

**GUIDE TO IMPLEMENTING THE
LOCAL OPTION MUNICIPAL ECONOMIC
DEVELOPMENT ACT
1991 State Statute, Article 27
Section 18,2701-18,2723**

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INTRODUCTION

Purpose

The Local Option Municipal Economic Development Act (LB 840, 1991) 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 that placed an amendment to the Constitution of the State of Nebraska on a statewide ballot. The 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.

At the November 1990 general election, the voters of Nebraska, by a majority of more than 100,000 votes, approved Amendment 3 (LB 11 CA) and amended 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 on a local level.

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

Keys to Success

Despite the apparent complexity of the Act, it is based on a very simple premise that the voters of a municipality should have the right to spend their own tax dollars in the manner they find best suits their own local needs. Within certain broad limits, local municipalities are given a great deal of latitude in defining local economic development needs and in spending their own tax dollars in meeting those needs.

The core of the LB 840 process involves the formulation of the local economic development program plan that is 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, its provisions become the basis through which the municipality's economic development program operates.

Careful, thoughtful development of the plan is of paramount importance to the success of the economic development program. Understandably, voters are more likely to approve the expenditure of their tax dollars if they believe the plan is well thought out and workable. Once voters approve the plan, it defines the limits of the economic development program. Remember, the limits can only be changed through another election process.

The Local Option Municipal Economic Act is a local economic development tool--there's no state oversight or enforcement mechanism. However, care should be taken not to violate any provisions in the Act. Local citizens 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 assist communities in understanding the Local Option Municipal Economic Development Act, commonly known as LB 840, the typeface in the guide varies. *The wording that is italicized comes directly or is paraphrased from the Act.* Additional guidance or suggestions will appear as regular print.

It is advisable when implementing the Local Option Municipal Economic Development Act to refer directly to the Act.

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 their actual valuation) for the purpose of carrying on 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 that authorized the purchase or option of land was unconstitutional. Because of this ruling, LB 840 deletes from Section 13-315 the language related to the purchase and option of land.

It also should be noted that a special provision was placed into LB 840 (Section 3) that specifies 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 who 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 incorporated city or villages acting together under the terms of the Inter-Local Cooperation Act or by the Joint Public Agency Act by means of a properly executed agreement. Counties are not eligible. (See LB 840, Revised Statutes of Nebraska, Chapter 18-2704)

Are there any special requirements for communities 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 Interlocal Cooperation Act or Joint Public Agency Act (See LB 840, Revised Statutes of Nebraska, Chapter 18-2704).

Steps to Implement Local Option Municipal Economic Development Act

1. Prepare a general community and economic development strategy.
2. Prepare a proposed plan for the economic development program.
3. Prepare and pass a resolution that adopts the plan and provides for the wording on 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 at 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 not later than **15 days** prior to the date of the election.
6. Hold Election.
7. If the program is approved by the voters, establish the economic development program by ordinance within **45 days** after voter approval.
8. Appoint a Citizen Advisory Review Committee.
9. Amend the existing municipal annual budget to include, or include in the next annual budget, the amount to be expended on the economic development program.
10. Establish an Economic Development Fund.
11. Carry out the required tasks once the program is implemented.
12. When ready to end the program, follow termination activities. (This step also includes the methods to end the program.)

STEP ONE.

Prepare a general community and economic strategy for the community.

The Act requires that a description of the community's general community and economic development strategy be included in the plan but does not provide any guidance for a process to use in the development of that strategy.

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

A community and economic development strategy is a description of how the community will address its future. The strategy is based on efforts to understand what economic activity changes are taking place in the community and why. It implies an understanding of how wealth is created within the community, where local residents and businesses spend dollars, and how creating wealth might change in the future.

A strategy is based on strengths that provide opportunities for growth and weaknesses that are causing or will cause decline. The most important issues should be highlighted in the strategy, and if addressed, the strengths can foster opportunities and the weaknesses can be overcome. Goals are identified for each of these important issues.

Assistance is available to communities that are preparing community economic development strategies and plans for an LB840 initiative. For more information please contact:

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STEP TWO.

Preparing an economic development plan is a required step in implementing the Local Option Municipal Economic Development Act.

The plan must include a description of the community's general community and economic development strategy. (See LB 840, Revised Statutes of Nebraska, Chapter 18- 2710)

This description should be a statement covering the highlights of the strategy, the rationale, and methodology used to meet the objectives of the goals.

