

ECONOMIC DEVELOPMENT AUTHORITY [261]

Adopted and Filed Emergency

Pursuant to the authority of 2011 Iowa Acts, House File 590, Section 7, the Economic Development Authority hereby amends Chapter 65, “Brownfield Redevelopment Program,” Iowa Administrative Code.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to public interest because of the benefit conferred to the public by having updated application procedures in effect immediately.

The Authority further finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing. The Authority’s finding is based upon the fact that the amendments will confer a benefit upon the public by providing opportunities for additional discussion before these rules are amended further.

The Economic Development Authority adopted these amendments on August 18, 2011.

These amendments are intended to implement Iowa Code sections 15.291, 15.292, 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514.

These amendments became effective August 19, 2011.

The Governor’s Office Pre-cleared the amendments on August ____, 2011.

After analysis and review of this rule making, no negative impact on jobs has been found.

The following amendments are adopted.

ITEM 1. Amend subrule 261—65.1(15) as follows:

261—65.1(15) Purpose. The brownfield redevelopment program is designed to provide

financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield and grayfield sites.

ITEM 2. Amend Subrule 261---65.2(15) as follows:

261—65.2(15) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15.292 shall apply to this chapter. The following definitions shall also apply:

“*Acquisition*” means the purchase of brownfield or grayfield property.

“*Advisory council*” means the brownfield redevelopment advisory council as established in Iowa Code section 15.294 consisting of five members.

“*Authority*” means the Economic Development Authority.

“*Board*” means the ~~Iowa economic development~~ Economic Development Authority board pursuant to 2011 Iowa Acts, House File 590, Section 3. ~~Iowa Code section 15.103~~.

“*Brownfield site*” means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed, or is proposed for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

“*CERCLA*” means Comprehensive Environmental Response, Compensation, and Liability Act as defined at 42 U.S.C. 9601 et seq.

“*Characterization*” means determination of both the nature and extent of contamination in the various media of the environment.

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

“*Contaminant*” means any hazardous substance found in the various media of the environment.

“*Council*” means the brownfield redevelopment advisory council, as established in Iowa Code section 15.294.

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

“*Fund*” means the brownfield redevelopment fund established pursuant to Iowa Code section 15.293.

“*Grant*” means the donation or contribution of funds with no expectation or requirement that the funds be repaid.

“*Grayfield site*” means an industrial or commercial property meeting all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.
2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:
 - Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
 - Assessed value of improvements on the property has decreased by 25 percent or more;
 - The property is used as a parking lot;
 - Improvements on the property no longer exist.

“*Green development*” means development which meets or exceeds the sustainable design standards as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

“*Hazardous substance*” means “hazardous substance” as defined in 567—Chapter 137 and includes petroleum substances not addressed in 567—Chapter 135.

“*Loan*” means an award of assistance with the requirement that the award be repaid, and with term, interest rate, and any other conditions specified as part of the award. A deferred loan is one for which the payment of principal or interest, or both, is not required for some specified period. A

forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A loan guarantee is a third-party commitment to repay all or a portion of the loan in the event that the borrower defaults on the loan.

“Qualifying investment” means ~~the purchase price, cleanup cost(s), and redevelopment cost(s)~~ costs that are directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. *“Qualifying Investment” only includes the purchase price, the cleanup costs, and the redevelopment costs.*

“Qualifying investor” means an applicant who has been accepted by the department to receive a redevelopment tax credit.

“Qualifying redevelopment project” means a brownfield or grayfield site being redeveloped or improved by the property owner. “Qualifying redevelopment project” does not include a previously remediated or redeveloped brownfield site.

“Redevelopment” means projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

“Remediation” includes characterization, risk assessment, removal and cleanup of environmental contaminants located on and adjacent to a brownfield site. Funding awards used for remediation must comply with appropriate Iowa department of natural resources requirements and guidelines.

“Risk evaluation” means assessment of risks to human health and environment by way of guidelines established in 567—Chapter 137.

