

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 467

Introduced by Krist, 10.

Read first time January 17, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-1116, 77-2905, 77-2906, and 77-5723, Revised Statutes Cumulative
3 Supplement, 2016; to change provisions relating to the New Markets
4 Job Growth Investment Act, the Nebraska Job Creation and Mainstreet
5 Revitalization Act, and the Nebraska Advantage Act; to repeal the
6 original sections; and to declare an emergency.

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

1 Section 1. Section 77-1116, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-1116 (1) A qualified community development entity that seeks to
4 have an equity investment or long-term debt security designated as a
5 qualified equity investment and eligible for tax credits under the New
6 Markets Job Growth Investment Act shall apply to the Tax Commissioner.
7 There shall be no new applications for such designation filed under this
8 section (a) during the period beginning July 1, 2017, and ending June 30,
9 2019, or (b) after December 31, 2022.

10 (2) The qualified community development entity shall submit an
11 application on a form that the Tax Commissioner provides that includes:

12 (a) Evidence of the entity's certification as a qualified community
13 development entity, including evidence of the service area of the entity
14 that includes this state;

15 (b) A copy of the allocation agreement executed by the entity, or
16 its controlling entity, and the Community Development Financial
17 Institutions Fund referred to in section 77-1109;

18 (c) A certificate executed by an executive officer of the entity
19 attesting that the allocation agreement remains in effect and has not
20 been revoked or canceled by the Community Development Financial
21 Institutions Fund referred to in section 77-1109;

22 (d) A description of the proposed amount, structure, and purchaser
23 of the equity investment or long-term debt security;

24 (e) Identifying information for any taxpayer eligible to utilize tax
25 credits earned as a result of the issuance of the qualified equity
26 investment;

27 (f) Information regarding the proposed use of proceeds from the
28 issuance of the qualified equity investment; and

29 (g) A nonrefundable application fee of five thousand dollars.

30 (3) Within thirty days after receipt of a completed application
31 containing the information necessary for the Tax Commissioner to certify

1 a potential qualified equity investment, including the payment of the
2 application fee, the Tax Commissioner shall grant or deny the application
3 in full or in part. If the Tax Commissioner denies any part of the
4 application, the Tax Commissioner shall inform the qualified community
5 development entity of the grounds for the denial. If the qualified
6 community development entity provides any additional information required
7 by the Tax Commissioner or otherwise completes its application within
8 fifteen days after the notice of denial, the application shall be
9 considered completed as of the original date of submission. If the
10 qualified community development entity fails to provide the information
11 or complete its application within the fifteen-day period, the
12 application remains denied and must be resubmitted in full with a new
13 submission date.

14 (4) If the application is deemed complete, the Tax Commissioner
15 shall certify the proposed equity investment or long-term debt security
16 as a qualified equity investment that is eligible for tax credits,
17 subject to the limitations contained in section 77-1115. The Tax
18 Commissioner shall provide written notice of the certification to the
19 qualified community development entity. The notice shall include the
20 names of those taxpayers who are eligible to utilize the credits and
21 their respective credit amounts. If the names of the taxpayers who are
22 eligible to utilize the credits change due to a transfer of a qualified
23 equity investment or a change in an allocation pursuant to section
24 77-1114, the qualified community development entity shall notify the Tax
25 Commissioner of such change.

26 (5) The Tax Commissioner shall certify qualified equity investments
27 in the order applications are received. Applications received on the same
28 day shall be deemed to have been received simultaneously. For
29 applications received on the same day and deemed complete, the Tax
30 Commissioner shall certify, consistent with remaining tax credit
31 capacity, qualified equity investments in proportionate percentages based

1 upon the ratio of the amount of qualified equity investment requested in
2 an application to the total amount of qualified equity investments
3 requested in all applications received on the same day.

4 (6) Once the Tax Commissioner has certified qualified equity
5 investments that, on a cumulative basis, are eligible for the maximum
6 limitation contained in section 77-1115, the Tax Commissioner may not
7 certify any more qualified equity investments for that fiscal year. If a
8 pending request cannot be fully certified, the Tax Commissioner shall
9 certify the portion that may be certified unless the qualified community
10 development entity elects to withdraw its request rather than receive
11 partial credit.

