

NEBRASKA

MUNICIPAL INLAND PORT AUTHORITY ACT GUIDELINES

State of Nebraska
Department of Economic Development

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TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION TO THE MUNICIPAL INLAND PORT AUTHORITY ACT 1

 1.1 Purpose 1

 1.2 Terms and Definitions..... 1

CHAPTER 2: PROPOSING AN INLAND PORT AUTHORITY 1

 2.1 Entities Capable of Proposing the Creation of an Inland Port Authority..... 1

 2.2 District Criteria 2

 2.3 District Proposal 3

 2.4 Application Requirements 3

 2.5 Prioritization Criteria..... 5

CHAPTER 3: CREATING AN INLAND PORT AUTHORITY 5

 3.1 DED review, Prioritization Metric, and Numerosity Limit 5

 3.2 Approving an Inland Port Authority..... 6

 3.3 Filing the District Boundaries with the City and/or County Clerk(s)..... 7

CHAPTER 4: OPERATING AN INLAND PORT AUTHORITY 7

 4.1 Inland Port Authority Board of Commissioners Formation 7

 4.2 Restrictions on Board Commissioners and Employees..... 8

 4.3 Inland Port Authority Powers 8

 4.4 Real Property Agreements with the State or Political Subdivisions, Tax Exemptions,
 Open Meetings Act, and Public Records..... 10

CHAPTER 5: DISSOLUTION OF AN INLAND PORT AUTHORITY 10

 5.1 Procedure to Dissolve an Inland Port Authority 10

NOTICE:

This guidance document is advisory in nature but is binding on the Department of Economic Development (“DED” or “Department”) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

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The Municipal Inland Port Authority Act is codified in Neb. Rev. Stat. §§ 13-3301 to 13-3313.

Application Portal and Management System

To administer the Municipal Inland Port Authority Act, DED uses a grants management system (“GMS”), AmpliFund. GMS User Guides, with instructions for accessing and using the system, along with other resources, are available on [DED's website](#) and on DED’s AmpliFund resource page, [AmpliFund--Nebraska Department of Economic Development](#).

CHAPTER 1: INTRODUCTION TO THE MUNICIPAL INLAND PORT AUTHORITY ACT

1.1 PURPOSE

Nebraska is ideally situated as an industrial and logistical hub for multiple industries across the United States. The Municipal Inland Port Authority Act (“Act”) is intended to stimulate the Nebraska economy by incentivizing the development of new industrial hubs and providing the economic development tools necessary to acquire and develop large shovel-ready sites. The creation of one or more inland port authorities in Nebraska will serve as a mechanism to develop both commercial and industrial sites. In addition to the development of commercial and industrial sites, Nebraska’s inland port authorities will serve as regional merging points for multi-modal transportation and the distribution of goods.

1.2 TERMS AND DEFINITIONS

- **Direct Financial Benefit:** Any form of financial benefit that accrues to an individual directly, including compensation, commission, or any other form of a payment or increase of money, or an increase in the value of a business or property. Direct financial benefit does not include a financial benefit that accrues to the public generally.
- **Family Member:** A spouse, parent, sibling, child, or grandchild.
- **Inland Port Authority:** An authority created by a city, county or counties, or city and one or more counties pursuant to the Act to manage an Inland Port District.
- **Inland Port District:** An area within the corporate boundaries or extraterritorial zoning jurisdiction or both of a city, within the boundaries of one or more counties, or within both the corporate boundaries or extraterritorial zoning jurisdiction or both of a city and the boundaries of one or more counties, and which meets at least two of the following criteria: (a) located within one mile of a navigable river or other navigable waterway; (b) located within one mile of a major rail line; (c) located within two miles of any portion of the federally designated National System of Interstate and Defense Highways or any other four-lane divided highway; or (d) located within two miles of a major airport.
- **Intermodal Facility:** A hub or other facility for trade combining any combination of rail, barge, trucking, air cargo, or other transportation services.
- **Major Airport:** An airport with commercial service as defined by the Federal Aviation Administration.
- **Major Rail Line:** A rail line that is accessible to a Class I railroad as defined by the federal Surface Transportation Board.
- **Nonprofit Economic Development Corporation:** A chamber of commerce or other mutual benefit or public benefit corporation organized under the Nebraska Nonprofit Corporation Act to assist in economic development.

