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LEGISLATURE OF NEBRASKA

ONE HUNDRED SEVENTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 74

Introduced by Geist, 25.

Read first time January 07, 2021

Committee: Revenue

A BILL FOR AN ACT relating to the Nebraska Advantage Microenterprise Tax Credit Act; to amend sections 50-1209, 77-5905, and 81-12,163, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to performance audits; to change a tax incentive termination date and tax credit limit as prescribed; to state intent regarding use of funds; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska, Section 1. Section 50-1209, Revised Statutes Cumulative Supplement, 2020, 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 Beginning Farmer Tax Credit Act;

(b) The ImagiNE Nebraska Act;

(c) The Nebraska Advantage Act;

~~(d) The Nebraska Advantage Microenterprise Tax Credit Act;~~

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

(e) ~~(f)~~ The Nebraska Advantage Rural Development Act;

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

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

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

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(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 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

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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;

(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 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. 2. Section 77-5905, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-5905 (1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the applicant will make new investment or employment in the microbusiness, and (c) the new investment or employment will create new income or jobs, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2021 ~~2022~~. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year through calendar year 2020 is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. The adjusted limit in calendar year 2021 is one million nine hundred thousand dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, the Nebraska Advantage Rural Development Act, or the ImagiNE Nebraska Act.

Sec. 3. Section 81-12,163, Revised Statutes Cumulative Supplement, 2020, 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 the Department of Economic Development ~~department~~ for the Business Innovation Act by four million dollars for fiscal year 2021-22 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 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 Laws 2019, LB334.

(2) It is the intent of the Legislature that (a) the two million dollars saved due to the elimination of funding for the Nebraska Advantage Microenterprise Tax Credit Act be used to increase the appropriation to the Department of Economic Development for the Business Innovation Act by two million dollars for fiscal year 2022-23 and each fiscal year thereafter and (b) the one hundred thousand dollars saved due to the reduction in tax credits authorized under the Nebraska Advantage Microenterprise Tax Credit Act for calendar year 2021 be used to increase the appropriation to the Department of Revenue by one hundred thousand dollars for fiscal year 2021-22 to offset the costs incurred by the Department of Revenue to implement this legislative bill.

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

Sec. 4. Original sections 50-1209, 77-5905, and 81-12,163, Revised Statutes Cumulative Supplement, 2020, are repealed.