LRB101 18076 HLH 67515 b

101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3381

Introduced 2/14/2020, by Sen. Chapin Rose

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/704A

Creates the Job Creation Zone Pilot Program Act. Sets forth the boundaries of the Job Creation Zone. Provides that applicants that pledge to hire at least 5 new employees at a designated location within the job creation zone are eligible for credits against their obligation to pay over withholding taxes under the Illinois Income Tax Act. Sets forth the amount of the credit, which is based on the incremental income tax attributable to new employees hired by the taxpayer during the calendar year. 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 State government.

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 Job Creation Zone Pilot Program Act.

Section 5. Definitions. As used in this Act:

"Agreement" means an agreement between the taxpayer and the Department for credit awards under this Act.

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

"Incremental income tax" means the total amount withheld during the reporting period 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 who (i) is first employed by a taxpayer in the project that is the subject of an agreement under this Act, (ii) is hired after the taxpayer enters into the tax credit agreement, (iii) receives compensation from the taxpayer that is at least 125% of the State minimum wage during the entire time he or she is considered a new employee, and (iv) is eligible for employer-sponsored group health insurance benefits and retirement benefits as a condition of his or her employment with the taxpayer. 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 hiring the employee; notwithstanding this paragraph, an employee may be considered a new employee if the employee performs a job that was previously performed by an employee who was:

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

(B) promoted by the taxpayer to another job;

(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 under this Act; 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.

"Project" means employment in one or more of the following fields: manufacturing, technology, research, science, mathematics, engineering, construction, energy, bioprocessing, or agriculture.

"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.

(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.

Section 10. Zone created. A job creation zone pilot program is hereby created. The job creation zone shall have the following boundaries:

Beginning at the intersection of US-51 and State Route 9; then East to the Indiana State Line; then South along the border between Illinois and Indiana; then Southwest along Interstate 70 to US-51; then North along US-51 to the Point of Beginning; the job creation zone also includes all of the territory within 15 miles of the North, South, and West borders set forth in this Section.

Section 15. Tax credit awards; application.

(a) The Department shall make credit awards under this Act to foster job creation within the job creation zone. To be eligible for credits under this Act, the applicant must pledge to hire at least 5 new employees at a designated location within the job creation zone.

(b) An applicant may request a credit award by formal written letter of request or by formal application to the Department, in which the applicant states its intent to hire at least 5 new employees at a designated location within the job creation zone. As circumstances require, the Department may require a formal application from an applicant and a formal letter of request for assistance.

(c) The Department may not make a credit award for a project at a location that was used by a different employer during the previous year if the applicant will employ the same number of employees or fewer employees (including new employees) at that project location.

(d) The Department may make credit awards for withholding reporting periods beginning on or after July 1, 2020.

Section 25. Tax credit awards; amount. Any taxpayer that has been issued a certificate of exemption by the Department under this Act may claim a credit against its obligation to pay over withholding under Section 704A of the Illinois Income Tax Act. The amount of the credit may not exceed (i) 50% of the incremental income tax attributable to each new employee during calendar year in which the new employee is hired and for the first 2 calendar years after the new employee is hired and (ii) 25% of the incremental income tax attributable to each new employee during the third and fourth calendar years after the new employee is hired.

Section 30. Rulemaking. The Department may adopt rules to implement and enforce the provisions of this Act.

Section 900. The Illinois Income Tax Act is amended by changing Section 704A as follows:

(35 ILCS 5/704A)

Sec. 704A. Employer's return and payment of tax withheld.

(a) In general, every employer who deducts and withholds or is required to deduct and withhold tax under this Act on or after January 1, 2008 shall make those payments and returns as provided in this Section.

(b) Returns. Every employer shall, in the form and manner required by the Department, make returns with respect to taxes withheld or required to be withheld under this Article 7 for each quarter beginning on or after January 1, 2008, on or before the last day of the first month following the close of that quarter.

(c) Payments. With respect to amounts withheld or required to be withheld on or after January 1, 2008:

(1) Semi-weekly payments. For each calendar year, each employer who withheld or was required to withhold more than $12,000 during the one-year period ending on June 30 of the immediately preceding calendar year, payment must be made:

(A) on or before each Friday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Saturday, Sunday, Monday, or Tuesday;

(B) on or before each Wednesday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Wednesday, Thursday, or Friday.

Beginning with calendar year 2011, payments made under this paragraph (1) of subsection (c) must be made by electronic funds transfer.

(2) Semi-weekly payments. Any employer who withholds or is required to withhold more than $12,000 in any quarter of a calendar year is required to make payments on the dates set forth under item (1) of this subsection (c) for each remaining quarter of that calendar year and for the subsequent calendar year.

(3) Monthly payments. Each employer, other than an employer described in items (1) or (2) of this subsection, shall pay to the Department, on or before the 15th day of each month the taxes withheld or required to be withheld during the immediately preceding month.

