COUNCIL COPY

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0668R

RESOLUTION ADOPTING BUSINESS SUBSIDY POLICY

CITY PROPOSAL:

RESOLVED, that the city of Duluth does hereby authorize that the attached business subsidy policy is hereby adopted effective January 1, 2012.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

BD/ATTY HTB/JC:bel 12/07/2011

STATEMENT OF PURPOSE: Minnesota Statutes §116J.993 et. seq. requires that the City adopt a business subsidy policy before it may grant a business subsidy as defined by the statute. The City adopted its policy/criteria in May 2000 and has subsequently amended it six times. There have been subsequent changes to the statute. In addition, the DEDA adopted its own, and different, policy/criteria in 2000. The purpose of this resolution is to adopt a replacement policy that conforms with current statute with the intent of the DEDA adopting the same policy at its December 14, 2011 meeting.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

and the

CITY OF DULUTH

BUSINESS SUBSIDY POLICY

1. **PUBLIC PURPOSE.** Whenever the City of Duluth (the "City") or the Duluth Economic Development Authority ("DEDA") invests public funds or agrees to voluntarily forfeit tax or other revenue that benefit private development projects, those projects should create a return on taxpayer investment. The return on investment may come in many forms including increased tax base, creation of high quality jobs, or other benefits.

2. **POLICY DESCRIPTION**

2.01 The purpose of this policy is to establish criteria regarding the use of business subsidies by the City and DEDA under the general Business Subsidy Act pursuant to Minn. Stat. §§ 116J.993 through 116J.995 (the "Business Subsidy Act") and the Job Opportunity Building Zones Act pursuant to Minn. Stat. §§ 469.310 through 469.320 (the "JOBZ Act"). The JOBZ Act and the Business Subsidy Act are hereinafter referred to as the "Acts". This policy and the criteria shall be used as a guide in processing and reviewing applications requesting business subsidy assistance. A copy of this policy shall be submitted to the Minnesota Department of Employment and Economic Development or a successor entity ("DEED").

2.02 The City and DEDA shall have the option of amending or waiving sections of this policy when determined necessary or appropriate. The Business Subsidy Act allows the City and DEDA to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to DEED. Amendments to this policy and criteria are subject to public hearing requirements pursuant to Minn. Stat. § 116J.994.

2.03 Incentives will be offered based on the nature of the project and the benefits to the City or DEDA. Meeting all or a majority of the criteria does not mean that a business subsidy will be awarded or denied by the City or DEDA. The City and DEDA maintain their ability to approve or reject a business subsidy at their discretion, based on the merits of the project and the overall benefit to the community, using the criteria as a means of measuring overall benefit. Furthermore, the approval or denial of one project is not intended to set precedent for approval or denial of another project.

3. **BUSINESS SUBSIDIES GENERALLY.**

3.01 A business subsidy may include loans, forgivable loans, tax increment financing (TIF), tax abatements or other tax reduction or deferral, guarantees of payment, contributions of property or infrastructure, preferential use of governmental facilities, and/or land contributions valued at $150,000 or more. A business subsidy requires annual reporting by the business subsidy recipient, a public hearing, and a business subsidy agreement between the recipient and the City or DEDA, as applicable.

3.02 There is a level of financial assistance under $150,000 to which reporting by the City or DEDA, as applicable, to DEED ~~this business subsidy criteria~~ applies: 1) financial assistance of $25,000 or more; and 2) business loans or loan guarantees of $75,000 or more. ~~This level of financial assistance requires annual reporting by the City or DEDA, as applicable, to DEED.~~

3.03 Minn. Stat. § 116J.993, subd. 3 exempts certain forms of financial assistance from the requirements of the Business Subsidy Act. These include assistance for job readiness and training, assistance for energy conservation, and federal assistance such as CDBG and HOME Program funding.

3.04 JOBZ business subsidies can only be provided by the City and may include exemption from individual income taxes, exemption from corporate franchise taxes, exemption from state sales and use tax and any local sales and use taxes on qualifying purchases, exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles, exemption from property tax, exemption from wind energy production tax, and/or jobs credit.

4. **DEFINITIONS.** The City and DEDA hereby adopt the definitions in the Acts for application to this policy.

5. **BUSINESS SUBSIDY CRITERIA.**

5.01 In accordance with the Acts, the City and DEDA will assess and measure applicants for business subsidies based on the following business subsidy criteria:

A. Increase the number and diversity of jobs that offer stable employment and high quality wages and benefits;
B. Retain local jobs in Duluth where the loss is imminent and demonstrable;
C. Enhance and diversify the City of Duluth's tax base;
D. Stimulate the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of substandard structures and contaminated land;

E. Encourage development of commercial and industrial areas in the city that result in higher quality development or redevelopment and private investment;

F. Achieve development on sites which would not be developed without business subsidies assistance;

G. Offset increased costs of development of specific properties when the unique physical characteristics of the site otherwise preclude private investment;

H. Depending on the nature of the project, such other factors as the City or DEDA may deem relevant in evaluating the project and the business subsidy proposed for it.

5.02 In addition to the business subsidy criteria set forth above, for a JOBZ Business Subsidy, the City must consider the following factors:

A. How wages compare to the regional industry average;

B. The number of jobs that will be provided relative to overall employment in the community;

C. The economic outlook for the industry the business will engage in;

D. Sales that will be generated from outside the state of Minnesota;

E. How the business will build on existing regional strengths or diversify the regional economy;

F. How the business will increase capital investment in the zone; and

G. Any other criteria the commissioner deems necessary.

5.03 All recipients of a business subsidy must pay both current and new employees compensation, including benefits not mandated by law, that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four or the living wage as set forth in ~~Article XXVI~~ Section 2-137 of the Duluth City Code, whichever is greater.

Additionally, a recipient of a business subsidy shall be required to cause the laborers, mechanics or apprentice-trainees employed directly upon the work site to be paid the wage rates as set forth in Section 2-25 of the Duluth City Code, commonly known as "Little Davis-Bacon," where such recipient is undertaking a project involving the erection, construction, or repair by recipient of any building or structure or any related infrastructure unless the City or DEDA, as applicable, determines that there is good cause to waive the wage requirement as evidenced by a vote of at least six (6) City Councilors or five (5) DEDA Commissioners, as applicable. For purposes of this paragraph, the definitions set forth in Section 2-25 of the Duluth City Code, with the exception of the definition of the term "Project," shall apply.

5.04 A JOBZ recipient that relocates from outside a JOBZ zone into a zone, as defined in Minn. Stat. § 469.310, subd. 12, must increase full-time employment in the first full year of operation within the JOBZ zone by a minimum of 5 jobs or 20 percent, whichever is greater, and must maintain that level of employment during the JOBZ zone designation.

6. OTHER CONSIDERATIONS.

6.01 The project must be in accordance with the Comprehensive Plan and Zoning Ordinances, or required changes to the plan and ordinances must be under active consideration by the City at the time of approval.

6.02 Prior to approval of a business subsidies financing plan and when deemed appropriate by the City and/or DEDA, the developer or business shall provide any required market and financial feasibility studies, appraisals, environmental data, information provided to private lenders for the project, and other information or data relative to the successful operation of the project that the City or DEDA or its financial consultants may require in order to proceed with an independent underwriting. If requested by the City, the developer shall provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, cash escrows, and personal guaranties.

6.03 A developer requesting ~~municipal~~business subsidy assistance must demonstrate, to the satisfaction of the City and/or DEDA, sufficient cash equity investment in the project.

7. SUBSIDY AGREEMENT.

7.01 A business subsidy recipient must enter into a subsidy agreement with the City or DEDA, as applicable, which includes, but is not limited to, the following:

A. Description of the subsidy;
B. Statement of the public purpose;
C. Measurable, specific and tangible goals for the subsidy;
D. Description of the financial obligation of the recipient if the goals are not met;
E. Statement of the reason why the subsidy is needed;
F. Commitment to continue operations at the site where the subsidy is used for a minimum of five (5) years after receipt of all financial assistance;
G. Name and address of parent corporation, if any;
H. List of all financial assistance by all grantors for the project;
I. Recipient's obligation if the recipient does not fulfill the agreement; and
J. If the business is qualified to receive JOBZ tax benefits, that business must agree to continue operations in the jurisdiction where the subsidy is used (the "Sub Zone") for the duration of the job zone term.

7.02 If the qualified JOBZ business or JOBZ recipient is a relocating business as defined in Minn. Stat. § 469.310, subd. 12, the business shall be required to enter into a binding written "Relocation Agreement" between the qualified business and the commissioner of DEED that:

A. Increases full-time employment in the first full year of operation within the job opportunity building zone by a minimum of 5 jobs or 20%, whichever is greater, measured relative to the operations that were relocated and maintains the required level of employment for each year the zone designation applies; and

B. Provides for repayment of all tax benefits enumerated under Minn. Stat. § 469.315 to the business under the procedures in Minn. Stat. § 469.319, if the requirements of clause A above are not met for the taxable year or for taxes payable during the year in which the requirements were not met; and

C. Contains any other terms the commissioner determines appropriate.

8. **PUBLIC HEARING.** Before granting a business subsidy of $150,000 or more, the City or DEDA, as applicable, must provide public notice and a public hearing on the subsidy.

9. **REPORTS.**

9.1 Recipients of business subsidies of $150,000 or more must report the information required pursuant to Minn. Stat. § 116J.994, subd. 7.

9.2 Recipients of JOBZ assistance must report the information required pursuant to Minn. Stat. § ~~469.310~~116J.994, subd. 7.

9.3 Reporting by the City or DEDA, as applicable, to DEED is required for financial assistance of $25,000 or more and business loan or loan guarantees of $75,000 or more unless specifically excluded in the Business Subsidy Act. Other financial assistance that is excluded from the definition of "business subsidy" may require reporting by recipients pursuant to Minn. Stat. § 116J.994, subd. 7(c).

9.4 The recipient must provide the required reporting data to the City or DEDA, as applicable, by March 1 for the preceding year.

9.5 Reporting is required for two (2) years after the "benefit date" as defined in the Business Subsidy Act or until goals specified in the Business Subsidy Agreement are met, whichever is greater.

10. **REPAYMENT.** Failure to meet business subsidy goals and for JOBZ recipients, failure to be a qualified business, may require repayment of the subsidy pursuant to Minn. Stat. § 116J.994, subd. 6 and Minn. Stat. § 469.319.

