

E AND R AMENDMENTS TO LB 334

Introduced by Slama, 1, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 13-1901, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 13-1901 (1) There are hereby created nine Nebraska planning and
6 development regions as follows:

7 (a) ~~(1)~~ Region 1 includes the counties of Sioux, Dawes, Sheridan,
8 Box Butte, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and
9 Deuel;

10 (b) ~~(2)~~ Region 2 includes the counties of Cherry, Keya Paha, Boyd,
11 Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley,
12 Greeley, and Sherman;

13 (c) ~~(3)~~ Region 3 includes the counties of Grant, Hooker, Thomas,
14 Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Dawson, Chase, Hayes,
15 Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas;

16 (d) ~~(4)~~ Region 4 includes the counties of Howard, Merrick, Buffalo,
17 Hall, Hamilton, Phelps, Kearney, Adams, Clay, Harlan, Franklin, Webster,
18 and Nuckolls;

19 (e) ~~(5)~~ Region 5 includes the counties of Knox, Cedar, Dixon,
20 Antelope, Pierce, Wayne, Thurston, Boone, Madison, Stanton, Cuming, Burt,
21 Platte, Colfax, Dodge, and Nance;

22 (f) ~~(6)~~ Region 6 includes the counties of Polk, Butler, Saunders,
23 York, Seward, ~~Cass~~, Fillmore, Saline, Otoe, Thayer, Jefferson, Gage,
24 Johnson, Nemaha, Pawnee, and Richardson;

25 (g) ~~(7)~~ Region 7 includes the county of Lancaster;

26 (h) ~~(8)~~ Region 8 includes the counties of Washington, Douglas, and
27 Sarpy, and Cass; and

1 (i) ~~(9)~~ Region 9 includes the county of Dakota.

2 (2) In order to facilitate development of a process which will allow
3 for future changes to the boundaries of the Nebraska planning and
4 development regions, until July 1, 2020, a county, city, village, or
5 development district shall not engage in negotiations to change the
6 boundaries of the planning and development regions. This subsection does
7 not prohibit negotiations relating to implementation of the changes to
8 the boundaries made by this legislative bill.

9 Sec. 2. Section 13-1907, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

11 13-1907 (1) The Department of Economic Development ~~may shall~~ adopt
12 and promulgate rules and regulations to carry out sections 13-1901 to
13 13-1907, ~~including which shall include~~ standardized reporting and
14 application procedures. Each development district shall submit annual
15 performance and financial reports to the department which shall address
16 the activities performed and services delivered.

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

22 Sec. 3. Section 13-2103, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 13-2103 (1)(a) ~~Beginning on December 1, 2014 the date the rules and~~
25 ~~regulations updated in accordance with section 13-2112 become effective~~
26 ~~as provided in section 84-908,~~ the department shall, for a period of one
27 hundred eighty days, accept formal applications for the designation of
28 enterprise zones. Within sixty days after the end of such application
29 period, the department may designate not more than five areas as
30 enterprise zones based on eligible applications it has received.

31 (b) If the department has received fewer than five applications for

1 the designation of enterprise zones after the end of the application
2 period described in subdivision (1)(a) of this section, the department
3 may establish a period of time within which to accept additional
4 applications. Within sixty days after the end of such extended
5 application period, the department may designate additional areas as
6 enterprise zones based on additional eligible applications received, but
7 not more than a total of five areas may be designated as enterprise zones
8 pursuant to this section.

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

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

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

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

1 certification of the same area.

2 (4) Two or more counties or tribal government areas may jointly
3 apply for designation of an area as an enterprise zone which is located
4 on both sides of their common boundaries.

