

## ECONOMIC DEVELOPMENT AUTHORITY[261]

### Notice of Intended Action

#### Proposing rulemaking related to the high quality jobs program and providing an opportunity for public comment

The Economic Development Authority hereby proposes to rescind Chapter 59, “Enterprise Zone (EZ) Program,” Chapter 60, “Entrepreneurial Ventures Assistance (EVA) Program,” and Chapter 68, “High Quality Jobs Program”; to adopt a new Chapter 68, “High Quality Jobs Program (HQJP)”; and to rescind Chapter 172, “Environmental Law Compliance; Violations of Law,” Chapter 173, “Standard Definitions,” Chapter 174, “Wage, Benefit, and Investment Requirements,” Chapter 175, “Application Review and Approval Procedures,” Chapter 187, “Contracting,” Chapter 188, “Contract Compliance and Job Counting,” and Chapter 189, “Annual Reporting,” Iowa Administrative Code.

#### *Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 15.106A.

#### *State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 15, subchapter II, part 13, and section 15A.1.

#### *Purpose and Summary*

The Authority administers the High Quality Jobs Program pursuant to Iowa Code chapter 15, subchapter II, part 13. Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 68 relating to the Program and adopt a new chapter in lieu thereof. The proposed chapter omits language that is duplicative of statutory language and Iowa Department of Revenue (IDR) rules. Additionally, the following changes to the chapter are proposed:

- Rule 261—68.1(15) is updated to remove references to 261—Chapters 172, 173, 174, 175, 187, 188, and 189, which are proposed to be rescinded. Language included in complex definitions is removed from this rule and is instead included in relevant rules later in the chapter.
- Rule 261—68.2(15) is updated to describe how local match requirements are approved by the Authority Board (Board), to clarify policies on acquisition of a business as a going concern and project initiation, and to add portions from rule 261—68.3(15) that relate to eligibility.
- Rule 261—68.3(15) is updated to remove language regarding project initiation that is proposed to be added to rule 261—68.2(15) and add language from 261—Chapters 174, 175, and 187 relating to the application and review process.
- New rule 261—68.6(15) addresses contracting and compliance policies currently addressed in 261—Chapters 172, 187, 188, and 189. The new rule streamlines the current process to extend the deadline for program recipients to execute an agreement with the Authority. A new requirement to maintain a base employment level is added for businesses receiving incentives based on retained jobs only.
- New rule 261—68.7(15) addresses job counting policies and procedures currently addressed in the definitions in rule 261—68.1(15) and 261—Chapter 188. The new rule also addresses considerations relating to remote workers.
- New rule 261—68.8(15) describes the procedure by which the Authority establishes wage requirements for the Program, which is currently addressed in 261—Chapter 174.
- New rule 261—68.9(15) describes the procedure by which the Authority establishes investment requirements for the Program, which is currently addressed in 261—Chapter 174.

The Authority further proposes to permanently rescind the following obsolete chapters:

- Chapter 59, which describes the policies and procedures applicable to the Enterprise Zone Program. The Program was repealed by 2014 Iowa Acts, House File 2448. Only one award contract remains open, and closeout procedures are expected to conclude prior to the effective date of rescission of the chapter.
- Chapter 60, which describes the eligibility criteria, application, and review process for the Entrepreneurial Ventures Assistance Program. The Authority ceased accepting applications for the Program effective July 1, 2009, pursuant to 2009 Iowa Acts, Senate File 344.
- Chapters 172, 173, 174, 175, 187, 188, and 189, which describe various policies and procedures applicable to multiple Authority programs, including the High Quality Jobs Program and several repealed programs. The portions of these chapters that are relevant to the High Quality Jobs Program are proposed to be incorporated into Chapter 68.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Authority no later than 4:30 p.m. on June 6, 2024. Comments should be directed to:

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 Iowa Economic Development Authority  
 1963 Bell Avenue, Suite 200  
 Des Moines, Iowa 50315  
 Phone: 515.348.6163  
 Email: [lisa.connell@iowaeda.com](mailto:lisa.connell@iowaeda.com)

