

E AND R AMENDMENTS TO LB 1018

Introduced by Enrollment and Review Committee: Nordquist, 7,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

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

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

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

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

19 Sec. 5. Approved cost means:

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

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

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

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

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

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

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

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

26 Sec. 7. Cultural development means a real estate
27 development with a primary purpose of promoting cultural education

1 or development, such as a museum or related visual arts centers,
2 performing arts facility, or facilities housing, incubating,
3 developing, or promoting art, music, theater, dance, zoology,
4 botany, natural history, cultural history, or the sciences.

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

13 Sec. 9. Entertainment destination center means a facility
14 containing a minimum of two hundred thousand square feet of
15 gross leasable area adjacent or complementary to an existing
16 tourism attraction, an approved tourism development project, or a
17 convention facility, and which provides a variety of entertainment
18 and leisure options that contain at least six full-service
19 restaurants and at least three additional entertainment venues,
20 including, but not limited to, live entertainment, multiplex
21 theaters, large-format theaters, motion simulators, family
22 entertainment centers, concert halls, virtual reality or other
23 interactive games, museums, exhibitions, or other cultural and
24 leisure-time activities. Entertainment, food, and drink options and
25 adjacent lodging shall occupy a minimum of sixty percent of the
26 total gross area. Other retail stores shall occupy no more than
27 forty percent of the total gross area.

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

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

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

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

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

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

7 (b) The facility utilizes a historical redevelopment; or

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

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

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

26 Sec. 16. Nebraska crafts and products center means a
27 real estate retail development primarily selling products created,

1 grown, or assembled in Nebraska. Nebraska crafts and products must
2 constitute a minimum of fifty percent of the total sales volume of
3 the development.

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

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

- 19 (a) Cultural development;
- 20 (b) Historical redevelopment;
- 21 (c) Recreation facilities;
- 22 (d) Entertainment destination centers;
- 23 (e) Lodging;
- 24 (f) Destination dining;
- 25 (g) Tourism attraction;
- 26 (h) Nebraska crafts and products center; or
- 27 (i) Any combination of the activities listed in this

1 subsection.

2 (2) For a redevelopment project, qualified business means

3 any business engaged in:

4 (a) Cultural development;

5 (b) Historical redevelopment;

6 (c) Recreation facilities;

7 (d) Entertainment destination centers;

8 (e) Mixed-use projects;

9 (f) Lodging;

10 (g) Full-service restaurants or destination dining;

11 (h) Residential development;

12 (i) Retail development;

13 (j) Structured parking;

14 (k) Tourism attraction;

15 (l) Nebraska crafts and products center; or

16 (m) Any combination of the activities listed in this

17 subsection.

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

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

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

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

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

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

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

1 incorporated, that is subject to such sales and use taxes or such
2 withholding.

3 (2) Taxpayer does not include a political subdivision or
4 an organization that is exempt from income taxes under section
5 501(a) of the Internal Revenue Code of 1986, as amended, or any
6 partnership, limited liability company, cooperative, including a
7 cooperative exempt under section 521 of the Internal Revenue Code
8 of 1986, as amended, limited cooperative association, or joint
9 venture in which political subdivisions or organizations described
10 in section 501(c) or (d) of the Internal Revenue Code of 1986, as
11 amended, hold an ownership interest of ten percent or more.

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

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

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

23 Sec. 28. The powers granted by the Nebraska Advantage
24 Transformational Tourism and Redevelopment Act shall not be
25 exercised unless and until the question of directing the proceeds
26 of the local option sales tax as authorized under the act has been
27 submitted at a primary, general, or special election held within

1 the municipality and in which all registered voters are entitled
2 to vote on such question. The officials of the municipality shall
3 order the submission of the question by submitting a certified copy
4 of the resolution proposing the tax to the election commissioner.
5 The question may include any terms and conditions set forth in
6 the resolution, such as a termination date, and shall include the
7 following language: Shall the municipality direct the local option
8 sales tax collected within an area defined by the municipality
9 to require redevelopment or as a tourism development project for
10 the benefit of that area? If a majority of the votes cast upon
11 the question are in favor, the governing body may so direct the
12 tax. If a majority of those voting on the question are opposed,
13 the governing body shall not so direct the tax. Once approved,
14 the municipality may exercise the powers granted by the act for
15 a period of ten years. Any election under this section shall
16 be conducted in accordance with the procedures provided in the
17 Election Act.

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

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

1 statewide, requesting an agreement.

2 (2) The application shall contain:

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

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

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

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

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

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

24 (4) The municipality shall conduct an internal review
25 of the feasibility study. If the municipality determines that
26 the feasibility study demonstrates that the project can meet the
27 requirements of the act, then the municipality shall conduct its

1 own study with an independent third party, the cost of which shall
2 be paid in full by the applicant. The cost of the study required
3 under this subsection shall be in addition to the fee required
4 under subsection (2) of this section. The purpose of the study is
5 to verify or nullify the results of the feasibility study provided
6 by the applicant. Additionally, the study shall examine the ability
7 of the applicant to meet the requirements of the act. The study
8 shall make a recommendation to the municipality on whether to
9 proceed with the project or not.

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

20 (6) After certification, the taxpayer and the
21 municipality shall enter into a written agreement. The taxpayer
22 shall agree to complete the project, and the municipality shall
23 designate the approved plan of the taxpayer as a project and,
24 in consideration of the taxpayer's agreement, agree to allow the
25 taxpayer to use the incentives contained in the Nebraska Advantage
26 Transformational Tourism and Redevelopment Act. The application,
27 and all supporting documentation, to the extent approved, shall be

1 considered a part of the agreement. The agreement shall state:

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

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

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

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

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

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

25 (8) The taxpayer may request that an agreement be
26 modified if the modification is consistent with the purposes
27 of the act and does not require a change in the description of the

1 project. Once satisfied that the modification to the agreement is
2 consistent with the purposes stated in the act, the municipality
3 and taxpayer may amend the agreement.

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

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

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

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

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

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

27 (C) Tier 3, twenty million dollars exclusive of land for

1 a project in a city within a county in which the net taxable sales
2 in the preceding calendar year were at least one hundred million
3 dollars but less than two hundred million dollars; and

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) Except as provided in subdivision (c) of this
24 subsection for redevelopment projects, a refund of local option
25 sales tax up to a rate of one and one-half percent paid on all
26 types of purchases on which the local option sales tax is levied
27 during each year of the entitlement period in which the taxpayer

1 meets the requirements contained in the agreement for the project;
2 and

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

8 Sec. 32. (1) The Department of Revenue shall contract
9 with an independent consultant to review each project under the
10 Nebraska Advantage Transformational Tourism and Redevelopment Act
11 every fifth year following the effective date of this act. The
12 review shall be paid for by each project owner. The review shall
13 examine patronage from outside the metropolitan statistical area as
14 defined by the United States Office of Management and Budget in
15 which the project is located, sales data, and employment records
16 to determine the project owner's continued compliance with the
17 provisions of the act. The project owner shall comply with the
18 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 act.

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

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

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

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

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

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

26 (2) The acquiring taxpayer, as of the date of
27 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. The Nebraska Advantage Transformational Tourism
10 and Redevelopment Act may not be used for the construction or
11 financing of a stadium or for support facilities for a stadium.