

## DEVELOPMENT ACTIVITIES

### **15E.1 Definition.**

As used in this chapter, unless the context otherwise requires, "*department*" means the Iowa department of economic development.

2002 Acts, ch 1119, §6

**15E.2 through 15E.10** Reserved.

### **15E.11 Corporation for receiving and disbursing funds.**

The Iowa development commission is hereby authorized to form a corporation under the provisions of chapter 504, Code 1989, for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and well-being of the state.

[C66, 71, 73, 75, 77, 79, 81, § 28.11]

C93, § 15E.11

2003 Acts, ch 108, §7

**15E.12 and 15E.13** Reserved.

### **15E.14 Incorporators.**

The incorporators of the corporation formed under sections 15E.11, 15E.15 and 15E.16, shall be:

1. The chairperson of the Iowa development commission.
2. The director of the Iowa development commission.
3. A member of the Iowa development commission selected by the chairperson.

[C66, 71, 73, 75, 77, 79, 81, § 28.14]

C93, § 15E.14

### **15E.15 Board of directors.**

The board of directors of the corporation formed under sections 15E.11, 15E.14 and 15E.16 shall be the members of the Iowa development commission or their successors in office.

[C66, 71, 73, 75, 77, 79, 81, § 28.15]

C93, § 15E.15

### **15E.16 Accepting grants in aid.**

The corporation formed under sections 15E.11, 15E.14 and 15E.15 is hereby authorized to accept grants of money or property from the federal government or any other source and may upon its own order use its money, property or other resources for any of the purposes herein.

[C66, 71, 73, 75, 77, 79, 81, § 28.16]

C93, § 15E.16

**15E.17 Regulatory information service.**

1. The Iowa department of economic development shall provide a regulatory information service. The purpose of the service shall be to provide a center of information where a person interested in establishing a commercial facility or engaging in a commercial activity may be informed of any registration, license, or other approval of a state regulatory agency that is required for that facility or activity or of the existence of standards, criteria, or requirements which the laws of this state require that facility or activity to meet.

2. Each state agency which requires a permit, license, or other regulatory approval or maintains standards or criteria with which an activity or facility must comply shall inform the Iowa department of economic development of the following:

*a.* The activity or facility that is subject to regulation.

*b.* The existence of any threshold levels which would exempt the activity or facility from regulation.

*c.* The nature of the regulatory program.

*d.* The amount of any fees.

*e.* How to apply for any permits or regulatory approvals.

*f.* A brief statement of the purpose of requiring the permit or regulatory approval or requiring compliance with the standards or criteria.

3. Each state agency shall promptly inform the Iowa department of economic development of any changes in the information provided under subsection 2 or the establishment of a new regulatory program. The information provided to or disseminated by the department shall not be binding upon the regulatory program of a state agency; however, a person shall not be subject to the imposition of a penalty for failure to comply with a regulatory program if the person demonstrates that the person relied upon information provided by the department indicating compliance was not required and either ceases the activity upon notification by the regulatory agency or brings the activity or facility into compliance.

4. Subsections 2 and 3 do not apply to the following:

*a.* The utilities division of the department of commerce insofar as the information relates to public utilities.

*b.* The banking division of the department of commerce.

*c.* The savings and loan division of the department of commerce.

*d.* The credit union division of the department of commerce.

[82 Acts, ch 1099, § 1]

C83, § 28.17

C93, § 15E.17

### **15E.18 Cities, counties, and regions site preparation for targeted economic development.**

1. For purposes of this section, "*region*" means a group of two or more contiguous counties that establishes a single, focused economic development effort.

2. A city, county, or region, subject to the approval of the property owner, may designate an area within the boundaries of the city, county, or region for a specific type of targeted economic development. The specific type of targeted economic development shall be one of the following:

*a.* Manufacturing.

*b.* Light industrial.

*c.* Warehouse and distribution.

*d.* Office parks.

*e.* Business and commerce parks.

*f.* Research and development.

3. A city, county, or region that designates an area for a specific type of targeted economic development may apply to the department for purposes of certifying the area as a preapproved development site. The department shall develop criteria for the certification process.

4. Prior to a specific project being developed, a city, county, or region designating the area for targeted economic development pursuant to this section may apply for and obtain appropriate licenses, permits, and approvals for the type of targeted economic development project desired for the area.

2003 Acts, ch 158, §1; 2003 Acts, 1st Ex, ch 1, §130, 133

[2003 Acts, 1st Ex, ch 1, §130, 133 amendments to section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

### **15E.19 Regulatory assistance.**

1. The department of economic development shall coordinate all regulatory assistance for the state of Iowa. Each state agency administering regulatory programs for business shall maintain a coordinator within the office of the director or the administrative division of the state agency. Each coordinator shall do all of the following:

*a.* Serve as the state agency's primary contact for regulatory affairs with the department of economic development.

*b.* Provide information regarding regulatory requirements to businesses and represent the state agency to the private sector.

*c.* Monitor permit applications and provide timely permit status information to the department of economic development.

*d.* Require regulatory staff participation in negotiations and discussions with businesses.

*e.* Notify the department of economic development regarding proposed rulemaking activities that impact a

regulatory program and any subsequent changes to a regulatory program.

2. The department of economic development shall, in consultation with the coordinators described in this section, examine, and to the extent permissible, assist in the implementation of methods, including the possible establishment of an electronic database, to streamline the process for issuing permits to business.

3. By January 15 of each year, the department of economic development shall submit a written report to the general assembly regarding the provision of regulatory assistance by state agencies, including the department's efforts, and its recommendations and proposed solutions, to streamline the process of issuing permits to business.

2005 Acts, ch 150, §7

**15E.20** Reserved.

2003 amendment made in 2003 Acts, 1st Ex, ch 1, and establishing section 15E.20 stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193

**15E.21 Iowa business resource centers.**

The department shall establish an Iowa business resource center program for purposes of locating Iowa business resource centers in the state. The department shall partner with another entity wanting to assist with economic growth and establish an Iowa business resource center. Operational duties of a center shall focus on providing information and referrals to entrepreneurs and businesses. Operational duties of a center shall be determined pursuant to a memorandum of agreement between the department and the other entity.

2005 Acts, ch 150, §8

**15E.22 through 15E.24** Reserved.

**15E.25 through 15E.29** Repealed by 2001 Acts, ch 61, §19.

**15E.30 through 15E.40** Reserved.

**15E.41 Purpose.**

The purpose of this division is to enhance the quality of life for citizens of this state through the increased availability of and accessibility to venture capital, particularly at the seed capital investment stage, which encourages the creation of wealth through high-paid, new jobs that increase the wage base and promote industrial development and innovative products that use new technology. The purpose of this division is also to encourage individuals to invest seed capital in Iowa businesses and in community-based seed capital funds.

2002 Acts, ch 1006, §1, 13

**15E.42 Definitions.**

For purposes of this division, unless the context otherwise requires:

1. "*Affiliate*" means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.
2. "*Board*" means the Iowa capital investment board created in section 15E.63.

3. "*Investor*" means a person making a cash investment in a qualifying business or in a community-based seed capital fund. "*Investor*" does not include a person that holds at least a seventy percent ownership interest as an owner, member, or shareholder in a qualifying business.

4. "*Near equity*" means debt that may be converted to equity at the option of the debt holder, and royalty agreements.

5. "*Qualifying business*" means a business meeting the criteria defined in section 15E.44.

2002 Acts, ch 1006, §2, 13; 2002 Acts, ch 1175, §75; 2003 Acts, ch 108, §8; 2003 Acts, ch 179, §95, 159; 2004 Acts, ch 1148, §1, 7

2003 amendment to subsection 3 takes effect May 30, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159

2004 amendment to subsection 3 applies retroactively to tax years beginning on or after January 1, 2004; 2004 Acts, ch 1148, §7

### **15E.43 Investment tax credits.**

1. *a.* For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer's equity investment, as provided in subsection 2, in a qualifying business or a community-based seed capital fund. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

*b.* A tax credit shall be allowed only for an investment made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year 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 taxpayer redeems the tax credit.

*c.* In the case of a tax credit allowed against the taxes imposed in chapter 422, division II, where the taxpayer died prior to redeeming the entire tax credit, the remaining credit can be redeemed on the decedent's final income tax return.

2. A tax credit shall equal twenty percent of the taxpayer's equity investment. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be fifty thousand dollars. Each year, an investor and all affiliates of the investor shall not claim tax credits under this section for more than five different investments in five different qualifying businesses.

3. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this division.

4. The aggregate amount of tax credits issued pursuant to this division shall not exceed a total of ten million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2002, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2003, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2004, shall not exceed four million dollars. Any amount of the maximum aggregate limit of tax credits

that have not been issued by June 30, 2005, may be issued in any subsequent fiscal year. Not more than three million dollars of tax credits may be issued in any one subsequent fiscal year.

5. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer.

6. The board shall develop a system for registration and authorization of tax credits authorized pursuant to this division and shall control distribution of all tax credits distributed to investors pursuant to this division. The board shall develop rules for the qualification and administration of qualifying businesses and community-based seed capital funds. The department of revenue shall adopt these criteria as administrative rules and any other rules pursuant to chapter 17A necessary for the administration of this division.

7. The board may cooperate with the small business development centers in an effort to disseminate information regarding the availability of tax credits for investments in qualifying businesses under this division. The board may also cooperate with the small business development centers to develop a standard seed capital application form that the small business development centers may submit to the board on behalf of clients seeking seed capital. The board shall distribute copies of the application forms to all community-based seed capital funds and potential individual investors.

2002 Acts, ch 1006, §3, 13; 2002 Acts, ch 1175, §76; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §96, 97, 159; 2004 Acts, ch 1148, §2, 7; 2005 Acts, ch 157, §1

Subsection 1, paragraph c, takes effect May 30, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159

2004 amendments to subsection 1, paragraph a and striking former paragraph a apply retroactively to January 1, 2004, for tax years beginning on or after that date; 2004 Acts, ch 1148, §7

#### **15E.44 Qualifying businesses.**

1. In order for an equity investment to qualify for a tax credit, the business in which the equity investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of the names, addresses, taxpayer identification numbers, shares issued, consideration paid for the shares, and the amount of any tax credits, of all shareholders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list of shareholders who may qualify for the tax credits shall be amended as new equity investments are sold or as any information on the list shall change.

2. In order to be a qualifying business, a business must meet all of the following criteria:

*a.* The principal business operations of the business are located in this state.

*b.* The business has been in operation for six years or less.

*c.* The business has an owner who has successfully completed one of the following:

(1) An entrepreneurial venture development curriculum.

(2) Three years of relevant business experience.

(3) A four-year college degree in business management, business administration, or a related field.

(4) Other training or experience as the board may specify by rule or order as sufficient to increase the probability of success of the qualifying business.

*d.* The business is not a business engaged primarily in retail sales, real estate, or the provision of health care or other professional services.

*e.* The business shall not have a net worth that exceeds ten million dollars.

*f.* The business shall have secured, within twenty-four months following the first date on which the equity investments qualifying for tax credits have been made, total equity or near equity financing equal to at least two hundred fifty thousand dollars.

3. A qualifying business shall have the burden of proof to demonstrate to the board its qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to redeem the investment tax credits in any tax year.

4. After verifying the eligibility of a qualifying business, the board shall issue a tax credit certificate to be attached to the equity investor's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of credit, the name of the qualifying business, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and in chapter 432, and for the moneys and credits tax imposed in section 533.24, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of section 15E.43.

2002 Acts, ch 1006, §4, 13; 2003 Acts, ch 145, §286; 2004 Acts, ch 1148, §3, 7; 2005 Acts, ch 157, §2

2004 amendment to subsection 4 applies retroactively to tax years beginning on or after January 1, 2004; 2004 Acts, ch 1148, §7

#### **15E.45 Community-based seed capital funds.**

1. An investment in a community-based seed capital fund shall qualify for a tax credit under section 15E.43 provided that all requirements of sections 15E.43, 15E.44, and this section are met.

2. In order to be a community-based seed capital fund qualifying under this section, a community-based seed capital fund must meet all of the following criteria:

*a.* The fund is a limited partnership or limited liability company.

*b.* The fund has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least one hundred twenty-five thousand dollars, but not more than three million dollars. However, if a fund is either a rural business investment company under the rural business investment program of the federal Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, or an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds, the fund may qualify notwithstanding having capital in excess of the limits set forth in this paragraph as long as the fund otherwise meets the requirements of this subsection.

*c.* The fund has no fewer than five investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than twenty-five percent of the ownership interests outstanding in the fund.

3. *a.* In order for an investment in a community-based seed capital fund to qualify for a tax credit, the community-based seed capital fund in which the investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of all of the following:

(1) The names, addresses, taxpayer identification numbers, equity interests issued, consideration paid for the interests, and the amount of any tax credits.

(2) All limited partners or members who may initially qualify for the tax credits.

(3) The earliest year in which the tax credits may be redeemed.

*b.* The list of limited partners or members who may qualify for the tax credits shall be amended as new equity interests are sold or as any information on the list shall change.

4. After verifying the eligibility of the community-based seed capital fund, the board shall issue a tax credit certificate to be attached to the taxpayer's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, the name of the community-based seed capital fund, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue or a local taxing district, as applicable, as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and chapter 432, and as payment for the moneys and credits tax imposed pursuant to section 533.24, subject to any conditions or restrictions placed by the board on the face of the tax credit certificate and subject to the limitations of section 15E.43.

5. The manager of the community-based seed capital fund shall have the burden of proof to demonstrate to the board the community-based seed capital fund's qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the community-based seed capital fund, in the qualifications of any qualifying business in which the fund has invested, or in the eligibility of limited partners or members to redeem the investment tax credits in any year.

6. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this section, or in the event that at least thirty-three percent of the invested capital of the community-based seed capital fund has not been invested in one or more separate qualifying businesses, measured at the end of the forty-eighth month after commencing the fund's investing activities, the board shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. However, a community-based seed capital fund may apply to the board for a one-year waiver of the requirements of this subsection.

7. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this division only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments made by the community-based seed capital fund in a qualifying business or in an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this division with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

8. A community-based seed capital fund shall not invest in the Iowa fund of funds, if organized pursuant to section 15E.65, but may invest up to sixty percent of its committed capital in an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds.

2002 Acts, ch 1006, §5, 13; 2003 Acts, ch 44, §10; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §98, 159; 2004 Acts, ch 1148, §57; 2005 Acts, ch 157, §3, 4

2003 amendment to subsection 2, paragraph c, is effective May 30, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159

2004 amendments to subsection 2, paragraphs b and c, and subsection 6 apply retroactively to tax years

beginning on or after January 1, 2002; 2004 Acts, ch 1148, §7

### **15E.46 Reports.**

The board shall publish an annual report of the activities conducted pursuant to this division and shall submit the report to the governor and the general assembly. The report shall include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the board.

