

## USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

### Footnotes

Legislative findings; 87 Acts, ch 183, § 1; 94 Acts, ch 1008, §1

### **15A.1 Economic development public purpose environmental protection and waste disposal requirements.**

1. Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives, and other financial assistance to or for the benefit of private persons.

For purposes of this chapter, "*economic development*" means private or joint public and private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost.

2. Before public funds are used for grants, loans, tax incentives, or other financial assistance to private persons or on behalf of private persons for economic development, the governing body of the state, city, county, or other public body dispensing those funds or the governing body's designee, shall determine that a public purpose will reasonably be accomplished by the dispensing or use of those funds. In determining whether the funds should be dispensed, the governing body or designee of the governing body shall consider any or all of the following factors:

*a.* Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

*b.* Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism- related activities.

*c.* Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

*d.* Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds.

3. In addition to the requirements of subsection 2, a state agency shall not provide a grant, loan, or other financial assistance to a private person or on behalf of a private person unless the business for whose benefit the financial assistance is to be provided meets, to the satisfaction of the state agency, all of the following:

*a.* The business makes a report detailing the circumstances of its violations, if any, of a federal or state environmental protection statute, regulation, or rule within the previous five years. The state agency shall take into consideration before allowing financial assistance this report of the business.

*b.* If the business generates solid or hazardous waste, that the business conducts in-house audits and management plans to reduce the amount of the waste and to safely dispose of the waste. For purposes of this paragraph, a business may, in lieu of conducting in-house audits, authorize the department of natural resources or the Iowa waste reduction center established under section 268.4 to provide the audits.

4. A state agency shall disburse public moneys used for grants, loans, tax incentives, or other financial

assistance for economic development without discrimination or without the use of terms or conditions which are more onerous than those regularly extended to persons of similar economic backgrounds and based on an applicant's age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

5. In addition to the other requirements of this section, a state agency may give additional consideration or additional points in the application of rating or evaluation criteria in providing a grant, loan, or other financial assistance for economic development-related purposes to a person or business for whose benefit the financial assistance is to be provided if the person or business is located in an area that meets one of the following criteria:

a. The area is a brownfield site as defined in section 15.291.

b. The area is a blighted area as defined in section 403.17.

c. The area is located in a city or county that meets the distress criteria provided under the enterprise zone program in section 15E.194, subsection 1 or 2.

87 Acts, ch 183, § 2; 90 Acts, ch 1125, § 1; 92 Acts, ch 1239, § 21; 94 Acts, ch 1008, §14, 15; 99 Acts, ch 197, §22; 2001 Acts, ch 7, §1; 2001 Acts, ch 156, §1; 2002 Acts, ch 1162, §27

### **15A.2 Conflicts of interest.**

If a member of the governing body of a city or county or an employee of a state, city, or county board, agency, commission, or other governmental entity of the state, city, or county has an interest, either direct or indirect, in a private person for which grants, loans, guarantees, tax incentives, or other financial assistance may be provided by the governing board or governmental entity, the interest shall be disclosed to that governing body or governmental entity in writing. The member or employee having the interest shall not participate in the decision-making process with regard to the providing of such financial assistance to the private person.

Employment by a public body, its agencies, or institutions or by any other person having such an interest shall not be deemed an indicia of an interest by the employee or of any ownership or control by the employee of interests of the employee's employer.

The word "*participate*" or "*participation*" shall be deemed not to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

The designation of a bank or trust company as depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

Stock ownership in a corporation having such an interest shall not be deemed an indicia of an interest or of ownership or control by the person owning the stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by that person.

The phrase "*decision-making process*" shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory approving or recommending function for economic development.

A violation of a provision of this section is misconduct in office under section 721.2. However, a decision of the governing board or governmental entity is not invalid because of the participation of the member or employee in the decision-making process or because of a vote cast by a member or employee in violation of

this section unless the participation or vote was decisive in the awarding of the financial assistance.

87 Acts, ch 183, § 3; 88 Acts, ch 1134, § 12; 94 Acts, ch 1008, §16

### **15A.3 Public economic development assistance violations criminal penalties.**

A person who engages in deception and knowingly makes or causes to be made, directly or indirectly, a false statement in writing, for the purpose of procuring economic development assistance from a state agency or political subdivision, for the benefit of the person or for whom the person is acting, is guilty of a fraudulent practice in the first degree as defined in section 714.9. For purposes of this section, "*deception*" means deception as defined in section 702.9.

