

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1261

Introduced by Murman, 38; Brandt, 32.

Read first time January 20, 2022

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Rural Development
- 2 Act; to amend sections 77-27,187.02 and 77-27,188, Reissue Revised
- 3 Statutes of Nebraska; to change provisions relating to limitations
- 4 on tax credits; to harmonize provisions; to repeal the original
- 5 sections; and to declare an emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-27,187.02, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-27,187.02 (1) To earn the incentives set forth in the Nebraska
4 Advantage Rural Development Act, the taxpayer shall file an application
5 for an agreement with the Tax Commissioner. There shall be no new
6 applications for incentives filed under this section after December 31,
7 2022.

8 (2) The application shall contain:

9 (a) A written statement describing the full expected employment or
10 type of livestock production and the investment amount for a qualified
11 business, as described in section 77-27,189, in this state;

12 (b) Sufficient documents, plans, and specifications as required by
13 the Tax Commissioner to support the plan and to define a project; and

14 (c) An application fee of five hundred dollars. The fee shall be
15 remitted to the State Treasurer for credit to the Nebraska Incentives
16 Fund. The application and all supporting information shall be
17 confidential except for the name of the taxpayer, the location of the
18 project, and the amounts of increased employment or investment.

19 (3)(a) The Tax Commissioner shall approve the application and
20 authorize the total amount of credits expected to be earned as a result
21 of the project if he or she is satisfied that the plan in the application
22 defines a project that (i) meets the requirements established in section
23 77-27,188 and such requirements will be reached within the required time
24 period and (ii) for projects other than livestock modernization or
25 expansion projects, is located in an eligible county, city, or village.

26 (b) For applications filed in calendar year 2015, the Tax
27 Commissioner shall not approve further applications once the expected
28 credits from the approved projects total one million dollars. For
29 applications filed in calendar year 2016 and each year thereafter, the
30 Tax Commissioner shall not approve further applications from applicants
31 described in subsection (1) of section 77-27,188 once the expected

1 credits from approved projects from this category total one million
2 dollars. For applications filed in calendar year 2016 and each year
3 thereafter, the Tax Commissioner shall not approve further applications
4 from applicants described in subsection (2) of section 77-27,188 once the
5 expected credits from approved projects in this category total: For
6 calendar year 2016, five hundred thousand dollars; for calendar years
7 2017 and 2018, seven hundred fifty thousand dollars; ~~and~~ for calendar
8 years year 2019, 2020, and 2021 ~~and each calendar year thereafter~~, one
9 million dollars; and for calendar year 2022 and each calendar year
10 thereafter, twenty-five million dollars. Four hundred dollars of the
11 application fee shall be refunded to the applicant if the application is
12 not approved because the expected credits from approved projects exceed
13 such amounts.

14 (c) Applications for benefits shall be considered separately and in
15 the order in which they are received for the categories represented by
16 subsections (1) and (2) of section 77-27,188.

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

21 (4) After approval, the taxpayer and the Tax Commissioner shall
22 enter into a written agreement. The taxpayer shall agree to complete the
23 project, and the Tax Commissioner, on behalf of the State of Nebraska,
24 shall designate the approved plans of the taxpayer as a project and, in
25 consideration of the taxpayer's agreement, agree to allow the taxpayer to
26 use the incentives contained in the Nebraska Advantage Rural Development
27 Act up to the total amount that were authorized by the Tax Commissioner
28 at the time of approval. The application, and all supporting
29 documentation, to the extent approved, shall be considered a part of the
30 agreement. The agreement shall state:

31 (a) The levels of employment and investment required by the act for

1 the project;

2 (b) The time period under the act in which the required level must
3 be met;

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

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

7 (e) The maximum amount of credits authorized.

8 Sec. 2. Section 77-27,188, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 77-27,188 (1) A refundable credit against the taxes imposed by the
11 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an
12 approved application pursuant to the Nebraska Advantage Rural Development
13 Act, who is engaged in a qualified business as described in section
14 77-27,189, and who after January 1, 2006:

15 (a)(i) Increases employment by two new equivalent employees and
16 makes an increased investment of at least one hundred twenty-five
17 thousand dollars prior to the end of the first taxable year after the
18 year in which the application was submitted in (A) any county in this
19 state with a population of fewer than fifteen thousand inhabitants,
20 according to the most recent federal decennial census, (B) any village in
21 this state, or (C) any area within the corporate limits of a city of the
22 metropolitan class consisting of one or more contiguous census tracts, as
23 determined by the most recent federal decennial census, which contain a
24 percentage of persons below the poverty line of greater than thirty
25 percent, and all census tracts contiguous to such tract or tracts; or

26 (ii) Increases employment by five new equivalent employees and makes
27 an increased investment of at least two hundred fifty thousand dollars
28 prior to the end of the first taxable year after the year in which the
29 application was submitted in any county in this state with a population
30 of less than twenty-five thousand inhabitants, according to the most
31 recent federal decennial census, or any city of the second class; and

