



Rep. Michael J. Zalewski

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LRB100 02290 AXK 27704 a

1 AMENDMENT TO HOUSE BILL 162

2 AMENDMENT NO. _____. Amend House Bill 162 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Section 704A as follows:

6 (35 ILCS 5/704A)

7 Sec. 704A. Employer's return and payment of tax withheld.

8 (a) In general, every employer who deducts and withholds or
9 is required to deduct and withhold tax under this Act on or
10 after January 1, 2008 shall make those payments and returns as
11 provided in this Section.

12 (b) Returns. Every employer shall, in the form and manner
13 required by the Department, make returns with respect to taxes
14 withheld or required to be withheld under this Article 7 for
15 each quarter beginning on or after January 1, 2008, on or
16 before the last day of the first month following the close of

1 that quarter.

2 (c) Payments. With respect to amounts withheld or required
3 to be withheld on or after January 1, 2008:

4 (1) Semi-weekly payments. For each calendar year, each
5 employer who withheld or was required to withhold more than
6 \$12,000 during the one-year period ending on June 30 of the
7 immediately preceding calendar year, payment must be made:

8 (A) on or before each Friday of the calendar year,
9 for taxes withheld or required to be withheld on the
10 immediately preceding Saturday, Sunday, Monday, or
11 Tuesday;

12 (B) on or before each Wednesday of the calendar
13 year, for taxes withheld or required to be withheld on
14 the immediately preceding Wednesday, Thursday, or
15 Friday.

16 Beginning with calendar year 2011, payments made under
17 this paragraph (1) of subsection (c) must be made by
18 electronic funds transfer.

19 (2) Semi-weekly payments. Any employer who withholds
20 or is required to withhold more than \$12,000 in any quarter
21 of a calendar year is required to make payments on the
22 dates set forth under item (1) of this subsection (c) for
23 each remaining quarter of that calendar year and for the
24 subsequent calendar year.

25 (3) Monthly payments. Each employer, other than an
26 employer described in items (1) or (2) of this subsection,

1 shall pay to the Department, on or before the 15th day of
2 each month the taxes withheld or required to be withheld
3 during the immediately preceding month.

4 (4) Payments with returns. Each employer shall pay to
5 the Department, on or before the due date for each return
6 required to be filed under this Section, any tax withheld
7 or required to be withheld during the period for which the
8 return is due and not previously paid to the Department.

9 (d) Regulatory authority. The Department may, by rule:

10 (1) Permit employers, in lieu of the requirements of
11 subsections (b) and (c), to file annual returns due on or
12 before January 31 of the year for taxes withheld or
13 required to be withheld during the previous calendar year
14 and, if the aggregate amounts required to be withheld by
15 the employer under this Article 7 (other than amounts
16 required to be withheld under Section 709.5) do not exceed
17 \$1,000 for the previous calendar year, to pay the taxes
18 required to be shown on each such return no later than the
19 due date for such return.

20 (2) Provide that any payment required to be made under
21 subsection (c)(1) or (c)(2) is deemed to be timely to the
22 extent paid by electronic funds transfer on or before the
23 due date for deposit of federal income taxes withheld from,
24 or federal employment taxes due with respect to, the wages
25 from which the Illinois taxes were withheld.

26 (3) Designate one or more depositories to which payment

1 of taxes required to be withheld under this Article 7 must
2 be paid by some or all employers.

3 (4) Increase the threshold dollar amounts at which
4 employers are required to make semi-weekly payments under
5 subsection (c) (1) or (c) (2).

6 (e) Annual return and payment. Every employer who deducts
7 and withholds or is required to deduct and withhold tax from a
8 person engaged in domestic service employment, as that term is
9 defined in Section 3510 of the Internal Revenue Code, may
10 comply with the requirements of this Section with respect to
11 such employees by filing an annual return and paying the taxes
12 required to be deducted and withheld on or before the 15th day
13 of the fourth month following the close of the employer's
14 taxable year. The Department may allow the employer's return to
15 be submitted with the employer's individual income tax return
16 or to be submitted with a return due from the employer under
17 Section 1400.2 of the Unemployment Insurance Act.

18 (f) Magnetic media and electronic filing. Any W-2 Form
19 that, under the Internal Revenue Code and regulations
20 promulgated thereunder, is required to be submitted to the
21 Internal Revenue Service on magnetic media or electronically
22 must also be submitted to the Department on magnetic media or
23 electronically for Illinois purposes, if required by the
24 Department.

