

LEGISLATIVE BILL 1053

Approved by the Governor April 11, 2012

Introduced by Louden, 49; Mello, 5; Wallman, 30.

FOR AN ACT relating to travel and tourism; to amend sections 81-1201.07, 81-1245, 81-1246, 81-1247, 81-1248, 81-1249, 81-1250, 81-1251, 81-1252, 81-1253, 81-1254, 81-1256, 81-1257, 81-1258, 81-1259, 81-1261, 81-1262, and 81-1263, Reissue Revised Statutes of Nebraska, sections 77-2711, 81-1201.04, and 81-1201.22, Revised Statutes Cumulative Supplement, 2010, and sections 81-1201.13, 81-1255, and 81-1260, Revised Statutes Supplement, 2011; to transfer and change provisions relating to the Nebraska Visitors Development Act; to define and redefine terms; to create and provide duties for a commission; to change membership provisions for the Economic Development Commission; to change the sources and uses of the Administrative Cash Fund; to eliminate a division and an advisory committee; to provide for transition; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-1263, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1263~~ Sections ~~81-1245 to 81-1263~~ 1 to 24 of this act shall be known and may be cited as the Nebraska Visitors Development Act.

Sec. 2. Section 81-1245, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1245~~ The purposes of the Nebraska Visitors Development Act are (1) to create a commission and a fund to provide for ~~general~~ promotional activity, solicitation, and an operating program to attract visitors to Nebraska and further the use of travel and tourism facilities in Nebraska, (2) to provide for a lodging tax on hotels for the purpose of establishing a State Visitors Promotion Cash Fund, and (3) to authorize the governing body of any county to appoint a visitors committee and impose a lodging tax on hotels for the purpose of establishing a County Visitors Promotion Fund and a County Visitors Improvement Fund.

Sec. 3. Section 81-1246, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1246~~ For purposes of the Nebraska Visitors Development Act, unless the context otherwise requires, the definitions found in sections ~~81-1247 to 81-1251~~ shall be used. 4 to 9 of this act apply.

Sec. 4. Commission means the Nebraska Tourism Commission.

Sec. 5. Section 81-1251, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1251~~ Committee shall mean means the visitors committee appointed as provided in section ~~81-1255~~ 17 of this act for the purpose of advising the county board in administering the County Visitors Promotion Fund and the County Visitors Improvement Fund established pursuant to such section ~~81-1255~~ and carrying out the purposes of the Nebraska Visitors Development Act.

Sec. 6. Section 81-1248, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1248~~ Consideration shall mean means the monetary charge for the use of space in a hotel only if the space is one ordinarily used for accommodations and shall not include the charge for any food or beverage served or personal services rendered to the occupant of such space.

Sec. 7. Section 81-1247, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1247~~ Hotel shall mean means any facility in which the public may, for a consideration, obtain sleeping accommodations. Hotel includes ~~The term shall include~~ hotels, motels, tourist homes, campgrounds, courts, lodging houses, inns, state-operated hotels, and nonprofit hotels, ~~but hotels shall not be defined so as to~~ but does not include hospitals, sanitariums, nursing homes, chronic care centers, or dormitories or facilities operated by an educational institution and regularly used to house students.

Sec. 8. Section 81-1249, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1249~~ Occupancy shall mean means the use or possession, or the right to the use or possession, of any space in a hotel if the space is one ordinarily used for accommodations and if the occupant's use, possession, or right to the use or possession is for less than a period of thirty days.

Sec. 9. Section 81-1250, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1250~~ Occupant ~~shall mean~~ means anyone who, for a consideration, uses, possesses, or has a right to use or possess any space in a hotel if the space is one ordinarily used for accommodations.

Sec. 10. (1) The Nebraska Tourism Commission is created. The members of the Travel and Tourism Division Advisory Committee, as such committee existed immediately prior to the operative date of this act, shall be the initial members of the commission and may be reappointed as provided in this section. The terms of initial members of the commission representing entities designated by subdivisions (2) (b), (d), (f), and (h) of this section shall be two years, beginning on the operative date of this act. The terms of initial members representing entities designated by subdivisions (2) (a), (c), (e), (g), and (i) of this section shall be four years, beginning on the operative date of this act. Each successive member shall be appointed by the Governor with the approval of a majority of the members of the Legislature for terms of four years and may be reappointed.

