

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 387

Introduced by Lindstrom, 18.

Read first time January 13, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to economic development; to amend sections
2 77-5902, 77-5904, 81-1201.15, 81-1201.20, and 81-12,156, Reissue
3 Revised Statutes of Nebraska, and sections 58-708, 77-5903, 77-5905,
4 77-6302, 77-6306, 77-6307, and 81-12,153, Revised Statutes
5 Cumulative Supplement, 2016; to change provisions relating to the
6 use of funds under the Nebraska Affordable Housing Act; to eliminate
7 provisions relating to distressed areas in the Nebraska Advantage
8 Microenterprise Tax Credit Act, the Angel Investment Tax Credit Act,
9 and the Business Innovation Act; to change provisions relating to
10 confidentiality requirements, the Business Recruitment Division, and
11 rules and regulations; to harmonize provisions; and to repeal the
12 original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 58-708, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 58-708 (1) During each calendar year in which funds are available
4 from the Affordable Housing Trust Fund for use by the Department of
5 Economic Development, the department shall make its best efforts to
6 allocate a specific amount of funds, not less than thirty percent of such
7 funds , to each congressional district. The department shall announce a
8 grant and loan application period of at least ninety days duration for
9 all projects. In selecting projects to receive trust fund assistance, the
10 department shall develop a qualified allocation plan and give first
11 priority to financially viable projects that serve the lowest income
12 occupants for the longest period of time. The qualified allocation plan
13 shall:

14 (a) Set forth selection criteria to be used to determine housing
15 priorities of the housing trust fund which are appropriate to local
16 conditions, including the community's immediate need for affordable
17 housing, proposed increases in home ownership, private dollars leveraged,
18 level of local government support and participation, and repayment, in
19 part or in whole, of financial assistance awarded by the fund; and

20 (b) Give first priority in allocating trust fund assistance among
21 selected projects to those projects which are located in whole or in part
22 within an enterprise zone designated pursuant to the Enterprise Zone Act,
23 serve the lowest income occupant, and are obligated to serve qualified
24 occupants for the longest period of time.

25 (2) The department shall fund in order of priority as many
26 applications as will utilize available funds less actual administrative
27 costs of the department in administering the program. In administering
28 the program the department may contract for services or directly provide
29 funds to other governmental entities or instrumentalities.

30 (3) The department may recapture any funds which were allocated to a
31 qualified recipient for an eligible project through an award agreement if

1 such funds were not utilized for eligible costs within the time of
2 performance under the agreement and are therefor no longer obligated to
3 the project. The recaptured funds shall be credited to the Affordable
4 Housing Trust Fund.

5 Sec. 2. Section 77-5902, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-5902 The Nebraska Advantage Microenterprise Tax Credit Act shall
8 be administered by the Department of Revenue. The purpose of the act is
9 to provide tax credits to applicants for creating or expanding
10 microbusinesses that contribute to the state's economy ~~revitalization of~~
11 ~~economically distressed areas~~ through the creation of new or improved
12 income, self-employment, or other new jobs ~~in the area~~.

13 Sec. 3. Section 77-5903, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 77-5903 For purposes of the Nebraska Advantage Microenterprise Tax
16 Credit Act:

17 (1) Actively engaged in the operation of a microbusiness means
18 personal involvement on a continuous basis in the daily management and
19 operation of the business;

20 ~~(2) Distressed area means a municipality, county, unincorporated~~
21 ~~area within a county, or census tract in Nebraska that has (a) an~~
22 ~~unemployment rate which exceeds the statewide average unemployment rate,~~
23 ~~(b) a per capita income below the statewide average per capita income, or~~
24 ~~(c) had a population decrease between the two most recent federal~~
25 ~~decennial censuses;~~

26 (2) ~~(3)~~ Equivalent employees means the number of employees computed
27 by dividing the total hours paid in a year by the product of forty times
28 the number of weeks in a year;

29 (3) ~~(4)~~ Microbusiness means any business employing five or fewer
30 equivalent employees at the time of application. Microbusiness does not
31 include a farm or livestock operation unless (a) the person actively

1 engaged in the operation of the microbusiness has a net worth of not more
2 than five hundred thousand dollars, including any holdings by a spouse or
3 dependent, based on fair market value, or (b) the investment or
4 employment is in the processing or marketing of agricultural products,
5 aquaculture, agricultural tourism, or the production of fruits, herbs,
6 tree products, vegetables, tree nuts, dried fruits, organic crops, or
7 nursery crops;

