

HOUSE BILL NO. 232

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOTT

Introduced: 3/6/95

**Referred: House Special Committee on Economic Development, State Affairs, Labor and Commerce,
Finance**

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing an economic development tax credit; and providing for an effective**
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 43.20 is amended by adding a new section to read:

5 Sec. 43.20.043. ECONOMIC DEVELOPMENT TAX CREDIT. (a) Subject
6 to the conditions set out in this section, and in addition to any other credit authorized
7 to the taxpayer by this chapter, a taxpayer may apply as a credit against the state tax
8 liability that may be imposed on the taxpayer under this chapter for a taxable year
9 after December 31, 1995, the amount approved as a credit by the Economic
10 Development Board under AS 44.33.070 for that taxable year.

11 (b) The credit allowed by this section

12 (1) may not exceed the amount approved as a credit by the Economic
13 Development Board under AS 44.33.070; and

14 (2) may not be claimed for more than 10 consecutive taxable years

1 after approval.

2 (c) If the commissioner determines that a taxpayer who has received a credit
3 under this section is not complying with the requirements of the tax credit agreement
4 or all of the provisions of this section and AS 44.33.070, the commissioner shall, after
5 giving the taxpayer an opportunity to explain the noncompliance, begin an enforcement
6 action against the taxpayer under AS 43.10.

7 (d) On or before March 31 each year, the commissioner shall submit a report
8 to the Economic Development Board on the tax credit program under this section. The
9 report must include information on the number of agreements that were entered into
10 under AS 44.33.070 during the preceding calendar year, a description of the project
11 that is the subject of each agreement, a summary of the status of projects under
12 agreements entered into before the preceding calendar year, and the sum of the credits
13 awarded under this section.

14 * **Sec. 2.** AS 44.33 is amended by adding a new section to read:

15 Sec. 44.33.070. ECONOMIC DEVELOPMENT BOARD. (a) The Economic
16 Development Board is established. The board consists of the following five members:

17 (1) the commissioner of commerce and economic development or the
18 commissioner's designee;

19 (2) the director of the office of management and budget;

20 (3) the commissioner of revenue or the commissioner's designee; and

21 (4) two public members appointed by the governor who shall serve
22 overlapping four-year terms.

23 (b) The commissioner of commerce and economic development or the
24 commissioner's designee shall serve as chair of the board. Three members of the
25 board constitute a quorum to transact and vote on the business of the board.

26 (c) The department shall assist the board in carrying out the board's duties
27 under this section.

28 (d) The board may make credit awards under this section to foster job creation
29 in the state. The credit may only be claimed for the taxable years specified in the
30 taxpayer's tax credit agreement and may not be applied retrospectively.

31 (e) A person that proposes a project to create new jobs in the state may apply
32 to the board to enter into an agreement for a tax credit under this section. The

1 commissioner of commerce and economic development shall prescribe the form of the
2 application.

3 (f) After receipt of an application, the board shall negotiate with the applicant
4 and may enter into an agreement with the applicant for a credit under this section if
5 the board determines that

6 (1) the applicant's project satisfies at least one of the following:

7 (A) the board

8 (i) verifies that at least one other state is being
9 considered for the project;

10 (ii) determines, using best available data, that the
11 projected costs for the applicant's project in this state would exceed the
12 costs of the project in the competing state, taking into account the
13 probable effect of the competing state's incentive programs based on
14 state, local, private, and federal funds available to the competing state;
15 and

16 (iii) finds that receiving the tax credit is a major factor
17 in the applicant's decision to proceed with the project and not receiving
18 the tax credit will result in the applicant not creating new jobs in the
19 state;

20 (B) the applicant's project will, upon completion, provide a net
21 increase of at least 25 percent in the number of new employees employed by
22 the applicant; or

23 (C) the applicant's project is economically sound and will, upon
24 completion, benefit the people of the state by increasing opportunities for
25 employment, strengthening the economy of the state, and significantly
26 expanding existing facilities in the state;

27 (2) awarding the tax credit will result in a net fiscal gain to this state,
28 as certified by the office of management and budget, using the best available data; and

29 (3) the credit is not prohibited by (g) of this section.

30 (g) A person is not entitled to claim the credit provided by this section for
31 jobs that the person relocates from one site in the state to another site in the state.

