

LB 840

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Nebraska Statutes
Section 18-2701 to 18-2738

**A GUIDE TO PROGRAM
IMPLEMENTATION**

The Local Option Municipal Economic Development Act

nebraska

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INTRODUCTION

Purpose

The Local Option Municipal Economic Development Act (LB 840) (Section 18-2701 to 18-2738 Nebraska Revised Statutes) authorizes incorporated cities and villages to appropriate and spend local sales and property tax revenues for certain economic development purposes. Such action must be made in compliance with procedures set forth in the Act.

This guide is intended to assist officials of any city or village who desire to use the authority granted by the Act. City and village officials should seek and follow the advice of their city or village attorney in implementing the Act.

History of "Local Option Municipal Economic Development Act"

In 1990, the Nebraska Legislature adopted Legislative Resolution 11 CA, which placed on a statewide ballot, an amendment to the Constitution of the State of Nebraska. This amendment would allow the Legislature to authorize any incorporated city or village (or group of two or more cities and villages) to appropriate funds (if approved by its voters) from local option sales and/or property taxes levied by the municipality for economic or industrial development programs.

During the November 1990 general election, Nebraska voters approved Amendment 3 (LB 11 CA), by more than 100,000 majority votes, amending the state constitution to authorize the Legislature to pass statutes granting cities and villages the power to use local sources of revenue for economic or industrial projects or programs, subject to a vote of the people at the local level.

The enabling legislation for this new authority was introduced during the 1991 Legislative Session. Legislative Bill 840, the Local Option Municipal Economic Development Act (referred in the document as "the Act" or LB 840), was passed by the Legislature and signed into law on June 3, 1991. The new law took effect on September 6, 1991.

Keys to Success

The complex Act is actually based on the simple premise that voters of a municipality should have the right to spend their own tax dollars in the manner they find best suited to meet their own local needs. Within certain broad limits, local municipalities are given great latitude in defining local economic development needs and in spending their own tax dollars to meet those needs.

The core of the LB 840 process involves formulation of the local economic development program plan--perhaps the most important part of the process. The plan forms the foundation for the collection and expenditure of local tax revenues for economic development and, if the voters approve the plan, the provisions of the plan become the basis under which the municipality's economic development program operates.

A careful, thought out and fully developed plan is of paramount importance to the success of the economic development program. And of course, voters are more likely to approve the expenditure of their tax dollars if they believe the plan is comprehensive and workable. If approved by voters, the plan will define the limits of the economic development program... limits that can only be changed through another election process.

The Local Option Municipal Economic Development Act is a local economic development tool--there is no state oversight or enforcement mechanism. However, care should be taken not to violate any provisions in the Act. Local citizens will have the right to seek enforcement of the Act's provisions in court if they feel those provisions have not been followed.

Using This Guide

To help communities better understand the Local Option Municipal Economic Development Act (or LB 840), the verbiage that is italicized in this guide comes directly, or is paraphrased from the Act. Additional information from the guide's author appears as regular print. When implementing the Local Option Municipal Economic Development Act it is advised to refer directly to the Act.

For additional information and assistance on Local Option Sales and Use Tax visit:

<http://www.revenue.state.ne.us/legal/regs/localopt.htm>

Special Note on Section 13-315

Section 13-315 of the Nebraska statutes (as amended in 1972) authorized cities, villages and counties to appropriate general funds or other revenues (not to exceed .4 percent of the actual valuation) for the express purpose of conducting a publicity campaign to encourage new business investment in the community, or to purchase or option land for industrial development. In 1976, the Nebraska State Supreme Court ruled that the portion of the statute authorizing the purchase or option of land was unconstitutional. Therefore, Section 13-315 related to the purchase and option of land was deleted. Also notable was a special provision placed into LB 840 (Section 3) specifying the following:

"Appropriations and expenditures made by a city which are authorized by Section 13-315 and made according to its provisions shall not be subject to the Local Option Municipal Economic Development Act and shall be exempt from its requirements."

LB 840 does not provide any new authority nor does it remove any previous authority for municipalities that use (or wish to use) the authority granted under Section 13-315. LB 840 merely reminds municipalities that publicity campaign activities, authorized under Section 13-315, can be financed as provided by Section 13-315 and do not need to comply with LB 840 requirements.

Before initiating a program under Section 13-315, you are encouraged to consult with your municipal attorney.

Communities That Are Eligible Under the Act

What communities may use the authority granted by the Local Option Municipal Economic Development Act?

Entities eligible under the Act would include any metropolitan, primary, first, or second class city, or village, including any city operated under a home rule charter. Also eligible is any group of two or more incorporated cities acting in concert under the terms of the Inter-Local Cooperation Act or Joint Public Agency Act by means of a properly executed agreement. Counties are not eligible. (Section 18-2704)

Are there any special requirements for communities that are working together under the Local Option Municipal Economic Development Act?

If an economic development program is to be conducted jointly by two or more municipalities, approval of the program by the voters of each participating municipality is required. To work jointly, the municipalities must enter into a properly executed agreement under the terms of the Inter-Local Cooperation Act or Joint Public Agency Act.

Steps to Implement the Local Option Municipal Economic Development Act

1. Prepare a general community and economic development strategy.
2. Develop a proposed plan for the economic development program.
3. Prepare and pass a resolution that adopts the plan and provides wording for the ballot. File the resolution and plan with the city or village clerk for public review. A public hearing, while not required before the resolution is passed, is advisable during this step.
4. File a certified copy of the resolution with the election commissioner or county clerk no later than 50 days prior to a general or primary election, or 41 days prior to a special election.
5. Schedule and hold a public hearing to present the resolution for public comment and discussion. The public hearing is to be held no later than 15 days prior to the date of the election.
6. Two issues must appear on the ballot – a vote for the tax and a vote to approve the plan.
7. Hold election.
8. If the program is approved by the voters, establish the economic development program by ordinance within 45 days after voter approval.
9. Appoint a Citizen Advisory Review Committee.
10. Amend the existing municipal annual budget to immediately include, or include in the next annual budget, the amount to be expended on the economic development program.
11. Establish an Economic Development Fund.
12. Carry out the required tasks once the program is implemented.
13. When ready to end the program, follow termination activities including steps for ending the program.

