

# SB1983



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1983

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

### SYNOPSIS AS INTRODUCED:

20 ILCS 715/25  
35 ILCS 10/5-55

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that the Department of Commerce and Economic Opportunity may issue a certificate of verification for the credit even if the Taxpayer does not meet certain payroll and capital expenditure requirements if that failure is due to financial hardship caused by the COVID-19 pandemic. Amends the Corporate Accountability for Tax Expenditures Act. Provides that credits awarded under the Economic Development for a Growing Economy tax credit program shall not be revoked or suspended as a result of the recipient's failure to meet requirements for new or retained employees if that failure is due to financial hardship caused by the COVID-19 pandemic. Effective immediately.

LRB102 16117 HLH 21492 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 Corporate Accountability for Tax  
5 Expenditures Act is amended by changing Section 25 as follows:

6 (20 ILCS 715/25)

7 Sec. 25. Recapture.

8 (a) All development assistance agreements shall contain,  
9 at a minimum, the following recapture provisions:

10 (1) The recipient must (i) make the level of capital  
11 investment in the economic development project specified  
12 in the development assistance agreement; (ii) create or  
13 retain, or both, the requisite number of jobs, paying not  
14 less than specified wages for the created and retained  
15 jobs, within and for the duration of the time period  
16 specified in the legislation authorizing, or the  
17 administrative rules implementing, the development  
18 assistance programs and the development assistance  
19 agreement.

20 (2) If the recipient fails to create or retain the  
21 requisite number of jobs within and for the time period  
22 specified, in the legislation authorizing, or the  
23 administrative rules implementing, the development

1 assistance programs and the development assistance  
2 agreement, the recipient shall be deemed to no longer  
3 qualify for the State economic assistance and the  
4 applicable recapture provisions shall take effect.

5 (3) If the recipient receives State economic  
6 assistance in the form of a High Impact Business  
7 designation pursuant to Section 5.5 of the Illinois  
8 Enterprise Zone Act and the business receives the benefit  
9 of the exemption authorized under Section 51 of the  
10 Retailers' Occupation Tax Act (for the sale of building  
11 materials incorporated into a High Impact Business  
12 location) or the utility tax exemption authorized under  
13 Section 9-222.1A of the Public Utilities Act and the  
14 recipient fails to create or retain the requisite number  
15 of jobs, as determined by the legislation authorizing the  
16 development assistance programs or the administrative  
17 rules implementing such legislation, or both, within the  
18 requisite period of time, the recipient shall be required  
19 to pay to the State the full amount of both the State tax  
20 exemption and the utility tax exemption that it received  
21 as a result of the High Impact Business designation.

22 (4) If the recipient receives a grant or loan pursuant  
23 to the Large Business Development Program, the Business  
24 Development Public Infrastructure Program, or the  
25 Industrial Training Program and the recipient fails to  
26 create or retain the requisite number of jobs for the

1 requisite time period, as provided in the legislation  
2 authorizing the development assistance programs or the  
3 administrative rules implementing such legislation, or  
4 both, or in the development assistance agreement, the  
5 recipient shall be required to repay to the State a pro  
6 rata amount of the grant; that amount shall reflect the  
7 percentage of the deficiency between the requisite number  
8 of jobs to be created or retained by the recipient and the  
9 actual number of such jobs in existence as of the date the  
10 Department determines the recipient is in breach of the  
11 job creation or retention covenants contained in the  
12 development assistance agreement. If the recipient of  
13 development assistance under the Large Business  
14 Development Program, the Business Development Public  
15 Infrastructure Program, or the Industrial Training Program  
16 ceases operations at the specific project site, during the  
17 5-year period commencing on the date of assistance, the  
18 recipient shall be required to repay the entire amount of  
19 the grant or to accelerate repayment of the loan back to  
20 the State.

21 (5) Except as provided in paragraph (5.1), if ~~if~~ the  
22 recipient receives a tax credit under the Economic  
23 Development for a Growing Economy tax credit program, the  
24 development assistance agreement must provide that (i) if  
25 the number of new or retained employees falls below the  
26 requisite number set forth in the development assistance

1 agreement, the allowance of the credit shall be  
2 automatically suspended until the number of new and  
3 retained employees equals or exceeds the requisite number  
4 in the development assistance agreement; (ii) if the  
5 recipient discontinues operations at the specific project  
6 site during the 5-year period after the beginning of the  
7 first tax year for which the Department issues a tax  
8 credit certificate, the recipient shall forfeit all  
9 credits taken by the recipient during such 5-year period;  
10 and (iii) in the event of a revocation or suspension of the  
11 credit, the Department shall contact the Director of  
12 Revenue to initiate proceedings against the recipient to  
13 recover wrongfully exempted Illinois State income taxes  
14 and the recipient shall promptly repay to the Department  
15 of Revenue any wrongfully exempted Illinois State income  
16 taxes. The forfeited amount of credits shall be deemed  
17 assessed on the date the Department contacts the  
18 Department of Revenue and the recipient shall promptly  
19 repay to the Department of Revenue any wrongfully exempted  
20 Illinois State income taxes.

