HOUSE RESEARCH
Bill Summary

FILE NUMBER: H.F. 3599 **DATE:** April 7, 2008

Version: First engrossment

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Subject: JOBZ

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Overview

This bill makes a large number changes in the JOBZ program, some in response to the recommendations of the program evaluation by the Office of the Legislative Auditor. The bill also provides a new tax credit for investments in funds that invest in small businesses on a regional basis.

Glossary of acronyms. The following acronyms are used in the summary:

BSA: Business Subsidy Agreement
DEED: Department of Trade and Economic Development
DOR: Department of Revenue
JOBZ: Job Opportunity Building Zone
OSA: Office of the State Auditor
TROC: Targeted Rural Opportunity Community

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Article 1: JOBZ Requirements

Overview

This article imposes additional requirements on JOBZ business subsidy agreements (BSAs), establishing new content requirements for BSAs and requiring approval by the commissioner of DEED before BSAs take effect. In addition, the article extends the duration of JOBZ tax benefits to 11 years for new JOBZ businesses (or to 13 years in cities and towns that had declining populations between 1980 and 2000 or high unemployment in 2006).

1 **Targeted rural opportunity community.** Defines a targeted rural opportunity community (TROC) as a city or township that meets either of the following tests:

- It suffered a population decline between the 1980 and 2000 decennial censuses.
- Its 2006 unemployment rate was higher than the state average, according to DEED's local area unemployment statistics.

TROCs qualify for an additional two years of tax incentives under the JOBZ program. The longer duration is provided in section 0.

2 **Definition of qualified business.** Requires BSAs to meet the requirements established under section 0and deletes the factors local governments must consider before entering BSAs. (These are replaced by factors that DEED is to consider before approving BSAs under section 0.) The requirement that relocating businesses enter agreements with DEED is eliminated, since all BSAs must be approved by DEED under section 0.

3 **State review criteria.** Establishes factors that DEED must consider before approving a BSA. These are necessary conditions for the business to receive JOBZ benefits, since entering the BSA triggers qualification for JOBZ tax benefits. The factors are:

- Whether competing Minnesota businesses will be adversely affected by the BSA
- Whether the JOBZ tax benefits are commensurate with the "proposed job creation, job retention, and capital investment"
- Whether other financial assistance is available
- Whether or not the business would have located, relocated or moved out of Minnesota if it did not receive the JOBZ tax benefits.

The local governments and businesses must provide information to DEED necessary to consider these factors. Satisfaction of any of these factors is not a precondition to approval of the BSA, but rather the commissioner's consideration of them of is – i.e., the bill simply requires the commissioner of DEED to consider these factors.

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4 **Business subsidy agreements; reporting requirements.**

Establishes legal requirement for BSAs . Under these requirements BSAs must:

- Be approved by DEED
- Require the creation or retention of a minimum number of jobs
- Define jobs as those that are employment for purposes of unemployment compensation insurance (and therefore excluding counting independent contractors)
- Require reporting by the business of the JOBZ location as a separate location for wage reporting purposes under the unemployment compensation law
- Include a data practices release by the business allowing the commissioners of DEED and DOR to monitor compliance.

Standard form . Directs the commissioner of DEED to establish a standard BSA form and requires local governments and businesses to use this form.

Reporting. Imposes reporting requirements on local governments and businesses:

- Local governments must report within 30 days after the end of the reporting period under the BSA on the progress in meeting its goals in a form prescribed by DEED. DEED is to schedule these reporting periods so the reports are due throughout the year.
- Businesses must be removed from JOBZ, if they fail to provide the information requested by the local government unit within 30 days after receipt of written notice that information is overdue. This report is in lieu of the standard business subsidy report by the business.

Public hearing . Requires the local government to provide published notice and hold a public hearing before approving a BSA.

5 **Duration limit.** Extends the permitted time for JOBZ tax benefits to 11 years, regardless of the zone duration: i.e., the year in which the BSA is signed and ten additional years. Present law limits the availability of these incentives to the duration of the zone. These zones were designated effective on January 1, 2004 , and have a 12-year duration. As result, the tax benefits will stop at the end of 2015. Thus, for example, a business signing a BSA (entitling it to JOBZ benefits) in 2008, cou1d qualify for 8 years of tax benefits (2008 through 2015). This would increase the entitlement to 11 years (through 2018 in the example).

Businesses located in a TROC qualify for two additional years or a 13-year duration limit.

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The extension of the duration limit does not apply to:

- BSAs executed before the section became effective or
- Relocations into a JOBZ, if the business received JOBZ benefits before the relocation.

6 **Revisor's instruction.** Instructs the Revisor of Statutes to changes the term "applicant" in the JOBZ statute to refer to "local government unit."

7 **Repealer .** Repeals the definition of "applicant" in the JOBZ statute. Section 0provides that "local government unit" will be used instead of "applicant" in the statute.