CHAPTER 2: PROPOSING AN INLAND PORT AUTHORITY

2.1 ENTITIES CAPABLE OF PROPOSING THE CREATION OF AN INLAND PORT AUTHORITY

An Inland Port Authority (“Authority”) can be proposed by:

- a. Any city of the metropolitan class, city of the primary class, or city of the first class which encompasses an area greater than three hundred (300) acres of land that is eligible to be designated as an Inland Port District (“District”).¹
- b. Any city of the metropolitan, primary, or first class and one or more counties in which the city is located, or in which the extraterritorial zoning jurisdiction of the city is located, which encompass an area greater than three hundred (300) acres of land that is eligible to be designated as a District.
- c. Any county or counties with a population greater than twenty thousand (20,000) inhabitants which encompasses an area greater than three hundred (300) acres of land that is eligible to be designated as a District.
- d. If a city, county or counties, or city and one or more counties meeting the criteria listed in this Chapter has/have not proposed to create an Authority, then a nonprofit economic development corporation that serves the applicable city, county or counties, or city and one or more counties may propose the creation of an Authority by submitting an application to DED.

2.2 DISTRICT CRITERIA

Any application submitted to DED must identify the areas designated as the District and include the location and boundaries of the proposed District. For the designated areas to be eligible as a District, it must meet the following criteria:

- a. A District must be at least three hundred (300) acres in size.
- b. No more than twenty-five percent (25%) of a District’s designated area, measured in acres, may be noncontiguous with the remaining contiguous portion of the District. Any such noncontiguous portion must be no more than one-quarter mile (1/4 mile) from the remaining contiguous portion of the District.
- c. A District must be located within two of the following:
 - i. Within one mile of a navigable river or other navigable waterway. For purposes of the Act, the only navigable river or waterway in Nebraska is the Missouri River.
 - ii. Within one mile of a major rail line. For purposes of the Act, major rail line includes rail accessible by the following Class I railroads: BNSF Railway, Union Pacific Railroad Company, Norfolk Southern Railway, Kansas City Southern Railway, CSX Transportation, Canadian Pacific Railway, and Canadian National Railway.
 - iii. Within two miles of any portion of the federally designated National System of Interstate and Defense Highways or any other four-lane divided highway.
 - iv. Within two miles of a major airport. For purposes of the Act, major airports in Nebraska are those with greater than 2,500 annual enplanements which includes: Omaha Eppley Airfield (OMA), Lincoln Airport (LNK), Central Nebraska Regional Airport (GRI), Kearney Regional Airport (EAR), North Platte Regional Airport/Lee Bird Field (LBF), Western Nebraska Regional Airport/William B. Heilig Field (BFF), Alliance Municipal Airport (AIA), and the Chadron Municipal Airport (CDR).

¹ See Chapter 2.2 of these Guidelines for the topographical criteria of a District to determine whether a location meets the eligibility requirements for a District.

Real property located within the boundaries of a District is not required to be owned by the Authority or cities or counties in which the real property is located.

2.3 DISTRICT PROPOSAL

To create an Authority, a city, county or counties, or city and one or more counties must first propose the creation of an Authority by enacting an ordinance, resolution, or an agreement pursuant to the Interlocal Cooperation Act. In determining whether to propose an Authority the city, county or counties, or city and one or more counties shall consider the prioritization criteria in Chapter 2.5 of these Guidelines. An ordinance, resolution, or interlocal agreement will not be required if the applicant is a nonprofit economic development corporation. However, the nonprofit economic development corporation is required to consider the prioritization criteria enumerated in Chapter 2.5 of these guidelines.

An ordinance, resolution, or interlocal agreement must designate the District location and boundaries; set forth the proposed Authority's purpose, powers, and limitations; delineate the form, structure, norms, and eligibility criteria for the board of commissioners that is to administer the proposed Authority; detail the dissolution procedure for the proposed Authority; and state any other special considerations including the applicability of the Open Meetings Act and the public records provisions of Neb. Rev. Stat. §§ 84-712 to 84-712.09 to the proposed Authority.

