



Rep. Michael J. Zalewski

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1 AMENDMENT TO HOUSE BILL 162

2 AMENDMENT NO. _____. Amend House Bill 162 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 3. KEEP ILLINOIS BUSINESSES ACT

5 Section 3-1. Short title. This Act may be cited as the Keep
6 Illinois Businesses Act.

7 Section 3-5. Purpose. The purpose of this Act is to
8 encourage businesses with primary business operations in the
9 State of Illinois to remain in this State by removing and
10 recouping any economic development assistance or benefit
11 provided to those businesses by the State should those
12 businesses decide to relocate jobs out-of-State.

13 Section 3-10. Definitions. As used in this Act:

14 "Economic development assistance" means (1) tax credits

1 and tax exemptions given as an incentive to a recipient
2 business organization under an initial certification or an
3 initial designation made by the Department of Commerce and
4 Economic Opportunity under the Economic Development for a
5 Growing Economy Tax Credit Act, River Edge Redevelopment Zone
6 Act, and the Illinois Enterprise Zone Act, including the High
7 Impact Business program; (2) grants or loans given to a
8 recipient as an incentive to a business organization under the
9 River Edge Redevelopment Zone Act, Large Business Development
10 Program, the Business Development Public Infrastructure
11 Program, or the Industrial Training Program; (3) the State
12 Treasurer's Economic Program Loans; (4) the Illinois
13 Department of Transportation Economic Development Program; (5)
14 all successor and subsequent programs and tax credits designed
15 to promote business relocations and expansions; (6) any
16 assistance provided by the Illinois Emergency Employment
17 Program under the Illinois Emergency Development Act; and (7)
18 any other economic incentive, benefit, assistance, credit,
19 loan, or grant provided by a State granting agency to a
20 recipient business with primary business operations in this
21 State.

22 "Recipient business" means any corporation, limited
23 liability company, partnership, joint venture, association,
24 sole proprietorship, or other legally recognized entity with
25 primary business operations in this State that receives
26 economic development assistance.

1 "State agency" has the meaning provided in Section 1-7 of
2 the Illinois State Auditing Act.

3 "State granting agency" means any State department or State
4 agency that provides economic development assistance to a
5 recipient business.

6 Section 3-15. Recovery of economic development assistance.

7 (a) Subject to the procedures outlined in this Section, any
8 recipient business that chooses to move all or part of its
9 business operations and the jobs created by its business
10 out-of-State shall be deemed to no longer qualify for State
11 economic development assistance, and shall be required to pay
12 to the relevant State granting agency the full amount of any
13 economic development assistance it received.

14 (b) Whenever a State granting agency believes that the
15 economic development assistance it provided to a recipient
16 business is subject to recovery, the State granting agency
17 shall provide the recipient business the opportunity for at
18 least one informal hearing to determine the facts and issues,
19 and to resolve any conflicts as amicably as possible before
20 taking any formal recovery actions.

21 (c) If a State granting agency determines that economic
22 development assistance is to be recovered, then, prior to
23 taking any action to recover, the State granting agency shall
24 provide the recipient business with a written notice of the
25 intended recovery. This notice shall identify the funds and the

1 amount to be recovered and the specific facts which permit
2 recovery.

3 (d) A recipient business shall have 35 days from the
4 receipt of the notice required in subsection (c) of this
5 Section to request a hearing to show why recovery is not
6 justified or proper. If a recipient business requests a hearing
7 under this subsection (d), then:

8 (1) the State granting agency shall hold a hearing
9 before the Director of that agency, or his or her designee,
10 at which a representative of the recipient business may
11 present an argument for why recovery should not be
12 permitted; and

13 (2) after the conclusion of the hearing, the Director
14 of the State granting agency, or his or her designee, shall
15 issue a written final recovery order and send a copy of the
16 order to the recipient business.

17 (e) A recipient business may seek judicial review of any
18 final recovery order under the provisions of the Administrative
19 Review Law.

20 (f) If a recipient business requests a hearing under
21 subsection (d) of this Section, then the State granting agency
22 may not take any action of recovery until at least 35 days
23 after the State granting agency has issued a final recovery
24 order under the requirements of subsection (d) of this Section.
25 If a recipient business does not request a hearing as permitted
26 in subsection (d) of this Section, then the State granting

1 agency may proceed with recovery of the economic development
2 assistance amount specified in the notice issued under the
3 requirements of subsection (c) of this Section, at any time
4 after the expiration of the 35-day request period established
5 in subsection (d) of this Section.

6 (g) Any notice or mailing required or permitted by this
7 Section shall be deemed received 5 days after the notice or
8 mailing is deposited in the United States mail, properly
9 addressed with the current business address of the recipient
10 business and with sufficient U.S. postage affixed.

11 ARTICLE 5. AMENDATORY PROVISIONS

12 Section 5-5. The Illinois Income Tax Act is amended by
13 changing Section 704A as follows:

14 (35 ILCS 5/704A)

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

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

20 (b) Returns. Every employer shall, in the form and manner
21 required by the Department, make returns with respect to taxes
22 withheld or required to be withheld under this Article 7 for
23 each quarter beginning on or after January 1, 2008, on or

1 before the last day of the first month following the close of
2 that quarter.

