

1 AMENDMENT TO HOUSE BILL 235

2 AMENDMENT NO. _____. Amend House Bill 235, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the
6 Corporate Accountability for Tax Expenditures Act.

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

8 "Base years" means the first 2 complete calendar years
9 following the effective date of a recipient receiving
10 development assistance.

11 "Date of assistance" means the commencement date of the
12 assistance agreement, which date triggers the period during
13 which the recipient is obligated to create or retain jobs and
14 continue operations at the specific project site.

15 "Default" means that a recipient has not achieved its job
16 creation, job retention, or wage or benefit goals, as
17 applicable, during the prescribed period therefor.

18 "Department" means, unless otherwise noted, the
19 Department of Commerce and Community Affairs or any successor
20 agency.

21 "Development assistance" means (1) tax credits and tax
22 exemptions (other than given under tax increment financing)

1 given as an incentive to a recipient business organization
2 pursuant to a certification or designation made by the
3 Department under the Economic Development for a Growing
4 Economy Tax Credit Act and the Illinois Enterprise Zone Act,
5 including the High Impact Business program, (2) grants or
6 loans given to a recipient as an incentive to a business
7 organization pursuant to the Large Business Development
8 Program, the Business Development Public Infrastructure
9 Program, or the Industrial Training Program, (3) the State
10 Treasurer's Economic Program Loans, (4) the Illinois
11 Department of Transportation Economic Development Program,
12 and (5) all successor and subsequent programs and tax credits
13 designed to promote large business relocations and
14 expansions. "Development assistance" does not include tax
15 increment financing, participation loans, or financial
16 transactions through statutorily authorized financial
17 intermediaries in support of small business loans and
18 investments or given in connection with the development of
19 affordable housing.

20 "Full-time, permanent job" means either: (1) the
21 definition therefor in the legislation authorizing the
22 programs described in the definition of development
23 assistance in the Act or (2) if there is no such definition,
24 then as defined in administrative rules implementing such
25 legislation, provided the administrative rules were in place
26 prior to the effective date of this Act. On and after the
27 effective date of this Act, if there is no definition of
28 "full-time, permanent job" in either the legislation
29 authorizing a program that constitutes economic development
30 assistance under this Act or in any administrative rule
31 implementing such legislation that was in place prior to the
32 effective date of this Act, then "full-time, permanent job"
33 means a job in which the new employee works for the recipient
34 at a rate of at least 35 hours per week.

1 "Granting body" means the Department, any State
2 department or agency that provides development assistance
3 that has reporting requirements under this Act, and any
4 successor agencies to any of the preceding.

5 "New employee" means either: (1) the definition therefor
6 in the legislation authorizing the programs described in the
7 definition of development assistance in the Act or (2) if
8 there is no such definition, then as defined in
9 administrative rules implementing such legislation, provided
10 the administrative rules were in place prior to the effective
11 date of this Act. On and after the effective date of this
12 Act, if there is no definition of "new employee" in either
13 the legislation authorizing a program that constitutes
14 economic development assistance under this Act nor in any
15 administrative rule implementing such legislation that was in
16 place prior to the effective date of this Act, then "new
17 employee" means a full-time, permanent employee who
18 represents a net increase in the number of the recipient's
19 employees statewide. "New employee" includes an employee who
20 previously filled a new employee position with the recipient
21 who was rehired or called back from a layoff that occurs
22 during or following the base years.

23 The term "New Employee" does not include any of the
24 following:

25 (1) An employee of the recipient who performs a job
26 that was previously performed by another employee, if
27 that job existed for at least 6 months before hiring the
28 employee.

29 (2) A child, grandchild, parent, or spouse, other
30 than a spouse who is legally separated from the
31 individual, of any individual who has a direct or
32 indirect ownership interest of at least 5% in the
33 profits, capital, or value of any member of the
34 recipient.

1 "Part-time job" means either: (1) the definition therefor
2 in the legislation authorizing the programs described in the
3 definition of development assistance in the Act or (2) if
4 there is no such definition, then as defined in
5 administrative rules implementing such legislation, provided
6 the administrative rules were in place prior to the effective
7 date of this Act. On and after the effective date of this
8 Act, if there is no definition of "part-time job" in either
9 the legislation authorizing a program that constitutes
10 economic development assistance under this Act or in any
11 administrative rule implementing such legislation that was in
12 place prior to the effective date of this Act, then
13 "part-time job" means a job in which the new employee works
14 for the recipient at a rate of less than 35 hours per week.

