

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1191

Introduced by Hallstrom, 1; Brandt, 32; Dorn, 30.

Read first time January 21, 2026

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend
- 2 sections 77-5723 and 77-5735, Revised Statutes Cumulative
- 3 Supplement, 2024; to change the time period in which the required
- 4 levels of employment and investment must be met for certain
- 5 projects; to provide for applicability; to provide for a fee; to
- 6 harmonize provisions; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 77-5723, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 77-5723 (1) In order to utilize the incentives set forth in the
4 Nebraska Advantage Act, the taxpayer shall file an application, on a form
5 developed by the Tax Commissioner, requesting an agreement with the Tax
6 Commissioner.

7 (2) The application shall contain:

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

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

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

20 (d) A nonrefundable application fee of one thousand dollars for a
21 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,
22 or tier 5 project, five thousand dollars for a tier 4 project, and ten
23 thousand dollars for a tier 6 project. The fee shall be credited to the
24 Nebraska Incentives Fund; and

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

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

1 required to be reported by sections 77-5731 and 77-5734.

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

7 (4) Once satisfied that the plan in the application defines a
8 project consistent with the purposes stated in the Nebraska Advantage Act
9 in one or more qualified business activities within this state, that the
10 taxpayer and the plan will qualify for benefits under the act, and that
11 the required levels of employment and investment for the project will be
12 met within the applicable time period prescribed in this subsection, the
13 Tax Commissioner shall approve the application. For a tier 6 project
14 submitted and approved by the Tax Commissioner prior to December 1, 2020,
15 or for any tier 1 or tier 3 project, the required levels of employment
16 and investment shall be met prior to the end of the fourth year after the
17 year in which the application was submitted. For a tier 6 project
18 submitted and approved by the Tax Commissioner on or after December 1,
19 2020, ~~or for any tier 2, tier 4, or tier 5 project,~~ the required levels
20 of employment and investment shall be met prior to the end of the ninth
21 ~~sixth~~ year after the year in which the application was submitted. For any
22 tier 2, tier 4, or tier 5 project, the required levels of employment and
23 investment shall be met prior to the end of the sixth year after the year
24 in which the application was submitted. For a tier 5 project that is
25 sequential to a tier 2 large data center project, the required level of
26 investment shall be met prior to the end of the fourth year after the
27 expiration of the tier 2 large data center project entitlement period
28 relating to sales tax exemptions.

29 (5) The Tax Commissioner shall make his or her determination to
30 approve or not approve an application within one hundred eighty days
31 after the date of the application. If the Tax Commissioner requests, by

1 mail or by electronic means, additional information or clarification from
2 the taxpayer in order to make his or her determination, such one-hundred-
3 eighty-day period shall be tolled from the time the Tax Commissioner
4 makes the request to the time he or she receives the requested
5 information or clarification from the taxpayer. The taxpayer and the Tax
6 Commissioner may also agree to extend the one-hundred-eighty-day period.
7 If the Tax Commissioner fails to make his or her determination within the
8 prescribed one-hundred-eighty-day period, the application shall be deemed
9 approved.

10 (6) Within one hundred eighty days after approval of the
11 application, the Tax Commissioner shall prepare and mail a written
12 agreement to the taxpayer for the taxpayer's signature. The taxpayer and
13 the Tax Commissioner shall enter into a written agreement. The taxpayer
14 shall agree to complete the project, and the Tax Commissioner, on behalf
15 of the State of Nebraska, shall designate the approved plan of the
16 taxpayer as a project and, in consideration of the taxpayer's agreement,
17 agree to allow the taxpayer to use the incentives contained in the
18 Nebraska Advantage Act. The application, and all supporting
19 documentation, to the extent approved, shall be considered a part of the
20 agreement. The agreement shall state:

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

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

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

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

28 (e) A requirement that the company update the Department of Revenue
29 annually on any changes in plans or circumstances which affect the
30 timetable of sales tax refunds as set out in the application. If the
31 company fails to comply with this requirement, the Tax Commissioner may

1 defer any pending sales tax refunds until the company does comply.

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

21 (8) A taxpayer and the Tax Commissioner may enter into agreements
22 for more than one project and may include more than one project in a
23 single agreement. The projects may be either sequential or concurrent. A
24 project may involve the same location as another project. No new
25 employment or new investment shall be included in more than one project
26 for either the meeting of the employment or investment requirements or
27 the creation of credits. When projects overlap and the plans do not
28 clearly specify, then the taxpayer shall specify in which project the
29 employment or investment belongs.