2002 Acts, ch 1006, §6, 13

### **15E.47 through 15E.50 Reserved.**

### **15E.51 Venture capital fund investment tax credits.**

1. For purposes of this section, "*venture capital fund*" means a private seed and venture capital partnership or entity fund that has been certified by the Iowa capital investment board created in section 15E.63, pursuant to subsection 7.
2. A tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer's equity investment in a venture capital fund. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.
3. The amount of a tax credit shall not exceed six percent of the taxpayer's equity investment in venture capital funds.
4. A taxpayer shall not claim a tax credit under this section if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds created in section 15E.65 or an investor that receives a tax credit for the same investment in a qualifying business as described in section 15E.44 or in a community-based seed capital fund as described in section 15E.45.
5. *a.* The Iowa capital investment board created in section 15E.63 shall issue certificates which may be redeemed for tax credits. The Iowa capital investment board created in section 15E.63 shall issue certificates so that not more than a total of five million dollars of tax credits may be claimed. The certificates shall not be transferable.  
*b.* The Iowa capital investment board created in section 15E.63 shall, in cooperation with the department of revenue, establish criteria and procedures for the allocation and issuance of tax credits by means of certificates issued by the Iowa capital investment board created in section 15E.63. The criteria shall include the contingencies that must be met for a certificate to be redeemable in order to receive a tax credit. The procedures established by the Iowa capital investment board created in section 15E.63, in cooperation with the department of revenue, shall relate to the procedures for the issuance of the certificates and for the redemption of a certificate and related tax credit.
6. A taxpayer shall not redeem a certificate and related tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year 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 taxpayer claims the tax credit.
7. A venture capital fund shall submit an application for certification to the Iowa capital investment board created in section 15E.63. The board shall approve the application and certify the venture capital fund if all of

the following criteria are met:

- a. The venture capital fund is a private seed and venture capital partnership or entity fund.
- b. The venture capital fund maintains a physical presence within the state of Iowa.
- c. The venture capital fund makes a commitment to consider equity investments in businesses located within the state of Iowa.

2002 Acts, ch 1156, §1, 8; 2003 Acts, ch 44, §11; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §99, 159; 2004 Acts, ch 1148, §4, 7

2003 amendment to subsection 4 by 2003 Acts, ch 179, §99, takes effect May 30, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159

2004 amendment to subsection 4 applies retroactively to tax years beginning on or after January 1, 2004; 2004 Acts, ch 1148, §7

**15E.52 through 15E.60** Reserved.

**15E.61 Findings purpose.**

The general assembly finds the following: Fundamental changes have occurred in national and international financial markets and in the financial markets of this state. A critical shortage of seed and venture capital resources exists in the state, and such shortage is impairing the growth of commerce in the state. A need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Iowa, including, without limitation, enterprises in the life sciences, advanced manufacturing, information technology, alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph "a", and value-added agriculture areas. Such investments will create jobs for Iowans and will help to diversify the state's economic base.

This division is enacted to fulfill the following purposes:

1. To mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales.
2. To retain the private-sector culture of focusing on rate of return in the investing process.
3. To secure the services of the best managers in the venture capital industry, regardless of location.
4. To facilitate the organization of the Iowa fund of funds in which to seek such private investment and to create interest in such investments by offering state incentives for private persons to make investments in the Iowa fund of funds.
5. To enhance the venture capital culture and infrastructure in the state of Iowa so as to increase venture capital investment within the state and to promote venture capital investing within Iowa.
6. To accomplish these purposes in such a manner as to minimize any appropriations by the state of Iowa.
7. To effectuate specific, measurable results, including all of the following:
  - a. The creation of three new venture capital fund offices in Iowa within three years of February 28, 2002.

b. The investment of resources from the Iowa fund of funds in Iowa businesses within three years of February 28, 2002.

c. A cumulative rate of return on venture investments of the Iowa fund of funds equal to a minimum of one and one-half percentage points above the ten-year treasury bill rate in effect at the end of five years following February 28, 2002.

2002 Acts, ch 1005, §1; 2002 Acts, ch 1006, §13, 14; 2006 Acts, ch 1142, §16

### **15E.62 Definitions.**

As used in this division, unless the context otherwise requires:

1. "*Board*" means the Iowa capital investment board created in section 15E.63.
2. "*Certificate*" means a contract between the board and a designated investor pursuant to which a tax credit is available and issued to the designated investor.
3. "*Designated investor*" means a person, other than the Iowa capital investment corporation, who purchases an equity interest in the Iowa fund of funds or a transferee of a certificate or tax credit.
4. "*Iowa capital investment corporation*" means a private, nonprofit corporation created pursuant to section 15E.64.
5. "*Iowa fund of funds*" means a private, for-profit limited partnership or limited liability company established by the Iowa capital investment corporation pursuant to section 15E.65 in which a designated investor purchases an equity interest.
6. "*Tax credit*" means a contingent tax credit issued pursuant to section 15E.66 that is available against tax liabilities imposed by chapter 422, divisions II, III, and V, and by chapter 432 and against the moneys and credits tax imposed by section 533.24.

2002 Acts, ch 1005, §2; 2002 Acts, ch 1006, §13, 14

### **15E.63 Iowa capital investment board.**

1. The Iowa capital investment board is created as a state governmental board and the exercise by the board of powers conferred by this division shall be deemed and held to be the performance of essential public purposes. The purpose of the board shall be to mobilize venture equity capital for investment in such a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.
2. The board shall consist of five voting members and two nonvoting advisory members. The five voting members shall be appointed by the governor and confirmed by the senate pursuant to section 2.32. The five voting members shall be appointed to five-year staggered terms that shall be structured to allow the term of one member to expire each year. One nonvoting member shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. One nonvoting member shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. The nonvoting members shall be appointed for two-year terms which shall expire upon the convening of a new general assembly. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall be compensated by the board for direct expenses and mileage but members shall not receive a director's fee, per diem, or salary for service on the board. Members shall be selected based upon demonstrated expertise and competence in the supervision of

investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members shall not have an interest in any person to whom a tax credit is allocated and issued by the board.

3. The board shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, provided, however, that the board shall not hire employees.

4. Members of the board shall be indemnified against loss to the broadest extent permissible under chapter 669.

5. Meetings of the board shall, except to the extent necessary to protect confidential information with respect to investments in the Iowa fund of funds, be subject to chapter 21.

6. The board shall, in cooperation with the department of revenue, establish criteria and procedures for the allocation and issuance of tax credits to designated investors by means of certificates issued by the board. The criteria shall include the contingencies that must be met for a certificate to be redeemable by a designated investor or transferee in order to receive a tax credit. The contingencies to redemption shall be tied to the scheduled rates of return of equity interests purchased by designated investors in the Iowa fund of funds. The procedures established by the board, in cooperation with the department of revenue, shall relate to the procedures for the issuance of the certificates and the related tax credits, for the transfer of a certificate and related tax credit by a designated investor, and for the redemption of a certificate and related tax credit by a designated investor or transferee. The board shall also establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors and transferees, including, without limitation, criteria and procedures for evaluating the value of investments made by the Iowa fund of funds and the returns from the Iowa fund of funds.

7. Pursuant to section 15E.66, the board shall issue certificates which may be redeemable for tax credits to provide incentives to designated investors to make equity investments in the Iowa fund of funds. The board shall issue the certificates so that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the date or dates on which the credit may be first claimed.

8. The board may charge a placement fee to the Iowa fund of funds with respect to the issuance of a certificate and related tax credit to a designated investor, but the fee shall be charged only to pay for reasonable and necessary costs of the board and shall not exceed one-half of one percent of the equity investment of the designated investor.

9. The board shall, in consultation with the Iowa capital investment corporation, publish an annual report of the activities conducted by the Iowa fund of funds, and present the report to the governor and the general assembly. The annual report shall include a copy of the audit of the Iowa fund of funds and a valuation of the assets of the Iowa fund of funds, review the progress of the investment fund allocation manager in implementing its investment plan, and describe any redemption or transfer of a certificate issued pursuant to this division, provided, however, that the annual report shall not identify any specific designated investor who has redeemed or transferred a certificate. Every five years, the board shall publish a progress report which shall evaluate the progress of the state of Iowa in accomplishing the purposes stated in section 15E.61.

10. The board shall redeem a certificate submitted to the board by a designated investor and shall calculate the amount of the allowable tax credit based upon the investment returns received by the designated investor and its predecessors in interest and the provisions of the certificate. Upon submission of a certificate for redemption, the board shall issue a verification to the department of revenue setting forth the maximum tax credit which may be claimed by the designated investor with respect to the redemption of the certificate.

11. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

2002 Acts, ch 1005, §3; 2002 Acts, ch 1006, §13, 14; 2003 Acts, ch 145, §286; 2005 Acts, ch 7, §1, 4

## **Footnotes**

Additional board duties; §15E.4115E.46, 15E.51

### **15E.64 Iowa capital investment corporation.**

1. An Iowa capital investment corporation may be organized as a private, not-for-profit corporation under chapter 504. The Iowa capital investment corporation is not a public corporation or instrumentality of the state and shall not enjoy any of the privileges and shall not be required to comply with the requirements of a state agency. Except as otherwise provided in this division, this division does not exempt the corporation from the requirements under state law which apply to other corporations organized under chapter 504. The purposes of an Iowa capital investment corporation shall be to organize the Iowa fund of funds, to select a venture capital investment fund allocation manager to select venture capital fund investments by the Iowa fund of funds, to negotiate the terms of a contract with the venture capital investment fund allocation manager, to execute the contract with the selected venture capital investment fund allocation manager on behalf of the Iowa fund of funds, to receive investment returns from the Iowa fund of funds, and to reinvest the investment returns in additional venture capital investments designed to result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The corporation shall not exercise governmental functions and shall not have members. The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not and cannot pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the corporation.

2. To facilitate the organization of an Iowa capital investment corporation, both of the following persons shall serve as incorporators as provided in section 504.201:

*a.* The chairperson of the Iowa economic development board or a designee of the chairperson.

*b.* The director of the department of economic development or a designee of the director.

3. After incorporation, the initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the Iowa economic development board. The initial board of directors shall consist of five members. The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise in the areas of the selection and supervision of investment managers or in the fiduciary management of investment funds, and other areas of expertise as deemed appropriate by the appointment committee. After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be elected by the remaining directors of the corporation. Members of the board of directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the corporation pursuant to the provisions of this division or in any investments made by the Iowa fund of funds.

4. The members of the appointment committee shall exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to venture capital investment, investment management, and supervision of investment managers and investment funds.

5. Upon the election of the initial board of directors, the terms of the members of the appointment committee

shall expire.

6. The department of economic development shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the incorporators and appointment committee in order to administer this section.

7. After incorporation, the Iowa capital investment corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Iowa fund of funds in accordance with the requirements of this division. Any proposed investment plan shall address the applicant's level of experience, quality of management, investment philosophy and process, probability of success in fund-raising, prior investment fund results, and plan for achieving the purposes of this division. The selected venture capital investment fund allocation manager shall be a person with substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation. The corporation shall only select a venture capital investment fund allocation manager with demonstrated expertise in the management and fund allocation of investments in venture capital funds. The corporation shall select the venture capital investment fund allocation manager deemed best qualified to generate the amount of capital required by this division and to invest the capital of the Iowa fund of funds.

8. The Iowa capital investment corporation may charge a management fee on assets under management in the Iowa fund of funds. The fee shall be in addition to any fee charged to the Iowa fund of funds by the venture capital investment fund allocation manager selected by the corporation, but the fee shall be charged only to pay for reasonable and necessary costs of the Iowa capital investment corporation and shall not exceed one-half of one percent per year of the value of assets under management.

9. Directors of the Iowa capital investment corporation shall be compensated for direct expenses and mileage but shall not receive a director's fee or salary for service as directors.

10. The Iowa capital investment corporation shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose. However, the corporation shall not hire staff as employees except to administer the rural and small business loan guarantee program of the Iowa fund of funds.

11. Upon the dissolution of the Iowa fund of funds, the Iowa capital investment corporation shall be liquidated and dissolved, and any assets owned by the corporation shall be distributed to the state of Iowa and deposited in the general fund.

2002 Acts, ch 1005, §4; 2002 Acts, ch 1006, §13, 14; 2002 Acts, ch 1175, §77; 2004 Acts, ch 1049, §181, 191, 192; 2004 Acts, ch 1175, §393

### **15E.65 Iowa fund of funds.**

1. The Iowa capital investment corporation shall organize the Iowa fund of funds. The Iowa fund of funds shall be authorized to make investments in private seed and venture capital partnerships or entities in a manner which will encourage the availability of a wide variety of venture capital in the state, strengthen the economy of the state, help business in Iowa gain access to sources of capital, help build a significant, permanent source of capital available to serve the needs of Iowa businesses, and accomplish all these benefits in a way that minimizes the use of tax credits.

2. The Iowa capital investment corporation shall organize the Iowa fund of funds in the following manner:

a. The Iowa fund of funds shall be organized as a private, for-profit, limited partnership or limited liability company under Iowa law pursuant to which the Iowa capital investment corporation shall be the general

partner or manager. The entity shall be organized so as to provide for equity interests for designated investors which provide for a designated scheduled rate of return. The interest of the Iowa capital investment corporation in the Iowa fund of funds shall be to serve as general partner or manager and to be paid a management fee for the service as provided in section 15E.64, subsection 8, and to receive investment returns of the Iowa fund of funds in excess of those payable to designated investors. Any returns in excess of those payable to designated investors shall be reinvested by the Iowa capital investment corporation by being held in the Iowa fund of funds as a revolving fund for reinvestment in venture capital funds or investments until the termination of the Iowa fund of funds. Any returns received from these reinvestments shall be deposited in the revolving fund.

*b.* The Iowa fund of funds shall principally make investments in high-quality venture capital funds managed by investment managers who have made a commitment to consider equity investments in businesses located within the state of Iowa and which have committed to maintain a physical presence within the state of Iowa. The investments by the Iowa fund of funds shall be focused principally on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Iowa fund of funds shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds. The Iowa fund of funds may invest in newly created venture capital funds as long as the managers or management teams of the funds have the experience, expertise, and a successful history in the investment of venture capital funds described in this paragraph.

*c.* The Iowa fund of funds shall establish and administer a program to provide loan guarantees and other related credit enhancements on loans to rural and small business borrowers within the state of Iowa. The Iowa fund of funds shall invest five percent of its assets in investments for this program.

*d.* The Iowa fund of funds shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, including, without limitation, engaging and agreeing to compensate a venture capital investment fund allocation manager. Such compensation shall be in addition to the management fee paid to the Iowa capital investment corporation. However, the Iowa fund of funds shall not hire employees except to administer its rural and small business loan guarantee and credit enhancement program.

*e.* The Iowa fund of funds may issue debt and borrow such funds as may be needed to accomplish its goals. However, such debt shall not be secured by tax credits issued by the board. The Iowa fund of funds may open and manage bank and short-term investment accounts as deemed necessary by the venture capital investment fund allocation manager.

