

AMENDMENTS TO LB1084

Introduced by Kolterman, 24.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Sections 1 to 26 of this act shall be known and may be  
4 cited as the Nebraska Transformational Projects Act.

5           Sec. 2. For purposes of the Nebraska Transformational Projects Act,  
6 the definitions found in sections 3 to 14 of this act shall be used.

7           Sec. 3. Applicant means a postsecondary institution having a  
8 college of medicine located in the State of Nebraska.

9           Sec. 4. Continuation period means the period of five years  
10 immediately following the end of the transformational period.

11          Sec. 5. Date of application means the date that a completed  
12 application is filed under the Nebraska Transformational Projects Act.

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

14          Sec. 7. Investment means the amount paid by the applicant for:

15           (1) Real property that is (a) constructed after the date of  
16 application, (b) owned by the applicant, (c) located at the qualified  
17 location, and (d) used to carry out the project; or

18           (2) Equipment that is (a) purchased after the date of application,  
19 (b) owned by the applicant, (c) located at the qualified location, and  
20 (d) used to carry out the project.

21          Sec. 8. Matching funds means the funds provided toward investment  
22 at a project by the State of Nebraska pursuant to section 18 of this act.

23          Sec. 9. (1) Private dollars means dollars donated to the applicant  
24 specifically for the project by any combination of one or more of the  
25 following:

26           (a) An individual;

27           (b) An organization that is exempt from income tax under section

1 501(c) of the Internal Revenue Code; or  
2 (c) Any nongovernmental organization.  
3 (2) Private dollars does not include any direct or indirect funding  
4 from any federal, state, or local government.

5 Sec. 10. Project means an investment by the applicant of at least  
6 one billion six hundred million dollars at one qualified location which  
7 is made to carry out the requirements for the qualified location to be  
8 included in the program described in Title VII, Subtitle C, section 740  
9 of Public Law 116-92.

10 Sec. 11. Qualified location means any parcel of real property, or  
11 contiguous or adjacent parcels of real property, within the State of  
12 Nebraska that is or are owned by the applicant, and such other parcels  
13 owned by the applicant that are necessary to support the applicant's  
14 project at such parcel or parcels. Except to the extent required for a  
15 project to be included in the program described in Title VII, Subtitle C,  
16 section 740 of Public Law 116-92, the award made for a qualified location  
17 may not be used for athletic or recreational purposes, except that a  
18 qualified location may contain space, totaling less than ten percent of  
19 the facility square footage at the project, that may be used for food  
20 service or for exercise or recreational purposes as is commonly used for  
21 the health and well-being of employees, students, and patients.

22 Sec. 12. Related entity means any entity which is a subsidiary or  
23 affiliated entity of the applicant or which has, as one of its purposes  
24 for existence, the financial support of the applicant.

25 Sec. 13. Transformational period means the period of time from the  
26 date of the complete application through the earlier of (1) the end of  
27 the tenth year after the year in which the complete application was filed  
28 with the director or (2) the end of the year in which the applicant  
29 attains the one billion six hundred million dollar investment  
30 requirement.

31 Sec. 14. Year means the fiscal year of the State of Nebraska.

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

5           (2) The application shall:

6           (a) Identify the project, including the qualified location of such  
7 project, and state that the applicant is pursuing a partnership with the  
8 federal government pursuant to Title VII, Subtitle C, section 740 of  
9 Public Law 116-92 for the project;

10           (b) State the estimated, projected amount of total new investment at  
11 the project, which shall not be less than one billion six hundred million  
12 dollars, including the estimated, projected amount of private dollars and  
13 matching funds;

14           (c) Include an independent assessment of the economic impact to  
15 Nebraska from the project and its construction, which shall be performed  
16 by a professional economist or economics firm which is not in the regular  
17 employ of the applicant. The assessment must show, to the reasonable  
18 satisfaction of the director, an economic impact to Nebraska of at least  
19 two billion seven hundred million dollars during the planning and  
20 construction period and at least four billion nine hundred million  
21 dollars during the ten-year period beginning either when construction is  
22 commenced or when the application is approved;

23           (d) Include approval of the project and of submission of the  
24 application by the governing body of the applicant. Approval of the  
25 project may be subject to other federal, state, and local government  
26 approvals needed to complete the project and subject to obtaining the  
27 funding, financing, and donations needed for the project;

28           (e) State the E-Verify number or numbers that will be used by the  
29 applicant for employees at the qualified location as provided by the  
30 United States Citizenship and Immigration Services; and

31           (f) Contain a nonrefundable application fee of twenty-five thousand

1 dollars. The fee shall be remitted to the State Treasurer for credit to  
2 the Nebraska Transformational Project Fund.