15 "Permanent job" means either: (1) the definition therefor
16 in the legislation authorizing the programs described in the
17 definition of development assistance in the Act or (2) if
18 there is no such definition, then as defined in
19 administrative rules implementing such legislation, provided
20 the administrative rules were in place prior to the effective
21 date of this Act. On and after the effective date of this
22 Act, if there is no definition of "permanent job" in either
23 the legislation authorizing a program that constitutes
24 economic development assistance under this Act or in any
25 administrative rule implementing such legislation that was in
26 place prior to the effective date of this Act, then
27 "permanent job" means a job in which a new employee works for
28 the recipient, not as an independent contractor or on a
29 consulting basis, at a rate of at least 35 hours per week
30 with the intention that such employment shall continue and
31 that the employee will receive all health insurance, pension,
32 profit sharing, and other benefits offered to other
33 full-time, permanent employees.

34 "Recipient" means any business that receives economic

1 development assistance. A business is any corporation,
2 limited liability company, partnership, joint venture,
3 association, sole proprietorship, or other legally recognized
4 entity.

5 "Retained employee" means either: (1) the definition
6 therefor in the legislation authorizing the programs
7 described in the definition of development assistance in the
8 Act or (2) if there is no such definition, then as defined in
9 administrative rules implementing such legislation, provided
10 the administrative rules were in place prior to the effective
11 date of this Act. On and after the effective date of this
12 Act, if there is no definition of "retained employee" in
13 either the legislation authorizing a program that constitutes
14 economic development assistance under this Act or in any
15 administrative rule implementing such legislation that was in
16 place prior to the effective date of this Act, then "retained
17 employee" means any employee defined as having a full-time or
18 full-time equivalent job preserved at a specific facility or
19 site, the continuance of which is threatened by a specific
20 and demonstrable threat, which shall be specified in the
21 application for development assistance.

22 "Specific project site" means that distinct operational
23 unit to which any development assistance is applied.

24 "Temporary job" means either: (1) the definition therefor
25 in the legislation authorizing the programs described in the
26 definition of development assistance in the Act or (2) if
27 there is no such definition, then as defined in
28 administrative rules implementing such legislation, provided
29 the administrative rules were in place prior to the effective
30 date of this Act. On and after the effective date of this
31 Act, if there is no definition of "temporary job" in either
32 the legislation authorizing a program that constitutes
33 economic development assistance under this Act or in any
34 administrative rule implementing such legislation that was in

1 place prior to the effective date of this Act, then
2 "temporary job" means a job in which the new employee is
3 hired for a specific duration of time or season.

4 "Value of assistance" means the face value of any form of
5 development assistance.

6 Section 10. Unified Economic Development Budget.

7 (a) For each State fiscal year ending on or after June
8 30, 2005, the Department shall submit an annual Unified
9 Economic Development Budget to the General Assembly. The
10 Unified Economic Development Budget shall be due within 3
11 months after the end of the fiscal year, and shall present
12 all types of development assistance granted during the fiscal
13 year, including:

14 (1) The aggregate amount of uncollected or diverted
15 State tax revenues resulting from each type of
16 development assistance provided in the tax statutes, as
17 reported to the Department of Revenue on tax returns
18 filed during the fiscal year.

19 (2) All State on-budget development assistance.

20 (b) All data contained in the Unified Economic
21 Development Budget presented to the General Assembly shall be
22 fully subject to the Freedom of Information Act.

23 (c) The Department of Revenue shall submit a report of
24 the amounts in subdivision (a)(1) of this Section to the
25 Department, which may append such report to the Unified
26 Economic Development Budget rather than separately reporting
27 such amounts.

28 Section 15. Standardized applications for State on-budget
29 development assistance.

30 (a) All applications utilized by the Department or any
31 other State granting body regarding requests for development
32 assistance shall contain, at a minimum:

1 (1) An application tracking number that is specific
2 to both the State granting agency and to each
3 application.

4 (2) The name, street and mailing addresses, phone
5 number, and chief officer of the granting body.

6 (3) The name, street and mailing addresses, phone
7 number, 4-digit SIC number, and chief officer of the
8 applicant at the specific project site for which
9 development assistance is sought.

10 (4) The applicant's total number of employees at the
11 specific project site on the date of the application,
12 broken down by full-time, permanent, part-time, and
13 temporary.

14 (5) The kind of development assistance and value of
15 assistance being applied for.

16 (6) The number of jobs to be created and retained or
17 both created and retained by the development assistance,
18 broken down by full-time, permanent, part-time, and
19 temporary.

20 (7) A detailed list of the occupation or job
21 classifications and number of new or retained employees
22 to be hired in full-time job positions, a schedule of
23 anticipated starting dates of the new hires and the
24 average wage by occupation or job classification and
25 total payroll to be created as a result of the
26 development assistance.

27 (8) A list of all other forms of development
28 assistance the applicant is seeking for the specific
29 project site and the name of each State granting body
30 from which that development assistance is being sought.

