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LRB096 11014 DRJ 39053 a

1 AMENDMENT TO SENATE BILL 1578

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1578 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Small  
5 Business Job Creation Tax Credit Act.

6 Section 5. Findings and purpose. The General Assembly finds  
7 that the Illinois economy is mired in one of the worst economic  
8 recessions it has ever suffered. Small businesses in particular  
9 have been hit hard by the economy, resulting in levels of high  
10 unemployment throughout the State. In order to reverse the  
11 trend of high unemployment and to help spur the economy to  
12 recovery, it is necessary to assist and encourage small  
13 businesses in the hiring of new employees.

14 Section 10. Definitions. In this Act:

15 "Applicant" means a person that is operating a business

1 located within the State of Illinois that is engaged in  
2 interstate or intrastate commerce and has no more than 50  
3 full-time employees, without regard to the location of  
4 employment of such employees at the beginning of the incentive  
5 period. In the case of any person that is a member of a unitary  
6 business group within the meaning of subdivision (a)(27) of  
7 Section 1501 of the Illinois Income Tax Act, "applicant" refers  
8 to the unitary business group.

9 "Certificate" means the tax credit certificate issued by  
10 the Department under Section 35 of this Act.

11 "Certificate of eligibility" means the certificate issued  
12 by the Department under Section 20 of this Act.

13 "Credit" means the amount awarded by the Department to an  
14 applicant by issuance of a certificate under Section 35 of this  
15 Act for each new full-time equivalent employee hired or job  
16 created.

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

19 "Director" means the Director of the Department.

20 "Full-time employee" means an individual who is employed  
21 for a basic wage for at least 35 hours each week or who renders  
22 any other standard of service generally accepted by industry  
23 custom or practice as full-time employment.

24 "Incentive period" means the period beginning July 1, 2010  
25 and ending on June 30, 2011.

26 "Basic wage" means compensation for employment that is no

1 less than \$13.75 per hour or the equivalent salary for a new  
2 employee.

3 "New employee" means a full-time employee first employed by  
4 an applicant within the incentive period whose hire results in  
5 a net increase in the applicant's full-time Illinois employees  
6 and who is receiving a basic wage as compensation. The term  
7 "new employee" does not include:

8 (1) a person who was previously employed in Illinois by  
9 the applicant or a related member prior to the onset of the  
10 incentive period; or

11 (2) any individual who has a direct or indirect  
12 ownership interest of at least 5% in the profits, capital,  
13 or value of the applicant or a related member.

14 "Noncompliance date" means, in the case of an applicant  
15 that is not complying with the requirements of the provisions  
16 of this Act, the day following the last date upon which the  
17 taxpayer was in compliance with the requirements of the  
18 provisions of this Act, as determined by the Director, pursuant  
19 to Section 45 of this Act.

20 "Related member" means a person that, with respect to the  
21 applicant during any portion of the incentive period, is any  
22 one of the following,

23 (1) An individual, if the individual and the members of  
24 the individual's family (as defined in Section 318 of the  
25 Internal Revenue Code) own directly, indirectly,  
26 beneficially, or constructively, in the aggregate, at

1 least 50% of the value of the outstanding profits, capital,  
2 stock, or other ownership interest in the applicant.

3 (2) A partnership, estate, or trust and any partner or  
4 beneficiary, if the partnership, estate, or trust and its  
5 partners or beneficiaries own directly, indirectly,  
6 beneficially, or constructively, in the aggregate, at  
7 least 50% of the profits, capital, stock, or other  
8 ownership interest in the applicant.

9 (3) A corporation, and any party related to the  
10 corporation in a manner that would require an attribution  
11 of stock from the corporation under the attribution rules  
12 of Section 318 of the Internal Revenue Code, if the  
13 applicant and any other related member own, in the  
14 aggregate, directly, indirectly, beneficially, or  
15 constructively, at least 50% of the value of the  
16 corporation's outstanding stock.

17 (4) A corporation and any party related to that  
18 corporation in a manner that would require an attribution  
19 of stock from the corporation to the party or from the  
20 party to the corporation under the attribution rules of  
21 Section 318 of the Internal Revenue Code, if the  
22 corporation and all such related parties own, in the  
23 aggregate, at least 50% of the profits, capital, stock, or  
24 other ownership interest in the applicant.

25 (5) A person to or from whom there is attribution of  
26 stock ownership in accordance with Section 1563(e) of the

1 Internal Revenue Code, except that for purposes of  
2 determining whether a person is a related member under this  
3 paragraph, "20%" shall be substituted for "5%" whenever  
4 "5%" appears in Section 1563(e) of the Internal Revenue  
5 Code.

