

## LEGISLATIVE BILL 1018

Approved by the Governor April 5, 2010

Introduced by Cornett, 45; Coash, 27.

FOR AN ACT relating to revenue and taxation; to amend section 18-2506, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Advantage Transformational Tourism and Redevelopment Act; to restrict the use of municipal initiative and referendum on action permitted by the act; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 35 of this act shall be known and may be cited as the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Sec. 2. The Legislature hereby finds and declares that it is the policy of this state to utilize Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska as a component of a program to develop new tourism attractions as well as to redevelop areas of municipalities which are suffering the effects of age. In addition, the policy of this state is to promote the creation and retention of new jobs in Nebraska and attract and retain Nebraska's best and brightest young people.

Sec. 3. For purposes of the Nebraska Advantage Transformational Tourism and Redevelopment Act, the definitions found in sections 4 to 27 of this act shall be used.

Sec. 4. Any term shall have the same meaning as used in Chapter 77, article 27.

Sec. 5. Approved cost means:

(1) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons, and material suppliers in connection with the acquisition, construction, equipping, and installation of a project;

(2) The cost of acquiring real property or rights in real property and any cost incidental thereto;

(3) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a project which is not paid by the vendor, supplier, delivery person, or contractor or otherwise provided;

(4) The cost of architectural and engineering services, including, but not limited to, estimates, plans, specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a project;

(5) The cost required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a project;

(6) The cost required for the installation of utilities, including, but not limited to: Water; sewer; sewer treatment; gas; electricity; and communications, including offsite construction of facilities paid for by the project owner; and

(7) All other costs comparable with those described in this section.

Sec. 6. Approved project means any project that is certified by a municipality under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Sec. 7. Cultural development means a real estate development with a primary purpose of promoting cultural education or development, such as a museum or related visual arts centers, performing arts facility, or facilities housing, incubating, developing, or promoting art, music, theater, dance, zoology, botany, natural history, cultural history, or the sciences.

Sec. 8. Destination dining means a real estate development primarily selling and serving prepared food and beverage to the public in a setting with sit-down dining. In addition, the development must offer a unique food or experience concept not found in this state within (1) the same metropolitan statistical area as determined by the United States Office of Management and Budget and (2) a fifty-mile radius of the development.

Sec. 9. Entertainment destination center means a facility containing a minimum of two hundred thousand square feet of gross leasable area adjacent or complementary to an existing tourism attraction, an approved tourism development project, or a convention facility, and which provides a variety of entertainment and leisure options that contain at least six full-service restaurants and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format

theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities. Entertainment, food, and drink options and adjacent lodging shall occupy a minimum of sixty percent of the total gross area. Other retail stores shall occupy no more than forty percent of the total gross area.

Sec. 10. Entitlement period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application.

Sec. 11. Full-service restaurant means any public place (1) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (2) which has no sleeping accommodations, (3) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests to consume on premise, and (4) which has wait staff and table service with an average per-table bill of at least fifteen dollars.

Sec. 12. Historical redevelopment means a real estate development project that redevelops a historic building, as listed on either the National Register of Historic Places or the Nebraska Historic Buildings Survey. The reuse of the historic building can be any approved use, including retail for an entertainment destination center or a mixed-use project.

Sec. 13. Investment means the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. Investment does not include real property for a tourism development project.

Sec. 14. (1) Lodging means any lodging facility with the following attributes:

(a) The facility constitutes a portion of an approved project and represents less than fifty percent of the total approved cost of the tourism attraction project, or the facility is to be located on recreational property owned or leased by the state or the federal government and has received prior approval from the appropriate state or federal agency;

(b) The facility utilizes a historical redevelopment; or

(c) The facility involves the construction, reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than two hundred fifty guestrooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding the minimum. The hotel facilities or attached conference facility must also include a minimum of fifteen thousand square feet of net function space, including exhibit space, ballrooms, meeting rooms, or lecture halls.

(2) Lodging includes a lodging facility constructed as part of a development prior to the construction of retail development or a tourism attraction under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Sec. 15. Mixed-use project means a facility containing a minimum of fifty thousand square feet. The project must include at least two vertical stories of usable or leasable space and contain a minimum of two uses, such as restaurant, office, retail, or residential, not including parking. Retail stores shall occupy no more than forty percent of the total gross usable area.

Sec. 16. Nebraska crafts and products center means a real estate retail development primarily selling products created, grown, or assembled in Nebraska. Nebraska crafts and products must constitute a minimum of fifty percent of the total sales volume of the development.

Sec. 17. Project means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, construction, and equipping of a tourism attraction or redevelopment project; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction or redevelopment project, including, but not limited to, surveys; installation of utilities which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

Sec. 18. (1) For a tourism development project, qualified business means any business engaged in:

(a) Cultural development;

(b) Historical redevelopment;

(c) Recreation facilities;

(d) Entertainment destination centers;

- (e) Lodging;
- (f) Destination dining;
- (g) Tourism attraction;
- (h) Nebraska crafts and products center; or
- (i) Any combination of the activities listed in this subsection.