31 (9) A narrative, if necessary, describing why the
32 development assistance is needed and how the applicant's
33 use of the development assistance may reduce unemployment
34 at any site in Illinois.

1 (10) Individual certifications by the chief officers
2 of the applicant and the State granting body as to the
3 accuracy of the information contained in the application,
4 under penalty of perjury.

5 (b) Every State granting body either shall complete, or
6 shall require the applicant to complete, an application form
7 that meets the minimum requirements as prescribed in this
8 Section each time an applicant applies for development
9 assistance covered by this Act.

10 Section 20. State on-budget development assistance
11 disclosure.

12 (a) Beginning February 1, 2005 and each year thereafter,
13 every State granting body in the State shall submit to the
14 Department copies of all application forms that meet the
15 requirements referenced in Section 15 of this Act for
16 development assistance that it approved in the previous
17 calendar year. Upon each form, the granting body shall
18 designate the date on which assistance will commence.

19 (b) For each development assistance application that was
20 approved, and for which the date of assistance has occurred
21 in a reporting year, each recipient shall submit to the
22 Department a progress report that shall include, but not
23 limited to, the following:

24 (1) The application tracking number.

25 (2) The name, street and mailing addresses, phone
26 number, and chief officer of the granting body.

27 (3) The name, street and mailing addresses, phone
28 number, 4-digit SIC number, and chief officer of the
29 applicant at the specific project site for which the
30 development assistance was approved.

31 (4) The kind of development assistance program and
32 value of assistance that was approved.

33 (5) The applicant's total level of employment at the

1 specific project site on the date of the application and
2 the applicant's total level of employment at the specific
3 project site on the date of the report, broken down by
4 full-time, permanent, part-time, and temporary, and a
5 computation of the gain or loss in each category.

6 (6) The number of new and retained jobs the
7 applicant stated in its development assistance agreement,
8 if any, if not, then in its application, would be created
9 by the development assistance broken down by full-time,
10 permanent, part-time, and temporary.

11 (7) A declaration of whether the recipient is
12 satisfying all job creation and retention or other
13 economic development requirements the recipient committed
14 to when receiving development assistance covered by this
15 Act.

16 (8) A detailed list of the occupation or job
17 classifications and number of new or retained employees
18 to be hired in full-time job positions, a schedule of
19 anticipated starting dates of the new hires and the
20 average wage by occupation or job classification and
21 total payroll to be created as a result of the
22 development assistance.

23 (9) A narrative, if necessary, describing how the
24 recipient's use of the development assistance during the
25 reporting year has reduced unemployment at any site in
26 Illinois.

27 (10) Signed individual certifications by the chief
28 officer of the applicant as to the accuracy of the
29 progress report, under penalty of perjury.

30 (c) The State granting body and the Department, or a
31 successor agency, shall have full investigative authority to
32 verify the applicant's progress report data, including but
33 not limited to inspection of the specific project site and
34 analysis of tax and payroll records.

1 (d) By June 1, 2005 and by June 1 of each year
2 thereafter, the Department shall compile and publish all data
3 in all of the development assistance progress reports in both
4 written and electronic form.

5 (e) Every aspect of all approved development assistance
6 applications, progress reports, and compilations of
7 applications and progress reports shall be fully subject to
8 the Freedom of Information Act.

9 (f) If a recipient of development assistance fails to
10 comply with subsections (a) and (b) of this Section, the
11 Department shall, within 20 working days after the reporting
12 submittal deadlines set forth in (i) the legislation
13 authorizing, (ii) the administrative rules implementing, or
14 (iii) specific provisions in development assistance
15 agreements pertaining to the development assistance programs,
16 suspend within 33 working days any current development
17 assistance to the recipient under its control, and shall be
18 prohibited from completing any current or providing any
19 future development assistance until it receives proof that
20 the recipient has come into compliance with the requirements
21 of subsection (a) and (b) of this Section.

22 Section 25. Recapture.

23 (a) All recipients of development assistance must execute
24 agreements that contain, at a minimum, the following
25 recapture provisions:

26 (1) The recipient must (i) make the level of capital
27 investment in the economic development project specified
28 in the development assistance agreement; (ii) create or
29 retain, or both, the requisite number of jobs, paying not
30 less than specified wages for the created and retained
31 jobs, within and for the duration of the time period
32 specified in the legislation authorizing, or the
33 administrative rules implementing, the development

1 assistance programs and the development assistance
2 agreement.

3 (2) If the recipient fails to create or retain the
4 requisite number of jobs within and for the time period
5 specified, in the legislation authorizing, or the
6 administrative rules implementing, the development
7 assistance programs and the development assistance
8 agreement, the recipient shall be deemed to no longer
9 qualify for the State economic assistance and the
10 applicable recapture provisions shall take effect.