STEP 1: Prepare a General Community and Economic Development Strategy.

The Act requires that a description of the community's general community and economic development strategy be included in the plan, but provides no guidance for developing such a strategy.

Therefore, it is recommended that a community and economic development strategy be developed through a community-wide assessment and planning process. More citizens may ultimately approve the program if they have participated in its preparation.

A community and economic development strategy describes how a community will fare in the future. The strategy is based on understanding what economic activity changes are taking place in the community and why. It implies an understanding of how dollars enter the community and where they are spent by local residents and businesses; how these dollar movements are changing; and how they might change in the future due to focusing on economic activities to take place during the next several years.

A strategy is balanced with growth opportunities and examination of weaknesses that are causing or may cause decline. The strategy should highlight the most important issues, and when properly addressed, can foster opportunities and overcome weaknesses. Goals are identified for each important issue that is raised.

Assistance is available for communities preparing economic development strategic plans. Organizations, including the Nebraska Department of Economic Development, University of Nebraska, Economic Development Districts, and private planning firms can provide valuable help.

STEP 2: Prepare a Proposed Plan for the Economic Development Program.

Before implementing the Local Option Municipal Economic Development Act, an economic development plan must be prepared that includes:

1. A description of the community's general community and economic development strategy.
2. A statement of purpose about the municipality's general intent and proposed goals for the economic development program.
3. A description of eligible activities under the program.
 - a. A description of eligible businesses under the program.
4. A statement specifying the total amount of money that is proposed to be collected to finance the program.
 - a. The projected length of time the program will exist.
 - b. A basic preliminary program budget.
5. If the plan includes financial assistance for businesses the plan must include:
 - a. A description of the process that a qualifying business must follow to apply for financial assistance, including information required from the business and the process used to verify the information.
 - b. Steps the municipality will take to insure the business's right to privacy and confidentiality.
6. A description of the administrative system that will be established to administer the economic development program, including the personnel structure and duties and responsibilities of all involved.
7. A description of how the municipality and qualifying businesses receiving assistance will comply with and enact all applicable laws, regulations, and requirements.

If the proposed economic development program involves the purchase of or option to purchase land, the plan also shall specify:

8. How tracts of land will be identified for purchase or option to purchase, and whether the municipality will use future sale proceeds from land for additional land purchases.

If the proposed economic development program involves the creation of a loan fund, the plan shall also specify:

9. The types of available loans including the maximum portion to be provided to any single qualifying business and criteria used to determine the appropriate level of assistance.
10. The criteria and procedures used to determine those businesses that qualify to participate in the loan fund program.
11. The timeline within which a qualifying business must meet the goals set forth under its participation agreement, and the criteria used to establish such a timeline.
12. What personnel beyond regular municipal employees, or other assistance that may be needed to administer the loan fund program and how personnel will be paid or reimbursed.

13. Investment strategies that the municipality will pursue to promote the growth, security and liquidity of the loan fund.
14. Auditing and verification methods to be used by the municipality to ensure appropriate assistance as well as protection against fraud or deceit.

General Community and Economic Development Strategy

The plan must include a description of the community's general community and economic development strategy (Section 18-2710) that includes highlights of the strategy, rationale and methodology used to meet the goals objectives.

Statement of Purpose Describing General Intent and Goals

The plan must include a statement of purpose describing the municipality's general intent and proposed goals for the economic development program. (Section 18-2710)

The statement must express the program's general direction and priority goals. Program goals do not need to include all goals identified in the strategy. Selecting program goals may depend upon resources available in relation to actions and the time involved in meeting those goals.

While the plan's general intent and goals can be very broad, identifying more specific goals may lead to swifter and more widespread approval. Samples of goals could be:

- A) Increase employment opportunities in the area;
- B) Increase opportunities for health care services;
- C) Increase tourism opportunities in the area.

Types of Activities That Will Be Eligible

The plan must describe eligible types of economic development activities under the program. (Section 18-2710)

This section should specifically describe types of eligible activities to be funded by local tax revenues under the program. However, it's important to note that all listed eligible activities do not necessarily need to be undertaken. The community and economic development strategy should provide guidance.

Activities not included in the plan, however, will not be eligible for funding during the life of the plan unless changed through another election process.

What are Eligible Activities of the "Economic Development Program?"

Eligible activities include any project or program using the program's funds for the purpose of providing direct or indirect financial assistance to a qualifying business, or for the payment of related costs and expenses. Examples include, but are not limited to (Section 18-2705):

1. Payments for salaries and support of municipal staff, or for contracts with outside entities to implement the economic development program.
2. Job training grants or loans.
3. Public works improvement grants essential to the location or expansion of qualifying businesses.
4. Direct loans or grants to qualifying businesses for fixed assets, working capital, or both.

5. Loan guarantees for qualifying businesses.
6. The purchase of real estate, or options for such purposes, and the renewal or extension of such options.
7. Technical assistance, including marketing, management counseling, financial package preparation, engineering assistance and other services for qualifying businesses.
8. Expenses for conducting industrial recruitment activities.
9. Grants and loans to construct or rehabilitate housing that is sold or leased to persons of low or moderate income persons.
10. Issuance of bonds as provided for in the Act.

It is important to note that a municipality's program need not be restricted to the listed activities. The Legislature left some latitude for local communities to develop creative forms of economic development program activities to match their own particular local conditions and needs. If a municipality has an idea for such a creative activity that is not otherwise inconsistent with the Act or other state laws, it can be included within the proposed plan. Consult your village or city attorney.

Types of Businesses That Will Be Eligible

The plan must describe those types of businesses that are eligible under the program (Section 18-2709).

What businesses may qualify for funds collected under the Local Option Municipal Economic Development Act?

In cities with populations greater than 2,500 persons, a qualifying business is any corporation, partnership, or sole proprietorship which derives its principal source of income from any of the following:

1. The manufacture of articles of commerce.
2. The conduct of research and development.
3. The processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce.
4. The sale of services in interstate commerce.
5. Advanced Telecommunications activities.
6. Tourism-related activities.
7. Headquarter facilities for a corporation, partnership or sole proprietorship whose activities include one or more of those listed in 16 above.
8. The construction or rehabilitation of affordable housing.
9. Retail trade, for cities with populations between 2,500 to 10,000.

