

AMENDMENTS TO LB1107

(Amendments to Standing Committee amendments, AM3316)

Introduced by Wayne, 13.

1 1. Insert the following new sections:

2 Sec. 115. Sections 115 to 136 of this act shall be known and may be  
3 cited as the Imagine Small Business and Urban Revitalization Act.

4 Sec. 116. For purposes of the Imagine Small Business and Urban  
5 Revitalization Act, the definitions found in sections 117 to 123 of this  
6 act shall be used.

7 Sec. 117. Any term has the same meaning as used in the Nebraska  
8 Revenue Act of 1967.

9 Sec. 118. Economic redevelopment area means an area in the State of  
10 Nebraska in which:

11 (1) The average rate of unemployment in the area during the period  
12 covered by the most recent federal decennial census or American Community  
13 Survey 5-Year Estimate by the United States Bureau of the Census is at  
14 least one hundred fifty percent of the average rate of unemployment in  
15 the state during the same period; and

16 (2) The average poverty rate in the area is twenty percent or more  
17 for the total federal census tract or tracts or federal census block  
18 group or block groups in the area.

19 Sec. 119. Equivalent employees means the number of employees  
20 computed by dividing the total hours paid in a year to employees by the  
21 product of forty times the number of weeks in a year.

22 Sec. 120. Qualified business means any business entity with a  
23 principal place of business located in an economic redevelopment area.

24 Sec. 121. Related taxpayers shall include any corporations that are  
25 part of a unitary business under the Nebraska Revenue Act of 1967 but are  
26 not part of the same corporate taxpayer, any business entities that are

1 not corporations but which would be a part of the unitary business if  
2 they were corporations, and any business entities if at least fifty  
3 percent of such entities are owned by the same persons or related  
4 taxpayers and family members as defined in the ownership attribution  
5 rules of the Internal Revenue Code of 1986, as amended.

6       Sec. 122. Taxpayer means a corporate taxpayer or other person  
7 subject to either an income tax imposed by the Nebraska Revenue Act of  
8 1967 or a franchise tax under Chapter 77, article 38, or a partnership,  
9 limited liability company, subchapter S corporation, cooperative,  
10 including a cooperative exempt under section 521 of the Internal Revenue  
11 Code of 1986, as amended, limited cooperative association, or joint  
12 venture that is or would otherwise be a member of the same unitary group  
13 if incorporated, which is, or whose partners, members, or owners  
14 representing an ownership interest of at least ninety percent of the  
15 control of such entity are, subject to or exempt from such taxes, and any  
16 other partnership, limited liability company, subchapter S corporation,  
17 cooperative, including a cooperative exempt under section 521 of the  
18 Internal Revenue Code of 1986, as amended, limited cooperative  
19 association, or joint venture when the partners, members, or owners  
20 representing an ownership interest of at least ninety percent of the  
21 control of such entity are subject to or exempt from such taxes.

22       Sec. 123. Year means the taxable year of the taxpayer.

23       Sec. 124. (1) To earn the incentives set forth in the Imagine Small  
24 Business and Urban Revitalization Act, the taxpayer shall file an  
25 application for an agreement with the Director of Economic Development.

26       (2) The application shall contain:

27       (a) A written statement describing the full expected employment and  
28 investment amount for a qualified business in this state;

29       (b) Sufficient documents, plans, and specifications as required by  
30 the director to support the plan and to define a project; and

31       (c) An application fee of five hundred dollars. The fee shall be

1 remitted to the State Treasurer for credit to the Nebraska Incentives  
2 Fund.

3 (3) The application and all supporting information shall be  
4 confidential except for the name of the taxpayer, the location of the  
5 project, and the amounts of increased employment or investment.

6 (4) Subject to the limit in subsection (5) of this section, the  
7 director shall approve the application and authorize the total amount of  
8 credits expected to be earned as a result of the project if he or she is  
9 satisfied that the plan in the application defines a project that meets  
10 the requirements established in section 125 of this act and such  
11 requirements will be reached within the required time period.

12 (5) For each calendar year, the director shall not approve further  
13 applications once the expected credits from the approved projects total  
14 ten million dollars. All but one hundred dollars of the application fee  
15 shall be refunded to the applicant if the application is not approved for  
16 any reason.

17 (6) Applications for incentives shall be considered in the order in  
18 which they are received.

