



TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

July 18, 2011

The Honorable Matthew Schultz
Secretary of State of Iowa
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

House File 590, an Act relating to the organization of the executive branch agencies responsible for administering economic development programs, making certain properly related changes, and including effective date and transition provisions.

The above House File is hereby approved this date.

Sincerely,

A handwritten signature in black ink that reads "Terry E. Branstad".

Terry E. Branstad
Governor

cc: Secretary of the Senate
Clerk of the House



House File 590

AN ACT

RELATING TO THE ORGANIZATION OF THE EXECUTIVE BRANCH AGENCIES
RESPONSIBLE FOR ADMINISTERING ECONOMIC DEVELOPMENT PROGRAMS,
MAKING CERTAIN PROPERLY RELATED CHANGES, AND INCLUDING
EFFECTIVE DATE AND TRANSITION PROVISIONS.

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

DIVISION I

ECONOMIC DEVELOPMENT AUTHORITY

Section 1. Section 15.101, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

15.101 Findings and purpose — collaboration described.

1. The general assembly finds that economic development is an important public purpose and that both the public and private sectors have a shared interest in fostering the economic vitality of the state. Therefore, it is the purpose of this subchapter to implement economic development policy in the state by means of a collaboration between government and the private sector.

2. The collaboration shall involve the economic development authority and the Iowa innovation corporation, both of which shall work together to further economic development policy according to the provisions of this subchapter.

Sec. 2. Section 15.102, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 01. "Authority" means the economic development authority created in section 15.105.

NEW SUBSECTION. 01A. "Business enterprise" means a work or improvement located within the state, including but not limited to real property, buildings, equipment, furnishings, and any other real and personal property or any interest

therein, financed, refinanced, acquired, owned, constructed, reconstructed, extended, rehabilitated, improved, or equipped, directly or indirectly, in whole or in part, by the authority or through loans made by it and which is designed and intended for the purpose of providing facilities for manufacturing, industrial, processing, warehousing, wholesale or retail commercial, recreational, hotel, office, research, business, or other related purposes, including but not limited to machinery and equipment deemed necessary or desirable for the operation thereof.

NEW SUBSECTION. 1A. "*Chief executive officer*" means the chief executive officer of the corporation.

NEW SUBSECTION. 2A. "*Corporation*" means the Iowa innovation corporation created pursuant to section 15.107.

NEW SUBSECTION. 4A. "*Financial assistance*" means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty payments.

Sec. 3. Section 15.102, subsections 1 and 4, Code 2011, are amended to read as follows:

1. "*Board*" means the ~~Iowa economic development board~~ members of the authority appointed by the governor and in whom the powers of the authority are vested pursuant to section 15.105.

4. "*Director*" means the director of the ~~department~~ authority, appointed pursuant to section 15.106C, or the director's designee.

Sec. 4. Section 15.102, subsection 3, Code 2011, is amended by striking the subsection.

Sec. 5. Section 15.105, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

15.105 Economic development authority.

1. The economic development authority is created, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which implement economic development policy in the state, and to undertake certain finance programs.

a. (1) The powers of the authority are vested in and shall be exercised by a board of eleven voting members appointed by the governor subject to confirmation by the senate. The voting members shall be comprised of the following:

(a) Two members from each United States congressional

district in the state.

(b) Three members selected at large.

(2) Of the voting members appointed pursuant to subparagraph (1), the governor shall appoint the following:

(a) One person who is a member of the Iowa innovation council established in section 15.117A.

(b) One person who has professional experience in finance, insurance, or investment banking.

(c) One person who has professional experience in advanced manufacturing.

(d) One person with professional experience in small business development.

(e) One person with professional experience representing the interests of organized labor.

(f) Six persons who are actively employed in the private, for-profit sector of the economy or who otherwise have substantial expertise in economic development.

(3) The governor shall not appoint to the authority board any person who is either the spouse or a relative within the first degree of consanguinity of a serving member of the authority board or the board of directors of the corporation.

b. There shall be four ex officio, nonvoting legislative members consisting of the following:

(1) Two state senators, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate from their respective parties.

