

CHAPTER 64
NEW CAPITAL INVESTMENT PROGRAM

261—64.1(80GA,HF677) Purpose. The purpose of the new capital investment program is to promote new economic development through new capital investments that upgrade and expand the capabilities of Iowa businesses by allowing the businesses to be more competitive in the world economy.

261—64.2(80GA,HF677) Definitions.

“*Act*” means 2003 Iowa Acts, House File 677.

“*Average county wage*” means the average wage the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“*Biotechnology-related processes*” means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

“*Board*” means the Iowa department of economic development board.

“*Capital investment*” means:

1. The costs of manufacturing machinery and equipment and computers, as defined in Iowa Code section 427A.1(1) “*e*” and “*j*,” which are purchased for use in the operation of the business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

2. The cost of improvements made to real property that is used in the operation of the business.

3. The purchase price of real property and any existing buildings and structures located on the real property. For purposes of this definition, if the business is leasing the property, the overall cost or value of the lease shall constitute a capital investment if the lease is treated as a capital transaction for tax purposes. A capital transaction for tax purposes means that the asset must be depreciated for federal income tax purposes. The business must be depreciating the leased property on the business’s income tax return in order to claim an investment tax credit for the cost or value of the leased property.

“*Community*” means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

“*Comprehensive health benefits*” means a standard medical insurance plan provided by the business and of which the business pays at least 80 percent of the premiums for employee-only coverage. The department shall determine what constitutes a standard medical insurance plan. Additional health benefits provided and paid for by the business may be considered in situations in which the business is paying a lesser percentage of the medical premiums. Additional health benefits include dental insurance, vision insurance, prescription drug coverage and health promotion programs.

“*Department*” means the Iowa department of economic development.

“*Director*” means the director of the Iowa department of economic development.

“*Full-time*” means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“*Job creation goal*” means the number of new high-quality jobs that the business pledged to create in its application.

“*Program*” means the new capital investment program.

“*Project*” means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the program and for which the business requests benefits. A project may include the start-up, location, or expansion of a business.

“*Project completion*” means the date of completion of all improvements necessary for the start-up, location, or expansion of the business within the community.

“*Project initiation*” means any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

"Retained jobs" means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.

"Tax credit certificate" means a document issued by the department to an approved business which indicates the amount of unused investment tax credit the business may receive in the form of a refund.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—64.3(80GA,HF677) Applying for benefits.

64.3(1) Eligibility requirements. To be eligible to receive benefits under this program, a business shall meet all of the following requirements:

a. Business closures. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

b. Retail businesses. The business is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

c. Capital investment. The business shall make a new capital investment of at least \$1 million within three years of application approval.

d. Environmental or worker safety violations. The business has not, within the five years prior to the application date, violated state or federal environmental or worker safety statutes, rules or regulations. If such violations have occurred, the business must demonstrate that there were mitigating circumstances or that such violations did not seriously affect public health or safety or the environment. The business shall provide with the application an affidavit stating that this requirement has been met.

e. Project initiation. A business shall not be eligible for benefits under this program if the project for which it is requesting benefits has been initiated.

f. Violations of law. If the department finds that a business has a record of violations of law over a three-year period that tends to show a consistent pattern, the business shall not be eligible for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental statute, regulation, or rule is the previous five years as required by Iowa Code section 15A.1(3) "a."

64.3(2) Application. The department shall develop a standardized application and make it available to a business applying for benefits. The application procedures are as follows:

a. Applications may be submitted at any time.

b. The community in which the business's project will be located shall review the application to determine whether the business is eligible for benefits. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits to the department.

c. Each application received from a community will be reviewed by the department. The department may request additional information from the business applying for benefits or use other resources to obtain the needed information.

d. Department staff will rate applications according to the criteria in subrule 64.3(3).

e. Decision making on applications.

(1) Applications which involve the creation of 50 or more new jobs and a capital investment equal to or greater than the minimum capital investment required by the new jobs and income program shall be referred to the board. The minimum capital investment required by the new jobs and income program is \$10 million indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce. Department staff will prepare a report for the board which includes the staff recommendation and the application's rating. The board will make the final decision to approve, defer, or deny the application.

(2) For all other applications, department staff will present their recommendation and the application's rating to the director. The director will make the final decision to approve, defer, or deny the application.

f. Written notification of the board's or the director's decision will be sent to the business within two weeks of the date on which the decision is made.

