House File 677

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AN ACT

RELATING TO NEW CAPITAL INVESTMENT FOR BUSINESSES AND NEW JOBS BY CREATING A NEW CAPITAL INVESTMENT PROGRAM, CREATING TAX INCENTIVES, AND AMENDING THE NEW JOBS AND INCOME PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 15.381 SHORT TITLE.

This part shall be known as and may be cited as the "New Capital Investment Program".

Sec. 2. NEW SECTION. 15.382 PURPOSE.

It is the purpose of this part 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.

Sec. 3. NEW SECTION. 15.383 DEFINITIONS.

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

1. "Community" means a city, county, or other entity established pursuant to chapter 28E.

2. "Eligible business" means a business which has been approved to receive incentives by the department pursuant to section 15.384, subsection 3.

Sec. 4. NEW SECTION. 15.384 ELIGIBLE BUSINESS.

1. To be eligible to receive incentives under this part, a business shall meet all of the following requirements:

a. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in the community.

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

c. The business makes a capital investment of at least one million dollars.

d. The business creates high=quality jobs due to the capital investment. In determining whether high=quality jobs are created, the department shall place greater emphasis on jobs that have all the following characteristics:

(1) Have a wage equal to at least the average county wage.

(2) Are full=time or career=type positions.

(3) Provide comprehensive health benefits.

(4) Have other related characteristics which could be considered to be higher in quality than do other jobs.

e. The start=up, location, or expansion of the business occurs within a specified period which will be negotiated with the department and the community, but which shall be at least a period of three years.

f. The business provides the community and the department with an affidavit stating that 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 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.

2. The community and the department may also consider a variety of factors, including the following, in determining the eligibility of a business to participate in the program:

a. The impact of the proposed project on the community and the state.

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

c. The potential for future growth in the industry represented by the business.

d. The impact the proposed new capital investment will have on the ability of the business to expand, upgrade, or modernize its capabilities, and the extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.

e. The local funding match to be provided.

3. If the community determines that a business is eligible, the community shall approve by resolution the application for incentives. Once a business is found to be eligible, the community shall submit the application to the

department. The department may approve, defer, or deny the application.

Sec. 5. NEW SECTION. 15.385 INCENTIVES.

For tax years beginning on or after January 1, 2003, an eligible business shall be eligible to receive some or all of the following incentives:

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

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

3. a. An eligible business may claim a tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business under the program. The tax credit shall be allowed against taxes imposed under chapter 422, division II, III, or V. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, 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, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust. The percentage shall be equal to the amount provided in paragraph "d". Any tax 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.

Subject to prior approval by the department of economic development, in consultation with the department of revenue and finance, an eligible business whose project primarily involves the production of value=added agricultural products or uses biotechnology=related processes may elect to receive a refund of all or a portion of an unused tax credit. For purposes of this subsection, such an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. The refund may be applied against a tax liability imposed under chapter 422, division II, III, or V. If the business is a partnership, subchapter S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. For purposes of this subsection, "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible 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) One hundred percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed under this

subsection if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within five full years after being placed in service.

c. (1) An eligible business whose project primarily involves the production of value=added agricultural products or uses biotechnology=related processes, which elects to receive a refund of all or a portion of an unused tax credit, shall apply to the department of economic development for tax credit certificates. Such an eligible business shall not claim a tax credit refund under this subsection unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit refund is claimed. For purposes of this subsection, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. For purposes of this subsection, an eligible business also includes a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. Such cooperative may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings of the cooperative.

(2) A tax credit certificate shall not be valid until the tax year following the date of the capital investment project completion. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit, and other information required by the department of revenue and finance. The department of economic development shall not issue tax credit certificates under this subsection and section 15.333, subsection 2, which total more than four million dollars during a fiscal year. If the department receives and approves applications for tax credit certificates under this subsection and section 15.333, subsection 2, in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred except as provided in this subsection for a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. For a cooperative described in section 521 of the Internal Revenue Code, the department of economic development shall require that the cooperative submit a list of its members and the share of each member's interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

d. The amount of a tax credit claimed under this subsection shall be determined as follows:

(1) If the department determines, based on the application of the eligible business, that high=quality jobs are not created but economic activity within the state is advanced, the eligible business may claim a tax credit of up to one percent of the new investment.

(2) If the department determines, based on the application of the eligible business, that one to five high=quality jobs are created, the eligible business may claim a tax credit of up to two percent of the new investment.

(3) If the department determines, based on the application of the eligible business, that six to ten high=quality jobs are created, the eligible business may claim a tax credit of up to three percent of the new investment.

(4) If the department determines, based on the application of the eligible business, that eleven to fifteen high=quality jobs are created, the eligible business may claim a tax credit of up to four percent of the new investment.