In municipalities with populations of 2,500 inhabitants or less, a qualifying business is any corporation, partnership or sole proprietorship regardless of its principal source of income (Section 18-2709).

Even though the municipality could identify specific business types based on the community's strategy, care must be taken not to exclude types of businesses that the municipality may want to fund in the future.

Remember that any eligible business classification type not initially included in the plan will not be eligible for funding throughout the life of the plan unless changed through another election process.

What safeguards prevent businesses from receiving assistance from one Nebraska municipality while moving its operations to another Nebraska community?

If an otherwise qualifying business employs people and carries on activities in more than one Nebraska community, or will do so at any time during the first year following its application for program participation, it shall qualify for assistance only if it maintains employment in each community for the first two years of its program participation at a level not less than its average employment in each community over the 12-month period preceding participation (Section 18-2709).

Example: Widget Corporation operates a manufacturing facility in Huskerville, Nebraska, where it has employed on average 20 employees during the most recent 12-month period. If Good Life City, Nebraska, wishes to provide financial assistance to Widget Corporation to expand its operation to Good Life City, it may do so only if Widget Corporation maintains its number of employees in Huskerville at an average of at least 20 employees over the next 24-month period. The purpose of this provision is to prevent Nebraska municipalities from using LB 840 funds to entice businesses from other Nebraska communities through lucrative offerings.

By adopting this provision, the Legislature clarified that it is the state's policy to create new jobs in Nebraska through the Act and increase total statewide employment opportunities, and not just to redistribute the same jobs between various communities at the taxpayer's expense, or to foster "bidding wars" between Nebraska communities.

Amount to be Collected from Local Sources

The plan must include a statement specifying the total amount of money that is proposed to be collected from local sources of revenue to finance the program (Section 18-2710).

How much money can be appropriated by a municipality for the economic development program?

No municipality shall appropriate more than the least amount calculated (Section 18-2717) under the following alternatives:

1. An amount exceeding the amount approved by voters in the election, or
2. An amount exceeding 4/10ths of one percent (0.4 percent) of the actual taxable valuation of the municipality in the year in which the funds are collected, or
3. More than \$3 million in any one year (for cities of metropolitan or primary class), or
4. More than \$2 million in any one year (for first class cities), or
5. More than \$1million in any one year (for second class cities or villages)

Keep in mind that the limitation is on the amount appropriated, not on the amount collected. Let's assume that the municipality wishes to collect a one-cent sales tax which is expected to generate about \$100,000 each year, but the appropriation limit for that same municipality is \$80,000 (0.4% of the municipality's taxable valuation) in any one year for the economic development program. The municipality can collect the one-cent sales tax, but only \$80,000 can be appropriated in any year for the economic development program. The suggested method is to optimize the amount of LB840 funds to be collected and appropriated for any program year. Also, the local government is encouraged to investigate LB840's impact on the municipal budget and its restricted funds. The most recent actual valuations can be obtained through each county assessor's office.

What types of sources can be collected for the Economic Development Program?

Provisions of Amendment 3 to the Constitution state that only funds raised from "general taxes levied by the city or village" can be used for economic development programs. The Act specifies that those local sources of revenue are the local property tax and/or the local option sales tax (Section 18-2708).

How much can be collected with a local option sales tax?

Local sales taxes can be levied at one-half percent, one percent, or by one and one-half percent. LB 840 does not authorize exceeding the one and one-half percent local tax limit. To estimate how much revenue a community could generate, multiply the municipality's "net taxable sales" by .005, .01, or .015 depending on the rate that's being considered. Recent figures can be obtained by calling the Nebraska Department of Economic Development. When a local option sales tax is collected, the state retains 3 percent of the amount collected for administration fees.

When can a municipality expect to receive the first month's sales tax collection receipt?

The Nebraska Department of Revenue requires a 60-day notice for the collection of local option sales taxes and those collections must begin (and end) at the beginning of a quarter. So a community that wants the sales tax collections to begin on January 1, must submit notice by November 1. Each month's receipts will be received by the city approximately two months after the month it is collected—for example, January's receipts would be received by the city in March.

When can a municipality expect to receive property tax increase receipts?

Property tax rates are revised for any given year by the preceding September 15th. The majority of a year's collections are received in the months of May and September of each year. So if a property tax increase was approved during the November 2009 election, the 2011 rate would be changed by September 15, 2010 and the first half year's collections would be received in May 2011.

Does the municipality have to impose an additional sales tax or raise the property tax levy to garner funds for the economic development program?

No. If revenue from the existing sales tax or current property tax levy is sufficient to fund the program, no additional funding need be sought and should be so stated in the plan.

If, however, a prior authorization to collect a local option sales tax specified different uses for the proceeds, such as property tax relief, debt service, capital improvements, etc., a new sales tax authorization vote may be necessary. Consult your city or village attorney.

Length of Time the Program Will Exist

The plan must include a statement specifying the length of time the program will exist. (Section 18-2710).

The Act does not limit the length of time a program can exist. Consequently, a municipality will probably not want to create a short program due to the amount of work involved in its start-up and to avoid going through another election within a year or two. Of course if a proposed program is too long, it may be more difficult to encourage citizens to vote for its approval. Therefore, careful consideration is urged in determining the proper length of a program.

Some consideration should be given to when increased taxes will actually be received by the city. For example, if a local option sales tax is approved during a November election, the earliest the sales tax can be collected is the following April. And April's collection won't be received by the city until June. For this reason a community may want to set two time periods in the plan--one for tax collection and one for the program's existence. The actual program would probably start before tax collections begin and end after last month's (or year's) taxes are to be received.

Program's Basic Preliminary Budget

The plan must include a statement specifying a basic preliminary program budget (Section 18-2710).

Requiring municipalities to include preliminary budgets encourages them to take a long, hard look at precisely what the proposed programs require in the way of municipal resources. How many new people may need to be hired? What qualifications will they need and what kind of salaries will we need to pay to attract them? These and other questions need answers before the municipality gets involved in a program.