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. (See LB 840, Revised Statutes of Nebraska, Chapter 18, 2710)

The statement of purpose expresses the general direction of the proposed program and prioritizes the goals that will be emphasized. The goals for the program do not need to include all goals identified in the strategy. Selecting goals for the program may depend upon resources available in relation to actions and the time required to succeed in meeting those goals. While the general intent and goals can be very broad, identifying more specific goals or objectives may assist in gaining approval for the plan. Samples of objectives could be:

- a.) To increase employment opportunities in the area;
- b.) To increase opportunities for health care services; and
- c.) to increase tourism opportunities in the area.

The plan must include:

1.) A description of the community's general community and economic development strategy;

2.) A statement of purpose describing the municipality's general intent and proposed goals for the economic development program;

3 a.) A description of the activities that will be eligible under the program;

b.) A description of the types of businesses that will be eligible under the program;

4 a.) *A statement specifying the total amount of money that is proposed to be collected from local sources of revenue to finance the program;*

b.) *A statement specifying the length of time the program will be in existence;*

c.) *A basic preliminary budget for the program;*

5.) *If the plan includes financial assistance to businesses the plan must include:*

a.) *A description of the required application process a qualifying business follows to apply for financial assistance, including the type of information that will be required from the business and the process that will be used to verify the information;*

b.) *A description of the steps the municipality will take to insure privacy and the confidentiality of business information provided;*

6.) *A description of the administrative system that will be established to administer the economic development program, including a description of the personnel structure involved and the duties and responsibilities of those persons involved; and*

7.) *A description of how the municipality will assure that all applicable laws, regulations, and requirements are met by the municipality and the qualifying businesses which receive assistance.*

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

8.) *The manner in which tracts of land will be identified for purchase or option to purchase and whether the municipality proposes to use the proceeds from the future sale of such land for additional land purchases.*

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

9.) a) *The types of loans that will be available, stating the maximum proportion that will be provided to any single qualifying business and specifying the criteria that will be provided to any single qualifying business and specifying the criteria that will be used to determine the appropriate level of assistance;*

b) *The criteria and procedures that will be used to determine the necessity and appropriateness of permitting a qualifying business to participate in the loan fund program;*

c) *The criteria for determining the time within which a qualifying business must meet the goals set for it under its participation agreement;*

d) What personnel or other assistance beyond regular municipal employees will be needed in the administration of the loan fund program and the manner in which they will be paid or reimbursed;

e) The investment strategies that the municipality will pursue to promote growth of the loan fund while assuring its security and liquidity; and

f) The methods of auditing and verification that will be used by the municipality to insure that the assistance given is used appropriately and that the municipality is protected against fraud or deceit in the conduct or administration of the economic development program.

Types of Activities That Will Be Eligible

The plan must include a description of the types of economic activities that will be eligible under the program (See LB 840, Revised Statutes of Nebraska, Chapter 18-2710).

This section of the plan should contain a description of the types of activities that will be eligible for funding by local tax revenues under the program. However, all eligible activities listed do not necessarily need to be undertaken. The community and economic development strategy should provide guidance for activities not included in the plan that will not be eligible for funding during the life of the plan unless it is 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, the following (See LB 840, Revised Statutes of Nebraska, Chapter 18-2705):

- 1.) Payments for salaries and support of municipal staff, or contracting with an outside entity to implement the economic development program;
- 2.) Grants or loans for job training;
- 3.) Grants for public works improvements essential to the location or expansion of a qualifying business;
- 4.) Direct loans or grants to qualifying businesses for fixed assets or working capital, or both;
- 5.) Loan guarantees for qualifying business;

- 6.) The purchase of real estate, options for such purposes, and the renewal or extension of such options;
- 7.) The provision of technical assistance to businesses, such as marketing assistance, management counseling, preparing financial packages, engineering assistance, etc.;
- 8.) Expenses for the conduct of industrial recruitment activities;
- 9.) Grants and loans for construction or rehabilitation for sale or lease of housing for persons of low or moderate income;
- 10.) Issuance of bonds as provided for in the Act.

Special emphasis is placed on the fact 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 program, and it is not otherwise inconsistent with the Act or other state laws, it can be included within the proposed plan.

Types of Businesses That Will be Eligible

The plan must include a description of the types of businesses that will be eligible under the program (See LB 840, Revised Statutes of Nebraska, Chapter 18-2709).

