

LB840

Local Option Municipal Economic Development Act

NEBRASKA

Legal Background – why LB840?

- Nebraska Constitution – Article XIII, Section 3: “The credit of the state shall never be given or loaned in aid of any individual, association, or corporation,”
- *Chase v County of Douglas*
- *Competition Concern (Other States)*

Legal Background – Constitutional Amendment & Legislation

- 1990 Constitutional Amendment approved
- 1991 – *LB840*
 - Historically, there have been numerous amendments made through the Nebraska Legislature.
- *Voters must approve a local Economic Development Plan and Funding Source.*

History of LB840 and Amendments

The Local Option Municipal Economic Development Act (LB 840, 1991) authorizes incorporated cities and villages to collect and appropriate local tax dollars (sales and/or property tax) if approved by the local voters, for economic development purposes. The Act went into effect on September 6, 1991. The Act has been modified by LB719A in 1992, LB121/LB732 in 1993, LB 1188 in 1994, LB207/LB490 in 1995, LB87 in 1999, LB1116/LB1258 in 2000, LB827/LB362 in 2001, LB131 in 2003, LB895 in 2008, LB471 in 2011, LB863/LB1115 in 2012, LB295 in 2013, LB150 in 2015, LB1059 in 2016, LB113/LB451 and LB614 in 2018

When you copy your friend's work and they get all the answers wrong...



Review other plans, but do not copy. Do your homework, review the statutes, THEY'VE CHANGED. Know your communities priorities.

The Voters must approve two ballot items:

- The program (PLAN)

(voters Need to approve the written plan including how and where the funds will be spent)

- **AND** the tax

(if the city is increasing the sales tax to fund the program that also needs to be approved by the voters)

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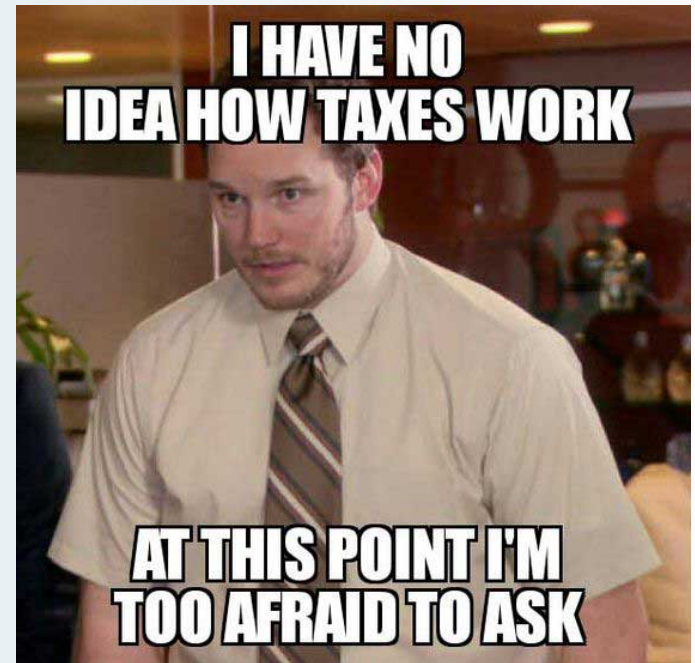
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What if one of the ballot issues doesn't pass?

- If the sales tax passes but the plan does not, the Dept. of Revenue will start collecting the sales tax but said funds cannot be spent until funding guidelines (the program) is passed and put into place.
- The program (*written plan*) can be presented to the voters at anytime.
- The (sales) tax can only be presented to the voters once every 23 months.

The Funding

- Property Tax
- Local Option Sales Tax
(Exception: Diversion from current sales tax)
- Any other general tax levied by the city or generated from municipally owned utilities
- Grants
- Donations
- State and Federal funds



Rules For Sales Tax Collection

- Can only collect sales taxes within city limits but can spend the funds outside the city limits.
- Not collected on items delivered outside city limits
- Collected on vehicles registered within city no matter where purchased-BUT money is now required to go into a separate fund (LB904, 2006)

The Program (written plan)

- Must be spent as intended and approved by voters
- Amendments require a recommendation from CARC, a public hearing and a 2/3 approval vote of the governing body and/or a vote of the public (major amendments require a vote of the public).
- Can be divided by vote (sample uses)
 - Economic development
 - Property tax relief
 - Infrastructure purposes
 - Other city

Elements of the Plan

- Description of eligible businesses
- Description of eligible activities
- Beginning and ending date for the ED plan.
- Oversight methods
- Citizens' Advisory Committee
- Methods for ending program

Eligible Activities (as per §18-2705): (may not be in all Plans, however)

May include, *but not limited to*:

- Loans or Grants to Qualifying Businesses for fixed assets or working capital or both.
- Loan Guaranties for Qualifying Businesses.
- Grants for public works improvements essential to the location or expansion of, or the provision of new services by, a Qualifying business.
- Grants or loans to Qualifying Businesses for job training.
- The purchase of real estate, options for such purchases, and renewals or extensions.

