



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3640

by Rep. Ryan Spain

#### SYNOPSIS AS INTRODUCED:

35 ILCS 10/5-5  
35 ILCS 10/5-25  
35 ILCS 10/5-40  
35 ILCS 10/5-77

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that an employee of the Taxpayer who was previously employed in Illinois by the Taxpayer and whose employment was shifted to the project after the Taxpayer entered into the Agreement is not considered a new employee for purposes of the Act. Provides that the Department of Commerce and Economic Opportunity shall not enter into any new EDGE Agreements after December 31, 2021 (currently, April 30, 2017). Removes a requirement that the Department of Commerce and Economic Opportunity shall consider the magnitude of the cost differential between Illinois and the competing state when awarding credits. Makes changes concerning eligibility for the credit. Effective immediately.

LRB100 11262 HLH 21597 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Economic Development for a Growing Economy  
5 Tax Credit Act is amended by changing Sections 5-5, 5-25, 5-40,  
6 and 5-77 as follows:

7 (35 ILCS 10/5-5)

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

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

11 "Applicant" means a Taxpayer that is operating a business  
12 located or that the Taxpayer plans to locate within the State  
13 of Illinois and that is engaged in interstate or intrastate  
14 commerce for the purpose of manufacturing, processing,  
15 assembling, warehousing, or distributing products, conducting  
16 research and development, providing tourism services, or  
17 providing services in interstate commerce, office industries,  
18 or agricultural processing, but excluding retail, retail food,  
19 health, or professional services. "Applicant" does not include  
20 a Taxpayer who closes or substantially reduces an operation at  
21 one location in the State and relocates substantially the same  
22 operation to another location in the State. This does not  
23 prohibit a Taxpayer from expanding its operations at another

1 location in the State, provided that existing operations of a  
2 similar nature located within the State are not closed or  
3 substantially reduced. This also does not prohibit a Taxpayer  
4 from moving its operations from one location in the State to  
5 another location in the State for the purpose of expanding the  
6 operation provided that the Department determines that  
7 expansion cannot reasonably be accommodated within the  
8 municipality in which the business is located, or in the case  
9 of a business located in an incorporated area of the county,  
10 within the county in which the business is located, after  
11 conferring with the chief elected official of the municipality  
12 or county and taking into consideration any evidence offered by  
13 the municipality or county regarding the ability to accommodate  
14 expansion within the municipality or county.

15 "Committee" means the Illinois Business Investment  
16 Committee created under Section 5-25 of this Act within the  
17 Illinois Economic Development Board.

18 "Credit" means the amount agreed to between the Department  
19 and Applicant under this Act, but not to exceed the Incremental  
20 Income Tax attributable to the Applicant's project.

21 "Department" means the Department of Commerce and Economic  
22 Opportunity.

23 "Director" means the Director of Commerce and Economic  
24 Opportunity.

25 "Full-time Employee" means an individual who is employed  
26 for consideration for at least 35 hours each week or who

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

9 "Incremental Income Tax" means the total amount withheld  
10 during the taxable year from the compensation of New Employees  
11 under Article 7 of the Illinois Income Tax Act arising from  
12 employment at a project that is the subject of an Agreement.

13 "New Employee" means:

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

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

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

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

1 Agreement; ~~or~~

2 (3) a child, grandchild, parent, or spouse, other  
3 than a spouse who is legally separated from the  
4 individual, of any individual who has a direct or an  
5 indirect ownership interest of at least 5% in the  
6 profits, capital, or value of the Taxpayer; or ~~or~~

7 (4) an employee of the Taxpayer who was previously  
8 employed in Illinois by the Taxpayer and whose  
9 employment was shifted to the project after the  
10 Taxpayer entered into the Agreement.

11 (c) Notwithstanding paragraph (1) of subsection (b),  
12 an employee may be considered a New Employee under the  
13 Agreement if the employee performs a job that was  
14 previously performed by an employee who was:

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

16 and

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

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

21 (1) the Applicant is in receipt of a letter from  
22 the Department stating an intent to enter into a credit  
23 Agreement;

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

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

3           "Noncompliance Date" means, in the case of a Taxpayer that  
4           is not complying with the requirements of the Agreement or the  
5           provisions of this Act, the day following the last date upon  
6           which the Taxpayer was in compliance with the requirements of  
7           the Agreement and the provisions of this Act, as determined by  
8           the Director, pursuant to Section 5-65.

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

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

15          "Related Member" means a person that, with respect to the  
16          Taxpayer during any portion of the taxable year, is any one of  
17          the following:

18                 (1) An individual stockholder, if the stockholder and  
19                 the members of the stockholder's family (as defined in  
20                 Section 318 of the Internal Revenue Code) own directly,  
21                 indirectly, beneficially, or constructively, in the  
22                 aggregate, at least 50% of the value of the Taxpayer's  
23                 outstanding stock.

