

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 40

FINAL READING

Introduced by Groene, 42; Williams, 36; Albrecht, 17; Halloran, 33;
Pahls, 31; Wayne, 13; Day, 49; Brewer, 43; Blood, 3;
Vargas, 7; Aguilar, 35; Stinner, 48.

Read first time January 07, 2021

Committee: Revenue

- 1 A BILL FOR AN ACT relating to economic development; to adopt the Nebraska
- 2 Rural Projects Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 24 of this act shall be known and may be
2 cited as the Nebraska Rural Projects Act.

3 Sec. 2. For purposes of the Nebraska Rural Projects Act, the
4 definitions found in sections 3 to 13 of this act shall be used.

5 Sec. 3. Applicant means a nonprofit economic development
6 corporation.

7 Sec. 4. Applicant resources means:

8 (1) Dollars donated to the applicant specifically for the project by
9 any combination of one or more of the following:

10 (a) An individual;

11 (b) An organization that is exempt from income tax under section
12 501(c) of the Internal Revenue Code; or

13 (c) Any nongovernmental organization; and

14 (2) Any direct or indirect funding for the project from any federal,
15 state, or local government, excluding any matching funds received
16 pursuant to the Nebraska Rural Projects Act.

17 Sec. 5. Date of application means the date that a completed
18 application is filed under the Nebraska Rural Projects Act.

19 Sec. 6. Director means the Director of Economic Development.

20 Sec. 7. Investment means the amount paid by the applicant for the
21 project. The term includes any applicant resources received by the
22 applicant for the project. The term does not include any matching funds
23 received by the applicant under the Nebraska Rural Projects Act.

24 Sec. 8. Matching funds means the funds provided by the State of
25 Nebraska pursuant to section 17 of this act.

26 Sec. 9. Project means expenses incurred or to be incurred at one
27 qualified location for site acquisition and preparation, utility
28 extensions, and rail spur construction for the development of a new
29 industrial rail access business park, including any such expenses
30 incurred to assist an initial tenant at such business park that conducts
31 business in the manufacturing, processing, distribution, or transloading

1 trades.

2 Sec. 10. Qualified location means a location within a county in
3 this state that has a population of less than one hundred thousand
4 inhabitants.

5 Sec. 11. Related entity means any entity which is a subsidiary or
6 affiliated entity of the applicant or which has, as one of its purposes
7 for existence, the financial support of the applicant.

8 Sec. 12. Transformational period means the period of time from the
9 date of application through the end of the tenth year after the year in
10 which the complete application was filed with the director.

11 Sec. 13. Year means the fiscal year of the State of Nebraska.

12 Sec. 14. (1) In order to be eligible to receive the matching funds
13 allowed in the Nebraska Rural Projects Act, the applicant shall file an
14 application with the director, on a form developed by the director,
15 requesting an agreement.

16 (2) The application shall:

17 (a) Identify the project, including the qualified location of such
18 project;

19 (b) State the estimated, projected amount of total new investment at
20 the project, including the estimated, projected amount of applicant
21 resources;

22 (c) State the E-Verify number or numbers that will be used by the
23 applicant for employees at the qualified location as provided by the
24 United States Citizenship and Immigration Services; and

25 (d) Contain a nonrefundable application fee of one thousand dollars.
26 The director shall collect all application fees and shall remit the fees
27 to the State Treasurer for credit to the Nebraska Rural Projects Fund.

28 (3) An application must be complete to establish the date of
29 application. An application shall be considered complete once it contains
30 the items listed in subsection (2) of this section.

31 (4) Once satisfied that the application is complete and that the

1 applicant is eligible to receive the matching funds allowed in the
2 Nebraska Rural Projects Act, the director shall approve the application.

3 (5) There shall be no new applications filed under this section
4 after June 30, 2023. Any complete application filed on or before June 30,
5 2023, shall be considered by the director and approved if the location
6 and applicant qualify for approval. Agreements may be executed with
7 regard to any complete application filed on or before June 30, 2023.