(2) The commission shall consist of the following members:

(a) One representative from the Game and Parks Commission;

(b) One representative from the Nebraska Travel Association;

(c) One representative from the Nebraska Hotel and Motel Association;

(d) One representative from a tourism attraction that records at least two thousand out-of-state visitors per year;

(e) One representative from the Nebraska Association of Convention and Visitors Bureaus;

(f) One representative from the Western Nebraska Tourism Coalition;

(g) One representative who resides in eastern Nebraska and is employed by a business that derives a majority of its revenue from out-of-state visitors;

(h) One representative from the Central Nebraska Tourism Partnership; and

(i) One representative of a business that derives a majority of its revenue from out-of-state visitors.

Sec. 11. The commission shall:

(1) Administer the Nebraska Visitors Development Act;

(2) Prepare and approve a budget;

(3) Elect a chairperson and vice-chairperson;

(4) Procure and evaluate data and information necessary for the proper administration of the act;

(5) Appoint an executive director to conduct the day-to-day operations of the commission;

(6) Employ personnel and contract for services which are necessary for the proper operation of the commission;

(7) Establish a means by which any interested person has the opportunity at least annually to offer his or her ideas and suggestions relative to the commission's duties for the upcoming year;

(8) Authorize the expenditure of funds and contracting of expenditures to carry out the act;

(9) Keep minutes of its meetings and other books and records which clearly reflect all of the actions and transactions of the commission and keep such records open to examination during normal business hours; and

(10) Prohibit any funds appropriated to the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state or federal legislation.

Sec. 12. (1) For purposes of transition, employees of the Travel and Tourism Division of the Department of Economic Development shall be considered employees of the commission and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the commission from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

(2) All items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Travel and Tourism Division of the Department of Economic Development shall become the property of the commission.

(3) Whenever the Travel and Tourism Division of the Department of Economic Development is referred to or designated by any contract or other document, such reference or designation shall apply to the commission.

All contracts entered into by the division prior to the operative date of this act are hereby recognized, with the commission succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the commission for the payment of such obligations. All licenses, certificates, registrations, permits, seals, or other forms of approval issued by the division shall remain valid as issued unless revoked or their effectiveness is otherwise terminated as provided by law. All documents and records transferred, or copies of such documents and records, may be authenticated or certified by the commission for all legal purposes.

(4) All rules, regulations, and orders of the Department of Economic Development adopted prior to the operative date of this act shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(5) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to the operative date of this act or which could have been commenced prior to that date, by or against the division or any employee thereof in his or her official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the division to the commission.

(6) On and after the operative date of this act unless otherwise specified, whenever any provision of law refers to the division, the law shall be construed as referring to the commission.

Sec. 13. Section 81-1201.13, Revised Statutes Supplement, 2011, is amended to read:

~~81-1201.13~~ (1) ~~The Travel and Tourism Division~~ commission shall develop a program to provide promotional services and technical assistance to local governments and industry members and to ensure the protection and development of Nebraska's attraction resources. ~~(b) The Travel and Tourism Division Advisory Committee~~

(2) The commission shall develop a statewide strategic plan to cultivate and promote tourism in Nebraska. The advisory committee ~~commission~~ shall adopt policy criteria to be used in the development of the plan. The plan shall include:

~~(i)~~ (a) A review of the existing and potential sources of funding for tourism at the state and local levels;

~~(ii)~~ (b) A comprehensive inventory of local tourism boards, the structure of such boards, and their funding;

~~(iii)~~ (c) Criteria for local tourism boards in terms of appointments to such boards and for awarding grants by such boards at the local level to ensure local resources are used to achieve the greatest return;

~~(iv)~~ (d) An examination of other states' funding models for tourism;

~~(v)~~ (e) Marketing strategies for promoting tourism;

~~(vi)~~ (f) A proposal for creating new or expanding existing tourism capacity, which may include encouraging regional cooperation, collaboration, or privatization; and

~~(vii)~~ (g) Recommended legislation or funding requirements.

