

LEGISLATIVE BILL 156

Approved by the Governor May 24, 2021

Introduced by Wayne, 13; Hansen, M., 26; Groene, 42; Hunt, 8.

A BILL FOR AN ACT relating to economic development; to amend sections 81-12,148 and 81-12,150, Reissue Revised Statutes of Nebraska, and sections 81-12,146, 81-12,147, and 81-12,149, Revised Statutes Cumulative Supplement, 2020; to adopt the Municipal Inland Port Authority Act; to state legislative intent for the transfer of funds; to change provisions relating to use of the Site and Building Development Fund and provide powers and duties for the Department of Economic Development; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 13 of this act shall be known and may be cited as the Municipal Inland Port Authority Act.

Sec. 2. The Legislature finds and declares as follows:

(1) Nebraska is ideally situated as a potential industrial and logistical hub for multiple industries across the rest of the country. The state is home to major railroads and trucking firms, and is within a two-day drive to major cities on the east coast, west coast, Mexico, and Canada;

(2) Increasingly, major companies looking to locate their headquarters or expand operations seek large shovel-ready commercial and industrial sites, commonly referred to as mega sites;

(3) Nebraska currently lacks the economic development tools necessary to acquire and develop large shovel-ready commercial and industrial sites, and the creation of one or more inland port authorities in Nebraska could serve as a mechanism to develop such sites; and

(4) In addition to the development of large shovel-ready commercial and industrial sites, the creation of one or more inland port authorities could serve as a regional merging point for multi-modal transportation and distribution of goods to and from ports and other locations in other regions.

Sec. 3. For purposes of the Municipal Inland Port Authority Act:

(1) Board means the board of commissioners of an inland port authority;

(2) City means any city of the metropolitan class, city of the primary class, or city of the first class which contains an area eligible to be designated as an inland port district;

(3) Direct financial benefit means any form of financial benefit that accrues to an individual directly, including compensation, commission, or any other form of a payment or increase of money, or an increase in the value of a business or property. Direct financial benefit does not include a financial benefit that accrues to the public generally;

(4) Family member means a spouse, parent, sibling, child, or grandchild;

(5) Inland port authority means an authority created by a city, county, or a city and one or more counties under the Municipal Inland Port Authority Act to manage an inland port district;

(6) Inland port district means an area within the corporate boundaries or extraterritorial zoning jurisdiction or both of a city, within the boundaries of one or more counties, or within both the corporate boundaries or extraterritorial zoning jurisdiction or both of a city and the boundaries of one or more counties, and which meets at least two of the following criteria:

(a) Is located within one mile of a navigable river or other navigable waterway;

(b) Is located within one mile of a major rail line;

(c) Is located within two miles of any portion of the federally designated National System of Interstate and Defense Highways or any other four-lane divided highway; or

(d) Is located within two miles of a major airport;

(7) Intermodal facility means a hub or other facility for trade combining any combination of rail, barge, trucking, air cargo, or other transportation services;

(8) Major airport means an airport with commercial service as defined by the Federal Aviation Administration; and

(9) Major rail line means a rail line that is accessible to a Class I railroad as defined by the federal Surface Transportation Board.

Sec. 4. (1) Any city which encompasses an area greater than three hundred acres eligible to be designated as an inland port district may propose to create an inland port authority by ordinance, subject to the cap on the total number of inland port districts provided in subsection (4) of this section. In determining whether to propose the creation of an inland port authority, the city shall consider the following criteria:

(a) The desirability and economic feasibility of locating an inland port district within the corporate boundaries, extraterritorial zoning jurisdiction, or both of the city;

(b) The technical and economic capability of the city and any other public and private entities to plan and carry out development within the proposed

inland port district;

(c) The strategic location of the proposed inland port district in proximity to existing and potential transportation infrastructure that is conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement such trade;

(d) The potential impact that development of the proposed inland port district will have on the immediate area; and

(e) The regional and statewide economic impact of development of the proposed inland port district.