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

6 (4) Once satisfied that the application is complete and that the  
7 applicant is eligible to receive the matching funds allowed in the  
8 Nebraska Transformational Projects Act, the director shall approve the  
9 application.

10 (5) There shall be no new applications filed under this section  
11 after December 31, 2021. Any complete application filed on or before  
12 December 31, 2021, shall be considered by the director and approved if  
13 the location and applicant qualify for approval. Agreements may be  
14 executed with regard to any complete application filed on or before  
15 December 31, 2021.

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

28 (a) The qualified location;

29 (b) The type of documentation the applicant will need to document  
30 its investment and receipt of private dollars under the act;

31 (c) The date the application was complete;

1       (d) A requirement that the applicant be and will stay registered for  
2 the E-Verify Program provided by the United States Citizenship and  
3 Immigration Services for the duration of the project;

4       (e) A requirement that the applicant update the director within  
5 sixty days of the following events:

6       (i) Execution of an agreement for construction of real property at  
7 the project;

8       (ii) Local approval for construction of real property at the  
9 project;

10       (iii) A binding commitment for financing of the project by a private  
11 lender, to the extent applicable;

12       (iv) Commencement of construction of real property at the project;  
13 and

14       (v) The issuance of a certificate of occupancy for real property at  
15 the project;

16       (f) A requirement that the applicant provide any information needed  
17 by the director to perform his or her responsibilities under the Nebraska  
18 Transformational Projects Act, in the manner specified by the director;

19       (g) A requirement that the applicant provide an annually updated  
20 timetable showing the private dollars donated and received and the  
21 investment at the project, in the manner specified by the director; and

22       (h) A requirement that the applicant update the director annually,  
23 with its timetable or in the manner specified by the director, on any  
24 changes in plans or circumstances which it reasonably expects will affect  
25 the investment or expected donations for the project.

26       (2) Any failure by the applicant to timely provide the updates or  
27 information required by the director or the act shall result in the loss  
28 of the right to receive matching funds or may, in the discretion of the  
29 director, result in the deferral of matching fund disbursements until  
30 such updates and information have been provided to the director by the  
31 applicant.

1       (3) The applicant shall provide documentation to the director  
2 validating the receipt of private dollars.

3       (4) An agreement under the Nebraska Transformational Projects Act  
4 shall have a duration of no more than fifteen years after the date of  
5 application, consisting of up to the ten years of the transformational  
6 period followed by the five-year continuation period, except such  
7 agreement shall remain effective until all matching fund payments have  
8 been received as provided for under the act.

9       (5) An agreement under the Nebraska Transformational Projects Act  
10 must be approved by the governing body of the applicant to be valid.

11       Sec. 17. The following transactions or activities shall not create  
12 investment under the Nebraska Transformational Projects Act except as  
13 specifically allowed by this section:

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

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

21       (3) The renegotiation of any agreement in existence on the date of  
22 application which does not materially change any of the material terms of  
23 the agreement shall be presumed to be a transaction entered into for the  
24 purpose of facilitating benefits under the act and shall not be allowed  
25 in the meeting of the required investment level under the act; and

26       (4) Any purchase of property from a related entity, except that the  
27 applicant will be considered to have made investment under the act to the  
28 extent the related entity would have been considered to have made  
29 investment on the purchase of the property if the related entity was  
30 considered the applicant.

31       Sec. 18. (1) Subject to section 21 of this act, an applicant shall,

1 upon the applicant's project being selected for the program established  
2 under Title VII, Subtitle C, section 740 of Public Law 116-92 and the  
3 receipt of federal dollars, be entitled to receive, from the State of  
4 Nebraska, three hundred million dollars as matching funds for the three  
5 hundred million dollars of private dollars received by the applicant  
6 between the date of application and the end of the continuation period.

7 (2) Subject to section 21 of this act, the state shall pay the  
8 available matching funds to the applicant on an annual basis.

9 Sec. 19. (1) The right to matching funds prescribed in section 18  
10 of this act shall be established by filing the forms required by the  
11 director. The matching funds may only be used by the applicant to make  
12 investments at the project or to pay off debt financing for such  
13 investments. Matching funds and private dollars shall be counted towards  
14 the attainment of the one billion six hundred million dollar investment  
15 requirement.