25 (g) For amounts deducted or withheld after December 31,
26 2009, a taxpayer who makes an election under subsection (f) of

1 Section 5-15 of the Economic Development for a Growing Economy
2 Tax Credit Act for a taxable year shall be allowed a credit
3 against payments due under this Section for amounts withheld
4 during the first calendar year beginning after the end of that
5 taxable year equal to the amount of the credit for the
6 incremental income tax attributable to full-time employees of
7 the taxpayer awarded to the taxpayer by the Department of
8 Commerce and Economic Opportunity under the Economic
9 Development for a Growing Economy Tax Credit Act for the
10 taxable year and credits not previously claimed and allowed to
11 be carried forward under Section 211(4) of this Act as provided
12 in subsection (f) of Section 5-15 of the Economic Development
13 for a Growing Economy Tax Credit Act. The credit or credits may
14 not reduce the taxpayer's obligation for any payment due under
15 this Section to less than zero. If the amount of the credit or
16 credits exceeds the total payments due under this Section with
17 respect to amounts withheld during the calendar year, the
18 excess may be carried forward and applied against the
19 taxpayer's liability under this Section in the succeeding
20 calendar years as allowed to be carried forward under paragraph
21 (4) of Section 211 of this Act. The credit or credits shall be
22 applied to the earliest year for which there is a tax
23 liability. If there are credits from more than one taxable year
24 that are available to offset a liability, the earlier credit
25 shall be applied first. Each employer who deducts and withholds
26 or is required to deduct and withhold tax under this Act and

1 who retains income tax withholdings under subsection (f) of
2 Section 5-15 of the Economic Development for a Growing Economy
3 Tax Credit Act must make a return with respect to such taxes
4 and retained amounts in the form and manner that the
5 Department, by rule, requires and pay to the Department or to a
6 depository designated by the Department those withheld taxes
7 not retained by the taxpayer. For purposes of this subsection
8 (g), the term taxpayer shall include taxpayer and members of
9 the taxpayer's unitary business group as defined under
10 paragraph (27) of subsection (a) of Section 1501 of this Act.
11 This Section is exempt from the provisions of Section 250 of
12 this Act. No credit awarded under the Economic Development for
13 a Growing Economy Tax Credit Act for agreements entered into on
14 or after January 1, 2015 may be credited against payments due
15 under this Section.

16 (h) An employer may claim a credit against payments due
17 under this Section for amounts withheld during the first
18 calendar year ending after the date on which a tax credit
19 certificate was issued under Section 35 of the Small Business
20 Job Creation Tax Credit Act. The credit shall be equal to the
21 amount shown on the certificate, but may not reduce the
22 taxpayer's obligation for any payment due under this Section to
23 less than zero. If the amount of the credit exceeds the total
24 payments due under this Section with respect to amounts
25 withheld during the calendar year, the excess may be carried
26 forward and applied against the taxpayer's liability under this

1 Section in the 5 succeeding calendar years. The credit shall be
2 applied to the earliest year for which there is a tax
3 liability. If there are credits from more than one calendar
4 year that are available to offset a liability, the earlier
5 credit shall be applied first. This Section is exempt from the
6 provisions of Section 250 of this Act.

7 (Source: P.A. 96-834, eff. 12-14-09; 96-888, eff. 4-13-10;
8 96-905, eff. 6-4-10; 96-1027, eff. 7-12-10; 97-333, eff.
9 8-12-11; 97-507, eff. 8-23-11.)

10 Section 10. The Economic Development for a Growing Economy
11 Tax Credit Act is amended by changing Sections 5-5, 5-15, 5-20,
12 5-25, 5-50, 5-65, 5-70 and 5-77 and by adding Section 5-57 as
13 follows:

14 (35 ILCS 10/5-5)

15 Sec. 5-5. Definitions. As used in this Act:

16 "Agreement" means the Agreement between a Taxpayer and the
17 Department under the provisions of Section 5-50 of this Act.

18 "Applicant" means a Taxpayer that is operating a business
19 located or that the Taxpayer plans to locate within the State
20 of Illinois and that is engaged in interstate or intrastate
21 commerce for the purpose of manufacturing, processing,
22 assembling, warehousing, or distributing products, conducting
23 research and development, providing tourism services, or
24 providing services in interstate commerce, office industries,

1 or agricultural processing, but excluding retail, retail food,
2 health, or professional services. "Applicant" does not include
3 a Taxpayer who closes or substantially reduces an operation at
4 one location in the State and relocates substantially the same
5 operation to another location in the State. This does not
6 prohibit a Taxpayer from expanding its operations at another
7 location in the State, provided that existing operations of a
8 similar nature located within the State are not closed or
9 substantially reduced. This also does not prohibit a Taxpayer
10 from moving its operations from one location in the State to
11 another location in the State for the purpose of expanding the
12 operation provided that the Department determines that
13 expansion cannot reasonably be accommodated within the
14 municipality in which the business is located, or in the case
15 of a business located in an incorporated area of the county,
16 within the county in which the business is located, after
17 conferring with the chief elected official of the municipality
18 or county and taking into consideration any evidence offered by
19 the municipality or county regarding the ability to accommodate
20 expansion within the municipality or county.

