



Sen. Melinda Bush

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1 AMENDMENT TO SENATE BILL 1427

2 AMENDMENT NO. _____. Amend Senate Bill 1427 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Economic Development for a Growing Economy
5 Tax Credit Act is amended by changing Sections 5-5, 5-20, 5-25,
6 and 5-50 as follows:

7 (35 ILCS 10/5-5)

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

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

11 "Applicant" means a Taxpayer that is operating a business
12 located or that the Taxpayer plans to locate within the State
13 of Illinois and that is engaged in interstate or intrastate
14 commerce for the purpose of manufacturing, processing,
15 assembling, warehousing, or distributing products, conducting
16 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 Incremental

1 Income Tax attributable to the Applicant's project.

2 "Department" means the Department of Commerce and Economic
3 Opportunity.

4 "Director" means the Director of Commerce and Economic
5 Opportunity.

6 "Full-time Employee" means an individual who is employed
7 for consideration for at least 35 hours each week or who
8 renders any other standard of service generally accepted by
9 industry custom or practice as full-time employment. An
10 individual for whom a W-2 is issued by a Professional Employer
11 Organization (PEO) is a full-time employee if employed in the
12 service of the Applicant for consideration for at least 35
13 hours each week or who renders any other standard of service
14 generally accepted by industry custom or practice as full-time
15 employment to Applicant.

16 "Incremental Income Tax" means the total amount withheld
17 during the taxable year from the compensation of New Employees
18 under Article 7 of the Illinois Income Tax Act arising from
19 employment at a project that is the subject of an Agreement.

20 "New Employee" means:

21 (a) A Full-time Employee first employed by a Taxpayer
22 in the project that is the subject of an Agreement and who
23 is hired after the Taxpayer enters into the tax credit
24 Agreement.

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

26 (1) an employee of the Taxpayer who performs a job

1 that was previously performed by another employee, if
2 that job existed for at least 6 months before hiring
3 the employee;

4 (2) an employee of the Taxpayer who was previously
5 employed in Illinois by a Related Member of the
6 Taxpayer and whose employment was shifted to the
7 Taxpayer after the Taxpayer entered into the tax credit
8 Agreement; ~~or~~

9 (3) a child, grandchild, parent, or spouse, other
10 than a spouse who is legally separated from the
11 individual, of any individual who has a direct or an
12 indirect ownership interest of at least 5% in the
13 profits, capital, or value of the Taxpayer; or ~~or~~

14 (4) an employee of the Taxpayer who was previously
15 employed in Illinois by the Taxpayer and whose
16 employment was shifted to the project after the
17 Taxpayer entered into the Agreement.

18 (c) Notwithstanding paragraph (1) of subsection (b),
19 an employee may be considered a New Employee under the
20 Agreement if the employee performs a job that was
21 previously performed by an employee who was:

22 (1) treated under the Agreement as a New Employee;
23 and

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

25 (d) Notwithstanding subsection (a), the Department may
26 award Credit to an Applicant with respect to an employee

1 hired prior to the date of the Agreement if:

2 (1) the Applicant is in receipt of a letter from
3 the Department stating an intent to enter into a credit
4 Agreement;

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

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

10 "Noncompliance Date" means, in the case of a Taxpayer that
11 is not complying with the requirements of the Agreement or the
12 provisions of this Act, the day following the last date upon
13 which the Taxpayer was in compliance with the requirements of
14 the Agreement and the provisions of this Act, as determined by
15 the Director, pursuant to Section 5-65.

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

19 "Project" means a for-profit economic development activity
20 or activities at a single site, or of one or more taxpayers at
21 multiple sites if the economic activities are vertically
22 integrated.

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

26 "Related Member" means a person that, with respect to the

1 Taxpayer during any portion of the taxable year, is any one of
2 the following:

3 (1) An individual stockholder, if the stockholder and
4 the members of the stockholder's family (as defined in
5 Section 318 of the Internal Revenue Code) own directly,
6 indirectly, beneficially, or constructively, in the
7 aggregate, at least 50% of the value of the Taxpayer's
8 outstanding stock.

9 (2) A partnership, estate, or trust and any partner or
10 beneficiary, if the partnership, estate, or trust, and its
11 partners or beneficiaries own directly, indirectly,
12 beneficially, or constructively, in the aggregate, at
13 least 50% of the profits, capital, stock, or value of the
14 Taxpayer.

15 (3) A corporation, and any party related to the
16 corporation in a manner that would require an attribution
17 of stock from the corporation to the party or from the
18 party to the corporation under the attribution rules of
19 Section 318 of the Internal Revenue Code, if the Taxpayer
20 owns directly, indirectly, beneficially, or constructively
21 at least 50% of the value of the corporation's outstanding
22 stock.

23 (4) A corporation and any party related to that
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
2 corporation and all such related parties own in the
3 aggregate at least 50% of the profits, capital, stock, or
4 value of the Taxpayer.

5 (5) A person to or from whom there is attribution of
6 stock ownership in accordance with Section 1563(e) of the
7 Internal Revenue Code, except, for purposes of determining
8 whether a person is a Related Member under this paragraph,
9 20% shall be substituted for 5% wherever 5% appears in
10 Section 1563(e) of the Internal Revenue Code.