Cost of administering the program is important to its viability and whether or not voters will approve it. This requirement gives the governing body and interested citizens the opportunity to do some practical planning and to establish solid, short-term goals.

Budget line items of an economic development program might include: salaries and fringe benefits; audit fees; travel; prospect entertainment; insurance; printing; advertising; office equipment; loan funds; land purchases; grants; and administrative items such as telephone, postage, photocopying, etc.

The budget also will include income amounts and sources, such as sales and property tax revenues, and program income (repayment of loans, interest income, and additional funds from other non-municipal sources including grants, utilities, economic development corporations, foundations, etc.).

Application Process for Financial Assistance to Businesses

The plan must include a detailed description of the required application process a qualifying business follows to apply for financial assistance. It must include the type of information required from the business and the process used to verify the information (Section 18-2710).

This section of the plan will be required only if the economic development program includes direct financial assistance to qualified businesses. Such assistance could include loans, grants, loan guarantees, tax incentives, or equity investments. If the program involves creation of a loan program, additional program description is required per the Act. While the application process can be tailored to fit your program, it should be able to answer general questions asked by businesses seeking funds from the municipality, including:

- What is the process I need to go through to get funding?
- Who can answer my questions?
- When and where do I submit my application?
- Who reviews the applications?
- Who makes the final decision of who receives assistance?
- Is the process competitive?
- Is there a deadline for applications?
- What kinds of businesses are eligible?
- What types of funding are there, and for what purposes?

Any process established for an economic development program application should answer these and other basic questions. The application process may vary according to the assistance that is provided by the program. For example, a loan application process will require different information than a business applying for employee training. Therefore, the program's application process needs to be in synch with the assistance that the municipality intends to provide.

The Information Required From the Business

To decide what kind of information you will need, you should focus again on the kind of program that is undertaken and the types of businesses to be assisted. It would be prudent to have enough information that confirms the business is responsible and can follow through with promises they make. It may be advisable to set up a mechanism to ascertain that any representations about a business's financial condition and prospectus are accurate.

Basic suggestions for what should be in the applications include:

1. A business description verifying that the business satisfies program goals and intentions.
2. A business plan for the project.
3. Income statements covering the last three years and pro forma for the next three.
4. Financing requirements and commitments from financial institutions, investors, etc., relating to the project/purpose being funded.
5. A list of key management, employees and their skills and experience related to the project.
6. Verification.

Once a business has provided required application information, it is advised to have a verification process in place to check for accuracy. A verification process may involve any number of activities from calling business references to criminal record checks. Determine what verification activities are necessary for your program and include a description of the proposed process in the plan.

Process to Insure Business Information Confidentiality

The plan must describe steps taken to insure the privacy and the confidentiality of business information. This section is required only if the economic development program includes direct financial assistance to qualified businesses. (Section 18-2710)

During the information gathering process a municipality may receive confidential information, which if released, could harm a business, or give an unfair advantage to its competitors. State law authorizes municipalities and other public entities to maintain the confidentiality of business records that come into their possession.

To protect businesses applying for funds, and encourage them to fully and frankly disclose relevant information on their application forms, the Act provides that municipalities should specify steps it will take to ensure full confidentiality. The process may include:

1. Adoption of an ordinance that requires information confidentiality and penalizes disclosure.
2. A restricted number of people allowed file access, and only one person primarily responsible for safe-keeping of the files.
3. Personnel involved in the program to review and sign confidentiality statements regarding all personal and private submittals by qualified businesses.

Administration System of Program/Personnel Structure

The plan must describe the administrative system that's established to administer the economic development program, including the personnel structure, duties and responsibilities of everyone involved (Section 18-2710).

Two staff positions and their responsibilities as specified in the Act are described below. Additional responsibilities, as well as other positions and responsibilities may need to be identified to carry out the program depending on its nature and extent. The administrative system needs to be tailored to the specific program needs and concerns of the municipality.

Program Administrator:

1. Track participating businesses' employment figures for two years if said businesses employ persons in other Nebraska communities (Section 18-2709).
2. Administer the economic development program (Section 18-2715).
3. Serve as an ex-officio member of the Citizen Advisory Review Committee (Section 18-2715).
4. Provide the Citizen Advisory Review Committee with necessary information and advise the Committee on the economic development program (Section 18-2715).

Loan Fund Program Administrator (If loan program exists):

1. Provide to the governing body an account of the status of:
 - a. Each outstanding loan.
 - b. Program income.
 - c. Monthly updates of current investments of unexpended funds (Section 18-2720).
2. Keep records on accounts and compile reports that include:
 - a. Name of borrower.
 - b. Purpose, date, amount, and basic terms of loan.
3. Payments made to date and current balance due (Section 18-2720).
4. Regularly monitor each loan's status and, with cooperation from the governing body and primary lender(s), take appropriate action on any delinquent loans (Section 18-2720).

Process to Assure Laws and Regulations are met by the Municipality and Participating Businesses

Describe how the municipality will assure that all applicable laws, regulations, and requirements are met by the municipality and that qualifying businesses will receive appropriate assistance (Section 18-2710).

The economic development program should be regularly reviewed to ensure that this responsibility is met, and a description should be included in the program of who will be handling such a review.

Municipal officials administering the economic development program are probably the most qualified to know when qualifying businesses or the municipality itself is violating state and federal laws and regulations. Because the program administrator regularly accesses confidential records and information and monitors activities he or she may be best suited to ensure that appropriate laws and regulations are followed.

It is wise to involve the city or village attorney in the review of relevant documents to assure that laws and regulations are upheld. The city or village attorney also should keep the municipality informed of any relevant legal changes affecting the program.

Beyond periodic review of the program, a system for monitoring participating businesses' activities may be included. Again, the nature of the program being undertaken will be determined by the process that is adopted.

Purchase or Option to Purchase Land

If the proposed economic development program involves the purchase or option to purchase land, the plan also shall specify how tracts of land will be identified for purchase or option to purchase. The plan also should address whether the municipality proposes to use proceeds from future sales of such land for additional land purchases (Section 18-2711).

