

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1356

Introduced by Wayne, 13.

Read first time January 17, 2024

Committee: Revenue

1 A BILL FOR AN ACT relating to the Community Development Assistance Act;
2 to amend sections 13-203, 13-204, 13-205, 13-206, 13-207, and
3 13-208, Reissue Revised Statutes of Nebraska; to redefine terms; to
4 change provisions relating to program proposals and review, powers
5 and duties of the Director or Economic Development and the
6 Department of Economic Development, and eligibility for and maximum
7 limits on tax credits; to eliminate obsolete provisions; to
8 harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-203, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-203 For purposes of the Community Development Assistance Act,
4 unless the context otherwise requires:

5 (1) Business firm shall mean any business entity, including a
6 corporation, a fiduciary, a sole proprietorship, a partnership, a limited
7 liability company, a corporation having an election in effect under
8 Chapter 1, subchapter S of the Internal Revenue Code, as defined in
9 section 49-801.01, subject to the state income tax imposed by section
10 77-2715 or 77-2734.02, an insurance company paying premium or related
11 retaliatory taxes in this state pursuant to section 44-150 or 77-908, or
12 a financial institution paying the tax imposed pursuant to sections
13 77-3801 to 77-3807;

14 (2) Community services shall mean any type of the following in a
15 community development area: (a) Employment training; (b) human services;
16 (c) medical services; (d) physical facility and neighborhood development
17 services; (e) recreational services or activities; (f) educational
18 services; or (g) crime prevention activities, including, but not limited
19 to, (i) the instruction of any individual in the community development
20 area that enables him or her to acquire vocational skills, (ii)
21 counseling and advice, (iii) emergency services, (iv) community, youth,
22 day care, and senior citizen centers, (v) in-home services, (vi) home
23 improvement services and programs, and (vii) any legal enterprise which
24 aids in the prevention or reduction of crime; (h) operations for a sports
complex or sports venue as defined in section 13-3102; or (i) operations
of any inland port authority created under the Municipal Inland Port
Authority Act;

25 (3) Department shall mean the Department of Economic Development;

26 (4) Director shall mean the Director of Economic Development;

27 (5) Community development area shall mean any village, city, county,
28 unincorporated area of a county, or census tract which has been

1 designated by the department as an area of chronic economic distress or
2 any inland port district created pursuant to the Municipal Inland Port
3 Authority Act;

4 (6) Community assistance shall mean furnishing financial assistance,
5 labor, material, or technical advice to aid in the physical improvement
6 of any part or all of a community development area;

7 (7) Community betterment organization shall mean (a) any
8 organization performing community services or offering community
9 assistance in a community development area and to which contributions are
10 tax deductible under the provisions of the Internal Revenue Service of
11 the United States Department of the Treasury, and (b) a county, city, or
12 village performing community services or offering community assistance in
13 a community development area, or (c) any inland port authority created
14 under the Municipal Inland Port Authority Act; and

15 (8) Area of chronic economic distress shall mean an area of the
16 state which meets any of the following conditions:

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

19 (b) A per capita income below the statewide average per capita
20 income; or

21 (c) A population loss between the two most recent federal decennial
22 censuses.

23 Sec. 2. Section 13-204, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 13-204 Any community betterment organization which provides
26 community assistance or community services in a community development
27 area may apply any time during the fiscal year to the department to have
28 one or more programs or projects certified for tax credit status as
29 provided in sections 13-205 to 13-208. The proposal shall set forth the
30 program or project to be conducted, the community development area, the
31 estimated amount to be required for completion of the program or project

1 or the annual estimated amount required for an ongoing program or
2 project, the plans for implementing the program or project, and the
3 amount of contributions committed or anticipated for such activities or
4 services.

5 Sec. 3. Section 13-205, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 13-205 (1) A proposal submitted to the department shall only
8 include all of the following:

9 (a) A description of the program or project to be conducted,
10 including the community assistance or community services that will be
11 provided as a result of the program or project;

12 (b) A description of the community development area, including the
13 geographical location and boundaries of the community development area;

14 (c) Evidence that the program or project addresses at least one of
15 the following: (i) The program or project will result in the provision of
16 essential services to low-income and moderate-income persons that are not
17 adequately being provided in the affected area and for which there are no
18 other readily available resources; (ii) the program or project tangibly
19 contributes to the development of lasting cooperation and partnership
20 efforts of area organizations and businesses; (iii) the program or
21 project will contribute to the operations of a sports complex or sports
22 venue as defined in section 13-3102; (iv) the program or project will
23 contribute to the operations of any inland port authority; (v) the
24 program or project will result in economic development and job creation;
25 or (vi) the program or project will result in an innovative and resilient
26 community;