90 Acts, ch 1135, §1

### **15A.4 Competitive programs good neighbor agreement additional consideration.**

For any program providing financial assistance for economic development in which the assistance is provided on a competitive basis, a business which enters into a good neighbor agreement shall receive extra consideration of at least ten points or the equivalent. A good neighbor agreement is an enforceable contract between the business and a community group or coalition of community groups which requires the business to adhere to negotiated environmental, economic, labor, or other social and community standards.

A business which fails to abide by the good neighbor agreement shall repay all financial assistance received under the program.

96 Acts, ch 1219, §96

### **15A.5 Reserved.**

**15A.6 State assistance for federal project.** Repealed effective January 1, 1996, by its own terms; 92 Acts, ch 1223, §1.

### **15A.7 Supplemental new jobs credit from withholding.**

In order to promote the creation of additional high-quality new jobs within the state, an agreement under section 260E.3 may include a provision for a supplemental new jobs credit from withholding from jobs created under the agreement. A provision in an agreement for which a supplemental credit from withholding is included shall provide for the following:

1. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the employer pursuant to section 422.16 is authorized to fund the program services for the additional project.
2. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.
3. That the employer shall agree to pay wages for the jobs for which the credit is taken of at least the average county wage or average regional wage, whichever is lower, as compiled annually by the department of economic development for the community economic betterment program. For the purposes of this section, the average regional wage shall be compiled based upon the service delivery areas in section 84B.2. Eligibility for the supplemental credit shall be based on a one-time determination of starting wages by the community college.

4. To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this section are in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

96 Acts, ch 1180, §8; 97 Acts, ch 23, §6; 2002 Acts, ch 1050, §3

#### **15A.8 Loans payable from new jobs credit from withholding.**

1. As an additional means to provide moneys for the payment of the costs of a new jobs training project or multiple projects under chapter 260E and this chapter, a community college may make an advance or loan, including an interfund transfer or a loan from moneys on hand and legally available, to be paid from the same sources and secured in the same manner as certificates described in sections 15A.7 and 260E.6.

2. Revenues from a job training agreement received prior to the completion by a business of its repayment obligation for a project and not pledged to certificates, loans, or advances, and not necessary for the payment of principal and interest maturing on such certificates, loans, or advances, may be applied by the community college to the reduction of any other outstanding certificates, loans, or advances.

98 Acts, ch 1225, §22

#### **15A.9 Quality jobs enterprise zone state assistance.**

1. *Findings zone designation.*

a. The general assembly finds and declares that the designation of a quality jobs enterprise zone or zones and the provision of economic development assistance within the zone or zones are necessary to diversify the Iowa economy, enhance opportunities for Iowans to obtain quality industrial jobs, and provide significant economic benefits to the state through the expansion of Iowa's economy. Establishment of the quality jobs enterprise zone or zones and the economic development assistance provided by the state or a local community will be for the well-being and benefit of the residents of the state and will be for a public purpose.

b. In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites, which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the purpose of attracting a primary business and supporting businesses to locate facilities within the state.

The primary business or a supporting business shall not be prohibited from participating in or receiving other economic development programs or services or electing to utilize other tax provisions to the extent authorized elsewhere by law.

2. *Definitions.* As used in this section:

a. *"Contractor or subcontractor"* means a person who contracts with the primary business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the zone, of the primary business or a supporting business.

b. *"Primary business"* means a business which pays its full-time production employees at the facility average cash compensation, which shall not include the cost of the business's contribution to retirement or health

benefit plans, equating to fifteen dollars per hour worked by the end of the second full year of operation following project completion, and which provides the department of economic development within thirty days of March 4, 1994, with notice of its intent to develop and operate a new manufacturing facility on a specific location within the state, including the legal description of the site which shall not contain more than two thousand five hundred acres, to invest at least two hundred fifty million dollars in the facility, and to commence construction of the facility by December 31, 1994, providing all necessary permits have been issued and zoning changes made in time for construction to begin by that date. The business shall also guarantee that it will create at least three hundred full-time jobs at the facility. The headquarters of the primary business need not be within the zone.

*c. "Project completion"* means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the primary business within the zone is at least fifty percent of the initial design capacity of the facility. The primary business shall inform the department of revenue in writing within two weeks of project completion.

*d. "Supporting business"* means a business under contract with the primary business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the zone and the revenue from fulfilling the contract with the primary business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the zone.

*e. "Zone or zones"* means a quality jobs enterprise zone or zones.

