**Regulatory Analysis**

Notice of Intended Action to be published: 261—Chapter 71
"Targeted Jobs Withholding Tax Credit Program"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A and 403.19A
State or federal law(s) implemented by the rulemaking: Iowa Code section 403.19A

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

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|---|---|
| August 12, 2025 | 1963 Bell Avenue |
| 2:45 to 3 p.m. | Des Moines, Iowa |

*Public Comment*

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Iowa Economic Development Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

*Purpose and Summary*

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 71 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the Targeted Jobs Withholding Tax Credit program established pursuant to Iowa Code section 403.19A. The updated chapter will be clearer and more concise throughout and will omit repetition of statutory language. Policies regarding project initiation will be incorporated into the new chapter. Additionally, job counting procedures previously addressed in 261—Chapter 188 will be included because that chapter was rescinded effective August 28, 2024.

*Analysis of Impact*

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Businesses interested in applying for or receiving assistance through the program will bear the costs of this proposed rulemaking.

- **Classes of persons that will benefit from the proposed rulemaking:**

Businesses interested in applying for or receiving assistance through the program will benefit from this proposed rulemaking.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

Businesses interested in applying for financial assistance may require staff time to complete an application for financial assistance. Businesses that are awarded a withholding tax credit may similarly incur costs to administer an award. Some applicants may choose to rely on an external

service provider to complete these tasks. The amount of the costs will vary depending on the compensation of staff or service providers.

- **Qualitative description of impact:**

The program provides a financial incentive to businesses relocating to Iowa from another state or expanding within the State.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

Authority staff time is required to review and approve applications, draft and execute program contracts, authorize utilization of the withholding tax credit, and communicate with program applicants and recipients.

- **Anticipated effect on State revenues:**

The proposed rules have no anticipated impact on State revenues. The Authority is directed to administer the program by Iowa Code section 403.19A.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Only the entities that will potentially benefit from financial assistance bear the costs of this proposed rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Authority has not identified any less costly methods or less intrusive methods for administering the program.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

The Authority did not consider any other methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Authority did not consider any other methods.

*Small Business Impact*

**If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:**

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

**If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?**

This proposed rulemaking impacts only small businesses seeking financial assistance. The rules regarding compliance and reporting requirements are no more stringent than necessary to implement the purposes of the program. The rules do not establish schedules or deadlines. The rules do not establish design or operational standards.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 261—Chapter 71 and adopt the following **new** chapter in lieu thereof:

CHAPTER 71
TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

**261—71.1(403) Definitions.**

*"Authority"* means the economic development authority created in Iowa Code section 15.105.

*"Award date"* means the date the board approved a withholding agreement.

*"Base employment level"* means the number of full-time equivalent positions at an employer as established by the authority and an employer using the employer's payroll records as of the date an employer applies for the program.

*"Board"* means the same as defined in Iowa Code section 15.102.

*"Business"* means the same as defined in Iowa Code section 403.19A.

*"Countywide average wage"* means the average that the 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 a new, permanent, full-time equivalent position added to an employer's payroll in excess of the employer's base employment level.

*"Employee"* means the same as defined in Iowa Code section 403.19A.

*"Employer"* means the same as defined in Iowa Code section 403.19A.

*"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 a non-part-time position for the number of hours or days per week considered to be full-time work for the kind of service or work performed for an employer. Typically, a full-time equivalent position requires 2,080 hours of work in a calendar year, including all paid holidays, vacations, sick time, and other paid leave.

*"Local financial support"* or *"local match"* means the same as defined in Iowa Code section 403.19A(3)*"k"*(2). For the purposes of this definition, "cash" includes but is not limited to loans, forgivable loans or grants. For the purposes of this definition, "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 the same as defined in Iowa Code section 403.19A.

*"Project"* means an activity or set of activities directly related to the start-up, location, modernization, or expansion of a business, and proposed in an application by a business, that will result in the accomplishment of the goals of the program.

*"Qualifying investment"* means the same as defined in Iowa Code section 403.19A. For purposes of this definition, "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 employer.

