

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 926

Introduced by Harr, 8.

Read first time January 12, 2016

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-908, Revised Statutes Cumulative Supplement, 2014; to adopt the
- 3 Nebraska Rural Jobs Act; to provide tax credits as prescribed; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known and may be
2 cited as the Nebraska Rural Jobs Act.

3 Sec. 2. For purposes of the Nebraska Rural Jobs Act, the
4 definitions found in sections 3 to 13 of this act shall be used.

5 Sec. 3. Affiliate means a person that directly, or indirectly
6 through one or more intermediaries, controls, is controlled by, or is
7 under common control with a person certified or seeking certification as
8 a rural business growth fund. For purposes of this section, a person is
9 controlled by another person if the controlling person holds, directly or
10 indirectly, the majority voting or ownership interest in the controlled
11 person or has control over the day-to-day operations of the controlled
12 person by contract or by law.

13 Sec. 4. Closing date means the date on which a rural business
14 growth fund has collected all of the amounts specified in subdivisions
15 (7)(a) and (b) of section 14 of this act.

16 Sec. 5. Credit-eligible capital contribution means an investment of
17 cash by a person in a rural business growth fund that equals the amount
18 specified on a tax credit certificate issued by the department under
19 subdivision (6)(b) of section 14 of this act. The investment shall
20 purchase an equity interest in the rural business growth fund or
21 purchase, at par value or premium, a debt instrument issued by the rural
22 business growth fund that meets all of the following criteria:

23 (1) The debt instrument has an original maturity date of at least
24 five years after the date of issuance;

25 (2) The debt instrument has a repayment schedule that is not faster
26 than a level principal amortization over five years; and

27 (3) The debt instrument has no interest, distribution, or payment
28 features dependent on the rural business growth fund's profitability or
29 the success of the rural growth investments.

30 Sec. 6. Department means the Department of Insurance.

31 Sec. 7. (1) Eligible distribution means any of the following:

1 (a) A distribution of cash to one or more equity owners of the rural
2 business growth fund to fully or partially offset a projected increase in
3 the owner's federal or state tax liability, including any penalties and
4 interest, related to the owner's ownership, management, or operation of
5 the rural business growth fund;

6 (b) A distribution of cash as payment of interest and principal on a
7 debt of the rural business growth fund except to the extent the payment
8 results in the rural business growth fund having less than one hundred
9 percent of its eligible investment authority invested in rural growth
10 investments in this state or held in cash and other marketable securities
11 awaiting investment in rural growth investments in this state; or

12 (c) A distribution of cash related to the reasonable costs and
13 expenses of forming, syndicating, managing, and operating the rural
14 business growth fund. Such distributions may include reasonable and
15 necessary fees paid for professional services, including legal and
16 accounting services, related to the formation and operation of the rural
17 business growth fund and an annual management fee to the extent it does
18 not exceed two percent of the rural business growth fund's eligible
19 investment authority.

20 (2) Eligible distribution does not include a distribution described
21 in subdivision (1)(c) of this section to a person that made a credit-
22 eligible capital contribution to the rural business growth fund.

23 Sec. 8. Eligible investment authority means the amount stated on
24 the notice issued under subdivision (6)(a) of section 14 of this act
25 certifying the rural business growth fund. Seventy percent of a rural
26 business growth fund's eligible investment authority shall be comprised
27 of credit-eligible capital contributions.

28 Sec. 9. Operating company means any business except for the
29 following:

30 (1) A country club;

31 (2) A racetrack or other facility used for gambling;

1 (3) A store the principal purpose of which is the sale of alcoholic
2 beverages for consumption off premises;

3 (4) A massage parlor;

4 (5) A hot tub facility;

5 (6) A suntan facility;

6 (7) A business engaged in the development or holding of intangibles
7 for sale;

8 (8) A private or commercial golf course;

9 (9) A farming operation;

10 (10) A business that derives or projects to derive fifteen percent
11 or more of its annual revenue from the rental or sale of real property,
12 except that this subdivision shall not apply to any business that is a
13 special purpose entity principally owned by a principal user of the real
14 property formed solely for the purpose of renting, either directly or
15 indirectly, or selling the real property back to such principal user if
16 such principal user does not derive fifteen percent or more of its gross
17 annual revenue from the rental or sale of real property; and

18 (11) A publicly traded business.

