

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1033

Introduced by Synowiecki, 7; Aguilar, 35; Burling, 33; Flood, 19;
Janssen, 15; Lathrop, 12; Preister, 5; Wightman, 36.

Read first time January 17, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-27,196.01, Reissue Revised Statutes of Nebraska, and
3 sections 77-27,187.02 and 77-27,188, Revised Statutes
4 Supplement, 2007; to change application requirements
5 for the Nebraska Advantage Rural Development Act;
6 to harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 77-27,187.02, Revised Statutes
2 Supplement, 2007, is amended to read:

3 77-27,187.02 (1) To earn the incentives set forth in the
4 Nebraska Advantage Rural Development Act, the taxpayer shall file
5 an application for an agreement with the Tax Commissioner.

6 (2) The application shall contain:

7 (a) A written statement describing the full expected
8 employment or type of livestock production and the investment
9 amount for a qualified business, as described in section 77-27,189,
10 in this state;

11 (b) Sufficient documents, plans, and specifications as
12 required by the Tax Commissioner to support the plan and to define
13 a project; and

14 (c) An application fee of five hundred dollars. The fee
15 shall be remitted to the State Treasurer for credit to the Nebraska
16 Advantage Rural Development Fund, which fund is hereby created. Any
17 money in the fund available for investment shall be invested by the
18 state investment officer pursuant to the Nebraska Capital Expansion
19 Act and the Nebraska State Funds Investment Act. The application
20 and all supporting information shall be confidential except for the
21 name of the taxpayer, the location of the project, and the amounts
22 of increased employment or investment.

23 (3) (a) The Tax Commissioner shall approve the application
24 and authorize the total amount of credits expected to be earned as
25 a result of the project if he or she is satisfied that the plan in

1 the application defines a project that (i) meets the requirements
2 established in section 77-27,188 and such requirements will be
3 reached within the required time period and (ii) for projects other
4 than livestock modernization or expansion projects, is located in
5 an eligible county, city, village, or enterprise zone.

6 (b) The Tax Commissioner shall not approve further
7 applications once the expected credits from the approved projects
8 total two million five hundred thousand dollars in each of fiscal
9 years 2004-05 and 2005-06 and three million dollars in fiscal
10 year 2006-07 and each fiscal year thereafter. Four hundred dollars
11 of the application fee shall be refunded to the applicant if
12 the application is not approved because the expected credits from
13 approved projects exceed such amounts.

14 (c) Applications for benefits shall be considered in the
15 order in which they are received.

16 (d) Applications shall be filed by November 1 and shall
17 be complete by December 1 of each calendar year. Any application
18 that is filed after November 1 or that is not complete on December
19 1 shall be considered to be filed during the following calendar
20 year.

21 (4) After approval, the taxpayer and the Tax Commissioner
22 shall enter into a written agreement. The taxpayer shall agree
23 to complete the project, and the Tax Commissioner, on behalf of
24 the State of Nebraska, shall designate the approved plans of the
25 taxpayer as a project and, in consideration of the taxpayer's

1 agreement, agree to allow the taxpayer to use the incentives
2 contained in the Nebraska Advantage Rural Development Act up to
3 the total amount that were authorized by the Tax Commissioner
4 at the time of approval. The application, and all supporting
5 documentation, to the extent approved, shall be considered a part
6 of the agreement. The agreement shall state:

7 (a) The levels of employment and investment required by
8 the act for the project;

9 (b) The time period under the act in which the required
10 level must be met;

11 (c) The documentation the taxpayer will need to supply
12 when claiming an incentive under the act;

13 (d) The date the application was filed; and

14 (e) The maximum amount of credits authorized.

15 Sec. 2. Section 77-27,188, Revised Statutes Supplement,
16 2007, is amended to read:

17 77-27,188 (1) A refundable credit against the taxes
18 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
19 taxpayer who has an approved application pursuant to the Nebraska
20 Advantage Rural Development Act, who is engaged in a qualifying
21 business as described in section 77-27,189, and who after January
22 1, 2006:

23 (a)(i) Increases employment by two new equivalent
24 employees and makes an increased investment of at least one hundred
25 twenty-five thousand dollars prior to the end of the first taxable

1 year after the year in which the application was submitted in
2 (A) any county in this state with a population of fewer than
3 fifteen thousand inhabitants, according to the most recent federal
4 decennial census, (B) any village in this state, or ~~in~~ (C) any area
5 that was designated enterprise zone on January 1, 2005, pursuant
6 to 42 U.S.C. 11501 or the Enterprise Zone Act or any area that is
7 subsequently designated as a new enterprise zone or as an expansion
8 of a previously existing enterprise zone; or

9 (ii) Increases employment by five new equivalent
10 employees and makes an increased investment of at least two hundred
11 fifty thousand dollars prior to the end of the first taxable
12 year after the year in which the application was submitted in
13 (A) any county in this state with a population of less than
14 twenty-five thousand inhabitants, according to the most recent
15 federal decennial census, (B) any city of the second class or
16 village in this state, or (C) any area that was a designated
17 enterprise zone on January 1, 2005, pursuant to 42 U.S.C. 11501 or
18 the Enterprise Zone Act or any area that is subsequently designated
19 as a new enterprise zone or as an expansion of a previously
20 existing enterprise zone; and

21 (b) Pays a minimum qualifying wage of eight dollars and
22 twenty-five cents per hour to the new equivalent employees for
23 which tax credits are sought under the Nebraska Advantage Rural
24 Development Act. The Department of Revenue shall adjust the minimum
25 qualifying wages required for applications filed after January 1,

1 2004, and each January 1 thereafter, as follows: The current rural
2 Nebraska average weekly wage shall be divided by the rural Nebraska
3 average weekly wage for 2003; and the result shall be multiplied by
4 the eight dollars and twenty-five cents minimum qualifying wage for
5 2003 and rounded to the nearest one cent. The amount of increase
6 or decrease in the minimum qualifying wages for any year shall
7 be the cumulative change in the rural Nebraska average weekly
8 wage since 2003. For purposes of this subsection, rural Nebraska
9 average weekly wage means the most recent average weekly wage paid
10 by all employers in all counties with a population of less than
11 twenty-five thousand inhabitants as reported by October 1 by the
12 Department of Labor.

