

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 15.106A and of 2014 Iowa Acts, Senate File 2339, the Economic Development Authority hereby gives Notice of Intended Action to amend Chapter 65, “Brownfield and Grayfield Redevelopment,” Iowa Administrative Code.

In 2014 Iowa Acts, Senate File 2339, the General Assembly made changes to the Redevelopment Tax Credits Program for brownfield and grayfield sites. The amendments conform the rules to the legislative changes and implement the new program requirements.

The Economic Development Authority Board approved these amendments on September 19, 2014, at the Board’s monthly meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 18, 2014. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to tim.whipple@iowa.gov.

After analysis and review of this rule making, the Authority finds that the amendments to the Redevelopment Tax Credits Program are likely to benefit the Iowa economy by helping more developers finance the redevelopment of underutilized existing infrastructure and by helping nonprofit organizations better finance redevelopment projects. The Iowa Department of Revenue has found that the program (1) increases the total assessed value of the redeveloped properties by more than 300 percent; (2) increases job creation at redeveloped properties by 139 percent; (3) and increases total wages at redeveloped properties by 119 percent.

These amendments are intended to implement 2014 Iowa Acts, Senate File 2339.

The following amendments are proposed.

ITEM 1. Amend rule **261—65.1(15)** and subrules **65.3(1)**, **65.4(1)**, **65.11(1)** and **65.11(2)** by striking the term “redevelopment tax credit program” and inserting “redevelopment tax credits program” in lieu thereof.

ITEM 2. Adopt the following **new** definitions in rule **261—65.2(15)**:

“*Abandoned public building*” means a vertical improvement constructed for use primarily by a political subdivision of the state for a public purpose and whose current use is outdated or prevents a better or more efficient use of the property by the current owner. “Abandoned public building” includes vacant, blighted, obsolete, or otherwise underutilized property.

“*Political subdivision*” means a city, county, township, or school district.

“*Redevelopment tax credits program*” means the tax credits program administered pursuant to Iowa Code sections 15.293A and 15.293B.

“*Vertical improvement*,” “*improvement*” or “*improved*” means the same as defined in Iowa Code section 15J.2.

ITEM 3. Amend the following definitions in rule **261—65.2(15)**:

“*Grayfield site*” means an abandoned public building or an industrial or commercial property meeting that meets all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.

2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:

- Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
- Assessed value of improvements on the property has decreased by 25 percent or more;
- The property is used as a parking lot;
- Improvements on the property no longer exist.

“Previously remediated or redeveloped” means any prior remediation or redevelopment ~~at a brownfield or grayfield site~~, including development for which ~~an application for or~~ an award of ~~brownfield or grayfield~~ tax credits under this chapter has been made.

“Redevelopment” means construction or development activities associated with a qualifying redevelopment project that are undertaken either for the purpose of constructing new buildings or improvements at a site where formerly existing buildings have been demolished or for the purpose of rehabilitating, reusing or repurposing existing buildings or improvements. Redevelopment typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

ITEM 4. Amend rule 261—65.6(15) as follows:

261—65.6(15) Application and award procedures General procedural overview.

65.6(1) Subject to availability of funds, applications to the brownfield redevelopment program will be ~~accepted, reviewed and rated~~ scored by economic development authority staff and by the advisory council on an annual basis. Brownfield redevelopment funds will be ~~awarded~~ scored on a competitive basis by the council, which will make recommendations on award amounts to the board.

65.6(2) Subject to availability of funds, applications to the redevelopment tax ~~credit~~ credits program for brownfields and grayfields will be accepted and reviewed by economic development authority staff and scored by the advisory council on a monthly annual basis. For the fiscal year beginning July 1, 2014, applications must be received by March 1, 2015. For each fiscal year thereafter, applications will be accepted beginning on July 1 and must be received by September 1. Subject to the availability of funding, the authority may set additional application deadlines after September 1 and before the end of a fiscal year.

65.6(3) Applications for all forms of financial assistance will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

65.6(4) Application forms for the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields are available upon request from Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Additional information is available on the authority’s Internet site at <http://www.iowaeconomicdevelopment.com>.

