

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 194

Introduced by Vargas, 7; Flood, 19; Pahls, 31; Wishart, 27.

Read first time January 08, 2021

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2901, 77-2902, 77-2903, 77-2904, 77-2905, 77-2909, and 77-2910,
3 Reissue Revised Statutes of Nebraska, and section 77-2906, Revised
4 Statutes Cumulative Supplement, 2020; to change the Nebraska Job
5 Creation and Mainstreet Revitalization Act as prescribed; to
6 eliminate certain deadlines for applications and the use of credits;
7 to harmonize provisions; to repeal the original sections; and to
8 outright repeal section 77-2912, Reissue Revised Statutes of
9 Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2901, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2901 Sections 77-2901 to 77-2911 ~~77-2912~~ shall be known and may
4 be cited as the Nebraska Job Creation and Mainstreet Revitalization Act.

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

7 77-2902 For purposes of the Nebraska Job Creation and Mainstreet
8 Revitalization Act:

9 (1) Department means the Department of Revenue;

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

16 (3) Historically significant real property means a building or an
17 at-grade or above-ground structure used for any purpose, ~~except for a~~
18 ~~single-family detached residence,~~ which, at the time of final approval of
19 the work by the officer pursuant to section 77-2906, is:

20 (a) Individually listed in the National Register of Historic Places
21 or eligible for listing in the National Register of Historic Places;

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

24 (ii) Determined by the officer as being historically significant to
25 such district;

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

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

30 (d)(i) Located within a district designated pursuant to a
31 preservation ordinance or resolution enacted by a county, city, or

1 village of the state or political body comprised thereof providing for
2 the rehabilitation, preservation, or restoration of historically
3 significant real property, which ordinance or resolution has been
4 approved by the officer; and

5 (ii) Determined by the officer as contributing to the historical
6 significance or economic viability of such district ~~or to its economic~~
7 ~~viability~~;

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

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

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

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

20 (6) Person means any natural person, political subdivision, limited
21 liability company, partnership, private domestic or private foreign
22 corporation, or domestic or foreign nonprofit corporation certified
23 pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as
24 amended;

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

29 (8) Standards means (a) the Secretary of the Interior's Standards
30 for the Treatment of Historic Properties as promulgated by the United
31 States Department of the Interior or (b) specific standards for the

1 rehabilitation, preservation, and restoration of historically significant
2 real property contained in a duly adopted local preservation ordinance or
3 resolution that has been approved by the officer pursuant to section
4 77-2903.

5 Sec. 3. Section 77-2903, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-2903 For purposes of establishing standards under subdivision (8)
8 (b) of section 77-2902, the officer shall approve a duly adopted local
9 preservation ordinance or resolution if such ordinance or resolution
10 meets the following requirements:

11 (1) The ordinance or resolution provides for specific standards and
12 requirements regarding building exteriors that reflect the heritage,
13 values, and character of the political subdivision adopting such
14 ordinance or resolution; and

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

23 Sec. 4. Section 77-2904, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-2904 (1) Any person incurring eligible expenditures may receive a
26 nonrefundable credit against any income tax imposed by the Nebraska
27 Revenue Act of 1967 or any tax imposed pursuant to sections 44-101 to
28 44-165, 77-907 to 77-918, or 77-3801 to 77-3807 for the year the
29 historically significant real property is placed in service. ~~The amount
30 of the credit shall be equal to twenty percent of eligible expenditures
31 up to a maximum credit of one million dollars.~~

1 (2) For historically significant real property located in a county
2 that includes a city of the metropolitan class or a city of the primary
3 class, the credit shall be equal to twenty-five percent of eligible
4 expenditures. For historically significant real property located in any
5 other county, the credit shall be equal to thirty percent of eligible
6 expenditures. In all cases, the maximum credit allocated to any one
7 project shall be two million dollars.

8 (3) Any taxpayer that claims a tax credit shall not be required to
9 pay any additional retaliatory tax under section 44-150 as a result of
10 claiming such tax credit. Any tax credit claimed under this section shall
11 be considered a payment of tax for purposes of subsection (1) of section
12 77-2734.03.

13 (4) ~~(2)~~ To claim the credit authorized under this section, a person
14 must first apply and receive an allocation of credits and application
15 approval under section 77-2905 and then request and receive final
16 approval under section 77-2906.

17 (5) ~~(3)~~ Interest shall not be allowed on any refund paid under the
18 Nebraska Job Creation and Mainstreet Revitalization Act.

