

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 756

Introduced by Vargas, 7.

Read first time January 18, 2023

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Job Creation and Mainstreet
2 Revitalization Act; to amend sections 77-2902, 77-2903, 77-2904,
3 77-2905, 77-2910, and 77-2912, Reissue Revised Statutes of Nebraska;
4 to redefine terms; to change provisions relating to local
5 preservation ordinances or resolutions, tax credits, and joint
6 reports; to change certain deadlines for applications and the use of
7 tax credits; to harmonize provisions; and to repeal the original
8 sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2902, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2902 For purposes of the Nebraska Job Creation and Mainstreet
4 Revitalization Act:

5 (1) Department means the Department of Revenue;

6 (2) Eligible expenditure means any cost incurred for the improvement
7 of historically significant real property located in the State of
8 Nebraska, including, but not limited to, qualified rehabilitation
9 expenditures as defined in section 47(c)(2) of the Internal Revenue Code
10 of 1986, as amended, and the related regulations thereunder, if such
11 improvement is in conformance with the standards;

12 (3) Historically significant real property means a building or an
13 at-grade or aboveground structure used for any purpose, except for a
14 single-family detached residence, which, at the time of final approval of
15 the work by the officer pursuant to section 77-2906, is:

16 (a) Individually listed in the National Register of Historic Places;

17 (b)(i) Located within a district listed in the National Register of
18 Historic Places; and

19 (ii) Determined by the officer as being historically significant to
20 such district;

21 (c)(i) Individually designated pursuant to a landmark ordinance or
22 resolution enacted by a political subdivision of the state, which
23 ordinance or resolution has been approved by the officer; and

24 (ii) Determined by the officer as being historically significant; or

25 (d)(i) Located within a district designated pursuant to a
26 preservation ordinance or resolution enacted by a county, city, or
27 village of the state or political body comprised thereof providing for
28 the rehabilitation, preservation, or restoration of historically
29 significant real property, which ordinance or resolution has been
30 approved by the officer; and

31 (ii) Determined by the officer as contributing to the historical

1 ~~significance or economic viability of such district or to its economic~~
2 ~~viability;~~

3 (4) Improvement means a rehabilitation, preservation, or restoration
4 project that contributes to the basis, functionality, or value of the
5 historically significant real property and has a total cost which equals
6 or exceeds five thousand dollars; ~~the following:~~

7 ~~(a) For historically significant real property that is not located~~
8 ~~in a city of the metropolitan or primary class, twenty-five thousand~~
9 ~~dollars; or~~

10 ~~(b) For historically significant real property that is located in a~~
11 ~~city of the metropolitan or primary class, the greater of (i) twenty-five~~
12 ~~thousand dollars or (ii) twenty-five percent of the historically~~
13 ~~significant real property's assessed value;~~

14 (5) Officer means the State Historic Preservation Officer;

15 (6) Person means any natural person, political subdivision, limited
16 liability company, partnership, private domestic or private foreign
17 corporation, or domestic or foreign nonprofit corporation certified
18 pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as
19 amended;

20 (7) Placed in service means that either (a) a temporary or final
21 certificate of occupancy has been issued for the improvement or (b) the
22 improvement is sufficiently complete to allow for the intended use of the
23 improvement; and

24 (8) Standards means (a) the Secretary of the Interior's Standards
25 for the Treatment of Historic Properties as promulgated by the United
26 States Department of the Interior or (b) specific standards for the
27 rehabilitation, preservation, and restoration of historically significant
28 real property contained in a duly adopted local preservation ordinance or
29 resolution that has been approved by the officer pursuant to section
30 77-2903.

31 Sec. 2. Section 77-2903, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-2903 For purposes of establishing standards under subdivision (8)
3 (b) of section 77-2902, the officer shall approve a duly adopted local
4 preservation ordinance or resolution if such ordinance or resolution
5 meets the following requirements:

6 (1) The ordinance or resolution provides for specific standards and
7 requirements regarding building exteriors that reflect the heritage,
8 values, and character of the political subdivision adopting such
9 ordinance or resolution; and

10 (2) The ordinance or resolution requires that any building to be
11 rehabilitated, preserved, or restored shall have been originally
12 constructed at least fifty years prior to the proposed rehabilitation,
13 preservation, or restoration and the facade of such building shall not
14 have undergone material structural alteration since its original
15 construction, unless the rehabilitation, preservation, or restoration to
16 be performed proposes to restore the facade to substantially its original
17 condition.