If land is to be purchased or optioned by the community for a general purpose industrial site or industrial park, it is advisable for the property to:

1. Measure at least five acres.
2. Be properly zoned with no excessive easements, covenants, or other encumbrances, and conform to the city's or county's comprehensive plan.
3. Feature good topography (level to gently sloping), be well-drained, and carry no flood plain designation.
4. Have access to city or rural water mains of 6" to 8" looped. On-site private wells can be used as well.
5. Have ready access to electricity and telecommunications infrastructure. While access to natural gas is not absolutely necessary, it is highly desirable.
6. Have good highway access. Railroad access is highly sought and often required.

If infrastructure is not already in place at the site, there should be an existing site plan that includes the extension of these utilities and ingresses and egresses from the proposed site. Protective covenants and easements need to be factored into the planning process. A professional engineer should be engaged to assist with the site plat plan. Future development costs must be known and included to ensure proper pricing of the land.

Communities seeking advice about the most feasible industrial site or industrial park properties should contact the Nebraska Department of Economic Development's Business Development Division. The Division's Field Staff coordinate the "Nebraska Site Evaluation Team" program. Economic development allies serving the region will collectively assist in determining which sites are the most feasible for industrial purposes.

Loan Program

Items 9 through 14 in Step 2 above are required in the Economic Development Plan **only if tax revenues are to be used in a business loan program.**

Types of Assistance Available and Maximum Portion

If the proposed economic development program involves creation of a loan fund, the plan also should specify the types of available financial assistance. It should state the maximum amount of financial assistance provided to any single qualifying business as well as the criteria used to determine the appropriate levels of assistance (Section 18-2711).

Participation Criteria for Qualifying Businesses

If the proposed economic development program involves creation of a loan fund, the plan also needs to specify criteria and procedures to be used to determine the necessity and appropriateness of permitting a qualifying business to participate in the loan fund program (Section 18-2711).

What are the requirements of a business applying to participate in a loan fund program?

At the time a qualifying business applies to a municipality to participate in a loan fund program, it needs to provide appropriate documentation verifying its negotiations with one or more primary lender(s) and the terms upon which it has received, or will receive, the portion of total financing for activities not provided by the municipality (Section 18-2719).

Time Allowed for Participating Businesses to Meet Goals

If the proposed economic development program involves creation of a loan fund, the plan also shall specify criteria for determining the timeframe within which a qualifying business must meet the goals set forth under its participation agreement (Section 18-2711).

What is the governing body's role in the repayment of loans to the loan program?

1. The governing body shall establish standards for:
 - a. When a loan shall be declared to be in default, and
 - b. What actions shall be taken to deal with the default and protect the interests of the qualifying business, third parties, and the municipality.
2. The governing body shall establish a process for consultation, agreement, and joint action between the municipality and the primary lender(s) when pursuing appropriate remedies following default of a qualifying business to collect amounts owed under the conditions of the loan (Section 18-2720).

Personnel Requirements

If the proposed economic development program involves creation of a loan fund, the plan also shall specify what personnel or other assistance beyond regular municipal employees will be needed to administer the loan fund program and the method for payment or reimbursement (Section 18-2711).

If the economic development program involves creation of a loan fund, who is responsible for loan servicing?

If the economic development program involves the creation of a loan fund the governing body shall designate a individual to assume primary responsibility for loan servicing and other assistance, lest the determination is made that additional personnel is required. The individual may be an employee of the municipality, or the municipality may contract with an appropriate business or financial institution for loan servicing functions (Section 18-2720).

What are the responsibilities of the person who services the loan fund?

1. The person responsible for overseeing the loan fund should provide accounts to the governing body about:
 - a. Each outstanding loan.
 - b. Program income.
 - c. Monthly updates of current investments of unexpended funds.
2. Records and reports made to the governing body of the municipality shall include, but not be limited to:

- a. The name of the borrower.
 - b. The purpose, date, amount and basic terms of the loan (including interest rate, maturity date and payment frequency).
 - c. Payments made to date and current balance due.
3. The individual responsible for loan servicing shall monitor the status of each loan and, with the cooperation of the municipality and the primary lender(s), take appropriate action when a loan becomes delinquent (Section 18-2720).

Investment Strategies

If the proposed economic development program involves creation of a loan fund, the plan also shall specify the investment strategies that the municipality will pursue to promote the growth, security and liquidity of the loan fund (Section 18-2711).

Methods of Auditing and Verification

If the proposed economic development program involves creation of a loan fund, the plan also shall specify methods of auditing and verification to be used by the municipality to insure appropriately awarded assistance, as well as protection against fraud or deceit in the conduct or administration of the program (Section 18-2711).

STEP 3: Prepare and Pass a Resolution that Adopts the Plan and Provides the Wording on the Ballot.

The Resolution and Plan are filed with the City or Village Clerk for Public Review. It is suggested (although not required) that a public hearing be held before the resolution is passed to allow for public input and plan changes to be made before a final vote is taken.

The Economic Development Plan has been completed. What is the next step?

After the plan is completed, the governing body must adopt it by resolution and file the resolution and proposed economic development plan with the city or village clerk who will make it available for public review at the city hall or village office during regular business hours (Section 18-2712).

The proposed economic development plan can either be included or referenced in the resolution. Either way, the plan needs to be available for public review.

However, a community may want to consider adding a step before the resolution. Although not a requirement of the Act, it may be in the interest of the economic development program to hold a public hearing before approving the plan by resolution to allow revisions should valid concerns arise out of the hearing process.

What must the required resolution include?

The resolution (Section 18-2710, 2712, 2713) must include:

1. A reference to the proposed economic development plan. The entire plan can be included in the resolution. If, however, the plan is long, it may be more appropriate for the resolution to refer to the plan since a requirement, outside of the Act requires municipalities to publish resolutions.
2. A formal adoption of the proposed plan.
3. A statement proposing the economic development program.

4. Wording for the question on the ballot.

What must be included in the ballot question?

The question on the ballot briefly sets out the terms, conditions, and goals of the proposed economic development program as outlined in the plan (Section 18-2713) to include:

1. The program's timeline.
2. The number of year(s) the funds are to be collected.
3. The source(s) from which the funds are to be collected.
4. The total amount to be collected for the program.
5. Whether additional, non-municipal funding sources will be sought beyond local sources of revenue.