(2) Any city and one or more counties in which a city of the metropolitan class, city of the primary class, or city of the first class is located, or in which the extraterritorial zoning jurisdiction of such city is located, which encompass an area greater than three hundred acres eligible to be designated as an inland port district may enter into an agreement pursuant to the Interlocal Cooperation Act to propose joint creation of an inland port authority, subject to the cap on the total number of inland port districts provided in subsection (4) of this section. In determining whether to propose the creation of an inland port authority, the city and counties shall consider the following criteria:

(a) The desirability and economic feasibility of locating an inland port district within the corporate boundaries or extraterritorial zoning jurisdiction or both of the city, or within both the corporate boundaries or extraterritorial zoning jurisdiction or both of a city and the boundaries of one or more counties;

(b) The technical and economic capability of the city and county or counties and any other public and private entities to plan and carry out development within the proposed inland port district;

(c) The strategic location of the proposed inland port district in proximity to existing and potential transportation infrastructure that is conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement such trade;

(d) The potential impact that development of the proposed inland port district will have on the immediate area; and

(e) The regional and statewide economic impact of development of the proposed inland port district.

(3) Any county with a population greater than twenty thousand inhabitants according to the most recent federal census or the most recent revised certified count by the United States Bureau of the Census which encompasses an area greater than three hundred acres eligible to be designated as an inland port district may propose to create an inland port authority by resolution, subject to the cap on the total number of inland port districts provided in subsection (4) of this section. In determining whether to propose the creation of an inland port authority, the county shall consider the following criteria:

(a) The desirability and economic feasibility of locating an inland port district within the county;

(b) The technical and economic capability of the county and any other public or private entities to plan and carry out development within the proposed inland port district;

(c) The strategic location of the proposed inland port district in proximity to existing and potential transportation infrastructure that is conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement such trade;

(d) The potential impact that development of the proposed inland port district will have on the immediate area; and

(e) The regional and statewide economic impact of development of the proposed inland port district.

(4) No more than five inland port districts may be designated statewide. No inland port authority shall designate more than one inland port district, and no inland port authority may be created without also designating an inland port district.

(5) Following the adoption of an ordinance, resolution, or execution of an agreement pursuant to the Interlocal Cooperation Act proposing creation of an inland port authority, the city clerk or county clerk shall transmit a copy of such ordinance, resolution, or agreement to the Department of Economic Development. Upon receipt of such ordinance, resolution, or agreement, the department shall evaluate the proposed inland port authority to determine whether the proposal meets the criteria in subsection (1), (2), or (3) of this section, whichever is applicable. Upon a determination that the proposed inland port authority sufficiently meets such criteria, the Director of Economic Development shall certify to the city clerk or county clerk whether the proposed creation of such inland port authority exceeds the cap on the total number of inland port districts pursuant to subsection (4) of this section. If the proposed inland port authority sufficiently meets such criteria and does not exceed such cap, the inland port authority shall be deemed created. If the proposed inland port authority does not sufficiently meet such criteria or exceeds such cap, the city shall repeal such ordinance, the county shall repeal such resolution, or the city and county or counties shall rescind such agreement and the proposed inland port authority shall not be created.

Sec. 5. (1) The city council of any city which has created an inland port authority pursuant to subsection (1) of section 4 of this act shall designate what areas within the corporate limits, extraterritorial zoning jurisdiction, or both of the city shall comprise the inland port district, subject to the limitations of the Municipal Inland Port Authority Act. The boundaries of any

inland port district shall be filed with the city clerk and shall become effective upon approval of the city council. The city council may from time to time enlarge or reduce the area comprising any inland port district, except that such district shall not be reduced to an area less than three hundred acres. Any change of boundaries shall be filed with the city clerk and become effective upon such filing.

(2) The city council of any city and county board or boards of any county or counties which have created an inland port authority pursuant to subsection (2) of section 4 of this act shall designate what areas within the corporate limits, extraterritorial zoning jurisdiction, or both of the city or within the county or counties shall comprise the inland port district, subject to the limitations of the Municipal Inland Port Authority Act. The boundaries of any inland port district shall be filed with the city clerk and the county clerk or clerks and shall become effective upon approval of the city council and the county board or boards. The city council and the county board or boards may from time to time enlarge or reduce the area comprising any inland port district, except that such district shall not be reduced to an area less than three hundred acres. Any change of boundaries shall be filed with the city clerk and the county clerk or clerks and become effective upon such filing.

