

## LEGISLATIVE BILL 372

Approved by the Governor April 10, 1984

Introduced by Landis, 46

AN ACT relating to community development; to amend sections 44-1213, 77-908, 77-909, and 81-1228, Reissue Revised Statutes of Nebraska, 1943, and sections 58-219, 58-256, 58-270, 77-2715, and 77-2734, Revised Statutes Supplement, 1983; to adopt the Community Development Assistance Act; to provide tax credits; to redefine a term; to require a report; to authorize certain projects; to provide powers and duties; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Community Development Assistance Act.

Sec. 2. The Legislature hereby finds that areas of chronic economic distress in the State of Nebraska are a detriment to the economic well-being, health, and safety of the citizens of Nebraska. The Legislature further contends that current governmental solutions have not been able to completely resolve certain problems such as overcrowding, unemployment, and poor health and sanitary conditions in a community which lead to further deterioration. Such problems cannot be remedied by the government alone, but can be alleviated through a partnership between the government and private enterprise. It is therefore declared to be public policy in this state to encourage contributions by business firms that offer and provide community and neighborhood assistance and community services.

Sec. 3. As used in the Community Development Assistance Act, unless the context otherwise requires:

(1) Business firm shall mean any business entity including a corporation, fiduciary, sole proprietorship, partnership, or corporation having an election in effect under subchapter S of the Internal Revenue Code subject to the state income or franchise tax imposed by section 77-2715 or 77-2734 or an insurance company paying a tax in this state pursuant to section 44-1213, 77-908, or 77-909;

(2) Community services shall mean any type of the following in a community development area: (a) Employment training; (b) human services; (c) medical services; (d) physical facility and neighborhood development services; (e) recreational services or

activities; (f) educational services; or (g) crime prevention activities, including, but not limited to, the instruction of any individual in the community development area that enables him or her to acquire vocational skills; counseling and advice; emergency services; community, youth, day care, and senior citizen centers; in-home services; home improvement services and programs; and any legal enterprise which aids in the prevention or reduction of crime;

(3) Department shall mean the Department of Economic Development;

(4) Director shall mean the Director of Economic Development;

(5) Community development area shall mean any village, city, county, or part thereof which has been designated by the department as an area of chronic economic distress;

(6) Community assistance shall mean furnishing financial assistance, labor, material, or technical advice to aid in the physical improvement of any part or all of a community development area;

(7) Community betterment organization shall mean any organization performing community services or offering community assistance in a community development area and to which contributions are tax deductible under the provisions of the Internal Revenue Service of the United States Department of the Treasury; and

(8) Area of chronic economic distress shall mean an area of the state which exceeds state averages in a majority of the following categories:

(a) Unemployment;

(b) Percentage of the population below the median family income;

(c) Vacant and substandard housing stock;

(d) Depressed housing valuations; and

(e) Crime.

Sec. 4. Any community betterment organization which provides community assistance or community services in a community development area may apply before the beginning of each fiscal year to the department to have one or more programs certified for tax credit status as provided in sections 5 to 8 of this act. The proposal shall set forth the program to be conducted, the community development area, the estimated amount to be required for completion of the program or the annual estimated amount required for an ongoing program, the plans for implementing the program, and the amount of contributions committed or anticipated from business firms for such activities or services.

Sec. 5. If the subdivision of local government has adopted a community development plan for an area which includes the area in which the community betterment organization is providing community assistance or

community services, the organization shall submit a copy of the program proposal to the chief executive officer of such subdivision. If the program proposal is consistent with the adopted community development plan, the chief executive officer shall so certify to the department for the department's approval or disapproval. If the program proposal is not consistent with the adopted community development plan of the local subdivision, the chief executive officer shall so indicate and the proposal shall not be approved by the department. If the proposed activities are consistent with the adopted community development plan, but for other reasons they are not viewed as appropriate by the local subdivision, the chief executive officer shall so indicate and the department shall review the program proposal and approve or disapprove it. The local subdivision shall review the proposal within forty-five days from the date of receipt for review. If the subdivision does not issue its finding concerning the proposal within forty-five days after receipt, the proposal shall be deemed approved. The department shall approve or disapprove all program proposals submitted pursuant to section 4 of this act within forty-five days from the beginning of each fiscal year.

