

The Sports Arena Facilities Financing Assistance Act

Overview

The Sports Arena Facility Financing Assistance Act (Act) allows municipalities and counties to apply to the Sports Arena Facilities Financing Assistance Board (Board) for state assistance.

The state assistance is an amount up to 70% of the state sales tax revenue collected by retailers doing business at the eligible facility, 70% of the state sales tax revenue collected on box office sales for events held at the eligible facility, and 70% of the new state sales tax revenue collected by retailers located in an area that is generally within 600 yards of the eligible facility. Effective May 26, 2021, the term “sports arena” also includes “sports complexes” which are multi-venue sports facilities.

The Nebraska Department of Revenue (DOR) is responsible for administering provisions of the Act, setting the hearing before the Board and, if an application is approved, calculating the amount of money to be transferred into the Sports Arena Facility Support Fund to provide the state assistance that was approved.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DOR 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.

This guidance document may change with updated information or added examples. DOR recommends you do not print this document. Instead, sign up for the [subscription service](https://revenue.nebraska.gov) at revenue.nebraska.gov to get updates on your topics of interest.

Terms

Board. The Board consists of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the Board by the Coordinating Commission for Postsecondary Education.

Box Office Sales. Box office sales are ticket sales or other admissions for events held at the eligible facility.

Eligible Sports Arena. An eligible sports arena is any publicly-owned, enclosed, and temperature-controlled building primarily used for sports that has a permanent seating capacity of at least 3,000 but no more than 7,000 seats, and for which initial occupancy occurred on or after July 1, 2010. It includes stadiums, arenas, dressing room and locker room facilities, concession areas, parking facilities, and

onsite administrative offices connected with operating the facilities. To be primarily used for sports, the commitments to use the eligible sports arena at the time of the application must show that more sporting events are planned for the eligible sports arena than for any other type of event.

An eligible sports arena facility includes any racetrack enclosure licensed by the State Racing Commission, including concession areas, parking facilities, and onsite administrative offices connected with operating the racetrack.

An eligible sports arena is also any privately owned concert venue including stages, dressing rooms, concession areas, parking facilities, lobby areas, and on-site administrative offices used in operating the concert venue.

A concert venue is any enclosed, temperature controlled building that is primarily used for live performances with an indoor capacity of 2,250 to 3,500 persons.

Beginning May 26, 2021, an eligible sports facility includes sports complexes, which include indoor or outdoor competitive sports venues that contain at least :

1. Twelve separate sports venues if the complex is located in a metropolitan class city,
2. Six separate sports venues if located in a primary class city or
3. Four separate sports venues if located anywhere else.

Sports venues include baseball fields, softball fields, swimming pools, multipurpose fields, or indoor arenas of any size.

Applicant. Local governments that can apply for state assistance under this Act are municipalities and counties. Local governments and nonprofit organizations can also jointly apply.

Program Area. The program area is the area that the nearby retailers are located in and from which the state assistance is calculated.

It is the entire area within 600 yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility, but not from any parking facility or other structure, except that if 25% or more of the area is unbuildable property, then the program area can be adjusted to avoid the unbuildable areas so long as it remains contiguous property with the same total amount of square footage that the program area would have contained had no adjustment been necessary.

If the facility is an eligible sports complex, the program area is the entire area within 600 yards of the external property lines of the complex, regardless of any unbuildable areas.

Increase in State Sales Tax Revenue. The increase in state sales tax revenue is the amount determined by DOR for each nearby retailer that in turn determines the amount of state assistance. It is the amount of state sales tax revenue collected by each nearby retailer during the state's fiscal year for which state assistance is calculated, minus the amount of state sales tax revenue collected by the nearby retailer in the state's fiscal year that ended immediately preceding the date the eligible sports arena was issued its occupancy permit or the eligible sports complex project was completed. The increase in state sales tax revenue cannot be less than zero.

Nearby Retailer. A nearby retailer is a retailer that is located within the program area.

New State Sales Tax Revenue.

(1) For nearby retailers that began collecting state sales tax during the period of time beginning 24 months prior to the time the eligible sports arena was issued its occupancy permit and ending 48 months later, new sales tax revenue is 100% of the state sales tax revenue collected by the nearby retailer and sourced under [Neb. Rev. Stat. §§ 77-2703.01 to 77-2703.04](#) to a location within the program area; and

(2) For nearby retailers that began collecting state sales tax before 24 months prior to the time the eligible sports arena was issued its occupancy permit, the new sales tax revenue is the increase in state sales tax revenue collected by the nearby retailer and sourced under [Neb. Rev. Stat. §§ 77-2703.01 to 77-2703.04](#) to a location within the program area.

(3) If the project is a sports complex, the new state sales tax revenue is limited to 100% of the state sales tax revenue that is collected by nearby retailers that commenced collecting sales tax after the project commenced and before 48 months after the completion date and sourced under [Neb. Rev. Stat. §§ 77-2703.01 to 77-2703.04](#) to a location within the program area.