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

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

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

14 Sec. 4. Section 13-2112, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 13-2112 The department may ~~shall~~ adopt and promulgate rules and
17 regulations to carry out the Enterprise Zone Act. ~~The department shall~~
18 ~~update such rules and regulations within six months after July 18, 2014.~~

19 Sec. 5. Section 50-1209, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 50-1209 (1) Tax incentive performance audits shall be conducted by
22 the office pursuant to this section on the following tax incentive
23 programs:

- 24 ~~(a) The Angel Investment Tax Credit Act;~~
25 (a) ~~(b)~~ The Beginning Farmer Tax Credit Act;
26 (b) ~~(c)~~ The Nebraska Advantage Act;
27 (c) ~~(d)~~ The Nebraska Advantage Microenterprise Tax Credit Act;
28 (d) ~~(e)~~ The Nebraska Advantage Research and Development Act;
29 (e) ~~(f)~~ The Nebraska Advantage Rural Development Act;
30 (f) ~~(g)~~ The Nebraska Job Creation and Mainstreet Revitalization Act;
31 (g) ~~(h)~~ The New Markets Job Growth Investment Act; and

1 (h) ~~(i)~~ Any other tax incentive program created by the Legislature
2 for the purpose of recruitment or retention of businesses in Nebraska. In
3 determining whether a future tax incentive program is enacted for the
4 purpose of recruitment or retention of businesses, the office shall
5 consider legislative intent, including legislative statements of purpose
6 and goals, and may also consider whether the tax incentive program is
7 promoted as a business incentive by the Department of Economic
8 Development or other relevant state agency.

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

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

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

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

18 (A) Attracting new business to the state;

19 (B) Expanding existing businesses;

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

24 (D) Creating high-quality jobs; and

25 (E) Increasing business investment;

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

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

31 (iv) Any other program-specific goals found in the statutes for the

1 tax incentive program being evaluated;

2 (b) An analysis of the economic and fiscal impacts of the tax
3 incentive program. The analysis may take into account the following
4 considerations in addition to other relevant factors:

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

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

9 (B) By an estimation including all investment;

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

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

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

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

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

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

26 (4) For purposes of this section:

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

30 (b) Full-time worker means an individual (i) who usually works
31 thirty-five hours per week or more, (ii) whose employment is reported to

1 the Department of Labor on two consecutive quarterly wage reports, and
2 (iii) who earns wages equal to or exceeding the state minimum wage;

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

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

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

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

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

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

15 (d) High-tech firm means a person or unitary group that has a
16 location with any of the following four-digit code designations under the
17 North American Industry Classification System as assigned by the
18 Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112,
19 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

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

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

31 (g) Renewable energy firm means a person or unitary group that has a

1 location with any of the following six-digit code designations under the
2 North American Industry Classification System as assigned by the
3 Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160,
4 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333,
5 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310,
6 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210,
7 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111,
8 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510,
9 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730,
10 or 562213;

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

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

15 Sec. 6. Section 77-6306, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-6306 (1) A qualified investor or qualified fund is eligible for a
18 refundable tax credit equal to forty percent of its qualified investment
19 in a qualified small business. The director shall not allocate more than
20 four million dollars in tax credits to all qualified investors or
21 qualified funds in a calendar year, except that for calendar year 2019,
22 the director shall not allocate more than three million nine hundred
23 thousand dollars in tax credits in such calendar year. If the director
24 does not allocate the entire amount of tax credits authorized for four
25 million dollars of tax credits in a calendar year, the tax credits that
26 are not allocated shall not carry forward to subsequent years. The
27 director shall not allocate any amount for tax credits for calendar years
28 after 2019 2022.

29 (2) The director shall not allocate more than a total maximum amount
30 in tax credits for a calendar year to a qualified investor for the
31 investor's cumulative qualified investments as an individual qualified

1 investor and as an investor in a qualified fund as provided in this
2 subsection. For married couples filing joint returns the maximum is three
3 hundred fifty thousand dollars, and for all other filers the maximum is
4 three hundred thousand dollars. The director shall not allocate more than
5 a total of one million dollars in tax credits for qualified investments
6 in any one qualified small business.

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

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

1 allocation of the tax credits shall notify the director of the failure to
2 invest within five business days after the expiration of the ninety-day
3 investment period.