12 (7) Within thirty days after receiving notice of certification, the
13 qualified community development entity shall issue the qualified equity
14 investment and receive cash in the amount of the certified amount. The
15 qualified community development entity shall provide the Tax Commissioner
16 with evidence of the receipt of the cash investment within ten business
17 days after receipt. If the qualified community development entity does
18 not receive the cash investment and issue the qualified equity investment
19 within thirty days after receipt of the certification notice, the
20 certification shall lapse and the entity may not issue the qualified
21 equity investment without reapplying to the Tax Commissioner for
22 certification. A certification that lapses reverts back to the Tax
23 Commissioner and may be reissued only in accordance with the application
24 process outlined in this section.

25 Sec. 2. Section 77-2905, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 77-2905 (1) Prior to commencing work on the historically significant
28 real property, a person shall file an application for credits under the
29 Nebraska Job Creation and Mainstreet Revitalization Act containing all
30 required information with the officer on a form prescribed by the officer
31 and shall include an application fee established by the officer pursuant

1 to section 77-2907. The officer shall not accept any application for
2 credits prior to January 1, 2015. The application shall include plans and
3 specifications, an estimate of the cost of the project prepared by a
4 licensed architect, licensed engineer, or licensed contractor, and a
5 request for a specific amount of credits based on such estimate. The
6 officer shall review the application and, within twenty-one days after
7 receiving the application, shall determine whether the information
8 contained therein is complete. The officer shall notify the applicant in
9 writing of the determination within five business days after making the
10 determination. If the officer fails to provide such notification as
11 required, the application shall be deemed complete as of the twenty-first
12 day after the application is received by the officer. If the officer
13 determines the application is complete or if the application is deemed
14 complete pursuant to this section, the officer shall reserve for the
15 benefit of the applicant an allocation of credits in the amount specified
16 in the application and determined by the officer to be reasonable and
17 shall notify the applicant in writing of the amount of the allocation.
18 The allocation does not entitle the applicant to an issuance of credits
19 until the applicant complies with all other requirements of the Nebraska
20 Job Creation and Mainstreet Revitalization Act for the issuance of
21 credits. The date the officer determines the application is complete or
22 the date the application is deemed complete pursuant to this section
23 shall constitute the applicant's priority date for purposes of allocating
24 credits under this section. For complete applications receiving an
25 allocation under this section, the officer shall determine whether the
26 application conforms to the standards, and, if so, the officer shall
27 approve such application or approve such application with conditions. If
28 the application does not conform to the standards, the officer shall deny
29 such application. The officer shall promptly provide the person filing
30 the application and the department with written notice of the officer's
31 determination. If the officer does not provide a written notice of his or

1 her determination within thirty days after the date the application is
2 determined or deemed to be complete pursuant to this section, the
3 application shall be deemed approved. The officer shall notify the
4 department of any applications that are deemed approved pursuant to this
5 section. If the officer denies the application, the credits allocated to
6 the applicant under this subsection shall be added to the annual amount
7 available for allocation under subsection (2) of this section. Any denial
8 of an application by the officer pursuant to this section may be
9 appealed, and the appeal shall be in accordance with the Administrative
10 Procedure Act. For the period beginning January 1, 2018, and ending
11 December 31, 2019, no credits shall be allocated under this section and
12 no application shall be approved or deemed approved under this section.

13 (2) For calendar years beginning before January 1, 2017, the total
14 amount of credits that may be allocated by the officer under this section
15 in any calendar year shall be limited to fifteen million dollars. For
16 calendar year 2017 and all calendar years beginning on or after January
17 1, 2020 ~~2017~~, the total amount of credits that may be allocated by the
18 officer under this section in any calendar year shall be limited to
19 fifteen million dollars, of which four million dollars shall be reserved
20 for applications seeking an allocation of credits of less than one
21 hundred thousand dollars. If the amount of credits allocated in any
22 calendar year is less than fifteen million dollars, the unused amount
23 shall expire ~~be carried forward to subsequent years and shall be~~
24 ~~available for allocation in subsequent years until fully utilized, except~~
25 ~~as otherwise provided in section 77-2912.~~ If the amount of credits
26 reserved for applications seeking an allocation of credits of less than
27 one hundred thousand dollars is not allocated by April 1 of any calendar
28 year, such unallocated credits for the calendar year shall expire ~~be~~
29 ~~available for any application seeking an allocation of credits based upon~~
30 ~~the applicant's priority date as determined by the officer.~~ The officer
31 shall allocate credits based on priority date, from earliest to latest.