Application for State Assistance

Any municipality or county that has acquired, constructed, improved, or equipped; approved a general obligation bond issue to acquire, construct, improve, or equip; or adopted a resolution authorizing the local government to pursue a general obligation bond issue to acquire, construct, improve, equip an eligible sports arena, or a building permit has been issued within the applicant's jurisdiction for an eligible sports arena facility that is a privately owned concert venue may apply to the Board for state assistance. The municipality or county may apply jointly with a nonprofit organization.

The applicant may first submit a draft application to DOR for approval. DOR will then review the draft application to determine if it is complete. There is a [checklist](#) showing the items which must be included with the application that goes before the Board. The applicant may submit multiple draft applications to DOR for review until all requirements for application are met. The application must contain at least:

- ❖ A description of the existing or proposed sports arena or sports complex that demonstrates that it meets the definition of eligible sports arena;
- ❖ A certified copy of the ordinance or resolution showing that the municipality or county has acquired, constructed, improved, or equipped; approved a general obligation bond issue to acquire, construct, improve, or equip; or adopted a resolution authorizing the local government to pursue a general obligation bond issue to acquire, construct, improve, or equip a sports arena or sports complex;
- ❖ A description of the proposed financing of the facility, including expected revenues from ticket sales, box office sales, sponsorships, naming rights, concessions, estimated state assistance, and the estimated construction costs, operating costs, principal and interest requirements for any bonds that will be issued to finance construction or acquisition of the facility, or the amounts necessary to repay the investment by the applicant in the facility;
- ❖ Documentation of the local financial commitment to support the project, including all public and private resources pledged or committed to the project and including a copy of any operating agreement or lease with substantial users of the facility; and
- ❖ A site map showing the location of the exterior walls of the sports arena or the exterior property line of the sports complex and the boundaries of the proposed program area.
- ❖ If the state assistance will be used to provide funding for promotion of the arts and cultural events, a detailed description of the programs and how programs will be in furtherance of applicants public use or public purpose.

Once the draft application is complete and finalized, the applicant must submit six copies of the final application to DOR, which will retain one copy and forward the others copies to the members of the Board at least 30 days prior to the hearing.

Conducting the Hearing

Once DOR receives the six copies of the application, it will forward the copies to the members of the Board and set a hearing date. DOR will publish notice of the hearing in a newspaper of general circulation in the area where the applicant is located at least three times before the hearing. No published notice can be less than 10 days before the hearing. The notice will give the time, date, and location of the hearing and a description of the eligible facility and its location. The applicant must reimburse DOR for the full cost of the published notice.

The Governor is the presiding officer at the hearing. The Tax Commissioner, or designee, is the Secretary and calls the roll, records any motions, and records any votes. The hearing will be conducted in the following order.

- ❖ The Tax Commissioner or designee will enter the completed application, proof of publication of the hearing notice, and other relevant documents into the record of the hearing.
- ❖ The applicant may make a presentation supporting the application. This may include any exhibits and live witnesses as are necessary to make the case for state assistance.
- ❖ Any member of the public may present written or oral testimony, or present other documentary evidence in support of or opposition to the application.
- ❖ Finally, the Board may seek expert testimony or require testimony from any individuals as the Board deems relevant.

The members of the Board may discuss the merits of the application and may offer any motions on the record of the hearing. The Board may also continue the hearing to a later date or close the hearing and discuss the application in executive session.

The Duties of the Board

A majority of the members of the Board is a quorum for purposes of conducting business. All actions of the Board must be approved by a majority of all Board members and one of the members of the majority must be the Governor. The Board may approve or deny the application and, if the applicant proposed to adjust the program area, the Board may approve, reject, or alter the proposed adjustment. The applicant will be notified of the Board's action on the application either in person at the hearing or in writing.

The Board will approve the application for state assistance if it finds that the facility described in the application meets the definition of an eligible sports arena, the applicant is eligible to receive state assistance, and approval is in the best interest of the state. When determining if approval is in the best interest of the state, the Board considers the fiscal and economic capacity of the applicant to finance its share of the cost of the sports arena or sports complex.

Any local government that has applied for and received a grant of assistance under the Civic and Community Center Financing Act is ineligible for state assistance for the same project for which the grant was awarded under the Civic and Community Center Financing Act.

If the certified copy of the resolution only authorizes the local government to pursue a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena, the Board can only grant a temporary approval. The temporary approval will become final upon approval by the voters of the general obligation bond described in the certified resolution. If the general obligation bond is disapproved by the voters, the temporary approval becomes void.

Verifying and Calculating the State Assistance

If an application for state assistance is approved and the approval is permanent, the applicant must notify any person selling tickets or other admissions for events held at the eligible sports arena or sports complex, and all retailers doing business at the eligible sports arena or sports complex, that they must complete a [Convention Center Facility Financing Assistance Act/Sports Arena Facility Financing Assistance Act Sales and Use Tax Information Form](#) monthly or distribute these forms to the persons selling tickets or admissions. These forms are due on the 20th of the month following the month the state sales tax was collected and are in addition to the required [Nebraska and Local Sales and Use Tax Return, Form 10](#).