21 "Committee" means the Illinois Business Investment
22 Committee created under Section 5-25 of this Act within the
23 Illinois Economic Development Board.

24 "Credit" means the amount agreed to between the Department
25 and Applicant under this Act, but not to exceed the lesser of:
26 (1) the sum of (i) 50% of the Incremental Income Tax

1 attributable to New Employees at the Applicant's project and
2 (ii) 10% of the training costs of New Employees; or (2) 100% of
3 the Incremental Income Tax attributable to New Employees at the
4 Applicant's project. However, if the project is located in an
5 underserved area, then the amount of the Credit may not exceed
6 the lesser of: (1) the sum of (i) 75% of the Incremental Income
7 Tax attributable to New Employees at the Applicant's project
8 and (ii) 10% of the training costs of New Employees; or (2)
9 100% of the Incremental Income Tax attributable to New
10 Employees at the Applicant's project. If an Applicant agrees to
11 hire the required number of New Employees, then the maximum
12 amount of the Credit for that Applicant may be increased by an
13 amount not to exceed 25% of the Incremental Income Tax
14 attributable to retained employees at the Applicant's project;
15 provided that, in order to receive the increase for retained
16 employees, the Applicant must provide the additional evidence
17 required under paragraph (3) of subsection (b) of Section 5-25.

18 "Department" means the Department of Commerce and Economic
19 Opportunity.

20 "Director" means the Director of Commerce and Economic
21 Opportunity.

22 "Full-time Employee" means an individual who is employed
23 for consideration for at least 35 hours each week or who
24 renders any other standard of service generally accepted by
25 industry custom or practice as full-time employment. An
26 individual for whom a W-2 is issued by a Professional Employer

1 Organization (PEO) is a full-time employee if employed in the
2 service of the Applicant for consideration for at least 35
3 hours each week or who renders any other standard of service
4 generally accepted by industry custom or practice as full-time
5 employment to Applicant.

6 "Incremental Income Tax" means the total amount withheld
7 during the taxable year from the compensation of New Employees
8 and, if applicable, retained employees under Article 7 of the
9 Illinois Income Tax Act arising from employment at a project
10 that is the subject of an Agreement.

11 "New Employee" means:

12 (a) A Full-time Employee first employed by a Taxpayer
13 in the project that is the subject of an Agreement and who
14 is hired after the Taxpayer enters into the tax credit
15 Agreement.

16 (b) The term "New Employee" does not include:

17 (1) an employee of the Taxpayer who performs a job
18 that was previously performed by another employee, if
19 that job existed for at least 6 months before hiring
20 the employee;

21 (2) an employee of the Taxpayer who was previously
22 employed in Illinois by a Related Member of the
23 Taxpayer and whose employment was shifted to the
24 Taxpayer after the Taxpayer entered into the tax credit
25 Agreement; or

26 (3) a child, grandchild, parent, or spouse, other

1 than a spouse who is legally separated from the
2 individual, of any individual who has a direct or an
3 indirect ownership interest of at least 5% in the
4 profits, capital, or value of the Taxpayer.

5 (c) Notwithstanding paragraph (1) of subsection (b),
6 an employee may be considered a New Employee under the
7 Agreement if the employee performs a job that was
8 previously performed by an employee who was:

9 (1) treated under the Agreement as a New Employee;

10 and

11 (2) promoted by the Taxpayer to another job.

12 (d) Notwithstanding subsection (a), the Department may
13 award Credit to an Applicant with respect to an employee
14 hired prior to the date of the Agreement if:

15 (1) the Applicant is in receipt of a letter from
16 the Department stating an intent to enter into a credit
17 Agreement;

18 (2) the letter described in paragraph (1) is issued
19 by the Department not later than 15 days after the
20 effective date of this Act; and

21 (3) the employee was hired after the date the
22 letter described in paragraph (1) was issued.

23 "Noncompliance Date" means, in the case of a Taxpayer that
24 is not complying with the requirements of the Agreement or the
25 provisions of this Act, the day following the last date upon
26 which the Taxpayer was in compliance with the requirements of

1 the Agreement and the provisions of this Act, as determined by
2 the Director, pursuant to Section 5-65.

3 "Pass Through Entity" means an entity that is exempt from
4 the tax under subsection (b) or (c) of Section 205 of the
5 Illinois Income Tax Act.

6 "Professional Employer Organization" (PEO) means an
7 employee leasing company, as defined in Section 206.1(A)(2) of
8 the Illinois Unemployment Insurance Act.

9 "Related Member" means a person that, with respect to the
10 Taxpayer during any portion of the taxable year, is any one of
11 the following:

12 (1) An individual stockholder, if the stockholder and
13 the members of the stockholder's family (as defined in
14 Section 318 of the Internal Revenue Code) own directly,
15 indirectly, beneficially, or constructively, in the
16 aggregate, at least 50% of the value of the Taxpayer's
17 outstanding stock.