6 Section 15. Powers of the Department. The Department, in  
7 addition to those powers granted under the Civil Administrative  
8 Code of Illinois, is granted and shall have all the powers  
9 necessary or convenient to carry out and effectuate the  
10 purposes and provisions of this Act, including, but not limited  
11 to, power and authority to:

12 (1) Promulgate procedures, rules, or regulations  
13 deemed necessary and appropriate for the administration of  
14 this Act; establish forms for applications, notifications,  
15 contracts, or any other agreements; and accept  
16 applications at any time during the year and require that  
17 all applications be submitted via the Internet. The  
18 Department shall require that applications be submitted in  
19 electronic form.

20 (2) Provide guidance and assistance to applicants  
21 pursuant to the provisions of this Act, and cooperate with  
22 applicants to promote, foster, and support job creation  
23 within the State.

24 (3) Enter into agreements and memoranda of  
25 understanding for participation of and engage in

1 cooperation with agencies of the federal government, units  
2 of local government, universities, research foundations or  
3 institutions, regional economic development corporations,  
4 or other organizations for the purposes of this Act.

5 (4) Gather information and conduct inquiries, in the  
6 manner and by the methods it deems desirable, including,  
7 without limitation, gathering information with respect to  
8 applicants for the purpose of making any designations or  
9 certifications necessary or desirable or to gather  
10 information in furtherance of the purposes of this Act.

11 (5) Establish, negotiate, and effectuate any term,  
12 agreement, or other document with any person necessary or  
13 appropriate to accomplish the purposes of this Act; and  
14 consent, subject to the provisions of any agreement with  
15 another party, to the modification or restructuring of any  
16 agreement to which the Department is a party.

17 (6) Provide for sufficient personnel to permit  
18 administration, staffing, operation, and related support  
19 required to adequately discharge its duties and  
20 responsibilities described in this Act from funds made  
21 available through charges to applicants or from funds as  
22 may be appropriated by the General Assembly for the  
23 administration of this Act.

24 (7) Require applicants, upon written request, to issue  
25 any necessary authorization to the appropriate federal,  
26 State, or local authority or any other person for the

1 release to the Department of information requested by the  
2 Department, with the information requested to include, but  
3 not be limited to, financial reports, returns, or records  
4 relating to the applicant or to the amount of credit  
5 allowable under this Act.

6 (8) Require that an applicant shall at all times keep  
7 proper books of record and account in accordance with  
8 generally accepted accounting principles consistently  
9 applied, with the books, records, or papers related to the  
10 agreement in the custody or control of the applicant open  
11 for reasonable Department inspection and audits, and  
12 including, without limitation, the making of copies of the  
13 books, records, or papers.

14 (9) Take whatever actions are necessary or appropriate  
15 to protect the State's interest in the event of bankruptcy,  
16 default, foreclosure, or noncompliance with the terms and  
17 conditions of financial assistance or participation  
18 required under this Act, including the power to sell,  
19 dispose of, lease, or rent, upon terms and conditions  
20 determined by the Director to be appropriate, real or  
21 personal property that the Department may recover as a  
22 result of these actions.

23 Section 20. Certificate of eligibility for tax credit.

24 (a) An applicant that has hired a new employee during the  
25 incentive period may apply for a certificate of eligibility for

1 the credit with respect to that position on or after the date  
2 of hire of the new employee. The date of hire shall be the  
3 first day on which the employee begins providing services for  
4 basic wage compensation.

5 (b) An applicant may apply for a certificate of eligibility  
6 for the credit for more than one new employee on or after the  
7 date of hire of each qualifying new employee.

8 (c) After receipt of an application under this Section, the  
9 Department shall issue a certificate of eligibility to the  
10 applicant, stating:

11 (1) The date and time on which the application was  
12 received by the Department and an identifying number  
13 assigned to the applicant by the Department.

14 (2) The maximum amount of the credit the applicant  
15 could potentially receive under this Act with respect to  
16 the new employees listed on the application.

17 (3) The maximum amount of the credit potentially  
18 allowable on certificates of eligibility issued for  
19 applications received prior to the application for which  
20 the certificate of eligibility is issued.

21 Section 25. Tax credit.

22 (a) Subject to the conditions set forth in this Act, an  
23 applicant is entitled to a credit against payment of taxes  
24 withheld under Section 704A of the Illinois Income Tax Act for  
25 calendar years ending on or after the date that is 12 months



1 after the date of hire of a new employee. The credit shall be  
2 allowed as a credit to an applicant for each full-time employee  
3 hired during the incentive period that results in a net  
4 increase in full-time Illinois employees, where the net  
5 increase in the employer's full-time Illinois employees is  
6 maintained for at least 12 months.

7 (b) The Department shall make credit awards under this Act  
8 to further job creation.