64.3(3) Application rating system. Each application will be reviewed and rated using the following criteria:

a. Community and state impacts. Factors to be considered include, but are not limited to, the following:

(1) Impact of the proposed project on the community and the state.

(2) Local/regional community funding match.

(3) Impact on in-state competitors.

Maximum – 20 points.

b. Impact on current and new jobs. Factors to be considered include, but are not limited to, the following:

(1) Impact on the business's current employees, including the potential for increased skills and wages, as a result of this project.

(2) Total number of jobs to be created as the result of the project and the starting wages for these jobs.

(3) Number of high-quality jobs to be created. "High-quality jobs" means new full-time or new career-type positions that have a starting wage equal to or greater than the average county wage.

(4) Number of retained jobs.

(5) Other characteristics that contribute to the quality of jobs, including, but not limited to, turnover rate, safe working environment, and additional fringe benefits.

Maximum – 35 points.

c. Impact on the business. Factors to be considered include, but are not limited to, the following:

(1) Impact that the investment will have on the ability of the business to expand, upgrade, or modernize its capabilities.

(2) The extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.

(3) Potential for future growth in the industry.

Maximum – 30 points.

d. Insurance benefits. The business provides comprehensive health benefits, as defined in rule 261—64.2(80GA, HF677), to all full-time employees. If the business meets this criterion, it will receive 15 points.

The maximum total score possible is 100 points. Projects that score less than 60 points will not be recommended for approval to the board or the director.

64.3(4) Project period. An approved business must complete its project within three years of the application approval date. If the project involves the creation of new high-quality jobs, the approved business must, upon reaching its job creation goal, maintain those jobs for two additional years.

64.3(5) Negotiations. The department reserves the right to enter into negotiations with a business regarding the amount of benefits the business may be eligible to receive. The department reserves the right to negotiate the amount of all benefits except the refund of sales, services, and use taxes paid to contractors and subcontractors.

261—64.4(80GA, HF677) Benefits. The following benefits may be available to an approved business. The amount of the benefits will be negotiated by the department with the approved business and reflected in the executed agreement.

64.4(1) Sales, services, and use tax refund. Pursuant to Iowa Code section 15.331A, the approved business shall be entitled to a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility being built, expanded, or rehabilitated as part of the project. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive a refund of sales, services, and use taxes paid to contractors or subcontractors, the approved business must, within one year after project completion, make an application to the Iowa department of revenue.

64.4(2) Research activities credit. Pursuant to Iowa Code section 15.335, the approved business shall be entitled to a research activities credit. This tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal) or division III (corporate). This incentive is a tax credit for increasing research activities in this state during the period the business is participating in the program. This credit may equal up to 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33, subsection 5. If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the approved business with interest computed under Iowa Code section 422.25. This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. In lieu of claiming a refund, the approved business may elect to have the overpayment credited to its tax liability for the following year.

64.4(3) Investment tax credit or insurance premium tax credit.

a. Investment tax credit. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the approved project. The percentage shall be equal to the amount provided in paragraph "c." 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 first.

The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an 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 from the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

The approved business may not claim an investment tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. Insurance premium tax credits. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the start-up, location, or expansion of an approved business under the program. The percentage shall be equal to the amount provided in paragraph "c." The tax credit shall be allowed against taxes imposed in Iowa Code 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 first. The approved business may not claim an insurance premium tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. Tax credit percentage. The amount of tax credit claimed under this subrule shall be determined as follows:

(1) If the department determines, based on the application of the approved business, that high-quality jobs are not created but economic activity within the state is advanced, the approved business may claim a tax credit of up to 1 percent of the amount of new capital investment, as described in the agreement.

(2) If the department determines, based on the application of the approved business, that one to five high-quality jobs are created, the approved business may claim a tax credit of up to 2 percent of the amount of new capital investment, as described in the agreement.

(3) If the department determines, based on the application of the approved business, that six to ten high-quality jobs are created, the approved business may claim a tax credit of up to 3 percent of the amount of new capital investment, as described in the agreement.

(4) If the department determines, based on the application of the approved business, that 11 to 15 high-quality jobs are created, the approved business may claim a tax credit of up to 4 percent of the amount of new capital investment, as described in the agreement.