(2) Two state representatives, one appointed by the speaker and one appointed by the minority leader of the house of representatives from their respective parties.

c. (1) There shall be three ex officio, nonvoting members consisting of the following:

(a) The president of the state board of regents, or the president's designee.

(b) One person, selected by the Iowa association of independent colleges and universities, who is the president of a private college or university in the state, or that person's designee.

(c) One person, selected by the Iowa association of community college presidents, who is the president of a community college, or that person's designee.

(2) A person serving as a designee pursuant to subparagraph (1) shall serve a one-year term as an ex officio member of the

authority board.

2. Members of the authority shall be appointed for staggered terms of four years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. Members of the authority board shall not serve as directors of the corporation.

3. a. Seven voting members of the authority constitute a quorum.

b. The affirmative vote of a majority of the quorum described in paragraph "a" is necessary for any action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose.

c. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or when two members so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the director shall serve as secretary to the authority.

8. a. The members of the authority shall develop a strategic plan for economic development in the state.

b. (1) The strategic plan shall identify the authority's goals for the next calendar year and shall include a set of metrics that will be used to gauge and assess the extent to which the authority achieves those goals. Such metrics shall include, but are not limited to:

(a) The number of net new jobs created in the state.

(b) The average wage and benefit levels for such jobs.

(c) The impact to average household income for Iowa families

as a result of the jobs created.

(d) Such other information as the authority or the director deems relevant.

(2) The strategic plan shall be submitted to the general assembly and the governor's office on or before January 31 of each year.

9. The net earnings of the authority, beyond that necessary to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that no law shall impair the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa, or Article I, section 10, of the Constitution of the United States.

10. Members of the authority, or persons acting on behalf of the authority while acting within the scope of their agency or employment, are not subject to personal liability resulting from carrying out the powers and duties in this chapter.

11. The authority shall be the successor entity to the economic development board and the department of economic development which are hereby eliminated. The authority shall assume all duties and responsibilities previously assigned to the economic development board and the department of economic development to the extent that such duties and responsibilities are not otherwise assigned by the provisions of this subchapter.

Sec. 6. Section 15.106, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

15.106 Conflicts of interest.

1. *a.* If a member or employee of the authority has an interest, either direct or indirect, in a contract to which the authority is, or is to be, a party, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority.

b. The member or employee having the interest shall not participate in any action of the authority with respect to

that contract. A violation of a provision of this subsection is misconduct in office under section 721.2. However, a resolution of the authority is not invalid because of a vote cast by a member in violation of this subsection or of section 15.105, subsection 3, unless the vote was decisive in the passage of the resolution.

c. For the purposes of this subsection, "*action of the authority with respect to that contract*" means only an action directly affecting a separate contract, and does not include an action which benefits the general public or which affects all or a substantial portion of the contracts included in a program of the authority.

2. The director shall not have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party. The director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending, or aiding in any purchase or sale of property, or loan, made by the authority, nor shall the director be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation or business unit, in any such purchase, sale, or loan.

3. Not more than one principal executive, employee, or other representative from a business or its affiliates may serve concurrently on the authority board, the board of directors of the corporation, or any combination thereof. For purposes of this subsection, "*affiliate*" means the same as defined in section 423.1.

Sec. 7. NEW SECTION. 15.106A General powers of the authority.

1. The authority has any and all powers necessary and convenient to carry out its purposes and duties and exercise its specific powers, including but not limited to the power to:
 - a. Sue and be sued in its own name.
 - b. Have and alter a corporate seal.
 - c. Make and alter bylaws for its management consistent with the provisions of this chapter.
 - d. Make and execute agreements, contracts, and other

instruments of any and all types on such terms and conditions as the authority may find necessary or convenient to the purposes of the authority, with any public or private entity, including but not limited to contracts for goods and services. All political subdivisions, other public agencies, and state departments and agencies may enter into contracts and otherwise cooperate with the authority.

e. Adopt by rule pursuant to chapter 17A procedures relating to competitive bidding, including the identification of those circumstances under which competitive bidding by the authority, either formally or informally, shall be required. In any bidding process, the authority may administer its own bidding and procurement or may utilize the services of the department of administrative services or any other agency. Except when such rules apply, the authority and all contracts made by it in carrying out its public and essential governmental functions with respect to any of its programs shall be exempt from the provisions and requirements of all laws or rules of the state which require competitive bids in connection with the letting of such contracts.