*"Retained job"* means the same as defined in Iowa Code section 403.19A. 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 the same as defined in Iowa Code section 403.19A.

*"Withholding agreement"* means the same as defined in Iowa Code section 403.19A.

**261—71.2(403) Pilot project cities.** Pursuant to Iowa Code section 403.19A(2), pilot project cities were identified by the authority based on applications received prior to October 1, 2006. The identified pilot project cities are:

1. Burlington.
2. Council Bluffs.
3. Fort Madison.
4. Keokuk.
5. Sioux City.

**261—71.3(403) Withholding agreements.** The authority and a pilot project city may enter into a withholding agreement pursuant to Iowa Code section 403.19A. In addition to the items described in Iowa Code section 403.19A(3)*"d,"* a withholding agreement shall contain all of the following:

**71.3(1)** A list of all other incentives or financial assistance the employer has requested or is receiving from other federal, state, or local economic development programs, including loans, grants, forgivable loans, and tax credits.

**71.3(2)** The total amount of withholding tax credits awarded.

**71.3(3)** The total number of created jobs and retained jobs included in the project.

**71.3(4)** The required countywide average wage.

**71.3(5)** The total qualifying investment included in the project.

**71.3(6)** The total required matching local financial support for the project.

**71.3(7)** The term of the withholding agreement.

**71.3(8)** Any terms deemed necessary by the authority to effect compliance with the requirements of Iowa Code section 403.19A and this chapter.

**261—71.4(403) Project approval.**

**71.4(1)** *Request for board approval form.* To request board approval of a proposed withholding agreement, an employer and pilot project city shall utilize a standardized application developed by the authority. The form will include but not be limited to the following:

*a.* A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

*b.* The employer's base employment level.

*c.* 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.

*d.* 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.

*e.* A letter or resolution of support from the local government showing support for the project.

**71.4(2)** *Timing of submittal.* Requests for board approval of a proposed withholding agreement may be submitted at any time. The authority will review requests for approval of a proposed withholding agreement in as timely a manner as possible.

**71.4(3)** *Project initiation.* The authority will not accept applications for projects that have been initiated or will be initiated prior to board consideration of the employer's application for the program unless the employer establishes that not initiating the project prior to board consideration of the application would result in undue hardship or that extenuating circumstances necessitate initiating the project prior to board consideration of the employer's application for the program. Whether an undue hardship or extenuating circumstance exists will be determined by the authority.

*a.* Any one of the following may indicate that a project has been initiated:

(1) The start of construction of new or expanded buildings;

(2) The start of rehabilitation of existing buildings;

(3) The purchase or leasing of existing buildings; or

(4) The installation of new machinery and equipment or new computers to be used in the operation of the project.

*b.* The following shall not indicate a project has been initiated:

(1) The purchase of land or signing an option to purchase land;

(2) Earthmoving or other site development activities not involving actual building construction, expansion or rehabilitation; or

(3) Acquisition of a business as a going concern.

*c.* Any costs incurred prior to the award date are not eligible qualifying investment expenses.

**71.4(4)** *Board action on requests for approval.* The board, on behalf of the authority, may approve or deny a withholding agreement according to the provisions of Iowa Code section 403.19A and this chapter. A pilot project city and employer will be notified in writing of the board's decision regarding the proposed withholding agreement.

**261—71.5(403) Reporting requirements.**

**71.5(1)** The annual report required by Iowa Code section 403.19A(3)*"c"*(3) shall be submitted by the employer by September 1 covering the prior fiscal year (July 1 to June 30). The authority will verify job creation or retention using the method described in rule 261—71.6(15).

**71.5(2)** The authority may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

**71.5(3)** The pilot project city or employer shall provide the following upon request:

*a.* Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

*b.* Information substantiating the total amount of qualifying investment made in the project;

*c.* Information substantiating the total amount of local financial support made in the project;

*d.* Payments and receipts under a withholding agreement.

**261—71.6(15) Job counting.**

**71.6(1)** *Overview.* The authority will count created and retained jobs using a base employment analysis comparing the base employment level to employment at another date. The employer's base employment level will be established at the time of application for the program. The number of jobs the employer has pledged to create shall be in addition to the base employment level. Retained jobs may be included in the base employment level as established at the time of approval.