27 (d) The estimated amount to be required for completion of the
28 program or project, including (i) a proposed budget for the program or
29 project with information on personnel and administrative overhead costs,
30 (ii) the amount of tax credits requested for the year of application, and
31 (iii) the amount of contributions pledged or anticipated from individuals

1 or business firms eligible for tax credits as well as other sources of
2 funding for the program or project;

3 (e) The annual estimated amount required for an ongoing program or
4 project, including a proposed annual budget with information on personnel
5 and administrative overhead costs, and the amount of tax credits
6 anticipated to be sought in future years;

7 (f) A description of the community betterment organization's plans
8 and capacity for implementing the program or project and continuing the
9 program or project;

10 (g) Documentation that the proposal was reviewed by the appropriate
11 subdivision of local government, including any letters of support on the
12 proposal provided by such subdivision of local government, and
13 information regarding whether the proposal is consistent with any
14 community development plan that may exist for the area in which the
15 community betterment organization will provide community services or
16 community assistance; and

17 (h) If the community betterment organization is recognized by the
18 Internal Revenue Service of the United States Department of the Treasury
19 as an organization to which contributions are tax deductible,
20 documentation of such recognition.

21 (2) The department will review all proposals based on the following
22 criteria:

23 (a) The extent to which the proposed program or project will reduce
24 chronic economic distress of the area, create or maintain jobs, provide
25 youth sport participation, or stimulate economic development;

26 (b) The extent to which the proposed program or project addresses at
27 least one of the following: (i) The program or project will result in the
28 provision of essential services to low-income and moderate-income persons
29 that are not adequately being provided in the affected area and for which
30 there are no other readily available resources; (ii) the program or
31 project tangibly contributes to the development of lasting cooperation

1 and partnership efforts of area organizations and businesses; (iii) the
2 program or project will contribute to the operations of a sports complex
3 or sports venue as defined in section 13-3102; (iv) the program or
4 project will contribute to the operations of any inland port authority;
5 (v) the program or project will result in economic development and job
6 creation; or (vi) the program or project will result in an innovative and
7 resilient community;

8 (c) A demonstrated capacity and performance of the community
9 betterment organization to execute the proposed program or project;

10 (d) The involvement of residents and community support of the
11 affected area in the planning of the proposed program or project and the
12 extent to which they will be involved in its implementation; and

13 (e) The extent to which private sector contributions have been
14 committed to the proposed program or project, contingent upon approval of
15 the program or project by the department.

16 (3) Proposals submitted subsequent to the first year shall be
17 evaluated on performance of the prior year's program or project, other
18 resources developed, and continued need.

19 If the subdivision of local government has adopted a community
20 development plan for an area which includes the area in which the
21 community betterment organization is providing community assistance or
22 community services, the organization shall submit a copy of the program
23 proposal to the chief executive officer of such subdivision. If the
24 program proposal is consistent with the adopted community development
25 plan, the chief executive officer shall so certify to the department for
26 the department's approval or disapproval. If the program proposal is not
27 consistent with the adopted community development plan of the local
28 subdivision, the chief executive officer shall so indicate and the
29 proposal shall not be approved by the department. If the proposed
30 activities are consistent with the adopted community development plan,
31 but for other reasons they are not viewed as appropriate by the local

1 subdivision, the chief executive officer shall so indicate and the
2 department shall review the program proposal and approve or disapprove
3 it. The local subdivision shall review the proposal within forty-five
4 days from the date of receipt for review. If the subdivision does not
5 issue its finding concerning the proposal within forty-five days after
6 receipt, the proposal shall be deemed approved. The department shall
7 approve or disapprove a program proposal submitted pursuant to section
8 13-204 within forty-five days of receipt by the department.

9 Sec. 4. Section 13-206, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 13-206 (1) The director shall adopt and promulgate rules and
12 regulations for the approval or disapproval of the program proposals
13 submitted pursuant to section 13-205 taking into account the economic
14 need level and the geographic distribution of the population of the
15 community development area. The director shall also adopt and promulgate
16 rules and regulations concerning the amount of the tax credit for which a
17 program shall be certified. The tax credits provided for in sections
18 13-205 to 13-208 shall be available for contributions to a certified
19 program or project which may qualify as a charitable contribution
20 deduction on the federal income tax return filed by the business firm or
21 individual making such contribution. The decision of the department to
22 approve or disapprove all or any portion of a proposal shall be in
23 writing. If the proposal is approved, the maximum tax credit allowance
24 for the certified program shall be stated along with the approval. The
25 maximum tax credit allowance approved by the department shall be final
26 for the fiscal year in which the program or project is certified. A copy of
27 all decisions shall be transmitted to the Tax Commissioner. A copy of
28 all credits allowed to business firms under sections 44-150 and 77-908
29 shall be transmitted to the Director of Insurance.