2.4 APPLICATION REQUIREMENTS

Following the adoption of an ordinance, resolution, or agreement pursuant to the Interlocal Cooperation Act proposing the creation of an Authority, the city or county clerk of the applicant shall transmit a copy of such ordinance, resolution, or agreement to DED along with an application seeking approval of the proposed Authority. A nonprofit economic development corporation wishing to apply must submit an application directly to DED. DED will begin accepting applications on October 17, 2022. DED will accept and review applications on a rolling basis.

The following documentation is required to be included with an application:

- a. Documentation showing that the proposed District meets the criteria detailed in Chapter 2.2 of these Guidelines.
- b. If the proposed District is not contiguous, documentation showing that any non-contiguous portion of the proposed District is twenty-five percent (25%) or less of the proposed District and no more than one quarter mile (1/4 mile) from the remaining contiguous portion of the District.
- c. An illustrated map of the proposed District boundaries. The illustrated map must also demarcate the corporate limits, extraterritorial zoning jurisdiction, or both of the city, and the boundaries of the county or counties in which the proposed District will be located. Where possible, the map provided should be in a GIS shapefile. If the applicant is unable to provide a map in GIS shapefile, a PDF format is acceptable.
- d. Using the Excel spreadsheet provided by DED on its [webpage](#), provide a listing of all parcels (using the County PID) and the corresponding street address for each parcel of the proposed District (if a parcel does not have a street address, simply indicate "N/A").
- e. A legal description for the proposed District boundaries.

- f. Any other documentation in support of the application which analyzes the proposed District and Authority against the prioritization criteria found in Neb. Rev. Stat. § 13-3304 and detailed below in Chapter 2.5 of these Guidelines.

If the applicant is a city, county or counties, or city and one or more counties, the following additional documentation is required to be uploaded with an application:

- a. A certified copy of the ordinance, resolution, or interlocal agreement proposing the creation of an Authority and designating the District location and boundaries.

If the applicant is a nonprofit economic development corporation, the following additional documentation is required to be uploaded with an application:

- a. Applicant's articles of incorporation or other legal document showing applicant is organized under the Nebraska Nonprofit Corporation Act.
- b. Applicant's bylaws or other legal document showing applicant was organized to assist economic development.
- c. Documentation showing that the applicant serves the city and/or counties for which it is applying.

All applications and supporting documentation must be submitted to DED electronically using AmpliFund. Applicants are encouraged to review the Application Checklist prior to filling out the application for a list of documents and information required to successfully complete the application. To apply, applicants should follow the "Apply Now" link on the DED Municipal Inland Port Authority Act webpage, create a user profile in the AmpliFund application portal, and complete the application. The user profile allows for saving a partially completed application after the application opens.

Questions regarding the application process should be sent to:

Jessica Anderson
jessica.anderson@nebraska.gov
402-471-3367

Individuals who are hearing and/or speech impaired and have a TTY, may contact DED through the Statewide Relay System by calling (711) INSTATE (800) 833-7352 (TTY) or (800) 833-0920 (voice). The relay operator should be asked to call DED at (800) 426-6505 or (402) 471-3111. Additional information can be found at the Nebraska Relay website <http://www.nebraskarelay.com/>.

Nebraska Relay offers Spanish relay service for our Spanish-speaking customers. Spanish-to-Spanish (711) or 1-888-272-5528/ Spanish-to-English (711) or 1-877-564-3503. Nebraska le ofrece el servicio de relevo a nuestros clientes en español. Los consumidores de TTY pueden escribir por máquina en español y las conversaciones serán retransmitidas en español y inglés.