~~(e) The department may hire a consultant to assist the Travel and Tourism Division Advisory Committee in developing the statewide strategic plan. The department may accept, in trust, any gifts, devises, and bequests to be held and administered by the department for the purposes of hiring a consultant. The advisory committee shall prepare and present the statewide strategic plan to the Legislature by September 1, 2012.~~

(3) All advertising contracts awarded by the ~~department~~ commission concerning travel and tourism shall be based on competitive bids. Contracts shall be awarded to the lowest responsible bidder, taking into consideration the best interests of the state, the quality of performance of the services rendered, the conformity with specifications, the purposes for which required, and the time of completion, ~~and with the consultation of the Travel and Tourism Division Advisory Committee.~~ In determining the lowest responsible bidder, in addition to price, the ~~following elements shall be given consideration:~~ commission shall consider: (a) The ability, capacity, creativity, and skill of the bidder to perform the contract required; (b) the character, integrity, reputation, judgment, experience, and efficiency of the bidder; (c) whether the bidder can perform the contract within the time specified; (d) the quality of performance of previous contracts; (e) the previous and existing compliance by the bidder with laws relating to the contract; and (f) such other information as may be secured having a bearing on the decision to award the contract. The ~~department~~ commission shall advertise for bids for the awarding of contracts concerning travel and tourism pursuant to sections 73-101 to 73-105. At least thirty working days shall elapse

between the time formal bids are advertised for and the time of their opening. Contracts shall be awarded within sixty working days after the bidding has been closed. Each person submitting a bid shall ~~by certified mail~~, be notified by certified mail as to whom the contract was awarded.

Sec. 14. Section 81-1252, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1252 (1) There is hereby created in the state treasury a special fund to be known as the The State Visitors Promotion Cash Fund which shall be under the Department of Economic Development.~~ (2) The division of travel and tourism in the Department of Economic Development is created. The commission shall use the proceeds of the State Visitors Promotion Cash Fund fund to generally promote, encourage, and attract visitors to and within the State of Nebraska and enhance the use of travel and tourism facilities within the state. The proceeds of the State Visitors Promotion Cash Fund fund shall be in addition to funds appropriated to the Department of Economic Development, division of travel and tourism, commission from the state General Fund. Any money in the State Visitors Promotion Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 15. Section 81-1253, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1253~~ There is hereby imposed an additional sales tax of one percent upon the total consideration charged for occupancy of any space furnished by any hotel in this state. The proceeds from such tax shall be paid to the State Visitors Promotion Cash Fund.

Sec. 16. Section 81-1254, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1254~~ (1) The governing body of any county may after a public hearing adopt a resolution to impose an additional sales tax of not to exceed two percent upon the total consideration charged for occupancy of any space furnished by any hotel if such county has created a County Visitors Promotion Fund and a visitors committee pursuant to section ~~81-1255~~, 17 of this act. The proceeds from such tax shall be paid to the County Visitors Promotion Fund.

(2) The governing body of any county may after a public hearing adopt a resolution to impose an additional sales tax of not to exceed two percent upon the total consideration charged for occupancy of any space furnished by any hotel if such county has created a County Visitors Improvement Fund and a visitors committee pursuant to section ~~81-1255~~, 17 of this act. The proceeds from such tax shall be paid to the County Visitors Improvement Fund.

(3) The taxes authorized by this section shall be in addition to the tax authorized in section ~~81-1253~~ 15 of this act or any other sales tax imposed or authorized.

Sec. 17. Section 81-1255, Revised Statutes Supplement, 2011, is amended to read:

~~81-1255~~ (1) The governing body of the county shall after a public hearing adopt a resolution establishing a County Visitors Promotion Fund and a visitors committee which shall serve as an advisory committee to the governing body in administering the proceeds from the taxes provided to the county by the Nebraska Visitors Development Act. The governing body of a county may also after a public hearing adopt a resolution establishing a County Visitors Improvement Fund. The proceeds of the County Visitors Promotion Fund shall be used generally to promote, encourage, and attract visitors to come to the county and use the travel and tourism facilities within the county. The proceeds of the County Visitors Improvement Fund shall be used to improve the visitor attractions and facilities in the county, except that no proceeds shall be used to improve a facility in which parimutuel wagering is conducted. If the visitors committee determines that the visitor attractions in the county are adequate and do not require improvement, the governing body of the county, with the advice of the committee, may use the County Visitors Improvement Fund to promote, encourage, and attract visitors to the county to use the county's travel and tourism facilities. The committee shall consist of five or seven members appointed by the governing body of the county. If the committee has five members, at least one but no more than two members of the committee shall be in the hotel industry. If the committee has seven members, at least two but no more than three members of the committee shall be in the hotel industry.

