

LEGISLATIVE BILL 300

Approved by the Governor March 5, 2001

Introduced by Chambers, 11

AN ACT relating to money and financing; to amend sections 13-203, 13-206, 13-207, 21-2102, 21-2104, and 21-2109, Reissue Revised Statutes of Nebraska, and section 58-239, Revised Statutes Supplement, 2000; to provide for the dissolution of the Research and Development Authority; to provide and change powers and duties; to harmonize provisions; to repeal the original sections; and to outright repeal sections 58-401 to 58-442 and 77-2704.18, Reissue Revised Statutes of Nebraska.

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

Section 1. (1) The Research and Development Authority, created pursuant to section 58-403, as such section existed prior to the effective date of this act, is hereby dissolved. Any assets of the authority remaining upon such dissolution which are pledged to outstanding indebtedness of the authority shall, upon the consent of the holders of the respective indebtedness, be immediately transferred, free and clear, to the holder of such indebtedness in satisfaction of such indebtedness.

(2) The business development corporation formed pursuant to section 58-440 shall no longer be required to include representatives of the authority. All interest of the authority in such business development corporation shall be transferred to the North Omaha Business Development Corporation, the business development corporation formed pursuant to section 58-440, as such section existed prior to the effective date of this act.

Sec. 2. Section 13-203, Reissue Revised Statutes of Nebraska, is amended to read:

13-203. For purposes of the Community Development Assistance Act, unless the context otherwise requires:

(1) Business firm shall mean any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a limited liability company, a corporation having an election in effect under Chapter 1, subchapter S of the Internal Revenue Code, as defined in section 49-801.01, subject to the state income tax imposed by section 77-2715 or 77-2734.02, an insurance company paying premium or related retaliatory taxes in this state pursuant to section 44-150 or 77-908, or a financial institution paying the tax imposed pursuant to sections 77-3801 to 77-3807;

(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, (i) the instruction of any individual in the community development area that enables him or her to acquire vocational skills, (ii) counseling and advice, (iii) emergency services, (iv) community, youth, day care, and senior citizen centers, (v) in-home services, (vi) home improvement services and programs, and (vii) any legal enterprise which aids in the prevention or reduction of crime; ~~or (h) purchasing shares in a business development corporation formed to carry out section 58-440;~~

(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 (a) 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 (b) ~~a business development corporation formed to carry out section 58-440, and (c) a county, city, or village performing community services or offering community assistance in a community development area; and~~

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

(a) An unemployment rate which exceeds the statewide average unemployment rate;

(b) Vacant and substandard housing stock which exceeds the statewide average percentage for vacant and substandard housing stock;

(c) Depressed housing valuations which exceed the statewide average rate for depressed housing valuations;

(d) A crime rate which exceeds the statewide average crime rate; or

(e) A per capita income below the statewide average per capita income.

Sec. 3. Section 13-206, Reissue Revised Statutes of Nebraska, is amended to read:

13-206. (1) The director shall adopt and promulgate rules and regulations for the approval or disapproval of the program proposals submitted pursuant to section 13-205 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 for ~~(a)~~ 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. ~~and (b) amounts used to purchase shares in a business development corporation formed to carry out section 58-440.~~ 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 44-150 and 77-908 shall be transmitted to the Director of Insurance.

(2) For all business firms eligible for the credit allowed by section 13-207, except for insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908, the Tax Commissioner shall provide for the manner in which the credit allowed by section 13-207 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 13-207 to insurance companies paying premium and related retaliatory taxes in this state pursuant to sections 44-150 and 77-908 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 premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908 a credit for the credit provided by section 13-207 and allowed by the Director of Insurance.

Sec. 4. Section 13-207, Reissue Revised Statutes of Nebraska, is amended to read:

13-207. (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 percent of the total amount contributed by the business firm during its taxable year to any programs certified pursuant to section 13-205. ~~Purchase of shares in a business development corporation formed to carry out section 58-440 shall be deemed a contribution to a certified program of a community betterment organization.~~ 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, 77-2734.02, and 77-3801 to 77-3807 and to the Director of Insurance who shall grant a tax credit against any premium and related retaliatory taxes due under sections 44-150 and 77-908.