(4) Payments with returns. Each employer shall pay to the Department, on or before the due date for each return required to be filed under this Section, any tax withheld or required to be withheld during the period for which the

return is due and not previously paid to the Department.

(d) Regulatory authority. The Department may, by rule:

(1) Permit employers, in lieu of the requirements of subsections (b) and (c), to file annual returns due on or before January 31 of the year for taxes withheld or required to be withheld during the previous calendar year and, if the aggregate amounts required to be withheld by the employer under this Article 7 (other than amounts required to be withheld under Section 709.5) do not exceed $1,000 for the previous calendar year, to pay the taxes required to be shown on each such return no later than the due date for such return.

(2) Provide that any payment required to be made under subsection (c)(1) or (c)(2) is deemed to be timely to the extent paid by electronic funds transfer on or before the due date for deposit of federal income taxes withheld from, or federal employment taxes due with respect to, the wages from which the Illinois taxes were withheld.

(3) Designate one or more depositories to which payment of taxes required to be withheld under this Article 7 must be paid by some or all employers.

(4) Increase the threshold dollar amounts at which employers are required to make semi-weekly payments under subsection (c)(1) or (c)(2).

(e) Annual return and payment. Every employer who deducts and withholds or is required to deduct and withhold tax from a person engaged in domestic service employment, as that term is defined in Section 3510 of the Internal Revenue Code, may comply with the requirements of this Section with respect to such employees by filing an annual return and paying the taxes required to be deducted and withheld on or before the 15th day of the fourth month following the close of the employer's taxable year. The Department may allow the employer's return to be submitted with the employer's individual income tax return or to be submitted with a return due from the employer under Section 1400.2 of the Unemployment Insurance Act.

(f) Magnetic media and electronic filing. With respect to taxes withheld in calendar years prior to 2017, any W-2 Form that, under the Internal Revenue Code and regulations promulgated thereunder, is required to be submitted to the Internal Revenue Service on magnetic media or electronically must also be submitted to the Department on magnetic media or electronically for Illinois purposes, if required by the Department.

With respect to taxes withheld in 2017 and subsequent calendar years, the Department may, by rule, require that any return (including any amended return) under this Section and any W-2 Form that is required to be submitted to the Department must be submitted on magnetic media or electronically.

The due date for submitting W-2 Forms shall be as prescribed by the Department by rule.

(g) For amounts deducted or withheld after December 31, 2009, a taxpayer who makes an election under subsection (f) of Section 5-15 of the Economic Development for a Growing Economy Tax Credit Act for a taxable year shall be allowed a credit against payments due under this Section for amounts withheld during the first calendar year beginning after the end of that taxable year equal to the amount of the credit for the incremental income tax attributable to full-time employees of the taxpayer awarded to the taxpayer by the Department of Commerce and Economic Opportunity under the Economic Development for a Growing Economy Tax Credit Act for the taxable year and credits not previously claimed and allowed to be carried forward under Section 211(4) of this Act as provided in subsection (f) of Section 5-15 of the Economic Development for a Growing Economy Tax Credit Act. The credit or credits may not reduce the taxpayer's obligation for any payment due under this Section to less than zero. If the amount of the credit or credits exceeds the total payments due under this Section with respect to amounts withheld during the calendar year, the excess may be carried forward and applied against the taxpayer's liability under this Section in the succeeding calendar years as allowed to be carried forward under paragraph (4) of Section 211 of this Act. The credit or credits shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one taxable year that are available to offset a liability, the earlier credit shall be applied first. Each employer who deducts and withholds or is required to deduct and withhold tax under this Act and who retains income tax withholdings under subsection (f) of Section 5-15 of the Economic Development for a Growing Economy Tax Credit Act must make a return with respect to such taxes and retained amounts in the form and manner that the Department, by rule, requires and pay to the Department or to a depositary designated by the Department those withheld taxes not retained by the taxpayer. For purposes of this subsection (g), the term taxpayer shall include taxpayer and members of the taxpayer's unitary business group as defined under paragraph (27) of subsection (a) of Section 1501 of this Act. This Section is exempt from the provisions of Section 250 of this Act. No credit awarded under the Economic Development for a Growing Economy Tax Credit Act for agreements entered into on or after January 1, 2015 may be credited against payments due under this Section.

(h) An employer may claim a credit against payments due under this Section for amounts withheld during the first calendar year ending after the date on which a tax credit certificate was issued under Section 35 of the Small Business Job Creation Tax Credit Act. The credit shall be equal to the amount shown on the certificate, but may not reduce the taxpayer's obligation for any payment due under this Section to less than zero. If the amount of the credit exceeds the total payments due under this Section with respect to amounts withheld during the calendar year, the excess may be carried forward and applied against the taxpayer's liability under this Section in the 5 succeeding calendar years. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one calendar year that are available to offset a liability, the earlier credit shall be applied first. This Section is exempt from the provisions of Section 250 of this Act.