“Sponsorship” means an agreement between a city or county and an applicant for assistance under the brownfield redevelopment program in which the city or county agrees to offer assistance or guidance to the applicant. Sponsorship is not required if the applicant is a city or county.

“Sustainable design” means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards

pursuant to Iowa Code section 103A.8B.

ITEM 3. Amend Subrule 261---65.4(15) as follows:

261—65.4(15) Eligible forms of assistance and limitations.

65.4(1) *Financial assistance.* Eligible forms of financial assistance under this program include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program established in Iowa Code section 15.292.

65.4(2) ~~*Technical*~~ *Other forms of assistance.* ~~Technical assistance under this program is available in the form of providing an applicant with assistance in identifying~~ The Authority may provide information on alternative forms of assistance for which the applicant may be eligible.

65.4(3) *Limitation on amount.* An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation, acquisition or redevelopment. This limitation does not apply to assistance provided in the form of tax credits pursuant to subrule 65.11(4).

65.4(4) *Exclusions.* Program funds shall not be used for the remediation of contaminants being addressed under Iowa's leaking underground storage tank (UST) program. However, a site's being addressed under the UST program does not necessarily exclude that site from being addressed under the Iowa brownfield redevelopment Act if other nonpetroleum contaminants or petroleum substances not addressed under 567—Chapter 135 are present.

ITEM 4. Amend Subrule 261---65.5(15) as follows:

261—65.5(15) Repayment to ~~IEDD~~ Economic Development Authority. Upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the ~~department~~ Authority for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original

owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.

ITEM 5. Amend Subrule 261---65.6(15) as follows:

261—65.6(15) Application and award procedures. Subject to availability of funds, applications will be reviewed and rated by ~~IDED~~ Economic Development Authority staff on an ongoing basis and reviewed quarterly by the advisory council. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

ITEM 6. Amend Subrule 261---65.7(15) as follows:

261—65.7(15) Application.

65.7(1) Every application for assistance shall include, ~~but not be limited to,~~ evidence of sponsorship and any other information the Authority deems necessary in order to process and review the application. An application shall be considered received by the Authority only when the Authority deems it to be complete. ~~In addition, a~~ Applications for assistance ~~other than tax credits~~ shall also include the following information:

a. A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

65.7(2) The ~~department~~ Authority shall accept ~~applications~~ and review applications

~~determine application eligibility in conjunction with the council and the board.~~ The council shall consider applications in the order complete applications are received and make application recommendations to the board. The board shall approve or deny applications.

65.7(3) Upon review of the application, the Authority may register the project under the program. If the Authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the Authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a non-binding figure, provided purely for the investor's and the Authority's information and convenience, based on the Authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this section shall be contingent upon completion of the requirements of subparagraphs (4) and (5) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to subrules 261-65.7, 261- 65.10, and Iowa Code sections 15.293A and 15.293B.

65.7(34) Approved applicants shall enter into an agreement with the ~~department~~ Authority. The agreement shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available.

65.7(5) Upon completion of a registered project, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and submitted to the Authority.

65.7(46) ~~The department shall issue a tax credit certificate u~~Upon written notification of project completion, review of the independent audit, and verification of the amount of the investment, the

Authority may issue a certificate to the investor.

ITEM 7. Amend Subrule 261---65.8(15) as follows:

261—65.8(15) Application forms. Application forms for the brownfield redevelopment program shall be available upon request from ~~IEDD~~ Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. ~~IEDD~~ Economic Development Authority may provide technical assistance as necessary to applicants. ~~IEDD~~ Economic Development Authority staff may conduct on-site evaluations of proposed activities.

ITEM 8. Amend Subrule 261---65.10(15) as follows:

261—65.10(15) Administration of awards.

65.10(1) A contract shall be executed between the recipient and ~~IEDD~~ the Authority. These rules and applicable state laws and regulations shall be part of the contract.

65.10(2) The recipient must execute and return the contract to ~~IEDD~~ the Authority within 45 days of transmittal of the final contract from ~~IEDD~~ the Authority. Failure to do so may be cause for the board to terminate the award.

