

LEGISLATIVE BILL 40

Approved by the Governor May 24, 2021

Introduced by Groene, 42; Williams, 36; Albrecht, 17; Halloran, 33; Pahls, 31; Wayne, 13; Day, 49; Brewer, 43; Blood, 3; Vargas, 7; Aguilar, 35; Stinner, 48.

A BILL FOR AN ACT relating to economic development; to adopt the Nebraska Rural Projects Act.

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

Section 1. Sections 1 to 24 of this act shall be known and may be cited as the Nebraska Rural Projects Act.

Sec. 2. For purposes of the Nebraska Rural Projects Act, the definitions found in sections 3 to 13 of this act shall be used.

Sec. 3. Applicant means a nonprofit economic development corporation.

Sec. 4. Applicant resources means:

(1) Dollars donated to the applicant specifically for the project by any combination of one or more of the following:

(a) An individual;

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

(c) Any nongovernmental organization; and

(2) Any direct or indirect funding for the project from any federal, state, or local government, excluding any matching funds received pursuant to the Nebraska Rural Projects Act.

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

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

Sec. 7. Investment means the amount paid by the applicant for the project. The term includes any applicant resources received by the applicant for the project. The term does not include any matching funds received by the applicant under the Nebraska Rural Projects Act.

Sec. 8. Matching funds means the funds provided by the State of Nebraska pursuant to section 17 of this act.

Sec. 9. Project means expenses incurred or to be incurred at one qualified location for site acquisition and preparation, utility extensions, and rail spur construction for the development of a new industrial rail access business park, including any such expenses incurred to assist an initial tenant at such business park that conducts business in the manufacturing, processing, distribution, or transloading trades.

Sec. 10. Qualified location means a location within a county in this state that has a population of less than one hundred thousand inhabitants.

Sec. 11. Related entity means any entity which is a subsidiary or affiliated entity of the applicant or which has, as one of its purposes for existence, the financial support of the applicant.

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

Sec. 13. Year means the fiscal year of the State of Nebraska.

Sec. 14. (1) In order to be eligible to receive the matching funds allowed in the Nebraska Rural Projects Act, the applicant shall file an application with the director, on a form developed by the director, requesting an agreement.

(2) The application shall:

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

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

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

(d) Contain a nonrefundable application fee of one thousand dollars. The director shall collect all application fees and shall remit the fees to the State Treasurer for credit to the Nebraska Rural Projects Fund.

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

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

(5) There shall be no new applications filed under this section after June 30, 2023. Any complete application filed on or before June 30, 2023, shall be considered by the director and approved if the location and applicant qualify for approval. Agreements may be executed with regard to any complete application filed on or before June 30, 2023.

Sec. 15. (1) Within ninety days after approval of the application, the director shall prepare and deliver a written agreement to the applicant for the

applicant's signature. The applicant and the director, on behalf of the State of Nebraska, shall enter into such written agreement. Under the agreement, the applicant shall agree to undertake the project and report all investment at the project to the director annually. The director, on behalf of the State of Nebraska, shall agree to allow the applicant to receive the matching funds allowed in the Nebraska Rural Projects Act, subject to appropriation of such funds by the Legislature. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

- (a) The qualified location;
- (b) The total amount of matching funds approved for the project;
- (c) The type of documentation the applicant will need to document its receipt of applicant resources and all other investment made under the act;
- (d) The date of application;
- (e) A requirement that any access to the primary rail carrier, land purchase option, or zoning approval needed to carry out the project will be secured;
- (f) A requirement that the applicant be and will stay registered for the E-Verify Program provided by the United States Citizenship and Immigration Services for the duration of the project;
- (g) A requirement that the applicant provide any information needed by the director to perform his or her responsibilities under the Nebraska Rural Projects Act, in the manner specified by the director;
- (h) A requirement that the applicant provide an annually updated timetable showing the applicant resources donated and received and all other investment at the project, in the manner specified by the director; and
- (i) A requirement that the applicant update the director annually, with its timetable or in the manner specified by the director, on any changes in plans or circumstances which it reasonably expects will affect the applicant resources or any other investment for the project.

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

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

(4) An agreement under the Nebraska Rural Projects Act shall have a duration of no more than ten years after the date of application, consisting of up to the ten years of the transformational period, except that such agreement shall remain effective until all matching fund payments that are allowed under the act have been received.

Sec. 16. The following transactions or activities shall not create investment under the Nebraska Rural Projects Act except as specifically allowed by this section:

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

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

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

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

Sec. 17. (1) Subject to section 19 of this act, an applicant shall be entitled to receive matching funds from the State of Nebraska as follows:

(a) For any amount of investment up to two million five hundred thousand dollars made by the applicant by the end of the transformational period, the applicant shall be entitled to receive two dollars of matching funds for each such dollar of investment; and

(b) For any amount of investment in excess of two million five hundred thousand dollars made by the applicant by the end of the transformational period, the applicant shall be entitled to receive five dollars of matching funds for each such dollar of investment.

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

Sec. 18. (1) The right to matching funds prescribed in section 17 of this act shall be established by filing the forms required by the director. Such forms shall be filed by the applicant on an annual basis and shall be used by the director to determine the amount of matching funds to be paid to the applicant each year. The matching funds may only be used by the applicant to pay for the project or to pay off debt financing related to the project.

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

of matching funds required under the Nebraska Rural Projects Act.

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

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

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

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

(a) Shall be subject to the limitations on matching funds provided in subsections (2) through (4) of this section and any other limitations provided in the act;

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

(c) Shall not be transferable.

(2) No more than fifty million dollars of matching funds shall be paid in total under the Nebraska Rural Projects Act.

(3) No more than thirty million dollars of matching funds shall be paid for any one project.

(4) An applicant shall not receive more matching funds than the amount of matching funds approved under the applicant's agreement.

(5) For any year in which more than one applicant qualifies for matching funds, the applicant with the earlier date of application shall receive the full amount of matching funds to which he or she is entitled before any matching funds may be paid to the applicant with the later date of application. If an applicant cannot be paid in full in any given year, then the matching funds shall be paid in later years until fully funded, subject to the limitations provided in this section.

(6) It is the intent of the Legislature that all matching funds owed to applicants under agreements signed pursuant to the Nebraska Rural Projects Act shall be paid by the state in full if the applicant has met all requirements for such funds.

(7) It is further the intent of the Legislature to appropriate five million dollars for fiscal year 2021-22 and five million dollars for fiscal year 2022-23 to the Department of Economic Development for purposes of carrying out the Nebraska Rural Projects Act.

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

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

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

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

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

(2) The report shall state (a) the total amount of matching funds paid by the State of Nebraska, (b) the expected amount of matching funds still to be paid by the State of Nebraska, and (c) the total investment made by the applicants.

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

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

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

Sec. 24. (1) The Nebraska Rural Projects Fund is hereby created. The fund

shall receive money from application fees paid under the Nebraska Rural Projects Act and from appropriations from the Legislature, grants, private contributions, repayments of matching funds, and all other sources. 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) Distributions of matching funds shall only be made from the fund in amounts determined pursuant to subsection (1) of section 17 of this act.