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

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| <p>June 4, 2024<br/>         11:15 to 11:30 a.m.</p> | <p>1963 Bell Avenue<br/>         Des Moines, Iowa<br/>         Registration information for online participation may be found at<br/> <a href="http://www.iowaeda.com/red-tape-review/">www.iowaeda.com/red-tape-review/</a></p> |
| <p>June 6, 2024<br/>         1:15 to 1:30 p.m.</p>   | <p>1963 Bell Avenue<br/>         Des Moines, Iowa<br/>         Registration information for online participation may be found at<br/> <a href="http://www.iowaeda.com/red-tape-review/">www.iowaeda.com/red-tape-review/</a></p> |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Authority and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **261—Chapter 59**.

ITEM 2. Rescind and reserve **261—Chapter 60**.

ITEM 3. Rescind 261—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68  
HIGH QUALITY JOBS PROGRAM (HQJP)

**261—68.1(15) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Authority*” means the same as defined in Iowa Code section 15.327(1).

“*Award date*” means the date the board approved an application for project completion assistance or tax incentives.

“*Base employment level*” means the same as defined in Iowa Code section 15.327(2).

“*Benefit*” means the same as defined in Iowa Code section 15.327(3).

“*Board*” means the same as defined in Iowa Code section 15.102(4).

“*Brownfield site*” means the same as defined in Iowa Code section 15.291(2).

“*Business*” means a sole proprietorship, partnership, corporation, or other business entity organized for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

“*Community*” means the same as defined in Iowa Code section 15.327(6).

“*Created job*” means the same as defined in Iowa Code section 15.327(8).

“*Eligible business*” means a business that meets the conditions of Iowa Code section 15.329.

“*Fiscal impact ratio*” means the same as defined in Iowa Code section 15.327(11).

“*Forgivable loan*” is a loan for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“*Full-time equivalent position*” means the same as defined in Iowa Code section 15.327(12).

“*Grayfield site*” means the same as defined in Iowa Code section 15.291(4).

“*High quality jobs*” means created or retained jobs that meet the applicable wage requirements established in Iowa Code section 15.329(1)“c” or 15.335C.

“*Laborshed area*” means the geographic area surrounding an employment center from which the employment center draws its commuting workers as defined by the department of workforce development.

“*Laborshed wage*” means the same as defined in Iowa Code section 15.327(15).

“*Loan*” means funds provided that must be repaid with term, interest rate, and other conditions specified in an agreement entered into pursuant to Iowa Code section 15.330.

“*Maintenance period*” means the same as defined in Iowa Code section 15.327(17).

“*Maintenance period completion date*” means the same as defined in Iowa Code section 15.327(18).

“*Modernization project*” means a project that will result in increased skills and wages for current employees and that does not involve created or retained jobs.

“*Program*” means the same as defined in Iowa Code section 15.327(19).

“*Project*” means the same as defined in Iowa Code section 15.327(21).

“*Project completion assistance*” means the same as defined in Iowa Code section 15.327(22).

“*Project completion date*” means the same as defined in Iowa Code section 15.327(23).

“*Project completion period*” means the same as defined in Iowa Code section 15.327(24).

“*Qualifying wage threshold*” means the same as defined in Iowa Code section 15.327(26).

“*Retained job*” means the same as defined in Iowa Code section 15.327(27).

“*Retention-only project*” means a project that involves only retained jobs.

## **261—68.2(15) Eligibility requirements.**

**68.2(1)** *Community approval and local match.* Community approval of the project by ordinance or resolution is required as specified in Iowa Code section 15.329(1)“a.” Local match may be required from the community or other relevant entity pursuant to criteria established by the board. The board will periodically approve such criteria to reflect meaningful types and amounts of local match that may be provided. The criteria established by the board may include but not be limited to when local match is required, entities that may provide local match, and acceptable amounts and forms of local match.

**68.2(2)** *Relocations and reductions in operations.* The authority will determine whether a business is ineligible due to a relocation or reduction in operations pursuant to Iowa Code section 15.329(1)“b.”

