

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 543**

Introduced by Watermeier, 1.

Read first time January 18, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend  
2 sections 77-5701, 77-5702, and 77-5723, Revised Statutes Cumulative  
3 Supplement, 2016; to define a term for purposes of certain  
4 evaluations; to change provisions relating to applications; to  
5 provide reporting requirements; to harmonize provisions; and to  
6 repeal the original sections.

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

1 Section 1. Section 77-5701, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 77-5701 Sections 77-5701 to 77-5735 and section 4 of this act shall  
4 be known and may be cited as the Nebraska Advantage Act.

5 Sec. 2. Section 77-5702, Revised Statutes Cumulative Supplement,  
6 2016, is amended to read:

7 77-5702 (1) The Legislature hereby finds and declares that it is  
8 the policy of this state to make revisions in Nebraska's tax structure in  
9 order to (a) ~~(1)~~ encourage new businesses to relocate to Nebraska, (b)  
10 ~~(2)~~ retain existing businesses and aid in their expansion, (c) ~~(3)~~  
11 promote the creation and retention of new, quality jobs in Nebraska,  
12 specifically jobs related to research and development, manufacturing, and  
13 large data centers, and (d) ~~(4)~~ attract and retain investment capital in  
14 the State of Nebraska.

15 (2) For purposes of any evaluation of the Nebraska Advantage Act  
16 conducted pursuant to the Legislative Performance Audit Act, the term new  
17 business, as used in this section, means a unitary business participating  
18 in the Nebraska Advantage Act that did not pay income taxes or wages in  
19 the state more than two years prior to submitting an application under  
20 the Nebraska Advantage Act.

21 Sec. 3. Section 77-5723, Revised Statutes Cumulative Supplement,  
22 2016, is amended to read:

23 77-5723 (1) In order to utilize the incentives set forth in the  
24 Nebraska Advantage Act, the taxpayer shall file an application, on a form  
25 developed by the Tax Commissioner, requesting an agreement with the Tax  
26 Commissioner.

27 (2) The application shall contain:

28 (a) A written statement describing the plan of employment and  
29 investment for a qualified business in this state. Such statement shall  
30 identify the federal tax identification numbers associated with the  
31 unitary business that will be involved in the project, including

1 identification of the federal tax identification numbers that will  
2 include project employees;

3 (b) Sufficient documents, plans, and specifications as required by  
4 the Tax Commissioner to support the plan and to define a project;

5 (c) If more than one location within this state is involved,  
6 sufficient documentation to show that the employment and investment at  
7 different locations are interdependent parts of the plan. A headquarters  
8 shall be presumed to be interdependent with each other location directly  
9 controlled by such headquarters. A showing that the parts of the plan  
10 would be considered parts of a unitary business for corporate income tax  
11 purposes shall not be sufficient to show interdependence for the purposes  
12 of this subdivision;

13 (d) A nonrefundable application fee of one thousand dollars for a  
14 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,  
15 or tier 5 project, five thousand dollars for a tier 4 project, and ten  
16 thousand dollars for a tier 6 project. The fee shall be credited to the  
17 Nebraska Incentives Fund; and

18 (e) A timetable showing the expected sales tax refunds and what year  
19 they are expected to be claimed. The timetable shall include both direct  
20 refunds due to investment and credits taken as sales tax refunds as  
21 accurately as possible.

22 The application and all supporting information shall be confidential  
23 except for the name of the taxpayer, the location of the project, the  
24 amounts of increased employment and investment, and the information  
25 required to be reported by sections 77-5731 and 77-5734.

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

31 (4) Once satisfied that the plan in the application defines a

1 project consistent with the purposes stated in the Nebraska Advantage Act  
2 in one or more qualified business activities within this state, that the  
3 taxpayer and the plan will qualify for benefits under the act, and that  
4 the required levels of employment and investment for the project will be  
5 met prior to the end of the fourth year after the year in which the  
6 application was submitted for a tier 1, tier 3, or tier 6 project or the  
7 end of the sixth year after the year in which the application was  
8 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner  
9 shall approve the application. For a tier 5 project that is sequential to  
10 a tier 2 large data center project, the required level of investment  
11 shall be met prior to the end of the fourth year after the expiration of  
12 the tier 2 large data center project entitlement period relating to  
13 direct sales tax refunds.

