Department of Finance and Administration

Legislative Impact Statement

Bill: SB688 Amendment Number: S2
Bill Subtitle: TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; AND TO DECLARE AN EMERGENCY.

Basic Change :

Sponsor: Senator D. Wallace

Engrossment 3/23/17 --- Senate Amendment 2 --- The bill is amended to change certain requirements and thresholds for a steel manufacturer's "qualified expansion project" and a "qualified steel specialty products manufacturing facility" to qualify for amended income tax incentive benefits.

The amendment provides that a "qualified expansion project" must invest at least one billion dollars ($1,000,000,000) and must provide a positive cost-benefit analysis before an incentive agreement is executed. The project requires certification from the taxpayer and verification from the state that necessary capital acquisition and borrowing has occurred and is undertaken by a taxpayer that has elected by agreement with the state for the expansion of the taxpayer's facility to be classified as a "qualified expansion project". Capital acquisition and financing necessary for the project by must be secured by July 1, 2018. The amendment also raises the job creation requirement from 350 to 500 and clarifies that the terms "net new direct positions" and "independent direct positions" mean the same as the definitions found in Section 8 of Act 1084 of 2013.

A "qualified steel specialty products manufacturing facility" must have an investment of at least two hundred million dollars ($200,000,000) and provide a positive cost-benefit analysis before an incentive agreement is executed. A project requires certification from the taxpayer and verification from the state that necessary capital acquisition and borrowing has occurred and is undertaken by a taxpayer that has elected by agreement with the state for the facility to be classified as a "qualified steel specialty products manufacturing facility". Capital acquisition and financing necessary for the project must be secured by July 1, 2018. The amendment also clarifies that the terms "net new direct positions" and "independent direct positions" mean the same as the definitions found in Section 8 of Act 1084 of 2013.

If a "qualified expansion project" does not have a public retirement system of the State of Arkansas as a member, the bill provides that no more than eleven million dollars ($11,000,000) of income tax credits can be used in any tax year. If a "qualified steel specialty products manufacturing facility" does not have a public retirement system as a member, then no more than: (1) $4,000,000 of income tax credits can be used each year if the total investment in the facility is at least $200,000,000 but less than $275,000,000; (2) $5,000,000 in income tax credits can be claimed each year if the total investment in the facility is at least $275,000,000 but less than $350,000,000; or (3) $6,500,000 of income tax credits can be claimed each year if the total investment in the facility is at least $350,000,000. Earned and unused tax credits may be carried forward past the normal carry forward period one (1) additional year at a time to preserve the ability of the taxpayer to use the credit against future tax liabilities.

If the "qualified expansion project' or the "qualified steel specialty products manufacturing facility" does have a public retirement system of the State of Arkansas as a member, the public retirement system shall have possession and control of all tax credits earned. The possession and control of the credits shall be confirmed in writing by a legal opinion issued by the Department of Finance and Administration (DFA). The public retirement system would sell the income tax credits back to the State for 80% of the face value of the credit.

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The bill provides that for a "qualified expansion project", no more than $11,000,000 of tax credits in possession or control of the public retirement system can be sold each year. For a "qualified steel specialty products manufacturing facility", no more than: (1) $4,000,000 of income tax credits can be sold if there is a total investment of at least $200,000,000 but less than $275,000,000; (2) $5,000,000 of income tax credits if there is a total investment of at least $275,000,000 but less than $350,000,000; or (3) $6,5000,000 if there is a total investment of at least $350,000,000. Any unused credit may be carried forward past the normal carry forward period one (1) additional year at a time to preserve the ability of the public retirement system to sell all unused tax credits in future years.

The amendment adds claw back provisions and consequences for failure to meet the requirements of a "qualified expansion project" or a "qualified steel specialty products manufacturing facility". The bill is amended to stipulate that the total amount of tax credits authorized shall not exceed the amount determined by the cost-benefit analysis. A performance and claw back agreement between the taxpayer and the Arkansas Economic Development Commission shall establish the capital investment for the project; the number of new full-time direct positions and independent direct positions; the annual salary requirements; the timeline for fulfilling the investment and job creation targets stated in the performance and claw back agreement; and conditions for which the claw back provisions will be triggered, including the failure to maintain a positive cost-benefit analysis for a test period of the longer of the life of the tax credits or fourteen (14) years; however the test period shall not be longer than fifteen (15) years.

If a "qualified expansion project" or a "qualified steel specialty products manufacturing facility" does not meet the requirements set forth in this amendment, then the taxpayer will be eligible to receive the tax credits otherwise provided in this section and the tax credit benefits provided to other qualified manufacturers of steel under § 26-51-1215.

Engrossment 03/14/17 --- Senate Amendment 1 ---The bill amends the provisions of the income tax credits allowed for the purchase of waste reduction, reuse, or recycling equipment to provide qualified manufacturers of steel beginning "qualified expansion projects" or beginning the development and construction of a "qualified steel specialty products manufacturing facility" additional income tax incentive benefits.

To qualify for the income tax incentive benefits, the qualified manufacturer of steel must, by July 1, 2018, obtain the capital acquisition and financing necessary for: securing a site for the "qualified expansion project" or the "qualified steel specialty manufacturing facility"; obtain necessary engineering services; purchase equipment; and begin initial construction of the "qualified expansion project" or the "qualified steel specialty products manufacturing facility".

