

A BILL

entitled

INCENTIVES FOR JOB MAKERS ACT 2011

TABLE OF CONTENTS

1	Citation
2	Inserts section 3B in the Economic Development Act 1968
3	Substitutes section 5 of the Economic Development Act 1968
4	Substitutes section 31A of the Bermuda Immigration and Protection Act 1956
5	Amends Schedule to the Government Fees Regulations 1976
6	Commencement

WHEREAS it is expedient to amend the Economic Development Act 1968 and the Bermuda Immigration and Protection Act 1956 to provide concessions to important businesses that are critical to the economy;

AND WHEREAS it is expedient to amend the Bermuda Immigration and Protection Act 1956 to delete the right of certain long term residents to permanent residence and substitute it with the right of persons designated under section 5 of the Economic Development Act 1968 as exempt from Part V of the Bermuda Immigration and Protection Act 1956, to permanent residence;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Incentives for Job Makers Act 2011.

Inserts section 3B in the Economic Development Act 1968

2 The Economic Development Act 1968 is amended by inserting the following section next after section 3A—

“Concessions for certain businesses which employ and train Bermudians
3B (1) The Chief Executive of a company may apply to the Minister, for the company to be designated as a company whose senior executive employees can

INCENTIVES FOR JOB MAKERS ACT 2011

apply for exemption from Part V of the Bermuda Immigration and Protection Act 1956, under section 5 of this Act.

(2) The Minister may designate a company as a company whose senior executive employees can apply for exemption from Part V of the Bermuda Immigration and Protection Act 1956, under section 5 of this Act, where the Minister is satisfied that the company—

- (a) has at least 25 persons with Bermudian status on its staff;
- (b) has persons with Bermudian status employed at all levels in the company;
- (c) provides entry-level positions for persons with Bermudian status;
- (d) has programmes in place for developing and promoting persons with Bermudian status; and
- (e) exercises employment practices which have not regularly required the intervention of labour relations officers of the Department of Labour and Industrial Relations or the Human Rights Commission.”.

Substitutes section 5 of the Economic Development Act 1968

3 The Economic Development Act 1968 is amended by repealing section 5 and substituting the following section—

“Senior executive employees of designated companies may be exempted from Part V of the Bermuda Immigration and Protection Act 1956

5 (1) Where a company is designated by the Minister under section 3B(2), a person in a senior executive position in that company shall be eligible to apply to the Minister, to be exempted from Part V of the Bermuda Immigration and Protection Act 1956.

(2) Where the Minister receives an application in pursuance of subsection (1), he shall review the application and make recommendations to a Cabinet Committee comprising the Minister of Finance, the Minister responsible for immigration and the Minister responsible for work permits, for a determination.

(3) A determination made under subsection (2) shall be dependent upon—

- (a) the applicant meeting the following criteria—
 - (i) the company in which the applicant is employed must be a company that has been designated under section 3B(2);
 - (ii) the applicant must be a person in a senior executive position in that company;
 - (iii) the applicant must be responsible for making decisions that are critical to the continuity of the company in Bermuda;

INCENTIVES FOR JOB MAKERS ACT 2011

- (iv) the continued presence of the company in Bermuda must be dependent on the applicant remaining in Bermuda; and
 - (v) the applicant's continued employment in the company designated under section 3B(2), for the duration of the exemption; and
- (b) the company in which the applicant is working at the time of an application in pursuance of subsection (1), continuing to meet the conditions under section 3B(2)(a) to (e) for the duration of the exemption.
- (4) A company designated under section 3B(2), may have up to a maximum of five employees exempted from Part V of the Bermuda Immigration and Protection Act 1956 at any one time.
- (5) An exemption shall not be granted under subsection (2) in respect of any person, unless the Minister is satisfied that there is no person with Bermudian status in Bermuda with sufficient qualifications and experience available to undertake the work concerned, efficiently.
- (6) Where by virtue of a determination made under subsection (2), a person is exempted from Part V of the Bermuda Immigration and Protection Act 1956 for any period of time, that person shall, for the purposes of section 31A of that Act, be deemed to be eligible to apply under that section for a permanent resident's certificate, provided the person satisfies the requirements under section 31A(1) of that Act.”.

Substitutes section 31A of the Bermuda Immigration and Protection Act 1956

4 The Bermuda Immigration and Protection Act 1956 is amended by repealing section 31A and substituting the following sections—

“Right of persons designated under section 5 of the Economic Development Act 1968 as exempt from Part V of this Act, to a permanent resident's certificate

31A (1) A person may apply to the Minister for the grant of a permanent resident's certificate if—

- (a) he has been exempted from Part V of this Act, under section 5 of the Economic Development Act 1968 for at least 10 years;
 - (b) he has been ordinarily resident in Bermuda for a period of at least 10 years; and
 - (c) he has been ordinarily resident in Bermuda during the two years immediately preceding the application.
- (2) In the case of a person who was resident in Bermuda before 1 January 2012, the reference to 10 years in subsection (1)(a) may be reduced to correspond with any period since 1 January 2007 during which the person would have been

INCENTIVES FOR JOB MAKERS ACT 2011

eligible to receive exemption from Part V under the new provision, had it come into force on 1 January 2007.