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

5 (1) Semi-weekly payments. For each calendar year, each
6 employer who withheld or was required to withhold more than
7 \$12,000 during the one-year period ending on June 30 of the
8 immediately preceding calendar year, payment must be made:

9 (A) on or before each Friday of the calendar year,
10 for taxes withheld or required to be withheld on the
11 immediately preceding Saturday, Sunday, Monday, or
12 Tuesday;

13 (B) on or before each Wednesday of the calendar
14 year, for taxes withheld or required to be withheld on
15 the immediately preceding Wednesday, Thursday, or
16 Friday.

17 Beginning with calendar year 2011, payments made under
18 this paragraph (1) of subsection (c) must be made by
19 electronic funds transfer.

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

26 (3) Monthly payments. Each employer, other than an

1 employer described in items (1) or (2) of this subsection,
2 shall pay to the Department, on or before the 15th day of
3 each month the taxes withheld or required to be withheld
4 during the immediately preceding month.

5 (4) Payments with returns. Each employer shall pay to
6 the Department, on or before the due date for each return
7 required to be filed under this Section, any tax withheld
8 or required to be withheld during the period for which the
9 return is due and not previously paid to the Department.

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

11 (1) Permit employers, in lieu of the requirements of
12 subsections (b) and (c), to file annual returns due on or
13 before January 31 of the year for taxes withheld or
14 required to be withheld during the previous calendar year
15 and, if the aggregate amounts required to be withheld by
16 the employer under this Article 7 (other than amounts
17 required to be withheld under Section 709.5) do not exceed
18 \$1,000 for the previous calendar year, to pay the taxes
19 required to be shown on each such return no later than the
20 due date for such return.

21 (2) Provide that any payment required to be made under
22 subsection (c)(1) or (c)(2) is deemed to be timely to the
23 extent paid by electronic funds transfer on or before the
24 due date for deposit of federal income taxes withheld from,
25 or federal employment taxes due with respect to, the wages
26 from which the Illinois taxes were withheld.

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

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

7 (e) Annual return and payment. Every employer who deducts
8 and withholds or is required to deduct and withhold tax from a
9 person engaged in domestic service employment, as that term is
10 defined in Section 3510 of the Internal Revenue Code, may
11 comply with the requirements of this Section with respect to
12 such employees by filing an annual return and paying the taxes
13 required to be deducted and withheld on or before the 15th day
14 of the fourth month following the close of the employer's
15 taxable year. The Department may allow the employer's return to
16 be submitted with the employer's individual income tax return
17 or to be submitted with a return due from the employer under
18 Section 1400.2 of the Unemployment Insurance Act.

19 (f) Magnetic media and electronic filing. Any W-2 Form
20 that, under the Internal Revenue Code and regulations
21 promulgated thereunder, is required to be submitted to the
22 Internal Revenue Service on magnetic media or electronically
23 must also be submitted to the Department on magnetic media or
24 electronically for Illinois purposes, if required by the
25 Department.

26 (g) For amounts deducted or withheld after December 31,

1 2009, a taxpayer who makes an election under subsection (f) of
2 Section 5-15 of the Economic Development for a Growing Economy
3 Tax Credit Act for a taxable year shall be allowed a credit
4 against payments due under this Section for amounts withheld
5 during the first calendar year beginning after the end of that
6 taxable year equal to the amount of the credit for the
7 incremental income tax attributable to full-time employees of
8 the taxpayer awarded to the taxpayer by the Department of
9 Commerce and Economic Opportunity under the Economic
10 Development for a Growing Economy Tax Credit Act for the
11 taxable year and credits not previously claimed and allowed to
12 be carried forward under Section 211(4) of this Act as provided
13 in subsection (f) of Section 5-15 of the Economic Development
14 for a Growing Economy Tax Credit Act. The credit or credits may
15 not reduce the taxpayer's obligation for any payment due under
16 this Section to less than zero. If the amount of the credit or
17 credits exceeds the total payments due under this Section with
18 respect to amounts withheld during the calendar year, the
19 excess may be carried forward and applied against the
20 taxpayer's liability under this Section in the succeeding
21 calendar years as allowed to be carried forward under paragraph
22 (4) of Section 211 of this Act. The credit or credits shall be
23 applied to the earliest year for which there is a tax
24 liability. If there are credits from more than one taxable year
25 that are available to offset a liability, the earlier credit
26 shall be applied first. Each employer who deducts and withholds

1 or is required to deduct and withhold tax under this Act and
2 who retains income tax withholdings under subsection (f) of
3 Section 5-15 of the Economic Development for a Growing Economy
4 Tax Credit Act must make a return with respect to such taxes
5 and retained amounts in the form and manner that the
6 Department, by rule, requires and pay to the Department or to a
7 depository designated by the Department those withheld taxes
8 not retained by the taxpayer. For purposes of this subsection
9 (g), the term taxpayer shall include taxpayer and members of
10 the taxpayer's unitary business group as defined under
11 paragraph (27) of subsection (a) of Section 1501 of this Act.
12 This Section is exempt from the provisions of Section 250 of
13 this Act. No credit awarded under the Economic Development for
14 a Growing Economy Tax Credit Act for agreements entered into on
15 or after January 1, 2015 may be credited against payments due
16 under this Section.

