

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1093

Introduced by Flood, 19.

Read first time January 19, 2022

Committee: Revenue

- 1 A BILL FOR AN ACT relating to economic development; to amend sections
- 2 13-2610, 82-334, and 82-335, Revised Statutes Supplement, 2021; to
- 3 adopt the Enhancement Project Financing Assistance Act; to provide
- 4 for use of certain sales tax revenue; to harmonize provisions; and
- 5 to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known and may be
2 cited as the Enhancement Project Financing Assistance Act.

3 Sec. 2. For purposes of the Enhancement Project Financing
4 Assistance Act:

5 (1) Applicant means any village in this state that is located within
6 five miles of a Nebraska state park;

7 (2) Bond means a general obligation bond, redevelopment bond, lease-
8 purchase bond, revenue bond, or a combination of any such bonds;

9 (3) Department means the Department of Economic Development;

10 (4) Eligible state sales tax revenue means the amount of state sales
11 tax revenue that is sourced under sections 77-2703.01 to 77-2703.04 to
12 the program area;

13 (5) Enhancement project means a project undertaken by the applicant
14 that includes, but is not limited to, expenditures for:

15 (a) Road and street safety and general infrastructure improvements;

16 (b) Development of parks and open space;

17 (c) Landscaping;

18 (d) Housing development;

19 (e) Development of tourist and seasonal lodging;

20 (f) Facade enhancements; and

21 (g) Water attractions;

22 (6) General obligation bond means any bond or refunding bond issued
23 by a village which is payable from the proceeds of an ad valorem tax;

24 (7) Program area means the corporate limits of the village that
25 applies for state assistance;

26 (8) Revenue bond means any bond or refunding bond issued by a
27 village which is limited or special rather than a general obligation bond
28 of the village and which is not payable from the proceeds of an ad
29 valorem tax; and

30 (9) State assistance means the financial assistance provided by the
31 state pursuant to section 8 of this act.

1 Sec. 3. (1) Any applicant that has (a) undertaken an enhancement
2 project, (b) approved a revenue bond issue or a general obligation bond
3 issue to finance an enhancement project, or (c) adopted a resolution
4 authorizing the applicant to pursue a general obligation bond issue to
5 finance an enhancement project may apply to the department for state
6 assistance.

7 (2) The state assistance shall only be used to pay back amounts
8 expended by the applicant or borrowed through one or more issues of bonds
9 to be expended by the applicant for an enhancement project.

10 (3) No more than fifty percent of the final cost of the enhancement
11 project shall be funded by state assistance.

12 Sec. 4. (1) All applications for state assistance under the
13 Enhancement Project Financing Assistance Act shall be in writing and
14 shall include a certified copy of the approving action of the governing
15 body of the applicant describing the proposed enhancement project for
16 which state assistance is requested and the anticipated financing.

17 (2) The application shall contain:

18 (a) A description of the proposed financing of the enhancement
19 project, including the estimated principal and interest requirements for
20 the bonds proposed to be issued in connection with the project or the
21 amounts necessary to repay the original investment by the applicant in
22 the project;

23 (b) Documentation of the local financial commitment to support the
24 project, including all public and private resources pledged or committed
25 to the project; and

26 (c) Any other project information deemed appropriate by the
27 department.

28 (3) Upon receiving an application for state assistance, the
29 department shall review the application and notify the applicant of any
30 additional information needed for a proper evaluation of the application.

31 Sec. 5. (1) After reviewing an application submitted under section

1 4 of this act, the department shall hold a public hearing on the
2 application.

3 (2) The department shall give notice of the time, place, and purpose
4 of the public hearing by publication three times in a newspaper of
5 general circulation in the area where the village submitting the
6 application is located. The last such publication shall be not less than
7 ten days prior to the hearing. The notice shall describe generally the
8 enhancement project for which state assistance has been requested. The
9 applicant shall pay the cost of the notice.

10 (3) At the public hearing, representatives of the applicant and any
11 other interested persons may appear and present evidence and argument in
12 support of or in opposition to the application. The department may seek
13 expert testimony and may require testimony of persons whom the department
14 desires to comment on the application. The department may accept
15 additional evidence after conclusion of the public hearing.

