JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
Fiscal Impact Review
2011 Session

Bill Number: SB 1136 as Introduced
Review Requested By: Senator Colgan

JLARC Staff Fiscal Estimates

JLARC staff do not concur with the estimated revenue impact provided in the Fiscal Impact Statement (FIS) for SB 1136. SB 1136 would offer international trade facilities an income tax credit of either $3,000 per job created or two percent of the capital investment made to increase utilization of Virginia ports by at least ten percent. The revenue impact could be higher than estimated in the FIS, although how much higher cannot be precisely quantified.

The FIS estimate is based on the assumption that all eligible facilities will claim the jobs credit, but it is possible that facilities making a substantial capital investment in Virginia would claim the capital investment credit if it is more advantageous than the jobs credit. Historic announcement data indicate that capital investment could nearly double the cost of the credit, although VPA staff suggested that future investment is unlikely to match the growth seen from 2004 to 2008. Moreover, the State's exposure is exacerbated by the fact that the credit is not capped. A company may only claim a credit equal to 50 percent of its tax liability in a given year, but the credit, as proposed, carries forward for up to ten years. Still, the revenue impact could be tempered because only companies that increase volume by more than ten percent would be eligible for the credit, whereas all companies are assumed to be eligible in the FIS. It should be noted that eligible companies adding jobs or making capital investments in tobacco-dependent localities would be able to claim twice the amount that is available in other localities. However, the double credit would not further decrease general fund revenues because it uses funds from the Tobacco Indemnification and Revitalization Fund.

An explanation of the JLARC staff review is included on the following pages.

Authorized for Release:

Glen S. Tittermary
Director

JLARC offers Fiscal Impact Reviews in accordance with Item 30D of Chapter 874 (2010 Acts of Assembly). JLARC Fiscal Impact Reviews do not comment on the merits of the bill under review.

Bill Summary: SB 1136 authorizes an income tax credit for either capital investment or increasing jobs at an international trade facility. The amount of the credit would equal two percent of the capital investment or $3,000 per new full-time employee that results from an increase of at least ten percent in the volume of shipping moving through Virginia ports.

Discussion of Fiscal Implications: The Fiscal Impact Statement (FIS) for SB 1136 estimates the following general fund revenue decreases for SB 1136:

FY 2012	$277,000
FY 2013	$582,000
FY 2014	$859,000
FY 2015	$748,000
FY 2016	$443,000
FY 2017	$166,000

The total State cost estimated in the FIS is $3.1 million over the next six fiscal years. This fiscal impact is based on an estimated increase in shipping volume (50,000 twenty-foot equivalent units), manpower needed to support the increase, and the timing of its impact. These figures were developed by staff at the Virginia Port Authority (VPA) and their consultants.

While the estimates provided by the VPA appear reasonable, JLARC staff identified a key assumption of the FIS for SB 1136 that could result in greater than predicted decreases in State revenue. The FIS assumes that all eligible companies will claim the jobs credit, and does not contemplate the option for companies to claim the capital investment credit instead. The fact that companies may claim either the jobs credit or capital investment credit has the potential to result in values significantly higher than those assumed in the FIS; however, the magnitude of this financial exposure is uncertain because it is unclear how much capital eligible companies might invest in the future. However, the revenue impact could be tempered because only companies that increase volume by more than ten percent would be eligible for the credit, whereas all companies are assumed to be eligible in the FIS. International trade facilities in tobacco-dependent localities could claim twice the credit available in other localities, although this would not further reduce general fund revenues.

Companies Can Claim Jobs or Capital Investment Tax Credit

The fiscal estimate in the FIS is based on the number of jobs that the VPA estimates will be created as a result of this credit. This estimate may be too low because companies are eligible to claim either the jobs or capital investment credit. While companies are eligible for a $3,000 per job created tax credit, they are also eligible for a credit equal to two percent of capital investments made in the course of increasing volume of shipments through Virginia's ports by at least ten percent. Although companies must elect to take either the jobs or capital investment credit, eligible companies would most likely claim the larger of the two credits. Thus, the estimate in the FIS, which assumes all eligible facilities elect to take the jobs credit, represents the minimum revenue impact associated with the growth predicted by the VPA.

