



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3934

Introduced 1/10/2012, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

20 ILCS 2505/2505-503 new
35 ILCS 10/5-10
35 ILCS 10/5-20
35 ILCS 10/5-45
35 ILCS 10/5-50

Amends the Department of Revenue Law of the Civil Administrative Code of Illinois. Creates the Economic Incentive Committee within the Department for the purpose of approving Agreements entered into under the Economic Development for a Growing Economy Tax Credit Act. Sets forth the membership of the Committee. Provides that the Department of Revenue shall post the terms of each Agreement entered into under the Economic Development for a Growing Economy Tax Credit Act on its website. Amends the Economic Development for a Growing Economy Tax Credit Act to provide that each Agreement is subject to final approval by the Economic Incentive Committee. Effective July 1, 2012.

LRB097 15154 HLH 60254 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 Department of Revenue Law of the Civil
5 Administrative Code of Illinois is amended by adding Section
6 2505-503 as follows:

7 (20 ILCS 2505/2505-503 new)

8 Sec. 2505-503. Economic Incentive Committee; creation;
9 duties. An Economic Incentive Committee is created within the
10 Department for the purpose of approving Agreements entered into
11 under the Economic Development for a Growing Economy Tax Credit
12 Act. The Committee shall consist of 5 members appointed as
13 follows: one member shall be appointed by the Governor; one
14 member shall be appointed by the Speaker of the House of
15 Representatives; one member shall be appointed by the President
16 of the Senate; one member shall be appointed by the House
17 Minority Leader; and one member shall be appointed by the
18 Senate Minority Leader. Each member of the Committee shall be a
19 business owner or shall have expertise in economic development
20 or academia.

21 The Committee shall approve or deny each Agreement within
22 60 days after the Agreement is submitted to the Committee.
23 Members shall serve without compensation, but may be reimbursed

1 for their necessary expenses. If a member has a conflict of
2 interest with respect to any Agreement, he or she shall recuse
3 himself or herself from consideration of that Agreement. The
4 Committee shall consider each Agreement submitted on or before
5 December 31, 2016 and shall be dissolved as soon after that
6 date as possible.

7 The Department shall post the terms of each Agreement
8 entered into under the Economic Development for a Growing
9 Economy Tax Credit Act on its website.

10 Section 10. The Economic Development for a Growing Economy
11 Tax Credit Act is amended by changing Sections 5-10, 5-20,
12 5-45, and 5-50 as follows:

13 (35 ILCS 10/5-10)

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

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

1 (b) Provide and assist Taxpayers pursuant to the provisions
2 of this Act, and cooperate with Taxpayers that are parties to
3 Agreements to promote, foster, and support economic
4 development, capital investment, and job creation or retention
5 within the State.

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

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

19 (e) Establish, negotiate and effectuate any term,
20 agreement or other document with any person, necessary or
21 appropriate to accomplish the purposes of this Act; and to
22 consent, subject to the provisions of any Agreement with
23 another party, to the modification or restructuring of any
24 Agreement to which the Department is a party, provided that all
25 Agreements entered into on or after the effective date of this
26 amendatory Act of the 97th General Assembly, and all

1 modifications to or restructuring of Agreements occurring on or
2 after the effective date of this amendatory Act of the 97th
3 General Assembly, require the approval of the Economic
4 Incentive Committee established under Section 2505-503 of the
5 Department of Revenue Law of the Civil Administrative Code of
6 Illinois.

7 (f) Fix, determine, charge, and collect any premiums, fees,
8 charges, costs, and expenses from Applicants, including,
9 without limitation, any application fees, commitment fees,
10 program fees, financing charges, or publication fees as deemed
11 appropriate to pay expenses necessary or incident to the
12 administration, staffing, or operation in connection with the
13 Department's or Committee's activities under this Act, or for
14 preparation, implementation, and enforcement of the terms of
15 the Agreement, or for consultation, advisory and legal fees,
16 and other costs; however, all fees and expenses incident
17 thereto shall be the responsibility of the Applicant.

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

25 (h) Require Applicants, upon written request, to issue any
26 necessary authorization to the appropriate federal, state, or

1 local authority for the release of information concerning a
2 project being considered under the provisions of this Act, with
3 the information requested to include, but not be limited to,
4 financial reports, returns, or records relating to the
5 Taxpayers' or its project.