*f.* The Iowa fund of funds may expend moneys to secure investment ratings for investments by designated investors in the Iowa fund of funds.

*g.* Each calendar year, the auditor of state shall conduct an annual audit of the activities of the Iowa fund of funds or shall engage an independent auditor to conduct the audit, provided that the independent auditor has no business, contractual, or other connection to the Iowa capital investment corporation or the Iowa fund of funds. The corporation shall reimburse the auditor of state for costs associated with the annual audit. The audit shall be delivered to the Iowa capital investment corporation and the board each year and shall include a valuation of the assets owned by the Iowa fund of funds as of the end of each year.

*h.* Fifty years after the organization of the Iowa fund of funds, the Iowa capital investment corporation shall cause the Iowa fund of funds to be liquidated with all of its assets distributed to its owners in accordance with the provisions of its organizational documents.

*i.* Upon the liquidation of the Iowa fund of funds, the Iowa capital investment corporation shall file a report with the general assembly stating how many jobs in this state were created through investments made by the

Iowa fund of funds.

2002 Acts, ch 1005, §5; 2002 Acts, ch 1006, §13, 14; 2005 Acts, ch 7, §2, 4

### **15E.66 Certificates and tax credits.**

1. The board may issue certificates and related tax credits to designated investors which, if redeemed for the maximum possible amount, shall not exceed a total aggregate of one hundred million dollars of tax credits. The certificates shall be issued contemporaneously with a commitment to invest in the Iowa fund of funds by a designated investor. A certificate issued by the board shall have a specific maturity date or dates designated by the board and shall be redeemable only in accordance with the contingencies reflected on the certificate or incorporated therein by reference. A certificate and the related tax credit shall be transferable by the designated investor. A tax credit shall not be claimed or redeemed except by a designated investor or transferee in accordance with the terms of a certificate from the board. A tax credit shall not be claimed for a tax year that begins earlier than the maturity date or dates stated on the certificate. An individual may claim the credit of a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier.
2. The board shall certify the maximum amount of a tax credit which could be issued to a designated investor and identify the specific earliest date or dates the certificate may be redeemed pursuant to this division. The amount of the tax credit shall be limited to an amount equivalent to any difference between the scheduled aggregate return to the designated investor at rates of return authorized by the board and aggregate actual return received by the designated investor and any predecessor in interest of capital and interest on the capital. The rates, whether fixed rates or variable rates, shall be determined pursuant to a formula stipulated in the certificate or incorporated therein by reference. The board shall clearly indicate on the certificate, or incorporate therein by reference, the schedule, the amount of equity investment, the calculation formula for determining the scheduled aggregate return on invested capital, and the calculation formula for determining the amount of the tax credit that may be claimed. Once issued to a designated investor, a certificate shall be binding on the board and the department of revenue and shall not be modified, terminated, or rescinded.
3. If a designated investor or transferee elects to redeem a certificate, the certificate shall not be redeemed prior to the maturity date or dates stated on the certificate. At the time of redemption, the board shall determine the amount of the tax credit that may be claimed by the designated investor based upon the returns received by the designated investor and its predecessors in interest and the provisions of the certificate. The board shall issue a verification to the department of revenue setting forth the maximum tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.
4. The board shall, in conjunction with the department of revenue, develop a system for registration of any certificate and related tax credit issued or transferred pursuant to this section and a system that permits verification that any tax credit claimed upon a tax return is valid and that any transfers of the certificate and related tax credit are made in accordance with the requirements of this division.
5. The board shall issue the tax credits in such a manner that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the maturity date or dates on which the credit may be first claimed.
6. A certificate or tax credit issued or transferred pursuant to this division shall not be considered a security pursuant to chapter 502.
7. In determining the one hundred million dollar maximum limit in subsection 1 and the twenty million dollar

limitation in subsection 5, the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors. However, certificates and related tax credits which have expired shall not be included and certificates and related tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.

2002 Acts, ch 1005, §6; 2002 Acts, ch 1006, §13, 14; 2003 Acts, ch 145, §286; 2005 Acts, ch 7, §3, 4

#### **15E.67 Powers and effectiveness.**

This division shall not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this division are cumulative to such powers. This division shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional to the powers conferred by any other law. The level, timing, or degree of success of the Iowa fund of funds or the investment funds in which the Iowa fund of funds invests in, or the extent to which the investment funds are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objectives, shall not compromise, diminish, invalidate, or affect the provisions of any contract entered into by the board or the Iowa fund of funds.

2002 Acts, ch 1005, §7; 2002 Acts, ch 1006, §13, 14; 2003 Acts, ch 44, §12

#### **15E.68 Permissible investments.**

Investments by designated investors in the Iowa fund of funds shall be deemed permissible investments for state-chartered banks, for credit unions, and for domestic insurance companies under applicable state laws.

2002 Acts, ch 1005, §8; 2002 Acts, ch 1006, §13, 14

#### **Footnotes**

Insurance companies; §511.8, 515.35

Banks; §524.901

Credit unions; §533.47

#### **15E.69 Enforcement.**

The attorney general may enforce the provisions of this division and conduct any investigations necessary for such enforcement.

2002 Acts, ch 1005, §9; 2002 Acts, ch 1006, §13, 14

**15E.70 through 15E.80** Reserved.

**15E.81 through 15E.85** Repealed by 2001 Acts, ch 61, § 19.

**15E.86 President.** Repealed by 98 Acts, ch 1225, §39.

**15E.87 through 15E.94** Repealed by 2001 Acts, ch 61, § 19.

**15E.95 through 15E.105** Reserved.

**15E.106 through 15E.108** Repealed by 2001 Acts, ch 61, § 19.

**15E.109 and 15E.110** Reserved.

**15E.111 Value-added agricultural products and processes financial assistance program.**

1. The department shall establish a value-added agricultural products and processes financial assistance program. The department shall consult with the Iowa corn growers association and the Iowa soybean association. The purpose of the program is to encourage the increased utilization of agricultural commodities produced in this state. The program shall assist in efforts to revitalize rural regions of this state, by committing resources to provide financial assistance to new or existing value-added production facilities. In awarding financial assistance, the department shall commit resources to assist the following:

*a.* Facilities which are involved in the development of new innovative products and processes related to agriculture. The facility must do either of the following: produce a good derived from an agricultural commodity, if the good is not commonly produced from an agricultural commodity; or use a process to produce a good derived from an agricultural process, if the process is not commonly used to produce the good.

*b.* Renewable fuel production facilities. As used in this section, "*renewable fuel*" means an energy source which is derived from an organic compound capable of powering machinery, including an engine or power plant.

Financial assistance awarded under this section may be in the form of a loan, loan guarantee, grant, production incentive payment, or a combination of financial assistance. The department shall not award more than twenty-five percent of the amount allocated to the value-added agricultural products and processes financial assistance fund during any fiscal year to support a single person. The department may finance any size of facility. However, the department shall reserve up to fifty percent of the total amount allocated to the fund, for purposes of assisting persons requiring one hundred thousand dollars or less in financial assistance. The amount shall be reserved until the end of the third quarter of the fiscal year. The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

2. A person is eligible to apply for assistance under this section, if the person satisfies the following requirements:

*a.* The existing or proposed facility is located in this state.

*b.* The person applies to the department of economic development in a manner and according to procedures required by the department.

*c.* The person submits a business plan which demonstrates managerial and technical expertise.

3. The department of economic development shall grant financial assistance to a person determined by the department to be eligible to receive assistance under this section, upon review and evaluation of the person's application by the agricultural products advisory council as established in section 15.203. The department shall consider the council's evaluation in granting or denying assistance. The department shall not approve an

application for assistance under this section to refinance an existing loan. The department shall not directly award financial assistance to support an activity directly related to farming as defined in section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

4. The department shall select an applicant to receive financial assistance based on the following criteria:

- a.* The feasibility of the existing or proposed facility to remain a viable enterprise and the degree to which the facility will increase the utilization of agricultural commodities produced in this state.
- b.* The extent to which the existing or proposed facility is located in a rural region of the state.
- c.* The proportion of local match to be contributed to the project.
- d.* The level of need of the region where the existing facility is or the proposed facility is to be located.
- e.* The degree to which the facility produces a coproduct which is marketed in the same locality as the facility.

5. An application based on innovation shall be considered if any of the following apply:

- a.* The production process is not commonly available in this state.
- b.* The product is not commonly produced in this state.

6. *a.* The department shall consider an application to assist a renewable fuel production facility. An application based on ethanol fuel production shall be considered by the department if all of the following apply:

(1) All fermentation, distillation, and dehydration of the ethanol will occur at the proposed facility.

(2) The ethanol produced at the proposed facility will be at least one hundred ninety proof and must be denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner will produce one hundred ninety proof ethanol from the ethanol purchased from the facility.

*b.* The department shall give priority to supporting proposed renewable fuel production facilities which directly support livestock production operations. The highest priority shall be provided to a renewable fuel production facility which produces coproducts which are used to produce livestock raised in the same locality as the production facility. If the department has several proposals having the highest priority, a preference shall be given to a proposal in which the livestock operation:

(1) Is located in an agricultural area as provided in chapter 352.

(2) Is located in close proximity to and is an integral part of the renewable fuel production facility. However, the owner of the facility is not required to hold an interest in the land on which the livestock are produced. The livestock may be produced under the terms of a contract, in which a person regularly engaged in livestock production provides for the care and feeding of the livestock on behalf of the facility's owner.

*c.* The department shall cooperate with the office of renewable fuels and coproducts in order to carry out this subsection, as provided in section 159A.6B. The office shall be primarily responsible for providing technical expertise regarding the operation of a renewable fuel production facility, and specifically a facility which supports livestock production operations. The department shall cooperate with any contract consultant supported by the office as provided in section 159A.6B. The agricultural products advisory council as

established in section 15.203 shall coordinate the activities of the department and the office. In administering this part of the program, the department and the office shall cooperate with the department of natural resources which shall assist an applicant in complying with all applicable environmental regulations. The department of natural resources shall acknowledge receipt of a completed application for a permit not later than two weeks following receipt of a completed application by the department. Within twelve weeks following receipt of the application, the department shall issue the permit or reply to the applicant describing reasons why the permit cannot be issued.

7. The university of Iowa, Iowa state university, and the university of northern Iowa shall cooperate in assisting facilities receiving financial assistance under this section. Iowa state university, including the Iowa cooperative extension service in agriculture and home economics, shall cooperate in assisting each renewable fuel production facility supporting livestock operations, including advising producers regarding nutrition and management practices. Community colleges and private universities and colleges are not precluded from providing this assistance.

8. The department of economic development and the office of renewable fuels and coproducts shall prepare a report each six months detailing the progress of the department and other agencies provided in this section. The office of renewable fuels and coproducts, the department of natural resources, and Iowa state university may contribute a summary of their activities. The report shall be delivered to the secretary of the senate and the chief clerk of the house; the legislative services agency; the chairpersons and ranking members of the senate standing committee on agriculture; the senate standing committee on economic growth; the house of representatives standing committee on agriculture; and the house of representatives standing committee on economic growth.

90 Acts, ch 1138, § 2

C91, § 28.111

92 Acts, ch 1244, § 25

C93, § 15E.111

94 Acts, ch 1119, §5; 96 Acts, ch 1186, § 23; 2002 Acts, ch 1050, §5; 2002 Acts, ch 1162, §28; 2003 Acts, ch 35, §44, 49; 2003 Acts, ch 108, §9; 2003 Acts, 1st Ex, ch 1, §87, 133

[2003 Acts, 1st Ex, ch 1, §87, 133 amendments to subsection 1 stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

### **15E.112 Value-added agricultural products and processes financial assistance fund.**

1. A value-added agricultural products and processes financial assistance fund is created within the state treasury under the control of the department. The fund shall consist of moneys allocated from the Iowa strategic investment fund created in section 15.313, those appropriated moneys, and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for administration and carrying out the purposes of section 15E.111.

2. In administering the fund and the value-added agricultural products and processes financial assistance program, the department may do any of the following:

*a.* Contract, sue and be sued, and adopt administrative rules necessary to carry out the provisions of this section and section 15E.111. However, the department shall not in any manner directly or indirectly pledge the credit of the state.

b. Authorize payment from the fund for costs, commissions, attorney fees, and other reasonable expenses, including expenses related to carrying out duties necessary for insuring or guaranteeing loans under section 15E.111, and for the recovery of loan moneys insured or guaranteed or the management of property acquired in connection with such loans.

3. Payments of interest, recaptures of awards, or repayments of moneys loaned under the value-added agricultural products and processes financial assistance program shall be deposited into the fund. Section 8.33 does not apply to any moneys in the fund.

4. The fund is subject to an annual audit by the auditor of state. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of economic development or an authorized representative of the director.

90 Acts, ch 1138, § 3

C91, § 28.112

91 Acts, ch 260, § 1202; 92 Acts, ch 1244, § 26

C93, § 15E.112

94 Acts, ch 1119, §6; 96 Acts, ch 1219, §97; 97 Acts, ch 207, §6, 15; 2000 Acts, ch 1230, §17, 18; 2002 Acts, ch 1175, §22; 2002 Acts, 2nd Ex, ch 1003, §66, 79; 2003 Acts, ch 145, §286

**15E.113 through 15E.115** Reserved.

**15E.116 Iowa wine and beer promotion board.**

An Iowa wine and beer promotion board is created. The board consists of three members appointed by the director of the department of economic development. Each member shall serve a term of two years on the board. One member shall represent the department, one member shall represent the Iowa wine makers, and one member shall represent the Iowa beer makers. The board shall advise the department on the best means to promote wine and beer made in Iowa.

86 Acts, ch 1246, § 719

C87, § 28.116

C93, § 15E.116

**15E.117 Promotion of Iowa wine and beer.**

The department of economic development shall consult with the Iowa wine and beer promotion board on the best means to promote wine and beer made in Iowa. The department has the authority to contract with private persons for the promotion of beer and wine made in Iowa. At the direction of the department, the director of the department of administrative services shall issue warrants to the department of economic development on the barrel tax fund created in section 123.143 and the wine gallonage tax fund created in section 123.183, which moneys may be used by the department for the purpose of this section, including administrative expenses incurred under this section.

86 Acts, ch 1246, § 720

C87, § 28.117

C93, § 15E.117

2002 Acts, ch 1050, §6; 2003 Acts, ch 145, §286

**15E.118 and 15E.119** Reserved.

**15E.120 Loan repayments.**

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.
2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.
3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986, shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.
4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department of economic development" for "office for planning and programming".
5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community economic betterment account of the strategic investment fund established in section 15.313.

86 Acts, ch 1185, § 1

C87, § 28.120

90 Acts, ch 1262, §28; 91 Acts, ch 23, §12; 91 Acts, ch 264, §512; 91 Acts, ch 267, §313

C93, § 15E.120

95 Acts, ch 67, § 5; 2001 Acts, ch 61, §8; 2003 Acts, ch 71, §5

Temporary appropriation of all moneys available from deposits made pursuant to subsection 5; 2006 Acts, ch 1176, §6

**15E.121 through 15E.130** Reserved.

**15E.131 Title of Act.**

This division shall be known and may be cited as the *"Iowa Business Development Finance Act"*.