(3) The county board of any county which has created an inland port authority pursuant to subsection (3) of section 4 of this act shall designate what areas within the county shall comprise the inland port district, subject to the limitations of the Municipal Inland Port Authority Act. The boundaries of any inland port district shall be filed with the county clerk and shall become effective upon approval of the county board. The county board may from time to time enlarge or reduce the area comprising any inland port district, except that such district shall not be reduced to an area less than three hundred acres. Any change of boundaries shall be filed with the county clerk and become effective upon such filing.

Sec. 6. (1) An inland port authority shall have the power to:

(a) Plan, facilitate, and develop the inland port district in conjunction with the city, the county or counties, and other public and private entities, including the development of publicly-owned infrastructure and improvements within the inland port district;

(b) Engage in marketing and business recruitment activities and efforts to encourage and facilitate development of the inland port district;

(c) Apply for and take all other necessary actions for the establishment of a foreign trade zone, as provided under federal law, within the inland port district;

(d) Issue and sell revenue bonds as provided in section 8 of this act;

(e) Acquire, own, lease, sell, or otherwise dispose of interest in and to any real property and improvements located thereon, and in any personal property, and construct buildings and other structures necessary to fulfill the purposes of the inland port authority;

(f) Acquire rights-of-way and property of any kind or nature within the inland port district necessary for its purposes by purchase or negotiation;

(g) Enter into lease agreements for real or personal property, either as lessee or lessor;

(h) Sue and be sued in its own name;

(i) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act with the city, the county or counties, or any other political subdivision of this or any other state;

(j) Borrow money from private lenders, from the state, or from the federal government as may be necessary for the operation and work of the inland port authority;

(k) Accept appropriations, including funds transferred by the Legislature pursuant to section 81-12,146, contributions, gifts, grants, or loans from the United States, the State of Nebraska, political subdivisions, or other public and private agencies, individuals, partnerships, or corporations;

(l) Employ such managerial, engineering, legal, technical, clerical, accounting, advertising, administrative, or other assistance as may be deemed advisable, or to contract with independent contractors for any such assistance;

(m) Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted, except that such bylaws, rules, and regulations shall not exceed the powers granted to the inland port authority by the Municipal Inland Port Authority Act;

(n) Enter into agreements with private operators or public entities for the joint development, redevelopment, reclamation, and other uses of property within the inland port district;

(o) Own and operate an intermodal facility and other publicly-owned infrastructure and improvements within the boundaries of the inland port district; and

(p) Establish and charge fees to businesses and customers utilizing the services offered by the inland port authority within the inland port district as required for the proper maintenance, development, operation, and administration of the inland port authority.

(2) An inland port authority shall neither possess nor exercise the power of eminent domain.

Sec. 7. The State of Nebraska and any municipality, county, or other political subdivision of the state may, in its discretion, with or without consideration, transfer or cause to be transferred to any inland port authority

or place in its possession or control, by lease or other contract or agreement, either for a limited period or in fee, any real property within its inland port district. Nothing in this section shall in any way impair, alter, or change any obligations of such entities, contractual or otherwise, existing prior to the effective date of this act.

Sec. 8. (1) An inland port authority created under the Municipal Inland Port Authority Act may issue and sell revenue bonds necessary to provide sufficient funds for achieving its purposes, including the construction of intermodal facilities, buildings, and infrastructure and the financing of port improvement projects, except that such authority shall not issue or sell general obligation bonds. An inland port authority may pledge any revenue derived from the sale or lease of property of such authority to the payment of such revenue bonds.

(2) The State of Nebraska shall not be liable for any bonds of any inland port authority. Any such bonds shall not be a debt of the state and shall contain on the faces thereof a statement to such effect.

(3) No commissioner of any board of any inland port authority or any other authorized person executing inland port authority bonds shall be personally liable on such bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Sec. 9. No inland port authority shall be required to pay any taxes or any assessments whatsoever to the State of Nebraska or to any political subdivision of the state, except for assessments under the Nebraska Workers' Compensation Act and any combined tax due or payments in lieu of contributions as required under the Employment Security Law. The bonds of every inland port authority and the income therefrom shall, at all times, be exempt from any taxes and any assessments, except for inheritance and gift taxes and taxes on transfers.

