

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 22-4—HB 5505

Emergency Certification

AN ACT CONCERNING CERTAIN AEROSPACE MANUFACTURING PROJECTS

SUMMARY: This act authorizes the Department of Economic and Community Development (DECD) commissioner to enter into an assistance agreement with an eligible aerospace company that intends to take on a qualifying helicopter production project in Connecticut. The agreement may provide the company with up to \$50 million or \$75 million in total tax benefits over its term, depending on whether it enters into federal contracts for one or two helicopter programs, respectively. These tax benefits may allow the company to first offset its sales and use tax liability and, if applicable, claim a corporation business tax credit, up to specified limits, for each year from FYs 23 to 32 (referred to as “compliance years” in the act).

Among other things, the eligible company must (1) have a wholly owned subsidiary with its headquarters and production facilities in Connecticut, (2) operate its primary helicopter production facility for its current U.S. government helicopter programs here, and (3) employ at least 7,000 people in the state. The qualifying project (i.e., “aerospace manufacturing project”) must, among other things, require the company to undertake and maintain primary production of helicopters in Connecticut under one or more future federal contracts.

Under the act, the commissioner must first certify that the company’s aerospace manufacturing project meets specified criteria, including agreeing to minimum requirements for total employment, average employee wages, supplier spend, and capital expenditures, that continue through at least June 30, 2042. Once certified, the commissioner and the company may enter into an assistance agreement that has a minimum 20-year term.

Under the act, if the DECD commissioner determines that the company fails to meet any of the minimum requirements during FYs 23-32, the company must repay the tax benefit that it used for that year and any penalty established under the assistance agreement. The act also establishes a framework for recapturing these tax benefits from FYs 33-42 if the company does not meet the specified thresholds.

Lastly, the act authorizes the DECD commissioner to revise the assistance agreement’s terms to address delays preventing the company from entering into these production contracts by June 30, 2024. This may include changing the agreement’s timing, minimum requirements, and recapture period.

EFFECTIVE DATE: Upon passage

ELIGIBILITY CRITERIA

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Eligible Taxpayers

Under the act, a taxpayer qualifies for the act's tax benefits if it is an aerospace company with a place of business or wholly owned subsidiary headquartered in Connecticut, including any subsidiaries and affiliates it or its wholly owned subsidiary owns. The company must also meet the following criteria when it applies to DECD for certification:

1. employ at least 7,000 people in Connecticut;
2. operate its primary helicopter production facility for its current federal programs here;
3. plan to bid on a helicopter production contract or contracts under one or more federal programs; and
4. have a wholly owned subsidiary with headquarters and production facilities in Connecticut before April 28, 2022.

Eligible Aerospace Manufacturing Project

An eligible "aerospace manufacturing project" is one involving helicopter production in Connecticut that, if certified by the DECD commissioner, will require the following:

1. primary helicopter production to be performed in Connecticut for current federal programs specified in the assistance agreement, as of the date specified in the agreement;
2. undertaking and maintaining primary helicopter production in Connecticut during the assistance agreement's term for one or more of the future federal programs specified in the agreement under production contracts the eligible taxpayer enters into after April 28, 2022; and
3. minimum employment, wage, supplier spend, and capital expenditure requirements by the eligible taxpayer through at least June 30, 2042.

Under the act "production" means the various operations related to completing a helicopter, including procurement, engineering, manufacturing, assembly, integration, and testing.

Certifying Project Eligibility

DECD must certify that the aerospace manufacturing project meets the act's criteria before it may enter into an assistance agreement with the company. Any company seeking certification must apply to the commissioner in a form acceptable to him and include information he prescribes, including the project's term and estimated expenditures and a detailed plan outlining it. The commissioner may also require the company to provide any additional information he needs to certify its eligibility.

Under the act, only the DECD commissioner may decide if a project meets the act's eligibility criteria. His authority to do so is neither a waiver of the state's sovereign immunity nor an authorization for a company to sue the state if he denies its application.