65.10(3) Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

65.10(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity.

65.10(5) Awards may be conditioned upon ~~IEDD~~ the Authority's receipt and approval of an implementation plan for the funded activity.

ITEM 9. Amend Subrule 261---65.11(15) as follows:

261—65.11(15) Redevelopment tax credit.

65.11(1) *Purpose.* The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The ~~department~~ Authority may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

65.11(2) *Eligible applicant.* An individual, partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual may claim a redevelopment tax credit. Once an applicant is deemed eligible, the applicant shall be considered a qualifying investor for a redevelopment tax credit. A city or county may not apply for a redevelopment tax credit.

65.11(3) *Tax credit certificate.*

a. Issuance. The ~~department~~ Authority shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

b. Acceptance. The tax credit certificate, unless rescinded by the board, shall be accepted by the Iowa department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of this rule, for a portion of a taxpayer's equity investment in a qualifying redevelopment project.

c. Transfer. Tax credit certificates issued under this rule may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the Iowa department of revenue, including a statement with the transferee's name, tax identification

number, address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the Iowa department of revenue.

d. Replacement certificate. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate.

e. Claiming a transferred tax credit. A tax credit shall not be claimed by a transferee 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 in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration paid or received for the transfer of the tax credit shall not be included or deducted as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.329.

65.11(4) *Amount of tax credit.*

a. Pro rata share. The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the qualified investor's liability for the tax year is not refundable but 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 qualified investor receives the tax credit.

b. Percentage. The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
- (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying

redevelopment project meets the requirements of green development as defined in 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

c. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4)“d.”

d. Maximum credit total. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the ~~department~~ Authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, and for each subsequent fiscal year, the maximum amount of tax credits issued by the Authority shall be an amount determined by the board, but not in excess of \$5 million. The ~~department~~ Authority shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.

65.11(5) *Claiming a tax credit.* The qualified investor must attach one or more tax credit certificate(s) to the qualified investor's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2009. The tax credit certificate or certificates attached to the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.

65.11(6) *Reduction of tax credit.*

a. Taxes imposed under Iowa Code section 422.11V, less the credits allowed under Iowa Code sections 422.12, 422.33, 422.60, 432.12L, and moneys and credits imposed under Iowa Code section 533.329 shall be reduced by a redevelopment tax credit allowed under Iowa Code sections 15.291 to 15.294.

b. For purposes of individual and corporate income taxes and the franchise tax, the increase in

the basis of the redeveloped property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the credit computed under this rule.

65.11(7) *Project completion.*

a. An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, ~~or after June 30, 2010,~~ shall not qualify for a tax credit under this rule.

b. ~~A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project.~~ A registered project shall be completed within thirty months of the project's approval unless the Authority, with the approval of the board, provides additional time to complete the project. A project shall not be provided more than twelve months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this section.

c. Failure to comply. If a taxpayer receives a tax credit pursuant to Iowa Code section 15.293A but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

65.11(8) *Tax credit carryover.* If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the ~~department~~ Authority may prorate the remaining credit amount among other eligible applicants.

65.11(9) ~~Department~~ Authority *registration and authorization.* The ~~department~~ Authority shall develop a system for registration and authorization of tax credits. The ~~department~~ Authority shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in

an ensuing year.

65.11(10) *Other financial assistance considerations.* If a qualified investor has also applied to the ~~department~~ Authority, the board, or any other agency of state government for additional financial assistance, the ~~department~~ Authority, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

ITEM 10. Amend Subrule 261---65.12(15) as follows:

261—65.12(15) Council approval and repayment requirements of redevelopment tax credit.

65.12(1) A qualified investor seeking to claim a tax credit pursuant to Iowa Code sections 15.293A and 15.293B shall apply to the ~~council~~, Authority and applications shall be reviewed by the council as established in Iowa Code section 15.294. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

65.12(2) A qualified investor shall provide to the Authority, the council and the board all of ~~with~~ the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in Iowa Code section 15.293A.