



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5737

by Rep. Jerry Lee Long

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/227 new

Amends the Illinois Business Use Incentives for Large-Scale Development Act. Provides that the Department of Commerce and Economic Opportunity may enter into a financing agreement with an eligible industry with respect to an economic development project. Provides that those eligible industries are entitled to a credit against their Illinois income taxes in an amount not to exceed 5% of the gross wages paid in one year by an eligible industry to all eligible employees in new jobs. Provides that an "eligible industry" is a business located in the State which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, health or professional services. Effective immediately.

LRB100 19656 HLH 34929 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 1. Short title. This Act may be cited as the
5 Illinois Business Use Incentives for Large-Scale Development
6 Act.

7 Section 5. Definitions. As used in this Act:

8 "Assessment" means an amount of up to 5% of the gross wages
9 paid in one year by an eligible industry to all eligible
10 employees in new jobs.

11 "Credit" means the amount agreed to between the Department
12 and an eligible industry, but not to exceed the assessment
13 attributable to the eligible industry's project.

14 "Department" means the Department of Commerce and Economic
15 Opportunity.

16 "Economic development project" means:

17 (1) the acquisition of any real property by the
18 Department, the eligible industry, or its affiliate; or

19 (2) the fee ownership of real property by the eligible
20 industry or its affiliate; and

21 (3) for both paragraphs (1) and (2), "economic
22 development project" also means the development of the real
23 property including construction, installation, or

1 equipping of a project, including fixtures and equipment,
2 and facilities necessary or desirable for improvement of
3 the real property, including surveys; site tests and
4 inspections; subsurface site work; excavation; removal of
5 structures, roadways, cemeteries and other surface
6 obstructions; filling, grading and provision of drainage,
7 storm water retention, installation of utilities such as
8 water, sewer, sewage treatment, gas, electricity,
9 communications and similar facilities; off-site
10 construction of utility extensions to the boundaries of the
11 real property; and the acquisition, installation, or
12 equipping of facilities on the real property, for use and
13 occupancy by the eligible industry or its affiliates.

14 "Eligible employee" means a person employed on a full-time
15 basis in a new job at the economic development project
16 averaging at least 35 hours per week who was not employed by
17 the eligible industry or a related taxpayer in this State at
18 any time during the 12-month period immediately prior to being
19 employed at the economic development project.

20 "Eligible industry" means a business located in the State
21 which is engaged in interstate or intrastate commerce for the
22 purpose of manufacturing, processing, or assembling products,
23 conducting research and development, or providing services in
24 interstate commerce, office industries, or agricultural
25 processing, but excluding retail, health or professional
26 services. "Eligible industry" does not include a business that

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

20 (1) pledge to invest a minimum of \$10,000,000 in an
21 economic development project; and

22 (2) create a minimum of 100 new jobs for eligible
23 employees at the economic development project or a minimum
24 of 200 new jobs if the economic development project is an
25 office industry located within a distressed community, as
26 determined by the Department.

1 "New job" means a job in a new or expanding eligible
2 industry not including jobs of recalled workers, replacement
3 jobs, or jobs that formerly existed in the eligible industry in
4 the State.

5 "Obligation" means the revenue bonds or notes authorized to
6 be issued by the Department pursuant to this Act.

7 "Office industry" means a regional, national, or
8 international headquarters, a telecommunications operation, a
9 computer operation, an insurance company, or a credit card
10 billing and processing center.

11 Section 10. Powers of the Authority.

12 (a) The Department shall have all the powers necessary to
13 carry out and effectuate the purposes and provisions of this
14 Act, including, but not limited to, the power to:

15 (1) provide and finance economic development projects
16 pursuant to the provisions of this Act, and cooperate with
17 eligible industries in order to promote, foster and support
18 economic development within the State;

19 (2) conduct hearings and inquiries, in the manner and
20 by the methods as it deems desirable, for the purpose of
21 gathering information with respect to eligible industries
22 and economic development projects, and for the purpose of
23 making any determinations necessary or desirable in the
24 furtherance of this Act; and

25 (3) negotiate the terms of, including the amount of

1 project costs, and enter into financing agreements with
2 eligible industries, and in connection therewith to
3 acquire, convey, sell, mortgage, finance or otherwise
4 dispose of any property, real or personal, loan bond
5 proceeds, and permit the use of assessments, in connection
6 with an economic development project, and to pay, or cause
7 to be paid, in accordance with the provisions of a
8 financing agreement, the program costs of an economic
9 development project from any funds available the project.

10 (b) Obligations issued by the Department pursuant to this
11 Act shall not constitute an indebtedness or liability of the
12 State within the meaning of any state constitutional provision
13 or statutory limitation, shall not constitute a pledge of the
14 faith and credit of the State, shall not be guaranteed by the
15 credit of the State, and unless approved by a concurrent
16 resolution of the General Assembly, no obligation in default
17 shall be paid by the State.

