

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB389

Hearing Date: Thursday February 03, 2011
Committee On: Revenue
Introducer: Cornett
One Liner: Adopt the Angel Investment Tax Credit Act

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

Vote Results:

Aye: 8 Senators Adams, Cornett, Fischer, Hadley, Louden, Pankonin, Pirsch, Utter
Nay:
Absent:
Present Not Voting:

Proponents:

Sen. Abbie Cornett
Richard Baier
Doug Ewald
Doug McGregor
Ron Withem
Jennifer Wolf
Dennis Schulz
John Miles
Bradley Walker

Representing:

Introducer
Dept. of Economic Development
Dept. of Revenue
Omaha Chamber of Commerce
University of Nebraska
Dawson Area Development
Maxxfire Industries
Lincoln Chamber of Commerce
Nanonation, Inc.

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 389 adopts the Angel Investment Tax Credit Act (Act). [LB 389, sections 1 to 9.]

The Act defines key terms, including qualified investor (minimum investment of \$25,000 per year); qualified fund (minimum investment of \$50,000 per year and at least 3 investors, none of whom: (a) may control 50% or more of the qualified business receiving the investment, (b) be a venture capital company, or (c) be any bank, savings and loan association, insurance company, or similar entity whose normal business activities include venture capital investments); qualified small business (a Nebraska-based business with more than 51% of its employees in Nebraska, more than 51% of its payroll in Nebraska, and 25 or fewer employees at the time of investment); qualified investment (a cash investment in exchange for an ownership interest%u2014including common stock or a partnership interest%u2014in a qualified small business); and qualified high-technology field (e.g., "aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biosolutions, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields"). [LB 389, section 2.]

The Act sets forth an application process and related procedures for certification as a "qualified small business" by the Department of Economic Development (department); sets forth an application process and related procedures for certification as a "qualified fund" by the department; and sets forth an application process and related procedures for certification as a "qualified investor" by the department. A \$500 application fee is required of a qualified fund and a \$250 application fee is required of a qualified investor. [LB 389, sections 3 to 5.]

A qualified investor and a qualified fund is eligible for a refundable income tax credit equal to 40 percent of its qualified investment in a qualified small business. Allocation of the credits by the department cannot exceed \$5 million in a calendar year for all qualified investors and qualified funds (unallocated credits will not be carried forward to future calendar years). The total maximum amount of credits allocated to a qualified investor for the investor's cumulative qualified investments and as an investor in a qualified fund is limited to \$350,000 for a married couple filing a joint income tax return and \$300,000 for all other filers. But the department cannot allocate more than \$1 million in credits over all taxable years for making qualified investments in any one qualified small business. [LB 389, section 6.]

Beginning July 1, 2012, each qualified small business, qualified investor, and qualified fund must submit an annual report to the department by July 1 annually. The report must identify the amount invested by or in the previous calendar year under the Act and must certify that the business, investor, and fund meet the requirements of the Act. Failure to timely file the annual report will cause a \$200 fine to be imposed. To maintain confidentiality of qualified investors and qualified small businesses, the department will assign a designated number to identify such investors and businesses. [LB 389, section 7.]

The Act also sets forth rules governing recapture of the Act's tax credits. If, at anytime within 6 years after the allocation of credits is made, a qualified investor or qualified fund did not meet the 3-year ownership holding period required by section 6 of the Act, any tax credit allocated and certified to the investor or fund must be recaptured by the department. [LB 389, section 8.]

The department can adopt rules and regulations to carry out the Act. [LB 389, section 9.]

LB 389 also makes related coordinating changes to various Nebraska statutes, including the statutes governing refundable income tax credits for individuals and estates and trusts. [LB 389, sections 10 to 12.]