11 "Retained Employee" means a full-time employee employed by
12 a taxpayer during the term of the Agreement whose job duties
13 are directly and substantially related to the project. The term
14 "Retained Employee" does not include a child, grandchild,
15 parent, or spouse, other than a spouse who is legally separated
16 from the individual, of any individual who has direct or
17 indirect ownership interest of at least 5% in the profits,
18 capital, or value of the taxpayer. For purposes of this
19 definition, "directly and substantially related to the
20 project" means at least two-thirds of the employee's job duties
21 must be directly related to the project and the employee must
22 devote at least two-thirds of his or her time to the project.

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

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

1 (35 ILCS 10/5-20)

2 Sec. 5-20. Application for a project to create and retain
3 new jobs.

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

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

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

20 (2) involve an investment in capital improvements to be
21 placed in service in the State at a level ~~of at least an~~
22 ~~amount (to be expressly specified by the Department and the~~
23 ~~Committee) in capital improvements to be placed in service~~
24 and ~~will~~ employ at least an amount ~~(to be expressly~~
25 ~~specified by the Department and the Committee)~~ of New
26 Employees or Retained Employees within the State as

1 specified by the Department, provided that the Department
2 has ~~and the Committee have~~ determined that the project will
3 provide a substantial economic benefit to the State; or

4 (3) if the applicant has 100 or fewer employees,
5 involve an investment of at least \$1,000,000 in capital
6 improvements to be placed in service and to employ at least
7 5 New Employees within the State as a direct result of the
8 project.

9 The Director may approve projects that do not meet the
10 specified minimum job creation and investment thresholds set
11 forth in this subsection (b) for an applicant meeting all other
12 requirements of this Act provided that one or more of the
13 following conditions are met:

14 (A) approval would support a business with potential to
15 generate additional growth by attracting companion
16 businesses; or

17 (B) approval would avert loss of one of the area's
18 major sources of employment.

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

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

23 (35 ILCS 10/5-25)

24 Sec. 5-25. Review of Application.

25 (a) In addition to those duties granted under the Illinois

1 Economic Development Board Act, the Illinois Economic
2 Development Board shall form a Business Investment Committee
3 for the purpose of making recommendations for applications. At
4 the request of the Board, the Director of Commerce and Economic
5 Opportunity or his or her designee, the Director of the
6 Governor's Office of Management and Budget or his or her
7 designee, the Director of Revenue or his or her designee, the
8 Director of Employment Security or his or her designee, and an
9 elected official of the affected locality, such as the chair of
10 the county board or the mayor, may serve as members of the
11 Committee to assist with its analysis and deliberations.

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

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

26 (2) The Applicant's project is economically sound and

1 will benefit the people of the State of Illinois by
2 increasing opportunities for employment and strengthen the
3 economy of Illinois.

4 (3) That, if not for the Credit, the project would not
5 occur in Illinois, which may be demonstrated by any means
6 including, but not limited to, evidence the Applicant has
7 multi-state location options and could reasonably and
8 efficiently locate outside of the State, or demonstration
9 that at least one other state is being considered for the
10 project, or evidence the receipt of the Credit is a major
11 factor in the Applicant's decision and that without the
12 Credit, the Applicant likely would not create new jobs in
13 Illinois, or demonstration that receiving the Credit is
14 essential to the Applicant's decision to create or retain
15 new jobs in the State.

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

23 (5) The political subdivisions affected by the project
24 have committed local incentives with respect to the
25 project, considering local ability to assist.

26 (6) Awarding the Credit will result in an overall

1 positive fiscal impact to the State, as certified by the
2 Committee using the best available data.

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

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

6 (35 ILCS 10/5-50)

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

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

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

16 (3) The Credit amount that will be allowed for each
17 taxable year.

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

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

23 (6) A requirement that the Taxpayer shall annually
24 report to the Department the number of New Employees and
25 Retained Employees, the Incremental Income Tax withheld in

1 connection with the New Employees and Retained Employees,
2 and any other information the Director needs to perform the
3 Director's duties under this Act.

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

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

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

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

22 (11) A requirement that the Taxpayer shall provide
23 written notification to the Director and the Committee not
24 more than 30 days after the Taxpayer determines that the
25 minimum job creation or retention, employment payroll, or
26 investment no longer is being or will be achieved or

1 maintained as set forth in the terms and conditions of the
2 Agreement.

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

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

11 (13.5) A provision that, if the Taxpayer never meets
12 either the investment or job creation and retention
13 requirements specified in the Agreement during the entire
14 5-year period beginning on the first day of the first
15 taxable year in which the Agreement is executed and ending
16 on the last day of the fifth taxable year after the
17 Agreement is executed, then the Agreement is automatically
18 terminated on the last day of the fifth taxable year after
19 the Agreement is executed and the Taxpayer is not entitled
20 to the award of any credits for any of that 5-year period.

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

23 The Department shall post on its website the terms of each
24 Agreement entered into under this Act on or after the effective
25 date of this amendatory Act of the 97th General Assembly.

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".