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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1578

03/14/2013 Authored by Savick, Dill and Howe

The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance and Policy

1.1 A bill for an act
1.2 relating to taxation; providing sales and property tax incentives for certain
1.3 businesses; closing JOBZ to new businesses; appropriating money; amending
1.4 Minnesota Statutes 2012, sections 272.02, by adding a subdivision; 297A.68, by
1.5 adding a subdivision; 469.310, subdivision 11; proposing coding for new law in
1.6 Minnesota Statutes, chapters 116J; 290.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. [116J.3738] TAX INCENTIVES FOR CERTAIN EXPANSIONS OF
1.9 GREATER MINNESOTA BUSINESSES.

1.10 Subdivision 1. Definitions. (a) For purposes of this section, the following terms
1.11 have the meanings given unless the context clearly indicates otherwise.

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

1.16 (c) "Business" means an individual, corporation, partnership, limited liability
1.17 company, association, or any other entity engaged in operating a trade or business located
1.18 in greater Minnesota.

1.19 (d) "City" means a statutory or home rule charter city.

1.20 (e) "Greater Minnesota" means the area of the state that excludes the metropolitan
1.21 area, as defined in section 473.121, subdivision 2.

1.22 (f) "Qualified business" means a business that satisfies the requirements of subdivision
1.23 2, has been certified under subdivision 3, and has not been terminated under subdivision 5.

2.1 Subd. 2. **Qualified business.** (a) A business is a qualified business if it satisfies the
2.2 requirement of this paragraph and is not disqualified under the provisions of paragraph
2.3 (b). To qualify, the business must:

2.4 (1) have operated its trade or business in a city or cities in greater Minnesota for at
2.5 least one year before applying under subdivision 3;

2.6 (2) pay or agree to pay in the future each employee compensation, including benefits
2.7 not mandated by law, that on an annualized basis equal at least 120 percent of the federal
2.8 poverty level for a family of four;

2.9 (3) plan and agree to expand its employment in one or more cities in greater Minnesota
2.10 by the minimum number of employees required under subdivision 3, paragraph (c); and

2.11 (4) received certification from the commissioner under subdivision 3 that it is a
2.12 qualified business.

2.13 (b) A business is not a qualified business if it is either:

2.14 (1) primarily engaged in making retail sales to purchasers who are physically present
2.15 at the business's location or locations in greater Minnesota; or

2.16 (2) a public utility, as defined in section 336B.01.

2.17 (c) The requirements in paragraph (a) that the business' operations and expansion be
2.18 located in a city do not apply to an agricultural processing facility.

2.19 Subd. 3. **Certification of qualified business.** (a) A business may apply to
2.20 the commissioner for certification as a qualified business under this section. The
2.21 commissioner shall specify the form of the application, the manner and times for applying,
2.22 and the information required to be included in the application. The commissioner may
2.23 impose an application fee in an amount sufficient to defray the commissioner's cost of
2.24 processing certifications. A business must file a copy of its application with the chief
2.25 clerical officer of the city at the same it applies to the commissioner. For an agricultural
2.26 processing facility located outside the boundaries of a city, the business must file a copy
2.27 of the application with the county auditor.

2.28 (b) The commissioner shall certify each business as a qualified business that:

2.29 (1) satisfies the requirements of subdivision 2;

2.30 (2) the commissioner determines would not expand its operations in greater
2.31 Minnesota without the provision of one or more of the tax incentives available under
2.32 subdivision 4; and

2.33 (3) enters a business subsidy agreement with the commissioner that pledges to
2.34 satisfy the minimum expansion requirements of paragraph (c) within three years or less
2.35 following execution of the agreement.

The commissioner must act on an application within 60 days after its filing. Failure by the commissioner to take action within the 60-day period is deemed approval of the application.

(c) The following minimum expansion requirements apply, based on the number of employees of the business at locations in greater Minnesota:

(1) a business that employees 50 or fewer full-time equivalent employees in greater Minnesota when the agreement is executed must increase its employment by five or more full-time equivalent employees;

(2) a business that employees more than 50 but fewer than 200 full-time equivalent employees in greater Minnesota when the agreement is executed must increase the number of its full-time equivalent employees in greater Minnesota by at least ten percent; or

(3) a business that employees 200 or more full-time equivalent employees in greater Minnesota when the agreement is executed must increase its employment by at least 21 full-time equivalent employees.