Sec. 6. (1) The director shall adopt and promulgate rules and regulations for the approval or disapproval of the program proposals submitted pursuant to section 5 of this act taking into account the economic need level and the geographic distribution of the population of the community development area. The director shall also adopt and promulgate rules and regulations concerning the amount of the tax credit for which a program shall be certified. The tax credits shall be available only for those contributions to a certified program which may qualify as a charitable contribution deduction on the federal income tax return filed by the business entity making such contribution. The decision of the department to approve or disapprove all or any portion of a proposal shall be in writing. If the proposal is approved, the maximum tax credit allowance for the certified program shall be stated along with the approval. The maximum tax credit allowance approved by the department shall be final for the fiscal year in which the program is certified. A copy of all decisions shall be transmitted to the Tax Commissioner. A copy of all credits allowed to business firms under sections 44-1213, 77-908, and 77-909 shall be transmitted to the Director of Insurance.

(2) For all business firms eligible for the credit allowed by section 7 of this act, except for insurance companies paying an annual tax in this state pursuant to sections 44-1213, 77-908, and 77-909, the Tax Commissioner shall provide for the manner in which the credit allowed by section 7 of this act shall be taken and

the forms on which such credit shall be allowed. The Tax Commissioner shall adopt and promulgate rules and regulations for the method of providing tax credits. The Director of Insurance shall provide for the manner in which the credit allowed by section 7 of this act to insurance companies paying an annual tax in this state pursuant to sections 44-1213, 77-908, and 77-909 shall be taken and the forms on which such credit shall be allowed. The Director of Insurance shall adopt and promulgate rules and regulations for the method of providing the tax credit. The Tax Commissioner shall allow against any income tax due from the insurance companies paying an annual tax in this state pursuant to sections 44-1213, 77-908, and 77-909, a credit for the credit provided by section 7 of this act and allowed by the Director of Insurance.

Sec. 7. (1) Any business firm which plans to or which has contributed to a certified program of a community betterment organization may apply to the department for authorization for a tax credit for the contribution to the certified program in an amount up to but not exceeding the maximum tax credit allowed by the department. The maximum tax credit allowed by the department for each approved business firm shall be in an amount which does not exceed forty per cent of the total amount contributed by the business firm during its taxable year to any programs certified pursuant to section 5 of this act. The director shall send a copy of the approved application which includes the amount of the tax credit to be allowed and a certification by the department that the contribution has been paid as proposed by the business firm to the Tax Commissioner who shall grant a tax credit against any tax due under sections 77-2715 and 77-2734, and to the Director of Insurance who shall grant a tax credit against any tax due under sections 44-1213, 77-908, and 77-909.

(2) No tax credit shall be granted to any business firm in this state pursuant to the Community Development Assistance Act for activities that are a part of its normal course of business. Any tax credit balance may be carried over and applied against the business firm's tax liability for the next five years immediately succeeding the tax year in which the credit was first allowed.

Sec. 8. The total amount of tax credit granted for programs approved and certified under the Community Development Assistance Act by the department for any fiscal year shall not exceed two hundred fifty thousand dollars.

Sec. 9. That section 44-1213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-1213. Such attorney, in lieu of any other intangible property tax, shall pay to the Director of Insurance to be credited to the Insurance Tax Fund a tax of six-tenths of one per cent of the gross amount of direct

writing premiums or deposits received from Nebraska subscribers during the calendar year, less all amounts returned to the subscribers or credited to their accounts, if such attorney be domiciled in Nebraska, or a tax of two per cent of the gross amount of direct writing premiums or deposits received from Nebraska subscribers during the calendar year, less all amounts returned to the subscribers or credited to their accounts, if such attorney be not domiciled in Nebraska. Such tax is eligible for a credit as provided in the Community Development Assistance Act.

Sec. 10. That section 58-219, Revised Statutes Supplement, 1983, be amended to read as follows:

58-219. Project shall mean one or more of the following:

- (1)(a) Rental housing;
- (b) Residential housing; and
- (c) Residential energy conservation devices;
- (2) Agriculture or agricultural enterprise; ~~and~~
- (3) Any land, building, or other improvement, any real or personal property, or any equipment, and any undivided or other interest in any of the foregoing, whether or not in existence, suitable or used for or in connection with any of the following revenue-producing enterprises or two or more such enterprises engaged or to be engaged in:

