

## CHAPTER 141

### ECONOMIC DEVELOPMENT PROGRAMS — INVESTMENT TAX CREDITS — ENTERPRISE ZONES

H.F. 349

**AN ACT** relating to the enterprise zone program and providing effective date and retroactive applicability date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 15.333, subsection 1, Code 2001, is amended to read as follows:

1. An eligible business may claim a corporate tax credit up to a maximum of ten percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust. For purposes of this section, "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business ~~and which receives a partial property tax exemption for the actual value added under section 15.332.~~

Sec. 2. Section 15E.193B, subsection 2, Code 2001, is amended to read as follows:

2. An eligible housing business under this section includes a housing developer, housing contractor, or nonprofit organization that builds or rehabilitates a minimum of four single-family homes ~~with a value, after completion of the building or rehabilitation, not exceeding one hundred twenty thousand dollars for each home~~ located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units ~~with a total value per unit, after completion of the building or rehabilitation, not exceeding one hundred twenty thousand dollars~~ located in that part of a city or county in which there is a designated enterprise zone.

Sec. 3. Section 15E.193B, subsection 6, paragraph a, Code 2001, is amended to read as follows:

a. An eligible housing business may claim a tax credit up to a maximum of ten percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first one hundred forty thousand dollars of value for each single-family home or for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may

claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Sec. 4. Section 15E.193B, subsection 6, paragraph b, Code 2001, is amended to read as follows:

b. Sales, services, and use tax refund for taxes paid by an eligible business including an eligible business acting as a contractor or subcontractor, as provided in section 15.331A.

Sec. 5. NEW SECTION. 15E.193C ELIGIBLE DEVELOPMENT BUSINESS.

1. A development business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. Sections 15E.193, 15E.193B, and 15E.196 do not apply to an eligible development business qualifying under this section.

2. An eligible development business includes a developer or development contractor that constructs, expands, or rehabilitates a building space with a minimum capital investment of at least five hundred thousand dollars in that part of a city or county in which there is a designated enterprise zone. An eligible development business is eligible for one, but not both, of the following exemptions to the capital investment requirements:

a. For an eligible development business purchasing a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, as determined by the local enterprise zone commission, shall be deducted from the capital investment requirement.

b. For an eligible development business that rehabilitates a building space that has been in an enterprise zone for at least five years, the fair market value as established by an appraisal of the building, not to exceed two hundred fifty thousand dollars, shall be deducted from the capital investment requirement.

3. Upon completion of the construction, expansion, or rehabilitation project by the eligible development business, the building space shall not be occupied by a retail business.

4. An eligible development business shall complete its construction, expansion, or rehabilitation within three years from the time the eligible development business receives approval from the department. The failure to complete construction, expansion, or rehabilitation within three years shall result in the eligible development business becoming ineligible and subject to the repayment requirements and penalties provided in subsection 8.

5. Prior to applying for assistance under this section, an eligible development business shall enter into an agreement with at least one business for purposes of locating the business in all or a portion of the building space for a period of at least five years.

6. An eligible development business shall provide the enterprise zone commission with all of the following information:

a. The long-term strategic plan for the development business which shall include infrastructure needs and a copy of any agreement entered into by the eligible development business as required under subsection 5.

b. Information relating to the benefits the development business will bring to the area.

c. Examples of why the development business should be considered or would be considered a good business enterprise.

d. An affidavit that the development business has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or the violations did not seriously affect public health or safety or the environment.