88 Acts, ch 1207, §1

C89, § 28.131

C93, § 15E.131

**15E.132 Definitions.**

As used in this division, unless the context otherwise requires, the term:

1. "*Board*" means the board of directors of the corporation constituted under section 15E.143 in office from time to time.
2. "*Business*" means a business which meets the United States small business administration's definition of small business for that type of business, except a business whose primary activity is retail sales.
3. "*Corporation*" means the business development finance corporation organized pursuant to this division and for the purpose of assisting businesses in any phase of business or product development in the state of Iowa by the loaning of money to and investing money in the business, and otherwise organizing for the purposes in section 15E.133.
4. "*Department*" means the Iowa department of economic development or any agency which succeeds to the functions of the Iowa department of economic development.
5. "*Financial institution*" means a bank, trust company, savings and loan association, insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds, or any private or public retirement fund.
6. "*Member*" means a financial institution which has been accepted for membership in the corporation in accordance with section 15E.137.
7. "*Private director*" means a member of the board representing the shareholders of the corporation.
8. "*Public director*" means a member of the board representing the state of Iowa.

88 Acts, ch 1207, §2

C89, § 28.132

C93, § 15E.132

**15E.133 Purposes.**

The purposes of the corporation shall be limited to those provided in this section and shall be to promote, stimulate, develop and advance business prosperity of the state of Iowa and its citizens; to encourage and assist through loans, investments, or other business transactions, the location of new businesses in the state; to rehabilitate and assist existing businesses in this state; to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of business development in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state, in situations in which assistance would not otherwise be reasonably available from commercial sources.

This division being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

88 Acts, ch 1207, §3

C89, § 28.133

C93, § 15E.133

**15E.134 Powers.**

The corporation shall, subject to the restrictions and limits contained in this division, have the following powers:

1. To provide letters of credit or guarantees to businesses for any phase of product or business development, not to exceed thirty percent of the total loan amount.
2. To provide equity financing to businesses for any phase of business or product development.
3. To provide loans for businesses in any phase of product or business development when serviced by an Iowa financial institution.
4. To underwrite the public offering of shares by businesses.
5. To request, as a condition of participation or assistance, royalty, equity ownership, or fees, as it determines appropriate, for its assistance.
6. To make contracts and incur liabilities for any of the purposes of the corporation.
7. To borrow money and to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder approval.
8. To do all acts and things necessary or convenient to carry out the powers expressly granted in this division and such other powers not in conflict with this division granted under chapter 490, including the power and authority to sell any and all of the stock or ownership interest of any corporation formed pursuant to this division notwithstanding any contrary provisions or restrictions of this division. Any proceeds of the sale of stock or ownership interest shall be deposited in the strategic investment fund created in section 15.313 to be allocated by the Iowa economic development board to programs for which the assets of the fund may be used.
9. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.
10. To accept broker deposits from financial institutions.
11. To use not more than five percent of its funds for management assistance.

88 Acts, ch 1207, §4

C89, § 28.134

C93, § 15E.134

98 Acts, ch 1085, §1

**15E.135 Stock limitations.**

Capital stock shall be issued only on receipt by the corporation of cash in an amount not less than the par value as may be determined by the board. A shareholder of the corporation shall not be entitled as of right to purchase or subscribe for any unissued or treasury shares of the corporation, and the shareholder shall not be entitled as of right to purchase or subscribe for any bonds, notes, certificates of indebtedness, debentures, or other obligations convertible into shares of the corporation.

88 Acts, ch 1207, §5

C89, § 28.135

C93, § 15E.135

**15E.136 Stockholders' privileges.**

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures; a person is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owner of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

88 Acts, ch 1207, §6

C89, § 28.136

C93, § 15E.136

**15E.137 Corporation membership.**

1. A financial institution is authorized to become a member of the corporation and to make loans to the corporation.
2. A financial institution may request membership in the corporation by making application to the board on forms and in the manner as the board may require and membership shall become effective upon acceptance of the application by the board.
3. Each financial institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of, bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, of which it is a member and while owner of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state. The amount of capital stock of the corporation which a member is authorized to acquire is in addition to the amount of capital stock in other corporations which the member may otherwise be authorized to acquire.

88 Acts, ch 1207, §7

C89, § 28.137

C93, § 15E.137

**15E.138 Eligibility to participate.**

A financial institution is not eligible to receive benefits from the corporation unless it becomes a shareholder, a member, or both. If, as determined by the president of the corporation, there is an insufficient number of eligible financial institutions to ensure reasonable access by businesses to assistance by the corporation, the board may designate additional eligible financial institutions.

88 Acts, ch 1207, §8

C89, § 28.138

C93, § 15E.138

**15E.139 Loan to the corporation by members.**

Each member of the corporation may make loans to the corporation as and when called upon by the corporation to do so on terms and conditions as shall be approved from time to time by the board subject to the following:

1. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section.
2. A loan to the corporation shall not be made if immediately thereafter the total amount of the obligations of the corporation calling for the loan would exceed ten times the amount then paid in on the outstanding capital stock of the corporation.
3. The total amount outstanding at any one time on loans to the corporation made by a member of the corporation when added to the amount of the investment in the capital stock of the corporation held by the member, shall not exceed the lesser of:
  - a.* Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in that total amount outstanding amounts validly called for loan but not yet loaned.
  - b.* The limit, to be determined as of the time the member becomes a member, on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership, as follows:
    - (1) Banks and trust companies five percent of the paid- in capital, surplus, and undivided profits.
    - (2) Savings and loan associations two percent of the general reserve account, surplus and undivided profits.
    - (3) Stock life insurance companies one percent of capital and unassigned surplus.
    - (4) Mutual life insurance companies one percent of the unassigned surplus.
    - (5) All other insurance companies one-tenth of one percent of the assets.
    - (6) Other financial institutions such limits as may be approved by the board of the business development finance corporation.

4. Each call for loan shall be prorated among the members in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding obligations of the corporation to the member and the investment in capital stock of the corporation held by the member at the time of the call.

5. All loans to the corporation by a member shall be evidenced by registered bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable by the registered holder thereof on the books of the corporation.

88 Acts, ch 1207, §9

C89, § 28.139

C93, § 15E.139

#### **15E.140 Duration of membership.**

Membership in the corporation shall be for the duration of the corporation. However, upon written notice given to the corporation five years in advance a member may withdraw from membership in the corporation at the expiration date of the notice. A financial institution may at any time withdraw from membership without such notice in the event of its merger with another financial institution, after commencement of proceedings for voluntary or involuntary dissolution, receivership, or reorganization pursuant to or by operation of federal or state law or in the event of conversion from a state financial institution to a federal financial institution or the reverse. If there shall be a legislative amendment of this division affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation of the corporation which shall not have been approved by the public and private directors within the time set forth and in the manner provided in this division, a member may immediately withdraw from membership upon giving written notice to the corporation not later than ninety days from the effective date of the amendment. A member shall not be obligated to make loans to the corporation pursuant to calls made subsequent to the withdrawal of the member from the corporation.

88 Acts, ch 1207, §10

C89, § 28.140

C93, § 15E.140

#### **15E.141 Powers of shareholders.**

The shareholders of the corporation shall have the following powers of the corporation:

1. Those powers granted in chapter 490 which are not inconsistent with this division.
2. To elect the private directors as provided in this division.
3. To exercise other powers of the corporation as may be conferred on the shareholders by the bylaws.

As to all matters requiring action by the shareholders of the corporation, except as may be otherwise provided in this division, approval of the matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by the shareholder.

88 Acts, ch 1207, §11

C89, § 28.141

C93, § 15E.141

**15E.142 Articles amended.**

The articles of incorporation of the corporation may be amended by a majority vote of both the public and private directors. An amendment shall not be made which is inconsistent with this division, authorizes an additional class or classes of shares of capital stock, or eliminates or curtails the authority of the department with respect to the corporation. Without the consent of each of the members affected, an amendment shall not be made which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation; affects a member's right to withdraw from membership, as provided in this division; or affects a member's voting rights, if the member is a shareholder, in the corporation. Within thirty days after a meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth the amendment and the due adoption of them, shall be submitted to the director of the department who shall examine them, and if the director finds that they conform to the requirements of this division, shall certify and endorse the director's approval of them. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in chapter 490 and the amendment shall not take effect until the articles of amendment shall have been approved and filed as provided in this section. Within sixty days after the effective date of a legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of the legislative amendment shall be voted on by the public and private directors of the corporation at a meeting duly called for that purpose. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of the corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of the corporation setting forth the action taken at the meeting with respect to the amendment shall be submitted to the director of the department and upon receipt of the approval shall be filed in the office of the secretary of state.

88 Acts, ch 1207, §12

C89, § 28.142

C93, § 15E.142

**15E.143 Board of directors.**

1. The board shall consist of twelve directors, seven of which represent the public and five of which represent the shareholders. The seven public directors consist of:

- a. The director of the department.
- b. The director of the Iowa finance authority.
- c. The superintendent of banking.
- d. The superintendent of credit unions.
- e. The commissioner of insurance.

*f.* The treasurer of state.

*g.* Or the designees of the officials named in paragraphs "a" through "f".

2. The director of the department, or the director's designee, shall serve as chairperson of the board.

3. Within sixty days of July 1, 1988, the chairperson shall convene the public directors for the purpose of organizing the corporation under chapter 490.

4. Within sixty days of the completion of the initial stock offering, the chairperson shall convene a meeting of the shareholders for the purpose of the initial election of the private directors. The private directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the bylaws. A vacancy in the office of a director elected by the shareholders shall be filled by the other directors elected by the shareholders.

5. If stock is not issued and private directors are not elected, all powers of the board shall be exercised by the public directors.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of the corporation organized for the purposes of this division to which the insurance company or other financial institution may make a loan or may make an investment.

88 Acts, ch 1207, §13

C89, § 28.143

91 Acts, ch 267, §314

C93, § 15E.143

2001 Acts, ch 61, §9, 10

#### **15E.144 President of the corporation.**

The director of the department shall appoint the president of the corporation from the division within the department that administers business financial assistance programs. Administrative and staff support shall be furnished by the department.

88 Acts, ch 1207, §14

C89, § 28.144

91 Acts, ch 267, §315

C93, § 15E.144

#### **15E.145 Applications for financial assistance.**

1. Applications for financial assistance shall be forwarded by a business in conjunction with an eligible financial institution or by a city, county, or local community economic development corporation on behalf of a business, together with an application fee prescribed by the corporation, to the president of the corporation.

The president, after preparing the necessary records for the corporation, shall forward each application to the staff of the corporation for an investigation and report concerning the advisability of approving the financial assistance for the business and concerning any other factors found relevant by the corporation. The investigation and report shall include information as deemed necessary by the president.

2. Criteria for assistance shall be developed by the president with approval of the board and consistent with the strategic plan for state economic growth prepared by the Iowa economic development board.

3. The president shall award assistance in consultation with the board upon review and rating of each application by the staff of the corporation.

4. Appeals of the president's decisions concerning awards of assistance shall be heard by the board. However, the president's decision cannot be reversed except by a majority vote of the directors.

88 Acts, ch 1207, §15

C89, § 28.145

C93, § 15E.145

#### **15E.146 Earned surplus set aside.**

Net earnings and surplus shall be determined by the board, after providing for the reserves as the directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

88 Acts, ch 1207, §16

C89, § 28.146

C93, § 15E.146

#### **15E.147 Reports to governor and general assembly.**

The corporation shall submit annually a record of its operations and condition to the governor and general assembly. The department may request the superintendent of banking to examine the condition of the corporation and submit a report to the department, copies of which shall also be sent to the governor and general assembly.

88 Acts, ch 1207, §17

C89, § 28.147

C93, § 15E.147

#### **15E.148 State assistance fund.**

There is created in the treasurer of state's office a "business development finance corporation assistance fund". The fund shall consist of all appropriations, grants, or gifts received by the treasurer specifically for assistance under this division and moneys allocated from the strategic investment fund created in section 15.313. Moneys in this fund are appropriated to the corporation for the purposes stated in this division. Moneys allocated to this fund for purposes of the capital access program and repayments of moneys or

recaptures of awards from the capital access program which remain unobligated at the end of a fiscal year may be returned to the strategic investment fund upon approval of the board of directors of the business development finance corporation.

88 Acts, ch 1207, §18

C89, § 28.148

92 Acts, ch 1244, § 27

C93, § 15E.148

**15E.149 Multiple corporations.**

The public directors, by a majority vote, may create more than one corporation. Each additional corporation shall be governed by this division. An additional corporation may act as a general partner in a limited partnership under chapter 488.

89 Acts, ch 180, §1

CS89, § 28.149

C93, § 15E.149

2004 Acts, ch 1021, §109, 117, 118

**15E.150 and 15E.151** Reserved.

**15E.152 through 15E.155** Repealed by 99 Acts, ch 208, § 73.

**15E.156 Executive director duties.** Repealed by 93 Acts, ch 49, §7.

**15E.157 through 15E.159** Repealed by 99 Acts, ch 208, § 73.

**15E.160 Science and technology advisory council.** Repealed by 99 Acts, ch 208, §73.

**15E.161 Wallace technology transfer foundation fund.** Repealed by 99 Acts, ch 208, § 73.

**15E.162 through 15E.164** Reserved.

**15E.165 Manufacturing technology program purpose intent.** Repealed by 99 Acts, ch 208, §73.

**15E.166 Regionally based manufacturing technology program.** Repealed by 99 Acts, ch 208, § 73.

**15E.167 and 15E.168** Reserved.

**15E.169 through 15E.171** Repealed by 2001 Acts, ch 61, § 19.

**15E.172 through 15E.174** Reserved.

**15E.175 Physical infrastructure assistance program.**

1. The Iowa department of economic development shall establish a physical infrastructure financial

assistance program to provide financial assistance for business or community physical infrastructure development or redevelopment projects. Physical infrastructure projects that create the necessary infrastructure for economic success throughout Iowa, that provide the opportunity for the creation of quality, high-wage jobs, and that involve substantial capital investment may be eligible for financial assistance under the program, provided, however, that the project could not be assisted through or eligible for financial assistance from other existing private, local, or state funds or programs. Physical infrastructure development or redevelopment projects include, but are not limited to, projects involving any mode of transportation infrastructure, public works and utilities such as sewer, water, power or telecommunications, physical improvements which mitigate, prevent or eliminate environmental contaminants, and any other project deemed appropriate by the department.

2. A physical infrastructure assistance fund is created within the state treasury under the control of the Iowa department of economic development.

*a.* The fund shall include any moneys appropriated to the fund by the general assembly, payments of interest earned, recaptures of awards, repayments of moneys loaned or expended from the physical infrastructure assistance program, and any other moneys designated by the department for placement in the fund.

