HB3556

LRB10010737HLH21726b

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3556

by Rep. Keith R. Wheeler

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/224 new

Creates the Transforming, Helping, and Reviving Illinois' Versatile Economy (THRIVE) Job Creation Tax Credit Act. Provides that the Department of Commerce and Economic Opportunity shall award an income tax credit to taxpayers that meet certain criteria. Contains job creation and capital investment requirements. Provides that the credit may not exceed 50% of the incremental income tax attributable to the applicant's project. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning revenue.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Transforming, Helping, and Reviving Illinois' Versatile Economy (THRIVE) Job Creation Tax Credit Act.

Section 5. Definitions.

"Agreement" means the Agreement between a taxpayer and the Department under Section 40 of this Act.

"Applicant" means a taxpayer that is operating a business located, or that the taxpayer plans to locate, within the State and that is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling, warehousing, or distributing products, conducting research and development, providing tourism services, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, retail food, health, or professional services. "Applicant" does not include a taxpayer who closes or substantially reduces an operation at one location in the State and relocates substantially the same operation to another location in the State. This does not prohibit a taxpayer from expanding its operations at another location in the State, provided that existing operations of a similar nature located within the State are not closed or substantially reduced. This also does not prohibit a taxpayer from moving its operations from one location in the State to another location in the State for the purpose of expanding the operation, provided that the Department determines that expansion cannot reasonably be accommodated within the municipality in which the business is located, or, in the case of a business located in an unincorporated area of the county, within the county in which the business is located, after conferring with the chief elected official of the municipality or county and taking into consideration any evidence offered by the municipality or county regarding the ability to accommodate expansion within the municipality or county.

"Credit" means the amount agreed to between the Department and applicant under this Act, but not to exceed 50% of the incremental income tax attributable to the applicant's project.

"Department" means the Department of Commerce and Economic Opportunity.

"Director" means the Director of Commerce and Economic Opportunity.

"Full-time employee" means an individual who is employed for consideration for at least 35 hours each week or who renders any other standard of service generally accepted by industry custom or practice as full-time employment. An individual for whom a W-2 is issued by a Professional Employer

Organization (PEO) is a full-time employee if employed in the service of the applicant for consideration for at least 35 hours each week or who renders any other standard of service generally accepted by industry custom or practice as full-time employment.

"Incremental income tax" means the total amount withheld during the taxable year from the compensation of new employees under Article 7 of the Illinois Income Tax Act arising from employment at a project that is the subject of an agreement.

"New employee" means a full-time employee first employed by a taxpayer in the project that is the subject of an agreement and who is hired after the taxpayer enters into the tax credit agreement. The term "new employee" does not include:

(1) an employee of the taxpayer who performs a job that was previously performed by another employee, if that job existed for at least 6 months before the employee was hired by the taxpayer;

(2) an employee of the taxpayer who was previously employed in Illinois by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer entered into the agreement; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has a direct or an indirect ownership interest of at least 5% in the profits, capital, or value of the taxpayer.

Notwithstanding paragraph (1) above, an employee may be considered a new employee under the agreement if the employee performs a job that was previously performed by an employee who was:

(1) treated under the agreement as a new employee; and

(2) promoted by the taxpayer to another job.

An employee hired prior to the date of the Agreement who otherwise qualifies as a new employee may be considered a new employee for purposes of awarding a credit under an agreement. if:

(1) the applicant is in receipt of a letter from the Department stating an intent to enter into a credit agreement;

(2) that letter is issued by the Department not later than 15 days after the effective date of this Act; and

(3) the employee was hired after the date the letter was issued.

"Noncompliance date" means, in the case of a taxpayer that is not complying with the requirements of the agreement or the provisions of this Act, the day following the last date upon which the taxpayer was in compliance with the requirements of the agreement and the provisions of this Act, as determined by the Director under Section 50 of this Act.

"Pass-through entity" means an entity that is exempt from the tax under subsection (b) or (c) of Section 205 of the Illinois Income Tax Act.

"Professional Employer Organization" or "PEO" means an employee leasing company, as defined in Section 206.1(A)(2) of the Illinois Unemployment Insurance Act.

