

CHAPTER 71  
TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

**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 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 an enterprise that is located in this state and that is operated for profit and under a single management. “Business” includes professional services 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 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.

“*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 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 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 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.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09; ARC 1373C, IAB 3/19/14, effective 2/24/14]

**261—71.2(403) Eligibility requirements.** An eligible city may apply to the authority to be designated as a pilot project city. An eligible city is a city that contains three or more census tracts and is located in a county meeting one of the following requirements:

1. A county that borders Nebraska.
2. A county that borders South Dakota.
3. A county that borders a state other than Nebraska or South Dakota.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 1373C, IAB 3/19/14, effective 2/24/14]

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

**71.3(1) Application.** The authority shall develop a standardized application and make the application available to eligible cities. The application procedures are as follows:

a. An eligible city seeking approval as a pilot project city will submit an application to the authority. The authority shall determine if the application is complete.

b. The authority will review the application and consider the following criteria:

(1) Need for pilot project status. The city shall demonstrate why status as a pilot project city is necessary, including how the city will utilize the program to attract and retain employers.

(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 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.

(3) Use of withholding funds. If approved as a pilot project city, the city shall indicate how the city plans to utilize withholding funds generated from the program. The city shall provide an estimate of the number of withholding agreements the city anticipates executing, the amount of withholding funds the city expects to generate as a result of the program, and the investment to be leveraged by use of the program.

(4) Matching funds. The city shall identify its ability to provide matching funds for projects involving withholding credits, including the potential sources of matching funds.

c. A resolution of support from the city applying for approval as a pilot project city is required as part of the application. This resolution shall include approval of the submission of the application to the authority for status as a pilot project city.

d. The authority may request additional information from a city that is applying for pilot project city status or may use other resources to obtain the needed information.

e. Applications filed on or after October 1, 2006, shall not be considered.

**71.3(2) Approval of applications.** The authority shall approve four eligible pilot project cities: one pursuant to 71.2“1,” one pursuant to 71.2“2,” and two pursuant to 71.2“3.” If more than two cities meeting the requirements of 71.2“3” apply to be designated as a pilot project city, the department of management, in consultation with the authority, shall determine which two cities hold the most potential to create new jobs or generate the greatest capital in their areas. Authority staff will prepare a recommendation for each of the cities to be approved as pilot project cities. The board will make the final decision to approve, defer or deny applications. Once applications are approved by the board, all communities applying for pilot project city status will be notified of the status of their applications.

**71.3(3) Status as a pilot project city.** If a pilot project city does not enter into a withholding agreement within one year of its approval as a pilot project city, the city shall lose its status as a pilot project city. Upon such occurrence, the authority shall take applications from other eligible cities to replace that city. Another city shall be designated within six months.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 1373C, IAB 3/19/14, effective 2/24/14]

#### **261—71.4(403) Withholding agreements.**

**71.4(1) Designated account.** An approved pilot project city may provide by city 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.* 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 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 jobs or making a qualifying investment of at least \$500,000 within the 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 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. Board approval of withholding agreements.* Prior to entering into a withholding agreement with a business, a pilot project city shall request board approval of the withholding agreement. The process for requesting approval from the 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, and how withholding funds generated by the city will be used.

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

*c.* The amount of assistance provided by the pilot project city for the project.

*d.* Documentation of the approval of the project by local participating authorities.

*e.* The total amount of withholding tax credits awarded.

*f.* The total number of created and retained jobs included in the project.

*g.* The required countywide average wage.

*h.* The total qualifying investment included in the project.

*i.* The total required matching local financial support for the project.

**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 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 section 422.16.

**71.4(6)** *Use of withholding funds.* A pilot project city shall allocate the withholding funds into a designated withholding project fund for the project. All funds deposited shall be used or pledged by the pilot project city for a project related to the employer pursuant to the withholding agreement.