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

In cities with a population of more 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 above;*

8.) *The construction or rehabilitation of affordable housing; and*

9.) *Retail trade, for cities whose population is between 2,500 and 10,000.*

In municipalities with a population of 2,500 inhabitants or less, a qualifying business is any corporation, partnership or sole proprietorship regardless of its principal source of income (See LB 840, Revised Statutes of Nebraska, 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 any eligible business classification not initially included in the plan will not be eligible for funding throughout the life of the plan unless it's changed through another election process.

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

Yes. 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 participation, it shall qualify for assistance only if it maintains employment in each community for the first two years of its participation in the economic development program at a level not less than its average employment in each community over the twelve-month period preceding participation (See LB 840, Revised Statutes of Nebraska, 18-2709).

Example: Widget Corporation has a manufacturing facility in Huskerville, Nebraska, where it has employed an average of 20 employees over 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 wanted to make it clear that it was the policy of the state to create new jobs in Nebraska through the Act and to increase total statewide employment opportunities, not just to redistribute the same jobs between the 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 (See LB 840, Revised Statutes of Nebraska, 18-2710).

Are there limits on how much money can be appropriated by a municipality for the economic development program?

Yes. No municipality shall appropriate more than the least amount calculated under the following alternatives (See LB 840, Revised Statutes of Nebraska, 18-2717):

- 1.) An amount in excess of the amount approved by the voters at the election, or*
- 2.) An amount in excess of 4 percent of the actual valuation of the municipality in the year in which the funds are collected, or*
- 3.) More than \$3,000,000 in any one year (for cities of the metropolitan or primary class), or*
- 4.) More than \$2,000,000 in any one year (for first class cities), or*
- 5.) More than \$1,000,000 in any one year (for second class cities or villages)*

Keep in mind that the limitation is on the amount appropriated and not on the amount collected. Let's assume that the municipality wishes to collect a one-cent sales tax that is expected to generate about \$100,000 each year but the limit to appropriate for that same municipality is \$80,000 (.4 percent of the municipality's taxable valuation). The municipality can collect the one-cent sales tax but only \$80,000 can be appropriated in any one year for the economic development program. The suggested method to optimize the amount of LB840 funds to be collected and appropriated for any program year is .4 percent of the city's taxable valuation. Also, the local government is encouraged to investigate LB840's impact on the municipal budget and its restricted funds.

The .4 percent of the actual valuation appropriation limits can be estimated by multiplying the municipality's actual taxable valuation and .004. The most recent actual valuations can be obtained through the county assessor's office.

Are there guidelines as to what sources can be collected for the Economic Development Program?

Yes. By the provisions of Amendment 3 to the Constitution, 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 (LB 840, Revised Statutes of Nebraska, 18-2708).

How much can be collected through 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 limit. To estimate how much revenue a community could generate, multiply the municipality's "net taxable sales" (see figures in the Appendix) by .005, .01, or .015 depending upon the rate 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 three percent of the amount collected for administration fees.

When can a municipality expect to receive the receipts from the first month's sales tax collections?

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

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

Property tax rates are revised for a 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 in November 2000 election the 2002 rate would be changed by September 15, 2001 and the first half year's collections would be received in May of 2002.

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 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 Be In Existence

The plan must include a statement specifying the length of time the program will be in existence (See LB 840, Revised Statutes of Nebraska, 18-2710).

The Act does not set limitations on the length of time a program can be in existence. A municipality will probably not want to make the length too short due to the amount of work in starting a new program and to avoid going to another election within the next year or two. Of course if a program is proposed to extend over a long period of time it may be more difficult to encourage citizens to approve the program at an election. Because of this, careful consideration should be given to what length of program is right for your community.

Some consideration should be given to when increased taxes will actually be received by the city. For instance if a local option sales tax is approved at 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 sometime in June. For this reason a community may want to set two time periods in the plan--one for tax collection and one for the time period during which the program would be in existence. The actual program would probably start before tax collections begin and end after last month's (or year's) taxes are expected to be received.

Program's Basic Preliminary Budget

The plan must include a statement specifying a basic preliminary budget for the program (See LB 840, Revised Statutes of Nebraska, 18-2710).

The requirement of including a preliminary budget was intended to encourage the municipality to take a long, hard look at precisely what the proposed program would require in the way of municipal resources. Will new people need to be hired? What kind of qualifications will they need to have and what kind of salary must we pay to get them? These and other questions should be answered before the municipality gets involved in a program.