17 (h) An employer may claim a credit against payments due
18 under this Section for amounts withheld during the first
19 calendar year ending after the date on which a tax credit
20 certificate was issued under Section 35 of the Small Business
21 Job Creation Tax Credit Act. The credit shall be equal to the
22 amount shown on the certificate, but may not reduce the
23 taxpayer's obligation for any payment due under this Section to
24 less than zero. If the amount of the credit exceeds the total
25 payments due under this Section with respect to amounts
26 withheld during the calendar year, the excess may be carried

1 forward and applied against the taxpayer's liability under this
2 Section in the 5 succeeding calendar years. The credit shall be
3 applied to the earliest year for which there is a tax
4 liability. If there are credits from more than one calendar
5 year that are available to offset a liability, the earlier
6 credit shall be applied first. This Section is exempt from the
7 provisions of Section 250 of this Act.

8 (Source: P.A. 96-834, eff. 12-14-09; 96-888, eff. 4-13-10;
9 96-905, eff. 6-4-10; 96-1027, eff. 7-12-10; 97-333, eff.
10 8-12-11; 97-507, eff. 8-23-11.)

11 Section 5-10. The Economic Development for a Growing
12 Economy Tax Credit Act is amended by changing Sections 5-5,
13 5-15, 5-20, 5-25, 5-50, 5-65, 5-70 and 5-77 and by adding
14 Section 5-57 as follows:

15 (35 ILCS 10/5-5)

16 Sec. 5-5. Definitions. As used in this Act:

17 "Agreement" means the Agreement between a Taxpayer and the
18 Department under the provisions of Section 5-50 of this Act.

19 "Applicant" means a Taxpayer that is operating a business
20 located or that the Taxpayer plans to locate within the State
21 of Illinois and that is engaged in interstate or intrastate
22 commerce for the purpose of manufacturing, processing,
23 assembling, warehousing, or distributing products, conducting
24 research and development, providing tourism services, or

1 providing services in interstate commerce, office industries,
2 or agricultural processing, but excluding retail, retail food,
3 health, or professional services. "Applicant" does not include
4 a Taxpayer who closes or substantially reduces an operation at
5 one location in the State and relocates substantially the same
6 operation to another location in the State. This does not
7 prohibit a Taxpayer from expanding its operations at another
8 location in the State, provided that existing operations of a
9 similar nature located within the State are not closed or
10 substantially reduced. This also does not prohibit a Taxpayer
11 from moving its operations from one location in the State to
12 another location in the State for the purpose of expanding the
13 operation provided that the Department determines that
14 expansion cannot reasonably be accommodated within the
15 municipality in which the business is located, or in the case
16 of a business located in an incorporated area of the county,
17 within the county in which the business is located, after
18 conferring with the chief elected official of the municipality
19 or county and taking into consideration any evidence offered by
20 the municipality or county regarding the ability to accommodate
21 expansion within the municipality or county.

22 "Committee" means the Illinois Business Investment
23 Committee created under Section 5-25 of this Act within the
24 Illinois Economic Development Board.

25 "Credit" means the amount agreed to between the Department
26 and Applicant under this Act, but not to exceed the lesser of:

1 (1) the sum of (i) 50% of the Incremental Income Tax
2 attributable to New Employees at the Applicant's project and
3 (ii) 10% of the training costs of New Employees; or (2) 100% of
4 the Incremental Income Tax attributable to New Employees at the
5 Applicant's project. However, if the project is located in an
6 underserved area, then the amount of the Credit may not exceed
7 the lesser of: (1) the sum of (i) 75% of the Incremental Income
8 Tax attributable to New Employees at the Applicant's project
9 and (ii) 10% of the training costs of New Employees; or (2)
10 100% of the Incremental Income Tax attributable to New
11 Employees at the Applicant's project. If an Applicant agrees to
12 hire the required number of New Employees, then the maximum
13 amount of the Credit for that Applicant may be increased by an
14 amount not to exceed 25% of the Incremental Income Tax
15 attributable to retained employees at the Applicant's project;
16 provided that, in order to receive the increase for retained
17 employees, the Applicant must provide the additional evidence
18 required under paragraph (3) of subsection (b) of Section 5-25.

19 "Department" means the Department of Commerce and Economic
20 Opportunity.

21 "Director" means the Director of Commerce and Economic
22 Opportunity.

23 "Full-time Employee" means an individual who is employed
24 for consideration for at least 35 hours each week or who
25 renders any other standard of service generally accepted by
26 industry custom or practice as full-time employment. An

1 individual for whom a W-2 is issued by a Professional Employer
2 Organization (PEO) is a full-time employee if employed in the
3 service of the Applicant for consideration for at least 35
4 hours each week or who renders any other standard of service
5 generally accepted by industry custom or practice as full-time
6 employment to Applicant.

7 "Incremental Income Tax" means the total amount withheld
8 during the taxable year from the compensation of New Employees
9 and, if applicable, retained employees under Article 7 of the
10 Illinois Income Tax Act arising from employment at a project
11 that is the subject of an Agreement.

12 "New Employee" means:

13 (a) A Full-time Employee first employed by a Taxpayer
14 in the project that is the subject of an Agreement and who
15 is hired after the Taxpayer enters into the tax credit
16 Agreement.