18 Section 15. Establishment of procedures to determine
19 eligible industries.

20 (a) The Department shall establish the procedures and
21 standards for the determination and approval of eligible
22 industries and their economic development projects by the
23 adoption of rules in accordance with the Illinois
24 Administrative Procedure Act. Those rules shall mandate the
25 evaluation of the credit worthiness of eligible industries, the

1 number of new jobs to be provided by an economic development
2 project to residents of the State, and the likelihood of the
3 economic success of the economic development project. No
4 economic development project which will result in the
5 replacement of facilities existing in the State shall be
6 approved by the Department.

7 (b) With respect to each eligible industry making an
8 application to the Department for incentives, and with respect
9 to the economic development project described in the
10 application, the Department shall request relevant
11 information, documentation, and other materials and make
12 inquiries of the applicant as necessary or appropriate. After a
13 diligent review of relevant materials and completion of its
14 inquiries, the Department may by resolution designate an
15 economic development project.

16 Section 20. Financing agreement.

17 (a) The Department may enter into a financing agreement
18 with any eligible industry with respect to an economic
19 development project.

20 (b) The financing agreement shall provide in substance
21 that:

22 (1) it may be assigned by the eligible industry only
23 upon the prior written consent of the Department; and

24 (2) upon default by the eligible industry in any
25 obligations under the financing agreement or other

1 documents evidencing, securing, or related to the eligible
2 industry's obligations, the Department shall have the
3 right, at its option, to:

4 (A) declare the financing agreement or other such
5 documents in default;

6 (B) accelerate and declare the total of all such
7 payments due by the eligible industry and sell the
8 economic development project at public, private, or
9 judicial sale;

10 (C) pursue any remedy provided under the financing
11 agreement or other such documents;

12 (D) be entitled to the appointment of a receiver by
13 the circuit court wherein any part of the economic
14 development project is located; and

15 (E) pursue any other applicable legal remedy.

16 Section 25. Credit agreement; conditions. After receipt of
17 an application, for taxable years ending on or after December
18 31, 2019 and ending on or before December 31, 2024, the
19 Department may enter into an agreement with an eligible
20 industry for a credit pursuant to this Act against the taxes
21 imposed by subsections (a) and (b) of Section 201 if the
22 Department determines that all of the following conditions
23 exist:

24 (1) the applicant's project will create new jobs that
25 were not jobs previously performed by employees of the

1 applicant in the State;

2 (2) the applicant's project is economically sound and
3 will benefit the people of the State by increasing
4 opportunities for employment and strengthening the economy
5 of the State;

6 (3) significant local incentives with respect to the
7 project or eligible industry have been committed, which
8 incentives may consist of either or both of the following:

9 (A) cash or in-kind incentives derived from any
10 non-State source, including incentives provided by the
11 affected political subdivisions, private industry,
12 local chambers of commerce, or similar organizations;
13 and

14 (B) relief from local taxes, in either case as
15 acceptable to the Department;

16 (4) receiving the credit is a major factor in the
17 applicant's decision to go forward with the project and not
18 receiving the credit will result in the applicant not
19 creating new jobs in the State; and

20 (5) awarding the credit will result in an overall
21 positive fiscal impact to the State.

22 Section 30. Credit factors. In determining the amount of
23 the credit that should be awarded, the Department shall take
24 into consideration the following factors:

25 (1) the economy of the county where the projected

1 investment is to occur;

2 (2) the potential impact on the economy of the State;

3 (3) the payroll attributable to the project;

4 (4) the capital investment attributable to the
5 project;

6 (5) whether the amount the average wage paid by the
7 applicant exceeds the average wage paid within the county
8 in which the project will be located;

9 (6) the costs to the and the affected units of local
10 government with respect to the project; and

11 (7) the financial assistance that is otherwise
12 provided by the State and the affected units of local
13 government.

14 Section 35. Department authority to determine projects.
15 The Department shall determine the amount and duration of a
16 project and its associated assessments, credits and refunds.
17 The credit amount may not exceed the estimated assessment.
18 Assessments made for any project may not exceed a period of 15
19 years.

20 Section 40. Agreement contents. An agreement between the
21 Department and an eligible industry shall include all of the
22 following:

23 (1) a detailed description of the project that is the
24 subject of the agreement;

1 (2) a specific method for determining the number of new
2 employees employed during a taxable year who are performing
3 jobs not previously performed by an employee of the
4 eligible industry;

5 (3) a requirement that the taxpayer shall annually
6 report to the Department the number of new employees who
7 are performing jobs not previously performed by an
8 employee, the total amount of salaries and wages paid to
9 eligible employees in new jobs, and any other information
10 the Department needs to perform its duties pursuant to this
11 Act;

12 (4) a requirement that the taxpayer shall provide
13 written notification to the Department not more than 30
14 days after the taxpayer makes or receives a proposal that
15 would transfer the taxpayer's State tax liability
16 obligations to a successor taxpayer;

17 (5) any other performance conditions that the
18 Department determines are appropriate; and

19 (6) a requirement that the taxpayer shall maintain
20 operations at the project location for at least a period of
21 time equal to the number of years for which credits are
22 authorized in the financing agreement with the Department.