**68.2(3)** *Retail or service businesses.* For the purposes of determining whether a business is an ineligible retail business pursuant to Iowa Code section 15.329(1)“f,” “retail business” means any business engaged in the business of sale at retail of tangible personal property or taxable services in this state or online. “Sale at retail” means the same as defined in Iowa Code section 423.1(46). Any business obligated to collect sales or use tax under Iowa Code chapter 423 is an ineligible retail business. A service business is not eligible for the program unless a significant proportion of its sales, as determined by the authority, are outside this state.

**68.2(4)** *Created and retained jobs.* The jobs created or retained by a business shall pay the applicable wages as established in Iowa Code section 15.329(1)“c” or 15.335C.

**68.2(5)** *Determination of sufficient benefits.* The business shall offer a sufficient package of benefits to each full-time equivalent position included in the business’s base employment level and to each full-time equivalent position at the project location until the maintenance period completion date. The benefits package provided shall meet the criteria established by the board. The board will periodically approve such criteria to reflect the most current benefits package typically offered by employers. The criteria established by the board may include but not be limited to premium percentages to be paid by the business, deductible amounts, and other such criteria as determined necessary to the evaluation of benefits offered by a business.

**68.2(6)** *Sufficient fiscal impact.* The business shall demonstrate a sufficient fiscal impact as described in Iowa Code section 15.329(1)“e.”

**68.2(7)** *Violations of law.* If the authority finds that a business has a record of violations of law, including but not limited to environmental and worker safety laws, over a period of time that tends to show a consistent pattern as described in Iowa Code section 15.329(2)“a,” the business shall not qualify for the program.

**68.2(8)** *Applicant’s past or current performance.* If an applicant received a prior award or other benefit through any program administered by the authority, the authority and board will consider the applicant’s past or current performance under the prior award or benefit.

**68.2(9)** *Results of due diligence review.* The authority will complete a due diligence review, including but not limited to lien searches, reports of violations, pending or resolved litigation, and other relevant information about the applicant. A business may be ineligible based on the results of the review.

**68.2(10)** *Other factors.* The authority shall consider any applicable additional factors pursuant to Iowa Code section 15.329(3).

**68.2(11)** *Ineligible projects.*

*a.* If a project is creating or retaining jobs, but none are high quality jobs, then the project is not eligible for the program.

*b.* A project representing solely acquisition of a business as a going concern that does not include creation or retention of jobs and capital investment at the acquired business facility is not eligible for the

program. A qualified project that occurs following acquisition of a business as a going concern may be eligible for the program.

**68.2(12) Project initiation.** The authority will not accept applications for projects that have been initiated or will be initiated prior to board consideration of the business's application for the program unless the business 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 business'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 business's 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.

#### **261—68.3(15) Application process and review.**

**68.3(1) Application.** Businesses applying for the program shall utilize a standardized application developed by the authority. A signature from an official authorized to represent the affected local community is required to indicate that the community supports the project. For a project with a qualifying investment of \$10 million or more, the application shall include an ordinance or resolution of the community's governing body approving the project.

**68.3(2) Applicability of wage requirements.** The qualifying wage threshold applicable to a project is the threshold in effect on the date the fully completed project application is received by the authority. If such an application is received but not acted upon by the board before the qualifying wage thresholds are updated, the thresholds in effect on the date the application was received will remain in effect for a period of three months after the month the thresholds were updated. The authority shall have sole discretion to determine whether an application is fully completed. Qualifying wage thresholds will be calculated and applied as described in rule 261—68.8(15).

**68.3(3) Job requirements.** The created job and retained job requirements applicable to a project, identified as described in rule 261—68.7(15), will be established at the time of application. Job requirements will be based on the base employment level as of the date the application was fully completed and submitted to the authority and eligible business's job projections and will be utilized to determine the amount of tax incentives and assistance.

**68.3(4) Investment requirements.** The investment requirements applicable to a project, identified as described in rule 261—68.9(15), will be established at the time of application. Investment requirements are based on an eligible business's estimates of project costs and will be utilized to determine the amount of tax incentives and assistance.