Article 2: JOBZ Tax Provisions

Overview

This article makes a series changes in the provisions requiring noncompliant JOBZ businesses to repay tax benefits. The article, in particular, establishes a set of rules that govern situations where businesses have not fully met their business subsidy agreements (BSA) requirements, but are continuing to operate in the zone.

1 **Repayment of JOBZ benefits.** Exempts businesses from the repayment requirement (often called the "clawback" provision), if they continue to be a qualified business and to operate in the zone. These businesses would be subject to the provisions of section 0. Thus, the full repayment obligation would apply only to businesses that stop operating in the zone or that are no longer qualified businesses. A business that fails to meet its job or investment promises under the BSA or stops being a qualified business (for failing to meet its relocation agreement) may still be subject to repayment under the provisions of section 0.

A number of substantive changes in the repayment requirements are also made:

- Investors who receive JOBZ benefits, but who are not themselves qualified businesses (e.g., these include owners of property leased to JOBZ businesses or investors in a JOBZ business), are explicitly made subject to repayment on the same terms as the businesses with the BSA.
- Repayments of property tax are distributed to all taxing districts, not just the city or town, county, and school district. This will allow distributions to special taxing districts, such as watershed districts or HRAs. The commissioner of DOR is to distribute city and county sales tax repayments.
- Property tax statements for repayment of property taxes must be provided to the taxpayer of record in addition to the business (e.g., the owner of property leased to the JOBZ business).
- Clarifications of the payment dates are made for sales, corporate franchise, and property taxes, to more clearly determine the 2-year period to which the

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repayment obligation applies.

- A business cannot qualify for income or franchise tax benefits for any part of a year in which it is subject to the repayment obligation or for any property taxes payable during that year.

- Waivers of the repayment for a qualified business also extend to persons other than the qualified business that receive JOBZ tax benefits (e.g., an investor for the capital gain exemption or the owner of real property leased to the JOBZ business). In addition, the commissioner must waive repayment for these persons, if (1) they are not related parties (under the federal definition, such as family members, corporations that are members of the same controlled group, and so forth) with the JOBZ business and (2) their actions did not contribute to the default.

Effective date: Day following final enactment

2 **Breach of BSAs by businesses continuing to operate in zone.** Creates a new provision that deals with JOBZ businesses that continue to operate in the zone, but do so in violation of the terms of their BSA (e.g., they have not created the required number of jobs or investment). These businesses are subject to the requirement to repay two years of tax benefits, unless they enter a new or an amended BSA with DEED.

These businesses lose at least one year of JOBZ tax benefits – i.e., for the year in which they did not comply with BSA. They may lose additional years, because the section requires a proportionate reduction in the zone duration based on the size of their violation of the BSA. (This implies that the amount or value of the breach of the BSA is reduced to a dollar amount – perhaps on a present value basis – and that this amount is compared to the total value of the business's obligation and the result is used to determine the number of years – rounded to a whole number – that the zone duration is, then, reduced by. There may be issues with how to do this, when the BSA involves pledges of numbers of jobs and other obligations, such as the investment amounts.) Once adjusted under this provision, the zone duration cannot be readjusted.

A business that violates the second business subsidy agreement cannot use this section again, and is permanently barred from future JOBZ benefits. It is also subject to repayment of two years of benefits.

Effective date : Day following final enactment for all violations of business subsidy agreements except those resolved before the effective date

3 **No amendments of BSAs.** Prohibits amending a BSA or relocation agreement to change jobs creation, retention or wages goals.

Effective date : Day following final enactment for all BSAs, regardless of when they were executed

4 **Annual certifications of eligibility.** Requires JOBZ businesses to certify each December 1 to DEED that they are in compliance with their BSA. Businesses that do not do so permanently lose eligibility to participate in JOBZ and must repay two years of tax benefits.

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The certification is public information.

Effective date : Day following final enactment

Article 3: State Auditor and JOBZ

Overview

This article makes changes in the tax and unemployment compensation data practices laws to allow return information to be released to the Office of State Auditor (OSA) so it can perform audits of the JOBZ program. In addition, it requires a JOBZ business to repay two years of tax benefits, if it fails to file a JOBZ tax benefit report within 60 days after receiving demands from DOR.

1 **Unemployment compensation data.** Authorizes release of data collected in administering the unemployment compensation law to OSA to conduct audits under the JOBZ law.

2 **Tax return data.** Requires disclosure of tax return data on JOBZ tax incentives to OSA to conduct audits of the program.

3 **Penalty for failing to file JOBZ report.** Requires businesses receiving JOBZ tax incentives to file an annual report listing the tax benefits by October 15^{th}. DOR must notify businesses that fail to file this report on time, demanding filing within 60 days. (DOR may extend the 60-day period for good cause.) DOR is required to notify DEED of noncompliant businesses. Failure to file (after expiration of the 60-day period) disqualifies the business under JOBZ and requires repayment of two years of tax benefits.

Effective date : Beginning with reports due on October 15, 2008

4 **OSA audit authority.** Authorizes OSA to request tax return and unemployment compensation return information from DOR and DEED in order to perform JOBZ audits.