18 Sec. 3. Section 77-2904, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-2904 (1) Any person incurring eligible expenditures may receive a
21 nonrefundable credit against any income tax imposed by the Nebraska
22 Revenue Act of 1967 or any tax imposed pursuant to sections 44-101 to
23 44-165, 77-907 to 77-918, or 77-3801 to 77-3807 for the year the
24 historically significant real property is placed in service. ~~The amount~~
25 ~~of the credit shall be equal to twenty percent of eligible expenditures~~
26 ~~up to a maximum credit of one million dollars.~~

27 (2) For historically significant real property located in a county
28 that includes a city of the metropolitan class or a city of the primary
29 class, the credit shall be equal to twenty-five percent of eligible
30 expenditures. For historically significant real property located in any
31 other county, the credit shall be equal to thirty percent of eligible

1 expenditures. In all cases, the maximum credit allocated to any one
2 project shall be two million dollars.

3 (3) Any taxpayer that claims a tax credit shall not be required to
4 pay any additional retaliatory tax under section 44-150 as a result of
5 claiming such tax credit. Any tax credit claimed under this section shall
6 be considered a payment of tax for purposes of subsection (1) of section
7 77-2734.03.

8 (4) (2) To claim the credit authorized under this section, a person
9 must first apply and receive an allocation of credits and application
10 approval under section 77-2905 and then request and receive final
11 approval under section 77-2906.

12 (5) (3) Interest shall not be allowed on any refund paid under the
13 Nebraska Job Creation and Mainstreet Revitalization Act.

14 Sec. 4. Section 77-2905, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 77-2905 (1) Prior to commencing work on the historically significant
17 real property, a person shall file an application for credits under the
18 Nebraska Job Creation and Mainstreet Revitalization Act containing all
19 required information with the officer on a form prescribed by the officer
20 and shall include an application fee established by the officer pursuant
21 to section 77-2907. ~~The officer shall not accept any application for~~
22 ~~credits prior to January 1, 2015.~~ The application shall include plans and
23 specifications, an estimate of the cost of the project prepared by a
24 licensed architect, licensed engineer, or licensed contractor, and a
25 request for a specific amount of credits based on such estimate. The
26 officer shall review the application and, within twenty-one days after
27 receiving the application, shall determine whether the information
28 contained therein is complete. The officer shall notify the applicant in
29 writing of the determination within five business days after making the
30 determination. If the officer fails to provide such notification as
31 required, the application shall be deemed complete as of the twenty-first

1 day after the application is received by the officer. If the officer
2 determines the application is complete or if the application is deemed
3 complete pursuant to this section, the officer shall reserve for the
4 benefit of the applicant an allocation of credits in the amount specified
5 in the application and determined by the officer to be reasonable and
6 shall notify the applicant in writing of the amount of the allocation.
7 The allocation does not entitle the applicant to an issuance of credits
8 until the applicant complies with all other requirements of the Nebraska
9 Job Creation and Mainstreet Revitalization Act for the issuance of
10 credits. The date the officer determines the application is complete or
11 the date the application is deemed complete pursuant to this section
12 shall constitute the applicant's priority date for purposes of allocating
13 credits under this section. For complete applications receiving an
14 allocation under this section, the officer shall determine whether the
15 application conforms to the standards, and, if so, the officer shall
16 approve such application or approve such application with conditions. If
17 the application does not conform to the standards, the officer shall deny
18 such application. The officer shall promptly provide the person filing
19 the application and the department with written notice of the officer's
20 determination. If the officer does not provide a written notice of his or
21 her determination within thirty days after the date the application is
22 determined or deemed to be complete pursuant to this section, the
23 application shall be deemed approved. The officer shall notify the
24 department of any applications that are deemed approved pursuant to this
25 section. If the officer denies the application, the credits allocated to
26 the applicant under this subsection shall be added to the annual amount
27 available for allocation under subsection (2) of this section. Any denial
28 of an application by the officer pursuant to this section may be
29 appealed, and the appeal shall be in accordance with the Administrative
30 Procedure Act.

