

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB720

Hearing Date: Wednesday March 06, 2019
Committee On: Revenue
Introducer: Kolterman
One Liner: Adopt the ImagiNE Nebraska Act and provide tax incentives

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Briese, Crawford, Kolterman, Lindstrom, Linehan, McCollister
Nay:
Absent:
Present Not Voting: 2 Senators Friesen, Groene

Oral Testimony:

Proponents:

Senator Mark Kolterman
David Rippe
Chad Denton
Walker Zulkoski
David Brown

David Arnold
Pam Miller
Richard Lombardi
Kevin Andersen
Lynn Rex
Andy Hunzeker
Richard Baier

Opponents:

Renee Fry
Dan Watermeier
Dave Welsch
John Hansen

Neutral:

Mark McHargue

Representing:

Introducer
Nebraska Department of Economic Development
State Chamber of Commerce
Nebraska Economic Developers Association
Greater Omaha Chamber, Lincoln Chamber of Commerce
Buildertrend
Renewable Fuels Nebraska
Advanced Power Alliance
City of Omaha
League of Municipalities
Lincoln Industries
Nebraska Bankers Association

Representing:

Open Sky Policy Institute
Self
Milford Public Schools
Nebraska Farmers Union

Representing:

Ag Leaders Working Group

Summary of purpose and/or changes:

The bill creates the ImagiNE Nebraska Act to replace the Nebraska Advantage Act.

Timing - Applications for Nebraska Advantage would no longer be allowed after the effective date of the bill, which contains the Emergency Clause. Application for the new programs would be allowed after the effective date.

Administration - The bill transfers the overall administration of the program from the Department of Revenue to the Department of Economic Development. Revenue would still have the authority to audit taxpayers under the program and would be responsible for recapture of credits and refunds if necessary.

Qualified Businesses - The new program changes the industries that may qualify for incentives and in some cases specifies the "NAICS" code (North American Industry Classification System) needed to qualify. Qualified businesses include:

- Manufacturing;
- Testing laboratories;
- Administrative management/Headquarter facilities;
- Logistics facilities;
- Research, development, or testing for scientific, agricultural, animal husbandry, food product, industrial, or technology purposes;
- Data processing, insurance, transportation or financial services;
- Telecommunications services;
- Operating a data center;
- Production of electricity using renewable energy sources;
- Performance of information technology services; and
- Retail (if 75% of the revenue is derived from sales to customers in other states).

Non-qualified businesses include:

- Agricultural, forestry, fishing and hunting;
- Mining, quarrying and oil and gas extraction;
- Utilities (other than as authorized);
- Construction;
- Retail trade (other than as authorized);
- Real estate and rental and leasing;
- Professional, scientific, and technical services (other than as authorized);
- Health care and social assistance;
- Arts, entertainment and recreation;
- Accommodation and food services;
- Other services not already specified; and
- Public administration.

New Employees - Incentives under the new program increase with the level of wages paid. Wages paid are compared to either the average hourly wage in Nebraska excluding the three largest counties or including the three largest counties. Taxpayers must pay wages at or above 100% of the two standards.

Project Phases

- a) Application. Taxpayers must file an application showing they will make new investment and create new employment as required. An application is deemed "complete" if the requirements laid out in the bill are all included. The director of the Department of Economic Development must approve or disapprove a complete application within 90 days.
- b) Agreement. The director must prepare and deliver an agreement to the taxpayer within 90 days of approving an application. Agreements are for a period of 15 years.
- c) Precertification. A taxpayer may request that the director certify that it is operating a qualified business at a qualified location. The director must complete the review within 90 days of the request. A taxpayer may request that the Tax Commissioner certify base year employment and wage levels. The review must be completed within 180 days of the request. Once these certifications are made, they are binding on the Department of Revenue when the taxpayer claims the incentives, so long as the taxpayer has complied with the terms its agreement.
- d) Ramp-up Period. This runs for 4 years after the year of application. The taxpayer must attain its investment and job creation level during this period. Also, taxpayers may begin filing direct refund claims for sales and use tax paid on qualified property during this period.
- e) Performance Period. This is the year during which the required levels of investment and employment are attained

and continues until the end of the 6th year after the year of attainment. During this period, the taxpayer is exempt from paying sales and use tax on purchases of qualified property.

f) Carryover Period. This runs for 3 years after the end of the Performance Period. Taxpayers are no longer allowed to earn credits but may continue to use credits earned.

Revolving Loan Fund - Taxpayers with an application under the new program may obtain loans from this new fund for:

- Workforce Training - Taxpayers may partner with postsecondary educational institutions in Nebraska, nonprofit educational organizations, or a school district in providing workforce training; and
- Infrastructure Development.

The bill requires a transfer of \$5 million to this fund no later than July 15, 2019 and another transfer no later than July 15, 2020. The fund may also receive money from appropriations, grants, private contributions, repayment of loans and all other sources. Loans may be repaid using credits earned under the new program.