8 Sec. 15. (1) Within ninety days after approval of the application,
9 the director shall prepare and deliver a written agreement to the
10 applicant for the applicant's signature. The applicant and the director,
11 on behalf of the State of Nebraska, shall enter into such written
12 agreement. Under the agreement, the applicant shall agree to undertake
13 the project and report all investment at the project to the director
14 annually. The director, on behalf of the State of Nebraska, shall agree
15 to allow the applicant to receive the matching funds allowed in the
16 Nebraska Rural Projects Act, subject to appropriation of such funds by
17 the Legislature. The application, and all supporting documentation, to
18 the extent approved, shall be considered a part of the agreement. The
19 agreement shall state:

20 (a) The qualified location;

21 (b) The total amount of matching funds approved for the project;

22 (c) The type of documentation the applicant will need to document
23 its receipt of applicant resources and all other investment made under
24 the act;

25 (d) The date of application;

26 (e) A requirement that any access to the primary rail carrier, land
27 purchase option, or zoning approval needed to carry out the project will
28 be secured;

29 (f) A requirement that the applicant be and will stay registered for
30 the E-Verify Program provided by the United States Citizenship and
31 Immigration Services for the duration of the project;

1 (g) A requirement that the applicant provide any information needed
2 by the director to perform his or her responsibilities under the Nebraska
3 Rural Projects Act, in the manner specified by the director;

4 (h) A requirement that the applicant provide an annually updated
5 timetable showing the applicant resources donated and received and all
6 other investment at the project, in the manner specified by the director;
7 and

8 (i) A requirement that the applicant update the director annually,
9 with its timetable or in the manner specified by the director, on any
10 changes in plans or circumstances which it reasonably expects will affect
11 the applicant resources or any other investment for the project.

12 (2) Any failure by the applicant to timely provide the updates or
13 information required by the director or the act may result in the loss of
14 the right to receive matching funds or, at the discretion of the
15 director, result in the deferral of matching fund disbursements until
16 such updates and information have been provided to the director by the
17 applicant.

18 (3) The applicant shall provide documentation to the director
19 validating the receipt of applicant resources but is not required to
20 disclose the names of any private donors.

21 (4) An agreement under the Nebraska Rural Projects Act shall have a
22 duration of no more than ten years after the date of application,
23 consisting of up to the ten years of the transformational period, except
24 that such agreement shall remain effective until all matching fund
25 payments that are allowed under the act have been received.

26 Sec. 16. The following transactions or activities shall not create
27 investment under the Nebraska Rural Projects Act except as specifically
28 allowed by this section:

29 (1) The renegotiation of any private donor commitment in existence
30 before the date of application, except to the extent of additional
31 donation commitments;

1 (2) The purchase of any property which was previously owned by the
2 applicant or a related entity. The first purchase by either the applicant
3 or a related entity shall be treated as investment if the item was first
4 placed in service in the state after the date of application;

5 (3) The renegotiation of any agreement in existence on the date of
6 application which does not materially change any of the material terms of
7 the agreement shall be presumed to be a transaction entered into for the
8 purpose of facilitating benefits under the act and shall not be allowed
9 in the calculation of investment under the act; and

10 (4) Any purchase of property from a related entity, except that the
11 applicant will be considered to have made investment under the act to the
12 extent the related entity would have been considered to have made
13 investment on the purchase of the property if the related entity was
14 considered the applicant.

15 Sec. 17. (1) Subject to section 19 of this act, an applicant shall
16 be entitled to receive matching funds from the State of Nebraska as
17 follows:

18 (a) For any amount of investment up to two million five hundred
19 thousand dollars made by the applicant by the end of the transformational
20 period, the applicant shall be entitled to receive two dollars of
21 matching funds for each such dollar of investment; and

22 (b) For any amount of investment in excess of two million five
23 hundred thousand dollars made by the applicant by the end of the
24 transformational period, the applicant shall be entitled to receive five
25 dollars of matching funds for each such dollar of investment.

26 (2) Subject to section 19 of this act, the state shall pay the
27 available matching funds to the applicant on an annual basis.

28 Sec. 18. (1) The right to matching funds prescribed in section 17
29 of this act shall be established by filing the forms required by the
30 director. Such forms shall be filed by the applicant on an annual basis
31 and shall be used by the director to determine the amount of matching

1 funds to be paid to the applicant each year. The matching funds may only
2 be used by the applicant to pay for the project or to pay off debt
3 financing related to the project.

4 (2) Interest at the rate specified in section 45-104.02, as such
5 rate may from time to time be adjusted, shall be due by the applicant on
6 any repayment of matching funds required under the Nebraska Rural
7 Projects Act.

8 (3) All interpretations of the Nebraska Rural Projects Act shall be
9 made by the director.

10 (4) An audit of a project shall be made by the director to the
11 extent and in the manner determined by the director. The director may
12 recover any matching funds which were erroneously allowed by issuing a
13 repayment determination within the later of three years from the date the
14 matching funds were paid or three years after the end of the
15 transformational period.