*b.* The fund shall be used for the following:

(1) To provide reimbursement to the department of natural resources for activities related to physical infrastructure assistance projects under this section.

(2) To provide financial assistance for qualifying projects.

(3) To provide funding for any other purpose consistent with this section and deemed appropriate by the department.

*c.* Section 8.33 shall not apply to the physical infrastructure assistance fund. Notwithstanding section 12C.7, interest earned on moneys in the fund shall be credited to the fund.

3. The department shall establish procedures and guidelines for the physical infrastructure assistance program and shall proceed in accordance with the following:

*a.* Consult with and coordinate with the state department of transportation, the department of natural resources, and any other appropriate state agency which is responsible for the development or redevelopment of physical infrastructure in this state to ensure that activities conducted pursuant to this section are consistent with the policies and plans of other state agencies and are coordinated with other physical infrastructure projects.

*b.* Provide financial assistance in the form of a loan, forgivable loan, loan guarantee, cost-share, indemnification of costs, or any combination of financial assistance deemed by the department to be most efficient in facilitating the physical infrastructure project.

*c.* Enter into contracts and to sue and be sued. However, the department shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

*d.* Authorize payment of costs, commissions, attorney fees, consultant fees, and other reasonable expenses from the fund. Expenses may include costs relating to carrying out the duties necessary for insuring or guaranteeing loans, co-sharing or indemnifying costs under the physical infrastructure financial assistance program, and for the recovery of loans insured or guaranteed, costs co-shared or indemnified, or the management of property acquired in connection with such loans or costs.

e. Adopt administrative rules necessary to carry out the provisions of this section.

96 Acts, ch 1218, §52

**15E.176 through 15E.180** Reserved.

**15E.181 through 15E.184** Repealed by 2001 Acts, ch 61, § 19.

**15E.185 through 15E.190** Reserved.

**15E.191 Intent.**

It is the intent of the general assembly that this division be administered in a manner to promote new economic development in economically distressed areas by encouraging communities to target resources in ways that attract productive private investment.

97 Acts, ch 144, §1

**15E.192 Enterprise zones.**

1. A county may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to one percent of the county area for that purpose. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to chapter 28E regarding the establishment of the enterprise zone. A county may establish more than one enterprise zone.

2. A city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census, may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating one or more contiguous census tracts, as determined in the most recent federal census, or designating other geographic units approved by the department of economic development for that purpose. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an economic development enterprise zone. The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the area limitation pursuant to subsection 4. In creating an enterprise zone, a city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census, may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units meet the criteria and the city agrees to being included. The city may establish more than one enterprise zone. Reference in this division to "*city*" means a city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census.

3. A city may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to four square miles of the city for that purpose. In order for an enterprise zone to be certified pursuant to this subsection, an enterprise zone shall meet the distress criteria provided in section 15E.194, subsection 3. Section 15E.194, subsection 2, shall not apply to an enterprise zone certified pursuant to this subsection. For the fiscal period beginning July 1, 2007, and ending June 30, 2010, each fiscal year a cumulative total of not more than twenty-five million dollars worth of incentives and assistance under section 15E.196, subsections 1, 2, 3, 4, and 6, shall be awarded to eligible businesses applying to an enterprise zone commission for incentives and assistance

during that fiscal year that are located in an enterprise zone certified pursuant to this subsection. For purposes of this subsection and section 15E.194, subsection 3, "city" means a city that includes at least three census tracts, as determined in the most recent federal census.

4. *a.* An enterprise zone certified by the department pursuant to subsection 2 shall only be amended if the amendment consists of an area being added to the enterprise zone and the added area meets the criteria of section 15E.194, subsection 2. An enterprise zone certified by the department pursuant to subsection 1 or 2 may be decertified; however, if a subsequent enterprise zone is designated, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A portion of a certified enterprise zone may be decertified, provided that the remaining portion of the certified enterprise zone meets the distress criteria provided in section 15E.194.

*b.* A county or city may apply to the department for an area to be certified as an enterprise zone at any time prior to July 1, 2010. However, the total amount of land designated as enterprise zones under subsection 1, and any other enterprise zones certified by the department, excluding those approved pursuant to subsection 2 and section 15E.194, subsections 3 and 5, shall not exceed in the aggregate one percent of the total county area.

5. An enterprise zone designation shall remain in effect for ten years following the date of certification. Prior to the expiration of an enterprise zone designation, a city or county meeting the distress criteria in section 15E.194 may apply for a one-time ten-year extension of the designation. In applying for a one-time ten-year extension of an enterprise zone designation, a city or county may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the applicable distress criteria provided in section 15E.194. Prior to the expiration of an enterprise zone designation, a city or county that is not eligible to designate an enterprise zone but previously designated the enterprise zone pursuant to section 15E.194, Code Supplement 1997, may apply for a one-time extension of the enterprise zone designation to one year following the complete publication of the 2010 federal census. In applying for a one-time extension of the enterprise zone designation, the city or county may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the distress criteria provided in section 15E.194, Code Supplement 1997. The department shall designate by rule the specific date of one year following the complete publication of the 2010 federal census. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration.

97 Acts, ch 144, §2; 98 Acts, ch 1175, § 6; 2000 Acts, ch 1213, §3, 4, 10; 2002 Acts, ch 1145, §1, 7, 10; 2003 Acts, ch 129, §1, 57; 2005 Acts, ch 57, §1; 2006 Acts, ch 1133, §14, 10

2006 amendments to subsection 2 and 4, and adding NEW subsection 3, take effect May 30, 2006, and apply retroactively to March 1, 2006; 2006 Acts, ch 1133, §10

2006 amendment to subsection 5 takes effect May 30, 2006, and applies retroactively to May 14, 1997; 2006 Acts, ch 1133, §10

### **15E.193 Eligible business.**

1. A business which is or will be located, in whole or in part, in an enterprise zone is eligible to receive incentives and assistance under this division if the business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone and if the business meets all of the following:

*a.* Is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

*b.* Provides all full-time employees with the option of choosing one of the following:

(1) The business pays eighty percent of both of the following:

(a) The cost of a standard medical insurance plan.

(b) The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1).

*c.* Pays an average wage that is at or greater than ninety percent of the lesser of the average county wage or average regional wage, as determined by the department. However, the wage paid by the business shall not be less than seven dollars and fifty cents per hour.

*d.* Creates at least ten full-time positions and maintains them for at least ten years. For an existing business in counties with a population of ten thousand or less or in cities with a population of two thousand or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional jobs to be added in five years. The business shall include in its strategic plan the timeline for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives or assistance will cease immediately.

*e.* Makes a capital investment of at least five hundred thousand dollars. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to two hundred fifty thousand dollars of the fair market value, as established by an appraisal, of the building and land.

*f.* If the business is only partially located in an enterprise zone, the business must be located on contiguous land.

2. In addition to meeting the requirements under subsection 1, an eligible business shall provide the enterprise zone commission with all of the following:

*a.* The long-term strategic plan for the business which shall include labor and infrastructure needs.

*b.* Information dealing with the benefits the business will bring to the area.

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

*d.* The impact the business will have on other businesses in competition with it.

*e.* An affidavit that it 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 such violations did not seriously affect public health or safety or the environment.

3. If a business has received incentives or assistance under section 15E.196 and fails to maintain the requirements of subsection 1 to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under section 15E.196. The value of state incentives provided under section

15E.196 includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into 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 subsection 1. In addition, a business that fails to maintain the requirements of subsection 1 shall not receive incentives or assistance for each year during which the business is not in compliance.

4. If a business that is approved to receive incentives or assistance provided under section 15E.196 experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business has received incentives or assistance under section 15E.196 and experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

97 Acts, ch 144, §3; 98 Acts, ch 1175, §79; 2003 Acts, ch 129, §2; 2003 Acts, ch 145, §286; 2006 Acts, ch 1009, §13

**15E.193A Alternative eligible business criteria.** Repealed by 2002 Acts, ch 1145, §9.

**15E.193B Eligible housing business.**

1. A housing business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. An eligible housing business shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to section 15E.194, subsection 3 or 5. Sections 15E.193 and 15E.196 do not apply to an eligible housing business qualifying under this section.

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 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.

3. The single-family homes and dwelling units which are rehabilitated or constructed by the eligible housing business shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States department of housing and urban development's housing quality standards and local safety standards.

4. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties enumerated in subsection 7. The department may extend the prescribed two-year completion period for any current or future project which has not been completed if the department determines that completion within the two-year period is impossible or impractical as a result of a substantial loss caused by flood, fire, earthquake, storm, or other catastrophe. For purposes of this subsection, "*substantial loss*" means damage or destruction in an amount in excess of thirty percent of the project's expected eligible basis as set forth in the eligible housing business's application.

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

a. The long-term strategic plan for the housing business which shall include labor and infrastructure needs.

b. Information dealing with the benefits the housing business will bring to the area.

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

d. An affidavit that it 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 such violations did not seriously affect public health or safety or the environment.

e. Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subsection 6, paragraph "a".

f. If the eligible housing business is a partnership, S corporation, or limited liability company using low-income housing tax credits authorized under section 42 of the Internal Revenue Code to assist in the financing of the housing development, the name of any partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company and the amount designated as allowed under subsection 8.

6. An eligible housing business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195 shall receive all of the following incentives and assistance for a period not to exceed ten years:

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, 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 except as allowed for under subsection 8 when low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development.

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.

7. If a business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible housing 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 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 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.

8. The amount of the tax credits determined pursuant to subsection 6, paragraph "a", for each project shall be

approved by the department of economic development. The department shall utilize the financial information required to be provided under subsection 5, paragraph "e", to determine the tax credits allowed for each project. In determining the amount of tax credits to be allowed for a project, the department shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans. Upon approving the amount of the tax credit, the department of economic development shall issue a tax credit certificate to the eligible housing business except when low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development in which case the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. An eligible housing business or the designated partner if the business is a partnership, designated shareholder if the business is an S corporation, or designated member if the business is a limited liability company, or transferee shall not claim the tax credit unless a tax credit certificate is attached to the taxpayer's return for the tax year for which the tax credit is claimed. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. The tax credit certificate shall be transferable if the housing development is located in a brownfield site as defined in section 15.291, if the housing development is located in a blighted area as defined in section 403.17, or if low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. Not more than three million dollars worth of tax credits for housing developments that are located in a brownfield site as defined in section 15.291 or housing developments located in a blighted area as defined in section 403.17 shall be transferred in one calendar year. The three million dollar annual limit does not apply to tax credits awarded to an eligible housing business having low-income housing tax credits authorized under section 42 of the Internal Revenue Code to assist in the financing of the housing development. The department may approve an application for tax credit certificates for transfer from an eligible housing business located in a brownfield site as defined in section 15.291 or in a blighted area as defined in section 403.17 that would result in the issuance of more than three million dollars of tax credit certificates for transfer, provided the department, through negotiation with the eligible business, allocates those tax credit certificates for transfer over more than one calendar year. The department shall not approve more than one million five hundred thousand dollars in tax credit certificates for transfer to any one eligible housing business located in a brownfield site as defined in section 15.291 or in a blighted area as defined in section 403.17 in a calendar year. If three million dollars in tax credit certificates for transfer have not been issued at the end of a calendar year, the remaining tax credit certificates for transfer may be issued in advance to an eligible housing business scheduled to receive a tax credit certificate for transfer in a later calendar year. Any time the department approves a tax credit certificate for transfer which has not been allocated at the end of a calendar year, the department may prorate the remaining certificates to more than one eligible applicant. If the entire three million dollars of tax credit certificates for transfer is not issued in a given calendar year, the remaining amount may be carried over to a succeeding calendar year. Tax credit certificates issued under this chapter may be transferred to any person or entity. The department of economic development shall notify the department of revenue of the tax credit certificates which have been approved for transfer. Within ninety days of transfer, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required to receive the original certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the department of economic development shall not be transferable. A tax credit shall not be claimed by a transferee under subsection 6, paragraph "a", until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422,

divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

9. The department of economic development and the department of revenue shall each adopt rules to jointly administer this section.

98 Acts, ch 1179, §1; 2000 Acts, ch 1213, §58, 10; 2001 Acts, ch 141, §24, 8; 2002 Acts, ch 1145, §2, 3; 2003 Acts, ch 129, §3; 2003 Acts, ch 133, §1, 4; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §100, 159; 2003 Acts, 1st Ex, ch 2, §15, 209; 2005 Acts, ch 130, §1, 2; 2005 Acts, ch 179, §5355; 2006 Acts, ch 1133, §5, 10; 2006 Acts, ch 1158, §1

2003 amendment to subsection 8 takes effect May 16, 2003, and applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 133, §4

2005 amendments pertaining to the transfer of tax credit certificates for projects in brownfield sites or blighted areas apply to projects beginning on or after July 1, 2005; 2005 Acts, ch 130, §2

2006 amendment to subsection 1 takes effect May 30, 2006, and applies retroactively to March 1, 2006; 2006 Acts, ch 1133, §10

**15E.193C Eligible development business.** Repealed by 2004 Acts, ch 1003, § 11, 12.

**15E.194 Distress criteria.**

1. An enterprise zone may be designated by a county which meets at least two of the following criteria:

*a.* The county has an average weekly wage that ranks among the bottom twenty-five counties in the state based on the 2000 annual average weekly wage for employees in private business.

*b.* The county has a family poverty rate that ranks among the top twenty-five counties in the state based on the 2000 census.

*c.* The county has experienced a percentage population loss that ranks among the top twenty-five counties in the state between 1995 and 2000.

*d.* The county has a percentage of persons sixty-five years of age or older that ranks among the top twenty-five counties in the state based on the 2000 census.

2. An enterprise zone may be designated by a city which meets at least two of the following criteria:

*a.* The area has a per capita income of twelve thousand six hundred forty-eight dollars or less based on the 2000 census.

*b.* The area has a family poverty rate of twelve percent or higher based on the 2000 census.

*c.* Ten percent or more of the housing units are vacant in the area.

*d.* The valuations of each class of property in the designated area is seventy-five percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

*e.* The area is a blighted area, as defined in section 403.17.

3. A city may designate an area of up to four square miles to be an enterprise zone if the area is a blighted area as defined in section 403.17 and the area includes or is located within four miles of at least three of the following:

- a.* A commercial service airport.
- b.* A barge terminal or a navigable waterway.
- c.* Entry to a rail line.
- d.* Entry to an interstate highway.
- e.* Entry to a commercial and industrial highway network as identified pursuant to section 313.2A.

An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

4. The department of economic development shall certify eligible enterprise zones that meet the requirements of subsection 1 upon request by the county, subsection 2 upon request by the city, or subsection 3 upon request by the city, as applicable.