18 (2) A partnership, estate, or trust and any partner or
19 beneficiary, if the partnership, estate, or trust, and its
20 partners or beneficiaries own directly, indirectly,
21 beneficially, or constructively, in the aggregate, at
22 least 50% of the profits, capital, stock, or value of the
23 Taxpayer.

24 (3) A corporation, and any party related to the
25 corporation in a manner that would require an attribution
26 of stock from the corporation to the party or from the

1 party to the corporation under the attribution rules of
2 Section 318 of the Internal Revenue Code, if the Taxpayer
3 owns directly, indirectly, beneficially, or constructively
4 at least 50% of the value of the corporation's outstanding
5 stock.

6 (4) A corporation and any party related to that
7 corporation in a manner that would require an attribution
8 of stock from the corporation to the party or from the
9 party to the corporation under the attribution rules of
10 Section 318 of the Internal Revenue Code, if the
11 corporation and all such related parties own in the
12 aggregate at least 50% of the profits, capital, stock, or
13 value of the Taxpayer.

14 (5) A person to or from whom there is attribution of
15 stock ownership in accordance with Section 1563(e) of the
16 Internal Revenue Code, except, for purposes of determining
17 whether a person is a Related Member under this paragraph,
18 20% shall be substituted for 5% wherever 5% appears in
19 Section 1563(e) of the Internal Revenue Code.

20 "Taxpayer" means an individual, corporation, partnership,
21 or other entity that has any Illinois Income Tax liability.

22 "Underserved area" means a geographic area that meets one
23 or more of the following conditions:

24 (1) the area has a poverty rate of at least 20%
25 according to the latest federal decennial census;

26 (2) 75% or more of the children in the area participate

1 in the federal free lunch program according to reported
2 statistics from the State Board of Education;

3 (3) at least 20% of the households in the area receive
4 assistance under the Supplemental Nutrition Assistance
5 Program (SNAP); or

6 (4) the area has an average unemployment rate, as
7 determined by the Illinois Department of Employment
8 Security, that is more than 120% of the national
9 unemployment average, as determined by the U.S. Department
10 of Labor, for a period of at least 2 consecutive calendar
11 years preceding the date of the application.

12 (Source: P.A. 94-793, eff. 5-19-06; 95-375, eff. 8-23-07.)

13 (35 ILCS 10/5-15)

14 Sec. 5-15. Tax Credit Awards. Subject to the conditions set
15 forth in this Act, a Taxpayer is entitled to a Credit against
16 or, as described in subsection (g) of this Section, a payment
17 towards taxes imposed pursuant to subsections (a) and (b) of
18 Section 201 of the Illinois Income Tax Act that may be imposed
19 on the Taxpayer for a taxable year beginning on or after
20 January 1, 1999, if the Taxpayer is awarded a Credit by the
21 Department under this Act for that taxable year.

22 (a) The Department shall make Credit awards under this Act
23 to foster job creation and retention in Illinois.

24 (b) A person that proposes a project to create new jobs in
25 Illinois must enter into an Agreement with the Department for

1 the Credit under this Act.

2 (c) The Credit shall be claimed for the taxable years
3 specified in the Agreement.

4 (d) The Credit shall not exceed the Incremental Income Tax
5 attributable to the project that is the subject of the
6 Agreement.

7 (e) Nothing herein shall prohibit a Tax Credit Award to an
8 Applicant that uses a PEO if all other award criteria are
9 satisfied.

10 (f) In lieu of the Credit allowed under this Act against
11 the taxes imposed pursuant to subsections (a) and (b) of
12 Section 201 of the Illinois Income Tax Act for any taxable year
13 ending on or after December 31, 2009, for Taxpayers that
14 entered into Agreements prior to January 1, 2015 and otherwise
15 meet the criteria set forth in this subsection (f), the
16 Taxpayer may elect to claim the Credit against its obligation
17 to pay over withholding under Section 704A of the Illinois
18 Income Tax Act.

