

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1018

Introduced by Cornett, 45.

Read first time January 20, 2010

Committee: Revenue

A BILL

- 1 FOR AN ACT relating to revenue and taxation; to adopt the Nebraska
- 2 Advantage Transformational Tourism and Redevelopment Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 36 of this act shall be known
2 and may be cited as the Nebraska Advantage Transformational Tourism
3 and Redevelopment Act.

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

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

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

17 Sec. 5. Approved cost means:

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

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

24 (3) The cost of contract bonds and of insurance of all
25 kinds that may be required or necessary during the course of the

1 acquisition, construction, equipping, and installation of a project
2 which is not paid by the vendor, supplier, delivery person, or
3 contractor or otherwise provided;

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

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

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

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

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

22 Sec. 7. Cultural development means a real estate
23 development with a primary purpose of promoting cultural education
24 or development, such as a museum or related visual arts centers,
25 performing arts facility, or facilities housing, incubating,

1 developing, or promoting art, music, theater, dance, zoology,
2 botany, natural history, cultural history, or the sciences.

3 Sec. 8. Destination dining means a real estate
4 development primarily selling and serving prepared food and
5 beverage to the public in a setting with sit-down dining. Food
6 sales must represent a minimum of forty percent of the total sales
7 volume of the development. In addition, the development must offer
8 a unique food or experience concept not found in this state within
9 (1) the same metropolitan statistical area as determined by the
10 United States Office of Management and Budget and (2) a fifty-mile
11 radius of the development.

12 Sec. 9. Entertainment destination center means a facility
13 containing a minimum of two hundred thousand square feet of
14 gross leasable area adjacent or complementary to an existing
15 tourism attraction, an approved tourism development project, or a
16 convention facility, and which provides a variety of entertainment
17 and leisure options that contain at least six full-service
18 restaurants and at least three additional entertainment venues,
19 including, but not limited to, live entertainment, multiplex
20 theaters, large format theaters, motion simulators, family
21 entertainment centers, concert halls, virtual reality or other
22 interactive games, museums, exhibitions, or other cultural and
23 leisure time activities. Entertainment and food and drink options
24 shall occupy a minimum of sixty percent of total gross area
25 available for lease, including adjacent lodging. Other retail

1 stores shall occupy no more than forty percent of the total gross
2 area available for lease.

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

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

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

23 Sec. 13. Investment means the value of qualified property
24 incorporated into or used at the project. For qualified property
25 owned by the taxpayer, the value shall be the original cost of the

1 property. Investment does not include real property for a tourism
2 development project.

3 Sec. 14. Lodging means any lodging facility with the
4 following attributes:

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

11 (2) The facility utilizes a historic redevelopment; or

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

20 Lodging includes a lodging facility constructed as part
21 of a development prior to the construction of retail development or
22 a tourism attraction under the Nebraska Advantage Transformational
23 Tourism and Redevelopment Act.

24 Sec. 15. Mixed-use project means a facility containing a
25 minimum of fifty thousand square feet. The project must include at

1 least two vertical stories of usable or leasable space and contain
2 a minimum of two uses, such as restaurant, office, retail, or
3 residential, not including parking. Retail stores shall occupy no
4 more than forty percent of the total gross usable area.

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

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

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

25 (a) Cultural development;

- 1 (b) Historical redevelopment;
- 2 (c) Recreation facilities;
- 3 (d) Entertainment destination centers;
- 4 (e) Lodging;
- 5 (f) Destination dining;
- 6 (g) Tourism attraction;
- 7 (h) Nebraska crafts and products center; or
- 8 (i) Any combination of the activities listed in this
- 9 subsection.

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

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

1 Sec. 19. Qualified property means any tangible property
2 of a type subject to depreciation, amortization, or other recovery
3 under the Internal Revenue Code of 1986, as amended, or the
4 components of such property, that will be located and used at
5 the project. Qualified property does not include (1) aircraft,
6 barges, motor vehicles, railroad rolling stock, or watercraft or
7 (2) property that is rented by the taxpayer qualifying under the
8 Nebraska Advantage Transformational Tourism and Redevelopment Act
9 to another person.

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

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

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

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

5 Sec. 24. Taxpayer means any person subject to sales and
6 use taxes under the Nebraska Revenue Act of 1967 and subject to
7 withholding under section 77-2753 and any corporation, partnership,
8 limited liability company, cooperative, including a cooperative
9 exempt under section 521 of the Internal Revenue Code of 1986,
10 as amended, limited cooperative association, or joint venture that
11 is or would otherwise be a member of the same unitary group, if
12 incorporated, that is subject to such sales and use taxes or such
13 withholding. Taxpayer does not include a political subdivision or
14 an organization that is exempt from income taxes under section
15 501(a) of the Internal Revenue Code of 1986, as amended, or any
16 partnership, limited liability company, cooperative, including a
17 cooperative exempt under section 521 of the Internal Revenue Code
18 of 1986, as amended, limited cooperative association, or joint
19 venture in which political subdivisions or organizations described
20 in section 501(c) or (d) of the code hold an ownership interest of
21 ten percent or more.

22 Sec. 25. Tourism attraction means a place of interest
23 where tourists visit, typically for the inherent or exhibited
24 cultural value, historical significance, natural or built beauty,
25 or amusement opportunities, such as historical places, monuments,

1 zoos, aquaria, museums, art galleries, botanical gardens,
2 skyscrapers, parks, forests, natural recreation areas, theme parks,
3 ethnic enclaves, historic transportation, and landmarks.