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ASSISTANCE AGREEMENT

Once the DECD commissioner certifies the company's aerospace manufacturing project, the act authorizes him to enter into an assistance agreement with a term of at least 20 years. Under this agreement (including any amendments or extensions made to it), the commissioner may agree to provide the company tax benefits for meeting minimum annual requirements and to further induce the company to enter into an aerospace manufacturing project. These benefits may allow the company to first offset its sales and use tax liability for the corresponding compliance year and, if applicable, claim a corporation business tax credit, as described below. Under the act, a "compliance year" covers the same period as a state fiscal year (i.e., July 1 to June 30), from FY 23 to FY 32.

The commissioner may not enter into any assistance agreement under the act after January 31, 2023.

Required Terms

The act requires that the agreement specify the conditions the company must meet to receive the benefits. These include requiring the company to commit to (1) maintaining its wholly owned subsidiary's headquarters (or its successor's) in Connecticut, (2) operating its primary helicopter production facility for current federal government programs here, and (3) undertaking and maintaining its primary helicopter production for any future federal government programs here.

The agreement must also:

1. describe the project's specifications and completion time;
2. establish the minimum requirements the company must meet in each compliance year, as described below;
3. identify the amount of sales and use tax offsets and corporation business tax credits for which the company is eligible for each compliance year if it meets these minimum requirements;
4. establish the terms and conditions for repaying the tax offsets and paying any penalties for failing to comply with the agreement;
5. specify how the company must notify the commissioner about any disputes under the agreement; and
6. include any other terms and conditions the commissioner requires.

Benefit Period

The agreement must require the company to earn and use the tax benefits during the first eight years of any federal helicopter production contract but no later than the "benefit period." Under the act, the benefit period runs from the agreement's effective date to June 30, 2032.

Dispute Resolution

The act allows the company to sue the state in Hartford Superior Court if it

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disputes a claim under the assistance agreement. The company must (1) first notify the DECD commissioner as the agreement requires and (2) bring the action within two years after providing this notice. The act reserves all legal defenses to the state except sovereign immunity.

Conflicts With Other Statutes

The act specifies that the agreement's provisions supersede any conflicting laws (1) limiting the amount of assistance the DECD commissioner may award under the Manufacturing Assistance Act (MAA), (2) requiring businesses to provide security for any MAA financing they receive, and (3) requiring legislative approval for economic development assistance exceeding specified thresholds.

Allocation Notice

Under the act, after the DECD commissioner and company execute the assistance agreement, the commissioner must issue an allocation notice indicating the (1) maximum amount of sales and use tax offset and refundable tax credit available to the company for the benefit period and (2) requirements the company must meet to qualify for them. The notice must certify to the company that it may claim the offsets and credits if it meets the specified requirements.

Revisions to the Agreement

The act allows the commissioner to revise the assistance agreement's terms to address a delay, not caused by the company, that prevents it from entering into one or more production contracts by June 30, 2024. The revisions may include changes to the timing of the (1) benefit period, (2) compliance years, (3) contract years (i.e., years following the benefit period where the company must continue to meet certain requirements to avoid benefit recapture), (4) minimum requirements (see below), and (5) recapture period. They may also include other conforming changes, so long as the project tax benefit must be earned and used during the production contract's first eight years.

The act also authorizes the commissioner to periodically amend, supplement, or modify the agreement's terms as long as the changes are consistent with the act's provisions.

MINIMUM REQUIREMENTS

The act establishes the minimum conditions the company must meet during each compliance year to qualify for the incentives for each of these years (i.e., "minimum requirements"). These include the following:

1. maintaining its wholly owned subsidiary's headquarters in Connecticut;
2. maintaining and operating the company's primary helicopter production facility for its current federal government programs here;
3. undertaking and maintaining in Connecticut its primary production for

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helicopters that will be produced (a) during the assistance agreement's term under one or more of the future federal government programs specified in the agreement and (b) under production contracts entered into after April 28, 2022;

4. maintaining diversity and workforce training programs according to the agreement's terms; and
5. achieving the employee, average wage, supplier spend, and capital expenditure requirements for compliance years 23-32, as described below.

Employee Requirement

Under the act, the employee requirement the company must achieve depends on whether it enters into one or two of the federal helicopter production contracts specified in the assistance agreement. If it enters into a contract for one federal program, it must have at least 7,375 full-time employees in Connecticut on average for each compliance year (i.e., employees working at least 35 hours per week, excluding temporary or seasonal workers or anyone who does not receive a federal W-2 form from the company). If it enters into contracts for two federal programs, it must have at least 7,500 full-time employees for each year, on average.