7. An eligible development business, which has been approved to receive incentives and assistance by the department of economic development pursuant to section 15E.195, shall be eligible to receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible development business may claim a tax credit up to a maximum of ten percent of the new investment that is directly related to the construction, expansion, or rehabilitation of building space to be used for manufacturing, processing, cold storage,

distribution, or office facilities. For purposes of this section, "new investment" includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business for the tax year in which the construction, expansion, or rehabilitation is completed. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Sales, services, and use tax refund, as provided in section 15.331A.

c. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible development business constructs, expands, or rehabilitates property in an enterprise zone. The amount of value added for purposes of this<sup>1</sup> shall be the amount of the increase in assessed valuation of the property following the construction, expansion, or rehabilitation by the development business in the enterprise zone. If an exemption provided pursuant to this<sup>2</sup> is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria that further some planning objective established by the city or county enterprise zone commission and approved by the city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible development business enters into an agreement with the county or city to construct, expand, or rehabilitate property in an enterprise zone.

8. If a development business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible development business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into an agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

9. The department of economic development and the department of revenue and finance shall each adopt rules pursuant to chapter 17A to jointly administer this section.

10. An eligible business under section 15E.193 is not eligible for incentives and assistance listed in section 15E.196 if the property is owned, or was previously owned, by an approved development business that has received incentives and assistance under this section 15E.193C.

11. If, within five years of the completion of a construction, expansion, or rehabilitation project, the development business, or its successor, sells or leases any space to any retail business, the development business shall proportionally refund any tax credits, refunds, or exemptions which were claimed under this section.

Sec. 6. Section 15E.195, Code 2001, is amended to read as follows:

**15E.195 ENTERPRISE ZONE COMMISSION.**

1. A county which designates an enterprise zone pursuant to section 15E.194, subsection 1, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone designated pursuant to section 15E.194, subsection 1, to

<sup>1</sup> According to enrolled Act; this "paragraph" probably intended

<sup>2</sup> According to enrolled Act; this "paragraph" probably intended

receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall also review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C. The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

2. A city with a population of twenty-four thousand or more which designates an enterprise zone pursuant to section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C. The commission shall consist of nine members. Six of these members shall consist of one representative of an international labor organization, one member with economic development expertise chosen by the department of economic development, one representative of the city council, one member of the local community college board of directors, one member of the city planning and zoning commission, and one representative of the local workforce development center. These six members shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission. A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. If a city has established an enterprise zone commission prior to the effective date of this Act, the city may petition to the department of economic development to change the structure of the existing commission.

3. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in sections 15E.193, ~~and 15E.193B, and 15E.193C.~~ The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

4. If the enterprise zone commission determines that a business qualifies and is eligible to receive incentives or assistance as provided in ~~either section 15E.193B or section, 15E.193C,~~ or 15E.196, the commission shall submit an application for incentives or assistance to the department of economic development. The department may approve, defer, or deny the application.

5. In making its decision, the commission or department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or department shall also make a good faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

However, if the commission or department finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under section 15E.193B, 15E.193C, or ~~section~~ 15E.196, unless the commission or department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.193B, 15E.193C, or ~~section~~ 15E.196, the commission or department shall be exempt from chapter 17A. If requested by the commission or department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the commission or department in assessing the nature of any violation.

6. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department of economic development its compliance with the requirements of ~~either~~ section 15E.193, ~~or section~~ 15E.193B, or 15E.193C.

Sec. 7. Section 15E.196, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A business eligible to receive incentives and assistance described in this section and located in a building for which incentives and assistance are or have been claimed by an approved development business under section 15E.193C is not eligible to receive the following incentives and assistance:

a. An investment tax credit under subsection 3 for the portion of the investment tax credit that is claimed on the purchase price of land or improvements to real property by an approved development business pursuant to section 15E.193C, subsection 7, paragraph "a".

b. Sales, services, and use tax refund under subsection 2 that is made pursuant to section 15E.193C, subsection 7, paragraph "b".

c. A property tax exemption under subsection 5 for improvements to real property that are exempted from property taxation pursuant to section 15E.193C, subsection 7, paragraph "c".

Sec. 8. **RETROACTIVE APPLICABILITY.**

1. Section 4 of this Act, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to July 1, 1998.

2. With the exception of section 4 of this Act, this Act is retroactively applicable to January 1, 2001, and is applicable on and after that date.

Approved May 16, 2001