



Rep. Mark L. Walker

**Filed: 3/22/2021**

10200HB1868ham001

LRB102 14693 HLH 23654 a

1 AMENDMENT TO HOUSE BILL 1868

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1868 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, 5-15, and  
6 5-20 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  
20 by the municipality or county regarding the ability to  
21 accommodate 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  
5 the Applicant's project. However, if the project is located in  
6 an underserved area, then the amount of the Credit may not  
7 exceed the lesser of: (1) the sum of (i) 75% of the Incremental  
8 Income Tax attributable to New Employees at the Applicant's  
9 project and (ii) 10% of the training costs of New Employees; or  
10 (2) 100% of the Incremental Income Tax attributable to New  
11 Employees at the Applicant's project. If an Applicant agrees  
12 to 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  
19 5-25.

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

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

24 "Full-time Employee" means an individual who is employed  
25 for consideration for at least 35 hours each week or who  
26 renders any other standard of service generally accepted by

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

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

13 "New Construction EDGE Agreement" means the Agreement  
14 between a Taxpayer and the Department under the provisions of  
15 Section 5-51 of this Act.

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

26 "New Construction EDGE Employee" means a laborer or worker

1 who is employed by an Illinois contractor or subcontractor in  
2 the actual construction work on the site of a New Construction  
3 EDGE Project, pursuant to a New Construction EDGE Agreement.

4 "New Construction EDGE Incremental Income Tax" means the  
5 total amount withheld during the taxable year from the  
6 compensation of New Construction EDGE Employees.

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

13 "New Employee" means:

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

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

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

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

1 credit Agreement; or

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

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

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

12 and

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

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

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

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

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

25 "Noncompliance Date" means, in the case of a Taxpayer that  
26 is not complying with the requirements of the Agreement or the

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

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

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

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

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

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

26 (3) A corporation, and any party related to the

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

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

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

22 "Startup taxpayer" means a corporation, partnership, or  
23 other entity incorporated no more than 5 years before the  
24 filing of an application for an Agreement that has never had  
25 any Illinois income tax liability, excluding any Illinois  
26 income tax liability of a Related Member which shall not be



1 attributed to the startup taxpayer.

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

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

6 (1) the area has a poverty rate of at least 20%  
7 according to the latest American Community Survey ~~federal~~  
8 ~~decennial census~~;

9 (2) 35% or more of the families with children in the  
10 area are living below 130% of the poverty line, according  
11 to the latest American Community Survey ~~75% or more of the~~  
12 ~~children in the area participate in the federal free lunch~~  
13 ~~program according to reported statistics from the State~~  
14 ~~Board of Education~~;

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

18 (4) the area has an average unemployment rate, as  
19 determined by the Illinois Department of Employment  
20 Security, that is more than 120% of the national  
21 unemployment average, as determined by the U.S. Department  
22 of Labor, for a period of at least 2 consecutive calendar  
23 years preceding the date of the application.

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

25 (35 ILCS 10/5-15)

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

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

11           (b) A person that proposes a project to create new jobs in  
12 Illinois must enter into an Agreement with the Department for  
13 the Credit under this Act.

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

16           (d) The Credit shall not exceed the Incremental Income Tax  
17 attributable to the project that is the subject of the  
18 Agreement.

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

22           (f) In lieu of the Credit allowed under this Act against  
23 the taxes imposed pursuant to subsections (a) and (b) of  
24 Section 201 of the Illinois Income Tax Act for any taxable year  
25 ending on or after December 31, 2009, for Taxpayers that  
26 entered into Agreements prior to January 1, 2015 and otherwise

1 meet the criteria set forth in this subsection (f), the  
2 Taxpayer may elect to claim the Credit against its obligation  
3 to pay over withholding under Section 704A of the Illinois  
4 Income Tax Act.