24                 (2) A partnership, estate, or trust and any partner or  
25                 beneficiary, if the partnership, estate, or trust, and its  
26                 partners or beneficiaries own directly, indirectly,

1           beneficially, or constructively, in the aggregate, at  
2           least 50% of the profits, capital, stock, or value of the  
3           Taxpayer.

4           (3) A corporation, and any party related to the  
5           corporation in a manner that would require an attribution  
6           of stock from the corporation to the party or from the  
7           party to the corporation under the attribution rules of  
8           Section 318 of the Internal Revenue Code, if the Taxpayer  
9           owns directly, indirectly, beneficially, or constructively  
10          at least 50% of the value of the corporation's outstanding  
11          stock.

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

20          (5) A person to or from whom there is attribution of  
21          stock ownership in accordance with Section 1563(e) of the  
22          Internal Revenue Code, except, for purposes of determining  
23          whether a person is a Related Member under this paragraph,  
24          20% shall be substituted for 5% wherever 5% appears in  
25          Section 1563(e) of the Internal Revenue Code.

26          "Taxpayer" means an individual, corporation, partnership,

1 or other entity that has any Illinois Income Tax liability.

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

3 (35 ILCS 10/5-25)

4 Sec. 5-25. Review of Application.

5 (a) In addition to those duties granted under the Illinois  
6 Economic Development Board Act, the Illinois Economic  
7 Development Board shall form a Business Investment Committee  
8 for the purpose of making recommendations for applications. At  
9 the request of the Board, the Director of Commerce and Economic  
10 Opportunity or his or her designee, the Director of the  
11 Governor's Office of Management and Budget or his or her  
12 designee, the Director of Revenue or his or her designee, the  
13 Director of Employment Security or his or her designee, and an  
14 elected official of the affected locality, such as the chair of  
15 the county board or the mayor, may serve as members of the  
16 Committee to assist with its analysis and deliberations.

17 (b) At the Department's request, the Committee shall  
18 convene, make inquiries, and conduct studies in the manner and  
19 by the methods as it deems desirable, review information with  
20 respect to Applicants, and make recommendations for projects to  
21 benefit the State. In making its recommendation that an  
22 Applicant's application for Credit should or should not be  
23 accepted, which shall occur within a reasonable time frame as  
24 determined by the nature of the application, the Committee  
25 shall determine that all the following conditions exist:



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

6           (2) The Applicant's project is economically sound and  
7 will benefit the people of the State of Illinois by  
8 increasing opportunities for employment and strengthen the  
9 economy of Illinois.

10           (3) (Blank). ~~That, if not for the Credit, the project~~  
11 ~~would not occur in Illinois, which may be demonstrated by~~  
12 ~~any means including, but not limited to, evidence the~~  
13 ~~Applicant has multi-state location options and could~~  
14 ~~reasonably and efficiently locate outside of the State, or~~  
15 ~~demonstration that at least one other state is being~~  
16 ~~considered for the project, or evidence the receipt of the~~  
17 ~~Credit is a major factor in the Applicant's decision and~~  
18 ~~that without the Credit, the Applicant likely would not~~  
19 ~~create new jobs in Illinois, or demonstration that~~  
20 ~~receiving the Credit is essential to the Applicant's~~  
21 ~~decision to create or retain new jobs in the State.~~

22           (4) (Blank). ~~A cost differential is identified, using~~  
23 ~~best available data, in the projected costs for the~~  
24 ~~Applicant's project compared to the costs in the competing~~  
25 ~~state, including the impact of the competing state's~~  
26 ~~incentive programs. The competing state's incentive~~

1 ~~programs shall include state, local, private, and federal~~  
2 ~~funds available.~~

3 (5) The political subdivisions affected by the project  
4 have committed local incentives with respect to the  
5 project, considering local ability to assist.

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

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

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

12 (35 ILCS 10/5-40)

13 Sec. 5-40. Determination of Amount of the Credit. In  
14 determining the amount of the Credit that should be awarded,  
15 the Committee shall provide guidance on, and the Department  
16 shall take into consideration, the following factors:

17 (1) The number and location of jobs created and  
18 retained in relation to the economy of the county where the  
19 projected investment is to occur.

20 (2) The potential impact on the economy of Illinois.

21 (3) (Blank). ~~The magnitude of the cost differential~~  
22 ~~between Illinois and the competing state.~~

23 (4) The incremental payroll attributable to the  
24 project.

25 (5) The capital investment attributable to the

1 project.

2 (6) The amount of the average wage and benefits paid by  
3 the Applicant in relation to the wage and benefits of the  
4 area of the project.

5 (7) The costs to Illinois and the affected political  
6 subdivisions with respect to the project.

7 (8) The financial assistance that is otherwise  
8 provided by Illinois and the affected political  
9 subdivisions.

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

11 (35 ILCS 10/5-77)

12 Sec. 5-77. Sunset of new Agreements. The Department shall  
13 not enter into any new Agreements under the provisions of  
14 Section 5-50 of this Act after December 31, 2021 ~~April 30,~~  
15 ~~2017~~.

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

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law.