16 (2) Interest shall be due by the applicant on any repayment of  
17 matching funds.

18 (3) All interpretations of the Nebraska Transformational Projects  
19 Act shall be made by the director.

20 (4) An audit of a project shall be made by the director to the  
21 extent and in the manner determined by the director. The director may  
22 recover any matching funds which were erroneously allowed by issuing a  
23 repayment determination within the later of three years from the date the  
24 matching funds were paid or three years after the end of the continuation  
25 period.

26 (5) Any determination by the director that the applicant does not  
27 qualify, that a location is not a qualified location, that a project does  
28 not qualify, that a private dollar donation does not qualify, or that  
29 matching funds must be repaid may be protested by the applicant to the  
30 director within sixty days after the mailing to the applicant of the  
31 written notice of the proposed determination by the director. If the

1 notice of proposed determination is not protested in writing by the  
2 applicant within the sixty-day period, the proposed determination is a  
3 final determination. If the notice is protested, the director, after a  
4 formal hearing by the director or by an independent hearing officer  
5 appointed by the director, if requested by the applicant in such protest,  
6 shall issue a written order resolving such protest.

7       Sec. 20. (1) The applicant must make an investment of one billion  
8 six hundred million dollars at the project before the end of the  
9 transformational period. If the applicant fails to reach such threshold,  
10 all of the matching funds paid to the applicant under the Nebraska  
11 Transformational Projects Act shall be repaid by the applicant to the  
12 director, and the applicant shall be entitled to no matching funds for  
13 the project.

14       (2) The applicant must maintain the required level of investment for  
15 the entire continuation period. If the applicant fails to maintain the  
16 required level of investment for the entire continuation period, all of  
17 the matching funds paid to the applicant under the act shall be repaid by  
18 the applicant to the director, and the applicant shall be entitled to no  
19 matching funds for the project.

20       (3) If the applicant fails to receive, before the end of the  
21 continuation period, three hundred million dollars of donations of  
22 private dollars to be used for the project, then all matching funds paid  
23 to the applicant under the act shall be repaid by the applicant to the  
24 director.

25       (4) The repayment required by this section shall not occur if the  
26 failure to receive a donation, or achieve or maintain the required level  
27 of investment, was caused by an act of God or national emergency.

28       Sec. 21. The right to receive matching funds under the Nebraska  
29 Transformational Projects Act:

30       (1) Shall be subject to the limitations provided in the act;

31       (2) Shall be subject to funds being appropriated by the Legislature;

1 and

2 (3) Shall not be transferable.

3 Sec. 22. If the applicant cannot be paid in full in any given  
4 fiscal year, then the matching funds shall be paid in later years until  
5 fully funded.

6 Sec. 23. Any complete application shall be considered a valid  
7 application on the date submitted for the purposes of the Nebraska  
8 Transformational Projects Act.

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

20 (2) The report shall state (a) the payment of matching funds made by  
21 the State of Nebraska, (b) the expected payments of matching funds still  
22 to be made by the State of Nebraska, and (c) the investment made by the  
23 applicant.

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

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

1           Sec. 25.     Except as otherwise provided in the Nebraska  
2 Transformational Projects Act, the director may adopt and promulgate all  
3 procedures and rules and regulations necessary to carry out the purposes  
4 of the act.

5           Sec. 26.   (1) The Nebraska Transformational Project Fund is hereby  
6 created. The fund shall receive money from application fees paid under  
7 the Nebraska Transformational Projects Act and from appropriations from  
8 the Legislature, grants, private contributions, repayments of matching  
9 funds, and all other sources. Any money in the fund available for  
10 investment shall be invested by the state investment officer pursuant to  
11 the Nebraska Capital Expansion Act and the Nebraska State Funds  
12 Investment Act.

13           (2) It is the intent of the Legislature that the State Treasurer  
14 shall transfer an amount not to exceed three hundred million dollars to  
15 the Nebraska Transformational Project Fund no later than fiscal year  
16 2026-27. No transfer shall be made to the fund until the applicant has  
17 been selected for participation in the program described in Title VII,  
18 Subtitle C, section 740 of Public Law 116-92 and commitments of at least  
19 one billion three hundred million dollars in total investment, including  
20 only federal dollars and private donations, have been secured.  
21 Distributions may be made from the fund in amounts equal to the amount of  
22 private dollars received by the applicant for the project.

23           (3) Any money remaining in the fund after all obligations have been  
24 met shall be transferred to the General Fund.

25           Sec. 27.   This act becomes operative on January 1, 2021.