



Duluth Seaway Port Authority

1200 Port Terminal Drive
Duluth, Minnesota 55802-2609 U.S.A.
218-727-8525 • Fax 218-727-6888
E-Mail: admin@duluthport.com • www.duluthport.com

Resolution No. 10-04

SECOND PUBLIC HEARING FOR ADOPTION OF ADDITIONAL BUSINESS SUBSIDY CRITERIA¹

FINDINGS:

1. As required by Minnesota Statutes § 116J.993 to 116J.995, (the "Minnesota Business Subsidy Act"), the Duluth Seaway Port Authority ("Authority") published notice on February 16, 2004 of a public hearing which was held on February 26, 2004 for the purpose of establishing additional business subsidy criteria ("Business Subsidy Criteria"), and
2. The Authority from the date of adoption of the Business Subsidy Act in 1999 to the present has only adopted Business Subsidy Criteria for tax exempt financing as the Authority has not granted a business subsidy after 1999 for other than tax exempt financing², and
3. The Job Opportunity Building Zone legislation requires Business Subsidy compliance and the Minnesota Business Subsidy Act defines as a form of a business subsidy "any reduction or deferral of any tax or any fee..." and the Job Opportunity Building Zone legislation provides tax exemptions and job credits for individuals, business entities, corporation, partnership, limited liability company or associate ("Person") with a subsidy agreement doing business in a Job Opportunity Building Zone, and
4. Section 116J.994 subdivision 1 of the Minnesota Business Subsidy Act requires that a business subsidy meet a public purpose which may include, but may not be limited to increasing the tax base, and job creation may be used as a public purpose while job retention may only be used as a public purpose when job loss is specific and demonstratable, and
5. The Minnesota Business Subsidy Act sets forth the following provisions:
 - i. § 116J.993 subdivision 5 defines local government agencies that must comply to include a "port authority" and,
 - ii. § 116J.994 subdivision 3(d) requires business subsidy agreements must be approved by local elected governing bodies except for a seaway port authority; and
 - iii. § 116J.994 subdivision 4 provides in part:

"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," and

¹ First public hearing and Resolution No. 77-99 established criteria for tax exempt financing and refinancing on December 15, 1999.

² In 1999 the Authority issued St. Lawrence Dock & Wharf tax exempt bonds as a business subsidy but in 2000 the legislature retroactivity exempted seaway port authority dock and wharf bonds from the Business Subsidy legislation.

BusinessSubsidyCriteria2-26,RES04

- a. The Authority in Airpark Phase I has created 26 businesses with over 607 jobs and 19 businesses with 353 jobs on the waterfront both without imposing strict job level requirements, and
 - b. Based upon the Authority history of creating maximum business development by requiring substantial structures the Authority finds that jobs follow business development, and
 - c. The Authority has found that by creation of as much business mass as possible the jobs follow and setting absolute job requirements does not create business mass, and
 - d. The Authority has found that businesses, if successful, create as many jobs as possible to increase their profitability and if businesses are unprofitable the Authority finds that trying to retain the business just to create an artificial job level is counter-productive, and
 - e. The Authority, if a business fails and is unsuccessful, may buy applicable land and/or buildings and the Authority has purchased buildings in the past and through a process of adaptive reuse by either reconfiguring for a different business or subdividing the building into component parts new jobs have been created, and
6. While the Authority is interested in wage goals for Authority projects, a review of existing projects indicates that the creation of warehouse/distribution and manufacturing jobs have acceptable rates of pay and benefits and the Authority desires to maintain minimal public involvement in establishing or setting specific rates of pay and specific job goals, and
- i. § 116J.994 subdivision 3 requires that a recipient of a business subsidy must enter into a subsidy agreement with the Authority ("Subsidy Agreement") and the Authority is adopting herewith all provisions of § 116J.994 subdivision 3 that are required to be placed in the Subsidy Agreement, except that wage and job goals as stated in § 116J.994 subdivision 4 shall be as required herein, and
 - ii. § 116J.994 subdivision 6 requires that Subsidy Agreements of the Authority specify the recipients obligation if the recipient fails to fulfill the agreement with the minimum being repayment of the subsidy with interest and,
 - iii. The Job Opportunity Building Zone legislation requires that recipients failing to meet the requirements of the Subsidy Agreement repay the tax benefits and job credits received, and
 - iv. Therefore for purposes of requiring compliance with both laws, the Job Opportunity Building Zone and Business Subsidy legislation, the Authority adopts as a requirement that any recipient who fails to meet the requirements of a Subsidy Agreement must meet the minimum payback requirements of the Job Opportunity Building Zone legislation as defined in Minn. Stat. § 469.319, or § 116J as applicable, subject to such extensions or continuations as may be allowed by law, and

v. § 116J.994 subdivision 7 requires that the Authority monitor the progress of Subsidy Agreements and the Authority is adopting the monitoring requirements of § 116J.993 to 116J.995 as the information required to be reported to the Authority by each Subsidy Agreement.

CONCLUSIONS AND RESOLUTION OF THE BOARD OF COMMISSIONERS:

1. The acts of staff in causing publication of notice, posting on the internet, and making hearing information publicly available are herewith confirmed.
2. The public purpose of increasing the tax base and job creation is fulfilled by the Port Authority entering into land sale agreements, land leases, and building leases which agreements require the construction and certification for occupancy of a business enterprise within one year of plans being approved by the Board of Commissioners.
3. Future projects in the Job Opportunity Building Zones may be used for job retention when job loss is specific and demonstrable based on factual evidence submitted to the Board of Commissioners.
4. A Person, that relocates a trade or business from outside a Job Opportunity Building Zone but within the State of Minnesota into an Authority Job Opportunity Building Zone is not qualified for Job Opportunity Building Zone subsidy unless such Person:
 - i. increases full-time employment in the first year by at least 20 percent, or
 - ii. makes a capital investment in the first year in the zone property equivalent to 10 percent of the gross revenues of the operation that was relocated, and
 - iii. enters into agreements with both the Authority and the commissioner of employment and economic development for Minnesota, and
 - iv. otherwise complies with all requirements of the Job Opportunity Building Zone legislation.

That, after public hearing and comment, notwithstanding the provisions of 116J.994 subdivision 3, permitting waiver of wage and job goals the Authority makes the following Business Subsidy wage and job determinations:

5. Wages and benefits shall be not less than 110% of the 2003 poverty level for a family of four in the state of Minnesota to be adjusted annually; and
6. Jobs are to be established as follows: projects that do not entail any jobs are not permissible, but projects that are ready to go, the job goals should be that designed by the business to create a successful business.
7. Person(s) receiving subsidies must execute an Agreement with the Authority and such Subsidy Agreement shall contain all of the applicable provisions of § 116J.993 through § 116J.994 that are required unless waived herein, and further, each Person who receives a Job Opportunity Building Zone subsidy must meet all other required applicable provisions of § 469.310 through § 469.320, unless waived herein.

ADOPTED: February 26, 2004

DULUTH SEAWAY PORT AUTHORITY

(SEAL)

By Bill Kron
Bill Kron, President

ATTEST:

By Janet E. Nelson
Janet E. Nelson, Secretary