(2) For a redevelopment project, qualified business means any business engaged in:

- (a) Cultural development;
- (b) Historical redevelopment;
- (c) Recreation facilities;
- (d) Entertainment destination centers;
- (e) Mixed-use projects;
- (f) Lodging;
- (g) Full-service restaurants or destination dining;
- (h) Residential development;
- (i) Retail development;
- (j) Structured parking;
- (k) Tourism attraction;
- (l) Nebraska crafts and products center; or
- (m) Any combination of the activities listed in this subsection.

Sec. 19. (1) Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project.

(2) Qualified property does not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Nebraska Advantage Transformational Tourism and Redevelopment Act to another person.

Sec. 20. Recreation facility means any real estate project with a primary purpose of promoting and hosting sports or recreation activities, including sports facilities, golf courses, beaches, parks, water parks, amusement parks, and related support amenities.

Sec. 21. Redevelopment project means a project proposed on a parcel or parcels previously developed with real property improvements. Current usage cannot include agriculture or livestock. The redevelopment project must be within the municipal limits of a municipality. The existing improvements must be more than ten years old or have been demolished prior to application.

Sec. 22. Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Sec. 23. Structured parking means a real estate development used primarily as a covered parking facility for automobiles or related personal vehicles. The parking facility must have a minimum of two levels of parking above or below ground.

Sec. 24. (1) Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding.

(2) Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the Internal Revenue Code of 1986, as amended, hold an ownership interest of ten percent or more.

Sec. 25. Tourism attraction means a place of interest where tourists visit, typically for the inherent or exhibited cultural value, historical significance, natural or built beauty, or amusement opportunities, such as historical places, monuments, zoos, aquaria, museums, art galleries, botanical gardens, skyscrapers, parks, forests, natural recreation areas, theme parks, ethnic enclaves, historic transportation, and landmarks.

Sec. 26. Year means the taxable year of the taxpayer.

Sec. 27. Year of application means the year that a completed application is filed under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Sec. 28. The powers granted by the Nebraska Advantage

Transformational Tourism and Redevelopment Act shall not be exercised unless and until the question of directing the proceeds of the local option sales tax as authorized under the act has been submitted at a primary, general, or special election held within the municipality and in which all registered voters are entitled to vote on such question. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk. The question may include any terms and conditions set forth in the resolution, such as a termination date, and shall include the following language: Shall the municipality direct the local option sales tax collected within an area defined by the municipality to require redevelopment or as a tourism development project for the benefit of that area? If a majority of the votes cast upon the question are in favor, the governing body may so direct the tax. If a majority of those voting on the question are opposed, the governing body shall not so direct the tax. Once approved, the municipality may exercise the powers granted by the act for a period of ten years. Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Sec. 29. A municipality shall not approve or grant to any person any incentive under the Nebraska Advantage Transformational Tourism and Redevelopment Act unless the taxpayer provides evidence satisfactory to the municipality that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

Sec. 30. (1) In order to utilize the incentives set forth in the Nebraska Advantage Transformational Tourism and Redevelopment Act, the taxpayer shall file an application, on a form developed by an association of municipalities organized statewide, requesting an agreement.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the municipality to support the plan and to define a project and a feasibility study. The plans shall include evidence that demonstrates that the project is feasible only with the incentives provided by the act;

(c) A nonrefundable application fee of two thousand five hundred dollars; and

(d) A timetable showing the expected local option sales tax refunds and what year they are expected to be claimed.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment and investment.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the municipality's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) The municipality shall conduct an internal review of the feasibility study. If the municipality determines that the feasibility study demonstrates that the project can meet the requirements of the act, then the municipality shall conduct its own study with an independent third party, the cost of which shall be paid in full by the applicant. The cost of the study required under this subsection shall be in addition to the fee required under subsection (2) of this section. The purpose of the study is to verify or nullify the results of the feasibility study provided by the applicant. Additionally, the study shall examine the ability of the applicant to meet the requirements of the act. The study shall make a recommendation to the municipality on whether to proceed with the project or not.

(5) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Transformational Tourism and Redevelopment Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for incentives under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted, the municipality shall certify the application. Certification shall require approval by a majority vote by the members of the governing body of the municipality.

(6) After certification, the taxpayer and the municipality shall enter into a written agreement. The taxpayer shall agree to complete the project, and the municipality shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska

Advantage Transformational Tourism and Redevelopment Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the municipality annually on any changes in plans or circumstances which affect the timetable of local option sales tax refunds as set out in the application. If the company fails to comply with this requirement, the municipality may defer any pending local option sales tax refunds until the company does comply.

(7) A taxpayer and a municipality may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. 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 incentives. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the municipality and taxpayer may amend the agreement.

(9) The agreement shall include performance-based metrics to insure compliance with the act.