16 Sec. 6. (1) After consideration of the application and the
17 evidence, if the department finds that the enhancement project described
18 in the application is eligible and that state assistance is in the best
19 interest of the state, the application shall be approved, except that an
20 approval of an application submitted pursuant to subdivision (1)(c) of
21 section 3 of this act is a temporary approval. If the general obligation
22 bond issue is subsequently approved by the voters of the village, the
23 approval by the department becomes permanent. If the general obligation
24 bond issue is not approved by such voters, the temporary approval shall
25 become void.

26 (2) In determining whether state assistance is in the best interest
27 of the state, the department shall consider the fiscal and economic
28 capacity of the applicant to finance the local share of the project.

29 Sec. 7. (1) If an application is approved, the Tax Commissioner
30 shall:

31 (a) Determine the eligible state sales tax revenue collected by

1 retailers doing business in the program area; and

2 (b) Certify annually the amount of eligible state sales tax revenue
3 determined under subdivision (a) of this subsection to the Legislature.

4 (2) Eligible state sales tax revenue collected by retailers doing
5 business in the program area shall be reported on informational returns
6 developed by the Department of Revenue and provided to any such retailers
7 by the applicant. The informational returns shall be submitted to the
8 Department of Revenue by the retailer by the twentieth day of the month
9 following the month the sales taxes are collected.

10 (3) The Tax Commissioner shall use data from the informational
11 returns submitted by retailers under subsection (2) of this section and
12 the sales tax returns of such retailers to certify quarterly, for each
13 enhancement project for which state assistance has been approved, the
14 total amount of eligible state sales tax revenue described in subdivision
15 (1)(a) of this section that was collected in the preceding calendar
16 quarter. The Tax Commissioner shall certify such amount to the State
17 Treasurer within sixty days after the end of each calendar quarter, and
18 such certification shall be used for purposes of making the transfers
19 required under subsection (2) of section 8 of this act and making the
20 quarterly distributions of state assistance described in subsection (4)
21 of section 8 of this act.

22 (4) The Department of Revenue may adopt and promulgate rules and
23 regulations to carry out the Enhancement Project Financing Assistance
24 Act.

25 Sec. 8. (1) The Enhancement Project Support Fund is created. Any
26 money in the fund available for investment shall be invested by the state
27 investment officer pursuant to the Nebraska Capital Expansion Act and the
28 Nebraska State Funds Investment Act.

29 (2) Upon receiving the quarterly certification described in
30 subsection (3) of section 7 of this act, the State Treasurer shall
31 transfer the amount certified to the fund.

1 (3)(a) It is the intent of the Legislature to appropriate from the
2 fund money to be distributed as provided in subsection (4) of this
3 section to any village for which an application for state assistance
4 under the Enhancement Project Financing Assistance Act has been approved
5 an amount not to exceed seventy percent of the eligible state sales tax
6 revenue collected by retailers doing business in the program area.

7 (b) The amount to be appropriated for distribution as state
8 assistance to a village under this subsection for any one year after the
9 tenth year shall not exceed the highest such amount appropriated under
10 subdivision (3)(a) of this section during any one year of the first ten
11 years of such appropriation. If seventy percent of the eligible state
12 sales tax revenue as described in subdivision (3)(a) of this section
13 exceeds the amount to be appropriated under this subdivision, such excess
14 funds shall be transferred to the General Fund.

15 (4) Quarterly distributions and associated transfers of state
16 assistance shall be made. Such quarterly distributions and transfers
17 shall be based on the certifications provided under subsection (3) of
18 section 7 of this act and shall occur within fifteen days after receipt
19 of such certification.

20 (5) The total amount of state assistance approved for an enhancement
21 project shall not exceed seven million dollars and shall not be paid out
22 for more than twenty years after the issuance of the first bond for the
23 enhancement project.

24 (6) State assistance to the applicant shall no longer be available
25 upon the retirement of the bonds issued to finance the enhancement
26 project or any subsequent bonds that refunded the original issue or when
27 state assistance reaches the amount determined under subsection (5) of
28 this section, whichever comes first.

29 (7) The thirty percent of eligible state sales tax revenue remaining
30 after the appropriation in subsection (3) of this section shall be
31 appropriated by the Legislature and transferred quarterly as follows:

1 (a) Eighty-three percent of such revenue shall be transferred to the
2 Support the Arts Cash Fund; and

3 (b) Seventeen percent of such revenue shall be transferred to the
4 Convention Center Support Fund.

