ONE HUNDREDTH LEGISLATURE - SECOND SESSION - 2008

COMMITTEE STATEMENT

LB895

Hearing Date: February 06, 2008

Committee On: Revenue

Introducer(s): (Janssen)

Title: Change provisions of tax incentive laws

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

6	Yes	Senators Burling, Cornett, Janssen, Langemeier, Preister and White
1	No	Senator Raikes
1	Absent	Senator Dierks
0	Present, not voting	

Proponents:	**Representing:**
Senator Ray Janssen	Introducer
Governor Dave Heineman	State of Nebraska
Doug Ewald	Department of Revenue
Richard Baier	NE Department of Economic Development
Lon Lowrey	Novartis, Lincoln Chamber of Commerce, State Chamber of Commerce
Dennis Hirschbrunner	Himself
Cindy Johnson	NE Chamber of Commerce, Omaha Chamber, NE Economic Developers Assn.
Bob Hallstrom	Nebraska Bankers Association
Lynn Rex	League of NE Municipalities

Opponents:	**Representing:**
Jay Schmidt	Himself

Neutral:	**Representing:**
None	

Summary of purpose and/or change:

LB 895 would add a new tier of qualification to the Nebraska Advantage Act. The new tier would be for projects that pay at least 150 percent of the state average weekly wage or 200 percent of the county average, whichever is larger.

Any business, except retail sales of tangible personal property, qualifies for tier 6, a broader pool of qualifiers than the current program. Also, the number of new jobs would be 75 and the required investment $10 million. These thresholds are higher than most tiers, but lower than the tier 4 qualifications.

Tier 6 qualifiers would receive higher benefits, a 10 percent jobs credit and a 15 percent investment credit, compared to a maximum 6 percent jobs credit and 10 percent investment credit. Qualifiers could also receive an exemption for all personal property at the project compared to the current, rather limited exemption for some personal property for tier 4 projects. Tier 6 qualifiers would also have longer to earn credits and one year longer to use them. Finally, tier 6 qualifiers could use any credits by obtaining reimbursement for real estate taxes paid anywhere in the state.

<u>Section by Section summary</u>

Sections 1 & 2 would incorporate the new definitions in sections 2, 8, 9, and the new section 15 into the Nebraska Advantage Act.

Section 3 would provide a new definition for “county average wage“ as that reported by the Department of Labor by October 1 of the prior year.

Section 4 would amend section 77-5708, the definition of “Entitlement period.” This is the period of time during which the qualifying companies earn the benefits set out in the act. Under LB 895, the entitlement for a tier 6 project would be ten years. In comparison, the old LB 775 tiers that were retained in the Nebraska Advantage Act are also ten years. The new tiers that were invented for the Nebraska Advantage Act for smaller projects and for job-only projects were limited to seven years.

Section 5 would amend section 77-5712 to clarify, but not change, the meaning of “Nebraska average wage.”

Section 6 would amend section 77-5714 to set out a different calculation of the “number of new employees” for purposes of tier 6 qualifiers. For the Nebraska Advantage Act, the new employees must be paid at least 60 percent of the Nebraska average wage to count for purposes of qualification. Under LB 895, for tier 6 the new employees must be paid at least the tier 6 qualifying compensation. Section 8 sets out this requirement as the greater of 200 percent of the county average weekly wage or 150 percent of the state average weekly wage. Currently, the state average weekly wage is $650, so this would mean an annual salary of $50,000. Douglas County has an average weekly wage of $764, meaning that a project located there would need to pay almost $80,000 to count as a new job.

Section 7 would amend section 77-5715, the definition of “qualified business” to provide that a tier 6 qualifier may be any type of business except retail sales of tangible personal property not manufactured or used by the business. For most other tiers, the business must be involved in research, development, or testing; telecommunications, insurance or financial services; manufacturing; warehousing or distribution; high technology services where more than 75 percent of the product is exported; or a headquarters operation. Tier 1 qualifiers (smaller projects) face a narrower definition of qualifying business: R & D, manufacturing and high technology services where more than 75 percent of the sales are out of state.

Section 9 would add a new definition for “wages” for the existing tiers as the base pay, not reduced for benefits or increased for overtime or bonuses. For a tier 6 project, wages means compensation, so it would include overtime and bonuses. This change in the definition for tier 6 softens the impact of the higher wage amount requirement.

