Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 312

Hearing Date: February 10, 2005
Committee On: Revenue

Introducer(s): (Landis)
Title: Change provisions of the Employment and Investment Growth Act

Roll Call Vote – Final Committee Action:

	Advanced to General File
X	Advanced to General File with Amendments
	Indefinitely Postponed

Vote Results:

7	Yes	Senators Baker, Connealy, Cornett, Janssen, Landis, Preister and Redfield
1	No	Senator Raikes
0	Present, not voting	
0	Absent	

Proponents:	**Representing:**
Senator David Landis	Introducer
Jim Fram	Lincoln Chamber of Commerce, Nebraska Economic Development Association
Gary Warren	State Chamber of Commerce, Omaha Chamber of Commerce, Nebraska Bankers
Mark Vasina	Nebraskans for Peace
Milo Mumgaard	Nebraska Appleseed Center for Law in the Public Interest
Loran Schmit	Schmit Industries
Craig Groat	Himself

Opponents:	**Representing:**
None	

Neutral:	**Representing:**
None	

Summary of purpose and/or changes:

LB 312 would make many changes in the Employment and Investment Growth Act. Some of these changes would make the act more lucrative and some less so. Significant changes would be:

1. The time for attaining the required levels of investment and employment and the length of time benefits may be received would be shortened. The attainment period would be reduced from seven years to five, and the entitlement period would also be reduced from seven years to five. Carryover of unused credits would be limited to ten years after application, shortening the maximum amount of time for credits to be used from 22 years to ten.

2. The investment thresholds would be doubled for most tiers of qualification while the jobs thresholds would be lowered by about 17 percent.

3. The jobs credit would be available on a sliding scale with lower paying jobs generating smaller percentage credits. The range of credit percentages would be from three percent to six percent.

4. The investment credit would be extended to investment-only projects at a rate of five percent. The regular investment credit would be reduced from ten percent to eight percent, but projects with at least $40 million in investment and 25 jobs would qualify for both for a total credit of 13 percent.

5. Jobs credits could be taken against withholding of new employees.

6. The reporting requirements would be extended to project-specific information about credits earned and used and sales tax refunds received during the previous year.

Explanation of amendments, if any:

The Committee Amendment (AM 1350) would rewrite LB 312 to insert provisions creating a tax credit for increases in research and development spending (from LB 672), for investing in microenterprises (from LB 309), and providing a sales tax exemption for manufacturing machinery and equipment (from LB 695). The amendment would also change the Employment Expansion and Investment Incentive Act to grant tax credits in counties less than 15,000 if the company increases employment by only two jobs and invests only $125,000 and allow teleworkers to count as new employees. Further disclosure of benefits received would also be required under AM 1350.

The amendment would also replace the Employment and Investment Growth Act (LB 775, 1987) with the Nebraska Advantage Act. There would be no new applications under the Employment and Investment Growth Act (LB 775, 1987) after the operative date of the Nebraska Advantage

Act, January 1, 2006. Overall, the Committee amendment is a blend between the introduced version of LB 312 and the Employment and Investment Growth Act with some added substantive provisions from the introduced versions of LB 646 and administrative changes contained in LBs 696, 520, and 571 or adopted by the Committee after discussions.

The most significant changes from LB 775 are 1) the requirement of a wage equal to at least 60 percent of the state's average wage for all employers for purposes of qualifying for and earning benefits, 2) granting larger wage credits for better-paying new jobs, 3) indexing investment thresholds in the future to changes in the producer price index, 4) creating a jobs-only tier, 5) allowing jobs credits to be taken against the withholding of new employees, 6) expanding the definition of taxpayer to eliminate the necessity that at least 90 percent of the owners be subject to income tax, 7) allow teleworkers to count as jobs at the project if the telework is interrelated to the project, 8) limiting benefits available under the newly-created Tiers 1 and 3 so that they cannot extend more than 10 years after the application date, including any carryover. Carryover under Tiers 2 and 4 would be limited to ten years, 9) expanding the definition of "qualified business" to grant benefits to businesses involved in technology-related services where more than 75 percent of the sales are to an out-of-state customer or to the federal government, 10) allowing the Tax Commissioner to sanction taxpayers for failing to respond to information requests promptly, including deeming an application withdrawn, 11) delaying large refunds of local sales taxes to meet budgeting requirements of cities until November, and 12) requiring disclosure of project-specific credits used and refunds received information every other year.