f. Acquire, hold, improve, mortgage, lease, and dispose of real and personal property, including but not limited to the power to sell at public or private sale, with or without public bidding, any such property, or other obligation held by it.

g. Procure insurance against any loss in connection with its operations and property interests.

h. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount, and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

i. Provide to public and private entities technical assistance and counseling related to the authority's purposes.

j. In cooperation with other local, state, or federal governmental agencies, conduct research studies, develop estimates of unmet economic development needs, gather and compile data useful to facilitating decision making, and enter into agreements to carry out programs within or without the state which the authority finds to be consistent with the goals of the authority.

k. Enter into agreements with the federal government, tribes, and other states to undertake economic development activities in the state of Iowa.

- l. Own or acquire intellectual property rights including but not limited to copyrights, trademarks, service marks, and patents, and enforce the rights of the authority with respect to such intellectual property rights.
 - m. Make, alter, interpret, and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.
 - n. Form committees or panels as necessary to facilitate the authority's duties. Committees or panels formed pursuant to this paragraph shall be subject to the provisions of chapters 21 and 22.
 - o. Establish one or more funds within the state treasury under the control of the authority. Notwithstanding section 8.33 or 12C.7, or any other provision to the contrary, moneys invested by the treasurer of state pursuant to this subsection shall not revert to the general fund of the state and interest accrued on the moneys shall be moneys of the authority and shall not be credited to the general fund. The nonreversion of moneys allowed under this paragraph does not apply to moneys appropriated to the authority by the general assembly.
 - p. Select projects to receive assistance by the exercise of diligence and care.
 - q. Exercise generally all powers typically exercised by private enterprises engaged in business pursuits unless the exercise of such a power would violate the terms of this chapter or the Constitution of the State of Iowa.
 - r. Issue negotiable bonds and notes as provided in section 15.106D.
 2. Notwithstanding any other provision of law, any purchase or lease of real property, other than on a temporary basis, when necessary in order to implement the programs of the authority or protect the investments of the authority, shall require written notice from the authority to the government oversight standing committees of the general assembly and the prior approval of the executive council.
 3. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in this chapter and such powers do not limit or restrict any other powers of the authority.
- Sec. 8. NEW SECTION. 15.106B Specific program powers.**
1. In addition to the general powers described in section 15.106A, the authority shall have all powers convenient and necessary to carry out its programs.
 2. For purposes of this section, *“powers convenient and*

necessary" includes but is not limited to the power to:

- a. Undertake more extensive research and discussion of the strategic plan developed by the members of the authority in order to better formulate and implement state economic development policy.
- b. Establish a nonprofit corporation pursuant to section 15.107, for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and economic well-being of the state.
- c. Provide export documentation to Iowa businesses that are exporting goods and services if no other government entity is providing export documentation in a form deemed necessary for international commerce.
- d. (1) Pursuant to a contract executed between the authority and the corporation, the authority may delegate to the corporation the performance of the following functions on behalf of the authority:
 - (a) Marketing and promotional activities.
 - (b) Policy research.
 - (c) Economic analysis.
 - (d) Expansion of international markets for Iowa-produced or Iowa-based products.
 - (e) Consulting services.
 - (f) Services related to statewide commercialization development as provided for in section 15.411, subsection 2.
- (2) A contract executed pursuant to this paragraph "d" shall not delegate an essential government function, including the budgetary or personnel management responsibilities of the authority, and shall not delegate any sovereign power of the state.
- (3) The terms of a contract executed pursuant to this paragraph "d" may provide for compensation at the fair market value of the services to be provided under the contract.
- (4) Notwithstanding section 8A.311 and any rules promulgated thereunder by the department of administrative services, the authority may enter into contracts with the corporation for the sole source procurement of services. In entering into such sole source contracts, the authority shall negotiate a fair and reasonable price for the services and shall thoroughly document the circumstances of such sole source procurements.
- (5) A contract executed pursuant to this paragraph "d" shall be drafted and executed with the assistance and advice of the

attorney general.