8 (4) ~~(5)~~ New employment means the amount by which the total
9 compensation plus the employer cost for health insurance for employees
10 paid during the tax year to or for employees who are Nebraska residents
11 exceeds the total compensation paid plus the employer cost for health
12 insurance for employees to or for employees who are Nebraska residents in
13 the tax year prior to application. New employment does not include
14 compensation to any employee that is in excess of one hundred fifty
15 percent of the Nebraska average weekly wage. Nebraska average weekly wage
16 means the most recent average weekly wage paid by all employers as
17 reported by October 1 by the Department of Labor;

18 (5) ~~(6)~~ New investment means the increase during the tax year over
19 the year prior to the application in the applicant's (a) purchases of
20 buildings and depreciable personal property located in Nebraska, (b)
21 expenditures on repairs and maintenance on property located in Nebraska,
22 neither subdivision (a) or (b) of this subdivision to include vehicles
23 required to be registered for operation on the roads and highways of this
24 state, and (c) expenditures on advertising, legal, and professional
25 services. If the buildings or depreciable personal property is leased,
26 the amount of new investment shall be the increase in average net annual
27 rents multiplied by the number of years of the lease for which the
28 taxpayer is bound, not to exceed ten years;

29 (6) ~~(7)~~ Related persons means (a) any corporation, partnership,
30 limited liability company, cooperative, including cooperatives exempt
31 under section 521 of the Internal Revenue Code of 1986, as amended,

1 limited cooperative association, or joint venture which is or would
2 otherwise be a member of the same unitary group, if incorporated, or any
3 person who is considered to be a related person under either section
4 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as
5 amended, and (b) any individual who is a spouse, parent if the taxpayer
6 is a minor, or minor son or daughter of the taxpayer; and

7 (7) ~~(8)~~ Taxpayer means any person subject to the income tax imposed
8 by the Nebraska Revenue Act of 1967, any corporation, partnership,
9 limited liability company, cooperative, including a cooperative exempt
10 under section 521 of the Internal Revenue Code of 1986, as amended,
11 limited cooperative association, or joint venture that is or would
12 otherwise be a member of the same unitary group, if incorporated, which
13 is, or whose partners, members, or owners representing an ownership
14 interest of at least ninety percent of such entity are, subject to such
15 tax, and any other partnership, limited liability company, subchapter S
16 corporation, cooperative, including a cooperative exempt under section
17 521 of the Internal Revenue Code of 1986, as amended, limited cooperative
18 association, or joint venture when the partners, shareholders, or members
19 representing an ownership interest of at least ninety percent of such
20 entity are subject to such tax.

21 The changes made to this section by Laws 2008, LB 177, shall be
22 operative for all applications for benefits received on or after July 18,
23 2008.

24 Sec. 4. Section 77-5904, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-5904 (1) The Department of Revenue shall accept applications for
27 tax credits from taxpayers who are actively engaged in the operation of a
28 microbusiness ~~in a distressed area~~ or who will establish a microbusiness
29 that they will actively operate ~~in a distressed area~~ within the current
30 or subsequent tax year. Applications shall be filed by November 1 and
31 shall be complete by December 1 of each calendar year. Any application

1 that is filed after November 1 or that is not complete on December 1
2 shall be considered to be filed during the following calendar year.

3 (2) The department may convene an advisory committee of individuals
4 with expertise in small business development, lending, and community
5 development to evaluate applications and advise the department in
6 authorizing tentative tax credits.

7 (3) The application shall be on a form developed by the department
8 and shall contain:

9 (a) A description of the microbusiness;

10 (b) The projected income and expenditures;

11 (c) The market to be served by the microbusiness and the way the
12 expansion addresses the market;

13 (d) The amount of projected investment or employment increase that
14 would generate the credit;

15 ~~(e) The projected improvement in income or creation of new self-~~
16 ~~employment or other jobs in the distressed area;~~

17 ~~(e) (f)~~ The nature of the applicant's engagement in the operation of
18 the microbusiness; and

19 ~~(f) (g)~~ Other documents, plans, and specifications as required by
20 the department.

21 Sec. 5. Section 77-5905, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 77-5905 (1) If the Department of Revenue determines that an
24 application meets the requirements of section 77-5904 and that the
25 investment or employment is eligible for the credit and (a) the applicant
26 is actively engaged in the operation of the microbusiness or will be
27 actively engaged in the operation upon its establishment, (b) ~~the~~
28 ~~majority of the assets of the microbusiness are located in a distressed~~
29 ~~area or will be upon its establishment,~~ (c) the applicant will make new
30 investment or employment in the microbusiness, and ~~(c) (d)~~ the new
31 investment or employment will create new income or jobs ~~in the distressed~~

1 area, the department shall approve the application and authorize
2 tentative tax credits to the applicant within the limits set forth in
3 this section and certify the amount of tentative tax credits approved for
4 the applicant. Applications for tax credits shall be considered in the
5 order in which they are received.