13 For purposes of this section, a teleworker working in
14 Nebraska from his or her residence for a taxpayer shall be
15 considered an employee of the taxpayer, and property of the
16 taxpayer provided to the teleworker working in Nebraska from his
17 or her residence shall be considered an investment. Teleworker
18 includes an individual working on a per-item basis and an
19 independent contractor working for the taxpayer so long as the
20 taxpayer withholds Nebraska income tax from wages or other payments
21 made to such teleworker. For purposes of calculating the number
22 of new equivalent employees when the teleworkers are paid on a
23 per-item basis or are independent contractors, the total wages or
24 payments made to all such new employees during the year shall be
25 divided by the qualifying wage as determined in subdivision (b) of

1 this subsection, with the result divided by two thousand eighty
2 hours.

3 (2) A refundable credit against the taxes imposed by the
4 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who
5 (a) has an approved application pursuant to the Nebraska Advantage
6 Rural Development Act, (b) is engaged in livestock production, and
7 (c) after January 1, 2007, invests at least fifty thousand dollars
8 for livestock modernization or expansion.

9 (3) The amount of the credit allowed under subsection
10 (1) of this section shall be three thousand dollars for each new
11 equivalent employee and two thousand seven hundred fifty dollars
12 for each fifty thousand dollars of increased investment. The amount
13 of the credit allowed under subsection (2) of this section shall
14 be ten percent of the investment, not to exceed a credit of
15 thirty thousand dollars. For each application, a taxpayer engaged
16 in livestock production may qualify for a credit under either
17 subsection (1) or (2) of this section, but cannot qualify for more
18 than one credit per application.

19 (4) An employee of a qualified employee leasing company
20 shall be considered to be an employee of the client-lessee for
21 purposes of this section if the employee performs services for the
22 client-lessee. A qualified employee leasing company shall provide
23 the Department of Revenue access to the records of employees leased
24 to the client-lessee.

25 (5) The credit shall not exceed the amounts set out in

1 the application and approved by the Tax Commissioner.

2 (6) (a) If a taxpayer who receives tax credits creates
3 fewer jobs or less investment than required in the project
4 agreement, the taxpayer shall repay the tax credits as provided in
5 this subsection.

6 (b) If less than seventy-five percent of the required
7 jobs in the project agreement are created, one hundred percent
8 of the job creation tax credits shall be repaid. If seventy-five
9 percent or more of the required jobs in the project agreement are
10 created, no repayment of the job creation tax credits is necessary.

11 (c) If less than seventy-five percent of the required
12 investment in the project agreement is created, one hundred percent
13 of the investment tax credits shall be repaid. If seventy-five
14 percent or more of the required investment in the project
15 agreement is created, no repayment of the investment tax credits is
16 necessary.

17 (7) For taxpayers who submitted applications for benefits
18 under the Nebraska Advantage Rural Development Act before January
19 1, 2006, subsection (1) of this section, as such subsection existed
20 immediately prior to such date, shall continue to apply to such
21 taxpayers. The changes made by Laws 2005, LB 312, shall not
22 preclude a taxpayer from receiving the tax incentives earned prior
23 to January 1, 2006.

24 Sec. 3. Section 77-27,196.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-27,196.01 (1) The changes made in sections 77-27,188,
2 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by
3 Laws 1997, LB 886, shall become operative for all credits earned in
4 tax years beginning, or deemed to begin, on and after January 1,
5 1998. For all credits earned in tax years beginning, or deemed to
6 begin, prior to January 1, 1998, the provisions of the Employment
7 Expansion and Investment Incentive Act as they existed immediately
8 prior to such date shall apply.

9 (2) The changes made in sections 77-27,187.01 and
10 77-27,188 by Laws 1999, LB 539, shall become operative for all
11 credits earned in tax years beginning, or deemed to begin, on
12 and after January 1, 1999. For all credits earned in tax years
13 beginning, or deemed to begin, prior to January 1, 1999, the
14 provisions of the Employment Expansion and Investment Incentive Act
15 as they existed immediately prior to such date shall apply.

16 (3) The changes made in sections 77-27,188, 77-27,188.02,
17 and 77-27,192 by Laws 2001, LB 169, shall become operative for
18 all credits earned in tax years beginning, or deemed to begin, on
19 and after January 1, 2001. For all credits earned in tax years
20 beginning, or deemed to begin, prior to January 1, 2001, the
21 provisions of the Employment Expansion and Investment Incentive Act
22 as they existed immediately prior to such date shall apply.

23 (4) The changes made in sections 77-27,187.02 and
24 77-27,188 by this legislative bill become operative for
25 applications filed after the effective date of this act.

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1 Sec. 4. Original section 77-27,196.01, Reissue Revised
2 Statutes of Nebraska, and sections 77-27,187.02 and 77-27,188,
3 Revised Statutes Supplement, 2007, are repealed.