

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 40

Introduced by Groene, 42.

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 fifth 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 fee shall be remitted to the State Treasurer for credit to the
27 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 December 31, 2022. Any complete application filed on or before
5 December 31, 2022, shall be considered by the director and approved if
6 the location and applicant qualify for approval. Agreements may be
7 executed with regard to any complete application filed on or before
8 December 31, 2022.

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

21 (a) The qualified location;

22 (b) 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 (c) The date of application;

26 (d) 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 (e) 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 (f) 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 (g) 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 (h) 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 five years after the date of application,
23 consisting of up to the five 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, from the State of Nebraska, a dollar-for-dollar
17 match for the total amount of investment made by the applicant by the end
18 of the transformational period.

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

21 Sec. 18. (1) The right to matching funds prescribed in section 17
22 of this act shall be established by filing the forms required by the
23 director. The matching funds may only be used by the applicant to pay for
24 the project or to pay off debt financing related to the project.

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

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

31 (4) An audit of a project shall be made by the director to the

1 extent and in the manner determined by the director. The director may
2 recover any matching funds which were erroneously allowed by issuing a
3 repayment determination within the later of three years from the date the
4 matching funds were paid or three years after the end of the
5 transformational period.

6 (5) Any determination by the director that the applicant does not
7 qualify, that a location is not a qualified location, that a project does
8 not qualify, that investment does not qualify, or that matching funds
9 must be repaid may be protested by the applicant to the director within
10 sixty days after the mailing to the applicant of the written notice of
11 the proposed determination by the director. If the notice of proposed
12 determination is not protested in writing by the applicant within the
13 sixty-day period, the proposed determination is a final determination. If
14 the notice is protested, the director, after a formal hearing by the
15 director or by an independent hearing officer appointed by the director,
16 if requested by the applicant in such protest, shall issue a written
17 order resolving such protest.

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

20 (a) Shall be subject to the aggregate limit on matching funds
21 provided in subsection (2) of this section and any other limitations
22 provided in the act;

23 (b) Shall be subject to funds being appropriated by the Legislature;
24 and

25 (c) Shall not be transferable.

26 (2) No more than ten million dollars of matching funds shall be paid
27 under the Nebraska Rural Projects Act.

28 (3) For any year in which more than one applicant qualifies for
29 matching funds, the applicant with the earlier date of application shall
30 receive the full amount of matching funds to which he or she is entitled
31 before any matching funds may be paid to the applicant with the later

1 date of application. If an applicant cannot be paid in full in any given
2 year, then the matching funds shall be paid in later years until fully
3 funded, subject to the aggregate limit provided in subsection (2) of this
4 section.

5 Sec. 20. Any complete application shall be considered a valid
6 application on the date submitted for the purposes of the Nebraska Rural
7 Projects Act.

8 Sec. 21. (1) An applicant may sell all or any part of the project
9 authorized by the Nebraska Rural Projects Act or the land on which such
10 project is situated to a person who is seeking to establish a business at
11 the site of such project if the sale is approved by the director.

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

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

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

29 (2) The report shall state (a) the payment of matching funds made by
30 the State of Nebraska, (b) the expected payments of matching funds still
31 to be made by the State of Nebraska, and (c) the total investment made by

1 the applicants.

2 (3) The report shall provide an explanation of the audit and review
3 processes of the Department of Economic Development in approving and
4 rejecting the provision of matching funds and in enforcing matching funds
5 repayment.

6 (4) No information shall be provided in the report or in
7 supplemental information that is protected by state or federal
8 confidentiality laws. The identity of private donors shall not be
9 included in the report.

10 Sec. 23. The director may adopt and promulgate all procedures and
11 rules and regulations necessary to carry out the purposes of the Nebraska
12 Rural Projects Act.

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

20 (2) Distributions shall only be made from the fund in amounts equal
21 to the amount of investment made by the applicant for the project.