**68.3(5) Negotiations.** Authority staff may negotiate with the applicant concerning dollar amounts, terms, collateral, conditions of award, or any other elements of the proposed award. All forms of tax incentives and assistance available under the program are subject to negotiations. The authority shall consider all of the following factors in negotiating with the business:

*a. Level of need.* The following factors will determine the authority's assessment of need:

- (1) Whether the business can raise only a portion of the debt and equity necessary to complete the project. The existence of a gap between the financing required and the committed financing indicates that tax incentives or assistance may be needed to fill the gap.

(2) Whether the likely returns of the project are inadequate to motivate a company decision maker to proceed with the project even if sufficient debt or equity can be raised to finance the project. The existence of such a condition indicates that the project's risks may outweigh its rewards and that tax incentives or assistance may be needed to reduce the project's risks.

(3) Whether the business is deciding between an Iowa site and a site in another state for its project and the cost of completing the project at the out-of-state site is demonstrably lower. Such a condition indicates that tax incentives or assistance may be needed to equalize the cost differential between the two sites. The authority will attempt to quantify the cost differential between the sites.

*b. Quality of the jobs.* The authority shall place greater emphasis on projects involving created or retained jobs rated as higher quality jobs pursuant to the factors listed in Iowa Code section 15.329(3) "a."

*c. Percentage of created jobs defined as high quality jobs.* The authority will consider the number of high quality jobs to be created in proportion to the total number of created jobs in determining what amount of tax incentives and assistance to offer the business.

*d. Economic impact.* In measuring the economic impact to this state, the authority shall place greater emphasis on projects that demonstrate the factors listed in Iowa Code section 15.329(3) "c."

**68.3(6) Board approval and notice.**

*a.* Authority staff will review applications to ensure program eligibility requirements are satisfied. Authority staff may request additional information from the business or may use other resources to obtain the needed information.

*b.* Complete and eligible applications and supporting documentation will be submitted to the board for its consideration. Authority staff will generate and submit to the board a report that summarizes the project and provide a recommendation on the amount of tax incentives and assistance to be offered to the business. Staff may provide to the board additional information or documentation as determined by staff. The board may offer an award in a lesser amount or that is structured in a manner different from that requested or recommended by authority staff. Meeting eligibility requirements does not guarantee that assistance will be offered or provided in the manner sought by the applicant.

*c.* The due diligence committee of the board established pursuant to 261—subrule 1.3(7) will review applications and make recommendations regarding the size and conditions of awards. The board may accept or reject recommendations from the due diligence committee.

*d.* If the board approves an award, an applicant will be notified in writing, including any conditions and terms of the approval.

**261—68.4(15) Tax incentives.** The authority may approve a business to receive any combination of applicable tax incentives allowed through the program pursuant to Iowa Code section 15.331A, 15.331C, 15.332, 15.333, 15.333A, or 15.335. An approved business shall not claim a tax incentive in excess of the amount specified in an agreement entered into pursuant to Iowa Code section 15.330.

**68.4(1) Sales and use tax refund or tax credit for racks, shelving, and conveyor equipment.** A business approved to receive a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment in one fiscal year shall not be considered for an additional award of a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment in a succeeding fiscal year. No business shall receive more than \$500,000 in refunds pursuant to this subrule. The limitations in this subrule also apply to an approved business that receives tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment pursuant to Iowa Code section 15.331C.

**68.4(2) Value-added property tax exemption.** If a community approves an exemption from taxation pursuant to Iowa Code section 15.332, the community shall provide the authority and the local assessor with a copy of the resolution adopted by the community's governing body that indicates the estimated value and duration of the authorized exemption.

**68.4(3) Investment tax credit—treatment of rent.** The annual base rent paid to a third-party developer by an approved business may be considered new investment for the purpose of an investment tax credit approved pursuant to Iowa Code section 15.333 or an insurance premium tax credit approved pursuant to Iowa Code section 15.333A. Annual base rent may be included as new investment for a period equal to

the term of the lease agreement but not to exceed the maximum term specified in a contract entered into with the authority. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years. For the purposes of this subrule, “annual base rent” means the business’s annual lease payment minus taxes, insurance and operating or maintenance expenses.

