

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois is amended by adding Section 605-1055 as follows:

(20 ILCS 605/605-1055 new)

Sec. 605-1055. The Illinois Small Business Fund. The Illinois Small Business Fund is created as a nonappropriated separate and apart trust fund in the State Treasury. The Department shall use moneys in the Fund to manage proceeds that result from investments that the Department has undertaken through economic development programs, including, but not limited to, the Department's Venture Capital Investment Program. The Department may use moneys collected to reinvest in small business and economic development initiatives through grants or loans. The Fund may receive any grants or other moneys designated for small business growth from the State, or any unit of federal or local government, or any other person, firm, partnership, or corporation. Any interest earnings that are attributable to moneys in the Fund must be deposited into the Fund.

(20 ILCS 605/605-320 rep.)

Section 10. The Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois is amended by repealing Section 605-320.

Section 12. The State Finance Act is amended by adding Section 5.936 as follows:

(30 ILCS 105/5.936 new)

Sec. 5.936. Illinois Small Business Fund.

(30 ILCS 750/Art. 11 rep.)

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

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

(35 ILCS 10/5-5)

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

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

"Applicant" means a Taxpayer that is operating a business located or that the Taxpayer plans to locate within the State of Illinois and that is engaged in interstate or intrastate

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

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

~~Illinois Economic Development Board.~~

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

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

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

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

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

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

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

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

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

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

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

"New Employee" means:

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

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

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

(2) an employee of the Taxpayer who was previously

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

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

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

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

and

(2) promoted by the Taxpayer to another job.

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

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

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

(3) the employee was hired after the date the

letter described in paragraph (1) was issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(35 ILCS 10/5-10)

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

(a) Promulgate procedures, rules, or regulations deemed

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

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

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

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

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

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

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

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

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

Taxpayers' or its project.

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

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

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

(35 ILCS 10/5-25)

Sec. 5-25. Review of Application.

(a) (Blank). ~~In addition to those duties granted under the Illinois Economic Development Board Act, the Illinois Economic Development Board shall form a Business Investment Committee for the purpose of making recommendations for applications. At~~

~~the request of the Board, the Director of Commerce and Economic Opportunity or his or her designee, the Director of the Governor's Office of Management and Budget or his or her designee, the Director of Revenue or his or her designee, the Director of Employment Security or his or her designee, and an elected official of the affected locality, such as the chair of the county board or the mayor, may serve as members of the Committee to assist with its analysis and deliberations.~~

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

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

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

increasing opportunities for employment and strengthen the economy of Illinois.

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

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

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

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

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

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

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

(35 ILCS 10/5-70)

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

The report must include, for each Agreement:

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

(2) any relevant modifications to existing Agreements;

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

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

applicable, retained employees in the State;

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

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

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

(35 ILCS 10/5-90)

Sec. 5-90. Program Terms and Conditions.

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

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

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

(35 ILCS 10/5-40 rep.)

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