5 (1) The election under this subsection (f) may be made  
6 only by a Taxpayer that (i) is primarily engaged in one of  
7 the following business activities: water purification and  
8 treatment, motor vehicle metal stamping, automobile  
9 manufacturing, automobile and light duty motor vehicle  
10 manufacturing, motor vehicle manufacturing, light truck  
11 and utility vehicle manufacturing, heavy duty truck  
12 manufacturing, motor vehicle body manufacturing, cable  
13 television infrastructure design or manufacturing, or  
14 wireless telecommunication or computing terminal device  
15 design or manufacturing for use on public networks and  
16 (ii) meets the following criteria:

17 (A) the Taxpayer (i) had an Illinois net loss or an  
18 Illinois net loss deduction under Section 207 of the  
19 Illinois Income Tax Act for the taxable year in which  
20 the Credit is awarded, (ii) employed a minimum of  
21 1,000 full-time employees in this State during the  
22 taxable year in which the Credit is awarded, (iii) has  
23 an Agreement under this Act on December 14, 2009 (the  
24 effective date of Public Act 96-834), and (iv) is in  
25 compliance with all provisions of that Agreement;

26 (B) the Taxpayer (i) had an Illinois net loss or an

1 Illinois net loss deduction under Section 207 of the  
2 Illinois Income Tax Act for the taxable year in which  
3 the Credit is awarded, (ii) employed a minimum of  
4 1,000 full-time employees in this State during the  
5 taxable year in which the Credit is awarded, and (iii)  
6 has applied for an Agreement within 365 days after  
7 December 14, 2009 (the effective date of Public Act  
8 96-834);

9 (C) the Taxpayer (i) had an Illinois net operating  
10 loss carryforward under Section 207 of the Illinois  
11 Income Tax Act in a taxable year ending during  
12 calendar year 2008, (ii) has applied for an Agreement  
13 within 150 days after the effective date of this  
14 amendatory Act of the 96th General Assembly, (iii)  
15 creates at least 400 new jobs in Illinois, (iv)  
16 retains at least 2,000 jobs in Illinois that would  
17 have been at risk of relocation out of Illinois over a  
18 10-year period, and (v) makes a capital investment of  
19 at least \$75,000,000;

20 (D) the Taxpayer (i) had an Illinois net operating  
21 loss carryforward under Section 207 of the Illinois  
22 Income Tax Act in a taxable year ending during  
23 calendar year 2009, (ii) has applied for an Agreement  
24 within 150 days after the effective date of this  
25 amendatory Act of the 96th General Assembly, (iii)  
26 creates at least 150 new jobs, (iv) retains at least

1           1,000 jobs in Illinois that would have been at risk of  
2           relocation out of Illinois over a 10-year period, and  
3           (v) makes a capital investment of at least  
4           \$57,000,000; or

5           (E) the Taxpayer (i) employed at least 2,500  
6           full-time employees in the State during the year in  
7           which the Credit is awarded, (ii) commits to make at  
8           least \$500,000,000 in combined capital improvements  
9           and project costs under the Agreement, (iii) applies  
10          for an Agreement between January 1, 2011 and June 30,  
11          2011, (iv) executes an Agreement for the Credit during  
12          calendar year 2011, and (v) was incorporated no more  
13          than 5 years before the filing of an application for an  
14          Agreement.

15          (1.5) The election under this subsection (f) may also  
16          be made by a Taxpayer for any Credit awarded pursuant to an  
17          agreement that was executed between January 1, 2011 and  
18          June 30, 2011, if the Taxpayer (i) is primarily engaged in  
19          the manufacture of inner tubes or tires, or both, from  
20          natural and synthetic rubber, (ii) employs a minimum of  
21          2,400 full-time employees in Illinois at the time of  
22          application, (iii) creates at least 350 full-time jobs and  
23          retains at least 250 full-time jobs in Illinois that would  
24          have been at risk of being created or retained outside of  
25          Illinois, and (iv) makes a capital investment of at least  
26          \$200,000,000 at the project location.

1           (1.6) 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 within 150 days after the  
4           effective date of this amendatory Act of the 97th General  
5           Assembly, if the Taxpayer (i) is primarily engaged in the  
6           operation of a discount department store, (ii) maintains  
7           its corporate headquarters in Illinois, (iii) employs a  
8           minimum of 4,250 full-time employees at its corporate  
9           headquarters in Illinois at the time of application, (iv)  
10          retains at least 4,250 full-time jobs in Illinois that  
11          would have been at risk of being relocated outside of  
12          Illinois, (v) had a minimum of \$40,000,000,000 in total  
13          revenue in 2010, and (vi) makes a capital investment of at  
14          least \$300,000,000 at the project location.