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

20 (6) A qualified investor or qualified fund, or a qualified small
21 business acting on behalf of the investor or fund, shall notify the
22 director when an investment for which tax credits were allocated has been
23 made and shall furnish the director with documentation of the investment
24 date. A qualified fund shall also provide the director with a statement
25 indicating the amount invested by each investor in the qualified fund
26 based on each investor's share of the assets of the qualified fund at the
27 time of the qualified investment. After receiving notification that the
28 qualified investment was made, the director shall issue tax credit
29 certificates for the taxable year in which the qualified investment was
30 made to the qualified investor or, for a qualified investment made by a
31 qualified fund, to each qualified investor who is an investor in the

1 fund. The certificate shall state that the tax credit is subject to
2 revocation if the qualified investor or qualified fund does not hold the
3 investment in the qualified small business for at least three years,
4 consisting of the calendar year in which the investment was made and the
5 two following calendar years. The three-year holding period does not
6 apply if:

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

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

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

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

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

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

20 Sec. 7. Section 81-12,152, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 81-12,152 Sections 81-12,152 to 81-12,166 ~~81-12,167~~ shall be known
23 and may be cited as the Business Innovation Act.

24 Sec. 8. Section 81-12,163, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 81-12,163 (1) It is the intent of the Legislature that (a) the four
27 million dollars saved due to the elimination of funding for the Angel
28 Investment Tax Credit Act be used to increase the appropriation to
29 appropriate seven million dollars from the General Fund to the department
30 for the Business Innovation Act by four million dollars for fiscal year
31 2020-21 and each fiscal year thereafter and (b) the one hundred thousand

1 dollars saved due to the reduction in tax credits authorized under the
2 Angel Investment Tax Credit Act for calendar year 2019 be used to
3 increase the appropriation to the Department of Revenue by one hundred
4 thousand dollars for fiscal year 2019-20 to offset the costs incurred by
5 the Department of Revenue to implement this legislative bill for each of
6 fiscal years 2015-16 and 2016-17.

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

10 Sec. 9. Section 81-12,166, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

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

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

1 (3) Beginning with the FY2021-23 biennial budget review process, the
2 Appropriations Committee of the Legislature shall conduct a biennial
3 analysis of the financial status and impact of the programs funded under
4 the Business Innovation Act.

5 (4) (2) Applications for funding and related documentation which may
6 be received, developed, created, or otherwise maintained by the
7 Department of Economic Development in administering the Business
8 Innovation Act may be deemed confidential by the department and not
9 subject to public disclosure.

10 Sec. 10. Original sections 13-1901 and 77-6306, Reissue Revised
11 Statutes of Nebraska, and sections 13-1907, 13-2103, 13-2112, 50-1209,
12 81-12,152, 81-12,163, and 81-12,166, Revised Statutes Cumulative
13 Supplement, 2018, are repealed.

14 Sec. 11. The following section is outright repealed: Section
15 81-12,167, Reissue Revised Statutes of Nebraska.

16 2. On page 1, strike beginning with "section" in line 1 through line
17 12 and insert "sections 13-1901 and 77-6306, Reissue Revised Statutes of
18 Nebraska, and sections 13-1907, 13-2103, 13-2112, 50-1209, 81-12,152,
19 81-12,163, and 81-12,166, Revised Statutes Cumulative Supplement, 2018;
20 to change provisions relating to Nebraska planning and development
21 regions; to change and eliminate provisions relating to rules and
22 regulations of the Department of Economic Development; to reduce and
23 eliminate the granting of tax credits under the Angel Investment Tax
24 Credit Act as prescribed; to eliminate a termination date, state
25 appropriation intent language, require evaluations of programs, and
26 provide a duty for the Appropriations Committee of the Legislature under
27 the Business Innovation Act; to harmonize provisions; to repeal the
28 original sections; and to outright repeal section 81-12,167, Reissue
29 Revised Statutes of Nebraska."