If the funds are to be derived from local property tax, the ballot question also shall include:

1. The present annual cost of the economic development program per \$10,000 of assessed valuation based on the most recent valuation of the municipality.

The ballot question shall state: "Shall the city (village) of _____ establish an economic development program as described here by appropriating \$ _____ annually for _____ years?"

Special Note: The Act specifies that if the proposed program either involves the purchase or option to purchase land, or a loan program the resolution also must specify information concerning these two items. These have been covered in Step 2 because it was the intent of the bill's authors to include this information. Please check with your city or village attorney for their interpretation.

Can the ballot questions for the economic development program and the local option sales tax be combined?

No. If the funding source for the proposed economic development program is a local option sales tax, two separate resolutions and ballot questions will be required. The resolution and ballot question for the economic development program are covered by LB 840 and addressed above. The Local Option Revenue Act, 77-27,142 and 77-27,142.02 covers the requirements for a local option sales tax resolution and ballot question. Both ballot questions should be carefully and clearly worded so that voters understand only one tax increase is being proposed. (The Local Option Revenue Act, 77-27,142 and 77-27,142.02 is included in the Appendix.)

STEP 4: File a Certified Copy of the Resolution with the Election Commissioner or County Clerk.

How does the question get placed on the ballot?

The city's or village's governing body submits the question by filing a certified copy of the resolution proposing the economic development program (and specifying the wording for the ballot question) with the election commissioner or county clerk no later than:

- Forty-one (41) days prior to a special election, OR
- Fifty (50) days prior to a primary or general election.

Refer to Section 18-2713.

The LB 840 Guide authors caution readers about relying on the 41-day window for filing prior to a special election (specified in Section 18-2713) due to a conflicting provision in Section 32-559 (that more generally governs special elections by political subdivisions, such as cities or villages). Section 32-559 requires that for an issue to be submitted to voters as part of a special election, it must be certified by the election commissioner or county clerk at least fifty (50) days prior to that election. The apparent conflict in the statutes:

- a 41-day window for special election submission in Section 18-2713, versus
- a 50-day window for special election submission in Section 32-559

is probably best handled (to avoid any future objections about timing) by taking the conservative approach and making sure the filing with the election commissioner or county clerk is done at least 50 days prior to any election—primary, general or special.

STEP 5: Schedule a Public Hearing to Present the Resolution for Public Comment and Discussion.

What guidelines does the Local Option Municipal Economic Development Act spell out for public hearings?

The governing body of the municipality shall schedule a public hearing at which time the resolution shall be presented for public comment and discussion. The public hearing shall be held no later than 15 days prior to the date of the election (Section 18-2712).

In addition to holding a required public hearing for presenting the resolution, it is recommended to hold an additional public hearing (described in Step 3) to allow for revisions to the proposed economic development program and ballot question before passing the resolution (particularly if valid concerns arise during the hearing).

Because of the timing of the required public hearing described here in Step 5, the actual benefit of this hearing may be to inform the voters rather than to provide a method of changing the plan since the ballot question will probably have already been filed.

STEP 6: Hold Election.

Who ultimately decides whether an economic development program is adopted for a municipality?

Voters within the municipality. Before adopting an economic development program a municipality shall submit the question of its adoption to the registered voters at an election, either primary, general, or special (Section 18-2713).

What determines the results of the election?

If a majority votes in favor of the question, the governing body may implement the proposed economic development program upon the terms set out in the resolution.

If a majority votes against the question, the governing body shall not implement the economic development program (Section 18-2713).

Are there any limits on how many times a community can bring an Economic Development Program to an election?

No. However, if the Economic Development Program is to be funded through a Local Option Sales Tax, state statute (Section 77-27.142.03) limits how often a sales tax issue can be submitted to the voters.

According to Section 77-27.142.03, "The question of imposing a sales and use tax shall not be submitted to the electors of an incorporated municipality more often than once every 23 months."

STEP 7: Establish the Economic Development Program by Ordinance.

What are the requirements for establishing the economic development program by ordinance after the election?

After the ordinance establishing the economic development program is adopted, it shall only be amended:

1. To conform to the provisions of any existing or future state or federal law; or
2. When necessary to accomplish the purpose of the original enabling resolution.

An amendment requires notice, at least one public hearing, and a two-thirds vote of members of the governing body of the municipality.

The municipality shall not amend the economic development program so as to fundamentally alter its basic structure or goals, either with regard to eligible businesses, use of funds, or basic terms set out in the original enabling resolution, without submitting the proposed changes for a new vote of registered voters in the appropriate manner (Section 18-2714).

Because fundamental changes cannot be made without another election process, care should be taken to include businesses and activities that you may want to fund through the economic development program in the original proposed plan.

STEP 8: Appoint a Citizen Advisory Review Committee.

Who should make up the Citizen Advisory Review Committee?

The Citizen Advisory Review Committee shall consist of five to ten resident taxpayers of the municipality who shall be appointed to the committee by the mayor (or chairman) subject to approval by the governing body of the municipality. (Section 18-2715)

Committee member criterion includes:

1. At least one committee member shall have expertise or experience in the business finance or accounting field.
2. All committee members shall be resident taxpayers of the municipality.

No member of the Citizen Advisory Review Committee shall be:

1. An elected or appointed municipal official.
2. An employee of the municipality.
3. An official or employee of any qualifying business receiving financial assistance under the economic development program.
4. An official or employee of any financial institution participating directly in the economic development program.

What is the responsibility of the Citizen Advisory Review Committee?

The Citizen Advisory Review Committee (Section 18-2715) shall:

1. Review the economic development program's function and progress at regular meetings, as set forth in the ordinance, and advise the governing body of the municipality with regard to the program.
2. Report to the governing body on its findings and suggestions at a public hearing called for that purpose, at least once in every six-month period after the effective date of the ordinance.

Is there any provision for official municipal government representation on the Citizen Advisory Review Committee?

Yes. In the ordinance, the governing body shall designate one municipal official or employee (designated by title instead of name) to administer the economic development program and serve as an ex officio Committee member. The designated individual also will be responsible for providing the committee with necessary information and advice on the economic development program (Section 18-2715).

Are there any safeguards that protect the confidentiality of business information provided by participating businesses?

