

Public Act 093-0552
HB0235 Enrolled

LRB093 02644 ACG 02654 b

AN ACT concerning corporations.

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

Section 1. Short title. This Act may be cited as the
Corporate Accountability for Tax Expenditures Act.

Section 5. Definitions. As used in this Act:

"Base years" means the first 2 complete calendar years
following the effective date of a recipient receiving
development assistance.

"Date of assistance" means the commencement date of the
assistance agreement, which date triggers the period during
which the recipient is obligated to create or retain jobs and
continue operations at the specific project site.

"Default" means that a recipient has not achieved its job
creation, job retention, or wage or benefit goals, as
applicable, during the prescribed period therefor.

"Department" means, unless otherwise noted, the
Department of Commerce and Community Affairs or any successor
agency.

"Development assistance" means (1) tax credits and tax
exemptions (other than given under tax increment financing)
given as an incentive to a recipient business organization
pursuant to an initial certification or an initial
designation made by the Department under the Economic
Development for a Growing Economy Tax Credit Act and the
Illinois Enterprise Zone Act, including the High Impact
Business program, (2) grants or loans given to a recipient as
an incentive to a business organization pursuant to the Large
Business Development Program, the Business Development Public
Infrastructure Program, or the Industrial Training Program,
(3) the State Treasurer's Economic Program Loans, (4) the

Illinois Department of Transportation Economic Development Program, and (5) all successor and subsequent programs and tax credits designed to promote large business relocations and expansions. "Development assistance" does not include tax increment financing, assistance provided under the Illinois Enterprise Zone Act pursuant to local ordinance, participation loans, or financial transactions through statutorily authorized financial intermediaries in support of small business loans and investments or given in connection with the development of affordable housing.

"Development assistance agreement" means any agreement executed by the State granting body and the recipient setting forth the terms and conditions of development assistance to be provided to the recipient consistent with the final application for development assistance, including but not limited to the date of assistance, submitted to and approved by the State granting body.

"Full-time, permanent job" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "full-time, permanent job" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "full-time, permanent job" means a job in which the new employee works for the recipient at a rate of at least 35 hours per week.

"New employee" means either: (1) the definition therefor in the legislation authorizing the programs described in the

definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "new employee" in either the legislation authorizing a program that constitutes economic development assistance under this Act nor in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "new employee" means a full-time, permanent employee who represents a net increase in the number of the recipient's employees statewide. "New employee" includes an employee who previously filled a new employee position with the recipient who was rehired or called back from a layoff that occurs during or following the base years.

The term "New Employee" does not include any of the following:

(1) An employee of the recipient who performs a job that was previously performed by another employee in this State, if that job existed in this State for at least 6 months before hiring the employee.

(2) 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 indirect ownership interest of at least 5% in the profits, capital, or value of any member of the recipient.

"Part-time job" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective

date of this Act. On and after the effective date of this Act, if there is no definition of "part-time job" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "part-time job" means a job in which the new employee works for the recipient at a rate of less than 35 hours per week.

"Recipient" means any business that receives economic development assistance. A business is any corporation, limited liability company, partnership, joint venture, association, sole proprietorship, or other legally recognized entity.

"Retained employee" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "retained employee" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "retained employee" means any employee defined as having a full-time or full-time equivalent job preserved at a specific facility or site, the continuance of which is threatened by a specific and demonstrable threat, which shall be specified in the application for development assistance.

"Specific project site" means that distinct operational unit to which any development assistance is applied.

"State granting body" means the Department, any State department or State agency that provides development

assistance that has reporting requirements under this Act, and any successor agencies to any of the preceding.

"Temporary job" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "temporary job" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "temporary job" means a job in which the new employee is hired for a specific duration of time or season.

"Value of assistance" means the face value of any form of development assistance.

Section 10. Unified Economic Development Budget.

(a) For each State fiscal year ending on or after June 30, 2005, the Department of Revenue shall submit an annual Unified Economic Development Budget to the General Assembly. The Unified Economic Development Budget shall be due within 3 months after the end of the fiscal year, and shall present all types of development assistance granted during the prior fiscal year, including:

(1) The aggregate amount of uncollected or diverted State tax revenues resulting from each type of development assistance provided in the tax statutes, as reported to the Department of Revenue on tax returns filed during the fiscal year.