11. **JOBZ ACT CONTROLS.** In the event of a conflict between the requirements of the Business Subsidy Act and the JOBZ Act, the JOBZ Act controls.

12. **AMENDMENTS TO THE ACTS.** Any amendments or modifications to the Acts shall amend or modify the terms and definitions of this policy and criteria without any further actions of the City or DEDA.

13. **EFFECTIVE DATE.** This modified business subsidy policy shall be effective January 1, 2012.

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Background: Minnesota Statutes §116J.993 et. seq. requires that entities such as the City and the DEDA adopt a business subsidy policy before it may grant a business subsidy as defined by the statute. DEDA adopted its policy/criteria in May 2000. The City adopted its own, and different, policy/criteria in 2000 and has amended the policy six times since. Since the City's policy was more restrictive than DEDA's and the Council must approve DEDA's subsidies, as a practical matter, DEDA has followed the City's policy. There have been subsequent changes to the statute since 2000.

Process: Throughout 2011, DEDA has been reviewing existing policies such as prevailing wage, project labor agreements and wages/hours requirements. DEDA and City staff have considered how the existing policies compare with statutory requirements. They also reviewed business subsidy policies of a number of other communities.

Recommendation: Staff recommends the attached policy for both DEDA and City business subsidies. Below is a comparison of existing and proposed policies. This comparison is provided in lieu of a redline/strike-out document. It is staff's opinion that the suggested policy is more coherent, comprehensive, and statutorily based, and offers a better approach than again amending the existing policy.

Comparison of Existing and Proposed Business Subsidy Policies	
Existing	**Proposed**
Does not conform to current statute. E.g., defines dollar amount to trigger business subsidy at $25,000; amount by statute is $150,000	Conforms with statute. Defines business subsidy as assistance of $150,000 or more. Clarifies that financial assistance of $25,000 or more, or loan/loan guarantees of $75,000 or more, though not a "subsidy", requires ~~compliance with business subsidy criteria~~ a report to DEED
City and DEDA each have their own, different, policies	The same policy is adopted by both entities
There are two different sets of criteria for JOBZ subsidies and non JOBZ subsidies	One basic set of criteria applies to both JOBZ and non JOBZ subsidies with an additional state-mandated criteria applying to JOBZ subsidies
Includes both statute-based and "homemade" definitions. E.g., definition of Target Industries	Adopts the definitions contained in the Business Subsidy and JOBZ Statutes.
Has two different wage floors, one for JOBZ subsidies and one for non JOBZ subsidies. Defines wage floor for JOBZ subsidies as 110% of federal poverty level for family of four (per JOBZ statute); defines wage floor for non-JOBZ subsidies as local living wage and prevailing wage	Has one wage floor for ALL subsidies. Defines wage floor as 110% of the federal poverty level for a family of four OR the living wage, whichever is greater
Requires a public hearing on all subsidies, defined as $25,000 or more	As per statute, requires a public hearing on subsidies, defined as $150,000 or more
Establishes both mandatory AND preferential criteria	Establishes only one set of business subsidy criteria
References prevailing wage requirements	~~Is silent on prevailing wage, as by both City and DEDA policy, prevailing wage is required only on City and DEDA projects—not on private projects.~~
Silent as to what is contained in a business subsidy agreement	Sets forth requirements for business subsidy agreements

BUSINESS SUBSIDIES

116J.993 DEFINITIONS.

Subdivision 1. Scope.

For the purposes of sections 116J.993 to 116J.995, the terms defined in this section have the meanings given them.

Subd. 2. Benefit date.

"Benefit date" means the date that the recipient receives the business subsidy. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date begins when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the benefit date refers to the earliest date of either:

(1) when the improvements are finished for the entire project; or

(2) when a business occupies the property. If a business occupies the property and the subsidy grantor expects that other businesses will also occupy the same property, the grantor may assign a separate benefit date for each business when it first occupies the property.

Subd. 3. Business subsidy.

"Business subsidy" or "subsidy" means a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business.

The following forms of financial assistance are not a business subsidy:

(1) a business subsidy of less than $150,000;

(2) assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;

(3) public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;

(4) redevelopment property polluted by contaminants as defined in section 116J.552, subdivision 3;

(5) assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50 percent of the total cost;

(6) assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;

(7) assistance for housing;

(8) assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance subdistrict as defined under section 469.174, subdivision 23;

(9) assistance for energy conservation;

(10) tax reductions resulting from conformity with federal tax law;

(11) workers' compensation and unemployment insurance;

(12) benefits derived from regulation;

(13) indirect benefits derived from assistance to educational institutions;

(14) funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;

(15) assistance for a collaboration between a Minnesota higher education institution and a business;

(16) assistance for a tax increment financing soils condition district as defined under section 469.174, subdivision 19;

(17) redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;

(18) general changes in tax increment financing law and other general tax law changes of a principally technical nature;

(19) federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency;

(20) funds from dock and wharf bonds issued by a seaway port authority;

(21) business loans and loan guarantees of $150,000 or less;

(22) federal loan funds provided through the United States Department of Commerce, Economic Development Administration; and

(23) property tax abatements granted under section 469.1813 to property that is subject to valuation under Minnesota Rules, chapter 8100.

Subd. 4. Grantor.

"Grantor" means any state or local government agency with the authority to grant a business subsidy.

Subd. 5. Local government agency.

"Local government agency" includes a statutory or home rule charter city, housing and redevelopment authority, town, county, port authority, economic development authority, community development agency, nonprofit entity created by a local government agency, or any other entity created by or authorized by a local government with authority to provide business subsidies.

Subd. 6. Recipient.

"Recipient" means any for-profit or nonprofit business entity that receives a business subsidy. Only nonprofit entities with at least 100 full-time equivalent positions and with a ratio of highest to lowest paid employee, that exceeds ten to one, determined on the basis of full-time equivalent positions, are included in this definition.

Subd. 6a. Residence.

"Residence" means the place where an individual has established a permanent home from which the individual has no present intention of moving.

Subd. 7. State government agency.

"State government agency" means any state agency that has the authority to award business subsidies.

History: 1999 c 243 art 12 s 1; 2000 c 482 s 1; 2004 c 206 s 52; 1Sp2005 c 3 art 7 s 1; 2006 c 259 art 4 s 1; 2008 c 366 art 5 s 2

116J.994 REGULATING LOCAL AND STATE BUSINESS SUBSIDIES.

Subdivision 1. Public purpose.

A business subsidy must meet a public purpose which may include, but may not be limited to, increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable.

Subd. 2. Developing a set of criteria.

A business subsidy may not be granted until the grantor has adopted criteria after a public hearing for awarding business subsidies that comply with this section. The criteria may not be adopted on a case-by-case basis. The criteria must set specific minimum requirements that recipients must meet in order to be eligible to receive business subsidies. The criteria must include a specific wage floor for the wages to be paid for the jobs created. The wage floor may be stated as a specific dollar amount or may be stated as a formula that will generate a specific dollar amount. A grantor may deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to the department. The commissioner of employment and economic development may assist local government agencies in developing criteria. A copy of the criteria must be submitted to the Department of Employment and Economic Development along with the first annual report following May 15, 2000, or with the first annual report after it has adopted criteria, whichever is earlier. Notwithstanding section 116J.993, subdivision 3, clauses (1) and (21), for the purpose of this subdivision, "business subsidies" as defined under section 116J.993 includes the following forms of financial assistance:

(1) a business subsidy of $25,000 or more; and

(2) business loans and guarantees of $75,000 or more.

Subd. 3. Subsidy agreement.

(a) A recipient must enter into a subsidy agreement with the grantor of the subsidy that includes:

(1) a description of the subsidy, including the amount and type of subsidy, and type of district if the subsidy is tax increment financing;

(2) a statement of the public purposes for the subsidy;

(3) measurable, specific, and tangible goals for the subsidy;

(4) a description of the financial obligation of the recipient if the goals are not met;

(5) a statement of why the subsidy is needed;

(6) a commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date;

(7) the name and address of the parent corporation of the recipient, if any; and

(8) a list of all financial assistance by all grantors for the project.

(b) Business subsidies in the form of grants must be structured as forgivable loans. For other types of business subsidies, the agreement must state the fair market value of the subsidy to the recipient, including the value of conveying property at less than a fair market price, or other in-kind benefits to the recipient.

(c) If a business subsidy benefits more than one recipient, the grantor must assign a proportion of the business subsidy to each recipient that signs a subsidy agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.

(d) The state or local government agency and the recipient must both sign the subsidy agreement and, if the grantor is a local government agency, the agreement must be approved by the local elected governing body, except for the St. Paul Port Authority and a seaway port authority.

(e) Notwithstanding the provision in paragraph (a), clause (6), a recipient may be authorized to move from the jurisdiction where the subsidy is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. For the purpose of this paragraph, if the grantor is a state government agency other than the Iron Range Resources and Rehabilitation Board, "jurisdiction" means a city or township.

Subd. 4. Wage and job goals.

The subsidy agreement, in addition to any other goals, must include: (1) goals for the number of jobs created, which may include separate goals for the number of part-time or full-time jobs, or, in cases where job loss is specific and demonstrable, goals for the number of jobs retained; (2) wage goals for any jobs created or retained; and (3) wage goals for any jobs to be enhanced through increased wages. After a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero. The goals for the number of jobs to be created or retained must result in job creation or retention by the recipient within the granting jurisdiction overall.

In addition to other specific goal time frames, the wage and job goals must contain specific goals to be attained within two years of the benefit date.

Subd. 5. Public notice and hearing.

(a) Before granting a business subsidy that exceeds $500,000 for a state government grantor and $150,000 for a local government grantor, the grantor must provide public notice and a hearing on the subsidy. A public hearing and notice under this subdivision is not required if a hearing and notice on the subsidy is otherwise required by law.

(b) Public notice of a proposed business subsidy under this subdivision by a state government grantor, other than the Iron Range Resources and Rehabilitation Board, must be published in the State Register. Public notice of a proposed business subsidy under this subdivision by a local government grantor or the Iron Range Resources and Rehabilitation Board must be published in a local newspaper of general circulation. The public notice must identify the location at which information about the business subsidy, including a summary of the terms of the subsidy, is available. Published notice should be sufficiently conspicuous in size and placement to distinguish the notice from the surrounding text. The grantor must make the information available in printed paper copies and, if possible, on the Internet. The government agency must provide at least a ten-day notice for the public hearing.