9 (c) The credit shall be claimed for the first calendar year  
10 ending on or after the date on which the certificate is issued  
11 by the Department.

12 (d) The credit shall not exceed \$2,500 per new employee  
13 hired.

14 (e) The net increase in full-time Illinois employees,  
15 measured on an annual full-time equivalent basis, shall be the  
16 total number of full-time Illinois employees of the applicant  
17 on June 30, 2011, minus the number of full-time Illinois  
18 employees employed by the employer on July 1, 2010. For  
19 purposes of the calculation, an employer that begins doing  
20 business in this State during the incentive period, as  
21 determined by the Director, shall be treated as having zero  
22 Illinois employees on July 1, 2010.

23 (f) The net increase in the number of full-time Illinois  
24 employees of the applicant must be sustained continuously for  
25 at least 12 months, starting with the date of hire of a new  
26 employee during the incentive period. Eligibility for the

1 credit does not depend on the continuous employment of any  
2 particular individual. For purposes of this subsection (f), if  
3 a new employee ceases to be employed before the completion of  
4 the 12-month period for any reason, the net increase in the  
5 number of full-time Illinois employees shall be treated as  
6 continuous if a different new employee is hired as a  
7 replacement within a reasonable time for the same position.

8 Section 30. Maximum amount of credits allowed. The  
9 Department shall limit the monetary amount of credits awarded  
10 under this Act to no more than \$50,000,000. If applications for  
11 a greater amount are received, credits shall be allowed on a  
12 first-come-first-served basis, based on the date on which each  
13 properly completed application for a certificate of  
14 eligibility is received by the Department. If more than one  
15 certificate of eligibility is received on the same day, the  
16 credits will be awarded based on the time of submission for  
17 that particular day.

18 Section 35. Application for award of tax credit; tax credit  
19 certificate.

20 (a) On or after the conclusion of the 12-month period after  
21 a new employee has been hired, an applicant shall file with the  
22 Department an application for award of a credit. The  
23 application shall include the following:

24 (1) The names, Social Security numbers, job

1 descriptions, salary or wage rates, and dates of hire of  
2 the new employees with respect to whom the credit is being  
3 requested.

4 (2) A certification that each new employee listed has  
5 been retained on the job for one year from the date of  
6 hire.

7 (3) The number of new employees hired by the applicant  
8 during the incentive period.

9 (4) The net increase in the number of full-time  
10 Illinois employees of the applicant (including the new  
11 employees listed in the request) between the beginning of  
12 the incentive period and the dates on which the new  
13 employees listed in the request were hired.

14 (5) An agreement that the Director is authorized to  
15 verify with the appropriate State agencies the information  
16 contained in the request before issuing a certificate to  
17 the applicant.

18 (6) Any other information the Department determines to  
19 be appropriate.

20 (b) Although an application may be filed at any time after  
21 the conclusion of the 12-month period after a new employee was  
22 hired, an application filed more than 90 days after the  
23 earliest date on which it could have been filed shall not be  
24 awarded any credit if, prior to the date it is filed, the  
25 Department has received applications under this Section for  
26 credits totaling more than \$50,000,000.

1 (c) The Department shall issue a certificate to each  
2 applicant awarded a credit under this Act. The certificate  
3 shall include the following:

4 (1) The name and taxpayer identification number of the  
5 applicant.

6 (2) The date on which the certificate is issued.

7 (3) The credit amount that will be allowed.

8 (4) Any other information the Department determines to  
9 be appropriate.

10 Section 40. Submission of tax credit certificate to  
11 Department of Revenue. An applicant claiming a credit under  
12 this Act shall submit to the Department of Revenue a copy of  
13 each certificate issued under Section 35 of this Act with the  
14 first return for which the credit shown on the certificate is  
15 claimed. However, failure to submit a copy of the certificate  
16 with the applicant's return shall not invalidate a claim for a  
17 credit.

18 Section 45. Noncompliance with Act. If the Director  
19 determines that an applicant who has received a credit under  
20 this Act is not complying with the requirements of the  
21 provisions of this Act, the Director shall provide notice to  
22 the applicant of the alleged noncompliance, and allow the  
23 taxpayer a hearing under the provisions of the Illinois  
24 Administrative Procedure Act. If, after such notice and any

1 hearing, the Director determines that a noncompliance exists,  
2 the Director shall issue to the Department of Revenue notice to  
3 that effect, stating the noncompliance date.

4 Section 50. Rules. The Department may adopt rules necessary  
5 to implement this Act. The rules may provide for recipients of  
6 credits under this Act to be charged fees to cover  
7 administrative costs of the tax credit program.