"Related member" means a person that, with respect to the taxpayer during any portion of the taxable year, is any one of the following:

(1) an individual stockholder, if the stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;

(2) a partnership, estate, or trust and any partner or beneficiary, if the partnership, estate, or trust, and its partners or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the taxpayer;

(3) a corporation, and any party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the taxpayer owns directly, indirectly, beneficially, or constructively at least 50% of the value of the corporation's outstanding stock;

(4) a corporation, and any party related to that corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the corporation and all such related parties own in the aggregate at least 50% of the profits, capital, stock, or value of the taxpayer; and

(5) a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code, except, for purposes of determining whether a person is a related member under this paragraph, 20% shall be substituted for 5% wherever 5% appears in Section 1563(e) of the Internal Revenue Code.

"Taxpayer" means an individual, corporation, partnership, or other entity that has any Illinois income tax liability.

Section 10. Powers of the Department. The Department, in addition to those powers granted under the Civil Administrative Code of Illinois, is granted and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, power and authority to:

(1) Promulgate procedures or regulations deemed necessary and appropriate for the administration of the programs; establish forms for applications, notifications,

contracts, or any other agreements; and accept applications at any time during the year.

(2) Provide and assist taxpayers pursuant to the provisions of this Act, and cooperate with taxpayers that are parties to agreements to promote, foster, and support economic development, capital investment, and job creation within the State.

(3) Enter into agreements and memoranda of understanding for participation of and engage in cooperation with agencies of the federal government, units of local government, universities, research foundations or institutions, regional economic development corporations, or other organizations in furtherance of the purposes of this Act.

(4) Gather information and conduct inquiries, in the manner and by the methods as it deems desirable, including without limitation, gathering information with respect to applicants for the purpose of making any designations or certifications necessary or desirable in the furtherance of the purposes of this Act.

(5) Establish, negotiate, and effectuate any term, agreement or other document with any person necessary or appropriate to accomplish the purposes of this Act; and to consent, subject to the provisions of any agreement with another party, to the modification or restructuring of any agreement to which the Department is a party.

(6) Fix, determine, charge, and collect any premiums, fees, charges, costs, and expenses from Applicants, including, without limitation, any application fees, commitment fees, program fees, financing charges, or publication fees as deemed appropriate to pay expenses necessary or incident to the administration, staffing, or operation in connection with the Department's activities under this Act, or for preparation, implementation, and enforcement of the terms of an agreement, or for consultation, advisory and legal fees, and other costs; however, all fees and expenses incident thereto shall be the responsibility of the applicant.

(7) Provide for sufficient personnel to permit administration, staffing, operation, and related support required to adequately discharge its duties and responsibilities described in this Act from funds made available through charges to applicants or from funds as may be appropriated by the General Assembly for the administration of this Act.

(8) Require applicants, upon written request, to issue any necessary authorization to the appropriate federal, State, or local authority for the release of information concerning a project being considered under the provisions of this Act, with the information requested to include, but not be limited to, financial reports, returns, or records relating to the taxpayer or its project.

(9) Require that a taxpayer shall at all times keep proper books of record and account in accordance with generally accepted accounting principles consistently applied, with the books, records, or papers related to the agreement in the custody or control of the taxpayer open for reasonable Department inspection and audits, and including, without limitation, the making of copies of the books, records, or papers, and the inspection or appraisal of any of the taxpayer or project assets.

(10) Take whatever actions are necessary or appropriate to protect the State's interest in the event of bankruptcy, default, foreclosure, or noncompliance with the terms and conditions of financial assistance or participation required under this Act, including the power to sell, dispose, lease, or rent, upon terms and conditions determined by the Director to be appropriate, real or personal property that the Department may receive as a result of these actions.

Section 15. Tax credit awards. Subject to the conditions set forth in this Act, a taxpayer is entitled to a credit against taxes or, as to a pass-through entity, a payment towards taxes imposed pursuant to subsections (a) and (b) of Section 201 of the Illinois Income Tax Act if the taxpayer is awarded a credit by the Department under this Act for that taxable year.

The Department shall make credit awards under this Act to foster job creation in Illinois.