5 Sec. 9. (1) A village that applies for state assistance under the
6 Enhancement Project Financing Assistance Act may issue from time to time
7 its bonds and refunding bonds to finance and refinance the enhancement
8 project. The bonds may be sold by the village in such manner and for such
9 price as the village determines, at a discount, at par, or at a premium,
10 at private negotiated sale or at public sale, after notice published
11 prior to the sale in a legal newspaper having general circulation in the
12 village or in such other medium of publication as the village deems
13 appropriate. The bonds shall have a stated maturity of twenty years or
14 less and shall bear interest at such rate or rates and otherwise be
15 issued in accordance with the respective procedures and with such other
16 terms and provisions as are established, permitted, or authorized by
17 applicable state laws for the type of bonds to be issued. Such bonds may
18 be secured as to payment in whole or in part by a pledge, as shall be
19 determined by the village, from the income, proceeds, and revenue of the
20 enhancement project financed with proceeds of such bonds or from the
21 village's revenue and income, including its sales, use, or occupation tax
22 revenue, fees, or receipts, as may be determined by the village. The
23 village may further secure the bonds by a mortgage or deed of trust
24 encumbering all or any portion of the enhancement project and by a bond
25 insurance policy or other credit support facility. No general obligation
26 bonds, except refunding bonds, shall be issued until authorized by
27 greater than fifty percent of the village's electors voting on the
28 question as to their issuance at any election as defined in section
29 32-108. The face of the bonds shall plainly state that the bonds and the
30 interest thereon shall not constitute nor give rise to an indebtedness,
31 obligation, or pecuniary liability of the state nor a charge against the

1 general credit, revenue, or taxing power of the state. Bonds of the
2 village are declared to be issued for an essential public and
3 governmental purpose and, together with interest thereon and income
4 therefrom, shall be exempt from all state income taxes.

5 (2) All payments to villages under the Enhancement Project Financing
6 Assistance Act are made subject to specific appropriation for such
7 purpose.

8 Sec. 10. The department shall not accept applications for state
9 assistance under the Enhancement Project Financing Assistance Act after
10 June 30, 2023.

11 Sec. 11. The department may adopt and promulgate rules and
12 regulations to carry out the Enhancement Project Financing Assistance
13 Act.

14 Sec. 12. Section 13-2610, Revised Statutes Supplement, 2021, is
15 amended to read:

16 13-2610 (1) Upon the annual certification under section 13-2609, the
17 State Treasurer shall transfer after the audit the amount certified to
18 the Convention Center Support Fund. The Convention Center Support Fund is
19 created. Transfers may be made from the fund to the General Fund at the
20 direction of the Legislature. Any money in the Convention Center Support
21 Fund available for investment shall be invested by the state investment
22 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
23 State Funds Investment Act.

24 (2)(a) It is the intent of the Legislature to appropriate from the
25 fund to any political subdivision for which an application for state
26 assistance under the Convention Center Facility Financing Assistance Act
27 has been approved an amount not to exceed (i) seventy percent of the
28 state sales tax revenue collected by retailers and operators doing
29 business at such facilities on sales at such facilities, state sales tax
30 revenue collected on primary and secondary box office sales of admissions
31 to such facilities, and state sales tax revenue collected by associated

1 hotels, (ii) seventy-five million dollars for any one approved project,
2 or (iii) the total cost of acquiring, constructing, improving, or
3 equipping the eligible facility. State assistance shall not be used for
4 an operating subsidy or other ancillary facility.

5 (b) It is further the intent of the Legislature to appropriate from
6 the fund to any city of the metropolitan class for which an application
7 for state assistance under the Convention Center Facility Financing
8 Assistance Act has been approved an amount not to exceed the amount of
9 money transferred to the fund pursuant to subdivision (9)(a) of section
10 13-3108 and subsection (7) of section 8 of this act.

11 (3)(a) Ten percent of the funds appropriated to a city of the
12 metropolitan class under subdivision (2)(a) of this section and all of
13 the funds appropriated to a city of the metropolitan class under
14 subdivision (2)(b) of this section shall be equally distributed to areas
15 with a high concentration of poverty to (i) showcase important historical
16 aspects of such areas or areas within close geographic proximity of the
17 area with a high concentration of poverty, (ii) assist with the reduction
18 of street and gang violence in such areas, or (iii) assist with small
19 business and entrepreneurship growth in such areas.