(a) In all areas of the state, manufacturing or industrial enterprises including assembling, fabricating, mixing, processing, warehousing, distributing, or transporting any products of agriculture, forestry, mining, industry, or manufacturing; pollution control facilities; facilities incidental to the development of industrial sites including land costs and the costs of site improvements thereon, such as drainage, water, storm, and sanitary sewers, grading, streets, and other facilities and structures incidental to the use of such sites for manufacturing or industrial enterprises;

(b) In all areas of the state, commercial or service enterprises if (i) such facilities constitute new construction or rehabilitation including hotels or motels, sports and recreation facilities available for use by members of the general public either as participants or spectators, and convention or trade show facilities and (ii) such facilities do not or will not derive a significant portion of their gross receipts from retail sales or utilize a significant portion of their total area for retail sales;

(c) In blighted areas of the state as defined in section 18-2103, commercial, service, and business enterprises if such facilities constitute new construction, acquisition, or rehabilitation, including, but not limited to, those enterprises specified in subdivision (3)(b) of this section, office buildings, and

retail businesses; and

(d) In all areas of the state, any land, building, or other improvement and all real or personal property, including furniture and equipment, and any undivided or other interest in any such property, whether or not in existence, suitable or used for or in connection with any hospital, nursing home, and any facilities related and subordinate thereto; and

(4) Any land, building, or other improvement, any real or personal property, or any equipment, and any undivided or other interest in any of the foregoing, whether or not in existence, used by any business as an office building, but only if (a) the principal long-term occupant or occupants thereof initially employ at least fifty people, (b) the office building will be used by the principal long-term occupant or occupants as a national, regional, or divisional office, (c) the principal long-term occupant or occupants are engaged in a multistate operation, and (d) the authority makes the findings specified in subdivision (1) of section 58-251.

Nothing in subdivision (3) of this section shall be construed to include any rental or residential housing, residential energy conservation device, or agriculture or agricultural enterprise.

Sec. 11. That section 58-256, Revised Statutes Supplement, 1983, be amended to read as follows:

58-256. The bonds shall be authorized by a resolution of the authority, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond other than bonds issued to finance rental housing projects or residential housing shall mature more than thirty years from the date of its issue, as the resolution shall provide. ~~No In no case shall any bond issued to finance rental housing projects shall~~ mature more than fifty years from the date of issue. The bonds shall bear interest at such rate or rates, including variations of such rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution may provide, except that facsimile signatures of all members of the authority shall be sufficient only if the resolution requires that the trustee for such bond issue manually authenticate each bond and the resolution permits the use of facsimile signatures. The resolution authorizing the bonds may provide that the bonds contain a recital that they are issued under the Nebraska Investment Finance Authority Act and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. The provisions of section 10-126 shall not apply to bonds

issued by the authority. Bonds of the authority may be sold by the authority at a public or private sale and at such price or prices as the authority shall determine.

The authority may bring an action for declaratory judgment to determine the validity of any issuance or proposed issuance of its bonds under the Nebraska Investment Finance Authority Act and the legality and validity of all proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of such bonds and for the payment of the principal thereof and interest thereon.

Sec. 12. That section 58-270, Revised Statutes Supplement, 1983, be amended to read as follows:

58-270. (1) The authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the Clerk of the Legislature of this state. Each member of the Legislature shall receive a copy of such report by making a request for it to the chairperson of the authority. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers. Such report shall include a showing of the distribution of agricultural borrowers according to personal net worth, family net worth, and gross farm sales. An independent certified public accountant shall at least once in each year audit the books and accounts of the authority.

(2) No later than two weeks after December 31, 1986, the authority shall file a report with the Governor, the Clerk of the Legislature, and the Banking, Commerce and Insurance Committee of the Legislature specifying the office buildings financed under the Nebraska Investment Finance Authority Act, the number of jobs created or retained thereby, and the tax base increased thereby, for the purpose of assisting the Governor and the Legislature in determining whether subdivision (4) of section 58-219 continues to effectuate a valid and proper public purpose.

Sec. 13. That section 77-908, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-908. Every foreign or alien insurance company, which is transacting business in this state, except fraternal beneficiary associations, shall on or before March 1 of each year, in lieu of any other intangible property tax, pay a tax to the director of two per cent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state. The taxable life insurance premiums shall include premiums paid on the lives of persons residing in this state whether the insurance was written in this state or not. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being

claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act.