30 (2) For all business firms and individuals eligible for the credit
31 allowed by section 13-207, except for insurance companies paying premium

1 and related retaliatory taxes in this state pursuant to section 44-150 or
2 77-908, the Tax Commissioner shall provide for the manner in which the
3 credit allowed by section 13-207 shall be taken and the forms on which
4 such credit shall be allowed. The Tax Commissioner shall adopt and
5 promulgate rules and regulations for the method of providing tax credits.
6 The Director of Insurance shall provide for the manner in which the
7 credit allowed by section 13-207 to insurance companies paying premium
8 and related retaliatory taxes in this state pursuant to sections 44-150
9 and 77-908 shall be taken and the forms on which such credit shall be
10 allowed. The Director of Insurance may adopt and promulgate rules and
11 regulations for the method of providing the tax credit. The Tax
12 Commissioner shall allow against any income tax due from the insurance
13 companies paying premium and related retaliatory taxes in this state
14 pursuant to section 44-150 or 77-908 a credit for the credit provided by
15 section 13-207 and allowed by the Director of Insurance.

16 (3) The decision of the department to approve or disapprove all or
17 any portion of a proposal or certify a program or project for a
18 designated amount of tax credits shall be provided in writing within
19 forty-five days after receipt of a complete application. If the program
20 or project is approved or certified for a designated amount of tax
21 credits, the department shall prepare and transmit a written agreement to
22 the community betterment organization. The date the written agreement is
23 fully executed by the community betterment organization and the
24 department shall be the date from which contributions may be made to the
25 approved program or project.

26 (4) Documentation evidencing contributions made to programs or
27 projects certified for tax credit status by the department shall be
28 submitted to the department. The department may request additional
29 documentation as the facts and circumstances may require, or to
30 substantiate the value of the contribution, but documentation shall
31 generally be as follows:

1 (a) Cash contributions may be shown by a photocopy of both sides of
2 the canceled check or by proof of electronic funds transfer that includes
3 documentation from the bank account of origin and destination. Checks
4 shall be made payable to the community betterment organization and noted
5 specifically for that project or activity, and electronic funds transfers
6 shall be transferred into the community betterment organization's bank
7 account for the program or project certified for tax credit status by the
8 department;

9 (b) Real property contributions may be shown by the deed and
10 documentation of at least one independent appraisal of the real property
11 by a real property appraiser credentialed under the Real Property
12 Appraiser Act;

13 (c) Contributions of equipment or supplies may be shown by copies of
14 invoices signed by both the contributor and the community betterment
15 organization receiving the equipment or supplies;

16 (d) Contributions of services include the provision of services to a
17 community betterment organization that, if not provided, the community
18 betterment organization would have to pay for or purchase. Contributions
19 of services shall be shown by an affidavit submitted by the individual or
20 business firm demonstrating the net cost of the donated services by (i)
21 taking the time spent providing the services times the hourly wage plus
22 other benefits paid to personnel providing the services or (ii) providing
23 documentation of two price quotes obtained by the contributor
24 demonstrating the cost of the services provided;

25 (e) Stock contributions shall be converted into cash before the
26 community betterment organization receives the donation. Stock
27 contributions may be shown as cash contributions; and

28 (f) Other contributions may be shown by affidavit or by other signed
29 statement deemed acceptable by the department that identifies the
30 contribution, the value of the contribution, and how the value was
31 determined along with other information as may be requested by the

1 department for the particular situation.

2 (5) The value of eligible contributions made to community betterment
3 organizations for programs or projects certified for tax credit status by
4 the department shall be determined based upon the valuation of charitable
5 contributions for federal income tax purposes established by the Internal
6 Revenue Service of the United States Department of the Treasury.

7 Sec. 5. Section 13-207, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 13-207 (1) An individual taxpayer who makes one or more cash
10 contributions to one or more community benefit organizations during a tax
11 year shall be eligible for a credit against the income tax due under the
12 Nebraska Revenue Act of 1967. Except as otherwise provided in the
13 Community Development Assistance Act, the amount of the credit shall be
14 equal to whichever of the following amounts is the lowest: (a) The total
15 amount of such contributions made during the tax year; (b) fifty percent
16 of the income tax liability of such taxpayer for the tax year; or (c) one
17 hundred thousand dollars. A taxpayer may only claim a credit pursuant to
18 this section for the portion of the contribution that was not claimed as
19 a charitable contribution under the Internal Revenue Code.

20 (2) Taxpayers who are married but file separate returns for a tax
21 year in which they could have filed a joint return may each claim only
22 one-half of the tax credit that would otherwise have been allowed for a
23 joint return.