31 (2) ~~For calendar years beginning before January 1, 2017, the total~~

1 ~~amount of credits that may be allocated by the officer under this section~~
2 ~~in any calendar year shall be limited to fifteen million dollars. For~~
3 ~~calendar years beginning before January 1, 2024 on or after January 1,~~
4 ~~2017, the total amount of credits that may be allocated by the officer~~
5 ~~under this section in any calendar year shall be limited to fifteen~~
6 ~~million dollars, of which four million dollars shall be reserved for~~
7 ~~applications seeking an allocation of credits of less than one hundred~~
8 ~~thousand dollars. For calendar years beginning on or after January 1,~~
9 ~~2024, the total amount of credits that may be allocated by the officer~~
10 ~~under this section in any calendar year shall be limited to twelve~~
11 ~~million dollars, of which four million dollars shall be reserved for~~
12 ~~applications seeking an allocation of credits of less than one hundred~~
13 ~~thousand dollars. If the amount of credits allocated in any calendar year~~
14 ~~is less than the maximum amount of credits available under this section~~
15 ~~for that year fifteen million dollars, the unused amount shall be carried~~
16 ~~forward to subsequent years and shall be available for allocation in~~
17 ~~subsequent years until fully utilized, except as otherwise provided in~~
18 ~~section 77-2912. If the amount of credits reserved for applications~~
19 ~~seeking an allocation of credits of less than one hundred thousand~~
20 ~~dollars is not allocated by April 1 of any calendar year, such~~
21 ~~unallocated credits for the calendar year shall be available for any~~
22 ~~application seeking an allocation of credits based upon the applicant's~~
23 ~~priority date as determined by the officer. The officer shall allocate~~
24 ~~credits based on priority date, from earliest to latest. If the officer~~
25 ~~determines that the complete applications for credits in any calendar~~
26 ~~year exceed the maximum amount of credits available under this section~~
27 ~~for that year, only those applications with a priority date on or before~~
28 ~~the date on which the officer makes that determination may receive an~~
29 ~~allocation in that year, and the officer shall not make additional~~
30 ~~allocations until sufficient credits are available. If the officer~~
31 ~~suspends allocations of credits pursuant to this section, applications~~

1 with priority dates on or before the date of such suspension shall retain
2 their priority dates. Once additional credits are available for
3 allocation, the officer shall once again allocate credits based on
4 priority date, from earliest to latest, even if the priority dates are
5 from a prior calendar year.

6 ~~(3) Prior to December 1 of any year, the holder of an allocation of~~
7 ~~credits under this section who has not commenced the improvements in his~~
8 ~~or her approved application shall notify the officer of his or her intent~~
9 ~~to retain or release the allocation. Any released allocation shall be~~
10 ~~added to the aggregate amount of credits available for allocation in the~~
11 ~~following year. Any holder of an allocation who fails to timely notify~~
12 ~~the officer of such intent shall be deemed to have released the~~
13 ~~allocation.~~

14 (3) ~~(4)~~ The holder of an allocation of credits whose application was
15 approved under this section shall start substantial work pursuant to the
16 approved application within twenty-four months after receiving notice of
17 approval of the application or, if no notice of approval is sent by the
18 officer, within twenty-four months after the application is deemed
19 approved pursuant to this section. Failure to comply with this subsection
20 shall result in forfeiture of the allocation of credits received under
21 this section. Any such forfeited allocation shall be added to the
22 aggregate amount of credits available for allocation for the year in
23 which the forfeiture occurred.

24 (4) ~~(5)~~ Notwithstanding subsection (1) of this section, the person
25 applying for the credit under this section may, at its own risk, incur
26 eligible expenditures up to six months prior to the submission of the
27 application required under subsection (1) of this section if such
28 eligible expenditures are limited to architectural ~~fees~~, engineering,
29 accounting, and legal fees, and any costs generally related to the
30 protection of the historically significant real property from
31 deterioration.

1 Sec. 5. Section 77-2910, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2910 (1) The Nebraska State Historical Society and the department
4 may each adopt and promulgate rules and regulations to carry out the
5 Nebraska Job Creation and Mainstreet Revitalization Act.

6 (2) The Nebraska State Historical Society and the department shall
7 annually issue a joint report electronically to the Revenue Committee of
8 the Legislature no later than December 31 of each year ~~, 2017~~. The report
9 shall include, but not be limited to, (a) the total number of
10 applications submitted under the Nebraska Job Creation and Mainstreet
11 Revitalization Act, (b) the number of applications approved or
12 conditionally approved, (c) the number of applications outstanding, if
13 any, (d) the number of applications denied and the basis for denial, (e)
14 the total amount of eligible expenditures approved, (f) the total amount
15 of credits issued, claimed, and still available for use, (g) the total
16 amount of fees collected, (h) the name and address location of each
17 historically significant real property identified in each application,
18 whether approved or denied, (i) the total amount of credits transferred,
19 sold, and assigned and a certification of the ownership of the credits,
20 (j) the total amount of credits claimed against each tax type by
21 category, and (k) the total amount of credits recaptured, if any. No
22 information shall be provided in the report that is protected by state or
23 federal confidentiality laws.

24 Sec. 6. Section 77-2912, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-2912 There shall be no new applications filed under the Nebraska
27 Job Creation and Mainstreet Revitalization Act after December 31, 2030
28 ~~2022~~. All applications and all credits pending or approved before such
29 date shall continue in full force and effect, except that no credits
30 shall be allocated under section 77-2905, issued under section 77-2906,
31 or used on any tax return or similar filing after December 31, 2035 ~~2027~~.

1 Sec. 7. Original sections 77-2902, 77-2903, 77-2904, 77-2905,
2 77-2910, and 77-2912, Reissue Revised Statutes of Nebraska, are repealed.