

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1084

Introduced by Kolterman, 24; Blood, 3; Brewer, 43; Cavanaugh, 6; DeBoer, 10; Dorn, 30; Geist, 25; Gragert, 40; Groene, 42; Hansen, M., 26; Hilgers, 21; Hilkemann, 4; Howard, 9; La Grone, 49; Lathrop, 12; Lindstrom, 18; Linehan, 39; McCollister, 20; Morfeld, 46; Pansing Brooks, 28; Quick, 35; Scheer, 19; Slama, 1; Stinner, 48; Walz, 15; Williams, 36; Wishart, 27.

Read first time January 21, 2020

Committee: Revenue

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

1 Section 1. Sections 1 to 28 of this act shall be known and may be
2 cited as the Nebraska Transformational Projects Act.

3 Sec. 2. The Legislature hereby finds and declares that it is the
4 policy of this state to support economic development transformation of
5 state and local government services in the State of Nebraska in order to
6 (1) better solve the needs of the citizens of the State of Nebraska and
7 (2) increase the local, national, and international social and economic
8 impact of the State of Nebraska and its political subdivisions.

9 Sec. 3. For purposes of the Nebraska Transformational Projects Act,
10 the definitions found in sections 4 to 15 of this act shall be used.

11 Sec. 4. Applicant means the University of Nebraska as specified in
12 section 85-102.01, any state college as specified in section 85-301, any
13 community college as defined in section 85-1503, any natural resources
14 district as defined in section 2-3202, any city or village, any county,
15 any school district, any learning community, any public power district,
16 any other unit of local government, and any entity created pursuant to
17 the Interlocal Cooperation Act or the Joint Public Agency Act.

18 Sec. 5. Continuation period means the period of five years
19 immediately following the end of the transformational period.

20 Sec. 6. Date of application means the date that a completed
21 application is filed under the Nebraska Transformational Projects Act.

22 Sec. 7. Director means the Director of Economic Development.

23 Sec. 8. Investment means the amount paid by the applicant for:

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

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

30 Sec. 9. Matching funds means the funds provided toward investment
31 at a project by the State of Nebraska pursuant to section 19 of this act.

1 Sec. 10. (1) Private dollars means dollars donated to the applicant
2 specifically for the project by any combination of one or more of the
3 following:

4 (a) An individual;

5 (b) An organization that is exempt from income tax under section
6 501(c) of the Internal Revenue Code; or

7 (c) Any nongovernmental organization.

8 (2) Private dollars does not include any direct or indirect funding
9 from any federal, state, or local government.

10 Sec. 11. Project means an investment by the applicant of at least
11 one billion dollars at one qualified location which is made to carry out
12 the requirements for the qualified location to be included in the program
13 described in Title VII, Subtitle C, section 740 of Public Law 116-92.

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

26 Sec. 13. Related entity means any entity which is a subsidiary or
27 affiliated entity of the applicant or which has, as one of its purposes
28 for existence, the financial support of the applicant.

29 Sec. 14. Transformational period means the period of time from the
30 date of the complete application through the earlier of (1) the end of
31 the tenth year after the year in which the complete application was filed

1 with the director or (2) the end of the year in which the applicant
2 attains the one billion dollar investment requirement.

3 Sec. 15. Year means the fiscal year of the State of Nebraska.

4 Sec. 16. (1) In order to be eligible to receive the matching funds
5 allowed in the Nebraska Transformational Projects Act, the applicant
6 shall file an application with the director, on a form developed by the
7 director, requesting an agreement.

8 (2) The application shall:

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

13 (b) State the estimated, projected amount of total new investment at
14 the project, which shall not be less than one billion dollars, and the
15 estimated, projected amount of private dollars;

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

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

30 (e) State the E-Verify number or numbers that will be used by the
31 applicant for employees at the qualified location as provided by the

1 United States Citizenship and Immigration Services; and

2 (f) Contain a nonrefundable application fee of twenty-five thousand
3 dollars. The fee shall be remitted to the State Treasurer for credit to
4 the Nebraska Transformational Project Fund.

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

8 (4) Once satisfied that the application is consistent with the
9 purposes stated in the Nebraska Transformational Projects Act for a
10 project within this state, the director shall approve the application.