Costs of administration may prove to be an important element in program feasibility and certainly will be of concern to voters. 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 in the forms of sales tax revenues, property tax revenues, program income such as the repayment of loans, interest income, and additional funds from other non-municipal sources such as grants, utilities, economic development corporations, and foundations, etc.

Application Process for Financial Assistance to Businesses

The plan must include a description of the required application process a qualifying business follows to apply for financial assistance, including the type of information that will be required from the business and the process that will be used to verify the information (See LB 840, Revised Statutes of Nebraska, 18-2710).

This section of the plan is 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 the creation of a loan program, additional program description is required per the Act.

The application process can be tailored to fit your program but should basically be aimed at answering general questions that may be 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 kind of businesses is eligible?
- What types of funding are there?
- How may the funds be used?

Any process established for an economic development program application should answer these very basic questions and probably others that are likely to be asked. The application process may vary according to the type of assistance that will be provided by the program. For instance, a loan application process will probably be quite different from the application process used by a business seeking job training for its employees. Tailor the process to the assistance the municipality intends to provide.

Information Required From the Business

A determination needs to be made as to what type of information should be required from businesses applying for assistance. To decide what kind of information you will need, you should focus again on the kind of program that is being undertaken and the types of businesses to be assisted. It would be prudent to have enough information to be reasonably sure that the business is a responsible one and that there is a reasonable degree of certainty that the business can follow through on any promises they may 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.

Some basic suggestions on what should be in the applications are:

- 1.) A business description that verifies the business satisfies the goals and intentions of the program.
- 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.) Key management and employees and their experience related to the project.

Verification

Once the necessary information has been provided by a business through the application process, it may be in the best interest of the program to implement a verification process. The best application may be worthless, and perhaps even disastrous, if the information is not checked for accuracy. A verification process may involve any number of activities from calling business references to criminal record checks. A determination should be made as to what is necessary for your program. After that determination has been made, include a description of the proposed verification process in the plan.

Process to Insure the Confidentiality of Business Information Received

The plan must include a description of the steps the municipality will take to insure the privacy and the confidentiality of business information provided (See LB 840, Revised Statutes of Nebraska, 18-2710).

This section of the plan will be required only if the economic development program includes direct financial assistance to qualified businesses.

In the process of gathering information about a qualifying business, the municipality may receive information about the business that is confidential and, if released, could harm the 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 are in their possession.

To protect businesses applying for funds, and to encourage them to make full and frank disclosures of information relevant to their application, the Act provides that the municipality should specify what steps it will take to insure the confidentiality of the information it receives. The process could include:

- 1.) The adoption of an ordinance that makes such information confidential punishes disclosure,
- 2.) A restriction on the number of people with access to the files with only one person primarily responsible for their safe-keeping, and
- 3.) Requiring personnel that are involved in the program review to sign statements of confidentiality regarding all personal and private submittals by qualified businesses.

Administration System of Program/Personnel Structure

The plan must include a description of the administrative system that will be established to administer the economic development program, including a description of the personnel structure and the duties and responsibilities of these persons involved (See LB 840, Revised Statutes of Nebraska, 18-2710).

It is important to have an administrative system clearly defined before embarking on an economic development program. The plan must include a description of that system, the personnel structure, and duties and responsibilities of those persons involved.

Two positions and their responsibilities as specified in the Act are described below. Additional responsibilities and positions may need to be identified depending on the nature and extent of the program. The administrative system needs to be tailored to meet the needs of the program and the particular concerns of the municipality.

Program Administrator:

Track employment figures for participating businesses for two years if businesses employ persons in other Nebraska communities (See LB 840, Revised Statutes of Nebraska, 18-2709).

Administration of the economic development program (See LB 840 Revised Statutes of Nebraska, 18-2715).

Serve as an ex officio member of the Citizen Advisory Review Committee (See LB 840, Revised Statutes of Nebraska, 18-2715).

Provide the Citizen Advisory Review Committee with necessary information and advise the Committee on the economic development program (See LB 840, Revised Statutes of Nebraska, 18-2715).

Loan Fund Program Administrator
(If loan program exists):

Provide to the governing body an account of the status of:

- 1.) each loan outstanding,*
- 2.) program income, and*
- 3.) current investments of unexpended funds on a monthly basis (See LB 840, Revised Statutes of Nebraska, 18-2720).*

Establish a separate account in a financial institution for each loan made (See LB 840, Revised Statutes of Nebraska, 18-2720).