19 (1) The election under this subsection (f) may be made
20 only by a Taxpayer that (i) is primarily engaged in one of
21 the following business activities: water purification and
22 treatment, motor vehicle metal stamping, automobile
23 manufacturing, automobile and light duty motor vehicle
24 manufacturing, motor vehicle manufacturing, light truck
25 and utility vehicle manufacturing, heavy duty truck
26 manufacturing, motor vehicle body manufacturing, cable

1 television infrastructure design or manufacturing, or
2 wireless telecommunication or computing terminal device
3 design or manufacturing for use on public networks and (ii)
4 meets the following criteria:

5 (A) the Taxpayer (i) had an Illinois net loss or an
6 Illinois net loss deduction under Section 207 of the
7 Illinois Income Tax Act for the taxable year in which
8 the Credit is awarded, (ii) employed a minimum of 1,000
9 full-time employees in this State during the taxable
10 year in which the Credit is awarded, (iii) has an
11 Agreement under this Act on December 14, 2009 (the
12 effective date of Public Act 96-834), and (iv) is in
13 compliance with all provisions of that Agreement;

14 (B) the Taxpayer (i) had an Illinois net loss or an
15 Illinois net loss deduction under Section 207 of the
16 Illinois Income Tax Act for the taxable year in which
17 the Credit is awarded, (ii) employed a minimum of 1,000
18 full-time employees in this State during the taxable
19 year in which the Credit is awarded, and (iii) has
20 applied for an Agreement within 365 days after December
21 14, 2009 (the effective date of Public Act 96-834);

22 (C) the Taxpayer (i) had an Illinois net operating
23 loss carryforward under Section 207 of the Illinois
24 Income Tax Act in a taxable year ending during calendar
25 year 2008, (ii) has applied for an Agreement within 150
26 days after the effective date of this amendatory Act of

1 the 96th General Assembly, (iii) creates at least 400
2 new jobs in Illinois, (iv) retains at least 2,000 jobs
3 in Illinois that would have been at risk of relocation
4 out of Illinois over a 10-year period, and (v) makes a
5 capital investment of at least \$75,000,000;

6 (D) the Taxpayer (i) had an Illinois net operating
7 loss carryforward under Section 207 of the Illinois
8 Income Tax Act in a taxable year ending during calendar
9 year 2009, (ii) has applied for an Agreement within 150
10 days after the effective date of this amendatory Act of
11 the 96th General Assembly, (iii) creates at least 150
12 new jobs, (iv) retains at least 1,000 jobs in Illinois
13 that would have been at risk of relocation out of
14 Illinois over a 10-year period, and (v) makes a capital
15 investment of at least \$57,000,000; or

16 (E) the Taxpayer (i) employed at least 2,500
17 full-time employees in the State during the year in
18 which the Credit is awarded, (ii) commits to make at
19 least \$500,000,000 in combined capital improvements
20 and project costs under the Agreement, (iii) applies
21 for an Agreement between January 1, 2011 and June 30,
22 2011, (iv) executes an Agreement for the Credit during
23 calendar year 2011, and (v) was incorporated no more
24 than 5 years before the filing of an application for an
25 Agreement.

26 (1.5) The election under this subsection (f) may also

1 be made by a Taxpayer for any Credit awarded pursuant to an
2 agreement that was executed between January 1, 2011 and
3 June 30, 2011, if the Taxpayer (i) is primarily engaged in
4 the manufacture of inner tubes or tires, or both, from
5 natural and synthetic rubber, (ii) employs a minimum of
6 2,400 full-time employees in Illinois at the time of
7 application, (iii) creates at least 350 full-time jobs and
8 retains at least 250 full-time jobs in Illinois that would
9 have been at risk of being created or retained outside of
10 Illinois, and (iv) makes a capital investment of at least
11 \$200,000,000 at the project location.

12 (1.6) The election under this subsection (f) may also
13 be made by a Taxpayer for any Credit awarded pursuant to an
14 agreement that was executed within 150 days after the
15 effective date of this amendatory Act of the 97th General
16 Assembly, if the Taxpayer (i) is primarily engaged in the
17 operation of a discount department store, (ii) maintains
18 its corporate headquarters in Illinois, (iii) employs a
19 minimum of 4,250 full-time employees at its corporate
20 headquarters in Illinois at the time of application, (iv)
21 retains at least 4,250 full-time jobs in Illinois that
22 would have been at risk of being relocated outside of
23 Illinois, (v) had a minimum of \$40,000,000,000 in total
24 revenue in 2010, and (vi) makes a capital investment of at
25 least \$300,000,000 at the project location.

26 (1.7) Notwithstanding any other provision of law, the

1 election under this subsection (f) may also be made by a
2 Taxpayer for any Credit awarded pursuant to an agreement
3 that was executed or applied for on or after July 1, 2011
4 and on or before March 31, 2012, if the Taxpayer is
5 primarily engaged in the manufacture of original and
6 aftermarket filtration parts and products for automobiles,
7 motor vehicles, light duty motor vehicles, light trucks and
8 utility vehicles, and heavy duty trucks, (ii) employs a
9 minimum of 1,000 full-time employees in Illinois at the
10 time of application, (iii) creates at least 250 full-time
11 jobs in Illinois, (iv) relocates its corporate
12 headquarters to Illinois from another state, and (v) makes
13 a capital investment of at least \$4,000,000 at the project
14 location.