19 Sec. 10. Rural area means either of the following:

20 (1) Any area located within a political subdivision having a
21 population less than or equal to fifty thousand inhabitants and outside
22 the standard metropolitan statistical area of any adjacent community
23 having a population greater than fifty thousand inhabitants; or

24 (2) Any area determined to be rural in character by the Under
25 Secretary for Rural Development within the United States Department of
26 Agriculture.

27 Sec. 11. (1) Rural business concern means an operating company
28 that, at the time of the initial investment in the operating company by a
29 rural business growth fund, has its principal business operations in this
30 state, has fewer than two hundred fifty employees or not more than
31 fifteen million dollars in net income for the preceding taxable year, and

1 meets either of the following criteria:

2 (a) The operating company's principal business operations are
3 located in a rural area; or

4 (b) The operating company produces or provides any goods or services
5 normally used by farmers, ranchers, or producers and harvesters of
6 aquatic products in their business operations or to improve the welfare
7 or livelihood of such persons or is involved in the processing and
8 marketing of agricultural products, farm supplies, or input suppliers.

9 (2) For purposes of this section, an operating company's principal
10 business operations are in this state if at least eighty percent of the
11 operating company's employees reside in this state, the individuals who
12 receive eighty percent of the operating company's payroll reside in this
13 state, or the operating company has agreed to use the proceeds of a rural
14 growth investment to relocate at least eighty percent of its employees to
15 this state or pay at least eighty percent of its payroll to individuals
16 residing in this state.

17 (3) For purposes of this section, net income means federal adjusted
18 gross income as required to be reported under the Internal Revenue Code
19 less federal and state taxes imposed on or measured by income.

20 Sec. 12. Rural business growth fund means an entity certified by
21 the department under subdivision (6)(a) of section 14 of this act.

22 Sec. 13. Rural growth investment means any capital or equity
23 investment in a rural business concern or any loan to a rural business
24 concern with a term of at least one year.

25 Sec. 14. (1) Beginning October 1, 2016, a person that has developed
26 a business plan to invest in rural business concerns in this state and
27 has successfully solicited private investors to make capital
28 contributions in support of the plan may apply to the department for
29 certification as a rural business growth fund. The application shall
30 include all of the following:

31 (a) The total eligible investment authority sought by the applicant

1 under the business plan;

2 (b) Documents and other evidence sufficient to prove, to the
3 satisfaction of the department, that the applicant meets all of the
4 following criteria:

5 (i) The applicant or an affiliate of the applicant is a rural
6 business investment company as defined in 7 U.S.C. 2009cc or is licensed
7 as a small business investment company under 15 U.S.C. 681; and

8 (ii) As of the date the application is submitted, the applicant has
9 invested more than one hundred million dollars in operating companies,
10 including at least fifty million dollars in operating companies located
11 in rural areas. In computing investments under this subdivision, the
12 applicant may include investments made by affiliates of the applicant;

13 (c) The industries in which the applicant proposes to make rural
14 growth investments and the percentage of the rural growth investments
15 that will be made in each industry. The applicant shall identify each
16 industry by using the codes utilized by the North American Industry
17 Classification System;

18 (d) An estimate of the number of jobs that will be created or
19 retained in this state as a result of the applicant's rural growth
20 investments;

21 (e) A revenue impact assessment for the applicant's proposed rural
22 growth investments prepared by a nationally recognized third-party
23 independent economic forecasting firm using a dynamic economic
24 forecasting model. The revenue impact assessment shall analyze the
25 applicant's business plan over the ten years following the date the
26 application is submitted to the department;

27 (f) A signed affidavit from each investor successfully solicited by
28 the applicant to make a credit-eligible capital contribution in support
29 of the business plan. Each affidavit shall include information sufficient
30 for the department to identify the investor and shall state the amount of
31 the investor's credit-eligible capital contribution; and

1 (g) A nonrefundable application fee of five thousand dollars.

2 (2) The department shall review and make a determination with
3 respect to each application submitted under this section within thirty
4 days after receipt. The department shall review and make determinations
5 on the applications in the order in which the applications are received
6 by the department. Applications received by the department on the same
7 day shall be deemed to have been received simultaneously. The department
8 shall approve not more than one hundred million dollars in eligible
9 investment authority and not more than seventy million dollars in credit-
10 eligible capital contributions under this section.

