from \$8,000,000 to \$9,000,000 for each calendar year for all taxpayers that export or import through port facilities in South Carolina. The credits may be claimed against corporate income tax, pass-through trade and business income, and against employee withholding. A taxpayer must invest a minimum of \$20,000,000 in a port enhancement zone at a single site, create at least fifty new full-time jobs, and the base year cargo must be at least 5,000 TEUs or its non-containerized equivalent. To remain eligible for the port cargo volume tax credit each year, the facility would have to increase its base year cargo volume level of 5,000 TEUs by five percent, or 250 TEUs, in the second year. The Coordinating Council for Economic Development (Council) may award up to \$1,000,000 of the \$9,000,000 in credits annually to be used by the facility in a port enhancement zone. The Council would award a credit certificate to certify that the capital investment and job thresholds have been achieved. The certificate is good for three years from the date of issue and unused credits may be carried forward for twenty taxable quarters. The Council has discretion to award the credits pursuant to this section. This section is expected to reduce General Fund income tax withholding revenue by up to \$1,000,000 in FY2016-17.

Section 5. This section would amend Section 12-10-80(D)(1) to allow eighty-five percent or the maximum job development credits may be claimed by businesses located in a port enhancement zone. This is the same reclamation rate as full-time new job in a Tier III county designation. Based on the port enhancement zone criteria in Section 2, the future site of a port distribution facility is most likely to locate in a Tier III or IV county. This section is not expected to affect General Fund revenue in FY2016-17.

Section 6. Currently, there is allowed an investment tax credit against a taxpayer's income tax equal to a sliding scale of one-half of one percent for all three-year property up to two and one-half percent for all fifteen-year property placed in service for a taxable year. This section would amend Section 12-14-60(A) to allow the amount of the credits to double for any qualified manufacturing and productive equipment property located in a port enhancement zone. Multiplying \$40,000,000 of capital investment by an estimated twenty percent of productive equipment property and applying an investment tax credit of two and one-half percent yields a reduction of General Fund income tax revenue of an estimated \$160,000 in FY2016-17.

Section 7. This section would amend Section 12-36-2120(51) to lower the investment threshold from \$35,000,000 to \$20,000,000 in real or personal property in a port enhancement zone over a five-year period to qualify for a sales and use tax exemption on material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility. Dividing \$20,000,000 in real or personal property over five years and multiplying by a six percent sales and use tax rate yields a reduction in sales and use tax revenue of an estimated \$240,000 in FY2016-17. Of this amount, General Fund sales and use tax would be reduced by \$160,000, the EIA fund would be reduced by \$40,000, and the Homestead Exemption Fund would be reduced by \$40,000 in FY2016-17.

This section would also amend Section 12-36-2120(67) to lower the investment threshold from \$100,000,000 to at least \$40,000,000 in real and personal property at a single site located in a port enhancement zone in the State over an eighteen month period to qualify for a sales and use tax exemption on construction materials used in the construction of a new or expanded single manufacturing or distribution facility. A typical construction project is generally split forty percent for construction materials and sixty percent for labor services. Multiplying \$40,000,000 in real and personal property by forty percent for construction materials and applying a six percent sales and use tax rate yields a reduction in sales and use tax revenue of an estimated \$960,000 in FY2016-17. Of this amount, General Fund sales and use tax would be reduced by \$640,000, the EIA fund would be reduced by \$160,000, and the Homestead Exemption Fund would be reduced by \$160,000 in FY2016-17.

Section 8. This act takes effect upon approval by the Governor.

Local Expenditure/Local Revenue

N/A



Frank A. Rainwater, Executive Director

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

3

4 COMMITTEE REPORT

5 March 23, 2016

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S. 743

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9 Introduced by Senators Matthews, Hutto, Campsen, Johnson and
10 Bennett