20 (b) Each area with a high concentration of poverty that has been
21 distributed funds under subdivision (3)(a) of this section shall
22 establish a development fund and form a committee which shall identify
23 and research potential projects to be completed in the area with a high
24 concentration of poverty or in an area within close geographic proximity
25 of such area if the project would have a significant or demonstrable
26 impact on such area and make final determinations on the use of the funds
27 received for such projects.

28 (c) A committee formed under subdivision (3)(b) of this section
29 shall include the following members:

30 (i) The member of the city council whose district includes a
31 majority of the census tracts which each contain a percentage of persons

1 below the poverty line of greater than thirty percent, as determined by
2 the most recent federal decennial census, within the area with a high
3 concentration of poverty;

4 (ii) The commissioner of the county whose district includes a
5 majority of the census tracts which each contain a percentage of persons
6 below the poverty line of greater than thirty percent, as determined by
7 the most recent federal decennial census, within the area with a high
8 concentration of poverty;

9 (iii) Two residents of the area with a high concentration of
10 poverty, appointed by the two members of the committee described in
11 subdivisions (3)(c)(i) and (ii) of this section. Such resident members
12 shall be appointed for four-year terms. Each time a resident member is to
13 be appointed pursuant to this subdivision, the committee shall solicit
14 applications from interested individuals by posting notice of the open
15 position on the city's website and on the city's official social media
16 accounts, if any, and by publishing the notice in a legal newspaper in or
17 of general circulation in the area with a high concentration of poverty.
18 Prior to making any appointment, the committee shall hold a public
19 hearing in the area with a high concentration of poverty. Notice of the
20 hearing shall be provided, at least seven days prior to the hearing, by
21 posting the notice on the city's website and on the city's official
22 social media accounts, if any, and by publishing the notice in a legal
23 newspaper in or of general circulation in the area with a high
24 concentration of poverty; and

25 (iv) The member of the Legislature whose district includes a
26 majority of the census tracts which each contain a percentage of persons
27 below the poverty line of greater than thirty percent, as determined by
28 the most recent federal decennial census, within the area with a high
29 concentration of poverty. The member described in this subdivision shall
30 be a nonvoting member of the committee.

31 (d) A committee formed under subdivision (3)(b) of this section

1 shall solicit project ideas from the public and shall hold a public
2 hearing in the area with a high concentration of poverty. Notice of a
3 proposed hearing shall be provided in accordance with the procedures for
4 notice of a public hearing pursuant to section 18-2115.01. The committee
5 shall research potential projects and make the final determination
6 regarding the annual distribution of funding to such projects.

7 (e) On or before July 1, 2022, and on or before July 1 of each year
8 thereafter, a committee formed under subdivision (3)(b) of this section
9 shall electronically submit a report to the Legislature which includes:

10 (i) A description of the projects that were funded during the most
11 recently completed calendar year;

12 (ii) A description of where such projects were located;

13 (iii) A description of the outcomes of such projects; and

14 (iv) A ten-year strategic plan on how the committee plans to meet
15 the goals described in subdivision (3)(a) of this section.

16 (f) For purposes of this subsection, an area with a high
17 concentration of poverty means an area within the corporate limits of a
18 city of the metropolitan class consisting of one or more contiguous
19 census tracts, as determined by the most recent federal decennial census,
20 which contain a percentage of persons below the poverty line of greater
21 than thirty percent, and all census tracts contiguous to such tract or
22 tracts, as determined by the most recent federal decennial census.

23 (4)(a) Ten percent of the funds appropriated to a city of the
24 primary class under subdivision (2)(a) of this section may, if the city
25 determines by consent of the city council that such funds are not
26 currently needed for the purposes described in section 13-2604, be used
27 as follows:

28 (i) For investment in the construction of qualified low-income
29 housing projects as defined in 26 U.S.C. 42, including qualified projects
30 receiving Nebraska affordable housing tax credits under the Affordable
31 Housing Tax Credit Act; or

1 (ii) If there are no such qualified low-income housing projects as
2 defined in 26 U.S.C. 42 being constructed or expected to be constructed
3 within the political subdivision, for investment in areas with a high
4 concentration of poverty to assist with low-income housing needs.

5 (b) For purposes of this subsection, an area with a high
6 concentration of poverty means an area within the corporate limits of a
7 city of the primary class consisting of one or more contiguous census
8 tracts, as determined by the most recent American Community Survey 5-Year
9 Estimate, which contain a percentage of persons below the poverty line of
10 greater than thirty percent, and all census tracts contiguous to such
11 tract or tracts, as determined by the most recent American Community
12 Survey 5-Year Estimate.

