

CS FOR HOUSE BILL NO. 232(ECD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT

Offered: 3/22/95

Referred: State Affairs, Labor and Commerce, Finance

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing an economic development tax credit; and providing for an
2 effective 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 to
6 the conditions set out in this section, and in addition to any other credit authorized to the
7 taxpayer by this chapter, a taxpayer may apply as a credit against the state tax liability
8 that may be imposed on the taxpayer under this chapter for a taxable year after
9 December 31, 1995, the amount approved as a credit by the Economic Development
10 Board under AS 44.33.070 for that taxable year.

11 (b) The credit allowed by this section may not

12 (1) exceed the amount approved as a credit by the Economic
13 Development Board under AS 44.33.070;

14 (2) be awarded for more than 10 consecutive taxable years after approval;

1 and

2 (3) be used in a tax year by a taxpayer in conjunction with any other tax
3 credit program.

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

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

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

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

19 (1) the commissioner of commerce and economic development or the
20 commissioner's designee;

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

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

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

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

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

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

1 (e) A person that proposes a project to create new jobs in the state may apply
2 to the board to enter into an agreement for a tax credit under this section. The
3 commissioner of commerce and economic development shall prescribe the form of the
4 application.

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

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

9 (A) the board

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

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

17 (iii) finds that receiving the tax credit is a major factor in
18 the applicant's decision to proceed with the project and not receiving the
19 tax credit will result in the applicant not creating new jobs in the 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 the
22 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 and strengthening the economy of the state, and significantly
26 expands existing facilities in the state;

27 (2) awarding the tax credit will result in a net fiscal gain to this state, as
28 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 jobs
31 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 take
2 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 the
13 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 a
22 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 the
26 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 credit;
- 30 (5) a specific method for determining the number of new employees
31 employed during a taxable year who are performing jobs not previously performed by
32 an employee;

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

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

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

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

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

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

25 (m) In this section,

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

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

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

32 (4) "full-time employee" means an individual who is employed for

1 consideration for at least 35 hours each week or who renders any other standard of
2 service generally accepted by custom or specified by contract as full-time employment;

3 (5) "new employee"

4 (A) means

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

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

13 (B) does not include

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

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

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

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