16 (5) Any determination by the director that the applicant does not
17 qualify, that a location is not a qualified location, that a project does
18 not qualify, that investment does not qualify, or that matching funds
19 must be repaid may be protested by the applicant to the director within
20 sixty days after the mailing to the applicant of the written notice of
21 the proposed determination by the director. If the notice of proposed
22 determination is not protested in writing by the applicant within the
23 sixty-day period, the proposed determination is a final determination. If
24 the notice is protested, the director, after a formal hearing by the
25 director or by an independent hearing officer appointed by the director,
26 if requested by the applicant in such protest, shall issue a written
27 order resolving such protest.

28 Sec. 19. (1) The right to receive matching funds under the Nebraska
29 Rural Projects Act:

30 (a) Shall be subject to the limitations on matching funds provided
31 in subsections (2) through (4) of this section and any other limitations

1 provided in the act;

2 (b) Shall be subject to funds being appropriated by the Legislature;
3 and

4 (c) Shall not be transferable.

5 (2) No more than fifty million dollars of matching funds shall be
6 paid in total under the Nebraska Rural Projects Act.

7 (3) No more than thirty million dollars of matching funds shall be
8 paid for any one project.

9 (4) An applicant shall not receive more matching funds than the
10 amount of matching funds approved under the applicant's agreement.

11 (5) For any year in which more than one applicant qualifies for
12 matching funds, the applicant with the earlier date of application shall
13 receive the full amount of matching funds to which he or she is entitled
14 before any matching funds may be paid to the applicant with the later
15 date of application. If an applicant cannot be paid in full in any given
16 year, then the matching funds shall be paid in later years until fully
17 funded, subject to the limitations provided in this section.

18 (6) It is the intent of the Legislature that all matching funds owed
19 to applicants under agreements signed pursuant to the Nebraska Rural
20 Projects Act shall be paid by the state in full if the applicant has met
21 all requirements for such funds.

22 (7) It is further the intent of the Legislature to appropriate five
23 million dollars for fiscal year 2021-22 and five million dollars for
24 fiscal year 2022-23 to the Department of Economic Development for
25 purposes of carrying out the Nebraska Rural Projects Act.

26 Sec. 20. Any complete application shall be considered a valid
27 application on the date submitted for the purposes of the Nebraska Rural
28 Projects Act.

29 Sec. 21. (1) An applicant may sell all or any part of the project
30 authorized by the Nebraska Rural Projects Act or the land on which such
31 project is situated to a person who is seeking to establish a business at

1 the site of such project if the sale is approved by the director.

2 (2) The director shall approve a sale under this section if the
3 director finds that the sale furthers the goals of the project and the
4 Nebraska Rural Projects Act.

5 (3) Any sale under this section shall not affect any matching funds
6 already granted to the applicant and shall not disqualify the applicant
7 from receiving matching funds after the sale.

8 Sec. 22. (1) No later than October 1, 2022, and no later than
9 October 1 of each year thereafter, the director shall submit
10 electronically an annual report for the previous fiscal year to the
11 Legislature. The report shall be on a fiscal year, accrual basis that
12 satisfies the requirements set by the Governmental Accounting Standards
13 Board. The director shall, on or before December 15, 2022, and on or
14 before December 15 of each year thereafter, appear at a joint hearing of
15 the Appropriations Committee of the Legislature and the Revenue Committee
16 of the Legislature and present the report. Any supplemental information
17 requested by three or more committee members shall be presented within
18 thirty days after the request.

19 (2) The report shall state (a) the total amount of matching funds
20 paid by the State of Nebraska, (b) the expected amount of matching funds
21 still to be paid by the State of Nebraska, and (c) the total investment
22 made by the applicants.

23 (3) The report shall provide an explanation of the audit and review
24 processes of the Department of Economic Development in approving and
25 rejecting the provision of matching funds and in enforcing matching funds
26 repayment.

27 (4) No information shall be provided in the report or in
28 supplemental information that is protected by state or federal
29 confidentiality laws. The identity of private donors shall not be
30 included in the report.

31 Sec. 23. The director may adopt and promulgate all procedures and

1 rules and regulations necessary to carry out the purposes of the Nebraska
2 Rural Projects Act.

3 Sec. 24. (1) The Nebraska Rural Projects Fund is hereby created.
4 The fund shall receive money from application fees paid under the
5 Nebraska Rural Projects Act and from appropriations from the Legislature,
6 grants, private contributions, repayments of matching funds, and all
7 other sources. Any money in the fund available for investment shall be
8 invested by the state investment officer pursuant to the Nebraska Capital
9 Expansion Act and the Nebraska State Funds Investment Act.

10 (2) Distributions of matching funds shall only be made from the fund
11 in amounts determined pursuant to subsection (1) of section 17 of this
12 act.