19 (7) Applications shall be filed by November 1 and shall be complete  
20 by December 1 of each calendar year. Any application that is filed after  
21 November 1 or that is not complete on December 1 shall be considered to  
22 be filed during the following calendar year.

23 (8) After approval, the taxpayer and the director shall enter into a  
24 written agreement. As part of such agreement, the taxpayer shall agree to  
25 complete the project and the director, on behalf of the State of  
26 Nebraska, shall designate the approved plans of the taxpayer as a project  
27 and, in consideration of the taxpayer's agreement, agree to allow the  
28 taxpayer to use the incentives contained in the Imagine Small Business  
29 and Urban Revitalization Act up to the total amount that were authorized  
30 by the director at the time of approval. The application and all  
31 supporting documentation, to the extent approved, shall be considered a

1 part of the agreement. The agreement shall state:

2 (a) The levels of employment and investment required by the act for  
3 the project;

4 (b) The time period under the act in which the required levels must  
5 be met;

6 (c) The documentation the taxpayer will need to supply when claiming  
7 an incentive under the act;

8 (d) The date the application was filed; and

9 (e) The maximum amount of credits authorized.

10 (9) There shall be no new applications for incentives filed under  
11 this section after December 31, 2029.

12 Sec. 125. (1) A refundable credit against the taxes imposed by the  
13 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an  
14 approved application pursuant to the Imagine Small Business and Urban  
15 Revitalization Act, who is engaged in a qualified business, and who:

16 (a) Increases employment in an economic redevelopment area located  
17 within a city of the metropolitan class or city of the primary class by  
18 five new equivalent employees and makes an increased investment of at  
19 least one hundred fifty thousand dollars in an economic redevelopment  
20 area located within a city of the metropolitan class or city of the  
21 primary class prior to the end of the second taxable year after the year  
22 in which the application was submitted; and

23 (b) Pays a minimum qualifying wage of fourteen dollars per hour to  
24 the new equivalent employees for whom tax credits are sought under the  
25 Imagine Small Business and Urban Revitalization Act.

26 (2) A refundable credit against the taxes imposed by the Nebraska  
27 Revenue Act of 1967 shall be allowed to any taxpayer who has an approved  
28 application pursuant to the Imagine Small Business and Urban  
29 Revitalization Act, who is engaged in a qualified business, and who makes  
30 an increased investment of at least fifty thousand dollars in an economic  
31 redevelopment area located within a city of the metropolitan class or

1 city of the primary class prior to the end of the first taxable year  
2 after the year in which the application was submitted.

3 (3) The amount of the credit allowed under subsection (1) of this  
4 section shall be three thousand dollars for each new equivalent employee  
5 and two thousand seven hundred fifty dollars for each fifty thousand  
6 dollars of increased investment, not to exceed a credit of one hundred  
7 thousand dollars per application.

8 (4) The amount of the credit allowed under subsection (2) of this  
9 section shall be ten percent of the investment, not to exceed a credit of  
10 one hundred thousand dollars per application.

11 (5) A taxpayer may qualify for a credit under either subsection (1)  
12 or (2) of this section, but cannot qualify for a credit under both such  
13 subsections. The credit shall not exceed the amounts set out in the  
14 application and approved by the Director of Economic Development.

15 (6) A taxpayer shall not qualify for any credits under the Imagine  
16 Small Business and Urban Revitalization Act if the taxpayer is receiving  
17 any benefits under any other tax incentive program offered by the State  
18 of Nebraska.

19 (7) A teleworker working from his or her residence shall not be  
20 considered an employee of the taxpayer for purposes of the Imagine Small  
21 Business and Urban Revitalization Act unless the teleworker's residence  
22 is located in the economic redevelopment area in which the qualified  
23 business is located.

24 Sec. 126. (1) A taxpayer shall be deemed to have new equivalent  
25 employees when the new equivalent employees hired during a taxable year  
26 are in addition to the number of total equivalent employees in the  
27 taxable year preceding the date of application.

28 (2) The hours worked by any person considered an independent  
29 contractor or the employee of another taxpayer shall not be used in the  
30 computation of equivalent employees.

31 Sec. 127. (1) A taxpayer shall be deemed to have made an increased

1 investment in this state to the extent the value of the property used or  
2 available for use exceeds the value of all property used or available for  
3 use on the last day of the taxable year previous to the date the  
4 application was filed.