5. *a.* A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least one thousand employees or four percent or more of the county's resident labor force based on the most recent annual resident labor force statistics from the department of workforce development, whichever is lower. The enterprise zone may be established on the property of the place of business that has closed and the enterprise zone may include an area up to an additional three miles adjacent to the property. The area meeting the requirements for enterprise zone eligibility under this subsection shall not be included for the purpose of determining the area limitation pursuant to section 15E.192, subsection 4. An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

*b.* The area included in an enterprise zone designated under this subsection on or after June 1, 2000, may be amended to change the boundaries of the enterprise zone. Such an amendment must be approved by the department within three years of the date the enterprise zone was certified.

97 Acts, ch 144, §4; 2000 Acts, ch 1213, §9, 10; 2002 Acts, ch 1145, §6; 2006 Acts, ch 1133, §6, 7, 10

2006 amendments adding NEW subsection 3 and amending subsection 4 take effect May 30, 2006, and apply retroactively to March 16, 2006; 2006 Acts, ch 1133, §10

### **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 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 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 which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city and which designates an enterprise zone pursuant to section 15E.194, subsection 2 or 3, 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 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 July 1, 1998, 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. 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 section 15E.193B 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 or 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 or 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 section 15E.193 or 15E.193B.

97 Acts, ch 144, §5; 98 Acts, ch 1175, §12; 98 Acts, ch 1223, §17; 2001 Acts, ch 141, §6, 8; 2002 Acts, ch 1119, §120; 2004 Acts, ch 1003, §9, 12; 2006 Acts, ch 1133, §8, 10

2006 amendment to subsection 2 takes effect May 30, 2006, and applies retroactively to March 16, 2006; 2006 Acts, ch 1133, §10

### **15E.196 Incentives assistance.**

For purposes of determining the incentives or assistance provided in this section, "*eligible business*" means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195. The incentives and assistance provided under this division for businesses located in enterprise zones shall be for a period not to exceed ten years and shall include all of the following:

1. *a.* New jobs credit from withholding, as provided in section 15E.197.

*b.* (1) As an alternative to paragraph "*a*", a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(2) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified.

(3) The employer shall certify to the department of revenue that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in section 422.16.

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

3. Investment tax credit of up to ten percent, as provided in section 15.333.

4. Research activities credit, as provided in section 15.335.

5. 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 business locates or expands in an enterprise zone and which is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection 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 which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

6. Insurance premium tax credit of up to ten percent, as provided in section 15.333A.

97 Acts, ch 144, §6; 98 Acts, ch 1175, §13; 98 Acts, ch 1179, §3; 99 Acts, ch 172, §2; 2001 Acts, ch 141, §7, 8; 2003 Acts, ch 145, §286; 2004 Acts, ch 1003, §10, 12; 2005 Acts, ch 150, §52, 53, 68, 69

2005 amendments to this section apply to tax years ending on or after July 1, 2005; continuation of contracts under new jobs and income program; 2005 Acts, ch 150, §68, 69

### **15E.197 New jobs credit from withholding.**

An eligible business may enter into an agreement with the department of revenue and a community college for a supplemental new jobs credit from withholding from jobs created under the program. 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:

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 eligible business 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 auditor of state shall perform an annual audit regarding how the training funds are being used.

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 is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. For purposes of this section, "*eligible business*" means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195.

2005 Acts, ch 150, §54, 69

Section applies to tax years ending on or after July 1, 2005; 2005 Acts, ch 150, §69

**15E.198 through 15E.200** Reserved.

**15E.201 Short title.**

This division shall be known and may be cited as the "*Iowa Agricultural Industry Finance Act*".

98 Acts, ch 1207, §2

**15E.202 Definitions.**

Except as otherwise provided in this division, or unless the context otherwise requires, the words and phrases used in this division shall have the same meaning as the words and phrases used in chapter 490, including but not limited to the words and phrases used in section 490.140. In addition, all of the following shall apply:

1. "*Actively engaged in agriculture*" means to do any of the following:

a. Inspect agricultural operations periodically and furnish at least half the direct cost of the operations.

b. Regularly and frequently make or take an important part in making management decisions substantially contributing to or affecting the success of the agricultural operation.

c. Perform physical work which significantly contributes to agricultural operation.

2. "*Agricultural commodity*" means any unprocessed agricultural product, including livestock as defined in section 717.1, agricultural crops, and forestry products grown, raised, produced, or fed in this state for sale in commercial channels.

3. "*Agricultural operation*" means an operation concerned with the production of agricultural commodities for processing into agricultural processed products.

4. "*Agricultural processed product*" means an agricultural commodity that has been processed for sale in commercial markets.

5. "*Agricultural producer*" means a person who is any of the following:

a. An individual actively engaged in agricultural production.

b. A person other than an individual, if the person is any of the following:

(1) A general partnership in which all the partners are natural persons, and one of the partners is actively engaged in agricultural production.

(2) A family farm entity if any of the following individuals is actively engaged in agricultural production:

(a) A shareholder and an officer, director, or employee of a family farm corporation.

(b) A member or manager of a family farm limited liability company.

(c) A general partner of a family farm limited partnership.

(d) A beneficiary of a family trust.

(3) A networking farmers entity.

6. "*Agricultural product*" means an agricultural commodity or an agricultural processed product.

7. "*Biotechnology enterprise*" means an enterprise organized under the laws of this state using biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.

8. "*Certified facility*" means a facility used to process agricultural products as certified by a corporation pursuant to section 15E.209.

9. "*Department*" means the department of economic development as created in section 15.101.

10. "*Economic development board*" means the economic development board created pursuant to section 15.103.

11. "*Family farm entity*" means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust as defined in section 9H.1.

12. "*Iowa agricultural industry finance corporation*" or "*corporation*" means a corporation formed under this division.

13. "*Iowa agricultural industry finance loan*" means a loan made to a qualified Iowa agricultural industry finance corporation pursuant to section 15E.208.

14. "*Iowa agricultural industry venture*" means an enterprise involving any of the following:

a. Agricultural producers investing in a new facility or acquiring or expanding an existing facility in this state which is used to process agricultural commodities produced in this state, if the purpose of the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state derived from processing and marketing agricultural commodities produced in this state.

(2) Increasing production, processing, and marketing of value-added agricultural products in this state.

(3) Providing for a substantial equitable ownership interest in the enterprise by Iowa agricultural producers.

(4) Providing an alternative in this state to corporate vertical integration in the production, processing, and marketing of agricultural products.

b. An agricultural biotechnology enterprise located in this state, if the purpose of research and application of biological techniques conducted by the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state.

(2) Increasing the value of agricultural commodities.

15. "Loan" means providing financing to a person under an agreement requiring that the amount in financing be repaid at a maturity date, with an interest rate, and other conditions as specified in the agreement.

16. "Networking farmers entity" means the same as defined in section 10.1.

17. "Qualified investor" means any of the following:

- a. An agricultural producer.
- b. A cooperative organized under chapter 501 or 501A.
- c. A networking farmers entity.

18. "Qualified Iowa agricultural industry finance corporation" or "qualified corporation" means an Iowa agricultural industry financing corporation which meets the eligibility requirements of and is approved by the department pursuant to section 15E.208.

98 Acts, ch 1207, §3; 2002 Acts, ch 1050, §7; 2005 Acts, ch 135, §105

### **15E.203 Findings intent and purposes.**

1. The general assembly finds that this state is in a period when the economic structure of agriculture and the production, processing, and marketing of agricultural products is undergoing a period of rapid transformation.

2. It is the intent of the general assembly and purpose of this division that this state capture the greatest benefit from opportunities created during this period, by encouraging local agricultural producer-led ventures to expand production and processing of high value agricultural products, including agricultural processed products, to organize new business structures within the state to carry out these ventures, and to market and deliver increasingly high value agricultural products to consumers around the world. In carrying out this purpose, state resources provided by this division shall be used to assure all of the following:

- a. That the majority of the wealth created by Iowa agricultural productivity is retained in this state.
- b. That employment in the production, processing, and marketing of agricultural products, and especially agricultural processed products, is increased in this state.
- c. That agricultural producers in this state are provided with an opportunity to acquire a majority ownership interest in Iowa agricultural industry ventures promoted under this division.
- d. That this state becomes a world model for agricultural producer-based vertical cooperation which depends upon broadly shared access to information, capital, and cooperative action.
- e. That the use of private resources with state incentives establish Iowa as the world leader in responsibly produced agricultural products that meet the needs of consumers throughout the world.

3. It is the intent of the general assembly and the purpose of this division that the state encourage Iowa agricultural industry ventures which promote the research and application of biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.

98 Acts, ch 1207, §4

## Footnotes

Additional legislative findings; 98 Acts, ch 1207, §1

### **15E.204 Iowa agricultural industry finance corporations scope of powers and duties.**

1. An Iowa agricultural industry finance corporation formed under this division shall be subject to and have the powers and privileges conferred by provisions of chapter 490, unless otherwise limited by or inconsistent with the provisions of this division.
2. Nothing in this division requires any of the following:
  - a.* That a limited number of Iowa agricultural industry finance corporations are authorized to be formed. However, the department may strictly interpret and apply the requirements of this division in determining whether a corporation is a qualified corporation under section 15E.208.
  - b.* That a corporation be organized on a cooperative basis, including structured, organized, or operated pursuant to 26 U.S.C. § 1381(a).
  - c.* That a corporation is restricted from holding, acquiring, or transferring financial or security instruments, including but not limited to a security regulated under chapter 502, money, accounts, and chattel paper under chapter 554, security interests under chapter 554, or a mortgage or deed of trust under chapter 654.
3. An Iowa agricultural industry finance corporation is a private business corporation and not a public corporation or instrumentality of the state. Except as provided in this division, nothing in this division exempts an Iowa agricultural industry finance corporation from the same requirements under state law which apply to other corporations organized under chapter 490, including taxation provisions under chapter 422 or Title X, subtitle 2 of this Code, or security regulations under chapter 502.

98 Acts, ch 1207, §5

### **15E.205 Iowa agricultural industry finance corporations requirements.**

1. A corporation incorporated under chapter 490 is an Iowa agricultural industry finance corporation if the corporation complies with the requirements of this section and section 15E.206. In addition to the other requirements for a corporation organized under chapter 490, all of the following shall apply:
  - a.* Agricultural producers must hold at least fifty-one percent of the corporation's common stock and at least fifty-one percent of the corporation's voting stock. The status of an agricultural producer shall be determined at the time of the transfer of stock from the corporation to the shareholder in a manner and as provided in the corporation's articles of incorporation or bylaws.
  - b.* A director of the corporation's board of directors shall not serve for more than seven consecutive years as a board director.
  - c.* The purpose of the corporation must be limited to providing financing to eligible persons under section 15E.209 who are engaging in Iowa agricultural industry ventures limited to establishing a business structure in which agricultural producers produce agricultural commodities for processing and marketing as agricultural processed products.
2. The requirements of this section shall be memorialized in the corporation's articles of incorporation.

98 Acts, ch 1207, §6; 99 Acts, ch 66, §1

### **15E.206 Formation of an Iowa agricultural industry finance corporation.**

1. This section authorizes the formation of Iowa agricultural industry finance corporations in order to perfect the manner in which such corporations are formed and operate. Such a corporation is a private business corporation and not a public corporation or instrumentality of the state. The corporation shall not enjoy any of the privileges nor be required to comply with any of the requirements of a state agency.

2. In facilitating the formation of an Iowa agricultural industry finance corporation, the following persons shall serve as incorporators as provided in section 490.201:

- a.* The chairperson of the economic development board or a designee of the chairperson.
- b.* The director of the department of economic development, or a designee of the director.
- c.* The secretary of agriculture or a designee of the secretary.

3. *a.* After incorporation, such a corporation shall be organized by an initial board of directors as provided in chapter 490, division II. The initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the economic development board. The initial board of directors shall consist of seven members. The members of the appointment committee shall include persons who have an expertise in areas of banking, agricultural lending, business development, agricultural production and processing, seed and venture capital investment, and other areas of expertise as deemed appropriate by the interim board of directors.

*b.* The members of the appointment committee shall exercise due care to assure that persons appointed to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to agricultural lending, commercial banking, and investment management.

*c.* Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

*d.* The department shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the economic development board and the director of the department in order to administer this section.

98 Acts, ch 1207, §7

### **15E.207 Iowa agricultural industry finance corporations guiding principles.**

In carrying out its duties and exercising its powers under this division, an Iowa agricultural industry finance corporation shall be guided by the following principles:

1. The corporation must exercise diligence and care in the selection of persons and projects to receive financing as provided in section 15E.209. The corporation must apply customary and acceptable business and lending standards and practices in selecting persons and projects designated for financing and managing agreements under which financing is provided.

In selecting projects to receive financing, it is the intent of the general assembly that the corporation seek projects with wage, benefit, and work safety plans which improve the quality of employment in the state and which would not displace employees of existing Iowa agricultural industry ventures.

2. Except as otherwise provided in this section, the corporation shall not become an owner of real or

depreciable property, including agricultural land, as provided in section 9H.4. However, this subsection shall not preclude the corporation from holding an interest in real or depreciable property if any of the following apply:

*a.* The corporation holds nonagricultural property for purposes of carrying out the management of its corporate affairs, including office space, furniture, and supplies.

*b.* The corporation holds an interest in real or depreciable property on a temporary basis, and any of the following apply:

(1) The interest is a bona fide encumbrance taken for purposes of security in connection with providing financing under section 15E.209.

(2) The interest is acquired by operation of law, including by any of the following:

(a) Devise or bequest.

(b) Court order.

(c) Dissolution under chapter 490, division XIV.

(d) Order in bankruptcy.

(e) Pursuant to a proceeding to enforce a debt against real property under chapter 654, to forfeit a contract to purchase real property under chapter 656, to enforce a secured interest in real or depreciable property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach real or depreciable property in the collection of debts, or by any procedure for the enforcement of a lien or claim.

(3) The interest is acquired in order to facilitate a transfer between persons pursuant to a transaction authorized under this division.

98 Acts, ch 1207, §8

### **15E.208 Qualified corporations Iowa agricultural industry finance loans.**

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the department in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.

3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.

*a.* The department may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

*b.* The Iowa agricultural industry finance loan shall be repayable upon terms and conditions negotiated by the parties.

(1) The repayment period shall begin six years following the date when the Iowa agricultural industry finance loan is awarded and end twenty-five years after the date that the repayment period begins.

(2) At least four percent of the amount of the Iowa agricultural industry finance loan due shall be paid each year to the department. However, the department may accept an assignment of a loan made by the corporation providing financing to an eligible person pursuant to section 15E.209. The assigned loan shall grant to the department the corporation's right to payment under the loan. Any such assignment shall be made by an agreement executed by the department and the corporation. The assignment agreement shall be subject to all of the following:

(a) The period of assignment may be for any number of years. The department shall apply to the amounts due under the Iowa agricultural industry finance loan the principal, interest, and fees which the eligible person is obligated to pay under the assigned loan. The total amount of the principal, interest, and fees that the eligible person is obligated to pay to the department during the period of assignment plus any other repayment of the Iowa agricultural industry finance loan made by the corporation to the department must equal the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay the department during that same period. However, the agreement may provide that during any year of the assignment period the eligible person may pay more or less than four percent of the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay during that year.