**71.4(7)** *Local match requirement.* The intent of the program is to require a pilot project city to contribute to projects that result in an increase in the city's tax collections. If a pilot project city realizes an increase in tax revenues due to the project, then the pilot project city is required to contribute at least 10 percent of the required local match. For example, if a project includes the purchase and remodeling of a building that results in increased tax collections to the pilot project city by an amount equal to 10 percent of the total amount of the withholding tax credit award, then the pilot project city is required to contribute at least 10 percent of the required local match for the project. In cases in which a project would include the purchase of a building but there is no increase in tax collections to the pilot project city, the pilot project city is not required to contribute to the required local match.

*a.* A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

*b.* If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph "a."

*c.* If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

*d.* A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

**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 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 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 section 260E.5 or may claim a supplemental withholding credit under Iowa Code 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.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7847B, IAB 6/17/09, effective 5/21/09; ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09; ARC 1373C, IAB 3/19/14, effective 2/24/14; ARC 4512C, IAB 6/19/19, effective 7/24/19; ARC 4990C, IAB 3/11/20, effective 4/15/20]

## **261—71.5(403) Project approval.**

### **71.5(1) Request for 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 board, on behalf of the authority. The authority shall develop a standardized form to be used by pilot project cities to request board approval of a proposed withholding agreement. To request board approval of a proposed withholding agreement, a pilot project city shall 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 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 letter or resolution of support from the local government showing support for the project.

*b. 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.

*c. 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 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 board shall only deny 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 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 board's decision regarding the proposed withholding agreement.

### **71.5(2) Certification to the department of revenue.**

*a.* The employer shall certify to the department of revenue that the targeted jobs withholding tax credit is in accordance with the withholding agreement and shall provide other information the department of revenue may require.

*b.* A pilot project city shall certify to the department of revenue the amount of the targeted jobs withholding tax credit an employer has remitted to the city and shall provide other information the department of revenue may require.

*c.* Notice of any withholding agreement shall be provided promptly to the department of revenue following its execution between a pilot project city and an employer.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7847B, IAB 6/17/09, effective 5/21/09; ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09; ARC 1373C, IAB 3/19/14, effective 2/24/14]

**261—71.6(403) Reporting requirements.****71.6(1) Required reports.**

*a.* At the time the pilot project city submits its budget to the department of management, the pilot project city shall submit to the department of management and the authority a description of the activities involving the use of withholding agreements. The description shall include, but not be limited to, the following:

(1) The total number of targeted jobs associated with withholding agreements and the wages of those targeted jobs.

(2) A breakdown of the number of targeted jobs that are associated with Iowa business expansions or retentions within the city limits of the pilot project city and the number of targeted jobs resulting from out-of-state businesses moving to or expanding in Iowa.

(3) The number of withholding agreements and the amount of withholding credits associated with those agreements.

(4) The types of businesses that entered into withholding agreements with the city and the types of businesses that declined the city's proposal to enter into a withholding agreement with the city.

*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.

*c.* The employer, in conjunction with the pilot project city, shall provide information documenting the total amount of payments and receipts from the withholding project fund under the withholding agreement, including all agreements 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 authority annually by September 1 covering the prior fiscal year (July 1 to June 30). The authority shall verify the information provided and determine whether the pilot project city and the employer are in compliance with Iowa Code section 403.19A and this chapter. The authority will verify job creation or retention using the method described in 261—Chapter 188.

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

*e.* The authority shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

(1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

(2) Information substantiating the total amount of qualifying investment made in the project;

(3) Information substantiating the total amount of local financial support made in the project;

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

**71.6(2) Annual report.** As required by Iowa Code section 15.104(9)“k,” the authority shall include in its annual report information about the targeted jobs withholding tax credit program. This report is due on January 31 of each year.

[ARC 7561B, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); ARC 7848B, IAB 6/17/09, effective 7/1/09; ARC 8147B, IAB 9/23/09, effective 10/28/09; ARC 1373C, IAB 3/19/14, effective 2/24/14]

**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.

[ARC 1373C, IAB 3/19/14, effective 2/24/14]

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

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[Editorial change: IAC Supplement 3/25/09]

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[Filed ARC 4990C (Notice ARC 4737C, IAB 11/6/19), IAB 3/11/20, effective 4/15/20]

<sup>1</sup> The March 18, 2009, effective date of **ARC 7561B** was delayed 70 days by the Administrative Rules Review Committee at its meeting held March 6, 2009.