(3) In subsection (2), “the new provision” means section 5 of the Economic Development Act 1968 (as substituted by section 3 of the Incentives for Job Makers Act 2011).

(4) For the purposes of subsection (1)(b), but subject to subsections (5) and (6), periods of continuous residence in Bermuda of 12 months or longer may be aggregated for the purpose of calculating years of ordinary residence.

(5) For the purposes of aggregating periods of continuous residence for calculating years of ordinary residence under subsection (4), a period of absence from Bermuda shall not exceed two years.

(6) Subject to subsection (7), for the purposes of subsection (1)(b), section 20C(3) to (5) shall, subject to necessary modifications, apply to a person making application for a permanent resident’s certificate under this section as they apply to a person making an application for Bermudian status under that section.

(7) Section 19(3) to (9) shall have effect, subject to necessary modifications, in relation to an application made under this section as that section has effect, in relation to an application under section 19.

Amount to be paid on application for permanent resident’s certificate

31AB (1) An applicant for a permanent resident’s certificate under section 31A shall pay an amount of \$120,000 to the Accountant General.

(2) The amount paid under subsection (1) shall be refundable in the event the permanent resident’s certificate is not issued.

(3) The Minister may, after consultation with the Minister of Finance, by Order subject to affirmative resolution procedure amend the amount prescribed under subsection (1).”.

Amends Schedule to the Government Fees Regulations 1976

5 The Schedule to the Government Fees Regulations 1976 is amended—

- (a) in Head 6 in paragraph (16) by deleting “31A or”; and
- (b) by inserting the following Head next after Head 21—

“

Head 21A	
Economic Development Act 1968	
(1) Issuing a certificate for exemption from Part V of the Bermuda Immigration and Protection Act 1956, under section 5	\$20,000 ”.

INCENTIVES FOR JOB MAKERS ACT 2011

Commencement

6 This Act shall come into operation on 1 January 2012.

INCENTIVES FOR JOB MAKERS BILL 2011

EXPLANATORY MEMORANDUM

This Bill amends the Economic Development Act 1968 and the Bermuda Immigration and Protection Act 1956 to provide concessions to important businesses that are critical to the economy and their senior executive employees.

Clause 1 is the citation.

Clause 2 inserts a new section 3B into the Economic Development Act 1968. Under the new section 3B, the Chief Executive of a company may apply to the Minister of Finance, for the company to be designated as a company whose senior executive employees can apply for exemption from Part V of the Bermuda Immigration and Protection Act 1956.

Clause 3 repeals and replaces section 5 of the Economic Development Act 1968. Under the new section 5, senior executive employees of a company designated under section 3B of that Act as a company whose senior executive employees may be exempted from Part V of the Bermuda Immigration and Protection Act 1956 may apply for that exemption.

Clause 4 repeals and substitutes section 31A of the Bermuda Immigration and Protection Act 1956. The existing section 31A deals with the right of certain long term residents to a permanent resident's certificate if an application was made before 1 August 2010. This is replaced by a new section 31A which deals with the right of persons designated under section 5 of the Economic Development Act 1968 as exempt from Part V of the Bermuda Immigration and Protection Act 1956, to a permanent resident's certificate. Clause 4 also makes provision for the period of residence of a person who has been resident in Bermuda before 1 January 2012 and has been exempted from Part V of the Bermuda Immigration and Protection Act 1956 under section 5 of the Economic Development Act 1968 for at least 10 years, to be reduced to correspond with any period since 1 January 2007 during which the person would have been eligible to be exempted from Part V under section 5 of the Economic Development Act 1968 (as substituted by section 3 of the Incentives for Job Makers Act 2011), had it come into force on 1 January 2007. Clause 4 also introduces a new section 31AB into the Bermuda Immigration and Protection Act 1956. Under this new section 31AB, an applicant for a permanent resident's certificate under section 31A shall pay an amount of \$120,000 to the Accountant General. The Minister responsible for immigration may after consultation with the Minister of Finance, by Order, amend the amount prescribed in section 31A.

Clause 5 makes a consequential repeal to the Government Fees Regulations 1976 in Head 6 paragraph (16). Under clause 5, a new Head 21A is also inserted into the Government Fees Regulations 1976 to enable a fee of \$20,000 to be charged for the issuing of a certificate for exemption from Part V of the Bermuda Immigration and Protection Act 1956.

Clause 6 is the commencement provision.