(2) All State development assistance.

(b) All data contained in the Unified Economic

Development Budget presented to the General Assembly shall be fully subject to the Freedom of Information Act.

(c) The Department of Revenue shall submit a report of the amounts in subdivision (a)(1) of this Section to the Department, which may append such report to the Unified Economic Development Budget rather than separately reporting such amounts.

Section 15. Standardized applications for State development assistance.

(a) All final applications submitted to the Department or any other State granting body requesting development assistance shall contain, at a minimum:

(1) An application tracking number that is specific to both the State granting agency and to each application.

(2) The office mailing addresses, office telephone number, and chief officer of the granting body.

(3) The office mailing address, telephone number, 4-digit SIC number or successor number, and the name of the chief officer of the applicant or authorized designee for the specific project site for which development assistance is requested.

(4) The applicant's total number of employees at the specific project site on the date that the application is submitted to the State granting body, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs.

(5) The type of development assistance and value of assistance being requested.

(6) The number of jobs to be created and retained or both created and retained by the applicant as a result of the development assistance, including the number of full-time, permanent jobs, the number of part-time jobs,

and the number of temporary jobs.

(7) A detailed list of the occupation or job classifications and number of new employees or retained employees to be hired in full-time, permanent jobs, a schedule of anticipated starting dates of the new hires and the anticipated average wage by occupation or job classification and total payroll to be created as a result of the development assistance.

(8) A list of all other forms of development assistance that the applicant is requesting for the specific project site and the name of each State granting body from which that development assistance is being requested.

(9) A narrative, if necessary, describing why the development assistance is needed and how the applicant's use of the development assistance may reduce employment at any site in Illinois.

(10) A certification by the chief officer of the applicant or his or her authorized designee that the information contained in the application submitted to the granting body contains no knowing misrepresentation of material facts upon which eligibility for development assistance is based.

(b) Every State granting body either shall complete, or shall require the applicant to complete, an application form that meets the minimum requirements as prescribed in this Section each time an applicant applies for development assistance covered by this Act.

(c) The Department shall have the discretion to modify any standardized application for State development assistance required under subsection (a) for any grants under the Industrial Training Program that are not given as an incentive to a recipient business organization.

Section 20. State development assistance disclosure.

(a) Beginning February 1, 2005 and each year thereafter, every State granting body shall submit to the Department copies of all development assistance agreements that it approved in the prior calendar year.

(b) For each development assistance agreement for which the date of assistance has occurred in the prior calendar year, each recipient shall submit to the Department a progress report that shall include, but not be limited to, the following:

(1) The application tracking number.

(2) The office mailing address, telephone number, and the name of the chief officer of the granting body.

(3) The office mailing address, telephone number, 4-digit SIC number or successor number, and the name of the chief officer of the applicant or authorized designee for the specific project site for which the development assistance was approved by the State granting body.

(4) The type of development assistance program and value of assistance that was approved by the State granting body.

(5) The applicant's total number of employees at the specific project site on the date that the application was submitted to the State granting body and the applicant's total number of employees at the specific project site on the date of the report, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs, and a computation of the gain or loss of jobs in each category.

(6) The number of new employees and retained employees the applicant stated in its development assistance agreement, if any, if not, then in its application, would be created by the development assistance broken down by full-time, permanent,

part-time, and temporary.

(7) A declaration of whether the recipient is in compliance with the development assistance agreement.

(8) A detailed list of the occupation or job classifications and number of new employees or retained employees to be hired in full-time, permanent jobs, a schedule of anticipated starting dates of the new hires and the actual average wage by occupation or job classification and total payroll to be created as a result of the development assistance.

(9) A narrative, if necessary, describing how the recipient's use of the development assistance during the reporting year has reduced employment at any site in Illinois.

(10) A certification by the chief officer of the applicant or his or her authorized designee that the information in the progress report contains no knowing misrepresentation of material facts upon which eligibility for development assistance is based.

(c) The State granting body, or a successor agency, shall have full authority to verify information contained in the recipient's progress report, including the authority to inspect the specific project site and inspect the records of the recipient that are subject to the development assistance agreement.

(d) By June 1, 2005 and by June 1 of each year thereafter, the Department shall compile and publish all data in all of the progress reports in both written and electronic form.