(5) If the department determines, based on the application of the approved business, that 16 or more high-quality jobs are created, the approved business may claim a tax credit of up to 5 percent of the amount of new capital investment, as described in the agreement.

64.4(4) Investment tax credit refunds. Subject to prior approval by the department, in consultation with the Iowa department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to apply for a refund of all or a portion of an unused tax credit. For purposes of this subrule, an approved business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). To apply to receive a refund of all or a portion of an unused investment tax credit, the following procedures apply:

a. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

b. How to apply for tax credit certificate. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member approved for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

c. Application processing. The department will make public by June 1 of each fiscal year the total number of requests for tax credit certificates and the total dollar amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time following the June 1 announcement.

d. Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the new capital investment program, the new jobs and income program, and the enterprise zone program which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000.

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500,000$$

e. When claimed. Tax credit certificates shall not be valid until the tax year following the date of project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the tax credit is depleted, whichever occurs first.

f. Carryforward. An approved business may apply for a tax credit certificate once each year for up to seven years after the qualifying asset is placed in service or until the approved business's unused investment tax credit is depleted, whichever occurs first. For example, an approved business which completes a project in October 2004 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2005. If, because of the proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 up to seven years or until the credit is depleted, whichever occurs first.

261—64.5(80GA, HF677) Agreement, compliance, and repayment provisions.

64.5(1) Agreement. After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

- a.* Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;
- b.* Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;
- c.* The amount or level of tax benefits the approved business shall receive as negotiated by the department; and
- d.* The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within 180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

64.5(2) Annual certification. An approved business shall certify annually to the community and the department that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

64.5(3) On-site monitoring. The approved business shall, upon prior reasonable notice and at any time (during normal business hours), permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

64.5(4) Repayment of benefits. If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business is subject to repayment of all or a portion of the benefits that it has received. The repayment will be calculated as follows:

a. Job creation. If the approved business does not meet its job creation goal as defined in the agreement or fails to maintain the required number of jobs, the business shall repay a percentage of the tax credits claimed under subrules 64.4(2) and 64.4(3). The repayment percentage will be equal to the percentage of jobs that the approved business failed to create or maintain.

b. Wages and benefits. If the approved business fails to comply with the wage or benefit requirements outlined in the agreement, the business shall not receive the tax credits described in subrules 64.4(2) and 64.4(3) for each year during which the business is not in compliance.

c. Capital investment. If the approved business does not meet the capital investment requirement in the agreement, repayment of the tax credits claimed under subrules 64.4(2) and 64.4(3) shall be calculated as follows:

(1) If the business has not met the minimum investment requirement of \$1 million, the business shall repay all of the benefits that it has received.

(2) If the business has met 50 percent or less of the pledged capital investment, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the pledged capital investment, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the pledged capital investment, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

d. Selling, disposing, or razing of property. If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit or insurance premium tax credit was claimed under subrule 64.4(3), the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) 100 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) 80 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) 60 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) 40 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) 20 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within five full years after being placed in service.

64.5(5) Layoffs or closures. If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the benefits and assistance, the department may reduce or eliminate all or a portion of the benefits and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the benefits and assistance,

the business may be subject to repayment of all or a portion of the benefits and assistance that it has received.

64.5(6) Extensions. If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department, in consultation with the community, may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

a. The delay in achievement of the job creation goal or pledged capital investment was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed job creation goal or pledged capital investment can be achieved; or

b. The project does not fit under paragraph “*a*” and the approved business has demonstrated to the department’s satisfaction the existence of special circumstances.

261—64.6(80GA,HF677) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested in writing. No amendment will be valid until approved by the department.

261—64.7(80GA,HF677) Other benefits. An approved business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this program. However, an approved business which participates in this program shall not receive any funds, tax credits, or incentives from the new jobs and income program or the enterprise zone program.

These rules are intended to implement 2003 Iowa Acts, House File 677.

261—64.8(81GA,HF868) Applicability of new capital investment program after July 1, 2005.

64.8(1) Effective July 1, 2005, the NCIP program is rescinded by 2005 Iowa Acts, House File 868, and replaced with a new tax credit program, the high quality job creation program. Rules for the high quality job creation program may be found in 261—Chapter 68.

64.8(2) For awards made or contracts entered into prior to July 1, 2005, the rules of 261—Chapter 64 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2005 Iowa Acts, House File 868.

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