Section 10 would amend section 77-5723 to set the application fee for a tier 6 project at $10,000, twice what the tier 4 application fee is. This section also provides that a tier 6 project must attain the required jobs and investment within five years of the application. In comparison, that is the same as the small project and jobs only tiers in the Nebraska Advantage Act. The old LB 775 tiers retained a seven year attainment period when carried into the Nebraska Advantage Act.

Section 11 would amend section 77-5725 to set out the qualifying standards for the new tier. A tier 6 project under LB 895 would have to promise at least 75 new jobs and $10 million in new investment. This is *less* than the current tier 4, which requires 100 new jobs and $10 million in investment.

This section also sets out the benefits received by the Nebraska Advantage Act qualifiers. Like the other qualifiers, tier 6 beneficiaries would receive a refund of sales tax on tangible personal property used at the project. Tier 6 qualifiers only would receive a credit equal to 10 percent of the increased compensation at the project. In comparison, the current qualifiers receive a sliding scale wage credit that is three percent if the compensation is over 60 percent of the state average weekly wage, four percent of increased compensation if it is over 75 percent, five percent of increased compensation if it is over 100 percent, and six percent of the increased compensation if the average wages are over 125 percent of the state average.

For a tier 6 project, the compensation is to exclude any compensation over $1 million for any individual. It should be noted that the compensation for purposes of meeting the 200 percent or 150 percent qualifying wage does *not* exclude compensation over $1 million. Note also that to qualify for the 6 percent wage credit for the other tiers, only wages count, but for tier 6 total compensation, including overtime and bonuses, count. Therefore, the increased wage requirement to 150 percent rather than 125 percent may not be significant in some instances.

Tier 6 qualifiers also receive an investment credit equal to fifteen percent of the investment at the project, rather than 10 percent that is granted to qualifiers in the other tiers. A tier 6 qualifier also receives a personal property tax exemption for all personal property of any kind located at the project. Tier 4 projects are the only ones which qualify for a personal property tax exemption currently and that exemption is limited to agricultural processing machinery and equipment, distribution equipment, turbine-powered aircraft, and computer systems.

Section 12 would amend section 77-5726 dealing with the use of credits. Tier 6 qualifiers, like those in the other tiers would be able to use wage credits against income tax and against withholding. Jobs and investment credits may be used to obtain a refund of sales taxes paid at the project that are not otherwise refundable. However for a tier 6 project, wage or investment credits may be used to obtain a state paid reimbursement of real estate taxes paid anywhere in the state. This would be the only instance in our system of tax incentives where a qualifier would be able to offset taxes paid at a location away from the project.

This section would also permit credits to be carried over one year past the entitlement period, which could be as much as 16 years after application. Under the current Nebraska Advantage Act, credits expire ten years after application for small projects or jobs only projects and 15 years after application for the old LB 775 tiers.

Section 13 would amend section 77-5727, dealing with recapture of benefits, to harmonize the creation of a new tier 6 benefit.

Section 14 would amend section 77-5731 to require the annual report on the program to include the amount of real estate taxes reimbursed for tier 6 beneficiaries.

Section 15 would provide that the changes made by this bill be operative for applications filed on or after the effective date of the act. Section 16 would repeal the original sections.

Explanation of amendments, if any:

The Committee amendments add four sections from LB 1033 and LB 1046 to the bill. These changes amend the Nebraska Advantage Rural Development Act to:

1. Eliminate from the definition of “livestock modernization or expansion” which are eligible for benefits, any improvements performed to correct environmental violations that are made within five years of a complaint by the Director of the Department of Environmental Quality.

2. Allow benefits for projects in villages in any county of this state if the project promises at least two new jobs and at least $125,000 of new investment. Currently such small projects must be in counties with a population of 15,000 or less, or in an enterprise zone. (**LB 1033)**

3. Allow benefits for projects in one or more census tracts located in metropolitan class cites which have a percentage of residents in poverty greater than 30 percent and any adjacent census tracts if the project promises at least two new jobs and at least $125,000 in new investment. Currently, these small projects must be in small counties or in enterprise zones. Since the enterprise zone legislation has expired, this amendment would strike references to enterprise zones and replace these references with this similar poverty-based description. (**Revised LB 1033)**

4. Allow benefits for projects in second class cities in any county in this state if the project promises at least five new jobs and at least $250,000 of new investment. Currently, projects in this tier must be in counties with a population of 25,000 or less (**LB 1033)**, and

5. Increase the annual dollar cap for tax credits from $3 million to $4 million beginning with fiscal year 2008-09. (**LB 1046)**

The changes made to this act by the bill would be effective for applications filed after the effective date of the act.

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Senator Ray Janssen, Chairperson