



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB1867

Introduced 2/17/2021, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

20 ILCS 605/605-1055 new
20 ILCS 605/605-320 rep.
30 ILCS 750/Art. 11 rep.
35 ILCS 10/5-5
35 ILCS 10/5-10
35 ILCS 10/5-25
35 ILCS 10/5-70
35 ILCS 10/5-90
35 ILCS 10/5-40 rep.

Amends the Economic Development for a Growing Economy Tax Credit Act. Repeals provisions concerning the Illinois Business Investment Committee. Amends the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code. Creates the Illinois Small Business Fund as a nonappropriated separate and apart trust fund in the State Treasury. Provides that the Department of Commerce and Economic Opportunity shall use moneys in the Fund to manage proceeds that result from investments that the Department has undertaken through economic development programs. Repeals the Illinois Small Business Incubator Article within the Build Illinois Act.

LRB102 14727 HLH 20080 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Commerce and Economic
5 Opportunity Law of the Civil Administrative Code of Illinois
6 is amended by adding Section 605-1055 as follows:

7 (20 ILCS 605/605-1055 new)

8 Sec. 605-1055. The Illinois Small Business Fund. The
9 Illinois Small Business Fund is created as a nonappropriated
10 separate and apart trust fund in the State Treasury. The
11 Department shall use moneys in the Fund to manage proceeds
12 that result from investments that the Department has
13 undertaken through economic development programs, including
14 but not limited to the Department's Venture Capital Investment
15 Program. The Department may use moneys collected to reinvest
16 in small business and economic development initiatives through
17 grants or loans. The Fund may receive any grants or other
18 moneys designated for small business growth from the State, or
19 any unit of federal or local government, or any other person,
20 firm, partnership, or corporation. Any interest earnings that
21 are attributable to moneys in the Fund must be deposited into
22 the Fund.

1 (20 ILCS 605/605-320 rep.)

2 Section 10. The Department of Commerce and Economic
3 Opportunity Law of the Civil Administrative Code of Illinois
4 is amended by repealing Section 605-320.

5 (30 ILCS 750/Art. 11 rep.)

6 Section 15. The Build Illinois Act is amended by repealing
7 Article 11.

8 Section 20. The Economic Development for a Growing Economy
9 Tax Credit Act is amended by changing Sections 5-5, 5-10,
10 5-25, 5-70, and 5-90 as follows:

11 (35 ILCS 10/5-5)

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

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

15 "Applicant" means a Taxpayer that is operating a business
16 located or that the Taxpayer plans to locate within the State
17 of Illinois and that is engaged in interstate or intrastate
18 commerce for the purpose of manufacturing, processing,
19 assembling, warehousing, or distributing products, conducting
20 research and development, providing tourism services, or
21 providing services in interstate commerce, office industries,
22 or agricultural processing, but excluding retail, retail food,
23 health, or professional services. "Applicant" does not include

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

19 ~~"Committee" means the Illinois Business Investment~~
20 ~~Committee created under Section 5-25 of this Act within the~~
21 ~~Illinois Economic Development Board.~~

22 "Credit" means the amount agreed to between the Department
23 and Applicant under this Act, but not to exceed the lesser of:
24 (1) the sum of (i) 50% of the Incremental Income Tax
25 attributable to New Employees at the Applicant's project and
26 (ii) 10% of the training costs of New Employees; or (2) 100% of

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

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

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

21 "Full-time Employee" means an individual who is employed
22 for consideration for at least 35 hours each week or who
23 renders any other standard of service generally accepted by
24 industry custom or practice as full-time employment. An
25 individual for whom a W-2 is issued by a Professional Employer
26 Organization (PEO) is a full-time employee if employed in the

1 service of the Applicant for consideration for at least 35
2 hours each week or who renders any other standard of service
3 generally accepted by industry custom or practice as full-time
4 employment to Applicant.

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

10 "New Construction EDGE Agreement" means the Agreement
11 between a Taxpayer and the Department under the provisions of
12 Section 5-51 of this Act.

13 "New Construction EDGE Credit" means an amount agreed to
14 between the Department and the Applicant under this Act as
15 part of a New Construction EDGE Agreement that does not exceed
16 50% of the Incremental Income Tax attributable to New
17 Construction EDGE Employees at the Applicant's project;
18 however, if the New Construction EDGE Project is located in an
19 underserved area, then the amount of the New Construction EDGE
20 Credit may not exceed 75% of the Incremental Income Tax
21 attributable to New Construction EDGE Employees at the
22 Applicant's New Construction EDGE Project.