11

12 S. Printed 3/23/16--S.

13 Read the first time May 4, 2015.

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16

17

A BILL

18

19 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
20 1976, SO AS TO ENACT THE "PORT ENHANCEMENT ZONE
21 ACT"; TO AMEND SECTION 12-6-3360, RELATING TO THE
22 JOB TAX CREDIT, SO AS TO PROVIDE FOR A PORT
23 ENHANCEMENT ZONE; TO AMEND SECTION 12-6-3367,
24 RELATING TO THE MORATORIUM ON CERTAIN TAXES
25 FOR CERTAIN TAXPAYERS, SO AS TO EXTEND THE
26 MORATORIUM TO TAXPAYERS CREATING AT LEAST
27 FIFTY FULL-TIME NEW JOBS IN A PORT ENHANCEMENT
28 ZONE; TO AMEND SECTION 12-6-3375, AS AMENDED,
29 RELATING TO THE TAX CREDIT FOR PORT CARGO
30 VOLUME INCREASE, SO AS TO INCREASE THE MAXIMUM
31 ANNUAL CREDIT AMOUNT FROM EIGHT MILLION TO
32 NINE MILLION DOLLARS AND TO PROVIDE THAT ONE
33 MILLION DOLLARS MAY BE AWARDED TO A NEW
34 WAREHOUSE OR DISTRIBUTION FACILITY THAT MEETS
35 CERTAIN REQUIREMENTS AND EMPLOYS AT LEAST
36 FIFTY NEW FULL-TIME JOBS IN A PORT ENHANCEMENT
37 ZONE; TO AMEND SECTION 12-10-80, AS AMENDED,
38 RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO
39 ALLOW EIGHTY-FIVE PERCENT OF THE MAXIMUM
40 CREDIT TO BE CLAIMED BY BUSINESSES LOCATED IN A
41 PORT ENHANCEMENT ZONE; TO AMEND SECTION
42 12-14-60, RELATING TO THE INVESTMENT TAX CREDIT,

1 SO AS TO DOUBLE THE AMOUNT OF THE CREDIT FOR
2 ANY QUALIFIED MANUFACTURING AND PRODUCTIVE
3 EQUIPMENT PROPERTY LOCATED IN A PORT
4 ENHANCEMENT ZONE; AND TO AMEND SECTION
5 12-36-2120, RELATING TO EXEMPTIONS FROM THE STATE
6 SALES TAX, SO AS TO EXTEND THE EXEMPTION FOR
7 MATERIALS HANDLING TO A TAXPAYER THAT INVESTS
8 AT LEAST TWENTY MILLION DOLLARS IN A PORT
9 ENHANCEMENT ZONE, AND TO EXTEND THE EXEMPTION
10 FOR CONSTRUCTION MATERIALS TO A TAXPAYER THAT
11 INVESTS AT LEAST FORTY MILLION DOLLARS, IN REAL
12 AND PERSONAL PROPERTY, IN A PORT ENHANCEMENT
13 ZONE.

14
15 Be it enacted by the General Assembly of the State of South
16 Carolina:

17
18 SECTION 1. This act may be cited as the “Port Enhancement Zone
19 Act”.

20
21 SECTION 2. A. Section 12-6-3360(E)(1) of the 1976 Code is
22 amended to read:

23
24 “(1) Taxpayers which qualify for the job tax credit provided in
25 subsection (C) and which are located in a business or industrial park
26 jointly established and developed by a group of counties pursuant to
27 Section 13 of Article VIII of the Constitution of this State or in a
28 port enhancement zone as defined in subsection (M)(16) are allowed
29 an additional one thousand dollar credit for each new full-time job
30 created. This additional credit is permitted for five years beginning
31 in the taxable year following the creation of the job.”

32
33 B. Section 12-6-3360(M) of the 1976 Code is amended by adding an
34 item to read:

35
36 “(16) ‘Port enhancement zone’ means an area that meets all of
37 the following conditions:

38 (a) it is comprised of one or more contiguous census tracts as
39 defined by the United States Census Bureau’s American
40 Community Survey in 2014;

41 (b) all of the area is located within a twenty-three mile radius
42 of the intersection of two interstate highways that is no more than

1 sixty miles from the Port of Charleston and is capable of being used
2 to enhance port operations;

3 (c) every census tract that comprises the area has at least
4 eighteen percent of households with incomes of fifteen thousand
5 dollars or less; and

6 (d) all of the area is in a county ranked as either Tier III or IV,
7 provided that a census tract in a Tier I or II county with at least
8 thirty-five percent of households with incomes of fifteen thousand
9 or less also qualifies if it meets all of the other conditions of this
10 subsection.

