DEPARTMENT OF TAXATION
2011 Fiscal Impact Statement

1. Patron Frank W. Wagner

2. Bill Number SB 1136

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
X **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Income tax; international trade facility tax credit

5. Summary/Purpose:

This bill would allow an income tax credit for either capital investment in an international trade facility or increasing jobs related to an international trade facility. The amount of the credit would be equal to $3,000 per new qualified full-time employee that results form increased qualified trade activities by the taxpayer or two percent of the amount of capital investment made by the taxpayer to facilitate the increased eligible trade activities. Taxpayers would be permitted to elect either credit, but would not be entitled to claim both credits in the same taxable year.

To receive a credit under this bill, taxpayers would be required to apply to TAX. No more than $250,000 in tax credits could be issued in any fiscal year. TAX would determine the credit amount for the taxable year and provide a written certification to each taxpayer.

The credit would be claimed ratably over three years, with one-third of the credit being claimed each year. The amount of the credit would be limited to fifty percent of the taxpayer's tax liability for the taxable year. Any unused credit amount could be carried forward for ten years.

If the number of qualified full-time employees in any of the five years succeeding the credit year decreases below the average number of qualified full-time employees employed during the credit year, the credit would be subject to recapture.

This credit could be claimed against the individual income tax and the corporate income tax.

This bill would be effective for taxable years beginning on and after January 1, 2011, but before January 1, 2015. No credits could be issued after the fiscal year ending June 30, 2015.

This is an executive bill.

6. Budget amendment necessary: No.

7. **No Fiscal Impact** (See Line 8.)

8. **Fiscal implications:**

   Administrative Costs

   TAX considers implementation of this bill as routine, and does not require additional funding.

   Revenue Impact

   Based on data provided by the Virginia Port Authority, it is expected that credits would be issued in the full amount of the $250,000 annual cap. Accordingly, this bill would result in an annual $250,000 revenue loss. No budget amendment is needed as this bill is funded in the introduced Executive Budget as part of the Governor's transportation package for the ports.

9. **Specific agency or political subdivisions affected:**

   Virginia Department of Taxation
   Virginia Port Authority

10. **Technical amendments necessary:** Yes.

    To ensure that the credit amount issued each year is consistent with the credit cap, TAX suggests the following technical amendment:

    Line 80, after calendar year.
    Strike: The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years beginning with the credit year, subject to the limitations in subsection D.

    To clarify the method of issuing tax credits in taxable years for which the amount of credits requested exceeds the credit cap, TAX suggests the following technical amendment:

    Line 89, after Commonwealth.
    Insert: If the amount of tax credits requested under this section for any taxable year exceeds $250,000, such credits shall be allocated proportionately among all qualified taxpayers.

11. **Other comments:**

    Virginia Major Business Facility Job Tax Credit

    Under current law, a taxpayer may claim the major business facility job tax credit if the taxpayer creates at least fifty new full-time jobs in connection with the establishment or expansion of a major business facility and the company is engaged in a qualifying industry in Virginia. The credit is equal to $1,000 for each qualifying new job in excess of fifty jobs (25 jobs for a taxpayer located in an enterprise zone or economically distressed area).

The credit must be claimed ratably over two or three taxable years, depending on when the credit is claimed, beginning with the taxable year following the year in which the facility is established or expanded or the new qualifying jobs are added. Unused credits may be carried forward for ten taxable years. The major business facility job tax credit does not contain any specific provisions related to port activity.

Proposed Legislation

This bill would allow an international trade facility to claim either a job tax credit equal to $3,000 per new qualified full-time employee that results from increased qualified trade activities by the taxpayer or an amount equal to two percent of the amount of capital investment made by the taxpayer to facilitate the increased eligible trade activities. This credit could be claimed against the individual income tax and the corporate income tax. Taxpayers would be permitted to elect either credit, but would not be entitled to claim both credits in the same taxable year. The credit would be claimed ratably over three years, with one-third of the credit being claimed each year.