3. *New jobs credit.* At the request of the primary business or a supporting business, an agreement authorizing a supplemental new jobs credit from withholding from jobs within the zone may be entered into between the department of revenue, a community college, and the primary business or a supporting business. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

*a.* That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the primary business or a supporting business pursuant to section 422.16 is authorized to fund the program services for the additional project.

*b.* That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

*c.* That the community college shall not be allowed any expenses for administering the additional project except those expenses which are directly attributable to the additional project and which are in excess of the expenses allowed for the project under chapter 260E.

To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this subsection is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. *Investment tax credit.* The primary business and a supporting business shall be entitled to a corporate tax credit equal to ten percent of the new investment made within the zone by the primary business or a supporting business prior to project completion. A credit in excess of the tax liability for the tax year may be credited to the tax liability for the following twenty years or until depleted, whichever comes first.

For purposes of this section, *"new investment made within the zone"* means the capitalized cost of all real and personal property, including buildings and other improvements to real estate, purchased or otherwise acquired or relocated to the zone for use in the operation of the primary business or a supporting business within the zone. New investment in the zone does not include land, intangible property, or furniture and furnishings. The capitalized cost of property shall for the purposes of this section be determined in accordance with generally accepted accounting principles.

*5. Property tax exemption.*

*a.* All property, as defined in former section 427A.1, subsection 1, paragraphs "e" and "j", Code 1993, used by the primary business or a supporting business and located within the zone, shall be exempt from property taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

*b.* Property which is exempt for property tax purposes under this subsection is eligible for the sales and use tax exemption under section 423.3, subsection 47, notwithstanding that subsection or any other provision of the Code to the contrary.

*6. Sales, services, and use tax refund.* Taxes paid pursuant to chapter 423 on the sales price or rental price of property purchased or rented by the primary business or a supporting business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

*7. Sales, services, and use tax refund contractor or subcontractor.* The primary business or a supporting business shall be entitled to a refund of the sales and use taxes paid under chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the zone of the primary business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive the refund, a claim shall be filed by the primary business or a supporting business with the department of revenue as follows:

*a.* The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the zone upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the primary business or supporting business before final settlement is made.

*b.* The primary business or a supporting business shall, not more than six months after project completion, make application to the department for any refund of the amount of the sales and use taxes paid pursuant to chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

c. A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

8. *Corporate tax research credit.* A corporate tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone.

a. The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Thirteen percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state within the zone to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are three and thirty hundredths percent, four and forty hundredths percent, and five and fifty hundredths percent, respectively.

d. Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

e. For the purposes of this subsection, "*base amount*", "*basic research payment*", and "*qualified research expense*" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state within the zone.

For purposes of this subsection, "*Internal Revenue Code*" means the Internal Revenue Code in effect on January 1, 2006.

f. The credit authorized in this subsection is in lieu of the credit authorized in section 422.10 and section 422.33, subsection 5.

9. *Exemption from land ownership restrictions for nonresident aliens.*

a. The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 9I.3, and shall be exempt from the requirements

of section 9I.4. The primary business and supporting business shall comply with the remaining provisions of chapters 9H and 9I to the extent they do not conflict with this subsection.

*b. "Actively engaged in farming"* means any of the following:

(1) Inspecting agricultural production activities within the zone periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the zone.

(3) Performing physical work which significantly contributes to crop or livestock production.

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the department of economic development finds that a primary business or a supporting 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 primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the department of economic development 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 a primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the department of economic development shall be exempt from chapter 17A.

94 Acts, ch 1008, §17; 95 Acts, ch 152, §1, 7; 96 Acts, ch 1166, §1, 4; 97 Acts, ch 135, §2, 9; 98 Acts, ch 1078, §2, 10, 14; 99 Acts, ch 95, § 2, 12, 13; 2000 Acts, ch 1146, §2, 9, 11; 2000 Acts, ch 1194, §2, 21; 2001 Acts, ch 127, §2, 9, 10; 2002 Acts, ch 1050, §4; 2002 Acts, ch 1069, §2, 10, 14; 2003 Acts, ch 35, §26, 49; 2003 Acts, ch 139, §2; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §154, 205; 2004 Acts, ch 1073, §2; 2005 Acts, ch 24, §2, 10, 11; 2006 Acts, ch 1010, §8; 2006 Acts, ch 1140, §2, 10, 11

## **Footnotes**

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2006 amendment to subsection 8, paragraph e, is effective May 30, 2006, and applies retroactively to January 1, 2005, for tax years beginning on or after that date; 2006 Acts, ch 1140, §10, 11