

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority hereby amends Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” and Chapter 187, “Contracting,” Iowa Administrative Code.

The rules in Chapter 71 describe the Targeted Jobs Withholding Tax Credit Program. These amendments update existing rules to change program definitions, require that the Authority be a party to withholding agreements, allow the Authority to negotiate the amount of credits awarded and the duration of withholding agreements, extend the sunset date for the program, require the Board to approve or deny new agreements and outline the conditions under which an agreement may be denied, set a performance period for both retained jobs and created jobs and clarify the conditions under which a program can be terminated, specify what elements must be included in local development agreements, and require pilot project cities to submit a report annually to allow the Authority to better assess compliance with withholding agreements. The amendment to Chapter 187 updates the approval procedures for the Targeted Jobs Withholding Tax Credit Program in accordance with changes enacted in 2013 Iowa Acts, Senate File 433.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 25, 2013, as **ARC 1248C**. No public comment was received on these amendments. One change has been made to the amendments published under Notice of Intended Action. Item 14 amending the implementation sentence for Chapter 71 was not adopted because the Iowa Code section amended therein to include Senate File 433 has been codified in the 2014 Iowa Code online. Consequently, Item 15 has been renumbered as Item 14.

These amendments were adopted by the Economic Development Authority Board on February 21, 2014.

The Authority finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective on February 24, 2014, as they confer a benefit on the public by clarifying the requirements of the program and extending the sunset date for the program.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 403.19A.

These amendments became effective February 24, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 261—71.1(403) as follows:

261—71.1(403) Definitions.

“Act” means Iowa Code section 403.19A.

“Authority” means the economic development authority.

“Award date” means the same as defined in 261—Chapter 173.

“Base employment level” means the same as defined in 261—Chapter 173.

“Board” means the ~~Iowa economic development board created in Iowa Code section 15.103~~ members of the authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“Business” means ~~any~~ an enterprise that is located in this state and that is operated for profit and under a single management. “Business” includes professional services or industrial enterprise, including and industrial enterprises, including but not limited to medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. “Business” does not include a retail operation, a government entity, or a business which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation to another area of this state.

“Countywide average wage” means the average that the ~~department~~ authority calculates using the most current four quarters of wage and employment information as provided in the quarterly covered wage and employment data report as provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“Created job” means the same as defined in 261—Chapter 173.

“Department” means the Iowa department of economic development.

“Due diligence committee” or “DDC” means the due diligence committee organized by the board pursuant to 261—Chapter 1.

“Employee” means the individual employed in a targeted job that is subject to a withholding agreement.

“Employer” means a business creating or retaining targeted jobs in ~~an urban renewal area~~ of a pilot project city pursuant to a withholding agreement.

“Employer’s taxable capital investment” means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

“Full-time equivalent job” or “full-time” means the same as defined in 261—Chapter 173.

“Local financial support” or “local match” means cash or in-kind contributions to be used for the project from a private donor, a business, or the pilot project city. “Cash” includes but is not limited to loans, forgivable loans or grants. “In-kind contributions” means contributions directly related to the project and includes but is not limited to the construction of private or public infrastructure or other amenities and improvements.

“Pilot project city” means a city that has applied and been approved as a pilot project city pursuant to rule 261—71.2(403).

“Project initiation” means the same as defined in 261—Chapter 173.

“Qualifying investment” means a capital investment in real property including the purchase price of land and existing buildings, site preparation, building construction, and long-term lease costs. “Qualifying investment” also means a capital investment in depreciable assets. For purposes of this paragraph, “long-term lease costs” means those costs incurred or expected to be incurred under a lease during the duration of a withholding agreement, provided that the cumulative cost for that period does not exceed the cost of the land and the third-party developer’s costs to build or renovate the building for the approved business.

“Retained job” means a full-time equivalent position in existence at the time an employer applies to the authority for approval of a withholding agreement and which remains continuously filled and which is at risk of elimination if the project for which the employer is seeking assistance under the withholding agreement does not proceed. For the purposes of this definition, a position “at risk of elimination” includes a position that would be relocated out of state.

“Targeted job” means a job in a business which is or will be located in ~~an urban renewal area~~ of a pilot project city that pays a wage at least equal to the countywide average wage. “Targeted job” includes new or retained jobs from Iowa business expansions or retentions within the city limits of the pilot project city and those jobs resulting from established out-of-state businesses, as defined by the ~~department~~ authority, that are moving to or expanding in Iowa.

“Urban renewal area” means the same as defined in Iowa Code section 403.17.

“Withholding agreement” means an agreement authorized in rule 261—71.4(403) between a pilot project city, the authority, and an employer concerning the targeted jobs withholding tax credit and that includes an application for a project that is the subject of a withholding agreement.

ITEM 2. Strike “department” wherever it appears in rules **261—71.2(403)** and **261—71.3(403)**, paragraph **71.6(1)“a,”** relettered paragraphs **71.6(1)“d”** and **“e,”** and subrule **71.6(2)**, except in the

phrases “department of management” and “department of revenue,” and insert “authority” in lieu thereof.