11 (3) The department shall deny an application submitted under this
12 section if any of the following are true:

13 (a) The application is incomplete;

14 (b) The application fee is not paid in full;

15 (c) The applicant does not satisfy all the criteria described in
16 subdivision (1)(b) of this section;

17 (d) The revenue impact assessment submitted under subdivision (1)(e)
18 of this section does not demonstrate that the applicant's business plan
19 will result in a positive economic impact on this state over a ten-year
20 period that exceeds the cumulative amount of tax credits that would be
21 earned under section 15 of this act if the application were approved;

22 (e) The credit-eligible capital contributions described in
23 affidavits submitted under subdivision (1)(f) of this section do not
24 equal seventy percent of the total amount of eligible investment
25 authority sought under the applicant's business plan; or

26 (f) The department has already approved the maximum amount of
27 eligible investment authority and credit-eligible capital contributions
28 allowed under subsection (2) of this section.

29 (4) If the department denies an application under subsection (3) of
30 this section, the department shall send notice of its determination to
31 the applicant. The notice shall include the reasons that the application

1 was denied. If the application was denied for any reason other than the
2 reason specified in subdivision (3)(f) of this section, the applicant may
3 provide additional information to the department to complete, clarify, or
4 cure defects in the application. The additional information must be
5 submitted within fifteen days after the date the notice of denial was
6 sent by the department. If the person or entity submits additional
7 information within fifteen days, the department shall reconsider the
8 application within thirty days after receiving the additional
9 information. The reconsidered application shall be reviewed and
10 considered before any pending application submitted after the original
11 submission date of the reconsidered application. If the person or entity
12 does not submit additional information within fifteen days after the
13 notice of denial was sent by the department, the applicant may submit a
14 new application with a new submission date at any time.

15 (5) If approving multiple simultaneously submitted applications
16 would result in exceeding the overall eligible investment authority limit
17 prescribed by subsection (2) of this section, the department shall
18 proportionally reduce the eligible investment authority and the credit-
19 eligible capital contributions for each approved application as necessary
20 to avoid exceeding the limit.

21 (6) The department shall not deny a rural business growth fund
22 application or reduce the requested eligible investment authority for
23 reasons other than those described in subsections (3) and (5) of this
24 section. If the department approves such an application, the department
25 shall issue all of the following notices:

26 (a) To the applicant, a written notice certifying that the applicant
27 qualifies as a rural business growth fund and specifying the amount of
28 the applicant's eligible investment authority; and

29 (b) To each investor whose affidavit was included in the
30 application, a tax credit certificate specifying the amount of the
31 investor's credit-eligible capital contribution.

1 (7) A rural business growth fund shall do all of the following
2 within sixty days after receiving the certification issued under
3 subdivision (6)(a) of this section:

4 (a) Collect the credit-eligible capital contributions from each
5 investor issued a tax credit certificate under subdivision (6)(b) of this
6 section; and

7 (b) Collect one or more investments of cash that, when added to the
8 contributions collected under subdivision (7)(a) of this section, equal
9 the fund's eligible investment authority. At least ten percent of the
10 fund's eligible investment authority shall be comprised of equity
11 investments contributed by affiliates of the rural business growth fund,
12 including employees, officers, and directors of such affiliates.

13 (8) Within sixty-five days after receiving the certification issued
14 under subdivision (6)(a) of this section, the rural business growth fund
15 shall send to the department documentation sufficient to prove that the
16 amounts described in subdivisions (7)(a) and (b) of this section have
17 been collected. If the rural business growth fund fails to fully comply
18 with subdivisions (7)(a) and (b) of this section, the fund's
19 certification shall lapse. Eligible investment authority and
20 corresponding credit-eligible capital contributions that lapse under this
21 subsection do not count toward limits on total eligible investment
22 authority and credit-eligible capital contributions prescribed by
23 subsection (2) of this section. Once eligible investment authority has
24 lapsed, the department shall first award lapsed authority pro rata to
25 each rural business growth fund that was awarded less than the requested
26 eligible investment authority under subsection (5) of this section. Any
27 remaining eligible investment authority may be awarded by the department
28 to new applicants.

29 (9) Application fees submitted to the department pursuant to
30 subdivision (1)(g) of this section shall be credited to the Nebraska
31 Rural Jobs Fund, which is hereby created, and used by the department to

1 administer the Nebraska Rural Jobs Act.

2 Sec. 15. (1) There is hereby allowed a nonrefundable tax credit for
3 taxpayers that made a credit-eligible capital contribution to a rural
4 business growth fund and were issued a tax credit certificate under
5 subdivision (6)(b) of section 14 of this act. The credit may be claimed
6 against any premium or related retaliatory taxes due under section 44-150
7 or 77-908. The credit may not be sold, transferred, or allocated to any
8 entity other than an affiliate of the taxpayer.

