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AMENDMENTS TO LB334

Introduced by Appropriations.

1. Strike the original sections and insert the following new sections:

Section 1. Section 13-1907, Revised Statutes Cumulative Supplement, 2018, is amended to read:

13-1907 (1) The Department of Economic Development may ~~shall~~ adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907, including ~~which shall include~~ standardized reporting and application procedures. Each development district shall submit annual performance and financial reports to the department which shall address the activities performed and services delivered.

(2) The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906.

Sec. 2. Section 13-2103, Revised Statutes Cumulative Supplement, 2018, is amended to read:

13-2103 (1)(a) Beginning on December 1, 2014 ~~the date the rules and regulations updated in accordance with section 13-2112 become effective as provided in section 84-908~~, the department shall, for a period of one hundred eighty days, accept formal applications for the designation of enterprise zones. Within sixty days after the end of such application period, the department may designate not more than five areas as enterprise zones based on eligible applications it has received.

(b) If the department has received fewer than five applications for the designation of enterprise zones after the end of the application period described in subdivision (1)(a) of this section, the department

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may establish a period of time within which to accept additional applications. Within sixty days after the end of such extended application period, the department may designate additional areas as enterprise zones based on additional eligible applications received, but not more than a total of five areas may be designated as enterprise zones pursuant to this section.

(c) In the application period, the department may reject from consideration any application which does not fully and completely comport with the provisions of section 13-2104 at the end of the designated application period. In choosing among eligible applications for enterprise zone designation, the department shall consider the levels of distress existing within the applicant areas and the contents of the applicant's formal enterprise zone application.

(d) Each area designated as an enterprise zone shall meet all eligibility criteria. Of the enterprise zones authorized, no more than one shall be located inside the boundaries of a city of the metropolitan class and no more than one inside a city of the primary class.

(2) Any city, village, tribal government area, or county may apply for designation of an area within such city, village, tribal government area, or county as an enterprise zone, except that if a county seeks to have an area within an incorporated city or village or a tribal government area designated as an enterprise zone, the consent of the governing body of such city, village, or tribal government area shall first be required.

(3) If an incorporated city or village or a tribal government area consents, a county may apply on behalf of the city, village, or tribal government area for certification of an area within such city, village, or tribal government area as an enterprise zone. Both a county and a city, village, or tribal government area shall not apply for certification of the same area.

(4) Two or more counties or tribal government areas may jointly

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apply for designation of an area as an enterprise zone which is located on both sides of their common boundaries.

(5) Political subdivisions wishing to file an application for designation of an enterprise zone shall first follow the procedures set out in sections 13-2106 to 13-2108. An application for designation as an enterprise zone shall be in a form and contain information prescribed by the department pursuant to section 13-2104.

(6) An area designated as an enterprise zone shall retain such designation for a period of ten years from the date of such designation.

(7) All enterprise zones designated as such within a single county shall not exceed a total of sixteen square miles in area.

Sec. 3. Section 13-2112, Revised Statutes Cumulative Supplement, 2018, is amended to read:

13-2112 The department <u>may</u> ~~shall~~ adopt and promulgate rules and regulations to carry out the Enterprise Zone Act.~~ The department shall update such rules and regulations within six months after July 18, 2014.~~

Sec. 4. Section 50-1209, Revised Statutes Cumulative Supplement, 2018, is amended to read:

50-1209 (1) Tax incentive performance audits shall be conducted by the office pursuant to this section on the following tax incentive programs:

~~(a) The Angel Investment Tax Credit Act;~~

<u>(a)</u> ~~(b)~~ The Beginning Farmer Tax Credit Act;

<u>(b)</u> ~~(c)~~ The Nebraska Advantage Act;

<u>(c)</u> ~~(d)~~ The Nebraska Advantage Microenterprise Tax Credit Act;

<u>(d)</u> ~~(e)~~ The Nebraska Advantage Research and Development Act;

<u>(e)</u> ~~(f)~~ The Nebraska Advantage Rural Development Act;

<u>(f)</u> ~~(g)~~ The Nebraska Job Creation and Mainstreet Revitalization Act;

<u>(g)</u> ~~(h)~~ The New Markets Job Growth Investment Act; and

<u>(h)</u> ~~(i)~~ Any other tax incentive program created by the Legislature for the purpose of recruitment or retention of businesses in Nebraska. In

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determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider legislative intent, including legislative statements of purpose and goals, and may also consider whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agency.

(2) The office shall develop a schedule for conducting tax incentive performance audits and shall update the schedule annually. The schedule shall ensure that each tax incentive program is reviewed at least once every five years.