(c) The public notice must include the date, time, and place of the hearing.

(d) The public hearing by a state government grantor other than the Iron Range Resources and Rehabilitation Board must be held in St. Paul.

(e) If more than one nonstate grantor provides a business subsidy to the same recipient, the nonstate grantors may designate one nonstate grantor to hold a single public hearing regarding the business subsidies provided by all nonstate grantors. For the purposes of this paragraph, "nonstate grantor" includes the iron range resources and rehabilitation board.

(f) The public notice of any public meeting about a business subsidy agreement, including those required by this subdivision and by subdivision 4, must include notice that a person with residence in or the owner of taxable property in the granting jurisdiction may file a written complaint with the grantor if the grantor fails to comply with sections 116J.993 to 116J.995, and that no action may be filed against the grantor for the failure to comply unless a written complaint is filed.

Subd. 6. Failure to meet goals.

(a) The subsidy agreement must specify the recipient's obligation if the recipient does not fulfill the agreement. At a minimum, the agreement must require a recipient failing to meet subsidy agreement goals to pay back the assistance plus interest to the grantor or, at the grantor's option, to the account created under section 116J.551 provided that repayment may be prorated to reflect partial fulfillment of goals. The interest rate must be set at no less than the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31 of the previous year. The grantor, after a public hearing, may extend for up to one year the period for meeting the wage and job goals under subdivision 4 provided in a subsidy agreement. A grantor may extend the period for meeting other goals under subdivision 3, paragraph (a), clause (3), by documenting in writing the reason for the extension and attaching a copy of the document to its next annual report to the department.

(b) A recipient that fails to meet the terms of a subsidy agreement may not receive a business subsidy from any grantor for a period of five years from the date of failure or until a recipient satisfies its repayment obligation under this subdivision, whichever occurs first.

(c) Before a grantor signs a business subsidy agreement, the grantor must check with the compilation and summary report required by this section to determine if the recipient is eligible to receive a business subsidy.

Subd. 7. Reports by recipients to grantors.

(a) A business subsidy grantor must monitor the progress by the recipient in achieving agreement goals.

(b) A recipient must provide information regarding goals and results for two years after the benefit date or until the goals are met, whichever is later. If the goals are not met, the recipient must continue to provide information on the subsidy until the subsidy is repaid. The information must be filed on forms developed by the commissioner in cooperation with representatives of local government. Copies of the completed forms must be sent to the local government agency that provided the subsidy or to the commissioner if the grantor is a state agency. If the Iron Range Resources and Rehabilitation Board is the grantor, the copies must be sent to the board. The report must include:

(1) the type, public purpose, and amount of subsidies and type of district, if the subsidy is tax increment financing;

(2) the hourly wage of each job created with separate bands of wages;

(3) the sum of the hourly wages and cost of health insurance provided by the employer with separate bands of wages;

(4) the date the job and wage goals will be reached;

(5) a statement of goals identified in the subsidy agreement and an update on achievement of those goals;

(6) the location of the recipient prior to receiving the business subsidy;

(7) the number of employees who ceased to be employed by the recipient when the recipient relocated to become eligible for the business subsidy;

(8) why the recipient did not complete the project outlined in the subsidy agreement at their previous location, if the recipient was previously located at another site in Minnesota;

(9) the name and address of the parent corporation of the recipient, if any;

(10) a list of all financial assistance by all grantors for the project; and

(11) other information the commissioner may request.

0A report must be filed no later than March 1 of each year for the previous year. The local agency and the Iron Range Resources and Rehabilitation Board must forward copies of the reports received by recipients to the commissioner by April 1.

(c) Financial assistance that is excluded from the definition of "business subsidy" by section 116J.993, subdivision 3, clauses (4), (5), (8), and (16), is subject to the reporting requirements of this subdivision, except that the report of the recipient must include instead:

(1) the type, public purpose, and amount of the financial assistance, and type of district if the assistance is tax increment financing;

(2) progress towards meeting goals stated in the assistance agreement and the public purpose of the assistance;

(3) if the agreement includes job creation, the hourly wage of each job created with separate bands of wages;

(4) if the agreement includes job creation, the sum of the hourly wages and cost of health insurance provided by the employer with separate bands of wages;

(5) the location of the recipient prior to receiving the assistance; and

(6) other information the grantor requests.

(d) If the recipient does not submit its report, the local government agency must mail the recipient a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the recipient fails to provide a report, the recipient must pay to the grantor a penalty of $100 for each subsequent day until the report is filed. The maximum penalty shall not exceed $1,000.

Subd. 8. Reports by grantors.

(a) Local government agencies of a local government with a population of more than 2,500 and state government agencies, regardless of whether or not they have awarded any business subsidies, must file a report by April 1 of each year with the commissioner. Local government agencies of a local government with a population of 2,500 or less are exempt from filing this report if they have not awarded a business subsidy in the past five years. The report must include a list of recipients that did not complete the recipient report required under subdivision 7 and a list of recipients that have not met their job and wage goals within two years and the steps being taken to bring them into compliance or to recoup the subsidy.

If the commissioner has not received the report by April 1 from an entity required to report, the commissioner shall issue a warning to the government agency. If the commissioner has still not received the report by June 1 of that same year from an entity required to report, then that government agency may not award any business subsidies until the report has been filed.

(b) The report required under paragraph (a) is also required for financial assistance of $25,000 and greater that is excluded from the definition of "business subsidy" by section 116J.993, subdivision 3, clause (1), and of $75,000 and greater that is excluded from the definition of "business subsidy" by section 116J.993, subdivision 3, clause (21). The report for the financial assistance under this paragraph must be completed within one year of the granting of the financial assistance. The report required for financial assistance under this paragraph must include:

(1) the name of the recipient, its organizational structure, its address and contact information, and its industry sector;

(2) a description of the amount and use of the financial assistance and the total project budget, including a list of all financial assistance by all grantors for the project and the private sources of financial assistance;

(3) the public purpose of the financial assistance, the job goals associated with both the financial assistance and the total project in which the financial assistance is included, the hourly wage of each job created, and the cost of health insurance provided by the employer;

(4) the date the project will be completed;

(5) the name and address of the parent corporation of the recipient, if any; and

(6) any other information the commissioner may request.

(c) Within one year of completing a report under paragraph (b), the local government agency must report to the commissioner on progress in achieving the purposes and goals under paragraph (b), clause (3).

(d) The commissioner of employment and economic development must provide information on reporting requirements to state and local government agencies.

Subd. 9. Compilation and summary report.

The Department of Employment and Economic Development must publish a compilation and summary of the results of the reports for the previous two calendar years by December 1 of 2004 and every other year thereafter. The reports of the government agencies to the department and the compilation and summary report of the department must be made available to the public. The commissioner must make copies of all business subsidy reports submitted by local and state granting agencies available on the department's Web site by October 1 of the year in which they were submitted.

The commissioner must coordinate the production of reports so that useful comparisons across time periods and across grantors can be made. The commissioner may add other information to the report as the commissioner deems necessary to evaluate business subsidies. Among the information in the summary and compilation report, the commissioner must include:

(1) total amount of subsidies awarded in each development region of the state;

(2) distribution of business subsidy amounts by size of the business subsidy;

(3) distribution of business subsidy amounts by time category;

(4) distribution of subsidies by type and by public purpose;

(5) percent of all business subsidies that reached their goals;

(6) percent of business subsidies that did not reach their goals by two years from the benefit date;

(7) total dollar amount of business subsidies that did not meet their goals after two years from the benefit date;

(8) percent of subsidies that did not meet their goals and that did not receive repayment;

(9) list of recipients that have failed to meet the terms of a subsidy agreement in the past five years and have not satisfied their repayment obligations;

(10) number of part-time and full-time jobs within separate bands of wages for the entire state and for each development region of the state;

(11) benefits paid within separate bands of wages for the entire state and for each development region of the state; and

(12) number of employees in the entire state and in each development region of the state who ceased to be employed because their employers relocated to become eligible for a business subsidy.

Subd. 10. Compilation.

The Department of Employment and Economic Development must publish a compilation of granting agencies' criteria policies adopted in the previous two calendar years by December 1 of 2004 and every other year thereafter.

Subd. 11. Enforcement.

(a) A person with residence in or an owner of taxable property located in the jurisdiction of the grantor may bring an action for equitable relief arising out of the failure of the grantor to comply with sections 116J.993 to 116J.995. The court may award a prevailing party in an action under this subdivision costs and reasonable attorney fees.

(b) Prior to bringing an action, the party must file a written complaint with the grantor stating the alleged violation and proposing a remedy. The grantor has up to 30 days to reply to the complaint in writing and may take action to comply with sections 116J.993 to 116J.995.

(c) The written complaint under this subdivision for failure to comply with subdivisions 1 to 5, must be filed with the grantor within 180 days after approval of the subsidy agreement under subdivision 3, paragraph (d). An action under this subdivision must be commenced within 30 days following receipt of the grantor's reply, or within 180 days after approval of the subsidy agreement under subdivision 3, paragraph (d), whichever is later.

History: 1999 c 243 art 12 s 2; 2000 c 482 s 2-11; 2001 c 7 s 28; 2003 c 128 art 13 s 24-26; 1Sp2003 c 4 s 1; 2004 c 206 s 24,25; 1Sp2005 c 1 art 4 s 23,24; 1Sp2005 c 3 art 7 s 2-5; 2008 c 366 art 5 s 3-5

116J.995 ECONOMIC GRANTS.

An appropriation rider in an appropriation to the Department of Employment and Economic Development that specifies that the appropriation be granted to a particular business or class of businesses must contain a statement of the expected benefits associated with the grant. At a minimum, the statement must include goals for the number of jobs created or enhanced, wages paid, and the tax revenue increases due to the grant. The wage and job goals must contain specific goals to be attained within two years of the benefit date. The statement must specify the recipient's obligation if the recipient does not attain the goals. At a minimum, the statement must require a recipient failing to meet the job and wage goals to pay back the assistance plus interest to the Department of Employment and Economic Development provided that repayment may be prorated to reflect partial fulfillment of goals. The interest rate must be set at no less than the implicit price deflator as defined under section 116J.994, subdivision 6. The legislature, after a public hearing, may extend for up to one year the period for meeting the goals provided in the statement.