1 (b) Pays a minimum qualifying wage of eight dollars and twenty-five
2 cents per hour to the new equivalent employees for which tax credits are
3 sought under the Nebraska Advantage Rural Development Act. The Department
4 of Revenue shall adjust the minimum qualifying wages required for
5 applications filed after January 1, 2004, and each January 1 thereafter,
6 as follows: The current rural Nebraska average weekly wage shall be
7 divided by the rural Nebraska average weekly wage for 2003; and the
8 result shall be multiplied by the eight dollars and twenty-five cents
9 minimum qualifying wage for 2003 and rounded to the nearest one cent. The
10 amount of increase or decrease in the minimum qualifying wages for any
11 year shall be the cumulative change in the rural Nebraska average weekly
12 wage since 2003. For purposes of this subsection, rural Nebraska average
13 weekly wage means the most recent average weekly wage paid by all
14 employers in all counties with a population of less than twenty-five
15 thousand inhabitants as reported by October 1 by the Department of Labor.

16 For purposes of this section, a teleworker working in Nebraska from
17 his or her residence for a taxpayer shall be considered an employee of
18 the taxpayer, and property of the taxpayer provided to the teleworker
19 working in Nebraska from his or her residence shall be considered an
20 investment. Teleworker includes an individual working on a per-item basis
21 and an independent contractor working for the taxpayer so long as the
22 taxpayer withholds Nebraska income tax from wages or other payments made
23 to such teleworker. For purposes of calculating the number of new
24 equivalent employees when the teleworkers are paid on a per-item basis or
25 are independent contractors, the total wages or payments made to all such
26 new employees during the year shall be divided by the qualifying wage as
27 determined in subdivision (b) of this subsection, with the result divided
28 by two thousand eighty hours.

29 (2) A refundable credit against the taxes imposed by the Nebraska
30 Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an
31 approved application pursuant to the Nebraska Advantage Rural Development

1 Act, (b) is engaged in livestock production, and (c) after January 1,
2 2007, invests at least fifty thousand dollars for livestock modernization
3 or expansion.

4 (3) The amount of the credit allowed under subsection (1) of this
5 section shall be three thousand dollars for each new equivalent employee
6 and two thousand seven hundred fifty dollars for each fifty thousand
7 dollars of increased investment. For applications filed before January 1,
8 2016, 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 thirty thousand dollars. For applications filed on or after January 1,
11 2016, and before the effective date of this act, the amount of the credit
12 allowed under subsection (2) of this section shall be ten percent of the
13 investment, not to exceed a credit of one hundred fifty thousand dollars
14 per application. For applications filed on or after the effective date of
15 this act, the amount of the credit allowed under subsection (2) of this
16 section shall be ten percent of the investment, not to exceed a credit of
17 five hundred thousand dollars per application. For each application, a
18 taxpayer engaged in livestock production may qualify for a credit under
19 either subsection (1) or (2) of this section, but cannot qualify for more
20 than one credit per application.

21 (4) An employee of a qualified employee leasing company shall be
22 considered to be an employee of the client-lessee for purposes of this
23 section if the employee performs services for the client-lessee. A
24 qualified employee leasing company shall provide the Department of
25 Revenue access to the records of employees leased to the client-lessee.

26 (5) The credit shall not exceed the amounts set out in the
27 application and approved by the Tax Commissioner.

28 (6)(a) If a taxpayer who receives tax credits creates fewer jobs or
29 less investment than required in the project agreement, the taxpayer
30 shall repay the tax credits as provided in this subsection.

31 (b) If less than seventy-five percent of the required jobs in the

1 project agreement are created, one hundred percent of the job creation
2 tax credits shall be repaid. If seventy-five percent or more of the
3 required jobs in the project agreement are created, no repayment of the
4 job creation tax credits is necessary.

5 (c) If less than seventy-five percent of the required investment in
6 the project agreement is created, one hundred percent of the investment
7 tax credits shall be repaid. If seventy-five percent or more of the
8 required investment in the project agreement is created, no repayment of
9 the investment tax credits is necessary.

10 (7) For taxpayers who submitted applications for benefits under the
11 Nebraska Advantage Rural Development Act before January 1, 2006,
12 subsection (1) of this section, as such subsection existed immediately
13 prior to such date, shall continue to apply to such taxpayers. The
14 changes made by Laws 2005, LB 312, shall not preclude a taxpayer from
15 receiving the tax incentives earned prior to January 1, 2006.

16 Sec. 3. Original sections 77-27,187.02 and 77-27,188, Reissue
17 Revised Statutes of Nebraska, are repealed.

18 Sec. 4. Since an emergency exists, this act takes effect when
19 passed and approved according to law.