11 The area of a county that is included in one or more port
12 enhancement zones must not exceed five percent of the total area of
13 the county. Upon application of a county, the Secretary of
14 Commerce shall make a written determination whether an area is a
15 port enhancement zone that satisfies the conditions of this item. The
16 application must include all of the information listed in this
17 subsection. A determination pursuant to this section is effective
18 until December thirty-first of the year following the year in which
19 the determination is made. The Department of Commerce shall
20 publish annually a list of all port enhancement zones with a
21 description of their boundaries, including:

22 (i) a map showing the census tracts that would comprise
23 the zone;

24 (ii) a detailed description of the boundaries of the area that
25 would comprise the zone;

26 (iii) a certification regarding the size of the proposed zone;

27 (iv) detailed census information on the county and the
28 proposed zone;

29 (v) a resolution of the board of county council requesting
30 the designation of the area as a port enhancement zone; and

31 (vi) any other material required by the Secretary of
32 Commerce.”

33

34 SECTION 3. Section 12-6-3367(A) and (B) of the 1976 Code are
35 amended to read:

36

37 “(A) A taxpayer creating and maintaining at least one hundred
38 full-time new jobs, as defined in Section 12-6-3360(M), at a facility
39 of a type identified in Section 12-6-3360(M) or fifty full-time new
40 jobs in a port enhancement zone as defined in Section
41 12-6-3360(M), may petition, utilizing the procedure in Section
42 12-6-2320(B), for a moratorium on state corporate income taxes
43 imposed pursuant to Section 12-6-530 or insurance premium taxes

1 imposed pursuant to Title 38 for the ten taxable years beginning the
2 first full taxable year after the taxpayer qualifies and ending either
3 ten years from that year or the year when the taxpayer's number of
4 full-time new jobs falls below one hundred, or fifty full-time new
5 jobs in a port enhancement zone, whichever is earlier. For purposes
6 of insurance premium taxes, the petition pursuant to Section
7 12-6-2320(B) must be made to and approved by the Director of the
8 Department of Insurance.

9 (B)(1) To qualify for the moratorium pursuant to subsection (A),
10 a taxpayer shall:

11 (a)(i) create at least one hundred full-time new jobs at a
12 facility in a county with an average annual unemployment rate of at
13 least twice the state average during each of the last two completed
14 calendar years, based on the most recent unemployment rates
15 available, or that is one of the three lowest per capita income
16 counties, based on the average of the three most recent years of
17 available average per capita income data, or create fifty full-time
18 new jobs in a port enhancement zone; and

19 (ii) invest at least ninety percent of its total investment in
20 this State in the moratorium county; or

21 (b)(i) create at least one hundred full-time new jobs, and
22 invest at least one hundred fifty million dollars, at a manufacturing
23 facility in a county with an average annual unemployment rate of at
24 least twice the state average during each of the last two completed
25 calendar years, based on the most recent unemployment rates
26 available, or that is one of the three lowest per capita income
27 counties, based on the average of the three most recent years of
28 available average per capita income data;

29 (ii) create at least one hundred full-time new jobs, and
30 invest at least one hundred fifty million dollars, at a manufacturing
31 facility in a second county which is designated as distressed, least
32 developed, or underdeveloped pursuant to Section 12-6-3360; and

33 (iii) invest at least ninety percent of its total investment in
34 this State in one or both of the counties specified in subsubitems (i)
35 and (ii) of subsection (B)(1)(b).

36 (2) Taxpayers qualifying pursuant to subsection (B)(1)(b) are
37 entitled to the moratorium for separate ten-year periods pursuant to
38 subsection (A) for income attributable to facilities in each county,
39 beginning with the first full taxable year after the taxpayer qualifies
40 in the respective county and ending with respect to the income
41 attributable to facilities in that county either ten years from that year
42 or the year when the taxpayer's number of full-time new jobs in that
43 county falls below one hundred, whichever is earlier. Loss of the

1 moratorium in one county due to job reduction does not impact the
2 moratorium for income attributable to facilities in the other county.”

3

4 SECTION 4. Section 12-6-3375 of the 1976 Code, as last amended
5 by Act 81 of 2013, is further amended to read:

6

7 “Section 12-6-3375. (A)(1) A taxpayer engaged in any of the
8 following: manufacturing, warehousing, freight forwarding, freight
9 handling, goods processing, cross docking, transloading,
10 wholesaling of goods, or distribution, exported or imported through
11 port facilities in South Carolina and which increases its port cargo
12 volume at these facilities by a minimum of five percent in a single
13 calendar year over its base year port cargo volume is eligible to
14 claim an income tax credit or a credit against employee withholding
15 in the amount determined by the Coordinating Council for
16 Economic Development (council).