5 (2) Only investment in improvements to real property and tangible  
6 personal property that are depreciable under the Internal Revenue Code of  
7 1986, as amended, shall be considered.

8 (3) Vehicles, planes, railroad rolling stock, single-family housing,  
9 and duplexes shall be excluded when determining the increased investment  
10 for purposes of the credits allowed under subsections (1) and (2) of  
11 section 125 of this act.

12 Sec. 128. (1)(a) If the taxpayer acquires an existing business, the  
13 increases determined in sections 126 and 127 of this act shall be  
14 computed as though the taxpayer had owned the business for the entire  
15 taxable year preceding the date of application.

16 (b) If the taxpayer disposes of an existing business and the new  
17 owner maintains the minimum increases in the levels of investment and  
18 employment required in section 125 of this act to create a credit, the  
19 taxpayer shall not be required to make any repayment under section 131 of  
20 this act solely because of the disposition of the business.

21 (2) If the structure of a business is reorganized, the taxpayer  
22 shall compute the increases on a consistent basis for all periods.

23 (3) If the taxpayer moves a business from one economic redevelopment  
24 area to another economic redevelopment area and the business was operated  
25 in an economic redevelopment area during the taxable year preceding the  
26 date of application, the increases determined in sections 126 and 127 of  
27 this act shall be computed as though the taxpayer had operated the  
28 business at the new location for the entire taxable year preceding the  
29 date of application.

30 (4) If the taxpayer enters into any of the following transactions,  
31 the transaction shall be presumed to be a transaction entered into for

1 the purpose of generating benefits under the Imagine Small Business and  
2 Urban Revitalization Act and shall not be allowed in the computation of  
3 any benefit or the meeting of any required levels under the agreement  
4 except as specifically provided in this subsection:

5 (a) The purchase or lease of any property that was previously owned  
6 by the taxpayer who filed the application or a related taxpayer unless  
7 the first purchase by either the taxpayer who filed the application or a  
8 related taxpayer was first placed in service in the state after the  
9 beginning of the taxable year the application was filed;

10 (b) The renegotiation of any lease in existence during the taxable  
11 year the application was filed which does not materially change any of  
12 the terms of the lease other than the expiration date;

13 (c) The purchase or lease of any property from a related taxpayer,  
14 except that the taxpayer who filed the application will be allowed any  
15 benefits under the act to which the related taxpayer would have been  
16 entitled on the purchase or lease of the property if the related taxpayer  
17 was considered the taxpayer; and

18 (d) Any transaction entered into primarily for the purpose of  
19 receiving benefits under the act which is without a business purpose and  
20 does not result in increased economic activity in the state.

21 Sec. 129. (1) The credit allowed under section 125 of this act may  
22 be used:

23 (a) To obtain a refund of state sales and use taxes paid;

24 (b) Against the income tax liability of the taxpayer; or

25 (c) As a refundable credit claimed on an income tax return of the  
26 taxpayer. The return need not reflect any income tax liability owed by  
27 the taxpayer.

28 (2) A claim for the credit may be filed quarterly for refund of the  
29 state sales and use taxes paid, either directly or indirectly, after the  
30 filing of the income tax return for the taxable year in which the credit  
31 was first allowed.

1           (3) The credit may be used to obtain a refund of state sales and use  
2 taxes paid before the end of the taxable year for which the credit was  
3 allowed, except that the amount refunded under this subsection shall not  
4 exceed the amount of the state sales and use taxes paid, either directly  
5 or indirectly, by the taxpayer on the qualifying investment.

6           (4) For purposes of subsections (2) and (3) of this section, the  
7 taxpayer shall be deemed to have paid indirectly any state sales or use  
8 taxes paid by a contractor on building materials annexed to an  
9 improvement to real estate built for the taxpayer. The contractor shall  
10 certify to the taxpayer the amount of the Nebraska state sales and use  
11 taxes paid on the building materials, or the taxpayer, with the  
12 permission of the Director of Economic Development and a certification  
13 from the contractor that Nebraska state sales and use taxes were paid on  
14 all building materials, may presume that fifty percent of the cost of the  
15 improvement was for building materials annexed to real estate on which  
16 the tax was paid.