6 (2) The department may approve applications up to the adjusted limit
7 for each calendar year beginning January 1, 2006, through December 31,
8 2022. After applications totaling the adjusted limit have been approved
9 for a calendar year, no further applications shall be approved for that
10 year. The adjusted limit in a given year is two million dollars plus
11 tentative tax credits that were not granted by the end of the preceding
12 year. Tax credits shall not be allowed for a taxpayer receiving benefits
13 under the Employment and Investment Growth Act, the Nebraska Advantage
14 Act, or the Nebraska Advantage Rural Development Act.

15 Sec. 6. Section 77-6302, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 77-6302 For purposes of the Angel Investment Tax Credit Act:

18 (1) Director means the Director of Economic Development;

19 ~~(2) Distressed area means a municipality, a county with a population~~
20 ~~of fewer than one hundred thousand inhabitants according to the most~~
21 ~~recent federal decennial census, an unincorporated area within a county,~~
22 ~~or a census tract in Nebraska that (a) has an unemployment rate which~~
23 ~~exceeds the statewide average unemployment rate, (b) has a per capita~~
24 ~~income below the statewide average per capita income, or (c) had a~~
25 ~~population decrease between the two most recent federal decennial~~
26 ~~censuses;~~

27 (2) ~~(3)~~ Family member means a family member within the meaning of
28 section 267(c)(4) of the Internal Revenue Code of 1986, as amended;

29 (3) ~~(4)~~ Investment date means the latest of the following:

30 (a) The date of a fully executed investor subscription agreement or
31 underlying transaction document pertaining to the applicable qualified

1 investment;

2 (b) The date on a check made out to a qualified small business for
3 the applicable qualified investment or the date a wire transfer is
4 completed for the applicable qualified investment; or

5 (c) The date the qualified small business deposits a check made out
6 to such qualified small business for the applicable qualified investment
7 or receives a wire transfer for the applicable qualified investment, as
8 documented on the deposit slip or bank statement of the qualified small
9 business;

10 ~~(4)~~ ~~(5)~~ Pass-through entity means an organization that for the
11 applicable taxable year is a subchapter S corporation, general
12 partnership, limited partnership, limited liability partnership, trust,
13 or limited liability company and that for the applicable taxable year is
14 not taxed as a corporation;

15 ~~(5)~~ ~~(6)~~ Qualified fund means a fund that has been certified by the
16 director under section 77-6304;

17 ~~(6)~~ ~~(7)~~ Qualified high-technology field includes, but is not limited
18 to, aerospace, agricultural processing, renewable energy, energy
19 efficiency and conservation, environmental engineering, food technology,
20 cellulosic ethanol, information technology, materials science technology,
21 nanotechnology, telecommunications, biosolutions, medical device
22 products, pharmaceuticals, diagnostics, biologicals, chemistry,
23 veterinary science, and similar fields;

24 ~~(7)~~ ~~(8)~~ Qualified investment means a cash investment in a qualified
25 small business made in exchange for common stock, a partnership or
26 membership interest, preferred stock, debt with mandatory conversion to
27 equity, or an equivalent ownership interest as determined by the director
28 of a minimum of:

29 (a) Twenty-five thousand dollars in a calendar year by a qualified
30 investor; or

31 (b) Fifty thousand dollars in a calendar year by a qualified fund;

1 (8) ~~(9)~~ Qualified investor means an individual, trust, or pass-
2 through entity which has been certified by the director under section
3 77-6305; and

4 (9) ~~(10)~~ Qualified small business means a business that has been
5 certified by the director under section 77-6303.

6 Sec. 7. Section 77-6306, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 77-6306 (1) ~~A For taxable years beginning or deemed to begin on or~~
9 ~~after January 1, 2011, under the Internal Revenue Code of 1986, as~~
10 ~~amended,~~ a qualified investor or qualified fund is eligible for a
11 refundable tax credit equal to ~~thirty five percent of its qualified~~
12 ~~investment in a qualified small business, except that if the qualified~~
13 ~~small business is located in a distressed area the qualified investor or~~
14 ~~qualified fund is eligible for a refundable tax credit equal to forty~~
15 percent of its qualified investment in a ~~the~~ qualified small business.
16 The director shall not allocate more than four million dollars in tax
17 credits to all qualified investors or qualified funds in a calendar year.
18 If the director does not allocate the entire four million dollars of tax
19 credits in a calendar year, the tax credits that are not allocated shall
20 not carry forward to subsequent years. The director shall not allocate
21 any amount for tax credits for calendar years after 2022.

