



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1690

Introduced 2/26/2021, by Sen. Scott M. Bennett

SYNOPSIS AS INTRODUCED:

20 ILCS 605/605-1055 new
20 ILCS 605/605-320 rep.
30 ILCS 105/5.936 new
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. Amends the State Finance Act to make a conforming change. Repeals the Illinois Small Business Incubator Article within the Build Illinois Act.

LRB102 17107 HLH 22536 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 Section 12. The State Finance Act is amended by adding
6 Section 5.936 as follows:

7 (30 ILCS 105/5.936 new)

8 Sec. 5.936. Illinois Small Business Fund.

9 (30 ILCS 750/Art. 11 rep.)

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

12 Section 20. The Economic Development for a Growing Economy
13 Tax Credit Act is amended by changing Sections 5-5, 5-10,
14 5-25, 5-70, and 5-90 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

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

25 ~~"Committee" means the Illinois Business Investment~~
26 ~~Committee created under Section 5-25 of this Act within the~~

1 ~~Illinois Economic Development Board.~~

2 "Credit" means the amount agreed to between the Department
3 and Applicant under this Act, but not to exceed the lesser of:
4 (1) the sum of (i) 50% of the Incremental Income Tax
5 attributable to New Employees at the Applicant's project and
6 (ii) 10% of the training costs of New Employees; or (2) 100% of
7 the Incremental Income Tax attributable to New Employees at
8 the Applicant's project. However, if the project is located in
9 an underserved area, then the amount of the Credit may not
10 exceed the lesser of: (1) the sum of (i) 75% of the Incremental
11 Income Tax attributable to New Employees at the Applicant's
12 project and (ii) 10% of the training costs of New Employees; or
13 (2) 100% of the Incremental Income Tax attributable to New
14 Employees at the Applicant's project. If an Applicant agrees
15 to hire the required number of New Employees, then the maximum
16 amount of the Credit for that Applicant may be increased by an
17 amount not to exceed 25% of the Incremental Income Tax
18 attributable to retained employees at the Applicant's project;
19 provided that, in order to receive the increase for retained
20 employees, the Applicant must provide the additional evidence
21 required under paragraph (3) of subsection (b) of Section
22 5-25.

23 "Department" means the Department of Commerce and Economic
24 Opportunity.

25 "Director" means the Director of Commerce and Economic
26 Opportunity.

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

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

16 "New Construction EDGE Agreement" means the Agreement
17 between a Taxpayer and the Department under the provisions of
18 Section 5-51 of this Act.

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

1 attributable to New Construction EDGE Employees at the
2 Applicant's New Construction EDGE Project.

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

7 "New Construction EDGE Incremental Income Tax" means the
8 total amount withheld during the taxable year from the
9 compensation of New Construction EDGE Employees.

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

16 "New Employee" means:

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

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

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

26 (2) an employee of the Taxpayer who was previously

1 employed in Illinois by a Related Member of the
2 Taxpayer and whose employment was shifted to the
3 Taxpayer after the Taxpayer entered into the tax
4 credit Agreement; or

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

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

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

15 and

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

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

20 (1) the Applicant is in receipt of a letter from
21 the Department stating an intent to enter into a
22 credit Agreement;

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

26 (3) the employee was hired after the date the

1 letter described in paragraph (1) was issued.

2 "Noncompliance Date" means, in the case of a Taxpayer that
3 is not complying with the requirements of the Agreement or the
4 provisions of this Act, the day following the last date upon
5 which the Taxpayer was in compliance with the requirements of
6 the Agreement and the provisions of this Act, as determined by
7 the Director, pursuant to Section 5-65.

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

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

14 "Related Member" means a person that, with respect to the
15 Taxpayer during any portion of the taxable year, is any one of
16 the following:

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

23 (2) A partnership, estate, or trust and any partner or
24 beneficiary, if the partnership, estate, or trust, and its
25 partners or beneficiaries own directly, indirectly,
26 beneficially, or constructively, in the aggregate, at

1 least 50% of the profits, capital, stock, or value of the
2 Taxpayer.

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

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

19 (5) A person to or from whom there is attribution of
20 stock ownership in accordance with Section 1563(e) of the
21 Internal Revenue Code, except, for purposes of determining
22 whether a person is a Related Member under this paragraph,
23 20% shall be substituted for 5% wherever 5% appears in
24 Section 1563(e) of the Internal Revenue Code.

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

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

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

5 (2) 75% or more of the children in the area
6 participate in the federal free lunch program according to
7 reported statistics from the State Board of Education;

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

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

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

18 (35 ILCS 10/5-10)

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

25 (a) Promulgate procedures, rules, or regulations deemed

1 necessary and appropriate for the administration of the
2 programs; establish forms for applications, notifications,
3 contracts, or any other agreements; and accept applications at
4 any time during the year.

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

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

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

23 (e) Establish, negotiate and effectuate any term,
24 agreement or other document with any person, necessary or
25 appropriate to accomplish the purposes of this Act; and to
26 consent, subject to the provisions of any Agreement with

1 another party, to the modification or restructuring of any
2 Agreement to which the Department is a party.

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

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

21 (h) Require Applicants, upon written request, to issue any
22 necessary authorization to the appropriate federal, state, or
23 local authority for the release of information concerning a
24 project being considered under the provisions of this Act,
25 with the information requested to include, but not be limited
26 to, financial reports, returns, or records relating to the

1 Taxpayers' or its project.

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

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

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

20 (35 ILCS 10/5-25)

21 Sec. 5-25. Review of Application.

22 (a) (Blank). ~~In addition to those duties granted under the~~
23 ~~Illinois 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~~
2 ~~Economic Opportunity or his or her designee, the Director of~~
3 ~~the 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~~
7 ~~of the county board or the mayor, may serve as members of the~~
8 ~~Committee to assist with its analysis and deliberations.~~

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

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

25 (2) The Applicant's project is economically sound and
26 will benefit the people of the State of Illinois by

1 increasing opportunities for employment and strengthen the
2 economy of Illinois.

3 (3) That, if not for the Credit, the project would not
4 occur in Illinois, which may be demonstrated by evidence
5 that receipt of the Credit is essential to the Applicant's
6 decision to create new jobs in the State, such as the
7 magnitude of the cost differential between Illinois and a
8 competing State; in addition, if the Applicant is seeking
9 an increase in the maximum amount of the Credit for
10 retained employees, the Applicant must provide evidence
11 the Applicant has multi-state location options and could
12 reasonably and efficiently locate outside of the State or
13 demonstrate that at least one other state is being
14 considered for the project.

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

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

25 (6) Awarding the Credit will result in an overall
26 positive fiscal impact to the State, as certified by the

1 Department ~~Committee~~ using the best available data.

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

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

5 (35 ILCS 10/5-70)

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

18 The report must include, for each Agreement:

19 (1) the original estimates of the value of the Credit
20 and the number of new jobs to be created and, if
21 applicable, the number of retained jobs;

22 (2) any relevant modifications to existing Agreements;

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

25 (4) a statement of wages paid to New Employees and, if

1 applicable, retained employees in the State;

2 (5) any information reported under Section 5-57 of
3 this Act; and

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

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

7 (35 ILCS 10/5-90)

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

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

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

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

22 (35 ILCS 10/5-40 rep.)

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