65.6(5) The authority may provide technical assistance as necessary to applicants. Authority staff may conduct on-site evaluations of proposed activities.

ITEM 5. Amend rule 261—65.7(15) as follows:

261—65.7(15) Application to the brownfield redevelopment program—agreements.

65.7(1) Every application for assistance shall include evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. Applications for assistance shall also include the following information:

a. A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

~~65.7(2)~~ The authority shall accept and review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The council will score applications according to the application review criteria established pursuant to rule 261—65.9(15). The board shall approve or deny applications.

~~65.7(3)~~ Upon review of the application for the redevelopment tax credit program for brownfields and grayfields, the authority may register the project under the program. If the authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a nonbinding figure, provided purely for the investor's and the authority's information and convenience, based on the authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this subrule shall be contingent upon completion of the requirements of subrules 65.7(4) to 65.7(6) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to this rule, rule 261—65.10(15), and 2011 Iowa Code Supplement sections 15.293A and 15.293B.

~~65.7(4)~~ ~~65.7(3)~~ Approved applicants shall enter into an agreement with the authority. The agreement for the redevelopment tax credit program for brownfields and grayfields shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available. The agreement for the brownfield redevelopment program shall specify the requirements necessary in order to receive benefits under the program.

~~65.7(5)~~ Upon completion of a registered project under the redevelopment tax credit program for brownfields and grayfields, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and shall be submitted to the authority.

~~65.7(6)~~ Upon written notification of project completion from the investor, the authority will review the independent audit, verify the amount of the qualifying investment and issue a redevelopment tax credit certificate to the investor in the amount of the tax credit for which the investor is entitled under its contract with the authority.

ITEM 6. Rescind rule 261—65.8(15) and adopt the following new rule in lieu thereof:

261—65.8(15) Application to the redevelopment tax credits program—registration of projects—agreements.

65.8(1) *System for application, review, registration, and authorization of projects.* The authority will administer a system for application, review, registration, and authorization of projects as described in this subrule and will only issue tax credit certificates pursuant to subrule 65.11(3).

a. The authority will accept and, in conjunction with the council, review applications for tax credits provided in Iowa Code section 15.293A and, with the approval of the council, make tax credit award recommendations regarding the applications to the board.

b. Applications for redevelopment tax credits will only be accepted during the established application period as provided in subrule 65.6(2).

c. Upon review of an application, the authority may register the project with the redevelopment tax credits program. If the authority registers the project, the authority may, in conjunction with the council, make a preliminary determination as to the amount of tax credit for which an award recommendation will be made to the board.

d. After registering the project, the authority will notify the investor of successful registration under the redevelopment tax credits program. The notification may include the amount of tax credit for which an award recommendation will be made to the board. If an award recommendation is included in the notification, such notification will include a statement that the award recommendation is a recommendation only. The amount of tax credit included on a tax credit certificate issued pursuant to this rule shall be contingent upon an award by the board and upon completion of the requirements in this rule.

e. (1) All completed applications will be reviewed and scored, pursuant to subrule 65.8(2), on a competitive basis by the council and the board. In reviewing and scoring applications, the council and the board may consider any factors the council and board deem appropriate for a competitive application process, including but not limited to the financial need, quality, and feasibility of a qualifying redevelopment project.

(2) For purposes of this rule:

1. “*Feasibility*” means the likelihood that the project will obtain the financing necessary to allow for full completion of the project and the likelihood that the proposed redevelopment or improvement that is the subject of the project will be fully completed.

2. “*Financial need*” means the difference between the total costs of the project less the total financing that will be received for the project.

3. “*Quality*” means the merit of the project after considering and evaluating its total characteristics and measuring those characteristics in a uniform, objective manner against the total characteristics of other projects that have applied for the tax credit provided in this chapter during the same established application period.

f. Upon reviewing and scoring all applications that are part of an annual application period, the board may award tax credits provided in this chapter.

g. If the applicant for a tax credit provided in this chapter has also applied to an agency of the federal government or to the authority, the board, or any other agency of state government for additional financial assistance, the authority, the council, and the board will consider the amount of funding to be received from such public sources when making a tax credit award pursuant to this rule.

h. An applicant that is unsuccessful in receiving a tax credit award during an established application period may make additional applications during subsequent application periods. Such applicants must submit a new application and must be competitively reviewed and scored in the same manner as other applicants in that same application period.