(d) The city, or a county for an agricultural processing facility located outside the boundaries of a city, in which the business proposes to expand its operations may file comments supporting or opposing the application with the commissioner. The comments must be filed within 30 days after receipt by the city of the application and may include a notice of any contribution the city or county intends to make to encourage or support the business expansion, such as the use of tax increment financing, property tax abatement, additional city or county services, or other financial assistance.

(e) Certification of a qualified business is effective for the 12-year period beginning on the first day of the calendar month immediately following execution of the business subsidy agreement.

Subd. 4. **Available tax incentives.** A qualified business is entitled to one or more of the following tax incentives as provided under its business subsidy agreement with the commissioner:

(1) a sales tax exemption, as provided in section 297A.68, subdivision 44, for purchases made during the period the business was certified as a qualified business under this section;

(2) exemption from the state general tax as provided under section 272.02, subdivision 98, of the improvements to real estate made by the qualified business in greater Minnesota in any calendar year in which certification of the business as a qualified business applies under this section; and

4.1 (3) the jobs credit, as provided in section 290.0682, effective for taxable years
4.2 beginning during a calendar year in which certification of the business as a qualified
4.3 business applies under this section.

4.4 Subd. 5. **Termination of status as a qualified business.** (a) The commissioner shall
4.5 put in place a system for monitoring and ensuring that each certified business meets within
4.6 three years or less the minimum expansion requirement in its business subsidy agreement
4.7 and continues to satisfy those requirements for the rest of the duration of the certification
4.8 under subdivision 3. This system must include regular reporting by the business to the
4.9 commissioner of its baseline and current employment levels and any other information
4.10 the commissioner determines may be useful to ensure compliance and for legislative
4.11 evaluation of the effectiveness of the tax incentives.

4.12 (b) A business ceases to be a qualified business and to qualify for the tax incentives
4.13 under subdivision 4 upon the earlier of the following dates:

4.14 (1) the end of the duration of its designation under subdivision 3, paragraph (e),
4.15 effective as provided under subdivision 4 or other provision of law for the tax incentive; or

4.16 (2) the date the commissioner finds that the business has breached its business
4.17 subsidy agreement and failed to satisfy the minimum expansion required by subdivision 3
4.18 and its agreement.

4.19 (c) A business may contest the commissioner's finding that it breached its business
4.20 subsidy agreement under paragraph (b), clause (2), under the contested case procedures in
4.21 the Administrative Procedure Act, chapter 14.

4.22 (d) The commissioner, after consulting with the commissioner of revenue, may
4.23 waive a breach of the business subsidy agreement and permit continued receipt of tax
4.24 incentives, if the commissioner determines that termination of the tax incentives is not in
4.25 the best interest of the state or the local government units and the business' breach of the
4.26 agreement is a result of circumstances beyond its control including, but not limited to:

4.27 (1) a natural disaster;

4.28 (2) unforeseen industry trends;

4.29 (3) a decline in economic activity in the overall or greater Minnesota economy; or

4.30 (4) loss of a major supplier or customer of the business.

4.31 Subd. 6. **Statement of tax expenditure purpose.** (a) In accordance with the
4.32 requirements of section 3.192, the legislature states that its purpose in enacting this
4.33 section, as well as the coordinate provisions in chapters 272, 290, and 297A, is to induce
4.34 existing businesses in greater Minnesota to increase investment and expand employment
4.35 in greater Minnesota.

(b) The standards or goals against which to measure the effectiveness of these tax expenditures are that:

(1) qualified businesses increase their investments in the land and commercial-industrial improvements in greater Minnesota by at least ten percent;

(2) qualified businesses increase their greater Minnesota payrolls by ten percent in the three-year period after the businesses are certified; and

(3) the foregone tax revenues under this section are less than \$7,000 per year for each additional employment position established by a qualified business following certification.

EFFECTIVE DATE. This section is effective the day following final enactment and applies: (1) beginning for property taxes assessed in 2014; (2) to sales and use taxes on sales and purchases made after June 30, 2013; and (3) for jobs credits for taxable years beginning after December 31, 2013.

Sec. 2. Minnesota Statutes 2012, section 272.02, is amended by adding a subdivision to read:

Subd. 98. **Greater Minnesota business expansion property.** (a) Improvements to real property, classified under section 273.13, subdivision 24, and located within greater Minnesota, of a qualified business are exempt from the taxes levied under section 275.025 to the extent provided in the business subsidy agreement. The exemption is limited to the market value of improvements made after certification of the qualified business and applies only to assessment years in which the certification of the qualified business is in effect.