11 (5) The director shall make his or her determination to approve or
12 not approve an application within ninety days after the date of the
13 application. If the director requests, by mail or by electronic means,
14 additional information or clarification from the applicant in order to
15 make his or her determination, such ninety-day period shall be tolled
16 from the time the director makes the request to the time he or she
17 receives the requested information or clarification from the applicant.
18 The applicant and the director may also agree to extend the ninety-day
19 period. If the director fails to make his or her determination within the
20 prescribed ninety-day period, the application is deemed approved.

21 (6) There shall be no new applications filed under this section
22 after December 31, 2030. All complete applications filed on or before
23 December 31, 2030, shall be considered by the director and approved if
24 the location and applicant qualify for approval. Agreements may be
25 executed with regard to complete applications filed on or before December
26 31, 2030. All agreements pending, approved, or entered into before such
27 date shall continue in full force and effect.

28 Sec. 17. (1) Within ninety days after approval of the application,
29 the director shall prepare and deliver a written agreement to the
30 applicant for the applicant's signature. The applicant and the director,
31 on behalf of the State of Nebraska, shall enter into such written

1 agreement. Under the agreement, the applicant shall agree to undertake
2 the project and report all investment at the project to the director
3 annually. The director, on behalf of the State of Nebraska, shall agree
4 to allow the applicant to receive the matching funds allowed in the
5 Nebraska Transformational Projects Act, subject to appropriation of such
6 funds by the Legislature. The application, and all supporting
7 documentation, to the extent approved, shall be considered a part of the
8 agreement. The agreement shall state:

9 (a) The qualified location;

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

12 (c) The date the application was complete;

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

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

18 (i) Execution of an agreement for construction of real property at
19 the project;

20 (ii) Local approval for construction of real property at the
21 project;

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

24 (iv) Commencement of construction of real property at the project;
25 and

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

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

31 (g) A requirement that the applicant provide an annually updated

1 timetable showing the private dollars donated and the investment at the
2 project, in the manner specified by the director; and

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

7 (2) Any failure by the applicant to timely provide the updates or
8 information required by the director or the act shall not result in the
9 loss of the right to receive matching funds but may, in the discretion of
10 the director, result in the deferral of matching fund disbursements until
11 such updates and information have been provided to the director by the
12 applicant.

13 (3) The applicant is not required to reveal to the director the
14 names of any donors of private dollars.

15 (4) An agreement under the Nebraska Transformational Projects Act
16 shall have a duration of no more than fifteen years after the date of
17 application, consisting of up to the ten years of the transformational
18 period followed by the five-year continuation period, except such
19 agreement shall remain effective until all matching fund payments have
20 been received as provided for under the act. An applicant with an
21 existing agreement may apply for and receive a new agreement for any
22 projects that are not part of an existing agreement under the Nebraska
23 Transformational Projects Act, but cannot apply for a new agreement for a
24 project or qualified location designated in an existing agreement until
25 after the end of the continuation period for the existing agreement.

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

28 Sec. 18. The following transactions or activities shall not create
29 investment under the Nebraska Transformational Projects Act except as
30 specifically allowed by this section:

31 (1) The renegotiation of any private donor commitment in existence

1 before the date of application, except to the extent of additional
2 donation commitments;

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

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

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

17 Sec. 19. (1) Subject to section 22 of this act, an applicant shall,
18 upon the later of the applicant's project being selected for the program
19 established under Title VII, Subtitle C, section 740 of Public Law 116-92
20 and the receipt of federal dollars or the execution of an agreement for a
21 project, be entitled to receive, from the State of Nebraska, three
22 hundred million dollars as matching funds for the three hundred million
23 dollars of private dollars received or to be received by the applicant
24 between the date of application and the end of the continuation period.

25 (2) Subject to section 22 of this act, the state shall pay the
26 available matching funds to the applicant on an annual basis, even if the
27 project has not yet reached one billion dollars in total investment or
28 three hundred million in private dollars donated.

29 Sec. 20. (1) The right to matching funds prescribed in section 19
30 of this act shall be established by filing the forms required by the
31 director. The matching funds may only be used by the applicant to make

1 investments at the project or to pay off debt financing for such
2 investments. Matching funds shall not be counted towards the attainment
3 of the one billion dollar investment requirement.

4 (2) Interest shall not be allowed on any matching funds made to an
5 applicant under the Nebraska Transformational Projects Act and shall not
6 be due by the applicant on any repayment of matching funds.