The average number of full-time employees for each compliance year is calculated by adding the number of these employees at the end of each quarter and dividing the total by four.

Average Wage Requirement

Under the act, the company's average annual wage for full-time employees in Connecticut must be no less than the amounts specified in the assistance agreement.

Supplier Spend Requirement

The act requires the wholly owned subsidiary, or the company on the subsidiary's behalf, to annually spend at least the following amounts with supply companies in Connecticut (i.e., total annual spend):

1. \$300 million for compliance years 23 and 24,
2. \$410 million for compliance years 25-29, and
3. \$470 million for compliance years 29-32.

Purchases count toward the total annual spend if the supply company is a commercial business with a "regular place of business" in Connecticut and supplies goods and services needed to support the company's operations or product manufacturing. Supply companies do not include local, state, or federal revenue collection or taxing entities.

Under the act, the supply company has a regular place of business in Connecticut if it operates a bona fide office, factory, warehouse, or other space in the state at which it regularly and systematically does business in its own name through its employees (1) in regular attendance there and (2) carrying on its business in its own name. Regular places of business do not include (1) the location

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of a supply company's statutory agent for service of process; (2) temporary offices used only for the duration of the contract; or (3) offices maintained, occupied, or used by a supplier's affiliate.

If an expenditure qualifies for both the supplier spend and capital expenditures requirement described below, the company may choose to count the expenditure toward either of the categories, but not both.

Capital Expenditure Requirement

The act requires that the wholly owned subsidiary achieve annual capital expenditures in Connecticut that meet the minimum amounts shown in the table below.

Capital Expenditure Requirements for Compliance Years 23-32

Compliance Year	Minimum Amount (millions)
23	\$70.2
24	71.1
25	72.9
26	73.8
27	75.6
28	77.4
29	78.3
30	80.1
31	81.9
32	83.7

“Capital expenditures” are the bona fide costs to the company's wholly owned subsidiary and its subsidiaries for the following:

1. acquiring land, buildings, machinery, equipment, or any combination of them;
2. making site and infrastructure improvements;
3. planning;
4. spending on eligible research and development (R&D), including developing new products and markets (i.e., spending eligible for the state's R&D tax credit); and
5. developing diversification strategies, including preparing plans for regional diversification strategies and hiring consultants needed to complete these plans and strategies.

TAX BENEFITS

The act authorizes two forms of tax benefits under the assistance agreement: a sales and use tax offset and refundable corporation business tax credit, as described below. Generally, the sales and use tax offsets must be claimed first; the company may claim a corporation business tax credit only if it is unable to use all of its

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allotted offsets.

The act caps the total benefit that may accrue to the company in the form of these incentives (i.e., project tax benefit) over the assistance agreement's term at (1) \$6.25 million for each compliance year (\$50 million total) or (2) \$9.375 million for each compliance year (\$75 million total), depending on whether the company enters into federal contracts for one or two helicopter programs, respectively.

Sales and Use Tax Offset

Certification. The act requires that the assistance agreement authorize a sales and use tax offset for the company. After the federal helicopter production contract takes effect, the company must annually certify its actual employment, wages, supplier spend, and capital expenditure amounts to the DECD commissioner under the assistance agreement's requirements and subject to a third-party audit performed according to DECD's audit guide. The company must do so within 60 days after each compliance year ends or by an extended date if requested by the company and approved by the commissioner.

Calculating and Claiming the Offset. The act requires the DECD commissioner, in consultation with the Department of Revenue Services (DRS) commissioner, to determine the form, timing, and manner of providing the offset. The company must calculate the offset amounts after deducting any sales and use tax exemptions applicable to its purchase. This offset does not limit the company's ability to claim the sales and use tax exemptions for which it otherwise qualifies under existing law (e.g., existing exemptions for aerospace companies, see BACKGROUND).

If the audit (see above) shows that the company claimed an offset that exceeds the allowable amount, the company must repay the offset as specified in the assistance agreement. After the DECD commissioner receives the company's certification at the end of each compliance year, he must tell the DRS commissioner whether the company (1) has met all of the minimum requirements necessary to qualify for the offset or (2) must repay the offset amount in accordance with the assistance agreement's terms.