(5) If the department determines, based on the application of the eligible business, that more than fifteen high=quality jobs are created, the eligible business may claim a tax credit of up to five percent of the new investment.

4. a. An eligible business may claim an insurance premium tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business under the program. The tax credit shall be allowed against taxes imposed in chapter 432. A tax 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 percentage shall be equal to the amount provided in paragraph "c".

b. For purposes of this subsection, "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible 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) One hundred percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within five full years after being placed in service.

c. The amount of the tax credit claimed under this subsection shall be determined as follows:

(1) If the department determines, based on the application of the eligible business, that high=quality jobs are not created but economic activity within the state is advanced, the eligible business may claim an insurance premium tax credit of up to one percent of the new investment.

(2) If the department determines, based on the application of the eligible business, that one to five high=quality jobs are created, the eligible business may claim an insurance premium tax credit of up to two percent of the new investment.

(3) If the department determines, based on the application of the eligible business, that six to ten high=quality jobs are created, the eligible business may claim an insurance premium tax credit of up to three percent of the new investment.

(4) If the department determines, based on the application of the eligible business, that eleven to fifteen high=quality jobs are created, the eligible business may claim an insurance premium tax credit of up to four percent of the new investment.

(5) If the department determines, based on the application of the eligible business, that more than fifteen high=quality jobs are created, the eligible business may claim an insurance premium tax credit of up to five percent of the new investment.

Sec. 6. <u>NEW SECTION</u>. 15.386 AGREEMENT.

A business shall enter into an agreement with the department specifying the requirements that must be met to confirm eligibility pursuant to section 15.384. The department shall consult with the community during negotiations relating to the agreement. The agreement shall contain, at a minimum, the following provisions:

1. A business that is approved to receive incentives shall, for the length of the agreement, certify annually to the community and the department the compliance of the business with the requirements of the agreement.

2. The repayment of incentives by the business if the business has not met any of the requirements of this part or the resulting agreement.

3. If a business that is approved to receive incentives under this part experiences a layoff within the state or closes any of its facilities within the state, the department

shall have the discretion to reduce or eliminate some or all of the incentives. If a business has received incentives under this part and experiences a layoff within the state or closes any of its facilities within the state, the business may be subject to repayment of all or a portion of the incentives that it has received.

Sec. 7. NEW SECTION. 15.387 OTHER INCENTIVES.

An eligible business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this part. However, a business which participates in the program under this part shall not receive any funds, tax credits, or incentives under chapter 15, subchapter II, part 13, or chapter 15E, division XVIII.

Sec. 8. Section 15.333, subsection 2, unnumbered paragraph 2, Code 2003, is amended to read as follows:

A tax credit certificate shall not be valid until the tax year following the date of the project completion. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit, and other information required by the department of revenue and finance. The department of economic development shall not issue tax credit certificates under this subsection and section 15.385, subsection 3, paragraph "c", which total more than four million dollars during a fiscal year. If the department receives and approves applications for tax credit certificates under this subsection and section 15.385, subsection 3, paragraph "c", in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred except as provided in this subsection for a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. For a cooperative described in section 521 of the Internal Revenue Code, the department of economic development shall require that the cooperative submit a list of its members and the share of each member's interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

Sec. 9. Section 15.337, Code 2003, is amended to read as follows:

15.337 WAIVER OF PROGRAM QUALIFICATION REQUIREMENTS.

A community may request the waiver of ~~the capital investment requirement or~~ the requirement for number of positions created under section 15.329. However, in no event shall the minimum number of jobs created be less than fifteen ~~or the minimum capital investment be less than three million dollars~~ per application under the program. ~~The department shall develop an appropriate formula of minimum jobs created and capital investment required per program application which can be authorized under the waiver.~~ The department may grant a waiver for good cause shown and approve the program application.

As used in this section, "good cause shown" includes ~~but is not limited to a demonstrated lack of growth in the community, a significant percentage of persons in the community who have incomes at or below the poverty level, community~~ a county family poverty rate higher than the state average, a county unemployment rate higher than the state average, a unique opportunity to use existing unutilized ~~or underutilized~~ facilities in the community, a significant downsizing or closure by one of the community's major employers, or an immediate threat posed to the community's workforce due to business downsizing or closure. "Good cause shown" may also include a proposed project by a business in one of the state's targeted industry clusters which will make a higher than average capital investment and which will pay an average starting wage for all the new jobs created as the result of the project that is significantly higher than the wage requirement in section 15.329. For purposes of this section, "targeted industry clusters" includes the industry clusters of life sciences, information solutions, and advanced manufacturing.

CHRISTOPHER C. RANTS
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 677, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved ________________, 2003

THOMAS J. VILSACK
Governor