There would be five tiers of benefits allowed under AM 1350 :

1. Tier 1 - $1 million of new investment and 10 new jobs. This tier would only be available to manufacturers, research and development or testing businesses, and listed technology-related services where at least 75 percent of the sales are out of state or to the federal government. Qualifying businesses under this tier would be eligible for a refund of one-half of the sales tax paid for purchases at the project, the full sliding-scale jobs credit, and a three percent investment credit. Applications under this tier could not be accepted after January 1, 2011.

2. Tier 2 - $3 million of new investment and 30 new jobs. This tier is currently provided in LB 775. It would permit the qualifying business to receive a sales tax refund for purchases at the project, the wage credit and a 10 percent investment credit.

3. Tier 3 - $0 investment and 30 jobs. This tier would allow the beneficiaries to receive only the sliding-scale wage credit. It would also expire after January 1, 2011.

4. Tier 4 - $10 million in investment and 100 new jobs. This tier is currently provided in LB 775. In addition to the sales tax refund, jobs credit, and the investment credit, qualifying businesses under this tier would receive a personal property tax exemption for turbine-powered aircraft, mainframe computers, agricultural processing machinery, and personal property used in a distribution business.

5. Tier 5 – $30 million of new investment with no requirement of new jobs. This tier is also in LB 775 except that the amount of investment required has been increased from $20 million to $30 million. Beneficiaries receive only the refund of sales taxes paid on investment at the project.

Section by section summary

Section 1 would allow a research tax credit to business firms that increase research expenditures in the state. The tax credit would be equal to three percent times the amount expended by the firm in the state that is in excess of the base amount determined by averaging the previous two years of research expenditures. The amount expended in the state could be proved either using invoices or through apportionment of the expenditures both for the base year and the credit years using the average of the property factor and the payroll factor. The credit is to be limited to five years.

The tax credit could be taken either as a state sales tax refund or as a refundable income tax credit. The credit could not be used to refund any local sales taxes. Sales tax refunds must be filed quarterly. Sales tax is presumed to be paid by contractors on 40 percent of the contract price. Credits may be distributed to partners, members, or other owners of pass-through entities. Business firms eligible for the credit would mean an entity subject to sales taxes but not including governmental entities or organizations exempt under section 501(a) of the Internal Revenue Code. The credit would be operative for tax years beginning or deemed to begin on or after January 1, 2006.

Section 2 would create the Small Business Microenterprise Tax Credit Program and allow up to $2 million of refundable individual income tax credits per year, beginning in 2006 for applicants operating a microbusiness in depressed areas. Depressed areas would be defined as 1) municipalities that have had a population decrease between the two most recent censuses, 2) unincorporated areas in counties that have lost population between the two most recent censuses, 3) designated federal enterprise zones, and 4) census tracts that have less than 80 percent of the average statewide per capita income. Microbusiness would be defined to mean a business with five or fewer employees. Taxpayer would be defined as subject to sales and income taxes and includes any entity that is 90 percent owned by taxpayers.

The Department of Revenue is to allocate tentative tax credits to applicants that operate microbusinesses in depressed areas. There is to be an application form, developed by the Department that is to describe the microbusiness, show projected income and expenses, show the market to be served, project the amount of investment or employment, and describe the nature of the taxpayer's involvement in the microbusiness.

Once the $2 million annual allotment of tax credits are approved, no further applications for tentative tax credits could be approved. There could be no benefits for taxpayers receiving benefits under the Employment and Investment Growth Act, the Employment Expansion and Investment Incentive Act or the Nebraska Advantage Act. Any unused tentative credits may be carried over to the following year and approved then. Tentative credits expire after one year.

Taxpayers claim the credits by filing a form with the tax return and attaching the certification of approved tentative credits from the prior year.

The credit is to be equal to 20 percent of the new investment up to $10,000 per applicant throughout the life of the program. New investment is to include capital, plant, equipment, and inventory, but not interest. This section is to be operative for all tax years beginning on or after January 1, 2006 through December 31, 2010.

Section 3 would amend section 49-801.01 to include several sections of this act into the section that is annually updated to reflect changes in the Internal Revenue Code.

Section 4 would amend section 66-1344 (the Ethanol Development Act) to exclude beneficiaries under the new Nebraska Advantage Act from ethanol production incentives

Sections 5 and 6 would amend sections 77-202 and 77-1229 to harmonize the personal property tax exemptions created in the Nebraska Advantage Act into the personal property tax sections.

Section 7 would amend section 77-2701 to include sections 1, 2, and 9 to 11 into the Revenue Act.

Section 8 would amend section 77-2704.04 to incorporate sections 9 to 11 into the sales tax statutes.