Sec. 10. (1) An inland port authority shall be administered by the board which shall consist of:

- (a) If created by a city of the metropolitan class, nine members;
- (b) If created by a city of the primary class, seven members;
- (c) If created by a city of the first class, five members;
- (d) If jointly created by a city of the metropolitan class and one or more counties, eleven members;
- (e) If jointly created by a city of the primary class and one or more counties, nine members;
- (f) If jointly created by a city of the first class and one or more counties, seven members; or
- (g) If created by a county, nine members.

(2) Upon the creation of an inland port authority under subsection (1) or (2) of section 4 of this act, the mayor of the city that created the authority, with the approval of the city council, and, if the authority is created under subsection (2) of section 4 of this act, with the approval of the county board or boards, shall appoint a board to govern the authority. Members of the board shall be residents of the city, or, if the authority is created under subsection (2) of section 4 of this act, members of the board shall be residents of the county or counties.

(3) Upon the creation of an inland port authority under subsection (3) of section 4 of this act, the chairperson of the county board, with the approval of the county board, shall appoint a board to govern the authority. Members of the board shall be residents of the county.

(4) The members of the board of any inland port authority created under section 4 of this act shall be appointed to staggered terms of four years in such a manner to ensure that the terms of no more than three members expire in any one year.

(5) Any vacancy on the board of an inland port authority shall be filled in the same manner as the vacating board member was appointed to serve the unexpired portion of the board member's term.

Sec. 11. (1) No individual may serve as a commissioner or an employee of an inland port authority if:

(a) The individual or a family member of the individual owns an interest in any real property located within the boundaries of the inland port district; or

(b) The individual or a family member of the individual owns an interest in, is directly affiliated with, or is an employee or officer of a private firm, company, or other entity that the individual reasonably believes is likely to:

(i) Participate in or receive a direct financial benefit from the development of the inland port district; or

(ii) Acquire an interest in any facility located within the inland port district.

(2) Before taking office as a commissioner or accepting employment with an inland port authority, an individual shall submit to the authority a statement verifying that the individual's service as a commissioner or an employee will not violate subsection (1) of this section.

(3) An individual shall not, at any time during the individual's service as a commissioner or an employee of an inland port authority, acquire or take any action to initiate, negotiate, or otherwise arrange for the acquisition of an interest in any real property located within the boundaries of the inland port district.

(4) A commissioner or an employee of an inland port authority shall not receive a direct financial benefit from the development of any real property

located within the boundaries of the inland port district.

Sec. 12. (1) The board shall cause minutes of meetings and a record to be kept of all its proceedings. Meetings of the board shall be subject to the Open Meetings Act.

(2) An inland port authority's records and documents, except those which may be lawfully excluded, shall be considered public records for purposes of sections 84-712 to 84-712.09.

Sec. 13. (1) The city council of a city that created an inland port authority under subsection (1) of section 4 of this act or the county board of a county that created an inland port authority under subsection (3) of section 4 of this act may dissolve such inland port authority if such inland port authority has no outstanding obligations. The inland port authority shall be dissolved as of the date of approval by the city council or county board. All funds and other assets of the inland port authority shall be transferred upon dissolution to the city or county, as applicable.

(2) The city council of a city and the county board or boards of a county or counties that created an inland port authority under subsection (2) of section 4 of this act may dissolve such inland port authority if such inland port authority has no outstanding obligations. The inland port authority shall be dissolved as of the date of approval by the city council and the county board or boards. Upon dissolution, all funds and other assets of the inland port authority shall be transferred to the city or the county or counties as agreed upon by the city and county or counties.

Sec. 14. Section 81-12,146, Revised Statutes Cumulative Supplement, 2020, is amended to read:

81-12,146 (1) The Site and Building Development Fund is created. The fund shall receive money pursuant to section 76-903 and may include revenue from transfers by appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources. The Department of Economic Development, as part of its comprehensive business development strategy, shall administer the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) It is the intent of the Legislature to transfer five million dollars from the General Fund to the Site and Building Development Fund for fiscal year 2022-23 and five million dollars from the General Fund to the Site and Building Development Fund for fiscal year 2023-24. Such money shall be placed in a subaccount of the Site and Building Development Fund and earmarked for use to fund large shovel-ready commercial and industrial sites developed under the Municipal Inland Port Authority Act.