17 (b) The term "New Employee" does not include:

18 (1) an employee of the Taxpayer who performs a job
19 that was previously performed by another employee, if
20 that job existed for at least 6 months before hiring
21 the employee;

22 (2) an employee of the Taxpayer who was previously
23 employed in Illinois by a Related Member of the
24 Taxpayer and whose employment was shifted to the
25 Taxpayer after the Taxpayer entered into the tax credit
26 Agreement; or

1 (3) a child, grandchild, parent, or spouse, other
2 than a spouse who is legally separated from the
3 individual, of any individual who has a direct or an
4 indirect ownership interest of at least 5% in the
5 profits, capital, or value of the Taxpayer.

6 (c) Notwithstanding paragraph (1) of subsection (b),
7 an employee may be considered a New Employee under the
8 Agreement if the employee performs a job that was
9 previously performed by an employee who was:

10 (1) treated under the Agreement as a New Employee;

11 and

12 (2) promoted by the Taxpayer to another job.

13 (d) Notwithstanding subsection (a), the Department may
14 award Credit to an Applicant with respect to an employee
15 hired prior to the date of the Agreement if:

16 (1) the Applicant is in receipt of a letter from
17 the Department stating an intent to enter into a credit
18 Agreement;

19 (2) the letter described in paragraph (1) is issued
20 by the Department not later than 15 days after the
21 effective date of this Act; and

22 (3) the employee was hired after the date the
23 letter described in paragraph (1) was issued.

24 "Noncompliance Date" means, in the case of a Taxpayer that
25 is not complying with the requirements of the Agreement or the
26 provisions of this Act, the day following the last date upon

1 which the Taxpayer was in compliance with the requirements of
2 the Agreement and the provisions of this Act, as determined by
3 the Director, pursuant to Section 5-65.

4 "Pass Through Entity" means an entity that is exempt from
5 the tax under subsection (b) or (c) of Section 205 of the
6 Illinois Income Tax Act.

7 "Professional Employer Organization" (PEO) means an
8 employee leasing company, as defined in Section 206.1(A)(2) of
9 the Illinois Unemployment Insurance Act.

10 "Related Member" means a person that, with respect to the
11 Taxpayer during any portion of the taxable year, is any one of
12 the following:

13 (1) An individual stockholder, if the stockholder and
14 the members of the stockholder's family (as defined in
15 Section 318 of the Internal Revenue Code) own directly,
16 indirectly, beneficially, or constructively, in the
17 aggregate, at least 50% of the value of the Taxpayer's
18 outstanding stock.

19 (2) A partnership, estate, or trust and any partner or
20 beneficiary, if the partnership, estate, or trust, and its
21 partners or beneficiaries own directly, indirectly,
22 beneficially, or constructively, in the aggregate, at
23 least 50% of the profits, capital, stock, or value of the
24 Taxpayer.

25 (3) A corporation, and any party related to the
26 corporation in a manner that would require an attribution

1 of stock from the corporation to the party or from the
2 party to the corporation under the attribution rules of
3 Section 318 of the Internal Revenue Code, if the Taxpayer
4 owns directly, indirectly, beneficially, or constructively
5 at least 50% of the value of the corporation's outstanding
6 stock.

7 (4) A corporation and any party related to that
8 corporation in a manner that would require an attribution
9 of stock from the corporation to the party or from the
10 party to the corporation under the attribution rules of
11 Section 318 of the Internal Revenue Code, if the
12 corporation and all such related parties own in the
13 aggregate at least 50% of the profits, capital, stock, or
14 value of the Taxpayer.

15 (5) A person to or from whom there is attribution of
16 stock ownership in accordance with Section 1563(e) of the
17 Internal Revenue Code, except, for purposes of determining
18 whether a person is a Related Member under this paragraph,
19 20% shall be substituted for 5% wherever 5% appears in
20 Section 1563(e) of the Internal Revenue Code.

21 "Taxpayer" means an individual, corporation, partnership,
22 or other entity that has any Illinois Income Tax liability.

23 "Underserved area" means a geographic area that meets one
24 or more of the following conditions:

25 (1) the area has a poverty rate of at least 20%
26 according to the latest federal decennial census;

1 (2) 75% or more of the children in the area participate
2 in the federal free lunch program according to reported
3 statistics from the State Board of Education;

4 (3) at least 20% of the households in the area receive
5 assistance under the Supplemental Nutrition Assistance
6 Program (SNAP); or

7 (4) the area has an average unemployment rate, as
8 determined by the Illinois Department of Employment
9 Security, that is more than 120% of the national
10 unemployment average, as determined by the U.S. Department
11 of Labor, for a period of at least 2 consecutive calendar
12 years preceding the date of the application.

13 (Source: P.A. 94-793, eff. 5-19-06; 95-375, eff. 8-23-07.)

14 (35 ILCS 10/5-15)

15 Sec. 5-15. Tax Credit Awards. Subject to the conditions set
16 forth in this Act, a Taxpayer is entitled to a Credit against
17 or, as described in subsection (g) of this Section, a payment
18 towards taxes imposed pursuant to subsections (a) and (b) of
19 Section 201 of the Illinois Income Tax Act that may be imposed
20 on the Taxpayer for a taxable year beginning on or after
21 January 1, 1999, if the Taxpayer is awarded a Credit by the
22 Department under this Act for that taxable year.