(i) Each employer with 50 or fewer full-time equivalent employees during the reporting period may claim a credit against the payments due under this Section for each qualified employee in an amount equal to the maximum credit allowable. The credit may be taken against payments due for reporting periods that begin on or after January 1, 2020, and end on or before December 31, 2027. An employer may not claim a credit for an employee who has worked fewer than 90 consecutive days immediately preceding the reporting period; however, such credits may accrue during that 90-day period and be claimed against payments under this Section for future reporting periods after the employee has worked for the employer at least 90 consecutive days. In no event may the credit exceed the employer's liability for the reporting period. Each employer who deducts and withholds or is required to deduct and withhold tax under this Act and who retains income tax withholdings under this subsection must make a return with respect to such taxes and retained amounts in the form and manner that the Department, by rule, requires and pay to the Department or to a depositary designated by the Department those withheld taxes not retained by the employer.

For each reporting period, the employer may not claim a credit or credits for more employees than the number of employees making less than the minimum or reduced wage for the current calendar year during the last reporting period of the preceding calendar year. Notwithstanding any other provision of this subsection, an employer shall not be eligible for credits for a reporting period unless the average wage paid by the employer per employee for all employees making less than $55,000 during the reporting period is greater than the average wage paid by the employer per employee for all employees making less than $55,000 during the same reporting period of the prior calendar year.

For purposes of this subsection (i):

"Compensation paid in Illinois" has the meaning ascribed to that term under Section 304(a)(2)(B) of this Act.

"Employer" and "employee" have the meaning ascribed to those terms in the Minimum Wage Law, except that "employee" also includes employees who work for an employer with fewer than 4 employees. Employers that operate more than one establishment pursuant to a franchise agreement or that constitute members of a unitary business group shall aggregate their employees for purposes of determining eligibility for the credit.

"Full-time equivalent employees" means the ratio of the number of paid hours during the reporting period and the number of working hours in that period.

"Maximum credit" means the percentage listed below of the difference between the amount of compensation paid in Illinois to employees who are paid not more than the required minimum wage reduced by the amount of compensation paid in Illinois to employees who were paid less than the current required minimum wage during the reporting period prior to each increase in the required minimum wage on January 1. If an employer pays an employee more than the required minimum wage and that employee previously earned less than the required minimum wage, the employer may include the portion that does not exceed the required minimum wage as compensation paid in Illinois to employees who are paid not more than the required minimum wage.

(1) 25% for reporting periods beginning on or after January 1, 2020 and ending on or before December 31, 2020;

(2) 21% for reporting periods beginning on or after January 1, 2021 and ending on or before December 31, 2021;

(3) 17% for reporting periods beginning on or after January 1, 2022 and ending on or before December 31, 2022;

(4) 13% for reporting periods beginning on or after January 1, 2023 and ending on or before December 31, 2023;

(5) 9% for reporting periods beginning on or after January 1, 2024 and ending on or before December 31, 2024;

(6) 5% for reporting periods beginning on or after January 1, 2025 and ending on or before December 31, 2025.

The amount computed under this subsection may continue to be claimed for reporting periods beginning on or after January 1, 2026 and:

(A) ending on or before December 31, 2026 for employers with more than 5 employees; or

(B) ending on or before December 31, 2027 for employers with no more than 5 employees.

"Qualified employee" means an employee who is paid not more than the required minimum wage and has an average wage paid per hour by the employer during the reporting period equal to or greater than his or her average wage paid per hour by the employer during each reporting period for the immediately preceding 12 months. A new qualified employee is deemed to have earned the required minimum wage in the preceding reporting period.

"Reporting period" means the quarter for which a return is required to be filed under subsection (b) of this Section.

(j) An employer may claim a credit against payments due under this Section for amounts withheld during the first calendar year ending after the date on which a certificate of exemption was issued under the Job Creation Zone Pilot Program Act. The credit shall be equal to the amount shown on the certificate, but may not reduce the taxpayer's obligation for any payment due under this Section to less than zero. If the amount of the credit exceeds the total payments due under this Section with respect to amounts withheld during the calendar year, the excess may be carried forward and applied against the taxpayer's liability under this Section in the 5 succeeding calendar years. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one calendar year that are available to offset a liability, the earlier credit shall be applied first. This subsection (j) is exempt from the provisions of Section 250 of this Act.

(Source: P.A. 100-303, eff. 8-24-17; 100-511, eff. 9-18-17; 100-863, eff. 8-14-18; 101-1, eff. 2-19-19.)

Section 999. Effective date. This Act takes effect upon becoming law.