**68.4(4) Maximum tax incentives available.** Tax incentives awarded under this program are based upon the number of jobs created or retained that pay the applicable wages as established in Iowa Code section 15.329(1) “c” or 15.335C and the amount of qualifying investment. The amount of tax incentives is subject to negotiations based on the factors identified in subrule 68.3(5). The maximum possible award is based on the following schedule:

*a.* The business is required to maintain the base employment level, but no high quality jobs are created or retained and economic activity is furthered by the qualifying investment. For purposes of this paragraph, “economic activity” means a modernization project that will result in increased skills and wages for the current employees.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 1 percent.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.

(3) \$500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
3. Research activities credit.

*b.* One to five high quality jobs are created or retained.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 2 percent.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 2 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.

(3) \$500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 2 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
3. Research activities credit.

*c.* Six to ten high quality jobs are created or retained.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 3 percent.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 3 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.

(3) \$500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 3 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
3. Research activities credit.

*d.* 11 to 15 high quality jobs are created or retained.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 4 percent.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 4 percent.
2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.

(3) \$500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 4 percent.

2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
3. Research activities credit.
- e. 16 to 30 high quality jobs are created or retained.
  - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 5 percent.
    - (2) \$100,000 to \$499,999 in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 5 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
    - (3) \$500,000 or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 4 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
  - f. 31 to 40 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 6 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - g. 41 to 60 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 7 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - h. 61 to 80 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 8 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - i. 81 to 100 high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 9 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.
  - j. 101 or more high quality jobs are created or retained.
    - (1) \$10 million or more in qualifying investment.
      1. Investment tax credit or insurance premium tax credit of up to 10 percent.
      2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
      3. Research activities credit.
      4. Value-added property tax exemption.
    - (2) Reserved.

**261—68.5(15) Project completion assistance.**

**68.5(1) Awards and negotiations.** The authority may award project completion assistance, in the form of a loan or forgivable loan or combination of both, to a business that meets the eligibility requirements of the program. All award determinations are subject to the requirements of Iowa Code



section 15.335B(3). The board, with the assistance of authority staff, will determine the appropriate amount of project completion assistance, and the board will make a good-faith effort to provide only the amount of incentives and assistance necessary to facilitate the project's successful completion. The amount, type, and terms of the assistance provided typically vary according to the needs of each project, and each award is subject to negotiation. The board and the authority will strive to treat similarly situated applicants in a like manner. However, the amount, type, and terms of project completion assistance most appropriate for a given project are necessarily dependent on many factors, and awards of project completion assistance shall be entirely at the discretion of the board.

**68.5(2)** *Factors affecting the amount, type, and terms of project completion assistance.* When determining an award of project completion assistance, the board, with the assistance of authority staff, typically considers the following factors:

- a. The fiscal impact ratio of the project.
- b. Whether the amount of assistance to be awarded is appropriate to the number of jobs that will be created.
- c. The availability of funding.
- d. Whether other forms of assistance, including tax incentives, are available.
- e. The project's level of need, including whether the local community and the private sector are also contributing to the success of the project.
- f. The total amount of funds from other sources that can be leveraged.
- g. The quality of the project.

#### **261—68.6(15) Agreements and compliance.**

**68.6(1)** *Execution.* Successful applicants will be required to execute an agreement with the authority within 180 days of the award date. The time limit for execution may be extended by the authority director for an additional 180 days for good cause shown. Upon expiration of the time limit, including any extensions approved pursuant to this subrule, the board may approve additional extensions or rescind the award.

**68.6(2)** *Requirements.* An agreement shall meet all requirements of and be administered pursuant to Iowa Code sections 15.330 and 15.330A.