History: 1999 c 243 art 12 s 3; 2000 c 482 s 12; 2001 c 7 s 29; 2003 c 128 art 13 s 27; 1Sp2003 c 4 s 1

JOB OPPORTUNITY BUILDING ZONES

469.310 DEFINITIONS.

Subdivision 1. Scope.

For purposes of sections 469.310 to 469.320, the following terms have the meanings given.

Subd. 2. Agricultural processing facility.

"Agricultural processing facility" means one or more facilities or operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plants or plant products into goods that are used for intermediate or final consumption including goods for nonfood use, and surrounding property.

Subd. 3. Applicant.

"Applicant" means a local government unit or units applying for designation of an area as a job opportunity building zone or a joint powers board, established under section 471.59, acting on behalf of two or more local government units.

Subd. 4. Commissioner.

"Commissioner" means the commissioner of employment and economic development.

Subd. 4a. Create automotive recovery zone.

"Create automotive recovery zone" means a zone designated by the commissioner under section 469.314 that contains a motor vehicle assembly facility.

Subd. 5. Development plan.

"Development plan" means a plan meeting the requirements of section 469.311.

Subd. 6. Job opportunity building zone or zone.

"Job opportunity building zone" or "zone" means a zone designated by the commissioner under section 469.314, and includes an agricultural processing facility zone and a create automotive recovery zone.

Subd. 7. Job opportunity building zone percentage or zone percentage.

"Job opportunity building zone percentage" or "zone percentage" means the following fraction reduced to a percentage:

(1) the numerator of the fraction is:

(i) the ratio of the taxpayer's property factor under section 290.191 located in the zone for the taxable year over the property factor numerator determined under section 290.191, plus

(ii) the ratio of the taxpayer's job opportunity building zone payroll factor under subdivision 8 over the payroll factor numerator determined under section 290.191; and

(2) the denominator of the fraction is two.

When calculating the zone percentage for a business that is part of a unitary business as defined under section 290.17, subdivision 4, the denominator of the payroll and property factors is the Minnesota payroll and property of the unitary business as reported on the combined report under section 290.17, subdivision 4, paragraph (j).

Subd. 8. Job opportunity building zone payroll factor.

"Job opportunity building zone payroll factor" or "job opportunity building zone payroll" is that portion of the payroll factor under section 290.191 that represents:

(1) wages or salaries paid to an individual for services performed in a job opportunity building zone; or

(2) wages or salaries paid to individuals working from offices within a job opportunity building zone if their employment requires them to work outside the zone and the work is incidental to the work performed by the individual within the zone.

Subd. 9. Local government unit.

"Local government unit" means a statutory or home rule charter city, county, town, Iron Range resources and rehabilitation agency, regional development commission, or a federally designated economic development district.

Subd. 10. Person.

"Person" includes an individual, corporation, partnership, limited liability company, association, or any other entity.

Subd. 11. Qualified business.

(a) A person carrying on a trade or business at a place of business located within a job opportunity building zone is a qualified business for the purposes of sections 469.310 to 469.320 according to the criteria in paragraphs (b) to (f).

(b) A person is a qualified business only on those parcels of land for which the person has entered into a business subsidy agreement, as required under section 469.313, with the appropriate local government unit in which the parcels are located.

(c) Prior to execution of the business subsidy agreement, the local government unit must consider the following factors:

(1) how wages compare to the regional industry average;

(2) the number of jobs that will be provided relative to overall employment in the community;

(3) the economic outlook for the industry the business will engage in;

(4) sales that will be generated from outside the state of Minnesota;

(5) how the business will build on existing regional strengths or diversify the regional economy;

(6) how the business will increase capital investment in the zone; and

(7) any other criteria the commissioner deems necessary.

(d) A person that relocates a trade or business from outside a job opportunity building zone into a zone is not a qualified business unless the business meets all of the requirements of paragraphs (b) and (c) and:

(1) increases full-time employment in the first full year of operation within the job opportunity building zone by a minimum of five jobs or 20 percent, whichever is greater, measured relative to the operations that were relocated and maintains the required level of employment for each year the zone designation applies; and

(2) enters a binding written agreement with the commissioner that:

(i) pledges the business will meet the requirements of clause (1);

(ii) provides for repayment of all tax benefits enumerated under section 469.315 to the business under the procedures in section 469.319, if the requirements of clause (1) are not met for the taxable year or for taxes payable during the year in which the requirements were not met; and

(iii) contains any other terms the commissioner determines appropriate.

(e) The commissioner may waive the requirements under paragraph (d), clause (1), if the commissioner determines that the qualified business will substantially achieve the factors under this subdivision.

(f) A business is not a qualified business if, at its location or locations in the zone, the business is primarily engaged in making retail sales to purchasers who are physically present at the business's zone location.

(g) A qualifying business must pay each employee compensation, including benefits not mandated by law, that on an annualized basis is equal to at least 110 percent of the federal poverty level for a family of four.

(h) A public utility, as defined in section 336B.01, is not a qualified business.

(i) A business operating in a create automotive recovery zone is a qualified business only if it engages in the assembly of motor vehicles at the zone location.

Subd. 12. Relocates.

(a) "Relocates" means that the trade or business:

(1) ceases one or more operations or functions at another location in Minnesota and begins performing substantially the same operations or functions at a location in a job opportunity building zone; or

(2) reduces employment at another location in Minnesota during a period starting one year before and ending one year after it begins operations in a job opportunity building zone and its employees in the job opportunity building zone are engaged in the same line of business as the employees at the location where it reduced employment.

(b) "Relocate" does not include an expansion by a business that establishes a new facility that does not replace or supplant an existing operation or employment, in whole or in part.

(c) "Trade or business" includes any business entity that is substantially similar in operation or ownership to the business entity seeking to be a qualified business under this section.

Subd. 13. Relocation payroll percentage.

"Relocation payroll percentage" is a fraction, the numerator of which is the zone payroll of the business for the tax year minus the payroll from the relocated operations in the last full year of operations prior to the relocation, and the denominator of which is the zone payroll of the business for the tax year. The relocation payroll percentage of a business that is not a relocating business is 100 percent.

Subd. 14. Motor vehicle assembly facility.

"Motor vehicle assembly facility" means a manufacturing facility with at least 500 employees that is used to assemble motor vehicles and is located in a city of the first class.

History: 1Sp2003 c 4 s 1; 1Sp2003 c 21 art 1 s 15; 2005 c 69 art 1 s 21; 1Sp2005 c 1 art 4 s 107; 1Sp2005 c 3 art 7 s 12,13; 2010 c 216 s 33-36

469.311 DEVELOPMENT PLAN.

(a) An applicant for designation of a job opportunity building zone must adopt a written development plan for the zone before submitting the application to the commissioner.

(b) The development plan must contain, at least, the following:

(1) a map of the proposed zone that indicates the geographic boundaries of the zone, the total area, and present use and conditions generally of the land and structures within those boundaries;

(2) evidence of community support and commitment from local government, local workforce investment boards, school districts, and other education institutions, business groups, and the public;

(3) a description of the methods proposed to increase economic opportunity and expansion, facilitate infrastructure improvement, reduce the local regulatory burden, and identify job-training opportunities;

(4) current social, economic, and demographic characteristics of the proposed zone and anticipated improvements in education, health, human services, and employment if the zone is created;

(5) a description of anticipated activity in the zone and each subzone, including, but not limited to, industrial use, industrial site reuse, commercial or retail use, and residential use; and

(6) any other information required by the commissioner.

History: 1Sp2003 c 21 art 1 s 16

469.312 JOB OPPORTUNITY BUILDING ZONES; LIMITATIONS.

Subdivision 1. Maximum size.

A job opportunity building zone may not exceed 5,000 acres. For a zone designated as an agricultural processing facility zone, the zone also may not exceed the size of a site necessary for the agricultural processing facility, including ancillary operations and space for expansion in the reasonably foreseeable future. For a zone designated as a create automotive recovery zone, the zone also may not exceed the size of the site necessary for the assembly of motor vehicles, including ancillary operations and space for expansion in the reasonably foreseeable future.

Subd. 2. Subzones.

The area of a job opportunity building zone may consist of one or more noncontiguous areas or subzones.

Subd. 3. Outside metropolitan area.

Except for a create automotive recovery zone, the area of a job opportunity building zone must be located outside of the metropolitan area, as defined in section 473.121, subdivision 2.

Subd. 4. Border city development zones.

(a) The area of a job opportunity building zone may not include the area of a border city development zone designated under section 469.1731. The city may remove property from a border city development zone contingent upon the area being designated as a job opportunity building zone. Before removing a parcel of property from a border city development zone, the city must obtain the written consent to the removal from each recipient that is located on the parcel and receives incentives under the border city development zone. Consent of any other property owner or taxpayer in the border city development zone is not required.
(b) A city may not provide tax incentives under section 469.1734 to individuals or businesses for operations or activity in a job opportunity building zone.

Subd. 5. Duration limit.

(a) The maximum duration of a zone is 12 years. The applicant may request a shorter duration. The commissioner may specify a shorter duration, regardless of the requested duration.

(b) The duration limit under this subdivision and the duration of the zone for purposes of allowance of tax incentives described in section 469.315 is extended by three calendar years for each parcel of property that meets the following requirements:

(1) the qualified business operates an ethanol plant, as defined in section 41A.09, on the site that includes the parcel; and

(2) the business subsidy agreement was executed after April 30, 2006.

(c) The duration limit under this subdivision and the duration of the zone for purposes of allowance of tax incentives described in section 469.315 is extended by five calendar years for each parcel of property that meets the following requirements:

(1) the parcel is located in a county with an unemployment rate that on the date that the business subsidy agreement is executed (i) equals or exceeds ten percent or (ii) is ten percent higher than the statewide average;

(2) the operations of the qualified business on the site include:

(i) its headquarters;

(ii) facilities for research and development; and

(iii) the manufacturing of products, used by the building, transport, consumer products, and industrial products sectors, that reduce the use of or increase the efficiency of the use of energy resources and that are manufactured using innovative and high technology processes; and

(3) the business subsidy agreement is executed after July 1, 2009, and before July 1, 2011.

(d) The duration of a create automotive recovery zone is 12 years from the date of the designation of a zone by the commissioner under section 469.314, subdivision 4, paragraph (g).