17 (2) The maximum amount of tax credits allowed to all
18 qualifying taxpayers pursuant to this section may not exceed ~~eight~~
19 nine million dollars for each calendar year. The credits may be
20 claimed against the taxes imposed pursuant to Sections 12-6-530
21 and 12-6-545 and against employee withholdings. The council has
22 sole discretion in allocating the credits provided by this section and
23 must consider the following factors:

24 (a) the amount of base year port cargo volume;

25 (b) the total and percentage increase in port cargo volume;

26 and

27 (c) factors related to the economic benefit of the State or
28 other factors.

29 (3)(a) If the income tax credit exceeds the taxpayer’s income
30 tax liability for the taxable year, the excess amount may be carried
31 forward and claimed against income taxes in the next five
32 succeeding taxable years.

33 (b) If the credit against withholding taxes exceeds the
34 taxpayer’s withholding tax liability for the taxable quarter that is not
35 otherwise refunded ~~under~~ pursuant to Title 12 of the 1976 Code, the
36 excess amount may be carried forward and claimed against
37 withholding liability that is not otherwise refunded ~~under~~ pursuant
38 to Title 12 of the 1976 Code in the next twenty succeeding taxable
39 quarters.

40 (B)(1) For every year in which a taxpayer claims the credit, the
41 taxpayer shall submit an application to the council after the calendar
42 year in which the increase in port cargo volume occurs. Allocations
43 of the credit may be made on a monthly, quarterly, or annual basis.

1 The taxpayer shall attach a schedule to the taxpayer's application to
2 the council with the following information and information
3 requested by the council or the department:

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

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

7 (c) the amount of the increase in port cargo volume for the
8 taxable year stated both as a percentage increase and as a total
9 increase in net tons of non-containerized cargo, measurement of
10 cargo, and TEUs of cargo, including information which
11 demonstrates an increase in port cargo volume in excess of the
12 minimum amount required to claim the tax credits pursuant to this
13 section;

14 (d) any tax credit utilized by the taxpayer in prior years;
15 and

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

17 (2) To receive the credit the taxpayer shall claim the credit on
18 its income tax or withholding return in a manner prescribed by the
19 department. The department may require a copy of the certification
20 form issued by the council be attached to the return or otherwise
21 provided.

22 (C) As used in this section:

23 (1) 'TEU' means a twenty-foot equivalent unit; a volumetric
24 measure based on the size of a container twenty feet long by eight
25 feet wide by eight feet, six inches high. A 'weighted TEU' is equal
26 to seven and one-half tons. A 'measured TEU' is equal to
27 thirty-eight and one-half cubic meters.

28 (2) 'Base year port cargo volume' initially means the total
29 amount of net tons of non-containerized cargo, measured equivalent
30 of non-cargo or TEUs of cargo actually transported by way of a
31 waterborne ship through a port facility during the period from
32 January first through December thirty-first of the same year. Base
33 year port cargo volume must be at least seventy-five net tons of
34 non-containerized cargo, three hundred eighty-five cubic meters, or
35 ten TEUs for a taxpayer to be eligible for the credits provided in this
36 section. For a taxpayer that does not ship that amount in the year
37 ending December thirty-first of the previous year, including a
38 taxpayer who locates in South Carolina after December thirty-first
39 of the previous year, its base cargo volume will be measured by the
40 initial January first through December thirty-first calendar year in
41 which it meets the requirements of seventy-five net tons of
42 non-containerized cargo, three hundred eighty-five cubic meters, or

1 ten loaded TEUs. Base year port cargo volume must be recalculated
2 each calendar year after the initial base year.

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

8 (4) 'Port cargo volume' means the total amount of net tons of
9 non-containerized cargo or containers measured in twenty-foot
10 equivalent units (TEUs) of cargo transported by way of a
11 waterborne ship or vehicle through a port facility, or measured cubic
12 meters of cargo.