To qualify as a "qualified expansion project', the steel manufacturer must: (1) begin the expansion project on or after January 1, 2017; (2) conduct the expansion on the site of a qualified manufacturer of steel; (3) incur a total investment in excess of seven hundred fifty million dollars ($750,000,000); (4) enter into an agreement with the State of Arkansas to create at least three hundred fifty (350) direct and indirect jobs with an average annual wage of at least seventy-five thousand dollars ($75,000); and (5) establish that the project has a positive cost benefit to the state.

To qualify as a "qualified steel specialty products manufacturing facility" the steel manufacturer must: (1) begin construction of the facility in Arkansas on or after January 1, 2017; (2) the facility will melt

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scrap steel in an electric arc furnace to produce one (1) or more specialty steel products; (3) the steel manufacturer has a total investment in excess of two hundred million dollars ($200,000,000); (4) the facility is constructed by a steel manufacturer who has entered into an agreement with the State to create at least one hundred fifty (150) direct and indirect jobs with an average annual wage of at least seventy-five thousand dollars ($75,000); and (5) the project has a positive cost benefit to the state.

If a "qualified expansion project" does not have a public retirement system of the State of Arkansas as a member, the bill provides that no more than sixteen million dollars ($16,000,000) of income tax credits can be used in any tax year. If a "qualified steel specialty products manufacturing facility" does not have a public retirement system as a member, then no more than: (1) $3,000,000 of income tax credits can be used each year if the total investment in the facility is at least $200,000,000 but less than $275,000,000; (2) $4,000,000 in income tax credits can be claimed each year if the total investment in the facility is at least $275,000,000 but less than $350,000,000; or (3) $5,000,000 of income tax credits can be claimed each year if the total investment in the facility is at least $350,000,000. Earned and unused tax credits may be carried forward past the normal carry forward period one (1) additional year at a time to preserve the ability of the taxpayer to use the credit against future tax liabilities.

If the "qualified expansion project' or the "qualified steel specialty products manufacturing facility" does have a public retirement system of the State of Arkansas as a member, the public retirement system shall have possession and control of all tax credits earned. The possession and control of the credits shall be confirmed in writing by a legal opinion issued by DFA. The public retirement system would sell the income tax credits back to the State for 80% of the face value of the credit. The bill as currently drafted provides that for a "qualified steel specialty products manufacturing facility", no more than $16,000,000 of tax credits in possession or control of the public retirement system can be sold each year. For a "qualified expansion project", no more than: (1) $3,000,000 of income tax credits can be sold if there is a total investment of at least $200,000,000 but less than $275,000,000; (2) $4,000,000 of income tax credits if there is a total investment of at least $275,000,000 but less than $350,000,000; or (3) $5,000,000 if there is a total investment of at least $350,000,000. Any unused credit may be carried forward past the normal carry forward period one (1) additional year at a time to preserve the ability of the public retirement system to sell all unused tax credits in future years.

Beginning July 1, 2020, and by July 15 of each year, the public retirement system would notify DFA of the amount of tax credits to be sold or transferred. The State of Arkansas shall pay the purchase price equal to 80% of the face value of credits included in the notice before June 30 of the following calendar year. The tax credits sold or transferred for value are extinguished upon payment of the purchase price as if claimed against the income tax due by a taxpayer.

If the State of Arkansas fails to timely pay the purchase price based on 80% of face value, the public retirement system may sell the income tax credit. These credits could then be claimed in accordance with applicable law, provided that any credits sold are used prior to expiration. The sale of the tax credits shall be confirmed in writing by a legal opinion issued by DFA.

Concerning the enumeration of special revenue, the amendment provides that a transfer from general revenue to the Economic Development Incentive Fund would be made in the amount of payment due the public retirement system for the purchase of the income tax credits.

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The bill has an emergency clause and the Act would be effective on the date approved by the Governor.

Revenue Impact :

If a "qualified expansion project' or a "qualified steel specialty products manufacturing facility" of a qualified manufacturer of steel is completed by June 30, 2020, income tax credits could be used during FY2021.

Income tax credits reducing general revenues of up to $11 million per year could be used on a "qualified expansion project' or, if a public retirement system is an ownership member, 80% of $11 million ($8.8 million) per year impact to state general revenues for the purchase of the income tax credits from the public retirement system.

Income tax credits reducing general revenues of up to $6.5 million per year dependent on project cost could be used on a "qualified steel specialty products manufacturing facility" or, if a public retirement system is an ownership member, 80% of $6.5 million ($5.2 million) per year impact to state general revenues for the purchase of the income tax credits from the public retirement system.

If a qualified manufacturer of steel were approved for the income tax incentives for developing a "qualified expansion project' and was also approved for a project to develop a "qualified steel specialty products manufacturing facility", income tax credits for both types of projects could be used or be available for purchase by the State during the same fiscal year.

Taxpayer Impact :

Qualified manufacturers of steel who develop a "qualified expansion project" and/or a "qualified steel specialty products manufacturing facility" will benefit from the law change.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

None.

Other Comments :

None.

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Legal Analysis :

None.