1 If the officer determines that the complete applications for credits in
2 any calendar year exceed the maximum amount of credits available under
3 this section for that year, only those applications with a priority date
4 on or before the date on which the officer makes that determination may
5 receive an allocation in that year, and the officer shall not make
6 additional allocations until sufficient credits are available. If the
7 officer suspends allocations of credits pursuant to this section,
8 applications with priority dates on or before the date of such suspension
9 shall retain their priority dates. Once additional credits are available
10 for allocation, the officer shall once again allocate credits based on
11 priority date, from earliest to latest, even if the priority dates are
12 from a prior calendar year.

13 (3) Prior to December 1 of any year, the holder of an allocation of
14 credits under this section who has not commenced the improvements in his
15 or her approved application shall notify the officer of his or her intent
16 to retain or release the allocation. Any released allocation shall be
17 added to the aggregate amount of credits available for allocation in the
18 following year. Any holder of an allocation who fails to timely notify
19 the officer of such intent shall be deemed to have released the
20 allocation.

21 (4) The holder of an allocation of credits whose application was
22 approved under this section shall start substantial work pursuant to the
23 approved application within twenty-four months after receiving notice of
24 approval of the application or, if no notice of approval is sent by the
25 officer, within twenty-four months after the application is deemed
26 approved pursuant to this section. Failure to comply with this subsection
27 shall result in forfeiture of the allocation of credits received under
28 this section. Any such forfeited allocation shall be added to the
29 aggregate amount of credits available for allocation for the year in
30 which the forfeiture occurred.

31 (5) Notwithstanding subsection (1) of this section, the person

1 applying for the credit under this section may, at its own risk, incur
2 eligible expenditures up to six months prior to the submission of the
3 application required under subsection (1) of this section if such
4 eligible expenditures are limited to architectural fees, accounting and
5 legal fees, and any costs related to the protection of the historically
6 significant real property from deterioration.

7 Sec. 3. Section 77-2906, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 77-2906 (1) Within twelve months after the date on which the
10 historically significant real property is placed in service, a person
11 whose application was approved under section 77-2905 shall file a request
12 for final approval containing all required information with the officer
13 on a form prescribed by the officer and shall include a fee established
14 by the officer pursuant to section 77-2907. The officer shall then
15 determine whether the work substantially conforms to the application
16 approved under section 77-2905. If the work substantially conforms and no
17 other significant improvements have been made to the historically
18 significant real property that do not substantially comply with the
19 standards, the officer shall approve the request for final approval and
20 refer the application to the department to determine the amount of
21 eligible expenditures, calculate the amount of the credit, and issue a
22 certificate to the person evidencing the credit. If the work does not
23 substantially conform to the approved application or if other significant
24 improvements have been made to the historically significant real property
25 that do not substantially comply with the standards, the officer shall
26 deny the request for final approval and provide the person with a written
27 explanation of the decision. The officer shall make a determination on
28 the request for final approval in writing within thirty days after the
29 filing of the request. If the officer does not make a determination
30 within thirty days after the filing of the request, the request shall be
31 deemed approved and the person may petition the department directly to

1 determine the amount of eligible expenditures, calculate the amount of
2 the credit, and issue a certificate evidencing the credit. Any denial of
3 a request for final approval by the officer pursuant to this section may
4 be appealed, and the appeal shall be in accordance with the
5 Administrative Procedure Act. For the period beginning January 1, 2018,
6 and ending December 31, 2019, no request for final approval shall be
7 approved or deemed approved under this section.

8 (2) The department shall divide the credit and issue multiple
9 certificates to a person who qualifies for the credit upon reasonable
10 request.

11 (3) In calculating the amount of the credits to be issued pursuant
12 to this section, the department may issue credits in an amount that
13 differs from the amount of credits allocated by the officer under section
14 77-2905 if such credits are supported by eligible expenditures as
15 determined by the department, except that the department shall not issue
16 credits in an amount exceeding one hundred ten percent of the amount of
17 credits allocated by the officer under section 77-2905. If the amount of
18 credits to be issued under this section is more than the amount of
19 credits allocated by the officer pursuant to section 77-2905, the
20 department shall notify the officer of the difference and such amount
21 shall be subtracted from the annual amount available for allocation under
22 section 77-2905. If the amount of credits to be issued under this section
23 is less than the amount of credits allocated by the officer pursuant to
24 section 77-2905, the department shall notify the officer of the
25 difference and such amount shall be added to the annual amount available
26 for allocation under section 77-2905.