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

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

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

24 (35 ILCS 10/5-20)

25 Sec. 5-20. Application for a project to create and retain

1 new jobs.

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

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

14 (1) involve an investment of at least \$5,000,000 in
15 capital improvements to be placed in service and to employ
16 at least 25 New Employees within the State as a direct
17 result of the project;

18 (2) involve an investment of at least an amount (to be
19 expressly specified by the Department and the Committee) in
20 capital improvements to be placed in service and will
21 employ at least an amount (to be expressly specified by the
22 Department and the Committee) of New Employees within the
23 State, provided that the Department and the Committee have
24 determined that the project will provide a substantial
25 economic benefit to the State; or

26 (3) if the applicant has 100 or fewer employees,

1 involve an investment of at least \$1,000,000 in capital
2 improvements to be placed in service and to employ at least
3 5 New Employees within the State as a direct result of the
4 project.

5 (c) After receipt of an application, the Department may
6 enter into an Agreement with the Applicant if the application
7 is accepted in accordance with Section 5-25 and the Agreement
8 is approved by the Economic Incentive Committee established
9 under Section 2505-503 of the Department of Revenue Law of the
10 Civil Administrative Code of Illinois.

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

12 (35 ILCS 10/5-45)

13 Sec. 5-45. Amount and duration of the credit.

14 (a) The Department shall determine the amount and duration
15 of the credit awarded under this Act. The duration of the
16 credit may not exceed 10 taxable years. The credit may be
17 stated as a percentage of the Incremental Income Tax
18 attributable to the applicant's project and may include a fixed
19 dollar limitation. With respect to Agreements entered into or
20 modified on or after the effective date of this amendatory Act
21 of the 97th General Assembly, the amount and duration of the
22 credit is subject to final approval by the Economic Incentive
23 Committee established under Section 2505-503 of the Department
24 of Revenue Law of the Civil Administrative Code of Illinois.

25 (b) Notwithstanding subsection (a), and except as the

1 credit may be applied in a carryover year pursuant to Section
2 211(4) of the Illinois Income Tax Act, the credit may be
3 applied against the State income tax liability in more than 10
4 taxable years but not in more than 15 taxable years for an
5 eligible business that (i) qualifies under this Act and the
6 Corporate Headquarters Relocation Act and has in fact
7 undertaken a qualifying project within the time frame specified
8 by the Department of Commerce and Economic Opportunity under
9 that Act, and (ii) applies against its State income tax
10 liability, during the entire 15-year period, no more than 60%
11 of the maximum credit per year that would otherwise be
12 available under this Act.

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

14 (35 ILCS 10/5-50)

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

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

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

24 (3) The Credit amount that will be allowed for each
25 taxable year.

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

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

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

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

16 (8) A requirement that the Taxpayer shall provide
17 written notification to the Director not more than 30 days
18 after the Taxpayer makes or receives a proposal that would
19 transfer the Taxpayer's State tax liability obligations to
20 a successor Taxpayer.

21 (9) A detailed description of the number of New
22 Employees to be hired, and the occupation and payroll of
23 the full-time jobs to be created or retained as a result of
24 the project.

25 (10) The minimum investment the business enterprise
26 will make in capital improvements, the time period for

1 placing the property in service, and the designated
2 location in Illinois for the investment.

3 (11) A requirement that the Taxpayer shall provide
4 written notification to the Director and the Committee not
5 more than 30 days after the Taxpayer determines that the
6 minimum job creation or retention, employment payroll, or
7 investment no longer is being or will be achieved or
8 maintained as set forth in the terms and conditions of the
9 Agreement.

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

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

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

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

3 Any Agreement entered into on or after the effective date
4 of this amendatory Act of the 97th General Assembly is subject
5 to the approval of the Economic Incentive Committee established
6 under Section 2505-503 of the Department of Revenue Law of the
7 Civil Administrative Code of Illinois. Any modifications to an
8 existing Agreement that take effect on or after the effective
9 date of this amendatory Act of the 97th General Assembly are
10 subject to the approval of the Economic Incentive Committee
11 established under Section 2505-503 of the Department of Revenue
12 Law of the Civil Administrative Code of Illinois. The
13 Department must forward any proposed Agreements or
14 modifications to the Economic Incentive Committee within 15
15 days after the terms of the Agreement or modification are
16 finalized.

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

18 Section 99. Effective date. This Act takes effect July 1,
19 2012.