

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 334

Introduced by Stinner, 48.

Read first time January 16, 2019

Committee: Appropriations

1 A BILL FOR AN ACT relating to economic development; to amend section
2 77-6306, Reissue Revised Statutes of Nebraska, and sections 13-1907,
3 13-2103, 13-2112, 81-12,152, 81-12,163, and 81-12,166, Revised
4 Statutes Cumulative Supplement, 2018; to change and eliminate
5 provisions relating to rules and regulations of the Department of
6 Economic Development; to stop granting tax credits under the Angel
7 Investment Tax Credit Act; to eliminate a termination date, state
8 appropriation intent language, require evaluations of programs, and
9 provide a duty for the Appropriations Committee of the Legislature
10 under the Business Innovation Act; to harmonize provisions; to
11 repeal the original sections; and to outright repeal section
12 81-12,167, Reissue Revised Statutes of Nebraska.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-1907, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 13-1907 (1) The Department of Economic Development ~~may shall~~ adopt
4 and promulgate rules and regulations to carry out sections 13-1901 to
5 13-1907, including ~~which shall include~~ standardized reporting and
6 application procedures. Each development district shall submit annual
7 performance and financial reports to the department which shall address
8 the activities performed and services delivered.

9 (2) The Governor shall, from time to time, evaluate the
10 effectiveness and activities of the development districts receiving
11 assistance. If the Governor finds a development district to be
12 ineffective, he or she may take action, including the withholding of
13 assistance authorized under section 13-1906.

14 Sec. 2. Section 13-2103, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 13-2103 (1)(a) Beginning on December 1, 2014 ~~the date the rules and~~
17 ~~regulations updated in accordance with section 13-2112 become effective~~
18 ~~as provided in section 84-908~~, the department shall, for a period of one
19 hundred eighty days, accept formal applications for the designation of
20 enterprise zones. Within sixty days after the end of such application
21 period, the department may designate not more than five areas as
22 enterprise zones based on eligible applications it has received.

23 (b) If the department has received fewer than five applications for
24 the designation of enterprise zones after the end of the application
25 period described in subdivision (1)(a) of this section, the department
26 may establish a period of time within which to accept additional
27 applications. Within sixty days after the end of such extended
28 application period, the department may designate additional areas as
29 enterprise zones based on additional eligible applications received, but
30 not more than a total of five areas may be designated as enterprise zones
31 pursuant to this section.

1 (c) In the application period, the department may reject from
2 consideration any application which does not fully and completely comport
3 with the provisions of section 13-2104 at the end of the designated
4 application period. In choosing among eligible applications for
5 enterprise zone designation, the department shall consider the levels of
6 distress existing within the applicant areas and the contents of the
7 applicant's formal enterprise zone application.

8 (d) Each area designated as an enterprise zone shall meet all
9 eligibility criteria. Of the enterprise zones authorized, no more than
10 one shall be located inside the boundaries of a city of the metropolitan
11 class and no more than one inside a city of the primary class.

12 (2) Any city, village, tribal government area, or county may apply
13 for designation of an area within such city, village, tribal government
14 area, or county as an enterprise zone, except that if a county seeks to
15 have an area within an incorporated city or village or a tribal
16 government area designated as an enterprise zone, the consent of the
17 governing body of such city, village, or tribal government area shall
18 first be required.

19 (3) If an incorporated city or village or a tribal government area
20 consents, a county may apply on behalf of the city, village, or tribal
21 government area for certification of an area within such city, village,
22 or tribal government area as an enterprise zone. Both a county and a
23 city, village, or tribal government area shall not apply for
24 certification of the same area.

25 (4) Two or more counties or tribal government areas may jointly
26 apply for designation of an area as an enterprise zone which is located
27 on both sides of their common boundaries.

28 (5) Political subdivisions wishing to file an application for
29 designation of an enterprise zone shall first follow the procedures set
30 out in sections 13-2106 to 13-2108. An application for designation as an
31 enterprise zone shall be in a form and contain information prescribed by

1 the department pursuant to section 13-2104.

