



States' Biofuels Statutes

STATE OF NEBRASKA

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).

Current through the 2013 Legislative Session of the Nebraska General Assembly.

77-5536. Application; approval; procedure

(1) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Invest Nebraska Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

- (a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;
- (b) The type of industry in which the company and the project would be engaged;
- (c) The timing, amount, and types of investment in qualified property to be made at the project; and
- (d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(2) The weight given to each factor shall be determined by each board member individually for each application. The decision of the board shall be made in open meeting and is not confidential.

(3) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the purposes contained in section 77-5502 in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least ten million dollars and the hiring of a number of new employees of at least twenty-five. The investment and new employees for such project shall count towards attaining and maintaining such thresholds only if the qualified property is located in, and the employee's principal place of employment for the company is located in, one or more Nebraska counties having a population of less than one hundred thousand individuals as of the end of the base year. For this purpose, the population shall be conclusively determined by the Department of Revenue, (b) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred, (c) the

investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty, or (d) the investment in qualified property of at least two hundred million dollars and the hiring of a number of new employees of at least five hundred.

(4) The new investment and employment shall occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(5)(a) An individual employed by the company, other than a base-year employee, shall be considered an employee for purposes of attaining and maintaining the required number of new employees and shall be considered an employee whose compensation is included in the calculation of the wage benefit credit only if the compensation paid by the company to such employee for the year is (i) for companies qualifying under the ten million dollar investment and twenty-five new employee threshold under subdivision (3)(a) of this section, at least one hundred percent of the Nebraska average annual wage, (ii) for companies qualifying under the fifty million dollar investment and five hundred new employee threshold under subdivision (3)(b) of this section or the one hundred million dollar investment and two hundred fifty new employee threshold under subdivision (3)(c) of this section, at least one hundred ten percent of the Nebraska average annual wage; and (iii) for the companies applying under the two hundred million dollar investment and five hundred new employee threshold of subdivision (3)(d) of this section, at least one hundred twenty percent of the Nebraska average annual wage.

(b) For the purposes of subdivision (a) of this subsection, compensation paid by the company to such employee for the year shall be the amount paid for the entire year for regular hours worked, not including overtime, bonuses, or any other irregular payments. If the employee works for less than a year, the compensation paid will be annualized solely for the purpose of comparison with the Nebraska average annual wage.

(6) If the project application is approved by the board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner. In the agreement the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit or the investment tax credit, as applicable, as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be deemed a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment and investment have been attained and maintained. The agreement shall contain provisions to require verification that the required levels have been attained before any credits are used. The agreement shall contain such other conditions or requirements, if any, for the company as established by the department to carry out the purposes of the act.

(7) Any investment or employment which is eligible for benefits under the Quality Jobs Act shall not be included in a project under the Invest Nebraska Act. A project under the Invest Nebraska Act may involve the same location as another project under the Invest Nebraska Act or under the Quality Jobs Act, except that no new employment or new investment shall be included in more than one project for

either the meeting of the employment or investment requirements or the creation of tax incentives. When projects overlap and the project application does not otherwise clearly specify, the company shall specify in which project the employment and investment belongs.

(8) For applications for projects that are not receiving benefits under the Ethanol Development Act or applications filed before April 16, 2004, any employment or investment which is eligible for benefits under the Invest Nebraska Act may also be included in, and create incentives for, a project under the Employment and Investment Growth Act, the Nebraska Advantage Rural Development Act, and the Rural Economic Opportunities Act, to the extent otherwise allowable under such respective acts. For applications filed on or after April 16, 2004, a taxpayer that is receiving benefits under the Ethanol Development Act may not receive benefits under the Invest Nebraska Act for the project that generates the incentive under the Ethanol Development Act.

(9) In order to provide the degree of certainty necessary to enable a project to proceed, and notwithstanding any provision of Nebraska statute or common law to the contrary, to the extent any such right of appeal or challenge otherwise exists, no appeal or challenge of the board's decision by any person shall be filed after the expiration of thirty days after the board's decision.

Credits: Laws 2001, LB 620, § 36; Laws 2004, LB 479, § 10; Laws 2005, LB 312, § 58.