11 (3) If the recipient receives State economic
12 assistance in the form of a High Impact Business
13 designation pursuant to Section 5.5 of the Illinois
14 Enterprise Zone Act and the business receives the benefit
15 of the exemption authorized under Section 51 of the
16 Retailers' Occupation Tax Act (for the sale of building
17 materials incorporated into a High Impact Business
18 location) and the recipient fails to create or retain the
19 requisite number of jobs, as determined by the
20 legislation authorizing the development assistance
21 programs or the administrative rules implementing such
22 legislation, or both, within the requisite period of
23 time, the recipient shall be required to pay to the State
24 the full amount of the State tax exemption that it
25 received as a result of the High Impact Business
26 designation.

27 (4) If the recipient receives a grant or loan
28 pursuant to the Large Business Development Program, the
29 Business Development Public Infrastructure Program, or
30 the Industrial Training Program and the recipient fails
31 to create or retain the requisite number of jobs for the
32 requisite time period, as provided in the legislation
33 authorizing the development assistance programs or the
34 administrative rules implementing such legislation, or

1 both, or in the development assistance agreement, the
2 recipient shall be required to repay to the State a pro
3 rata amount of the grant; that amount shall reflect the
4 percentage of the deficiency between the requisite number
5 of jobs to be created or retained by the recipient and
6 the actual number of such jobs in existence as of the
7 date the Department determines the recipient is in breach
8 of the job creation or retention covenants contained in
9 the development assistance agreement. If the recipient of
10 development assistance under the Large Business
11 Development Program, the Business Development Public
12 Infrastructure Program, or the Industrial Training
13 Program ceases operations at the specific project site,
14 during the 5-year period commencing on the date of
15 assistance, the recipient shall be required to repay the
16 entire amount of the grant or to accelerate repayment of
17 the loan back to the State.

18 (5) If the recipient receives a tax credit under the
19 Economic Development for a Growing Economy tax credit
20 program, the development assistance agreement must
21 provide that (i) if the number of new or retained
22 employees falls below the requisite number set forth in
23 the development assistance agreement, the allowance of
24 the credit shall be automatically suspended until the
25 number of new and retained employees equals or exceeds
26 the requisite number in the development assistance
27 agreement; (ii) if the recipient discontinues operations
28 at the specific project site during the first 5 years of
29 the 10-year term of the development assistance agreement,
30 the recipient shall forfeit all credits taken by the
31 recipient during such 5-year period; and (iii) in the
32 event of a revocation or suspension of the credit, the
33 Department shall contact the Director of Revenue to
34 initiate proceedings against the recipient to recover

1 wrongfully exempted Illinois State income taxes and the
2 recipient shall promptly repay to the Department of
3 Revenue any wrongfully exempted Illinois State income
4 taxes. The forfeited amount of credits shall be deemed
5 assessed on the date the Department contacts the
6 Department of Revenue and the recipient shall promptly
7 repay to the Department of Revenue any wrongfully
8 exempted Illinois State income taxes.

9 (b) The Director may elect to waive enforcement of any
10 contractual right arising out of the development assistance
11 agreement required by this Act based on a finding that the
12 waiver is necessary to avert an imminent, demonstrable, and
13 material hardship to the recipient that may result in such
14 recipient's insolvency or discharge of workers. The
15 recipient's request for waiver and the justification therefor
16 must be published in electronic form by the Department for a
17 period of 30 days before the Director may take action on the
18 waiver request. If a waiver is granted, the recipient must
19 agree to a contractual modification, including recapture
20 provisions, to the development assistance agreement. The
21 existence of any waiver granted pursuant to this subsection
22 (c), the date of the granting of such waiver, and a brief
23 summary of the reasons supporting the granting of such waiver
24 shall be disclosed consistent with the provisions of Section
25 25 of this Act.

26 (c) Beginning June 1, 2004, the Department shall
27 annually compile a report on the outcomes and effectiveness
28 of recapture provisions by program, including but not limited
29 to: (i) the total number of companies that receive
30 development assistance as defined in this Act; (ii) the total
31 number of recipients in violation of development agreements
32 with the Department; (iii) the total number of completed
33 recapture efforts; (iv) the total number of recapture efforts
34 initiated; and (v) the number of waivers granted. This report

1 shall be disclosed consistent with the provisions of Section
2 20 of this Act.

3 (d) For the purposes of this Act, recapture provisions do
4 not include the Illinois Department of Transportation
5 Economic Development Program or any successor programs as
6 described in the term "development assistance" in Section 5
7 of this Act.

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