The Citizen Advisory Review Committee, in their capacity as and consistent with their responsibilities as members, may access business information received by the municipality in the course of its administering the economic development program...information that would otherwise be confidential. Any municipal ordinance that provides access to such records to members of the committee, and guarantees the confidentiality of business information received by reason of its administration of the economic development program, also may stipulate that unauthorized disclosure of any business information confidential under Section 84-712.05 shall be a Class III misdemeanor (Section 18-2715).

STEP 9: Annual Budget

The municipality's existing annual budget must be amended to include the amount to be expended on the economic development program, or the next annual budget must include this amount.

How is the amount to be expended on the economic development program determined? Does it change from year to year?

Although the amount to be collected is specified in the original plan, the amount to be expended for the ensuing year is fixed after the election.

Following adoption of the ordinance establishing the economic development program, the amount expended on the program for the ensuing year shall be fixed at the time of formulating the annual budget, which is required by law and shall be included in the municipality's budget (Section 18-2716).

This means that a municipality cannot spend any collected funds until the expenditures have been included in the budget and approved and appropriated as required by law. Normally this does not occur before August 1 when the fiscal year starts for the municipality. However, if a municipality already has collected money and wants to spend it before the fiscal year, they can amend the local budget through the appropriate statutory process.

Can the municipality re-appropriate unexpended money that was appropriated in a previous year?

Yes. However the municipality cannot appropriate more than the limits described in Section 18-2717 in any one year.

For instance, assume that the limit for Huskerville is \$40,000 per year (0.4 percent of the actual valuation). If in year one \$40,000 was appropriated and only \$30,000 was expended, the unexpended \$10,000 could be re-appropriated the next year. However, the limit that can be appropriated in year two would remain at \$40,000 (or 0.4 percent of the actual valuation in that year), and not increased to \$50,000 to make up for the savings that took place in year one.

Other than the appropriation limitations set out in Section 18-2717, are there requirements about how fast a community should expend the money collected for the economic development program?

No. However, if after five full budget years following initiation of the approved economic development program, less than 50 percent of the money collected is spent or committed by contract, the governing body of the municipality shall place the question of continuing the economic development program on the ballot of the next regular election. (Section 18-2718)

STEP 10: Establish the Economic Development Fund.

What should be deposited into the "Economic Development Fund?"

Any municipality conducting an economic development program shall establish a separate economic development fund. Funds that shall be deposited into this fund (Section 18-2718) are:

1. Those derived from local sources of revenue for the economic development program.
2. Earnings from the investment of such funds.
3. Loan payments.
4. Proceeds from the sale of assets purchased by the municipality under its economic development program.
5. Any other money received by the municipality by reason of the economic development program.

Can funds collected for the economic development program be deposited into the general fund?

Except in the case of the termination of the economic development program, no money in the economic development fund shall be deposited or transferred to the general fund of the municipality, nor shall it be commingled with any other municipal funds (Section 18-2718).

Can funds collected for the economic development program be invested?

Any money in the economic development fund not currently required or committed for the purposes of the economic development program shall be invested as provided for in state statute (Section 18-2718, 77-2341).

STEP 11: Carry Out the Required Tasks Once the Program is Implemented.

What are the ongoing responsibilities of the Citizen Advisory Review Committee?

The Citizen Advisory Review Committee (Section 18-2715) shall:

1. Review the functioning and progress of the economic development program at regular meetings, as set forth in the ordinance, and advise the governing body of the municipality with regard to the

program.

2. Report to the governing body on its findings and suggestions at a public hearing called for that purpose, at least once during every six-month period after the effective date of the ordinance.

What safeguards are provided concerning the integrity of the program and the proper use of funds?

The municipality shall provide for an annual, outside, independent audit of its economic development program by a qualified private auditing business. The auditing business shall not, at the time of the audit or for any period during the term subject to the audit, have any contractual or business relation with any:

1. Qualifying business receiving funds or assistance under the economic development program.
2. Financial institution directly involved with a qualifying business receiving funds or assistance under the economic development program.

The results of the audit shall be filed with the city or village clerk and made available for public review during normal business hours. (Section 18-2721)

STEP 12: Methods to End the Program Including Termination Activities.

How do the municipality's citizens repeal the economic development program?

Registered voters of any municipality that has established an economic development program have the right to vote, at any time after one year following the original vote, on continuation of the economic development program. The question shall be submitted to the voters whenever petitions calling for its submission, signed by registered voters of the municipality in number equal to at least 20 percent of people voting in the municipality at the last preceding general election, are presented to the municipality (Section 18-2722).

What process should be followed if petitions are received?

Upon receipt of the adequate number of valid petitions, the governing body shall:

1. Submit the question at a special election to be held 30 to 45 days after receipt of the petitions. (If another election is to be held within 90 days of the receipt of the petitions, the election may be held on the same date.
2. Give notice of the submission of the question 10 to 20 days prior to the election via publication in one or more city-circulated newspaper(s). This notice is additional to any notices required by the election laws of the state (Section 18-2722).

What steps can a municipality take to avoid putting the question to a vote after the proper number of petitions are received?

If the municipality acts within 15 days of receiving petitions for an election, and two-thirds of the members of the governing body of the municipality vote to repeal the ordinance establishing the economic development program, the economic development program shall end and the election shall not be held (Section 18-2722).

How should the question on the ballot appear in case a valid petition calls for the question's submission?

The question on the ballot shall generally set out the basic terms and provisions of the economic development program as required for the initial submission, except the question shall be:

"Shall the city (village) of _____ continue its economic development program?" (Section 18-2722).

What determines the results of the election?

A majority of registered voters voting on the question at the election shall determine its outcome. The final vote shall be binding. If a majority of voters choose to discontinue the program, the municipality shall act within 60 days of the certification of the vote to repeal the ordinance that established the economic development program (Section 18-2722).

What method is available for the governing body of the municipality to repeal the economic development program?

The governing body of a municipality may, after publishing notice of its intent to consider the repeal and holding a public hearing, repeal the ordinance by a two-thirds vote of the members of the governing body. This would end the economic development program, which is subject only to the provisions of any existing contracts relating to the program and rights of any third parties arising from those contracts. (Section 18-2714)

Termination Activities:

What steps must be taken before terminating the economic development fund?