Sec. 14. That section 77-909, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-909. Every domestic insurance company, including all companies organized under stock, mutual, or assessment plans as well as companies organized as ~~employers~~ employers' liability insurance associations or nonprofit hospital service corporations, but excluding fraternal beneficiary associations, shall, on or before March 1 of each year, in lieu of any other intangible property tax, pay ~~a tax~~ to the director a tax of six-tenths of one per cent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state. The taxable life insurance premiums shall include premiums paid on the lives of persons residing in this state whether the insurance was written in this state or not. The tax shall also apply to premiums for insurance written on individuals residing outside this state or property located outside this state provided that if no comparable tax is paid by the direct writing company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act.

Sec. 15. That section 77-2715, Revised Statutes Supplement, 1983, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each taxable year on the entire income of every resident individual of this state and on the income of every nonresident individual of this state which is derived from sources within this state. The tax shall be a flat percentage of, for each resident individual, the taxpayer's adjusted federal income tax liability for the taxable year; and, for each nonresident individual, the taxpayer's adjusted federal income tax liability for the taxable year which is attributable to income derived from sources within this state.

The taxpayer's adjusted federal income tax liability shall be the amount of federal income tax, as determined under Subtitle A, Chapter I, subchapter A, Parts I, V, and VI of the Internal Revenue Code, for which the taxpayer would have been liable if such taxpayer had paid federal income tax based on federal taxable income as adjusted by the modifications provided in section 77-2716



without any allowance for credits against tax permitted under the Internal Revenue Code.

The adjusted federal income tax liability of each nonresident individual taxpayer which is attributable to income derived from sources within this state shall be determined by multiplying his or her adjusted federal income tax liability by a fraction, the numerator of which is his or her taxable income derived from sources within this state as determined by section 77-2733; and the denominator of which is his or her total federal taxable income, after first subtracting from each the amounts provided in subsection (1) of section 77-2716. ~~If this is~~ **PROVIDED, that if the above** determination attributes more or less federal income tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for, or the Tax Commissioner may require, the employment of any other method to attribute an amount of federal income tax which is reasonable and equitable in the circumstances.

(2)(a) A resident of this state shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state; and

(b) A nonresident shall mean an individual who is not a resident of this state.

(3) There shall be allowed, to qualified resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135, a credit for the elderly equal to fifty per cent of the federal credit allowed under section 37 of the Internal Revenue Code.

(4) Subject to termination under section 66-1055, there shall be allowed to individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135, a credit for renewable energy source systems as provided under section 66-1047.

(5) There shall be allowed to individuals carrying on business as a sole proprietorship or as a partnership or having an election in effect under subchapter S of the Internal Revenue Code as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner of a reporting business partnership or shareholder of a business firm with an election in effect under subchapter S of the Internal Revenue Code shall report the credit in the same manner and proportion as the partner reports the partnership income or the shareholder reports the subchapter S corporation income.

Sec. 16. That section 77-2734, Revised Statutes Supplement, 1983, be amended to read as follows:

77-2734. (1) A tax is hereby imposed for each

taxable year on the taxable income derived from sources within this state of any corporation or any other entity taxed as a corporation under the Internal Revenue Code whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both; at a rate equal to twenty-five per cent of the rate imposed on individuals under section 77-2715 on the first fifty thousand dollars of taxable income; and at the rate of thirty-five per cent of such rate on all taxable income in excess of fifty thousand dollars. For any taxpayer subject to this section whose fiscal year does not coincide with the calendar year, the rate initially set shall also apply for the period from January 1, 1968, to the last day of its then current fiscal year.

(2) Except as provided in subsection (1) of this section, for the privilege of exercising its franchise or doing business in this state in a corporate capacity, there is hereby imposed a franchise tax on each corporation or any other entity taxed as a corporation under the Internal Revenue Code according to or measured by its entire net income derived from all sources within this state for the taxable year at the rates imposed under subsection (1) of this section. For the purposes of this subsection the taxpayer's entire net income shall be its federal taxable income derived from sources within this state as determined pursuant to sections 77-2735 to 77-2749, the State of Nebraska hereby adopting method numbered (4) authorized by section 5219, United States Revised Statutes, as amended, 12 USC 548, for state taxation of national banking associations. The tax imposed by this subsection on national banking associations shall be in lieu of all taxes imposed by this state on national banking associations to the extent it is not permissible to tax such associations under federal law. For the purpose of computing the franchise or income tax levied in this section, the net income of cooperative organizations shall be the entire net income derived from all sources within this state, excluding distributions of earnings and profits of the cooperative to members or patrons such as dividends paid on capital stock, nonpatronage income allocated to patrons, or patronage dividends attributable to this state as shall be excludable or deductible by such corporation for federal income tax purposes. All provisions of sections 77-2714 to 77-27,124 relating to taxation of corporations shall apply to franchise taxes or income taxes imposed under this section unless the context requires otherwise.