Incentives

- Taxpayers may receive refunds for sales and use tax paid on purchases of qualified property at a qualified location during the ramp-up phase;
- Taxpayers are exempt from such sales and use taxes during the performance period;
- They may earn and use investment credits against income tax liability, sales and use tax liability on purchases of other than qualified property, or to repay loans;
- They may earn and use employment credits against withholding taxes;
- Certain taxpayers may receive a property tax exemption for personal property acquired after the application date and used at a qualified location;
- Certain taxpayers may receive reimbursement from the state for real property taxes paid on a qualified location; and
- Credits may be used to obtain a payment from the state that is equal to the amount spent by the taxpayer for Job Training and Talent Recruitment.

City Sales Tax - Refunds of local sales taxes in excess of \$25,000 filed by June 15 shall be made on or after November 15 of the same year. Refunds filed on or after June 16 shall not be made until on or after November 15 of the following year. Existing statutes that delay payment of other local sales tax refunds are incorporated into the bill.

Taxpayers under the Employment and Investment Growth Act (775), Nebraska Advantage Act and the ImagiNE Nebraska Act are required to annually provide each municipality with the maximum amount the taxpayer is eligible to receive in sales and use tax refunds for the previous year and the estimate of sales and use taxes such business intends to claim by June 30.

Explanation of amendments:

Section 14-15:

- Clarifies the data set to be used in determining the "Nebraska ninety-county average hourly wage" and the "Nebraska statewide average hourly wage" is the set calculated by the Office of Labor Market Information of the Department of Labor using annual data from the Quarterly Census of Employment and Wages;

Section 16:

- Clarifies the different level of wages that must be paid under the different qualifying categories;

Section 18:

Adds and/or clarifies the following businesses in the definition of "qualified location":

- Transportation includes both rail and truck
- Insurance services is changed to Insurance Carriers
- Telecommunications services are to include both wired and wireless carriers but exclude satellite

- Telemarketing Bureaus and Other Contact Centers
- Computer Facilities Management Services
- Warehousing and Storage;

Sections 28-29:

- Adds additional items to be included in the application
- Adds language that the applicant must acknowledge in the application and in the agreement that it does not violate any state or federal law against discrimination
- Adds a nonrefundable application fee of \$5,000
- Adds a requirement for notification to any municipality in which project locations exist of the approval of an application and execution of an agreement
- The Department of Revenue is required to notify municipalities within 30 days after a refund is allowed or approved;

Section 32:

- The amendment modifies one of the levels for qualification from 10 new employees and \$1,000,000 investment to 5 new employees and \$1,000,000
- Applicants under this modified level may also receive a 1% multiplier for the wage and investment credits if the project is located in an area that has been designated as "extremely blighted"
- Requires that applicants offer to full-time employees insurance coverage that complies with the Affordable Care Act
- The administrative fee required under this section may be offset by the application fee;

Section 33:

- Adds new language for the order of utilization of credits from existing programs and this new program
- Credits may also be used to obtain payment from the state for taxpayer-sponsored child care at the qualified location during the performance and carryover period;

Section 34:

- For purposes of recapture, the average wage and health coverage requirements are treated as a required level of employment for each year of the performance period;

Section 40:

- Creates a committee to review the most recently available data on refunds and credits used as well as estimates of refunds and credits to be used under the program. This is the same data that will be made available to the Legislative Fiscal Office and the Nebraska Economic Forecasting Advisory Board. The committee may also request additional information which it believes should be considered by the Appropriations Committee for state budgeting and appropriations. The committee members are:
 - The Speaker of the Legislature
 - The Chairs of the Revenue, Appropriations Performance Audit Committees
 - The Tax Commissioner and
 - The Director of the Department of Economic Development.

This is in addition to the Annual Report to the Revenue and Appropriations Committees;

Sections 45-55:

The provisions of LB605 (Lindstrom 2019) are incorporated to create the Renewable Chemical Production Tax Credit Act. The Department of Economic Development (DED) will be responsible for managing the application, certification and agreement with an eligible business.

Requirements include:

- The business produced at least 1 million pounds of renewable chemicals in this state during the calendar year for which tax credits are sought

- The business is physically located in this state and
- The business organized, expanded, or located in this state on or after the effective date of this Act
- The agreement may certify the business to receive tax credits under the act for up to 4 years
- Within 30 days after receiving a program certification application, DED shall certify the business as satisfying the conditions required of an eligible business, request additional information, or deny the program certification application
- The director may approve program certification applications for a total of up to \$3 million dollars in tax credits for calendar years 2021 and 2022 and up to \$6 million dollars in tax credits for calendar years 2023 and beyond
- Program certification applications approved after such annual limit has been reached shall be placed on a wait list in the order in which they are received
- The credits are refundable
- The maximum amount of tax credits that may be issued to an eligible business under a single tax credit application shall not exceed \$1.5 million per year
- An eligible business may be subject to the repayment or recapture of tax credits claimed.

Section 68:

- Municipalities are required to keep all sales and use tax information received confidential unless previously disclosed by the taxpayer or the state
- Funds held by municipalities to make refunds of sales and use taxes under this program or prior incentive programs shall not count toward any budgeted restricted funds limitation as provided in section 13-519 or toward any cash reserve limitation as provided in section 13-504.

Lou Ann Linehan, Chairperson