2.5 PRIORITIZATION CRITERIA

Pursuant to Neb. Rev. Stat. § 13-3304 of the Act, DED will utilize the following prioritization criteria when considering applications:

- a. Desirability and Economic Feasibility: The desirability and economic feasibility of locating a District within the corporate boundaries, extraterritorial zoning jurisdiction, or both of the city, within the boundaries of one or more counties, or within both the corporate boundaries or extraterritorial zoning jurisdiction or both of a city and the boundaries of one or more counties (whichever is applicable);
- b. Technical and Economic Capability: The technical and economic capability of the city, county or counties, or city and one or more counties (whichever is applicable) and any other public and private entities to plan and carry out development within the proposed District;
- c. Strategic Location: The strategic location of the proposed District in proximity to existing and potential transportation infrastructure that is conducive to facilitating regional, national, and international trade and the businesses and facilities that promote and complement such trade;
- d. Impact on Immediate Area: The potential impact that development of the proposed District will have on the immediate area;
- e. Regional and Statewide Economic Impact: The regional and statewide economic impact of development of the proposed District.

CHAPTER 3: CREATING AN INLAND PORT AUTHORITY

3.1 DED REVIEW, PRIORITIZATION METRIC, AND NUMEROSITY LIMIT

Upon receiving an application and the requisite supporting documentation, DED will evaluate the application and proposed Authority. Submission of an application does not guarantee approval of the proposed Authority.

DED will review applications and proposed Authorities to ensure the eligibility requirements detailed above in Chapters 2.1, 2.2, and 2.3 of these Guidelines are satisfied. To prioritize proposed Authorities, DED will utilize the criteria found in Neb. Rev. Stat. § 13-3304 of the Act and addressed in Chapter 2.5 of these Guidelines. DED will prioritize applications using the following metric:

Prioritization Criteria	Application Score	Maximum Score Possible
Desirability and Economic Feasibility		15
Technical and Economic Capability		15
Strategic Location		15
Impact on Immediate Area		15
Regional and Statewide Economic Impact		15
Total (Minimum Score Necessary to be Approved: 45)		75

The Department will not approve an application that: 1) fails to satisfy the eligibility requirements detailed in Chapters 2.1, 2.2, and 2.3 of these Guidelines; 2) fails to provide the requisite documentation required in Chapter 2.4 of these Guidelines; or 3) fails to attain a minimum score

of forty-five (45)—as determined by the DED review committee according to the prioritization criteria and scoring metric set forth in Chapters 2.5 and 3.1 of these Guidelines.

Pursuant to the Act, DED may not approve more than five (5) Authorities and their corresponding Districts. As such, applicants that otherwise satisfy the eligibility requirements, provide the requisite documentation, and attain the minimum prioritization score are not guaranteed to be approved. If the numerosity limitation is implicated and there is more than one otherwise qualified applicant, the applicant with the higher prioritization score will be prioritized over applicants with lower prioritization scores. DED will accept and review applications on a rolling basis.

3.2 APPROVING AN INLAND PORT AUTHORITY

If DED approves an application from a city, county or counties, or city and one or more counties, the Department will then certify to the city or county clerk(s) whether the proposed Authority exceeds the statutory numerosity limit. If the Department approves an application and certifies that the proposed Authority does not exceed the statutory limit, then the proposed Authority will be deemed created.

If DED denies an application from a city, county or counties, or city and one or more counties, or if the proposed Authority would exceed the statutory numerosity limit, then the Department will certify such to the city or county clerk(s) and the city, county or counties, or city and one or more counties must repeal the ordinance or resolution proposing an Authority and/or rescind the interlocal agreement proposing an Authority and the proposed Authority shall not be created.

If DED approves an application from a nonprofit economic development corporation, DED will certify to the nonprofit economic development corporation and the applicable city or county clerk(s) whether the proposed Authority exceeds the statutory numerosity limit. If the Department approves an application and certifies that the proposed Authority does not exceed the statutory limit, then the applicable city, county or counties, or city and one or more counties that was/were the subject of the nonprofit economic development corporation's application shall create an Authority by enacting an ordinance, resolution, or entering into an interlocal agreement as described above in Chapter 2.3 of these Guidelines. The ordinance, resolution, and/or interlocal agreement must apply the same criteria—including the District boundaries—that were utilized by the nonprofit economic development corporation in its application to DED. Upon enacting such ordinance, resolution, and/or interlocal agreement, the city, county or counties, or city and one or more counties must make a copy of the ordinance, resolution, and/or interlocal agreement available to DED.