Any (a) corporation subject to tax under section 44-1213, 77-908, 77-909, or 81-523, (b) corporations organized as cooperatives under Chapter 21, article 13, (c) electric cooperatives organized under Chapter 70, article 7, (d) nonstock cooperative marketing companies organized under Chapter 21, article 14, (e) savings and

loan associations, (f) production credit associations, (g) persons licensed to engage in this state in the business of purchasing installment paper, (h) installment loan companies, (i) credit unions, (j) mutual investment companies, (k) banks for cooperatives, and (l) industrial loan and investment companies shall be credited, in the computation of tax due under the provisions of this section, with the amount paid during the taxable year as taxes in lieu of intangible tax.

(3)(a) A small business corporation having an election in effect under subchapter S of the Internal Revenue Code shall not be subject to the Nebraska income tax or franchise tax on corporations.

(b) The shareholders of such corporation who are residents of Nebraska shall include in their incomes their proportionate share of such corporation's federal taxable income.

(c) If any shareholder of such corporation is a nonresident during any part of the corporation's taxable year, he or she shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income that portion of the corporation's Nebraska income, as determined under the provisions of sections 77-2735 to 77-2749, allocable to his or her interest in the corporation. He or she shall execute and forward to the corporation, before the original due date of the Nebraska corporate return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state. Such 7 and such agreement shall be attached to the corporation's Nebraska return for such taxable year.

(d) In the absence of the nonresident shareholder's executed agreement being attached to the Nebraska corporate return, the corporation shall remit a portion of his or her share of the corporation's taxable income which was derived from or attributable to this state, which portion shall be ten per cent of the nonresident shareholder's share of the corporation's income which was derived from or attributable to sources within this state.

(e) The Tax Commissioner may require a nonresident shareholder to file a Nebraska income tax return even though his or her only source of Nebraska income was his or her share of the corporation's income which was derived from or attributable to sources within this state. The 7 and the amount of remittance by the corporation on behalf of such nonresident shareholder shall be allowed as a credit against his or her Nebraska income tax liability.

(4) Any corporation taxed pursuant to subsection (1) or (2) of this section, except for a tax paid under section 81-523, may receive a tax credit for contributions to community betterment programs as provided in the

Community Development Assistance Act.

Sec. 17. That section 81-1228, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1228. The Department of Economic Development shall have the following powers:

(1) To cooperate with and assist similar departments, agencies, commissions, or councils of the federal governments and of other state governments;

(2) To utilize the facilities and services and direct the cooperation of the University of Nebraska and all other existing officers, offices, commissions, departments, boards, bureaus, institutions, and other agencies of the state and of the political subdivisions thereof in order to avoid duplication of such facilities and services, and all such other officers and agencies shall cooperate with and extend their services and facilities to the department;

(3) To adopt, amend, and repeal rules, regulations, and ~~by-laws~~ bylaws governing its procedures and activities;

(4) To create committees to aid in the discharge of its duties;

(5) To submit and adopt all necessary plans, enter into contracts, and accept gifts, grants, and federal funds; and

(6) To administer the tax credit program established by the Community Development Assistance Act and to adopt and promulgate rules and regulations pursuant to such act; and

(7) To do all acts, not inconsistent with the law, necessary or conducive to the efficient utilization of Nebraska's agricultural, community, commercial, tourism, and industrial resources and to the state's overall economic development.

Sec. 18. This act shall become operative for all taxable years commencing on or after January 1, 1985, or deemed to begin on or after January 1, 1985, under the Internal Revenue Code of 1954, as amended, and ending on or before December 31, 1988.

Sec. 19. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 20. That original sections 44-1213, 77-908, 77-909, and 81-1228, Reissue Revised Statutes of Nebraska, 1943, and sections 58-219, 58-256, 58-270, 77-2715, and 77-2734, Revised Statutes Supplement, 1983, are repealed.