15          (1.7) Notwithstanding any other provision of law, the  
16          election under this subsection (f) may also be made by a  
17          Taxpayer for any Credit awarded pursuant to an agreement  
18          that was executed or applied for on or after July 1, 2011  
19          and on or before March 31, 2012, if the Taxpayer is  
20          primarily engaged in the manufacture of original and  
21          aftermarket filtration parts and products for automobiles,  
22          motor vehicles, light duty motor vehicles, light trucks  
23          and utility vehicles, and heavy duty trucks, (ii) employs  
24          a minimum of 1,000 full-time employees in Illinois at the  
25          time of application, (iii) creates at least 250 full-time  
26          jobs in Illinois, (iv) relocates its corporate

1 headquarters to Illinois from another state, and (v) makes  
2 a capital investment of at least \$4,000,000 at the project  
3 location.

4 (1.8) Notwithstanding any other provision of law, the  
5 election under this subsection (f) may also be made by a  
6 startup taxpayer for any Credit awarded pursuant to an  
7 Agreement that was executed or applied for on or after the  
8 effective date of this amendatory Act of the 102nd General  
9 Assembly, if the startup taxpayer, without considering any  
10 Related Member or other investor, (i) has never had any  
11 Illinois income tax liability and (ii) was incorporated no  
12 more than 5 years before the filing of an application for  
13 an Agreement. Any such election under this paragraph (1.8)  
14 shall be effective unless and until such startup taxpayer  
15 has any Illinois income tax liability. This election under  
16 this paragraph (1.8) shall automatically terminate when  
17 the startup taxpayer has any Illinois income tax liability  
18 at the end of any taxable year during the term of the  
19 Agreement. Thereafter, the startup taxpayer may receive a  
20 Credit, taking into account any benefits previously  
21 enjoyed or received by way of the election under this  
22 paragraph (1.8), so long as the startup taxpayer remains  
23 in compliance with the terms and conditions of the  
24 Agreement.

25 (2) An election under this subsection shall allow the  
26 credit to be taken against payments otherwise due under

1 Section 704A of the Illinois Income Tax Act during the  
2 first calendar year beginning after the end of the taxable  
3 year in which the credit is awarded under this Act.

4 (3) The election shall be made in the form and manner  
5 required by the Illinois Department of Revenue and, once  
6 made, shall be irrevocable.

7 (4) If a Taxpayer who meets the requirements of  
8 subparagraph (A) of paragraph (1) of this subsection (f)  
9 elects to claim the Credit against its withholdings as  
10 provided in this subsection (f), then, on and after the  
11 date of the election, the terms of the Agreement between  
12 the Taxpayer and the Department may not be further amended  
13 during the term of the Agreement.

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



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

2 (35 ILCS 10/5-20)

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

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

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

17 (1) if the Applicant has more than 100 employees,  
18 involve an investment of at least \$2,500,000 in capital  
19 improvements to be placed in service within the State as a  
20 direct result of the project; if the Applicant has 100 or  
21 fewer employees, then there is no capital investment  
22 requirement;

23 (1.5) if the Applicant has more than 100 employees,  
24 employ a number of new employees in the State equal to the  
25 lesser of (A) 10% of the number of full-time employees

1 employed by the applicant world-wide on the date the  
2 application is filed with the Department or (B) 50 New  
3 Employees; and, if the Applicant has 100 or fewer  
4 employees, employ a number of new employees in the State  
5 equal to the lesser of (A) 5% of the number of full-time  
6 employees employed by the applicant world-wide on the date  
7 the application is filed with the Department or (B) 50 New  
8 Employees;

9 (1.6) if the Applicant is a startup taxpayer, the  
10 employees employed by Related Members shall not be  
11 attributed to the Applicant for purposes of determining  
12 the capital investment or job creation requirements under  
13 this subsection (b);

14 (2) (blank);

15 (3) (blank); and

16 (4) include an annual sexual harassment policy report  
17 as provided under Section 5-58.

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

21 (Source: P.A. 100-511, eff. 9-18-17; 100-698, eff. 1-1-19;  
22 101-81, eff. 7-12-19.)".