17           (5) Credits distributed to a partner, limited liability company  
18 member, shareholder, or beneficiary under section 133 of this act may be  
19 used against the income tax liability of the partner, member,  
20 shareholder, or beneficiary receiving the credits.

21           Sec. 130. (1) If a taxpayer who receives tax credits creates fewer  
22 jobs or makes less investment than required in the project agreement, the  
23 taxpayer shall repay the tax credits as provided in this section.

24           (2) If less than seventy-five percent of the required jobs in the  
25 project agreement are created, one hundred percent of the job creation  
26 tax credits shall be repaid. If at least seventy-five percent but less  
27 than one hundred percent of the required jobs in the project agreement  
28 are created, ten percent of the job creation tax credits shall be repaid.

29           (3) If less than seventy-five percent of the required investment in  
30 the project agreement is made, one hundred percent of the investment tax  
31 credits shall be repaid. If at least seventy-five percent but less than



1 one hundred percent of the required investment in the project agreement  
2 is made, ten percent of the investment tax credits shall be repaid.

3 Sec. 131. If the taxpayer does not maintain the increased levels of  
4 investment and employment that were required to create a credit under  
5 subsection (1) of section 125 of this act for at least three years after  
6 the year for which the credit was first allowed, the taxpayer shall lose  
7 all used and unused credits. The taxpayer shall repay to the state the  
8 amount of the used credits within one year after the failure to maintain  
9 such investment and employment.

10 Sec. 132. (1) The Director of Economic Development shall not  
11 approve or grant to any person any tax incentive under the Imagine Small  
12 Business and Urban Revitalization Act unless the taxpayer provides  
13 evidence satisfactory to the director that the taxpayer electronically  
14 verified the work eligibility status of all newly hired employees  
15 employed in Nebraska.

16 (2) For purposes of calculating any tax incentive available under  
17 the act, the director shall exclude hours worked and compensation paid to  
18 an employee that is not eligible to work in Nebraska as verified under  
19 subsection (1) of this section.

20 Sec. 133. The credit allowed under the Imagine Small Business and  
21 Urban Revitalization Act shall not be transferable except in the  
22 following situations:

23 (1) Any credit allowable to a partnership, a limited liability  
24 company, a subchapter S corporation, a cooperative, including a  
25 cooperative exempt under section 521 of the Internal Revenue Code of  
26 1986, as amended, a limited cooperative association, or an estate or  
27 trust may be distributed to the partners, limited liability company  
28 members, shareholders, patrons, limited cooperative association members,  
29 or beneficiaries. Any credit distributed shall be distributed in the same  
30 manner as income is distributed. A credit distributed shall be considered  
31 a credit used and the partnership, limited liability company, subchapter

1 S corporation, cooperative, limited cooperative association, estate, or  
2 trust shall be liable for any repayment under section 131 of this act;

3 (2) The incentives previously allowed and the future allowance of  
4 incentives may be transferred when a project covered by an agreement is  
5 transferred by sale or lease to another taxpayer or in an acquisition of  
6 assets qualifying under section 381 of the Internal Revenue Code of 1986,  
7 as amended. The acquiring taxpayer, as of the date of notification of the  
8 Director of Economic Development of the completed transfer, shall be  
9 entitled to any unused credits and to any future incentives allowable  
10 under the act. The acquiring taxpayer shall be liable for any repayment  
11 that becomes due after the date of the transfer with respect to any  
12 benefits received either before or after the transfer; and

13 (3) If a taxpayer operating a qualifying business and allowed a  
14 credit under section 125 of this act dies and there is credit remaining  
15 after the filing of the final return for the taxpayer, the personal  
16 representative shall determine the distribution of the credit or any  
17 remaining carryover with the initial fiduciary return filed for the  
18 estate. The determination of the distribution of the credit may be  
19 changed only after obtaining the permission of the director.

20 Sec. 134. Interest shall not be allowable on any refunds paid  
21 because of benefits earned under the Imagine Small Business and Urban  
22 Revitalization Act.

23 Sec. 135. (1) On or before July 15, 2022, and on or before July 15  
24 of each year thereafter, the Director of Economic Development shall  
25 prepare a report that includes:

26 (a) The total amount of investment in economic redevelopment areas  
27 in the previous calendar year by taxpayers who are claiming credits  
28 pursuant to the Imagine Small Business and Urban Revitalization Act;

29 (b) The total number of equivalent employees added in the previous  
30 calendar year by taxpayers who are claiming credits pursuant to the act;  
31 and

1        (c) The total amount of credits claimed in the previous calendar  
2 year under the act.