19 Sec. 5. Section 77-2905, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 77-2905 (1) Prior to commencing work on the historically significant
22 real property, a person shall file an application for credits under the
23 Nebraska Job Creation and Mainstreet Revitalization Act containing all
24 required information with the officer on a form prescribed by the officer
25 and shall include an application fee established by the officer pursuant
26 to section 77-2907. ~~The officer shall not accept any application for~~
27 ~~credits prior to January 1, 2015.~~ The application shall include plans and
28 specifications, an estimate of the cost of the project prepared by a
29 licensed architect, licensed engineer, or licensed contractor, and a
30 request for a specific amount of credits based on such estimate. The
31 officer shall review the application and, within twenty-one days after

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

1 available for allocation under subsection (2) of this section. Any denial
2 of an application by the officer pursuant to this section may be
3 appealed, and the appeal shall be in accordance with the Administrative
4 Procedure Act.

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

1 additional credits are available for allocation, the officer shall once
2 again allocate credits based on priority date, from earliest to latest,
3 even if the priority dates are from a prior calendar year.

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

12 (3) ~~(4)~~ The holder of an allocation of credits whose application was
13 approved under this section shall start substantial work pursuant to the
14 approved application within twenty-four months after receiving notice of
15 approval of the application or, if no notice of approval is sent by the
16 officer, within twenty-four months after the application is deemed
17 approved pursuant to this section. Failure to comply with this subsection
18 shall result in forfeiture of the allocation of credits received under
19 this section. Any such forfeited allocation shall be added to the
20 aggregate amount of credits available for allocation for the year in
21 which the forfeiture occurred.

22 (4) ~~(5)~~ Notwithstanding subsection (1) of this section, the person
23 applying for the credit under this section may, at its own risk, incur
24 eligible expenditures up to six months prior to the submission of the
25 application required under subsection (1) of this section if such
26 eligible expenditures are limited to architectural ~~fees~~, engineering,
27 accounting, and legal fees, and any costs generally related to the
28 protection of the historically significant real property from
29 deterioration.

30 Sec. 6. Section 77-2906, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 77-2906 (1)(a) Within twelve months after the date on which the
2 historically significant real property is placed in service, a person
3 whose application was approved under section 77-2905 shall file a request
4 for final approval containing all required information with the officer
5 on a form prescribed by the officer and shall include a fee established
6 by the officer pursuant to section 77-2907. The officer shall then
7 determine whether the work substantially conforms to the application
8 approved under section 77-2905. If the work substantially conforms and no
9 other significant improvements have been made to the historically
10 significant real property that do not substantially comply with the
11 standards, the officer shall approve the request for final approval. The
12 person whose request is approved shall then apply to the department to
13 determine the amount of eligible expenditures, calculate the amount of
14 the credit, and issue a certificate to the person evidencing the credit.
15 If the work does not substantially conform to the approved application or
16 if other significant improvements have been made to the historically
17 significant real property that do not substantially comply with the
18 standards, the officer shall deny the request for final approval and
19 provide the person with a written explanation of the decision. The
20 officer shall make a determination on the request for final approval in
21 writing within thirty days after the filing of the request. If the
22 officer does not make a determination within thirty days after the filing
23 of the request, the request shall be deemed approved and the person may
24 apply to the department to determine the amount of eligible expenditures,
25 calculate the amount of the credit, and issue a certificate evidencing
26 the credit.

27 (b) The department shall determine the amount of eligible
28 expenditures, calculate the amount of the credit, and issue one or more
29 certificates evidencing the credit within sixty days after receiving an
30 application pursuant to subdivision (1)(a) of this section. The person
31 filing the application and the department may also agree to extend the

1 sixty-day period, but such extension shall not exceed an additional
2 thirty days. If the department does not determine the amount of eligible
3 expenditures, calculate the amount of the credit, and issue one or more
4 certificates evidencing the credit within such sixty-day period or
5 agreed-upon longer period, the credit shall be deemed to have been issued
6 by the department for the amount requested in such person's application,
7 except that such amount shall not exceed one hundred ten percent of the
8 amount of credits allocated by the officer under section 77-2905 and such
9 amount shall not increase or decrease the total amount of credits that
10 may be allocated by the officer under section 77-2905 in any calendar
11 year.

12 (c) Any denial of a request for final approval by the officer or any
13 determination of the amount of eligible expenditures or calculation of
14 the amount of the credit by the department pursuant to this section may
15 be appealed, and the appeal shall be in accordance with the
16 Administrative Procedure Act.

17 (2) The department shall divide the credit and issue multiple
18 certificates to a person who qualifies for the credit upon reasonable
19 request.

20 (3) In calculating the amount of the credits to be issued pursuant
21 to this section, the department may issue credits in an amount that
22 differs from the amount of credits allocated by the officer under section
23 77-2905 if such credits are supported by eligible expenditures as
24 determined by the department, except that the department shall not issue
25 credits in an amount exceeding one hundred ten percent of the amount of
26 credits allocated by the officer under section 77-2905. If the amount of
27 credits to be issued under this section is more than the amount of
28 credits allocated by the officer pursuant to section 77-2905, the
29 department shall notify the officer of the difference and such amount
30 shall be subtracted from the annual amount available for allocation under
31 section 77-2905. If the amount of credits to be issued under this section

1 is less than the amount of credits allocated by the officer pursuant to
2 section 77-2905, the department shall notify the officer of the
3 difference and such amount shall be added to the annual amount available
4 for allocation under section 77-2905.