(b) The business must notify the county assessor in writing of eligibility under this subdivision by July 1 in order to begin receiving the exemption under this subdivision for taxes payable in the following year. The business need not annually notify the county assessor of its continued exemption under this subdivision, but must notify the county assessor immediately if the exemption no longer applies.

(c) The definitions under section 116J.3738, subdivision 1, apply for purposes of this subdivision.

EFFECTIVE DATE. This section is effective for property taxes assessed in 2014.

Sec. 3. **[290.0682] JOBS CREDIT; GREATER MINNESOTA BUSINESS EXPANSIONS.**

Subdivision 1. **Credit allowed.** If authorized by its business subsidy agreement, a qualified business is allowed a credit against the taxes imposed under chapter 290. The credit equals seven percent of the:

6.1 (1) lesser of:

6.2 (i) the greater Minnesota payroll for the taxable year, less the greater Minnesota
6.3 payroll for the base year; or

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

6.6 (2)(i) \$35,000 multiplied by (ii) the number of full-time equivalent employees that
6.7 the qualified business employs in greater Minnesota for the taxable year, minus the
6.8 number of full-time equivalent employees the business employed in greater Minnesota in
6.9 the base year, but not less than zero.

6.10 Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have
6.11 the meanings given.

6.12 (b) "Base year" means the taxable year beginning during the calendar year prior to
6.13 the calendar year in which the qualified business was certified under section 116J.3738.

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

6.16 (d) "Greater Minnesota" has the meaning given in section 116J.3738.

6.17 (e) "Greater Minnesota payroll" is that portion of the payroll factor under section
6.18 290.191 that represents:

6.19 (1) wages or salaries paid to an individual for services performed in greater
6.20 Minnesota; plus

6.21 (2) wages or salaries paid to individuals working from offices within greater
6.22 Minnesota if their employment requires them to work outside of greater Minnesota and the
6.23 work is incidental to the work performed by the individual within greater Minnesota; less

6.24 (3) the amount of compensation attributable to any employee whose wages or salary
6.25 are included in clause (1) or (2) that exceeds \$125,000.

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

6.29 (g) "Qualified business" means a qualified business certified under section
6.30 116J.3738, subdivision 3.

6.31 Subd. 3. **Inflation adjustment.** For taxable years beginning after December 31,
6.32 2014, the dollar amounts in subdivision 1, clause (2), and subdivision 2, paragraph (e), are
6.33 annually adjusted for inflation. The commissioner of revenue shall adjust the amounts by
6.34 the percentage determined under section 290.06, subdivision 2d, for the taxable year.

6.35 Subd. 4. **Refundable.** If the amount of the credit exceeds the liability for tax under
6.36 this chapter, the commissioner of revenue shall refund the excess to the qualified business.

7.1 Subd. 5. **Appropriation.** An amount sufficient to pay the refunds authorized by this
7.2 section is appropriated to the commissioner of revenue from the general fund.

7.3 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
7.4 December 31, 2013.

7.5 Sec. 4. Minnesota Statutes 2012, section 297A.68, is amended by adding a subdivision
7.6 to read:

7.7 Subd. 44. **Greater Minnesota business expansions.** (a) Purchases and use of
7.8 tangible personal property or taxable services by a qualified business, as defined in section
7.9 116J.3738, are exempt if:

7.10 (1) the business subsidy agreement provides that the exemption under this
7.11 subdivision applies;

7.12 (2) the property or services are primarily used or consumed in greater Minnesota; and

7.13 (3) the purchase was made and delivery received during the duration of the
7.14 certification of the business as a qualified business under section 116J.3738.

7.15 (b) Purchase and use of construction materials and supplies used or consumed in,
7.16 and equipment incorporated into, the construction of improvements to real property in
7.17 greater Minnesota are exempt if the improvements after completion of construction are
7.18 to be used in the conduct of the trade or business of the qualified business, as defined in
7.19 section 116J.3738. This exemption applies regardless of whether the purchases are made
7.20 by the business or a contractor.

7.21 (c) The exemptions under this subdivision apply to a local sales and use tax.

7.22 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
7.23 June 30, 2013.

7.24 Sec. 5. Minnesota Statutes 2012, section 469.310, subdivision 11, is amended to read:

7.25 Subd. 11. **Qualified business.** (a) A person carrying on a trade or business at a place
7.26 of business located within a job opportunity building zone is a qualified business for the
7.27 purposes of sections 469.310 to 469.320 according to the criteria in paragraphs (b) to (f).

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

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

7.33 (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.

(j) No local government or business may enter a new business subsidy agreement after June 30, 2013.

9.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.