**68.6(3)** *Jobs.* An agreement will specify the number of jobs the business has pledged to create in addition to the base employment level and the number of retained jobs, if applicable. If the project is a modernization project or retention-only project, the business shall maintain the base employment level. Job obligations will be established and monitored pursuant to rule 261—68.7(15).

**68.6(4)** *Investment.* An agreement will describe the project and specify the investment the business proposes to make.

**68.6(5)** *Project completion date.* An agreement will specify the project completion date. The project completion date will be the date on which a program recipient has agreed to meet all the terms and obligations contained in an agreement with the authority, including but not limited to completing the project and creating or retaining jobs. The project completion period will be at least three years. The project completion date is calculated by the authority from the end of the month during which an award is made. For example, if an award is made on June 13, 2023, the three-year project completion date will be calculated from June 30, 2023. The project completion date for this award would be June 30, 2026.

**68.6(6)** *Maintenance period completion date.* An agreement will specify the maintenance period completion date. The maintenance period completion date will be used to establish the period during which the project, the created jobs, if any, and the retained jobs must be maintained. A modernization project shall maintain the base employment level through the maintenance period completion date. The total contract length, including the maintenance period, will be at least five years.

**68.6(7)** *Conditions to disbursement.* An agreement will specify the conditions to disbursement of project completion assistance funds or issuance of a tax credit certificate, including but not limited to compliance with the requirements of Iowa Code section 15A.1(3) "b" regarding solid and hazardous waste.

**68.6(8) Monitoring and reports.** The authority shall ensure that program recipients comply with contracts entered into pursuant to this rule. An agreement will specify the reports a program recipient must submit to the authority and due dates for such reports. Reports shall be provided in form and content acceptable to the authority.

*a.* Recipients shall report annually to the authority about the status of the funded project, including but not limited to employment, wages, benefits, project costs, capital investment, and compliance with the contract. The authority will use the data it collects in the authority's annual report to the general assembly.

*b.* Recipients shall submit a report to the authority following the project completion date and the maintenance period completion date to verify compliance with the agreement. On-site or remote monitoring may be conducted following the project completion date as deemed appropriate by the authority. On-site or remote monitoring may be conducted following the maintenance period completion date as deemed appropriate by the authority.

**68.6(9) Default.** An agreement will specify events of default and the remedies available to the authority.

*a. Project completion assistance.* If the authority determines that a recipient is in default, the authority may seek recovery of all project completion assistance funds plus interest; assess penalties; negotiate alternative repayment schedules; initiate, suspend or discontinue collection efforts; and take other appropriate action as the board deems necessary. Negotiated settlements, write-offs or discontinuance of collection efforts are subject to approval by the board. If the authority or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply.

*b. Tax incentives.* If the authority determines that a recipient is in default, the authority may seek recovery of all state tax incentives by notifying the department of revenue of the event of default and the required repayment amount. The repayment amount is subject to applicable interest and penalties as determined by the department of revenue. The department of revenue will undertake collection efforts. If the business is an entity that has elected pass-through taxation status for income tax purposes, the department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through. If the agreement provided for local tax incentives, the authority will notify the community that provided incentives.

*c. Calculation of repayment due or reduction of incentives.*

(1) Job shortfall. If a business does not meet its job requirements, the repayment amount or reduction of incentives shall be the same proportion as the amount of the job shortfall. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received or incentives will be reduced by 50 percent.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount or reduction of incentives shall be the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received or incentives will be reduced by 25 percent.

(3) Job and capital investment shortfalls. If a business has a shortfall in both capital investment and job requirements, the repayment amount or reduction of incentives shall be the same proportion as the greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received or incentives will be reduced by 50 percent.

(4) Benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the benefit requirements of the agreement, the business shall be required to repay all of the incentives received or incentives will be fully revoked.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a business fails to maintain eligibility for the program, the business shall repay all of the incentives received or incentives will be fully revoked.

*d. Notice of default.* The authority will notify a business and, if applicable, the community of an event of default as described in the agreement.

**68.6(10) Amendments.** Agreement amendments must comply with Iowa Code chapter 15, subchapter II, part 13, and this chapter. Participating businesses may submit requests for amendments to authority staff.

