

# SB3711



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3711

Introduced 2/10/2012, by Sen. Dan Kotowski

#### SYNOPSIS AS INTRODUCED:

20 ILCS 715/25

Amends the Corporate Accountability for Tax Expenditures Act. Provides that the Department of Commerce and Economic Opportunity shall post on its website (i) the identity of each recipient from whom amounts were recaptured, (ii) the amount recaptured, and (iii) the identity of each recipient receiving a waiver of the recapture provisions.

LRB097 20174 HLH 65583 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 (3) If the recipient receives State economic  
6 assistance in the form of a High Impact Business  
7 designation pursuant to Section 5.5 of the Illinois  
8 Enterprise Zone Act and the business receives the benefit  
9 of the exemption authorized under Section 51 of the  
10 Retailers' Occupation Tax Act (for the sale of building  
11 materials incorporated into a High Impact Business  
12 location) and the recipient fails to create or retain the  
13 requisite number of jobs, as determined by the legislation  
14 authorizing the development assistance programs or the  
15 administrative rules implementing such legislation, or  
16 both, within the requisite period of time, the recipient  
17 shall be required to pay to the State the full amount of  
18 the State tax exemption that it received as a result of the  
19 High Impact Business designation.

20 (4) If the recipient receives a grant or loan pursuant  
21 to the Large Business Development Program, the Business  
22 Development Public Infrastructure Program, or the  
23 Industrial Training Program and the recipient fails to  
24 create or retain the requisite number of jobs for the  
25 requisite time period, as provided in the legislation  
26 authorizing the development assistance programs or the

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

19 (5) If the recipient receives a tax credit under the  
20 Economic Development for a Growing Economy tax credit  
21 program, the development assistance agreement must provide  
22 that (i) if the number of new or retained employees falls  
23 below the requisite number set forth in the development  
24 assistance agreement, the allowance of the credit shall be  
25 automatically suspended until the number of new and  
26 retained employees equals or exceeds the requisite number

1 in the development assistance agreement; (ii) if the  
2 recipient discontinues operations at the specific project  
3 site during the 5-year period after the beginning of the  
4 first tax year for which the Department issues a tax credit  
5 certificate, the recipient shall forfeit all credits taken  
6 by the recipient during such 5-year period; and (iii) in  
7 the event of a revocation or suspension of the credit, the  
8 Department shall contact the Director of Revenue to  
9 initiate proceedings against the recipient to recover  
10 wrongfully exempted Illinois State income taxes and the  
11 recipient shall promptly repay to the Department of Revenue  
12 any wrongfully exempted Illinois State income taxes. The  
13 forfeited amount of credits shall be deemed assessed on the  
14 date the Department contacts the Department of Revenue and  
15 the recipient shall promptly repay to the Department of  
16 Revenue any wrongfully exempted Illinois State income  
17 taxes.

18 (b) The Director may elect to waive enforcement of any  
19 contractual provision arising out of the development  
20 assistance agreement required by this Act based on a finding  
21 that the waiver is necessary to avert an imminent and  
22 demonstrable hardship to the recipient that may result in such  
23 recipient's insolvency or discharge of workers. If a waiver is  
24 granted, the recipient must agree to a contractual  
25 modification, including recapture provisions, to the  
26 development assistance agreement. The existence of any waiver

1 granted pursuant to this subsection (c), the date of the  
2 granting of such waiver, and a brief summary of the reasons  
3 supporting the granting of such waiver shall be disclosed  
4 consistent with the provisions of Section 25 of this Act.

5 (b-5) The Department shall publish, on its website, (i) the  
6 identity of each recipient from whom amounts were recaptured  
7 under this Section, (ii) the amount recaptured, and (iii) the  
8 identity of each recipient receiving a waiver under subsection  
9 (b) of this Section.

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

20 (d) For the purposes of this Act, recapture provisions do  
21 not include the Illinois Department of Transportation Economic  
22 Development Program, any grants under the Industrial Training  
23 Program that are not given as an incentive to a recipient  
24 business organization, or any successor programs as described  
25 in the term "development assistance" in Section 5 of this Act.

26 (Source: P.A. 97-2, eff. 5-6-11.)