Keep records on accounts and make reports to include:

- 1.) name of the borrower,*
- 2.) purpose of the loan,*
- 3.) date the loan was made,*
- 4.) amount of the loan,*
- 5.) basic terms of the loan, and*
- 6.) payments made to date and the current balance due (See LB 840, Revised Statutes of Nebraska, 18-2720).*

Monitor the status of each loan and, with the cooperation of the governing body and the primary lender(s), take appropriate action when a loan becomes delinquent (See LB 840, Revised Statutes of Nebraska, 18-2720).

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

The plan must include a description of how the municipality will assure that all applicable laws, regulations, and requirements are met by the municipality and the qualifying businesses which receives assistance (See LB 840, Revised Statutes of Nebraska, 18-2710).

To provide for such assurances, there should be regular review of the economic development program to see that this responsibility is being met along with a description of who will be responsible for such a review.

Municipal officials administering the economic development program are probably the individuals most qualified to know when state and federal laws and regulations are being violated by a qualifying business or by the municipality. The program administrator has access to confidential records and information and monitors activities on an ongoing basis. As a result, the program administrator may be in the best position to take the responsibility to see that appropriate laws and regulations are being followed with guidance and review from the municipal or village attorney. The city or village attorney also should be responsible for keeping the municipality informed of any relevant changes in the law that could affect the program.

Beyond the periodic review of the program, the mechanism also may include a system to monitor the activities of participating businesses. Again, the process that is adopted will depend on the nature of the program being undertaken.

Purchase or Option to Purchase Land

If the proposed economic development program involves the purchase or option to purchase land, the plan shall also specify the manner in which tracts of land will be identified for purchase or option to purchase. The plan should also address whether the municipality proposes to use the proceeds from the future sale of such land for additional land purchases (See LB 840, Revised Statutes of Nebraska, 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 have the following minimum characteristics:

- 1.) At least five acres.
- 2.) Properly zoned with no excessive easements, covenants, or other encumbrances, and conform with the city's or county's comprehensive plan.
- 3.) Good topography (level to gently sloping), well-drained, no flood designation.
- 4.) Accessible to city or rural water mains of 8" or 6" looped. On-site private wells can be used.
- 5.) Easily accessible to electricity and telecommunications infrastructure. Access to natural gas not absolutely necessary, but highly desirable.
- 6.) Good highway access and often railroad access.

If the infrastructure is not in place at the site, there should be a site plan developed that includes the extension of utilities, telecommunications access, ingress and egress from the proposed site. Protective covenants and easements need to be considered in the planning process. A professional engineer should be engaged to assist with the site plan. Future development costs must be known to ensure proper pricing of the land.

Communities seeking advice on the most feasible property suited for an industrial site or industrial park should contact the Nebraska Department of Economic Development's Business Development Division. The Division coordinates the "Nebraska Site Evaluation Team" program. Economic development allies serving the region will collectively determine sites that are the most feasible for industrial purposes.

Loan Program---Types of Assistance

If the proposed economic development program involves the creation of loan fund, the plan also shall specify the type of financial assistance that will be available. The plan also should state the maximum proportion of financial assistance that will be provided to any single qualifying business as well as specifying the criteria that will be used to determine the appropriate level of assistance (See LB 840, Revised Statutes of Nebraska, 18-2711).

Loan Program---Participation Criteria for Qualifying Businesses

If the proposed economic development program involves the creation of a loan fund, the plan also shall specify the criteria and procedures that will be used to determine the necessity and appropriateness of permitting a qualifying business to participate in the loan fund program (See LB 840, Revised Statutes of Nebraska, 18-2711).

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

When a qualifying business applies to a municipality to participate in a loan fund program, the qualifying business will provide the municipality with appropriate documentation evidencing its negotiations with one or more primary lenders and the terms upon which it has received, or will receive, the portion of the total financing for its activities which will not be provided by the municipality (See LB 840, Revised Statutes of Nebraska, 18-2719).

Loan Program---Time Allowed for Participating Businesses To Meet Goals

If the proposed economic development program involves the creation of a loan fund, the plan also shall specify the criteria for determining the time within which a qualifying business must meet the goals set for it under its participation agreement (See LB 840, Revised Statutes of Nebraska, 18-2711).