9 (2) On the closing date, the taxpayer shall earn a vested credit
10 equal to the amount of the taxpayer's credit-eligible capital
11 contribution to the rural business growth fund, as specified on the tax
12 credit certificate received under subdivision (6)(b) of section 14 of
13 this act.

14 (3)(a) The credits authorized under this section may be claimed as
15 follows:

16 (i) Credits equaling twenty percent of the rural business growth
17 fund's eligible investment authority may be claimed for each of the
18 taxable years that include the third, fourth, and fifth anniversary dates
19 of the closing date; and

20 (ii) Credits equaling ten percent of the rural business growth
21 fund's eligible investment authority may be claimed for the taxable year
22 that includes the sixth anniversary date of the closing date.

23 (b) Amounts carried forward pursuant to subsection (4) of this
24 section shall not be counted for purposes of subdivision (3)(a) of this
25 section.

26 (4) If the amount of the credit for a taxable year exceeds the tax
27 otherwise due for that year, the excess shall be carried forward to
28 ensuing taxable years until fully used.

29 (5) A taxpayer claiming a credit under this section shall submit a
30 copy of the tax credit certificate with the taxpayer's return for each
31 taxable year for which the credit is claimed.

1 Sec. 16. (1) The department shall revoke a tax credit certificate
2 issued under section 14 of this act if any of the following occur with
3 respect to a rural business growth fund before the fund is decertified
4 under subsection (5) of this section:

5 (a) The rural business growth fund in which the credit-eligible
6 capital contribution was made does not invest one hundred percent of its
7 eligible investment authority in rural growth investments in this state
8 within three years after the closing date;

9 (b) The rural business growth fund, after investing one hundred
10 percent of its eligible investment authority in rural growth investments
11 in this state, fails to maintain that investment until the fifth
12 anniversary of the closing date. For purposes of this subdivision, an
13 investment is maintained even if the investment is sold or repaid so long
14 as the rural business growth fund reinvests an amount equal to the
15 capital returned to or recovered by the rural business growth fund from
16 the original investment, exclusive of any profits realized, in other
17 rural growth investments in this state within twelve months after the
18 receipt of such capital. Amounts received periodically by a rural
19 business growth fund shall be treated as continually invested in rural
20 growth investments if the amounts are reinvested in one or more rural
21 growth investments by the end of the following calendar year. A rural
22 business growth fund is not required to reinvest capital returned from
23 rural growth investments after the fourth anniversary of the closing
24 date, and such rural growth investments shall be considered held
25 continuously by the rural business growth fund through the fifth
26 anniversary of the closing date;

27 (c) The rural business growth fund makes a distribution or payment
28 other than an eligible distribution before the fourth anniversary of the
29 closing date;

30 (d) The rural business growth fund invests more than twenty percent
31 of its eligible investment authority in the same rural business concern,

1 including amounts invested in affiliates of the rural business concern,
2 but excluding amounts reinvested in the rural business concern from
3 capital returned to or recovered by the rural business growth fund from
4 its original investment as described in subdivision (1)(b) of this
5 section; or

6 (e) The rural business growth fund makes a rural growth investment
7 in a rural business concern that directly, or indirectly through an
8 affiliate, owns, has the right to acquire an ownership interest in, makes
9 a loan to, or makes an investment in the rural business growth fund, an
10 affiliate of the rural business growth fund, or an investor in the rural
11 business growth fund. This subdivision does not apply to investments in
12 publicly traded securities by a rural business concern or an owner or
13 affiliate of such rural business concern.

14 (2) Before revoking one or more tax credit certificates under this
15 section, the department shall notify the rural business growth fund of
16 the reasons for the pending revocation. If the rural business growth fund
17 corrects the violations outlined in the notice to the satisfaction of the
18 department within one hundred eighty days after the date the notice was
19 sent, the department shall not revoke the tax credit certificates.

20 (3) If the department revokes a tax credit certificate under this
21 section, the department shall make an assessment under section 44-150 or
22 77-908 for the amount of the credit claimed by the certificate holder
23 before the certificate was revoked. The time limitations on assessments
24 of taxes under section 44-150 or 77-908 do not apply to an assessment
25 under this subsection, but the department shall make the assessment
26 within one year after the date the certificate is revoked.