Eligible activities (CONTINUED)

- Grants or loans to Qualifying Businesses to provide relocation incentives for new residents.
- The issuance of bonds as provided for in the Act.
- Payments for salaries and support of City staff to implement the Program or the contracting of implementation to an outside entity.
- Grants or loans for the construction or rehabilitation for sale or lease of housing *for persons of low or moderate income* (requires specification of income levels & criteria as set out by statute).
- Grants or loans for the construction or rehabilitation for sale or lease of housing as part of a “**Workforce Housing Plan**”.
-- added by LB1059 (effective July, 2016).
- Grants, loans or funds for early childhood infrastructure development.
- Grants, loans or funds for a business that derives its principal source of income from early childhood care and education programs;
-- added by LB1060 (effective August, 2019).

WHY PLAN?



PLANNING

Still a good thing to do first.

A well thought out plan with a **focused** use of tax dollars will give your community the edge it needs to promote business & economic growth.



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Qualifying Business

According to State Statute, Principal source of income must come from (not all have to be included in a Plan):

- Manufacturing
- Research & Development
- Processing, storage, transport or sales of goods or commodities in interstate commerce
- Sale of services in interstate commerce
- Headquarters facilities relating to eligible activities
- Telecommunication Activities
- Tourism-related activities
- Production of films, including feature, independent, and documentary films, commercials, and television programs.

Qualifying business does not have to be located within city limits.

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Qualifying Businesses Cont..

Cities of the First and Second Class and Villages may also include:

- Construction or Rehabilitation of Housing (either as LMI or under a Workforce Housing Plan).
- Retail Trade (limited to 40% of funds generated in a 12-month period and 20% in a 5-year period). Retail trade means a business which primarily sells to consumers for own use or consumption and not for resale.
- In cities with a population of 2500 or less, any activities.

*A qualifying business does **not** include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the 1st and 2nd class and villages for rural infrastructure development as provided for in subsection (4) of section 18-2705.*

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Industrial Park

- Real Estate can be purchased for Qualifying Businesses, *regardless* of whether the business is identified at the time of the project.
- Assistance to a Qualifying Business can be direct *or indirect*.
- Real Estate purchased with LB840 funds can only be sold to a Qualifying Business.

Workforce Housing Plan - REQUIRED

- **Definition:** a program to construct or rehabilitate single-family housing or market rate multi-family housing which is designed to address a housing shortage that impairs the ability of a city to attract new businesses or the ability of existing businesses to recruit new employees.



- **Summary:** Housing shortage is adversely impacting new business in the area or expansion of an existing business.

Work Force Housing Plan to include:

- An assessment of current housing stock in the City or Village, including both single-family and market rate multi-family housing;
- Whether the plan will also include housing for persons of low or moderate income;
- Other factors relevant in assessing the **conditions faced by existing businesses in recruiting** new employees; and
- Other factors particularly relevant in assessing the **conditions faced by persons seeking new or rehabilitated housing** in the City.

LB840 is Locally Controlled

- The law provides limited direction. The plan should lay out how decisions will be made. (Citizen lawsuits)
- Application review committee makes the decisions on where the funds should be spent, and what businesses should be assisted.
The City Council/Village Board has the final approval of funds.
- The Citizens Advisory Review Committee (CARC) ensures that the loan/finance committee is funding projects or businesses in accordance to the plan approved by the voters.

CARC

- This is an “oversight” committee.
- This committee reviews process.



By law, no member of the CARC may be an elected or appointed city official, an employee of the city or be in a decision-making position as to where the funds are spent.

The CARC Role:

Citizen Advisory Committee reviews annual reports and ensures that the goal of the program is being met.

- Recipients are generally required to file annual reports.
- Reports show added employees, benefits of equipment, etc.
- Review the functioning and progress of the economic development program at regular meetings;
- Advise the Governing Body with regard to the program, and
Report to the Governing Body at a Public Hearing
(every 6-month period)

Checks and Balances

Best Practices — Proprietary information remains confidential

Administrator
and/or
contracted
person
implementing
the plan

- Determination of eligibility.
- Supplies applications.
- Collects required information.

Application Review

Statute does not specify if this is a committee or an individual therefore the structure is up to the community. Commonly a banker and CPA are members of this committee. This person or committee will request additional information, deny an application or recommend an application for funding to the governing board.

Only restriction is that any person or persons involved in reviewing the applications is not allowed to serve on the CARC.