(3) Each tax incentive performance audit conducted by the office pursuant to this section shall include the following:

(a) An analysis of whether the tax incentive program is meeting the following goals:

(i) Strengthening the state's economy overall by:

(A) Attracting new business to the state;

(B) Expanding existing businesses;

(C) Increasing employment, particularly employment of full-time workers. The analysis shall consider whether the job growth in those businesses receiving tax incentives is at least ten percent above industry averages;

(D) Creating high-quality jobs; and

(E) Increasing business investment;

(ii) Revitalizing rural areas and other distressed areas of the state;

(iii) Diversifying the state's economy and positioning Nebraska for the future by stimulating entrepreneurial firms, high-tech firms, and renewable energy firms; and

(iv) Any other program-specific goals found in the statutes for the tax incentive program being evaluated;

(b) An analysis of the economic and fiscal impacts of the tax

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incentive program. The analysis may take into account the following considerations in addition to other relevant factors:

(i) The costs per full-time worker. When practical and applicable, such costs shall be considered in at least the following two ways:

(A) By an estimation including the minimum investment required to qualify for benefits; and

(B) By an estimation including all investment;

(ii) The extent to which the tax incentive changes business behavior;

(iii) The results of the tax incentive for the economy of Nebraska as a whole. This consideration includes both direct and indirect impacts generally and any effects on other Nebraska businesses; and

(iv) A comparison to the results of other economic development strategies with similar goals, other policies, or other incentives;

(c) An assessment of whether adequate protections are in place to ensure the fiscal impact of the tax incentive does not increase substantially beyond the state's expectations in future years;

(d) An assessment of the fiscal impact of the tax incentive on the budgets of local governments, if applicable; and

(e) Recommendations for any changes to statutes or rules and regulations that would allow the tax incentive program to be more easily evaluated in the future, including changes to data collection, reporting, sharing of information, and clarification of goals.

(4) For purposes of this section:

(a) Distressed area means an area of substantial unemployment as determined by the Department of Labor pursuant to the Nebraska Workforce Innovation and Opportunity Act;

(b) Full-time worker means an individual (i) who usually works thirty-five hours per week or more, (ii) whose employment is reported to the Department of Labor on two consecutive quarterly wage reports, and (iii) who earns wages equal to or exceeding the state minimum wage;

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(c) High-quality job means a job that:

(i) Averages at least thirty-five hours of employment per week;

(ii) Is reported to the Department of Labor on two consecutive quarterly wage reports; and

(iii) Earns wages that are at least ten percent higher than the statewide industry sector average and that equal or exceed:

(A) One hundred ten percent of the Nebraska average weekly wage if the job is in a county with a population of less than one hundred thousand inhabitants; or

(B) One hundred twenty percent of the Nebraska average weekly wage if the job is in a county with a population of one hundred thousand inhabitants or more;

(d) High-tech firm means a person or unitary group that has a location with any of the following four-digit code designations under the North American Industry Classification System as assigned by the Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112, 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

(e) Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of each year;

(f) New business means a person or unitary group participating in a tax incentive program that did not pay income taxes or wages in the state more than two years prior to submitting an application under the tax incentive program. For any tax incentive program without an application process, new business means a person or unitary group participating in the program that did not pay income taxes or wages in the state more than two years prior to the first day of the first tax year for which a tax benefit was earned;

(g) Renewable energy firm means a person or unitary group that has a location with any of the following six-digit code designations under the North American Industry Classification System as assigned by the

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Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160, 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333, 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310, 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210, 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111, 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510, 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730, or 562213;

(h) Rural area means any village or city of the second class in this state or any county in this state with fewer than twenty-five thousand residents; and

(i) Unitary group has the same meaning as in section 77-2734.04.

Sec. 5. Section 77-6306, Reissue Revised Statutes of Nebraska, is amended to read:

77-6306 (1) A qualified investor or qualified fund is eligible for a refundable tax credit equal to forty percent of its qualified investment in a qualified small business. The director shall not allocate more than four million dollars in tax credits to all qualified investors or qualified funds in a calendar year, except that for calendar year 2019, the director shall not allocate more than three million nine hundred thousand dollars in tax credits in such calendar year. If the director does not allocate the entire amount of tax credits authorized for ~~four million dollars of tax credits in~~ a calendar year, the tax credits that are not allocated shall not carry forward to subsequent years. The director shall not allocate any amount for tax credits for calendar years after 2019 ~~2022~~.

(2) The director shall not allocate more than a total maximum amount in tax credits for a calendar year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund as provided in this subsection. For married couples filing joint returns the maximum is three

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hundred fifty thousand dollars, and for all other filers the maximum is three hundred thousand dollars. The director shall not allocate more than a total of one million dollars in tax credits for qualified investments in any one qualified small business.

(3) The director shall not allocate a tax credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than forty-nine percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. A family member of an individual disqualified by this subsection is not eligible for a tax credit under this section. For a married couple filing a joint return, the limitations in this subsection apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this subsection, the rules under section 267(c) and (e) of the Internal Revenue Code of 1986, as amended, apply.