15 (2) An election under this subsection shall allow the
16 credit to be taken against payments otherwise due under
17 Section 704A of the Illinois Income Tax Act during the
18 first calendar year beginning after the end of the taxable
19 year in which the credit is awarded under this Act.

20 (3) The election shall be made in the form and manner
21 required by the Illinois Department of Revenue and, once
22 made, shall be irrevocable.

23 (4) If a Taxpayer who meets the requirements of
24 subparagraph (A) of paragraph (1) of this subsection (f)
25 elects to claim the Credit against its withholdings as
26 provided in this subsection (f), then, on and after the

1 date of the election, the terms of the Agreement between
2 the Taxpayer and the Department may not be further amended
3 during the term of the Agreement.

4 (g) A pass-through entity that has been awarded a credit
5 under this Act, its shareholders, or its partners may treat
6 some or all of the credit awarded pursuant to this Act as a tax
7 payment for purposes of the Illinois Income Tax Act. The term
8 "tax payment" means a payment as described in Article 6 or
9 Article 8 of the Illinois Income Tax Act or a composite payment
10 made by a pass-through entity on behalf of any of its
11 shareholders or partners to satisfy such shareholders' or
12 partners' taxes imposed pursuant to subsections (a) and (b) of
13 Section 201 of the Illinois Income Tax Act. In no event shall
14 the amount of the award credited pursuant to this Act exceed
15 the Illinois income tax liability of the pass-through entity or
16 its shareholders or partners for the taxable year.

17 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
18 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
19 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

20 (35 ILCS 10/5-20)

21 Sec. 5-20. Application for a project to create and retain
22 new jobs.

23 (a) Any Taxpayer proposing a project located or planned to
24 be located in Illinois may request consideration for
25 designation of its project, by formal written letter of request

1 or by formal application to the Department, in which the
2 Applicant states its intent to make at least a specified level
3 of investment and intends to hire or retain a specified number
4 of full-time employees at a designated location in Illinois. As
5 circumstances require, the Department may require a formal
6 application from an Applicant and a formal letter of request
7 for assistance.

8 (b) In order to qualify for Credits under this Act, an
9 Applicant's project must:

10 (1) if the Applicant has more than 100 employees,
11 involve an investment of at least \$2,500,000 ~~\$5,000,000~~ in
12 capital improvements to be placed in service ~~and to employ~~
13 ~~at least 25 New Employees~~ within the State as a direct
14 result of the project; if the Applicant has 100 or fewer
15 employees, then there is no capital investment
16 requirement; and

17 (1.5) if the Applicant has more than 100 employees,
18 employ a number of new employees in the State equal to the
19 lesser of (A) 10% of the number of full-time employees
20 employed by the applicant world-wide on the date the
21 application is filed with the Department or (B) 50 New
22 Employees; and, if the Applicant has 100 or fewer
23 employees, employ a number of new employees in the State
24 equal to the lesser of (A) 5% of the number of full-time
25 employees employed by the applicant world-wide on the date
26 the application is filed with the Department or (B) 50 New

1 Employees;

2 (2) (blank); ~~involve an investment of at least an~~
3 ~~amount (to be expressly specified by the Department and the~~
4 ~~Committee) in capital improvements to be placed in service~~
5 ~~and will employ at least an amount (to be expressly~~
6 ~~specified by the Department and the Committee) of New~~
7 ~~Employees within the State, provided that the Department~~
8 ~~and the Committee have determined that the project will~~
9 ~~provide a substantial economic benefit to the State; or~~

10 (3) (blank). ~~if the applicant has 100 or fewer~~
11 ~~employees, involve an investment of at least \$1,000,000 in~~
12 ~~capital improvements to be placed in service and to employ~~
13 ~~at least 5 New Employees within the State as a direct~~
14 ~~result of the project.~~

15 (c) After receipt of an application, the Department may
16 enter into an Agreement with the Applicant if the application
17 is accepted in accordance with Section 5-25.

18 (Source: P.A. 93-882, eff. 1-1-05.)

19 (35 ILCS 10/5-25)

20 Sec. 5-25. Review of Application.

21 (a) In addition to those duties granted under the Illinois
22 Economic Development Board Act, the Illinois Economic
23 Development Board shall form a Business Investment Committee
24 for the purpose of making recommendations for applications. At
25 the request of the Board, the Director of Commerce and Economic

1 Opportunity or his or her designee, the Director of the
2 Governor's Office of Management and Budget or his or her
3 designee, the Director of Revenue or his or her designee, the
4 Director of Employment Security or his or her designee, and an
5 elected official of the affected locality, such as the chair of
6 the county board or the mayor, may serve as members of the
7 Committee to assist with its analysis and deliberations.