23 (a) The Department shall make Credit awards under this Act
24 to foster job creation and retention in Illinois.

25 (b) A person that proposes a project to create new jobs in

1 Illinois must enter into an Agreement with the Department for
2 the Credit under this Act.

3 (c) The Credit shall be claimed for the taxable years
4 specified in the Agreement.

5 (d) The Credit shall not exceed the Incremental Income Tax
6 attributable to the project that is the subject of the
7 Agreement.

8 (e) Nothing herein shall prohibit a Tax Credit Award to an
9 Applicant that uses a PEO if all other award criteria are
10 satisfied.

11 (f) In lieu of the Credit allowed under this Act against
12 the taxes imposed pursuant to subsections (a) and (b) of
13 Section 201 of the Illinois Income Tax Act for any taxable year
14 ending on or after December 31, 2009, for Taxpayers that
15 entered into Agreements prior to January 1, 2015 and otherwise
16 meet the criteria set forth in this subsection (f), the
17 Taxpayer may elect to claim the Credit against its obligation
18 to pay over withholding under Section 704A of the Illinois
19 Income Tax Act.

20 (1) The election under this subsection (f) may be made
21 only by a Taxpayer that (i) is primarily engaged in one of
22 the following business activities: water purification and
23 treatment, motor vehicle metal stamping, automobile
24 manufacturing, automobile and light duty motor vehicle
25 manufacturing, motor vehicle manufacturing, light truck
26 and utility vehicle manufacturing, heavy duty truck

1 manufacturing, motor vehicle body manufacturing, cable
2 television infrastructure design or manufacturing, or
3 wireless telecommunication or computing terminal device
4 design or manufacturing for use on public networks and (ii)
5 meets the following criteria:

6 (A) the Taxpayer (i) had an Illinois net loss or an
7 Illinois net loss deduction under Section 207 of the
8 Illinois Income Tax Act for the taxable year in which
9 the Credit is awarded, (ii) employed a minimum of 1,000
10 full-time employees in this State during the taxable
11 year in which the Credit is awarded, (iii) has an
12 Agreement under this Act on December 14, 2009 (the
13 effective date of Public Act 96-834), and (iv) is in
14 compliance with all provisions of that Agreement;

15 (B) the Taxpayer (i) had an Illinois net loss or an
16 Illinois net loss deduction under Section 207 of the
17 Illinois Income Tax Act for the taxable year in which
18 the Credit is awarded, (ii) employed a minimum of 1,000
19 full-time employees in this State during the taxable
20 year in which the Credit is awarded, and (iii) has
21 applied for an Agreement within 365 days after December
22 14, 2009 (the effective date of Public Act 96-834);

23 (C) the Taxpayer (i) had an Illinois net operating
24 loss carryforward under Section 207 of the Illinois
25 Income Tax Act in a taxable year ending during calendar
26 year 2008, (ii) has applied for an Agreement within 150

1 days after the effective date of this amendatory Act of
2 the 96th General Assembly, (iii) creates at least 400
3 new jobs in Illinois, (iv) retains at least 2,000 jobs
4 in Illinois that would have been at risk of relocation
5 out of Illinois over a 10-year period, and (v) makes a
6 capital investment of at least \$75,000,000;

7 (D) the Taxpayer (i) had an Illinois net operating
8 loss carryforward under Section 207 of the Illinois
9 Income Tax Act in a taxable year ending during calendar
10 year 2009, (ii) has applied for an Agreement within 150
11 days after the effective date of this amendatory Act of
12 the 96th General Assembly, (iii) creates at least 150
13 new jobs, (iv) retains at least 1,000 jobs in Illinois
14 that would have been at risk of relocation out of
15 Illinois over a 10-year period, and (v) makes a capital
16 investment of at least \$57,000,000; or

17 (E) the Taxpayer (i) employed at least 2,500
18 full-time employees in the State during the year in
19 which the Credit is awarded, (ii) commits to make at
20 least \$500,000,000 in combined capital improvements
21 and project costs under the Agreement, (iii) applies
22 for an Agreement between January 1, 2011 and June 30,
23 2011, (iv) executes an Agreement for the Credit during
24 calendar year 2011, and (v) was incorporated no more
25 than 5 years before the filing of an application for an
26 Agreement.

1 (1.5) The election under this subsection (f) may also
2 be made by a Taxpayer for any Credit awarded pursuant to an
3 agreement that was executed between January 1, 2011 and
4 June 30, 2011, if the Taxpayer (i) is primarily engaged in
5 the manufacture of inner tubes or tires, or both, from
6 natural and synthetic rubber, (ii) employs a minimum of
7 2,400 full-time employees in Illinois at the time of
8 application, (iii) creates at least 350 full-time jobs and
9 retains at least 250 full-time jobs in Illinois that would
10 have been at risk of being created or retained outside of
11 Illinois, and (iv) makes a capital investment of at least
12 \$200,000,000 at the project location.