The economic development fund shall not be terminated until all projects and contracts related to the program have been finally completed and all related funds fully accounted for, with no further municipal action required, and after completion of a final audit.

When the economic development program is terminated, the governing body of the municipality shall certify, by resolution, the amount of money to be transferred from the economic development fund to the general fund of the municipality and the amount that is anticipated will be received by the municipality between such time and the final audit of the economic development fund (Section 18-2718).

What happens to the balance of the money in the economic development fund after the program is terminated?

The balance of the money in the economic development fund not otherwise committed by contract under the program shall be deposited in the general fund of the municipality. (Section 18-2718)

What happens to funds received because of the economic development fund after the termination of the program?

Any funds received by the municipality for the economic development program after its termination shall be transferred to the general fund of the municipality as such funds are received (Section 18-2718).

Upon termination of the economic development program, how fast must a municipality spend funds transferred to the general fund?

The sum of the amount transferred from the economic development fund to the general fund plus the amount anticipated to be received should be divided by the number of years the economic development program funds were collected. This total shall be the amount applied against the budgeted expenditures of the municipality during each succeeding year until all funds from the economic development program have been expended. Example: A municipality expects to transfer a total of \$100,000 for a program that lasted five years, so \$20,000 (\$100,000 divided by 5), should be applied against expenditures each year for the next five years (Section 18-2718).

Upon the program's termination, how will the expenditure of money now in the general fund affect property taxes?

The yearly installments to be applied against expenditures shall go toward reducing the property tax levy of the municipality by that amount in each year in which they are expended. So in the example cited directly above, a \$20,000 property tax reduction per year for five years would be required (Section 18-2718).

APPENDIX

Local Option Municipal Development Act

18-2701

Act, how cited.

Sections 18-2701 to 18-2738 shall be known and may be cited as the Local Option Municipal Economic Development Act.

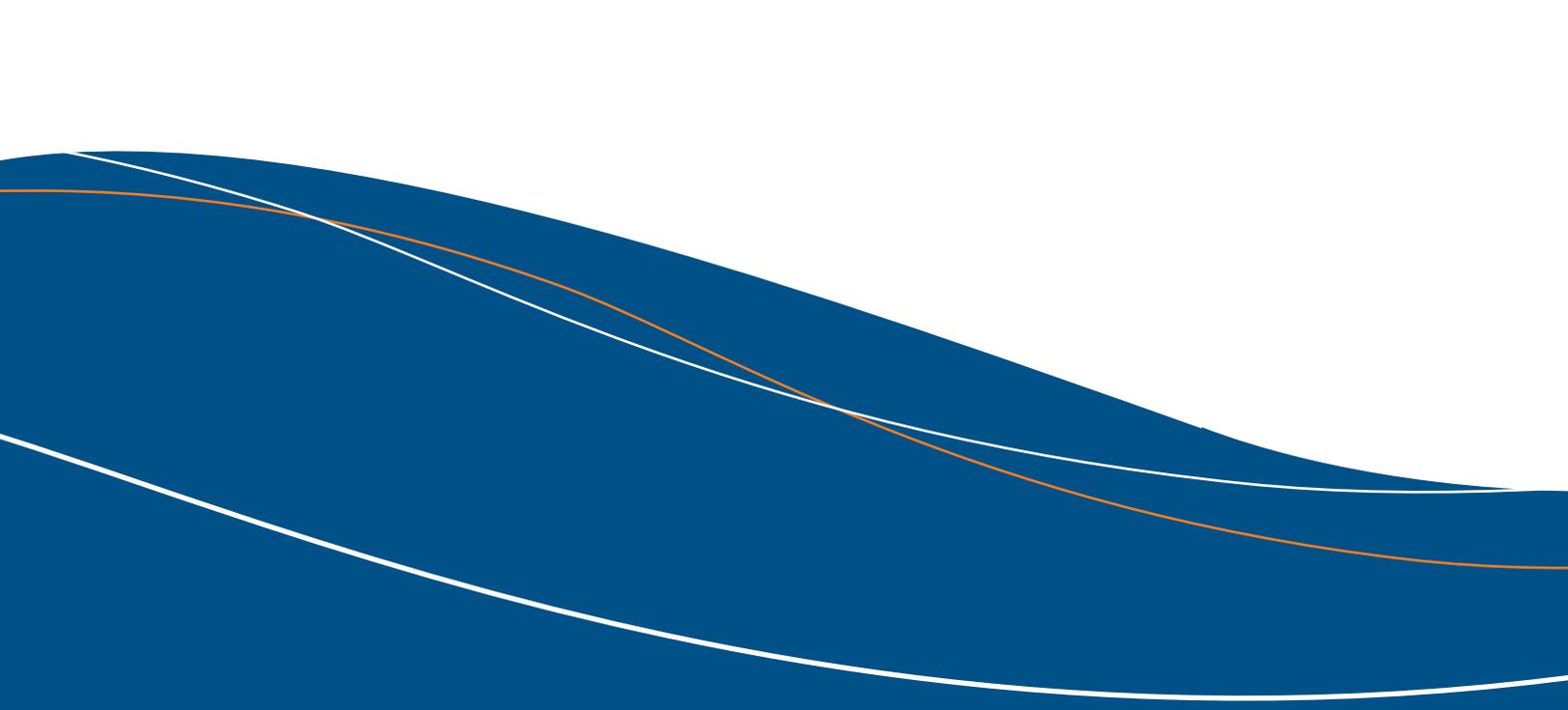
Source: Laws 1991, LB 840, § 1; Laws 1993, LB 732, § 16; Laws 1995, LB 207, § 1; Laws 2001, LB 827, § 9.

http://nebraskalegislature.gov/laws/display_html.php?begin_section=18-2701&end_section=18-2739

Nebraska Constitution that authorizes LB 840 is Chapter XIII, Article 2

The constitutional authority for LB 840 is in the second paragraph of Chapter XIII, Article 2

<http://nebraskalegislature.gov/laws/articles.php?article=XIII-2&print=true>



LB 840 **A GUIDE TO PROGRAM** **IMPLEMENTATION**

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