(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. 5. Section 21-2102, Reissue Revised Statutes of Nebraska, is

amended to read:

21-2102. For purposes of the Nebraska Business Development Corporation Act, unless the context otherwise requires:

(1) Development corporation or corporation shall mean any corporation organized pursuant to the act for the purpose of developing business, industry, and enterprise in the State of Nebraska by the lending of money thereto and otherwise organizing for the purposes set forth in section 21-2104;

(2) Financial institution shall mean any banking institution, insurance company or related corporation, savings and loan association, partnership, limited liability company, credit union, foundation, trust, licensee under the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., as the act existed on the effective date of this act, or other entity engaged in lending or investing funds and authorized to do business in the State of Nebraska, including ~~the Research and Development Authority~~ and the United States Small Business Administration;

(3) Member shall mean any financial institution which undertakes to lend money to a development corporation upon its call and in accordance with section 21-2109;

(4) Board of directors shall mean members of the board of directors of a development corporation in office from time to time; and

(5) Loan limit shall mean, for any member, the maximum amount permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined under the Nebraska Business Development Corporation Act.

Sec. 6. Section 21-2104, Reissue Revised Statutes of Nebraska, is amended to read:

21-2104. The purposes of a business development corporation shall be only: (1) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Nebraska and its citizens; (2) to encourage and assist through loans, investments, or other business transactions the location of new business and industry in the state; (3) to rehabilitate and assist existing business and industry in this state; (4) to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability in this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; (5) to cooperate and act in conjunction with other organizations, public or private, including ~~the Research and Development Authority~~ and the United States Small Business Administration, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and (6) to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

Sec. 7. Section 21-2109, Reissue Revised Statutes of Nebraska, is amended to read:

21-2109. (1) Notwithstanding any other provision of law, any financial institution is authorized to become a member of and to invest in a development corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of such application by such board. Membership shall be for the duration of the corporation, except that upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of such notice and shall not, after the expiration date of such notice, be obligated to make any loans to the corporation. No financial institution shall become a member of more than one development corporation. ~~7 except that this restriction shall not apply to the Research and Development Authority.~~

(2) Each such member shall make loans to the corporation as and when called upon to do so, upon such terms and conditions as approved from time to time by the board of directors, subject to the following conditions:

(a) All loans shall be evidenced by negotiable instruments of the corporation and shall bear interest at the rate determined by the board of directors to be the prime rate on unsecured commercial loans as of the date of the loan;

(b) All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section;

(c) The total amount outstanding at any one time on loans to a development corporation made by any member, other than an insurance company, reciprocal exchange, or fraternal benefit society, shall not exceed the following limit, to be determined as of the time such member becomes a member, on the basis of figures contained in the most recent year-end statement prior to its application for membership:

(i) Banking associations, three percent of the paid-in capital and surplus;

(ii) Savings and loan associations, three percent of the general reserve account and surplus; and

(iii) Other financial institutions, such limits as may be approved from time to time by the board of directors of the development corporation;

(d) In the case of an insurance company, reciprocal exchange, and fraternal benefit society, the total amount outstanding at any time on loans to a development corporation shall be limited as follows: (i) For stock life insurance companies, one percent of capital and unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized for stock life insurance companies under section 44-5153; (ii) for mutual life insurance companies or fraternal benefit societies, one percent of unassigned surplus, which amount loaned shall be included in and be a part of those investments authorized under such section; and (iii) for other insurance companies or reciprocal exchanges, one-tenth of one percent of admitted assets, which amount loaned shall be included in and be a part of those investments authorized under such section; and

(e) Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the loan limit of each member bears to the aggregate loan limits of all members.