8 (b) At the Department's request, the Committee shall
9 convene, make inquiries, and conduct studies in the manner and
10 by the methods as it deems desirable, review information with
11 respect to Applicants, and make recommendations for projects to
12 benefit the State. In making its recommendation that an
13 Applicant's application for Credit should or should not be
14 accepted, which shall occur within a reasonable time frame as
15 determined by the nature of the application, the Committee
16 shall determine that all the following conditions exist:

17 (1) The Applicant's project intends, as required by
18 subsection (b) of Section 5-20 to make the required
19 investment in the State and intends to hire the required
20 number of New Employees in Illinois as a result of that
21 project.

22 (2) The Applicant's project is economically sound and
23 will benefit the people of the State of Illinois by
24 increasing opportunities for employment and strengthen the
25 economy of Illinois.

26 (3) That, if not for the Credit, the project would not

1 occur in Illinois, which may be demonstrated by evidence
2 that receipt of the Credit is essential to the Applicant's
3 decision to create new jobs in the State, such as the
4 magnitude of the cost differential between Illinois and a
5 competing State; in addition, if the Applicant is seeking
6 an increase in the maximum amount of the Credit for
7 retained employees, the Applicant must provide ~~any means~~
8 ~~including, but not limited to,~~ evidence the Applicant has
9 multi-state location options and could reasonably and
10 efficiently locate outside of the State, or demonstrate
11 ~~demonstration~~ that at least one other state is being
12 considered for the project, ~~or evidence the receipt of the~~
13 ~~Credit is a major factor in the Applicant's decision and~~
14 ~~that without the Credit, the Applicant likely would not~~
15 ~~create new jobs in Illinois, or demonstration that~~
16 ~~receiving the Credit is essential to the Applicant's~~
17 ~~decision to create or retain new jobs in the State.~~

18 (4) A cost differential is identified, using best
19 available data, in the projected costs for the Applicant's
20 project compared to the costs in the competing state,
21 including the impact of the competing state's incentive
22 programs. The competing state's incentive programs shall
23 include state, local, private, and federal funds
24 available.

25 (5) The political subdivisions affected by the project
26 have committed local incentives with respect to the

1 project, considering local ability to assist.

2 (6) Awarding the Credit will result in an overall
3 positive fiscal impact to the State, as certified by the
4 Committee using the best available data.

5 (7) The Credit is not prohibited by Section 5-35 of
6 this Act.

7 (Source: P.A. 94-793, eff. 5-19-06.)

8 (35 ILCS 10/5-50)

9 Sec. 5-50. Contents of Agreements with Applicants. The
10 Department shall enter into an Agreement with an Applicant that
11 is awarded a Credit under this Act. The Agreement must include
12 all of the following:

13 (1) A detailed description of the project that is the
14 subject of the Agreement, including the location and amount
15 of the investment and jobs created or retained.

16 (2) The duration of the Credit and the first taxable
17 year for which the Credit may be claimed.

18 (3) The Credit amount that will be allowed for each
19 taxable year.

20 (4) A requirement that the Taxpayer shall maintain
21 operations at the project location that shall be stated as
22 a minimum number of years not to exceed 10.

23 (5) A specific method for determining the number of New
24 Employees employed during a taxable year.

25 (6) A requirement that the Taxpayer shall annually

1 report to the Department the number of New Employees, the
2 Incremental Income Tax withheld in connection with the New
3 Employees, and any other information the Director needs to
4 perform the Director's duties under this Act.

5 (7) A requirement that the Director is authorized to
6 verify with the appropriate State agencies the amounts
7 reported under paragraph (6), and after doing so shall
8 issue a certificate to the Taxpayer stating that the
9 amounts have been verified.

10 (8) A requirement that the Taxpayer shall provide
11 written notification to the Director not more than 30 days
12 after the Taxpayer makes or receives a proposal that would
13 transfer the Taxpayer's State tax liability obligations to
14 a successor Taxpayer.

15 (9) A detailed description of the number of New
16 Employees to be hired, and the occupation and payroll of
17 the full-time jobs to be created or retained as a result of
18 the project.

19 (10) The minimum investment the business enterprise
20 will make in capital improvements, the time period for
21 placing the property in service, and the designated
22 location in Illinois for the investment.

23 (11) A requirement that the Taxpayer shall provide
24 written notification to the Director and the Committee not
25 more than 30 days after the Taxpayer determines that the
26 minimum job creation or retention, employment payroll, or

1 investment no longer is being or will be achieved or
2 maintained as set forth in the terms and conditions of the
3 Agreement.

4 (12) A provision that, if the total number of New
5 Employees falls below a specified level, the allowance of
6 Credit shall be suspended until the number of New Employees
7 equals or exceeds the Agreement amount.

8 (13) A detailed description of the items for which the
9 costs incurred by the Taxpayer will be included in the
10 limitation on the Credit provided in Section 5-30.