13 (5) State assistance to the political subdivision shall no longer be
14 available upon the retirement of the bonds issued to acquire, construct,
15 improve, or equip the facility or any subsequent bonds that refunded the
16 original issue or when state assistance reaches the amount determined
17 under subdivision (2)(a) of this section, whichever comes first.

18 (6) The remaining thirty percent of state sales tax revenue
19 collected by retailers and operators doing business at such facilities on
20 sales at such facilities, state sales tax revenue collected on primary
21 and secondary box office sales of admissions to such facilities, and
22 state sales tax revenue collected by associated hotels, shall be
23 appropriated by the Legislature to the Civic and Community Center
24 Financing Fund. Upon the annual certification required pursuant to
25 section 13-2609 and following the transfer to the Convention Center
26 Support Fund required pursuant to subsection (1) of this section, the
27 State Treasurer shall transfer an amount equal to the remaining thirty
28 percent from the Convention Center Support Fund to the Civic and
29 Community Center Financing Fund.

30 (7) Any municipality that has applied for and received a grant of
31 assistance under the Civic and Community Center Financing Act may not

1 receive state assistance under the Convention Center Facility Financing
2 Assistance Act.

3 Sec. 13. Section 82-334, Revised Statutes Supplement, 2021, is
4 amended to read:

5 82-334 (1) The Support the Arts Cash Fund is created. The fund shall
6 consist of all money credited to the fund pursuant to section 60-3,252
7 and all money transferred to the fund pursuant to section 13-3108 and
8 section 8 of this act.

9 (2) The Nebraska Arts Council shall administer and distribute the
10 Support the Arts Cash Fund. The fund shall be expended by the Nebraska
11 Arts Council (a) to provide aid to communities that designate a focus
12 area of the city for arts and cultural development, (b) to provide money
13 for a competitive grant program that awards a grant to any creative
14 district that meets the criteria for the competitive grant, if such
15 program exists, (c) to provide money for the competitive grant program
16 for cities of the first class described in section 82-335, and (d) to
17 defray costs directly related to the administration of the fund.

18 (3) All money transferred to the fund pursuant to section 13-3108
19 and section 8 of this act shall be used for the competitive grant program
20 for cities of the first class described in section 82-335.

21 (4) Any money in the fund available for investment shall be invested
22 by the state investment officer pursuant to the Nebraska Capital
23 Expansion Act and the Nebraska State Funds Investment Act.

24 Sec. 14. Section 82-335, Revised Statutes Supplement, 2021, is
25 amended to read:

26 82-335 (1) The Nebraska Arts Council shall establish a competitive
27 grant program to award grants to cities of the first class as provided in
28 this section. The grants shall be awarded from funds transferred to the
29 Support the Arts Cash Fund pursuant to subdivision (9)(a) of section
30 13-3108 and subsection (7) of section 8 of this act.

31 (2) A city of the first class is eligible for a grant under this

1 section if:

2 (a) The city has a creative district within its boundaries that has
3 a ten-year plan for integration of the arts intended to catalyze economic
4 and workforce development initiatives in such city; and

5 (b) The city is not receiving state assistance under the Sports
6 Arena Facility Financing Assistance Act.

7 (3) Priority in grant funding shall go to any city of the first
8 class described in subsection (2) of this section whose project includes
9 the partnership of a city convention and visitors bureau or county
10 convention and visitors bureau.

11 (4) Grants under this section may fund capital assets, video
12 projection mapping, and intangible video or audio artistic expression
13 presentations. Grants shall not fund ongoing operational and personnel
14 expenses of a political subdivision or nonprofit corporation, live
15 performances, promotional or marketing efforts of the creative district,
16 legal expenses, lobbying expenses, planning expenses, architectural
17 expenses, or engineering expenses.

18 (5) Any assets acquired using grant funds shall be owned by the city
19 of the first class receiving such grant.

20 (6) Any grant awarded under this section must be at least equal to
21 one million five hundred thousand dollars.

22 (7) For purposes of this section, creative district means a creative
23 district established pursuant to subdivision (5) of section 82-312.

24 Sec. 15. Original sections 13-2610, 82-334, and 82-335, Revised
25 Statutes Supplement, 2021, are repealed.