DOR will determine the amount of state sales tax collected by nearby retailers from the Forms 10, filed by nearby retailers and any Convention Center Facility Financing Assistance Act/Sports Arena Facility Financing Assistance Act Sales and Use Tax Information Forms filed by nearby retailers.

For each calendar quarter, DOR will calculate the total of:

- ❖ The state sales tax revenue collected on box office sales for events held at the eligible facility;
- ❖ The state sales tax revenue collected by retailers doing business at the eligible facility; and
- ❖ The new state sales tax revenue collected by nearby retailers.

Within 60 days after the end of each calendar quarter, DOR will certify the amount calculated to the State Treasurer for deposit in the Sports Arena Facility Support Fund.

The calculation and certification will begin with the month during which the approval by the Board became final, or the month the eligible sports arena was issued its occupancy permit or the sports complex project was completed, whichever is later. The calculation and certification on box office sales for events held at the eligible sports arena will include sales tax collected for all events held at the eligible facility during the month in which the approval by the Board became final or the month the eligible sports arena was issued its occupancy permit or the sports complex project was completed, whichever is later.

If a nearby retailer reports sales from that location which are not properly sourced to a location within the program area, the nearby retailer must also attach a worksheet identifying only those sales and the related sales tax collected which are properly sourced to a location within the program area.

For example, if a nearby retailer makes sales from its retail location and also delivers taxable goods throughout a delivery area, the worksheet must separate sales delivered to an address outside the program area from the sales made over the counter and sales delivered to an address within the program area.

Distribution and Proper Use of State Assistance

State assistance is appropriated and provided to the municipality or county from the Sports Arena Facility Support Fund quarterly, based on the amounts certified by DOR to the State Treasurer for the immediately preceding calendar quarter. The amount appropriated for each approved applicant cannot exceed 70% of the amount certified.

The total amount of state assistance approved for an eligible sports arena facility cannot exceed \$100 million. State assistance for any year after the first 10 years that state assistance is provided cannot exceed the largest amount for any of the first 10 years. State assistance cannot be provided for any year after the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue are retired.

State assistance cannot be used for an operating subsidy supporting the eligible sports arena or another ancillary facility. State assistance must be used for a public purpose.

If an eligible sports arena facility is a privately owned concert venue, state assistance shall only be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the applicant to acquire, construct, improve, or equip a nearby parking facility, or to promote arts and cultural events which are open to or made available to the general public.

If the state assistance will be used to provide funding for promotion of the arts and cultural events, state assistance to the political subdivision shall no longer be available after ten years of funding or when the state assistance reaches the amount determined (no more than 50% of the project cost), whichever comes first.

Resource List

- ❖ [Neb. Rev. Stat. §§ 13-3101 to 13-3109](#), and [77-2703.01 to 77-2703.04](#).

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Nebraska Sports Arena Facilities Financing Assistance Application Checklist

- 1** A project description. The description should be detailed enough to show that the project is an eligible sports arena or an eligible sports complex. If the project is a sports arena, the project description must demonstrate the the project is:
- a** A publicly-owned, enclosed, and temperature-controlled building;
 - b** Primarily used for sports, meaning that more sporting events are planned than for any other type of event; and
 - b** Permanent seating capacity of at least 3,000, but no more than 7,000;
 - c** A racetrack enclosure; or
 - d** A Concert venue with indoor capacity of at least 2,250, but no more than 3,500.
- If the project is a sports complex, the project description must show that it is a multi-venue competitive sports facility that:
- a** Has at least 12 separate venues if located in a metropolitan class city;
 - b** Has at least six separate sports venues if located in a primary class city; or
 - c** Has four separate venues if the project is located in an opportunity zone or otherwise outside a metropolitan or primary class city.
- 2** Initial occupancy occurred after July 1, 2010.
- 3** A certified copy of the ordinance or resolution showing (check one below):
- a** That the local government has acquired, constructed, improved, or equipped an eligible facility;
 - b** That the local government has approved a general obligation bond to acquire, construct, improve, or equip an eligible facility; or
 - c** That the local government has adopted a resolution to pursue a general obligation bond to acquire, construct, improve, or equip an eligible facility.
- 4** A description of the proposed financing pro forma including:
- a** Ticket, box office, concessions, rentals, events, and other revenue;
 - b** Estimated state assistance;
 - c** Private support;
 - d** Sponsorships, advertising and other revenue;
 - e** Acquisition, construction, improvement, and equipment costs; and
 - f** Principal and interest repayment.
- 5** A proposed operating pro forma, showing long-term viability.
- 6** Documentation of the local financial commitment to support the project, including any:
- a** Public and private resources pledged or committed to the project;
 - b** Any operating lease with substantial users; and
 - c** Any sponsorship and advertising agreements.
- 7** A site plan showing the location of the exterior walls of the sports arena or exterior boundaries of the sports complex and other amenities related to the facility.
- a** A site plan showing the area and all existing and proposed retailers located within 600 yards of the exterior walls of the sports arena or within 600 yards of the exterior boundaries of the sports complex; or
 - b** If the project is a sports arena, and 25% or more of the area described in 7a is unbuildable, a proposed contiguous area with the same total amount of square footage that avoids as much of the unbuildable area as is practical.