Sec. 15. Section 81-12,147, Revised Statutes Cumulative Supplement, 2020, is amended to read:

81-12,147 (1) Except as provided in subsection (2) of this section, the The Department of Economic Development shall use the Site and Building Development Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for industrial site and building development and for expenses of the department as appropriated by the Legislature for administering the fund. The following activities are eligible for assistance from the fund:

(a) (1) Grants or zero-interest loans to villages, cities, or counties to acquire land, infuse infrastructure, or otherwise make large sites and buildings ready for industrial development;

(b) (2) Matching funds for new construction, rehabilitation, or acquisition of land and buildings to assist villages, cities, and counties;

(c) (3) Technical assistance, design and finance services, and consultation for villages, cities, and counties for the preparation and creation of industrial-ready sites and buildings;

(d) (4) Loan guarantees for eligible projects;

(e) (5) Projects making industrial-ready sites and buildings more accessible to business and industry;

(f) (6) Infrastructure projects necessary for the development of industrial-ready sites and buildings;

(g) (7) Projects that mitigate the economic impact of a closure or downsizing of a private-sector entity by making necessary improvements to buildings and infrastructure; and

(h) (8) Public and private sector initiatives that will improve the military value of military installations by making necessary improvements to buildings and infrastructure.

(2) The Department of Economic Development shall use the subaccount of the Site and Building Development Fund described in subsection (2) of section 81-12,146 to provide financial assistance to any inland port authority created under the Municipal Inland Port Authority Act to help finance large shovel-ready commercial and industrial sites developed under such act.

Sec. 16. Section 81-12,148, Reissue Revised Statutes of Nebraska, is amended to read:

81-12,148 (1) Governmental subdivisions and Nebraska nonprofit organizations are eligible to receive assistance under the Site and Building Development Act. Any entity receiving assistance under the act shall provide, or cause to be provided, matching funds for the eligible activity in an amount determined by the Department of Economic Development, which amount shall be at least equal to one hundred percent of the amount of assistance provided by the Site and Building Development Fund. Nothing in the act shall be construed to allow individuals or businesses to receive direct loans from the fund.

(2) This section does not apply to any inland port authority receiving

assistance under subsection (2) of section 81-12,147.

Sec. 17. Section 81-12,149, Revised Statutes Cumulative Supplement, 2020, is amended to read:

81-12,149 (1) During each calendar year in which funds are available from the Site and Building Development Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than forty percent, to nonmetropolitan areas. For purposes of this section, nonmetropolitan areas means counties with fewer than one hundred thousand inhabitants according to the most recent federal decennial census. In selecting projects to receive fund assistance, the department shall develop a qualified action plan by January 1 of each even-numbered year. The plan shall give first priority to financially viable projects that have an agreement with a business that will locate a site within ninety days of the signed agreement and to financially viable projects located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act or an opportunity zone designated pursuant to the federal Tax Cuts and Jobs Act, Public Law 115-97. The plan shall set forth selection criteria to be used to determine priorities of the fund which are appropriate to local conditions, including the community's immediate need for site and building development, proposed increases in jobs and investment, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund. The Director of Economic Development shall submit the plan to the Governor for approval.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

(3) This section does not apply to any inland port authority receiving assistance under subsection (2) of section 81-12,147.

Sec. 18. Section 81-12,150, Reissue Revised Statutes of Nebraska, is amended to read:

81-12,150 The Department of Economic Development ~~may shall~~ adopt and promulgate rules and regulations to carry out the Site and Building Development Act, including rules and regulations relating to reviewing inland port authority proposals pursuant to section 4 of this act and providing financial assistance to any inland port authority created under the Municipal Inland Port Authority Act.

Sec. 19. The Revisor of Statutes shall assign sections 1 to 13 of this act to a new article in Chapter 13.

Sec. 20. Original sections 81-12,148 and 81-12,150, Reissue Revised Statutes of Nebraska, and sections 81-12,146, 81-12,147, and 81-12,149, Revised Statutes Cumulative Supplement, 2020, are repealed.