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

- 1.) *The governing body shall establish standards for:
 - a.) *When a loan shall be declared to be in default, and*
 - b.) *When a loan shall be taken to deal with default to protect the interests of the qualifying business, third parties, and the municipality.**
- 2.) *The governing body shall establish a process to provide for consultation, agreement, and joint action between the municipality and the primary lender(s) in pursuing appropriate remedies following the default of a qualifying business in order to collect amounts owed under the loan (See LB 840, Revised Statutes of Nebraska, 18-2720).*

Loan Program---Personnel Requirements

If the proposed economic development program involves the creation of a loan fund, the plan also shall specify what personnel or other assistance beyond regular municipal employees will be needed to assist in the administration of the loan fund program and the manner in which they will be paid or reimbursed (See LB 840, Revised Statutes of Nebraska, 18-2711).

If the economic development program involves the establishment of a loan fund, who assumes primary responsibility for loan servicing?

If the economic development program involves the establishment of a loan fund the governing body shall designate an appropriate individual to assume primary responsibility for loan servicing and shall provide such other assistance or additional personnel as may be 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 (See LB 840, Revised Statutes of Nebraska, 18-2720).

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

- 1.) *The person designated the responsibility of the loan fund should provide to the governing body of the municipality an account of the status of:*
 - a.) *Each loan outstanding,*
 - b.) *Program income, and*
 - c.) *Current investments of unexpended funds on a monthly basis.*
- 2.) *The individual responsible for loan servicing shall establish a separate account in a financial institution for each loan made from the loan fund.*
- 3.) *Records kept on such accounts 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 of the loan;*
 - c.) *The date the loan was made;*
 - d.) *The amount of the loan;*
 - e.) *The basic terms of the loan, including the interest rate, maturity date, and the frequency of payments; and*

- f.) *The payments made to date and the current balance due.*
- 4.) *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 (See LB 840, Revised Statutes of Nebraska, 18-2720).*

Loan Program---Investment Strategies

If the proposed economic development program involves the creation of a loan fund, the plan also shall specify the investment strategies that the municipality will pursue to promote the growth of the loan fund while assuring its security and liquidity (See LB 840, Revised Statutes of Nebraska, 18-2711).

Loan Program---Methods of Auditing and Verification

If the proposed economic development program involves the creation of a loan fund, the plan also shall specify the methods of auditing and verification that will be used by the municipality to insure that appropriate assistance is provided and the municipality is protected against fraud or deceit in the conduct or administration of the economic development program (See LB 840, Revised Statutes of Nebraska, 18-2711).

STEP THREE.

Prepare and pass a resolution for adopting the plan and providing the wording on the ballot. File the resolution and plan with the city or village clerk for public review. Although it is not required, it is suggested that a public hearing be held before the resolution is passed.

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

After the plan has been completed the governing body must adopt the proposed economic development plan by resolution and file the resolution along with the proposed economic development plan with the city or village clerk who shall make it available for public review at the city hall during regular business hours (See LB 840, Revised Statutes of Nebraska, 18-2712).

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

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

The public hearing, that is required by the Act, is discussed further in STEP FIVE.

What must the required resolution include?

The resolution must include (See LB 840, Revised Statutes of Nebraska, 18-2710, 2712, 2713:)

- 1.) *A reference to the proposed economic development plan (if the plan is concise, the entire plan can be included in the resolution rather than the resolution referring to it. However if the plan is long, it may be more appropriate for the resolution to refer to the plan since there is a requirement, outside of the Act, that municipalities must publish resolutions),*
- 2.) *A formal adoption of the proposed plan,*
- 3.) *A statement proposing the economic development program, and*
- 4.) *The 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 set out in the plan to include (See LB 840, Revised Statutes of Nebraska, 18-2713):

- 1.) *The length of time the program will be in existence,*
- 2.) *The 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, and*
- 5.) *Whether additional funds from other non-municipal sources will be sought beyond those derived from 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 upon 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 also specifies that if the proposed program involves the purchase or option to purchase land or a loan program that the resolution must also specify information concerning these two items. These have been covered in Step 2 because it was the intent of the authors of the bill that this information be included in the plan which is approved by the resolution. Please check with your city or village attorney for their interpretation.

Can the ballot question for the economic development program be combined with the ballot question for the local option sales tax?