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

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

8 Sec. 28. The powers granted by the Nebraska Advantage
9 Transformational Tourism and Redevelopment Act shall not be
10 exercised unless and until the question of directing the proceeds
11 of the local option sales tax as authorized under the act has been
12 submitted at a primary, general, or special election held within
13 the municipality and in which all registered voters are entitled
14 to vote on such question. The officials of the municipality shall
15 order the submission of the question by submitting a certified copy
16 of the resolution proposing the tax to the election commissioner.
17 The question may include any terms and conditions set forth in
18 the resolution, such as a termination date, and shall include the
19 following language: Shall the municipality direct the local option
20 sales tax collected within an area defined by the municipality
21 to require redevelopment or as a tourism development project for
22 the benefit of that area? If a majority of the votes cast upon
23 the question are in favor, the governing body may so direct the
24 tax. If a majority of those voting on the question are opposed,
25 the governing body shall not so direct the tax. Once approved,

1 the municipality may exercise the powers granted by the act for
2 a period of ten years. Any election under this section shall
3 be conducted in accordance with the procedures provided in the
4 Election Act.

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

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

16 (2) The application shall contain:

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

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

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

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

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

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

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

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

11 (6) After certification, the taxpayer and the
12 municipality shall enter into a written agreement. The taxpayer
13 shall agree to complete the project, and the municipality shall
14 designate the approved plan of the taxpayer as a project and,
15 in consideration of the taxpayer's agreement, agree to allow the
16 taxpayer to use the incentives contained in the Nebraska Advantage
17 Transformational Tourism and Redevelopment Act. The application,
18 and all supporting documentation, to the extent approved, shall be
19 considered a part of the agreement. The agreement shall state:

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

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

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

1 (d) The date the application was filed; and

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

8 (7) A taxpayer and a municipality may enter into
9 agreements for more than one project and may include more than
10 one project in a single agreement. The projects may be either
11 sequential or concurrent. A project may involve the same location
12 as another project. No new employment or new investment shall be
13 included in more than one project for either the meeting of the
14 employment or investment requirements or the creation of credits.
15 When projects overlap and the plans do not clearly specify, then
16 the taxpayer shall specify in which project the employment or
17 investment belongs.

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

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

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

4 (a) Tourism development project, investment in qualified
5 property as required by this subdivision and a net employment
6 increase to the state. Net employment from the project shall be
7 determined at stabilization of the project, typically by the third
8 year and shall include any lost jobs from semi-competitive venues.
9 The investment requirement for a tourism development project is as
10 follows:

11 (i) Tier 1, fifty million dollars exclusive of land for a
12 project located in a city within a county in which the net taxable
13 sales in the preceding calendar year were at least nine hundred
14 million dollars or a city within a county bordered by two counties
15 in which the total net taxable sales in the preceding calendar year
16 were at least nine hundred million dollars;

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

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

25 (iv) Tier 4, fifteen million dollars exclusive of land

1 for a project in a city within a county in which the net taxable
2 sales in the preceding calendar year were less than one hundred
3 million dollars.

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

12 (b) Redevelopment project, investment in qualified
13 property of at least ten million dollars and a net employment
14 increase to the state. Net employment from the project shall be
15 determined by comparing the impact of the project to the impact
16 of not having the project. Agreements may be executed with regard
17 to completed project applications.

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

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

22 (b) The applicant shall demonstrate that the project is
23 only feasible but for the incentives provided under the act; and

24 (c) The applicant shall demonstrate that the project
25 has conditional financing prior to completion of the application

1 and final approval of financing before final approval of the
2 application by the municipality.

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

6 (a) A refund of local option sales tax up to a rate of
7 1.50 percent from the date of the application through the meeting
8 of the requirements contained in the agreement for the project for
9 all purchases, including rentals, of:

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

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

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

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

21 (b) A refund of local option sales tax up to a rate of
22 1.50 percent paid on the types of purchases, including rentals,
23 listed in subdivision (a) of this subsection for such taxes paid
24 during each year of the entitlement period in which the taxpayer
25 meets the requirements contained in the agreement for the project;

1 and

2 (c) For a redevelopment project, if the taxpayer has been
3 collecting local option sales tax for more than twenty-four months
4 prior to completion of the project, the increase in local option
5 sales tax revenue collected by the taxpayer each calendar year
6 after the completion of the project shall be used by the city for
7 the project.

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

23 (2) If the taxpayer fails either to meet the requirements
24 contained in the agreement for the project by the end of the
25 fourth year after the end of the year the application was submitted

1 or for the entire entitlement period, all or a portion of the
2 incentives provided under the act shall be recaptured on behalf of
3 the municipality.

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

8 (4) Any amounts due under this section shall be
9 recaptured notwithstanding other allowable credits and shall not be
10 subsequently refunded under any provision of the Nebraska Advantage
11 Transformational Tourism and Redevelopment Act unless the recapture
12 was in error.

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

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

24 (2) The acquiring taxpayer, as of the date of
25 notification of the municipality of the completed transfer, shall

1 be entitled to any future incentives allowable under the act.

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

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

9 Sec. 35. A county that has adopted a local option sales
10 tax pursuant to section 13-319 may utilize the provisions of the
11 Nebraska Advantage Transformational Tourism and Redevelopment Act
12 upon approval by the registered voters of the county in the manner
13 provided in section 28 of this act.

14 Sec. 36. The Nebraska Advantage Transformational Tourism
15 and Redevelopment Act may not be used for the construction or
16 financing of a stadium or for support facilities for a stadium.