11 (13.5) A provision that, if the Taxpayer never meets
12 either the investment or job creation and retention
13 requirements specified in the Agreement during the entire
14 5-year period beginning on the first day of the first
15 taxable year in which the Agreement is executed and ending
16 on the last day of the fifth taxable year after the
17 Agreement is executed, then the Agreement is automatically
18 terminated on the last day of the fifth taxable year after
19 the Agreement is executed and the Taxpayer is not entitled
20 to the award of any credits for any of that 5-year period.

21 (13.7) A provision specifying that, if the Taxpayer
22 ceases principal operations with the intent to shut down
23 the project in the State permanently during the term of the
24 Agreement, then the entire credit amount awarded to the
25 Taxpayer prior to the date the Taxpayer ceases principal
26 operations shall be returned to the Department and shall be

1 reallocated to the local workforce investment area in which
2 the project was located.

3 (14) Any other performance conditions or contract
4 provisions as the Department determines are appropriate.

5 The Department shall post on its website the terms of each
6 Agreement entered into under this Act on or after the effective
7 date of this amendatory Act of the 97th General Assembly. Such
8 information shall be posted within 10 days after entering into
9 the Agreement and must include the following:

10 (1) the name of the recipient business;

11 (2) the location of the project;

12 (3) the estimated value of the credit;

13 (4) the number of new jobs and, if applicable, retained
14 jobs pledged as a result of the project; and

15 (5) whether or not the project is located in an
16 underserved area.

17 (Source: P.A. 97-2, eff. 5-6-11; 97-749, eff. 7-6-12.)

18 (35 ILCS 10/5-57 new)

19 Sec. 5-57. Supplier diversity goals; reports. Each
20 taxpayer claiming a credit under this Act shall, no later than
21 April 15 of each taxable year for which the taxpayer claims a
22 credit under this Act, submit to the Department of Commerce and
23 Economic Opportunity an annual report containing the
24 information described in subsections (b), (c), (d), and (e) of
25 Section 5-117 of the Public Utilities Act. Those reports shall

1 be submitted in the form and manner required by the Department
2 of Commerce and Economic Opportunity.

3 (35 ILCS 10/5-65)

4 Sec. 5-65. Noncompliance; notice; assessment. If the
5 Director determines that a Taxpayer who has received a Credit
6 under this Act is not complying with the requirements of the
7 Agreement or all of the provisions of this Act, the Director
8 shall provide notice to the Taxpayer of the alleged
9 noncompliance, and allow the Taxpayer a hearing under the
10 provisions of the Illinois Administrative Procedure Act. If,
11 after such notice and any hearing, the Director determines that
12 a noncompliance exists, the Director shall issue to the
13 Department of Revenue notice to that effect, stating the
14 Noncompliance Date. If, during the term of an Agreement, the
15 Taxpayer ceases operations at a project location that is the
16 subject of that Agreement with the intent to terminate
17 operations in the State, the Department and the Department of
18 Revenue shall recapture from the Taxpayer the entire Credit
19 amount awarded under that Agreement prior to the date the
20 taxpayer ceases operations. The Department shall, subject to
21 appropriation, reallocate the recaptured amounts to the local
22 workforce investment area in which the project was located for
23 the purposes of workforce development, expanded opportunities
24 for unemployed persons, and expanded opportunities for women
25 and minorities in the workforce.

1 (Source: P.A. 91-476, eff. 8-11-99.)

2 (35 ILCS 10/5-70)

3 Sec. 5-70. Annual report. On or before July 1 each year,
4 the Committee shall submit a report to the Department on the
5 tax credit program under this Act to the Governor and the
6 General Assembly. The report shall include information on the
7 number of Agreements that were entered into under this Act
8 during the preceding calendar year, a description of the
9 project that is the subject of each Agreement, an update on the
10 status of projects under Agreements entered into before the
11 preceding calendar year, and the sum of the Credits awarded
12 under this Act. A copy of the report shall be delivered to the
13 Governor and to each member of the General Assembly.

14 The report must include, for each Agreement:

15 (1) the original estimates of the value of the Credit
16 and the number of new jobs to be created and, if
17 applicable, the number of retained jobs;

18 (2) any relevant modifications to existing Agreements;

19 (3) a statement of the progress made by each Taxpayer
20 in meeting the terms of the original Agreement;

21 (4) a statement of wages paid to New Employees and, if
22 applicable, retained employees in the State;

23 (5) any information reported under Section 5-57 of this
24 Act; and

25 (6) a copy of the original Agreement.

1 (Source: P.A. 91-476, eff. 8-11-99.)

2 (35 ILCS 10/5-77)

3 Sec. 5-77. Sunset of new Agreements. The Department shall
4 not enter into any new Agreements under the provisions of
5 Section 5-50 of this Act after June 30, 2022 ~~April 30, 2017~~.

6 (Source: P.A. 99-925, eff. 1-20-17.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".