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. Attention should be given to carefully wording both ballot questions to make it clear to the voters that only one tax increase is being proposed.

STEP FOUR.

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.

How does the question get placed on the ballot?

The governing body of the municipality orders the submission of 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 not later than 41 days prior to the election (See LB 840, Revised Statutes of Nebraska, 18-2713).

Even though LB840 refers to a filing date with a 41-day prior notice, this only holds true in the case of special elections. According to state statute 32-4,153 which spells out provisions that are applicable to elections, "In lieu of submitting a matter or issue at a separate special municipal election, any city of the first or second class or any village may submit such matter or issue at a statewide general or primary election, except that no such matter or issue shall be submitted at a statewide election unless the matter or issue to be submitted has been certified by the municipal clerk to the county clerk or election commissioner at least 50 days prior to the election." In summary, if an LB840 ballot issue is going to be on the primary or general election ballot, the filing deadline is 50 days prior to the election.

STEP FIVE.

Schedule a public hearing to present the resolution for public comment and discussion.

What are the public hearing guidelines as laid out by the Local Option Municipal Economic Development Act?

The governing body of the municipality shall schedule a public hearing at which the resolution shall be presented for public comment and discussion. The public hearing shall be held not later than 15 days prior to the date of the election (See LB 840, Revised Statutes of Nebraska, 18-2712).

In addition to the public hearing that is required to present the resolution, another public hearing is suggested that may be in the best interest of the economic development program. This optional public hearing described in Step 3 would allow for revisions to be made to the plan and the ballot question prior to the passing of the resolution should valid concerns arise through the hearing process.

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 SIX.

Hold election.

Who makes the ultimate decision on whether an economic development program is adopted for a municipality?

The voters of that municipality. Before adopting an economic development program a municipality shall submit the question of its adoption to the registered voters at an election (either special, primary, or general election) (See LB 840, Revised Statutes of Nebraska, 18-2713).

What determines the results of the election?

If a majority of those voting on the issue vote 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 of those voting on the issue vote against the question, the governing body shall not implement the economic development program (See LB 840, Revised Statutes of Nebraska, 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 there is a state statute (Section 77-27, 142.03) that limits how often a sales tax issue can be submitted to the voters. According to Sec. 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 that once every 23 months."

STEP SEVEN.

Establish the economic development program by ordinance.

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

After the adoption of the ordinance establishing the economic development program, the ordinance 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 (requires notice, at least one public hearing, and a two-thirds vote of the 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, the uses of the funds, or the basic terms set out in the original enabling resolution, without submitting the proposed changes to a new vote of the registered voters in the appropriate manner (See LB 840, Revised Statutes of Nebraska, 18-2714).

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

STEP EIGHT.

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 (See LB 840, Revised Statutes of Nebraska, 18-2715).

Committee member criteria includes:

- 1.) *At least one member of the committee shall have expertise or experience in the field of business finance or accounting.*
- 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, or*
- 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 shall (See LB 840, Revised Statutes of Nebraska, 18-2715):

- 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; and*

- 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 (designate by title instead of name) with responsibility for the administration of the economic development program to service as an ex officio member of the Committee. That individual is to provide the committee with necessary information and advise on the economic development program (See LB 840, Revised Statutes of Nebraska, 18-2715).

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

Members of the Citizen Advisory Review Committee, in their capacity as members and consistent with their responsibilities as members, may be permitted access to business information received by the municipality in the course of its administration of the economic development program that would otherwise be confidential. Any ordinance of the municipality 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, may provide that unauthorized disclosure of any business information confidential under section 84-712.05 shall be a Class III misdemeanor (See LB 840, Revised Statutes of Nebraska, 18-2715).

STEP NINE.

Amend the existing municipal annual budget to include, or include in the next annual budget, the amount to be expended on the economic development program.

When is the amount that is to be expended on the economic development program set?

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 the adoption of the ordinance establishing the economic development program, the amount to be expended on the program for the ensuing year shall be fixed at the time of making up the annual budget that is required by law and shall be included in the municipality's budget (See LB 840, Revised Statutes of Nebraska, 18-2716).

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

Can the municipality reappropriate unexpended money that was appropriated in a previous year?

Yes. However the municipality cannot appropriate more than the limits described in the Revised Statutes of Nebraska, 18-2717 in any one year.