ITEM 3. Amend rule 261—71.3(403), catchwords, as follows:

261—71.3(403) Application Pilot project city application process and review.

ITEM 4. Amend subparagraph 71.3(1)“b”(2) as follows:

(2) Planned and current projects. The city shall provide information on planned and current economic development projects that are taking place or will take place in ~~an urban renewal area~~ a pilot project city. The city shall demonstrate its ability to enter into a withholding agreement with an eligible business within one year of the city’s approval as a pilot project city.

ITEM 5. Rescind subparagraph 71.3(1)“b”(4).

ITEM 6. Renumber subparagraph 71.3(1)“b”(5) as 71.3(1)“b”(4).

ITEM 7. Amend rule 261—71.4(403) as follows:

261—71.4(403) Withholding agreements.

71.4(1) Designated account. An approved pilot project city may provide by city ordinance ~~for a designated account resolution~~ for the deposit of funds generated through withholding agreements into a designated withholding project fund under the targeted jobs withholding tax credit program.

71.4(2) Entering into a withholding agreement.

a. *Agreement between a pilot project city, the authority, and a business.* ~~A~~ The authority and a pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area a pilot project city. The authority and a pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating or retaining at least ten new jobs or making a qualifying investment of at least \$500,000 within the ~~urban renewal area~~ pilot project city.

b. *Total amount of withholding tax credits.* The withholding agreement shall provide for the total amount of withholding tax credits awarded, as negotiated by the economic development authority, the pilot project city, and the employer. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

c. *Ineligibility if there is competition between pilot project city and non-pilot project city.* A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the ~~department~~ authority.

d. *Option of a business to enter into withholding agreement.* A business shall not be obligated to enter into a withholding agreement with a pilot project city and the authority.

e. ~~2013 sunset~~ *Sunset date.* A pilot project city and the authority shall not enter into a withholding agreement with a business after June 30, ~~2013~~ 2018.

f. ~~Department~~ *Board approval of withholding agreements.* Prior to entering into a withholding agreement with a business, a pilot project city shall request ~~department~~ board approval of the withholding agreement. The process for requesting approval from the ~~department~~ board is described in subrule 71.5(1).

71.4(3) Required components of a withholding agreement. A withholding agreement shall be disclosed to the public and shall contain all of the following:

a. A copy of the adopted local development agreement between the pilot project city and employer that outlines local incentives or assistance for the project using urban renewal or urban revitalization incentives, if applicable, including and how withholding funds generated by the city will be used.

b. to i. No change.

71.4(4) Length of withholding agreements. A withholding agreement may have a term of up to ten years, as negotiated by the authority, the pilot project city, and the employer. A withholding agreement specifying a term of years or a total amount of withholding credits shall either terminate upon the

expiration of the term of years specified in the agreement or upon the award of the total amount of withholding credits specified in the agreement, whichever occurs first.

71.4(5) *Withholding generated through the program.*

a. Once a pilot project city, the authority, and an employer have entered into a withholding agreement, an amount equal to 3 percent of the gross wages paid by the business to each employee under a withholding agreement shall be credited from the payment made by the employer pursuant to Iowa Code ~~Supplement~~ section 422.16. If the amount of withholding by the employer is less than 3 percent of the gross wages paid to the employees covered by the withholding agreement, the employer shall receive a credit against other withholding taxes due by the employer or may carry the credit forward for up to ten years or until depleted, whichever occurs first.

b. The employer shall submit the amount of the credit quarterly, in the same manner as withholding payments are made to the department of revenue, to the pilot project city.

c. An employee whose wages are subject to a withholding agreement shall receive full credit for the amount withheld under the targeted jobs withholding tax credit program as provided in Iowa Code ~~Supplement~~ section 422.16.

71.4(6) *Use of withholding funds.* A pilot project city shall allocate the withholding funds into a designated account ~~in the special~~ withholding project fund for the ~~urban renewal area in which the targeted jobs are located~~ project. All funds deposited shall be used or pledged by the pilot project city for ~~an urban renewal~~ a project related to the employer pursuant to the withholding agreement.

71.4(7) No change.

71.4(8) *Termination of a withholding agreement.* Following the termination of a withholding agreement, the employer credits shall cease and any funds received by the pilot project city after the agreement has been terminated shall be remitted to the state treasurer to be deposited in the general fund of the state. The pilot project city shall notify the department of revenue ~~and the department of economic development~~ within 30 days of the termination of the withholding agreement. If the authority, following an 18-month performance period beginning on the date the withholding agreement is approved by the board, determines that the employer does not meet the requirements of the withholding agreement relating to retaining jobs, if applicable, the agreement shall be terminated by the authority and the pilot project city and any withholding credits for the employer shall cease. If the employer has created or retained the required number of new jobs under the agreement, and the number of jobs falls below the required level, the employer shall not be considered in default until 18 months after the date of the decrease in new jobs. If the authority, following a three-year performance period beginning on the date the withholding agreement is approved by the board, determines that the employer has not met or is incapable of meeting the requirements of the withholding agreement relating to creating jobs, if applicable, or the requirement of the withholding agreement relating to the qualifying investment prior to the end of the withholding agreement, the authority may reduce the future benefits to the employer under the agreement or negotiate with the other parties to terminate the agreement early.