23 "New Construction EDGE Employee" means a laborer or worker
24 who is employed by an Illinois contractor or subcontractor in
25 the actual construction work on the site of a New Construction
26 EDGE Project, pursuant to a New Construction EDGE Agreement.

1 "New Construction EDGE Incremental Income Tax" means the
2 total amount withheld during the taxable year from the
3 compensation of New Construction EDGE Employees.

4 "New Construction EDGE Project" means the building of a
5 Taxpayer's structure or building, or making improvements of
6 any kind to real property. "New Construction EDGE Project"
7 does not include the routine operation, routine repair, or
8 routine maintenance of existing structures, buildings, or real
9 property.

10 "New Employee" means:

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

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

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

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

25 (3) a child, grandchild, parent, or spouse, other
26 than a spouse who is legally separated from the

1 individual, of any individual who has a direct or an
2 indirect ownership interest of at least 5% in the
3 profits, capital, or value of the Taxpayer.

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

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

9 and

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

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

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

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

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

22 "Noncompliance Date" means, in the case of a Taxpayer that
23 is not complying with the requirements of the Agreement or the
24 provisions of this Act, the day following the last date upon
25 which the Taxpayer was in compliance with the requirements of
26 the Agreement and the provisions of this Act, as determined by

1 the Director, pursuant to Section 5-65.

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

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

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

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

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

23 (3) A corporation, and any party related to the
24 corporation in a manner that would require an attribution
25 of stock from the corporation to the party or from the
26 party to the corporation under the attribution rules of

1 Section 318 of the Internal Revenue Code, if the Taxpayer
2 owns directly, indirectly, beneficially, or constructively
3 at least 50% of the value of the corporation's outstanding
4 stock.

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

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

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

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

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

25 (2) 75% or more of the children in the area
26 participate in the federal free lunch program according to

1 reported statistics from the State Board of Education;

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

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

11 (Source: P.A. 100-511, eff. 9-18-17; 101-9, eff. 6-5-19.)

12 (35 ILCS 10/5-10)

13 Sec. 5-10. Powers of the Department. The Department, in
14 addition to those powers granted under the Civil
15 Administrative Code of Illinois, is granted and shall have all
16 the powers necessary or convenient to carry out and effectuate
17 the purposes and provisions of this Act, including, but not
18 limited to, power and authority to:

19 (a) Promulgate procedures, rules, or regulations deemed
20 necessary and appropriate for the administration of the
21 programs; establish forms for applications, notifications,
22 contracts, or any other agreements; and accept applications at
23 any time during the year.

24 (b) Provide and assist Taxpayers pursuant to the
25 provisions of this Act, and cooperate with Taxpayers that are

1 parties to Agreements to promote, foster, and support economic
2 development, capital investment, and job creation or retention
3 within the State.

4 (c) Enter into agreements and memoranda of understanding
5 for participation of and engage in cooperation with agencies
6 of the federal government, local units of government,
7 universities, research foundations or institutions, regional
8 economic development corporations, or other organizations for
9 the purposes of this Act.

10 (d) Gather information and conduct inquiries, in the
11 manner and by the methods as it deems desirable, including
12 without limitation, gathering information with respect to
13 Applicants for the purpose of making any designations or
14 certifications necessary or desirable or to gather information
15 to assist the Department ~~Committee~~ with any recommendation or
16 guidance in the furtherance of the purposes of this Act.

17 (e) Establish, negotiate and effectuate any term,
18 agreement or other document with any person, necessary or
19 appropriate to accomplish the purposes of this Act; and to
20 consent, subject to the provisions of any Agreement with
21 another party, to the modification or restructuring of any
22 Agreement to which the Department is a party.

23 (f) Fix, determine, charge, and collect any premiums,
24 fees, charges, costs, and expenses from Applicants, including,
25 without limitation, any application fees, commitment fees,
26 program fees, financing charges, or publication fees as deemed

1 appropriate to pay expenses necessary or incident to the
2 administration, staffing, or operation in connection with the
3 Department's ~~or Committee's~~ activities under this Act, or for
4 preparation, implementation, and enforcement of the terms of
5 the Agreement, or for consultation, advisory and legal fees,
6 and other costs; however, all fees and expenses incident
7 thereto shall be the responsibility of the Applicant.

8 (g) Provide for sufficient personnel to permit
9 administration, staffing, operation, and related support
10 required to adequately discharge its duties and
11 responsibilities described in this Act from funds made
12 available through charges to Applicants or from funds as may
13 be appropriated by the General Assembly for the administration
14 of this Act.