13 (1.6) The election under this subsection (f) may also
14 be made by a Taxpayer for any Credit awarded pursuant to an
15 agreement that was executed within 150 days after the
16 effective date of this amendatory Act of the 97th General
17 Assembly, if the Taxpayer (i) is primarily engaged in the
18 operation of a discount department store, (ii) maintains
19 its corporate headquarters in Illinois, (iii) employs a
20 minimum of 4,250 full-time employees at its corporate
21 headquarters in Illinois at the time of application, (iv)
22 retains at least 4,250 full-time jobs in Illinois that
23 would have been at risk of being relocated outside of
24 Illinois, (v) had a minimum of \$40,000,000,000 in total
25 revenue in 2010, and (vi) makes a capital investment of at
26 least \$300,000,000 at the project location.

1 (1.7) Notwithstanding any other provision of law, the
2 election under this subsection (f) may also be made by a
3 Taxpayer for any Credit awarded pursuant to an agreement
4 that was executed or applied for on or after July 1, 2011
5 and on or before March 31, 2012, if the Taxpayer is
6 primarily engaged in the manufacture of original and
7 aftermarket filtration parts and products for automobiles,
8 motor vehicles, light duty motor vehicles, light trucks and
9 utility vehicles, and heavy duty trucks, (ii) employs a
10 minimum of 1,000 full-time employees in Illinois at the
11 time of application, (iii) creates at least 250 full-time
12 jobs in Illinois, (iv) relocates its corporate
13 headquarters to Illinois from another state, and (v) makes
14 a capital investment of at least \$4,000,000 at the project
15 location.

16 (2) An election under this subsection shall allow the
17 credit to be taken against payments otherwise due under
18 Section 704A of the Illinois Income Tax Act during the
19 first calendar year beginning after the end of the taxable
20 year in which the credit is awarded under this Act.

21 (3) The election shall be made in the form and manner
22 required by the Illinois Department of Revenue and, once
23 made, shall be irrevocable.

24 (4) If a Taxpayer who meets the requirements of
25 subparagraph (A) of paragraph (1) of this subsection (f)
26 elects to claim the Credit against its withholdings as

1 provided in this subsection (f), then, on and after the
2 date of the election, the terms of the Agreement between
3 the Taxpayer and the Department may not be further amended
4 during the term of the Agreement.

5 (g) A pass-through entity that has been awarded a credit
6 under this Act, its shareholders, or its partners may treat
7 some or all of the credit awarded pursuant to this Act as a tax
8 payment for purposes of the Illinois Income Tax Act. The term
9 "tax payment" means a payment as described in Article 6 or
10 Article 8 of the Illinois Income Tax Act or a composite payment
11 made by a pass-through entity on behalf of any of its
12 shareholders or partners to satisfy such shareholders' or
13 partners' taxes imposed pursuant to subsections (a) and (b) of
14 Section 201 of the Illinois Income Tax Act. In no event shall
15 the amount of the award credited pursuant to this Act exceed
16 the Illinois income tax liability of the pass-through entity or
17 its shareholders or partners for the taxable year.

18 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
19 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
20 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

21 (35 ILCS 10/5-20)

22 Sec. 5-20. Application for a project to create and retain
23 new jobs.

24 (a) Any Taxpayer proposing a project located or planned to
25 be located in Illinois may request consideration for

1 designation of its project, by formal written letter of request
2 or by formal application to the Department, in which the
3 Applicant states its intent to make at least a specified level
4 of investment and intends to hire or retain a specified number
5 of full-time employees at a designated location in Illinois. As
6 circumstances require, the Department may require a formal
7 application from an Applicant and a formal letter of request
8 for assistance.

9 (b) In order to qualify for Credits under this Act, an
10 Applicant's project must:

11 (1) if the Applicant has more than 100 employees,
12 involve an investment of at least \$2,500,000 ~~\$5,000,000~~ in
13 capital improvements to be placed in service and to employ
14 ~~at least 25 New Employees~~ within the State as a direct
15 result of the project; if the Applicant has 100 or fewer
16 employees, then there is no capital investment
17 requirement; and

18 (1.5) if the Applicant has more than 100 employees,
19 employ a number of new employees in the State equal to the
20 lesser of (A) 10% of the number of full-time employees
21 employed by the applicant world-wide on the date the
22 application is filed with the Department or (B) 50 New
23 Employees; and, if the Applicant has 100 or fewer
24 employees, employ a number of new employees in the State
25 equal to the lesser of (A) 5% of the number of full-time
26 employees employed by the applicant world-wide on the date

1 the application is filed with the Department or (B) 50 New
2 Employees;

3 (2) (blank); ~~involve an investment of at least an~~
4 ~~amount (to be expressly specified by the Department and the~~
5 ~~Committee) in capital improvements to be placed in service~~
6 ~~and will employ at least an amount (to be expressly~~
7 ~~specified by the Department and the Committee) of New~~
8 ~~Employees within the State, provided that the Department~~
9 ~~and the Committee have determined that the project will~~
10 ~~provide a substantial economic benefit to the State; or~~

11 (3) (blank). ~~if the applicant has 100 or fewer~~
12 ~~employees, involve an investment of at least \$1,000,000 in~~
13 ~~capital improvements to be placed in service and to employ~~
14 ~~at least 5 New Employees within the State as a direct~~
15 ~~result of the project.~~

16 (c) After receipt of an application, the Department may
17 enter into an Agreement with the Applicant if the application
18 is accepted in accordance with Section 5-25.

19 (Source: P.A. 93-882, eff. 1-1-05.)