(e) The duration limit under this subdivision and the duration of the zone for purposes of allowance of tax incentives described in section 469.315 is extended by five calendar years for each parcel of property that meets the following requirements:

(1) the parcel is located in a county with an unemployment rate for any of the 12 months preceding the date on which the business subsidy agreement is executed that (i) equals or exceeds ten percent or (ii) is ten percent higher than the statewide average;

(2) the qualified business is engaged in the business of manufacturing wind turbines and related products for the generation of energy, and the parcel includes one or more of the following facilities of the qualified business:

(i) the headquarters of the business in this country;

(ii) training facilities; or

(iii) manufacturing facilities; and

(3) the initial business subsidy agreement is executed after July 1, 2010, and before November 1, 2011.

History: 1Sp2003 c 21 art 1 s 17; 2006 c 259 art 13 s 10; 2006 c 281 art 4 s 26; 2009 c 88 art 5 s 10; 2010 c 216 s 37-39; 2011 c 76 art 1 s 80

469.313 APPLICATION FOR DESIGNATION.

Subdivision 1. Who may apply.

One or more local government units, or a joint powers board under section 471.59, acting on behalf of two or more units, may apply for designation of an area as a job opportunity building zone. All or part of the area proposed for designation as a zone must be located within the boundaries of each of the governmental units. A local government unit may not submit or have submitted on its behalf more than one application for designation of a job opportunity building zone.

Subd. 2. Application content.

The application must include:

(1) a development plan meeting the requirements of section 469.311;

(2) the proposed duration of the zone, not to exceed 12 years;

(3) a resolution or ordinance adopted by each of the cities or towns and the counties in which the zone is located, agreeing to provide all of the local tax exemptions provided under section 469.315;

(4) if the proposed zone includes area in a border city development zone, written consent to removal of the property from the border city development zone to the extent required by section 469.312, subdivision 4;

(5) an agreement by the applicant to treat incentives provided under the zone designation as business subsidies under sections 116J.993 to 116J.995 and to comply with the requirements of that law; and

(6) supporting evidence to allow the commissioner to evaluate the application under the criteria in section 469.314.

History: 1Sp2003 c 21 art 1 s 18

469.314 DESIGNATION OF JOB OPPORTUNITY BUILDING ZONES.

Subdivision 1. Commissioner to designate.

(a) The commissioner, in consultation with the commissioner of revenue, shall designate not more than ten job opportunity building zones and not more than one create automotive recovery zone. In making the designations, the commissioner shall consider need and likelihood of success to yield the most economic development and revitalization of economically distressed rural areas of Minnesota.

(b) In addition to the designations under paragraph (a), the commissioner may, in consultation with the commissioners of agriculture and revenue, designate up to five agricultural processing facility zones.

(c) The commissioner may, upon designation of a zone, modify the development plan, including the boundaries of the zone or subzones, if in the commissioner's opinion a modified plan would better meet the objectives of the job opportunity building zone program. The commissioner shall notify the applicant of the modification and provide a statement of the reasons for the modifications.

Subd. 2. Need indicators.

(a) In evaluating applications to determine the need for designation of a job opportunity building zone, the commissioner shall consider the following factors as indicators of need:

(1) the percentage of the population that is below 200 percent of the poverty rate, compared with the state as a whole;

(2) the extent to which the area's average weekly wage is significantly lower than the state average weekly wage;

(3) the amount of property in or near the proposed zone that is deteriorated or underutilized;

(4) the extent to which the median sale price of housing units in the area is below the state median;

(5) the extent to which the median household income of the area is lower than the state median household income;

(6) the extent to which the area experienced a population loss during the 20-year period ending the year before the application is made;

(7) the extent to which an area has experienced sudden or severe job loss as a result of closing of businesses or other employers;

(8) the extent to which property in the area would remain underdeveloped or nonperforming due to physical characteristics;

(9) the extent to which the area has substantial real property with adequate infrastructure and energy to support new or expanded development; and

(10) the extent to which the business startup or expansion rates are significantly lower than the respective rate for the state.

(b) In applying the need indicators, the best available data should be used. If reported data are not available for the proposed zone, data for the smallest area that is available and includes the area of the proposed zone may be used. The commissioner may require applicants to provide data to demonstrate how the area meets one or more of the indicators of need.

Subd. 3. Success indicators.

In determining the likelihood of success of a proposed zone, the commissioner shall consider:

(1) the strength and viability of the proposed development goals, objectives, and strategies in the development plan;

(2) whether the development plan is creative and innovative in comparison to other applications;

(3) local public and private commitment to development of the proposed zone and the potential cooperation of surrounding communities;

(4) existing resources available to the proposed zone;

(5) how the designation of the zone would relate to other economic and community development projects and to regional initiatives or programs;

(6) how the regulatory burden will be eased for businesses operating in the proposed zone;

(7) proposals to establish and link job creation and job training; and

(8) the extent to which the development is directed at encouraging and that designation of the zone is likely to result in the creation of high-paying jobs.

Subd. 4. Designation schedule.

(a) The schedule in paragraphs (b) to (f) applies to the designation of job opportunity building zones. Paragraph (g) applies to the designation of a create automotive recovery zone.

(b) The commissioner shall publish the form for applications and any procedural, form, or content requirements for applications by no later than August 1, 2003. The commissioner may publish these requirements on the Internet, in the State Register, or by any other means the commissioner determines appropriate to disseminate the information to potential applicants for designation.

(c) Applications must be submitted by October 15, 2003.

(d) The commissioner shall designate the zones by no later than December 31, 2003.

(e) The designation of the zones takes effect January 1, 2004.

(f) The commissioner may reserve one or more of the ten authorized zones for a second round of designations in calendar year 2004. If the commissioner chooses to reserve designations for this purpose, the commissioner shall establish the schedule for the second round of designations, notwithstanding the dates in paragraphs (c), (d), and (e). The commissioner shall allow a period of at least 90 days for submission of applications after notification of the second round. A zone designated in the second round takes effect on January 1, 2005.

(g) The commissioner may accept applications for a create automotive recovery zone at any time before January 1, 2016. The commissioner may designate a create automotive recovery zone at any time after December 31, 2011, and before January 1, 2016, but only if the applicant has entered a written agreement with a qualified business committing to make a capital investment of at least $100,000,000 to improve or retrofit a motor vehicle assembly facility located in the zone.

Subd. 5. Geographic distribution.

The commissioner shall have as a goal the geographic distribution of zones around the state.

Subd. 6. Rulemaking exemption.

The commissioner's actions in establishing procedures, requirements, and making determinations to administer sections 469.310 to 469.320 are not a rule for purposes of chapter 14 and are not subject to the Administrative Procedure Act contained in chapter 14 and are not subject to section 14.386.

History: 1Sp2003 c 21 art 1 s 19; 2010 c 216 s 40,41

469.315 TAX INCENTIVES AVAILABLE IN ZONES.

Qualified businesses that operate in a job opportunity building zone, individuals who invest in a qualified business that operates in a job opportunity building zone, and property located in a job opportunity building zone qualify for:

(1) exemption from individual income taxes as provided under section 469.316;

(2) exemption from corporate franchise taxes as provided under section 469.317;

(3) exemption from the state sales and use tax and any local sales and use taxes on qualifying purchases as provided in section 297A.68, subdivision 37;

(4) exemption from the state sales tax on motor vehicles and any local sales tax on motor vehicles as provided under section 297B.03;

(5) exemption from the property tax as provided in section 272.02, subdivision 64;

(6) exemption from the wind energy production tax under section 272.029, subdivision 7; and

(7) the jobs credit allowed under section 469.318, except that a qualified business located in a create automotive recovery zone is not eligible for the credit under section 469.318 but is eligible for the credit under section 469.3181.

History: 1Sp2003 c 21 art 1 s 20; 2010 c 216 s 42

NOTE: The amendment to this section by Laws 2010, chapter 216, section 42, is effective for taxable years beginning after December 31, 2011. Laws 2010, chapter 216, section 42, the effective date.

469.316 INDIVIDUAL INCOME TAX EXEMPTION.

Subdivision 1. Application.

An individual, estate, or trust operating a trade or business in a job opportunity building zone, and an individual, estate, or trust making a qualifying investment in a qualified business operating in a job opportunity building zone qualifies for the exemptions from taxes imposed under chapter 290, as provided in this section. The exemptions provided under this section apply only to the extent that the income otherwise would be taxable under chapter 290. Subtractions under this section from federal taxable income, alternative minimum taxable income, or any other base subject to tax are limited to the amount that otherwise would be included in the tax base absent the exemption under this section. This section applies only to taxable years beginning during the duration of the job opportunity building zone.

Subd. 2. Rents.

An individual, estate, or trust is exempt from the taxes imposed under chapter 290 on net rents derived from real or tangible personal property used by a qualified business and located in a zone for a taxable year in which the zone was designated a job opportunity building zone. If tangible personal property was used both within and outside of the zone by the qualified business, the exemption amount for the net rental income must be multiplied by a fraction, the numerator of which is the number of days the property was used in the zone and the denominator of which is the total days the property is rented by the qualified business.

Subd. 3. Business income.

An individual, estate, or trust is exempt from the taxes imposed under chapter 290 on net income from the operation of a qualified business in a job opportunity building zone. If the trade or business is carried on within and without the zone and the individual is not a resident of Minnesota, or the taxpayer is an estate or trust, the exemption must be apportioned based on the zone percentage and the relocation payroll percentage for the taxable year. If the trade or business is carried on within and without the zone and the individual is a resident of Minnesota, the exemption must be apportioned based on the zone percentage and the relocation payroll percentage for the taxable year, except the ratios under section 469.310, subdivision 7, clause (1), items (i) and (ii), must use the denominators of the property and payroll factors determined under section 290.191. No subtraction is allowed under this section in excess of 20 percent of the sum of the job opportunity building zone payroll and the adjusted basis of the property at the time that the property is first used in the job opportunity building zone by the business.

Subd. 4. Capital gains.