23 Section 45. Noncompliance by eligible industry;
24 determination; penalty. If the Department determines that an
25 eligible industry that has received a credit pursuant to this

1 Act is not complying with the requirements of the credit
2 agreement or all of the provisions of this Act, the Department
3 shall, after giving the industry an opportunity to explain the
4 noncompliance, notify the Department of Revenue of the
5 noncompliance and request a penalty. The Department shall state
6 the amount of the penalty, which may not exceed the sum of any
7 previously allowed credit awards pursuant to this Act.

8 Section 50. Evaluation of program. On an annual basis, the
9 Department shall provide for an evaluation of the program. The
10 evaluation shall include an assessment of the effectiveness of
11 the program in creating new jobs in the State and of the
12 revenue impact of the program. The Department shall submit a
13 report on the evaluation to the Governor and the General
14 Assembly no later than July 1, 2023.

15 Section 55. Program costs; how paid; assessments. An
16 agreement between the Department and an eligible industry shall
17 provide that all or part of program costs are to be met by
18 receipt of assessments. Assessments shall be based upon wages
19 paid to eligible employees. If business or employment
20 conditions cause the amount of the assessment to be less than
21 the amount projected in the agreement for any time period, then
22 the employer shall pay to the Department the amount of such
23 difference, and a portion of withholding tax paid by the
24 employer pursuant to Article 7 of the Illinois Income Tax Act

1 may be credited to the Department by the amount of such
2 difference. The employer shall remit the amount of the
3 assessment to the Department. When all program costs, including
4 the principal of, premium, if any, and interest on the
5 obligation have been paid, the employer credits shall cease.

6 Section 60. Special fund; purposes; certification by
7 employer.

8 (a) The Department shall establish a special fund for and
9 in the name of each project. All moneys received by the
10 Department in respect of the project and required by the
11 agreement to be used to pay program costs for the project shall
12 be deposited into the special fund. Amounts held in the special
13 fund may be used and disbursed by the Department only to pay
14 program costs for the project.

15 (b) Any disbursement in respect of a project pursuant to
16 the provisions of this Act, and the special fund into which
17 moneys received in respect of the project are paid, may be
18 irrevocably pledged by the Department for the payment of the
19 principal of, premium, if any, and interest on obligations
20 issued by the Department to finance or refinance, in whole or
21 in part, the project.

22 (c) The employer shall certify to the Department of Revenue
23 that the assessment is in accordance with an agreement and
24 shall provide other information the Department of Revenue may
25 require.

1 (d) If an agreement provides that all or part of program
2 costs are to be met by receipt of assessments, the provisions
3 of this Section shall also apply to any successor to the
4 original employer until such time as the principal and interest
5 on the obligation have been paid.

6 Section 65. Obligations issued by the Department. To
7 provide funds for the present payment of the costs of economic
8 development projects, the Department may borrow money and issue
9 and sell obligations payable from a sufficient portion of the
10 future receipts of payments authorized by the agreement. The
11 receipts shall be pledged to the payment of principal of and
12 interest on the obligations. Obligations may be sold at public
13 sale or at private sale at par, premium, or discount of not
14 less than 95% of the par value thereof, at the discretion of
15 the Department, and may bear interest at such rate or rates as
16 the Department shall determine, notwithstanding the provisions
17 of law to the contrary. Obligations may be issued with respect
18 to a single project or multiple projects and may contain terms
19 or conditions as the Department may provide by resolution
20 authorizing the issuance of the obligations.

21 Section 900. The Illinois Income Tax Act is amended by
22 adding Section 227 as follows:

23 (35 ILCS 5/227 new)

1 Sec. 227. Illinois Business Use Incentives for Large-Scale
2 Development Act. For taxable years ending on or after December
3 31, 2019 and ending on or before December 31, 2029, a taxpayer
4 that is awarded a credit under the Illinois Business Use
5 Incentives for Large-Scale Development Act is entitled to a
6 credit as provided in that Act.

7 For partners, shareholders of Subchapter S corporations,
8 and owners of limited liability companies, if the liability
9 company is treated as a partnership for purposes of federal and
10 State income taxation, there shall be allowed a credit under
11 this Section to be determined in accordance with the
12 determination of income and distributive share of income under
13 Sections 702 and 704 and Subchapter S of the Internal Revenue
14 Code.

15 Section 999. Effective date. This Act takes effect upon
16 becoming law.