For instance, assume that the limit for Huskerville is \$40,000 per year (.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 reappropriated the next year. However, the limit that can be appropriate in year two would remain at \$40,000 (or .4 percent of the actual valuation in that year), and would not be raised to \$50,000 to make up for the savings that took place in year one.

Other than the appropriation limitations as set out in Chapter 18, 2717 of the Revised Statutes of Nebraska, are there requirements as to 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 governing body of the municipality shall place the question of the continuation of the economic development program on the ballot at the next regular election (See LB 840, Sec. Revised Statutes of Nebraska, 18-2718).*

STEP TEN.

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 are (See LB 840, Revised Statutes of Nebraska, 18-2718):

- 1.) *All funds derived from local sources of revenue for the economic development program,*
- 2.) *Any earnings from the investment of such funds,*

- 3.) *Any loan payments,*
- 4.) *Any proceeds from the sale of assets purchased by the municipality under its economic development program, and*
- 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 (See LB 840, Revised Statutes of Nebraska, 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 section 77-2341. (See LB 840, Revised Statutes of Nebraska, 18-2718, 77-2341)

STEP ELEVEN.

Carry out the required tasks once the program is implemented.

What are the on-going responsibilities of the Citizen Advisory Review Committee?

The Citizen Advisory Review Committee shall (See LB 840, Revised Statutes of Nebraska, 18-2715):

- 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; and*
- 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.*

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:

- 1.) *Any qualifying business receiving funds or assistance under the economic development program, or*
- 2.) *Any 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 (See LB 840, Revised Statutes of Nebraska, 18-2721).

STEP TWELVE.

Methods to end the program, including termination activities.

Is there a method for the municipality's citizens to repeal the economic development program?

Yes. The registered voters of any municipality that has been established an economic development program have the right to vote, at any time after one year following the original vote, on the continuation of an 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 the number of persons voting in the municipality at the last preceding general election, are presented to the municipality (See LB 840, Revised Statutes of Nebraska, 18-2722).

What process should be followed if petitions are received?

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

- 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.) *A notice of the submission of the question shall be given 10 to 20 days prior to the election by publication in one or more city-circulated newspapers. This notice is to be in addition to any notices required by the election laws of the state (See LB 840, Revised Statutes of Nebraska, 18-2722).*

Are there any steps a municipality can take to avoid putting the question to a vote after the proper amount of petitions have been received?

Yes, if the municipality acts within 15 days of the receipt of the petitions for an election, and if 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 (See LB 840, Revised Statutes of Nebraska, 18-2722).

Are there guidelines on how the question on the ballot should appear in the case that 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 (See LB 840, S Revised Statutes of Nebraska, 18-2722):

"Shall the city (village) of _____ continue its economic development program?"

What determines the results of the election?

A majority of the registered voters voting on the question at the election shall determine the question. The final vote shall be binding. If a majority of those voting vote 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 (See LB 840, Revised Statutes of Nebraska, 18-2722).

Is there a method for the governing body of the municipality to repeal the economic development program?

Yes, the governing body of a municipality may (after publishing notice of its intent to consider the repeal and after 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 that is subject only to the provisions of any existing contracts relating to the program and the rights of any third parties arising from those contracts (See LB 840, Revised Statutes of Nebraska, 18-2714).

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

The economic development fund shall not be terminated until such a time as all projects and contracts related to the program have been finally completed and all funds related to them fully accounted for, with no further municipal action required, and after the 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 (See LB 840, Revised Statutes of Nebraska, 18-2718).

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

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 (See LB 840, Revised Statutes of Nebraska, 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 by reason of the economic development program after the termination of the program shall be transferred from the economic development fund to the general fund of the municipality as such funds are received (See LB 840, Revised Statutes of Nebraska, 18-2718).

At the termination of the programs are there guidelines on how fast a municipality can spend the funds that are transferred to the general fund?

Yes, the sum of the amount to be transferred from the economic development fund to the general fund and the amount that is anticipated to be received should be divided by the number of years the economic development program funds were collected. The resulting figure shall be in 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 is expecting 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 (See LB 840, Revised Statutes of Nebraska, 18-2718).

At the termination of the program will the expenditure of this money now in the general fund affect property taxes?

Yes. The yearly installments that are to be applied against expenditures shall be used to reduce the property tax levy of the municipality by that amount in each year in which they are expended. So in the example above, a property tax reduction of \$20,000 each of five years would be called for (See LB 840, Revised Statutes of Nebraska, 18-2718).