(a) An individual, estate, or trust is exempt from the taxes imposed under chapter 290 on:

(1) net gain derived on a sale or exchange of real property located in the zone and used by a qualified business. If the property was held by the individual, estate, or trust during a period when the zone was not designated, the gain must be prorated based on the percentage of time, measured in calendar days, that the real property was held by the individual, estate, or trust during the period the zone designation was in effect to the total period of time the real property was held by the individual;

(2) net gain derived on a sale or exchange of tangible personal property used by a qualified business in the zone. If the property was held by the individual, estate, or trust during a period when the zone was not designated, the gain must be prorated based on the percentage of time, measured in calendar days, that the property was held by the individual, estate, or trust during the period the zone designation was in effect to the total period of time the property was held by the individual. If the tangible personal property was used outside of the zone during the period of the zone's designation, the exemption must be multiplied by a fraction, the numerator of which is the number of days the property was used in the zone during the time of the designation and the denominator of which is the total days the property was held during the time of the designation; and

(3) net gain derived on a sale of an ownership interest in a qualified business operating in the job opportunity building zone, meeting the requirements of paragraph (b). The exemption on the gain must be multiplied by the zone percentage of the business for the taxable year prior to the sale.

(b) A qualified business meets the requirements of paragraph (a), clause (3), if it is a corporation, an S corporation, or a partnership, and for the taxable year its job opportunity building zone percentage exceeds 25 percent. For purposes of paragraph (a), clause (3), the zone percentage must be calculated by modifying the ratios under section 469.310, subdivision 7, clause (1), items (i) and (ii), to use the denominators of the property and payroll factors determined under section 290.191. Upon the request of an individual, estate, or trust holding an ownership interest in the entity, the entity must certify to the owner, in writing, the job opportunity building zone percentage needed to determine the exemption.

History: 1Sp2003 c 21 art 1 s 21; 1Sp2005 c 3 art 7 s 14

469.317 CORPORATE FRANCHISE TAX EXEMPTION.

(a) A qualified business is exempt from taxation under section 290.02, the alternative minimum tax under section 290.0921, and the minimum fee under section 290.0922, on the portion of its income attributable to operations within the zone. This exemption is determined as follows:

(1) for purposes of the tax imposed under section 290.02, by multiplying its taxable net income by its zone percentage and by its relocation payroll percentage and subtracting the result in determining taxable income;

(2) for purposes of the alternative minimum tax under section 290.0921, by multiplying its alternative minimum taxable income by its zone percentage and by its relocation payroll percentage and reducing alternative minimum taxable income by this amount; and

(3) for purposes of the minimum fee under section 290.0922, by excluding property and payroll in the zone from the computations of the fee or by exempting the entity under section 290.0922, subdivision 2, clause (7).

(b) No subtraction is allowed under this section in excess of 20 percent of the sum of the corporation's job opportunity building zone payroll and the adjusted basis of the property at the time that the property is first used in the job opportunity building zone by the corporation.

(c) This section applies only to taxable years beginning during the duration of the job opportunity building zone.

History: 1Sp2003 c 21 art 1 s 22; 1Sp2005 c 3 art 7 s 15

469.318 JOBS CREDIT.

Subdivision 1. Credit allowed.

A qualified business is allowed a credit against the taxes imposed under chapter 290. The credit equals seven percent of the:

(1) lesser of:

(i) zone payroll for the taxable year, less the zone payroll for the base year; or

(ii) total Minnesota payroll for the taxable year, less total Minnesota payroll for the base year; minus

(2) $30,000 multiplied by (the number of full-time equivalent employees that the qualified business employs in the job opportunity building zone for the taxable year, minus the number of full-time equivalent employees the business employed in the zone in the base year, but not less than zero).

Subd. 2. Definitions.

(a) For purposes of this section, the following terms have the meanings given.

(b) "Base year" means the taxable year beginning during the calendar year prior to the calendar year in which the zone designation took effect.

(c) "Full-time equivalent employees" means the equivalent of annualized expected hours of work equal to 2,080 hours.

(d) "Minnesota payroll" means the wages or salaries attributed to Minnesota under section 290.191, subdivision 12, for the qualified business or the unitary business of which the qualified business is a part, whichever is greater.

(e) "Zone payroll" means wages or salaries used to determine the zone payroll factor for the qualified business, less the amount of compensation attributable to any employee that exceeds $100,000.

Subd. 3. Inflation adjustment.

For taxable years beginning after December 31, 2004, the dollar amounts in subdivision 1, clause (2), and subdivision 2, paragraph (e), are annually adjusted for inflation. The commissioner of revenue shall adjust the amounts by the percentage determined under section 290.06, subdivision 2d, for the taxable year.

Subd. 4. Refundable.

If the amount of the credit exceeds the liability for tax under chapter 290, the commissioner of revenue shall refund the excess to the qualified business.

Subd. 5. Appropriation.

An amount sufficient to pay the refunds authorized by this section is appropriated to the commissioner of revenue from the general fund.

History: 1Sp2003 c 21 art 1 s 23

469.3181 CREATE AUTOMOTIVE RECOVERY JOBS CREDIT.

Subdivision 1. Credit allowed.

(a) A qualified business located in a create automotive recovery zone is allowed a credit against the tax imposed under chapter 290 equal to $2,500 times the number of full-time equivalent employees receiving wages from the qualified business for working at the facility during the taxable year. The qualified business is allowed an additional credit equal to $1,000 times the number of full-time equivalent employees receiving wages from the qualified business for working at the facility during the taxable year in excess of 750 employees.

(b) For purposes of this section, "employee" and "wages" have the meanings given them in section 290.92, subdivisions 1 and 3.

(c) For purposes of this section, "full-time equivalent employees" means the equivalent of annualized expected hours of work equal to 2,080 hours.

Subd. 2. Refundable.

If the amount of the credit exceeds the liability for tax under chapter 290, the commissioner of revenue shall refund the excess to the qualified business.

Subd. 3. Appropriation.

An amount sufficient to pay the refunds authorized by this section is appropriated to the commissioner of revenue from the general fund.

Subd. 4. Manner of claiming credit.

The commissioner shall prescribe the manner in which the credit may be issued or claimed. This may include allowing the credit only as a separately processed claim for refund.

History: 2010 c 216 s 43

NOTE: This section, as added by Laws 2010, chapter 216, section 43, is effective for taxable years beginning after December 31, 2011. Laws 2010, chapter 216, section 43, the effective date.

469.319 REPAYMENT OF TAX BENEFITS BY BUSINESSES THAT NO LONGER OPERATE IN A ZONE.

Subdivision 1. Repayment obligation.

A business must repay the total tax benefits listed in section 469.315 received during the two years immediately before it (1) ceased to perform a substantial level of activities described in the business subsidy agreement, or (2) otherwise ceased to be a qualified business, other than those subject to the provisions of section 469.3191.

Subd. 1a. Repayment obligation of businesses not operating in zone.

Persons that receive benefits without operating a business in a zone are subject to repayment under this section if the business for which those benefits relate is subject to repayment under this section. Such persons are deemed to have ceased performing in the zone on the same day that the qualified business for which the benefits relate becomes subject to repayment under subdivision 1.

Subd. 2. Definitions.

(a) For purposes of this section, the following terms have the meanings given.

(b) "Business" means any person that received tax benefits enumerated in section 469.315.

(c) "Commissioner" means the commissioner of revenue.

(d) "Persons that receive benefits without operating a business in a zone" means persons that claim benefits under section 469.316, subdivision 2 or 4, as well as persons that own property leased by a qualified business and are eligible for benefits under section 272.02, subdivision 64, or 297A.68, subdivision 37, paragraph (b).

Subd. 3. Disposition of repayment.

The repayment must be paid to the state to the extent it represents a state tax reduction and to the county to the extent it represents a property tax reduction. Any amount repaid to the state must be deposited in the general fund. Any amount repaid to the county for the property tax exemption must be distributed to the taxing authorities with authority to levy taxes in the zone in the same manner provided for distribution of payment of delinquent property taxes. Any repayment of local sales taxes must be repaid to the commissioner for distribution to the city or county imposing the local sales tax.

Subd. 4. Repayment procedures.

(a) For the repayment of taxes imposed under chapter 290 or 297A or local taxes collected pursuant to section 297A.99, a business must file an amended return with the commissioner of revenue and pay any taxes required to be repaid within 30 days after becoming subject to repayment under this section. The amount required to be repaid is determined by calculating the tax for the period or periods for which repayment is required without regard to the exemptions and credits allowed under section 469.315.

(b) For the repayment of taxes imposed under chapter 297B, a business must pay any taxes required to be repaid to the motor vehicle registrar, as agent for the commissioner of revenue, within 30 days after becoming subject to repayment under this section.

(c) For the repayment of property taxes, the county auditor shall prepare a tax statement for the business, applying the applicable tax extension rates for each payable year and provide a copy to the business and to the taxpayer of record. The business must pay the taxes to the county treasurer within 30 days after receipt of the tax statement. The business or the taxpayer of record may appeal the valuation and determination of the property tax to the Tax Court within 30 days after receipt of the tax statement.

(d) The provisions of chapters 270C and 289A relating to the commissioner's authority to audit, assess, and collect the tax and to hear appeals are applicable to the repayment required under paragraphs (a) and (b). The commissioner may impose civil penalties as provided in chapter 289A, and the additional tax and penalties are subject to interest at the rate provided in section 270C.40, from 30 days after becoming subject to repayment under this section until the date the tax is paid.

(e) If a property tax is not repaid under paragraph (c), the county treasurer shall add the amount required to be repaid to the property taxes assessed against the property for payment in the year following the year in which the auditor provided the statement under paragraph (c).

(f) For determining the tax required to be repaid, a reduction of a state or local sales or use tax is deemed to have been received on the date that the good or service was purchased or first put to a taxable use. In the case of an income tax or franchise tax, including the credit payable under section 469.318, a reduction of tax is deemed to have been received for the two most recent tax years that have ended prior to the date that the business became subject to repayment under this section. In the case of a property tax, a reduction of tax is deemed to have been received for the taxes payable in the year that the business became subject to repayment under this section and for the taxes payable in the prior year.

(g) The commissioner may assess the repayment of taxes under paragraph (d) any time within two years after the business becomes subject to repayment under subdivision 1, or within any period of limitations for the assessment of tax under section 289A.38, whichever period is later. The county auditor may send the statement under paragraph (c) any time within three years after the business becomes subject to repayment under subdivision 1.

(h) A business is not entitled to any income tax or franchise tax benefits, including refundable credits, for any part of the year in which the business becomes subject to repayment under this section nor for any year thereafter. Property is not exempt from tax under section 272.02, subdivision 64, for any taxes payable in the year following the year in which the property became subject to repayment under this section nor for any year thereafter. A business is not eligible for any sales tax benefits beginning with goods or services purchased or first put to a taxable use on the day that the business becomes subject to repayment under this section.