Effective date : Day following final enactment

Article 4: Regional Emerging Business Investment Credit

Overview

This article creates a tax credit under the individual income and corporate franchise taxes for investors in investment funds that invest in small Minnesota businesses. The total amount of credits is limited to a dollar amount specified in the law (but left blank in the bill – the Governor's very similar proposal has a $3 million limit). The fund investments in qualifying small businesses can be either equity or debt investments.

1 **Regional emerging business tax credit.** Establishes the parameters for a small business investment credit. This credit applies to regional investment funds that, in turn, invest in small businesses.

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Subd. 1. Definitions. Defines the following terms:

Qualifying small business are the types of businesses that the funds must invest in to qualify for the credit. A qualified business must meet the following requirements:

- It must have at least 5 employees, but no more than 100, and pay 75% of its employees (but excluding its "first five employees" – this appears to refer to the first five individuals that the business hired, but it may refer to the first five employment positions) at least 110 percent of the federal poverty level for a family of four. Pay is computed on a full time equivalency basis.

- It must be engaged in biotechnology, technology, manufacturing, agriculture, research and development, or development or new products or processes.

- It cannot be engaged in finance, insurance or real estate, lobbying, political consulting, wholesale or retail trade, leisure, hospitality construction, or professional services.

- It must be headquartered in Minnesota and have at least 51% of its employees in Minnesota .

- It cannot have more than $2 million in gross sales in the previous year.

- It cannot be a subsidiary or affiliate of a business with more than 100 employees or with total gross sales of [*an amount left blank in the bill*] computed by aggregating all the employees and sales of the affiliated entities.

- It has not received more than $2 million in equity investments.

- It has not received more than $1 million in investments that qualified for the credit under this section.

Regional investment funds are pooled investment funds that:

- Invest in qualifying small businesses in the region

- Are organized as a passthrough entity (LLC, partnership, S corporation or similar)

- Have at least 5 investors, none of which own more than 25% of the fund. Spouses, children, siblings, and entities the investor controls are all aggregated in applying the 25% test.

Subd. 2. Credit allowed. Allows a 25% tax credit against the individual income and corporate franchise taxes for investments in regional investment funds. The credit is limited to the lesser of tax liability (including the both AMT s , but not the

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minimum fee) or the amount of credit certificates issued to the fund.

Subd. 3. Qualifying regional investment fund requirements. Establishes requirements for a regional investment fund.

- Two-thirds or more of its investors must be residents of the region. (This test is not based, however, on the amount of their ownership interests in the fund, which could be more heavily concentrated in individuals who live outside of the region. Moreover, corporations can also claim the credit, but it is unclear how the residency test would be applied to them. All of this probably would be resolved by DEED under its authority under subdivision 5 to enter agreements with the applicant funds as part of the certification process.)

- The fund must allocate at least 60% of its investments or planned investments in the region. Other regional funds investments in the same qualified business can be counted to meet this allocation. (The bill does not specify precisely how these outside investments will be used to calculate the 60% – e.g., will they also be added to the base or denominator of the fund's assets in computing the 60%?)

Investments of a fund can be equity or debt, as its governing body determines appropriate.

Subd. 4. Certification of funds. Authorizes funds to apply to DEED for certification. DEED can certify up to 20 funds and must do so in the order applications are received from qualifying applicants. Restrictions are imposed to distribute funds across the state:

- No more than three funds may be certified that invest in more than 15 counties

- No more than five funds may invest in the Twin Cities (seven county) metropolitan area

- No more than three funds may be certified for the same region

DEED will provide certificates to certified funds, entitling them to credits, upon their showing that they have met the agreed upon goals for employment, wages and so forth. These certificates are subject to dollar limits [*which the bill leaves as blanks*]. To the extent that these amounts are unspent at the end of the fiscal year, the amounts carryover to the next two fiscal years.

Subd. 5. Fund requirements. Directs DEED to enter agreements with each fund that receives certifications for its employment, wages, and benefits for the businesses it is investing in or plans to invest in. This agreement also is to specify how the fund plans to meet its 60% allocation to its region.

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Subd. 6. Limitations. Requires the taxpayer to claim credit in the same taxable year for which the fund was certified and only for investments made after the fund was certified.

Subd. 7. Statement of credit share. Directs the fund to provide its investors with a statement indicating their shares of the credit certificates, which is based on their pro rata ownership of the fund when the investment was made in the qualified small business.

Subd. 8. Carryover. Allows a 10-year carryover if the credit exceeds the taxpayer's tax.

Subd. 9. False applications. Forfeits any unused credit, if:

- If the fund doesn't meet the requirements to be a regional fund under the statute (subdivision 3); or
- The small business does not meet the requirements of subdivision 1.

These forfeited credits are treated as underpayment of taxes, generating interest and penalty obligations on the part of the investors that claimed them.

2 **Credit allowed.** Allows the credit in the income and corporate franchise tax chapter.

Effective date : July 1, 2008 , for tax year 2008