(b) The assignment agreement shall contain conditions relating to the right of payment assigned to the department which may include securing the payment obligation in any manner that allows the department to enforce a debt against the property of the eligible person. The department shall not have a right of recourse against the corporation for any amount required to be applied from the assigned loan to the Iowa agricultural industry finance loan.

(c) Notwithstanding any provision of this division to the contrary, payments on the principal balance of the loan granted by the corporation to an eligible person and assigned to the department pursuant to this subparagraph during calendar year 2003 shall be deferred until October 1, 2007. The eligible person shall make principal payments to the department in the amount of one million dollars for each year on October 1, 2007, October 1, 2008, and October 1, 2009. The eligible person shall pay the department four hundred eighty-two thousand seven hundred sixty-one dollars in interest, which shall be deemed to be the total amount of interest accruing on the principal amount of the loan. The eligible person shall pay the interest amount on October 1, 2010. Upon the payment of the principal balance of the loan and the accrued interest, the debt shall be retired.

(d) Notwithstanding any provision of this division to the contrary, the corporation shall repay the department the principal balance of the Iowa agricultural industry finance loan beginning on October 1, 2007. The principal balance of the loan equals twenty-one million five hundred seventeen thousand two hundred thirty-nine dollars. The corporation shall repay the department five hundred seventeen thousand two hundred thirty-nine dollars by October 1, 2007, and for each subsequent year the corporation shall repay the department at least one million dollars by October 1 until the total principal balance of the loan is repaid. This subparagraph subdivision shall not be construed to limit the department's authority to negotiate the payment of interest accruing on the principal balance which shall be paid to the department as provided by an agreement executed by the department and the corporation.

(e) Notwithstanding any provision of this division to the contrary, payments of principal and interest of the loan granted by the corporation to an eligible person and assigned to the department pursuant to this subparagraph during calendar year 2003 which were deferred pursuant to subparagraph subdivision (c) shall be forgiven and the total debt, including interest, shall be retired.

(3) The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B or 459, subchapters II and III, concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 459.604.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

*e.* To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

*f.* Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

*g.* The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

*a.* Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the department.

*b.* Violates the terms of the loan agreement executed between the department and the corporation, which violation is not approved by the department.

*c.* Fails to comply with the requirements of section 15E.205.

*d.* Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

98 Acts, ch 1207, §9; 99 Acts, ch 66, §2; 2000 Acts, ch 1058, §6; 2001 Acts, ch 55, §20, 38; 2002 Acts, ch 1162, §29; 2003 Acts, ch 122, §1, 2; 2004 Acts, ch 1175, §324; 2006 Acts, ch 1185, §55

#### **15E.209 Financing provided by an Iowa agricultural industry finance corporation.**

1. An Iowa agricultural industry finance corporation may only provide financing to a person determined eligible by the corporation according to requirements of the corporation and this section. At a minimum, an eligible person must be one of the following:

*a.* An agricultural producer participating in an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural producer and the corporation. The agreement may require that the agricultural producer acquire an interest in an agricultural products processor certified by the corporation, or enter into a marketing agreement under which the agricultural producer agrees to market an amount of the agricultural producer's agricultural commodities to the agricultural products processor.

*b.* An agricultural products processor which participates as part of an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural products processor and the corporation. The corporation shall only provide financing if the venture involves the construction, expansion, or acquisition of an agricultural products processing facility as certified by the corporation and if all of the following apply:

(1) The certified facility must be located in this state.

(2) Either of the following apply:

(a) More than fifty percent of the ownership interest in the certified facility must be held by qualified investors. If the certified facility is owned by an entity rather than by individuals, more than fifty percent of the interest in the entity and more than fifty percent of the voting interest in the entity must be held by qualified investors.

(b) More than fifty percent of the commodities processed by the certified facility during any twelve-month period is produced in this state. However, the corporation may provide financing, if its board of directors determines that adequate supplies of the commodity are not available for processing as otherwise required in

this subparagraph subdivision.

c. An agricultural biotechnology enterprise which qualifies as an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural biotechnology enterprise and the corporation, if the board of directors for the corporation determines that the enterprise would advance the intent and purposes set out in section 15E.203.

2. Financing may be in the form of a loan, loan guarantee, sale and purchase of mortgage instruments for eligible recipients, or other similar forms of financing. The financing shall be awarded pursuant to an agreement between the corporation and the eligible person.

3. A corporation shall not provide financing to support an outstanding debt or other obligation, regardless of whether the original financing was provided by a corporation.

98 Acts, ch 1207, §10

#### **15E.210 Obligations.**

The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except for those of the corporation.

98 Acts, ch 1207, §11

#### **15E.211 Rules.**

The department may adopt rules pursuant to chapter 17A necessary to administer this division.

98 Acts, ch 1207, §12

**15E.212 through 15E.220** Reserved.

#### **15E.221 Short title.**

This division shall be known and may be cited as the "*Iowa Economic Development Loan and Credit Guarantee Fund Act*".

2003 Acts, 1st Ex, ch 1, §101, 133

[2003 enactment of this section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §24, 29

#### **15E.222 Legislative finding purposes.**

1. The general assembly finds all of the following:

a. That small and medium-sized businesses, in general, and certain targeted industry businesses and other qualified businesses, in particular, may not qualify for conventional financing.

b. That the limited availability of credit for export transactions limits the ability of small and medium-sized

businesses in this state to compete in international markets.

c. That, to enhance competitiveness and foster economic development, this state must focus on growth in certain specific targeted industry businesses and other qualified businesses, especially during a time of war.

d. That the challenge for the public economic sector is to create an atmosphere conducive to economic growth, in conjunction with financial institutions in the private sector, which fill the gaps in credit availability and export finance, and that allow the private sector to identify the lending opportunities and foster decision making at the local level.

2. The general assembly declares the purposes of this division to be all of the following:

a. To create incentives and assistance to increase the flow of private capital to targeted industry businesses and other qualified businesses.

b. To promote industrial modernization and technology adoption.

c. To encourage the retention and creation of jobs.

d. To encourage the export of goods and services sold by Iowa businesses in national and international markets.

2003 Acts, 1st Ex, ch 1, §102, 133

[2003 enactment of this section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §24, 29

### **15E.223 Definitions.**

As used in this division, unless the context otherwise requires:

1. "*Financial institution*" means an institution listed in section 422.61, subsection 1, or such other financial institution as defined by the department for purposes of this division.

2. "*Program*" means the loan and credit guarantee program established in this division.

3. "*Qualified business*" means an existing or proposed business entity with an annual average number of employees not exceeding two hundred employees. "*Qualified business*" does not include businesses engaged primarily in retail sales, real estate, or the provision of health care or other professional services. "*Qualified business*" includes professional services businesses that provide services to targeted industry businesses or other entities.

4. "*Targeted industry business*" means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph "a", and any other industry designated as a targeted industry by the department.

2003 Acts, 1st Ex, ch 1, §103, 133

[2003 enactment of this section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

**15E.224 Loan and credit guarantee program.**

1. The department shall establish and administer a loan and credit guarantee program. The department, pursuant to agreements with financial institutions, shall provide loan and credit guarantees, or other forms of credit guarantees for qualified businesses and targeted industry businesses for eligible project costs. The department may invest up to ten percent of the assets of the loan and credit guarantee fund, or five hundred thousand dollars, whichever is greater, to provide loan and credit guarantees or other forms of credit guarantees for eligible project costs to microenterprises located in a municipality with a population under fifty thousand that is not contiguous to a municipality with a population of fifty thousand or more. For purposes of this division, "*microenterprise*" means a business providing services with five or fewer full-time equivalent employee positions. A loan or credit guarantee provided under the program may stand alone or may be used in conjunction with or to enhance other loans or credit guarantees offered by private, state, or federal entities. The department may purchase insurance to cover defaulted loans meeting the requirements of the program. However, the department shall not in any manner directly or indirectly pledge the credit of the state. Eligible project costs include expenditures for productive equipment and machinery, working capital for operations and export transactions, research and development, marketing, and such other costs as the department may so designate.

2. A loan or credit guarantee or other form of credit guarantee provided under the program to a participating financial institution for a single qualified business or targeted industry business shall not exceed one million dollars in value. Loan or credit guarantees or other forms of credit guarantees provided under the program to more than one participating financial institution for a single qualified business or targeted industry business shall not exceed ten million dollars in value.

3. In administering the program, the department shall consult and cooperate with financial institutions in this state. Administrative procedures and application procedures, as practicable, shall be responsive to the needs of qualified businesses, targeted industry businesses, and financial institutions, and shall be consistent with prudent investment and lending practices and criteria.

4. Each participating financial institution shall identify and underwrite potential lending opportunities with qualified businesses and targeted industry businesses. Upon a determination by a participating financial institution that a qualified business or targeted industry business meets the underwriting standards of the financial institution, subject to the approval of a loan or credit guarantee, the financial institution shall submit the underwriting information and a loan or credit guarantee application to the department.

5. The department shall adopt a loan or credit guarantee application procedure for a financial institution on behalf of a qualified business, microenterprise, or targeted industry business.

6. Upon approval of a loan or credit guarantee, the department shall enter into a loan or credit guarantee agreement with the participating financial institution. The agreement shall specify all of the following:

- a. The fee to be charged to the financial institution.
- b. The evidence of debt assurance of, and security for, the loan or credit guarantee.
- c. A loan or credit guarantee that does not exceed fifteen years.
- d. Any other terms and conditions considered necessary or desirable by the department.

7. The department may adopt loan and credit guarantee application procedures that allow a qualified business, microenterprise, or targeted industry business to apply directly to the department for a preliminary

guarantee commitment. A preliminary guarantee commitment may be issued by the department subject to the qualified business, microenterprise, or targeted industry business securing a commitment for financing from a financial institution. The application procedures shall specify the process by which a financial institution may obtain a final loan and credit guarantee.

2003 Acts, 1st Ex, ch 1, §104, 133

[2003 enactment of this section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §24, 26, 29; 2005 Acts, ch 150, §39

#### **15E.225 Terms fees.**

1. When entering into a loan or credit guarantee agreement, the department shall establish fees and other terms for participation in the program by qualified businesses and targeted industry businesses.
2. The department, with due regard for the possibility of losses and administrative costs, shall set fees and other terms at levels sufficient to assure that the program is self-financing.
3. For a preliminary guarantee commitment, the department may charge a qualified business, microenterprise, or targeted industry business a preliminary guarantee commitment fee. The application fee shall be in addition to any other fees charged by the department under this section and shall not exceed one thousand dollars for an application.

2003 Acts, 1st Ex, ch 1, §105, 133

[2003 enactment of this section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §24, 27, 29; 2005 Acts, ch 150, §40

#### **15E.226 Reserved.**

2003 amendments made in 2003 Acts, 1st Ex, ch 1, and establishing section 15E.226 stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193

#### **15E.227 Loan and credit guarantee fund.**

1. A loan and credit guarantee fund is created and established as a separate and distinct fund in the state treasury. Moneys in the fund shall only be used for purposes provided in this section. The moneys in the fund are appropriated to the department to be used for all of the following purposes:
  - a. Payment of claims pursuant to loan and credit guarantee agreements entered into under this division.
  - b. Payment of administrative costs of the department for actual and necessary administrative expenses incurred by the department in administering the program.
  - c. Purchase or buyout of superior or prior liens, mortgages, or security interests.
  - d. Purchase of insurance to cover the default of loans made pursuant to the requirements of the loan and credit guarantee program.
2. Moneys in the loan and credit guarantee fund shall consist of all of the following:

*a.* Moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department for placement in the fund.

*b.* Proceeds from collateral assigned to the department, fees for guarantees, gifts, and moneys from any grant made to the fund by any federal agency.

3. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on the moneys in the fund shall be credited to the fund.

4. *a.* The department shall only pledge moneys in the loan and credit guarantee fund and not any other moneys of the department. In a fiscal year, the department may pledge an amount not to exceed the total amount appropriated to the fund for the same fiscal year to assure the repayment of loan and credit guarantees or other extensions of credit made to or on behalf of qualified businesses or targeted industry businesses for eligible project costs.

*b.* The department shall not pledge the credit or taxing power of this state or any political subdivision of this state or make debts payable out of any moneys except for those in the loan and credit guarantee fund.

2003 Acts, 1st Ex, ch 2, §81, 209; 2004 Acts, 1st Ex, ch 1001, §28, 29

For future repeal of this section, effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93

**15E.228 through 15E.230** Reserved.

**15E.231 Economic development regions.**

1. In order for an economic development region to receive moneys from the grow Iowa values fund created in section 15G.108, an economic development region's regional development plan must be approved by the department. An economic development region shall consist of not less than three counties, unless two contiguous counties have a combined population of at least three hundred thousand based on the most recent federal decennial census. An economic development region shall establish a focused economic development effort that shall include a regional development plan relating to one or more of the following areas:

*a.* Regional marketing strategies.

*b.* Development of the information solutions sector.

*c.* Development of the advanced manufacturing sector.

*d.* Development of the life sciences and biotechnology sector.

*e.* Development of the insurance or financial services sector.

*f.* Physical infrastructure including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure.

*g.* Entrepreneurship.

*h.* Development of the alternative and renewable energy sector.

2. An economic development region may create an economic development region revolving fund as provided in section 15E.232.

**15E.232 Economic development region revolving funds tax credits.**

1. An economic development region may create an economic development region revolving fund.
  2. *a.* A nongovernmental entity making a contribution to an economic development region revolving fund, except those described in paragraph "b", may claim a tax credit equal to twenty percent of the amount contributed to the revolving fund. The tax credit shall be allowed against taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24. An individual may claim under this subsection the tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following ten years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. A tax credit under this section is not transferable.
  - b.* Subject to the provisions of paragraph "c", an organization exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code making a contribution to an economic development region revolving fund, shall be paid from the general fund of the state an amount equal to twenty percent of such contributed amount within thirty days after the end of the fiscal year during which the contribution was made.
  - c.* The total amount of tax credits and payments to contributors, referred to as the credit amount, authorized during a fiscal year shall not exceed two million dollars plus any unused credit amount carried over from previous years. Any credit amount which remains unused for a fiscal year may be carried forward to the succeeding fiscal year. The maximum credit amount that may be authorized in a fiscal year for contributions made to a specific economic development region revolving fund is equal to two million dollars plus any unused credit amount carried over from previous years divided by the number of economic development region revolving funds existing in the state.
  - d.* The department of economic development shall administer the authorization of tax credits under this section and payments to contributors described in paragraph "b" and shall, in cooperation with the department of revenue, adopt rules pursuant to chapter 17A necessary for the administration of this section.
3. An economic development region may apply for financial assistance from the grow Iowa values fund to assist with the installation of physical infrastructure needs including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure, related to the development of fully served business and industrial sites by one or more of the region's economic development partners or for the installation of infrastructure related to a new business location or expansion. In order to receive financial assistance pursuant to this subsection, the economic development region must demonstrate all of the following:
  - a.* The ability to provide matching moneys on a basis of a one dollar contribution of local matching moneys for every two dollars received from the grow Iowa values fund.
  - b.* The commitment of the specific business partner including, but not limited to, a letter of intent defining a capital commitment or a percentage of equity.
  - c.* That all other funding alternatives have been exhausted.
4. The department may establish and administer a regional economic development revenue sharing pilot project for one or more regions. The department shall take into consideration the geographical dispersion of

the pilot projects. The department shall provide technical assistance to the regions participating in a pilot project.