Subd. 5. Waiver authority.

(a) The commissioner may waive all or part of a repayment required under subdivision 1, if the commissioner, in consultation with the commissioner of employment and economic development and appropriate officials from the local government units in which the qualified business is located, determines that requiring repayment of the tax is not in the best interest of the state or the local government units and the business ceased operating as a result of circumstances beyond its control including, but not limited to:

(1) a natural disaster;

(2) unforeseen industry trends; or

(3) loss of a major supplier or customer.

(b)(1) The commissioner shall waive repayment required under subdivision 1a if the commissioner has waived repayment by the operating business under subdivision 1, unless the person that received benefits without having to operate a business in the zone was a contributing factor in the qualified business becoming subject to repayment under subdivision 1;

(2) the commissioner shall waive the repayment required under subdivision 1a, even if the repayment has not been waived for the operating business if:
(i) the person that received benefits without having to operate a business in the zone and the business that operated in the zone are not related parties as defined in section 267(b) of the Internal Revenue Code of 1986, as amended through December 31, 2007; and

(ii) actions of the person were not a contributing factor in the qualified business becoming subject to repayment under subdivision 1.

(c) Requests for waiver must be made no later than 60 days after the earlier of the notice date of an order issued under subdivision 4, paragraph (d), or the date of a tax statement issued under subdivision 4, paragraph (c).

Subd. 6. Reconciliation.

Where this section is inconsistent with section 116J.994, subdivision 3, paragraph (e), or 6, or any other provisions of sections 116J.993 to 116J.995, this section prevails.

History: 1Sp2003 c 4 s 1; 1Sp2003 c 21 art 1 s 24; 2005 c 151 art 2 s 17; 1Sp2005 c 1 art 4 s 108,109; 2008 c 366 art 5 s 13; 2010 c 389 art 7 s 6; 2011 c 112 art 10 s 3

469.3191 BREACH OF AGREEMENTS BY BUSINESSES THAT CONTINUE TO OPERATE IN ZONE.

(a) A "business in violation of its business subsidy agreement but not subject to section 469.319" means a business that is operating in violation of the business subsidy agreement but maintains a level of operations in the zone that does not subject it to the repayment provisions of section 469.319, subdivision 1, clause (1).

(b) A business described in paragraph (a) that does not sign a new or amended business subsidy agreement, as authorized under paragraph (h), is subject to repayment of benefits under section 469.319 from the day that it ceases to perform in the zone a substantial level of activities described in the business subsidy agreement.

(c) A business described in paragraph (a) ceases being a qualified business after the last day that it has to meet the goals stated in the agreement.

(d) A business is not entitled to any income tax or franchise tax benefits, including refundable credits, for any part of the year in which the business is no longer a qualified business under paragraph (c), and thereafter. A business is not eligible for sales tax benefits beginning with goods or services purchased or put to a taxable use on the day that it is no longer a qualified business under paragraph (c). Property is not exempt from tax under section 272.02, subdivision 64, for any taxes payable in the year following the year in which the business is no longer a qualified business under paragraph (c), and thereafter.

(e) A business described in paragraph (a) that wants to resume eligibility for benefits under section 469.315 must request that the commissioner of employment and economic development determine the length of time that the business is ineligible for benefits. The commissioner shall determine the length of ineligibility by applying the proportionate level of performance under the agreement to the total duration of the zone as measured from the date that the business subsidy agreement was executed. The length of time must not be less than one full year for each tax benefit listed in section 469.315. The commissioner of employment and economic development and the appropriate local government officials shall consult with the commissioner of revenue to ensure that the period of ineligibility includes at least one full year of benefits for each tax.

(f) The length of ineligibility determined under paragraph (e) must be applied by reducing the zone duration for the property by the duration of the ineligibility.

(g) The zone duration of property that has been adjusted under paragraph (f) must not be altered again to permit the business additional benefits under section 469.315.

(h) A business described in paragraph (a) becomes eligible for benefits available under section 469.315 by entering into a new or amended business subsidy agreement with the appropriate local government unit. The new or amended agreement must cover a period beginning from the date of ineligibility under the original business subsidy agreement, through the zone duration determined by the commissioner under paragraph (f). No exemption of property taxes under section 272.02, subdivision 64, is available under the new or amended agreement for property taxes due or paid before the date of the final execution of the new or amended agreement, but unpaid taxes due after that date need not be paid.

(i) A business that violates the terms of an agreement authorized under paragraph (h) is permanently barred from seeking benefits under section 469.315 and is subject to the repayment provisions under section 469.319 effective from the day that the business ceases to operate as a qualified business in the zone under the second agreement.

History: 2008 c 366 art 5 s 14

469.3192 PROHIBITION AGAINST AMENDMENTS TO BUSINESS SUBSIDY AGREEMENT.

Except as authorized under section 469.3191, under no circumstance shall terms of any agreement required as a condition for eligibility for benefits listed under section 469.315 be amended to change job creation, job retention, or wage goals included in the agreement.

History: 2008 c 366 art 5 s 15

469.3193 CERTIFICATION OF CONTINUING ELIGIBILITY FOR JOBZ BENEFITS.

(a) By October 15 of each year, every qualified business must certify to the commissioner of revenue, on a form prescribed by the commissioner of revenue, whether it is in compliance with any agreement required as a condition for eligibility for benefits listed under section 469.315. A business that fails to submit the certification, or any business, including those still operating in the zone, that submits a certification that the commissioner of revenue later determines materially misrepresents the business's compliance with the agreement, is subject to the repayment provisions under section 469.319 from January 1 of the year in which the report is due or the date that the business became subject to section 469.319, whichever is earlier. Any such business is permanently barred from obtaining benefits under section 469.315. For purposes of this section, the bar applies to an entity and also applies to any individuals or entities that have an ownership interest of at least 20 percent of the entity.

(b) Before the sanctions under paragraph (a) apply to a business that fails to submit the certification, the commissioner of revenue shall send notice to the business, demanding that the certification be submitted within 30 days and advising the business of the consequences for failing to do so. The commissioner of revenue shall notify the commissioner of employment and economic development and the appropriate job opportunity subzone administrator whenever notice is sent to a business under this paragraph.

(c) The certification required under this section is public.

(d) The commissioner of revenue shall promptly notify the commissioner of employment and economic development of all businesses that certify that they are not in compliance with the terms of their business subsidy agreement and all businesses that fail to file the certification.

History: 2008 c 366 art 5 s 16; 2010 c 389 art 7 s 7

469.320 ZONE PERFORMANCE; REMEDIES.

Subdivision 1. Reporting requirement.

An applicant receiving designation of a job opportunity building zone under section 469.314 must annually report to the commissioner on its progress in meeting the zone performance goals under the development plan for the zone and the applicant's compliance with the business subsidy law under sections 116J.993 to 116J.995.

Subd. 2. Procedures.

For reports required by subdivision 1, the commissioner may prescribe:

(1) the required time or times by which the reports must be filed;

(2) the form of the report; and

(3) the information required to be included in the report.

Subd. 3. Remedies.

If the commissioner determines, based on a report filed under subdivision 1 or other available information, that a zone or subzone is failing to meet its performance goals, the commissioner may take any actions the commissioner determines appropriate, including modification of the boundaries of the zone or a subzone or termination of the zone or a subzone. Before taking any action, the commissioner shall consult with the applicant and the affected local government units, including notifying them of the proposed actions to be taken. The applicant may appeal the commissioner's order under the contested case procedures of chapter 14.

Subd. 4. Existing businesses.

(a) An action to remove area from a zone or to terminate a zone under this section does not apply to:

(1) the property tax on improvements constructed before the first January 2 following publication of the commissioner's order;

(2) sales tax on purchases made before the first day of the next calendar month beginning at least 30 days after publication of the commissioner's order; and

(3) individual income tax or corporate franchise tax attributable to a facility that was in operation before the publication of the commissioner's order.

(b) The tax exemptions specified in paragraph (a) terminate on the date on which the zone expires under the original designation.

History: 1Sp2003 c 21 art 1 s 25; 1Sp2005 c 1 art 4 s 110

469.3201 STATE AUDITOR; AUDITS OF JOB OPPORTUNITY BUILDING ZONES AND BUSINESS SUBSIDY AGREEMENTS.

The Office of the State Auditor must annually audit the creation and operation of all job opportunity building zones and business subsidy agreements entered into under Minnesota Statutes, sections 469.310 to 469.320. To the extent necessary to perform this audit, the state auditor may request from the commissioner of revenue tax return information of taxpayers who are eligible to receive tax benefits authorized under section 469.315. To the extent necessary to perform this audit, the state auditor may request from the commissioner of employment and economic development wage detail report information required under section 268.044 of taxpayers eligible to receive tax benefits authorized under section 469.315.

History: 1Sp2005 c 3 art 7 s 19 subd 2; 2008 c 366 art 5 s 17

BUSINESS SUBSIDY POLICY AND CRITERIA

Preamble. Whenever the City of Duluth invests public funds or agrees to voluntarily forfeit tax or other revenue that benefit private development projects, those projects should create the greatest number of living wage jobs possible for the residents of the city and the surrounding region. City of Duluth policy makers and economic development agents need to keep the critical need for living wage jobs a high priority whenever public dollars are invested in a private business or development project.

This policy is adopted in compliance with M.S. § 116J.994, subd. 2. A copy of the policy shall be submitted to the Department of Employment and Economic Development along with the City's annual Business Subsidy report. Pursuant to Rule 18 of the Standing Rules of the Duluth City Council, resolutions granting business subsidies require two readings before the City Council. Pursuant to Ordinance No. 9672 effective August 22, 2004, all business subsidy proposals require a tax base impact worksheet and a tax base impact summary and may require a tax base impact statement.

Business Subsidy Implementation. The City will focus its business subsidy assistance on businesses which 1) demonstrate a clear and ongoing commitment to the community by providing living wage jobs to their employees, and 2) agree to comply with annual Business Subsidy reporting requirements as required by Job Opportunity Building Zone (JOBZ) statute M.S. § § 469.310 - 469.320; and/or as required by the Business Subsidy statute M.S. § § 116J.993 - 116J.995.