LB 389 also amends the statutes governing: (1) the Nebraska Advantage Rural Development Act (i.e., all credits deemed unallocated for calendar year 2011 must be used for purposes of the Angel Investment Tax Credit Act); and (2) the Nebraska Advantage Microenterprise Tax Credit Act (i.e., beginning January 1, 2012, the "adjusted limit" for tax credit under that act in a given year is \$1 million--\$2 million under current law--plus tentative tax credits that were not granted by the end of the preceding year). Additionally, for both of those existing tax incentive programs, LB 389 states that it's the intent of the Legislature that all tax credits deemed unallocated for calendar year 2011 must be used for purposes of the Angel Investment Tax Credit Act. [LB 389, sections 13 and 14.]

The Angel Investment Tax Credit Act is operative for all taxable years beginning on or after January 1, 2011. January 1, 2011, is also the operative date of LB 389, sections 11, 12, and 16. Other sections of LB 389 are operative on their effective date. [LB 389, section 15.]

Explanation of amendments:

The Revenue Committee adopted AM 516 to LB 389 (Act) during its executive session on February 24, 2011. AM 516 makes the following changes to the introduced version of LB 389:

(1) The refundable angel investment income tax credit will be equal to: (a) 40% of qualified investments for calendar years 2011 and 2012; and (b) 35% of qualified investments for each calendar year thereafter. (As introduced, the refundable angel investment income tax credit would have been 40% of qualified investments for each calendar year beginning in 2011 and for each year thereafter.)

(2) The angel investment tax credit program is capped at \$3 million annually (\$5 million annually under LB 389 as introduced). The tax credit program will be funded by: (a) reducing from \$4 million to \$1 million the annual tax credit cap under the Nebraska Advantage Rural Development Act; and (b) retaining - rather than reducing - the annual tax credit cap under the Nebraska Advantage Microenterprise Development Act (as introduced, LB 389 would have reduced the annual tax credit cap under the Nebraska Advantage Microenterprise Tax Credit Act from \$2 million to \$1 million). Additionally, the committee amendment strikes section 14 of LB 389 as introduced.

(3) Applications for tax benefits under the Nebraska Advantage Rural Development Act must be filed in calendar year 2011 by July 1, 2011, and must be complete by August 1, 2011. Furthermore, any application for tax benefits under the Nebraska Advantage Rural Development Act that is filed after July 1, 2011, or that is incomplete on August 1, 2011, will be deemed to be filed during the following calendar year. However, for applications filed in calendar year 2012 and each year thereafter, applications for tax benefits under the Nebraska Advantage Rural Development Act must be filed by November 1 each year and must be complete by December 1 each year. Furthermore, any application for tax benefits under the Nebraska Advantage Rural Development Act that is filed after November 1, 2012, or that is incomplete on December 1, 2012, will be deemed to be filed during the following calendar year.

(4) The Department of Economic Development will be required to submit a report to the Legislature and the Governor by November 15 of each odd-numbered year showing: (a) The number and geographic location of qualified investors; (b) The number, geographic location, and amount of investment made into each qualified business; (c) A breakdown of the industry sectors that qualified businesses are involved; (d) The number of actual tax credits issued by project on an annual basis; and (e) The number of jobs created at each qualified business.

(5) The angel investment tax credit program will sunset after 2017; namely, the director of the Department of Economic Development is prohibited from allocating "any amount for credits for calendar years after 2017."

(6) Recapture of angel investment income tax credits will be the province of the Tax Commissioner rather than the Director of the Department of Economic Development.

(7) The committee amendment requires renumbering of the bill's sections accordingly.

(8) The committee amendment also makes coordinating changes to: (a) The operative date provisions of the introduced version of LB 389, section 15 (i.e., it provides that renumbered sections 10 and 13 will be operative for tax years beginning on or after January 1, 2011); (b) Section 11 and the remaining renumbered sections of the LB 389, as amended by AM 516, will become operative on their effective date; and (c) Section 17 of the introduced version of LB 389 which is one of two sections in the bill that repeal existing statutes amended by the bill as amended by AM 516.

Abbie Cornett, Chairperson