5. An economic development region may apply for financial assistance from the grow Iowa values fund to assist an existing business threatened with closure due to a potential consolidation to an out-of-state location. The economic development region may apply for financial assistance from the grow Iowa values fund for the purchase, rehabilitation, or marketing of a building that has become available due to the closing of an existing business due to a consolidation to an out-of-state location. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every three dollars received from the grow Iowa values fund.

6. An economic development region may apply for financial assistance from the grow Iowa values fund to establish and operate an entrepreneurial initiative. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every two dollars received from the grow Iowa values fund.

7. *a.* An economic development region may apply for financial assistance from the grow Iowa values fund to establish and operate a business succession assistance program for the region.

*b.* In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every two dollars received from the grow Iowa values fund.

8. An economic development region may apply for financial assistance from the grow Iowa values fund to implement economic development initiatives that are either unique to the region or innovative in design and implementation. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a one-to-one basis.

9. Financial assistance under subsections 3, 5, 6, 7, and 8, and section 15E.233 shall be limited to a total of one million dollars each fiscal year for the fiscal period beginning July 1, 2005, and ending June 30, 2015, and shall not be provided to assist in the establishment, operation, or installation of a project, initiative, or activity that may result in the provision, lease, or sale of goods or services by a government body that competes with private enterprise.

2005 Acts, ch 150, §10

### **15E.233 Economic enterprise areas.**

1. An economic development region may apply to the department for approval to be designated as an economic enterprise area based on criteria provided in subsection 3. The department shall approve no more than ten regions as economic enterprise areas.

2. *a.* An approved economic enterprise area may apply to the department for financial assistance from the grow Iowa values fund for up to seventy-five thousand dollars each fiscal year during the fiscal period beginning July 1, 2005, and ending June 30, 2015, for any of the following purposes:

(1) Economic development-related strategic planning and marketing for the region as a whole.

(2) Economic development of fully-served business sites.

(3) The construction of speculative buildings on a fully served lot.

(4) The rehabilitation of an existing building to marketable standards.

b. In order to receive financial assistance under this subsection, an economic enterprise area must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every three dollars received from the grow Iowa values fund.

3. An economic enterprise area shall consist of at least one county containing no city with a population of more than twenty-three thousand five hundred and shall meet at least three of the following criteria:

a. A per capita income of eighty percent or less than the national average.

b. A household median income of eighty percent or less than the national average.

c. Twenty-five percent or more of the population of the economic enterprise area with an income level of one hundred fifty percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

d. A population density in the economic enterprise area of less than ten people per square mile.

e. A loss of population as shown by the 2000 certified federal census when compared with the 1990 certified federal census.

f. An unemployment rate greater than the national rate of unemployment.

g. More than twenty percent of the population of the economic enterprise area consisting of people over the age of sixty-five.

2005 Acts, ch 150, §11

**15E.234 through 15E.300** Reserved.

**15E.301 Short title.**

This division shall be known as and may be cited as the "*Endow Iowa Program Act*".

2003 Acts, 1st Ex, ch 1, §88, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4

2004 reaffirmation and reenactment is effective September 7, 2004, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date; 2004 Acts, 1st Ex, ch 1001, §4

**15E.302 Purpose.**

The purpose of this division is to enhance the quality of life for citizens of this state through increased philanthropic activity by providing capital to new and existing citizen groups of this state organized to establish endowment funds that will address community needs. The purpose of this division is also to encourage individuals, businesses, and organizations to invest in community foundations.

2003 Acts, 1st Ex, ch 1, §89, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4

2004 reaffirmation and reenactment is effective September 7, 2004, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date; 2004 Acts, 1st Ex, ch 1001, §4

### **15E.303 Definitions.**

As used in this division, unless the context otherwise requires:

1. "*Board*" means the governing board of the lead philanthropic entity identified by the department pursuant to section 15E.304.
2. "*Business*" means a business operating within the state and includes individuals operating a sole proprietorship or having rental, royalty, or farm income in this state and includes a consortium of businesses.
3. "*Community affiliate organization*" means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in this state with the intention of establishing a community affiliate endowment fund.
4. "*Endow Iowa qualified community foundation*" means a community foundation organized or operating in this state that substantially complies with the national standards established by the national council on foundations as determined by the department in collaboration with the Iowa council of foundations.
5. "*Endowment gift*" means an irrevocable contribution to a permanent endowment held by an endow Iowa qualified community foundation.
6. "*Lead philanthropic entity*" means the entity identified by the department pursuant to section 15E.304.

2003 Acts, 1st Ex, ch 1, §90, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4; 2005 Acts, ch 150, §71, 81

2004 reaffirmation and reenactment is effective September 7, 2004, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date; 2004 Acts, 1st Ex, ch 1001, §4

2005 amendments to this section take effect June 9, 2005, and apply retroactively to January 1, 2005; 2005 Acts, ch 150, §81

### **15E.304 Endow Iowa grants.**

1. The department shall identify a lead philanthropic entity for purposes of encouraging the development of qualified community foundations in this state. A lead philanthropic entity shall meet all of the following qualifications:

a. The entity shall be a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code.

b. The entity shall be a statewide organization with membership consisting of organizations, such as community, corporate, and private foundations, whose principal function is the making of grants within the

state of Iowa.

c. The entity shall have a minimum of forty members and that membership shall include qualified community foundations.

2. A lead philanthropic entity may receive a grant from the department. The board shall use the grant moneys to award endow Iowa grants to new and existing qualified community foundations and to community affiliate organizations that do all of the following:

a. Provide the board with all information required by the board.

b. Demonstrate a dollar-for-dollar funding match in a form approved by the board.

c. Identify an endow Iowa qualified community foundation to hold all funds. An endow Iowa qualified community foundation shall not be required to meet this requirement.

d. Provide a plan to the board demonstrating the method for distributing grant moneys received from the board to organizations within the community or geographic area as defined by the endow Iowa qualified community foundation or the community affiliate organization.

3. Endow Iowa grants awarded to new and existing endow Iowa qualified community foundations and to community affiliate organizations shall not exceed twenty-five thousand dollars per foundation or organization unless a foundation or organization demonstrates a multiple county or regional approach. Endow Iowa grants may be awarded on an annual basis with not more than three grants going to one county in a fiscal year.

4. In ranking applications for grants, the board shall consider a variety of factors including the following:

a. The demonstrated need for financial assistance.

b. The potential for future philanthropic activity in the area represented by or being considered for assistance.

c. The proportion of the funding match being provided.

d. For community affiliate organizations, the demonstrated need for the creation of a community affiliate endowment fund in the applicant's geographic area.

e. The identification of community needs and the manner in which additional funding will address those needs.

f. The geographic diversity of awards.

5. Of any moneys received by a lead philanthropic entity from the state, not more than five percent of such moneys shall be used by the entity for administrative purposes.

2003 Acts, 1st Ex, ch 1, §91, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4; 2005 Acts, ch 150, §72, 73, 81

2004 reaffirmation and reenactment is effective September 7, 2004, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date; 2004 Acts, 1st Ex, ch 1001, §4

2005 amendments to this section take effect June 9, 2005, and apply retroactively to January 1, 2005; 2005 Acts, ch 150, §81

### **15E.305 Endow Iowa tax credit.**

1. For tax years beginning on or after January 1, 2003, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24 equal to twenty percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. A tax credit shall be allowed only for an endowment gift made to an endow Iowa qualified community foundation for a permanent endowment fund established to benefit a charitable cause in this state. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

2. The aggregate amount of tax credits authorized pursuant to this section shall not exceed a total of two million dollars annually. The maximum amount of tax credits granted to a taxpayer shall not exceed five percent of the aggregate amount of tax credits authorized.

Ten percent of the aggregate amount of tax credits authorized in a calendar year shall be reserved for those endowment gifts in amounts of thirty thousand dollars or less. If by September 1 of a calendar year the entire ten percent of the reserved tax credits is not distributed, the remaining tax credits shall be available to any other eligible applicants.

3. A tax credit shall not be transferable to any other taxpayer.

4. A tax credit shall not be authorized pursuant to this section after December 31, 2008.

5. The department shall develop a system for registration and authorization of tax credits under this section and shall control the distribution of all tax credits to taxpayers providing an endowment gift subject to this section. The department shall adopt administrative rules pursuant to chapter 17A for the qualification and administration of endowment gifts.

2003 Acts, 1st Ex, ch 2, §83, 89; 2005 Acts, ch 150, §7477, 81

Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 2, §89

For future repeal of this section effective June 30, 2010, and the strike of that repeal, effective July 1, 2007, see 2003 Acts, 1st Ex, ch 2, §93; 2006 Acts, ch 1151, § 7, 8

2005 amendments to this section take effect June 9, 2005, and apply retroactively to January 1, 2005; intent regarding issuance of tax credits; 2005 Acts, ch 150, §80, 81

For future amendments to subsections 2 and 4 effective July 1, 2007, see 2006 Acts, ch 1151, § 13, 7, 8

### **15E.306 Reports.**

By January 31 of each year, the lead philanthropic entity, in cooperation with the department, shall publish an annual report of the activities conducted pursuant to this division during the previous calendar year and shall

submit the report to the governor and the general assembly. The annual report shall include a listing of endowment funds and the amount of tax credits authorized by the department.

2003 Acts, 1st Ex, ch 1, §92, 93

[2003 enactment of section rescinded pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, 1st Ex, ch 1001, §3, 4

2004 reaffirmation and reenactment is effective September 7, 2004, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date; 2004 Acts, 1st Ex, ch 1001, §4

**15E.307 through 15E.310** Reserved.

**15E.311 County endowment fund.**

1. The purpose of this section is to enhance the quality of life for citizens of Iowa by providing moneys to new or existing citizen groups of this state organized to establish county affiliate funds or community foundations that will address countywide needs.
2. A county endowment fund is created in the state treasury under the control of the department of revenue. The fund consists of all moneys appropriated to the fund. Moneys in the fund shall be distributed by the department as provided in this section.
3.
  - a. At the end of each fiscal year, moneys in the fund shall be transferred into separate accounts within the fund and designated for use by each county in which no licensee authorized to conduct gambling games under chapter 99F was located during that fiscal year. Moneys transferred to county accounts shall be divided equally among the counties. Moneys transferred into an account for a county shall be transferred by the department to an eligible county recipient for that county. Of the moneys transferred, an eligible county recipient shall distribute seventy-five percent of the moneys as grants to charitable organizations for charitable purposes in that county and shall retain twenty-five percent of the moneys for use in establishing a permanent endowment fund for the benefit of charitable organizations for charitable purposes.
  - b. If a county does not have an eligible county recipient, moneys in the account for that county shall remain in that account until an eligible county recipient for that county is established.
4. As used in this section, unless the context otherwise requires:
  - a. "*Charitable organization*" means an organization that is described in section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code or an organization that is established for a charitable purpose.
  - b. "*Charitable purpose*" means a purpose described in section 501(c)(3) of the Internal Revenue Code, or a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.
  - c. "*Eligible county recipient*" means an endow Iowa qualified community foundation or community affiliate organization, as defined in section 15E.303, that is selected, in accordance with the procedures described in section 15E.304, to receive moneys from an account created in this section for a particular county. To be selected as an eligible county recipient, a community affiliate organization shall establish a county affiliate fund to receive moneys as provided by this section.
5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the county

endowment fund shall be credited to the county endowment fund. Notwithstanding section 8.33, moneys credited to the county endowment fund shall not revert at the close of a fiscal year.

6. Three percent of the moneys deposited in the county endowment fund shall be used by the lead philanthropic organization identified by the department pursuant to section 15E.304 for purposes of administering and marketing the county endowment fund.

2004 Acts, ch 1136, §1; 2005 Acts, ch 150, §78, 79, 81

2005 amendments to this section take effect June 9, 2005, and apply retroactively to January 1, 2005; 2005 Acts, ch 150, §81

For future amendments to subsections 3 and 6 effective July 1, 2007, see 2006 Acts, ch 1151, § 4, 5, 8

**15E.312 through 15E.350** Reserved.

**15E.351 Business accelerators.**

1. The department shall establish and administer a business accelerator program to provide financial assistance for the establishment and operation of a business accelerator for technology-based, value-added agricultural, information solutions, alternative and renewable energy including the alternative and renewable energy sectors listed in section 476.42, subsection 1, paragraph "a", or advanced manufacturing start-up businesses or for a satellite of an existing business accelerator. The program shall be designed to foster the accelerated growth of new and existing businesses through the provision of technical assistance. The department shall use moneys appropriated to the department from the grow Iowa values fund pursuant to section 15G.111, subsection 1, subject to the approval of the economic development board, to provide financial assistance under this section.

2. In determining whether a business accelerator qualifies for financial assistance, the department must find that a business accelerator meets all of the following criteria:

*a.* The business accelerator must be a not-for-profit organization affiliated with an area chamber of commerce, a community or county organization, or economic development region.

*b.* The geographic area served by a business accelerator must include more than one county.

*c.* The business accelerator must possess the ability to provide service to a specific type of business as well as to meet the broad-based needs of other types of start-up entrepreneurs.

*d.* The business accelerator must possess the ability to market business accelerator services in the region and the state.

*e.* The business accelerator must possess the ability to communicate with and cooperate with other business accelerators and similar service providers in the state.

*f.* The business accelerator must possess the ability to engage various funding sources for start-up entrepreneurs.

*g.* The business accelerator must possess the ability to communicate with and cooperate with various entities for purposes of locating suitable facilities for clients of the business accelerator.

*h.* The business accelerator must possess the willingness to accept referrals from the department of economic development.

3. In determining whether a business accelerator qualifies for financial assistance, the department may consider any of the following:

*a.* The business experience of the business accelerator's professional staff.

*b.* The business plan review capacity of the business accelerator's professional staff.

*c.* The business accelerator's professional staff with demonstrated experience in all aspects of business disciplines.

*d.* The business accelerator's professional staff with access to external service providers including legal, accounting, marketing, and financial services.

4. In order to receive financial assistance under this section, the financial assistance recipient must demonstrate the ability to provide matching moneys on a basis of a two dollar contribution of recipient moneys for every one dollar received in financial assistance.

2005 Acts, ch 150, §12; 2006 Acts, ch 1030, § 4; 2006 Acts, ch 1142, §19