22 (2) The director shall not allocate more than a total maximum amount
23 in tax credits for a calendar year to a qualified investor for the
24 investor's cumulative qualified investments as an individual qualified
25 investor and as an investor in a qualified fund as provided in this
26 subsection. For married couples filing joint returns the maximum is three
27 hundred fifty thousand dollars, and for all other filers the maximum is
28 three hundred thousand dollars. The director shall not allocate more than
29 a total of one million dollars in tax credits for qualified investments
30 in any one qualified small business.

31 (3) The director shall not allocate a tax credit to a qualified

1 investor either as an individual qualified investor or as an investor in
2 a qualified fund if the investor receives more than forty-nine percent of
3 the investor's gross annual income from the qualified small business in
4 which the qualified investment is proposed. A family member of an
5 individual disqualified by this subsection is not eligible for a tax
6 credit under this section. For a married couple filing a joint return,
7 the limitations in this subsection apply collectively to the investor and
8 spouse. For purposes of determining the ownership interest of an investor
9 under this subsection, the rules under section 267(c) and (e) of the
10 Internal Revenue Code of 1986, as amended, apply.

11 (4) Tax credits shall be allocated to qualified investors or
12 qualified funds in the order that the tax credit applications are filed
13 with the director. Once tax credits have been approved and allocated by
14 the director, the qualified investors and qualified funds shall implement
15 the qualified investment specified within ninety days after allocation of
16 the tax credits. Qualified investors and qualified funds shall notify the
17 director no later than thirty days after the expiration of the ninety-day
18 period that the qualified investment has been made. If the qualified
19 investment is not made within ninety days after allocation of the tax
20 credits, or the director has not, within thirty days following expiration
21 of the ninety-day period, received notification that the qualified
22 investment was made, the tax credit allocation is canceled and available
23 for reallocation. A qualified investor or qualified fund that fails to
24 invest as specified in the application within ninety days after
25 allocation of the tax credits shall notify the director of the failure to
26 invest within five business days after the expiration of the ninety-day
27 investment period.

28 (5) All tax credit applications filed with the director on the same
29 day shall be treated as having been filed contemporaneously. If two or
30 more qualified investors or qualified funds file tax credit applications
31 on the same day and the aggregate amount of tax credit allocation

1 requests exceeds the aggregate limit of tax credits under this section or
2 the lesser amount of tax credits that remain unallocated on that day,
3 then the tax credits shall be allocated among the qualified investors or
4 qualified funds who filed on that day on a pro rata basis with respect to
5 the amounts requested. The pro rata allocation for any one qualified
6 investor or qualified fund shall be the product obtained by multiplying a
7 fraction, the numerator of which is the amount of the tax credit
8 allocation request filed on behalf of a qualified investor or qualified
9 fund and the denominator of which is the total of all tax credit
10 allocation requests filed on behalf of all applicants on that day, by the
11 amount of tax credits that remain unallocated on that day for the taxable
12 year.

13 (6) A qualified investor or qualified fund, or a qualified small
14 business acting on behalf of the investor or fund, shall notify the
15 director when an investment for which tax credits were allocated has been
16 made and shall furnish the director with documentation of the investment
17 date. A qualified fund shall also provide the director with a statement
18 indicating the amount invested by each investor in the qualified fund
19 based on each investor's share of the assets of the qualified fund at the
20 time of the qualified investment. After receiving notification that the
21 qualified investment was made, the director shall issue tax credit
22 certificates for the taxable year in which the qualified investment was
23 made to the qualified investor or, for a qualified investment made by a
24 qualified fund, to each qualified investor who is an investor in the
25 fund. The certificate shall state that the tax credit is subject to
26 revocation if the qualified investor or qualified fund does not hold the
27 investment in the qualified small business for at least three years,
28 consisting of the calendar year in which the investment was made and the
29 two following calendar years. The three-year holding period does not
30 apply if:

31 (a) The qualified investment by the qualified investor or qualified

1 fund becomes worthless before the end of the three-year period;

2 (b) Eighty percent or more of the assets of the qualified small
3 business are sold before the end of the three-year period;

4 (c) The qualified small business is sold or merges with another
5 business before the end of the three-year period;

6 (d) The qualified small business's common stock begins trading on a
7 public exchange before the end of the three-year period; or

8 (e) In the case of an individual qualified investor, such investor
9 becomes deceased before the end of the three-year period.