20 (35 ILCS 10/5-25)

21 Sec. 5-25. Review of Application.

22 (a) In addition to those duties granted under the Illinois
23 Economic Development Board Act, the Illinois Economic
24 Development Board shall form a Business Investment Committee
25 for the purpose of making recommendations for applications. At

1 the request of the Board, the Director of Commerce and Economic
2 Opportunity or his or her designee, the Director of the
3 Governor's Office of Management and Budget or his or her
4 designee, the Director of Revenue or his or her designee, the
5 Director of Employment Security or his or her designee, and an
6 elected official of the affected locality, such as the chair of
7 the county board or the mayor, may serve as members of the
8 Committee to assist with its analysis and deliberations.

9 (b) At the Department's request, the Committee shall
10 convene, make inquiries, and conduct studies in the manner and
11 by the methods as it deems desirable, review information with
12 respect to Applicants, and make recommendations for projects to
13 benefit the State. In making its recommendation that an
14 Applicant's application for Credit should or should not be
15 accepted, which shall occur within a reasonable time frame as
16 determined by the nature of the application, the Committee
17 shall determine that all the following conditions exist:

18 (1) The Applicant's project intends, as required by
19 subsection (b) of Section 5-20 to make the required
20 investment in the State and intends to hire the required
21 number of New Employees in Illinois as a result of that
22 project.

23 (2) The Applicant's project is economically sound and
24 will benefit the people of the State of Illinois by
25 increasing opportunities for employment and strengthen the
26 economy of Illinois.

1 (3) That, if not for the Credit, the project would not
2 occur in Illinois, which may be demonstrated by evidence
3 that receipt of the Credit is essential to the Applicant's
4 decision to create new jobs in the State, such as the
5 magnitude of the cost differential between Illinois and a
6 competing State; in addition, if the Applicant is seeking
7 an increase in the maximum amount of the Credit for
8 retained employees, the Applicant must provide ~~any means~~
9 ~~including, but not limited to,~~ evidence the Applicant has
10 multi-state location options and could reasonably and
11 efficiently locate outside of the State, or demonstrate
12 ~~demonstration~~ that at least one other state is being
13 considered for the project, ~~or evidence the receipt of the~~
14 ~~Credit is a major factor in the Applicant's decision and~~
15 ~~that without the Credit, the Applicant likely would not~~
16 ~~create new jobs in Illinois, or demonstration that~~
17 ~~receiving the Credit is essential to the Applicant's~~
18 ~~decision to create or retain new jobs in the State.~~

19 (4) A cost differential is identified, using best
20 available data, in the projected costs for the Applicant's
21 project compared to the costs in the competing state,
22 including the impact of the competing state's incentive
23 programs. The competing state's incentive programs shall
24 include state, local, private, and federal funds
25 available.

26 (5) The political subdivisions affected by the project

1 have committed local incentives with respect to the
2 project, considering local ability to assist.

3 (6) Awarding the Credit will result in an overall
4 positive fiscal impact to the State, as certified by the
5 Committee using the best available data.

6 (7) The Credit is not prohibited by Section 5-35 of
7 this Act.

8 (Source: P.A. 94-793, eff. 5-19-06.)

9 (35 ILCS 10/5-50)

10 Sec. 5-50. Contents of Agreements with Applicants. The
11 Department shall enter into an Agreement with an Applicant that
12 is awarded a Credit under this Act. The Agreement must include
13 all of the following:

14 (1) A detailed description of the project that is the
15 subject of the Agreement, including the location and amount
16 of the investment and jobs created or retained.

17 (2) The duration of the Credit and the first taxable
18 year for which the Credit may be claimed.

19 (3) The Credit amount that will be allowed for each
20 taxable year.

21 (4) A requirement that the Taxpayer shall maintain
22 operations at the project location that shall be stated as
23 a minimum number of years not to exceed 10.

24 (5) A specific method for determining the number of New
25 Employees employed during a taxable year.

1 (6) A requirement that the Taxpayer shall annually
2 report to the Department the number of New Employees, the
3 Incremental Income Tax withheld in connection with the New
4 Employees, and any other information the Director needs to
5 perform the Director's duties under this Act.

6 (7) A requirement that the Director is authorized to
7 verify with the appropriate State agencies the amounts
8 reported under paragraph (6), and after doing so shall
9 issue a certificate to the Taxpayer stating that the
10 amounts have been verified.

11 (8) A requirement that the Taxpayer shall provide
12 written notification to the Director not more than 30 days
13 after the Taxpayer makes or receives a proposal that would
14 transfer the Taxpayer's State tax liability obligations to
15 a successor Taxpayer.

16 (9) A detailed description of the number of New
17 Employees to be hired, and the occupation and payroll of
18 the full-time jobs to be created or retained as a result of
19 the project.

20 (10) The minimum investment the business enterprise
21 will make in capital improvements, the time period for
22 placing the property in service, and the designated
23 location in Illinois for the investment.

24 (11) A requirement that the Taxpayer shall provide
25 written notification to the Director and the Committee not
26 more than 30 days after the Taxpayer determines that the

1 minimum job creation or retention, employment payroll, or
2 investment no longer is being or will be achieved or
3 maintained as set forth in the terms and conditions of the
4 Agreement.