3. The authority may enter into contracts on behalf of the Iowa innovation council established in section 15.117A. Such contracts may delegate the performance of functions to the corporation only if the contracts meet the requirements of subsection 2, paragraph "d".

4. *a.* If the authority enters into a contract, including but not limited to a contract executed pursuant to subsection 2, paragraph "d", with a nonprofit corporation organized under chapter 504 or under the similar laws of another jurisdiction, the authority shall ensure that the terms of the contract shall provide for the disclosure of all gifts, grants, bequests, donations, or other conveyances of financial assistance to the corporation from all private and public sources. Such disclosure shall include information from the corporation's current fiscal year and its most recent three fiscal years and shall include the name and address of the person or entity making the conveyance and the amount.

b. If the authority enters into a contract for the provision of financial assistance to a business, the authority shall ensure that the terms of the contract provide for the disclosure of all donations the business has ever made to the corporation. The authority shall not consider the amount or frequency of such donations when evaluating the merits of the business's application or when determining the amount of financial assistance to be awarded to the business.

c. The authority shall not enter into a contract for services, including a contract executed pursuant to subsection 2, paragraph "d", that exceeds two years in duration.

Sec. 9. NEW SECTION. 15.106C Director — responsibilities.

1. The operations of the authority shall be administered by a director who shall be appointed by the governor, subject to confirmation by the senate, and who shall serve for a four-year term beginning and ending as provided in section 69.19. An appointment by the governor to fill a vacancy in the office of the director shall be for the balance of the unexpired four-year term.

2. The director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view or to favor a political candidate for office. The director shall ensure that the authority is operated free from political influence.

3. The director shall advise the authority on matters

relating to economic development and act on the authority's behalf to carry out all directives from the authority board in regard to the operation of the authority.

4. The director shall employ personnel as necessary to carry out the duties and responsibilities of the authority. For nonprofessional employees, employment shall be consistent with chapter 8A, subchapter IV. The employment of professional employees shall be exempt from the provisions of chapter 8A, subchapter IV, and chapter 20.

5. A person shall not be employed concurrently by both the authority and the corporation.

6. A person leaving employment with the authority shall not be employed by the corporation until a period of two years has passed. A person leaving employment with the corporation shall not be employed by the authority until a period of two years has passed.

7. *a.* The director may create organizational divisions within the authority in the manner the director deems most efficient to carry out the duties and responsibilities of the department.

b. In structuring the authority, the director shall create a small business development division and ensure that the division focuses administrative efforts, program resources, and financial assistance awards on small businesses.

c. (1) On or before September 15, 2011, the authority shall submit a report to the governor and the general assembly assessing the extent to which each of the authority's programs can be used to provide assistance to small businesses and making recommendations for legislative changes to such programs in order to better and more intensively focus economic development efforts on such small businesses. The report shall also address the extent to which the authority's programs address local economic development needs and efforts.

(2) This paragraph "c" is repealed on June 30, 2012.

Sec. 10. NEW SECTION. 15.106D Private activity bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to finance the cost of business enterprises, to finance the working capital needs of businesses, to refinance existing indebtedness incurred for any of the foregoing purposes or any combination of the foregoing, the payment of interest on its bonds and notes, the establishment of reserves

to secure its bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out the purposes of this section. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code, chapter 554.

2. All bonds issued by the authority shall be limited obligations of the authority. The principal of and interest on such bonds shall be payable solely out of the revenues derived from the business enterprise to be financed by the bonds so issued under the provisions of this section. Bonds and interest coupons issued under authority of this section shall not constitute an indebtedness of the authority within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the authority or a charge against its general credit. Bonds or notes are not an obligation of this state or any political subdivision of this state, other than the authority, within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this section, and the authority may not pledge the credit or taxing power of this state or any political subdivision of this state, other than the authority, or make its debts payable out of any moneys except as provided in this section.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of such authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the revenues derived from the business enterprise to be financed by the bonds so issued under the provisions of this section, constitute special obligations of the authority, and do not constitute an indebtedness of the authority, this state, or any political subdivision of this state within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this