30 (9) The taxpayer may request that an agreement be modified if the
31 modification is consistent with the purposes of the act and does not

1 require a change in the description of the project. An agreement may not
2 be modified to a tier that would grant a higher level of benefits to the
3 taxpayer or to a tier 1 project. Once satisfied that the modification to
4 the agreement is consistent with the purposes stated in the act, the Tax
5 Commissioner and taxpayer may amend the agreement. For a tier 6 project,
6 the taxpayer must agree to limit the project to qualified activities
7 allowable under tier 2 and tier 4.

8 **Sec. 2.** Section 77-5735, Revised Statutes Cumulative Supplement,
9 2024, is amended to read:

10 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
11 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
12 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
13 all applications filed on and after April 18, 2008. For all applications
14 filed prior to such date, the provisions of the Nebraska Advantage Act as
15 they existed immediately prior to such date apply.

16 (2) The changes made in sections 77-5725 and 77-5726 by Laws 2010,
17 LB879, apply to all applications filed on or after July 15, 2010. For all
18 applications filed prior to such date, the taxpayer may make a one-time
19 election, within the time period prescribed by the Tax Commissioner, to
20 have the changes made in sections 77-5725 and 77-5726 by Laws 2010,
21 LB879, apply to such taxpayer's application, or in the absence of such an
22 election, the provisions of the Nebraska Advantage Act as they existed
23 immediately prior to July 15, 2010, apply to such application.

24 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and
25 77-5725 by Laws 2010, LB918, apply to all applications filed on or after
26 July 15, 2010. For all applications filed prior to such date, the
27 provisions of the Nebraska Advantage Act as they existed immediately
28 prior to such date apply.

29 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
30 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
31 applications filed on or after March 8, 2012. For all applications filed

1 prior to such date, the provisions of the Nebraska Advantage Act as they
2 existed immediately prior to such date apply.

3 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
4 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
5 applications filed on or after September 6, 2013. For all applications
6 filed prior to such date, the provisions of the Nebraska Advantage Act as
7 they existed immediately prior to such date apply.

8 (6) The changes made in section 77-5726 by Laws 2017, LB161, apply
9 to all applications filed before, on, or after August 24, 2017.

10 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,
11 and 77-5727 and in subsections (3), (6), and (7) of section 77-5731 by
12 Laws 2022, LB1150, apply to any agreement entered into under the Nebraska
13 Advantage Act that is still active on January 1, 2023, if the taxpayer
14 makes a one-time election, within the time period prescribed by the Tax
15 Commissioner, to have such changes apply to such taxpayer's agreement. In
16 the absence of such an election, the provisions of such sections and
17 subsections as they existed immediately prior to January 1, 2023, shall
18 apply to such agreement. For each election made under this subsection,
19 the Tax Commissioner shall disclose such election, the identity of the
20 taxpayer, and the location of the taxpayer's project to each municipality
21 in which the project is located. The Tax Commissioner shall make such
22 disclosures within thirty days after the election.

23 (8) The changes made in sections 77-5723 and 77-5727 by Laws 2024,
24 LB1088, apply to any agreement entered into under the Nebraska Advantage
25 Act that is still active on July 19, 2024, if the taxpayer makes a one-
26 time election, within the time period prescribed by the Tax Commissioner,
27 to have such changes apply to such taxpayer's agreement. In the absence
28 of such an election, the provisions of such sections as they existed
29 immediately prior to July 19, 2024, shall apply to such agreement.

30 (9) The changes made in section 77-5723 by this legislative bill
31 apply to any agreement for a tier 6 project entered into under the

1 Nebraska Advantage Act that is still active on the effective date of this
2 act if a taxpayer makes a one-time election and pays a fee of ninety
3 thousand dollars, within the time period prescribed by the Tax
4 Commissioner, to have such changes apply to such taxpayer's agreement. In
5 the absence of such an election, the provisions of such section as it
6 existed immediately prior to the effective date of this act shall apply
7 to such agreement.

8 **Sec. 3.** Original sections 77-5723 and 77-5735, Revised Statutes
9 Cumulative Supplement, 2024, are repealed.