32 Determinations under this subsection shall be made by the board.

1 (h) In negotiating the credit amount that should be awarded, the board shall
2 take into consideration the following factors:

- 3 (1) the economy of the area where the projected investment is to occur;
- 4 (2) the potential effect on the economy of the state;
- 5 (3) the magnitude of the cost differential between the state and the
6 competing state;
- 7 (4) the incremental payroll attributable to the project;
- 8 (5) the capital investment attributable to the project;
- 9 (6) the amount the average wage paid by the applicant exceeds the
10 average wage paid within the area in which the project will be located;
- 11 (7) the costs to the state with respect to the project; and
- 12 (8) the financial assistance that is otherwise provided by the state and
13 the municipalities in the affected area.

14 (i) The board shall determine the amount and duration of a tax credit awarded
15 under this section. The credit amount may not exceed the lesser of

- 16 (1) the amount of the credit approved under (f) of this section, which
17 credit amount may not exceed five percent of the amount of gross wages payable as
18 compensation for new employees; or
- 19 (2) 25 percent of the tax due and payable by the taxpayer under this
20 chapter.

21 (j) The board shall enter into an agreement with an applicant that is awarded
22 a credit under this section. The agreement must include

- 23 (1) a detailed description of the project that is the subject of the
24 agreement;
- 25 (2) the duration of the tax credit and the first taxable year for which
26 the credit may be claimed;
- 27 (3) the credit amount that will be allowed for each taxable year;
- 28 (4) a requirement that the taxpayer shall maintain operations at the
29 project location for at least two times the number of years as the term of the tax
30 credit;
- 31 (5) a specific method for determining the number of new employees
32 employed during a taxable year who are performing jobs not previously performed by

1 an employee;

2 (6) a requirement that the taxpayer shall annually report to the board
3 the number of new employees who are performing jobs not previously performed by
4 an employee and any other information the commissioner of commerce and economic
5 development needs to perform the commissioner's duties under this section;

6 (7) a requirement that the commissioner of commerce and economic
7 development is authorized to verify with the appropriate state agencies the amounts
8 reported under (6) of this subsection and after doing so shall issue a certificate to the
9 taxpayer stating that the amounts have been verified;

10 (8) a requirement that the taxpayer shall provide written notification to
11 the commissioner of commerce and economic development and the board not more
12 than 30 days after the taxpayer makes or receives a proposal that would transfer the
13 taxpayer's state tax liability obligations to a successor taxpayer; and

14 (9) any other performance conditions that the board determines are
15 appropriate.

16 (k) A taxpayer claiming a credit under this section shall submit to the
17 department a copy of the certificate of verification under (j) of this section for the
18 taxable year. However, failure to submit a copy of the certificate does not invalidate
19 a claim for a credit.

20 (l) Biennially, the board shall provide for an evaluation of the tax credit
21 program authorized by this section. The evaluation must include an assessment of the
22 effectiveness of the program in creating new jobs in the state and of the revenue
23 effect of the program, and may include a review of the practices and experiences of
24 other states with similar programs. The board shall submit a report on the evaluation
25 to the governor and the legislature.

26 (m) In this section,

27 (1) "board" means the Economic Development Board established by this
28 section;

29 (2) "credit amount" means the amount agreed to between the board and
30 applicant under this section;

31 (3) "department" means the Department of Commerce and Economic
32 Development;

1 (4) "full-time employee" means an individual who is employed for
2 consideration for at least 35 hours each week or who renders any other standard of
3 service generally accepted by custom or specified by contract as full-time employment;

4 (5) "new employee"

5 (A) means

6 (i) a full-time employee employed by a taxpayer in the
7 project that is the subject of a tax credit agreement and who is first
8 employed by the taxpayer after the taxpayer enters into the tax credit
9 agreement;

10 (ii) notwithstanding (B)(i) of this paragraph, a new
11 employee who performs a job that was previously performed by an
12 employee who was treated under the agreement as a new employee and
13 was promoted by the taxpayer to another job;

14 (B) does not include

15 (i) an employee of the taxpayer who performs a job that
16 was previously performed by another employee if that job existed for
17 at least six months before hiring the new employee;

18 (ii) an employee of the taxpayer who was previously
19 employed in the state by a related member of the taxpayer and whose
20 employment was shifted to the taxpayer after the taxpayer entered into
21 the tax credit agreement; or

22 (iii) a child, grandchild, parent, or spouse, other than a
23 spouse who is legally separated from the individual, of any individual
24 who is an employee of the taxpayer and who has a direct or an indirect
25 ownership interest of at least five percent in the profits, capital, or value
26 of the taxpayer, as determined in accordance with 26 U.S.C. 1563.

27 * **Sec. 3.** This Act takes effect January 1, 1996.