A person that proposes a project to create new jobs in Illinois must enter into an agreement with the Department for the credit under this Act.

The credit shall be claimed for the taxable years specified in the agreement.

The credit shall not exceed 50% of the incremental income tax attributable to the project that is the subject of the agreement.

Nothing herein shall prohibit a tax credit award to an applicant that uses a PEO if all other award criteria are satisfied.

Credits awarded under this Act are transferable through the Department at the discretion of the Director within 2 years after the credit is awarded. Credits may be transferred only to a single taxpayer or to common entities within a single ownership structure and may not be transferred more than once. The Department shall maintain an online information portal where entities anticipating the purchase or sale of credits shall register their intent to do so. Any taxpayer transferring a credit under this Section shall pay a uniform fee to the Department that the Department shall set by rule, and that amount shall be invested consistent with the clawback provisions set forth in Section 43 of this Act.

For partners, shareholders of Subchapter S corporations, and owners of limited liability companies, if the liability company is treated as a partnership for purposes of federal and State income taxation, the credit under this Act shall be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code or as allowed under the agreement with the Department.

A pass-through entity that has been awarded a credit under this Act, or its shareholders or partners, may treat some or all of the credit awarded pursuant to this Act as a tax payment for purposes of the Illinois Income Tax Act. For purposes of this Section, "tax payment" means a payment as described in Article 6 or Article 8 of the Illinois Income Tax Act or a composite payment made by a pass-through entity on behalf of any of its shareholders or partners to satisfy such shareholders' or partners' taxes imposed pursuant to subsections (a) and (b) of Section 201 of the Illinois Income Tax Act. In no event shall the amount of the award credited pursuant to this Act exceed the Illinois income tax liability of the pass-through entity or its shareholders or partners for the taxable year.

Section 20. Application for a project to create new jobs.

(a) Any taxpayer proposing a project located or planned to be located in Illinois may request consideration for designation of its project, by formal application to the

Department in which the applicant states its intent to meet the criteria set forth in this Section.

(b) The applicant's project must: (1) employ a number of new employees equal to the lesser of (A) 10% of the number of full-time employees employed by the applicant world-wide on the date the application is filed with the Department or (B) 50 new employees; and (2) involve a capital investment of at least $2,500,000 at a project location in the State, except that, if the applicant employs fewer than 100 full-time employees on the date the application is filed with the Department, then the applicant's capital investment may be less than $2,500,000 if the capital investment is approved by the Department at the discretion of the Director at the time of the application.

(c) The Department may enter into an agreement with the applicant if the application is accepted and approved by the Department as provided in Section 22 of this Act.

Section 22. Review of Applications. In making its determination that an application for a credit should or should not be accepted, which shall occur within a reasonable time frame as determined by the nature of the application, the Department shall consider all of the following, as well as any other circumstances it may deem appropriate:

(1) The applicant's project intends, as required by subsection (b) of Section 20 of this Act to make the required investment in the State and intends to hire the

required number of new employees in Illinois as a result of that project.

(2) The applicant's project is economically sound and will benefit the people of Illinois by increasing opportunities for employment and strengthen the economy of Illinois.

(3) Evidence the receipt of the credit is essential to the applicant's decision to create new jobs in the State, such as the magnitude of the cost differential between Illinois and a competing State.

(4) The political subdivisions affected by the project have committed local incentives with respect to the project, considering local ability to assist.

(5) Awarding the credit will result in an overall positive fiscal impact to the State.

(6) The credit is not prohibited by Section 25 of this Act.

Section 25. Relocation of jobs within Illinois; baseline employment. A taxpayer is not entitled to claim the credit provided by this Act with respect to any jobs that the taxpayer relocates from one site in Illinois to another site in Illinois. In addition, a taxpayer is not entitled to claim a credit under this Act for a taxable year if the average number of full-time employees employed by the taxpayer in this State during that taxable year is less than the average number of full-time employees employed by the taxpayer in this State as of the date of the application. If the project is a qualifying project certified under the Corporate Headquarters Relocation Act, however, then the taxpayer is not subject to the requirements of this Section but is nevertheless considered an applicant for purposes of this Act. Moreover, any full-time employee of an eligible business relocated to Illinois in connection with that qualifying project is deemed to be a new employee for purposes of this Act. Determinations under this Section shall be made by the Department and at the Department's discretion.