5 (4) The department shall not issue any certificates for credits
6 under this section until the recipient of the credit has paid to the
7 department:

8 (a) A fee equal to one-quarter of one percent of the credit amount.
9 The department shall remit such fees to the State Treasurer for credit to
10 the Civic and Community Center Financing Fund; and

11 (b) A fee equal to six-tenths of one percent of the credit amount.
12 The department shall remit such fees to the State Treasurer for credit to
13 the Department of Revenue Enforcement Fund.

14 (5) If the recipient of the credit is (a) a corporation having an
15 election in effect under subchapter S of the Internal Revenue Code of
16 1986, as amended, (b) a partnership, or (c) a limited liability company,
17 the credit may be claimed by the shareholders of the corporation, the
18 partners of the partnership, or the members of the limited liability
19 company in the same manner as those shareholders, partners, or members
20 account for their proportionate shares of the income or losses of the
21 corporation, partnership, or limited liability company, or as provided in
22 the bylaws or other executed agreement of the corporation, partnership,
23 or limited liability company. Credits granted to a partnership, a limited
24 liability company taxed as a partnership, or other multiple owners of
25 property shall be passed through to the partners, members, or owners,
26 respectively, on a pro rata basis or pursuant to an executed agreement
27 among the partners, members, or owners documenting any alternate
28 distribution method.

29 (6) ~~Any Subject to section 77-2912,~~ any credit amount that is unused
30 may be carried forward to subsequent tax years until fully utilized.

31 (7) Credits allowed under this section may be claimed for taxable

1 years beginning or deemed to begin on or after January 1, 2015, under the
2 Internal Revenue Code of 1986, as amended.

3 Sec. 7. Section 77-2909, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 77-2909 (1) Persons who receive the original issuance of credits
6 from the department under section 77-2906 may transfer, sell, or assign
7 up to fifty percent of such credits to any person or legal entity. If the
8 person who receives the original issuance of credits from the department
9 is a political subdivision or a tax-exempt entity under section 501(c)(3)
10 of the Internal Revenue Code of 1986, as amended, such fifty-percent
11 limitation shall not apply.

12 (2) The credits allowed to be transferred, sold, or assigned
13 pursuant to subsection (1) of this section may thereafter be transferred,
14 sold, or assigned multiple times, either in whole or in part, by or to
15 any person or legal entity.

16 (3) Any person acquiring credits under this section may use such
17 credits to offset up to one hundred percent of such person's income tax
18 due under the Nebraska Revenue Act of 1967 or any tax due under sections
19 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807 in the year the
20 historically significant real property is placed in service and in
21 subsequent years until all credits have been utilized, ~~except as~~
22 ~~otherwise provided in section 77-2912.~~ Any taxpayer that claims a tax
23 credit shall not be required to pay any additional retaliatory tax under
24 section 44-150 as a result of claiming such tax credit. Any tax credit
25 claimed shall be considered a payment of tax for purposes of subsection
26 (1) of section 77-2734.03.

27 (4) The person transferring, selling, or assigning the credits shall
28 notify the officer and the department in writing within fifteen calendar
29 days following the effective date of the transfer, sale, or assignment
30 and shall remit to the department the certificate issued for the credits
31 that were transferred, sold, or assigned. The department shall then issue

1 new certificates as necessary to effectuate the transfer, sale, or
2 assignment. The issuance of the new credits by the department shall
3 perfect the transfer, sale, or assignment of credits.

4 (5) The department shall develop a system to track the transfer,
5 sale, and assignment of credits and to certify the ownership of the
6 credits.

7 (6) The department shall have, with respect to the Nebraska Job
8 Creation and Mainstreet Revitalization Act, all authority granted to it
9 in section 77-27,119.

10 Sec. 8. Section 77-2910, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 77-2910 (1) The Nebraska State Historical Society and the department
13 may each adopt and promulgate rules and regulations to carry out the
14 Nebraska Job Creation and Mainstreet Revitalization Act.

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

1 confidentiality laws.

2 Sec. 9. Original sections 77-2901, 77-2902, 77-2903, 77-2904,
3 77-2905, 77-2909, and 77-2910, Reissue Revised Statutes of Nebraska, and
4 section 77-2906, Revised Statutes Cumulative Supplement, 2020, are
5 repealed.

6 Sec. 10. The following section is outright repealed: Section
7 77-2912, Reissue Revised Statutes of Nebraska.