(e) If a recipient of development assistance fails to comply with subsection (b) of this Section, the Department shall, within 20 working days after the reporting submittal deadlines set forth in (i) the legislation authorizing, (ii) the administrative rules implementing, or (iii) specific

provisions in development assistance agreements pertaining to the development assistance programs, suspend within 33 working days any current development assistance to the recipient under its control, and shall be prohibited from completing any current or providing any future development assistance until it receives proof that the recipient has come into compliance with the requirements of subsection (b) of this Section.

(f) The Department shall have the discretion to modify the information required in the progress report required under subsection (b) consistent with the disclosure purpose of this Section for any grants under the Industrial Training Program that are not given as an incentive to a recipient business organization.

Section 25. Recapture.

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

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

(2) If the recipient fails to create or retain the requisite number of jobs within and for the time period specified, in the legislation authorizing, or the administrative rules implementing, the development assistance programs and the development assistance agreement, the recipient shall be deemed to no longer

qualify for the State economic assistance and the applicable recapture provisions shall take effect.

(3) If the recipient receives State economic assistance in the form of a High Impact Business designation pursuant to Section 5.5 of the Illinois Enterprise Zone Act and the business receives the benefit of the exemption authorized under Section 51 of the Retailers' Occupation Tax Act (for the sale of building materials incorporated into a High Impact Business location) and the recipient fails to create or retain the requisite number of jobs, as determined by the legislation authorizing the development assistance programs or the administrative rules implementing such legislation, or both, within the requisite period of time, the recipient shall be required to pay to the State the full amount of the State tax exemption that it received as a result of the High Impact Business designation.

(4) If the recipient receives a grant or loan pursuant to the Large Business Development Program, the Business Development Public Infrastructure Program, or the Industrial Training Program and the recipient fails to create or retain the requisite number of jobs for the requisite time period, as provided in the legislation authorizing the development assistance programs or the administrative rules implementing such legislation, or both, or in the development assistance agreement, the recipient shall be required to repay to the State a pro rata amount of the grant; that amount shall reflect the percentage of the deficiency between the requisite number of jobs to be created or retained by the recipient and the actual number of such jobs in existence as of the date the Department determines the recipient is in breach of the job creation or retention covenants contained in

the development assistance agreement. If the recipient of development assistance under the Large Business Development Program, the Business Development Public Infrastructure Program, or the Industrial Training Program ceases operations at the specific project site, during the 5-year period commencing on the date of assistance, the recipient shall be required to repay the entire amount of the grant or to accelerate repayment of the loan back to the State.

(5) If the recipient receives a tax credit under the Economic Development for a Growing Economy tax credit program, the development assistance agreement must provide that (i) if the number of new or retained employees falls below the requisite number set forth in the development assistance agreement, the allowance of the credit shall be automatically suspended until the number of new and retained employees equals or exceeds the requisite number in the development assistance agreement; (ii) if the recipient discontinues operations at the specific project site during the first 5 years of the 10-year term of the development assistance agreement, the recipient shall forfeit all credits taken by the recipient during such 5-year period; and (iii) in the event of a revocation or suspension of the credit, the Department shall contact the Director of Revenue to initiate proceedings against the recipient to recover wrongfully exempted Illinois State income taxes and the recipient shall promptly repay to the Department of Revenue any wrongfully exempted Illinois State income taxes. The forfeited amount of credits shall be deemed assessed on the date the Department contacts the Department of Revenue and the recipient shall promptly repay to the Department of Revenue any wrongfully exempted Illinois State income taxes.

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

(c) Beginning June 1, 2004, the Department shall annually compile a report on the outcomes and effectiveness of recapture provisions by program, including but not limited to: (i) the total number of companies that receive development assistance as defined in this Act; (ii) the total number of recipients in violation of development agreements with the Department; (iii) the total number of completed recapture efforts; (iv) the total number of recapture efforts initiated; and (v) the number of waivers granted. This report shall be disclosed consistent with the provisions of Section 20 of this Act.

(d) For the purposes of this Act, recapture provisions do not include the Illinois Department of Transportation Economic Development Program, any grants under the Industrial Training Program that are not given as an incentive to a recipient business organization, or any successor programs as described in the term "development assistance" in Section 5 of this Act.

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