(2) The members of the committee shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve for terms of four years, except that at least half of those appointed shall be appointed for initial terms of two years. Vacancies shall be filled in the same manner as the initial appointments. The committee shall elect a

chairperson and vice-chairperson from among its members to serve for terms of two years.

Sec. 18. Section 81-1256, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1256~~ The governing body of the county shall annually set the budget, if any, under which the committee shall operate.

Sec. 19. Section 81-1257, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1257~~ The county board may contract with any person, firm, association, or corporation to carry out its powers and duties under the Nebraska Visitors Development Act.

Sec. 20. Section 81-1258, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1258~~ (1) (a) The County Visitors Improvement Fund shall be administered by the governing body of the county with the advice of the visitors committee created ~~in section 81-1255,~~ pursuant to section 17 of this act. The fund shall be used to make grants for expanding and improving facilities at any existing visitor attraction, acquiring or expanding exhibits for existing visitor attractions, constructing visitor attractions, or planning or developing such expansions, improvements, or construction.

(b) Grants shall be available for any visitor attraction in the county owned by the public or any nonprofit organization, the primary purpose of which is to operate the visitor attraction, except that grants shall not be available for any visitor attraction where parimutuel wagering is conducted.

(c) Grants may be made for a specified annual amount not to exceed the proceeds derived from a sales tax rate of one percent imposed by a county for a County Visitors Improvement Fund for a term of years not to exceed twenty years and may be pledged by the recipient to secure bonds issued to finance expansion, improvement, or construction of a visitor attraction. Any grant made for a term of years shall be funded each year in accordance with any agreement contained in the grant contract.

(d) No bonds issued by a grant recipient which pledges grant funds shall constitute a debt, liability, or general obligation of the county levying the tax or a pledge of the faith and credit of the county levying the tax but shall be payable solely from grant funds. Each bond issued by any grant recipient which pledges grant funds shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of the county levying the tax is pledged to the payment of the principal of or the interest on such bond.

(2) For purposes of this section and section ~~81-1255,~~ 17 of this act, visitor attraction means a defined location open to the public, which location is of educational, cultural, historical, artistic, or recreational significance or provides entertainment or in which are exhibits, displays, or performances of educational, cultural, historic, artistic, or entertainment value.

Sec. 21. Section 81-1259, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1259~~ The Department of Economic Development's division of travel and tourism commission shall cooperate with other departments and agencies of the state and may contract with other persons, including private agencies, to carry out any of the functions and purposes of the Nebraska Visitors Development Act.

Sec. 22. Section 81-1260, Revised Statutes Supplement, 2011, is amended to read:

~~81-1260~~ Unless otherwise specifically provided, any sales tax on transient lodging imposed under the Nebraska Visitors Development Act is in addition to that sales tax imposed under the provisions of Chapter 77, article 27, and shall be interpreted, collected, remitted, and enforced by the Tax Commissioner under the provisions of such article. Any sales tax on transient lodging imposed under the Nebraska Visitors Development Act shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period.

Sec. 23. Section 81-1261, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1261~~ The amount the Tax Commissioner shall remit, as taxes collected for a County Visitors Promotion Fund, shall be reduced by three percent as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident to such collection.

Sec. 24. Section 81-1262, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-1262~~ The commission and the Tax Commissioner shall adopt and

promulgate rules and regulations necessary for the administration of to carry out the Nebraska Visitors Development Act.

Sec. 25. Section 77-2711, Revised Statutes Cumulative Supplement, 2010, is amended to read:

77-2711 (1) (a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3) (a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar

privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, (g) the disclosure of information pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section ~~81-1254~~ 16 of this act with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or Legislative Performance Audit Section shall disclose to any person, other than another Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or Legislative Performance Audit Section employee.