Sections 9 through 11 would exempt manufacturing machinery and equipment from the sales tax.

Section 9 would define "manufacturing" as an action or series of actions which results in tangible personal property being reduced or transformed into a different state, quality or form.

Section 10 would define "manufacturing machinery and equipment" very broadly to include:

(1) Equipment for transporting raw materials or components like assembly lines or mill rolls,
(2) Molds and dies for forming cast or injected products or its packaging material,
(3) Machinery to maintain the integrity of the product or environmental conditions, such as climate control or clean room equipment,
(4) Testing equipment for quality control,
(5) Computers that control a manufacturing process,
(6) Machinery used to produce power or energy, such as steam turbines,
(7) Catalysts, solvents, and other solutions even if they do not become part of the finished product, and
(8) Repair or replacement parts purchased for repairing or maintaining manufacturing machinery, such as refractory brick.

Equipment would not need to come into contact with the product to qualify for the exemption. Manufacturing machinery and equipment would not include motor vehicles, hand tools, office equipment, and computers that do not control the manufacturing process.

Section 11 would exempt manufacturing machinery and equipment and all repair and service performed on such equipment from sales taxes.

Section 12 would amend section 77-2711 to exclude the information required to be disclosed under the Employment Expansion and Investment Incentive Act or the Nebraska Advantage Act from the sales tax confidentiality sections.

Sections 13, 14 and 15 would amend sections 77-2715.07, 77-2717, and 77-2734.03 to insert the credits provided in sections 1 & 2 into the individual, fiduciary, and corporate income tax statutes.

Section 16 would amend section 77-27,119 to exclude the information required to be disclosed under the Employment Expansion and Investment Incentive Act or the Nebraska Advantage Act from the income tax confidentiality sections.

Section 17 would amend 77-27,188, which is part of the Employment Expansion and Investment Incentive Act, as amended by LB 608 (2003), to add a qualification tier for eligible projects. Currently, projects qualify for benefits by being located either in an enterprise zone or a county with less than 25,000 residents and increasing employment by at least ten new employees and investment by at least $250,000.

Under the Committee amendment to LB 312, projects in counties with less than 15,000 inhabitants could qualify if they propose to add two new employees and $125,000 new investment. This section would also provide that for taxpayers who met the thresholds for a tax year before 2006, the old thresholds and requirements will apply.

Telework personnel may be considered employees and property owned by the taxpayer that is used at the residence of the teleworker may qualify as investment for purposes of this act. If the teleworker is paid at a piece rate, or is an independent contractor, he or she may still qualify as new employees, if the employer withholds income taxes from the payments. The number of new employees would be calculated from the total compensation by assuming each is paid the minimum wage under LB 608, as adjusted, and dividing the hours by 2080.

Section 18 would amend section 77-27,195 to provide that beginning with applications filed on or after January 1, 2006, the report of activities under the Employment Expansion and Investment Incentive Act must disclose some project-specific information. The new requirement would be 1) the identity of the taxpayer, 2) the location of the project, and 3) the total refunds and credits used by the business during the previous two years. The reporting requirement would begin the second year after the company first reaches the thresholds necessary for qualification and would be reported every other year thereafter.

Section 19 would name sections 19 through 51 the Nebraska Advantage Act.

Section 20 would declare that it is the policy of the state to make changes in tax structure to attract and retain businesses.

Sections 22 through 39 would be the definition sections. Generally, they are the same as for the Employment and Investment Growth Act (LB 775, 1987). Highlights and differences only are detailed in this summary

Section 26 would define “Entitlement Period” for Tier 1 or Tier 3 projects as the year the required increases in employment and investment are met plus the next six years, not to extend past ten years after the application date. For Tier 2, 4, or 5 projects, the entitlement period would be the same as for LB 775, the year the required increases in employment and investment are met plus the next six years. The entitlement period is the number of years a business may generate benefits under the act.

Section 28 would define “Interdependent” to mean that the different project locations are part of a single plan and are connected in the flow of production of a product or service.

Section 29 would define “Investment” as the value of property owned or leased by the taxpayer at the project.

Section 30 would define “Nebraska average weekly wage” as the most recent average wage paid by all Nebraska employers as reported by the Department of Labor the previous October 1.

Section 33 would define “Number of new employees” as “equivalent employees” meaning the number of hours paid divided by 2080, that are in excess of the number in the base year, not to exceed the number that are new and who are paid at least 60 percent of the Nebraska average weekly wage. Telework personnel working in Nebraska from their residences on tasks interdependent with the project would be considered to be employed at the project.