Under this bill, an “international trade facility” is defined as a company that is engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing; uses maritime port facilities located in the Commonwealth of Virginia; and transports at least 10 percent more cargo, measured in 20-foot equivalent marine containers, through maritime port facilities in the Commonwealth during the taxable year than was transported by the company through such facilities during the preceding taxable year.

For purposes of the port job tax credit, a “qualified full-time employee” would be defined as an employee filling a new, permanent full-time position in an international trade facility in the Commonwealth. A “new, permanent full-time position” would be defined as a job of indefinite duration, created by the company as a result of the establishment or expansion of an international trade facility in the Commonwealth, requiring a minimum of 35 hours of work per week for the entire normal year. A “normal year” would be defined as at least 48 weeks in a calendar year. Seasonal and temporary positions; jobs created by shifting a job function from elsewhere in the Commonwealth; and positions ancillary to the principal activities performed by employees at international trade facilities would not qualify as new, permanent full-time positions.

No credit would be allowed for the same jobs for which a major business facility job tax credit was claimed pursuant to *Va. Code* § 58.1-439.

No credit would be permitted for any employee for whom a credit under this section was previously earned by a related party or trade or business under common control. If an employee is employed in the Commonwealth for less than twelve full months during the credit year, the credit amount would be equal to $3,000 multiplied by a fraction, the numerator of which is the number of full months that the qualified full time employee worked for the international trade facility for the year, and the denominator of which is twelve.

For purposes of the port investment tax credit, a “capital investment” would be defined as the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year and the cost of machinery, tools, and equipment used by an international trade facility directly related to the movement of cargo and placed in service on or after January 1, 2010. Machinery, tools, and equipment would not include the basis of any property for which a credit was previously granted; which was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or which was previously placed in service in Virginia and has a basis in the hands of the person acquiring it, determined by reference to the basis of the property in the hands of the person from whom it was acquired.

"Capital investments" would include expenditures associated with exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. However, "capital investments" would not include the cost of acquiring any real property or building; the cost of furnishings; any expenditure associated with appraisal, architectural, engineering, and interior design fees; loan fees, points, or capitalized interest; legal, accounting, realtor, sales and marketing, or other professional fees; closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; utility hook-up or access fees; outbuildings; or the cost of any well or septic or sewer system.

To receive a credit under this bill, taxpayers would be required to apply to TAX. No more than $250,000 in tax credits could be issued in any fiscal year. TAX would determine the credit amount for the taxable year and provide a written certification to each taxpayer.

The amount of the credit would be limited to fifty percent of the taxpayer's tax liability for the taxable year. Any unused credit amount could be carried forward for ten years.

For purposes of qualifying for this credit, two or more affiliated companies would be permitted to aggregate the number of jobs created for qualified full-time employees or the amounts of capital investments as the result of the establishment or expansion by the individual companies.

The credit could be claimed against the individual income tax and the corporate income tax. Any amount of credit attributable to a partnership, S-corporation, or limited liability company would be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in the business entity.

Any company that creates jobs or makes capital investments in a "tobacco-dependent locality" would be permitted to claim a port tax credit equal to $6,000 per job created or four percent of qualified capital investment expenses, to the extent that money is available in the Tobacco-Dependent Localities Fund. If the amount of credits allowable for companies in tobacco-dependent localities exceeds the amount deposited in the Fund, the credits would be allocated to taxpayers on a pro rata basis by the Department of Taxation.

This bill would also amend *Va. Code* § 58.1-439.15 to make funds in the Tobacco-Dependent Localities Fund available to reimburse the general fund for providing port tax credits. Additionally, this bill would require all funds remaining in the Tobacco-Dependent Localities Fund to revert to the Tobacco Indemnification and Community Revitalization Fund after all eligible tax credits have been claimed for taxable years beginning before January 1, 2013, rather than for taxable years beginning before January 1, 2010.