(12) For purposes of this subsection and subsection (11) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return

or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. The Tax Commissioner may provide additional information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

(14) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(15) (a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (15)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Sec. 26. Section 81-1201.04, Revised Statutes Cumulative Supplement, 2010, is amended to read:

81-1201.04 (1) The commission shall consist of nine voting members appointed by the Governor. The chairperson of the commission shall be one of the appointed members and shall be chosen by the commission. Each congressional district in Nebraska shall be represented by three members, and the Governor shall solicit nominations for appointments to the commission from recognized economic development groups in Nebraska. The members of the commission shall be representative, to the extent possible, of the various geographic areas of the state and of both the urban and rural population. The director shall serve as an ad hoc nonvoting member of the commission. In appointing the members, the Governor shall seek to create a broad-based commission representative of the Nebraska economy. To achieve this objective the Governor shall appoint individuals from the following private industry sectors:

~~(1)~~ (a) Production agriculture;

~~(2)~~ (b) At least two individuals from manufacturing, one such individual shall represent a company with no more than seventy-five employees;

~~(3)~~ (c) Transportation and logistics;

~~(4)~~ ~~Travel and tourism;~~

~~(5)~~ (d) Financial services and insurance;

~~(6)~~ (e) Information technology and communications;

~~(7)~~ (f) Biotechnology; and

~~(8)~~ (g) Community development.

(2) The commission and department are encouraged to involve other essential groups in the work of the commission, including, but not limited to, the (a) University of Nebraska, (b) Department of Agriculture, (c) State Energy Office, (d) educational institutions, (e) Department of Labor, and (f) Nebraska Investment Finance Authority. No more than five voting members of the commission shall belong to the same political party.

(3) The commission shall provide programmatic policy guidance and oversight to the Nebraska Manufacturing Extension Partnership and shall provide regular consultation to the Community Development Block Grant Program.

Sec. 27. Section 81-1201.07, Reissue Revised Statutes of Nebraska, is amended to read:

81-1201.07 The department may have the divisions and program listed in this section to aid in the discharge of its duties but shall not be limited to such divisions and program: (1) An Existing Business Assistance Division; (2) a Business Recruitment Division; (3) a ~~Travel and Tourism Division;~~ ~~(4)~~ a Community and Rural Development Division; and ~~(5)~~ (4) a Community Development Block Grant Program. Each division and program, when deemed appropriate by the director, is encouraged to establish advisory committees and programs to insure public participation and input.

Sec. 28. Section 81-1201.22, Revised Statutes Cumulative Supplement, 2010, is amended to read:

81-1201.22 (1) There is hereby created the Administrative Cash Fund to be administered by the department. Revenue from the following sources shall

be remitted to the State Treasurer for credit to the fund:

(a) Fees charged for the sale of department publications or subscription to publications;

(b) Fees charged for the sale of Nebraska items promoting economic development of the state; ~~including travel and tourism;~~

(c) Deposits charged for the temporary use of Nebraska items promoting economic development of the state; ~~including travel and tourism;~~

(d) Fees charged for attendance and participation in department-sponsored conferences, training sessions, and other special events;

(e) Money collected from nondepartment sources in connection with cooperative funding of advertising, marketing, promotional, or consulting activities; and

(f) Money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used by the department for carrying out the provisions of Chapter 81, article 12.

(2) Revenue from the fund may be expended for the following purposes:

(a) Production and distribution costs of department publications;

(b) Purchase of items promoting economic development of the state; ~~including travel and tourism;~~ intended for sale;

(c) Reimbursement of deposits collected for the temporary use of promotional items;

(d) Payment of costs in connection with department-sponsored conferences, training sessions, and other special events;

(e) Payment of costs of advertising, marketing, promotional, or consulting activities in cooperative funding partnerships with nondepartment organizations; and

(f) Payment of costs for which fund revenue has been received and which are related to department activities in Chapter 81, article 12.

(3) Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 29. This act becomes operative on July 1, 2012.

Sec. 30. Original sections 81-1201.07, 81-1245, 81-1246, 81-1247, 81-1248, 81-1249, 81-1250, 81-1251, 81-1252, 81-1253, 81-1254, 81-1256, 81-1257, 81-1258, 81-1259, 81-1261, 81-1262, and 81-1263, Reissue Revised Statutes of Nebraska, sections 77-2711, 81-1201.04, and 81-1201.22, Revised Statutes Cumulative Supplement, 2010, and sections 81-1201.13, 81-1255, and 81-1260, Revised Statutes Supplement, 2011, are repealed.

Sec. 31. Since an emergency exists, this act takes effect when passed and approved according to law.