27 (4) If tax credit certificates are revoked under this section, the
28 associated eligible investment authority and credit-eligible capital
29 contributions do not count toward the limit on total eligible investment
30 authority and credit-eligible capital contributions described by
31 subsection (2) of section 14 of this act. The department shall first

1 award revoked authority pro rata to each rural business growth fund that
2 was awarded less than the requested eligible investment authority under
3 subsection (5) of section 14 of this act. Any remaining eligible
4 investment authority may be awarded by the department to new applicants.

5 (5)(a) On or after the fifth anniversary of the closing date, a
6 rural business growth fund that has not committed any of the acts
7 described in subsection (1) of this section may apply to the department
8 to decertify as a rural business growth fund. The department shall
9 respond to the application within thirty days after receiving the
10 application. In evaluating the application, the fact that no tax credit
11 certificates have been revoked with respect to the rural business growth
12 fund shall be sufficient evidence to prove that the fund is eligible for
13 decertification. The department shall not unreasonably deny an
14 application for decertification.

15 (b) The department shall send notice of its determination with
16 respect to an application for decertification to the rural business
17 growth fund. If the application is denied, the notice shall include the
18 reasons for the denial.

19 (c) The department shall not revoke a tax credit certificate due to
20 any actions of a rural business growth fund that occur after the date the
21 rural business growth fund's application for decertification is approved.

22 Sec. 17. (1) Each rural business growth fund shall submit a report
23 to the department on or before the fifth business day after the second
24 anniversary of the closing date. The report shall provide documentation
25 as to the investment of the fund's eligible investment authority in rural
26 growth investments. Such documentation shall include the following:

27 (a) A bank statement of the rural business growth fund displaying
28 each rural growth investment; and

29 (b) The name and location of each operating company in which the
30 rural business growth fund has made a rural growth investment, including
31 evidence that the operating company qualified as a rural business concern

1 at the time the investment was made.

2 (2) On or before the last day of February of each year following the
3 year in which the report required under subsection (1) of this section is
4 due, the rural business growth fund shall submit an annual report to the
5 department including the following:

6 (a) The number of employment positions created or retained as a
7 result of the rural business growth fund's rural growth investments as of
8 the last day of the preceding calendar year;

9 (b) The average annual salary of the positions described in
10 subdivision (2)(a) of this section; and

11 (c) Any other information required by the department.

12 Sec. 18. The department may adopt and promulgate rules and
13 regulations necessary to carry out the Nebraska Rural Jobs Act.

14 Sec. 19. Section 77-908, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 77-908 Every insurance company organized under the stock, mutual,
17 assessment, or reciprocal plan, except fraternal benefit societies, which
18 is transacting business in this state shall, on or before March 1 of each
19 year, pay a tax to the director of one percent of the gross amount of
20 direct writing premiums received by it during the preceding calendar year
21 for business done in this state, except that (1) for group sickness and
22 accident insurance the rate of such tax shall be five-tenths of one
23 percent and (2) for property and casualty insurance, excluding individual
24 sickness and accident insurance, the rate of such tax shall be one
25 percent. A captive insurer authorized under the Captive Insurers Act that
26 is transacting business in this state shall, on or before March 1 of each
27 year, pay to the director a tax of one-fourth of one percent of the gross
28 amount of direct writing premiums received by such insurer during the
29 preceding calendar year for business transacted in the state. The taxable
30 premiums shall include premiums paid on the lives of persons residing in
31 this state and premiums paid for risks located in this state whether the

1 insurance was written in this state or not, including that portion of a
2 group premium paid which represents the premium for insurance on Nebraska
3 residents or risks located in Nebraska included within the group when the
4 number of lives in the group exceeds five hundred. The tax shall also
5 apply to premiums received by domestic companies for insurance written on
6 individuals residing outside this state or risks located outside this
7 state if no comparable tax is paid by the direct writing domestic company
8 to any other appropriate taxing authority. Companies whose scheme of
9 operation contemplates the return of a portion of premiums to
10 policyholders, without such policyholders being claimants under the terms
11 of their policies, may deduct such return premiums or dividends from
12 their gross premiums for the purpose of tax calculations. Any such
13 insurance company shall receive a credit on the tax imposed as provided
14 in the Community Development Assistance Act, the Nebraska Job Creation
15 and Mainstreet Revitalization Act, the Nebraska Rural Jobs Act, and the
16 New Markets Job Growth Investment Act.

17 Sec. 20. Original section 77-908, Revised Statutes Cumulative
18 Supplement, 2014, is repealed.