10 (7) The director shall notify the Tax Commissioner that tax credit
11 certificates have been issued, including the amount of tax credits and
12 all other pertinent tax information.

13 Sec. 8. Section 77-6307, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 77-6307 (1) Each qualified small business, qualified investor, and
16 qualified fund shall submit an annual report to the director by July 1 of
17 each year. The report shall certify that the business, investor, or fund
18 satisfies the requirements of the Angel Investment Tax Credit Act and
19 shall include all information which will enable the Department of
20 Economic Development to fulfill its reporting requirements under section
21 77-6309.

22 (2) A qualified small business that ceases all operations and
23 becomes insolvent shall file a final report with the director in the form
24 required by the director documenting its insolvency.

25 (3) To maintain the confidentiality of the qualified investor ~~and~~
26 ~~qualified small business~~, the Department of Economic Development shall
27 use a designated number to identify such persons or entities ~~businesses~~.

28 (4) A qualified small business, qualified investor, or qualified
29 fund that fails to file a complete annual report by July 1 shall, at the
30 discretion of the director, be subject to a fine of two hundred dollars,
31 revocation of its certification, or both.

1 Sec. 9. Section 81-1201.15, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-1201.15 (1) The primary responsibility of the Business
4 Recruitment Division shall be the creation of jobs through the attraction
5 of business to the state. The division shall develop a program of
6 assistance to local governments, chambers of commerce, development
7 organizations, and other entities involved in attracting new value-adding
8 industries. Activities shall include, but not be limited to, industrial
9 recruitment, marketing, international investment attraction, and
10 technical assistance to community organizations in their recruitment
11 efforts.

12 (2) Information regarding business recruitment, location,
13 relocation, and expansion projects conducted by or with the assistance of
14 the Business Recruitment Division may be withheld from the public until a
15 public announcement is made about the project or until negotiations
16 between the business and the division or other governmental entity
17 regarding the project have been completed, whichever is earlier.

18 Sec. 10. Section 81-1201.20, Reissue Revised Statutes of Nebraska,
19 is amended to read:

20 81-1201.20 The department ~~may shall~~ adopt and promulgate rules and
21 regulations to carry out sections 81-1201.01 to 81-1201.20.

22 Sec. 11. Section 81-12,153, Revised Statutes Cumulative Supplement,
23 2016, is amended to read:

24 81-12,153 For purposes of the Business Innovation Act:

25 (1) Department means the Department of Economic Development;

26 ~~(2) Distressed area means a municipality, a county with a population~~
27 ~~of fewer than one hundred thousand inhabitants according to the most~~
28 ~~recent federal decennial census, an unincorporated area within a county,~~
29 ~~or a census tract in Nebraska that (a) has an unemployment rate which~~
30 ~~exceeds the statewide average unemployment rate, (b) has a per capita~~
31 ~~income below the statewide average per capita income, or (c) had a~~

1 ~~population decrease between the two most recent federal decennial~~
2 ~~censuses;~~

3 (2) (3) Federal grant program means the federal Small Business
4 Administration's Small Business Innovation Research grant program or
5 Small Business Technology Transfer grant program;

6 (3) (4) Microenterprise means a for-profit business entity with not
7 more than ten full-time equivalent employees;

8 (4) (5) Prototype means an original model on which something is
9 patterned by a resident of Nebraska or a company located in Nebraska; and

10 (5) (6) Value-added agriculture means increasing the net worth of
11 food or nonfood agricultural products by processing, alternative
12 production and handling methods, collective marketing, or other
13 innovative practices.

14 Sec. 12. Section 81-12,156, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 81-12,156 ~~At least forty percent of the funding for financial~~
17 ~~assistance programs in sections 81-12,157 to 81-12,162 shall be used for~~
18 ~~projects that best alleviate chronic economic distress in distressed~~
19 ~~areas.~~ When selecting projects for funding under the Business Innovation
20 Act ~~this section~~, the department shall give a preference to projects
21 located in whole or in part within an enterprise zone designated pursuant
22 to the Enterprise Zone Act.

23 Sec. 13. Original sections 77-5902, 77-5904, 81-1201.15,
24 81-1201.20, and 81-12,156, Reissue Revised Statutes of Nebraska, and
25 sections 58-708, 77-5903, 77-5905, 77-6302, 77-6306, 77-6307, and
26 81-12,153, Revised Statutes Cumulative Supplement, 2016, are repealed.