27 (4) The department shall not issue any certificates for credits
28 under this section until the recipient of the credit has paid to the
29 department a fee equal to one-quarter of one percent of the credit
30 amount. The department shall remit such fees to the State Treasurer for
31 credit to the Civic and Community Center Financing Fund.

1 (5) If the recipient of the credit is (a) a corporation having an
2 election in effect under subchapter S of the Internal Revenue Code of
3 1986, as amended, (b) a partnership, or (c) a limited liability company,
4 the credit may be claimed by the shareholders of the corporation, the
5 partners of the partnership, or the members of the limited liability
6 company in the same manner as those shareholders, partners, or members
7 account for their proportionate shares of the income or losses of the
8 corporation, partnership, or limited liability company, or as provided in
9 the bylaws or other executed agreement of the corporation, partnership,
10 or limited liability company. Credits granted to a partnership, a limited
11 liability company taxed as a partnership, or other multiple owners of
12 property shall be passed through to the partners, members, or owners,
13 respectively, on a pro rata basis or pursuant to an executed agreement
14 among the partners, members, or owners documenting any alternate
15 distribution method.

16 (6) Subject to section 77-2912, any credit amount that is unused may
17 be carried forward to subsequent tax years until fully utilized.

18 (7) Credits allowed under this section may be claimed for taxable
19 years beginning or deemed to begin on or after January 1, 2015, under the
20 Internal Revenue Code of 1986, as amended.

21 Sec. 4. Section 77-5723, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 77-5723 (1) In order to utilize the incentives set forth in the
24 Nebraska Advantage Act, the taxpayer shall file an application, on a form
25 developed by the Tax Commissioner, requesting an agreement with the Tax
26 Commissioner.

27 (2) The application shall contain:

28 (a) A written statement describing the plan of employment and
29 investment for a qualified business in this state;

30 (b) Sufficient documents, plans, and specifications as required by
31 the Tax Commissioner to support the plan and to define a project;

1 (c) If more than one location within this state is involved,
2 sufficient documentation to show that the employment and investment at
3 different locations are interdependent parts of the plan. A headquarters
4 shall be presumed to be interdependent with each other location directly
5 controlled by such headquarters. A showing that the parts of the plan
6 would be considered parts of a unitary business for corporate income tax
7 purposes shall not be sufficient to show interdependence for the purposes
8 of this subdivision;

9 (d) A nonrefundable application fee of one thousand dollars for a
10 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,
11 or tier 5 project, five thousand dollars for a tier 4 project, and ten
12 thousand dollars for a tier 6 project. The fee shall be credited to the
13 Nebraska Incentives Fund; and

14 (e) A timetable showing the expected sales tax refunds and what year
15 they are expected to be claimed. The timetable shall include both direct
16 refunds due to investment and credits taken as sales tax refunds as
17 accurately as possible.

18 The application and all supporting information shall be confidential
19 except for the name of the taxpayer, the location of the project, the
20 amounts of increased employment and investment, and the information
21 required to be reported by sections 77-5731 and 77-5734.

22 (3) An application must be complete to establish the date of the
23 application. An application shall be considered complete once it contains
24 the items listed in subsection (2) of this section, regardless of the Tax
25 Commissioner's additional needs pertaining to information or
26 clarification in order to approve or not approve the application.

27 (4) Once satisfied that the plan in the application defines a
28 project consistent with the purposes stated in the Nebraska Advantage Act
29 in one or more qualified business activities within this state, that the
30 taxpayer and the plan will qualify for benefits under the act, and that
31 the required levels of employment and investment for the project will be

1 met prior to the end of the fourth year after the year in which the
2 application was submitted for a tier 1, tier 3, or tier 6 project or the
3 end of the sixth year after the year in which the application was
4 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner
5 shall approve the application, except that the Tax Commissioner shall not
6 approve any applications for the period beginning July 1, 2017, and
7 ending June 30, 2019. For a tier 5 project that is sequential to a tier 2
8 large data center project, the required level of investment shall be met
9 prior to the end of the fourth year after the expiration of the tier 2
10 large data center project entitlement period relating to direct sales tax
11 refunds.