**71.6(2)** *Base employment level.*

*a.* Base employment level will include the number of full-time equivalent positions employed at the project location. If the project occurs at more than one physical location, the employer's base employment level will include the total number of full-time equivalent positions working at the identified locations. Base employment level may include the employer's full-time equivalent positions in this state as identified by the authority that are not located at the project location.

*b.* If an employer enters multiple withholding agreements for projects at the same location, the base employment level will be calculated by using the payroll document from the oldest withholding agreement that is open. Job obligations from each new withholding agreement will be added to this base employment level.

*c.* The authority will collect payroll documents to calculate and verify the base employment level used in each withholding agreement. Payroll documents must include a name or employee identification number and the hourly rate of pay for all full-time equivalent positions.

*d.* If the base employment level includes retained jobs, the authority will require an employer to verify that a job is at risk. Such verification may include the signed statement of an officer of the employer, documentation that the employer is actively exploring other sites for the project, or any other information the authority may reasonably require during the application review process to establish that a job is at risk.

**71.6(3)** *Verification.* At the project completion date, during the maintenance period, and following the maintenance period completion date, payroll documents will be used to calculate and verify compliance with job obligations. The person who submits the documents must, under penalty of perjury, verify that the information contained in the documents is true and correct.

**71.6(4)** *Full-time equivalent positions.* Only a full-time equivalent position filled by an individual will be considered an employee of the employer for the purpose of establishing the base employment level, retained jobs, or created jobs. The authority will not consider "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person in counting jobs. The authority will verify that full-time equivalent positions constitute the employment of one person for:

*a.* Eight hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

*b.* The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year, including paid holidays, vacations, and other paid leave.

*c.* If employees at the facility do not typically work 40 hours per week, the employer will be required to provide documentation outlining what the employer considers a full-time workweek and how the employer's interpretation fits within the norms of its industry standards. Whether to accept this interpretation is within the sole discretion of the authority.

**71.6(5)** *Contract employees.* An employer's leased or contract employee may be included in the base employment level, as a created job, or as a retained job only if the following requirements are met:

*a.* The employer has a legally binding contract with a third-party provider to provide the leased or contract employee.

*b.* The contract between the third-party provider and the employer specifically requires the third-party provider to pay the wages required for the time period required by the authority as conditions of the approval of a withholding agreement with the employer.

*c.* The contract between the third-party provider and the employer specifically requires the third-party provider to submit payroll records to the authority, in form and content and as frequently as required by the authority, for purposes of verifying the employer's job creation/retention.

*d.* The contract between the third-party provider and the employer specifically authorizes the authority or its authorized representatives to access the third-party provider's records related to the project.

*e.* The employer agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

**71.6(6)** *Remote employees.* Employees with a reasonable connection to a project location who work remotely may be included in the base employment level, as a created job, or as a retained job as established by the authority at the time of application. To determine whether employees who work remotely should be included, the authority will consider an employer's policies on establishing remote work locations for employees, reporting structures, percentage of time worked at the project location, and the distance of employees' remote work locations from the project location. Only employees who work remotely within a defined geographic area established by the authority will be included. Whether an employee who works remotely is included in the base employment level, as a created job, or as a retained job pursuant to this subrule shall be solely within the discretion of the authority.

**71.6(7)** *Wages.* Jobs that are not paid the countywide average wage will not be counted toward an employer's job creation or job retention obligations. To determine the wages paid to the employees of an eligible business, the authority will include only monetary compensation, represented in terms of an hourly rate, paid by an employer to an employee for work or services provided, typically on a weekly or biweekly basis. The wage will not include nonregular forms of compensation, such as

bonuses, unusual overtime pay, commissions, stock options, pensions, retirement or death benefits, unemployment benefits, life or other insurance, or other fringe benefits.

**261—71.7(403) Applicability.** This chapter applies to withholding agreements entered into on or after July 1, 2013. 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.

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