If DED denies an application from a nonprofit economic development corporation, or if the proposed Authority would exceed the statutory numerosity limit, then the Department will certify such to the nonprofit economic development corporation and the city or county clerk(s) and the proposed Authority shall not be created.

3.3 FILING THE DISTRICT BOUNDARIES WITH THE CITY AND/OR COUNTY CLERK(S)

Upon the creation of an Authority as outlined in Paragraph 3.2 of these Guidelines, the city council and/or county board(s) (whichever is applicable) which has or have created an Authority, shall designate what areas shall comprise the District. The District boundaries must be filed with the city and/or county clerk(s) and shall become effective upon approval of the city council and/or county board(s).

The city council and/or county board(s) may from time to time enlarge or reduce the area comprising the District, but the District may not be reduced to an area less than three hundred (300) acres. Any change of District boundaries must be filed with the city and/or county clerk(s) and become effective upon such filing.

CHAPTER 4: OPERATING AN INLAND PORT AUTHORITY

4.1 INLAND PORT AUTHORITY BOARD OF COMMISSIONERS FORMATION

An Authority must be administered by a board of commissioners. The requisite size of the board is determined pursuant to the following:

Entity or Entities Creating the Authority	Required Size of the Board
City of the metropolitan class	Nine (9) members
City of the primary class	Seven (7) members
City of the first class	Five (5) members
City of the metropolitan class and one or more counties	Eleven (11) members
City of the primary class and one or more counties	Nine (9) members
City of the first class and one or more counties	Seven (7) members
County or counties	Nine (9) members

If the Authority was created by a city, then, upon the creation of the Authority, the mayor of that city, with the approval of the city council, shall appoint a board to govern the Authority. Members of the board must be residents of the city that created the Authority.

If the Authority was created by a city and one or more counties, then, upon the creation of the Authority, the mayor of the city, with the approval of the city council and county board(s), shall appoint a board to govern the authority. Members of the board must be residents of the county or counties that created the Authority.

If the Authority was created by one or more counties, then, upon the creation of the Authority, the chairperson(s) of the county board(s), with the approval of the county board(s), shall appoint a board to govern the Authority. Members of the board must be residents of the county or counties that created the Authority.

Board members shall serve staggered terms of four years in such a manner to ensure that the terms of no more than three members expire in any one year. Any vacancy on the board is to be filled in the same manner as the vacating board member was appointed to serve the unexpired portion of the board member's term.

4.2 RESTRICTIONS ON BOARD COMMISSIONERS AND EMPLOYEES

No individual may serve as a board commissioner or an Authority employee if:

- a. The individual or a family member of the individual owns an interest in any real property located within the boundaries of the District; or
- b. The individual or a family member of the individual owns an interest in, is directly affiliated with, or is an employee or officer of a private firm, company, or other entity that the individual reasonably believes is likely to:
 - i. Participate in or receive a direct financial benefit from the development of the District; or
 - ii. Acquire an interest in any facility located within the District.

Before taking office as a board commissioner or accepting employment with an Authority, an individual must submit a statement to the Authority verifying that the individual's service as a board commissioner or an Authority employee will not violate the restrictions contained in Neb. Rev. Stat. § 13-3311(1) and summarized in Chapter 4.2 of these Guidelines.

An individual shall not, at any time during the individual's services as a board commissioner or an Authority employee, acquire or take any action to initiate, negotiate, or otherwise arrange for the acquisition of an interest in any real property located within the boundaries of the Authority's District.

Neither a board commissioner, nor any Authority employee, may receive a direct financial benefit from the development of any real property located within the boundaries of the District.

4.3 INLAND PORT AUTHORITY POWERS

An Authority will have the power to:

- a. Plan, facilitate, and develop the District in conjunction with the city, the county or counties, and other public and private entities, including the development of publicly-owned infrastructure and improvements within the District;
- b. Engage in marketing and business recruitment activities and efforts to encourage and facilitate development of the District;
- c. Apply for and take all other necessary actions for the establishment of a foreign trade zone, as provided under federal law, within the District;
- d. Acquire, own, lease, sell, or otherwise dispose of interest in and to any real property and improvements located thereon, and in any personal property, and construct buildings and other structures necessary to fulfill the purposes of the Authority;