Refundable Tax Credit

Under the act, if the audit shows that the company is unable to use all of the offset for a compliance year, then the agreement must authorize the company to claim the excess amount as a refundable corporation business tax credit. The credit may be for up to \$5 million for each compliance year and \$45 million total over the agreement's term.

The company must claim the refundable credit on its corporate tax return for the income year that ends during the compliance year. The act exempts the credit from statutes that (1) limit the total amount of tax credits a corporation may use to reduce its corporation business tax liability and (2) specify the order in which corporations must claim their eligible credits. It instead requires that the company claim the credit after all other credits have been claimed.

Carry Forwards. Under the act, if the excess amount is greater than \$5 million

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for any year, the company may carry forward the excess to future compliance years until it is fully used, but no later than June 30, 2032.

The company may first use the carry forward amount to offset its sales and use tax liability and then as refundable corporation business tax credits of up to \$5 million for each compliance year. The company must use the carry forward amount before applying any sales and use tax offset it earns in any future compliance year.

Credit Voucher. The act requires DECD to issue the company a credit voucher that establishes the refundable credit amount allowed and income year for which it may be claimed. It must do so within 30 days after receiving the audit described above, or as provided in the assistance agreement, during each year of the benefit period. The commissioner must annually provide the DRS commissioner with a report detailing these credit vouchers.

REPAYMENT AND RECAPTURE

Repayment During Compliance Years

Under the act, if the DECD commissioner determines that the company failed to meet any of the minimum requirements for a compliance year, the company must repay any project tax benefit that it used for that year and pay any penalty established under the assistance agreement.

Recapture During Contract Years

The act subjects the sales and use tax offset and refundable tax credit to potential recapture for 10 years, from FYs 33 to 42. Specifically, the recapture applies during each 12-month period from July 1, 2032, through June 30, 2042 (i.e., contract years), if the company fails to meet the following requirements as detailed in the assistance agreement:

1. meeting the annual threshold for employee head count, average wages, supplier spend, and capital expenditures detailed in the assistance agreement;
2. maintaining its wholly owned subsidiary's headquarters in Connecticut, as described in the assistance agreement;
3. maintaining and operating the company's primary helicopter production facility for its current federal government programs here;
4. undertaking and maintaining in Connecticut its primary helicopter production that will be produced during the assistance agreement's term under one or more of the future federal government programs specified in the agreement and entered into after April 28, 2022; and
5. maintaining diversity and workforce training programs according to the agreement's terms.

Job Requirement. For each of these contract years, the act establishes a targeted and minimum job requirement that depends on whether the company enters into one or two of the federal helicopter production contracts specified in the assistance agreement. The table below shows these requirements.

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Annual Job Requirements From FY 33-42

<i>Job Requirement</i>	<i>One Program</i>	<i>Two Programs</i>
Minimum Number	6,000	7,000
Targeted Number	7,250	7,750

For any year in which the number of actual jobs is less than the minimum number required, the act requires the company to repay 10% of the aggregate project tax benefits it used (i.e., the “annual recapture amount”). This annual recapture amount is prorated at 90% (i.e., 9% of the aggregate project tax benefits it used) if the number of actual jobs equals or exceeds the minimum but is less than the targeted amount.

The act authorizes the DECD commissioner to establish other requirements (e.g., wage requirements) that apply to recapturing the remaining 10% of the annual recapture amount. However, the total amount of the recapture may not exceed the annual recapture amount.

BACKGROUND

Connecticut Strategic Defense Investment Act

Enacted in 2016 (PA 16-1, Sept. Special Session), this law authorizes a similar framework for providing financial incentives to an eligible aerospace company engaging in a qualifying helicopter manufacturing project in Connecticut. Specifically, the law authorizes DECD to enter into an assistance agreement to provide an eligible company with up to \$140 million in bond-funded grants and \$80 million in sales and use tax offsets for the manufacturing project over a 14-year term (i.e., July 1, 2018, to June 30, 2032). In exchange, the company must, among other things, maintain minimum levels of employment, payroll, supplier spend, and capital expenditures and keep its primary production facility and subsidiary’s headquarters in Connecticut. The annual amount of incentives the company receives depends on the extent to which it meets or exceeds the specified performance requirements (CGS §§ 32-4n & -4o).