*a.* Except as provided in paragraph 68.6(10)“*b*,” no request to amend an agreement may be approved unless it has been reviewed by the due diligence committee established pursuant to 261—subrule 1.3(7), the due diligence committee has recommended approving the request to amend the agreement, and the board approves the request to amend the agreement.

*b.* Authority staff may approve nonsubstantive changes, including but not limited to the following:

- (1) Recipient name, address and similar changes.
- (2) Collateral changes that do not materially and substantially impact the authority’s security.
- (3) Line item budget changes that do not reduce overall total project costs.
- (4) Loan repayment amounts or due dates that do not extend the final due date of a loan.
- (5) Changes to tax credit amortization schedules.

**261—68.7(15) Job counting.**

**68.7(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 business’s base employment level will be established at the time of application for the program. The number of jobs the business 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.

**68.7(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 business’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 business’s full-time equivalent positions as identified by the authority who are employed in this state but are not employed at the project location.

*b.* If a business receives multiple awards for projects at the same location, the base employment level will be calculated by using the payroll document from the oldest award that is open. Job obligations from each new award will be added to this base employment level.

*c.* The authority will collect payroll documents to calculate and verify base employment level used in each award. 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 a business to verify that a job is at risk. Such verification may include the signed statement of an officer of the business, documentation that the business 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.

**68.7(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.

**68.7(4) Full-time equivalent positions.** Only a full-time equivalent position filled by an individual will be considered an employee of the business 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.

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

**68.7(5) *Contract employees.*** A business'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 business receiving the tax incentives or project completion assistance 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 business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the authority as conditions of the award to the business.

*c.* The contract between the third-party provider and the business 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 that the business's job creation/retention and benefit requirements are being met.

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

*e.* The business receiving the tax incentives or project completion assistance agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

**68.7(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 a business'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.

**261—68.8(15) Authority procedure for establishing wage requirements.** Created or retained jobs shall meet the qualifying wage threshold requirements as established pursuant to this rule and as indicated in an agreement entered into pursuant to Iowa Code section 15.330. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations.

**68.8(1)** The authority will update the qualifying wage thresholds annually each fiscal year. The thresholds will take effect on September 1 of each fiscal year and remain in effect until August 31 of the following fiscal year. If the authority determines that the laborshed wage of a laborshed area would increase by more than one dollar per hour, the authority will limit the increase to the qualifying wage threshold for that laborshed area for that annual update to one dollar per hour.

**68.8(2)** The authority will calculate the laborshed wage as follows:

*a.* The most current covered wage and employment data available from the department of workforce development will be used.

*b.* The wage will be computed as a mean wage figure and represented in terms of an hourly wage rate.

*c.* Only the wages paid by employers for jobs performed within the first two zones of a laborshed area will be included.

d. The wages paid by employers in the following categories will be excluded from the calculation: government, retail trade, health care and social assistance, and accommodations and food service. The wages paid by employers in all other categories will be included in the calculation.

e. To the extent that a laborshed area includes zip codes from states other than Iowa, the wages paid by employers in those zip codes may be included if the department of workforce development has finalized a data-sharing agreement with the state in question and has received the necessary data.

f. Only those wages within two standard deviations from the mean wage will be included.

**68.8(3)** For the purposes of establishing wage requirements, the authority may designate a county that does not meet at least three of the criteria listed in Iowa Code section 15.335C(1) as an economically distressed area if a business located in the county experiences a layoff or a closure that has a significant impact on a community within the county.

a. Factors the authority will consider in determining whether a layoff or closure has a significant impact on a community within the county include but are not limited to total number of employees impacted; percentage of the applicable laborshed impacted; number of employees impacted as a percentage of population; current unemployment rate; and unemployment rate, including the employees affected by a layoff or closure.

b. A city or county shall request designation of a county as an economically distressed area, pursuant to this subrule, in writing. Such requests are subject to approval by the board. Requests may be made simultaneously with a project application that would qualify for a lower qualifying wage threshold requirement pursuant to this subrule if the request is approved.

