

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 724

Introduced by Vargas, 7; Cavanaugh, 6; Pansing Brooks, 28; Wayne, 13;
Wishart, 27.

Read first time January 23, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend
2 sections 77-5701, 77-5723, and 77-5731, Reissue Revised Statutes of
3 Nebraska; to state findings; to provide requirements for boards of
4 directors in order to qualify for incentives; to harmonize
5 provisions; and to repeal the original sections.

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

1 Section 1. Section 77-5701, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-5701 Sections 77-5701 to 77-5735 and section 2 of this act shall
4 be known and may be cited as the Nebraska Advantage Act.

5 Sec. 2. (1) The Legislature finds and declares that:

6 (a) Nationwide and in Nebraska, women are paid significantly less
7 than men. In addition to wage disparity, women make up a small share of
8 top leadership positions in private businesses. In recent years, women
9 have made some gains in leadership positions, and experience has shown
10 that the increase of women in leadership is helping businesses thrive in
11 unprecedented ways. For over fifty years, equal pay laws have sought to
12 remedy persistent disparities based on sex and gender in the workplace.
13 Nevertheless, gender-based disparities with regard to pay and leadership
14 status persist and have created a wage gap in Nebraska negatively
15 impacting working women, working families, our state budget, and our
16 state and national economies;

17 (b) The persistent gender disparities illustrate that this state
18 must do better and must modernize its equal pay laws with innovative and
19 creative policy strategies. Research shows that if the state waits for a
20 private market correction, Nebraska women will not realize equal pay for
21 equal work until 2066. That pace is unacceptable. The state must be
22 proactive and take additional steps to make equal pay a reality; and

23 (c) The Nebraska Advantage Act encourages and rewards employers that
24 invest in Nebraska and its workforce. One of the stated goals of the act
25 is to promote the creation and retention of new, quality jobs in
26 Nebraska. Quality jobs are jobs provided by employers that recognize that
27 women are a significant portion of Nebraska's workforce and that provide
28 for pay and employment equity for women, including equity in leadership.

29 (2) For any taxpayer that is a domestic corporation with a board of
30 directors, such taxpayer shall not qualify for any incentives under the
31 Nebraska Advantage Act unless at least one-half of the members of the

1 taxpayer's board of directors are female. Such requirement shall continue
2 to apply to the taxpayer throughout the entitlement period. If a taxpayer
3 fails to meet such requirement at any time during the entitlement period,
4 such failure shall be treated in the same manner as a failure to maintain
5 the required level of employment for purposes of recapture and
6 disallowance of incentives under section 77-5727.

7 (3) For purposes of this section, female means an individual who
8 self-identifies as a woman, without regard to the individual's designated
9 sex at birth.

10 (4) This section applies to applications submitted on and after the
11 effective date of this act.

12 Sec. 3. Section 77-5723, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 77-5723 (1) In order to utilize the incentives set forth in the
15 Nebraska Advantage Act, the taxpayer shall file an application, on a form
16 developed by the Tax Commissioner, requesting an agreement with the Tax
17 Commissioner.

18 (2) The application shall contain:

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

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

23 (c) If more than one location within this state is involved,
24 sufficient documentation to show that the employment and investment at
25 different locations are interdependent parts of the plan. A headquarters
26 shall be presumed to be interdependent with each other location directly
27 controlled by such headquarters. A showing that the parts of the plan
28 would be considered parts of a unitary business for corporate income tax
29 purposes shall not be sufficient to show interdependence for the purposes
30 of this subdivision;

31 (d) A nonrefundable application fee of one thousand dollars for a

1 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,
2 or tier 5 project, five thousand dollars for a tier 4 project, and ten
3 thousand dollars for a tier 6 project. The fee shall be credited to the
4 Nebraska Incentives Fund;~~and~~

5 (e) A timetable showing the expected sales tax refunds and what year
6 they are expected to be claimed. The timetable shall include both direct
7 refunds due to investment and credits taken as sales tax refunds as
8 accurately as possible; and -

9 (f) If the taxpayer is a domestic corporation with a board of
10 directors, information regarding the gender of the members of the board
11 of directors at the time of application and, if necessary, a timetable
12 showing the year the taxpayer expects to meet the requirements in section
13 2 of this act with respect to its board of directors. This subdivision
14 applies to applications submitted on and after the effective date of this
15 act.

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

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

25 (4) Once satisfied that the plan in the application defines a
26 project consistent with the purposes stated in the Nebraska Advantage Act
27 in one or more qualified business activities within this state, that the
28 taxpayer and the plan will qualify for benefits under the act, and that
29 the required levels of employment and investment for the project will be
30 met prior to the end of the fourth year after the year in which the
31 application was submitted for a tier 1, tier 3, or tier 6 project or the

1 end of the sixth year after the year in which the application was
2 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner
3 shall approve the application. For a tier 5 project that is sequential to
4 a tier 2 large data center project, the required level of investment
5 shall be met prior to the end of the fourth year after the expiration of
6 the tier 2 large data center project entitlement period relating to
7 direct sales tax refunds.