8 Section 90. The Illinois Income Tax Act is amended by  
9 changing Section 704A as follows:

10 (35 ILCS 5/704A)

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

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

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

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

1           (1) Semi-weekly payments. For each calendar year, each  
2 employer who withheld or was required to withhold more than  
3 \$12,000 during the one-year period ending on June 30 of the  
4 immediately preceding calendar year, payment must be made:

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

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

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

19           (3) Monthly payments. Each employer, other than an  
20 employer described in items (1) or (2) of this subsection,  
21 shall pay to the Department, on or before the 15th day of  
22 each month the taxes withheld or required to be withheld  
23 during the immediately preceding month.

24           (4) Payments with returns. Each employer shall pay to  
25 the Department, on or before the due date for each return  
26 required to be filed under this Section, any tax withheld

1 or required to be withheld during the period for which the  
2 return is due and not previously paid to the Department.

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

4 (1) If the aggregate amounts required to be withheld  
5 under this Article 7 do not exceed \$1,000 for the calendar  
6 year, permit employers, in lieu of the requirements of  
7 subsections (b) and (c), to file annual returns due on or  
8 before January 31 of the following year for taxes withheld  
9 or required to be withheld during that calendar year and to  
10 pay the taxes required to be shown on each such return no  
11 later than the due date for such return.

12 (2) Provide that any payment required to be made under  
13 subsection (c)(1) or (c)(2) is deemed to be timely to the  
14 extent paid by electronic funds transfer on or before the  
15 due date for deposit of federal income taxes withheld from,  
16 or federal employment taxes due with respect to, the wages  
17 from which the Illinois taxes were withheld.

18 (3) Designate one or more depositories to which payment  
19 of taxes required to be withheld under this Article 7 must  
20 be paid by some or all employers.

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

24 (e) Annual return and payment. Every employer who deducts  
25 and withholds or is required to deduct and withhold tax from a  
26 person engaged in domestic service employment, as that term is

1 defined in Section 3510 of the Internal Revenue Code, may  
2 comply with the requirements of this Section with respect to  
3 such employees by filing an annual return and paying the taxes  
4 required to be deducted and withheld on or before the 15th day  
5 of the fourth month following the close of the employer's  
6 taxable year. The Department may allow the employer's return to  
7 be submitted with the employer's individual income tax return  
8 or to be submitted with a return due from the employer under  
9 Section 1400.2 of the Unemployment Insurance Act.

10 (f) Magnetic media and electronic filing. Any W-2 Form  
11 that, under the Internal Revenue Code and regulations  
12 promulgated thereunder, is required to be submitted to the  
13 Internal Revenue Service on magnetic media or electronically  
14 must also be submitted to the Department on magnetic media or  
15 electronically for Illinois purposes, if required by the  
16 Department.

17 (g) For amounts deducted or withheld after December 31,  
18 2009, a taxpayer who makes an election under Section 5-15(f) of  
19 the Economic Development for a Growing Economy Act for a  
20 taxable year shall be allowed a credit against payments due  
21 under this Section for amounts withheld during the first  
22 calendar year beginning after the end of that taxable year  
23 equal to the amount of the credit awarded to the taxpayer by  
24 the Department of Commerce and Economic Opportunity under the  
25 Economic Development for a Growing Economy Act for the taxable  
26 year. The credit may not reduce the taxpayer's obligation for



1 any payment due under this Section to less than zero. If the  
2 amount of the credit exceeds the total payments due under this  
3 Section with respect to amounts withheld during the calendar  
4 year, the excess may be carried forward and applied against the  
5 taxpayer's liability under this Section in the 5 succeeding  
6 calendar years. The credit shall be applied to the earliest  
7 year for which there is a tax liability. If there are credits  
8 from more than one taxable year that are available to offset a  
9 liability, the earlier credit shall be applied first. This  
10 Section is exempt from the provisions of Section 250 of this  
11 Act.

12 (h) An employer may claim a credit against payments due  
13 under this Section for amounts withheld during the first  
14 calendar year ending after date on which a tax credit  
15 certificate was issued under Section 35 of the Small Business  
16 Job Creation Tax Credit Act. The credit shall be equal to the  
17 amount shown on the certificate, but may not reduce the  
18 taxpayer's obligation for any payment due under this Section to  
19 less than zero. If the amount of the credit exceeds the total  
20 payments due under this Section with respect to amounts  
21 withheld during the calendar year, the excess may be carried  
22 forward and applied against the taxpayer's liability under this  
23 Section in the 5 succeeding calendar years. The credit shall be  
24 applied to the earliest year for which there is a tax  
25 liability. If there are credits from more than one calendar  
26 year that are available to offset a liability, the earlier

1 credit shall be applied first. This Section is exempt from the  
2 provisions of Section 250 of this Act.

3 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,  
4 eff. 12-14-09.)".

5 Section 999. Effective date. This Act takes effect upon  
6 becoming law.".