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

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

15 (5) Any determination by the director that the applicant does not
16 qualify, that a location is not a qualified location, that a project does
17 not qualify, that a private dollar donation does not qualify, or that
18 matching funds must be repaid may be protested by the applicant to the
19 director within sixty days after the mailing to the applicant of the
20 written notice of the proposed determination by the director. If the
21 notice of proposed determination is not protested in writing by the
22 applicant within the sixty-day period, the proposed determination is a
23 final determination. If the notice is protested, the director, after a
24 formal hearing by the director or by an independent hearing officer
25 appointed by the director, if requested by the applicant in such protest,
26 shall issue a written order resolving such protest. The written order of
27 the director resolving a protest may be appealed to the district court of
28 Lancaster County in accordance with the Administrative Procedure Act
29 within thirty days after the issuance of the order.

30 (6) The matching funds prescribed in section 19 of this act shall be
31 considered as a tax expenditure for state fiscal analysis purposes.

1 Sec. 21. (1) The applicant must make an investment of one billion
2 dollars at the project before the end of the transformational period. If
3 the applicant fails to reach such threshold, all of the matching funds
4 paid to the applicant under the Nebraska Transformational Projects Act
5 shall be repaid by the applicant to the director, and the applicant shall
6 be entitled to no matching funds for the project.

7 (2) The applicant must maintain the required level of investment for
8 the entire continuation period. If the applicant fails to maintain the
9 required level of investment for the entire continuation period, all of
10 the matching funds paid to the applicant under the act shall be repaid by
11 the applicant to the director, and the applicant shall be entitled to no
12 matching funds for the project.

13 (3) If the applicant fails to receive, before the end of the
14 continuation period, three hundred million dollars of donations of
15 private dollars to be used for the project, then all matching funds paid
16 to the applicant under the act shall be repaid by the applicant to the
17 director.

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

21 Sec. 22. The right to receive matching funds under the Nebraska
22 Transformational 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. 23. The total matching funds paid by the director under the
28 Nebraska Transformational Projects Act in a fiscal year shall not exceed
29 one percent of the state tax receipts received by the state in the prior
30 fiscal year. If all projects under the act cannot be paid in full in any
31 given fiscal year, then the available matching funds shall be allocated

1 and dispersed proportionately among the applicants based on the amount of
2 matching funds that would be due to each applicant for that year if they
3 could be fully funded. Any deferred, unpaid matching funds shall be paid
4 in later years until fully funded.

5 Sec. 24. Any complete application shall be considered a valid
6 application on the date submitted for the purposes of the Nebraska
7 Transformational Projects Act.

8 Sec. 25. (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 list (a) the agreements which have been signed
20 during the previous year, (b) the agreements which are still in effect,
21 (c) the identity of each applicant who is party to an agreement, and (d)
22 the qualified location for each project.

23 (3) The report shall also state, for applicants who are parties to
24 agreements, (a) the applications under the Nebraska Transformational
25 Projects Act, (b) the payment of matching funds made by the State of
26 Nebraska, (c) the expected payments of matching funds still to be made by
27 the State of Nebraska, and (d) the investment made at each project.

28 (4) The report shall provide an explanation of the audit and review
29 processes of the Department of Economic Development in approving and
30 rejecting applications or the provision of matching funds and in
31 enforcing matching funds repayment.

1 (5) The report shall include an executive summary which shows
2 aggregate information for all agreements for which the information on
3 projects is reported.

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

8 Sec. 26. Except as otherwise provided in the Nebraska
9 Transformational Projects Act, the director may adopt and promulgate all
10 procedures and rules and regulations necessary to carry out the purposes
11 of the act.

12 Sec. 27. The Nebraska Transformational Project Fund is hereby
13 created. The fund shall receive money from application fees paid under
14 the Nebraska Transformational Projects Act and from appropriations from
15 the Legislature, grants, private contributions, repayments of matching
16 funds, and all other sources. Any money in the fund available for
17 investment shall be invested by the state investment officer pursuant to
18 the Nebraska Capital Expansion Act and the Nebraska State Funds
19 Investment Act.

20 Sec. 28. It is the intent of the Legislature to transfer one
21 percent of the state tax receipts received in the prior fiscal year to
22 the Nebraska Transformational Project Fund for fiscal year 2022-23 and
23 for each fiscal year thereafter for purposes of carrying out the purposes
24 of the Nebraska Transformational Projects Act. Any money remaining in the
25 fund after all obligations have been met for all projects shall be
26 returned to the General Fund.

27 Sec. 29. This act becomes operative on January 1, 2021.