Sec. 31. (1) Applicants may qualify for incentives under the Nebraska Advantage Transformational Tourism and Redevelopment Act as follows:

(a)(i) Tourism development project, investment in qualified property as required by this subdivision and a net employment increase to the state. Net employment from the project shall be determined at stabilization of the project, typically by the third year, and shall include any lost jobs from semi-competitive venues.

(ii) The investment requirement for a tourism development project is as follows:

(A) Tier 1, fifty million dollars exclusive of land for a project located in a municipality within a county in which the net taxable sales in the preceding calendar year were at least nine hundred million dollars or a municipality within a county bordered by two counties in which the total net taxable sales in the preceding calendar year were at least nine hundred million dollars;

(B) Tier 2, thirty million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were at least two hundred million dollars but less than nine hundred million dollars;

(C) Tier 3, twenty million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were at least one hundred million dollars but less than two hundred million dollars; and

(D) Tier 4, ten million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were less than one hundred million dollars.

(iii) All complete project applications shall be considered by the municipality and certified if the project and taxpayer qualify for incentives. Agreements may be executed with regard to completed project applications. A tourism development project shall be unique and not duplicate any other qualified business in this state within (A) the same metropolitan statistical area as determined by the United States Office of Management and Budget and (B) a fifty-mile radius of the project; and

(b) Redevelopment project, investment in qualified property of at least ten million dollars and a net employment increase to the state, except that for a redevelopment project in a municipality within a county in which the net taxable sales in the preceding calendar year were less than one hundred million dollars, the requirements shall be investment in qualified property of at least seven million five hundred thousand dollars and a net employment increase to the state. Net employment from the project shall be determined by comparing the impact of the project to the impact of not having the project. Agreements may be executed with regard to completed project

applications.

(2) In addition to the requirements of subsection (1) of this section:

(a) The project shall be open at least one hundred fifty days each calendar year;

(b) The applicant shall demonstrate that the project is not feasible but for the incentives provided under the act; and

(c) The applicant shall demonstrate that the project has conditional financing prior to completion of the application and final approval of financing before final approval of the application by the municipality.

(3) When the taxpayer has met the requirements contained in the agreement for the project, the taxpayer shall be entitled to the following incentives:

(a) A refund of local option sales tax up to a rate of one and one-half percent from the date of the application through the meeting of the requirements contained in the agreement for the project for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate;

(b) Except as provided in subdivision (c) of this subsection for redevelopment projects, a refund of local option sales tax up to a rate of one and one-half percent paid on all types of purchases on which the local option sales tax is levied within the boundaries of the project during each year of the entitlement period in which the taxpayer meets the requirements contained in the agreement for the project; and

(c) For a redevelopment project, if the taxpayer has been collecting local option sales tax for more than twenty-four months prior to completion of the project, a refund of the increase in local option sales tax revenue collected by the taxpayer within the boundaries of the project each calendar year after the completion of the project.

Sec. 32. (1) The Department of Revenue shall contract with an independent consultant to review each project under the Nebraska Advantage Transformational Tourism and Redevelopment Act every fifth year following the effective date of this act. The review shall be paid for by each project owner. The review shall examine patronage from outside the metropolitan statistical area as defined by the United States Office of Management and Budget in which the project is located, sales data, and employment records to determine the project owner's continued compliance with the provisions of the act. The project owner shall comply with the provisions of this subsection or be subject to the recapture provisions of this section. If it is determined that the project owner was not in compliance, the municipality may recapture all or a portion of the incentives provided under the act.

(2) If the taxpayer fails to meet the requirements contained in the agreement for the project either by the end of the fourth year after the end of the year the application was submitted or for the entire entitlement period, all or a portion of the incentives provided under the act shall be recaptured on behalf of the municipality.

(3) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of four years after the end of the entitlement period.

(4) Any amounts due under this section shall be recaptured notwithstanding other allowable incentives and shall not be subsequently refunded under any provision of the act unless the recapture was in error.

(5) The recapture required by this section shall not occur if (a) the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency or (b) the cost of recapture would exceed the amount to be recaptured in the opinion of the municipality.

(6) The Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund is created. The fund shall be used by the department to carry out its duties under this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 33. (1) The incentives allowed under the Nebraska Advantage Transformational Tourism and Redevelopment Act may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the municipality of the completed transfer, shall be entitled to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any incentives received either before or after the transfer.

Sec. 34. Interest shall not be allowable on any refunds paid because of incentives earned under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Sec. 35. The Nebraska Advantage Transformational Tourism and Redevelopment Act may not be used for the construction or financing of a stadium or for support facilities for a stadium.

Sec. 36. Section 18-2506, Reissue Revised Statutes of Nebraska, is amended to read:

18-2506 Measure ~~shall mean~~ means an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to pass, and which is not excluded from the operation of referendum by the exceptions in section 18-2528. Measure does not include any action permitted by the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Sec. 37. Original section 18-2506, Reissue Revised Statutes of Nebraska, is repealed.