15 (h) Require Applicants, upon written request, to issue any
16 necessary authorization to the appropriate federal, state, or
17 local authority for the release of information concerning a
18 project being considered under the provisions of this Act,
19 with the information requested to include, but not be limited
20 to, financial reports, returns, or records relating to the
21 Taxpayers' or its project.

22 (i) Require that a Taxpayer shall at all times keep proper
23 books of record and account in accordance with generally
24 accepted accounting principles consistently applied, with the
25 books, records, or papers related to the Agreement in the
26 custody or control of the Taxpayer open for reasonable

1 Department inspection and audits, and including, without
2 limitation, the making of copies of the books, records, or
3 papers, and the inspection or appraisal of any of the Taxpayer
4 or project assets.

5 (j) Take whatever actions are necessary or appropriate to
6 protect the State's interest in the event of bankruptcy,
7 default, foreclosure, or noncompliance with the terms and
8 conditions of financial assistance or participation required
9 under this Act, including the power to sell, dispose, lease,
10 or rent, upon terms and conditions determined by the Director
11 to be appropriate, real or personal property that the
12 Department may receive as a result of these actions.

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

14 (35 ILCS 10/5-25)

15 Sec. 5-25. Review of Application.

16 (a) (Blank). ~~In addition to those duties granted under the~~
17 ~~Illinois Economic Development Board Act, the Illinois Economic~~
18 ~~Development Board shall form a Business Investment Committee~~
19 ~~for the purpose of making recommendations for applications. At~~
20 ~~the request of the Board, the Director of Commerce and~~
21 ~~Economic Opportunity or his or her designee, the Director of~~
22 ~~the Governor's Office of Management and Budget or his or her~~
23 ~~designee, the Director of Revenue or his or her designee, the~~
24 ~~Director of Employment Security or his or her designee, and an~~
25 ~~elected official of the affected locality, such as the chair~~

1 ~~of the county board or the mayor, may serve as members of the~~
2 ~~Committee to assist with its analysis and deliberations.~~

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

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

19 (2) The Applicant's project is economically sound and
20 will benefit the people of the State of Illinois by
21 increasing opportunities for employment and strengthen the
22 economy of Illinois.

23 (3) That, if not for the Credit, the project would not
24 occur in Illinois, which may be demonstrated by evidence
25 that receipt of the Credit is essential to the Applicant's
26 decision to create new jobs in the State, such as the

1 magnitude of the cost differential between Illinois and a
2 competing State; in addition, if the Applicant is seeking
3 an increase in the maximum amount of the Credit for
4 retained employees, the Applicant must provide evidence
5 the Applicant has multi-state location options and could
6 reasonably and efficiently locate outside of the State or
7 demonstrate that at least one other state is being
8 considered for the project.

9 (4) A cost differential is identified, using best
10 available data, in the projected costs for the Applicant's
11 project compared to the costs in the competing state,
12 including the impact of the competing state's incentive
13 programs. The competing state's incentive programs shall
14 include state, local, private, and federal funds
15 available.

16 (5) The political subdivisions affected by the project
17 have committed local incentives with respect to the
18 project, considering local ability to assist.

19 (6) Awarding the Credit will result in an overall
20 positive fiscal impact to the State, as certified by the
21 Department Committee using the best available data.

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

24 (Source: P.A. 100-511, eff. 9-18-17.)

25 (35 ILCS 10/5-70)

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

13 The report must include, for each Agreement:

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

17 (2) any relevant modifications to existing Agreements;

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

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

22 (5) any information reported under Section 5-57 of
23 this Act; and

24 (6) a copy of the original Agreement or a link the
25 Agreement on the Department's website.

26 (Source: P.A. 100-511, eff. 9-18-17.)

1 (35 ILCS 10/5-90)

2 Sec. 5-90. Program Terms and Conditions.

3 (a) Any documentary materials or data made available or
4 received by any ~~member of a Committee or any~~ agent or employee
5 of the Department shall be deemed confidential and shall not
6 be deemed public records to the extent that the materials or
7 data consists of trade secrets, commercial or financial
8 information regarding the operation of the business conducted
9 by the Applicant for or recipient of any tax credit under this
10 Act, or any information regarding the competitive position of
11 a business in a particular field of endeavor.

12 (b) Nothing in this Act shall be construed as creating any
13 rights in any Applicant to enter into an Agreement or in any
14 person to challenge the terms of any Agreement.

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

16 (35 ILCS 10/5-40 rep.)

17 Section 25. The Economic Development for a Growing Economy
18 Tax Credit Act is amended by repealing Section 5-40.