14 (5) The Tax Commissioner shall make his or her determination to  
15 approve or not approve an application within one hundred eighty days  
16 after the date of the application. If the Tax Commissioner requests, by  
17 mail or by electronic means, additional information or clarification from  
18 the taxpayer in order to make his or her determination, such one-hundred-  
19 eighty-day period shall be tolled from the time the Tax Commissioner  
20 makes the request to the time he or she receives the requested  
21 information or clarification from the taxpayer. The taxpayer and the Tax  
22 Commissioner may also agree to extend the one-hundred-eighty-day period.  
23 If the Tax Commissioner fails to make his or her determination within the  
24 prescribed one-hundred-eighty-day period, the application shall be deemed  
25 approved.

26 (6) Within one hundred eighty days after approval of the  
27 application, the Tax Commissioner shall prepare and mail a written  
28 agreement to the taxpayer for the taxpayer's signature. The taxpayer and  
29 the Tax Commissioner shall enter into a written agreement. The taxpayer  
30 shall agree to complete the project, and the Tax Commissioner, on behalf  
31 of the State of Nebraska, shall designate the approved plan of the

1 taxpayer as a project and, in consideration of the taxpayer's agreement,  
2 agree to allow the taxpayer to use the incentives contained in the  
3 Nebraska Advantage Act. The application, and all supporting  
4 documentation, to the extent approved, shall be considered a part of the  
5 agreement. The agreement shall state:

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

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

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

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

13 (e) A requirement that the company update the Department of Revenue  
14 annually on any changes in plans or circumstances which affect the  
15 timetable of sales tax refunds as set out in the application. If the  
16 company fails to comply with this requirement, the Tax Commissioner may  
17 defer any pending sales tax refunds until the company does comply.

18 (7) The incentives contained in section 77-5725 shall be in lieu of  
19 the tax credits allowed by the Nebraska Advantage Rural Development Act  
20 for any project. In computing credits under the act, any investment or  
21 employment which is eligible for benefits or used in determining benefits  
22 under the Nebraska Advantage Act shall be subtracted from the increases  
23 computed for determining the credits under section 77-27,188. New  
24 investment or employment at a project location that results in the  
25 meeting or maintenance of the employment or investment requirements, the  
26 creation of credits, or refunds of taxes under the Employment and  
27 Investment Growth Act shall not be considered new investment or  
28 employment for purposes of the Nebraska Advantage Act. The use of  
29 carryover credits under the Employment and Investment Growth Act, the  
30 Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the  
31 Quality Jobs Act shall not preclude investment and employment from being

1 considered new investment or employment under the Nebraska Advantage Act.  
2 The use of property tax exemptions at the project under the Employment  
3 and Investment Growth Act shall not preclude investment not eligible for  
4 the property tax exemption from being considered new investment under the  
5 Nebraska Advantage Act.

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

15 (9) The taxpayer may request that an agreement be modified if the  
16 modification is consistent with the purposes of the act and does not  
17 require a change in the description of the project. An agreement may not  
18 be modified to a tier that would grant a higher level of benefits to the  
19 taxpayer or to a tier 1 project. Once satisfied that the modification to  
20 the agreement is consistent with the purposes stated in the act, the Tax  
21 Commissioner and taxpayer may amend the agreement. For a tier 6 project,  
22 the taxpayer must agree to limit the project to qualified activities  
23 allowable under tier 2 and tier 4.

24 Sec. 4. (1) Beginning in 2018, each taxpayer who has requested that  
25 a project be audited by the Department of Revenue in order to determine  
26 whether the project qualifies for benefits under the Nebraska Advantage  
27 Act shall report the following information to the Department of Revenue  
28 by May 31:

29 (a) All federal tax identification numbers assigned to the unitary  
30 business associated with the project in the previous calendar year,  
31 including identification of which federal tax identification numbers

1 include project employees; and

2 (b) All unemployment insurance numbers assigned to the unitary  
3 business associated with the project in the previous calendar year,  
4 including identification of which unemployment insurance numbers include  
5 project employees.

6 (2) Beginning in 2018, each taxpayer who has requested that a  
7 project be audited by the Department of Revenue in order to determine  
8 whether the project qualifies for benefits under the Nebraska Advantage  
9 Act shall report the following information to the Department of Labor by  
10 May 31:

11 (a) The occupation title for each employee who contributes hours  
12 worked that qualify for benefits;

13 (b) The project location for each employee who contributes hours  
14 worked that qualify for benefits; and

15 (c) The number of hours qualifying for benefits that are worked at  
16 each project location for each employee who contributes hours worked that  
17 qualify for benefits.

18 Sec. 5. Original sections 77-5701, 77-5702, and 77-5723, Revised  
19 Statutes Cumulative Supplement, 2016, are repealed.