- e. Acquire rights-of-way and property of any kind or nature within the District necessary for its purposes by purchase or negotiation;
- f. Enter into lease agreements for real or personal property, either as lessee or lessor;
- g. Sue and be sued in its own name;
- h. Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act with the city, the county or counties, or any other political subdivision of this or any other state;
- i. Borrow money from private lenders, from the state, or from the federal government as may be necessary for the operation and work of the Authority;
- j. Accept appropriations, including funds transferred by the Legislature pursuant to Neb. Rev. Stat. § 81-12,146, contributions, gifts, grants, or loans from the United States, the State of Nebraska, political subdivisions, or other public and private agencies, individuals, partnerships, or corporations;
- k. Employ such managerial, engineering, legal, technical, clerical, accounting, advertising, administrative, or other assistance as may be deemed advisable, or to contract with independent contractors for any such assistance;
- l. Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted, except that such bylaws, rules, and regulations shall not exceed the powers granted to the Authority by the Municipal Inland Port Authority Act;
- m. Enter into agreements with private operators or public entities for the joint development, redevelopment, reclamation, or other uses of property within the District;
- n. Own and operate an intermodal facility and other publicly-owned infrastructure and improvements within the boundaries of the District;
- o. Establish and charge fees to businesses and customers utilizing the services offered by the Authority within the District as required for the proper maintenance, development, operation, and administration of the Authority; and
- p. Issue and sell revenue bonds necessary to provide sufficient funds for achieving its purposes, including the construction of intermodal facilities, buildings, and infrastructure and the financing of port improvement projects, except that such Authority shall not issue or sell general obligation bonds. An Authority may pledge any revenue derived from the sale or lease of property of such Authority to the payment of such revenue bonds. The State of Nebraska shall not be liable for any bonds of any Authority. Any such bonds shall not be a debt of the State of Nebraska and must contain on the faces thereof a statement to such effect. Neither the board commissioners nor any other authorized person executing Authority bonds shall be personally liable on such bonds, nor be subject to any personal liability or accountability by reason of the bond issuance.

An Authority does not possess, nor may it exercise, the power of eminent domain.

4.4 REAL PROPERTY AGREEMENTS WITH THE STATE OR POLITICAL SUBDIVISIONS, TAX EXEMPTIONS, OPEN MEETINGS ACT, AND PUBLIC RECORDS

The State of Nebraska and any municipality, county, or other political subdivision of the state may, with or without consideration, transfer to an Authority or place in its possession or control, by lease or other contract or agreement, either for a limited period or in fee, any real property within the Authority's District.

An Authority will not be required to pay any taxes or any assessments to the State of Nebraska or to any political subdivision of the state, except for assessments under the Nebraska Workers' Compensation Act and any combined tax due or payments in lieu of contributions as required under the Employment Security Law. The bonds of an Authority and the income derived therefrom are exempt from any taxes and any assessments to the State of Nebraska or to any political subdivision of the state, except for inheritance and gift taxes and taxes on transfers.

An Authority must keep records of all proceedings before the board of commissioners, including minutes of meetings. All meetings of the board of commissioners are subject to Neb. Rev. Stat. §§ 84-1407 to 84-1414 of the Open Meetings Act.

An Authority's records and documents, except those which may be lawfully excluded, are public records for purposes of Neb. Rev. Stat. §§ 84-712 to 84-712.09.

CHAPTER 5: DISSOLUTION OF AN INLAND PORT AUTHORITY

5.1 PROCEDURE TO DISSOLVE AN INLAND PORT AUTHORITY

An Authority may be dissolved if it has no outstanding obligations.

An Authority may be dissolved by the city council of the city that created the Authority or the county board of the county that created the Authority. The Authority is dissolved as of the date of approval by the city council or county board. All funds and other assets of the Authority are transferred upon the dissolution of the Authority to the city or county, as applicable.

If the Authority was created through an interlocal agreement, the city council of the city and/or the county board(s) of the county or counties may dissolve an Authority. The Authority is dissolved as of the date of approval by the city council and/or the county board(s). All funds and other assets of the Authority are transferred upon the dissolution of the Authority to the city and/or the county or counties as agreed upon by the city and county or counties.