5 (12) A provision that, if the total number of New
6 Employees falls below a specified level, the allowance of
7 Credit shall be suspended until the number of New Employees
8 equals or exceeds the Agreement amount.

9 (13) A detailed description of the items for which the
10 costs incurred by the Taxpayer will be included in the
11 limitation on the Credit provided in Section 5-30.

12 (13.5) A provision that, if the Taxpayer never meets
13 either the investment or job creation and retention
14 requirements specified in the Agreement during the entire
15 5-year period beginning on the first day of the first
16 taxable year in which the Agreement is executed and ending
17 on the last day of the fifth taxable year after the
18 Agreement is executed, then the Agreement is automatically
19 terminated on the last day of the fifth taxable year after
20 the Agreement is executed and the Taxpayer is not entitled
21 to the award of any credits for any of that 5-year period.

22 (13.7) A provision specifying that, if the Taxpayer
23 ceases principal operations with the intent to shut down
24 the project in the State permanently, then the Taxpayer
25 shall be subject to the provisions of the Keep Illinois
26 Businesses Act, and the recaptured Credit amounts shall be

1 reallocated to the local workforce investment area in which
2 the project was located.

3 (14) Any other performance conditions or contract
4 provisions as the Department determines are appropriate.

5 The Department shall post on its website the terms of each
6 Agreement entered into under this Act on or after the effective
7 date of this amendatory Act of the 97th General Assembly. Such
8 information shall be posted within 10 days after entering into
9 the Agreement and must include the following:

10 (1) the name of the recipient business;

11 (2) the location of the project;

12 (3) the estimated value of the credit;

13 (4) the number of new jobs and, if applicable, retained
14 jobs pledged as a result of the project; and

15 (5) whether or not the project is located in an
16 underserved area.

17 (Source: P.A. 97-2, eff. 5-6-11; 97-749, eff. 7-6-12.)

18 (35 ILCS 10/5-57 new)

19 Sec. 5-57. Supplier diversity goals; reports. Each
20 taxpayer claiming a credit under this Act shall, no later than
21 April 15 of each taxable year for which the taxpayer claims a
22 credit under this Act, submit to the Department of Commerce and
23 Economic Opportunity an annual report containing the
24 information described in subsections (b), (c), (d), and (e) of
25 Section 5-117 of the Public Utilities Act. Those reports shall

1 be submitted in the form and manner required by the Department
2 of Commerce and Economic Opportunity.

3 (35 ILCS 10/5-65)

4 Sec. 5-65. Noncompliance; notice; assessment. If the
5 Director determines that a Taxpayer who has received a Credit
6 under this Act is not complying with the requirements of the
7 Agreement or all of the provisions of this Act, the Director
8 shall provide notice to the Taxpayer of the alleged
9 noncompliance, and allow the Taxpayer a hearing under the
10 provisions of the Illinois Administrative Procedure Act. If,
11 after such notice and any hearing, the Director determines that
12 a noncompliance exists, the Director shall issue to the
13 Department of Revenue notice to that effect, stating the
14 Noncompliance Date. If the Taxpayer ceases operations at a
15 project location that is the subject of an Agreement with the
16 intent to terminate operations in the State, then the
17 Department and the Department of Revenue shall recapture the
18 amount of economic development assistance received under the
19 Agreement in accordance with the Keep Illinois Businesses Act.
20 Notwithstanding the provisions of the Keep Illinois Businesses
21 Act, the Department shall, subject to appropriation,
22 reallocate the recaptured amounts that are subject to the
23 Agreement to the local workforce investment area in which the
24 project was located for the purposes of workforce development,
25 expanded opportunities for unemployed persons, and expanded

1 opportunities for women and minorities in the workforce.

2 (Source: P.A. 91-476, eff. 8-11-99.)

3 (35 ILCS 10/5-70)

4 Sec. 5-70. Annual report. On or before July 1 each year,
5 the Committee shall submit a report to the Department on the
6 tax credit program under this Act to the Governor and the
7 General Assembly. The report shall include information on the
8 number of Agreements that were entered into under this Act
9 during the preceding calendar year, a description of the
10 project that is the subject of each Agreement, an update on the
11 status of projects under Agreements entered into before the
12 preceding calendar year, and the sum of the Credits awarded
13 under this Act. A copy of the report shall be delivered to the
14 Governor and to each member of the General Assembly.

15 The report must include, for each Agreement:

16 (1) the original estimates of the value of the Credit
17 and the number of new jobs to be created and, if
18 applicable, the number of retained jobs;

19 (2) any relevant modifications to existing Agreements;

20 (3) a statement of the progress made by each Taxpayer
21 in meeting the terms of the original Agreement;

22 (4) a statement of wages paid to New Employees and, if
23 applicable, retained employees in the State;

24 (5) any information reported under Section 5-57 of this
25 Act; and

1 (6) a copy of the original Agreement.

2 (Source: P.A. 91-476, eff. 8-11-99.)

3 (35 ILCS 10/5-77)

4 Sec. 5-77. Sunset of new Agreements. The Department shall
5 not enter into any new Agreements under the provisions of
6 Section 5-50 of this Act after June 30, 2022 ~~April 30, 2017~~.

7 (Source: P.A. 99-925, eff. 1-20-17.)"