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

30 (E) The council annually may award up to one million dollars of
31 the nine million dollars of credits against employee withholdings
32 that are not otherwise refundable pursuant to this title to a new
33 warehouse or distribution facility that commits to expending at least
34 twenty million dollars at a single site and creating fifty new full-time
35 jobs in a port enhancement zone as defined in Section
36 12-6-3360(M), and the base year cargo must not be less than five
37 thousand TEUs or its non-containerized equivalent. The council
38 may make the award in the year the facility is announced provided
39 that it may not tender the certificate until it has received satisfactory
40 proof that the capital investment and job creation requirements have
41 been, or will be, satisfied. A credit certificate expires three years
42 after issuance if satisfactory proof has not been received. If the
43 credit exceeds the taxpayer's withholding tax liability for the taxable

1 quarter that is not otherwise refundable pursuant to this title, the
2 excess amount may be carried forward and claimed against
3 withholding liability that is not otherwise refundable pursuant to this
4 title in the next twenty succeeding taxable quarters.

5 (F)(1) A taxpayer engaged in the movement of goods imported
6 or exported through South Carolina's port facilities may be eligible
7 for the port volume tax credit if the cargo supports a presence in the
8 State and the taxpayer does not have a distribution center in the State
9 at the time of initial approval of the port volume tax credit, so long
10 as:

11 (a) the taxpayer employs at least two hundred and fifty
12 full-time or full-time equivalent South Carolinians in operations
13 statewide;

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

17 (c) the base year for the taxpayer shall be not less than five
18 thousand TEUs or its non-containerized equivalent.

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

21 ~~(F)~~(G) The council has discretion to award the credits pursuant to
22 either subsection (D), ~~or~~ (E), or (F).

23 ~~(G)~~(H) Notwithstanding Section 12-54-240, the department and
24 the Department of Commerce may exchange information submitted
25 by a taxpayer pursuant to this section.

26 ~~(H)~~(I)(1) If a taxpayer receives the credit under subsection (D)
27 but fails to meet the requirements of subsection (D) at the end of the
28 three-year period, the taxpayer must repay the department a pro rata
29 portion of the credits claimed.

30 (2) If a taxpayer receives the credit under subsection ~~(E)~~ (F)
31 but fails to meet the requirements of subsection ~~(E)~~(F)(1) at the end
32 of the five-year period, the taxpayer must repay the department a
33 pro rata portion of the credits claimed.”

34
35 SECTION 5. Section 12-10-80(D)(1) of the 1976 Code is amended
36 by adding a new subitem to read:

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38 “(e) eighty-five percent or the maximum job development credits
39 may be claimed by businesses located in a port enhancement zone,
40 as defined in Section 12-6-3360(M).”

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42 SECTION 6. Section 12-14-60(A) of the 1976 Code, is amended
43 by adding a new item to read:

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“(3) Notwithstanding item (2), the amount of the credit is doubled for any qualified manufacturing and productive equipment property located in a port enhancement zone as defined in Section 12-6-3360(M).”

SECTION 7. Section 12-36-2120(51) and (67) of the 1976 Code is amended to read:

“(51) material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility including, but not limited to, racks used in the operation of a distribution facility or a manufacturing facility and either used or not used to support a facility structure or part of it. To qualify for this exemption, the taxpayer shall notify the department before the first month it uses the exemption and shall invest:

(a) at least thirty-five million dollars in real or personal property in this State; or

(b) twenty million dollars in a port enhancement zone as defined in Section 12-6-3360(M) over the five-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 ~~thirty-five million dollar~~ investment requirement or, after the expiration of the five years, that it has not met the ~~thirty-five million dollar~~ investment requirement. The department may assess any tax due on material handling systems and material handling equipment purchased tax-free pursuant to this item but due the State as a result of the taxpayer’s failure to meet the ~~thirty-five million dollar~~ 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 thirty-five million dollar investment requirement;

(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) 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;~~

1 **(b) at least forty million dollars in real and personal property**
2 **at a single site located in a port enhancement zone as defined in**
3 **Section 12-6-3360(M); or (c) effective November 1, 2009,**
4 construction materials used in the construction of a new or expanded
5 single manufacturing facility where:

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

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

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

27 As used in this subitem, 'taxpayer' includes a person who bears a
28 relationship to the taxpayer as described in Section 267(b) of the
29 Internal Revenue Code;"

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31 SECTION 8. This act takes effect upon approval by the Governor.

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