21 (5.1) For taxable years that begin on or after January  
22 1, 2020 and begin prior to January 1, 2022, credits  
23 awarded under the Economic Development for a Growing  
24 Economy tax credit program shall not be revoked or  
25 suspended as a result of the recipient's failure to meet  
26 requirements for new or retained employees if that failure

1       is due to financial hardship caused by the COVID-19  
2       pandemic. For the Department to grant relief under this  
3       paragraph (5.1), proof of financial hardship caused by the  
4       COVID-19 pandemic must be submitted to the Department  
5       during the annual EDGE agreement recertification process.

6       (b) The Director may elect to waive enforcement of any  
7       contractual provision arising out of the development  
8       assistance agreement required by this Act based on a finding  
9       that the waiver is necessary to avert an imminent and  
10      demonstrable hardship to the recipient that may result in such  
11      recipient's insolvency or discharge of workers. If a waiver is  
12      granted, the recipient must agree to a contractual  
13      modification, including recapture provisions, to the  
14      development assistance agreement. The existence of any waiver  
15      granted pursuant to this subsection (b), the date of the  
16      granting of such waiver, and a brief summary of the reasons  
17      supporting the granting of such waiver shall be disclosed  
18      consistent with the provisions of Section 25 of this Act.

19      (b-5) The Department shall post, on its website, (i) the  
20      identity of each recipient from whom amounts were recaptured  
21      under this Section on or after the effective date of this  
22      amendatory Act of the 97th General Assembly, (ii) the date of  
23      the recapture, (iii) a summary of the reasons supporting the  
24      recapture, and (iv) the amount recaptured from those  
25      recipients.

26      (c) Beginning June 1, 2004, the Department shall annually

1 compile a report on the outcomes and effectiveness of  
2 recapture provisions by program, including but not limited to:  
3 (i) the total number of companies that receive development  
4 assistance as defined in this Act; (ii) the total number of  
5 recipients in violation of development agreements with the  
6 Department; (iii) the total number of completed recapture  
7 efforts; (iv) the total number of recapture efforts initiated;  
8 and (v) the number of waivers granted. This report shall be  
9 disclosed consistent with the provisions of Section 20 of this  
10 Act.

11 (d) For the purposes of this Act, recapture provisions do  
12 not include the Illinois Department of Transportation Economic  
13 Development Program, any grants under the Industrial Training  
14 Program that are not given as an incentive to a recipient  
15 business organization, or any successor programs as described  
16 in the term "development assistance" in Section 5 of this Act.  
17 (Source: P.A. 97-2, eff. 5-6-11; 97-721, eff. 6-29-12; 98-109,  
18 eff. 7-25-13; 98-463, eff. 8-16-13.)

19 Section 10. The Economic Development for a Growing Economy  
20 Tax Credit Act is amended by changing Section 5-55 as follows:

21 (35 ILCS 10/5-55)

22 Sec. 5-55. Certificate of verification; submission to the  
23 Department of Revenue. A Taxpayer claiming a Credit under this  
24 Act shall submit to the Department of Revenue a copy of the

1 Director's certificate of verification under this Act for the  
2 taxable year. However, failure to submit a copy of the  
3 certificate with the Taxpayer's tax return shall not  
4 invalidate a claim for a Credit.

5 For a Taxpayer to be eligible for a certificate of  
6 verification, the Taxpayer shall provide proof as required by  
7 the Department prior to the end of each calendar year,  
8 including, but not limited to, attestation by the Taxpayer  
9 that:

10 (1) The project has substantially achieved the level  
11 of new full-time jobs specified in its Agreement.

12 (2) The project has substantially achieved the level  
13 of annual payroll in Illinois specified in its Agreement.

14 (3) The project has substantially achieved the level  
15 of capital investment in Illinois specified in its  
16 Agreement.

17 (4) For taxable years that begin on or after January  
18 1, 2020 and begin prior to January 1, 2022, if the Taxpayer  
19 does not meet (1), (2), or (3) due to financial hardship  
20 caused by the COVID-19 pandemic, this shall not prevent  
21 the Department from issuing a certificate of verification.  
22 The Department shall require proof of financial hardship.

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

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.