Section 30. Determination of amount of the credit. The credit may be stated as a percentage of the incremental income tax attributable to the applicant's project and may include a fixed dollar limitation. In determining the amount of the credit that should be awarded, the Department may take into consideration, the following factors:

(1) The number and location of jobs created in relation to the economy of the county where the projected investment is to occur.

(2) The potential impact on the economy of Illinois.

(3) The magnitude of the cost differential between Illinois and the competing state.

(4) The incremental payroll attributable to the project.

(5) The capital investment attributable to the project.

(6) The amount of the average wage and benefits paid by the applicant in relation to the wage and benefits of the area of the project.

(7) The costs to Illinois and the affected political subdivisions with respect to the project.

(8) The financial assistance that is otherwise provided by Illinois and the affected political subdivisions.

(9) The credit may not exceed the amount of taxes imposed pursuant to subsections (a) and (b) of Section 201 of the Illinois Income Tax Act.

(10) The total amount of the credit allowed during all tax years may not exceed the aggregate amount of costs incurred by the taxpayer during all prior tax years for the following items, to the extent provided in the agreement: (a) capital investment, including, but not limited to, equipment, buildings, or land; (b) infrastructure development; (c) debt service, except refinancing of current debt; (d) research and development; (e) job training and education; (f) lease costs; or (g) relocation costs.

Section 35. Duration of the credit. The duration of the credit may not exceed 10 taxable years, except that, if the project is located in a census tract with an unemployment rate that is greater than 150% of the State unemployment rate or a poverty rate greater than 150% of the State poverty rate at the time the application is filed with the Department, then the duration of the credit may not exceed 15 taxable years. Any credit that is unused in the year the credit is computed may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first.

Section 40. Contents of agreements with applicants. The Department shall enter into an agreement with an applicant that is awarded a credit under this Act. The Department may enter into only one agreement with a taxpayer with respect to a specific project or location. The agreement must include all of the following:

(1) A detailed description of the project that is the subject of the agreement, including the location and amount of the investment and jobs created.

(2) The duration of the credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain operations at the project location that shall be stated as a minimum number of years not to exceed 10.

(5) A specific method for determining the number of new employees employed during a taxable year.

(6) A requirement that the taxpayer shall annually report to the Department the number of new employees, the incremental income tax withheld in connection with the new employees, and any other information the Department needs to fulfill the Department's responsibilities duties under this Act.

(7) A requirement that the Department is authorized to verify with the appropriate State agencies the amounts reported under paragraph (6), and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(8) A requirement that the taxpayer shall provide written notification to the Department not more than 30 days after the taxpayer makes or receives a proposal that would transfer the taxpayer's State tax liability obligations to a successor taxpayer.

(9) A detailed description of the number of new employees to be hired, and the occupation and payroll of the full-time jobs to be created as a result of the project.

(10) The minimum investment the business enterprise

will make in capital improvements, the time period for placing the property in service, and the designated location in Illinois for the investment.

(11) A requirement that the taxpayer shall provide written notification to the Department not more than 30 days after the taxpayer determines that the minimum job creation, employment payroll, or investment no longer is being or will be achieved or maintained as set forth in the terms and conditions of the agreement.

(12) A provision specifying that, if the taxpayer ceases principal operations with the intent to shut down the project in the State permanently during the term of the agreement, then the entire credit amount awarded to the taxpayer prior to the date the taxpayer ceases principal operations shall be returned to the Department and shall be reallocated to the local workforce investment area in which the project was located as provided in Section 43 of this Act.

(13) A provision that if the total number of new employees falls below a specified level, the allowance of the credit shall be suspended until the number of new employees equals or exceeds that specified level.

(14) Any other performance conditions or contract provisions as the Department determines are appropriate.

Section 43. Taxpayer ceases principal operations. If the taxpayer ceases principal operations at the project location during the term of the agreement with the intent to shut down the project in the State permanently, then the entire credit amount awarded to the taxpayer prior to the date the taxpayer ceases principal operations shall be returned to the Department and shall be reallocated to the local workforce investment area in which the project was located for the purposes of workforce development, expanded opportunities for unemployed persons, and expanded opportunities for women and minorities in the workforce.