Under this bill, if the number of qualified full-time employees in any of the five years succeeding the credit year decreases below the average number of qualified full-time employees employed during the credit year, the credit would be recaptured by re-computing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and subtracting the recomputed credit amount from the amount of credit previously earned. If the average number of qualifying full-time employees employed at an international trade facility falls below the amount employed by the taxpayer prior to claiming any credits in any of the five taxable years succeeding the credit year, all credits earned with respect to the international trade facility would be recaptured. Any recapture would first reduce credits earned but not yet allowed and credits allowed but carried forward before it would increase a taxpayer's tax liability.

TAX would be required to issue guidelines to carry out the provisions of this bill, including the computation, carryover, and recapture of credits; the establishment of criteria for international trade facilities, qualified full-time employees, and capital investments; and the computation, carryover, recapture, and redemption of the credit by affiliated companies. Such guidelines would be exempt from the Administrative Process Act.

This bill would be effective for taxable years beginning on and after January 1, 2011, but before January 1, 2015. No credits could be issued after the fiscal year ending June 30, 2015.

Similar Credits in Other States

Six states (Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina) currently have statutes directed at increasing the use of state ports. Of these states, Alabama and Louisiana have port investment tax credits and Georgia offers both job tax credits and investment tax credits related to the use of state ports.

Georgia

Georgia's port tax credit structure is similar to the one proposed in this bill. If a business increases its port traffic in Georgia during the previous twelve-month period by more than ten percent above its base year port traffic and is qualified to claim a job tax credit, it may claim a $1,250 job tax credit in addition to the general job tax credit. If the business increases its port traffic by more than twenty percent above its base year port traffic and increases employment by 400 or more, it is entitled to an additional $1,250 job tax credit.

If a business increases its port traffic in Georgia by more than ten percent above its base year port traffic and is qualified to claim a credit for qualified investment property, it is entitled to claim a tax credit equal to five percent of qualified investment expenses. This credit is without regard to the tier designation of the county in which the property was placed in service and is in lieu of, rather than in addition to, the general investment tax credit.

Georgia defines “base year port traffic” as the total amount of net tons, containers, or twenty-foot equivalent units (TEUs) of product actually transported by way of a waterborne ship or vehicle through a port facility during the second preceding taxable year or 75 net tons, five containers, or ten TEUs (if the total amount transported was less than these amounts). Effective for taxable years beginning on or after January 1, 2010, the port traffic only includes shipments that are imported from or exported to another state.

Businesses that are eligible for both the Georgia job port tax credit and the Georgia investment port tax credit may generally only claim one of the two credits. However, a business is entitled to claim both credits if it increases its port traffic by more than twenty percent above its base year port traffic, increases employment by 400 or more, and has purchased or acquired qualified investment property having an aggregate cost that exceeds $20 million. The credit amount claimed for both the job tax credit and the investment tax credit is limited to fifty percent of the taxpayer’s tax liability for the taxable year. Any unused credit amount may be carried forward for up to ten years.

Alabama

Alabama allows a credit for investing companies that sponsor or undertake qualifying projects related to the Alabama State Port Authority Infrastructure. For purposes of the Alabama credit, a “qualifying project” is defined as any project sponsored or undertaken by one or more investing companies with a capital cost of at least $8 million and at which industrial, warehousing, or research activity is the predominant trade or business. The amount of the credit is equal to five percent of the capital costs of a qualifying project. The credit may be taken during the year in which the project is placed in service and for nineteen consecutive years thereafter. The credit may not be carried forward or back if the amount of the credit exceeds the taxpayer’s taxable income for the year. The Alabama tax credit is effective for qualifying projects on or before December 31, 2015.

Louisiana

Louisiana currently allows an investor tax credit that is available for individuals, estates, trusts, corporations, and other business entities that invest at least $5 million in a qualifying project. The credit amount is equal to five percent of the total capital costs of the qualifying projects and may be taken for up to twenty years.

Similar Legislation

House Bill 2385 and **Senate Bill 1282** would allow tax credits equal to $50 per container moved by rail or barge instead of by truck or motor vehicle on Virginia highways.

House Bill 2531 and **Senate Bill 1481** would allow tax credits for certain taxpayers that increase port cargo volume at Virginia port facilities by five percent over the base year.

cc : Secretary of Finance

Date: 2/11/2011 KLC
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