

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 879**

Introduced by Geist, 25.

Read first time January 09, 2020

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Microenterprise Tax
- 2 Credit Act; to amend section 77-5905, Reissue Revised Statutes of
- 3 Nebraska, and sections 50-1209 and 81-12,163, Revised Statutes
- 4 Supplement, 2019; to change provisions regarding performance audits
- 5 and termination of tax incentives as prescribed; to state intent
- 6 regarding use of funds; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 50-1209, Revised Statutes Supplement, 2019, is  
2 amended to read:

3 50-1209 (1) Tax incentive performance audits shall be conducted by  
4 the office pursuant to this section on the following tax incentive  
5 programs:

6 (a) The Beginning Farmer Tax Credit Act;

7 (b) The Nebraska Advantage Act;

8 ~~(c) The Nebraska Advantage Microenterprise Tax Credit Act;~~

9 (c) ~~(d)~~ The Nebraska Advantage Research and Development Act;

10 (d) ~~(e)~~ The Nebraska Advantage Rural Development Act;

11 (e) ~~(f)~~ The Nebraska Job Creation and Mainstreet Revitalization Act;

12 (f) ~~(g)~~ The New Markets Job Growth Investment Act; and

13 (g) ~~(h)~~ Any other tax incentive program created by the Legislature  
14 for the purpose of recruitment or retention of businesses in Nebraska. In  
15 determining whether a future tax incentive program is enacted for the  
16 purpose of recruitment or retention of businesses, the office shall  
17 consider legislative intent, including legislative statements of purpose  
18 and goals, and may also consider whether the tax incentive program is  
19 promoted as a business incentive by the Department of Economic  
20 Development or other relevant state agency.

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

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

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

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

30 (A) Attracting new business to the state;

31 (B) Expanding existing businesses;

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

5 (D) Creating high-quality jobs; and

6 (E) Increasing business investment;

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

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

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

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

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

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

21 (B) By an estimation including all investment;

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

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

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

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

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

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

7 (4) For purposes of this section:

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

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

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

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

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

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

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

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

27 (d) High-tech firm means a person or unitary group that has a  
28 location with any of the following four-digit code designations under the  
29 North American Industry Classification System as assigned by the  
30 Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112,  
31 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

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

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

12 (g) Renewable energy firm means a person or unitary group that has a  
13 location with any of the following six-digit code designations under the  
14 North American Industry Classification System as assigned by the  
15 Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160,  
16 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333,  
17 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310,  
18 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210,  
19 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111,  
20 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510,  
21 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730,  
22 or 562213;

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

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

27 Sec. 2. Section 77-5905, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 77-5905 (1) If the Department of Revenue determines that an  
30 application meets the requirements of section 77-5904 and that the  
31 investment or employment is eligible for the credit and (a) the applicant

1 is actively engaged in the operation of the microbusiness or will be  
2 actively engaged in the operation upon its establishment, (b) the  
3 applicant will make new investment or employment in the microbusiness,  
4 and (c) the new investment or employment will create new income or jobs,  
5 the department shall approve the application and authorize tentative tax  
6 credits to the applicant within the limits set forth in this section and  
7 certify the amount of tentative tax credits approved for the applicant.  
8 Applications for tax credits shall be considered in the order in which  
9 they are received.

10 (2) The department may approve applications up to the adjusted limit  
11 for each calendar year beginning January 1, 2006, through December 31,  
12 2020 2022. After applications totaling the adjusted limit have been  
13 approved for a calendar year, no further applications shall be approved  
14 for that year. The adjusted limit in a given year through calendar year  
15 2019 is two million dollars plus tentative tax credits that were not  
16 granted by the end of the preceding year. The adjusted limit in calendar  
17 year 2020 is one million nine hundred thousand dollars plus tentative tax  
18 credits that were not granted by the end of the preceding year. Tax  
19 credits shall not be allowed for a taxpayer receiving benefits under the  
20 Employment and Investment Growth Act, the Nebraska Advantage Act, or the  
21 Nebraska Advantage Rural Development Act.

22 Sec. 3. Section 81-12,163, Revised Statutes Supplement, 2019, is  
23 amended to read:

24 81-12,163 (1) It is the intent of the Legislature that (a) the four  
25 million dollars saved due to the elimination of funding for the Angel  
26 Investment Tax Credit Act be used to increase the appropriation to the  
27 Department of Economic Development ~~department~~ for the Business Innovation  
28 Act by four million dollars for fiscal year 2021-22 and each fiscal year  
29 thereafter and (b) the one hundred thousand dollars saved due to the  
30 reduction in tax credits authorized under the Angel Investment Tax Credit  
31 Act for calendar year 2019 be used to increase the appropriation to the

1 Department of Revenue by one hundred thousand dollars for fiscal year  
2 2019-20 to offset the costs incurred by the Department of Revenue to  
3 implement Laws 2019, LB334.

4 (2) It is the intent of the Legislature that (a) the two million  
5 dollars saved due to the elimination of funding for the Nebraska  
6 Advantage Microenterprise Tax Credit Act be used to increase the  
7 appropriation to the Department of Economic Development for the Business  
8 Innovation Act by two million dollars for fiscal year 2021-22 and each  
9 fiscal year thereafter and (b) the one hundred thousand dollars saved due  
10 to the reduction in tax credits authorized under the Nebraska Advantage  
11 Microenterprise Tax Credit Act for calendar year 2020 be used to increase  
12 the appropriation to the Department of Revenue by one hundred thousand  
13 dollars for FY2020-21 to offset the costs incurred by the Department of  
14 Revenue to implement this legislative bill.

15 (3) ~~(2)~~ Up to five percent of the funds appropriated for the  
16 Business Innovation Act may be used by the Department of Economic  
17 Development department, or by a nonprofit entity with which the  
18 department contracts, for administrative expenses.

19 Sec. 4. Original section 77-5905, Reissue Revised Statutes of  
20 Nebraska, and sections 50-1209 and 81-12,163, Revised Statutes  
21 Supplement, 2019, are repealed.