Section 34 would define “Qualified business” in the same way as LB 775 for a Tier 2, 3, 4, or 5 project except that technology-related exported services would be added. Essentially, qualified businesses are R & D, data processing, telecommunications, insurance, and financial services, manufacturing, distribution, or a headquarters (meaning the administrative operations of the taxpayer). Added to “qualified business” under this bill would be software development, computer systems design, product testing, guidance or surveillance systems design, or the licensing of technology where at least 75 percent of the sales or licenses are to customers who are not related entities and are located outside the state, or the federal government.

For a Tier 1 project “qualified business” would be limited to R & D, manufacturing, and the above-listed technology-related services. Qualified business does not include retailing tangible personal property unless the business makes the product in any tier.

Section 36 would define “Qualified property” as depreciable property. Qualified property of the taxpayer that is provided to a teleworker at his or her residence would be deemed to be located and used at the project.

Section 38 would define “Taxpayer” as a person subject to sales tax and withholding except that it does not include any political subdivision or any entity that is exempt from income taxes under section 501 (a) of the Internal Revenue Code of 1986 or any entity that is owned 10 percent or more by a governmental or 501 (a) entity. LB 775 defines taxpayer as subject to sales taxes and income taxes.

Section 40 would allow employees of a qualified employee leasing company to be considered an employee of the taxpayer.

Section 41 would require an application for receiving benefits. The application must contain a plan of employment and investment; define the project and if more than one location is contemplated, show the different locations to be interdependent; an application fee of $1,000 for a Tier 1 project, $2,500 for Tier 2, 3, or 5 projects, and $5,000 for a Tier 4 project; and a timetable showing expected sales tax refunds and when they will be claimed. If the taxpayer completes all the information requested on the application form, it is considered complete and establishes the application date even if the Department will require more information to determine eligibility. Employment and investment after the application date counts toward meeting the thresholds. The application and all supporting information would be confidential except for what is necessary to meet the reporting requirements.

If a request for additional information regarding an application has not been responded to within a reasonable time as determined by rules and regulations of the Revenue Department, the Tax Commissioner may send a second request with a deadline. If that deadline is not met, the application would drop to the bottom of all applications. Ultimately, the application could be deemed to be withdrawn.

Once satisfied that the application states a qualified project and the thresholds will be met by the fourth year after application for Tier 1 or 3 projects, or the sixth year for Tier 2, 4, or 5 projects, the Tax Commissioner is to approve the application

After approval the Tax Commissioner and taxpayer are to enter into a written agreement in which the taxpayer promises to complete the project and the Tax Commissioner agrees to allow the benefits. Taxpayers may not qualify under this act and the Employment Expansion and Investment Incentive Act (LB 608, 2003). The taxpayer may have more than one project at a time and may be receiving benefits under LB 775 at the time a Nebraska Advantage Act application is filed, so long as the same employment and investment do not count for both.

Section 42 would describe activities that do not create any credits or refunds under the act. Generally, these activities are the purchase or transfer of an existing business or moving a business within the state.

Section 43 would describe five tiers of benefits:

1. Tier 1 - $1 million of investment and 10 new employees. This tier would be sunsetted January 1, 2011;
2. Tier 2 - $3 million of investment and 30 new employees;
3. Tier 3 - 30 new employees with no investment – This tier would be sunsetted January 1, 2011;
4. Tier 4 - $10 million of new investment and 100 new employees;
5. Tier 5 - $30 million of new investment with no new employee requirement.

Qualifiers in Tier 1, Tier 2, Tier 4, and Tier 5 receive a refund of all sales taxes paid on property purchased at the project except that Tier 1 projects receive a refund of only half. Tier 2 and Tier 4 projects would also receive an investment credit of 10 percent of the investment at the project and a Tier 1 project would receive a 3 percent investment tax credit. Qualifiers in all tiers receive a wage credit equal to 3 percent if they pay between 60 percent and 75 percent of the state average wage to the new employees, 4 percent if they pay between 75 percent and 100 percent; 5 percent if they pay between 100 percent and 125 percent; and 6 percent if they pay more than 125 percent of the state average wage to the new employees. Thresholds are determined based on the year of application. Credits are earned for employment and investment made any time during the entitlement period.

Tier 4 projects also would receive a personal property tax exemption for up to 10 years for turbine-powered aircraft, personal property used in a distribution operation, mainframe computers and agricultural processing business equipment used at the project. To receive the exemption, the taxpayer must annually file a claim for exemption on or before May 1. A separate claim must be filed for each county. The Property Tax Administrator would make the determination as to whether or not the property is of a type that qualifies for the exemption while the Tax Commissioner would determine if the company has met the Tier 4 thresholds.