Eligible companies that make substantial capital investments in Virginia but add relatively few jobs could claim a far larger credit than the equivalent of $3,000 per job. As an illustration, a company that invests $6 million and adds 8 jobs in Virginia would claim the credit based on two percent of their investment, which would result in a $120,000 credit, compared to the $24,000 they would have received through the jobs credit.

Using VEDP data about planned company relocations or expansions announced between 2005 and 2010, JLARC staff determined that it is likely that at least some of the facilities eligible for this credit would have been able to claim a higher amount by taking the capital investment credit rather than the jobs credit. VEDP's data show that transportation and warehousing facilities involved in port related activity announced an average of $22.7 million in capital investment per year over the last six years. Several announcements are included below to illustrate the range in jobs created and capital investments among various past port related projects in Virginia.

Description	*Jobs*	*Investment*	*Jobs Credit*	*Investment Credit*
Expansion of port facility	8	$6,000,000	$24,000	$120,000
Expansion of marine cargo handling facility	10	1,500,000	30,000	30,000
New marine services and water transportation third-party logistics facility	24	1,500,000	72,000	30,000

A Portion of the Growth May Occur at Ineligible Facilities

The fiscal estimates in the FIS assume that all of the predicted 50,000 additional TEUs would be attributed to facilities eligible to claim the credit. It is possible that a portion of this increase could occur at facilities whose volume does not grow by ten percent, and would therefore be considered ineligible for the credit. Because companies must reach a certain threshold to be eligible for the credit, it is possible that utilization of the credit and the revenue impact could be less than projected.

Companies in Tobacco-Dependent Localities Are Eligible for Double Tax Credits

There is a provision in SB 1136 that would double the credit for facilities located in tobacco-dependent localities via funds deposited in the Technology Initiative in Tobacco-Dependent Localities Fund (the Fund) by the Virginia Tobacco Indemnification and Community Revitalization Commission (the Commission). Although there are no tobacco-dependent localities located immediately adjacent to Virginia's ports, it appears possible for facilities, such as warehouses or distribution centers, located in tobacco-dependent localities to be considered international trade facilities for the purposes of the tax credit. However, the ability of companies located in tobacco-dependent localities to claim the double tax credit depends on the Commission electing to transfer moneys to the Fund, which has never occurred in the history of the Fund. The double tax credit increases the value of the tax credit, but it does not impact general fund revenues as the additional moneys originate with the Tobacco Indemnification and Revitalization Fund.

Exemption From Administrative Process Act

As a part of the FIS, the Department of Taxation proposes technical amendments that would exempt the TAX Commissioner from the Virginia Administrative Process Act (§ 2.2-400 et seq.) (VAPA) in the promulgation of regulations associated with the tax credit. TAX indicated its request for exemption from the VAPA for the purposes of this credit is intended to allow for guidelines to be developed well before the first returns are filed that claim the new incentive. The credit outlined in SB 1136 could be claimed no earlier than January 1, 2012 because the credit is for taxable years beginning on or after January 1, 2011. Under the standard VAPA process, it is unlikely that regulations could be promulgated by January 1, 2012. However, before the credit is exempted from the VAPA, consideration could be given to using the fast-track process, which is significantly faster than the VAPA while still allowing for public comment.

Budget Amendment Necessary: No. This tax credit does not require appropriations because the credit results in foregone revenue, not direct government spending. The Governor's Proposed Amendments to the 2010-2012 Budget (HB 1500) adjust the general fund revenue forecast for FY 2012 downward by $5 million to account for this and two other port related tax credits; however, the reduction attributed to this credit reflects only the amount estimated in this FIS, which is $277,000.

Agencies Affected: Department of Taxation, Virginia Port Authority.

Date Released, Prepared By: 1/31/2011, Massey Whorley, Nathalie Molliet-Ribet