**68.8(4)** The authority will update the list of economically distressed areas, including those designated pursuant to subrule 68.8(3), according to the same schedule as the qualifying wage thresholds are updated pursuant to subrule 68.8(1). Designations of economically distressed areas will apply in the same manner as wage thresholds are applied as described in subrule 68.3(2).

**68.8(5)** The authority may consult with the brownfield redevelopment advisory council established pursuant to Iowa Code section 15.294 in order to make a determination as to whether a project site is a brownfield site or a grayfield site for purposes of determining wage requirements. The determination as to whether a project site qualifies as a brownfield site or a grayfield site shall be within the discretion of the authority. In making such determinations, to the extent it is possible to do so, the authority will apply the same definition in substantially the same manner as similar definitions are applied by the brownfield redevelopment advisory council. A project that is not a brownfield site or a grayfield site will be presumed to be a greenfield site.

**68.8(6)** 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—68.9(15) Authority procedure for establishing investment requirements.**

**68.9(1)** *Capital investment.* The authority reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are included when the authority determines the amount of capital investment associated with a project.

**68.9(2)** *Qualifying investment for tax credit programs.* Minimum investment thresholds must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold. This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

**68.9(3)** *Investment qualifying for tax credits.* Not all of the expenditures categories used to calculate the investment amount needed to meet program threshold requirements qualify for purposes of claiming the tax credits. The following table identifies the expenditures that do not qualify for tax credits.

|                                    | Capital Investment <sup>1</sup> | Qualifying Investment <sup>2</sup> | Investment Qualifying for Tax Credits <sup>3</sup> |
|------------------------------------|---------------------------------|------------------------------------|--|
| Land acquisition                   | Yes                             | Yes                                | Yes  |
| Site preparation                   | Yes                             | Yes                                | Yes  |
| Building acquisition               | Yes                             | Yes                                | Yes  |
| Building construction              | Yes                             | Yes                                | Yes  |
| Building remodeling                | Yes                             | Yes                                | Yes  |
| Mfg. machinery & equip.            | Yes                             | Yes                                | Yes  |
| Other machinery & equip.           | Yes                             | No                                 | No   |
| Racking, shelving, etc.            | Yes                             | No                                 | No   |
| Computer hardware                  | Yes                             | Yes                                | Yes  |
| Computer software                  | No                              | No                                 | No   |
| Furniture & fixtures               | Yes                             | Yes                                | No   |
| Working capital                    | No                              | No                                 | No   |
| Research & development             | No                              | No                                 | No   |
| Job training                       | No                              | No                                 | No   |
| Capital or synthetic lease         | No                              | Yes                                | Yes  |
| Rail improvements <sup>4</sup>     | Yes                             | Yes                                | Yes  |
| Public infrastructure <sup>5</sup> | Yes                             | Yes                                | Yes  |

<sup>1</sup> “Capital investment” is used to calculate project investment on depreciable assets.

<sup>2</sup> “Qualifying investment” is used to determine eligibility for the program.

<sup>3</sup> “Investment qualifying for tax credits” is used to calculate the maximum available tax credit award for a project.

<sup>4</sup> “Rail improvements” includes hard construction costs for rail improvements. (These costs are included as part of construction or site preparation costs.)

<sup>5</sup> “Public infrastructure” includes any publicly owned utility service, such as water, sewer, storm sewer or roadway construction and improvements. (These costs are included as part of construction costs.)

These rules are intended to implement Iowa Code chapter 15, subchapter II, part 13, and section 15A.1.

ITEM 4. Rescind and reserve **261—Chapter 172.**

ITEM 5. Rescind and reserve **261—Chapter 173.**

ITEM 6. Rescind and reserve **261—Chapter 174.**

ITEM 7. Rescind and reserve **261—Chapter 175.**

ITEM 8. Rescind and reserve **261—Chapter 187.**

ITEM 9. Rescind and reserve **261—Chapter 188.**

ITEM 10. Rescind and reserve **261—Chapter 189.**