12 (5) During those times when the Tax Commissioner is allowed to
13 approve applications under this section, the ~~The~~ Tax Commissioner shall
14 make his or her determination to approve or not approve an application
15 within one hundred eighty days after the date of the application. If the
16 Tax Commissioner requests, by mail or by electronic means, additional
17 information or clarification from the taxpayer in order to make his or
18 her determination, such one-hundred-eighty-day period shall be tolled
19 from the time the Tax Commissioner makes the request to the time he or
20 she receives the requested information or clarification from the
21 taxpayer. The taxpayer and the Tax Commissioner may also agree to extend
22 the one-hundred-eighty-day period. If the Tax Commissioner fails to make
23 his or her determination within the prescribed one-hundred-eighty-day
24 period, the application shall be deemed approved.

25 (6) Within one hundred eighty days after approval of the
26 application, the Tax Commissioner shall prepare and mail a written
27 agreement to the taxpayer for the taxpayer's signature. The taxpayer and
28 the Tax Commissioner shall enter into a written agreement. The taxpayer
29 shall agree to complete the project, and the Tax Commissioner, on behalf
30 of the State of Nebraska, shall designate the approved plan of the
31 taxpayer as a project and, in consideration of the taxpayer's agreement,

1 agree to allow the taxpayer to use the incentives contained in the
2 Nebraska Advantage Act. The application, and all supporting
3 documentation, to the extent approved, shall be considered a part of the
4 agreement. The agreement shall state:

5 (a) The levels of employment and investment required by the act for
6 the project;

7 (b) The time period under the act in which the required levels must
8 be met;

9 (c) The documentation the taxpayer will need to supply when claiming
10 an incentive under the act;

11 (d) The date the application was filed; and

12 (e) A requirement that the company update the Department of Revenue
13 annually on any changes in plans or circumstances which affect the
14 timetable of sales tax refunds as set out in the application. If the
15 company fails to comply with this requirement, the Tax Commissioner may
16 defer any pending sales tax refunds until the company does comply.

17 (7) The incentives contained in section 77-5725 shall be in lieu of
18 the tax credits allowed by the Nebraska Advantage Rural Development Act
19 for any project. In computing credits under the act, any investment or
20 employment which is eligible for benefits or used in determining benefits
21 under the Nebraska Advantage Act shall be subtracted from the increases
22 computed for determining the credits under section 77-27,188. New
23 investment or employment at a project location that results in the
24 meeting or maintenance of the employment or investment requirements, the
25 creation of credits, or refunds of taxes under the Employment and
26 Investment Growth Act shall not be considered new investment or
27 employment for purposes of the Nebraska Advantage Act. The use of
28 carryover credits under the Employment and Investment Growth Act, the
29 Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the
30 Quality Jobs Act shall not preclude investment and employment from being
31 considered new investment or employment under the Nebraska Advantage Act.

1 The use of property tax exemptions at the project under the Employment
2 and Investment Growth Act shall not preclude investment not eligible for
3 the property tax exemption from being considered new investment under the
4 Nebraska Advantage Act.

5 (8) A taxpayer and the Tax Commissioner may enter into agreements
6 for more than one project and may include more than one project in a
7 single agreement. The projects may be either sequential or concurrent. A
8 project may involve the same location as another project. No new
9 employment or new investment shall be included in more than one project
10 for either the meeting of the employment or investment requirements or
11 the creation of credits. When projects overlap and the plans do not
12 clearly specify, then the taxpayer shall specify in which project the
13 employment or investment belongs.

14 (9) The taxpayer may request that an agreement be modified if the
15 modification is consistent with the purposes of the act and does not
16 require a change in the description of the project. An agreement may not
17 be modified to a tier that would grant a higher level of benefits to the
18 taxpayer or to a tier 1 project. Once satisfied that the modification to
19 the agreement is consistent with the purposes stated in the act, the Tax
20 Commissioner and taxpayer may amend the agreement. For a tier 6 project,
21 the taxpayer must agree to limit the project to qualified activities
22 allowable under tier 2 and tier 4.

23 Sec. 5. Original sections 77-1116, 77-2905, 77-2906, and 77-5723,
24 Revised Statutes Cumulative Supplement, 2016, are repealed.

25 Sec. 6. Since an emergency exists, this act takes effect when
26 passed and approved according to law.