I. DEFINITIONS

A. "Business Subsidy" means a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipients, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business, and as defined by the Business Subsidy statute M.S. § § 116J.993 - 116J.995. Business Subsidy does not include the following:

1. assistance of less than $25,000;
2. Federal community development block grant program assistance until the assistance has bee repaid to, and reinvested by, the city;
3. Federal emergency shelter grant (ESG) and HOME investment partnerships program assistance until the assistance has been repaid to, and reinvested by, the city;
4. Minnesota housing finance agency - community revitalization fund

and innovative housing loan program;

5. Assistance for housing in the form of a loan at an interest rate not generally available to the borrower in the commercial lending market for the extension of street and utilities received by the borrower pursuant to authorization under Chapter IX of the Duluth City Charter;
6. All affordable housing projects that comply with DEDA's housing policy;
7. Assistance for housing.

B. "Business Subsidy Report" means the annual report submitted by the Local Governmental Unit required to comply with the M.S. § 116J.994, subd. 7(b).

C. "Criteria" means the equitably applied, uniform standards by which the city bases its decision to award any business subsidy to a private business or development project establishing a business and creating jobs in the city of Duluth.

D. "DEED" means Minnesota Department of Employment and Economic Development.

E. "Job Zone Term" means the period until December 31, 2015.

F. "JOBZ Business Subsidy" means tax exemptions or tax credits available to a Qualified JOBZ Business located in a job zone under the Job Opportunity Building Zone (JOBZ) statute M.S. § § 469.310 - 469.320;

G. "Living Wage Ordinance" means Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended.

H. "Local Governmental Unit" means the statutory or home rule charter city, county, town, iron range resources and rehabilitation agency, regional development commission;

I. "Non-relocating JOBZ Business" means a Qualified JOBZ Business which is a new business startup, an expansion which maintains current operations, relocation/expansion from another state, or a business currently operating in a JOBZ Zone.

J. "Qualified JOBZ Business" means a person that: a) carries on a trade or business at a place of business located within a Job Opportunity Building Zone as referenced in M.S. § 469.310, subd. 11; b) complies with the reporting requirements specified by M.S. § 469.313 subd. 2(5); c) received required approvals and entered into a business subsidy agreement; and d) comply with the criteria in Section III of this agreement. A Qualified JOBZ Business is a Recipient as defined by Business Subsidy law. A Qualified JOBZ Business shall not include a retail business, entertainment business, tourism business, hospitality business, personal service business, or a business that pays less than required by the Living Wage Ordinance.

K. "Recipient" means any business entity that receives a business subsidy as defined by M.S. § 116J.993, and that has signed a Business Subsidy Agreement with the city.

L. "Relocation JOBZ Agreement" means a binding written agreement between a Relocating JOBZ Business and the commissioner of DEED pledging that the Relocating JOBZ Business will (a) increase full-time or full-time equivalent employment in the first full year of operation within the Job Opportunity Building Zone by a minimum of five jobs or 20%, whichever is greater; and (b) provides for repayment of all tax benefits if the requirements of (a)-are not met.

M. "Relocating JOBZ Business" means a Qualified JOBZ Business relocating from another Minnesota non-JOB Zone location.

N. "Subzone" means the parcel or parcels of land designated by the Commissioner of Employment and Economic Development within a Job Opportunity Building Zone within the boundaries of Duluth to receive certain tax credits and exemptions specified under M.S. §§ 469.310 - 469.320.

O. "Target Industries" means manufacturing, aviation, high technology and eco-industry.

P. "Zone" means a Job Opportunity Building Zone designated by the Commissioner of Employment and Economic Development under M.S. § 469.314.

II. MANDATORY AND PREFERENTIAL CRITERIA FOR NON-JOBZ BUSINESS SUBSIDY

A. Mandatory Criteria. All projects receiving assistance of $25,000, or more, must satisfy the following seven criteria:

1. Public purpose criteria. The project must meet two of the following five public purpose criteria:

   (a) High quality jobs. If the project results in the creation of new jobs, then the jobs must be predominantly full-time jobs that pay at least a living wage (as defined by Duluth 's Living Wage Ordinance) and provide health insurance and other benefits;
   (b) Job retention. If the recipient can demonstrate that job loss is imminent without a business subsidy, then the recipient must present a plan which shows that a significant number of the existing jobs will be retained for at least five years after completion of the subsidy;
   (c) Economic diversity. The project must contribute to the economic diversity of the city by reducing dependency upon declining industries, participating in fast growing industries, or supporting existing industries of manufacturing, education, health care, retail sales, tourism and service and technology;
   (d) Quality of life. The project must enhance the quality of life of the city's residents by investing in neglected neighborhoods or business areas, utilizing in-fill areas rather than contributing to urban sprawl, benefitting the environment, or redeveloping blighted or polluted areas;
   (e) Tax base. The city must realize a reasonable rate of return on its public investment in the project in the form of an increase in tax base or other monetary return;

2. Specific goals. The project will have measurable, specific and tangible goals as they relate to the stated public purpose;

3. Equal opportunity. The recipient will abide by all local, state and federal laws prohibiting discriminatory hiring and employment practices and agree to affirmatively seek out participation in the project by members of protected classes;

4. Project feasibility and disclosure. The recipient must demonstrate to the satisfaction of the city that it has adequate financing for the project and that the project will be completed in a timely fashion;

5. Wage policy. If the project results in the creation of any job, the wage for each part-time and full-time job created must be in compliance with the Living Wage Ordinance and at least equal to the prevailing wage for like or similar projects within the area or such greater amount as required by the city for a specific project;

6. Report to the council. At the time the city council reviews a project development agreement calling for assistance of $25,000 or more, a report shall be submitted to councilors summarizing the information necessary for them to exercise their due diligence, as determined by the city council;

7. Applicable laws. The recipient will agree to satisfy all requirements of Minnesota's business subsidy law as defined in Minnesota Statutes §116J.993-§116J.995 and Duluth's Living Wage Ordinance, as amended, in Article 26, Chapter 2 of the Duluth City Code.

B. Preferential criteria. Businesses that meet any or all of the following criteria shall be given preference for receiving assistance over other businesses that meet the mandatory criteria but not any of the preferential criteria.

1. Locally owned businesses. Preference shall be given to locally owned businesses or to projects that make extensive use of local businesses for support;
2. Hiring low-income people. Preference shall be given to businesses with a commitment and plan to hire people earning at or below 200 percent of the poverty line;
3. Protected class business owners. Preference shall be given, as allowed by law, to businesses owned in whole or in part by members of protected classes;
4. Quality of life businesses. Preference shall be given to businesses that are environmentally responsible and enhance the overall quality of live in the city.

III. JOBZ BUSINESS SUBSIDY CRITERIA

Qualified JOBZ Businesses shall meet the following criteria:

1. Create jobs which offer high wages;
2. Encourage businesses to undertake expansions to add and retain jobs;
3. Enhance regional economic growth;
4. Support businesses which make a long-term commitment to

employment in the community;

5. Mitigate barriers to development of sites with constraints; and
6. Encourage neighborhood stability and growth consistent with good planning.
7. Satisfy those factors named in M.S. 469.310, Subdivision 11 (c).

IV. BUSINESS SUBSIDY REQUIREMENTS

A. Any time the city of Duluth provides a business subsidy to a Qualified JOBZ Business or Recipient, that business is subject to the wage goals, job goals and other criteria set forth in this policy. In the event of a conflict between the requirements of the Business Subsidy statue M.S. § § 116J.993 - 116J.995 and the JOBZ statute M.S. § § 469.310 - 469.320, the JOBZ statute shall control.

B. The city shall require all businesses receiving a business subsidy to comply with the following:

1. Attend a properly noticed public hearing which shall be held by the city of Duluth as provided by M.S. § 116J.994. The purpose of the hearing shall be held to identify and define the criteria that the Qualified JOBZ Business or Recipient will meet in order to be eligible to receive a business subsidy or become a Qualified JOBZ Business for purposes of the JOBZ statute. The hearing shall specify the subsidy provided, public purpose(s) that shall be achieved by offering the subsidy, and shall specify the measurable, specific, and tangible goals committed to by the Qualified JOBZ Business or Recipient. As provided by M.S. § 116J.994, subd. 5., a public notice shall be published in print and if possible, on the internet, at least 10 days prior to the hearing, identifying the location, date, time, and place of the hearing; and providing information about the business subsidy proposed, including a summary of the terms of the business subsidy. Pursuant to Rule 18 of the Standing Rules of the Duluth City Council, resolutions granting business subsidies require two readings before the City Council.
2. If the business is qualified to receive JOBZ tax benefits, that business shall agree to continue to operations in the jurisdiction where the subsidy is used (the subzone) for the duration of the Job Zone Term.

3. A Qualified JOBZ Business must satisfactorily meet those factors named in M.S. 469.310, subdivision 11 (c) as incorporated into DEED's Deal Evaluator, the results of which shall be submitted to DEED.

4. A Qualified JOBZ Business must pay both its current employees and the new hires compensation, including benefits not mandated by law, that on an annualized basis is equal to at least 110% of the federal poverty level for a family of four. This must be increased each year as the federal poverty rate is adjusted.
5. A Qualified JOBZ Business must increase full-time or full-time equivalent employment in the first full year of operation within the job opportunity building zone by a minimum of five jobs or 20%, whichever is greater.
6. If the Qualified JOBZ Business is a Relocating JOBZ Business under the definition set forth in this resolution, the business shall be required to enter into a binding written "Relocation Agreement" between the Relocating JOBZ Business and the commissioner of DEED pledging that the Relocating JOBZ Business will:

    a. meet the requirements of IV.B.5., and

    b. repay all tax benefits if this requirement is not met.

D. REQUIREMENTS AFTER APPROVAL OF PROJECTS

1. Subsidy Agreement. The city and the recipient must enter into a written agreement before the city grants the business subsidy.
2. Monitoring and Annual Reports.

    a. The business must complete a report on forms developed by the DEED and submit those forms to the city by February 1 each year.
    b. If a business fails to submit its report to the city by March 1 of each year, the city must mail a warning to the business. After 14 days, the city must impose a fine of $100.00 per day until it receives the report, with a maximum fine of $1000.00.
    c. The city must submit its own report to the DEED by April 1 of each year, which will include a list of those businesses that did not complete reports, and a list of those businesses that have not met wage and job goals within two years, and what the City is doing in response.