(4) Tax credits shall be allocated to qualified investors or qualified funds in the order that the tax credit applications are filed with the director. Once tax credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the qualified investment specified within ninety days after allocation of the tax credits. Qualified investors and qualified funds shall notify the director no later than thirty days after the expiration of the ninety-day period that the qualified investment has been made. If the qualified investment is not made within ninety days after allocation of the tax credits, or the director has not, within thirty days following expiration of the ninety-day period, received notification that the qualified investment was made, the tax credit allocation is canceled and available for reallocation. A qualified investor or qualified fund that fails to invest as specified in the application within ninety days after allocation of the tax credits shall notify the director of the failure to invest within five business days after the expiration of the ninety-day

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investment period.

(5) All tax credit applications filed with the director on the same day shall be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit applications on the same day and the aggregate amount of tax credit allocation requests exceeds the aggregate limit of tax credits under this section or the lesser amount of tax credits that remain unallocated on that day, then the tax credits shall be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts requested. The pro rata allocation for any one qualified investor or qualified fund shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the tax credit allocation request filed on behalf of a qualified investor or qualified fund and the denominator of which is the total of all tax credit allocation requests filed on behalf of all applicants on that day, by the amount of tax credits that remain unallocated on that day for the taxable year.

(6) A qualified investor or qualified fund, or a qualified small business acting on behalf of the investor or fund, shall notify the director when an investment for which tax credits were allocated has been made and shall furnish the director with documentation of the investment date. A qualified fund shall also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the qualified investment was made, the director shall issue tax credit certificates for the taxable year in which the qualified investment was made to the qualified investor or, for a qualified investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate shall state that the tax credit is subject to revocation if the qualified investor or qualified fund does not hold the

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investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following calendar years. The three-year holding period does not apply if:

(a) The qualified investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(b) Eighty percent or more of the assets of the qualified small business are sold before the end of the three-year period;

(c) The qualified small business is sold or merges with another business before the end of the three-year period;

(d) The qualified small business's common stock begins trading on a public exchange before the end of the three-year period; or

(e) In the case of an individual qualified investor, such investor becomes deceased before the end of the three-year period.

(7) The director shall notify the Tax Commissioner that tax credit certificates have been issued, including the amount of tax credits and all other pertinent tax information.

Sec. 6. Section 81-12,152, Revised Statutes Cumulative Supplement, 2018, is amended to read:

81-12,152 Sections 81-12,152 to 81-12,166 ~~81-12,167~~ shall be known and may be cited as the Business Innovation Act.

Sec. 7. Section 81-12,163, Revised Statutes Cumulative Supplement, 2018, is amended to read:

81-12,163 (1) It is the intent of the Legislature that (a) the four million dollars saved due to the elimination of funding for the Angel Investment Tax Credit Act be used to increase the appropriation ~~to appropriate seven million dollars from the General Fund~~ to the department for the Business Innovation Act by four million dollars for fiscal year 2020-21 and each fiscal year thereafter and (b) the one hundred thousand dollars saved due to the reduction in tax credits authorized under the Angel Investment Tax Credit Act for calendar year 2019 be used to

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increase the appropriation to the Department of Revenue by one hundred thousand dollars for fiscal year 2019-20 to offset the costs incurred by the Department of Revenue to implement this legislative bill ~~for each of fiscal years 2015-16 and 2016-17~~.

(2) Up to five percent of the funds appropriated for the Business Innovation Act may be used by the department, or by a nonprofit entity with which the department contracts, for administrative expenses.

Sec. 8. Section 81-12,166, Revised Statutes Cumulative Supplement, 2018, is amended to read:

81-12,166 (1) The department shall submit an annual report to the Governor and the Legislature on or before July 1 of each year which includes, but is not limited to, a description of the demand for financial assistance and programs under the Business Innovation Act from all geographic regions in Nebraska, a listing of the recipients and amounts of financial assistance awarded pursuant to the act in the previous fiscal year, the impact of the financial assistance, and an evaluation of the act's performance based on the documented goals of the recipients. The report submitted to the Legislature shall be submitted electronically. The department may require recipients to provide periodic performance reports to enable the department to fulfill the requirements of this subsection ~~section~~. The report shall contain no information that is protected by state or federal confidentiality laws.

(2) Beginning in 2020 and in every even-numbered year thereafter, the department shall assess and evaluate the economic impact of the programs funded under the Business Innovation Act and shall include the findings from such assessment and evaluation in the next annual report it submits under subsection (1) of this section. To carry out this subsection, the department shall contract with an organization or entity pursuant to state agency procurement requirements.

(3) Beginning with the FY2021-23 biennial budget review process, the Appropriations Committee of the Legislature shall conduct a biennial

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analysis of the financial status and impact of the programs funded under the Business Innovation Act.

(4) ~~(2)~~ Applications for funding and related documentation which may be received, developed, created, or otherwise maintained by the Department of Economic Development in administering the Business Innovation Act may be deemed confidential by the department and not subject to public disclosure.

Sec. 9. Original section 77-6306, Reissue Revised Statutes of Nebraska, and sections 13-1907, 13-2103, 13-2112, 50-1209, 81-12,152, 81-12,163, and 81-12,166, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 10. The following section is outright repealed: Section 81-12,167, Reissue Revised Statutes of Nebraska.