Section 45. Certificate of verification; submission to the Department of Revenue. A taxpayer claiming a credit under this Act shall submit to the Department of Revenue a copy of the certificate of verification under this Act for the taxable year. However, failure to submit a copy of the certificate with the taxpayer's tax return shall not invalidate a claim for a credit.

For a taxpayer to be eligible for a certificate of verification, the taxpayer shall provide proof as required by the Department prior to the end of each calendar year, including, but not limited to, attestation by the Taxpayer that the project continues to meet the terms of the agreement.

Section 47. Pass-through entity.

(a) The shareholders or partners of a taxpayer that is a pass-through entity shall be entitled to the credit allowed under the agreement.

(b) The credit provided under subsection (a) is in addition to any credit to which a shareholder or partner is otherwise entitled under a separate agreement under this Act. A pass-through entity and a shareholder or partner of the pass-through entity may not claim more than one credit under the same agreement.

Section 50. Noncompliance; notice; assessment. If the Department determines that a taxpayer who has received a credit under this Act is not complying with the requirements of the agreement or all of the provisions of this Act, the Department shall provide notice to the taxpayer of the alleged noncompliance, and allow the taxpayer a hearing under the provisions of the Illinois Administrative Procedure Act. If, after such notice and any hearing, the Department determines that a noncompliance exists, the Department shall issue to the Department of Revenue notice to that effect, stating the noncompliance date.

Section 55. Rules. The Department may adopt rules under the Illinois Administrative Procedure Act necessary to implement this Act.

Section 60. Annual report. On or before July 1 each year, the Department shall submit a report to the Governor and the General Assembly on the tax credit program under this Act. Subject to the limitations of Section 70 of this Act, the report shall include information on the number of agreements that were entered into under this Act during the preceding calendar year, a description of the project that is the subject of each agreement, an update on the status of projects under agreements entered into before the preceding calendar year, and the sum of the credits awarded under this Act.

Section 65. Evaluation of tax credit program. On a biennial basis, the Department shall evaluate the tax credit program under this Act. Subject to the limitations of Section 70 of this Act, the evaluation shall include an assessment of the effectiveness of the program in creating new jobs in Illinois and of the revenue impact of the program, and may include a review of the practices and experiences of other states with similar programs. The Department shall submit a report on the evaluation to the Governor and the General Assembly after June 30 and before November 1 in each odd-numbered year.

Section 70. Program terms and conditions.

(a) Any documentary materials or data made available or received by any agent or employee of the Department shall be deemed confidential and shall not be deemed public records to the extent that the materials or data consists of trade secrets, commercial or financial information regarding the operation of the business conducted by the applicant for or recipient of any tax credit under this Act, or any information regarding the competitive position of a business in a particular field of endeavor.

(b) Nothing in this Act shall be construed as creating any rights in any applicant to enter into an agreement or in any person to challenge the terms of any agreement.

Section 80. The Illinois Income Tax Act is amended by adding Section 224 as follows:

(35 ILCS 5/224 new)

Sec. 224. Transforming, Helping, and Reviving Illinois' Versatile Economy (THRIVE) Job Creation Tax Credit. For taxable years beginning on or after January 1, 2017, a taxpayer who has been granted a credit under the Transforming, Helping, and Reviving Illinois' Versatile Economy (THRIVE) Job Creation Tax Credit Act is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 as provided in that Act.

If the Taxpayer is a partnership or Subchapter S corporation, the credit is allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code.

A transfer of this credit may be made by the taxpayer earning the credit within 2 years after the credit is awarded in accordance with rules adopted by the Department of Commerce and Economic Opportunity.

The Department, in cooperation with the Department of Commerce and Economic Opportunity, must adopt rules to enforce and administer the provisions of this Section. This Section is exempt from the provisions of Section 250 of this Act.

The credit may not be carried back. If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. In no event shall a credit under this Section reduce the taxpayer's liability to less than zero.

Section 99. Effective date. This Act takes effect upon becoming law.