2 (6) An area designated as an enterprise zone shall retain such
3 designation for a period of ten years from the date of such designation.

4 (7) All enterprise zones designated as such within a single county
5 shall not exceed a total of sixteen square miles in area.

6 Sec. 3. Section 13-2112, Revised Statutes Cumulative Supplement,
7 2018, is amended to read:

8 13-2112 The department ~~may shall~~ adopt and promulgate rules and
9 regulations to carry out the Enterprise Zone Act. ~~The department shall~~
10 ~~update such rules and regulations within six months after July 18, 2014.~~

11 Sec. 4. Section 77-6306, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 77-6306 (1) A qualified investor or qualified fund is eligible for a
14 refundable tax credit equal to forty percent of its qualified investment
15 in a qualified small business. The director shall not allocate more than
16 four million dollars in tax credits to all qualified investors or
17 qualified funds in a calendar year. If the director does not allocate the
18 entire four million dollars of tax credits in a calendar year, the tax
19 credits that are not allocated shall not carry forward to subsequent
20 years. The director shall not allocate any amount for tax credits for
21 calendar years after 2019 ~~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. 5. Section 81-12,152, Revised Statutes Cumulative Supplement,
14 2018, is amended to read:

15 81-12,152 Sections 81-12,152 to 81-12,166 ~~81-12,167~~ shall be known
16 and may be cited as the Business Innovation Act.

17 Sec. 6. Section 81-12,163, Revised Statutes Cumulative Supplement,
18 2018, is amended to read:

19 81-12,163 (1) It is the intent of the Legislature that the four
20 million dollars saved due to the elimination of funding for the Angel
21 Investment Tax Credit Act be used to increase the appropriation to
22 appropriate seven million dollars from the General Fund to the department
23 for the Business Innovation Act by four million dollars for fiscal year
24 2020-21 and each fiscal year thereafter ~~for each of fiscal years 2015-16~~
25 ~~and 2016-17.~~

26 (2) Up to five percent of the funds appropriated may be used by the
27 department, or by a nonprofit entity with which the department contracts,
28 for administrative expenses.

29 Sec. 7. Section 81-12,166, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 81-12,166 (1) The department shall submit an annual report to the

1 Governor and the Legislature on or before July 1 of each year which
2 includes, but is not limited to, a description of the demand for
3 financial assistance and programs under the Business Innovation Act from
4 all geographic regions in Nebraska, a listing of the recipients and
5 amounts of financial assistance awarded pursuant to the act in the
6 previous fiscal year, the impact of the financial assistance, and an
7 evaluation of the act's performance based on the documented goals of the
8 recipients. The report submitted to the Legislature shall be submitted
9 electronically. The department may require recipients to provide periodic
10 performance reports to enable the department to fulfill the requirements
11 of this subsection ~~section~~. The report shall contain no information that
12 is protected by state or federal confidentiality laws.

13 (2) Beginning in 2020 and in every even-numbered year thereafter,
14 the department shall assess and evaluate the economic impact of the
15 programs funded under the Business Innovation Act and shall include the
16 findings from such assessment and evaluation in the next annual report it
17 submits under subsection (1) of this section. The department may contract
18 with a nonprofit organization pursuant to section 81-12,165 to carry out
19 the requirements of this subsection.

20 (3) Beginning with the FY2021-23 biennial budget review process, the
21 Appropriations Committee of the Legislature shall conduct a biennial
22 analysis of the financial status and impact of the programs funded under
23 the Business Innovation Act.

24 (4) (2) Applications for funding and related documentation which may
25 be received, developed, created, or otherwise maintained by the
26 Department of Economic Development in administering the Business
27 Innovation Act may be deemed confidential by the department and not
28 subject to public disclosure.

29 Sec. 8. Original section 77-6306, Reissue Revised Statutes of
30 Nebraska, and sections 13-1907, 13-2103, 13-2112, 81-12,152, 81-12,163,
31 and 81-12,166, Revised Statutes Cumulative Supplement, 2018, are

1 repealed.

2 Sec. 9. The following section is outright repealed: Section
3 81-12,167, Reissue Revised Statutes of Nebraska.