65.8(2) Scoring criteria.

a. Each application for tax credits during each established application period will be scored according to criteria set forth in this paragraph. Points will be added together and the resulting score averaged with the scores of applications evaluated by all council members. Scoring criteria include:

(1) The project’s feasibility: 25 points.

(2) The project’s financial need: 25 points.

(3) The project’s quality: 25 points.

(4) Whether the project was formerly registered under the program but did not receive an award: 25 points.

b. There is no minimum score required for a project to receive a recommendation for funding, but a higher score indicates that the council views a project more favorably. The council’s funding recommendation will reflect its overall view of the project in relation to other applying projects.

65.8(3) Required information. An investor applying for a tax credit shall provide the authority with all of the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which are directly related to the qualifying redevelopment project for which the investor is seeking approval for a tax credit, as provided in this chapter.

c. Any other information deemed necessary by the board and the council to review and score the application pursuant to this rule.

65.8(4) Agreement required—recapture of credits. If an investor is awarded a tax credit pursuant to this rule, the authority and the investor shall enter into an agreement concerning the qualifying redevelopment project. If the investor fails to comply with any of the requirements of the agreement, the authority may find the investor in default under the agreement and may revoke all or a portion of the tax credit award. The department of revenue, upon notification by the authority of an event of default, shall seek repayment of the value of any such tax credit already claimed in the same manner as provided in Iowa Code section 15.330, subsection 2.

65.8(5) Project completion. A registered project shall be completed within 30 months of the date the project was registered unless the authority provides additional time to complete the project. A project will not be provided more than 12 months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this chapter.

65.8(6) Audit required.

a. Upon completion of a registered project, an audit of the project, completed by an independent certified public accountant licensed in this state, must be submitted to the authority.

b. Upon review of the audit and verification of the amount of the qualifying investment, the authority will issue a tax credit certificate to the investor stating the amount of tax credit that the investor may claim.

ITEM 7. Amend subrule 65.11(4) as follows:

65.11(4) Amount of tax credit.

a. *Pro rata share.* The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. ~~Any~~ Except as provided in paragraph 65.11(4) "b," any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

b. *Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the following conditions are met:

(1) The taxpayer is an investor making application for tax credits provided in this rule and is an entity organized under Chapter 504 and qualifying under Section 501(c)(3) of the Internal Revenue Code as an organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code.

(2) The taxpayer establishes during the application process described in this chapter that the requirement in subparagraph 65.11(4) "b"(1) is satisfied. The authority, when issuing a certificate to a taxpayer that meets the requirements in this paragraph 65.11(4) "b," will indicate on the certificate that such requirements have been satisfied. A certificate indicating that it is refundable pursuant to this paragraph shall not also be transferred to another taxpayer unless all the requirements of this paragraph have been met.

~~b. c.~~ *Percentage.* The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
- (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).
- (3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.
- (4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

~~e. d.~~ *Maximum credit per project.* The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4) "~~d.~~" "~~e.~~"

~~d. e.~~ *Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, ~~and for each subsequent fiscal year,~~ the maximum amount of tax credits issued by the authority shall be

an amount determined by the board but not in excess of \$5 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of the amount established pursuant to Iowa Code section 15.119.

ITEM 8. Amend subrule 65.11(5) as follows:

65.11(5) *Claiming a tax credit.* The qualified investor must ~~attach~~ include one or more tax credit certificate(s) ~~to~~ with the qualified investor's tax return. A tax credit certificate shall not be used or ~~attached to~~ included with a return filed for a taxable year beginning prior to ~~July 1, 2009~~ the tax year listed on the certificate. The tax credit certificate or certificates ~~attached to~~ included with the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.