24 (3) Any partnership, limited liability company, or corporation
25 having an election in effect under subchapter S of the Internal Revenue
26 Code of 1986, as amended, that is carrying on any trade or business for
27 which deductions would be allowed under section 162 of the Internal
28 Revenue Code of 1986, as amended, or is carrying on any rental activity
29 and that makes one or more cash contributions to one or more community
30 benefit organizations during a tax year shall be eligible for a credit
31 against the income tax due under the Nebraska Revenue Act of 1967. Except

1 as otherwise provided in the Community Development Assistance Act, the
2 amount of the credit shall be equal to whichever of the following amounts
3 is the lowest: (a) The total amount of such contributions made during the
4 tax year; (b) fifty percent of the income tax liability of such taxpayer
5 for the tax year; or (c) one hundred thousand dollars. A taxpayer may
6 only claim a credit pursuant to this section for the portion of the
7 contribution that was not claimed as a charitable contribution under the
8 Internal Revenue Code. The credit shall be attributed to each partner,
9 member, or shareholder in the same proportion used to report the
10 partnership's, limited liability company's, or subchapter S corporation's
11 income or loss for income tax purposes.

12 (4) An estate or trust which makes one or more cash contributions to
13 one or more community benefit organizations during a tax year shall be
14 eligible for a credit against the income tax due under the Nebraska
15 Revenue Act of 1967. Except as otherwise provided in the Community
16 Development Assistance Act, the amount of the credit shall be equal to
17 whichever of the following amounts is the lowest: (a) The total amount of
18 such contributions made during the tax year; (b) fifty percent of the
19 income tax liability of such taxpayer for the tax year; or (c) one
20 million dollars. A taxpayer may only claim a credit pursuant to this
21 section for the portion of the contribution that was not claimed as a
22 charitable contribution under the Internal Revenue Code. Any credit not
23 used by the estate or trust may be attributed to each beneficiary of the
24 estate or trust in the same proportion used to report the beneficiary's
25 income from the estate or trust for income tax purposes.

26 (5) A corporate taxpayer as defined in section 77-2734.04 which
27 makes one or more cash contributions to one or more community benefit
28 organizations during a tax year shall be eligible for a credit against
29 the income tax due under the Nebraska Revenue Act of 1967. Except as
30 otherwise provided in the Community Development Assistance Act, the
31 amount of the credit shall be equal to whichever of the following amounts

1 is the lowest: (a) The total amount of such contributions made during the
2 tax year; (b) fifty percent of the income tax liability of such taxpayer
3 for the tax year; or (c) one hundred thousand dollars. A taxpayer may
4 only claim a credit pursuant to this section for the portion of the
5 contribution that was not claimed as a charitable contribution under the
6 Internal Revenue Code.

7 (6) The tax credit allowed under this section shall be a
8 nonrefundable credit. Any amount of the tax credit that is unused may be
9 carried forward and applied against the taxpayer's income tax liability
10 for the next five years immediately following the tax year in which the
11 credit is first allowed. The tax credit cannot be carried back.

12 (1) Any business firm or individual which plans to or which has
13 contributed to a certified program of a community betterment organization
14 may apply to the department for authorization for a tax credit for the
15 contribution to the certified program in an amount up to but not
16 exceeding the maximum tax credit allowed by the department. The maximum
17 tax credit allowed by the department for each approved business firm or
18 individual shall be in an amount which does not exceed forty percent of
19 the total amount contributed by the business firm or individual during
20 its taxable year to any programs certified pursuant to section 13-205.
21 The director shall send a copy of the approved application which includes
22 the amount of the tax credit to be allowed and a certification by the
23 department that the contribution has been paid as proposed by the
24 business firm or individual to the Tax Commissioner who shall grant a tax
25 credit against any tax due under sections 77-2715, 77-2734.02, and
26 77-3801 to 77-3807 and to the Director of Insurance who shall grant a tax
27 credit against any premium and related retaliatory taxes due under
28 sections 44-150 and 77-908.

29 (2) No tax credit shall be granted to any business firm or
30 individual in this state pursuant to the Community Development Assistance
31 Act for activities that are a part of its normal course of business. Any

1 ~~tax credit balance may be carried over and applied against the business~~
2 ~~firm's or individual's tax liability for the next five years immediately~~
3 ~~succeeding the tax year in which the credit was first allowed.~~

4 Sec. 6. Section 13-208, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 13-208 The total amount of tax credit granted for programs or
7 projects approved and certified under the Community Development
8 Assistance Act by the department ~~for any fiscal year~~ shall not exceed two
9 million dollars per fiscal year for programs or projects approved and
10 certified in each congressional district, for a total of six million
11 dollars per fiscal year three hundred fifty thousand dollars, except that
12 ~~for fiscal year 2016-17, the total amount of tax credit granted under~~
13 ~~this section shall be reduced by seventy-five thousand dollars.~~

14 Sec. 7. Original sections 13-203, 13-204, 13-205, 13-206, 13-207,
15 and 13-208, Reissue Revised Statutes of Nebraska, are repealed.