Sec. 8. Section 58-239, Revised Statutes Supplement, 2000, is amended to read:

58-239. The authority is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes including:

(1) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(2) To adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with the Nebraska Investment Finance Authority Act, to regulate its affairs, to carry into effect the powers and purposes of the authority, and to conduct its business;

(3) To sue and be sued in its own name;

(4) To have an official seal and alter it at will;

(5) To maintain an office at such place or places within the state as it may designate;

(6) To make and execute contracts and all other instruments as necessary or convenient for the performance of its duties and the exercise of its powers and functions under the act;

(7) To employ architects, engineers, attorneys, inspectors, accountants, building contractors, financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(8) To obtain insurance against any loss in connection with its bonds, property, and other assets in such amounts and from such insurers as it deems advisable;

(9) To borrow money and issue bonds as provided by the act;

(10) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the act subject to the conditions upon which the grants or contributions are made including gifts or grants from any department, agency, or instrumentality of the United States, and to make grants, for any purpose consistent with the act;

(11) To enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders for the purpose of carrying out projects authorized under the act;

(12) To enter into contracts or agreements with lenders for the servicing and processing of mortgages or loans pursuant to the act;

(13) To provide technical assistance to local public bodies and to for-profit and nonprofit entities in the areas of housing for low-income and moderate-income persons, agricultural enterprises, and community or economic development, to distribute data and information concerning the needs of the state in these areas, and, at the discretion of the authority, to charge reasonable fees for such assistance;

(14) To the extent permitted under its contract with the holders of bonds of the authority, to consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest or any other term of any contract, loan, loan note, loan note commitment, mortgage, mortgage loan, mortgage loan commitment, lease, or agreement of any kind to which the authority is a party;

(15) To the extent permitted under its contract with the holders of

bonds of the authority, to enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of the state, the reduction can be made without jeopardizing the economic stability of the project being financed;

(16) To acquire by construction, purchase, devise, gift, or lease or any one or more of such methods one or more projects located within this state, except that the authority shall not acquire any projects or parts of such projects by condemnation;

(17) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the act;

(18) To issue bonds for the purpose of paying the cost of financing any project or projects and to secure the payment of such bonds as provided in the act;

(19) To sell and convey any real or personal property and make such order respecting the same as it deems conducive to the best interest of the authority;

(20) To make and undertake commitments to make loans to lenders under the terms and conditions requiring the proceeds of the loans to be used by such lenders to make loans for projects. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in the state;

(21) To hold and dispose of any real or personal property, whether tangible or intangible, and any distributions thereon, transferred to or received by the authority as collateral or in payment of amounts due the authority or otherwise pursuant to state law, in accordance with the act;

(22) To invest in, purchase, make commitments to invest in or purchase, and take assignments or make commitments to take assignments of loans made by lenders for the construction, rehabilitation, or purchase of projects;

~~(22)~~ (23) To enter into financing agreements with others with respect to projects to provide financing for such projects upon such terms and conditions as the authority deems advisable to effectuate the public purposes of the act, which projects shall be located within the state. The authority shall not operate any project referred to in this section as a business or in any manner except as the lessor or seller of such project;

~~(23)~~ (24) To enter into financing agreements with any corporation, partnership, limited liability company, or individual or with any county, city, village, or entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for purposes of financing any solid waste disposal project;

~~(24)~~ (25) To enter into agreements with or purchase or guaranty obligations of political subdivisions of the state, including authorities, agencies, commissions, districts, and instrumentalities thereof, to provide financing for affordable housing infrastructure; and

~~(25)~~ (26) In lieu of providing direct financing as authorized by the Nebraska Investment Finance Authority Act, to guaranty debt obligations of any project owner to whom, and for such purposes as, the authority could otherwise provide direct financing, and the authority may establish a fund or account and limit its obligation on such guaranties to money in such fund or account. Any such guaranty shall contain a statement similar to that required by section 58-255 for bonds issued by the authority.

Sec. 9. Original sections 13-203, 13-206, 13-207, 21-2102, 21-2104, and 21-2109, Reissue Revised Statutes of Nebraska, and section 58-239, Revised Statutes Supplement, 2000, are repealed.

Sec. 10. The following sections are outright repealed: Sections 58-401 to 58-442 and 77-2704.18, Reissue Revised Statutes of Nebraska.