Investment thresholds would be adjusted annually beginning in 2007 to reflect changes in the Producer Price Index for all commodities, published by the U.S. Bureau of Labor Statistics. The adjustment would be for cumulative change since 2006. The amount would be rounded to the next lowest one million dollars. The adjustment would not affect projects that have already established an application date.

Section 44 would set out how the credits are used. The taxpayer would file a form with the income tax return. Credits would be utilized in the order earned. Employment credits may also be used against the withholding attributable to new employees at the project. The credit shall not exceed the withholding attributable to new employees at the project and any withholding in excess of the credit amount must be remitted according to law.

Credits could also be used to obtain refunds of state and local sales taxes that are not otherwise refunded. Refund claims could be filed no more often than once each quarter except that claims for $25,000 or more could be filed at any time. If there is a claim for a refund of local option sales tax that is greater than $25,000, it must be filed by June 15 to be paid on or after November 15 of the same year. Large claims filed after June 15 would not be paid until on or after November 15 of the next year. Interest is not allowed on sales tax refunds. Carryover of unused credits would be limited to nine years after the year of application for Tier 1 and Tier 3 projects and 15 years for Tier 2 and Tier 4 projects.

Section 45 would provide that, if the taxpayer fails to achieve the required levels of investment or employment within the fourth year after the year of application, for Tier 1 or Tier 3 projects, and the sixth year after application for Tier 2, Tier 4, or Tier 5 projects, credits or refunds would be recaptured or disallowed. If the thresholds are never achieved, any personal property tax benefit received would be considered delinquent immediately.

If the taxpayer achieves the thresholds, but later fails to maintain them, credits and refunds would be recaptured at a rate of one-seventh of received credits for each year of non-attainment. Collection of recaptured taxes shall be allowed three years after the end of the entitlement period. No taxes recaptured under this section could be subsequently refunded. Recapture would not occur if the failure to maintain the required levels is due to an act of God or a national emergency.

Section 46 would prohibit transfer of credits except for instances where the credit flows through a pass-through business entity or the entire project or taxpayer is acquired by another person.

Section 47 would prohibit interest on refunds paid under the act.

Section 48 would provide that any complete application shall be considered valid on the day it is submitted.

Section 49 would require an annual report from the Tax Commissioner every July 15th. The report would list agreements under the act, the identity of the taxpayer, and the location of the project. The report would also show by industry group 1) credits earned, 2) credits used to reduce income taxes, 3) credits used to obtain sales tax refunds. 4) direct refunds allowed, 5) credits used against withholding, 6) the number of new jobs and the statewide employment of the taxpayer before the project and currently, 7) the amount of investment, 8) estimated wage levels, 9) total number of qualified applicants, 10) projected future revenue gains and losses from the projects, 11) outstanding credits, and 12) the value of the personal property exempted by county. This is currently required under the Employment and Investment Growth Act except for the amount used against withholding.

In estimating future revenue gains and losses, the Department is to detail the methodology used and state the economic and industry multipliers used. Limitations of the methodology are also to be reported. The report is to also explain the audit and review processes, including stating the median period of time between the date of application and the date the contract is executed.

This section would add a new requirement for project-specific information. The new requirement would report 1) the identity of the taxpayer, 2) the location of the project, and 3) the total amount of credits and refunds used the prior two years. The requirement is to begin the second year after the entitlement period begins and every other year thereafter. The report is to also contain an executive summary which shows aggregate information for all projects for which project-specific information was reported. In addition to the total amount of benefits used, the executive summary is to report the number of projects, the statewide employment of the beneficiaries, the new jobs created, the total investment, and the average wages. No information could be disclosed that is protected by state or federal confidentiality laws.

Section 50 would create the fund to which application fees are to be credited.

Section 51 would permit the Tax Commissioner to adopt rules and regulations.

Section 52 would require that Department to estimate the amount of sales tax refunds to be paid in connection with revenue forecasts of the Nebraska Economic Forecasting Advisory Board.

Section 53 would amend the Employment and Investment Growth Act (LB 775, 1987) section 77-4109 to provide that no new applications be accepted under the act on or after January 1, 2006. All project applications and all project agreements in force on that date are to continue in effect.

Section 54 would provide that the effective date of the bill is January 1, 2006, and

Section 55 would repeal the amendatory sections in the bill.

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Senator David Landis, Chairperson