~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 31, 2022

**H. 4252**

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

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Read the first time April 22, 2021.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4252) to amend Section 12‑10‑20, Code of Laws of South Carolina, 1976, relating to the legislative intent of the Enterprise Zone Act of 1995, so as, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

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

**State Revenue**

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

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

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

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

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

“Section 12‑10‑20. The General Assembly finds:

(1) that the economic well‑being of the citizens of the State is enhanced by the increased development and growth of industry within the State, and that it is in the best interests of the State to induce the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, technology intensive, and certain tourism projects within the State to promote the public purpose of creating new jobs within the State;

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

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

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

Section 12‑10‑30. As used in this chapter:

(1) ‘Council’ means the Coordinating Council for Economic Development.

(2) ‘Department’ means the South Carolina Department of Revenue.

(3) ‘Employee’ means an employee of the qualifying business who works full time at the project.

(4) ‘Gross wages’ means wages subject to withholding.

(5) ‘Job development credit’ means the amount a qualifying business may claim as a credit against employee withholding pursuant to Sections 12‑10‑80 and 12‑10‑81 and a revitalization agreement.

(6) ‘New job’ means a job created or reinstated as defined in Section 12‑6‑3360(M)(3).

(7) ‘Qualifying business’ means a business that meets the requirements of Section 12‑10‑50 and other applicable requirements of this chapter.

(8) ‘Project’ means an investment for one or more purposes pursuant to this chapter needed for a qualifying business to locate, remain, or expand in this State and otherwise fulfill the requirements of this chapter.

(9) ‘Preliminary revitalization agreement’ means the application by the qualifying business for benefits pursuant to Section 12‑10‑80 or 12‑10‑81 if the council approves the application and agrees in writing at the time of approval to allow the approved application to serve as the preliminary revitalization agreement. The date of the preliminary revitalization agreement is the date of the council approval.

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

(11) ‘Qualifying expenditures’ means those expenditures that meet the requirements of Section 12‑10‑80(C) or 12‑10‑81(D).

(12) ‘Withholding’ means employee withholding pursuant to Chapter 8 of this title.

(13) ‘Technology employee’ means an employee at a technology intensive facility as defined in Section 12‑6‑3360(M)(14) who is directly engaged in technology intensive activities at that facility.

(14) ‘Production employee’ means an employee directly engaged in manufacturing or processing at a manufacturing or processing facility as defined in Section 12‑6‑3360(M).

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

(16) ‘Retraining credit’ means the amount that a qualifying business may claim as a credit against withholding pursuant to Section 12‑10‑95 and the retraining agreement.

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

(18) ‘Significant business’ means a qualifying business making a significant capital investment as defined in Section 12‑44‑30(7).

(19) ‘Related person’ includes any entity or person that bears a relationship to a business as provided in Internal Revenue Code Section 267 or 707(b). The related person must be a ‘qualifying business’ as defined in item 7, except that the related person does not have to meet the requirements of Section 12‑10‑50(A)(1) or, in case the qualifying business qualifies for the credit against withholding for retraining pursuant to Section 12‑10‑95 of this Chapter, the related person does not have to meet the requirements of Section 12‑10‑50(B)(1).”

SECTION 2. Section 12‑10‑50(B) of the 1976 Code is amended to read:

“(B) To qualify for benefits pursuant to Section 12‑10‑95, a business must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) authorized by the revitalization agreement; and

(3) used for any of the following purposes:

(a) training costs and facilities;

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

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

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

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

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

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

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

(i) apprenticeship programs;

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

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

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

(b) eighty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as ‘Tier III’;

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

(d) fifty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as ‘Tier I’.

(2) The amount that may be claimed as a job development credit by a qualifying business is limited by this subsection and by the revitalization agreement. The council may approve a waiver of ninety‑five percent of the limits provided in item (1) for:

(a) a significant business; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) the capital investment of the project; and

(e) the potential for expansion or growth of the business or industry.”

SECTION 4. Section 12‑10‑81 of the 1976 Code is amended to read:

“Section 12‑10‑81. (A) A qualifying business may claim a job development credit as determined by this section if the:

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

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

(3) business is a tire manufacturer that has more than four hundred twenty‑five million dollars in capital invested in this State and employs more than one thousand employees in this State and that commits within a period of five years from the date of a revitalization agreement, to invest an additional three hundred fifty million dollars and create an additional three hundred fifty jobs in this State qualifying for job development fees or credits pursuant to current or future revitalization agreements; except that the business must certify to the council that the business has satisfied all minimum capital investment and job requirements identified in the revitalization agreements but not certified by the council to the department before July 1, 2001. The council, in its discretion, may extend the five‑year period for two additional years if the business has made a commitment to the additional three hundred fifty million dollars and makes substantial progress toward satisfying the goal before the end of the initial five‑year period. A business that represents to the council its intent to qualify pursuant to this section and is approved by the council may put job development fees computed pursuant to this section into an escrow account until the date the business certifies to the council that the business has satisfied the capital and job requirements of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) authorized by the revitalization agreement; and

(3) used to reimburse the business for:

(a) training costs and facilities;

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

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

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

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

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

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

(b) eighty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as ~~"underdeveloped"~~ ‘Tier III’;

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

(d) fifty‑five percent of the maximum job development credits may be claimed by businesses located in counties designated as ~~"developed"~~ ‘Tier I’.

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

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

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

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

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

SECTION 5. Section 12‑10‑100(A) of the 1976 Code is amended to read:

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

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

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

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