71.4(9) *Participation in other programs.* An employer may participate in the Iowa industrial new jobs training program under Iowa Code ~~Supplement~~ section 260E.5 or may claim a supplemental withholding credit under Iowa Code ~~Supplement~~ section 15E.197, at the same time the employer is participating in the targeted jobs withholding tax credit program. The withholding credit under section 260E.5 and the supplemental withholding credit under section 15E.197 shall be collected and disbursed prior to the collection and disbursement of the withholding credit under the targeted jobs withholding tax credit program.

ITEM 8. Amend subrule 71.5(1) as follows:

71.5(1) *Request for ~~department~~ board approval of withholding agreement.*

a. *Request for approval form.* Prior to entering into a withholding agreement with an employer ~~and the authority,~~ a pilot project city must receive approval from the ~~department~~ board, on behalf of the authority. The ~~department~~ authority shall develop ~~and make available to the pilot project cities~~ a standardized form to be used by pilot project cities to request ~~department~~ board approval of a proposed withholding agreement. To request ~~department~~ board approval of a proposed withholding agreement,

a pilot project city shall ~~provide the department~~ submit the standardized form to the authority with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the ~~department~~ authority and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

(3) Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

(4) A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

~~(5) A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.~~

~~(6)~~ (5) A letter or resolution of support from the local government showing support for the project.

b. *Timing of submittal.* Requests for ~~department~~ board approval of a proposed withholding agreement may be submitted at any time. The ~~department~~ authority will review requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. *Department Board action on requests for approval.* The department board, on behalf of the authority, may approve, or deny, or suggest changes to a withholding agreement according to the provisions of this chapter. Each withholding agreement and the total amount of the withholding credits allowed under the withholding agreement shall be approved by the board after taking into account the incentives or assistance received by or to be received by the employer under other economic development programs. The department board shall only deny an a withholding agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) and paragraph 71.6(1)“b” or the local match requirement as stated in subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the department authority. The board shall have the authority to negotiate a withholding agreement and may suggest changes to any of the terms of the withholding agreement, including the total amount of withholding credits. A pilot project city and employer will be notified in writing of the department's board's decision regarding the proposed withholding agreement.

ITEM 9. Reletter paragraphs 71.6(1)“b” to “d” as 71.6(1)“c” to “e.”

ITEM 10. Adopt the following new paragraph 71.6(1)“b”:

b. Pursuant to rules adopted by the authority, the pilot project city shall provide to the authority information documenting the compliance of each employer with each requirement of the withholding agreement, including but not limited to the number of jobs created or retained, the wages associated with the targeted jobs, and the amount of investment made by the employer. The pilot project city shall provide this information annually by September 1. The authority shall, in response to receiving such information from the pilot project city, assess the level of compliance by each employer and provide to the pilot project city recommendations for either maintaining employer compliance with the withholding agreement or terminating the agreement for noncompliance under subrule 71.4(8). The authority shall also provide each such assessment and recommendation report to the department of revenue.

ITEM 11. Amend relettered paragraph 71.6(1)“c” as follows:

c. The employer, in conjunction with the pilot project city, shall provide information documenting the total amount of payments and receipts from the special withholding project fund under the withholding agreement, including all agreements with an between the pilot project city and the employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, to provide a grant not related to property taxes, or to make a direct payment of taxes. The employer and the pilot project city shall submit this information to the department authority annually by September 1 covering the prior fiscal year (July 1 to June 30). The department authority shall verify the information provided by the pilot project city and determine whether the pilot project city and

the employer are in compliance with Iowa Code section 403.19A and this chapter. The ~~department~~ authority will verify job creation or retention using the method described in 261—Chapter 188.

ITEM 12. Amend relettered subparagraph **71.6(1)“e”(4)** as follows:

(4) Payments and receipts as described in paragraph 71.6(1)“*b c.*”

ITEM 13. Adopt the following **new** rule 261—71.7(403):

261—71.7(403) Applicability.

71.7(1) Except as provided in rule 261—71.2(403), this chapter applies to withholding agreements entered into on or after July 1, 2013, in accordance with 2013 Iowa Code section 403.19A as amended by 2013 Iowa Acts, Senate File 433. Withholding agreements entered into prior to July 1, 2013, shall be governed by this chapter as it existed prior to the enactment of 2013 Iowa Acts, Senate File 433.

71.7(2) Paragraph 71.6(1)“*b*” applies to withholding agreements entered into prior to July 1, 2013, or entered into on or after July 1, 2013.

71.7(3) The authority will work with pilot project cities and businesses to amend existing agreements to reflect the requirements of subrule 71.7(2) of this rule.

ITEM 14. Amend paragraph **187.5(3)“f”** as follows:

f. The table below describes the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the authority.

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State	<u>DDC</u>	<u>Director</u> <u>Board</u>

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