

AMENDMENTS TO LB1107

(Amendments to Standing Committee amendments, AM3316)

Introduced by Groene, 42.

1 1. Insert the following new sections:

2 Sec. 115. Sections 115 to 138 of this act shall be known and may be
3 cited as the Nebraska Rural Projects Act.

4 Sec. 116. For purposes of the Nebraska Rural Projects Act, the
5 definitions found in sections 117 to 127 of this act shall be used.

6 Sec. 117. Applicant means a nonprofit economic development
7 corporation.

8 Sec. 118. (1) Applicant resources means dollars donated to the
9 applicant specifically for the project by any combination of one or more
10 of the following:

11 (a) An individual;

12 (b) An organization that is exempt from income tax under section
13 501(c) of the Internal Revenue Code; or

14 (c) Any nongovernmental organization.

15 (2) Applicant resources includes any direct or indirect funding for
16 the project from any federal, state, or local government.

17 Sec. 119. Date of application means the date that a completed
18 application is filed under the Nebraska Rural Projects Act.

19 Sec. 120. Director means the Director of Economic Development.

20 Sec. 121. Investment means the amount paid by the applicant for site
21 acquisition and preparation, utility extensions, and rail spur
22 construction for the development of a new industrial rail access business
23 park, including any such amounts paid to assist an initial tenant at such
24 business park that conducts business in the manufacturing, processing,
25 distribution, or transloading trades.

26 Sec. 122. Matching funds means the funds provided toward investment

1 at a project by the State of Nebraska pursuant to section 131 of this
2 act.

3 Sec. 123. Project means an investment by the applicant of up to ten
4 million dollars at one qualified location.

5 Sec. 124. Qualified location means a location within a county in
6 this state that has a population of less than one hundred thousand
7 inhabitants.

8 Sec. 125. Related entity means any entity which is a subsidiary or
9 affiliated entity of the applicant or which has, as one of its purposes
10 for existence, the financial support of the applicant.

11 Sec. 126. Transformational period means the period of time from the
12 date of application through the end of the fifth year after the year in
13 which the complete application was filed with the director.

14 Sec. 127. Year means the fiscal year of the State of Nebraska.

15 Sec. 128. (1) In order to be eligible to receive the matching funds
16 allowed in the Nebraska Rural Projects Act, the applicant shall file an
17 application with the director, on a form developed by the director,
18 requesting an agreement.

19 (2) The application shall:

20 (a) Identify the project, including the qualified location of such
21 project;

22 (b) State the estimated, projected amount of total new investment at
23 the project, including the estimated, projected amount of applicant
24 resources;

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

28 (d) Contain a nonrefundable application fee of one thousand dollars.
29 The fee shall be remitted to the State Treasurer for credit to the
30 Nebraska Rural Project Fund.

31 (3) An application must be complete to establish the date of

1 application. An application shall be considered complete once it contains
2 the items listed in subsection (2) of this section.

3 (4) Once satisfied that the application is complete and that the
4 applicant is eligible to receive the matching funds allowed in the
5 Nebraska Rural Projects Act, the director shall approve the application.

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

12 Sec. 129. (1) Within ninety days after approval of the application,
13 the director shall prepare and deliver a written agreement to the
14 applicant for the applicant's signature. The applicant and the director,
15 on behalf of the State of Nebraska, shall enter into such written
16 agreement. Under the agreement, the applicant shall agree to undertake
17 the project and report all investment at the project to the director
18 annually. The director, on behalf of the State of Nebraska, shall agree
19 to allow the applicant to receive the matching funds allowed in the
20 Nebraska Rural Projects Act, subject to appropriation of such funds by
21 the Legislature. The application, and all supporting documentation, to
22 the extent approved, shall be considered a part of the agreement. The
23 agreement shall state:

24 (a) The qualified location;

25 (b) The type of documentation the applicant will need to document
26 its investment and receipt of applicant resources under the act;

27 (c) The date of application;

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

31 (e) A requirement that the applicant be and will stay registered for

1 the E-Verify Program provided by the United States Citizenship and
2 Immigration Services for the duration of the project;

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

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

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

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

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

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

27 Sec. 130. The following transactions or activities shall not create
28 investment under the Nebraska Rural Projects Act except as specifically
29 allowed by this section:

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

1 donation commitments;

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

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

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

16 Sec. 131. (1) Subject to section 133 of this act, an applicant shall
17 be entitled to receive, from the State of Nebraska, up to ten million
18 dollars as matching funds for up to ten million dollars of investment
19 made by the applicant by the end of the transformational period. For
20 purposes of this section, applicant resources shall be counted as part of
21 the applicant's investment.

22 (2) Subject to section 133 of this act, the state shall pay the
23 available matching funds to the applicant on an annual basis.

24 Sec. 132. (1) The right to matching funds prescribed in section 131
25 of this act shall be established by filing the forms required by the
26 director. The matching funds may only be used by the applicant to make
27 investments at the project or to pay off debt financing for such
28 investments.

29 (2) Interest at the rate specified in section 45-104.02, as such
30 rate may from time to time be adjusted, shall be due by the applicant on
31 any repayment of matching funds.

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

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

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

21 Sec. 133. The right to receive matching funds under the Nebraska
22 Rural Projects Act:

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

24 (2) Shall be subject to funds being appropriated by the Legislature;
25 and

26 (3) Shall not be transferable.

27 Sec. 134. If the applicant cannot be paid in full in any given
28 fiscal year, then the matching funds shall be paid in later years until
29 fully funded.

30 Sec. 135. Any complete application shall be considered a valid
31 application on the date submitted for the purposes of the Nebraska Rural

1 Projects Act.

2 Sec. 136. (1) No later than October 1, 2022, and no later than
3 October 1 of each year thereafter, the director shall submit
4 electronically an annual report for the previous fiscal year to the
5 Legislature. The report shall be on a fiscal year, accrual basis that
6 satisfies the requirements set by the Governmental Accounting Standards
7 Board. The director shall, on or before December 15, 2022, and on or
8 before December 15 of each year thereafter, appear at a joint hearing of
9 the Appropriations Committee of the Legislature and the Revenue Committee
10 of the Legislature and present the report. Any supplemental information
11 requested by three or more committee members shall be presented within
12 thirty days after the request.

13 (2) The report shall state (a) the payment of matching funds made by
14 the State of Nebraska, (b) the expected payments of matching funds still
15 to be made by the State of Nebraska, and (c) the investment made by the
16 applicant.

17 (3) The report shall provide an explanation of the audit and review
18 processes of the Department of Economic Development in approving and
19 rejecting the provision of matching funds and in enforcing matching funds
20 repayment.

21 (4) No information shall be provided in the report or in
22 supplemental information that is protected by state or federal
23 confidentiality laws. The identity of private donors shall not be
24 included in the report.

25 Sec. 137. The director may adopt and promulgate all procedures and
26 rules and regulations necessary to carry out the purposes of the Nebraska
27 Rural Projects Act.

28 Sec. 138. (1) The Nebraska Rural Project Fund is hereby created. The
29 fund shall receive money from application fees paid under the Nebraska
30 Rural Projects Act and from appropriations from the Legislature, grants,
31 private contributions, repayments of matching funds, and all other

1 sources. Any money in the fund available for investment shall be invested
2 by the state investment officer pursuant to the Nebraska Capital
3 Expansion Act and the Nebraska State Funds Investment Act.

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

6 2. Renumber the remaining sections and correct internal references
7 accordingly.

8 3. Correct the operative date section so that the sections added by
9 this amendment become operative on January 1, 2021.