

SB1391



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1391

Introduced 2/9/2011, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

20 ILCS 715/25

Amends the Corporate Accountability for Tax Expenditures Act. Provides that, for certain programs based on job creation or retention, beginning in 2007 and through 2011, a recipient shall be deemed in compliance with those job creation or job retention requirements by establishing that it has created or maintained the requisite number of jobs based on a 3-year average, including the current reporting year and the 2 immediately preceding reporting years. Effective immediately.

LRB097 09393 HLH 49528 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 Corporate Accountability for Tax
5 Expenditures Act is amended by changing Section 25 as follows:

6 (20 ILCS 715/25)

7 Sec. 25. Recapture.

8 (a) All development assistance agreements shall contain,
9 at a minimum, the following recapture provisions:

10 (1) The recipient must (i) make the level of capital
11 investment in the economic development project specified
12 in the development assistance agreement; (ii) create or
13 retain, or both, the requisite number of jobs, paying not
14 less than specified wages for the created and retained
15 jobs, within and for the duration of the time period
16 specified in the legislation authorizing, or the
17 administrative rules implementing, the development
18 assistance programs and the development assistance
19 agreement.

20 (2) If the recipient fails to create or retain the
21 requisite number of jobs within and for the time period
22 specified, in the legislation authorizing, or the
23 administrative rules implementing, the development

1 assistance programs and the development assistance
2 agreement, the recipient shall be deemed to no longer
3 qualify for the State economic assistance and the
4 applicable recapture provisions shall take effect.
5 Beginning January 1, 2007 through December 31, 2011, a
6 recipient shall be deemed in compliance with all such job
7 creation or job retention requirements by establishing
8 that the recipient has created or maintained the requisite
9 number of jobs based on a 3-year average, including the
10 current reporting year and the 2 immediately preceding
11 reporting years.

12 (3) If the recipient receives State economic
13 assistance in the form of a High Impact Business
14 designation pursuant to Section 5.5 of the Illinois
15 Enterprise Zone Act and the business receives the benefit
16 of the exemption authorized under Section 51 of the
17 Retailers' Occupation Tax Act (for the sale of building
18 materials incorporated into a High Impact Business
19 location) and the recipient fails to create or retain the
20 requisite number of jobs, as determined by the legislation
21 authorizing the development assistance programs or the
22 administrative rules implementing such legislation, or
23 both, within the requisite period of time, the recipient
24 shall be required to pay to the State the full amount of
25 the State tax exemption that it received as a result of the
26 High Impact Business designation. Beginning January 1,

1 2007 through December 31, 2011, a recipient shall be deemed
2 in compliance with all such job creation or job retention
3 requirements by establishing that the recipient has
4 created or maintained the requisite number of jobs based on
5 a 3-year average, including the current reporting year and
6 the 2 immediately preceding reporting years.

7 (4) If the recipient receives a grant or loan pursuant
8 to the Large Business Development Program, the Business
9 Development Public Infrastructure Program, or the
10 Industrial Training Program and the recipient fails to
11 create or retain the requisite number of jobs for the
12 requisite time period, as provided in the legislation
13 authorizing the development assistance programs or the
14 administrative rules implementing such legislation, or
15 both, or in the development assistance agreement, the
16 recipient shall be required to repay to the State a pro
17 rata amount of the grant; that amount shall reflect the
18 percentage of the deficiency between the requisite number
19 of jobs to be created or retained by the recipient and the
20 actual number of such jobs in existence as of the date the
21 Department determines the recipient is in breach of the job
22 creation or retention covenants contained in the
23 development assistance agreement. If the recipient of
24 development assistance under the Large Business
25 Development Program, the Business Development Public
26 Infrastructure Program, or the Industrial Training Program

1 ceases operations at the specific project site, during the
2 5-year period commencing on the date of assistance, the
3 recipient shall be required to repay the entire amount of
4 the grant or to accelerate repayment of the loan back to
5 the State.

6 (5) If the recipient receives a tax credit under the
7 Economic Development for a Growing Economy tax credit
8 program, the development assistance agreement must provide
9 that (i) if the number of new or retained employees falls
10 below the requisite number set forth in the development
11 assistance agreement, the allowance of the credit shall be
12 automatically suspended until the number of new and
13 retained employees equals or exceeds the requisite number
14 in the development assistance agreement; (ii) if the
15 recipient discontinues operations at the specific project
16 site during the first 5 years of the 10-year term of the
17 development assistance agreement, the recipient shall
18 forfeit all credits taken by the recipient during such
19 5-year period; and (iii) in the event of a revocation or
20 suspension of the credit, the Department shall contact the
21 Director of Revenue to initiate proceedings against the
22 recipient to recover wrongfully exempted Illinois State
23 income taxes and the recipient shall promptly repay to the
24 Department of Revenue any wrongfully exempted Illinois
25 State income taxes. The forfeited amount of credits shall
26 be deemed assessed on the date the Department contacts the

1 Department of Revenue and the recipient shall promptly
2 repay to the Department of Revenue any wrongfully exempted
3 Illinois State income taxes.

4 (b) The Director may elect to waive enforcement of any
5 contractual provision arising out of the development
6 assistance agreement required by this Act based on a finding
7 that the waiver is necessary to avert an imminent and
8 demonstrable hardship to the recipient that may result in such
9 recipient's insolvency or discharge of workers. If a waiver is
10 granted, the recipient must agree to a contractual
11 modification, including recapture provisions, to the
12 development assistance agreement. The existence of any waiver
13 granted pursuant to this subsection (c), the date of the
14 granting of such waiver, and a brief summary of the reasons
15 supporting the granting of such waiver shall be disclosed
16 consistent with the provisions of Section 25 of this Act.

17 (c) Beginning June 1, 2004, the Department shall annually
18 compile a report on the outcomes and effectiveness of recapture
19 provisions by program, including but not limited to: (i) the
20 total number of companies that receive development assistance
21 as defined in this Act; (ii) the total number of recipients in
22 violation of development agreements with the Department; (iii)
23 the total number of completed recapture efforts; (iv) the total
24 number of recapture efforts initiated; and (v) the number of
25 waivers granted. This report shall be disclosed consistent with
26 the provisions of Section 20 of this Act.

1 (d) For the purposes of this Act, recapture provisions do
2 not include the Illinois Department of Transportation Economic
3 Development Program, any grants under the Industrial Training
4 Program that are not given as an incentive to a recipient
5 business organization, or any successor programs as described
6 in the term "development assistance" in Section 5 of this Act.
7 (Source: P.A. 93-552, eff. 8-20-03.)

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