City Council/ Village Board

Makes final decision on funding.

Citizens Advisory Review Committee

Reports at least every 6 months to governing board, making sure that decisions are being made according to guidelines set forth in the economic development plan.

LB840 Projects

■ Grants – Job Credits:

- \$_____ per Job – over 5 years
- More for higher paying jobs

■ Low Interest Loans

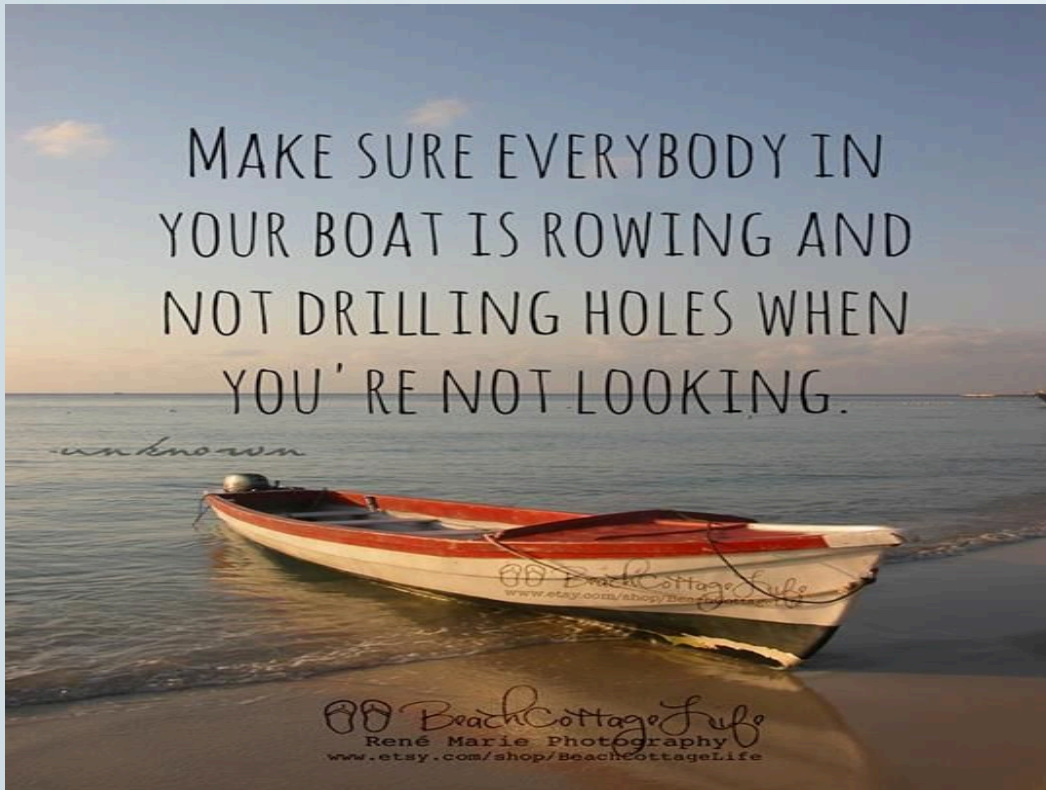
- Start-up capital
- Expansion capital
- Equipment
- Façade improvements
- Job Training

■ Combination: Loans where a portion can be earned with Job Credits or performance based criteria.

• Matching Funds

- State and Federal programs
- Packaged with local banks to reduce risk

• Program Administration/ED professional



- ❖ **Coming together is a beginning;**
- ❖ **Keeping together is progress;**
- ❖ **Working together is success.**

~ Henry Ford

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Review Process- Accountability

Local control is a privilege.

-- Insist on accountability & transparency

- Require recipients to file annual reports.
- Format report to show employees, benefits, etc.
- Citizen Advisory Committee reviews the annual reports.

Presentation Disclaimer

Information in this presentation is intended for education purposes only and does not represent independent legal advice.

When in doubt, talk to your city attorney. Have your city attorney involved in the process and at a minimum have them review your plan before presenting to voters. If your community belongs to the league of municipalities, their legal department will also answer questions and offer opinions.



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Additional LB840 Information

- The LB 840 statutes, officially known as the Local Option Municipal Economic Development Act, are found in Sections 18-2701 to 18-2739. A link to these statutes on the Legislature's website is

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

- The section from the Nebraska Constitution that authorizes LB 840 is Chapter XIII, Article 2. It can be found at

<http://nebraskalegislature.gov/laws/articles.php?article=XIII-2&print=true>. The constitutional authority for LB 840 is in the second paragraph of Chapter XIII, Article 2.

- A Guide to Program Implementation

<https://opportunity.nebraska.gov/wp-content/uploads/2017/05/DED-LB-840-Guide-2019-Update.pdf>

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