3        (2) The report shall also provide information on project-specific  
4 total incentives used every two years for each approved project,  
5 including (a) the identity of the taxpayer, (b) the location of the  
6 project, and (c) the total credits used and refunds approved during the  
7 immediately preceding two years expressed as a single, aggregated total.  
8 The incentive information required to be reported under this subsection  
9 shall not be reported for the first year the taxpayer attains the  
10 required employment and investment thresholds. The information on first-  
11 year incentives used shall be combined with and reported as part of the  
12 second year. Thereafter, the information on incentives used for  
13 succeeding years shall be reported for each project every two years and  
14 shall include information on two years of credits used and refunds  
15 approved. The incentives used shall include incentives that have been  
16 approved by the Director of Economic Development, but not necessarily  
17 received, during the previous two calendar years.

18        (3) On or before September 1, 2022, and on or before September 1 of  
19 each year thereafter, the Department of Economic Development shall  
20 present the report electronically to the Appropriations Committee of the  
21 Legislature. Any supplemental information requested by three or more  
22 committee members shall be presented within thirty days after the  
23 request.

24        (4) No information shall be provided in the report that is protected  
25 by state or federal confidentiality laws.

26        Sec. 136. (1) The taxpayer may request the Director of Economic  
27 Development to review and certify that the tax incentives applied for  
28 under the Imagine Small Business and Urban Revitalization Act are  
29 allowable under the act. The taxpayer shall describe in detail the  
30 activities taking place that may qualify for such tax incentives. The  
31 director shall make the determination based on the information provided

1 by the taxpayer. The director must complete the review within ninety days  
2 after the request. If the director requests, by mail or by electronic  
3 means, additional information or clarification from the taxpayer in order  
4 to make his or her determination, the ninety-day period shall be tolled  
5 from the time the director makes the request to the time he or she  
6 receives the requested information or clarification from the taxpayer.  
7 The taxpayer and the director may also agree to extend the ninety-day  
8 period. If the director fails to make his or her determination within the  
9 prescribed ninety-day period, the certification is deemed approved for  
10 the disclosed activities.

11 (2) Upon review, the director may approve, reject, or amend the tax  
12 incentives sought in the application contingent upon the accuracy of the  
13 information or plans disclosed by the taxpayer that describe the expected  
14 activity. Once the director certifies that the tax incentives are  
15 allowable, the certification is binding on the Department of Revenue when  
16 the taxpayer claims such tax incentives on a return to the extent the  
17 taxpayer's activities are as described in the application and the  
18 information and plans provided by the taxpayer were accurate.

19 (3) If the taxpayer does not request review and certification of  
20 such tax incentives, those items are subject to later audit by the  
21 Department of Revenue.

22 2. On page 86, line 25, strike "and 61" and insert "61, 121, 122,  
23 127, and 133".

24 3. On page 87, after line 3 insert the following new subdivision:  
25 "(c) The Imagine Small Business and Urban Revitalization Act;"; in  
26 line 4 strike "(c)" and insert "(d)"; in line 5 strike "(d)" and insert  
27 "(e)"; in line 6 strike "(e)" and insert "(f)"; in line 7 strike "(f)"  
28 and insert "(g)"; in line 8 strike "(g)" and insert "(h)"; in line 9  
29 strike "(h)" and insert "(i)"; and in line 10 strike "(i)" and insert  
30 "(j)".

31 4. On page 111, line 8, strike "or 39" and insert ", 39, or 135".

- 1           5. On page 132, line 9, strike "or 63" and insert "63, or 135".
- 2           6. On page 146, line 14, strike "or"; and in line 15 after "Act"
- 3 insert ", or the Imagine Small Business and Urban Revitalization Act".
- 4           7. On page 148, line 8, strike "or" and after "Act" insert ", or the
- 5 Imagine Small Business and Urban Revitalization Act".
- 6           8. Renumber the remaining sections and correct internal references
- 7 accordingly.
- 8           9. Correct the operative date and repealer sections so that the
- 9 sections added by this amendment become operative on July 1, 2021.