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

20 (6) Within one hundred eighty days after approval of the
21 application, the Tax Commissioner shall prepare and mail a written
22 agreement to the taxpayer for the taxpayer's signature. The taxpayer and
23 the Tax Commissioner shall enter into a written agreement. The taxpayer
24 shall agree to complete the project, and the Tax Commissioner, on behalf
25 of the State of Nebraska, shall designate the approved plan of the
26 taxpayer as a project and, in consideration of the taxpayer's agreement,
27 agree to allow the taxpayer to use the incentives contained in the
28 Nebraska Advantage Act. The application, and all supporting
29 documentation, to the extent approved, shall be considered a part of the
30 agreement. The agreement shall state:

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

1 the project;

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

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

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

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

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

31 (8) A taxpayer and the Tax Commissioner may enter into agreements

1 for more than one project and may include more than one project in a
2 single agreement. The projects may be either sequential or concurrent. A
3 project may involve the same location as another project. No new
4 employment or new investment shall be included in more than one project
5 for either the meeting of the employment or investment requirements or
6 the creation of credits. When projects overlap and the plans do not
7 clearly specify, then the taxpayer shall specify in which project the
8 employment or investment belongs.

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

18 Sec. 4. Section 77-5731, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-5731 (1) The Tax Commissioner shall submit electronically an
21 annual report to the Legislature no later than July 15 of each year. The
22 Department of Revenue shall, on or before September 1 of each year,
23 appear at a joint hearing of the Appropriations Committee of the
24 Legislature and the Revenue Committee of the Legislature and present the
25 report. Any supplemental information requested by three or more committee
26 members shall be presented within thirty days after the request.

27 (2) The report shall list (a) the agreements which have been signed
28 during the previous year, (b) the agreements which are still in effect,
29 (c) the identity of each taxpayer who is party to an agreement, and (d)
30 the location of each project.

31 (3) The report shall also state, for taxpayers who are parties to

1 agreements, by industry group (a) the specific incentive options applied
2 for under the Nebraska Advantage Act, (b) the refunds allowed on the
3 investment, (c) the credits earned, (d) the credits used to reduce the
4 corporate income tax and the credits used to reduce the individual income
5 tax, (e) the credits used to obtain sales and use tax refunds, (f) the
6 credits used against withholding liability, (g) the number of jobs
7 created under the act, (h) the expansion of capital investment, (i) the
8 estimated wage levels of jobs created under the act subsequent to the
9 application date, (j) the total number of qualified applicants, (k) the
10 projected future state revenue gains and losses, (l) the sales tax
11 refunds owed, (m) the credits outstanding under the act, (n) the value of
12 personal property exempted by class in each county under the act, (o) the
13 value of property for which payments equal to property taxes paid were
14 allowed in each county, ~~and~~ (p) the total amount of the payments, and (o)
15 the percentage of female members on the boards of directors of such
16 taxpayers.

17 (4) In estimating the projected future state revenue gains and
18 losses, the report shall detail the methodology utilized, state the
19 economic multipliers and industry multipliers used to determine the
20 amount of economic growth and positive tax revenue, describe the analysis
21 used to determine the percentage of new jobs attributable to the Nebraska
22 Advantage Act assumption, and identify limitations that are inherent in
23 the analysis method.

24 (5) The report shall provide an explanation of the audit and review
25 processes of the department in approving and rejecting applications or
26 the grant of incentives and in enforcing incentive recapture. The report
27 shall also specify the median period of time between the date of
28 application and the date the agreement is executed for all agreements
29 executed by December 31 of the prior year.

30 (6) The report shall provide information on project-specific total
31 incentives used every two years for each approved project. The report

1 shall disclose (a) the identity of the taxpayer, (b) the location of the
2 project, and (c) the total credits used and refunds approved during the
3 immediately preceding two years expressed as a single, aggregated total.
4 The incentive information required to be reported under this subsection
5 shall not be reported for the first year the taxpayer attains the
6 required employment and investment thresholds. The information on first-
7 year incentives used shall be combined with and reported as part of the
8 second year. Thereafter, the information on incentives used for
9 succeeding years shall be reported for each project every two years
10 containing information on two years of credits used and refunds approved.
11 The incentives used shall include incentives which have been approved by
12 the department, but not necessarily received, during the previous two
13 years.

14 (7) The report shall include an executive summary which shows
15 aggregate information for all projects for which the information on
16 incentives used in subsection (6) of this section is reported as follows:
17 (a) The total incentives used by all taxpayers for projects detailed in
18 subsection (6) of this section during the previous two years; (b) the
19 number of projects; (c) the new jobs at the project for which credits
20 have been granted; (d) the average compensation paid employees in the
21 state in the year of application and for the new jobs at the project; and
22 (e) the total investment for which incentives were granted. The executive
23 summary shall summarize the number of states which grant investment tax
24 credits, job tax credits, sales and use tax refunds for qualified
25 investment, and personal property tax exemptions and the investment and
26 employment requirements under which they may be granted.

27 (8) No information shall be provided in the report that is protected
28 by state or federal confidentiality laws.

29 Sec. 5. Original sections 77-5701, 77-5723, and 77-5731, Reissue
30 Revised Statutes of Nebraska, are repealed.